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**UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA * CRIMINAL DOCKET NO. 97-145
 v. * SECTION: "L"
 RICHARD R. PENA *

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, pursuant to Title 21, United States Code, Sections 848(h)(1)(A) and (B), by and through its undersigned counsel, and notifies the Court and the defendant in the above-captioned case that in the event of the defendant's conviction of one or more of the intentional killings of Navari Harvey, Richard Curtis, Roderick Smith, and/or Robin Pitre, as charged in Counts 10 through 13 of the Third Superseding Indictment, the Government will seek the sentence of death.

The Government will seek to prove the following aggravating factors as the basis for imposition of the death penalty.

COUNT 10INTENTIONAL KILLING OF NAVARRI HARVEY

A. Statutory Aggravating Factor Enumerated under 21 U.S.C. 848(n)(1)(A) through (D):

1. **Intentional Acts to Take Life or Use Lethal Force.** The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n)(1)(C).

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. 848(n)(2) through (12):

1. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

2. **Heinous, Cruel, or Depraved.** The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim. Section 848(n)(12).

C. Other, Non-Statutory, Aggravating Factors Identified under 21 U.S.C. 848(h)(1)(B) and 848(k):

1. **Multiple Intentional Killings.** The defendant intentionally killed, caused to be intentionally killed, and conspired to intentionally kill more than one person while engaging in and working in furtherance of a continuing criminal enterprise. See 18 U.S.C. § 3592(c)(16).

2. **Future Dangerousness.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to other persons. Simmons v. South Carolina, 14 S.Ct. 2187, 2193 (1994). In addition to the capital offenses charged in the Third

Superseding Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the defendant has:

(a) engaged in a continuing pattern of violent conduct, by committing and ordering others to commit acts of violence, including but not limited to: (1) cutting off Dominick Bush's finger and flushing it down a toilet so that it could not be re-attached; (2) rifle-butting Keith Bridgewater in the head; and (3) driving a nail through Marc Canty's bare foot; and

(b) planned to commit other acts of violence in the future: (1) escaping from jail; and (2) killing one or more law enforcement officers and government witnesses.

3. **Victim Impact Evidence.** The impact of the victim's death upon the victim's family. Payne v. Tennessee, 111 S.Ct. 2597, 2608-09 (1991). Navari Harvey is survived by his wife, parents, and sister who have suffered injury and loss as a result of his death.

COUNT II

INTENTIONAL KILLING OF RICHARD CURTIS

A. **Statutory Aggravating Factor Enumerated under 21 U.S.C. 848(n)(1)(A) through (D):**

1. **Intentional Acts to Take Life or Use Lethal Force.** The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n)(1)(C).

B. **Statutory Aggravating Factors Enumerated under 21 U.S.C. 848(n)(2) through (12):**

1. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

2. **Heinous, Cruel, or Depraved.** The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim. Section 848(n)(12).

C. Other, Non-Statutory, Aggravating Factors Identified under 21 U.S.C. 848(h)(1)(B) and 848(k):

1. **Multiple Intentional Killings.** The defendant intentionally killed, caused to be intentionally killed, and conspired to intentionally kill more than one person while engaging in and working in furtherance of a continuing criminal enterprise. See 18 U.S.C. § 3592(c)(16).

2. **Future Dangerousness.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to other persons. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994). In addition to the capital offenses charged in the Third Superseding Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the defendant has:

(a) engaged in a continuing pattern of violent conduct, by committing and ordering others to commit acts of violence, including but not limited to: (1) cutting off Dominick Bush's finger and flushing it down a toilet so that it could not be re-attached; (2) rifle-butting Keith Bridgewater in the head; and (3) driving a nail through Marc Canty's bare foot; and

(b) planned to commit other acts of violence in the future: (1) escaping from jail; and (2) killing one or more law enforcement officers and government witnesses.

3. **Victim Impact Evidence.** The impact of the victim's death upon the victim's family. Payne v. Tennessee, 111 S.Ct. 2597, 2608-09 (1991). Richard Curtis is survived by his mother, two brothers, and two sisters who have suffered injury and loss as a result of his death.

COUNT 12**INTENTIONAL KILLING OF RODERICK SMITH**

A. **Statutory Aggravating Factor Enumerated under 21 U.S.C. 848(n)(1)(A) through (D):**

1. **Intentional Acts to Take Life or Use Lethal Force.** The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n)(1)(C).

B. **Statutory Aggravating Factors Enumerated under 21 U.S.C. 848(n)(2) through (12):**

1. **Procurement of Offense by Payment.** The defendant procured commission of the offense by payment, or promise of payment, of anything of pecuniary value. Section 848(n)(6).

2. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

C. **Other, Non-Statutory, Aggravating Factors Identified under 21 U.S.C. 848(h)(1)(B) and 848(k):**

1. **Multiple Intentional Killings.** The defendant intentionally killed, caused to be intentionally killed, and conspired to intentionally kill more than one person while engaging in and working in furtherance of a continuing criminal enterprise. See 18 U.S.C. § 3592(c)(16).

2. **Future Dangerousness.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to other persons. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994). In addition to the capital offenses charged in the Third Superseding Indictment and the statutory and non-statutory aggravating factors alleged in this Notice,

the defendant has:

(a) engaged in a continuing pattern of violent conduct, by committing and ordering others to commit acts of violence, including but not limited to: (1) cutting off Dominick Bush's finger and flushing it down a toilet so that it could not be re-attached; (2) rifle-burting Keith Bridgewater in the head; and (3) driving a nail through Marc Canty's bare foot; and

(b) planned to commit other acts of violence in the future: (1) escaping from jail; and (2) killing one or more law enforcement officers and government witnesses.

3. **Victim Impact Evidence.** The impact of the victim's death upon the victim's family. Payne v. Tennessee, 111 S.Ct. 2597, 2608-09 (1991). Roderick Smith is survived by his wife and two children who have suffered injury and loss as a result of his death.

4. **Obstruction of Justice.** The defendant procured the killing of Roderick Smith in retaliation for assisting in the investigation of the defendant's drug-trafficking activities. See 18 U.S.C. §§ 1121(a)(2), 1512(a)(1), and 1513(a)(1).

COUNT 13

INTENTIONAL KILLING OF ROBIN PITRE

A. Statutory Aggravating Factor Enumerated under 21 U.S.C. 848(n)(1)(A) through (D):

1. **Intentional Acts to Take Life or Use Lethal Force.** The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, which resulted in the death of the victim. Section 848(n)(1)(C).

B. Statutory Aggravating Factors Enumerated under 21 U.S.C. 848(n)(2) through (12):

1. **Procurement of Offense by Payment.** The defendant procured commission of the offense by payment, or promise of payment, of anything of pecuniary value. Section 848(n)(6).

2. **Substantial Planning and Premeditation.** The defendant committed the offense after substantial planning and premeditation. Section 848(n)(8).

C. Other, Non-Statutory, Aggravating Factors Identified under 21 U.S.C. 848(h)(1)(B) and 848(k):

1. **Multiple Intentional Killings.** The defendant intentionally killed, caused to be intentionally killed, and conspired to intentionally kill more than one person while engaging in and working in furtherance of a continuing criminal enterprise. See 18 U.S.C. § 3592(c)(16).

2. **Future Dangerousness.** The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to other persons. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994). In addition to the capital offenses charged in the Third Superseding Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the defendant has:

(a) engaged in a continuing pattern of violent conduct, by committing and ordering others to commit acts of violence, including but not limited to: (1) cutting off Dominick Bush's finger and flushing it down a toilet so that it could not be re-attached; (2) rifle-butting Keith Bridgewater in the head; and (3) driving a nail through Marc Canty's bare foot; and


(b) planned to commit other acts of violence in the future: (1) escaping from jail; and (2) killing one or more law enforcement officers and government witnesses.


3. **Obstruction of Justice.** The defendant procured the killing of Robin Pitre to intimidate and prevent others from assisting in the investigation of the defendant's drug-trafficking

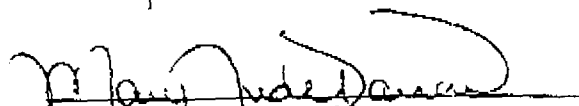
activities. See 18 U.S.C. §§ 1121(a)(2), 1512(a)(1), and 1513(a)(1).

4. **Victim Impact Evidence.** The victim's personal characteristics as an individual human being and the impact of the victim's death upon the victim's family. Payne v. Tennessee, 111 S.Ct. 2597, 2608-09 (1991). Robin Pitre was a single mother who worked days and attended school at night; she is survived by her 8-year-old son, parents, and grandparents who have suffered injury and loss as a result of her death.

Respectfully submitted,


EDDIE J. JORDAN, JR.
United States Attorney


MICHAEL F. WALTHER
Assistant United States Attorney


MARY JUDE DARROW
Assistant United States Attorney
Hale Boggs Federal Building
501 Magazine Street
New Orleans, Louisiana 70130
Telephone: (504) 680-3018

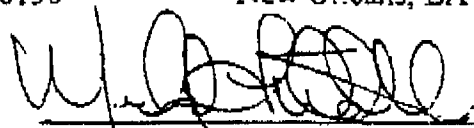
Dated: August 20, 1998

CERTIFICATE OF SERVICE

I herety certify that on the 2nd day of August, 1998, a true and correct copy of the foregoing notice of intent to seek the death penalty was delivered by hand to the following attorneys of record:

Kyle Schonekas
546 Carondelet Street
New Orleans, LA 70130

Laurie Anne White
633 Carondelet Street
New Orleans, LA 70130



MICHAEL F. WALTHER
Assistant United States Attorney