

1 JOHN K. VINCENT  
 United States Attorney  
 2 KENNETH J. MELIKIAN  
 R. STEVEN LAPHAM  
 3 Assistant U.S. Attorneys  
 501 I Street, Suite 10-100  
 4 Sacramento, California 95814  
 Telephone: (916) 554-2700  
 5

**FILED**

OCT 12 2001

*WBS*

6 IN THE UNITED STATES DISTRICT COURT  
 7 FOR THE EASTERN DISTRICT OF CALIFORNIA

8 UNITED STATES OF AMERICA, ) CR NO. S-00-411 WBS  
 9 )

Plaintiff, )

v. )

11 NOTICE OF INTENT TO  
 SEEK THE DEATH PENALTY

12 TRUNG THANH PHAM, )  
 13 )

Defendant. )

14 )  
 15 )  
 16 Pursuant to the requirements of 18 U.S.C. § 3593(a), the  
 17 United States hereby gives notice that it believes that the  
 18 circumstances of this case are such that, in the event that the  
 19 defendant is convicted of the capital offense relating to the  
 20 death of victim Hien Tran, a sentence of death is justified and  
 21 that the United States will seek the death penalty.  
 22 Specifically, the United States will seek a sentence of death for  
 23 Count One of the indictment which charges arson in violation of  
 24 18 U.S.C. § 844(i).

25 Pursuant to 18 U.S.C. § 3591(a)(2), the United States will  
 26 rely on the following preliminary factors to establish the  
 27 defendant's eligibility for the death penalty:

28 ///

1           1. **Intentional Acts to Take Life or Use Lethal Force.** The  
2 defendant intentionally participated in an act, contemplating  
3 that the life of a person would be taken or intending that lethal  
4 force would be used in connection with a person, other than one  
5 of the participants in the offense, and the victim died as a  
6 direct result of the act. 18 U.S.C. § 3591(a)(2)(C).

7           2. **Intentional Act Creating Grave Risk of Death.** The  
8 defendant intentionally and specifically engaged in an act of  
9 violence, knowing that the act created a grave risk of death to a  
10 person, other than one of the participants in the offense, such  
11 that participation in the act constituted a reckless disregard  
12 for human life and the victim died as a direct result of the act.  
13 18 U.S.C. § 3591(a)(2)(D).

14           Pursuant to 18 U.S.C. § 3592(c), the United States will rely  
15 on the following statutory aggravating factors as justifying a  
16 sentence of death:

17           1. **Death Resulting from Arson.** The death, or injury  
18 resulting in death, occurred during the commission or attempted  
19 commission of an offense under 18 U.S.C. § 844(i), which  
20 prohibits arson of a building used in or affecting interstate  
21 commerce. 18 U.S.C. § 3592(c)(1).

22           2. **Grave Risk of Death to Others.** The defendant, in the  
23 commission of the offense, knowingly created a grave risk of  
24 death to one or more persons in addition to the victim of the  
25 offense. 18 U.S.C. § 3592(c)(5).

26           3. **Pecuniary Gain.** The defendant committed the offense as  
27 consideration for the receipt, or in the expectation of the  
28 receipt, of anything of pecuniary value. 18 U.S.C. § 3592(c)(8).

1           4. **Substantial Planning and Premeditation.** The defendant  
2 committed the offense after substantial planning and  
3 premeditation to cause the death of one or more persons. 18  
4 U.S.C. § 3592(c)(9).

5           5. **Vulnerable Victim.** The victim was particularly  
6 vulnerable due to her youth. 18 U.S.C. § 3592(c)(11).

7           In addition to the statutory aggravating factors set forth  
8 above, the United States will rely on the following non-statutory  
9 aggravating factors to justify a sentence of death pursuant to 18  
10 U.S.C. § 3593(a)(2).

11           1. **Future Dangerousness of the Defendant.** The defendant  
12 represents a continuing danger to the lives and safety of other  
13 persons. The defendant has committed the acts alleged in the  
14 capital offense charged in the indictment and in the statutory  
15 and non-statutory aggravating factors contained in this Notice,  
16 and, in addition, has engaged in other intimidating and  
17 potentially violent conduct, and has demonstrated lack of remorse  
18 for the death and injuries he has inflicted, including but not  
19 limited to the following:

20                   (a) The defendant was affiliated with Asian street  
21 gangs prior to the commission of the offense set forth in the  
22 indictment.

23                   (b) The defendant was involved in serious felonious  
24 conduct when he was a juvenile.

25                   (c) The defendant attempted to injure or kill a  
26 particular individual on more than one occasion.

27           2. **Victim Impact Evidence.** As reflected by the victim's  
28 personal characteristics as an individual human being and the

1 impact of the offense on the victim and the victim's family, the  
 2 defendant caused loss, injury, and harm to the victim and the  
 3 victim's family, see Payne v. Tennessee, 501 U.S. 808, 825-827  
 4 (1991), including, but not limited to, the following:

5 (a) Characteristics of victim. The defendant caused  
 6 the death of Hien Tran, an innocent nine-year-old child, who had  
 7 her entire life in front of her. She came to this country from  
 8 Vietnam to seek a better life. She was a good student, a Girl  
 9 Scout, and had many friends.

10 (b) Impact of the offense on the family of the victim.  
 11 The victim's family has suffered severe and irreparable harm.  
 12 The victim's family was very close. The victim, her mother,  
 13 brother, sister, and two uncles all lived in the same house after  
 14 coming to this country from Vietnam. The adults of the victim's  
 15 family came to this country to find a better life for themselves  
 16 and their children. Instead, the victim was taken from them  
 17 before she was able to pursue her dreams. An enormous sense of  
 18 loss will haunt the victim's family forever.

19 (c) Serious injury to a survivor of the offense. The  
 20 victim's uncle, Duc Tran, who was present during the capital  
 21 offense charged in the indictment, suffered serious life-altering  
 22 injuries as a result of the arson offense.

23 DATED: October 12, 2001

Respectfully submitted,

24 JOHN K. VINCENT  
 25 United States Attorney

26 By *Kenneth J. Melikian*  
 KENNETH J. MELIKIAN  
 Assistant U.S. Attorney

27 By *R. Steven Lapham*  
 28 R. STEVEN LAPHAM  
 Assistant U.S. Attorney

CERTIFICATE OF SERVICE BY MAIL

3	UNITED STATES OF	)	CR. S-00-411 WBS
4	AMERICA,	)	
5	Plaintiff,	)	
6	v.	)	
7	TRUNG THANH PHAM,	)	
8	Defendant.	)	

The undersigned hereby certifies that she is an employee in the office of the United States Attorney for the Eastern District of California and is a person of such age and discretion as to be competent to serve papers.

That on October 12, 2001, she served a copy of the attached:

**NOTICE OF INTENT TO SEEK THE DEATH PENALTY**

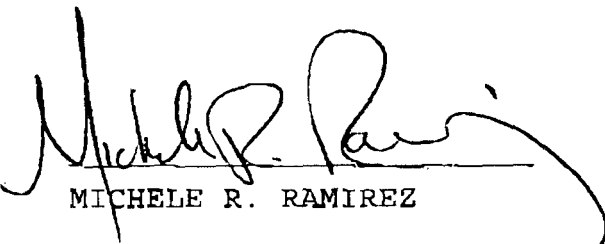
by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Sacramento, California; or by placing said copy into an interoffice delivery receptacle located in the Clerk's Office of the U.S. District Court in Sacramento, California.

**SERVICE BY MAIL**

**INTER-OFFICE DELIVERY**

Kevin D. Clymo  
Attorney At Law  
922 2nd Street, Suite 200  
Sacramento, Ca. 95814

Fred N. Dawson  
Attorney At Law  
922 2nd Street, Suite 200  
Sacramento, Ca. 95814

  
MICHELE R. RAMIREZ