

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 v.) Criminal No. 91-504 (EGS)
)
 Zaid HASSAN ABD LATIF SAFARINI,)
 also known as MUSTAFA HASSAN)
 SAID BOMER,)
 also known as MUSTAFA,)
)
 Defendant.)
 _____)

**GOVERNMENT'S AMENDED NOTICE
OF ITS INTENT TO SEEK THE DEATH PENALTY**

The United States of America hereby submits its amended notice to the Court and the defendant, Zaid HASSAN ABD LATIF SAFARINI, also known as MUSTAFA HASSAN SAID BOMER, also known as MUSTAFA (hereinafter referred to as "defendant SAFARINI") and his counsel, that in the event of defendant SAFARINI's conviction on Count Eight of the superseding indictment, wherein defendant SAFARINI is charged with Attempt to Commit Aircraft Piracy Resulting in Death and Aiding and Abetting and Causing an Act to be Done, in violation of Title 49, United States Code, Appendix Section 1472(i) (1982) and Title 18, United States Code, Section 2, the government will seek the sentence of death, in that the circumstances of the offense are such that a sentence of death is justified.

I. Statutory Threshold Findings Enumerated in 18 U.S.C. § 3591(a)

The government will seek to prove the following threshold findings as the basis for imposition of the death penalty in relation to Count Eight of the superseding indictment:

A. Defendant SAFARINI was not less than 18 years of age at the time of the offense. (Title 18, United States Code, Section 3591 (a))

B. Defendant SAFARINI intentionally killed the victims. (Title 18, United States Code, Section 3591(a)(2)(A))

C. Defendant SAFARINI intentionally inflicted serious bodily injury that resulted in the death of the victims. (Title 18, United States Code, Section 3591(a)(2)(B))

D. Defendant SAFARINI intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a person, other than one of the participants in this offense, and the victims died as a direct result of the act. (Title 18, United States Code, Section 3591(a)(2)(C))

E. Defendant SAFARINI intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victims died as a direct result of the act. (Title 18, United States Code, Section 3591(a)(2)(D))

II. Statutory Aggravating Factors Enumerated in 18 U.S.C. § 3592(c)

The government will seek to prove the following statutory aggravating factors as the basis for imposition of the death penalty in relation to Count Eight of the superseding indictment:

A. Defendant SAFARINI committed the offense described in Count Eight, which is

an offense under title 49 (attempt to commit aircraft piracy, now codified at section 46502), the offenses described in Counts Five, Six and Seven, which are offenses under section 32 of title 18 (destruction of aircraft or aircraft facilities), the offense described in Count Nine, which is an offense under section 844(i) of title 18 (destruction of property affecting interstate commerce by explosives), the offense described in Count Eleven, which is an offense under section 1203 of title 18 (hostage taking), and the offenses described in Counts Three and Four, which are offenses under former section 2331 of title 18 (terrorist acts abroad against United States nationals, now codified at section 2332 of title 18), and during the commission of those offenses, the death and injury resulting in death of victims occurred. (Title 18, United States Code, Section 3592(c)(1))

B. Defendant SAFARINI committed the offense described in Count Eight, and in committing that offense, knowingly created a grave risk of death to one or more persons in addition to the victims of the offenses. (Title 18, United States Code, Section 3592(c)(5))

C. Defendant SAFARINI committed the offense described in Count Eight in an especially heinous, cruel, and depraved manner in that the offense involved torture and serious physical abuse to the victims. (Title 18, United States Code, Section 3592(c)(6))

D. Defendant SAFARINI committed the offense described in Count Eight after substantial planning and premeditation to cause the death of a person and commit an act of terrorism. (Title 18, United States Code, Section 3592(c)(9))

E. Defendant SAFARINI committed the offense described in Count Eight against victims who were particularly vulnerable due to old age, youth, and infirmity. (Title 18, United States Code, Section 3592(c)(11))

F. Defendant SAFARINI intentionally killed and attempted to kill more than one person in a single criminal episode. (Title 18, United States Code, Section 3592(c)(16))

III. Statutory Aggravating Factors Enumerated in Title 49, United States Code Appendix, Section 1473(c)(7)(A) (1982)

The government will seek to prove the following statutory aggravating factors enumerated in Title 49, United States Code Appendix, Section 1473(c)(7)(A) (1982), as the basis for imposition of the death penalty in relation to Count Eight of the superseding indictment.

A. Defendant SAFARINI committed the offense described in Count Eight and the death of another person resulted from the commission of the offense after defendant SAFARINI had seized and exercised control of the aircraft. (Title 49, United States Code Appendix, Section 1473(c)(7)(A) (1982))

B. Defendant SAFARINI committed the offense described in Count Eight, knowingly creating a grave risk of death to another person in addition to the victims of the offense and the death of another person resulted from the commission of the offense. (Title 49, United States Code Appendix, Section 1473(c)(7)(B)(iii) (1982))

C. Defendant SAFARINI committed the offense described in Count Eight in an especially heinous, cruel, and depraved manner and the death of another resulted from the commission of the offense. (Title 49, United States Code Appendix, Section 1473(c)(7)(B)(iv)(1982))

IV. Absence of Statutory Mitigating Factors Enumerated in Title 49, United States Code Appendix, Section 1473(c)(6)(A) (1982)

The government believes that defendant SAFARINI will not be able to establish that any of the statutory mitigating factors enumerated in Title 49, United States Code Appendix, Section

1473(c)(7)(A) (1982), is present in this case. Specifically:

A. Defendant SAFARINI was not less than 18 years of age at the time of the offense described in Count Eight. (Title 49, United States Code Appendix, Section 1473(c)(6)(A) (1982))

B. Defendant SAFARINI had no significant impairment of his capacity to appreciate the wrongfulness of his conduct and to conform his conduct to the requirements of law at the time of the offense described in Count Eight. (Title 49, United States Code Appendix, Section 1473(c)(6)(B) (1982))

C. Defendant SAFARINI was under no unusual and substantial duress at the time of the offense described in Count Eight. (Title 49 United States Code Appendix, Section 1473(c)(6)(C) (1982))

D. Defendant SAFARINI was a principal in the offense described in Count Eight and his participation was not relatively minor. (Title 49, United States Code Appendix, Section 1473(c)(6)(D) (1982))

E. Defendant SAFARINI could reasonably foresee that his conduct in the course of the commission of the offense described in Count Eight would cause and would create a grave risk of causing death to another person. (Title 49, United States Code Appendix, Section 1473(c)(6)(E) (1982))

V. Non-Statutory Aggravating Factors Identified Under 18 U.S.C. § 3593(a) and (c)

The government will rely upon the following non-statutory aggravating factors as the basis for imposition of the death penalty in relation to Count Eight of the superseding indictment:

A. **Totality of the Evidence.** In support of the imposition of the death penalty, the

government intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial as it relates to the background and character of defendant SAFARINI, his moral culpability, and the nature and circumstances of the offenses charged in the superseding indictment.

B. Victim Impact in Relation to Those Victims Who Were Killed. As demonstrated by the personal characteristics as human beings of the twenty identified victims who were killed as the result of defendant SAFARINI's offenses and the impact of their deaths on their families, friends and co-workers, defendant SAFARINI caused injury, harm and loss to the victims who were killed, their families, their friends and their co-workers. The government will present information concerning the effect of defendant SAFARINI's offenses upon the victims who were killed, their families, their friends, and their co-workers, which may include oral testimony, particularized victim impact statements referencing the scope of the injury and loss suffered by the victims who were killed, their families, their friends, and their co-workers, and any other relevant information. See Payne v. Tennessee, 501 U.S. 808, 825-27 (1991).

C. Victim Impact in Relation to Those Victims Who Survived. Defendant SAFARINI's offenses resulted in serious physical, emotional and psychological injuries to the more than 350 victims who survived his offenses. The government will present information concerning the effect of defendant SAFARINI's offenses upon the victims who survived his offenses, which may include oral testimony, particularized victim impact statements referencing the scope of the injury and loss suffered by the victims who survived his offenses, and any other relevant information. Cf. Payne, supra, 501 U.S. at 825-27.

D. Participation in the Activities of the Abu Nidal Organization. According to his own admissions, defendant SAFARINI willingly joined the Abu Nidal Organization

(hereinafter referred to as the "ANO"), knowing it to be an extremely violent organization, willingly obtained weapons training from the ANO and participated in and supported the ANO's activities for approximately seven years prior to his offenses of conviction as described in the superseding indictment.

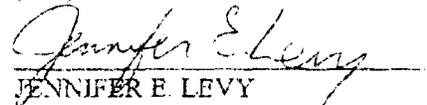
E. **Murder and Escape in Malta.** Defendant SAFARINI was arrested in the country of Malta on October 8, 1981, immediately after he shot and killed a Lebanese national there with a pistol. Defendant SAFARINI was imprisoned in Malta for this crime until June 10, 1982, when he escaped from custody with a fellow inmate.

Respectfully submitted,

ROSCOE C. HOWARD, JR.
UNITED STATES ATTORNEY
D.C. Bar Number 246470_A

By:


GREGG A. MAISEL
Assistant U.S. Attorney
D.C. Bar Number 447902
Transnational/Major Crimes Section
555 Fourth Street, N.W., 5th Floor
Washington, D.C. 20530
(202) 514-7746


JENNIFER E. LEVY
D.C. Bar Number 291070
U.S. Department of Justice, Criminal Division
Counterterrorism Section
10th Street & Constitution Ave., N.W.
Patrick Henry Building, Suite 6500
Washington, D.C. 20530
(202) 514-1092

CERTIFICATE OF SERVICE

I hereby certify that a copy of the "Government's Amended Notice of Its Intent to Seek the Death Penalty" was delivered to the Federal Public Defender's drop box inside the U.S. Courthouse, as well as sent by fax to (202) 501-3829 to counsel for the defendant, Robert Tucker, Assistant Federal Public Defender, 625 Indiana Avenue, N.W., Suite 550, Washington, D.C. 20004, and by first class mail to counsel for the defendant, David I. Bruck, 1247 Sumter Street, Suite 201, P.O. Box 11744, Columbia, SC 29211, as well as sent by fax to (803) 765-1143, on this 10th day of February, 2003.



GREGG A. MAISEL
ASSISTANT UNITED STATES ATTORNEY

Orig. notice
filed 12/12/02

LAW OFFICES OF
DAVID I. BRUCK

e-mail: david@brucklaw.com

**1247 SUMTER STREET, SUITE 201
(29201)**

**POST OFFICE BOX 11744
COLUMBIA, SOUTH CAROLINA 29211**

Telephone: (803) 765-1044

Fax: (803) 765-1143

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