

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 6:17-cr-15-Orl-37KRS

JARVIS WAYNE MADISON,

Defendant.

**DEFENDANT’S MOTION FOR DISCOVERY IN SUPPORT OF “MOTION TO STRIKE
DEATH PENALTY NOTICE” (DOC 264) BASED UPON INFLUENCE OF ARBITRARY
FACTOR - RACE AND GENDER OF VICTIM**

The Defendant, Jarvis Wayne Madison, by and through undersigned counsel, and pursuant to 18 U.S.C. §3593(f) and §3595(c)(2)(A), the Fifth, Sixth and Eighth Amendments to the United States Constitution, and the further points and authorities set forth *infra*, hereby moves for discovery.¹ The following is set forth in support:

MEMO OF LAW - INTRODUCTION

The United States Attorneys Manual (“U.S.A.M.”), although claiming that “it was not intended to, does not, and may not be relied upon to create any rights, substantive or procedural”, “contains general policies and some procedures relevant to the work of the United States Attorneys’ offices[.]” U.S.A.M. 1-1.00 Purpose. Particularly in the context of prosecution of capital crimes, the U.S.A.M. directs, if not controls, the decision by the Department of Justice as to whether, in any particular case, a federal capital prosecution will be sought. If the U.S.A.M.

¹ The undersigned contacted AUSA Vincent Chiu and the Government objects to this motion.

does not provide true and meaningful guidance on determining which cases are to be federal capital prosecutions, the federal death penalty lacks standards and becomes arbitrary and capricious in violation of the Eighth Amendment to the United States Constitution. *Zant v. Stephens*, 462 U.S. 862, 874 (1983) (“A fair statement of the consensus expressed by the Court in [*Furman v. Georgia*, 408 U.S. 238, 253 (1972)] is ‘that where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action.’”) (citing *Gregg v. Georgia*, 428 U.S. 153 (1976) (opinion of Stewart, Powell and Stevens, JJ.)). Compare, *United States v. Sampson*, 486 F.3d 13, 24 (1st Cir. 2007)(expressing the view that the Protocol, if properly followed, operates as a safeguard against arbitrariness: “To the extent that there may be an independent constitutional concern as to the decisional process by which the government decides if it will seek the death penalty, that process contains numerous safeguards built into an articulated death penalty protocol. The process, therefore, is not arbitrary”) (emphasis added).

The Government in this case is seeking the death penalty for a fifty-nine (59) year-old, severely mentally ill and irreversibly brain damaged individual in very poor health, with no prior felony conviction(s) , where the sole statutory aggravating factor is felony murder, (an essential element of the crime itself); and where the Government does not even contend Mr. Madison is a future danger. This is unprecedented in the modern federal death penalty’s thirty-year history. Given the Eighth Amendment requirement of appropriately channeled discretion in use of the death penalty, the established procedures in the U.S.A.M. purportedly used to select the cases for federal capital prosecution, and the circumstances of this case, one **must ask why**.

One readily apparent and constitutionally troubling answer is that Mr. Madison's wife is a white female, and the federal Government historically and disproportionately seeks the death penalty in such cases. The discovery requested herein will either establish that claim, or put it to rest.

As set forth in Mr. Madison's *Motion To Strike Death Penalty Notice Based Upon Influence Of Arbitrary Factor - Race And Gender Of Victim* (Doc. 264), the Court should order discovery and then hold an evidentiary hearing to inquire into the relationship between the "white female victim" effect and the Government's use of the federal death penalty. It is only through such a hearing that an "important question concerning the constitutionality of the death penalty" identified by the *Sampson* Court, (and by numerous constitutional scholars over the past decades) may be resolved.

The points and authorities set forth in that pleading are hereby re-alleged and incorporated by reference, as are the authorities set forth in Mr. Madison's "Notice of Filing Supplemental Authority in Support of all Motions on the Ground that 'Death is Different.'" (Doc. 75).

DISCOVERY REQUESTED

- a. The names, jurisdictions, case numbers and race of defendant and victim in all domestic violence killings where the federal government has filed charges, and sought the death penalty, together with a descriptive statement of why death was sought;²
- b. The name(s) of any case described above which has resulted in the death penalty;

² See U.S.A.M.9-10.140 – Standards for Determination "The standards governing the determination to be reached in cases under this Chapter include fairness, *national consistency*, adherence to statutory requirements, and law-enforcement objectives." (Emphasis added).

- c. The names, jurisdictions, case numbers and race of defendant and victim in all domestic violence killings where the federal government has filed charges, but **not** sought the death penalty, together with a descriptive statement of why death was not sought;
- d. The names, jurisdictions, case numbers and race of defendant and victim in all domestic violence killings where the federal government has considered, but declined to file federal charges;
- e. The names, jurisdictions, case numbers and race of defendant and victim in all other killings where the federal government has filed charges where only a single aggravating factor existed;
- f. The names, jurisdictions, case numbers and race of defendant and victim in all cases where the federal government has sought the death penalty against an individual who suffers from serious mental illness;
- g. The names, jurisdictions, case numbers and race of defendant and victim in all cases where the federal government has sought the death penalty against an individual who was fifty-five years of age or older³ at the time the *Notice of Intent to Seek the Death Penalty* was filed;
- h. The position of the United States Attorney's Office for the Middle District of Florida as to whether death should be sought in this case⁴;

³ A defendant's advanced age is a recognized mitigating factor in federal capital cases. See, e.g., *United States v. Mallay* (ED NY)(2007)(age 61 and poor health), *United States v. Johnson* (ED LA)(2009)(57 years old), *United States v. Henderson* (SD OH)(2007)(age 56).

⁴ The Defendant recognizes that the United States Attorney's Manual 9-10.050 states that "[t]he decision-making process preliminary to the Attorney General's final decision is confidential", and that "[t]he scope of confidentiality includes, but is not limited to: (1) the recommendations of the United States Attorney's Office or Department component, the Attorney General's Review Committee on Capital Cases (hereinafter the "Capital Review Committee"), the Deputy Attorney

- i. The position of the Attorney General’s Review Committee on Capital Cases⁵ as to whether death should be sought in this case;
- j. The position of the victim’s family as to whether death should be sought⁶ in this case,
- and
- k. What federal interest is more substantial⁷ in prosecuting this matter than the interests of the State of Florida which has its own death penalty and where jurisdiction and venue otherwise lie.

CONCLUSION

When the combined influence of victim race and gender is considered, the evidence of arbitrary and capricious application of the modern federal death penalty (1988-2018) is striking and undeniable. *See*, Doc. 264. Accordingly, this Court should enter its order requiring discovery as set forth in paragraphs a-k above. Thereafter, upon completion of discovery, an evidentiary

General, the Capital Case Section, and any other individual or office involved in reviewing the case”. However, to determine whether the decision to seek the death penalty was based upon improper factor(s), it is necessary to identify who the decisionmaker was, and whether the decision was consistent with, or in opposition to, the prosecutors in the case and others who conducted a review.

⁵ *See* U.S.A.M. 9-10.130 – “. . . The Capital Review Committee shall review the materials submitted by the United States Attorney or Assistant Attorney General and any materials submitted by defense counsel. The Capital Review Committee will consider all information presented to it, including any allegation of individual or systemic racial bias in the Federal administration of the death penalty. After considering all information submitted to it, the Committee shall make a recommendation to the Attorney General through the Deputy Attorney General.”

⁶ *See* U.S.A.M. 9-10.100 – “[T]he United States Attorney or Assistant Attorney General should consult with the family of the victim, if reasonably available, concerning the decision on whether to seek the death penalty.”

⁷ *See* U.S.A.M. 9-10.110 – “When concurrent jurisdiction exists with a State or local government, a Federal indictment for an offense subject to the death penalty generally should be obtained only when the Federal interest in the prosecution is more substantial than the interests of the State or local authorities.”

hearing should be conducted to address the basis of this authorization and whether the "white female victim" effect unconstitutionally influenced the death penalty authorization determination in this case contrary to the requirements under 18 U.S.C. Section 3593(f) and section 3595(c)(2)(A) and the Fifth, Sixth and Eighth Amendments to the United States Constitution.

Respectfully submitted this 13th day of April, 2018.

DONNA LEE ELM
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CERTIFICATE OF SERVICE

I Hereby Certify that undersigned electronically filed the foregoing with the Clerk of Court (CM/ECF) by using the CM/ECF system, which will send a notice of electronic filing to Vincent Chiu, Assistant United States Attorney, this the 13th day of April 2018.

/s/ D. Todd Doss