

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 04-60216-CR-COHN/SNOW

UNITED STATES OF AMERICA

Plaintiff,

vs.

KENNETH PAUL WILK,
a/k/a "Wolfpackeines,"

Defendant.

MOTION FOR LEAVE TO FILE AMENDED NOTICE
OF INTENT TO SEEK THE DEATH PENALTY

Comes now the United States, pursuant to Title 21, United States Code, Section 848(h)(2) and moves the court to permit the government to file an Amended Notice of Intent to Seek the Death Penalty. The government asserts that good cause exists for the court to grant the relief requested, as follows:

1. The government has charged Kenneth Paul Wilk with the murder of Todd M Fatta in an Indictment filed on October 21, 2004. Counts One and Three of the Indictment, charged capital offenses that, in the event of the defendant's conviction on any one of those counts, the government maintained a sentence of death would be justified under Chapter 228 (sections 3591 through 3598) of Title 18 of the United States Code. The Indictment included, with regard to each of the capital crimes, a "Notice of Special Findings" setting forth the statutory aggravating factors upon which the government would rely to seek a sentence of death.

2. On February 18, 2005, pursuant to the Court's imposed deadline, and the day after approval by the Attorney General of the United States to seek a sentence of death, the government filed a Notice of Intent to Seek the Death Penalty.

3. On February , 2005, at a status conference before Magistrate Judge Lurana Snow, the government announced that, based on instructions from the Attorney General, an additional count charging the defendant with the murder of a state law enforcement officer (Todd M Fatta) assisting a federal investigation, a violation of 18 U.S.C. §1121, would be sought in a Superseding Indictment.

4. On March 10, 2005, the government filed a Superseding Indictment adding a new Count One, charging the defendant with the murder of a state law enforcement officer assisting a federal investigation, a violation of 18 U.S.C. §1121. Aside from the adding of Count One, the prior Indictment was unchanged, save the re-numbering of the other counts and setting forth Counts One, Two and Four as the three capital counts of the Superseding Indictment in the Notice of Special Findings. There was no change in the Notice of Special Findings relating to the statutory aggravators of the capital counts.

5. There will be no change in the Amended Notice of Intent to Seek the Death Penalty to be filed by the government except that it will track the language of the Notice of Special Findings sections in the Superseding Indictment¹. The Amended Notice will not change the non-statutory aggravators of the prior notice. Therefore, there can be no claim of unfair surprise or prejudice by the defendant as to the eligibility factors or aggravating factors to be relied upon by the government in seeking a sentence of death. Conversely, the government will be greatly prejudiced if it is not permitted to amend the notice to accurately reflect the added charge in the Superseding Indictment

¹ In the wake of Ring v. Arizona , 122 S.Ct. 2428 (2002), which has been interpreted to require that the statutory aggravators be set forth in the Indictment, the formal requirement of notice as to the statutory aggravators is arguably superfluous or at least duplicative.

and proper renumbering of the two previous capital counts. The Amended Notice of Intent to Seek the Death Penalty is attached hereto.

WHEREFORE, the government requests the court to grant it leave to file an Amended Notice of Intent to Seek the Death Penalty as set forth above.

Respectfully Submitted,

MARCOS DANIEL JIMENEZ
UNITED STATES ATTORNEY



By: NEIL KARADBIL
ASSISTANT U S ATTORNEY
Fla. Bar No. 219381
500 East Broward Boulevard; Suite 700
Fort Lauderdale, Florida 33394
(954) 356-7254
FAX (954) 356-7336

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended Notice of Intent to Seek the Death Penalty was faxed and mailed on March 15, 2005 to William Matthewman, Esq., Seiden, Alder & Matthewman, P.A., 44 West Flagler Street, Suite 1100, Miami, Florida, 33130, and J. Raphael Rodriguez, Esq., 6367 Bird Road, Miami, Florida, 33155.



NEIL KARADBIL
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No: 04-60216-CR-COHN\SNOW

UNITED STATES OF AMERICA

Plaintiff,

vs.

KENNETH PAUL WILK,
a/k/a "Wolfpackeines,"

Defendant.

AMENDED NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, pursuant to Title 18 U.S.C. § 3593(a), by and through its undersigned counsel, Marcos Daniel Jimenez, United States Attorney, and Neil Karadbil, Assistant United States Attorney and notifies the Court and the defendant, Kenneth Paul Wilk, in the above-captioned case that the government believes the circumstances of the capital offenses charged in Counts One, Two and Four of the Indictment are such that, in the event of the defendant's conviction on any one of those counts, a sentence of death is justified under Chapter 228 (sections 3591 through 3598) of Title 18 of the United States Code, and that the government will seek the sentence of death for these offenses: a) Count One, the killing of state law enforcement officer, Todd M. Fatta, who was working with Federal law enforcement official Immigration and Customs Enforcement Special Agent Christopher Harvey, in furtherance of a Federal criminal investigation, in violation of 18 U.S.C. §§1121(a)(1)(A) and 1111, which carries a possible sentence of death; and b) Count Two, the premeditated killing, with malice aforethought, of Todd M. Fatta, during and in

relation to his assistance of Immigration and Customs Enforcement Special Agent Christopher Harvey, while Harvey was engaged in the performance of his official duties, in violation of 18 U.S.C. §§ 1114 and 1111(a), which carries a possible sentence of death; and c) Count Four, the carrying and use of a firearm resulting in the death of Todd M. Fatta, during and in relation to crimes of violence, that is murder and attempted murder, in relation to violations of 18 U.S.C. §§1114 and 1111, all in violation of 18 U.S.C. § 924(j)(1), which carries a possible sentence of death.

The Government proposes to prove the following factors as justifying a sentence of death for Counts One, Two and Four:

A. Statutory Proportionality Factors Enumerated Under 18 U.S.C. § 3591(a)(2)(A)-(D).

1. **Intentional Killing.** The defendant, Kenneth Paul Wilk, intentionally killed Todd M. Fatta. Section 3591(a)(2)(A).
2. **Intentional Infliction of Serious Bodily Injury.** The defendant, Kenneth Paul Wilk, intentionally inflicted serious bodily injury that resulted in the death of Todd M. Fatta. Section 3591(a)(2)(B).
3. **Intentional Participation in an Act Contemplating Lethal Force.** The defendant, Kenneth Paul Wilk, intentionally participated in an act, contemplating that a 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 the offense, and Todd M. Fatta died as a direct result of the act, Section 3591(a)(2)(C).
4. **Intentional Acts in Reckless Disregard for Life.** The defendant, Kenneth Paul Wilk, 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 Todd M. Fatta died as a direct result of the act. Section 3591(a)(2)(D).

B. Statutory Aggravating Factors Enumerated Under 18 U.S.C. § 3592(c).

1. **Substantial Planning and Premeditation.** The defendant, Kenneth Paul Wilk, committed the offense after substantial planning and premeditation to cause the death of a person which resulted in the death of Todd M. Fatta. Title 18, United States Code, Section 3592(c)(9).

2. **Multiple Killings.** The defendant, Kenneth Paul Wilk, killed or attempted to kill more than one person, that is, Todd M. Fatta and Angel Cedeno, in the same criminal episode. Section 3592(c)(16).

3. **Grave risk of death to additional persons.** The defendant, Kenneth Paul Wilk, in the commission of the offenses knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. Title 18, United States Code, Section 3592(c)(5).

C. Other, Non-Statutory, Aggravating Factors Identified Under 18 U.S.C. § 3593(a)(2).

1. **Obstruction of justice.** The victim was killed in an effort by the defendant, Kenneth Paul Wilk, to obstruct justice, tamper with a witness, or in retaliation for cooperating with authorities.

2. **Contemporaneous convictions.** The defendant, Kenneth Paul Wilk, may be convicted of, in addition to the capital offenses, attempted premeditated murder in Count Three of the Indictment, and threats of force to obstruct justice in Count Five of the Indictment.

3. **Future dangerousness.** The defendant, Kenneth Paul Wilk, is a danger to the

lives and safety of other persons, as evidenced by specific threats of violence, a continuing pattern of violence, specific admissions of violence, low rehabilitative potential and a lack of remorse. See Simmons v. South Carolina, 512 U.S. 154, 162 (1994). In addition to the offenses charged in the Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the circumstances which demonstrate his future dangerousness include: the defendant's pattern of criminal conduct; incidents of threats to law enforcement officers; his demonstrated low rehabilitative potential; and his lack of remorse for his criminal activities which have caused significant damage to the community and the victims and their families.

4. **Victim Impact.** The defendant, Kenneth Paul Wilk, caused injury, harm, and loss to the friends and family of Todd M. Fatta because of Todd M. Fatta's personal characteristics as an individual human being and the impact of his death upon those persons. See Payne v. Tennessee, 501 U.S. 808, 825-27 (1991).

Respectfully submitted,

MARCOS DANIEL JIMENEZ
UNITED STATES ATTORNEY



Neil Karadbil
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Government's Amended Notice of Intent to Seek Death Penalty was faxed and mailed on March ^{15th}, 2005 to William Matthewman, Esq., Seiden, Alder & Matthewman, P.A., 44 West Flagler Street, Suite 1100, Miami, Florida, 33130, and J. Raphael Rodriguez, Esq., 6367 Bird Road, Miami, Florida, 33155.



Neil Karadbil
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED BY: _____
2005 FEB 18 PM 3:33

Case No: 04-60216-CR-Cohn\Snow

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FL.-FTL.

UNITED STATES OF AMERICA

Plaintiff,

vs.

KENNETH PAUL WILK,
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NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, pursuant to Title 18 U.S.C. § 3593(a), by and through its undersigned counsel, Marcos Daniel Jimenez, United States Attorney, and Neil Karadbil, Assistant United States Attorney and notifies the Court and the defendant, Kenneth Paul Wilk, in the above-captioned case that the government believes the circumstances of the capital offenses charged in Counts One and Three of the Indictment are such that, in the event of the defendant's conviction on any one of those counts, a sentence of death is justified under Chapter 228 (sections 3591 through 3598) of Title 18 of the United States Code, and that the government will seek the sentence of death for these offenses: a) Count One, the premeditated killing, with malice aforethought, of Todd M. Fatta, during and in relation to his assistance of Immigration and Customs Enforcement Special Agent Christopher Harvey, while Harvey was engaged in the performance of his official duties, in violation of 18 U.S.C. § 1114 and 1111(a), which carries a possible sentence of death; and b) Count Three, the carrying and use of a firearm resulting in the death of Todd M.

B. Statutory Aggravating Factors Enumerated Under 18 U.S.C. § 3592(c).

1. **Substantial Planning and Premeditation.** The defendant, Kenneth Paul Wilk, committed the offense after substantial planning and premeditation to cause the death of a person which resulted in the death of Todd M. Fatta. Title 18, United States Code, Section 3592(c)(9).

2. **Multiple Killings.** The defendant, Kenneth Paul Wilk, killed or attempted to kill more than one person, that is, Todd M. Fatta and Angel Cedeno, in the same criminal episode. Section 3592(c)(16).

3. **Grave risk of death to additional persons.** The defendant, Kenneth Paul Wilk, in the commission of the offenses knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. Title 18, United States Code, Section 3592(c)(5).

C. Other, Non-Statutory, Aggravating Factors Identified Under 18 U.S.C. § 3593(a)(2).

1. **Obstruction of justice.** The victim was killed in an effort by the defendant, Kenneth Paul Wilk, to obstruct justice, tamper with a witness, or in retaliation for cooperating with authorities.

2. **Contemporaneous convictions.** The defendant, Kenneth Paul Wilk, may be convicted of, in addition to the capital offenses, attempted premeditated murder in Count Two of the Indictment, and threats of force to obstruct justice in Count Four of the Indictment.

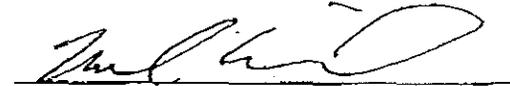
3. **Future dangerousness.** The defendant, Kenneth Paul Wilk, is a danger to the lives and safety of other persons, as evidenced by specific threats of violence, a continuing pattern of violence, specific admissions of violence, low rehabilitative potential and a lack of remorse. See Simmons v. South Carolina, 512 U.S. 154, 162 (1994). In addition to the offenses charged in the Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the

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Respectfully submitted,

MARCOS DANIEL JIMENEZ
UNITED STATES ATTORNEY



Neil Karadbil
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Government's Notice of Intent to Seek Death Penalty was mailed on February ^{18th}, 2005 to William Matthewman, Esq., Seiden, Alder & Matthewman, P.A., 44 West Flagler Street, Suite 1100, Miami, Florida, 33130, and J. Raphael Rodriguez, Esq., 6367 Bird Road, Miami, Florida, 33155.



Neil Karadbil

ASSISTANT UNITED STATES ATTORNEY