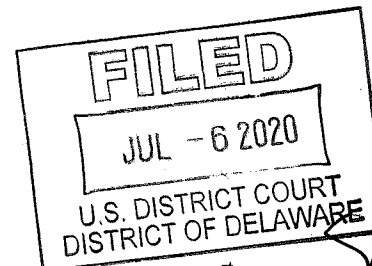


To Clerk of Court:
ENVELOPE #2
OF 2 ENVELOPES.

COPIES MAILED
IN ENVELOPE #1**

DAVID MATUSIEWICZ
81910-004
P.O. Box 33
Terre Haute, IN 47808

20 - 799

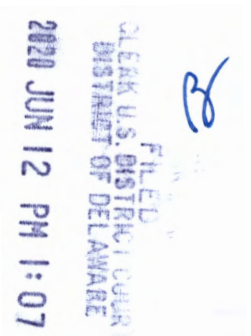


** See *De Aza Paez v. United States*, 343 F.3d 552; 2003 U.S. App. LEXIS 19006 (1st Cir. 2003) (unsigned document tolls time to file when omission cured and subsequently ratified by signed document); *Mederos v. United States*, 218 F.3d 1252; 2000 U.S. App. LEXIS 16682 (11th Cir. 2000) (same)

ENVELOPE #1
OF 2 ENVELOPES.

SIGNED ORIGINAL
IN ENVELOPE #2**

DAVID MATUSIEWICZ
81910-004
P.O. Box 33
Terre Haute, IN 47808



** See *De Aza Paez v. United States*, 343 F.3d 552; 2003 U.S. App. LEXIS 19006 (1st Cir. 2003) (unsigned document tolls time to file when omission cured and subsequently ratified by signed document); *Mederos v. United States*, 218 F.3d 1252; 2000 U.S. App. LEXIS 16682 (11th Cir. 2000) (same)

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

John A. Cerino
CLERK OF COURT

844 North King Street, Unit 18
Wilmington, DE 19801-3570
www.ded.uscourts.gov
(302) 573-6170

June 12, 2020

David Thomas Matusiewicz
81910-004
P.O. Box 33 USP
Terre Haute, IN 47808

RE: USA v. Matusiewicz et al – DEFICIENCY NOTICE
C. A. No: 1:13-cr-00083-GAM-1

Dear Mr. Matusiewicz:

Papers have been received by the Clerk's Office for filing in the above matter which do not conform to the Federal Rules of Civil Procedure, Rule 5; and District of Delaware Local Rules 5.2.(b) and/or 5.3.

Your papers will be docketed but no action will be taken by the Court until the pleading is **signed**. In order for your documents to be acceptable for filing they must be signed where indicated.

Your corrected filing should be returned to this office for processing. Nothing contained in this letter is intended to express an opinion as to the merits of any claims which you may be alleging.

KINDLY RETURN A COPY OF THIS LETTER WITH YOUR CORRECTED DOCUMENTS.

Sincerely,

John A. Cerino
CLERK OF COURT

/amf

cc: The Honorable Gerald A. McHugh

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

FILED
 U.S. DISTRICT COURT
 DISTRICT OF DELAWARE
 JUN 12 PM 1:07

I (a) PLAINTIFFS UNITED STATES OF AMERICA (b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) _____	DEFENDANTS David Matusiewicz County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) _____
--	--

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="border-bottom: 1px solid black;">Citizen of This State</td> <td style="border-bottom: 1px solid black;">PTF <input type="checkbox"/> 1</td> <td style="border-bottom: 1px solid black;">DEF <input type="checkbox"/> 1</td> <td style="border-bottom: 1px solid black;">Incorporated or Principal Place of Business In This State</td> <td style="border-bottom: 1px solid black;">PTF <input type="checkbox"/> 4</td> <td style="border-bottom: 1px solid black;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Citizen of Another State</td> <td style="border-bottom: 1px solid black;"><input type="checkbox"/> 2</td> <td style="border-bottom: 1px solid black;"><input type="checkbox"/> 2</td> <td style="border-bottom: 1px solid black;">Incorporated and Principal Place of Business In Another State</td> <td style="border-bottom: 1px solid black;"><input type="checkbox"/> 5</td> <td style="border-bottom: 1px solid black;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Citizen or Subject of a Foreign Country</td> <td style="border-bottom: 1px solid black;"><input type="checkbox"/> 3</td> <td style="border-bottom: 1px solid black;"><input type="checkbox"/> 3</td> <td style="border-bottom: 1px solid black;">Foreign Nation</td> <td style="border-bottom: 1px solid black;"><input type="checkbox"/> 6</td> <td style="border-bottom: 1px solid black;"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)						
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS <table style="width:100%; border-collapse: collapse;"> <tr> <td style="border-right: 1px solid black; vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice </td> <td style="border-right: 1px solid black; vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> <td style="vertical-align: top;"> FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions </td> </tr> </table>	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. 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Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions				
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input checked="" type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement				

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Remanded or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. § 2255

Brief description of cause:
 Debt is challenging conviction and/or sentence as violative of the constitution & laws of the United States.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ _____
 CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) PENDING OR CLOSED: (See instructions):

JUDGE: Gerald A. McHugh DOCKET NUMBER: 1:13-cr-00083-GAM-3

DATE: 6-15-2020 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING TFP _____ OTHER _____ MAG. JUDGE _____

20 - 199

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE
AT WILMINGTON

Crim. No. 1:13-cr-83-GAM
Civil No.

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

vs.

DAVID MATUSIEWICZ,

Defendant-Movant.

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2020 JUN 12 PM 1:07

B

THE HONORABLE GERALD MCHUGH
UNITED STATES DISTRICT JUDGE

COURT FORM AO-243
MOTION TO VACATE SENTENCE
PURSUANT TO 28 U.S.C. § 2255

DAVID MATUSIEWICZ
81910-004
P.O. Box 33 USP
Terre Haute, IN 47808

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APPENDIX OF FORMS
MODEL FORM FOR MOTIONS UNDER
28 U.S.C. § 2255

UNITED STATES DISTRICT COURT DISTRICT OF DELAWARE, AT
WILMINGTON.

Name: David Matusiewicz

Prisoner Number: 81910-004.

Place of Confinement: P.O. Box 33 USP, Terre Haute, IN 47808.

United States of America,
v.
David Matusiewicz,
Movant.

MOTION TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN
FEDERAL CUSTODY

MOTION

1. (a) Name and location of court which entered the judgment of conviction under attack: UNITED STATES DISTRICT COURT, DISTRICT OF DELAWARE, AT WILMINGTON.
(b) Criminal docket or case number (if you know): Crim. No. 1:13-cr-83-GAM
Civil No.
2. (a) Date of the judgment of conviction (if you know): 2-29-16
(b) Date of sentencing: 2-18-16.
3. Length of sentence: life incarceration.
4. Nature of offense involved (all counts): 18 U.S.C. § 371 (Conspiracy to commit interstate and cyber stalking) (Count 1); 18 U.S.C. § 2261A(1); 18 U.S.C. § 2261A(B); 18 U.S.C. § 2261(b); 18 U.S.C. § 2 (Aiding & Abetting Interstate stalking (resulting in the death of a victim) (Count 3); 18 U.S.C. § 2261A(2); 18 U.S.C. § 2261A(2)(B); 18 U.S.C. § 2261(b); 18 U.S.C. § 2 (Aiding & Abetting cyber stalking resulting in death) (Count 4).
5. What was your plea? (Check one)
(a) Not guilty|x|

- (b) Guilty.....[]
- (c) Nolo contendere.....[]

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? N/A

- 6. If you went to trial, what kind of trial did you have? (Check one)
 - (a) Jury.....[x]
 - (b) Judge only[]

- 7. Did you testify at a pretrial hearing, trial, or post-trial hearing?
Yes [] No []

- 8. Did you appeal from the judgment of conviction?
Yes [x] No []

9. If you did appeal, answer the following:

- (a) Name of court: USCA 3
- (b) Docket or case number (if you know): 16-1559
- (c) Result: appeal denied
- (d) Date of result (if you know): 9-7-18.
- (e) Citation to the case (if you know): 905 F.3d 165 * | 2018 U.S. App. LEXIS 25421.
- (f) Grounds raised: 1. Whether this Court should reverse David Matusiewicz's convictions because the Government did not prove that he:

- (a) engaged in a conspiracy to commit interstate stalking or cyberstalking;
- (b) committed interstate stalking, which resulted in death; and
- (c) committed cyberstalking, which resulted in death.

2. Whether this Court should reverse David Matusiewicz's convictions because the district court:

- (a) did not provide a specific unanimity jury instruction, in violation of the Sixth Amendment; and
- (b) provided an erroneous instruction on the resulting in death special interrogatory.

3. Whether this Court should vacate David Matusiewicz's sentence as procedurally and substantively reasonable because the district court:

- (a) violated due process when it imposed a life sentence based on its independent determination that he committed first-degree murder;
- (b) erroneously applied the two-level "vulnerable victim" sentencing enhancement pursuant to USSG § 3A1.1(b)(1); and
- (c) erroneously applied the six-level "official victim" sentencing enhancement pursuant to USSG § 3A1.2(c)(1).

4. Whether this Court should vacate David Matusiewicz's convictions because the district court:

- (a) admitted the prejudicial 2011 family court opinion terminating David Matusiewicz's parental rights; and

(b) admitted prejudicial hearsay evidence in the form of emails exchanged between the victim and her family court attorney.

5. All additional issues that are raised directly or by inference that were unknown at the time of submission of appellant's Opening Brief.

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): 18-9236

(2) Result: Petition denied

(3) Date of result (if you know): 6-17-19

(4) Citation to the case (if you know): 2019 U.S. LEXIS 4086 * | 139 S. Ct. 2727 | 204 L. Ed. 2d 1120

(5) Grounds raised: 1. The Sixth Amendment requires unanimity in jury verdicts. The question presented is: Whether juries must unanimously agree on the actus reus element of offenses as a step preliminary to determining if a defendant is guilty of a charged crime.

2. Whether 18 U.S.C. § 2261A is unconstitutionally overbroad, and as applied, so that its application violates the standards announced in *Elonis v. United States*, 135 S.Ct. 2001 (2015), *United States v. Playboy Entertainment Group*, 529 U.S. 803 (2000), *Reno v. ACLU*, 521 U.S. 844, 870 (1997), *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56, (1988), *Watts v. United States*, 394 U.S. 705, 708(1969), and *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)?

3. Whether a person can be convicted for stalking resulting in death based on jury instructions that blended two causation theories, and did not require the jury to find or agree on the scope of the person's actions or predicate conduct.

4. Whether the admissibility of a civil judicial opinion containing derogatory findings and assessments of the defendant's character, mental state, and motivations unfairly prejudices a defendant in a criminal prosecution involving jury findings on the same issues.

5. Whether sentencing courts may continue to violate the Sixth Amendment's jury-trial guarantee, and the Fifth Amendment's Due Process Clause, by imposing sentences that, but for judge-found facts, would be substantively unreasonable.

6. Whether *Crane v. Kentucky*, 476 U. S. 683, 690 (1986) and *Rock v. Arkansas*, 483 U.S. 44, 61, (1987) require admission of polygraph results in the defense case-in-chief to rebut admission of polygraph evidence in the government's case-in-chief.

10. **Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?**

Yes No

11. **If your answer to 10 was "yes," give the following information:** N/A

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

- (4) Nature of the proceeding:
- (5) Grounds raised:
- (6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No
- (7) Result:
- (8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information: N/A

- (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):
- (4) Nature of the proceeding:
- (5) Grounds raised:
- (6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No
- (7) Result:
- (8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application? N/A

- (1) First petition:..... Yes No
- (2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: Nothing was filed.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective Assistance Of Counsel During The Trial, Sentencing, And Direct Appeal Process When Counsel Failed To Specifically Object To Or Appeal The Use Of The Pinkerton Theory For Enhancement Of Mr. Matusiewicz’ Sentence From 5 Years To Life Incarceration.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The facts supporting this ground are set forth in the “Statement of Claim” and Claim Number One on the attachments to this page. Mr. Matusiewicz incorporates those facts by reference as if set forth in full herein.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?
Yes No
- (2) If you did not raise this issue in your direct appeal, explain why: The reasons for counsel’s failures were not part of the record.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?:

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?:

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Mr. Matusiewicz' Plea Of Not Guilty, Conviction And Sentence Are Violative Of The Sixth Amendment

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The facts supporting this ground are set forth in the "Statement of Claim" and Claim Number Two on the attachments to this page. Mr. Matusiewicz incorporates those facts by reference as if set forth in full herein.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: The reasons for counsel's failures were not part of the record.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion, petition, or application?:
Yes No
- (4) Did you appeal from the denial of your motion, petition, or application?:
Yes No
- (5) If your answer to Question (c)(4) is “Yes,” did you raise this issue in the appeal?
Yes No
- (6) If your answer to Question (c)(4) is “Yes,” state:
Name and location of the court where the appeal was filed:
Docket or case number (if you know):
Date of the court’s decision:
Result (attach a copy of the court’s opinion or order, if available):
- (7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:

GROUND THREE: Ineffective Assistance Of Counsel Due To Both The Individual And Cumulative Impact Of Multiple Deficiencies Or Errors By Counsel During The Pretrial, Plea, Trial, Sentencing And Direct Appeal Process

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The facts supporting this ground are set forth in the “Statement of Claim” and Claim Number Three on the attachments to this page. Mr. Matusiewicz incorporates those facts by reference as if set forth in full herein.

(b) Direct Appeal of Ground Three:

- (1) If you appealed from the judgment of conviction, did you raise this issue?
Yes No
- (2) If you did not raise this issue in your direct appeal, explain why: The reasons for counsel’s failures were not part of the record.

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?
Yes No
- (2) If your answer to Question (c)(1) is “Yes,” state:
Type of motion or petition:
Docket or case number (if you know):
Date of the court’s decision:
Result (attach a copy of the court’s opinion or order, if available):
- (3) Did you receive a hearing on your motion, petition, or application?:
Yes No
- (4) Did you appeal from the denial of your motion, petition, or application?:
Yes No
- (5) If your answer to Question (c)(4) is “Yes,” did you raise this issue in the appeal?
Yes No
- (6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:
Docket or case number (if you know):
Date of the court's decision:
Result (attach a copy of the court's opinion or order, if available):
(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND Four: Mr. Matusiewicz' Conviction And Sentence Are Violative Of The First, Fourth, Fifth, Sixth, And Eighth Amendments To The Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Mr. Matusiewicz' Conviction And Sentence Are Violative Of his Right To Freedom Of Speech And To Petition, his Right To Be Free Of Unreasonable Search And Seizure, his Right To Due Process Of Law, his Rights To Counsel, To Jury Trial, To Confrontation Of Witnesses, To Present A Defense, And To Compulsory Process, And his Right To Be Free Of Cruel And Unusual Punishment Under The Constitution.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?
Yes No
(2) If you did not raise this issue in your direct appeal, explain why:
Insufficient record and/or ineffective assistance of counsel.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?
Yes No
(2) If your answer to Question (c)(1) is "Yes," state:
Type of motion or petition:
Docket or case number (if you know):
Date of the court's decision:
Result (attach a copy of the court's opinion or order, if available):
(3) Did you receive a hearing on your motion, petition, or application?:
Yes No
(4) Did you appeal from the denial of your motion, petition, or application?:
Yes No
(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?
Yes No
(6) If your answer to Question (c)(4) is "Yes," state:
Name and location of the court where the appeal was filed:
Docket or case number (if you know):
Date of the court's decision:
Result (attach a copy of the court's opinion or order, if available):
(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

STATEMENT OF CLAIM

1.) Pursuant to Title 28, United States Code, Federal Rules of Civil Procedure 8-11, and Rule 2 of the Rules Governing Section 2255 Proceedings, Defendant-Movant David Matusiewicz, 81910-004, states the following claims for relief under 28 U.S.C. § 2255.

2.) These claims for relief incorporate the attached Section 2255 Model Court Form, as well as the information contained therein as if set forth in full herein.

3.) On or about 8-6-13 David Matusiewicz was charged with violation of 18 U.S.C. § 371 (Conspiracy to commit interstate and cyber stalking) (Count 1); 18 U.S.C. § 2261A(1); 18 U.S.C. § 2261A(B); 18 U.S.C. § 2261(b); 18 U.S.C. § 2 (Aiding & Abetting Interstate stalking (resulting in the death of a victim) (Count 3); 18 U.S.C. § 2261A(2); 18 U.S.C. § 2261A(2)(B); 18 U.S.C. § 2261(b); 18 U.S.C. § 2 (Aiding & Abetting cyber stalking resulting in death) (Count 4). (Presentence Report) (J&C) (USDC Docket)¹

4.) These charges arose from allegations that he monitored and participated in communications to and about Christine Belford, his ex-wife, and also that he committed interstate stalking of her. She was subsequently killed by his father.

5.) He was arraigned on or about 8-20-13 at which time he pleaded not guilty to the charged violations. (Presentence Report) (J&C) (USDC Docket)

6.) No motion to suppress was filed or litigated.

7.) On or about 6-8-15 Mr. Matusiewicz proceeded to trial. (USDC Docket)

8.) At trial, the evidence was riddled with lies, half-truths, inconsistencies, innuendoes, inferences from inferences and questionable circumstantial evidence.

¹ This refers to the Appendix of Exhibits attached to the memorandum in support of this motion which is filed simultaneously with this motion.

9.) The evidence that Mr. Matusiewicz "harrassed" Ms Belford and that Mr. Matusiewicz' father killed Ms Belford was, however, overwhelming. In order for Mr. Matusiewicz to be sentenced to life incarceration, that is essentially all the government had to prove.

10.) In the Court's jury instruction entitled "Special Interrogatory Regarding the Death of Christine Belford - Counts Three and Four" (CR 332, pages 46-47) the Court instructed that, in answering the interrogatory, the jury could find Mr. Matusiewicz culpable for the death of Ms Belford under either the theory of *Burrage v. United States*, 571 U.S. 204; 134 S. Ct. 881; 187 L. Ed. 2d 715; 2014 U.S. LEXIS 797 (2014) or under the theory of *Pinkerton v. United States*, 328 U.S. 640, 66 S.Ct. 1180, 90 L.Ed. 1489 (1946). This instruction caused substantial confusion to the jury as reflected in their note to the Court (Transcript of Trial 7-9-15 page 6040) so the Court provided additional instruction by handwritten annotation on said instruction. (Transcript of Trial 7-10-15).

11.) No objection was made to the submission of the *Pinkerton* instruction. (Transcript of Trial page 6041-6042)².

12.) On 7-10-15, Mr. Matusiewicz was found guilty by the jury as to violation of 18 U.S.C. § 371 (Conspiracy to commit interstate and cyber stalking) (Count 1); 18 U.S.C. § 2261A(1); 18 U.S.C. § 2261A(B); 18 U.S.C. § 2261(b); 18 U.S.C. § 2 (Aiding & Abetting Interstate stalking (resulting in the death of a victim) (Count 3); 18 U.S.C. § 2261A(2); 18 U.S.C. § 2261A(2)(B); 18 U.S.C. § 2261(b); 18 U.S.C. § 2 (Aiding & Abetting cyber stalking resulting in death) (Count 4) (CR 336) There is no way to determine whether the jury used the *Burrage*

² There was no "objection" to the *Pinkerton* "instruction" but the FPD filed a motion "preserving" *Pinkerton* somehow for appellate review. NOTE in the Federal Public Defender's

theory or the *Pinkerton* theory to determine Mr. Matusiewicz's culpability for the death of Ms Belford. *Id.*

13.) When the Presentence Report was prepared, the Probation Officer recommended finding a guideline sentencing range of "life" and a statutory maximum of "life". The enhancement to the statutory maximum from 5 years to life was predicated on the jury verdict and the "Special Interrogatory Regarding the Death of Christine Belford - Counts Three and Four".

14.) On 2-18-16, Mr. Matusiewicz appeared for sentencing. At sentencing, the court relied on the jury verdict to increase Mr. Matusiewicz's statutory maximum sentence from 5 years to life incarceration. (Transcript of sentencing pages 22, 85)

15.) On 2-18-16, Mr. Matusiewicz was sentenced to life incarceration for violations of 18 U.S.C. § 371 (Conspiracy to commit interstate and cyber stalking) (Count 1); 18 U.S.C. § 2261A(1); 18 U.S.C. § 2261A(B); 18 U.S.C. § 2261(b); 18 U.S.C. § 2 (Aiding & Abetting Interstate stalking (resulting in the death of a victim) (Count 3); 18 U.S.C. § 2261A(2); 18 U.S.C. § 2261A(2)(B); 18 U.S.C. § 2261(b); 18 U.S.C. § 2 (Aiding & Abetting cyber stalking resulting in death) (Count 4). This sentence represented enhancement of his statutory maximum sentence from 5 years to life incarceration based on the jury verdict from which it is impossible to say whether he was found culpable for the death of Ms Belford under the theory of *Pinkerton v. United States*, 328 U.S. 640, 66 S.Ct. 1180, 90 L.Ed. 1489 (1946) or the theory of *Burrage v. United States*, 571 U.S. 204; 134 S. Ct. 881; 187 L. Ed. 2d 715; 2014 U.S. LEXIS 797 (2014) or some hybrid theory combining the two. (Transcript of Trial 7-9-15, pages 6038-6045) (Transcript of Trial 7-10-15).

USCA brief, his argument did NOT go to the validity of the *Pinkerton* instruction; just the

16.) It is impossible to say that the sentence received by Mr. Matusiewicz did not include an unlawful increase in his maximum sentence based upon the jury verdict. This is because, while the theory of *Pinkerton* can be used for guilt-stage liability for coconspirators' substantive offenses, for sentencing liability for coconspirators' conduct, *Pinkerton* has been narrowed³ and it is impossible to say from the verdict that the jury did NOT rely on *Pinkerton*.

17.) Counsel filed a direct appeal. In the appeal, counsel did NOT argue that the statutory enhancement of Mr. Matusiewicz' sentence from 5 years to life was NOT based on a lawful finding by the jury because it is impossible to say that it was NOT predicated on *Pinkerton* liability or some hybrid theory.

18.) On 9-7-18, the Court of Appeals denied Mr. Matusiewicz' direct appeal. *United States v. Gonzalez*, 905 F.3d 165; 2018 U.S. App. LEXIS 25421 (3rd Cir. 9-7-18).

19.) A petition for Writ of Certiorari was timely filed with the Supreme Court. In the petition for Writ of Certiorari, counsel did not argue did NOT argue that the statutory enhancement of Mr. Matusiewicz' sentence from 5 years to life was NOT based on a lawful finding by the jury because it is impossible to say that it was NOT predicated on *Pinkerton* liability. On 6-17-19, the Supreme Court denied that petition. *Gonzalez v. United States*, 2019 U.S. LEXIS 4086; 139 S. Ct. 2727; 204 L. Ed. 2d 1120 (6-17-19).

20.) Mr. Matusiewicz provided counsel with complete and accurate information and did not place any restrictions on counsel.

Burrage. (Transcript of Trial page 6042)

³ *United States v. Hamm*, 952 F.3d 728, 746; 2020 U.S. App. LEXIS 7061 **20-39 (6th Cir. 2020) (*Pinkerton* did not support "death results" enhancement for sentencing) (citing *United States v. Swiney*, 203 F.3d 397 (6th Cir. 2000) and *Pinkerton v. United States*, 328 U.S. 640, 642, 645-647; 66 S.Ct. 1180; 90 L.Ed. 1489 (1946) and *United States v. Watson*, 620 F. App'x 493, 509 (6th Cir. 2015) and *United States v. Walker*, 721 F.3d 828, 833-36 (7th Cir. 2013) (adopting

21.) Mr. Matusiewicz relied completely and in all material respects on the advice of counsel.

CLAIM NUMBER ONE

22.) Mr. Matusiewicz restates, replays, and realleges the facts, pleadings, and allegations set forth in ¶¶1-21 herein.

23.) Mr. Matusiewicz' sentence is violative of his Sixth Amendment constitutional right to effective assistance of counsel in the trial, sentencing, and direct appeal process as hereinafter more fully appears.

24.) Counsel could have but did not object at trial that the instruction to the jury allowing it to find that "death resulted" based on *Pinkerton* liability was unlawful.

25.) Counsel could have but did not object at sentencing that the statutory enhancement of Mr. Matusiewicz' sentence from 5 years to life was NOT based on a lawful finding by the jury because it is impossible to say that it was NOT predicated on *Pinkerton* liability.

26.) Counsel could have but did not argue on direct appeal that the statutory enhancement of Mr. Matusiewicz' sentence from 5 years to life was NOT based on a lawful finding by the jury because it is impossible to say that it was NOT predicated on *Pinkerton* liability.

27.) Counsel's omissions set forth in ¶¶24-26 were based on an incomplete investigation of the law relevant to Mr. Matusiewicz' trial, sentencing, and direct appeal process.

28.) Counsel could have but did not investigate *United States v. Swiney*, 203 F.3d 397 (6th Cir. 2000) (*Pinkerton* liability does not support statutory sentencing enhancement) and

Swiney's holding and reasoning), vacated on other grounds, 572 U.S. 1111, 134 S. Ct. 2287, 189

United States v. Watson, 620 F. App'x 493, 509 (6th Cir. 2015) (same) and *United States v. Walker*, 721 F.3d 828, 833-36 (7th Cir. 2013) (adopting *Swiney*'s holding and reasoning), vacated on other grounds, 572 U.S. 1111, 134 S. Ct. 2287, 189 L. Ed. 2d 169 (2014) and *Pinkerton v. United States*, 328 U.S. 640, 642, 645-647; 66 S.Ct. 1180; 90 L.Ed. 1489 (1946) (liability is limited to culpability for offense).

29.) Counsel's omissions set forth in ¶¶24-30 were not the result of reasoned decisions based on strategic or tactical choices among all plausible options available to counsel for the defense of Mr. Matusiewicz during the trial, sentencing, and direct appeal process.

30.) Counsel's omissions set forth in ¶¶24-30 were the result of counsel's abdication of the duty and responsibility to advocate Mr. Matusiewicz' case and cause during the trial, sentencing, and direct appeal process.

31.) Mr. Matusiewicz was prejudiced from the unprofessional omissions of counsel, set forth in ¶¶24-30 because, absent said omissions, there is a reasonable probability that the outcome of his trial, sentencing, and direct appeal process would have been different. More specifically, but for counsel's unprofessional omissions there is a reasonable probability that he would have been sentenced to the unenhanced statutory maximum of 5 years incarceration pursuant to 18 U.S.C. § 2261(b)(5). This is because it is impossible to say that the sentence received by Mr. Matusiewicz did not include an unlawful increase in his maximum sentence based upon the jury verdict. This is because, while the theory of *Pinkerton* can be used for guilt-stage liability for coconspirators' substantive offenses, for sentencing liability for coconspirators'

conduct, *Pinkerton* has been narrowed⁴ and it is impossible to say from the verdict that the jury did NOT rely on *Pinkerton*.

32.) Mr. Matusiewicz was prejudiced from the unprofessional omissions of counsel, set forth in ¶¶24-30 because said omissions deprived his of his procedural and substantive right to statutory enhancement of his sentence based solely on a lawful jury verdict; a procedural and substantive right to which the law entitled him.

33.) Mr. Matusiewicz was prejudiced from the unprofessional omissions of counsel, set forth in ¶¶24-30 because said omissions undermine confidence in the reliability of his trial, sentencing, and direct appeal process.

CLAIM NUMBER TWO

34.) Mr. Matusiewicz restates, repleads, and realleges the facts, pleadings, and allegations set forth in ¶¶1-21 herein.

35.) Mr. Matusiewicz' plea of not guilty, conviction, and sentence are violative of his Sixth Amendment constitutional right to effective assistance of counsel in the plea process as hereinafter more fully appears.

36.) Prior to trial and during the plea process, counsel could have but did not advise Mr. Matusiewicz, in a way that he could understand, the minimum facts that the government would have to prove in order for him to be eligible for, and likely receive, a sentence of life incarceration.

⁴ *United States v. Hamm*, 952 F.3d 728, 746; 2020 U.S. App. LEXIS 7061 **20-39 (6th Cir. 2020) (*Pinkerton* did not support “death results” enhancement for sentencing) (citing *United States v. Swiney*, 203 F.3d 397 (6th Cir. 2000) and *Pinkerton v. United States*, 328 U.S. 640, 642, 645-647; 66 S.Ct. 1180; 90 L.Ed. 1489 (1946) and *United States v. Watson*, 620 F. App'x 493, 509 (6th Cir. 2015) and *United States v. Walker*, 721 F.3d 828, 833-36 (7th Cir. 2013) (adopting *Swiney*'s holding and reasoning), vacated on other grounds, 572 U.S. 1111, 134 S. Ct. 2287, 189 L. Ed. 2d 169 (2014)).

37.) Prior to trial and during the plea process, there was, in fact, an offer made for a 15 year sentence for Mr. Matusiewicz if he did not proceed to trial.

37A.) There is a reasonable probability that Mr. Matusiewicz and counsel could have negotiated the agreement to allow him to plea nolo contendere for the 5 year sentence.

38.) Prior to trial and during the plea process, counsel could have but did not advise Mr. Matusiewicz that there was virtually no chance he could prevail at trial due to the overwhelming weight of the government's evidence that Mr. Matusiewicz "harrassed" Ms Belford and that Mr. Matusiewicz' father killed Ms Belford.

39.) Prior to trial and during the plea process, counsel *affirmatively misadvised* Mr. Matusiewicz that he had a viable First Amendment challenge to his charge of violation of 18 U.S.C. § 2261A(2); 18 U.S.C. § 2261A(2)(B); 18 U.S.C. § 2261(b); 18 U.S.C. § 2 (Aiding & Abetting cyber stalking resulting in death).

40.) Counsel's failures set forth in ¶¶36-39 ere not the result of reasoned decisions based on strategic or tactical choices among all plausible options available to counsel for the defense of Mr. Matusiewicz during the plea process.

41.) Counsel's omissions set forth in ¶¶36-39 were the result of counsel's abdication of the duty and responsibility to advocate Mr. Matusiewicz' case and cause during the plea process.

42.) The advice received from counsel regarding whether to plead guilty, nolo contendere, or not guilty was so incorrect and so insufficient that it undermined Mr. Matusiewicz' ability to make a voluntary and intelligent choice among the alternative courses of action open to her.

43.) Based on the facts set forth in ¶¶36-42, Counsel's performance in the plea process fell below the objective standard of reasonableness required by the Sixth Amendment.

44.) Based on the facts set forth in ¶¶36-43, Mr. Matusiewicz's plea of not guilty was not a voluntary and intelligent choice among the alternative courses of action open to her.

45.) Mr. Matusiewicz was prejudiced by counsel's constitutionally ineffective and deficient performance set forth herein, because, absent said performance, Mr. Matusiewicz would have pleaded nolo contendere instead of proceeding to trial.

46.) Mr. Matusiewicz was prejudiced by counsel's constitutionally ineffective and deficient performance set forth herein, because a substantial difference exists between the sentence he could have obtained by a plea of guilty or nolo contendere and the actual sentence he received after trial. More specifically, had Mr. Matusiewicz pleaded guilty or nolo contendere instead of proceeding to trial, there is a reasonable probability he would have received a sentence of 15 years incarceration instead of the sentence of life incarceration he received after trial.

47.) The facts set forth in ¶46 plead and demonstrate "objective evidence" and "special circumstances" to support Mr. Matusiewicz's allegations set forth in ¶45.

48.) Mr. Matusiewicz was prejudiced from the unprofessional acts and omissions of counsel, set forth herein, because said omissions undermine confidence in the reliability of the plea process in his case.

CLAIM NUMBER THREE

49.) Mr. Matusiewicz restates, repleads, and realleges the facts, pleadings, and allegations set forth in ¶¶1-48 herein.

50.) Counsel unprofessionally failed to advise Mr. Matusiewicz as to all facts and law relevant to his decision to plead not guilty and proceed to trial. Had Mr. Matusiewicz been fully

advised, there is a reasonable probability that he would have pleaded nolo contendere. But for counsel's unprofessional error, there is a reasonable probability that the outcome of the proceeding would have been different.

51.) Counsel unprofessionally failed to timely, properly, and effectively move for suppression of evidence material to the conviction and/or sentence of Mr. Matusiewicz. But for counsel's unprofessional error, there is a reasonable probability that the outcome of the proceeding would have been different.

52.) Counsel unprofessionally failed to investigate or present available, material, exculpatory evidence and testimony at trial and failed to timely object to the unlawful admission of evidence by the prosecution. But for counsel's unprofessional error, there is a reasonable probability that the outcome of the proceeding would have been different.

53.) Counsel unprofessionally failed to timely request appropriate jury instructions and to timely object to insufficient instructions. In final argument, counsel unprofessionally also failed to timely object to improper argument by the prosecution and/or to timely ask for curative instructions for the improper argument. But for counsel's unprofessional error, there is a reasonable probability that the outcome of the proceeding would have been different.

54.) Counsel unprofessionally failed to investigate or present available evidence and legal authority material to the sentencing of Mr. Matusiewicz. Counsel also unprofessionally failed to object to, unlawful, false and unreliable evidence used to determine Mr. Matusiewicz' guideline sentencing range and ultimate sentence. But for counsel's unprofessional error, there is a reasonable probability that the outcome of the proceeding would have been different.

55.) Mr. Matusiewicz was prejudiced by the objectively unreasonable performance of counsel during the trial, sentencing and direct appeal process, when counsel failed to timely

argue that Mr. Matusiewicz was denied his Sixth Amendment constitutional rights by an unlawful increase in his maximum sentence based upon the jury verdict. This is because, while the theory of *Pinkerton* can be used for guilt-stage liability for coconspirators' substantive offenses, for sentencing liability for coconspirators' conduct, *Pinkerton* has been narrowed and it is impossible to say from the verdict that the jury did NOT rely on *Pinkerton*.

56.) Counsel unprofessionally failed to investigate or present the strongest issues available to Mr. Matusiewicz for his direct appeal. But for counsel's unprofessional error, there is a reasonable probability that the outcome of the proceeding would have been different.

57.) Trial counsel failed to reasonably investigate or advance at trial the obvious and most viable defense of "intervening events" of killer's brain tumor and subsequent murder/suicide at courthouse, thereby depriving petitioner of the effective assistance of counsel.

58.) Counsel failed to reasonably investigate Thomas Matusiewicz's brain tumor, its likely cause for extreme behavior, and to present forensic experts on issue for jury. Left issue of "causation" unchallenged by defense. Counsel's stipulation in re: brain tumor constitutes ineffective assistance of counsel when based on incomplete investigation/information.

59.) Counsel failed to present defense of "intervening events" of brain tumor and murder/suicide to establish a break in chain-of-events leading to death of victims (defense to "causation" element).

60.) Counsel failed to produce Dr. Carry Gordon's testimony & report for jury consideration constitutes ineffective assistance of counsel.

61.) Trial counsel failed to produce for jury's consideration available evidence to support "truth of claim" defense to stalking charges depriving petitioner of the effective assistance of counsel.

62.) Counsel failed to produce for jury 2006 video evidence from private investigator, Michael O'Rourke, of abuse of Leigh Matusiewicz by Christine Belford.

63.) Failed to call/interview Detective Phillips, videographer/investigator, who witnessed and recorded abuses of Matusiewicz children in 2006.

64.) Counsel failed to reasonably investigate or produce for jury's consideration evidence of admissions by Christine Belford of her abuse of her daughter left issue of defamation unchallenged. (Trial transcript 2143-49)

65.) Counsel failed to question Laura and/or Dr. Hann-DeSchane about pubic shaving, or to produce expert opinion to explain possible meaning of pubic shaving of a 9 year-old to jury.

66.) Trial and appellate counsel were ineffectve for failing to object to or appeal trial court's ex parte communication with jury resulting in confusion about "causation" instruction ("but-for" question from jury).

67.) Mr. Matusiewicz's conviction and/or sentence is violative of his Sixth Amendment constitutional right to effective assistance of counsel in the pretrial, plea, trial, sentencing and direct appeal process due to the individual errors, the multiplicity of errors, and the cumulative effect of the errors by counsel as set forth herein.

ALLEGATION OF JURISDICTION

68.) This Court has jurisdiction to entertain, rule on the merits, and grant relief in Claim Number One thru Claim Number Three under 28 U.S.C. § 2255 and the principles of *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984), as construed in case law such as *United States v. Glover*, 531 U.S. 198; 121 S. Ct. 696; 148 L. Ed. 2d 604; 2001 U.S. LEXIS 639 (2001) and *Williams v. Taylor*, 120 S. Ct. 1495, 1512-16; 2000 U.S. LEXIS 2837, **53-64; 146 L. Ed. 2d 389 (4-18-00).

STATEMENT AS TO WAIVER, CAUSE, AND PREJUDICE

69.) Mr. Matusiewicz is is not precluded from raising his claims of ineffective assistance of counsel for the first time in this motion pursuant to 28 U.S.C. § 2255. *Massaro v. United States*, 123 S. Ct. 1690; 155 L. Ed. 2d 714; 2003 U.S. LEXIS 3243 (4-23-03) (“an ineffective-assistance-of-counsel claim may be brought in a collateral proceeding under Section 2255, whether or not the petitioner could have raised the claim on direct appeal”).

JUDGMENT REQUESTED

70.) Pursuant to Rule 8 of the Rules Governing Section 2255 Proceedings, Mr. Matusiewicz asks this Honorable Court to **ORDER** an evidentiary hearing where he can prove the allegations herein by: (A) his own testimony; (B) the testimony of Attorneys Edson A. Bostic and Dina Chavar; (C) the testimony of AUSA’s Jamie M. McCall and Edward J. McAndrew and Shawn Weede; (D) the testimony of Amy Gonzalez; (E) additional evidence; and (F) legal argument to be presented at the hearing.

71.) Upon proof of Mr. Matusiewicz’ allegations herein, Mr. Matusiewicz asks this Honorable Court to:

71A.) ORDER that Mr. Matusiewicz’ conviction be **VACATED** and his indictment be **DISMISSED**; or,

71B.) ORDER that Mr. Matusiewicz’ sentence be **VACATED** and that he be **RESENTENCED** to 15 years incarceration.

MOTION FOR DISCOVERY

72.) Pursuant to Rule 6⁵ of the Rules Governing Section 2255 Proceedings, Mr. Matusiewicz asks leave of this Court to invoke the processes of discovery. More specifically, he asks this Honorable Court to **ORDER** that Edson A. Bostic and Dina Chavar allow themselves to be deposed. The evidence developed through the foregoing deposition will materially support the allegations of Mr. Matusiewicz, as to the “performance” of counsel, detailed and set forth herein. More specifically, Mr. Matusiewicz requests this Court to allow counsel to question Edson A. Bostic and Dina Chavar as to the reasons for their failures complained of herein. Mr. Matusiewicz also requests this Court to allow counsel to depose and AUSA’s Jamie M. McCall and Edward J. McAndrew and Shawn Weede as to the details of the plea offer made for Mr. Matusiewicz and as to the terms they would have accepted.

PROFFER

73.) Mr. Matusiewicz proffers to this Honorable Court that the foregoing depositions and/or evidentiary hearing will substantiate his allegations set forth in ¶¶27-30, 36-44, 50, 53-56.

MOTION FOR APPOINTMENT OF COUNSEL

74.) Pursuant to Rule 6(a) and Rule 6(c) and Rule 8(c) of the Rules Governing Section 2255 Proceedings, Mr. Matusiewicz asks that counsel be appointed for Mr. Matusiewicz.⁶

⁵ It should be noted that Rule 6(a) of the Rules Governing Section 2255 Proceedings provides for discovery under either Federal Rules of Civil Procedure 26-37 or under Federal Rule of Criminal Procedure 16. See J. Liebman and R. Hertz, *Federal Habeas Corpus Practice and Procedure*, § 41.6 [n. 2-3] (3rd Ed. 1998). In this respect, the Rules Governing Section 2255 Proceedings are distinct from the Rules Governing Section 2254 Proceedings because they allow additional discovery devices. *Id.*

⁶ See *United States v. Leopard*, 170 F.3d 1013, 1015 (10th Cir. 1999) (“if an evidentiary hearing is required, the judge shall appoint counsel for a movant who qualifies for the appointment of counsel under 18 U.S.C. § 3006A.”); *Bowman v. United States*, 2012 U.S. Dist. LEXIS 5231 (SD TX 1-17-12) (Court may appoint counsel for discovery); Rule 6(a) of the Rules Governing Section 2255 (“If necessary for effective utilization of discovery procedures, counsel shall be

VERIFICATION

75.) The facts set forth in ¶¶3-21, 24-26, 36-37, 37B-39, 42, 45, 50, 53-56 herein are based on the personal knowledge of Mr. Matusiewicz and are true and correct. The rest of the allegations are pleaded on information and belief.

76.) The allegations set forth in “Ground Four” of the Model Form and set forth in ¶51 herein are alleged on information and belief but are also pleaded to protect the record for Mr. Matusiewicz in the event of a change in law or new facts or circumstances which come to light during the litigation of this motion. To the extent that one claim may contradict another, Mr. Matusiewicz invokes Fed.R.Civ.P. 8(d)(2).⁷

Signed under penalty of perjury
under 28 U.S.C. § 1746 this 15 day
of JUNE, 2020.



David Matusiewicz
Defendant-Movant
81910-004
P.O. Box 33 USP
Terre Haute, IN 47808



appointed by the judge for a movant who qualifies for appointment of counsel under 18 U.S.C. § 3006A(g)"); *ABA Ethics Committee Formal Opinion*, No. 10-456 (7-14-10) (prior attorney’s disclosure of attorney client information in response to a prosecution request, prior to a court-supervised response by way of testimony or otherwise, unlikely to be justifiable).

⁷ See Fed.R.Civ.P. 8(d)(2):

“Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.”

**MODEL FORM FOR MOTIONS UNDER
28 U.S.C. § 2255
(Continued)**

13. **Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:** See "Statement as to Waiver, Cause, and Prejudice", supra.

14. **Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No**

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised: N/A

15. **Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:**

(a) **At preliminary hearing:** Edson A. Bostic 800 King St #200 Wilmington, DE 19801

(b) **At arraignment and plea:** Edson A. Bostic 800 King St #200 Wilmington, DE 19801

(c) **At trial:** Edson A. Bostic 800 King St #200 Wilmington, DE 19801 and Dina Chavar 1007 N Orange St, Fourth Floor Wilmington, DE 19801

(d) **At sentencing:** Edson A. Bostic 800 King St #200 Wilmington, DE 19801 and Dina Chavar 1007 N Orange St, Fourth Floor Wilmington, DE 19801

(e) **On appeal:** Edson A. Bostic and Tieffa N. Harper, 800 King St #200 Wilmington, DE 19801

(f) **In any post-conviction proceeding:** N/A

(g) **On appeal from any adverse ruling in a post-conviction proceeding:** N/A

16. **Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No**

17. **Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No**

(a) **If so, give name and location of court which imposed sentence to be served in the future:** N/A

(b) **Give the date the other sentence was imposed:** N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No N/A

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion: Mr. Matusiewicz' judgment of conviction became final on 6-17-19 when the Supreme Court denied certiorari. This motion is filed within one year of that date.

Therefore, movant asks that the Court grant the following relief: Mr. Matusiewicz asks the Court to VACATE his conviction and DISMISS the indictment or VACATE his sentence and RESENTENCE him to 15 years sentence.


or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the facts set forth in ¶¶ 1-11, 13-17 of the Model Form are true and correct. The remaining allegations are pleaded on information and belief. The allegations set forth in "Ground Four" of the Model Form and set forth in ¶51 of the Statement of Claim herein are alleged on information and belief but are also pleaded to protect the record for Mr. Matusiewicz in the event of a change in law or new facts or circumstances which come to light during the litigation of this motion. To the extent that one claim may contradict another, Mr. Matusiewicz invokes Fed.R.Civ.P. 8(d)(2). I also declare under penalty of perjury that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on June 16, 2020 (month, date, year).

Executed (signed) on June 16, 2020 (date)


(Signature of Movant)
David Matusiewicz
81910-004
P.O. Box 33 USP
Terre Haute, IN 47808



UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE
AT WILMINGTON


UNITED STATES OF AMERICA,)	Crim. No. 1:13-cr-83-GAM
)	Civil No.
Plaintiff-Respondent,)	HON. GERALD MCHUGH
)	MAG.
vs.)	
)	CERTIFICATE OF FILING
DAVID MATUSIEWICZ,)	
)	
Defendant-Movant.)	

* * * * *

Pursuant to the principles of *Houston v. Lack*, 487 U.S. 266, 276 (1988), the attached motion pursuant to 28 U.S.C. § 2255 was filed with the Court on this date by depositing one original into the prison mail collection box, in sealed envelopes, first class postage affixed and addressed to: Clerk -- U.S. District Court, 844 North King St Unit 18, Wilmington, DE 19801-3570.

I have read the foregoing and state that the facts are set forth upon personal knowledge and are true and correct.

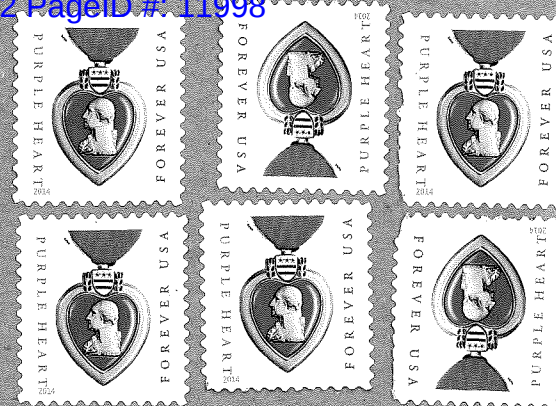
Signed under penalty of perjury under
28 U.S.C. § 1746, this 16 day
of July 2020.



David Matusiewicz
 81910-004
 P.O. Box 33 USP
 Terre Haute, IN 47808



v. Matusiewicz # 81210-004
United States Penitentiary Terre Haute
Box 33
TERRE HAUTE IN 47808



**INMATE
IDENTIFICATION
CONFIRMED**

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
844 N. KING ST. UNIT 18
WILMINGTON DE 19801-3570

FILED
JUL - 6 2020
U.S. DISTRICT COURT
DISTRICT OF DELAWARE

U.S. MAIL

LEGAL MAIL

