IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
v.	)	Crim. No. 13-cr-83-GAM
	)	Civil No. 20-cv-799-GAM
DAVID MATUSIEWICZ and	)	Civil No. 20-cv-800-GAM
AMY GONZALEZ,	)	
	)	
Defendants.	)	

GOVERNMENT'S CONSOLIDATED RESPONSE TO PETITIONERS' MOTIONS TO VACATE SENTENCE

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On the morning of February 11, 2013, the bustling lobby of the New Castle County Courthouse became a shooting gallery as Thomas Matusiewicz — the father of David Matusiewicz and Amy Gonzalez — shot and killed his former daughter-in-law, Christine Belford, and her friend, Laura "Beth" Mulford. Thomas Matusiewicz also shot two Capitol Police officers, who were providing security at the courthouse, before taking his own life.

This was not an isolated act against Belford. Rather, David Matusiewicz and Amy Gonzalez – as well as their father Thomas and mother Lenore – engaged in a relentless and escalating course of criminal conduct, which began with an international parental kidnapping, was followed by a three-year stalking campaign to spy on, torment, and harass Christine Belford and her children, and culminated in Belford's murder in the lobby of the courthouse. Through each phase of this conspiracy, the goal was clear—remove the children from Christine Belford's custody and care "at all costs." (Tr. 6/24/15 at 3725-26 (Gordon)).

For their conduct, David Matusiewicz and Amy Gonzalez were charged with cyberstalking resulting in death and related offenses. The

resulting litigation was extensive. The case involved numerous pretrial motions, a five-week jury trial with over 80 witnesses and 700 exhibits, a guilty verdict on all counts, and a 77-page precedential opinion from the Third Circuit Court of Appeals that affirmed in all respects. *United States v. Gonzalez*, 905 F.3d 165 (3d Cir. 2018). Throughout, the presiding judge handled the case "with exceptional precision and care." *Id.* at 174. And at every step, David Matusiewicz and Amy Gonzalez were vigorously represented by their attorneys, who the Court repeatedly commended for their advocacy and professionalism.

Against this backdrop, Petitioners David Matusiewicz and Amy Gonzalez now seek relief pursuant to 28 U.S.C. § 2255. (D.I. 443 (Matusiewicz); (D.I. 444 (Gonzalez)). In their motions, Petitioners argue that their counsel, as well as the Court itself, erred in multiple respects. As set forth below, their claims are without legal and factual support, and should be denied without an evidentiary hearing.

FACTUAL BACKGROUND[1]

A. The Divorce, Initial Custody Battle, and International Parental Kidnapping

David Matusiewicz and Christine Belford were married from 2001 to 2006, during which time they had three children – Laura, Leigh, and Karen. The couple also lived with Katie Moffa, a child from Belford's previous marriage. After their divorce, Belford and David engaged in a bitter custody dispute, during which David accused Belford of being an unfit mother who suffered from mental health disorders. On February 13, 2007, following an evaluation by a forensic psychologist who determined that David's allegations were unfounded, the Delaware Family Court awarded joint custody of the children.

On August 26, 2007, David, along with his mother Lenore, kidnapped Laura, Leigh, and Karen and absconded to Central America. During the kidnapping, David told Laura that Belford had committed suicide.

[1] The facts here are taken from those set forth in *United States v. Gonzalez*, 905 F.3d 165, 174-78, 181-82 (3d Cir 2018). Where necessary to respond to Petitioners' specific claims below, the government provides cites to the trial record.

In March 2009, the children were located in Nicaragua and rescued, and David and Lenore were arrested. The children returned to live with Belford, who had been awarded sole custody during the kidnapping. David pleaded guilty to federal kidnapping charges and was sentenced to 48 months of imprisonment on December 10, 2009.

B. The Stalking Campaign Begins

Later that month, while incarcerated, David sent a letter to his sister, Amy Gonzalez, in which he stated, "I'm done playing Mr. Nice Guy," and urged her to "begin making complaints anonymously and repeatedly to [Delaware Youth and Family Services]" about Belford. He also instructed her to "make sure Melinda's website is up and has a true story on it and is well publicized." Beginning in December 2009, a webpage was published that identified Belford and her children by name and set forth detailed claims against Belford of sexual abuse, physical abuse, and neglect of the children. That website was registered to Melinda Kula, the sister-in-law of Thomas and Lenore. It stated that the "[a]ctual names were used by the request and with the permission of David Matusiewicz."

In March and April 2011, Amy Gonzalez published three YouTube videos, which included: secret recordings of Belford and the children taken by a private investigator; posts claiming Belford sexually abused her daughter, Laura; and images of polygraph test results of Lenore and Gonzalez, which described the accusations of sexual abuse. From May 2011 through September 2012, David and Gonzalez had contact with David's former girlfriend, Cindy Bender, and enlisted her to probe Belford for details about her life and to share what she learned, which included information from Belford's private Facebook account.

Acting on instructions received from David while he was in prison, Lenore and Gonzalez mailed letters that accused Belford of sexual abuse to numerous media outlets, to the children's school and teachers, and to Belford's family members, neighbors, employer, church, and other members of her community. The defendants also mailed letters and cards directly to Belford and her children. Gonzalez and Thomas solicited their friends to drive past Belford's home and report on what they observed. The defendants also convinced a real estate agent in Delaware to conduct surveillance of Belford's house and to provide them with information about Belford's residence and about various persons

who were part of Belford's life and who were coming and going from her home.

C. The Defendants' Allegations Were False and Made with Criminal Intent

As the government demonstrated at trial, the defendants' accusations of sexual and physical abuse were false and defamatory, and were part of a campaign to harass and intimidate Belford into surrendering custody of her children. Notably, Laura testified that her mother did not abuse her, and refuted the specific claimed incidents of abuse advanced by the defendants. Laura's treating pediatrician, as well as a treating psychologist, corroborating her testimony – namely, that she never reported nor showed any signs of abuse.

The government further demonstrated that the timing of the defendants' claims of abuse did not add up. No accusations of sexual abuse were made during the custody hearing – when they could be investigated – or, for that matter, prior to the kidnapping in August 2007. And although David testified in a state court proceeding that he kidnapped the children upon learning of their alleged abuse in either July or August 2007, evidence showed that he began preparing for this

crime as early as fall 2006 – when the custody dispute was still pending.

The government also demonstrated that defendants gave contradictory and shifting statements about when and how they learned of the abuse, and about the details of the incidents of abuse. Indeed, the Director of the Delaware Division of Family Services, the state organization responsible for investigation of child abuse, testified that the agency did not open an investigation into defendants' claims of abuse because their allegations were contradictory and lacked credibility.

D. Defendants Ramp Up Their Stalking Campaign after Their Familial Rights Are Terminated

Between November 2010 and July 2011, the Delaware Family Court conducted a hearing over seven separate days on Belford's petition for termination of David's parental rights as to the children. On August 18, 2011, the court entered an order terminating David's parental rights as well as Thomas's, Lenore's, and Gonzalez's familial rights (the "TPR Order"). The Delaware Supreme Court affirmed that decision.

In spite of the TPR Order, the defendants continued to send letters to Belford's home, and made extrajudicial contact with the lawyers, judges, and witnesses involved in the TPR matter. Thomas and Lenore made numerous phone calls to the chambers of the judge overseeing a separate civil matter between Belford and the Matusiewicz family, during which they told the judge's assistant (referring to Belford) that the "bitch is going to get what is coming to her."

On December 1, 2011, Thomas and Lenore travelled to Delaware and showed up uninvited at Belford's house. This trip was ostensibly to visit the children, despite the fact that Delaware Family Court had previously denied petitions by both Thomas and Gonzalez to visit the children. Although Belford was not at home, the children and Belford's boyfriend were present. Belford's boyfriend instructed Thomas to leave.

The night before the trip, Thomas and Gonzalez exchanged emails in which Thomas informed Gonzalez of the visit, instructed her to clean out his home safe, and told her that he would let her know how things worked out. In response, Gonzalez gave Thomas her temporary cell phone number and told him to "Be careful!" In the emails, Thomas and

David refer to Belford by a nickname, "wb," which stood for "Whore Bitch."

Thomas sent a letter to David after his visit that contained the details of what he had observed. After this visit, Belford took steps to sell her home and move. The defendants then obtained the real estate listing — before it was made publicly available — from the real estate agent whom they had enlisted to surveil Belford.

E. The Impact on the Victims: Fear of Death and Serious Bodily Harm

The government's evidence demonstrated that the impact of the stalking conduct on Belford and her children was severe. The trial testimony showed that Belford and her children were not only aware of Defendants' public stalking campaign, but also of the surveillance conducted by Defendants. This awareness caused them to fear for their lives. Some of the most striking pieces of evidence at trial were the messages that Belford left behind with various people portending her fate. Belford communicated these fears to her friends, family, health care professionals, employer, and attorneys.

F. The Killing of Christine Belford

On November 1, 2012, David sent Gonzalez an ominous prophecy: "[p]repare yourself to be managing four by this time in 2013." This reference to "four" equated to Belford's three daughter, plus Gonzalez's one child. In light of the TPR Order, David had no legal basis for this prediction. Gonzalez responded to the email by stating that she was "praying for it."

On November 5, 2012, David filed a petition to reduce his back payments of child support in Delaware Family Court. A hearing was scheduled in Delaware, and although David was informed he could participate by phone (as he resided with his family in Texas at the time), he chose to attend in person. David received permission from his probation officers to attend, but failed to disclose that he could participate by phone or that his parents would accompany him on the trip.

On February 4, 2013, David, Lenore, and Thomas drove to Delaware in two vehicles, which were loaded with an assault rifle, handguns, military-style knives, thousands of rounds of ammunition, restraints, body armor, binoculars, an electric shock device, gas cans, a

shovel, photographs of Belford's children and residence, and handwritten notes about Belford's neighbors. Thomas left a note for Gonzalez in a hutch in the family's residence, instructing her to keep his guns for protection and that stated "hopefully we can end this BS now – up to Dave."

On February 11, 2013, Thomas and David entered the New Castle County Courthouse lobby, in Delaware, and remained there for approximately 25 to 30 minutes, during which time David and Thomas hugged and exchanged envelopes, before David passed through the security checkpoint. Belford entered the courthouse with her friend Laura "Beth" Mulford a short time later. Thomas then shot and killed both women, injured two police officers in an exchange of gunfire, and then shot himself in the head. Investigators recovered from Thomas's person two death certificates that were filled out with the names of Belford and her family court attorney. Investigators also found papers containing Thomas's burial request during a search of David's person following his arrest.

On February 13, 2013 — two days later — Gonzalez submitted a petition for custody of the children to the Delaware Family Court in the

New Castle County Courthouse, with a check dated February 12, 2013. The petition was denied. In the ensuing six months, Gonzalez continued to file additional custody petitions, and made repeated attempts to contact the children through the mail.

G. Law Enforcement Finds Evidence of a Plot to Kill

After the shooting, law enforcement officers found the aforementioned firearms and ammunition in the vehicles that the Matusiewsicz family had driven from Texas. The key to this vehicle was found on David's person. A surveillance video from a Walmart parking lot in Maryland depicted Thomas, David, and Lenore walking around the vehicle with its trunk open, demonstrating that all three knew of the weapons and ammunition inside.

Law enforcement also recovered a red notebook entitled "Important Information for David Matusiewicz" from the vehicle that David and Thomas drove to the courthouse; the contents of this notebook were in Thomas's handwriting. Within were the real estate listing for and pictures of Belford's home, accompanied by handwritten notes identifying the bedrooms in which Belford and her children slept. It also contained personal, identifying information on Belford's family,

lawyers, doctors, boyfriend, and employer, as well as a daily surveillance log tracking Belford's movements over a twelve-day period in March 2010. Additionally, there was a page marked "HL," which the government argued stood for "hit list," that identified sixteen individuals, including the judges, lawyers, and witnesses involved in the prior federal kidnapping and family court cases.

Gonzalez's residence was also searched. There, law enforcement found and seized large volumes of correspondence with third parties about the stalking campaign. There were also letters from Thomas to Gonzalez, stating that they "must drink" to the Belford's "final day," that Belford "can not keep" the children "at all costs," and that Belford "can not [and] will not have our girls into her old age. Ain't gonna happen."

PROCEDURAL HISTORY

On August 6, 2013, a federal grand jury indicted Petitioners David Matusiewicz and Amy Gonzalez (collectively, "Petitioners") with the following two offenses: (1) conspiracy to commit interstate stalking and cyber stalking (Count One), in violation of Title 18, United States Code, Sections 2261A(1) and 2261A(2), all in violation of Title 18, United

States Code, Section 371; and (2) cyberstalking resulting in the death of Christine Belford (Count Four), in violation of Title 18, United States Code, Sections 2261A(2), 2261(b), and 2. *See United States v. Gonzalez*, 905 F.3d 165, 177 (3d Cir. 2018). The grand jury likewise indicted Matusiewicz with interstate stalking resulting in the death of Christine Belford (Count Three), in violation of Title 18, United States Code Sections 2261A(1), 2261(b), and 2.

On June 8, 2016, Petitioners' jury trial commenced. Following nearly five weeks of trial, during which the government called approximately 65 witnesses and entered over 760 exhibits into evidence, the jury convicted Petitioners on all counts. Based on the same evidence, the Court sentenced Petitioners to life imprisonment.

Petitioners appealed, wherein they challenged the constitutionality of the cyberstalking statute, the sufficiency of the evidence, the jury instructions, venue, evidentiary determinations made before and during trial, the applicable sentencing guidelines, and their sentences. *Id.* at 178-79. In a 77-page precedential opinion, the Court of Appeals affirmed in all respects. *Id.* The Supreme Court of the

United States denied petitions for writ of certiorari on June 17, 2019. *Gonzalez v. United States*, 139 S.Ct. 2727 (2019).

On June 12, 2020, Petitioners David Matusiewicz and Amy Gonzalez filed Motions to Vacate Sentence Pursuant to 28 U.S.C. § 2255. (D.I. 443 (David); D.I. 444 (Amy)). Their counsel – Edson A. Bostic, Esq. (counsel for David) and Jeremy H.G. Ibrahim, Esq. (counsel for Amy) – both filed affidavits in response. (D.I. 456 (Ibrahim); D.I. 459 (Bostic)). The government now submits this consolidated response, and includes an affidavit from Shannon T. Hanson, who supervised the prosecution of Petitioners' case. (D.I. 460-1 (Hanson)).

STANDARD OF REVIEW

In their motions, Petitioners assert that their attorneys rendered ineffective assistance of counsel in a number of ways. Since Petitioners root their challenges in the performance of counsel, they are subject to the standard set forth in *Strickland v. Washington,* 466 U.S. 668 (1984).

Strickland has two prongs. First, Petitioners must show that counsels' performance was deficient. "This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment."

Strickland, 466 U.S. at 687. Second, Petitioners must prove actual prejudice. "This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.*; *accord Harrington v. Richter*, 562 U.S. 86, 104 (2011). Unless Petitioners make both showings, they cannot prevail. *Id.*

The above standard is both "rigorous" and "highly demanding," and requires a showing of "gross incompetence" on counsel's part. *Kimmelman v. Morrison,* 477 U.S. 365, 381-82 (1986). That is, Petitioners must prove that their counsels' performance "fell below an objective standard of reasonableness," and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 688, 694.

Counsel cannot be ineffective for failing to raise meritless claims, and counsel's strategic choices are reviewed with a strong presumption of correctness. *See Sistrunk v. Vaughn,* 96 F.3d 666, 670 (3d Cir.1996). Moreover, counsels' performance must be judged on the "facts of the particular case, viewed as of the time of counsel's conduct." *Id.* (cleaned up).

ARGUMENT

In their Motions, Petitioners allege that their counsel were ineffective in the following seven (7) ways: (1) failing to object to the Court's allegedly unlawful *Pinkerton* instruction; (2) failing to advise Petitioners to accept alleged offers to plead *nolo contendere* to unspecified offenses with either a five year (Gonzalez) or 15-year sentence (Matusiewicz); (3) failing to present evidence and argue that Thomas Matusiewicz had a brain tumor, which caused him to act independently when he shot and killed Christine Belford; (4) failing to produce video evidence obtained by a private investigator in 2006 that allegedly demonstrates that Ms. Belford abused her children; (5) failing to investigate and present evidence that Christine Belford allegedly admitted that she abused her daughter Leigh; (6) failure to cross-examine Dr. Hann-Deschaine, or otherwise present evidence, about "pubic shaving of a 9 year-old"; and (7) by failing to object to the "court's ex parte communication with jury resulting in confusion about 'causation' instruction ('but-for' question from jury)."[2]

[2] Petitioners also include a number of other vague and conclusory allegations without any supporting facts or law. (D.I. 444 at 17-20, ¶¶ 50-54, 56; D.I. 443 at 16-19, ¶¶ 50-54, 56). For example, Petitioners

As set forth below, all of these claims are without merit and should be denied without an evidentiary hearing.

A. Defense Counsel Were Not Ineffective for Failing to Pursue the Application of Out-of-Circuit Precedent Regarding Co-Conspirator Liability

At trial, the Court instructed the jury that it could rely on the *Pinkerton* doctrine of co-conspirator liability when determining whether Petitioners' conduct resulted in the death of Christine Belford. *United States v. Gonzalez*, 905 F.3d 165, 187-90 (3d Cir. 2018) (quoting, discussing, and affirming "death results" instruction). In *Pinkerton*, "the Supreme Court held that the criminal act of one conspirator in furtherance of the conspiracy is attributable to the other conspirators for the purpose of holding them responsible for the substantive offense." *United States v. Lopez*, 271 F.3d 472, 480 (3d Cir. 2001) (cleaned up) (citing *Pinkerton v. United States*, 328 U.S. 640 (1946)). This decision is rooted in the bedrock legal principle that if an "overt act

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claim that "[c]ounsel unprofessionally failed to timely, properly, and effectively move for suppression of evidence," but never articulate what that evidence was, or why it should be suppressed. (D.I. 444 at 17-18, ¶ 51; D.I. 443 at 17, ¶ 51). These allegations do not require a response. *See, e.g.*, *United States v. Thomas*, 221 F.3d 430, 437 (3d Cir. 2000) ("[V]ague and conclusory allegations contained in a § 2255 petition may be disposed of without further investigation by the District Court.").

[by] one partner in crime is attributable to all," then any act in furtherance of the conspiracy is "attributable to the others for the purpose of holding them responsible for the substantive offense." *Pinkerton*, 328 U.S. at 647. Thus, a defendant is liable for substantive offenses committed by co-conspirators under *Pinkerton* if: (1) the defendant is a party to a criminal conspiracy; (2) one or more co-conspirators committed the substantive offense in furtherance of the conspiracy, and (3) commission of the substantive offense was reasonably foreseeable. *See United States v. Ramos*, 147 F.3d 281, 286 (3d Cir. 1998).

Petitioners claim that their counsel should have objected to the use of *Pinkerton* in this case, and instead urged the Court to adopt the reasoning of the Sixth Circuit in *United States v. Swiney*, 203 F.3d 397 (6th Cir. 2000) and Seventh Circuit in *United States v. Walker*, 721 F.3d 828 (7th Cir. 2013) *vacated on other grounds by* 572 U.S. 1111 (2013). (D.I. 443 at 12; D.I. 444 at 13). Both cases involved multi-defendant drug-dealing conspiracies that resulted in an overdose death. And both courts held that the *Pinkerton* doctrine standing alone was insufficient to trigger the applicable "death results" sentencing enhancements at

issue there. Rather, *Swiney* and *Walker* instruct that a court should instead utilize the following standard for Relevant Conduct set forth at Section 1B1.3 of the Sentencing Guidelines: "a defendant is accountable for the conduct of other conspirators only if that conduct was (1) reasonably foreseeable to him and (2) in furtherance of the jointly undertaken criminal activity." *Swiney*, 203 F.3d at 402; *Walker*, 721 F.3d at 834-35. While this standard is similar to the *Pinkerton* doctrine, it "may be narrower" in that it focuses on the specific defendant at issue, what he jointly agreed to do, and what was foreseeable from his perspective. *Walker*, 721 F.3d at 835 (discussing U.S.S.G. § 1B1.3(a)(1)(B) and accompanying commentary); *Swiney*, 203 F.3d at 402 (same).

Petitioners' argument regarding *Swiney* and *Walker* fails for several reasons.

First, in delivering the *Pinkerton* instructions in this case, the Court followed the Third Circuit's "model jury instructions and precedent." *Gonzalez*, 905 F.3d at 190 (affirming the use of the *Pinkerton* instruction and highlighting Third Circuit precedent in support). Absent circumstances not present here, defense counsel does

not err at all – much less engage in "unprofessional" behavior or "gross incompetence" – by failing to argue that a district court should ignore the binding law of its own circuit.[3] *See Sistrunk v. Vaughn*, 96 F.3d 666, 671 (3d Cir. 1996) ("Only in a rare case would it be ineffective assistance by a trial attorney not to make an objection that would be overruled under prevailing law.") (cleaned up); *see also United States v. Petersen*, 622 F.3d 196, 208 (3d Cir. 2010) ("[W]e have a hard time concluding that the use of our own model instruction can constitute error."); *New v. United States*, 652 F.3d 949, 952 (8th Cir. 2011) (rejecting petitioner's argument that his trial counsel was "deficient" where he did not identify "any *controlling legal authority* that directly supported" his argument or clearly portended that it would be successful within the circuit) (emphasis added); *United States v. Foster*,

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[3] Notably, Petitioners cite no case, and the government has found none, where the Third Circuit (or even a district court within the Third Circuit) has followed *Swiney* or *Walker*. And Petitioners point to no authority suggesting that the Third Circuit would do so now or in the future. To the contrary, the Third Circuit continues to rely on the *Pinkerton* doctrine to establish co-conspirator liability, and does so for purposes of establishing statutory sentencing enhancements. *See United States v. Williams*, 974 F.3d 320, 364-68, 366 n.35 (3d Cir. 2020) (applying *Pinkerton* theory of liability to determine threshold drug quantities for purposes of establishing mandatory minimum sentences).

No. CRIM. A 98-127, 1999 WL 615630, at *4 (E.D. Pa. Aug. 12, 1999) (holding that *Strickland* does not require that "trial counsel keep abreast of all splits in authority in order to preserve issues in the remote chance that the Supreme Court might grant certiorari and reverse then-controlling law").

Second, even if the Court were to apply the rationale of *Swiney* and *Walker* here, it would not lead to a different result. The Court's instructions were carefully moored to this specific conspiracy, the killing of Ms. Belford, and the defendants. In order to find either Petitioner guilty under *Pinkerton*, the jury was instructed that it must find that "Ms. Belford's death" was committed to "help further or achieve the objectives of the *specific conspiracy*," was "within the scope of the agreement *that the defendant understood*," and was "reasonably foreseeable *to the defendant*" as a member of that conspiracy and as "*a necessary or natural consequence* of the unlawful agreement." (Tr. July 8, 2015, at 5935-37 (*Pinkerton* instructions) (emphasis added); *Gonzalez,* 905 F.3d at 187-88 (quoting same)). This is functionally the same as the standard for "jointly undertaken criminal activity" under

the Sentencing Guidelines, as discussed in *Swiney* and *Walker*. *See Swiney*, 203 F.3d at 402; *Walker*, 721 F.3d at 835.

Third, and relatedly, the trial evidence overwhelmingly demonstrated that Ms. Belford's death was part of the Petitioners' conspiracy – a result that they either specifically intended or knowingly facilitated. (Tr. 2/18/2016, at 36-38, 83 (Court's findings regarding David Matusiewicz's intent to kill); Tr. 2/18/2016, at 36-38, 106-09 (Court's findings concerning Ms. Gonzalez's awareness and facilitation of Ms. Belford's impending death); D.I. 369 at 7-13 (government's sentencing memorandum with record cites demonstrating evidence of David Matusiewicz's knowledge of the plot to kill Christine Belford); D.I. 370 at 7-10 (same for Amy Gonzalez); *see also Gonzalez*, 905 F.3d at 181-82 (discussing trial evidence demonstrating Petitioners' knowledge of and participation in Ms. Belford's death)). In light of this evidence, Petitioners cannot demonstrate that the verdict in this case would have been any different had the Court relied upon *Swiney*, *Walker*, or any other standard for co-conspirator liability.

B. Defense Counsel Were Not Ineffective in the Plea-Bargaining Process

Petitioners argue that their counsel were ineffective for failing to advise them to accept certain alleged plea offers made by the government. In particular, Ms. Gonzalez alleges that "there was an offer made for a 5 year sentence," and but for her counsel's deficient performance, there was a "reasonable probability" that she could have "negotiated the agreement to allow her to plea nolo contendere for the 5 year sentence," and would have accepted such an offer. (D.I. 444 at 15-16). Mr. Matusiewicz differs in that he claims that the offer was to plead to "a 15 year sentence," but likewise alleges that his counsel was ineffective for failing to negotiate a deal for him to plead "nolo contendere" to such a prison term, which he now states he would have accepted. (D.I. 443 at 15-16). This claim fails for two related reasons.

First, as a threshold matter, there were no formal plea offers in this case. It is true that, "as a general rule, defense counsel has the duty to communicate *formal offers* from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Missouri v.* Frye, 566 U.S. 134, 145 (2012) (emphasis added). And where appropriate, counsel should advise their clients to accept those

offers. *Lafler v. Cooper*, 566 U.S. 156, 163-64 (2012). But where no formal plea offer has been made, a claim of ineffective assistance of counsel in the plea-bargaining process "simply does not arise." *United States v. Penn*, Crim. No. 12-240, 2020 WL 6701022, at *7 (W.D. Pa. Nov. 13, 2020) (quoting *Lafler*, 566 U.S. at 164); *accord United States v. Nguyen*, 619 Fed. App'x. 136, 141 (3d Cir. July 20, 2015) ("[T]he petitioner must begin by proving that a plea agreement was formally offered by the Government.").

Neither Petitioner was given a formal plea offer by the government. At most, the assigned prosecutor engaged in informal and preliminary plea discussions with defense counsel, with many details left open – such as the specific facts that each Petitioner would have to agree to in pleading guilty. (D.I. 456 at 1) (Ibrahim Affidavit) ("The assigned AUSA indicated an openness to discuss a plea" to a conspiracy charge, but since the defendant was "adamant that no law was broken and that she would not agree to a statement of facts that implicated her family/codefendants," "no plea offer was sought from or offered by the government."); (D.I. 459 at 2-3) (Bostic Affidavit) (counsel had "preliminary discussion" with the government concerning a plea, but

there was "no specific" or "formal" offer on the table, and the petitioner ultimately told counsel "not to pursue" such discussions). Moreover, as set forth in an affidavit from Shannon T. Hanson – the Criminal Chief of the United States Attorney's Office during the relevant period – all proposed plea agreements must be approved by a supervisor, and no plea agreements were proposed or approved in this case. (D.I. 460-1 at 1) (Hanson Aff.).

Based on similar circumstances, numerous courts have concluded that no formal plea offer was extended by the government. *Penn*, 2020 WL 6701022, at *9-10 (finding that there was no formal plea offer where prosecutor neither obtained supervisory approval for a plea and did not reduce terms to writing); *Sanchez v. Madden*, Case No. 2:19-cv-01310-ODW (GJS), 2020 WL 6832074, at *6 (C.D. Cal. Oct. 6, 2020) (finding that there was not a "formal plea offer" in part since prosecutor did not seek approval from a supervisor) (report and recommendation); *Schnewer v. United States*, Civ. No. 13-3769 (RBK), 2016 WL 867461, at *17 (D.N.J. Mar. 7, 2016) (concluding that a "prosecutor's lack of authority to bind the government means that the plea offers lack the requisite formality to constitute a formal plea offer" and likewise

concluding that "plea discussions" never "reached the level of a formal pleas offer" since the parties did not agreed on the "facts" that the defendant "would have had to admit if he was to plead guilty"); *United States v. Jack*, No. CV 13-0738 WJ/LAM, 2014 WL 10793220, at *4 (D.N.M. Apr. 7, 2014) ("A verbal plea offer that was never set forth in writing or otherwise documented does not appear to constitute a formal plea offer . . ."); *McIntosh v. United States*, No. 13 C 4192, 2013 WL 5567578, at *4 n.4 (N.D. Ill. Oct. 9, 2013) (concluding that there was "no evidence that a formal plea offer was made" because the plea discussions were not reduced to writing and plea offers required the approval of a supervisor); *United States v. Waters*, Crim. No. 11-100, 2013 WL 3949092, at *10 (E.D. Pa. July 31, 2013) (concluding that there was no "formal plea offer" where the allege offer was not reduced to writing nor approved by a supervisor as required).[4]

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[4] There are sound reasons to distinguish informal plea discussions from formal plea offers. As one court observed:

> In reality, there is either a formal plea offer, or in its absence, mere discussions between counsel. Mere conversations are rarely recorded and always subject to interpretation and mis-remembering. It would be a near-impossible burden to require defense counsel to update defendant on each twist and turn in informal conversations.

Second, even if the aforementioned preliminary negotiations could be considered plea offers, Petitioners do not present any evidence that they would have accepted the limited terms that were discussed. *See Lafler*, 566 U.S. at 164 (holding that to establish an ineffective assistance claim in this context, "a defendant must show" that he "would have accepted the plea" and the court would have accepted its terms). Instead, Petitioners allege that they would have accepted proposals that were never on the table – namely, offers to plead guilty *nolo contendere*, without any admission of guilt or acceptance of responsibility. (D.I. 443 at 15-16 (alleging that but for counsel's "deficient performance," Matusiewicz would have "pleaded nolo contendere instead of proceeding to trial); D.I. 444 at 16-17 (same for

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> And it would be impossible for the government to reconstruct and prove each such twist and turn in the communication, much less prove that defense counsel passed on the twists and turns to their client, especially years after the fact. Therefore, to transmogrify mere conversation into an "informal plea offer" and then to further say it must be communicated to an accused on pain of Section 2255 relief would be a nifty sleight of hand.

United States v. McCall, No. C 00-00505 WHA, 2014 WL 2581353, at *3 (N.D. Cal. June 9, 2014).

Gonzalez)). An offer to plead guilty *nolo contendere* was not made in this case, and never would have been, since the United States Department of Justice directs federal prosecutors to "oppose nolo contendere pleas except in the most unusual circumstances."[5] (D.I. 460-1 at 1 (Hanson Aff.)). No such circumstances were present here – or, for that matter, in any other case filed in the District of Delaware in recent history. *Id.* ("In my nine years serving as Criminal Chief or First Assistant in the District of Delaware, I am not aware of a single case where an Assistant United States Attorney agreed to a nolo contendere plea.").

C. The Testimony of Dr. Barry Gordon Would Have Been No Help to Petitioners

Petitioner's father, Thomas Matusiewicz, shot and killed Christine Belford in the lobby of the New Castle County Courthouse on February 11, 2013. One of the primary issues at trial was whether this act was the result of Petitioners' stalking conspiracy, including whether it was "reasonably foreseeable" and "could be expected to follow as a natural

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[5] To safeguard this requirement, the Department of Justice requires that a *nolo contendere* plea must be approved by a "high-ranking member of the Department, such as the Attorney General or Deputy Attorney General of the United States." (*Id.* at 1-2).

consequence" of their criminal conduct. *United States v. Gonzalez*, 905 F.3d at 188-89.

Petitioners claim that their counsel were ineffective for failing to present evidence that Thomas had a brain tumor, which they characterize as an "intervening event" that caused him to act independently when he killed Ms. Belford. In particular, Petitioners argue that counsel should have produced "Dr. Carry [sic] Gordon's testimony & report for jury consideration," which they propose would support such an allegation. (D.I. 444 at 19; D.I. 443 at 18) This argument fails for two reasons.

First, as set forth in the affidavits of both Mr. Bostic and Mr. Ibrahim, Dr. Barry Gordon's testimony would not have supported the theory that Thomas Matusiewicz's brain tumor impacted his judgment in the manner that Petitioners' allege. (D.I. 456 at 2; D.I. 459 at 3). In fact, his was opinion was the contrary. Dr. Gordon concluded that there was "no reliable evidence" that a brain tumor affected Thomas' ability to "control his behavior":

b. The meningioma that was known to be present on the inside of Mr. Matusiewicz's skull since at least 1990 and confirmed that autopsy would not have been expected to have appreciably affected Mr. Matusiewicz's ability to control his behavior on February 11, 2013, nor is there evidence that it did appreciably affect his ability to control his behavior prior to that time (based upon what is cited in the available records, and the behaviors reported by Mr. Bostic in his conversation with me on April 7, 2015). Although the meningioma did produce some mass effect on at least the surface of Mr. Matusiewicz's left hemisphere (at least judging from the CAT scan report cited in the 1990 note by Dr. Barolat), it had hardly changed in size in the over 20 year interval between the time of the CAT scan and time of the autopsy. Moreover, there is no reliable evidence that it affected deeper areas of Mr. Matusiewicz's brain, those that might have caused alterations in his ability to control his behavior.

d. There is no reliable evidence available that Mr. Matusiewicz had any other 'extrinsic' organic neurologic condition affecting the control of his behavior, either prior to February 11, 2013, or on February 11, 2013.

e. It is highly unlikely that any further investigation at this point in time, and at this state of medical science, of Mr. Matusiewicz's past behaviors, his past medical history, or a microscopic or other analysis of his brain tissue, could reveal any reliable evidence for there having been an 'extrinsic' pathologic alteration of Mr. Matusiewicz's control of his behavior, as these terms are currently generally understood.

(D.I. 459-2 at 4).

Second, even if there were a basis to argue that Thomas Matusiewicz had a brain condition that caused him to act in an extreme or uncontrollable manner, it would not change the fact that the evidence at trial overwhelmingly demonstrated that Thomas was an active member of Petitioners' stalking conspiracy, and that Petitioners were aware of his intent to kill Ms. Belford on February 11, 2013. As the Court stated in sentencing Petitioners, the trial evidence demonstrated that David Matusiewicz had a specific intent to kill Ms.

Belford, and that Ms. Gonzalez "was aware of looming violence and facilitated it and did nothing to stop it." (Tr. 2/18/2016, at 36-38, 83 (Court's sentencing findings regarding David Matusiewicz); Tr. 2/18/2016, at 36-38, 106-09 (same for Ms. Gonzalez); D.I. 369 at 7-13 (government's sentencing memorandum providing cites to trial record demonstrating evidence of David Matusiewicz's knowledge of the plot to kill Christine Belford); D.I. 370 at 7-10 (same for Amy Gonzalez); *see also Gonzalez*, 905 F.3d at 181-82 (discussing trial evidence demonstrating Petitioners' knowledge of and participation in Ms. Belford's death)).

D. There Was No Video Evidence that Christine Belford Abused Her Children

Part of Petitioners' stalking campaign was to use the Internet to falsely paint Christine Belford as an abuser of her own children. *Gonzalez*, 905 F.3d at 175. In their motions, Petitioners claim that their counsel was ineffective for failing to introduce video evidence obtained through private investigators Michael O'Rouke and David Phillips in 2006,[6] which they contend would demonstrate that their

[6] Michael O'Rourke is a private investigator who David Matusiewicz employed in connection with his custody proceedings against Christine

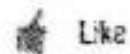
allegations were true. (D.I. 444 at 19; D.I. 443 at 19). Petitioners are wrong.

The video evidence in question was shown to the jury, but it did not support Petitioners' claims of abuse. As part of the stalking campaign, Gonzalez published three YouTube videos in early 2011 entitled "don't hurt me mommy" (GXS 327, 327A) and "Another unresolved Delaware Child Abuse Case" (GXS 328, 328A, 329, 329A). (Tr. 6/19/15, at 2797-2820 (Solon). The videos contain excerpts of surveillance that private investigators performed on Belford and her children taken during the original custody battle over Belford's children in 2006. Below is one example.

Belford in 2006. (Tr. July 6, 2015, at 5409 (O'Rourke)). Mr. O'Rourke engaged David Phillips, who performed surveillance on his behalf. (Tr. July 6, 2015, at 5410) (O'Rourke)).

don't hurt me mommy

voice4dvoiceless



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While Gonzalez falsely claimed that the videos displayed "child abuse," in reality they showed little more than Ms. Belford "playing" with her daughters outside. (Tr. June 29, 2015, at 4708 (Moffa); Tr. 6/24/15, at 3736 (Gordon)). Indeed, Amy Gonzalez's then co-worker Michael Solon – who helped Petitioner upload the videos in 2011 – specifically told her that he did not see any "physical abuse or harm" in the recordings. (Tr. 6/19/15, at 2813 (Solon)). Rather, he characterized them as "three kids playing by the driveway," and when one of them

would "run over to the road," the "mom" would help her back to the "front lawn." (Tr. 6/19/15, at 2804) (Solon).[7]

E. Christine Belford Did Not Admit to Abusing Her Daughter During a Doctor's Appointment

Petitioners next argue that their counsel were ineffective for failing to produce evidence that Christine Belford admitted to abusing her daughter during a doctor's appointment. (D.I. 444 at 20; D.I. 443 at 19). This claim fails because, as the trial record demonstrates, there was no such admission.

Petitioners allegation is rooted in the cross-examination of forensic psychologist Dr. Samuel Romirowsky – who David Matusiewicz hired to perform a child custody evaluation in 2006. (Tr. June 17, 2015, at 2098). There, defense counsel asked a number of questions about a note in his report pertaining to an interview with Ms. Belford:

[7] To the extent that Petitioners claim that there was some other relevant behavior that O'Rourke or Phillips witnessed, it could not be characterized as child abuse. All of the information that O'Rourke and Phillips obtained for David Matusiewicz was provided to the Family Court in connection with the initial custody proceedings in 2006. (Tr. July 6, 2015, at 5420-21 (O'Rourke)). And while David Matusiewicz argued that Christine Belford was an unfit mother, he never claimed that she physically abused her children. (Tr. June 16, 2015, at 1907-1911 (Hitchings)).

> She spoke of an incident occurring in the office of her 2¾ year old daughter's [sic] Lee's pediatrician that led to a risk that she would be charged with child abuse.

(*Id.* at 2149). As Dr. Romirowsky explained, and as the note itself says, Ms. Belford did not *admit* to child abuse during that visit, but rather had "concerns" about a report of child abuse from the episode. (Tr. June 17, 2015 at 2145-46) (Romirowsky)). Moreover, Dr. Romirowsky testified that the doctor in question was "Dr. Blalock" – an erroneous reference to Dr. Curt Blacklock – and Ms. Belford reported that he ultimately withdrew "his criticism over [the] treatment of her daughter and that it was a nonissue." (*Id.* at 2172).

Dr. Blacklock testified at trial and confirmed that Ms. Belford did not abuse Leigh or make an admission to that effect. He explained that in 2005, he treated a "two-year-old child" named Leigh Matusiewicz when her mother brought her to an urgent care facility. (Tr. June 25, 2015, at 3791-92 (Blacklock)). He remembered nothing "out of the ordinary" about the visit,[8] and indicated that if had witnessed any

[8] Dr. Blacklock did recall receiving a letter from "the patient's father's sister from Texas" – i.e., Petitioner Amy Gonzalez – "alleging events that seemed to me to be totally out of context to what had happened. It sounded fairly bizarre." (*Id.* at 3795).

evidence of abuse, he would have so documented in his records. (*Id.* at 3793-94). Those records contained nothing of the sort. (*Id.*).

F. Testimony Regarding "Pubic Shaving of a 9 Year Old" Would Not Have Benefitted Petitioners

Next, Petitioners argue that their counsel were ineffective for failing to present evidence with regard to "pubic shaving of a 9 year-old" – through either the cross examination of Laura Matusiewicz and Dr. Jason Hann-Deschane, or by affirmative expert testimony. (D.I. 444 at 20; D.I. 443 at 19). Petitioners, however, fail to demonstrate how such a tactic would have been sound legal strategy, or relatedly, how it would have materially impacted the trial verdict in this case.

Petitioners point to no evidence, and the government is aware of none, to suggest that any of Ms. Belford's three girls shaved their pubic area. Moreover, the oldest was only six when Petitioners had access to her.[9] Thus, any testimony concerning "pubic shaving" of a "9 year-old" would have no relevance to the case.

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[9] Laura, the eldest daughter, was born in May 2002. (Tr. 6/23/15, at 3135 (Bocanegra)). David Matusiewicz and his mother kidnapped Laura and her two sisters in August 2007. (Tr. 6/16/15, at 1918 (Hitchings)). In March 2009 – when Laura was six years old – law enforcement rescued the children in Nicaragua, arresting David and his mother Lenore in the process; thereafter, Laura and her sisters lived

To the extent that Petitioners believe that such testimony would substantiate their false claims that Ms. Belford sexually molested Laura, they are wrong. As the Court of Appeals put it, there was "overwhelming, uncontradicted evidence that the accusations that Belford sexually molested and abused her children were false." *Gonzalez*, 905 F.3d at 192, 192 n.11. Laura flatly denied that her mother sexually molested her in any way. (Tr. June 22, 2015, at 2926-29 (Laura M.)). And her treating medical professionals plainly corroborated this testimony. (Tr. 6/22/15, at 3069, 3084 (Hann-Deschane) (testimony of board-certified pediatrician, who treated Ms. Belford's daughters from 2004 until 2013, that he never had "any reason to suspect" that any of them "were being sexually abused in any way");[10] Tr. 6/23/15 at 3136, 3143-45, 3181, 3204-05, 3213-15

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with their mother until her death. (Tr. 6/15/15, at 1468 (David) (arrest date); Tr. 6/22/15 at 2925, 2930 (Laura M.) (living arrangements post rescue).

10 Moreover, despite Lenore Matusiewicz's public claims that she inspected Laura's hymen prior to the kidnapping and found that it was "torn," Dr. Hann-Deschaine testified that upon his physical examination of Laura in April 2009 – immediately after the children were rescued from Defendants in Nicaragua – her hymen was "normal," with no evidence of trauma. (Tr. 6/22/15, at 3079-84 (Hann-Deschaine)).

(Bocanegra) (testimony of clinical psychologist, who treated Laura after her rescue from the kidnapping, that she did not provide any information that suggested she had been sexually abused). Indeed, Petitioners' allegations were not credible on their face – both because they were materially inconsistent, as well as self-servingly timed.[11] *Gonzalez*, 905 F.3d at 192 n.11.

G. The Court Did Not Err in Responding to the Jury's Note Concerning the Causation Instructions

Lastly, Petitioners claim that their counsel were ineffective for failing to object to an *ex parte* communication that the Court allegedly had with the jury "resulting in confusion" about the "'causation' instruction ('but-for' question from jury)." (D.I. 444 at 20; D.I. 443 at 19). This is incorrect.

In the afternoon of the second day of deliberations, the jury sent a note asking the following: "We would like . . . (further explanation,

[11] Despite numerous opportunities to do so during the custody proceedings, Petitioners never reported to law enforcement or any other government entity that Christine Belford sexually abused her children prior to their kidnapping in August 2007. (Tr. 6/16/15, at 1908 (Hitchings); Tr. 6/17/15, at 2114 (Romirowsky); (Tr. 6/16/15, at 1987-88, 1990 (Bruno) (medical doctor and close friend of David)). And after their return, the allegations they made were inconsistent. (Tr. 6/16/15, at 2038-43, 2052 (Miles)).

more) determining the jury interrogatory questions." (Tr. 7/9/15, at 6030-31). The Court reviewed the note with counsel, but there was not a "meeting of the minds" as to whether this question referred to the jury instructions or the verdict form. (*Id.* at 6032). Accordingly, after conferring with counsel and without objection, the Court sent a clarification note back to the jury that asked the following:

> Members of the jury: When you were released to deliberate, you were provided with a fifty-eight-page document entitled "jury instructions" and three separate documents entitled "jury verdict form" and the name of each defendant. Would you please reply in writing as to whether your question pertains to the "jury instructions" or the "jury verdict forms" for each defendant.

(Id. at 6035).

The jury responded via another note, making it clear they had questions about "the instructions as they pertain to the verdict form." (*Id.* at 6037). Thereafter, after carefully weighing the matter and consulting with counsel, the Court provided the jury with a series of supplementary and clarifying instructions in open court and with all parties present. (Tr. 7/10/15, at 6054-65). This was proper. *See United States v. Toliver*, 330 F.3d 607, 611 (3d Cir. 2003) ("A jury's message should be answered in open court" and "petitioner's counsel should be

given an opportunity to be heard before the trial judge responds") (cleaned up).

To the extent Petitioners argue that the Court should have asked its clarification question in open court – as opposed to typing it up and submitting it to the jury via note – that argument likewise fails. Petitioners point to no material difference between the two methods. This is not a circumstance where the Court communicated with the jury "in the absence of counsel." *Toliver*, 330 F.3d at 616 (stating that the "real harm" in *ex parte* communications between a judge and jury is that defense counsel does not have "the opportunity to convince the judge that some other or different response would be more appropriate.") (citation omitted). Moreover, even if this could be characterized as a technical error, Petitioners point to no prejudice – and there could be none, given the circumstances. *Id.* at 615-616 (applying harmless error standard to *ex parte* communication between judge and jury); *United States v. Riley*, 336 Fed. App'x. 269, 270 (3d Cir. July 9, 2009) (noting no error where judge responded to jury question with a note after seeking input from counsel and no prejudice where judge followed-up with jury without defense counsel present).

H. Petitioners' Request for an Evidentiary Hearing Should Be Denied

When reviewing a Section 2255 motion, the Court must determine whether an evidentiary hearing is required. The decision to order a hearing is committed to the sound discretion of the trial court and is reviewed for abuse of that discretion. *See Government of Virgin Islands v. Forte,* 865 F.2d 59, 62 (3d Cir. 1989). Where the motions, files, and record "show conclusively that the movant is not entitled to relief," then a district court may summarily dismiss a Section 2255 motion without a hearing. *United States v. Nahodil,* 36 F.3d 323, 326 (3d Cir. 1994) (internal quotations omitted). A petitioner is not entitled to a hearing if her allegations are "contradicted conclusively by the record," or if they are "patently frivolous." *Solis v. United States,* 252 F.3d 289, 295 (3d Cir. 2001); *see also Forte,* 865 F.2d at 62.

Here, Petitioners cannot satisfy their burden to show either constitutionally deficient performance by their counsel or that they were prejudiced. Indeed, to the extent Petitioners allege facts at all, they are either bald assertions lacking any evidentiary support or are contradicted by the record. Thus, the Court may deny their motions without an evidentiary hearing. *Mayberry v. Petsock,* 821 F.2d 179, 185

(3d Cir. 1987) ("[B]ald assertions and conclusory allegations do not afford a sufficient ground for an evidentiary hearing . . . ."); *United States v. Vancol,* 778 F. Supp. 219, 226 (D. Del. 1991) (same).

CONCLUSION

For all of the above reasons, Petitioners Motions to Vacate Sentence Pursuant to 28 U.S.C. § 2255 should be denied.

Respectfully submitted,

DAVID C. WEISS
United States Attorney

BY: /s/ Shawn A. Weede
Shawn A. Weede
Assistant United States Attorney

Dated: April 29, 2021

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
v.	)	Crim. No. 13-cr-83-GAM
	)	Civil No. 20-cv-799-GAM
DAVID MATUSIEWICZ and	)	Civil No. 20-cv-800-GAM
AMY GONZALEZ,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I, Sherry Kaminski, an employee with the United States Attorney's Office, hereby certify that on the 29th day of April 2021, I caused to be electronically filed:

Government's Consolidated Response to Petitioner's Motions to Vacate Sentence and Affidavit of Shannon T. Hanson (Exhibit)

with the Clerk of the Court using CM/ECF. Said document is available for viewing and downloading from CM/ECF. I further certify one copy of said document to be served via U.S. mail upon:

///

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PRO SE

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PRO SE

/s/ Sherry Kaminski
Sherry Kaminski

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, Plaintiff v. DAVID MATUSIEWICZ and AMY GONZALEZ, Defendants.	))))))))))	Criminal No. 13-83-GAM Civil No. 20-CV-799-GAM Civil No. 20-CV-800-GAM

AFFIDAVIT OF SHANNON T. HANSON

I, Shannon T. Hanson, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am currently the First Assistant United States Attorney for the District of Delaware, a role in which I have served since March 2018. Prior to that, I served as the Chief of the Criminal Division for the period February 2012 through February 2018.

2. As Chief of the Criminal Division, I supervised the prosecution of *United States v. Matusiewicz, et al.*, 13-83-GAM.

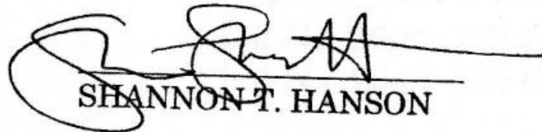
3. While individual Assistant United States Attorneys may engage in informal plea discussions on their own, per office policy, all proposed plea agreements must be approved by the Criminal Chief before they are extended to defense counsel. And any such approval must be documented in the file. I have no recollection of approving a plea agreement in this case. Moreover, I have examined the file, and there is no record of a plea agreement being approved in this case.

4. I have been made aware that defendants Amy Gonzalez and David Matusiewicz have each alleged that they would have accepted "nolo contendere" plea offers to five (5) years and (15) years, respectively. Approval for such plea offers was never sought in this case. Moreover, I would not have approved of them. In my nine years serving as Criminal Chief or First Assistant in the District of Delaware, I am not aware of a single case where an Assistant United States Attorney agreed to a nolo contendere plea. Indeed, the United States Department of Justice requires that we oppose nolo contendere pleas except in the most unusual circumstances and, only then,

with the approval of high-ranking member of the Department, such as the Attorney General or Deputy Attorney General of the United States. No such unusual circumstances were present in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of April, 2021.



SHANNON T. HANSON