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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.

AMY GONZALEZ,

Defendant-Movant.

THE HONORABLE GERALD MCHUGH
UNITED STATES DISTRICT JUDGE

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

AMY GONZALEZ
49619-379
P.O. Box 27137
Fort Worth, TX 76127

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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: Amy Gonzalez

Prisoner Number: 49619-379.

Place of Confinement: P.O. Box 27137, Fort Worth, TX 76127.

**United States of America,
v.
Amy Gonzalez,
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): 3-4-16
(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(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.....
(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): 16-1540

(c) Result: conviction and sentence affirmed

(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 the Indictment should be dismissed on the grounds that it is in violation of the First Amendment and Freedom of Speech/Expression clauses of the United States Constitution, as applied to the appellant, and or the statute relied on is void for vagueness or is overbroad.

2. Whether the trial court sitting in the District of Delaware lacked jurisdiction to hold the trial in that District based upon the initial Order of the Delaware District Court transferring venue out of the District.

3. Whether the evidence presented at trial against the Appellant was sufficient to establish that the appellant committed the crime of Interstate Stalking or Stalking as a principal, conspirator or aider/abettor.

4. Whether the trial court committed reversible error by precluding the defense from calling witnesses to rebut the attack on the veracity of the Capuchina polygraph.

5. Whether the trial court committed reversible error in permitting the admission of recorded therapy sessions of Christine Belford to be played to the jury.

6. Whether the trial court committed reversible error in permitting F.B.I. Special Agent Joseph Gordon to testify as to his belief in the strength of his case against the appellant.

7. Whether the trial court committed reversible error upon ruling that the prosecution was permitted to cross examine the appellant's character witnesses on facts the prosecution concluded were proof of dishonesty, lack of peacefulness and law abiding character, where such conclusions have not been proven.

8. Whether the sentence of Life imprisonment constituted cruel and unusual punishment.

9. Pursuant to Federal Rule of Appellate Procedure 28(i), Appellant Amy Gonzalez incorporates herein by reference the Arguments of Appellant David Matusiewicz, in Appeal No. 16-1559 to the extent that such arguments are not inconsistent with appellant's own brief, and the corresponding transcripts/exhibits in the Joint Appendix.

The issues are as follows:

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 Ms Gonzalez' 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. Ms Gonzalez 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: Ms Gonzalez' 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. Ms Gonzalez 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. Ms Gonzalez 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: Ms Gonzalez' 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.): Ms Gonzalez' Conviction And Sentence Are Violative Of Her Right To Freedom Of Speech And To Petition, Her Right To Be Free Of Unreasonable Search And Seizure, Her Right To Due Process Of Law, Her Rights To Counsel, To Jury Trial, To Confrontation Of Witnesses, To Present A Defense, And To Compulsory Process, And Her 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 Federal Rules of Civil Procedure 8-11, and Rule 2 of the Rules Governing Section 2255 Proceedings, Defendant-Movant Amy Gonzalez, 49619-379, 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 Amy Gonzalez was charged with violation of 18 U.S.C. § 371 (Conspiracy to commit interstate and cyber stalking) (Count 1); 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) (I&C) (USDC Docket)¹

4.) These charges arose from allegations that she monitored and participated in communications to and about Christine Belford, the ex-wife of her brother and codefendant David Matusiewicz who was subsequently killed by their father.

5.) She was arraigned on or about 9-17-13 at which time she pleaded not guilty to the charged violations. (USDC Docket)

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

7.) On or about 6-8-15 Ms Gonzalez 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.

9.) The evidence that Ms Gonzalez "harrassed" Ms Belford and that Ms Gonzalez' father killed Ms Belford was, however, overwhelming. In order for Ms Gonzalez 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 Ms Gonzalez 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, Ms Gonzalez 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(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 334) There is no way to determine whether the jury used the *Burrage* theory or the *Pinkerton* theory to determine Ms Gonzalez' culpability for the death of Ms Belford. *Id.*

13.) When the Presentence Report was prepared, the Probation Officer recommended finding a Total Offense Level 43 and a Criminal History "I" with a guideline sentencing range of "life" and a statutory maximum of "life". The enhancement to the statutory maximum from 5

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

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

years to life was predicated on the jury verdict and the “Special Interrogatory Regarding the Death of Christine Belford - Counts Three and Four”. (Presentence Report ¶¶132-133)

14.) On 2-18-16, Ms Gonzalez appeared for sentencing. At sentencing, the court relied on the jury verdict to increase Ms Gonzalez’ statutory maximum sentence from 5 years to life incarceration. (Transcript of sentencing page 22, 110)

15.) On 2-18-16, Ms Gonzalez 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(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 her statutory maximum sentence from 5 years to life incarceration based on the jury verdict from which it is impossible to say whether she 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). (Transcript of Trial 7-9-15, pages 6038-6045) (Transcript of Trial 7-10-15).

16.) It is impossible to say that the sentence received by Ms Gonzalez did not include an unlawful increase in her 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*.

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

17.) Counsel filed a direct appeal. In the appeal, counsel did NOT argue that the statutory enhancement of Ms Gonzalez' 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.

18.) On 9-7-18, the Court of Appeals denied Ms Gonzalez' 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 Ms Gonzalez' 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.) Ms Gonzalez provided counsel with complete and accurate information and did not place any restrictions on counsel.

21.) Ms Gonzalez relied completely and in all material respects on the advice of counsel.

CLAIM NUMBER ONE

22.) Ms Gonzalez restates, repleads, and realleges the facts, pleadings, and allegations set forth in ¶¶1-21 herein.

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)).

23.) Ms Gonzalez' sentence is violative of her 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 Ms Gonzalez' 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 Ms Gonzalez' 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 Ms Gonzalez' 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 *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 Ms Gonzalez 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 Ms Gonzalez' case and cause during the trial, sentencing, and direct appeal process.

31.) Ms Gonzalez 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 her trial, sentencing, and direct appeal process would have been different. More specifically, but for counsel's unprofessional omissions there is a reasonable probability that she 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 Ms Gonzalez did not include an unlawful increase in her 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.) Ms Gonzalez was prejudiced from the unprofessional omissions of counsel, set forth in ¶¶24-30 because said omissions deprived her of her procedural and substantive right to statutory enhancement of her sentence based solely on a lawful jury verdict; a procedural and substantive right to which the law entitled her.

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)).

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

CLAIM NUMBER TWO

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

35.) Ms Gonzalez' plea of not guilty, conviction, and sentence are violative of her 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 Ms Gonzalez, in a way that she could understand, the minimum facts that the government would have to prove in order for her to be eligible for, and likely receive, a sentence of life incarceration.

37.) Prior to trial and during the plea process, counsel could have but did not advise Ms Gonzalez of an available plea offer whereby she could receive a maximum of 5 years incarceration if she did not proceed to trial.

37A.) There was, in fact, an offer made for a 5 year sentence for Ms Gonzalez if she did not proceed to trial.

37B.) There is a reasonable probability that Ms Gonzalez and counsel could have negotiated the agreement to allow her 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 Ms Gonzalez that there was virtually no chance she could prevail at trial due to the

overwhelming weight of the government's evidence that Ms Gonzalez "harrassed" Ms Belford and that Ms Gonzalez' father killed Ms Belford.

39.) Prior to trial and during the plea process, counsel *affirmatively misadvised* Ms Gonzalez that she had a viable First Amendment challenge to her 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 Ms Gonzalez 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 Ms Gonzalez' 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 Ms Gonzalez' 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, Ms Gonzalez' plea of not guilty was not a voluntary and intelligent choice among the alternative courses of action open to her.

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

46.) Ms Gonzalez was prejudiced by counsel's constitutionally ineffective and deficient performance set forth herein, because a substantial difference exists between the sentence she could have obtained by a plea of guilty or nolo contendere and the actual sentence she received after trial. More specifically, had Ms Gonzalez pleaded guilty or nolo contendere instead of proceeding to trial, there is a reasonable probability she would have received a sentence of 5 years incarceration instead of the sentence of life incarceration she received after trial.

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

48.) Ms Gonzalez 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 her case.

CLAIM NUMBER THREE

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

50.) Counsel unprofessionally failed to advise Ms Gonzalez as to all facts and law relevant to her decision to plead not guilty and proceed to trial. Had Ms Gonzalez been fully advised, there is a reasonable probability that she 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 Ms Gonzalez. 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 Ms Gonzalez. Counsel also unprofessionally failed to object to, unlawful, false and unreliable evidence used to determine Ms Gonzalez' 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.) Ms Gonzalez was prejudiced by the objectively unreasonable performance of counsel during the trial, sentencing and direct appeal process, when counsel failed to timely argue that Ms Gonzalez was denied her Sixth Amendment constitutional rights by an unlawful increase in her 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 Ms Gonzalez for her 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 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 ineffective 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.) Ms Gonzalez' conviction and/or sentence is violative of her 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.) Ms Gonzalez is is not precluded from raising her claims of ineffective assistance of counsel for the first time in this motion pursuant to 28 U.S.C. § 2255. *Massaro v. United States*, 125 S. Ct. 1690; 135 L. Ed. 2d 714; 2003 U.S. LEXIS 3243 (1-23-03) ("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, Ms Gonzalez asks this Honorable Court to **ORDER** an evidentiary hearing where she can prove the allegations herein by: (A) her own testimony; (B) the testimony of Attorney Jeremy Ibrahim; (C) the testimony of AUSA's Jamie M. McCall and Edward J. McAndrew and Shawn Weede; (D) the testimony of David Matusiewicz; (E) additional evidence; and (F) legal argument to be presented at the hearing.

71.) Upon proof of Ms Gonzalez' allegations herein, Ms Gonzalez asks this Honorable Court to:

71A.) **ORDER** that Ms Gonzalez' conviction be **VACATED** and her indictment be **DISMISSED**; or,

71B.) **ORDER** that Ms Gonzalez' sentence be **VACATED** and that she be **RESENTENCED** to 5 years incarceration resulting in **TIME SERVED**.

MOTION FOR DISCOVERY

72.) Pursuant to Rule 6³ of the Rules Governing Section 2255 Proceedings, Ms Gonzalez asks leave of this Court to invoke the processes of discovery. More specifically, she asks this Honorable Court to **ORDER** that Jeremy Ibrahim allow himself to be deposed. The evidence developed through the foregoing deposition will materially support the allegations of

³ 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. Herz, *Federal Habeas Corpus Practice and Procedure*, § 41.6 [a] 2-31 (7th Ed. 1998). In this respect, the Rules Governing Section 2255 Proceedings are

Ms Gonzalez, as to the "performance" of counsel, detailed and set forth herein. More specifically, Ms Gonzalez requests this Court to allow counsel to question Jeremy Ibrahim as to the reasons for his failures complained of herein. Ms Gonzalez 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 Ms Gonzalez and as to the terms they would have accepted.

PROFFER

73.) Ms Gonzalez proffers to this Honorable Court that the foregoing depositions and/or evidentiary hearing will substantiate her 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, Ms Gonzalez asks that counsel be appointed for Ms Gonzalez.⁶

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 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).

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 Ms Gonzalez 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, 57-66 herein are alleged on information and belief but are also pleaded to protect the record for Ms Gonzalez 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, Ms Gonzalez invokes Fed.R.Civ.P. 8(d)(2).⁷

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

Amy Gonzalez
Defendant-Movant
49619-379
P.O. Box 27137
Fort Worth, TX 76127

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:** Jeremy H.G. Ibrahim, Sr., Esq., P.O. Box 1025, Chadds Ford, PA 19317
- (b) **At arraignment and plea:** Jeremy H.G. Ibrahim, Sr., Esq., P.O. Box 1025, Chadds Ford, PA 19317
- (c) **At trial:** Jeremy H.G. Ibrahim, Sr., Esq., P.O. Box 1025, Chadds Ford, PA 19317
- (d) **At sentencing:** Jeremy H.G. Ibrahim, Sr., Esq., P.O. Box 1025, Chadds Ford, PA 19317
- (e) **On appeal:** Jeremy H.G. Ibrahim, Sr., Esq., P.O. Box 1025, Chadds Ford, PA 19317
- (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: Ms Gonzalez' 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: Ms Gonzalez asks the Court to VACATE her conviction and DISMISS the indictment or VACATE her sentence and RESENTENCE her to TIME SERVED or a substantially reduced 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, 57-66 of the Statement of Claim herein are alleged on information and belief but are also pleaded to protect the record for Ms Gonzalez 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, Ms Gonzalez 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 _____ (month, date, year).

Executed (signed) on _____ (date)

(Signature of Movant)

Amy Gonzalez

49619-379

P.O. Box 27137

Fort Worth, TX 76127

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
AMY GONZALEZ,)	
)	
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 plus copies 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 _____ day
of _____ 2020.

Amy Gonzalez
49619-379
P.O. Box 27137
Fort Worth, TX 76127