

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal No. 13-83-GAM-3
)	Civil No. 20-CV-800-GAM
AMY GONZALEZ,)	
)	
Defendant.)	

**GOVERNMENT’S MOTION FOR AN EXTENSION OF TIME TO RESPOND
TO PETITIONER’S MOTION TO VACATE SENTENCE
AND FOR AN ATTORNEY AFFIDAVIT**

NOW COMES the United States of America, by and through its attorneys, David C. Weiss, United States Attorney for the District of Delaware, and Shawn A. Weede, Assistant United States Attorney, and hereby moves for an extension of time to respond to petitioner’s Motion to Vacate Sentence Pursuant to 28 U.S.C. § 2255 (D.I. 444 & 447) (hereinafter, the “Motion”), and for an attorney affidavit as set forth below.

1. On August 6, 2013, a federal grand jury indicted petitioner Amy Gonzalez – as well as co-defendants David Matusiewicz and Lenore Matusiewicz – 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). After a five-week jury trial during the summer of 2015, petitioner was convicted of both counts. *Id.* at 178.

2. As proven at trial, these crimes were part of a plot by petitioner, her brother David, and her parents Thomas and Lenore, to possess Christine Belford's three young girls. *Id.* at 180. This scheme involved a relentless and escalating course of criminal conduct, which began with an international parental kidnapping, was followed by a three-year stalking campaign to torment Christine Belford and her children through false allegations of physical and sexual abuse, and ultimately culminated in Ms. Belford's murder in the lobby of the New Castle County Courthouse on February 11, 2013.¹ *Id.* For these offenses, the Court sentenced petitioner to five years of imprisonment for Count One, and to a term of life imprisonment for Count Four, to be served concurrently. *Id.* at 178.

3. Petitioner appealed, wherein she challenged the constitutionality of the cyberstalking statute, the sufficiency of the evidence against her, the jury instructions, venue, evidentiary determinations made before and during trial, the applicable sentencing guidelines, and her ultimate sentence. *Id.* at 178-79. *Id.* In a 77-page precedential opinion, the Court of Appeals affirmed in all respects.

4. In her Motion, petitioner now asserts that her attorney, Jeremy H.G. Ibrahim, Esq., rendered ineffective assistance of counsel in a number of ways: (1) failing to object to the Court's allegedly unlawful *Pinkerton* instruction (D.I. 444 at 12-15); (2) failing to advise petitioner to accept an alleged offer to plead *nolo*

¹ A more detailed statement of the defendant's offense conduct may be found at *Gonzalez*, 905 F.3d at 174-77, 181.

contendere to an offense with a five-year sentence (D.I. 444 at 15-17, ¶¶ 34-46); (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 (D.I. 444 at 19, ¶¶ 57-60); (4) failing to produce video evidence obtained by a private investigator in 2006 that allegedly demonstrates that Ms. Belford abused her children (D.I. 444 at 19, ¶¶ 62-63); (5) failing to investigate and present evidence that Christine Belford admitted that she abused her daughter Leigh (D.I. 444 at 20, ¶ 64); (6) failure to cross-examine Dr. Hann-Deschaine or otherwise present evidence, about “pubic shaving of a 9 year-old” (D.I. 444 at 20, ¶ 65); and (7) failing to object to the “court’s ex parte communication with jury resulting in confusion about ‘causation’ instruction (‘but-for’ question from jury)” (D.I. 444 at 20, ¶ 66).²

5. Since petitioner roots these challenges in her counsel’s performance, they are subject to the standard set forth in *Strickland v. Washington*, which provides:

First, the defendant must show that counsel’s 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. Second, the defendant must show that the deficient performance prejudiced the defense. 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.

²In her Motion, petitioner also includes a number of vague and conclusory allegations without any supporting facts or law. (D.I. 444 at 17-20, ¶¶ 50-54, 56). For example, petitioner claims that “[c]ounsel unprofessionally failed to timely, properly, and effectively move for suppression of evidence,” but never articulates what that evidence was, or why it should be suppressed. (D.I. 444 at 17-18, ¶ 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.”).

466 U.S. 668, 687 (1984). Unless petitioner makes both showings, “it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.” *Id.*

6. The government has conducted a preliminary investigation into petitioner’s claims with *Strickland* in mind, and submits that the lion’s share of the Motion may be disposed of on the existing record. That record, however, is extensive. *See Gonzalez*, 905 F.3d at 180 (observing that the government produced approximately 65 witnesses and over 760 exhibits). Moreover, the undersigned is the last member of the original trial team still employed by the United States Department of Justice. Accordingly, the government respectfully requests an additional 45 days to respond.

7. In the interim, the government asks that the Court order Mr. Ibrahim to provide an attorney affidavit and supporting documentation with regard to two of petitioner’s claims set forth above: (1) counsel’s alleged failure to advise petitioner to accept an alleged offer to plead *nolo contendere* to a lesser-included offense with a five-year sentence (D.I 444 at 15-17, ¶¶ 34-46); and (2) the allegation that he failed 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 (D.I. 444 at 19, ¶¶ 57-60). Both of these claims depend on information that is not currently in the record: the former concerns allegations that involve plea discussions, and the latter appears to involve a potential trial strategy that was never utilized. And while both claims relate to communications petitioner had with defense counsel – i.e.,

information that would otherwise be protected by the attorney-client privilege – it is “well-established” that a party waives that privilege “by asserting claims or defenses that put his or her attorney’s advice at issue.” *United States v. Boyle*, No. 16-271, 2018 WL 6505526 at *3 n.1 (E.D. Pa. Dec. 11, 2018) (concluding that petitioner waived the attorney-client privilege with regard to specific claims raised in his § 2255 motion); *Wright v. United States*, No. 05-640-GMS, 2008 WL 4276206, at *3 (D. Del. Sept. 17, 2008) (ordering former defense attorneys to provide affidavits to respond to allegations raised in § 2255 motion with regard to information that was not otherwise found in the record); *see also Rhone-Poulenc Rorer Inc. v. Home Indemn. Co.*, 32 F.3d 851, 863 (3d Cir. 1994) (“[A] party can waive the attorney client privilege by asserting claims or defenses that put his or her attorney’s advice in issue in the litigation.”).³

8. In order to utilize these materials in its response, the government respectfully requests that Mr. Ibrahim be ordered to file his affidavit and any supporting documentation within 30 days of this Court’s order, with the government submitting its response 15 days after receipt.

³ While the Third Circuit has not ruled on this precise issue, other Courts of Appeals have applied this standard to ineffective assistance of counsel allegations, and held that petitioners under § 2255 waive the attorney-client privilege as to the claims they raise. *Id.* (citing cases from the Sixth, Ninth, Tenth, and Eleventh Circuits); *see also Tasby v. United States*, 504 F.2d 332, 336 (8th Cir. 1974) (“Surely a client is not free to make various allegations of misconduct and incompetence while the attorney’s lips are sealed by invocation of the attorney-client privilege.”).

WHEREFORE, the United States respectfully requests that the Court grant its Motion for an Extension of Time to Respond to Petitioner's Motion to Vacate and for an Attorney Affidavit. A proposed order is attached.

Respectfully submitted,

DAVID C. WEISS
United States Attorney

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

Dated: February 10, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal No. 13-83-GAM-3
)	Civil No. 20-CV-800-GAM
AMY GONZALEZ,)	
)	
Defendant.)	

ORDER

AND NOW, on this _____ day of _____ 2021, having considered the Government’s Motion for an Extension of Time to Respond to Petitioner’s Motion to Vacate and for an Attorney Affidavit, **IT IS HEREBY ORDERED** that the Motion is **GRANTED** and within 30 days from the date of this Order, Petitioner’s prior counsel, Jeremy H.G. Ibrahim, Esquire, shall file an affidavit responding to the following two claims of ineffective assistance of counsel: that counsel failed to advise petitioner to accept an alleged offer to plead *nolo contendere* to a lesser-included offense with a five-year sentence (D.I 444 at 15-17, ¶¶ 34-46); and (2) counsel failed 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 (D.I. 444 at 19, ¶¶ 57-60). The affidavit shall include all of the information that is necessary, in counsel’s view, to fully respond to these claims and shall include as attachments copies of any documents from his file specifically addressing the above matters. In preparing the affidavit and attachments, counsel should disclose only information

that is reasonably necessary. To the extent that any supporting documents address aspects of trial counsel's representation of petitioner that are not pertinent to the resolution of the above issues, those documents shall be redacted.

IT IS FURTHER ORDERED that the government shall file its response within 15 days after receipt of the affidavit and supporting documentation.

BY THE COURT:

Honorable Gerald A. McHugh
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal No. 13-83-GAM-3
)	Civil No. 20-CV-800-GAM
AMY GONZALEZ,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

I, Sherry Kaminski, an employee with the United States Attorney's Office, hereby certify that on the 10th day of February 2021, I caused to be electronically filed:

Government's Motion for an Extension of Time to Respond to Petitioner's Motion to Vacate Sentence and for an Attorney Affidavit

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

Amy Gonzalez
Register No. 49619-379
Inmate Mail
Federal Medical Center Carswell
P.O. Bo 27137
Fort Worth, TX 76127

/s/ Sherry Kaminski
Sherry Kaminski