

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

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

**GOVERNMENT’S MOTION FOR A SUPPLEMENTARY AFFIDAVIT AND
AN EXTENSION OF TIME TO SUBMIT A CONSOLIDATED RESPONSE TO
PETITIONERS’ MOTIONS TO VACATE SENTENCE**

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 a supplementary affidavit and an extension of time to submit a consolidated response to the Motions to Vacate Sentence Pursuant to 28 U.S.C. § 2255 filed by David Matusiewicz (D.I. 443 & 447) (“Matusiewicz Motion”), and Amy Gonzalez (D.I. 444) (“Gonzalez Motion”).

1. 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. After a five-week jury trial during the summer of 2015, Petitioners were convicted of all counts. *Id.* at 178.

2. As proven at trial, these crimes were part of a plot by Petitioners, as well as their parents Thomas and Lenore Matusiewicz, 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 Petitioners to life imprisonment. *Id.* at 178.

3. 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.

4. Petitioners have now filed Motion to Vacate Sentence Pursuant to 28 U.S.C. § 2255 (collectively, the "Motions"). In each, Petitioners assert that their attorneys rendered ineffective assistance of counsel in a number of ways. Since

¹ A more detailed recitation of the Petitioners' offense conduct may be found at *Gonzalez*, 905 F.3d at 174-78, 181-82.

Petitioners root their challenges in their counsels' 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.

466 U.S. 668, 687 (1984). Unless Petitioners make both showings, they cannot prevail. *Id.*

6. After reviewing both Motions, the government believes that it can respond the Petitioners' claims on the current record, with the exception of the following: (1) counsels' alleged failure to advise Petitioners to accept certain alleged plea offers (D.I 443 at 14-16, ¶¶ 34-48); and (2) allegations that 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. 443 at 18, ¶¶ 57-60). Both claims involve communications with counsel, or legal strategies that were investigated but not employed at trial.²

² While this information may 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."). While the Third Circuit has not ruled on this precise issue, other Courts

7. Mr. Jeremy H. Gonzalez Ibrahim, Esq. – counsel for Ms. Gonzalez – submitted an affidavit addressing these claims on March 11, 2021. The government, however, needs similar information from Edson A. Bostic, Esq., counsel for David Matusiewicz. Accordingly, the government asks that Court order Mr. Bostic to provide an attorney affidavit and supporting documentation concerning the above two claims within 30 days of the Court's order.

8. The government further requests that it be permitted to submit a consolidated response to both Motions 15 days thereafter. Petitioners' claims are largely the same. Moreover, some of the materials referenced in Mr. Ibrahim's affidavit are in the possession of Mr. Bostic and/or the Office of the Federal Public Defender. Thus, the government requires the information to be provided by Mr. Bostic in order to respond to both Motions.

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 a Supplementary Affidavit and an Extension of Time to Submit a Consolidated Response to Petitioners' Motions to Vacate Sentence. 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: March 15, 2021

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

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

ORDER

AND NOW, on this _____ day of _____ 2021, having considered the Government’s Motion for a Supplementary Affidavit and an Extension of Time to Submit a Consolidated Response to Petitioners’ Motions to Vacate Sentence, **IT IS HEREBY ORDERED** that the Motion is **GRANTED** and within 30 days from the date of this Order, Edson A. Bostic, Esquire, shall file an affidavit responding to the following two claims of ineffective assistance of counsel: (1) counsel’s alleged failure to advise David Matusiewicz to accept an alleged offer to plead *nolo contendere* to a fifteen-year sentence (D.I 443 at 14-16, ¶¶ 34-48); and (2) the allegation that 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. 443 at 18, ¶¶ 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 counsel's representation 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 a consolidated response to both Amy Gonzalez and David Matusiewicz's Motions to Vacate Sentence within 45 days of the date of this Order.

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
)	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 15th day of March 2021, I caused to be electronically filed:

Government's Motion For a Supplementary Affidavit and An Extension of Time to Submit a Consolidated Response to Petitioner's Motions to Vacate Sentence

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:

David Thomas Matusiewicz
 Register No. 81910-004
 Terre Haute Federal Correctional Institution
 Inmate Mail/Parcels
 P.O. Box 33
 Terre Haute, IN 47808
PRO SE

Amy Gonzalez
 Register No. 49619-379
 Carswell Federal Medical Center
 Inmate Mail/Parcels
 P.O. Box 27137
 Ft. Worth, TX 76127

/s/ Sherry Kaminski
 Sherry Kaminski