No: _____

SUPREME COURT OF THE UNITED STATES

William Kaetz, *Petitioner*

vs.

United States of America, *Respondent*

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI
APPENDIX

Exhibit #1 the district court's order, and opinion of 6/29/2023

Exhibit #2 the district court's memorandum order denying certificate of appealability of the habeas corpus motion.

Exhibit #3, Third Circuit Case no. 23-2488, document 10 filed 11/16/2023 denied appealability.

Exhibit #4, Appeals court order denied rehearing.

Exhibit #1 the district court's order, and opinion of 6/29/2023

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM KAETZ	)	
	)	
v.	)	Case Nos. 22-CV-1148, 21-CR-211
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM ORDER

AND NOW, this 29th day of June, 2023, the Court **DENIES** Plaintiff William Kaetz ("Kaetz")'s Motion to Vacate pursuant to 28 U.S.C. § 2255 (ECF Nos. 1, 9)[1] for the reasons set forth below. The Court likewise **DENIES** the related Motions at ECF No. 26, 27, and 28. The Motion cross-docketed at 21-cr-211 (ECF No. 132) is **DENIED** on the same basis.

I. BACKGROUND

On August 2, 2021, Kaetz pled guilty to one count of publishing restricted personal information belonging to a United States District Court Judge with intent to threaten and intimidate. (21-cr-211, ECF No. 113; 21-cr-211, ECF No. 73, at 132–34.) The indictment arose out of statements Kaetz made on Facebook and Twitter about the District Court Judge who was presiding over one of several civil matters Kaetz had brought before the United States District Court for the District of New Jersey. (*See* 21-cr-211, ECF No. 118, at 29:1–31:22.) Specifically, he posted the Judge's home address, which was restricted information, and encouraged others to, as he wrote, "[l]et [the Judge] feel your anger." (*Id.*)

During Kaetz's combined change-of-plea and sentencing hearing, he admitted to publishing this information. (*Id.* at 31:23–32:19.) Kaetz explained his actions as follows: "I just want to say that I ask for forgiveness for doing this. I didn't really mean to harm [the Judge] at all. I actually liked [the Judge]. [The Judge] is a very good judge. I believe [the Judge] was kind of

[1] All references to the record are to docket number 2:22-cv-1148 unless otherwise stated.

fair to me. It was just everything was taking a long time and I got frustrated. I didn't really mean to do any harm to [the Judge] or scare [the Judge] or intimidate [the Judge] at all. It was mostly about my case, nothing personal against [the Judge] at all." (*Id.* at 45:19–46:3.)

Pursuant to Kaetz's binding Rule 11(c)(1)(C) plea agreement, the Court sentenced him to sixteen months' imprisonment and three years' supervised release. (21-cr-211, ECF No. 116.) That plea agreement contained two relevant conditions and waivers. First, the plea agreement required that Kaetz serve the first six months of supervised release "in home detention," and this Court imposed that condition. (*See* 21-cr-211, ECF No. 118, at 22:15–23:1; *id.* at 50:14-21; ECF No. 116, at 5.) Second, Kaetz agreed to waive many of his appellate rights, including the right to file a motion to vacate his sentence pursuant 28 U.S.C. § 2255, except for claims of ineffective assistance of counsel. (ECF No. 25-1, p. 2.) At the combined change-of-plea and sentencing hearing, the Court asked Kaetz if he understood this waiver, and he stated that he did. (21-cr-211, ECF No. 118, 26:5-27:9.)

Despite his waiver, Kaetz moved *pro se* pursuant to section 2255 to vacate his sentence. (ECF 1; 21-cr-211, ECF No. 132.) The Court issued a *Miller* notice to Kaetz on August 9, 2022 (21-cr-211, ECF No. 133), but, after receiving no response and out of an abundance of caution, re-mailed the notice to Kaetz and gave him an additional three weeks to respond. (21-cr-211, ECF No. 140.) He did so on November 17, 2022 and requested the chance to supplement his motion (21-cr-211, ECF No. 141.)

Over the next several months, Kaetz filed a litany of motions for discovery, for release of *Brady* materials, and for appointment of counsel, which the Court denied for the various reasons stated on the docket; he also filed multiple motions for reconsideration of those denials, which the Court also denied for the various reasons stated on the docket. Finally, Kaetz filed his supplemental motion on February 11, 2023 (ECF No. 9). The government filed its response in opposition on March 13, 2023 (ECF No. 25). Kaetz filed his reply on April 2, 2023 (ECF No. 39); in the interim,

he also filed additional motions for discovery (ECF No. 26), for the appointment of counsel (ECF No. 27), and to transfer this case back to the District of New Jersey (ECF No. 28). Kaetz's various motions are now ripe for disposition. As explained below, the Court denies Kaetz's section 2255 motion, and in turn his other outstanding motions.

II. STANDARD OF REVIEW

"A Section 2255 petition enables a defendant to petition the court that imposed the sentence, collaterally attacking a sentence imposed after a conviction. Pursuant to 28 U.S.C. § 2255, a federal prisoner may move the sentencing court to vacate, set aside or correct a sentence upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack. Relief is generally available only in 'exceptional circumstances' to protect against a fundamental defect which inherently results in a complete miscarriage of justice or an omission inconsistent with the rudimentary demands of fair procedure." *United States v. Leavy*, No. 19-160, 2022 WL 2829948, at *1 (W.D. Pa. July 20, 2022) (Schwab, J.) (cleaned up). However, a motion to vacate "is not a substitute for an appeal." *Gov't of Virgin Islands v. Nicholas*, 759 F.2d 1073, 1074 (3d Cir. 1985) (citation omitted).

In reviewing a motion to vacate under Section 2255, "[t]he court must accept the truth of the movant's factual allegations unless they are clearly frivolous on the basis of the existing record." *United States v. Booth*, 432 F.3d 542, 545 (3d Cir. 2005) (cleaned up). Where, as here, the petitioner files his motion *pro se*, the Court construes the pleadings liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). But "vague and conclusory allegations contained in a § 2255 petition may be disposed of without further investigation[.]" *United States v. Thomas*, 221 F.3d 430, 437 (3d Cir.2000) (citation omitted). A district court "must hold an evidentiary hearing when the files and records of the case are inconclusive as to whether the movant is entitled

to relief," but "may summarily dismiss a § 2255 motion where the motion, files, and records show conclusively that the movant is not entitled to relief." *United States v. Mason*, No. 07-5101, 2008 WL 938784, at *1 (E.D. Pa. Apr. 4, 2008) (cleaned up).

III. DISCUSSION

As the Court reads the supplemental motion, Kaetz makes the following arguments for why his sentence must be vacated: (1) Kaetz's conviction is constitutionally infirm because it is based on "government provocation," as revealed by "newly, and after-discovered evidence" (ECF No. 9-2, at 5, 7); (2) Kaetz's sentence pertaining to the first six months of supervised release to be served on home detention "offends the Constitution's separation of powers" because it is a court-legislated punishment (ECF No. 9-1 at 2; ECF No. 9-2, at 5–6); (3) he is the victim of a vindictive and selective prosecution (ECF No. 9-2, at 7); and (4) his appointed counsel's performance was ineffective for "fail[ing] to protect his liberty interests" (ECF No. 9-2, at 7).

A. Kaetz waived his right to file this motion in his binding Rule 11(c)(1)(C) plea agreement.

The first issue is that Kaetz waived almost all grounds for relief under section 2255 when he signed his Rule 11(c)(1)(C) plea agreement. That plea agreement is a contract, "a bargained-for exchange" between Kaetz and the government. *United States v. Williams*, 510 F.3d 416, 422 (3d Cir. 2007). To ignore an unambiguous appellate rights waiver such as Kaetz's "would render the concept of a binding agreement a legal fiction." *Id.* at 423. For this reason, courts will enforce the appellate waiver provision of a plea agreement if (1) the waiver was knowing and voluntary, and (2) enforcement of the waiver will not work a miscarriage of justice. *United States v. Williams*, No. 21-1752, 2022 WL 973737, at *1 (W.D. Pa. Mar. 31, 2022) (Schwab, J.) (citing *United States v. Mabry*, 536 F.3d 231, 244 (3d Cir. 2008)).

The record establishes that Kaetz knowingly and voluntarily waived his right to file this motion. As explained above, Kaetz engaged in a lengthy colloquy regarding this waiver at his

combined change-of-plea and sentencing hearing. The Court advised Kaetz as follows: "Usually a defendant can also file a motion to vacate his or her sentence under 28 United States Code Section 2255 or file a similar collateral attack to the conviction or sentence. That's typically a way to argue your conviction or sentence is unconstitutional. Under the terms of the plea agreement, you are giving up your right to file any such collateral attack to your conviction or sentence. Do you understand that?" (21-cr-211, ECF No. 118, 26:5–13.) Kaetz responded: "Yes, Your Honor." (*Id.* at 26:14.)

The Court then explained that the collateral rights waiver could affect Kaetz's pending civil lawsuits in this District and the District of New Jersey: "You understand there is a potential based on the law and based on whether or not the lawsuits are characterized as collateral attacks that by signing this plea agreement, you could be effectively jeopardizing those civil lawsuits. Do you understand that?" (*Id.* at 26:22–27:2.) Kaetz responded: "Yes, Your Honor, I do." (*Id.* at 27:3.)

Kaetz also confirmed that he completely reviewed the terms of his plea agreement with his attorney, that he understood "all of the contents" of the agreement, and that he had no remaining questions for his attorney. (*Id.* at 24:23–25:10.) The Court then asked him: "Has anyone threatened you or anyone else which has forced you in any way to plead guilty today?" (*Id.* at 27:25–28:2.) Kaetz responded: "No, Your Honor." (*Id.* at 28:3.)

The Court concludes that Kaetz's collateral rights waiver was knowing and voluntarily made. *United States v. Parker*, 793 F. App'x 64, 68 (3d Cir. 2019) (colloquy advising defendant of appellate waiver established waiver was knowing and voluntary); *United States v. Wallace*, No. 08-411-10, 2016 WL 1446232, at *2 (W.D. Pa. Apr. 11, 2016) (Diamond, J.) ("[T]he plea colloquy in this case established that petitioner plainly understood the terms of the agreement waiving his collateral attack rights.").

As described above, a knowing and voluntary waiver must be enforced unless doing so would work a miscarriage of justice. In making this assessment, "a court should consider the clarity

of the [erroneous waiver], its gravity, its character, the impact of the error on the defendant, the impact of correcting the error on the government and the extent to which the defendant acquiesced in the result. A court should consider the listed factors and take a common-sense approach in determining whether a miscarriage of justice would occur if the waiver were enforced." *Williams*, 2022 WL 973737, at *2 (cleaned up).

The Court concludes that enforcement of the waiver will not work a miscarriage of justice. The only evidence Kaetz presents in support of his claims consists of various news articles (ECF No. 9-3, at 84–92; ECF No. 39-1), the complaint, second amended complaint, and docket sheet from the case *Loomer v. Meta Platforms, Inc., et al.*, Case No. 22-cv-2646 (N.D. Cal., Aug. 29, 2022) (ECF No. 39-2, ECF No. 39-20, ECF No. 40-1), affidavits and the docket sheet from the case *Missouri v. Biden*, No. 3:22-cv-1213 (W.D. La. Nov. 14, 2022) (ECF No. 39-5 to ECF No. 39-19), materials pertaining to COVID-19 (ECF No. 39-4), and the so-called "Twitter Files" (ECF No. 39, at 4, though this is not included in his exhibits).

Kaetz assumes that if his "evidence" is true in the context of *Loomer* and *Missouri*, then it must also be true for him.[2] Not so. *Christian v. Generation Mortg. Co.*, No. 12-5336, 2013 WL 2151681, at *3 (N.D. Ill. May 16, 2013) (explaining the "fallacy of division"). There is nothing among those exhibits or in the record that tends to prove that Kaetz specifically was provoked into acting, that he was the victim of a malicious, selective, or otherwise vindictive prosecution, or that his home confinement sentence violates the Constitution.[3] In other words, the evidence is neither "material to the issues involved" in this case, nor "of such nature, as that, on a new trial, the newly

[2] Since the materials are not relevant to this case, the Court will not weigh the merits, truth, or accuracy of these materials.

[3] The Court previously advised Kaetz that, for the Court to reach the merits of any of his motions, he should supply specific details applicable to his particular case that would tend to support his reasoning, rather than conclusory assertions. (*See* ECF No. 4, at 1 (" Kaetz has not shown good cause. Instead, he has made conclusory assertions that the discovery he seeks will prove he was 'targeted for being a United States Citizen doing his duty.' That is insufficient to give the Court reason to believe that [Defendant] may, if the facts are fully developed, be able to demonstrate that he is entitled to relief." (cleaned up)).)

discovered evidence would probably produce an acquittal." *United States v. McArthur*, No. 01-3943, 2003 WL 1420252, at *5 (E.D. Pa. Mar. 18, 2003) (cleaned up), *aff'd*, 107 F. App'x 275 (3d Cir. 2004).[4]

To the contrary, the evidence against Kaetz, as presented by the government at the combined change-of-plea and sentencing hearing, convincingly established his guilt. (*See* 21-cr-211, ECF No. 118, at 29:1–31:23.) Kaetz stated under oath that he had committed the conduct that the Government attorney described as the factual basis for the indictment and plea, and he made that admission knowingly and voluntarily. (*Id.* at 31:24–32:19.) What's more, he explained to the Court his reasons for behaving as he did: he stated that he committed the unlawful conduct because he "got frustrated" with the lethargy of the legal system. (*Id.* at 45:25.) Indeed, this appears to be a common plan or scheme at work. Kaetz has a long history of litigious—and sometimes threatening—conduct toward judges. (ECF No. 39-3, at 39–41 (U.S. Marshal's Service's investigative report into Kaetz's conduct, finding he is a "serial litigant," has previously threatened a federal judge (due to frustration with the justice system) and IRS agents, and has attempted to directly serve political figures with process).)

That history suggests a pattern of behavior that is entirely consistent with the unlawful conduct to which Kaetz pled guilty—without any evidence of government provocation or impropriety. *See United States v. Porter*, No. 18-36, 2022 WL 17852017, at *9 (W.D. Pa. Dec. 22, 2022) (Baxter, J.) (no miscarriage of justice where defendant failed to present "any new and relevant evidence to show that he did not commit the offenses to which he pled guilty"). Because Kaetz's claims lack merit, "he cannot establish that enforcing his knowing and voluntary waiver

[4] Where a section 2255 petitioner seeks relief on the basis of new evidence, courts in this Circuit have applied the test for a new trial under Federal Rule of Criminal Procedure 33, which requires: "(a) the evidence must be in fact, newly discovered, i.e., discovered since the trial; (b) facts must be alleged from which the court may infer diligence on the part of the movant; (c) the evidence relied on, must not be merely cumulative or impeaching; (d) it must be material to the issues involved; and (e) it must be such, and of such nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal." *McArthur*, 2003 WL 1420252, at *5 (citing *Government of Virgin Islands v. Lima*, 774 F.2d 1245, 1250 (3d Cir.1985))

would result in a miscarriage of justice." *United States v. Campbell*, No. 09-274, 2014 WL 3890351, at *2 (W.D. Pa. Aug. 8, 2014) (McVerry, J.).

Given the foregoing, the Court will enforce Kaetz's collateral rights waiver, and in turn concludes that it lacks jurisdiction to consider any of his claims for relief,[5] excluding the ineffective assistance claim. *United States v. Joseph*, No. 10-233, 2014 WL 2002280, at *1 (W.D. Pa. May 15, 2014) (Ambrose, J.) (A valid waiver "will divest the district court of jurisdiction over a collateral attack." (citations omitted)).[6]

B. Kaetz's ineffective assistance of counsel claim lacks merit.

In his ineffective assistance of counsel claim, Kaetz alleges that his attorney participated in a "fraud on the Court" by "fail[ing] to protect his liberty interests by siding with the misbehavior of the government." (ECF No. 9-2, at 7; ECF No 39, at 18.) Specifically, he alleges that counsel failed to argue against the home confinement condition of the supervised release sentence as a violation of separation of powers. (ECF No. 39, at 18.)

Kaetz did not waive his ineffective assistance of counsel claim in his plea agreement, and a claim of ineffective assistance of counsel is not procedurally defaulted at the section 2255 stage. *United States v. Nahodil*, 36 F.3d 323, 326 (3d Cir. 1994) ("A § 2255 motion is a proper and indeed the preferred vehicle for a federal prisoner to allege ineffective assistance of counsel." (citations

[5] Kaetz also failed to raise his government provocation, home confinement, and selective prosecution claims on appeal. "[A] movant has procedurally defaulted all claims that he neglected to raise on direct appeal." *Hodge v. United States*, 554 F.3d 372, 379 (3d Cir. 2009) (citing *Bousley v. United States*, 523 U.S. 614, 621 (1998)). The Court may exempt Kaetz from that rule if he shows that he was actually innocent of the crime, or that there is good cause for and prejudice resulting from the default. *Id.* But Kaetz did not attempt to show good cause or prejudice in his motions, and the foregoing establishes that he was not actually innocent of the offense. Thus, those claims are also procedurally defaulted, further precluding this Court from reviewing them.

[6] Kaetz had previously filed a section 2241 motion seeking relief from the home confinement condition, in which he raised the exact same arguments as in this section 2255 motion—this Court rejected them, and the Third Circuit affirmed. *Kaetz v. United States*, No. 2:21-CV-1614, 2022 WL 357214, at *1 n.1 (W.D. Pa. Feb. 7, 2022) (Ranjan, J.), *aff'd*, No. 22-1286, 2022 WL 1486775 (3d Cir. May 11, 2022). So the Court also declines to review the home confinement claim under the doctrine of issue preclusion, which "bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment." *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (cleaned up).

omitted)). Nonetheless, upon review of the record, the Court denies the claim because Kaetz cannot satisfy either prong of the familiar standard pronounced in *Strickland v. Washington*, 466 U.S. 668 (1984)—that is, he cannot show his counsel's performance fell below an objective standard of reasonableness, or that his counsel's deficient performance prejudiced his defense. *United States v. Otero*, 502 F.3d 331, 334 (3d Cir. 2007).

"To succeed on an ineffective assistance of counsel claim, Defendant must point to specific facts in the trial record supporting the alleged ineffectiveness of his trial counsel and meet both prongs of the *Strickland* test." *United States v. Sliter-Matias*, No. 17-34, 2023 WL 2957429, at *7 (W.D. Pa. Apr. 14, 2023) (Fischer, J.) (cleaned up). A petitioner cannot meet that burden "based on vague and conclusory allegations," but "must set forth facts to support his contention." *Zettlemoyer v. Fulcomer*, 923 F.2d 284, 298 (3d Cir. 1991) (citations omitted).

At the outset, the Court notes that Kaetz had moved to represent himself after expressing dissatisfaction with his appointed counsel. (21-cr-211, ECF No. 100.) But at the combined change-of-plea and sentencing hearing, he indicated that he was in fact satisfied with counsel and withdrew the self-representation motion (21-cr-211, ECF No. 112; 21-cr-211, ECF No. 188, 4:2–9.) That fact alone belies Kaetz's claim.

But even on the merits, there is no evidence in the record showing Kaetz's counsel performed deficiently. Instead, the claim rests entirely on conclusory allegations and *ipse dixit*, such as: "The appointed attorney prejudiced petitioner and failed to protect his liberty interests by siding with the misbehavior of the government, even after petitioner directed him to protect his liberty interests and presented to him the liberty interest arguments presented herein that are supported by the Constitution." (ECF No. 9-2, at 7.) Buzzwords and jargon like "liberty interest" and "government misbehavior" cannot go far without the underlying facts. "[A] habeas petitioner's nonspecific or conclusory allegations of ineffective assistance of counsel do not compel district

courts to convene evidentiary hearings in order to delve into the unelaborated factual basis of a habeas petition." *Palmer v. Hendricks*, 592 F.3d 386, 395 (3d Cir. 2010) (citations omitted).

In any event, the Court cannot conclude that Kaetz's counsel was deficient for failing to raise the separation of powers argument because that argument is simply without merit. The Supreme Court did away with Kaetz's reasoning over thirty years ago when it concluded that the Sentencing Guidelines do not offend separation of powers: "[The Guidelines] do not bind or regulate the primary conduct of the public or vest in the Judicial Branch the legislative responsibility for establishing minimum and maximum penalties for every crime. They do no more than fetter the discretion of sentencing judges to do what they have done for generations-impose sentences within the broad limits established by Congress." *Mistretta v. United States*, 488 U.S. 361, 396 (1989). Because "counsel cannot be deemed ineffective for failing to raise a meritless claim," the Court rejects Kaetz's argument. *Werts v. Vaughn*, 228 F.3d 178, 203 (3d Cir. 2000).

To the extent Kaetz argues that counsel failed to properly advise him on the home confinement condition, that argument also falls short. The Third Circuit addressed this very issue in Kaetz's appeal regarding his section 2241 motion and had this to say: "[W]e note that this argument lacks merit. Kaetz testified at his plea colloquy that no one had made any sentencing guarantee or promise '[o]ther than what is in the plea agreement[.]' And Kaetz's plea agreement expressly provides for separate terms of 16 months in prison and six months of home detention, as both the parties and the court made clear at the plea colloquy and sentencing. Thus, 'any possible error in plea counsel's advice . . . was cured by the plea agreement and at the plea colloquy.'" *Kaetz*, 2022 WL 1486775, at *2 (cleaned up). The Court need not belabor the point further.

The record here speaks for itself and is unequivocal. Thus, the Court concludes that it need not conduct a hearing on Kaetz's motion. *Mason*, 2008 WL 938784, at *1; *Nicholas*, 759 F.2d at 1075 ("where the record affirmatively indicates the claim for relief is without merit, the refusal to hold a hearing will not be deemed an abuse of discretion."). Additionally, because it concludes

that Kaetz is not entitled to relief on this motion, the Court also concludes that good cause has not been shown to justify discovery, that the interests of justice do not require the appointment of counsel, and that transfer of this case to the District of New Jersey is not appropriate because only this Court has jurisdiction over the motion.

IV. CONCLUSION

For the reasons set forth above, the Court **DENIES** Kaetz's Section 2255 petition (ECF Nos. 1, 9), and the related Motions at ECF No. 26, 27, and 28 are likewise **DENIED**. The Motion cross-docketed at 21-cr-211 ECF No. 132 is **DENIED** on the same basis.

s/ Mark R. Hornak
Mark R. Hornak
Chief United States District Judge

Exhibit #2 the district court's memorandum order denying certificate of appealability of the habeas corpus motion.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM KAETZ	)	
	)	
v.	)	**CASE NOS. 22-CV-1148, 21-CR-211**
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

MEMORANDUM ORDER DENYING CERTIFICATE OF APPEALABILITY

AND NOW, this 13th day of July 2023, the Court DENIES a certificate of appealability as to the Motion to Vacate filed by Mr. William Kaetz ("Petitioner") (ECF Nos. 9, 26). Petitioner's Motion to Vacate, along with several related motion, were denied by this Court's Memorandum Order dated June 29, 2023 (ECF No. 45).

The Rules Governing Petitions Under 28 U.S.C. § 2255 filed in United States District Courts require that a district court "issue or deny a certificate of appealability when it enters a final order adverse to the applicant." (*See* R. Governing § 2254 Cases in the United States District Courts, R. 11(a).) Thus, because the Court denied Petitioner's § 2255 Motion, it must consider whether the issues raised by Petitioner satisfy the showing required by 28 U.S.C. § 2253(c)(2), that is the whether the Petitioner has "made a substantial showing of the denial of a constitutional right." (*See id.*; 28 U.S.C. § 2253(c)(2).) To satisfy this standard, a petitioner "must demonstrate" that jurists of reason "would find the district court's assessment of [his] constitutional claims debatable or wrong." *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003); *see also Morales v. Att'y Gen. N.J.*, No. 22-2358, 2022 WL 18430458, at *1 (3d. Cir. Dec. 27, 2022) (citing *Miller*).

Having considered the papers of record, the Court concludes that jurists of reason would not find the Court's assessment of Petitioner's constitutional claims debatable or wrong. The constitutional issues raised by Petitioner—whether his Rule 11(c)(1)(C) plea agreement was enforceable and whether Petitioner's counsel was ineffective for failing to raise the argument that

the imposition of his sentence violated the separation of powers because it is alleged to be court-legislated punishment—do not raise novel issues or present close calls.

The record plainly demonstrates that Petitioner's plea agreement was entered into knowingly and voluntarily: its terms were clearly detailed in a written letter, which Petitioner signed, and were also explained to Petitioner on the record in open Court. During a robust colloquy with the Court, Petitioner confirmed that he understood his rights and the plea agreement's terms. (*See* No. 21-cr-211, ECF No. 111-1; No. 21-cr-211, ECF No. 118, at 9-19; 32:9-19.)

And Petitioner has presented no facts to suggest that he was coerced into accepting its terms or that his counsel ineffective. The fact that his counsel did not make an argument that Petitioner thinks he ought to have made is irrelevant because it is well established that "counsel cannot be deemed ineffective for failing to raise a meritless claim." *Werts v. Vaughn*, 228 F.3d 178, 203 (3d Cir. 2000); *see also Mistretta v. United States*, 488 U.S. 361, 396 (1989) (rejecting the argument that the Sentencing Guidelines violate the constitution because they offend the separation of powers). The sentence as agreed to and as imposed was lawful, and there was no sound basis for defense counsel to call it into question. The Defendant's claims without merit.

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For the reasons set forth above, the Court DENIES a certificate of appealability as to the Motion to Vacate filed by Mr. William Kaetz ("Petitioner") (ECF Nos. 9, 26).

Mark R. Hornak
Chief United States District Judge

Exhibit #3, Third Circuit Case no. 23-2488, document 10 filed 11/16/2023 denied appealability.

ALD-014

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **23-2488**

WILLIAM F. KAETZ, Appellant

VS.

UNITED STATES OF AMERICA

(W.D. Pa. Civ. No. 2-22-cv-01148)

Present: HARDIMAN, MONTGOMERY-REEVES, and NYGAARD, Circuit Judges

Submitted are:

(1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1), and the other requests contained in the document filed and docketed as "motion to expand certificate of appealability," etc. (Appeal Document 5);

(2) By the Clerk for possible summary action under 3rd Cir. LAR 27.4 and Chapter 10.6 of the Court's Internal Operating Procedures;

(3) Appellant's document filed and docketed as "motion to expedite and stay lower court proceedings," etc. (Appeal Document 6); and

(4) Appellant's document filed and docketed as "supplemental motion," etc. (Appeal Document 7)

in the above-captioned case.

Respectfully,

Clerk

(continued)

RE: Kaetz v. United States
C.A. No. 23-2488
Page 2

ORDER

Appellant's request for a certificate of appealability ("COA") is denied because jurists of reason would not debate the denial of his motion under 28 U.S.C. § 2255. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). We make that determination substantially for the reasons that the District Court explained.

We add that our independent review reveals that appellant's claims lack debatable merit and are largely frivolous. Appellant claims, for example, that he has new and previously unavailable evidence showing that his criminal act was "provoked" by governmental malfeasance. Appellant does not explain how he could have been provoked to act by circumstances that he did not know about or that did not exist when he acted. Nor does this claim otherwise state any arguable basis for relief. We also note that appellant appears to have asserted a new claim on appeal—i.e., that his counsel "willfully" failed to file a notice of appeal from the sentence. Appellant's bare assertion in that regard does not state a claim under Roe v. Flores-Ortega, 528 U.S. 470 (2000). But even if appellant had stated such a claim, we would not consider it in the first instance. See United States v. Garth, 188 F.3d 99, 106 n.7 (3d Cir. 1999).

For these reasons, appellant's request for a COA is denied. Appellant's other requests are denied as well. Our denial of appellant's requests relating to the ongoing proceedings that are the subject of appellant's appeal at C.A. No. 23-2585 is without prejudice to the Court's consideration of those requests in that appeal (should the Court reach those requests). In light of our denial of a COA, we do not reach the issue of summary action.

By the Court,

s/ Thomas M. Hardiman
Circuit Judge

Dated: November 16, 2023
Amr/cc: All counsel of record

A True Copy:

Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

Exhibit #4, Appeals court order denied rehearing.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 23-2488

WILLIAM F. KAETZ
Appellant

v.

UNITED STATES OF AMERICA

(W.D.PA. No.: 2-22-cv-01148)

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, JORDAN, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, and NYGAARD,[1] *Circuit Judges*.

The petition for rehearing in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Thomas M. Hardiman
Circuit Judge

Dated: February 8, 2024
Amr/cc: All counsel of record

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[1] The vote of Judge Nygaard is limited to panel rehearing.