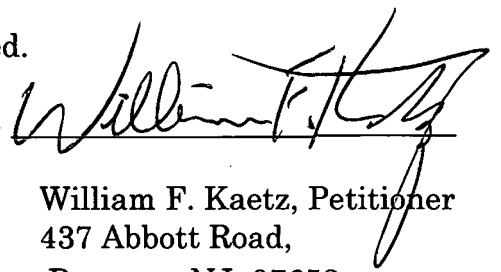
fraud (N.Y. Times, Mar. 25, 2025; see Kaetz's Petition for a Writ of Certiorari, Appeal No. 24-1646, Table of Authorities), and Petitioner's 2020 complaint (App. A113-A163; see also Kaetz's Petition for a Writ of Certiorari, Appeal No. 24-1646, Appendix a71-a121), constitute a miscarriage of justice that only this Court can rectify.

Certification

I, William F. Kaetz, Petitioner, swear under penalty of perjury all statements herein are true.

Respectfully submitted.

Date: 5/10/2025 By: 

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24-1605 Rehearing Denied 9/27/2024

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-1605

William F. Kaetz Appellant
v.
United States of America
(W.D. Pa. No. 2:21-cr-00211-001)

SUR PETITION FOR REHEARING

Present: CHARGES, *chief judge*, JORDAN, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, and MONTGOMERY-REEVES, *Circuit Judges.*

The petition for hearing filed by **appellant** 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/ Peter J. Phipps Circuit Judge

Date: September 27, 2024 PDB/cc: William F. Kaetz
All Counsel of Record.

DLD-162 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-1605

UNITED STATES OF AMERICA
v.
WILLIAM F. KAETZ,
Appellant

On Appeal from the United States District Court for the Western District of Pennsylvania
(D.C. Criminal Action No. 2-21-cr-00211-001)
District Judge: Honorable Mark R. Hornak

Submitted on Appellee's Motion for Summary Affirmance Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 August 1, 2024
Before: JORDAN, PORTER, and PHIPPS, Circuit Judges

(Opinion filed: August 8, 2024)

OPINION[1]
PER CURIAM

William F. Kaetz appeals from an order modifying his conditions of supervised release. We grant the

[1] This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Government's motion for summary action and will affirm.

I.

Kaetz was charged with crimes relating to his threats to kill a federal judge. He ultimately pleaded guilty to one count of publicizing the judge's home address in violation of 18 U.S.C. §§ 119(a)(1) and (a)(2). The District Court sentenced him to 16 months in prison and three years of supervised release. Kaetz has served his prison sentence and now is serving his term of supervised release.

At issue here are requests by the United States Probation Office to modify Kaetz's supervised release to include conditions that he (1) submit to searches and electronic monitoring of his computer equipment, and (2) participate in mental health treatment.

The first request prompted the court to appoint counsel for Kaetz. Kaetz disclaimed representation, and counsel filed a motion to withdraw. Kaetz then agreed to proceed with counsel during a conference on September 13, 2023. But Kaetz soon sued counsel for malpractice, and counsel filed another motion to withdraw.

That development led the court to schedule a hearing for November 8, 2023.

Kaetz filed pro se a motion to continue it and proposed an alternate date of December 8, 2023. The court granted Kaetz's motion and later scheduled an in-person hearing for December 8 to address issues concerning Kaetz's representation, including a personal colloquy of Kaetz, and then the substance of the Probation Office's requests. That order prompted numerous pro se filings by Kaetz, including three motions to continue that hearing too, which the court

denied, as well as a written waiver of counsel, which the court declined to accept.

Ultimately, on the morning of the December 8 hearing, Kaetz filed a "notice" with the court informing it that he would not attend. Kaetz in fact did not attend, and the court concluded that Kaetz had knowingly and intentionally waived his right to do so. Thus, the court proceeded with the hearing and heard from a Probation Officer, who testified to the reasons for seeking to modify Kaetz's supervised release. The court then granted that request and the motion of Kaetz's counsel to withdraw.

But thereafter, the court stayed both orders and vacated its supervised-release order without prejudice. The court adhered to its view that Kaetz had waived the right to be present, but it concluded that it could not rule out the possibility that Kaetz thought counsel would actively represent his interests at the hearing. (Kaetz's counsel had been present but declined to substantively participate because Kaetz's malpractice suit against him was still pending.) Thus, the court decided to reconvene the hearing after Kaetz's malpractice suit was resolved.

Ultimately, the court scheduled another hearing for April 4, 2024. That order prompted a motion from Kaetz to dismiss the Probation Office's request, continue the hearing, and disqualify both his counsel and the District Judge. The court denied those requests.[2] Undeterred, Kaetz filed several more documents, including another "notice" advising the

[2] The court also denied Kaetz's request in the same motion to reopen his previous proceeding under 28 U.S.C. § 2255 at W.D. Pa. Civ. No. 2-22-cv-01148. Kaetz's appeal as to his § 2255 proceeding has been separately docketed at C.A. No. 24-1646, and we are separately denying his request for a certificate of appealability in that appeal

court that he would not attend the April 4 hearing either. The court denied Kaetz's additional motions and proceeded with the April 4 hearing as scheduled. Once again, Kaetz did not attend, and the court proceeded with the hearing. The court then granted counsel's motion to withdraw and reimposed the two modifications to Kaetz's conditions of supervised release. Kaetz appeals.[3]

II.

The Government argues that we should summarily affirm because this appeal presents no substantial question. See 3d Cir. L.A.R. 27.4 (2011). We agree and will affirm all of the orders under review substantially for the reasons explained by the District Court.

We separately address four issues. First, the District Judge who sentenced Kaetz recused himself from this proceeding on Kaetz's motion. Kaetz argues that the successor judge should have recused himself too. But the successor judge did not abuse his discretion in denying Kaetz's numerous motions for that relief. Kaetz relied solely on rulings adverse to him and the fact that he named the judge as a defendant in some

[3] The District Court had jurisdiction to modify Kaetz's supervised release under 18 U.S.C. §§ 3231 and 3583(e), and its modification order is a final decision over which we have jurisdiction under 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291. See United States v. Wilson, 707 F.3d 412, 414 (3d Cir. 2013). Kaetz asserts that he is challenging that order and 27 others, including: (1) orders denying his motions to disqualify or recuse the District Judge, to continue the various hearings, to transfer venue to the District of New Jersey, and to stay orders pending appeal; (2) orders appointing counsel, declining to accept Kaetz's written waivers of counsel, and granting counsel's motion to withdraw; and (3) an order granting the Government's motion to delete the contents of certain electronic devices before returning them to Kaetz as agreed in Kaetz's plea agreement.

of his many suits against federal judges.[4] Neither circumstance requires recusal by itself. See Securacomm Consulting, Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000) (judicial rulings); Azubuko v. Royal, 443 F.3d 302, 304 (3d Cir. 2006) (per curiam) (judge as defendant). Kaetz has not raised any other circumstance even arguably suggesting that recusal might have been warranted, and we see none.

Second, the court did not err in its handling of the issue of counsel. A person on supervised release has the right to counsel at a modification hearing pursuant to Fed. R. Crim. P. 32.1(c)(1). Courts have the discretion to accept waivers of that right. See United States v. Owen, 854 F.3d 536, 541-42 (8th Cir. 2017); United States v. Boultinghouse, 784 F.3d 1163, 1171-72 (7th Cir. 2015); United States v. Hodges, 460 F.3d 646, 650 (5th Cir. 2006). But before doing so, courts must satisfy themselves that a waiver was "knowing and voluntary under a totality of the circumstances." United States v. Manuel, 732 F.3d 283, 291 (3d Cir. 2013) (quotation marks omitted).

In this case, Kaetz has not specifically challenged the court's application of these principles, and we see no substantial question in that regard. The court honored Kaetz's Rule 32.1 right to counsel by appointing counsel and, although Kaetz initially resisted the appointment, he agreed to proceed with counsel at the September 13 conference. When he sought to proceed pro se again, the court gave him two chances to do so by scheduling two hearings for a colloquy with him. Kaetz refused to attend both.

[4] Kaetz has appealed the dismissal of several of these suits to this Court. We will separately address those appeals in due course.

Kaetz does not even acknowledge that refusal in his filings on appeal. But to the extent he might argue that the court should not have required an in-person colloquy, the court acted well within its discretion under the circumstances, which included Kaetz's vacillation on the issue.

Moreover, the denial of leave to proceed pro se in the supervised release context can be harmless, see United States v. Spangle, 626 F.3d 488, 494 (9th Cir. 2010), and Kaetz has never shown prejudice. Kaetz argues that the court appointed counsel in order to "censor" him by refusing to consider his pro se filings. But with only one exception, the court in fact considered and ruled on the substance of his pro se filings.[5] And in any event, even if the court erred in its initial appointment of counsel, the court gave Kaetz two chances to proceed pro se thereafter and he rebuffed both.

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[5] That exception concerns Kaetz's motions to trans-fer venue back to the District of New Jersey where this case started and from which Kaetz himself re-quested a transfer to the Western District of Penn-sylvania. The court suggested that Kaetz's motions lacked merit for that reason and others, but it de-nied them without prejudice to their reassertion through counsel or pro se following a colloquy. Kaetz never appeared for the colloquy, so the court had no basis to revisit the issue. Kaetz also has not raised any issue regarding venue in response to the Government's arguments that the denial of these motions was correct. In any event, the District Court sentenced Kaetz and thus retained authority over his supervised release even though he resides and is being supervised in the District of New Jer-sey. See 18 U.S.C. § 3583(e); United States v. John-son, 861 F.3d 474, 479 (3d Cir. 2017); Burkey v. Marberry, 556 F.3d 142, 146 n.3 (3d Cir. 2009). And although 18 U.S.C. § 3605 "gives a court discretion to order a transfer" of supervised- release jurisdic-tion, the statute "conditions transfer upon the ac-ceptance of jurisdiction by the court to which the transfer is made." United States v. Ohler, 22 F.3d 857, 858-59 (9th Cir. 1994). Kaetz has raised noth-ing suggesting that that District of New Jersey agreed.

Third, and relatedly, Kaetz asserts that the court deprived him of an opportunity to be heard. Not so. As just discussed, Kaetz refused to appear at not one but two modification hearings, the first of which the court held on a date that Kaetz himself requested, and the second of which the court held in an abundance of caution to give Kaetz one more chance to appear. Kaetz does not even acknowledge his refusal to do so, let alone claim that it was anything other than knowing and voluntary. Having reviewed the issue, we fully agree that it was and that Kaetz thereby waived his right to attend. See Fed. R. Crim. P. 32.1(c)(2)(A); Manuel, 732 F.3d at 291.

Fourth and finally, Kaetz argues that his new conditions of supervised release violate the First Amendment because the Probation Office's requests referenced his court filings. Kaetz raised this issue in several motions to dismiss the requests. The court denied those motions on the grounds, inter alia, that the requests were not barred as a matter of law and that Kaetz's challenge likely turned instead on issues of fact to be resolved at a hearing. Assuming without deciding that Kaetz's challenge was even cognizable in this context,[6] the court was right—Kaetz was

[6] Kaetz relies on the elements of a civil claim for First Amendment retaliation, which is inapposite in this context. His argument instead implicates the theory of vindictive or pretextual prosecution. Kaetz has not cited any authority applying that theory to a Probation Office's request to modify supervised release, and we are aware of none. Cf. United States v. Reeves, 450 F. App'x 740, 742 (10th Cir. 2011) (not precedential) (noting that "vindictiveness and retaliation claims generally involve a prosecutor or a judge" and that "[w]e have not found a reported case in which the prosecutorial vindictiveness calculus was applied to a probation officer"). But assuming that this theory could apply, the burden was on Kaetz to present facts (1) showing actual vindictiveness, or (2) raising a

required to provide a factual basis for his challenge, see Paramo, 998 F.2d at 1220, and he had a chance to do so at the December 8 and April 4 hearings. But once again, he refused to attend both.

In any event, a Probation Officer testified about the reasons for the requested modifications. The court found his testimony credible and explained why it concluded that the modifications were not based on the mere fact that Kaetz filed documents in court but instead served the purposes of supervised release and were warranted under 18 U.S.C. §§ 3553 and 3583. Kaetz has not even acknowledged that explanation, let alone challenged it. We see no arguable basis to disturb the court's exercise of discretion. See United States v. Santos Diaz, 66 F.4th 435, 447-48 (3d Cir.), cert. denied, 144 S. Ct. 203 (2023); see also United States v. Wilson, 707 F.3d 412, 416 (3d Cir. 2013) (affirming modification of conditions to include participation in a mental health program); United States v. Miller, 594 F.3d 172, 186, 187-88 (3d Cir. 2010) (noting appropriateness of a computer-monitoring condition).

III.

For these reasons, we grant the Government's motion for summary affirmance and will affirm. Kaetz's motions in this Court are denied except to the extent that we have considered and rejected his challenges to all of the District Court orders he seeks to challenge, including the court's denial of his motions for "judicial notice."

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presumption of vindictiveness that the Government could seek to rebut. See United States v. Paramo, 998 F.2d 1212, 1220 (3d Cir. 1993).

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

UNITED STATES OF AMERICA,	)	
	)	2:21-cr-00211
v.	)	2:22-cv-01148
WILLIAM F. KAETZ,	)	

Defendant.

OMNIBUS ORDER DENYING VARIOUS MOTIONS FOR RELIEF, DIRECTING CERTAIN ACTIONS BY THE DEFENDANT AND REAFFIRMING THE SETTING OF AN IN-PERSON HEARING WITH THE DEFENDANT PRESENT

The Defendant/Petitioner William Kaetz has filed Motions for various relief as set forth Docket No. 2:21-cr- 211, ECF No. 255 and Docket No. 2:22-cv-1148, ECF No. 78. Also pending is the Motion of the United States at ECF No. 246 at 21-cr-211 seeking an Order authorizing the deletion of certain electronically stored information from certain devices, and a renewed Motion to Withdraw by the Defendant's counsel of record, ECF No. 196 (as renewed via subsequent status reports of such counsel), all collectively "the Motions".

Upon a consideration of the record including the Motions and the Court-ordered status reports of counsel, ECF Nos. 254, 246, 245, 242, 240 and 196 at 21-cr-211, along with the applicable legal principles and the prior Orders of this Court at ECF Nos. 237, 235, 234, 223, 222, 221, 217, 214, 209, 206, 199, 197, 196, 190, 183, 176, 169, and 167 at 21-cr-211, each bearing upon one or more issues now before the Court, the Court resolves all such pending Motions as follows, and reaffirms that an omnibus hearing on the pending request of the Probation Office to modify the Defendant's special conditions of supervision, the Motion of attorney Steven Townsend to withdraw, the Government's Motion to delete certain information, and the representational status of the Defendant will be conducted as scheduled and in person in Courtroom 6A of the U.S. Courthouse, 700 Grant Street, Pittsburgh, PA on April 4, 2024 at 2:30 PM, EDT. *See* ECF No. 252, 253.

The Defendant is to appear in person at such hearing, and any failure to so appear may be treated as a contempt of this Court and sanctioned as such under prevailing law. Further, given (1) that the Defendant has been made aware on multiple occasions of the relief sought in terms of the modification of the conditions of his supervision/counsel's Motion to Withdraw/the Government's Motion to delete certain electronic content, (2) that the Defendant has been represented by counsel as he had requested, (3) that such counsel has advised the Court that he believes that he is compelled to withdraw his appearance solely because he was sued by the Defendant in New Jersey state court (a lawsuit that has been dismissed by the New

Jersey state court for want of jurisdiction), and (4) the fact that the Defendant refused to appear before the Court at a prior hearing on these same topics, should the Defendant fail to appear in person at the hearing reaffirmed by this Order, the Court hereby advises the Defendant that the Court may treat such failure to appear and participate by the Defendant has his consent to the modification of the Defendant's conditions of supervision, his consent to the withdrawal of his counsel, his consent to the deletion of certain electronically stored information, and his consent to any other relief that is fairly encompassed within the matters now before the Court, all without further notice or hearing, as the Defendant has been provided with multiple full and fair opportunities to be heard in person or by counsel and has refused to do so.

Mr. Townsend shall forthwith deliver a copy of this Order to the Defendant by electronic means and promptly file a certificate of such service.

The Court further Orders as follows:

1) The Defendant's Motion for recusal or disqualification of the undersigned is again denied, as the record reveals no basis for such recusal pursuant to Canon 3 of the Code of Conduct for United States Judges, nor 28 U.S.C. § 144, 455.

2) The Motion to continue the referenced hearing is denied, as no compelling basis for such relief has been presented to the Court.

3) The Motion to Dismiss the request of the Probation Office to modify the Defendant's conditions of supervision is denied. That request is facially legitimate considering the facts of the offense conduct involved in the criminal

prosecution at 21-cr-211, and the Defendant's prior federal conviction and sentence for threats of serious bodily harm made to a federal officer.

4) The Motion to set a briefing schedule is dismissed as moot in light of this Order.

5) The Motion to reopen the Defendant's Motion/Petition for relief pursuant to 28 U.S.C. § 2255 is denied. If considered a Motion for Reconsideration, it is baseless, as there are presented no intervening controlling law calling the Court's prior disposition into question, nor the presentation of facts unavailable to the parties at the time that disposition was rendered, nor was the Court's disposition manifestly unjust under the prevailing law; if treated as a Motion for relief pursuant to Fed. R. Civ. P. 60, none of the bases for such relief via that Rule are demonstrated by the record.

6) The Court will address the Motions to Withdraw and to Delete Electronic Information at the time of the hearing.

7) Finally, to the extent the Defendant now complains about the status of his representation, the record reflects that the Defendant upon interrogation by the Court during the video hearing he had requested specifically confirmed that he wanted to be represented by counsel, specifically Mr. Townsend, thereafter filed and pursued a civil action against Mr. Townsend in the state courts of New Jersey which the state courts dismissed for want of jurisdiction, and then the Defendant failed, without excuse, to appear at the prior hearing set by this Court to hear from the Defendant on the topic of his representation,

which may at the Court's election be treated as a waiver or forfeiture of his right to counsel, and/or to engage in self- representation, and/or to object to any of the relief sought in matters now pending before the Court.

The Court will hear from all parties, as to all pending matters, at the hearing confirmed by this Order. Given the facially dilatory conduct of the Defendant in these actions as found and reflected in the numerous prior Orders of this Court as set forth above, the Defendant must be prepared to proceed as to all matters at that hearing, even if he requests and is granted the authority to engage in self-representation at such hearing.

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

Dated: April 1, 2024

Additional material from this filing is available in the Clerk's Office.