

CASE No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

In re MICHAEL HAGAR - PETITIONER

**PETITION FOR AN EXTRAORDINARY
WRIT OF HABEAS CORPUS**

APPENDIX

Michael A. Hagar
Oriana House, Inc.
Cleveland, Ohio
1829 East 55th Street
Cleveland, OH 44103

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APPENDIX A

a.1

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UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

v.

MICHAEL A. HAGAR

§ AMENDED
JUDGMENT IN A CRIMINAL CASE
(*to add total restitution amount)

§

§

§ Case Number: 1:16-CR-00273-DCN(1)

§ USM Number: 64124-060

§ James A. Jenkins

§ Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	pleaded nolo contendere to count(s) which was accepted by the court.	
☒	was found guilty on count(s) after a plea of not guilty	One, Two and Three of the Superseding Indictment

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense

18:2261A(2)(B) and 2261(b)(6) Cyberstalking

18:875(c) Interstate Threatening Communication

18:875(b) Interstate Threatening Communication

Offense Ended

06/30/2016

06/30/2016

06/30/2016

Count

1s

2s

3s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

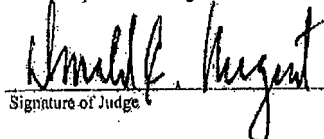
☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

June 7, 2019

Date of Imposition of Judgment



Signature of Judge

DONALD C. NUGENT, United States District Judge

Name and Title of Judge

June 11, 2019

Date

APPENDIX B

a.2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE I, SECTION IV, CLAUSE II OF THE CONSTITUTION

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

ARTICLE III, SECTION II, CLAUSE III OF THE CONSTITUTION

The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

FOURTH AMENDMENT TO THE CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FIFTH AMENDMENT TO THE CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX B

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SIXTH AMENDMENT TO THE CONSTITUTION

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

18 U.S.C. § 115(c)(2)

As used in this section, the term 'immediate family member' of individual means -

(A) his spouse, parent, brother or sister, child or person to whom he stands in loco parentis; or

(B) any other person living in his household and related to him by blood or marriage.

18 U. S.C. § 875(c)

Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years or both.

18 U.S.C. § 2261A(2)

Whoever with the intent to kill, injure, harass, intimidate, or place under surveillance with the intent to kill, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic interactive computer service or electronic communication system of interstate commerce or any other facility of interstate or foreign commerce to engage in a course of conduct that-

(A) places that person in reasonable fear of death or serious bodily injury to that person; an immediate family member (as defined in section 115) of that person; or the spouse or intimate partner of that person; or

(B) causes, attempts to cause or would reasonably be expected to cause substantial emotional distress to a person; an immediate family member (as defined in section 115) of that person; or the spouse or intimate partner of that person, shall be punished as provided in section 2261(b) of this title.

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a.4

18 U. S.C. § 3161(h)

The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offence must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to -

(D) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of such motion;

(H) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court;

(7)(C) No continuance under subparagraph (A) of this paragraph shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

18 U.S.C. § 3162(a)(2)

If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with the exclusion of the time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense, the facts and circumstances of the case which led to dismissal; and the impact of a reprosecution on the administration of justice. Failure of the defendant to move for a dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

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18 U.S.C. § 3237(a)

Except as otherwise expressly provided by enactment of Congress any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through or into which commerce, mail matter, or imported object or person moves.

28 U.S.C. § 1651(a)

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U. S.C. § 2106

The Supreme Court or any other court of appellate Jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

28 U.S.C. § 2241

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(c) The writ of habeas corpus shall not extend to a prisoner unless - (3) He is in custody in violation of the Constitution or laws or treaties of the United States;

28 U.S.C. § 2253(c)(2)

A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

APPENDIX B

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28 U.S.C. § 2255(a)

A prisoner in custody under a sentence of a court established by Act of Congress claiming the right to be released 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 excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255(b)

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate .

28 U.S.C. § 2255(e)

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

Rules Governing Section 2255 Proceedings; Rule 5(b)

The answer must address the allegations in the motion. In addition, it must state whether the moving party has used any other federal remedies, including any prior post-conviction motions under these rules or any previous rules, and whether the moving party received an evidentiary hearing.

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Rules Governing Section 2255 Proceedings; Rule 6(b)

A party requesting discovery must provide reasons for the request. The request must also include any proposed interrogatories and request for admission, and must specify any requested documents.

Rules Governing Section 2255 Proceedings; Rule 7(a)

If the motion is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the motion. The judge may require these materials be authenticated.

Rules Governing Section 2255 Proceedings; Rule 8(a)

If the motion is not dismissed, the judge must review the answer, any transcripts and records of prior proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.

APPENDIX C

a.8

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R

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the
Northern District of Ohio

2016 JUN 14 AM 10:49

United States of America

v.

Michael A. Hagar

Case No.

1:16 MJ 2113

MAG. JUDGE McHARGH

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of June 2, 2016 in the county of Cuyahoga in the
Northern District of Ohio, the defendant(s) violated:

Code Section

Title 18 U.S.C. § 875(c)

Offense Description

Transmit in interstate/foreign commerce a communication containing a threat to injure

This criminal complaint is based on these facts:

See attached affidavit.

☒ Continued on the attached sheet.


Complainant's signature

Special Agent Monica Hantz, FBI

Printed name and title

Sworn to before me and signed in my presence.

Date: 6/14/16


Judge's signature

City and state: Cleveland, Ohio

Kenneth S. McHargh, U.S. Magistrate Judge

Printed name and title

APPENDIX C

a.9

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R

AFFIDAVIT IN SUPPORT OF COMPLAINT FOR ARREST WARRANT

INTRODUCTION

I, Monica Hantz, being duly sworn and under oath state the following:

1. Your Affiant is a Special Agent of the Federal Bureau of Investigation, and, as such, is an investigative or law enforcement officer of the United States within the meaning of Rule 41(a)(2)(C) of the Federal Rules of Criminal Procedure. Your Affiant is engaged in the enforcement of criminal laws and is within a category of officers authorized by the Attorney General to request and execute search warrants pursuant to Title 18, U.S.C., Sections 3052 and 3107; and DOJ regulations set forth at Title 28, C.F.R., Sections 0.85 and 60.2(a).
2. Your Affiant has been employed by the FBI since January 2013, and is currently assigned to the FBI Cleveland Division Cyber Crimes Squad which is responsible for investigations involving computer-related offenses. Your Affiant has received specialized training at the FBI Academy, in Quantico, Virginia, in a variety of Federal criminal violations, including training on how to conduct surveillance, conduct electronic and physical searches, interview and interrogation techniques, financial investigations (including asset forfeiture and money laundering tactics), evidence collection, weapons of mass destruction, arrest and search warrant executions, and case preparation.
3. Others at the FBI who have extensive experience in the investigations of criminal acts under the jurisdiction of the FBI are also assisting in this investigation.
4. This affidavit is made in support of a criminal complaint and application for an arrest warrant for MICHAEL A. HAGAR. I have probable cause to believe MICHAEL A. HAGAR has sent interstate communications with the threat to injure in violation of 18 U.S.C § 875(c). I submit this affidavit in support of a Complaint and arrest warrant for MICHAEL A. HAGAR.

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5. Unless otherwise stated, the information contained herein is based on: information provided by FBI Special Agents; written reports about this and other investigations that I have received, directly or indirectly, from other law enforcement officers and agents; information gathered from the service of subpoenas; independent investigation and analysis by FBI agents/analysts and computer forensic professionals; and my experience, training and background as a Special Agent with the FBI. Because this affidavit is being submitted for the limited purpose of securing authorization for a criminal complaint and an arrest warrant, I have not included each and every fact known to me concerning this investigation. Instead, I have set forth only the facts that I believe are necessary to establish the necessary foundation for the requested relief.

RELEVANT STATUTES

This investigation concerns alleged violations of 18 U.S.C. § 875(c) which prohibits a person from transmitting in interstate or foreign commerce any communication containing any threat [...] to injure the person of another.

DEFINITIONS

6. The following definitions apply to this Affidavit and attachments hereto:
- a. "Email" pertains to electronic mail which can be sent over the Internet from one email account to one or more other email accounts. The sending and receiving of email requires the establishment of servers connected to the Internet to facilitate such communication. Users wishing to send and receive email generally must establish an account with a provider. Such providers include publicly available services such as Gmail, Hotmail, or Yahoo Mail, or private providers such as a company or

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organization. Email messages can contain text, images, files, and other attachments within a single communication.

- b. The "Internet" is a global network of computers and other electronic devices that communicate with each other. Due to the structure of the Internet, connections between devices on the Internet often cross state and international borders, even when the devices may be physically located in the same geographical region.

BACKGROUND OF THE INVESTIGATION AND PROBABLE CAUSE

7. The FBI has learned from employees of Eaton Corporation (hereafter Eaton), a business headquartered in Beachwood, Ohio, in the Northern District of Ohio, and also with business property in Oregon, that beginning in or around December 2015, they started receiving harassing, intimidating and threatening emails from a former employee, MICHAEL A. HAGAR, using email account ronin62474@hotmail.com. HAGAR sent the emails to specific employees of Eaton. On March 28, 2016, a response to a subpoena for records pertaining to the account ronin62474@hotmail.com revealed the email account was registered in HAGAR's name.

8. Since at least in or around December 2015, and continuing through to in or around May 2016, HAGAR continued to send harassing, intimidating and threatening emails to specific Eaton employees. The FBI also became aware that HAGAR also sent the same and similar emails to specific employees at Goodyear, a corporation headquartered in Akron, Ohio, in the Northern District of Ohio, and also with business property in Oregon. HAGAR was also a former employee at Goodyear.

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9. On December 1, 2015, HAGAR used email account ronin62474@yahoo.com to send an email to an Eaton employee, which contained an attachment titled "Exception Form.pdf" that included a scanned image of a Portland Power Center Payroll Exception Form signed by HAGAR.

10. On April 26, 2016, HAGAR used email account ronin62474@yahoo.com to send an email to an Eaton employee, which contained an attachment titled "NEVER TELL THE SAME LIE TWICE.pdf" that included a scanned image of a letter from the Oregon Employment Department addressed to HAGAR at P.O. Box [REDACTED] Salem, OR 97303-0172.

11. On or about March 11, 2016, HAGAR was arrested in Multnomah County, Oregon, for trespassing on Goodyear's corporate property. During this arrest, HAGAR admitted to sending threatening emails to Goodyear employees and that he used email account ronin62474@yahoo.com. Following this incident, Goodyear hired private detectives to conduct surveillance on HAGAR and to help provide protection for Goodyear employees, customers and property. Based upon reports provided by law enforcement officials in Oregon, the Goodyear private detectives made their presence known to HAGAR.

12. On or about June 2, 2016, Special Agent Michael G. Gerfin of the FBI received notification from an Eaton employee that HAGAR used email account ronin62474@hotmail.com to email multiple Eaton employees a communication containing threats to injure them. Specifically, the subject of this email stated, "I AM GOING TO SHOOT ONE OF MY GUARDS SOON."¹ The body of the message went on to state, in part, "AND THEN I WILL MAKES CERTAIN ALL OF YOU ARE SHOT ALSO." This email was addressed to

¹ To the extent emails are reproduced in this affidavit, your affiant has attempted to reproduce them in their original style, to include grammatical and spelling errors in the original.

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approximately 14 individuals in the TO: line, which included approximately five individuals with email addresses ending in "@eaton.com."

13. On June 7, 2016, SA Gerfin received the full email communication from Eaton, to include the complete header information. This header information revealed that the email was sent from a hotmail.com server with IP address 65.55.90.200, located in San Antonio, Texas, and subsequently received by a server with domain etn.com, registered to Eaton, with IP address 151.110.126.183, located in Beachwood, Ohio. The originating email account was identified as ronin62474@hotmail.com.

14. On June 6, 2016, SA Gerfin conducted database checks for HAGAR near Portland, Oregon, and received results for a Michael Anthony Hagar, date of birth [REDACTED] residence [REDACTED] Salem, Oregon 97301-0143. These records included a mailing address of P.O. Box [REDACTED] Salem, Oregon 97303-0172, which matched the address referenced in the April 26, 2016, email, discussed above.

15. On June 2, 2016, in addition to the email stating that he was going to shoot one of his guards, referenced above, HAGAR also used email account ronin62474@hotmail.com to send other threatening emails to the same recipients, including numerous Eaton employees. These emails included but were not limited to the following:

	SUBJECT LINE OF EMAIL	TEXT IN EMAIL MESSAGE
A.	"I ONLY HAVE TO SOOT YOUR KNEE CAP"	"AND YOU WILL NEVER WALK AGAIN?????????" followed by "ASS HOLES" repeated several times
B.	"I AM GOING TO MAKE YOU FAMILY PAY FOR WHAT YOU HAVE DONE TO ME"	"ASS HOLES" repeated several times
C.	"YOU ARE GOING TO PAY	"ASS HOLES" repeated several times

APPENDIX C

a.14

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	FOR WHAT YOU HAVE DONE TO ME"	
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16. On June 3, 2016, Oregon state law enforcement officers arrested HAGAR on a local warrant issued out of Multnomah County, Oregon, for violation of a Multnomah County Court's Stalking Order. The stalking order was obtained by and meant to protect an Eaton employee who received and continued to receive unwanted, threatening emails from HAGAR. During a custodial interview, in which HAGAR was advised of his *Miranda* rights, HAGAR confirmed his email address was ronin62474@hotmail.com, and further admitted to sending the June 2, 2016, email threatening to shoot one of his guards and others, as well as other threatening emails.

17. On June 8, 2016, law enforcement officers for the Multnomah County (Oregon) Sheriff's Office applied for and received a warrant from a competent Oregon state Circuit Court to search HAGAR's residence and automobiles for evidence concerning his emails and any evidence indicative of his intent to carry through with his threats against the email recipients. The officers conducted the search on that date and recovered, among other items, a Thompson Machine Gun, an AK-47 assault rifle, a Glock handgun, a Beretta handgun, a Ruger handgun, a .38 special handgun, an "AR-15 lower and parts," firearm magazines and numerous rounds of ammunition. The officers also recovered a military tactics book with plans for approaches, attacks and ambushes, and a hand-drawn map showing what appeared to be buildings or residences and streets marked with crosshairs or targets.

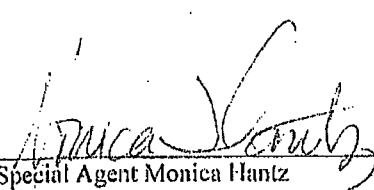
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a.15

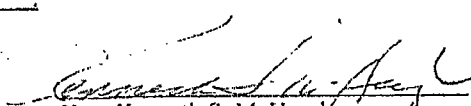
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Conclusion

18. Based on the foregoing, there is probable cause to believe that MICHAEL A. HAGAR has violated, among others, provisions of Title 18, United States Code, Section 875(c), in that, as demonstrated above, HAGAR, in the Northern District of Ohio and elsewhere, purposefully transmitted through interstate and foreign commerce communications including threats to injure the persons of another, to wit: employees of the Eaton Corporation, and others. Your Affiant respectfully request the attached warrant be issued authorizing the arrest of MICHAEL A. HAGAR.


Special Agent Monica Hantz
Federal Bureau of Investigation

Sworn to me on 6/14/16


Hon. Kenneth S. McElargh
United States Magistrate Judge

APPENDIX D

a.16

Case: 1:16-cr-00273-DCN Doc #: 10 Filed: 08/24/16 1 of 6. PageID #: 34

FILED

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL A. HAGAR,

Defendant.

INDICTMENT

1 : 16 CR 273

CASE NO.

Title 18, Sections 875(c),
2261A(2), United States Code

JUDGE NUGENT

The Grand Jury charges:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

1. The Defendant MICHAEL A. HAGAR was a resident of Salem, Oregon.
2. The Eaton Corporation ("Eaton") was a business with operations headquartered in Beachwood, Ohio, in the Northern District of Ohio, Eastern Division.
3. The Goodyear Corporation ("Goodyear") was a business with operations headquartered in Akron, Ohio, in the Northern District of Ohio, Eastern Division.
4. From in or around October 2011 to in or around August 2013, HAGAR was employed by Goodyear at a store located in the Salem, Oregon, area.

APPENDIX D

a.17

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5. From in or around September 2014 to in or around November 2015, HAGAR was employed by Eaton at a location in the Portland, Oregon, area.

6. HAGAR was involuntarily terminated from his employment at both Goodyear and Eaton.

7. E-mails sent to Goodyear and Eaton employees were routed through Goodyear and Eaton data centers located in the Northern District of Ohio.

8. R.G., an individual known to the Grand Jury but not named herein, was an employee of Eaton, with an Eaton e-mail address.

9. On May 9, 2016, HAGAR was personally served with a protective order, as that term is defined by Title 18, United States Code, Section 2266(5), to wit, a temporary stalking protective order issued on behalf of R.G., requiring HAGAR to "STOP ANY CONTACT WITH" R.G.

10. Yahoo! was a provider of an interactive computer service, an electronic communication system and an electronic communication service engaged in interstate and foreign commerce, with data centers located outside of the states of Oregon and Ohio.

11. Hotmail was a provider of an interactive computer service, an electronic communication system and an electronic communication service engaged in interstate and foreign commerce, with data centers located outside of the states of Oregon and Ohio.

HAGAR'S COURSE OF CONDUCT

12. From in or around December 2015 to in or around June 2016, HAGAR engaged in a course of conduct designed to cause substantial emotional distress to the following people and their immediate family members, spouses and intimate partners:

- a. His former co-workers at Eaton, including R.G., J.R., A.M., M.E., and C.B.;

APPENDIX D

a.18

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- b. His former co-workers at Goodyear, including L.H. and R.D.; and
- c. Law enforcement officials in the State of Oregon, including M.M., J.L., C.W., and T.B.

13. In carrying out this course of conduct, HAGAR used Yahoo! and Hotmail e-mail accounts to send threatening, harassing and intimidating e-mails to the above individuals at their respective Eaton, Goodyear and Oregon law enforcement email addresses.

14. The e-mails that HAGAR sent to the Eaton and Goodyear employees travelled through Eaton and Goodyear data centers located in the Northern District of Ohio.

15. On or about March 11, 2016, HAGAR was arrested for trespassing on Goodyear property in Oregon. Following his arrest, HAGAR continued to send threatening and harassing emails to Goodyear employees, at their Goodyear e-mail accounts, including Goodyear employees R.D. and L.H. As a result of HAGAR's trespass and continued conduct, Goodyear hired private detectives to provide security for its employees and property, and to monitor HAGAR's conduct.

16. From on or about May 9, 2016, and continuing through June 3, 2016, after personally receiving the temporary stalking protective order on behalf of R.G., HAGAR continued to send numerous threatening and harassing e-mails to R.G. in violation of the protective order. In doing so, HAGAR addressed the e-mails to R.G. and to Oregon law enforcement officials, among others. These e-mails included, among others, a May 30, 2016, e-mail to R.G. and Oregon law enforcement officials, with the subject line: "I AM GOING TO RUIN EVERYONE OF YOU[R] LIVES," and the e-mails referenced in Counts 2 and 3 of this indictment.

APPENDIX D

a.19

Case: 1:16-cr-00273-DCN Doc #: 10 Filed: 08/24/16 4 of 6. PageID #: 37

17. HAGAR sent the above-referenced emails for the purpose of issuing a threat, and with knowledge that the communication would be viewed as a threat.

18. The above-referenced emails caused, attempted to cause and would be reasonably expected to cause substantial emotional distress to the recipient(s).

COUNT 1
CYBERSTALKING
(18 U.S.C. §§ 2261A(2)(B) and 2261(b)(6))

19. The factual allegations of Paragraphs 1 through 18 of this Indictment are hereby re-alleged and incorporated as if set forth fully herein.

20. From in or around December 2015 to in or around June 2016, Defendant MICHAEL A. HAGAR, in the Northern District of Ohio, Eastern Division, and elsewhere, with the intent to kill, injure, harass, intimidate, and place under surveillance with intent to kill, injure, harass and intimidate another person, to wit, R.G., used any interactive computer service and electronic communication service and electronic communication service of interstate commerce and any other facility of interstate and foreign commerce, to wit, his Yahoo! and Hotmail e-mail accounts, to engage in a course of conduct, to wit, the course of conduct alleged in Paragraphs 1 through 18 of this Indictment, that caused, attempted to cause, and would be reasonably expected to cause substantial emotional distress to R.G., R.G.'s immediate family members, and R.G.'s spouse and intimate partners, and committed the offense conduct in violation of a protection order as that term is defined by Title 18, United States Code, Section 2266(5).

All in violation of Title 18, United States Code, Sections 2261A(2)(B) and 2261(b)(6).

APPENDIX D

a.20

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COUNT 2

Interstate Threatening Communication
(18 U.S.C. §875(c))

The Grand Jury further charges:

21. The factual allegations of Paragraphs 1 through 18 of this Indictment are hereby re-alleged and incorporated as if fully set forth herein.

22. On or about June 2, 2016, the Defendant, MICHAEL A. HAGAR, in the Northern District of Ohio, Eastern Division, and elsewhere, transmitted in interstate and foreign commerce any communication containing any threat to injure the person of another, to wit, Defendant MICHAEL HAGAR sent an e-mail from his residence in Oregon by means of a communication in interstate commerce, to individuals including R.G., C.B., A.M., J.R., M.E., to whom the e-mail travelled to data centers maintained by Eaton in the Northern District of Ohio, and to M.M., J.L., C.W., M.R., and T.B., all individuals known to the grand jury but not named herein, containing the threat to injure those individuals as follows:

- a. The subject line of the email read, "[Michael Hagar] I ONLY HAVE TO S[H]OOT YOUR KNEE CAP" and the body of the email stated "AND YOU WILL NEVER WALK AGAIN[]"

All in violation of Title 18, United States Code, Section 875(c).

COUNT 3

Interstate Threatening Communication
(18 U.S.C. §875(c))

23. The factual allegations of Paragraphs 1 through 18 of this Indictment are hereby re-alleged and incorporated as if fully set forth herein.

24. On or about June 2, 2016, the Defendant, MICHAEL A. HAGAR, in the Northern District of Ohio, Eastern Division, and elsewhere, transmitted in interstate and foreign commerce

APPENDIX D

a.21

Case: 1:16-cr-00273-DCN Doc #: 10 Filed: 08/24/16 6 of 6. PageID #: 39

any communication containing any threat to injure the person of another, to wit, Defendant MICHAEL HAGAR sent an e-mail from his residence in Oregon by means of a communication in interstate commerce, to individuals including R.G., C.B., A.M., J.R., M.E., to whom the e-mail travelled to data centers maintained by Eaton in the Northern District of Ohio, and to M.M, J.L, C.W, M.R., and T.B., all individuals known to the grand jury but not named herein, containing the threat to injure those individuals as follows:

- a. The subject line of the email read, "[Michael Hagar] I AM GOING TO SHOOT ONE OF MY GUARDS SOON" and the body of the email stated "AND THEN I WILL MAKES CERTAIN ALL OF YOU ARE SHOT ALSO."

All in violation of Title 18, United States Code, Section 875(c).

A TRUE BILL.

Original document - Signatures on file with the Clerk of Courts, pursuant to the E-Government Act of 2002.

APPENDIX E

a.22

Case: 1:16-cr-00273-DCN Doc #: 17 Filed: 10/14/16 1 of 2. PageID #: 68

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

vs.

Michael Hagar

CASE NO.: 1:16 CR 273
JUDGE DONALD C. NUGENT

The below signatures reflect the Parties' representations that the Defendant has requested a continuance of his/her trial beyond the 70 day limit set forth in the Speedy Trial Act of 1974, 18 U.S.C. Section 3161 (hereinafter "The Act"). The Defendant further represents that he/she has discussed his/her rights under the Act and specifically states that his/her interests will be best served by the granting of a continuance.

The attorney for the Defendant hereby represents that he/she has discussed the Defendant's rights under the Act with him/her, is satisfied that the Defendant understands said rights, and concurs with the decision of the Defendant that a continuance will be in the Defendant's best interest.

For reasons orally set forth, and as indicated below, this Court finds that the ends of justice which would be served by the granting of a continuance outweigh the best interests of the public and the defendant in a speedy trial. 18 U.S.C. Section 3161(h)(8)(A). Specifically, the Court hereby finds that:

- (✓) the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible, or would result in a miscarriage of justice.
- () the case is so unusual or so complex, due to -
 - () the number of defendants
 - () the nature of the prosecution
 - () the existence of novel questions of fact or lawthat it would be unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by 18 U.S.C. Section 3161.

APPENDIX E

a.23

Case: 1:16-cr-00273-DCN Doc #: 17 Filed: 10/14/16 2 of 2. PageID #: 69

- () the Defendant's arrest preceded his/her indictment, and
 - () the arrest occurred at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in 18 U.S.C. Section 3161(b)
 - () the facts upon which the grand jury must base its determination are unusual or complex
- () the failure to grant a continuance would
 - () deny the defendant reasonable time to obtain counsel
 - () unreasonably deny the Defendant or the Government continuity of counsel
 - (☒) deny counsel for the Defendant or the Attorney for the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

Therefore, this Court hereby grants Defendant's Request for Continuance. In the interests of justice, and at the specific request of the Defendant, the 70 day limit within which the Defendant shall be tried, as set forth in the Speedy Trial Act of 1974, has been extended until 2/1/17. A final pre-trial is scheduled for _____ at _____. The trial of this case has been re-set for _____ at _____. IT IS SO ORDERED.

Donald C. Nugent
Judge Donald C. Nugent
United States District Judge

October 13, 2016
Date

Michael Hagan
Defendant

D. B.
Attorney for Defendant

D. J. O'Neil
Attorney for the United States

APPENDIX F

a.24

Case: 1:16-cr-00273-DCN Doc #: 22 Filed: 01/24/17 1 of 2. PageID #: 75

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

vs.

Michael Hagan

CASE NO.: 1:16 cr 273

JUDGE DONALD C. NUGENT

The below signatures reflect the Parties' representations that the Defendant has requested a continuance of his/her trial beyond the 70 day limit set forth in the Speedy Trial Act of 1974, 18 U.S.C. Section 3161 (hereinafter "The Act"). The Defendant further represents that he/she has discussed his/her rights under the Act and specifically states that his/her interests will be best served by the granting of a continuance.

The attorney for the Defendant hereby represents that he/she has discussed the Defendant's rights under the Act with him/her, is satisfied that the Defendant understands said rights, and concurs with the decision of the Defendant that a continuance will be in the Defendant's best interest.

For reasons orally set forth, and as indicated below, this Court finds that the ends of justice which would be served by the granting of a continuance outweigh the best interests of the public and the defendant in a speedy trial. 18 U.S.C. Section 3161(h)(7)(A). Specifically, the Court hereby finds that:

- () the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible, or would result in a miscarriage of justice.
- () the case is so unusual or so complex, due to -
 - () the number of defendants
 - () the nature of the prosecution
 - () the existence of novel questions of fact or lawthat it would be unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by 18 U.S.C. Section 3161.

APPENDIX F

a.25

Case: 1:16-cr-00273-DCN Doc #: 22 Filed: 01/24/17 2 of 2. PageID #: 76

- ☐ the Defendant's arrest preceded his/her indictment, and
 - ☐ the arrest occurred at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in 18 U.S.C. Section 3161(b)
 - ☐ the facts upon which the grand jury must base its determination are unusual or complex
- ☒ the failure to grant a continuance would
 - ☐ deny the defendant reasonable time to obtain counsel
 - ☐ unreasonably deny the Defendant or the Government continuity of counsel
 - ☒ deny counsel for the Defendant or the Attorney for the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

Therefore, this Court hereby grants Defendant's Request for Continuance. In the interests of justice, and at the specific request of the Defendant, the 70 day limit within which the Defendant shall be tried, as set forth in the Speedy Trial Act of 1974, has been extended until 5/1/17. A final pre-trial is scheduled for 2/22/17 at 9:30Am. The trial of this case has been re-set for TBA at . IT IS SO ORDERED.

Donald C. Nugent
Judge Donald C. Nugent
United States District Judge

January 24, 2017
Date

Michael Hagan
Defendant

D.T.B.
Attorney for Defendant

[Signature]
Attorney for the United States

APPENDIX G

a.26

Case: 1:16-cr-00273-DCN Doc #: 51 Filed: 08/04/17 1 of 2 PageID #: 181

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

vs.

Michael A. Hagar

) CASE NO.: 1:16 CR 273

) JUDGE DONALD C. NUGENT

)

)

)

)

)

The below signatures reflect the Parties' representations that the Defendant has requested a continuance of his/her trial beyond the 70 day limit set forth in the Speedy Trial Act of 1974, 18 U.S.C. Section 3161 (hereinafter "The Act"). The Defendant further represents that he/she has discussed his/her rights under the Act and specifically states that his/her interests will be best served by the granting of a continuance.

The attorney for the Defendant hereby represents that he/she has discussed the Defendant's rights under the Act with him/her, is satisfied that the Defendant understands said rights, and concurs with the decision of the Defendant that a continuance will be in the Defendant's best interest.

For reasons orally set forth, and as indicated below, this Court finds that the ends of justice which would be served by the granting of a continuance outweigh the best interests of the public and the defendant in a speedy trial. 18 U.S.C. Section 3161(h)(7)(A). Specifically, the Court hereby finds that:

☒ the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible, or would result in a miscarriage of justice.

☐ the case is so unusual or so complex, due to -

☐ the number of defendants

☐ the nature of the prosecution

☐ the existence of novel questions of fact or law

that it would be unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by 18 U.S.C. Section 3161.

APPENDIX G

a.27

Case: 1:16-cr-00273-DCN Doc #: 51 Filed: 08/04/17 2 of 2. PageID #: 182

- () the Defendant's arrest preceded his/her indictment, and
- () the arrest occurred at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in 18 U.S.C. Section 3161(b).
- () the facts upon which the grand jury must base its determination are unusual or complex
- (✓) the failure to grant a continuance would
 - () deny the defendant reasonable time to obtain counsel.
 - () unreasonably deny the Defendant or the Government continuity of counsel
 - (✓) deny counsel for the Defendant or the Attorney for the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

Therefore, this Court hereby grants Defendant's Request for Continuance. In the interests of justice, and at the specific request of the Defendant, the 70 day limit within which the Defendant shall be tried, as set forth in the Speedy Trial Act of 1974, has been extended until 3/1/18. A final pre-trial is scheduled for 9/11/17 at 1:30P. The trial of this case has been re-set for TBD at . IT IS SO ORDERED.

151 DCN

Judge Donald C. Nugent
United States District Judge

8/3/17

Date

Michael A. Hagan
Defendant

D. D.
Attorney for Defendant

A. K. L.
Attorney for the United States

APPENDIX H

a.28

Case: 1:16-cr-00273-DCN Doc #: 65 Filed: 02/06/18 1 of 2. PageID #: 210

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

vs.

Michael Hagar

CASE NO.: 1:16 CR 273

JUDGE DONALD C. NUGENT

The below signatures reflect the Parties' representations that the Defendant has requested a continuance of his/her trial beyond the 70 day limit set forth in the Speedy Trial Act of 1974, 18 U.S.C. Section 3161 (hereinafter "The Act"). The Defendant further represents that he/she has discussed his/her rights under the Act and specifically states that his/her interests will be best served by the granting of a continuance.

The attorney for the Defendant hereby represents that he/she has discussed the Defendant's rights under the Act with him/her, is satisfied that the Defendant understands said rights, and concurs with the decision of the Defendant that a continuance will be in the Defendant's best interest.

For reasons orally set forth, and as indicated below, this Court finds that the ends of justice which would be served by the granting of a continuance outweigh the best interests of the public and the defendant in a speedy trial. 18 U.S.C. Section 3161(h)(7)(A). Specifically, the Court hereby finds that:

() the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible, or would result in a miscarriage of justice.

() the case is so unusual or so complex, due to -

() the number of defendants

() the nature of the prosecution

() the existence of novel questions of fact or law

that it would be unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by 18 U.S.C. Section 3161.

APPENDIX H

a.29

Case: 1:16-cr-00273-DCN Doc #: 65 Filed: 02/06/18 2 of 2. PageID #: 211

- () the Defendant's arrest preceded his/her indictment, and
 - () the arrest occurred at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in 18 U.S.C. Section 3161(b)
 - () the facts upon which the grand jury must base its determination are unusual or complex
- (X) the failure to grant a continuance would
 - () deny the defendant reasonable time to obtain counsel
 - () unreasonably deny the Defendant or the Government continuity of counsel
 - (X) deny counsel for the Defendant or the Attorney for the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

Therefore, this Court hereby grants Defendant's Request for Continuance. In the interests of justice, and at the specific request of the Defendant, the 70 day limit within which the Defendant shall be tried, as set forth in the Speedy Trial Act of 1974, has been extended until Sept. 30, 2018. A final pre-trial is scheduled for 3/6/18 at 10:00 AM. The trial of this case has been re-set for _____ at _____. IT IS SO ORDERED.

Donald C. Nugent
Judge Donald C. Nugent
United States District Judge

February 6, 2018
Date

Michael Hager
Defendant

[Signature]
Attorney for Defendant

[Signature]
Attorney for the United States

APPENDIX I

a.30

Case: 1:16-cr-00273-DCN Doc #: 131 Filed: 08/02/19 6 of 9. PageID #: 1259

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11:02:10 25

THE COURT: I would assume that you're prepared to go forward if we were to start trial on Monday?

MR. RIEDL: Yes, Your Honor.

THE COURT: Well, this is what I'm going to do. I will grant this request, and I'm going to appoint a new lawyer. But this is it, right? I hope you get along with this other lawyer. I'll look at the list of lawyers that we have and people who are very experienced in this type of case. But that will be it.

THE DEFENDANT: Okay.

THE COURT: If you don't like him or her, then too bad.

APPENDIX J

a.31

Case: 1:16-cr-00273-DCN Doc #: 77 Filed: 09/11/18 1 of 6. PageID #: 237

FILED

2018 SEP 11 PM 4:57

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL A. HAGAR,

Defendant.

) SUPERSEDING INDICTMENT

) JUDGE: Donald C. Nugent

) CASE NO. 1:16-CR-273

) Title 18, Sections 875(c),
) 2261A(2) (B) and 2261(b)(6),
) United States Code

The Grand Jury charges:

GENERAL ALLEGATIONS

At all times relevant to this Superseding Indictment:

1. The Defendant MICHAEL A. HAGAR was a resident of Salem, Oregon.
2. The Eaton Corporation ("Eaton") was a business with operations headquartered in Beachwood, Ohio, in the Northern District of Ohio, Eastern Division.
3. The Goodyear Corporation ("Goodyear") was a business with operations headquartered in Akron, Ohio, in the Northern District of Ohio, Eastern Division.
4. From in or around October 2011 to in or around August 2013, HAGAR was employed by Goodyear at a store located in the Salem, Oregon, area.

APPENDIX J

a.32

Case: 1:16-cr-00273-DCN Doc #: 77 Filed: 09/11/18 2 of 6. PageID #: 238

5. From in or around September 2014 to in or around November 2015, HAGAR was employed by Eaton at a location in the Portland, Oregon, area.

6. HAGAR was involuntarily terminated from his employment at both Goodyear and Eaton.

7. At all times relevant to this Superseding Indictment, e-mails sent to Goodyear e-mail addresses were accessible by Goodyear employees in the Northern District of Ohio.

8. C.B., an individual known to the Grand Jury but not named herein, was an employee of Eaton with an Eaton e-mail address. C.B. works in Beachwood, Ohio, in the Northern District of Ohio and lives in the Northern District of Ohio.

9. At all times relevant to this Superseding Indictment, e-mails sent to Eaton e-mail addresses were accessible by Eaton employees in the Northern District of Ohio.

10. R.G., an individual known to the Grand Jury but not named herein, was an employee of Eaton, with an Eaton e-mail address.

11. C.B. and R.G., were related by marriage.

12. On May 9, 2016, HAGAR was personally served with a protective order, as that term is defined by Title 18, United States Code, Section 2266(5), to wit, a temporary stalking protective order issued on behalf of R.G., requiring HAGAR to "STOP ANY CONTACT WITH" R.G.

13. Facebook, Yahoo! and Microsoft (Hotmail and Outlook) were providers of interactive computer services, electronic communication systems and electronic communication services engaged in interstate and foreign commerce, with data centers located outside of the states of Oregon and Ohio.

APPENDIX J

a.33

Case: 1:16-cr-00273-DCN Doc #: 77 Filed: 09/11/18 3 of 6. PageID #: 239

HAGAR'S COURSE OF CONDUCT

14. From in or around December 2015 to in or around June 2016, HAGAR engaged in a course of conduct designed to cause substantial emotional distress to the following people and their immediate family members, spouses and intimate partners:

- a. His former co-workers at Eaton, including R.G., J.R., A.M, M.E., and C.B.;
- b. His former co-workers at Goodyear, including L.H. and R.D.; and
- c. Law enforcement officials in the State of Oregon, including M.M., J.L., C.W., and T.B.

15. In carrying out this course of conduct, HAGAR used Yahoo!, Hotmail and Outlook e-mail accounts to send threatening, harassing and intimidating e-mails to the above individuals at their respective Eaton, Goodyear and Oregon law enforcement e-mail addresses.

16. The e-mails that HAGAR sent to the Goodyear employees travelled through Goodyear data centers located in the Northern District of Ohio.

17. The e-mails that HAGAR sent to C.B. were intended to reach her at her Eaton place of employment in Beachwood, Ohio, in the Northern District of Ohio. One or more of the e-mails HAGAR addressed to Eaton employees were forwarded and received by one or more Eaton employees in the Northern District of Ohio.

18. On or about March 11, 2016, HAGAR was arrested for trespassing on Goodyear property in Oregon. Following his arrest, HAGAR continued to send threatening and harassing e-mails to Goodyear employees, at their Goodyear e-mail accounts, including Goodyear employees R.D. and L.H. As a result of HAGAR's trespass and continued conduct, Goodyear hired private detectives to provide security for its employees and property, and to monitor HAGAR's conduct.

APPENDIX J

a.34

Case: 1:16-cr-00273-DCN Doc #: 77 Filed: 09/11/18 4 of 6. PageID #: 240

19. From on or about May 9, 2016, to on or about June 3, 2016, after personally receiving the temporary stalking protective order on behalf of R.G., HAGAR continued to send numerous threatening and harassing e-mails to R.G. in violation of the protective order. These e-mails included, among others, a May 30, 2016, e-mail to R.G., and C.B., Goodyear employees and Oregon law enforcement officials, with the subject line: "I AM GOING TO RUIN EVERYONE OF YOU[R] LIVES," and the e-mails referenced in Counts 2 and 3 of this Superseding Indictment.

20. HAGAR sent the above-referenced e-mails for the purpose of issuing a threat, and with knowledge that the communication would be viewed as a threat.

21. HAGAR sent e-mails to C.B. in order to cause and attempt to cause substantial emotional distress to R.G., R.G.'s immediate family members, and R.G.'s spouse and intimate partners.

22. The above-referenced e-mails caused, attempted to cause and would be reasonably expected to cause substantial emotional distress to the recipient(s).

COUNT 1
CYBERSTALKING
(18 U.S.C. §§ 2261A(2)(B) and 2261(b)(6))

23. The factual allegations of Paragraphs 1 through 22 of this Superseding Indictment are hereby re-alleged and incorporated as if set forth fully herein.

24. From in or around December 2015 to in or around June 2016, Defendant MICHAEL A. HAGAR, in the Northern District of Ohio, Eastern Division, and elsewhere, with the intent to kill, injure, harass, intimidate, and place under surveillance with intent to kill, injure, harass and intimidate another person, to wit, R.G., used any interactive computer service and electronic communication service and electronic communication service of interstate commerce

APPENDIX J

a.35

Case: 1:16-cr-00273-DCN Doc #: 77 Filed: 09/11/18 5 of 6. PageID #: 241

and any other facility of interstate and foreign commerce, to wit, his Yahoo!, Hotmail and Outlook e-mail accounts, to engage in a course of conduct, to wit, the course of conduct alleged in Paragraphs 1 through 22 of this Superseding Indictment, that caused, attempted to cause, and would be reasonably expected to cause substantial emotional distress to R.G., R.G.'s immediate family members, and R.G.'s spouse and intimate partners, and committed the offense conduct in violation of a protection order as that term is defined by Title 18, United States Code, Section 2266(5).

All in violation of Title 18, United States Code, Sections 2261A(2)(B) and 2261(b)(6).

COUNT 2

Interstate Threatening Communication
(18 U.S.C. § 875(c))

The Grand Jury further charges:

25. The factual allegations of Paragraphs 1 through 22 of this Superseding Indictment are hereby re-alleged and incorporated as if fully set forth herein.

26. On or about June 2, 2016, the Defendant, MICHAEL A. HAGAR, in the Northern District of Ohio, Eastern Division, and elsewhere, transmitted in interstate and foreign commerce any communication containing any threat to injure the person of another, to wit, Defendant HAGAR sent an e-mail from his residence in Oregon by means of a communication in interstate commerce, to individuals including R.G., C.B., A.M., J.R., M.E., M.M., J.L., C.W., and T.B., all individuals known to the grand jury but not named herein, containing the threat to injure those individuals as follows:

- a. The subject line of the e-mail read, "[Michael Hagar] I ONLY HAVE TO S[H]OOT YOUR KNEE CAP" and the body of the e-mail stated "AND YOU WILL NEVER WALK AGAIN[]"

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a.36

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All in violation of Title 18, United States Code, Section 875(c).

COUNT 3

Interstate-Threatening Communication
(18 U.S.C. § 875(c))

27. The factual allegations of Paragraphs 1 through 22 of this Superseding Indictment are hereby re-alleged and incorporated as if fully set forth herein.

28. On or about June 2, 2016, the Defendant, MICHAEL A. HAGAR, in the Northern District of Ohio, Eastern Division, and elsewhere, transmitted in interstate and foreign commerce any communication containing any threat to injure the person of another, to wit, Defendant HAGAR sent an e-mail from his residence in Oregon by means of a communication in interstate commerce, to individuals including R.G., C.B., A.M., J.R., M.E., M.M, J.L, C.W, and T.B., all individuals known to the grand jury but not named herein, containing the threat to injure those individuals as follows:

- a. The subject line of the e-mail read, "[Michael Hagar] I AM GOING TO SHOOT ONE OF MY GUARDS SOON" and the body of the e-mail stated "AND THEN I WILL MAKES CERTAIN ALL OF YOU ARE SHOT ALSO."

All in violation of Title 18, United States Code, Section 875(c).

A TRUE BILL.

Original document - Signatures on file with the Clerk of Courts, pursuant to the E-Government Act of 2002.

APPENDIX K

a.37

Case: 1:16-cr-00273-DCN Doc #: 81 Filed: 01/22/19 1 of 5. PageID #: 250

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA	)	CASE NO. 1:16 CR 273
	)	
Plaintiff	)	
	)	JUDGE DONALD C. NUGENT
vs.	)	
	)	
MICHAEL HAGAR	)	MOTION TO DISMISS
	)	(ORAL HEARING REQUESTED)
Defendant	)	

Now comes the Defendant, MICHAEL HAGAR, by and through his attorney, James A. Jenkins, and pursuant to the Sixth and Fourteenth Amendments of the United States Constitution, 18 U.S.C. §3161 *et seq.* and the Speedy Trial Act of 1974, requests a dismissal of any and all charges currently pending by the United States of America for the reasons set forth more fully in the Brief attached hereto and incorporated herein by reference.

Respectfully submitted,

/s/ James A. Jenkins
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APPENDIX K

a.38

Case: 1:16-cr-00273-DCN Doc #: 81 Filed: 01/22/19 2 of 5. PageID #: 251

SERVICE

A copy of the foregoing Motion to Dismiss was filed electronically this 22nd day of January, 2019. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ James A. Jenkins
JAMES A. JENKINS
Attorney for Defendant

APPENDIX K

a.39

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BRIEF

Defendant herein was arrested on or about May 3, 2016, as a result of certain criminal conduct alleged to have occurred against the State of Oregon during the months leading up to his arrest. A complaint was filed against him on or about June 14, 2016, and an initial appearance was set for July 7, 2016, July 26, 2016, and finally, on August 2, 2016. The matter was bound over to the Grand Jury and Hagar's arrest warrant (executed July 7, 2016) was finally returned August 12, 2016. Mr. Hagar was indicted August 24, 2016 and he was arraigned September 19, 2016. His case has been pending through the current date.

Mr. Hagar was initially represented by Darin Thompson of the Federal Public Defender's Office, however, undersigned counsel replaced Mr. Thompson at defendant's request on May 30, 2018. Mr. Hagar was also advised of his speedy trial rights and the seventy (70) days in which the government is obligated to bring him to trial. Extensions of his speedy trial time or continuance requests were filed October 13, 2016, October 19, 2016, January 24, 2017, April 11, 2017, August 3, 2017, August 28, 2017, October 30, 2017, February 6, 2018, and on September 5, 2018. New counsel was assigned May 30, 2018, and Defendant was informed of the Speedy Trial time being tolled by changing attorneys. By counsel's calculations, Mr. Hagar served an inordinate amount of time detained on these charges in the Northern

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a.40

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District of Ohio, well in excess of the time mandated by the Speedy Trial Act of 1974. His waivers of Speedy Trial should be set aside as they were signed under the mistaken belief that the federal government had evidence of the emails (which are the subject of this prosecution) having traveled through this Court's jurisdiction. As proof that the government had no such evidence, a superseding indictment was filed September 11, 2018. To this day, defendant believes that the subject emails had absolutely no nexus to this Court's jurisdiction.

It was and remains no fault of the accused that he has not been given his day in court inasmuch as his "waivers" were signed under the mistaken belief that this Court had jurisdiction. Therefore, it is defendant's position that the government has attempted to impede the Constitutional rights of the accused to a speedy trial.

The Speedy Trial Act of 1974, codified as 18 U.S.C. § 3161 *et seq.*, provides for the time period allowed between indictment or initial appearance and trial. To establish a violation of the Sixth Amendment right to a speedy trial, four factors must weigh in defendant's favor: 1) length of delay; 2) reason for the delay; 3) defendant's assertion of right to a speedy trial; and 4) prejudice suffered as a result of the delay. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). See *United States v. O'Dell*, 247 F3d 655, 667-736 (6th Cir. 2001).

In *United States v. Taylor* 487 U.S.D. 326 (1988), the United States Supreme Court upheld the Ninth Circuit and the District Court which dismissed criminal

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a.41

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charges against the accused due to violations of Taylor's right to a speedy trial.

In addressing the four factors, it is apparent that defendant will have been confined for a period in excess of the seventy (70) days during which the government is required to bring him to trial. November 27, 2016 marked the seventieth day after defendant's arraignment. Delaying the trial until well past the seventy days, is violative of Mr. Hagar's right to speedy trial. The reason for the delay cannot be blamed on the Defendant. Defendant was coerced into believing this Court had jurisdiction and having since learned otherwise, he has certainly asserted his desire to have the matter heard promptly according to the Speedy Trial Act. Finally, "affirmative proof of particularized prejudice is not essential to every speedy trial claim." *Doggett v. United States*, 505 U.S. 647, at 655 (1992); *Norris v. Schotten*, 146 F.3d 314, 328 (6th Cir.). Defendant asserts that he is not obligated to provide any affirmative proof of prejudice where he has been restrained of his liberty for even one hour more than the Speedy Trial Act of 1974 specifies.

WHEREFORE, Defendant respectfully requests this Honorable Court dismiss the charges reflected in the Superseding Indictment filed September 11, 2018.

/s/ James A. Jenkins
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APPENDIX L

a.42

Case: 1:16-cr-00273-DCN Doc #: 82 Filed: 02/12/19 1 of 7. PageID #: 255

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 1:16CR273
	)	
Plaintiff,	)	
	)	JUDGE DONALD C. NUGENT
v.	)	
	)	
MICHAEL A. HAGAR,	)	
	)	<u>GOVERNMENT'S RESPONSE IN</u>
Defendant.	)	<u>OPPOSITION TO MOTION TO DISMISS</u>

Now comes the United States of America, by and through its counsel, Justin E. Herdman, United States Attorney, and Daniel J. Riedl and Om M. Kakani, Assistant United States Attorneys, and hereby opposes Defendant Michael A. Hagar's Motion to Dismiss. For the reasons set forth below, Hagar's motion should be denied.

On June 3, 2016, Oregon state law enforcement arrested Defendant Michael A. Hagar ("Hagar") on a local warrant issued out of Multnomah County, Oregon, for violation of a Multnomah County Court's Stalking Order. On June 14, 2016, a complaint was filed against Hagar in the Northern District of Ohio, charging a violation of Title 18, United States Code, Section 875(c). (R. 1: Complaint). An arrest warrant was issued that same day, but was not executed. (R. 9: Arrest Warrant). On June 17, 2016, the Court issued a Writ of Habeas Corpus Ad Prosequendum to convey Hagar from Oregon state custody to federal custody in the Northern District of Ohio for arraignment on the complaint. (R. 6: Writ). Hagar was transported to the Northern District of Ohio and made his initial appearance on August 2, 2016. He was subsequently indicted on August 24, 2016. (R. 10: Indictment). A three-count superseding indictment was returned on September 11, 2018, charging Hagar with cyberstalking, in violation

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a.43

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of Title 18, United States Code, Section 2261A(2)(B) and 2261(b)(6) (Count 1), and interstate threatening communications, in violation of Title 18, United States Code, Section 875(c) (Counts 2 and 3). (R. 77: Superseding Indictment, PageID 237).

Since his indictment in August 2016, Hagar's counsel filed numerous continuance motions; Hagar himself specifically requested on multiple occasions for a continuance of his trial beyond the 70-day limit set forth in the Speedy Trial Act. (See R. 17, PageID 68; R. 18: October 19, 2016 Motion for Continuance, PageID 70; R. 22, PageID 75; R. 37, PageID 140; R. 50: August 2, 2017 Motion for Continuance, PageID 177; R. 51, PageID 181; R. 65, PageID 210; R. 75: September 6, 2018 Motion to Continue Trial, PageID 234). Adding to any pre-trial delay, Hagar filed motions to compel Yahoo! Inc. and Microsoft Corporation to provide records (R. 45, PageID 161; R. 46, PageID 167), and moved to replace his counsel in April 2018 (R. 67, PageID 213).

In the instant motion, Hagar argues his October 2016, January 2017, April 2017, August 2017, and February 2018 requests for continuance, or "waivers" of Speedy Trial time, should be set aside, "as they were signed under the mistaken belief that the federal government had evidence of the emails (which are the subject of this prosecution) having traveled through this Court's jurisdiction." (R. 81: Motion to Dismiss, PageID 253). According to Hagar, he was "coerced into believing this Court had jurisdiction." (*Id.*, PageID 254).

The Speedy Trial Act provides in relevant part:

In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.

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a.44

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18 U.S.C. § 3161(c)(1). The Act “generally requires a trial to begin within 70 days of the filing of an . . . indictment or the defendant’s initial appearance.” Zedner v. United States, 547 U.S. 489, 497 (2006) (citing 18 U.S.C. § 3161(c)(1)). The Act recognizes, however, “that criminal cases vary widely and that there are valid reasons for greater delay in particular cases.” Id. at 497. Accordingly, the Act sets forth in 18 U.S.C. § 3161(h) “a long and detailed list of periods of delay that are excluded in computing the time within which trial must start.” Id. Among the periods of delay which may properly be excluded are continuances granted under Section 3161(h)(7)(A), which authorizes continuances “if the court, after considering certain factors, makes on-the-record findings that the ends of justice served by granting the continuance outweigh the public’s and the defendant’s interest in a speedy trial.” Id. at 498-99.

This court properly considered the appropriate factors and made the required on-the-record findings before granting each of Hagar’s requested continuances. On October 14, 2016, January 24, 2017, April 11, 2017, August 2, 2017, and February 6, 2018, this Court entered orders granting Hagar’s signed requests for a continuance of his trial beyond the 70-day limit set forth in the Speedy Trial Act. (See R. 17, PageID 68; R. 22, PageID 75; R. 37, PageID 140; R. 51, PageID 181; R. 65, PageID 210). In granting the unopposed requests, the court agreed that a continuance was necessary to avoid a “miscarriage of justice” and afford Hagar “reasonable time necessary for effective preparation.” (Id. (quoting 18 U.S.C. § 3161(h)(7)(B)(i) and (iv)). On each occasion, the court concluded that “the ends of justice which would be served by the granting of a continuance outweigh the best interests of the public and the defendant in a speedy trial.” (Id.). Similarly, Hagar’s motion to replace counsel was granted on May 30, 2018. (R.70: Minutes, PageID 227). In granting Hagar’s motion, the court made the appropriate findings and noted that Hagar was “fully advised” that the Speedy Trial time would be tolled by his own

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a.45

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request to change attorneys. (*Id.*). The court noted that a continuance was required “to allow new counsel to become fully informed and prepared on all evidence and issues in this case. Due to complexity of issues and discovery, trial will have to be continued until at least October, 2018.” (*Id.*).

It is well settled that the “decision to grant a continuance and to exclude the delay is a matter of discretion for the district court.” United States v. Gardner, 488 F.3d 700, 718 (6th Cir. 2007). Indeed, “[t]he district court has wide latitude in deciding how to exercise its discretion in applying the ends of justice provision of the Speedy Trial Act.” United States v. Stewart, 628 F.3d 246, 253 (6th Cir. 2010). See also Zedner, 547 U.S. at 498-99. The record clearly reflects that the district court considered the appropriate § 3161(h)(7)(B) factors at the time the continuance was granted. It entered appropriate findings, provided proper explanation, and weighed the need for the continuance against the interests of the public and the defendant in a speedy trial. In reaching the conclusion that “the ends of justice which would be served by the granting of a continuance outweigh the best interests of the public and the defendant in a speedy trial” and in supporting its conclusion by finding that the continuances were needed to avoid a “miscarriage of justice” by allowing “reasonable time necessary for effective preparation,” the court clearly demonstrated that it was aware of, and had analyzed the requests in light of, § 3161(h)(7)(B)’s statutory factors. See United States v. Jordan, 544 F.3d 656, 664 (6th Cir. 2008) (order tracking language of § 3161(h)(7)(B) demonstrates court’s awareness of statutory factors); United States v. Gamboa, 439 F.3d 796, 803 (8th Cir. 2006) (same).

Hagar argues he would not have given his consent to the continuances had he been given additional information. Specifically, Hagar contends his “waivers were signed under the mistaken belief that the federal government had evidence of the emails (which are the subject of

APPENDIX L

a.46

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this prosecution) having traveled through this Court's jurisdiction" and that he was "coerced into believing this Court had jurisdiction." (R. 81: Motion to Dismiss, PageID 253-54).¹ However, the Speedy Trial Act clearly assigns to the district court the task of determining whether "the ends of justice served by [the continuance] outweigh the best interest of the public and the defendant in a speedy trial," 18 U.S.C. § 3161(h)(7)(A); see Zedner, 547 U.S. at 506-07. Nothing in the statute confers upon a defendant the right to override the court's determination by merely withholding consent. The Sixth Circuit, moreover, has expressly stated that § 3161(h)(7)(A) "does not require a defendant's consent to the continuance." United States v. Sobh, 571 F.3d 600, 603 (6th Cir. 2009). "In fact, the statute even allows the district court to grant a continuance on its own initiative if the interests of justice justify such a delay." Stewart, 628 F.3d at 254.

Hagar's Speedy Trial claim fails, as the record clearly reflects that in granting his numerous requests for a continuance, the district court properly considered the factors set forth in 18 U.S.C. § 3161(h)(7)(B). The court entered appropriate findings, provided explanation, and properly weighed the need for the continuance against the interests of the public and the defendant in a speedy trial. Moreover, contrary to Hagar's argument, there is nothing in the Act which requires that a defendant personally approve an "ends of justice" continuance, and existing case precedent makes clear that a district court may enter such a continuance without the

¹ Hagar's jurisdictional argument has no merit. He is charged with cyberstalking and sending threatening communications and his conduct was designed and intended to have an effect in the Northern District of Ohio. Indeed, many of his communications were directed to a specific individual in the Northern District of Ohio, sent with the intent to harass and intimidate both the recipient and her relative. Further, many of Hagar's intended victims work for Goodyear and Eaton, companies headquartered in the Northern District of Ohio. The government will establish at trial that some of Hagar's emails that are part of the charged course of conduct traveled to the Northern District of Ohio.

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a.47

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defendant's personal consent. As such, there was no Speedy Trial Act violation, and Hagar's motion should be denied.

Respectfully submitted,

JUSTIN E. HERDMAN
United States Attorney

By: /s/ Daniel J. Riedl

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APPENDIX L

a.48

Case: 1:16-cr-00273-DCN Doc #: 82 Filed: 02/12/19 7 of 7. PageID #: 261

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2019, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Daniel J. Riedl

Daniel J. Riedl
Assistant U.S. Attorney

APPENDIX M

a.49

Case: 1:16-cr-00273-DCN Doc #: 85 Filed: 02/22/19 1 of 3. PageID #: 273

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 1:16CR00273
	)	
Plaintiff,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	
	)	
MICHAEL A. HAGAR,	)	<u>STATEMENT OF THE CASE</u>
	)	
Defendant.	)	

Now comes the United States of America, by and through its counsel, Justin E. Herdman, United States Attorney, and Daniel J. Riedl and Om M. Kakani, Assistant United States Attorneys, and hereby submits the following statement of the case. Counsel for the government and defendant conferred and agree that the following statement of the case should be read to the jury during *voir dire* in the above-captioned matter:

Michael Hagar is charged with one count of cyberstalking and two counts of sending an interstate threatening communication. The Government alleges that Mr. Hagar was fired from jobs at Goodyear and Eaton. After he was fired, Mr. Hagar sent hundreds of emails to employees of Goodyear, Eaton and several law enforcement officials. In particular, Mr. Hagar sent emails to Rebecca Gentle, who worked in the same building as Mr. Hagar at Eaton. These emails were part of an ongoing course of conduct intended to threaten, harass and intimidate Ms. Gentle and cause her substantial emotional distress. During the course of Mr. Hagar's campaign, Ms. Gentle obtained a restraining order against him. However, he continued to send emails to

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a.50

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her, her coworkers and her aunt. In two of the emails, Mr. Hagar threatened to shoot people. When a search warrant was executed at Mr. Hagar's home, firearms and ammunition were found. Mr. Hagar maintains that he is innocent of the charges.

Respectfully submitted,

JUSTIN E. HERDMAN
United States Attorney

By: /s/ Daniel J. Riedl

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APPENDIX M

a.51

Case: 1:16-cr-00273-DCN Doc #: 85 Filed: 02/22/19 3 of 3. PageID #: 275

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February 2019 a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Daniel J. Riedl

Daniel J. Riedl
Assistant U.S. Attorney

APPENDIX N

a.52

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3

1 TUESDAY, FEBRUARY 26, 2019, 8:59 A.M.

2 THE COURT: Go ahead.

3 MR. RIEDL: Thank you, Your Honor.

4 Pursuant to *Frye* and *Lafler*, the Government

09:00:18 5 would like to make a record of the fact that the
6 Government did attempt to make a good faith effort to
7 negotiate a plea agreement with Mr. Hagar with the
8 current counsel as well as his previous attorneys.

9 We heard back repeatedly that Mr. Hagar was
09:00:31 10 not interested in any plea agreement; that he only wished
11 to have a trial. Therefore, no formal offers were made.

12 However, the Government did attempt to
13 negotiate a plea agreement, and it's our understanding
14 that Mr. Hagar rejected any attempts to negotiate a plea
09:00:43 15 in this case then.

16 THE COURT: Is that correct, Mr. Hagar?

17 THE DEFENDANT: Yes, it is.

18 THE COURT: All right. Thanks.

19 MR. RIEDL: Thank you.

09:00:51 20 THE COURT: Now we are ready to begin.

21

22

23

24

09:01:11 25

APPENDIX O

a.53

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23

1

2

3

4

09:28:58 5

6

7

And I've also said this is a criminal case.

8

In a criminal case -- first of all, you're in the

9

Northern District of Ohio. If you were wondering why

09:29:15 10

11

you're in Federal Court, you're in the Northern District

12

of Ohio. And the Northern District of Ohio encompasses

13

an area from Columbus to Lake Erie and from the

14

Pennsylvania border to the Indiana line, and it

09:29:30 15

16

encompasses all the counties contained in that.

17

Congress passes certain criminal statutes,

18

and if there's an alleged violation of a criminal statute

19

that occurs within that geographic area, the law requires

09:29:48 20

21

that it be litigated or tried in that venue area or in

22

that area.

So there's an allegation here that

something occurred within the geographic area of the

Northern District of Ohio, and that's why we're here.

23

You'll here a little bit more about that as

24

we go along.

09:29:58 25

APPENDIX P

a.54

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126

1 A. Sure. At that point it was e-mails.
2 Q. Okay. And how were you aware of the e-mails?
3 A. The team in Oregon would forward them to me,
4 primarily the HR representative.
13:47:27 5 Q. Okay. And on top of e-mails, were there any other
6 forms of communication going to Eaton employees?
7 A. Eventually the e-mails evolved to telephone calls.
8 Q. Okay. Any other type of social media?
9 A. Yeah, there were also some Facebook communications.
13:47:46 10 Q. Okay. And how long approximately --- so he was
11 terminated in November of 2015?
12 A. Correct.
13 Q. And for how long afterwards did this stream of
14 communications occur?
13:47:59 15 A. I believe the last e-mail came on June 3rd of 2016.
16 Q. Okay. And during that entire time frame from
17 November of 2015 to June 3rd of 2016, were all the
18 e-mails continuously going to Eaton e-mail boxes?
19 A. Yes. And some others.
13:48:16 20 Q. Okay. Did Eaton take any steps at any point in the
21 interim to handle all the e-mail traffic coming to its
22 employees?
23 A. We did. Because of the frequency of the e-mails
24 and then the recipient list, the frequency was increasing
13:48:31 25 and the addressee list or the recipient list kept getting

APPENDIX P

a.55

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127

1 broader, employees were finding them disconcerting so we
2 made the decision, I made the decision to redirect the
3 e-mails as they came in so that we could monitor them but
4 not have them going to all of the employees and
13:48:47 5 disrupting our work flow.

6 Q. Okay. And as you were monitoring them, where were
7 you monitoring them?

8 A. Ryan Keen was monitoring them and forwarding them
9 to me.

13:48:57 10 Q. Okay. So when you would actually see the e-mails,
11 where were you?

12 A. I was seated in Beachwood, Ohio.
13
14

13:49:10 15

16

17

18

19

13:49:21 20

21

22

23

24

13:49:39 25

APPENDIX P

a.56

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 37 of 120. PageID #: 495

136

1

2

3 Q. Okay. I'm going to bring up Exhibit 105 now.

4 All right. So just starting with the top

13:59:15 5 there, are those, in the "To" lines there, are those

6 Eaton employees?

7 A. Yes. Again the same two Eaton employees Andrea

8 Russell and Rebecca Gentle.

9 Q. Okay. And for all the e-mails I'm going to show

13:59:28 10 you going forward, you've had a chance to review them

11 before testifying here today?

12 A. Correct.

13 Q. All right. And is it -- where did you review, when

14 you first got these e-mails so back in 2016, where did

13:59:39 15 you actually review them?

16 A. They were e-mailed to me at my Eaton account, so in

17 my office in Beachwood I would open and review the

18 e-mails.

19 Q. Okay. So is this a forward -- does this appear to

13:59:51 20 be a forward of Exhibit 104?

21 A. Correct. That's the way I would have received

22 them.

23 Q. Okay. And going now to Exhibit 109.

24 And if we could just go in on the top part

14:00:11 25 there before the forward.

APPENDIX P

a.57

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138

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2
3
4
14:01:34 5
6
7
8
9 Q. Okay. Now, I'm going to draw your attention to,
14:01:53 10 sorry, Exhibit 128. I'll just go to the first part.
11 You've had a chance to review this as well?
12 A. Yes, I have.
13 Q. Okay. And can you tell us just, first of all,
14 what's the date on this e-mail?
14:02:09 15 A. June 2nd, 2016.
16 Q. Okay. And who is it from?
17 A. Michael Hagar.
18 Q. All right. And among the many recipients here, do
19 you recognize any Eaton employees here?
14:02:23 20 A. Yes.
21 Marc Elliott is a plant manager at
22 Mr. Hagar's former place of employment.
23 Rebecca Gentle is a former coworker.
24 Cynthia Burke works in the IT department in
14:02:35 25 the same building I do at Eaton Center in Beachwood,

APPENDIX P

a.58

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 40 of 120. PageID #: 498

139

1 Ohio.

2 Amir Messih I'm not personally acquainted
3 with, but I know he's also an employee.

4 And Joseph Raulino is Mr. Hagar's former
14:02:50 5 supervisor.

6 Q. What does it say in the subject line on this
7 e-mail?

8 A. "I am going to shoot one of my guards soon. And
9 then I will makes certain all of you are shot, also."

14:03:03 10 Q. Okay. Where did you receive this e-mail?

11 A. At my office in Beachwood.

12 Q. And what day did you receive it?

13 A. I believe it was the same day.

14 Q. I'm going to also ask you the same questions.

14:03:18 15 So Exhibit 129. And again just the top
16 part, please.

17 Is this similar to 128?

18 A. Correct. It's from Michael.

19 Q. Okay. And is it addressed to the same individuals
14:03:36 20 at Eaton?

21 A. Yes, I see the same names, Marc Elliott, Cynthia
22 Burke, Rebecca Gentle, Joseph Raulino, Amir Messih.

23 Q. Okay. And what does this say for the subject line?

24 A. "I only have to shoot your kneecap and you will
14:03:49 25 never walk again."

APPENDIX P

a.59

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 41 of 120. PageID #: 499

140

1 Q. Okay. And where did you receive this e-mail?

2 A. Also at my office in Beachwood.

3 Q. Okay. Upon seeing Exhibits 128 and 129, as the
4 head of corporate security for Eaton, what was your
14:04:03 5 response to receiving those e-mails?

6 A. Again we immediately contacted local law -- as with
7 the team in Oregon to immediately notify local law
8 enforcement, and I notified the Federal Bureau of
9 Investigation.

14:04:16 10 Q. Okay. Now, if we could bring up Exhibit 133. Just
11 on the top part there, please.

12 Was this another e-mail that was forwarded
13 to your account here in Beachwood, Ohio?

14 A. Yes.

14:04:33 15 Q. Okay. And who is this addressed to?

16 A. Rebecca Gentle.

17 Q. Okay.

18 A. And Cynthia Burke.

19 Q. And what's the middle e-mail address over there?

14:04:41 20 A. So the first Rebecca Gentle e-mail address would
21 have been her Eaton e-mail address, and the second one is
22 her Gmail address.

23 And then Cynthia Burke's appears to be her
24 Eaton e-mail address as well.

14:04:54 25 Q. Okay. And can you read the subject line of that

APPENDIX P

a.60

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 45 of 120. PageID #: 503

144

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14:08:45 5

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CROSS-EXAMINATION OF MATTHEW COBERLY

9

BY MS. SERRAT:

14:08:57 10

Q. Good afternoon, Mr. Coberly.

11

Have you ever met Michael Hagar?

12

A. I have not.

13

Q. You've not had any conversations with him

14

throughout your investigation and work on this case?

14:09:06 15

A. I have not.

16

Q. You used the word "Forwarded" a lot.

17

Were all the e-mails that you looked at

18

regarding Mr. Hagar forwarded to you to your offices in

19

Beachwood?

14:09:16 20

A. That's correct.

21

Q. Was Mr. Hagar ever put on notice that his e-mails

22

were being forwarded to the Northern District of Ohio or

23

your Beachwood office?

24

A. Not that I'm aware of.

14:09:27 25

Q. So there was no direction put out to him or an

APPENDIX P

a.61

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 46 of 120. PageID #: 504

145

1 automatic response or notification saying that his
2 e-mails were being forwarded to the Northern District of
3 Ohio?

4 A. No. Not that I'm aware of.

14:09:37 5

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14:09:53 10

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14:10:08 15

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14:10:22 20

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14:10:36 25

APPENDIX P

a.62

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 47 of 120. PageID #: 505

146

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Q. Did you ever speak with Hans M. Van Dyke, D-Y-K-E?

3

A. I did not.

4

Q. How were you given the e-mail to him in

14:10:49 5

Government's Exhibit 100?

6

A. It had been redirected to the box where we were

7

capturing the e-mail from Mr. Hagar.

8

Q. And regarding this redirection, was it an automatic

9

filter set up for certain e-mail addresses, or how did

14:11:02 10

that work with the redirection?

11

A. Yes. That's correct. If it -- when -- the e-mail

12

address that was coming in from Mr. Hagar was

13

automatically redirected to a box where we could review

14

them.

14:11:12 15

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14:11:25 20

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14:11:33 25

APPENDIX P

a.63

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 48 of 120. PageID #: 506

147

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14:11:52 5

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14:12:00 10

11 Q. Okay. Who is Ryan Keen?

12 A. Ryan Keen is an HR manager for Eaton.

13 Q. And what was Ryan Keen's involvement in Mr. Hagar's
14 termination from Eaton Corporation?

14:12:17 15 A. Because the decision was made at the -- his place
16 of employment to terminate his employment, that would
17 have been within the HR process so he would have had
18 oversight of that, that termination.

19

14:12:31 20

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14:12:40 25

APPENDIX P

a.64

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 50 of 120. PageID #: 508

149

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14:13:52 5

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Q. Regarding Government's Exhibits 128 and 129, those were forwarded to you, correct, in Beachwood, Ohio?

9

14:14:24 10

A. That's correct.

11

Q. Are there any individuals listed in the "To" box that work in your office in Beachwood?

12

13

A. Yes.

14

Q. And who would that be?

14:14:34 15

A. Cynthia Burke.

16

Q. And where was Cynthia Burke working in June 2nd of 2016?

17

18

A. I believe she was working at Beachwood Center.

19

Q. Do you know that for a fact?

14:14:46 20

A. Eaton Center in Beachwood.

21

She worked there before and she works there now, so I'm making an assumption that she worked there on that date as well.

22

23

24

Q. Okay.

14:14:55 25

APPENDIX P

a.65

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 52 of 120. PageID #: 510

151

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14:16:39 5

6

Q. Okay. And Cynthia Burke worked in the Northern District of Ohio, is that correct?

7

8

A. That's correct.

9

14:16:50 10

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14:17:04 15

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14:17:13 20

Q. Okay. And Ryan Keen, you were asked some questions about him.

21

22

Do you know physically where his offices

23

are?

24

A. His -- you know, I actually don't know exactly where he is. I think he currently resides in South

14:17:24 25

APPENDIX P

a.66

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 53 of 120. PageID #: 511

152

1 Carolina.

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14:17:33 5

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14:17:40 10

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14:18:16 15

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14:18:34 25

APPENDIX Q

a.67

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 77 of 120. PageID #: 535

176

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14:50:24 5

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The Government calls Cynthia Burke.

7

THE COURT: Ms. Burke, would you raise your

8

right hand for me?

9

CYNTHIA BURKE,

10

of lawful age, a witness called by the Government,

11

being first duly sworn, was examined

12

and testified as follows:

13

THE COURT: Please have a seat.

14

Can you tell us your full name and spell

14:50:59 15

your last name?

16

THE WITNESS: Cynthia Sue Burke, B-U-R-K-E.

17

THE COURT: Thank you.

18

DIRECT EXAMINATION OF CYNTHIA BURKE

19

BY MR. KAKANI:

14:51:07 20

Q. Ms. Burke, could you please tell the jury where it
is that you work?

21

22

A. Eaton.

23

Q. And best you can, speak into the microphone so
everyone can hear.

24

14:51:18 25

A. Eaton, Eaton Corporation.

APPENDIX Q

a.68

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 78 of 120. PageID #: 536

177

1 Q. How long have you been working for Eaton
2 Corporation?

3 A. Twelve years.

4 Q. And what is your title there right now?

14:51:26 5 A. I'm the Vice President of the Administrative Center
6 of Excellence in Information Technology.

7 Q. And what does that mean?

8 A. It means that I'm responsible for all the
9 applications, all the systems that are used by the
14:51:41 10 corporate officers, HR, finance, tax, treasury, legal.

11 Q. How long have you been in that particular position
12 at Eaton?

13 A. Since I began at Eaton.

14 Q. The whole time, so twelve years?

14:51:57 15 A. Indeed.

16 Q. Okay. Where do you work? Where physically do you
17 work, I should say?

18 A. I work in Beachwood.

19 Q. Here in Ohio?

14:52:06 20 A. Yes. At Eaton Center, 1000 Eaton Boulevard.

21 Q. Okay. And for those twelve years that you've been
22 the Vice-President of the Administrative Center For
23 Excellence, have you been in Beachwood for those twelve
24 years?

14:52:22 25 A. No. There were other locations prior to Beachwood.

APPENDIX Q

a.69

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 79 of 120. PageID #: 537

178 -

1 That location is relatively new, within the past five
2 years.

3 Q. Okay. How long have you been -- I'm sorry, so how
4 long have you been in that Beachwood location?

14:52:33 5 A. Since its inception.

6 Q. Five years?

7 A. Five years.

8 Q. Okay.

9 A. Um-hmm.

14:52:37 10 Q. Including 2016?

11 A. Yes.

12 Q. Do you know someone named Rebecca Gentle?

13 A. I do.

14 Q. How do you know Rebecca Gentle?

14:52:48 15 A. She's my step-niece.

16 Q. Okay. So if you could explain that relationship to
17 the jury.

18 A. My mother married her grandfather back in 1981, and
19 I've known Becky since she's been born.

14:53:04 20 Q. Okay. And her mother is your --

21 A. She's my stepsister.

22 Q. Okay. And what's her mother's name?

23 A. Karen.

24 Q. What's her full name?

14:53:14 25 A. Karen Gentle.

APPENDIX Q

a.70

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 80 of 120. PageID #: 538

179

1 Q. Okay. And your full name is what?

2 I'm sorry, let me take that back.

3 What was your maiden name?

4 A. Williams.

14:53:26 5

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14:53:38 10

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14:53:53 15

Q. Okay. Fair enough. Going back to Rebecca Gentle,
do you know where she works?

17 A. Yes. Eaton.

18 Q. Okay. How long has she been working at Eaton?

19 A. I don't know.

14:54:08 20

Q. Okay. Does she work in the Beachwood location?

21 A. No.

22 Q. Do you know where she works?

23 A. She works in Oregon.

24 Q. Okay. And do you have an Eaton e-mail account?

14:54:20 25

A. I do.

APPENDIX Q

a.71

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 81 of 120. PageID #: 539

180

1 Q. What is your Eaton e-mail account?
2 A. CynthiaSBurke@Eaton.com.
3 Q. Okay. And when you check your Eaton e-mail, where
4 would -- so when you're getting e-mail, where would that
14:54:33 5 be sent to when you would check it?
6 A. I would be checking it in my office. I would be
7 checking it on my phone.
8 Q. Okay. And your office is in Beachwood, Ohio?
9 A. Indeed.
14:54:46 10
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14:55:03 15
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14:55:13 20
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14:55:33 25

APPENDIX Q

a.72

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 97 of 120. PageID #: 555

196

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Q. Now, at the time that all these e-mails we just went through -- so not the Facebook messages but the Exhibits 125 through 138 that you've just looked at -- at the time that they were sent, did you actually review them?

A. No.

Q. Okay. So you reviewed them at a later date?

A. Yes.

Q. Okay. But throughout that time in 2016, this time frame that we've been looking at, where did you physically work for Eaton Corporation?

A. In Beachwood, Ohio.

Q. And where would you have received e-mails addressed to you at Eaton?

A. In Beachwood, Ohio.

APPENDIX Q

a.73

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 98 of 120. PageID #: 556

197

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15:17:06 20

You may cross-exam

21

CROSS-EXAMINATION OF CYNTHIA BURKE

22

BY MS. SERRAT:

23

Q. Good afternoon, Ms. Burke.

24

A. Good afternoon.

15:17:21 25

Q. You said you worked at Eaton Corporation for

APPENDIX Q

a.74

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 99 of 120. PageID #: 557

198

1 approximately twelve years, is that correct?

2 A. Yes.

3 Q. Do you know Matthew Coberly?

4 A. Yes.

15:17:30 5 Q. Did you at any point discuss -- and don't tell me

6 the discussions -- but discuss this case with Matthew

7 Coberly?

8 A. Yes.

9 Q. Were you aware that Matthew Coberly was

15:17:43 10 intercepting all of these e-mails that you just went over

11 with the Government on behalf of Eaton Corporation?

12 A. Yes.

13 Q. When was the first time that you saw these e-mails

14 that you just reviewed with the Government in your

15:17:57 15 capacity at Eaton Corporation?

16 A. When the District Attorney showed them to me.

17 Q. And when would that have been?

18 A. 2018.

19 Q. So prior to 2018, you had no knowledge that

15:18:11 20 Mr. Hagar had sent any of these e-mails to your Eaton

21 e-mail address, is that correct?

22 A. That's correct.

23 Q. With regard to these e-mails, do you commonly use

24 your e-mail at Eaton Corporation?

15:18:30 25 A. Yes.

APPENDIX Q

a.75

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 100 of 120. PageID #: 558

199

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15:19:02 15

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15:19:35 25

Q. And you said that Ms. Rebecca Gentle was your step-niece.

I'm not good with family trees. Could you once again explain how she is related to you?

A. My mother married Karen's father Tom Bode.

Q. Okay.

A. Karen married Al Gentle, so we're stepsisters.

APPENDIX Q

a.76

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 101 of 120. PageID #: 559

200

1 Q. Okay.

2 A. Okay? Through marriage.

3 Karen married Al Gentle and had two
4 daughters, so I would be her step-aunt.

15:19:53 5 Q. Step-aunt. Thank you for explaining that.

6 You're still currently employed at Eaton
7 Corporation, is that correct?

8 A. That's correct.

9

15:20:10 10

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15:20:40 25

APPENDIX Q

a.77

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 102 of 120. PageID #: 560

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15:21:39 25

Q. So you weren't aware of any of these e-mails until 2018 from Michael Hagar to your Eaton Corporation e-mail, correct?

A. That's correct.

Q. So as a result, you had never replied to any of the e-mails, is that correct?

A. That's correct.

Q. You had never asked Mr. Hagar to stop contacting you?

A. I have -- did not.

Q. Did you ever reply to any of the correspondence from Mr. Hagar or involved in this case?

A. I did not.

MS. SERRAT: No further questions at this

APPENDIX Q

a.78

Case: 1:16-cr-00273-DCN Doc #: 102 Filed: 03/13/19 103 of 120, PageID #: 561

202

1 time, Your Honor.

2 THE COURT: Thank you.

3 Mr. Kakani, anything?

4 MR. KAKANI: Very briefly, Judge.

15:21:49 5 REDIRECT EXAMINATION OF CYNTHIA BURKE

6 BY MR. KAKANI:

7 Q. You never asked Mr. Hagar to stop e-mailing you, is
8 that right?

9 A. No, I -- I didn't.

15:21:55 10 Q. You never responded to him, is that right?

11 A. That's correct.

12 Q. But he still sent all those e-mails to your e-mail
13 account at Eaton that we just went through, right?

14 A. Yes.

15:22:03 15 Q. Okay. And if someone wanted to send you an e-mail
16 at your work in Ohio, what account would they send it to?

17 A. CynthiaSBurke@Eaton.com.

18 Q. And you were asked about when you saw the Eaton
19 e-mails it wasn't until about roughly 2018, is that
20 correct?

15:22:23

21 A. That's correct.

22

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15:22:32 25

APPENDIX R

a.79

Case: 1:16-cr-00273-DCN Doc #: 104 Filed: 03/13/19 159 of 252. PageID #: 927

568

1 CROSS-EXAMINATION OF REBECCA GENTLE

2 BY MS. SERRAT:

3 Q. Good afternoon, Ms. Gentle.

4 At the time you received e-mails from
12:37:55 5 Mr. Hagar in this case, where were you residing? Not a
6 specific address. Where were you residing?

7 A. In Oregon.

8 Q. All of the e-mails you received, were any of them
9 received while you were in the Northern District of Ohio?

12:38:08 10 A. No.

11 Q. You were asked about YouTube videos.

12 Were any of those watched or received in
13 the Northern District of Ohio?

14 A. No.

12:38:15 15 Q. Have you ever resided in the Northern District of
16 Ohio?

17 A. No.

18 Q. Have you ever worked in the Northern District of
19 Ohio in the scope of your employment with Eaton

12:38:24 20 Corporation?

21 A. No.

22

23

24

12:38:33 25

APPENDIX R

a.80

Case: 1:16-cr-00273-DCN Doc #: 104 Filed: 03/13/19 160 of 252. PageID #: 928

569

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MS. SERRAT: No further questions, Your

3

Honor.

4

THE COURT: Thank you.

12:39:01 5

Any redirect?

6

MR. RIEDL: Thank you, Your Honor.

7

REDIRECT EXAMINATION OF REBECCA GENTLE

8

BY MR. RIEDL:

9

Q. Your aunt Cynthia Burke, was she in Ohio?

12:39:16 10

A. Yes.

11

Q. And was she a recipient of a number of the messages
that were also sent to you?

12

13

A. Yes.

14

Q. And was there any connection between Michael Hagar
and Cynthia Burke other than you?

12:39:24 15

16

A. No.

17

MR. RIEDL: Thank you.

18

No further questions.

19

12:39:31 20

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12:39:44 25

APPENDIX S

a.81

Case: 1:16-cr-00273-DCN Doc #: 105 Filed: 03/13/19 4 of 106. PageID #: 1024

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MR. JENKINS: And we do have a motion for acquittal under Federal Rule 29, and my esteemed colleague Ms. Serrat will address that issue.

THE COURT: Thank you.

MS. SERRAT: May it please the Court, Your Honor, at the close of the Government's case the defense reserved its right to make its motion for acquittal pursuant to Criminal Rule 29.

At this point we believe that the facts as established by the Government in this case do not meet the elements of the threats of cyberstalking as well as interstate threatening communication.

We would direct the Court's attention regarding the Count 1 of the indictment.

First of all, we believe and continue to argue, as was argued in the pretrial motions, that this Honorable Court does not have jurisdiction over this matter.

We would argue that the e-mails and

APPENDIX S

a.82

Case: 1:16-cr-00273-DCN Doc #: 105 Filed: 03/13/19 5 of 106. PageID #: 1025
666

1 correspondence all occurred outside of the Northern
2 District of Ohio.

3 The e-mails that were sent to the Northern
4 District of Ohio were sent via a forwarding system to
08:31:47 5 which the defendant had absolutely no knowledge. And
6 that was established, I believe, beyond any doubt that
7 the defendant here had no knowledge that these e-mails
8 were being forwarded to the Northern District of Ohio.

9 So we would ask, first of all, for this
08:32:01 10 Honorable Court to dismiss the charges based on this
11 Court's lack of jurisdiction to hear this case. At most,
12 this case should have been pursued in Oregon.

13 With regards to the elements of Count 1,
14 Ms. Rebecca Gentle, we believe that the Court failed to
08:32:17 15 establish that Mr. Hagar had any intent to threaten,
16 harass or intimidate Ms. Gentle. He was solely trying to
17 get the truth and get a response from these individuals.

18 Most specifically, regarding the second
19 part of the statute, it should read that Ms. Rebecca
08:32:37 20 Gentle is the only one that could have possibly felt
21 substantial emotional distress.

22 The Government did not provide any blood
23 relative or relative under the jury instructions that
24 will be instructed to this Court that a relative was
08:32:50 25 experiencing substantial emotional distress as a result

APPENDIX S

a.83

Case: 1:16-cr-00273-DCN Doc #: 105 Filed: 03/13/19 6 of 106. PageID #: 1026

667

1 of this correspondence to Ms. Gentle.

2 So we would ask that this Honorable Court,
3 first of all, find Mr. Hagar not guilty of this count,
4 but in addition, regarding the jury instructions, that
08:33:04 5 the jury not be instructed as to Rebecca Gentle and/or
6 her family members.

7 It should read solely "Rebecca Gentle."

8 The family members could be confused by the testimony of
9 the step-aunt which does not qualify as a family member
08:33:19 10 under the law.

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08:33:32 15

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08:34:09 25

APPENDIX T

a.84

Case: 1:16-cr-00273-DCN Doc #: 105 Filed: 03/13/19 66 of 106. PageID #: 1086

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10:04:10 25

During this case we heard a lot of places
many of you may not have heard of: Wilsonville, Oregon;

APPENDIX T

a.85

Case: 1:18-cr-00273-DCN Doc#: 105 Filed: 03/13/19 67 of 106. PageID #: 1087
728

1 Multnomah County, Oregon, which I can finally say;
2 Clackamas County, Oregon; Portland, Oregon; Ohio.
3 Why is this case here? This case never
4 should have been brought in the Northern District of
10:04:29 5 Ohio. There is no direct connections to this case and
6 the Northern District of Ohio.
7 MR. RIEDL: Objection, Your Honor. That's
8 not in the statement of facts.
9 THE COURT: Yes.
10:04:49 10 MS. SERRAT: We would ask that you consider
11 the facts and evidence in this case to determine whether
12 or not these offenses occurred in the Northern District
13 of Ohio, and for you to make that determination.
14 Mr. Hagar has never been to Eaton
10:05:03 15 Corporation in Beachwood, Ohio. He's never been to
16 Goodyear Corporation in Akron, Ohio. In fact, Mr. Hagar
17 testified he's never been to the State of Ohio other than
18 passing through on various road trips from Virginia to
19 Oregon.
10:05:17 20
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10:05:32 25

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And this offense goes beyond the pale, I think. There's no --- there's been no physical injury, but the mental stress and mental injury to the victims is more than I've seen in my lifetime.

And if I have to reflect the seriousness of the offense in the sentence and deter criminal conduct, I think the maximum sentence is appropriate.

And the public has to be protected from what you did, and I just heard here again, I heard your testimony. Actually I couldn't believe your testimony when I heard it, and then I hear it here. And I don't see any remorse. I don't see any acceptance of responsibility for acting badly and committing crimes. Nothing. You're angry that somebody did some perceived wrong to you, and then that's where it stands.

And so I don't see any assurance that if you were on the street, that the public would be protected at all. In fact, I see just the exact opposite.

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STATEMENT OF JURISDICTION

Michael Hagar filed a direct appeal from a criminal judgment entered against him on June 11, 2019 by the Honorable Judge Donald C. Nugent in the United States District Court for the Northern District of Ohio case number 1:16CR273. (Judgment, R. 114, PAGE ID 1223-4)(Notice, R. 115, PAGE ID 1230). Original jurisdiction for this matter was established pursuant to a three (3) count Superseding Indictment which alleged in a Count 1, Cyberstalking, in violation of 18 U.S.C. § 2261A(2)(B), 18 U.S.C. §§ 2261(b)(5) and (b)(6), and in Counts 2 and 3, Interstate Threatening Communication in violation of 18 U.S.C. § 875(c). On March 1, 2019, the jury found Mr. Hagar guilty of all three (3) counts of the Superseding Indictment. (Judgment, R. 98, PAGE ID 356-7). Honorable Judge Nugent sentenced Mr. Hagar to sixty (60) months imprisonment to each count of conviction, to be served consecutively, totaling one hundred and eighty (180) months imprisonment, an above guideline sentence. (Judgment, R. 112, PAGE ID 1212). The United States District Court for the Northern District of Ohio exercised original jurisdiction pursuant to 18 U.S.C. § 3231.¹ This Honorable Court has Appellate jurisdiction of Mr. Hagar's direct appeal under 28 U.S.C. § 1291.

¹ Mr. Hagar does not agree that the Northern District of Ohio had proper jurisdiction in this matter and argues herein that the Northern District of Ohio was not the proper venue to pursue these charges against Mr. Hagar, incorporated herein by reference.

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The Defendant made two (2) Motions for Judgment of Acquittal pursuant to Fed. R. Crim. P. 29 arguing that the facts as established by the Government in this case did not meet the elements of cyber stalking or interstate threatening communication. (Trial Trans., R. 105, PAGE ID 1024). First, the Defendant argued once again that the Northern District of Ohio did not have jurisdiction over Mr. Hagar and the venue of Ohio was not appropriate for the alleged conduct in this case. *Id.* All of the electronic correspondence in this case occurred outside of the Northern District of Ohio. *Id.* at PAGE ID 1025. The evidence at trial established that the emails in question were only sent to the Northern District of Ohio via a forwarding system to which Mr. Hagar had absolutely no knowledge about. *Id.* In addition, C.B., the only recipient in Ohio, testified that she never received any of the emails. As a result, Mr. Hagar asked the Court to dismiss all the charges against him due to the Court's lack of jurisdiction to hear this case, as it should have been pursued by the government in the District the offense allegedly occurred, Oregon. *Id.*

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II. THE NORTHERN DISTRICT OF OHIO WAS NOT THE PROPER VENUE FOR THE PROSECUTION OF MR. HAGAR.

A. STANDARD OF REVIEW.

This Honorable Court review the district court's jurisdiction conclusions de novo. *United States v. Graves*, 60 F.3d 1183, 1185 (6th Cir. 1995).

B. NONE OF MR. HAGAR'S CONDUCT ALLEGED IN HIS SUPERSEDING INDICTMENT OCCURRED IN THE NORTHERN DISTRICT OF OHIO. AS A RESULT, THE NORTHERN DISTRICT OF OHIO WAS AN IMPROPER VENUE AND THE DISTRICT COURT DID NOT HAVE JURISDICTION TO IMPOSE A CRIMINAL JUDGMENT AGAINST HIM.

Prior to and during the trial in this case, Mr. Hagar argued that venue was not proper in the Northern District of Ohio as none of the allegations of the Indictment or Superseding Indictment occurred in Ohio. As a result, Mr. Hagar asked the Court to dismiss the charges against him based upon the lack of jurisdiction and proper venue. (Trial Trans., R. 105, PAGE ID 1025). It is undisputed that Mr. Hagar never set foot in the Northern District of Ohio. At trial, Mr. Hagar testified that he never directed any correspondence to the State of Ohio. (Trial Trans., R. 104, PAGE ID 957). Mr. Hagar never sent any emails to the State of Ohio. *Id.* at PAGE ID 958. If this case were to stand, the government of any jurisdiction could obtain jurisdiction over cases involving electronic communication simply by forwarding the emails to the State they wish to prosecute a Defendant in. This forum shopping cannot occur. The only connection

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this case has to the Northern District of Ohio was that two large corporations, Goodyear and Eaton, are headquartered in Ohio.

The e-mails at issue in this case were sent to the Northern District of Ohio via a re-routing and/or forwarding system to which the defendant had absolutely no knowledge it existed. (Trial Trans., R. 104, PAGE ID 880, 884, 888). Mr. Peterson admitted that Mr. Hagar was never put on notice that his emails were being captured and re-routed to Akron, Ohio. *Id.* at PAGE ID 886. R.G. agreed that she was never in the Northern District of Ohio during the time frame in the Superseding Indictment, as she resided in Oregon. *Id.* at PAGE ID 927. M.M. has never even been to Ohio. (Trial Trans., R. 103, PAGE ID 731). Matthew Coberly, the global security director for Eaton Corporation, testified that other individuals were forwarding him Mr. Hagar's emails to be monitored in Beachwood, Ohio but agreed that Mr. Hagar was never put on notice that his emails were being forwarded to the Northern District of Ohio. (Trial Trans., R. 102, PAGE ID 486, 499, 503-4). Mr. Hagar has never been to Eaton Headquarters in Beachwood, Ohio or the Goodyear Headquarters in Akron, Ohio. *Id.* at PAGE ID 508. Although C.B. worked in Ohio, she testified that she never received any the emails from Mr. Hagar in this case. *Id.* at PAGE ID 560. In addition, the "Facebook messages" to C.B. were not part of the criminal allegations against Mr. Hagar in his Superseding Indictment. (Trial Trans., R. 105, PAGE ID 1029).

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This case should have been pursued in Oregon, the district of occurrence, not Ohio. Mr. Hagar did not commit any course of conduct to charges alleged against him in the Northern District of Ohio. As a result, the Northern District of Ohio was an improper venue and the Indictment and Superseding Indictment should have been dismissed. A majority of the witnesses that testified for the government were located outside of the State of Ohio, in the State of Oregon, along with the events in issue and the relevant documents and records. Mr. Hagar had to be transported from Oregon to face the charges in the case. The protective order at issue in this case was governed by Oregon law. The alleged trespassing that occurred, was at a Goodyear property in Oregon. (Superseding Indictment, R. 77, PAGE ID 239).

The proper place of colonial trials was so important to the founding generation that it was listed as a grievance in the Declaration of Independence. It was of such concern that the Constitution of the United States “twice safeguards the defendant’s venue right.” *United States v. Cabrales*, 524 U.S. 1, 6 (1998). Article III requires that “the Trial of all Crimes . . . shall be held in the State where the said Crimes shall have been committed.” U.S. Const. art. III, § 2, cl. 3. The Sixth Amendment further provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.” *Id.* amend VI. This

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guarantee is codified in the Federal Rules of Criminal Procedure, which require that “the [G]overnment must prosecute an offense in a district where the offense was committed.” Fed. R. Crim. P. 18.

“[T]he locus delicti must be determined from the nature of the crime alleged and the location of the act or acts constituting it.” *United States v. Anderson*, 328 U.S. 699, 703 (1946); accord *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279 (1999). Black’s Law Dictionary defines locus delicti as the “place where an offense was committed”. To perform this inquiry, the Court “must [1] initially identify the conduct constituting the offense . . . and then [2] discern the location of the commission of the criminal acts.” *Rodriguez-Moreno*, 526 U.S. at 279. Venue should be narrowly construed. Venue in criminal cases is more than a technicality; it involves “matters that touch closely the fair administration of criminal justice and public confidence in it.” *United States v. Johnson*, 323 U.S. 273, 276 (1944).

Prior to and during trial, Mr. Hagar continuously argued that the Northern District of Ohio was the improper venue to bring these charges against him. His alleged criminal acts in his Indictment and Superseding Indictment of sending electronic communications existed solely outside of Ohio. There was no conspiracy that contained any overt act which occurred in Ohio or element of the offense that occurred in Ohio. Pursuant to 18 U.S.C. § 3237(a), Mr. Hagar did not send the emails to Ohio, they were either forwarded by various individuals to Ohio

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or automatically captured and re-routed to Ohio. Not one alleged victim received an electronic communication from Mr. Hagar in Ohio. As a result, Mr. Hagar's offense conduct never traveled to the State of Ohio. Based upon the Northern District of Ohio's lack of proper jurisdiction in this case and the improper venue, Mr. Hagar respectfully requests this Honorable Court reverse the District Court's Judgment against him and dismiss all charges.

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IV. THE DISTRICT COURT ERRED WHEN IT FAILED TO GRANT THE DEFENDANT'S SECOND MOTION TO DISMISS.

A. STANDARD OF REVIEW.

The Sixth Circuit reviews the district court's interpretation of the Speedy Trial Act de novo and its factual findings for clear error. *United States v. White*, 920 F.3d 1109, 112 (6th Cir. 2019) citing *United States v. Anderson*, 695 F.3d 390, 396 (6th Cir. 2012).

B. THE GOVERNMENT FAILED TO BRING MR. HAGAR TO TRIAL WITHIN SEVENTY (70) DAYS OF MR. HAGAR'S ARRAIGNMENT AND AS A RESULT, THE DISTRICT COURT ERRED WHEN IT FAILED TO DISMISS THE SUPERSEDING INDICTMENT AGAINST HIM.

The District Court Erred with it failed to grant the Defendant's Second Motion to Dismiss because after the government obtained and filed the Superseding Indictment against Mr. Hagar, Mr. Hagar never waived his speedy trial rights or executed a speedy trial waiver. As a result of the government failing to bring him to trial within seventy (70) days after his arraignment, the Court should have dismissed the Superseding Indictment with prejudice.

On January 22, 2019, Mr. Hagar filed a Motion to Dismiss, arguing that Mr. Hagar had been confined in excess of seventy (70) days without being brought to trial in this case, in violation of the Speedy Trial Act. (Motion, R. 81, PAGE ID 250-254). From the date of his arraignment on the Superseding Indictment, September 19, 2019 until the date of his first pretrial on November 27, 2018,

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seventy (70) days had passed. *Id.* at PAGE ID 254. Mr. Hagar did not execute a speedy trial waiver when the government filed the Superseding Indictment against him, nor did the District Court make and ends of justice determination. At the time Mr. Hagar filed his Motion to Dismiss on January 22, 2019, one hundred and twenty-five (125) days had passed.

The government filed a response in Opposition to the Defendant's Motion to dismiss on February 12, 2019, arguing that since previous continuances were requested and previous speedy trial waivers were issued on the original Indictment, they should apply to the Superseding Indictment. (Response, R. 82, PAGE ID 225-261).

For our purposes, the Speedy Trial Act imposes two limits on the prosecution of a criminal defendant: (1) the government must file an indictment within 30 days of the defendant's arrest, 18 U.S.C. § 3161(b); and (2) **the defendant's trial must commence within 70 days of his initial appearance or the filing of the indictment, whichever occurs last.** *Id.* § 3161(c)(1). If more than seventy (70) non-excludable days pass before the commencement of trial, the Act mandates dismissal of the indictment upon motion by the defendant. 18 U.S.C. § 3162(a)(2). When seeking to dismiss an Indictment, the Defendant must first establish a prima facie violation of the Speedy Trial Act. 18 U.S.C. § 3162(a)(2). Thereafter, the Government has the burden to prove by a preponderance of the

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evidence that there are sufficient excludable days under § 3161(h) to reduce the time between the initial appearance and trial to within the 70-day limit imposed by the Act. *See United States v. Jenkins*, 92 F.3d 430, 438 (6th Cir. 1996).

Given the length of pretrial detention in this case and the government's decision to obtain a Superseding Indictment in this case, the Superseding Indictment against Mr. Hagar should have been dismissed with prejudice. As a result, Mr. Hagar respectfully requests this Honorable Court to reverse the judgment against him remand his case back to the District Court with an Order to dismiss the Superseding Indictment and all charges against him with prejudice.

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C.B. read the messages Hagar sent to her Eaton work email account for the first time during preparation for her trial testimony. (R.102: Trial Trans. (C.B.), PageID 557).

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II. HAGAR WAIVED HIS VENUE CLAIM, AND EVEN IF THIS COURT WERE TO ADDRESS IT, HIS CLAIM IS WITHOUT MERIT.

A. Additional Background

Hagar did not challenge venue before trial. (Docket Sheet, Northern District of Ohio, Case No. 1:16-CR-273). While Hagar's second speedy trial motion mentioned venue-related arguments, (R.81: Second Speedy Trial Motion, PageID 253), this was in the context of the *speedy trial claim* discussed above, and not a venue claim.

At the close of the government's trial evidence, Hagar, in the context of making a Federal Rule of Criminal Procedure 29 ("Rule 29") motion for a judgment of acquittal, said the following:

[W]e believe as was argued in the pretrial motions (sic), that this Honorable Court does not have jurisdiction over this matter. We would argue that the e-mails and correspondence all occurred outside of the Northern District of Ohio. The e-mails that were sent to the Northern District of Ohio were sent via a forwarding system to which the defendant had absolutely no knowledge. . . . So we would ask . . . this Honorable Court to dismiss the charges based on this Court's lack of jurisdiction to hear this case. At most, this case should have been pursued in Oregon. (R.105: Trial Trans., PageID 1024-25).

The district court denied Hagar's Rule 29 motion. (*Id.*, PageID 1035).

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2. Hagar's Venue Claim is Also Meritless.

Even if Hagar had not waived his current venue claim, that claim fails.⁶

C.B. – one of the named victims in Counts 2 and 3 of the indictment – worked at

⁶ The government acknowledges that this Court could construe the argument Hagar made in support his “jurisdictional” challenge in the district court to raise

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Eaton's Beachwood headquarters in the Northern District of Ohio. (R.77: Superseding Indictment, PageID 238-42). Hagar sent numerous threatening emails to C.B.'s Eaton email address. (*Id.*, PageID 241-42; R.102: Trial Trans. (C.B.), PageID 551-52; R.77: Superseding Indictment, PageID 241-42). C.B. routinely received and reviewed her Eaton emails at her office in Beachwood, Ohio. (R.102: Trial Trans. (C.B.), PageID 555). In addition, Count 1 of the superseding indictment referenced Hagar's messages to C.B. as part of Hagar's cyberstalking course of conduct, because R.G. (the named cyberstalking victim) and C.B. were related. (R.77: Superseding Indictment, PageID 237-41).

Because Hager sent the threats via email *from* Oregon *to* C.B. in the Northern District of Ohio, venue was proper. This Court addressed venue in a similar context in *United States v. Jeffries*, 692 F.3d 473 (6th Cir. 2012) (abrogated on other grounds by *Elonis v. United States*, 135 S. Ct. 2001 (2015)). Jeffries sent a threatening YouTube video from the Western District of Tennessee, via the internet, to victims in the Eastern District of Tennessee. *Jeffries*, 692 F.3d at 483. This Court explained that because Jeffries had transmitted the threat “‘from, to, or into’” the Eastern District of Tennessee via the internet, venue was proper in the

the issue of venue, albeit under the wrong label. (R.105: Trial Trans., PageID 1024-25).

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The district court ultimately found:

[T]his offense goes beyond the pale There's been no physical injury, but the mental stress and mental injury to the victims is more than I've seen in my lifetime. And if I have to reflect the seriousness of the offense in the sentence and deter criminal conduct, I think the maximum sentence is appropriate. And the public has to be protected from what you did, and I just heard here again, I heard your testimony. . . . And I don't see any remorse. I don't see any acceptance of responsibility for acting badly and committing crimes. Nothing. . . . And so I don't

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see any assurance that if you were on the street, that the public would be protected at all. In fact, I see just the exact opposite.

The court sentenced Hagar to 60 months on each count, to be served consecutively, for a total of 180 months. It ordered Hagar to pay \$155,654 to Eaton and \$403,832.41 to Goodyear.

This appeal follows.

II. Analysis

A. Speedy Trial Claims

Hagar argues that the district court erred when it failed to grant his motions to dismiss the indictment for Speedy Trial Act violations. He argues that the first motion should have been granted because he was arrested on July 7, 2016, but not indicted until August 24, 2016, in violation of the 30-day window of 18 U.S.C. § 3161(b). In his second motion to dismiss, Hagar claimed that seventy days passed from the date of his arraignment on the superseding indictment, September 19, 2018, and his trial, in violation of § 3161(c).

Speedy Trial Act claims “by their own terms must be raised pre-trial or be forever waived.” *United States v. Pickett*, 941 F.2d 411, 416 (6th Cir. 1991); *United States v. Stewart*, 628 F.3d 246, 253 (6th Cir. 2010). This is not exactly Hagar’s problem, because he brought his motions pretrial; the problem is that he failed to secure rulings on those motions from the district court. Similar claims are generally treated as abandoned and therefore not reviewable on appeal. *See, e.g., United States v. Harris*, 165 F.3d 1062, 1066 (6th Cir. 1999) (treating the appellant’s failure to request a ruling on a discovery motion at trial or at the final pretrial conferences as abandonment of the claim on appeal); *see also United States v. Franklin*, 197 F.3d 266, 270 (7th Cir. 1999) (stating that a defendant faces waiver if he fails to renew a pretrial motion that the trial court has not ruled on). And with good reason: “motions appealed in this fashion . . . [may] encourage parties to cache unanswered motions and, by doing so, disrupt the efficient function of the judicial process.”

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Franklin, 197 F.3d at 270. Thus, “[i]f a motion is not acted upon, a litigant had better renew it. He may not lull the judge into thinking it has been abandoned and then, after he has lost, pull a rabbit out of his pocket in the form of the forgotten motion.” *Id.* (quoting *United States v. Taglia*, 922 F.2d 413, 416 (7th Cir. 1991)).

We agree with the government that “failing to request and obtain rulings on such [raised-but-unruled-upon] claims is the functional equivalent of failing to bring the claims in the first place,” and such claims are therefore waived.² Moreover, plain error review is unavailable because “a defendant whose trial does not begin on time is deemed to have waived the right to move for dismissal.” *United States v. Brown*, 498 F.3d 523, 529–30 (6th Cir. 2007) (quoting *Zedner v. United States*, 547 U.S. 489, 494 (2006)).

Even if we ruled on Hagar’s claims he would still lose. Hagar’s first speedy trial claim is premised on the misunderstanding (based on a scrivener’s error) that he was arrested by federal authorities on July 7, 2016.³ But Hagar could not have been in federal custody on July 7. Hagar was arrested by Oregon state authorities in June 2016. He remained in state custody until his initial appearance in federal court on August 2, after the Marshals’ Service executed the federal writ on August 1. On August 2, Hagar was merely in the temporary custody of the Northern District of Ohio, pursuant to the writ of *habeas corpus ad prosequendum*. See *United States v. Munro*, 436 U.S. 340, 362 (1978); *Stewart v. Bailey*, 7 F.3d 384, 389 (4th Cir. 1993). The Speedy Trial clock was still not triggered since “only federal arrest, as distinct from state arrest, triggers the protections of the Speedy Trial Act.” *United States v. Copley*, 774 F.2d 728, 730 (6th Cir. 1985).

² In contrast, at the trial’s outset, Hagar requested a ruling on his motion *in limine* to preclude firearms evidence.

³ Perhaps this occurred because Hagar’s initial appearance was originally scheduled for July 7, 2016. That did not happen, however.

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In any event, Hagar was indicted 23 days later, on August 24, 2016, within 30 days. *See* 18 U.S.C. § 3161(b).

Hagar's second speedy trial act claim also falls flat. First, it is different from and contradictory to the argument he made before the district court. There, Hagar argued that his speedy trial waivers were based on his mistaken belief that the government had evidence of certain emails that created jurisdiction for the district court. On appeal, Hagar claims that the district court should have dismissed the superseding indictment under the Speedy Trial Act because he did not execute a speedy trial waiver when the superseding indictment was filed and more than 70 days elapsed between September 19, 2018 and February 26, 2019. We can therefore refuse to consider Hagar's argument. *See New Hampshire v. Maine*, 532 U.S. 742, 749–51 (2001). Second, Hagar forgets that he himself requested a continuance after the government filed the superseding indictment on September 11.

Even if we found a Speedy Trial Act violation, we would not dismiss the indictment with prejudice. Hagar's offenses were extremely serious. Hagar himself contributed to much of the delay in this case by filing numerous continuance motions and a request for new counsel. Hagar also has not shown actual prejudice from the delay such as loss of evidence, and there is not a whiff of prosecutorial bad faith. *See Sylvester v. United States*, 868 F.3d 503, 512 (6th Cir. 2017) (identifying the three factors this court considers when deciding to dismiss an action with or without prejudice). Thus, even assuming a Speedy Trial Act error, the government could re-indict Hagar.

B. Venue Claim

On appeal Hagar contends that the Northern District of Ohio was an improper venue and that the district court "did not have jurisdiction to impose a criminal judgment against him"

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because he did not send the emails to Ohio and did not know that they would be forwarded by individuals or automatically re-routed to the Eaton headquarters in Beachwood, Ohio, or the Goodyear Headquarters in Akron, Ohio. Hagar asserts that he should have been prosecuted in Oregon.

Hagar has a right to be tried in the state and district where he committed his crimes. *See* U.S. Const, art. III, § 2, cl. 3; U.S. Const, amend. VI; Fed. R. Crim. P. 18. But criminal offenses “begun in one district and completed in another,” may be “inquired of and prosecuted in any district in which such offense was begun, continued, or completed.” 18 U.S.C. § 3237(a); *see also United States v. Brika*, 416 F.3d 514, 527 (6th Cir. 2005) (applying a “substantial contacts” venue test).

Defects in venue generally must be asserted before trial. *United States v. Grenoble*, 413 F.3d 569, 573 (6th Cir. 2005). A court may not consider an untimely venue claim unless a defendant shows “good cause” for his untimeliness. Fed. R. Crim. P. 12(c)(3). However, if a venue defect is not apparent on the face of the indictment, a defendant may bring that challenge in a motion for acquittal at the close of the government’s case. *See United States v. Ramer*, 883 F.3d 659, 682 (6th Cir. 2018); *United States v. Lozoya*, 920 F.3d 1231, 1238 (9th Cir. 2019). If the venue challenge is properly preserved in the Rule 29 motion, we review the trial court’s denial of that motion “in the light most favorable to the prosecution.” *Grenoble*, 413 F.3d at 572.

Hagar did not bring a pre-trial change of venue motion, and he did not try to show “good cause” for that failure. He merely mentioned venue in his second speedy trial motion. He has therefore failed to preserve any facial challenge to venue. *Grenoble*, 413 F.3d at 573; Fed. R. Crim. P. 12(b)(3)(A)(i) and 12(c)(3).

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In his Rule 29 motion for judgment of acquittal, Hagar argued that the district court did not have jurisdiction over this case because the emails and correspondence occurred outside of the Northern District of Ohio and suggested that the case could only be tried in Oregon. He did not argue for a judgment of acquittal on venue grounds. The two concepts are distinct. *See, e.g., United States v. Obak*, 884 F.3d 934, 936–37 (9th Cir. 2018). He therefore forfeited the venue argument. *See United States v. Dandy*, 998 F.2d 1344, 1356–57 (6th Cir. 1993) (holding that when a defendant raises specific arguments in a Rule 29 motion, he forfeits arguments not made).

And, even if he had not forfeited his venue claim,⁴ it would fail because one of the victims, C.B., worked in Beachwood, Ohio at Eaton’s headquarters. Hagar sent threatening emails to C.B.’s Eaton email address. She received and reviewed them at her office in Beachwood, Ohio.⁵ Thus, venue was proper because the emails were sent from Oregon to C.B. in the Northern District of Ohio. *See United States v. Jeffries*, 692 F.3d 473, 483 (6th Cir. 2012), *abrogated on other grounds by Elonis v. United States*, 135 S. Ct. 2001 (2015) (holding that venue was proper in the Eastern District of Tennessee, where victims received threatening YouTube video via the internet sent from the Western District of Tennessee); *see also United States v. Singer*, 782 F.3d 270, 278 (6th Cir. 2015), *abrogated on other grounds by Musacchio v. United States*, 136 S. Ct. 709 (2016) (holding that in a mail fraud case venue is proper where the mail was sent or received).

Further, our “substantial contacts” test is also satisfied. *See Brika*, 416 F.3d at 527. “That test takes into account a number of factors—the site of the defendant’s act, the elements and nature of the crime, the locus of the effect of the criminal conduct, and the suitability of each district for accurate fact finding.” *Id.* (cleaned up). Eaton and Goodyear are both headquartered in the

⁴ The government acknowledges that it is possible to view Hagar’s “jurisdictional” challenge as raising venue.

⁵ Additionally, Count 1 of the superseding indictment referenced those messages because R.G., the cyberstalking victim, was related to C.G.

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No. 19-3591, *United States v. Hagar*

Northern District of Ohio and dealt with the effect of Hagar's actions from their respective Ohio headquarters. Thus, the "locus of the effect" of Hagar's conduct was felt in both Oregon and the Northern District of Ohio. *See id.* Several of the witnesses and much of the evidence was also located in Ohio.

That Hagar did not know his messages were "re-routed" or forwarded to the Northern District of Ohio is irrelevant. *See United States v. Houston*, 683 F. App'x 434, 438 (6th Cir. 2017) (observing, in a case involving interstate threats, that the "route" the defendant's threats took after he pronounced them were relevant to determining where "he would be subject to prosecution," regardless of the defendant's knowledge that the communications would be routed across state lines). That C.B. did not see all of the messages because Eaton's security office shielded her from them also does not matter. *Cf. Jeffries*, 692 F.3d at 483 (holding that the interstate threats statute "prohibits a communication containing any threat regardless of whether the threat reaches the target") (cleaned up). In short, the government's evidence easily satisfied the preponderance of evidence standard that venue was proper in the Northern District of Ohio. *See Grenoble*, 413 F.3d at 572 (a district court's decision to deny a properly preserved venue motion is reviewed de novo, and the government must show by a preponderance of evidence that venue was proper).

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FILED

AUG 16 2021

CASE No. 1: 16 CR 273

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

vs.

MICHAEL A. HAGAR

MOTION UNDER 28 U.S.C. § 2255 TO VACATE,

SET ASIDE, OR CORRECT SENTENCE BY

A PERSON IN FEDERAL CUSTODY.

Michael A. Hagar, Pro Se
Reg. 64124060
FCC Beaumont Low
P.O. Box 26020
Beaumont, TX 77720-6020

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A. Partridge, Legislative History of Title I of the Speedy Trial
Act of 1974, (Fed. Judicial Center 1980) 13, 14, 15, 16

A. Dershowitz, The Federalist Papers (Racehorse Publishing 2019) 13-14

STATEMENT OF THE ISSUE

The Petitioner is being held in violation of the Constitution, laws
or treaties of the United States.

ARGUMENTS PRESENTED

The Petitioner is being held in violation of:

- (1) The Speedy Trial Act, 18 U.S.C. §§ et seq., and the Fifth
Amendment Due Process Clause.
- (2) The Fifth Amendment Due Process Clause and the Separation of
Powers Doctrine.
- (3) The Fifth Amendment Due Process Clause for Prosecutorial
Misconduct and the Sixth Amendment right to effective assistance of counsel.
- (4) The Sixth Amendment right to a Speedy Trial.
- (5) The Sixth Amendment right to effective assistance of counsel.

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MOTION

- 1.(a) Name and location of court which entered the judgment of conviction you are challenging:
United States District Court For The Northern District of Ohio,
Eastern Division, 801 West Superior Avenue, Cleveland, Ohio, 44113.
(b) Criminal docket or case number: 1:16-CR-00273-DCN-1
- 2.(a) Date of judgment of conviction: June 7, 2019,
Amended judgment: June 11, 2019.
(b) Date of sentencing: June 7, 2019.
3. Length of sentencing: 60 months for each of counts one, two and three, to be served consecutively for a total term of 180 months.
4. Nature of crime: Count one 18 U.S.C. § 2261A(2)(B) and 2261(b)(6) Cyberstalking. Counts two and three: 18 U.S.C. § 875(c), Interstate Threatening Communication.
- 5.(a) What was your plea? Not guilty.
6. If you went to trial, what kind of trial did you have? Jury.
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes.
8. Did you appeal from the judgment of conviction? Yes.
9. If you did appeal, answer the following:
 - (a). Name of court: The United States Court of Appeals for the Sixth Circuit.
 - (b). Docket or case number: 19-3591.
 - (c). Result: Denied.
 - (d). Date of result: August 3, 2020.
 - (e). Citation to the case: United States v Michael A. Hagar, 822 Fed. Appx. 361, (6th. Cir. 2020).
 - (f). Grounds raised: I. The District Court erred when it failed to grant the Defendant's first Motion to Dismiss.
II. The Northern District of Ohio was not the proper venue for the prosecution of Mr. Hagar.
III. The District Court erred when it permitted the Government to introduce Mr. Hagar's lawfully possessed firearms, firearm parts, ammunition and other memorabilia at trial.

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- IV. The District Court erred when it failed to grant the Defendant's second Motion to Dismiss.
- V. The District Court erred when it failed to determine that R.G.'s Temporary Stalking Order was not lawfully issued and therefore invalid.
- VI. The District Court erred with (sic) it applied a six-level enhancement pursuant to USSG § 2A6.1(B)(1) and ultimately sentenced Mr. Hagar to a maximum consecutive sentence of imprisonment.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes.

If "Yes," answer the following:

- (1) Docket or case number: 20-6394
- (2) Result: Denied.
- (3) Date of result: January 11, 2021.
- (4) Citation to case: Not known.

(5) Grounds raised:

Question 1: Do the Article 3, Section 2, Clause 3 provision, the "trial shall be held in the State where the said Crime shall have been committed" and the Sixth Amendment provision, the trial "in the State and district wherein the crime shall have been committed which district shall have been previously ascertained by law," establish a tribunal that is part of the government structure and limit the district court's constitutional judicial power, Article 3, Section 2, Clause 1, to hear a case?

Question 2: Does 18 U.S.C. § 3232 limit the statutory Judicial power, 18 U.S.C. § 3231, of the district court to hear a case?

Question 3: Is 18 U.S.C. § 3237 a grant of jurisdiction, by Congress, to a district court giving the judicial power to hear a case for an offense committed within the district?

Question 4: Can a defendant raise the issue of improper venue in a motion to dismiss for a violation of the Speedy Trial Act and preserve the issue of improper venue for review on appeal?

Question 5: Should the Appeals Court have indulged a reasonable presumption against waiver, related to the issue of improper venue, and not presume acquiescence in the loss of a fundamental right?

Question 6: Did the Government violate Due Process by providing inaccurate information in the venue argument, and did the Appeals Court err when it reached its decision based on the inaccurate

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information, when the correct information was in the "Statement of the Case" of the same brief by the Government?

Question 7: Did the Appeals Court err when it relied on the "substantial contacts test" instead of "essential conduct element" and the erroneous view of the statute 18 U.S.C. § 115(c)(2), related to the meaning of an immediate family member, for finding that venue was proper in the Northern District of Ohio?

Question 8: Does the Speedy Trial Act confine the discretion of the district court as the Act mandates dismissal of the indictment upon violation of precise time limits? And should the Appeals Court indulge a reasonable presumption against waiver?

Question 9: Did the Appeals Court err, when it did not consider the second Motion to Dismiss; First, when it relied on *New Hampshire v. Maine* 532 U.S. 742, 749-51 (2001), to conclude that the argument was contradictory in the Appellant proceeding from the argument in the District Court? Second, when the Appeals Court claimed the Petitioner requested a continuance after the Superseding Indictment was filed?

Question 10: Does the Speedy Trial Act require a defendant to articulate the period of time that is unexcluded at the time the motion is filed?

Question 11: Did the Appeals Court err when it based its decision not to grant the Rule 29 Motion for Judgment of Acquittal; for improper service of the Temporary Protective Order on 18 U.S.C. § 2266(5); which defines a protective order, instead of 18 U.S.C. § 2265, which provides jurisdiction to other States to enforce a protective order from another State?

10. Other than the direct appeals listed above have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court? No.

11. N/A.

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.

GROUND 1: The Petitioner is being held in violation of the laws of the United States, the Speedy Trial Act, 18 U.S.C. §§ 3161, et seq., and the Fifth Amendment Due Process Clause, when the District Court did not dismiss the Petitioner's second Motion to Dismiss for violation of a speedy trial. Doc #: 81.

(a) Supporting Facts: The District Court did not dismiss Mr. Hagar's Superseding Indictment, Doc #: 77, as mandated by the Speedy Trial Act. On January 22, 2019, Mr. Hagar filed a Motion to Dismiss for violation of the Speedy Trial Act and the Sixth Amendment right to a speedy trial, prior to his trial, Doc #: 81. The trial began on

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February 26, 2019. Mr. Hagar's original Indictment was filed on August 24, 2016, Doc #: 10. There are more than seventy days between August 24, 2016 and February 26, 2019. The Court did not make an "ends of justice" finding on September 19, 2018, the day Mr. Hagar was arraigned on the Superseding Indictment, Doc #: 133, PageID #: 1267-1270. The Court did not make an "ends of justice" finding during the pre-trial hearing on November 27, 2018, Doc #: 80. There are 880 days from August 24, 2016 to January 22, 2019. The Fifth Amendment Due Process Clause protects a defendant's procedural due process rights. The due process clause protects State created liberty interest. The legislative history of the Speedy Trial Act demonstrates the purpose of the Act was to create an enforceable right to a speedy trial. The enforcement was directed at the courts and the prosecutors for the failure to bring a defendant to trial within the time limits of the Act. Congress has the authority to regulate the practices and the procedures of the federal courts. The relevant facts for Grounds 2, 3, 5A, 5B, 5C, and 5D, are herein incorporated as facts for Ground 1.

(b) Direct Appeal of Ground 1:

(1) If you appealed from judgment of conviction, did you raise this issue? Yes.

GROUND 2: The Petitioner is being held in violation of the Fifth Amendment Due Process Clause and the Separation of Powers Doctrine, when the Sixth Circuit Court of Appeals concluded the Petitioner waived his right to dismissal, usurping Congress's legislative authority, creating a new waiver provision for the Speedy Trial Act, when he did not request a ruling on the motions to dismiss for violation of speedy trial.

(a) Supporting Facts: The Speedy Trial Act has a waiver provision that defines when a defendant waives the right to dismissal of the indictment. Under Article 1, Section 8, Congress has the power to enact laws and create the inferior courts. This Constitutional power gives Congress the authority to dictate the process and procedures the courts must follow with regard to the Speedy Trial Act. Congress exercised its Constitutional power under the Necessary and Proper clause, when it created the process and procedures of the mandatory dismissal sanction and the waiver provision of the Act. Congress has delegated the power to the courts to make rules to regulate themselves, but those rules must be consistent with the Acts of Congress. The Speedy Trial Act is an Act of Congress. The relevant facts for Grounds 1, 3, 5A, 5B, 5C, and 5D, are herein incorporated as facts for Ground 2.

(b) Direct Appeal of Ground 2:

(1) If you appealed from judgment of conviction, did you raise this issue? No.

(2) If you did not raise this issue in your direct appeal, explain why: This issue is a result of the Appeals Court decision.

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GROUND 3: The Petitioner is being held in violation of the Fifth Amendment Due Process Clause, when the Government committed Prosecutorial Misconduct, using false information, (the I.P. address for Eaton's server) to obtain an arrest warrant and later an indictment against Mr. Hagar, violating the Petitioner's Sixth Amendment right to effective assistance of counsel, when the Government concealed the true location of Eaton's server for over a two year period.

(a) Supporting Facts: On June 14, 2016, FBI SA Hantz submitted to the court a sworn affidavit, which referred to the June 2, 2016 email that pertains to count 3 in the Original and Superseding Indictments. Paragraph 13 of the affidavit documents the Government possessed the the complete header information of the email, identifying an I.P. address, 151.110.126.183 registered to Eaton and located in Beachwood, OH, Doc #: 1-1, PageID #: 6. On August 24, 2016 the Government filed a 3 count indictment with count 3 pertaining to the June 2, 2016 email. Paragraph 7 of the Indictment alleges: "E-mails sent to Good-year and Eaton data centers located in the Northern District of Ohio." Doc #: 10, PageID #: 35. The relevant part of counts 2 and 3 alleges: "[T]he e-mail travelled to data centers maintained by Eaton in the Northern District of Ohio, ..." ID #: 38,39. Around July or August of 2018, the Government asked Mr. Hagar to agree to the stipulation, Eaton's server was located in the Northern District of Ohio. When Mr. Hagar refused to agree to the stipulation, the Government obtained a Superseding Indictment on September 11, 2018, with the references to Eaton's server being located in the Northern District of Ohio, having been removed. See counts 2 and 3 Doc #: 77, PageID #: 242-242. The Government notified Mr. Hagar's attorney around September 6, 2018, that Eaton's server was not located in the Northern District of Ohio. Mr. Hagar's attorney filed a continuance on September 6, 2018, Doc #: 75, PageID #: 234-235. The continuance states in part: "Due diligence demands a full vetting of this new indictment. ... Assistant U.S. Attorney Daniel Riedl has acquiesced to this request ..." ID #: 234. Each time Mr. Hagar signed a waiver or sought a continuance for the Speedy Trial Act, the Government either signed the waiver or agreed to the continuance. Doc #: 17, PageID #: 68-69, Doc #: 18, PageID #: 70-71, Doc #: 22, PageID #: 75-76, Doc #: 50, PageID #: 177-178, Doc #: 51, PageID #: 181-182, Doc #: 64, PageID #: 209, Doc #: 65 PageID #: 210-211, Doc #: 75, PageID #: 234-235. At the January 24, 2017 status hearing when Mr. Hagar signed Doc #: 22, PageID # 75-76, the Court said: "... as I understand now, the Government is ready, prepared to go forward, but you have no objection to the request for the continuance. Do you men?" Mr. Riedl replied: "No that's correct, Judge." Doc #: 132, PageID #: 1264. At the hearing on May 30, 2018, for Mr. Hagar's Motion to Replace Counsel, the Court asked the Government: "I would assume that you're prepared to go forward if we were to start trial Monday?" Mr. Riedl replied: "Yes, your Honor." Doc #: 131, PageID #: 1259. Without the knowledge of the true location of Eaton's server, Mr. Hagar was unable to prepare for his trial. The Government wanted Mr. Hagar to accept a plea agreement, Doc #: 101, PageID #: 362. All relevant facts for Grounds 1, 2, 4, 5A, 5B, 5C, and 5D are herein incorporated as facts for Ground 3.

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(b) Direct Appeal of Ground 3:

(1) If you appealed from judgment of conviction, did you raise this issue? No.

(2) If you did not raise this issue in your direct appeal explain why: An Appellant Attorney does not have to raise every nonfrivolous issue.

GROUND 4: The Petitioner is being held in violation of his Sixth Amendment right to a speedy trial, when the Government intentionally concealed the true location of Eaton's server for over two years.

(a) Supporting Facts: Mr. Hagar's second Motion to Dismiss for Violation of Speedy Trial is "... pursuant to the Sixth ... Amendment[] of the United States Constitution, ..." Doc #: 81, PageID #: 250. Mr. Hagar asserted, "... it is defendant's position that the government has attempted to impede the Constitution rights of the accused to a speedy trial." PageID #: 253. The Government has admitted it was aware Mr. Hagar wanted to proceed to trial. "We heard repeatedly that Mr. Hagar was not interested in any plea agreement; that he only wished to have a trial." Doc #: 101, PageID #: 362. According to the Writ of Habeas Corpus ad Prosequendum Returned Executed, was on August 1, 2016, Doc #: 116. Mr. Hagar's trial began on February 26, 2019. The length of delay is over two and a half years. The Government's Prosecutorial Misconduct hampered Mr. Hagar's ability to prepare his defense. The relevant facts for Grounds 1, 2, 3, 5A, 5B, 5C, and 5D are herein incorporated as facts for Ground 4.

(b) Direct Appeal of Ground 4:

(1) If you appealed from judgment of conviction, did you raise this issue? No.

(2) If you did not raise this issue in your direct appeal, explain why: An Appellant Attorney does not have to raise every nonfrivolous issue.

GROUND 5: The Petitioner is being held in violation of his Sixth Amendment right to effective assistance of counsel, when the Petitioner's attorneys, Mr. Jenkins and Ms. Serrat, provided ineffective assistance of counsel, for the following reasons.

(a) Supporting Facts: A. Mr. Hagar's attorneys did not obtain a copy of the June 2, 2016 email for count 3 of the Superseding Indictment, Doc #: 77, PageID #: 242, with the complete header information, referred to in paragraph 13 of the affidavit for the Complaint, Doc #: 1-1, PageID #: 6. Mr. Hagar informed his attorney, Mr. Jenkins, in a letter, dated September 11, 2018 of the importance of the document. Mr. Hagar received a letter from his attorney, Ms. Serrat, dated November 14, 2018, claiming the document was not part of his Superseding Indictment. Mr. Hagar repeatedly told his attorneys to obtain the document, but they did not attempt to do so. The document was to establish the burden of proof for Mr. Hagar's second Motion to Dismiss, Doc #: 81.

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B. Mr. Hagar did not instruct his attorneys to pursue a "jurisdiction" argument. Mr. Hagar did use the word "jurisdiction" in a letter dated September 11, 2018. Mr. Hagar's use of the word "jurisdiction" originated from FBI SA Hantz's use of the word in the applications for the search warrants for Mr. Hagar's email accounts. In the letter to Mr. Jenkins, Mr. Hagar identified and provided a copy of the relevant part of United States v Jefferson 674 F.3d 332, 364-369 (4th Cir 2012), related to improper venue for a wire fraud count. Mr. Hagar did instruct his attorneys to pursue an improper venue argument for his violation of the Sixth Amendment right to a speedy trial and for violation of the Speedy Trial Act. Mr. Hagar instructed his attorneys to pursue an improper venue defense at trial. Mr. Hagar's attorneys did not use the following Clackamas County Sheriff's reports GO 10 2015-34425, GO 10 2016-11774 and GO 10 2016-14957 at trial, as evidence the Government did not have proper venue. In the September 11, letter Mr. Hagar wrote about the Clackamas report: "My emails start in Oregon and ended in North Carolina being sent to Ryan Keen ..." The report GO 10 2016-14957 has a copy of the June 2, 2016 email, the email for Government exhibit 128 (count 3). The email shows it was completed at 6:12:59 PM EDT. The email was transmitted to Mr. Coberly, (who is in the NDOH), at 3:19 PDT or 6:19 EDT, by Mr. Keen. A delay of six minutes.

C. Mr. Hagar's attorneys failed to establish that C.B. is not an immediate family member to R.G. as defined by 18 U.S.C. § (c)(2)(B) for count 1 of the Superseding Indictment, Doc #: 77, PageID #: 240-241. C.B. lives in Ohio. R.G. lives in Oregon. They do not live together in the same household.

D. Mr. Hagar's attorneys failed to request the District Court to rule on Mr. Hagar's two Motions to Dismiss for Violation of Speedy Trial. Doc #: 31 and Doc #: 81. The Sixth Circuit concluded Mr. Hagar waived his claim to dismissal for violation of the Speedy Trial Act, 822 Fed. Appx. at 368.

E. Mr. Hagar's attorneys did not subpoena the Oregon Employment Department and obtain the information Eaton Corporation provided the Department, including the separation information the company is required to provide. At the sentencing hearing on June 7, 2019, Mr. Hagar pointed out the information in paragraph 69 of the PSR was false information, that was reported to Clackamas County Sheriff's Deputy Woodward, Doc #: 135, PageID #: 1307-1310. The Court did not believe Mr. Hagar, PageID #: 1312. The information in the PSR came from Clackamas County Sheriff's report GO 10 2015-34425, Page 2. Title 20 of the Code of Federal Regulations, requires an employer to provide information to the agency describing the reason for separation. A letter Mr. Hagar possesses from the Oregon Employment Department, with the Administrative Decision, provides some information from the separation notice. Under the heading, "Finding of Fact" item 2: "The claimant was discharged because his employer felt he was being disruptive to the company." Under the heading, "Legal Conclusion:" "Claimant was discharged but not for misconduct connected with work." Mark Elliot's testimony never mentioned anything about Mr. Hagar being discharged for throwing chairs. Doc #: PageID #: 746-750, Doc #: 104, PageID #: 786-790. Joseph Raulino testified what occurred between May, 2015 to the time of Mr. Hagar's discharge on November 23,

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2015, Doc #: 104, PageID #: 808-813. During Cross-examination, Mr. Raulino testified he was not present when it is alleged Mr. Hagar threw chairs and he was informed of it by his supervisor, Ms. Moen and HR Rep. Wrathell, PageID #: 826-827. More of Mr. Raulino's testimony relating to Mr. Hagar from May, 2015 to November, 2015 occurs at PageID #: 826-831.

F. Mr. Hagar's attorneys failed to obtain the invoices from Eaton's security company to show that Marc Elliott and Joseph Raulino gave false testimony at Mr. Hagar's trial. According to the PSR, Eaton spent \$41,016.00 for on-site security from November 2015 to May 31, 2016. Eaton also spent \$5,898.00 for 2 weeks of 24-7 on-site security and surveillance outside Hagar's former supervisor's home. Mr. Elliott testified that Eaton hired 24-7 on-site security for Mr. Raulino's home due to "some commentary" Mr. Hagar had allegedly said to another employee. Doc #: 103, PageID #: 753-754. Mr. Raulino testified about the alleged commentary and the security that was provided for his home starting around November 24, 2015, Doc #: 104, PageID #: 813. Mr. Elliott contradicted his prior testimony about ten minutes later, when asked if he hired the security for Mr. Raulino's home based on Government exhibit 104, an email dated February 27, 2016, Doc #: 103, PageID #: 761. There are 95 days between November 24, 2015 and February 27, 2016. Mr. Elliott testified Eaton hired private security on November 23, 2015, when Mr. Hagar was discharged, PageID #: 750. Mr. Elliott testified he hired the same security firm used on the day Mr. Hagar was discharged to provide security at the Wilsonville facility, PageID #: 754, Doc #: 104, PageID #: 793. Mr. Elliott's statement documented by the FBI 302 for the day Mr. Hagar was discharged: "A Wilsonville Police Officer was on-scene since Elliott feared Hagar may become uncontrollable or combative." Mr. Elliott's statement to the FBI is supported by Clackamas County Law Enforcement Event History Detail: C153270198. A call initiated at 09:46:29 on November 23, 2015 by an Eaton employee documents Eaton requested law enforcement presence when Mr. Hagar was to be discharged. The Event History documents at 15:55:04 "ONS-OK INFO PT." As documented in paragraph 9 of the affidavit for the Complaint: "... attachment titled 'Exception Form.pdf'" Doc #: 1-1, PageID #: 5, shows the Government is in possession of documentation that Mr. Hagar left Eaton's Wilsonville facility at 4:20 PM on November 23, 2015. The invoices will show what dates Eaton hired security for Mr. Raulino's home and for the Wilsonville facility.

G. Mr. Hagar's attorneys failed to subpoena T-Mobil for the Ping Data for Mr. Hagar's Prepaid Cellphone and to obtain a copy of the Spread Sheet detailing the expenses incurred by Goodyear from the private security firm Goodyear hired to observe Mr. Hagar. The Clackamas County Law Enforcement Event History Detail: C160740302 documents a call was initiated at 14:50:40 on March 14, 2016 by Mr. Raulino's supervisor, Makram Bou-Ismail. At 15:41:53 it is documented the false information Makram Bou-Ismail provided to the responding Law Enforcement Official: "MIKE HAGAR EX EMP PARKS ACROSS THE STREET AROUND THIS TIME DAILY." On March 15, 2016, Makram Bou-Ismail went to the Wilsonville Police Station to provide more false information as documented Event History: C160750359. It documents that Mr. Hagar sits across the street around 1500 hrs Mon-Fri. It is 30.7 miles from Mr. Hagar's home to Eaton's facility in Wilsonville. The invoices for Goodyear's

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security firm state the surveillance of Mr. Hagar began on February 22, 2016. The security was observing Mr. Hagar at 1500 hrs Mon-Fri. The invoices document Goodyear was charged 50 cents a mile. If the Spread Sheet itemizes each time Mr. Hagar left his home, individually it will lack a daily trip to Wilsonville. It would cost one surveillance vehicle about 31 dollars for a round trip. The Ping Data from Mr. Hagar's Prepaid Cellphone will document Mr. Hagar did not travel to Wilsonville at 1500 hrs Mon-Fri.

(b) Direct Appeal of Ground 5:

(1) If you appealed from judgment of conviction, did you raise these issues? No.

(2) If you did not raise these issues in your direct appeal, explain why: Mr. Jenkins was the Petitioner's trial and his Appellant Attorney.

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:

Grounds 2, 3, 4, and 5 were not presented as grounds in a federal court. The issues presented to the Supreme Court were issues that were related to the decision of the Appellant Court's proceedings. Ground 2 is a result of the Appellant Court's decision and was presented to the Supreme Court, but in a different manner. Ground 3 was discussed with the Petitioner's attorneys, but not pursued and was not raised due to their ineffective assistance of counsel. Ground 5 is a result of the Petitioner's attorneys deficient performance.

14. Do you have any motion, petition, or appeal now pending in any court for the judgment you are challenging? No.

15. Give the name and address, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

Darin Thompson
Office of the Federal Public Defender - Cleveland
Northern District of Ohio
750 Skylight Office Tower
1660 West Second Street
Cleveland, OH 44113

(b)(1) At the arraignment and plea on the original indictment:
Darin Thompson

(b)(2) At the arraignment and plea on the superseding indictment:
James Jenkins
Suite 2100
55 Public Square
Cleveland, OH 44113

(c) At trial: James Jenkins and
Marisa Serrat

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Suite 2100
55 Public Square
Cleveland, OH 44113

(d) At sentencing: James Jenkins and Marisa Serrat

(e) On appeal: James Jenkins

16. Were you sentenced on more than one court of an indictment, or more than one indictment, in the same court and at the same time? No.

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? No.

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitation as contained in 28 U.S.C. § 2255 does not bar your motion. Not applicable. The Supreme Court denied certiorari on January 11, 2021.

Therefore, the movant ask that the Court grant the following relief:

Vacate the judgment and dismiss the superseding indictment, with prejudice or conduct a sentencing hearing to consider additional factors for the sentence or any other relief to which movant may be entitled.

This motion and memorandum meet the requirement of Local Rule 10.1 the relevant part provides: "This Rule does not apply to documents filed by pro se litigants."

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on

August 5, 2021.

Executed on August 5, 2021

Michael A. Nagar

Signature of Movant

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Federalist Papers, P. 83.

"Sanctions alone are not necessarily sufficient. There will not be dramatic movement towards speedy trial unless both the courts and prosecutor's office are covered by the time limits." 1974 Senate Committee Report 22, reprinted in A. Partridge, 160.

The dismissal sanction is the command of Congress's policy with respect to a defendant's right to a speedy trial.

"Section 3162 is the heart of the speedy trial requirement, or rather, the teeth. ... If we are serious about implementing a requirement of trial within 60-120 days after arrest, we must provide sanctions that have some teeth." Prepared Statement of Representative Abner J. Mikva, 1971 Senate Hearing 128-29, reprinted in A. Partridge, 195-196.

"Our final point with respect to Title I of S. 895 is the importance of making clear in the legislative history of Title I that it is a Congressional method of giving effect to the Sixth Amendment right to a speedy trial By prescribing statutory deadlines for trial, it creates enforceable rights to a speedy trial[.]" Prepared Statement of Daniel Rezneck, 1971, Senate Hearing 36, reprinted in A. Partridge, 256.

Mr. Hagar's second motion clearly states: "November 27, 2016 marked the seventieth day after defendant's arraignment. Delaying the trial until well past the seventy days, is violative of Mr. Hagar's right to a speedy trial." Doc #: 81, PageID #: 254.

The motion fulfills Mr. Hagar's responsibility under the Act. The burden of proof supporting the motion is simple. "In ruling on a defendant's motion to dismiss the court must tally the unexcluded days. This, in turn, requires identifying the excluded days." *Zedner v United States* 547 U.S. 489, 507 (2006). The time between September 19, 2018 and January 22, 2019 was never excluded under section 3161(h) and was unexcluded time at the time the motion was filed. Thus proof supporting the motion to dismiss.

The Circuit Court violated the Separation of Powers Doctrine when it created a new waiver provision and applied it against Mr. Hagar. "[A] court lacks the power to exact a penalty that has not been authorized by a valid criminal statute." *Welch v United States* 194 L. Ed.2d 387, 403 (2016). The authorities the Circuit Court relied on for "Similar claims" are issues that fall under the Federal Rules of Criminal Procedure. *United States v Hagar* 822 Fed. Appx. at 358. "Congress has undoubted power to regulate the practices and procedure of federal courts and may exercise that power by delegating to this or other federal courts authority to make rules not inconsistent with the statutes or Constitution of the United States." *Sibbach v Wilson & Co.* 312 U.S. 1, 9-10 (1941).

The Circuit Court's decision is clearly inconsistent with the waiver provision of the Speedy Trial Act and the court must follow Congress's policy. "[T]he time limits and dismissal sanction of the Speedy Trial Act, assuredly constitute a valid procedural directive which preempt any contrary assertion of inherent power of the court." *United States v Brainer* 691 F.2d 691, 697 (4th Cir. 1982).

The Ninth Circuit recognized when the district court never ruled on a defendant's in propria persona motion to dismiss that the motion was continuing and preserved the objection to the delay. "Thus, the motion remained live when trial commenced on October 6, preserving for appeal

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Hall's Speedy Trial Act challenge to the entire pretrial delay."
United States v Hall 181 F.3d 1057, 1061 (9th Cir. 1999).

ARGUMENT SUPPORTING GROUND 3

On June 14, 2016, the Government used false information (the location of Eaton's server) to obtain an arrest warrant against Mr. Hagar. The Government then used the false information to obtain an indictment filed against Mr. Hagar on August 24, 2016, Doc #: 10. The Government then concealed the true location of Eaton's server for over a period of two years. This intentional deception interfered with Mr. Hagar's ability to prepare his defense. "Government violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense." Strickland v Washington 466 U.S. 668, 686 (1984).

In the context of a defendant seeking a continuance related to counsel the D.C. Circuit said: "[S]tripping away the opportunity to prepare for trial is tantamount to denying altogether the assistance of counsel for the defense." United States v Buxton 584 F.2d 485, 489 (D.C. Cir. 1978).

For Mr. Hagar's second Motion to Dismiss, the Circuit Court concluded: "Hagar also has not shown actual prejudice from the delay such as loss of evidence, and there is not a wiff of prosecutorial bad faith." Hagar 822 Fed. Appx. at 369. The information the Government concealed was an important piece of evidence which was intended to support the burden of proof for the second Motion to Dismiss. But for Mr. Hagar's attorneys ineffective assistance of counsel, Mr. Hagar would have proved the entire cause of a more than two year delay of the commencement of trial was caused by the Government's misconduct.

In the Government's Response In Opposition To Motion To Dismiss the Government wrote: "Hagar argues he would not have given his consent to the continuances had he been given additional information." Doc #: 82, PageID #: 258. Later the Government wrote: "Nothing in the statute confers upon a defendant the right to override the court's determination by merely withholding consent." PageID #: 259. But Mr. Hagar's motion provides: "His waivers of Speedy Trial should be set aside as they were signed under the mistaken belief that the federal government had evidence of the emails ... having traveled through this Court's jurisdiction." Doc #: 81, PageID #: 253.

18 U.S.C. § 3161(h)(7)(C) does provide Mr. Hagar the ability to request the Court to set aside the waivers and continuances. The relevant part of 18 U.S.C. § 3161(h)(7)(C) provides: "No continuance under subparagraph (A) of this paragraph shall be granted because of ... lack of diligent preparation."

The Government should have known the true location of Eaton's server prior to obtaining the original indictment, and if the Government intentionally deceived the court and the defendant, then the continuances were agreed to based on fraud. The Government waited until six days before Mr. Hagar's trial was to begin (September 17, 2018) to correct the error related to Eaton's server, by obtaining a superseding indictment on September 11, 2018.

The legislative history supports Mr. Hagar's position that the continuances should never have been granted.

"When case is set down for trial on a particular day or week

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under the speedy trial provision, the time scheduled for trial is more than just a target date, it is a strong admonition to all parties to plan the schedules accordingly so that delay based on ... inadequate preparation ... will not jeopardize the disposition of the case which could be detrimental to the interest of the defendant, the Government, or society. Section 3161(h)(8)(C) expressly provides that ... lack of diligent preparation ... [is] not proper grounds for granting a continuance." 1974 House Committee Report 29, reprinted in A. Partridge, 167-168.

The Government abused the continuance provision as a tactic to obtain an advantage over Mr. Hagar. The Government hoped Mr. Hagar would accept a plea agreement which would have concealed the Government's deception forever. Mr. Riedl at the beginning of voir dire:

"Pursuant to Frye and Lafler, the Government would like to make a record of the fact that the Government did attempt to make a good faith effort to negotiate a plea agreement with Mr. Hagar with current counsel as well as his previous attorneys.

We heard repeatedly that Mr. Hagar was not interested in any plea agreement; that he only wished to have a trial. Therefore, no formal offers were made.

However, the Government did attempt to negotiate a plea agreement, and it's our understanding that Mr. Hagar rejected any attempts to negotiate a plea in this case." Doc #: 101, PageID #: 362.

ARGUMENT SUPPORTING GROUND 4

The Supreme Court in *Barker v Wingo* articulated four factors that must weigh in the defendant's favor to establish a violation of the Sixth Amendment right to a Speedy Trial. *Barker v Wingo* 470 U.S. 514, 530 (1972). The four factors are 1) length of the delay, 2) reason for the delay, 3) defendant's assertion of right to speedy trial, 4) prejudice suffered as a result of the delay. All four factors weigh in favor for Mr. Hagar.

First, the length of the delay is over two and a half years from the date on the Writ of Habeas Corpus ad Prosequendum Return Executed, which is August 1, 2016, Doc #: 116, to the day Mr. Hagar's trial began on February 26, 2019.

Second, the reason for the delay is solely contributed to the Government intentionally concealing the location of Eaton's server for over a two year period of time.

Third, Mr. Hagar asserted his right to a speedy trial in the second Motion to Dismiss, Doc #: 81. "[P]ursuant to the Sixth ... Amendment[] of the United States Constitution, ..." PageID #: 250. "[I]t is defendant's position that the government has attempted to impede the Constitutional rights of the accused to a speedy trial." PageID #: 253.

Fourth, Mr. Hagar was prejudiced by the Government's delay when it intentionally concealed the location of Eaton's server, which prevented Mr. Hagar and his attorneys from preparing his defense. "A deliberate attempt to delay the trial in order to hamper the defense should be weighed heavily against the government." *Barker v Wingo* 470 U.S. 514, 531 (1972).

In *United States v Dogget* discussing about *Barker* the court concluded that a bad faith delay caused by the Government would "make

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relief virtually automatic..." United States v Dogget 505 U.S. 647, 656-657 (1992).

ARGUMENT SUPPORTING GROUNDS 5A, 5B, AND 5C

Mr. Hagar's attorneys, Mr. Jenkins and Ms. Serrat provided ineffective assistance of counsel when they intentionally did not attempt to obtain a copy of the June 2, 2016, email with the complete header information listing the IP addresses, including the Eaton server IP address, Doc #: 1-1, PageID #: 6. This email is the same email for count 3 of the superseding indictment. Doc #: 77, PageID #: 242.

They also intentionally argued that the court lacked jurisdiction of the offense, instead of improper venue. They also failed to argue that C.B. was not an immediate family member as provided by 18 U.S.C. § 115(c)(2), to R.G. for count 1, Doc #: 77, PageID #: 240-241.

"A lawyer shall abide by a clients decision concernig the objectives of representation ... and shall consult with the client as to the means by which they are to be pursued ..." Jones v Barnes 363 U.S. 745, note 6 (1983). As Mr. Jenkins and Ms. Serrat did not obtain the June 2, 2016, email with the header information and they did not use the copy of the email from the Clackamas County Sheriff's report GO 10 2016-14957, both of which are the same email for count 3 of the superseding indictment, they intentionally sabotaged Mr. Hagar's case.

The three Clackamas County Sheriff's reports and the June 2, 2016, email with the header information clearly demonstrates that venue was improper. "A continuing offense is a continuous act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy." (citation omitted). United States v MidState Horticultural Co. 306 U.S. 161, 166 (1939).

Mr. Hagar's emails to Eaton email addresses that were forwarded to the Northern District of Ohio were not "set on foot by a single impulse" nor were they "an unintermittent force." The relevant conduct of 18 U.S.C. § 875(c) is: "Whoever transmits." The copy of the email in the Clackamas County Sheriff's report clearly demonstrates "Who Transmitted" the email to the Northern District of Ohio and when. Ryan Keen (the individual who received the email in North Carolina) sent the email to Marc Elliott and Matthew Coberly (who is in the NDOH) at 3:19 PM (PDT) or 6:19 EDT. The time on Mr. Hagar's email is 6:12:59 PM EDT, GO 10 2016-14957, page 4. The six minute gap is clearly not an "unintermittent force."

This also demonstrates that paragraph 9 of the Superseding Indictment is false. "At all times relevant to this Superseding Indictment, e-mail sent to Eaton e-mail addresses were accessible by Eaton employees in the Northern District of Ohio." Doc #: 77, PageID #: 238.

During Matthew Coberly's testimony when asked about exhibit 128, (the email for count 3): Q. Okay. Where did you receive this email?

A. At my office in Beachwood.

Q. And what day did you receive it?

A. I believe it was the same day, Doc #: 102, PageID #: 498.

With the Sheriff's report Ms. Serrat could have asked the following:

Q. You did not receive the email of exhibit 128 did you, because the email you received had the following message from Ryan Keen: "This one is pretty threatening, Marc please forward to your contacts at clackamas and for becky to send to portland. Burwell was on this

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one so he will see it. Jennifer use as you see fit for tomorrows hearing. Clackamas report GO 10-2016-14957, Page 4.

This was the email Matthew Coberly received in the Northern District of Ohio, not the one he testified he received. Nor did he have access to it until Ryan Keen sent it to him. Mr. Hagar's emails began in Oregon, they continued from a hotmail.com server in San Antonio, TX, travelling through the servers listed by the IP addresses on the header information. It arrived at Eaton's server (which is not in the Northern District of Ohio), it went to Ryan Keen's inbox and the transmission was completed when Ryan Keen read the email in North Carolina.

Mr. Jenkins and Ms. Serrat did not ask for jury instructions for improper venue. They argued "jurisdiction" and not improper venue and they did it intentionally to sabotage Mr. Hagar's defense.

Mr. Hagar's attorneys did not identify that C.B. and R.G. did not live in the same household and therefore did not meet the definition of immediate family members as defined by 18 U.S.C. § 115(c)(2)(B). 18 U.S.C. § 115(c)(2)(B) provides: "immediate family member of individual means any other person living in his household and related to him by blood or marriage."

The word "and" means: together with; as well as.

The word "or" means: an alternative.

18 U.S.C. § 115(c)(2)(B) reads as follows: (1) any other person living in his household as well as related to him by blood.

The alternative is: (2) any other person living in his household as well as related to him by marriage.

C.B. clearly does not live in the same household as R.G. and does not meet the definition of an immediate family member under 18 U.S.C. § 115(c)(2)(B). C.B. does not provide venue for count 1.

ARGUMENT SUPPORTING GROUND 5D

"Counsel's failure to make a meritorious STA motion may constitute ineffective assistance." (citation omitted), *United States v Brown* 819 F.3d 800, 823 (6th Cir. 2016). The record clearly demonstrates Mr. Jenkins and Ms. Serrat did not request a ruling for the two Motions to Dismiss for Violation of Speedy Trial. Mr. Hagar's attorneys did not seek a ruling on the motions, for to do so would have required them to articulate the issues related to improper venue and the June 2, 2016 email with the header information. Their performance during trial clearly demonstrates they had no interest in presenting any evidence of the Government's misconduct. Mr. Hagar's attorneys acted on behalf of the Government, not on the behalf of Mr. Hagar.

ARGUMENT SUPPORTING GROUNDS 5E, 5F, AND 5G

Had Mr. Hagar's attorneys, Mr. Jenkins and Ms. Serrat obtained the information Eaton provided to the Oregon Employment Department, it would have shown Ryan Keen's statement to Clackamas County Sheriff's Deputy Woodward was false. As documented on page 2 of Clackamas County Sheriff's report GO 10-2015-34425: "Mr. Keen said the reason Mr. Hagar was let go was because he would throw chairs and cuss and they have a policy against work place violence." Also on page 2: "Mr. Keen said it was a just termination when Mr. Hagar was let go, there an internal investigation into the matter."

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Title 20 of the Code of Federal Regulations, Part 602, Appendix A to Part 602, Section 6014 provides in part:

"Where workers are separated, employers are required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits."

In the Administrative Decision letter from the Oregon Employment Department it has a heading "Laws/Rules," and it list ORS 657.176 and OAR 472-030-0038. ORS 657.176 Grounds and procedures for disqualification; rules, provides in part: (2) An individual shall be disqualified from the receipt of benefits ... if the authorized representative designated by the director finds that the individual: (a) Has been discharged for misconduct connected with work. OAR 471-030-0038 Work Separation provides in part: (1)(c) As used in this rule, "wantonly negligent" means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee. (3)(a) As used in ORS 657.176(2)(a) and (b), a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct.

Had Mr. Hagar been terminated as Ryan Keen told Deputy Woodward he never would have collected unemployment benefits, Marc Elliott and Joseph Raulino testified that private security was provided at Mr. Raulino's home after Mr. Hagar was fired on November 23, 2015, because an employee had said Mr. Hagar was going to hurt Mr. Raulino. If Marc Elliott's and Joseph Raulino's testimony was true then Ryan Keen would not needed to lie to Deputy Woodward. He simply needed to tell her he was concerned about Mr. Raulino's safety.

Mr. Hagar's email (exhibits 100, 100-A, 100-B) to Hans Van Dyke occurred on December 25, 2015. Ryan Keen's report was around 3:30 AM PST on December 26, 2015. As documented on page 2 of the report: "Mr. Keen said ... he was more worried about Mr. Hagar's mental state than the safety of current employees."

If Mr. Hagar had the T-Mobile Ping Data for his Prepaid Cellphone as well as the information of the Spread Sheet detailing the cost incurred by Goodyear from the security firm they hired, Mr. Hagar would have shown that Ryan Keen was not the only Eaton employee to provide false information to the Clackamas County Sheriff's Office/Wilsonville Police.

Ryan Keen and Makram Bou-Ismael did not tell Clackamas County Sheriff's Deputy Blair they lied to law enforcement officers. According to the Clackamas County Sheriff's report GO 10 2016-11774, which related to Mr. Hagar's arrest for Telephone Harassment ORS 166.090, on May 3, 2016, on 4/26/2016 Deputy Blair spoke to Marc Elliot and Ryan Keen about Mr. Hagar. Page 4.

Related to the arrest of Mr. Hagar, Deputy Blair documented on pages 6-7: "During the transport he talked (Mr. Hagar) to me nonstop ... He believes a false report was filed against him in December of 2015, but could not tell me what report was, or who filed it."

Ryan Keen and Makram Bou-Ismael concealed from R.G. that it was

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they who made a report and provided false information to law enforcement. R.G. testified she did not file a police report prior to May of 2016, Doc #: 104, PageID #: 903.

A. So. I just didn't want to get involved or do anything.

Q. And was that in part on the advice of your HR department?

A. They -- they said do what makes you comfortable and I had said I don't want to be a part at all so I'm not going to respond. Doc #: 104, PageID #: 905-906.

It is documented in the Clackamas County Sheriff's report GO 10 2015-34425 on page 2: "...Ryan Keen, who said he is the director of Human Resources for the company Eaton."

R.G. also testified:

Q. After you received these emails and others, were you engaged with your HR department throughout this?

A. Yes.

Q. At some point did they suggest that you might get a stalking order --

A. Yes.

Q. -- against Mr. Hagar? Did you take steps to get the stalking order?

A. I did. Doc#: 104, PageID #: 908-909.

Because Mr. Hagar's attorneys did not obtain the information from the Oregon Employment Department, the invoices from Eaton's private security firm, the Ping Data from T-Mobile and the Spread Sheet from Goodyear, Mr. Hagar did not have them as information for the court to consider at the sentencing hearing on June 7, 2019. "As a matter of due process, an offender may not be sentenced on the basis of mistaken facts or unfounded assumptions. *Townsend v. Burke*, 334 U.S. 736, 740-741, 92 L. Ed. 1690, 68 S. Ct. 1252 (1948)." *Robert v. United States*, 445 U.S. 552, 563 (1980).

The court could not have shown "reasoned judgment" for the Guidelines sentence of 180 months. The "court's concern for the public safety" is based on false information provided by Ryan Keen and Makram Bou-Ismaïl. The voluminous evidence of Hagar's enmity towards his former coworker, "is based on false testimony of Marc Elliott and Joseph Raulino. See Circuit Courts conclusion, *United States v. Hagar* 822 Fed. Appx. 361, 374 (6th Cir. 2020).

The court could not consider the effect that Ryan Keen, Makram Bou-Ismaïl, Marc Elliott, and Joseph Raulino intentional concealment of their deception had on others, and whether the financial cost to Eaton was a result of that deception. This information was also not available to the court when it applied the 6 point enhancement under U.S.S.G § 2A6.1(b)(1), intent to carry out such threat.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL A. HAGAR,	)	CASE NO.: 1:16CR273
	)	
Defendant-Petitioner,	)	
	)	JUDGE DONALD C. NUGENT
v.	)	
	)	<u>GOVERNMENT'S RESPONSE IN</u>
UNITED STATES OF AMERICA,	)	<u>OPPOSITION TO MOTION TO VACATE,</u>
	)	<u>SET ASIDE, OR CORRECT SENTENCE</u>
Plaintiff-Respondent.	)	<u>PURSUANT TO 28 U.S.C. § 2255</u>

Michael A. Hagar, who is currently serving a 180-month sentence for cyberstalking and making threatening communications, moves this Court to vacate, set aside, or correct his sentence pursuant to Title 28, United States Code, Section 2255. As set forth below, Hagar's Motion is without merit and should be denied without a hearing.

I. FACTUAL AND PROCEDURAL BACKGROUND

Following a jury trial in 2019, Hagar was convicted of cyberstalking in violation of a protection order, in violation of 18 U.S.C. §§ 2261A(2)(B) and 2261(b)(6) (Count 1); and two counts of making an interstate threatening communication, in violation of 18 U.S.C. § 875(c) (Counts 2-3). (R.77: Superseding Indictment, PageID 237-42; R.98: Judgment, PageID 355-57).

Hagar worked for the Goodyear and Eaton corporations, both of which fired him for work-related misconduct. Hagar retaliated by creating multiple email and social media accounts that he used to send harassing and threatening messages to numerous Goodyear and Eaton employees. Over the course of several weeks, Hagar's behavior escalated, and he sent harassing and threatening messages to law enforcement officers, prosecutors, and others. Hagar learned some of his victims' home addresses and contacted victims' family members. One victim obtained a civil protection order against Hagar, which he promptly violated. His criminal

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conduct culminated in a series of emails in which he made direct threats to shoot his victims. Hagar was arrested the following day and a search of his residence revealed numerous firearms, including rifles and handguns, and thousands of rounds of ammunition. (R. 103: Trial Trans., PageID 642-73).

Hagar was sentenced to 60 months on each of the three counts, to be served consecutively, for an aggregate sentence of 180 months. (R. 135: Sentencing Trans., PageID 1316). The court further ordered Hagar to pay \$155,654 to Eaton, \$403,832.41 to Goodyear, and a \$300 special assessment, and to serve three years of supervised release upon his release from incarceration. (*Id.*).

Hagar filed a timely notice of appeal on June 24, 2019. (R.115: Notice of Appeal, PageID 1230-31). In that appeal, Hagar contended, among other things, that this Court erred when it failed to grant his motions to dismiss (based on the Speedy Trial Act), and that the Northern District of Ohio was not the proper venue for trial. The Sixth Circuit affirmed all judgments of the district court in August 2020. (Docket No. 19-3591). Hagar's petition for certiorari was denied in January 2021. (Docket No. 20-6394).

On August 16, 2021, Hagar filed the instant Motion to Vacate under 28 U.S.C. § 2255. (R. 148: Motion, PageID 1435). Hagar's Motion presents (1) meritless claims of ineffective assistance of counsel; (2) claims that were already fully litigated on direct appeal, and (3) claims that could have been, but were not, raised on direct review. (*Id.*). Accordingly, Hagar's Motion should be denied without a hearing.

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II. LAW

A. A SECTION 2255 MOTION TO VACATE MAY ONLY PROCEED ON LIMITED GROUNDS

Title 28, United States Code, Section 2255, sets forth the four grounds upon which a federal prisoner may base a claim for relief: “(1) ‘that the sentence was imposed in violation of the Constitution or the laws of the United States;’ (2) ‘that the court was without jurisdiction to impose such sentence;’ (3) ‘that the sentence was in excess of the maximum authorized by law;’ or (4) that the sentence ‘is otherwise subject to collateral attack.’” Hill v. United States, 368 U.S. 424, 426-27 (1962). A prisoner seeking relief under Section 2255 “must allege as a basis for relief: (1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law that was so fundamental as to render the entire proceeding invalid.” Mallett v. United States, 334 F.3d 491, 497 (6th Cir. 2003). A petitioner seeking to set aside his sentence pursuant to Section 2255 has the burden of “sustaining [his] contentions by a preponderance of the evidence.” Pough v. United States, 442 F.3d 959, 964 (6th Cir. 2006) (quotation omitted). Indeed, to “obtain collateral relief a prisoner must clear a significantly higher hurdle than would exist on direct appeal.” United States v. Frady, 456 U.S. 152, 166 (1982). “Once the defendant’s chance to appeal has been waived or exhausted,” the courts “are entitled to presume that [the defendant] stands fairly and finally convicted.” Id. at 164.

B. LEGAL STANDARD FOR ESTABLISHING INEFFECTIVE ASSISTANCE OF COUNSEL ON SECTION 2255 COLLATERAL REVIEW

To succeed in a claim that his counsel was constitutionally ineffective, a petitioner must demonstrate both inadequate performance by counsel and prejudice resulting from that inadequate performance. Strickland v. Washington, 466 U.S. 668, 687 (1984); Ross v. United States, 339 F.3d 483, 491-92 (6th Cir. 2003). “The benchmark for judging any claim of

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ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result."

Strickland, 466 U.S. at 686. Under the test set forth in Strickland, the defendant must establish the following:

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. Unless a defendant makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable.

Id. at 687.

Judicial scrutiny of counsel's performance "must be highly deferential." Id. at 689. The focus is on the adequacy of counsel's actual performance, not hindsight potential for improvement. Coe v. Bell, 161 F.3d 320, 342 (6th Cir. 1998). His defense counsel's competence is presumed, and Hagar must rebut that presumption by proving, not simply alleging, that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy. Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); Cobb v. Perini, 832 F.2d 342, 347 (6th Cir. 1987). A reviewing court should avoid second guessing counsel and must ensure that "every effort is made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. Indeed, the Sixth Circuit has recognized the necessity of affording defense counsel wide latitude in making trial decisions. "Counsel may exercise his professional judgment with respect to the

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viability of certain defenses and evidentiary matters without running afoul of the Sixth Amendment.” Lewis v. Alexander, 11 F.3d 1349, 1353-54 (6th Cir. 1993).

Before a hearing on a Section 2255 petition must be held, “the petition must be accompanied by a detailed and specific affidavit which shows that the petitioner has actual proof of the allegations going beyond mere unsupported assertions.” Barry v. United States, 528 F.2d 1094, 1101 (7th Cir. 1976) (emphasis added). A Section 2255 petitioner is not entitled to a hearing upon his claim of ineffective assistance if his supporting affidavit makes only a conclusory claim without presenting a factual question of a violation. Turner v. United States, 183 F.3d 474, 477-78 (6th Cir. 1999). Furthermore, it is a matter for the Court’s discretion whether to admit and receive such affidavits as evidence. Bofford v. Marshall, 751 F.2d 845, 853 (6th Cir. 1985) (citations omitted).

To establish prejudice, the petitioner must show a reasonable probability that, but for his attorney’s errors, the proceedings would have produced a different result. Ross, 339 F.3d at 492 (citing Strickland, 466 U.S. at 694). If a court may more easily dispose of an ineffective assistance claim based on lack of prejudice, it should follow that route. Mallett, 334 F.3d at 497 (citing Strickland, 466 U.S. at 697).

An error by counsel, “even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Id. at 691. Deficiencies in counsel’s performance must instead “be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.” Id. at 692. It is not enough for the defendant to show “that the errors had some conceivable effect on the outcome of the proceeding” as virtually “every act or omission of counsel would meet this test.” Id. at 693. To establish prejudice, the “defendant must show that there is a reasonable probability that, but for

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counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

C. CLAIMS ALREADY RAISED ON DIRECT APPEAL

A Section 2255 motion may not be used to relitigate an issue that was raised on direct appeal. DuPont v. United States, 76 F.3d 108, 110 (6th Cir. 1996). See also Giraldo v. United States, 54 F.3d 776, 1995 WL 290354, *2 (6th Cir. 1995) (unpublished) ("It is well settled that a § 2255 motion may not be employed to relitigate an issue that was raised and considered on appeal absent highly exceptional circumstances, such as an intervening change in the law.").

D. FAILURE TO RAISE A CLAIM AT TRIAL OR ON DIRECT APPEAL

Finally, arguments not raised at trial or on direct appeal may be deemed procedurally defaulted. Indeed, a petition under Section 2255 may not be used as a second opportunity to review issues that could have been, but were not, raised on direct appeal, unless the petitioner can demonstrate "cause to excuse his failure to appeal the issue and actual prejudice."¹ Ratliff v. United States, 999 F.2d 1023, 1025 (6th Cir. 1993) (citing Frady, 456 U.S. at 167-68). To satisfy the cause and prejudice standard, a defendant must "shoulder the burden of showing, not merely that the errors at trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage." Frady, 456 U.S. at 170.

¹ The only exception to the "cause and prejudice" requirement is the "actual innocence" exception: if a petitioner cannot establish cause and prejudice for his procedural default, he cannot have his claim heard on collateral review unless he establishes "actual innocence." See Bousley v. United States, 523 U.S. 614, 622 (1998). Hagar does not assert that he is actually innocent.

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III. ARGUMENT

The claims advanced in Hagar's pro se petition for relief under Section 2255 can, for the purpose of response, be divided into three broad categories. First, Hagar makes claims of ineffective assistance of counsel. Second, Hagar advances claims that were fully litigated at trial and on appeal. Third, he advances claims that could have been, but were not, raised on direct review. As discussed above, the principles of habeas law governing such assertions are well settled. Hagar's specific claims are addressed below.

A. HAGAR WAS AFFORDED EFFECTIVE ASSISTANCE OF COUNSEL

Hagar contends trial counsel was ineffective for failing to procure various invoices, records, and documents. (See R. 148: Motion, "Ground 5(a), (c), (e), and (f)," PageID 1442-44). But unless Hagar specifically explains what, in his view, counsel should have investigated/obtained, and why, he cannot show that counsel was ineffective for not conducting further investigation. See United States v. Robson, 307 Fed. App'x. 907, 911 (6th Cir. 2009) (declining to review ineffectiveness claim because the record did not show what information could have been further investigated or how it might have altered the outcome of the case). Hagar does not explain how the various invoices, records, and email would have affected the ultimate outcome of his trial. See, e.g., Rompilla v. Beard, 545 U.S. 374, 382-83 (2005) ("[T]he duty to investigate does not force defense lawyers to scour the globe on the off chance something will turn up."). Indeed, it is Hagar's burden to set forth adequate facts to establish that he is entitled to relief, and failure to do so is fatal. See, e.g., LeCroy v. United States, 739 F.3d 1297, 1321 (11th Cir. 2014) ("the burden of proof . . . on a § 2255 petition belongs to the petitioner"); Wilkins v. United States, 754 F.3d 24, 28 (1st Cir. 2014) (same); O'Malley v. United States, 285 F.2d 733, 735 (6th Cir. 1961) ("Conclusions, not substantiated by allegations of fact with some

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probability of verity, are not sufficient to warrant a hearing,” much less relief); Short v. United States, 504 F.2d 63, 65 (6th Cir. 1974) (holding that if “claims are stated in the forms of conclusions without any allegations of fact in support thereof,” a § 2255 motion is “legally insufficient”); Wogenstahl v. Mitchell, 668 F.3d 307, 335 (6th Cir. 2012) (“Merely conclusory allegations of ineffective assistance are insufficient to state a constitutional claim.”).

Although couched in terms of ineffective assistance of counsel, Hagar also advances an improper venue argument. Hagar contends trial counsel was ineffective in pursuing this issue pre- and post-trial. (R. 148: Motion, “Ground 5(b),” PageID 1443). But this claim was raised on direct appeal, and Hagar cannot now use Section 2255 to relitigate an issue already decided adversely to him. See DuPont v. United States, 76 F.3d 108, 110 (6th Cir. 1996). See also United States v. Hagar, 822 F. App’x 361, 368 (6th Cir. 2020), cert. denied, 141 S. Ct. 1115, 208 L. Ed. 2d 557 (2021) (“And, even if he had not forfeited his venue claim, it would fail because one of the victims, C.B., worked in Beachwood, Ohio at Eaton’s headquarters.”).

Finally, Hagar claims trial counsel was ineffective for failing to request that the District Court rule on his two Motions to Dismiss. (R.148: Motion, “Ground 5(d),” PageID 1443). Hagar correctly notes that the Sixth Circuit concluded that he waived his claim to dismissal for speedy trial violations. See Hagar, 822 F. App’x at 368. But Hagar fails to note that the Sixth Circuit went a step further and opined that had they ruled on his speedy trial claims, “he would still lose” on the merits. Id. With respect to his first Speedy Trial Act claim, even if Hagar’s presence in the Northern District of Ohio on August 1, 2016, did somehow trigger Speedy Trial Act protections, the grand jury indicted Hagar 23 days later, on August 24, 2016, or within 30 days. 18 U.S.C. § 3161(b); (R.10: Indictment, PageID 34-39). Hagar’s own continuance motion on September 6, 2018, likewise, defeats his second claim on its merits, because it was Hagar’s

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own actions that caused the continuance of his trial. Counsel is under no obligation to propound frivolous arguments (see Krist v. Foltz, 804 F.2d 944, 946-47 (6th Cir. 1986)), and Hagar cannot show a reasonable probability that, but for his attorney's failure to request a ruling on his motions to dismiss, the proceedings would have produced a different result. Ross, 339 F.3d at 492 (citing Strickland, 466 U.S. at 694).

Hagar was effectively represented throughout the pendency of his case and his counsel performed exactly as one would reasonably expect. Since judicial scrutiny must be "highly deferential" according to Strickland, it is reasonable to conclude that counsel exercised sound strategy in his representation of Hagar. Hagar has not shown his counsel's representation fell below the "objective standard of reasonableness" called for in Strickland. Therefore, he does not satisfy Strickland. See Hill, 474 U.S. at 59. Hagar's claims are, therefore, properly denied.

B. HAGAR IS PROCEDURALLY BARRED FROM RAISING CLAIMS
ALREADY FULLY LITIGATED ON DIRECT APPEAL

The next category of claims presented by Hagar's petition for relief under Section 2255 includes those that were decided adversely to him on direct appeal. (R. 148: Motion, "Grounds 1, 2, and 4," PageID 1164). As set forth above, "[a] § 2255 motion may not be used to relitigate an issue that was raised on appeal absent highly exceptional circumstances." DuPont, 76 F.3d at 110 (internal quotation marks omitted) (collecting cases). See, e.g., Wright v. United States, 182 F.3d 458, 467 (6th Cir. 1999); accord, e.g., United States v. Scrivner, 189 F.3d 825, 828 (9th Cir. 1999); Murchu v. United States, 926 F.2d 50, 55 (1st Cir. 1991). In his motion, Hagar claims the district court erred in denying his motion to dismiss, which was based on an alleged Speedy Trial Act violation. (R. 148: Motion, "Ground 1²" PageID 1439-40). Hagar further contends that the

² Hagar acknowledges this argument was already made on direct appeal. (See R. 148: Motion,

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Sixth Circuit erred in determining he abandoned both his Speedy Trial Act claims. (*Id.*, “Ground 2,” PageID 1440). Finally, “Ground 4” of Hagar’s motion is an additional argument concerning his right to a speedy trial and the district court’s denial of his motion to dismiss. (*Id.*, PageID 1442).

The Sixth Circuit rejected Hagar’s Speedy Trial Act claims and found the district court did not err in denying his motions to dismiss. *See Hagar*, 822 F. App’x at 368. Hagar abandoned his Speedy Trial claims by failing to seek rulings on them. *Id.* “[F]ailing to request and obtain rulings on such [raised-but-unruled-upon] claims is the functional equivalent of failing to bring the claims in the first place, and such claims are therefore waived.” *Id.* As set forth above, the Sixth Circuit concluded that none of Hagar’s speedy trial claims had merit, nor could Hagar show that dismissal with prejudice was warranted. *Id.*

The Sixth Circuit’s disposition forecloses Hagar’s ability to reassert these claims on collateral review.

C. HAGAR IS PROCEDURALLY BARRED FROM RAISING CLAIMS NOT MADE ON DIRECT APPEAL

The last category of claims embraced by Hagar’s petition involves those that could have been, but were not, raised on appeal. (R. 148: Motion, “Ground 3,” PageID 1441). The law of this Circuit corresponds to that of every other circuit “that failure to raise an argument at trial or on direct appeal is waived on collateral review under § 2255, absent a showing of both cause and actual prejudice. *Murr v. United States*, 200 F.3d 895, 900 (6th Cir. 2000) (citing *Frady*, 456 U.S. at 164-65, 167); *see, e.g., Barker v. United States*, 7 F.3d 629, 632 (7th Cir. 1993). Hagar cannot demonstrate “cause and prejudice” with respect to his claims in “Ground 3.”

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Hagar maintains that the government “committed Prosecutorial Misconduct, using false information . . . to obtain an arrest warrant and later an indictment.” (R. 148: Motion, PageID 1441). Hagar admits this argument was not raised on direct appeal, noting that his appellate attorney was not required to raise every nonfrivolous issue. (*Id.*, PageID 1442). But “cause . . . ordinarily requires a showing of some external impediment preventing [petitioner] from constructing or raising the claim” (*Murray v. Carrier*, 477 U.S. 478, 492 (1986)), and attorney ignorance or inadvertence is not “cause” unless it amounts to constitutional ineffectiveness. *See Coleman v. Thompson*, 501 U.S. 722, 753-55 (1991) (requiring a petitioner to show that “some objective factor external to the defense” impeded his efforts to present an issue for judicial review earlier.). Hagar has not demonstrated cause, so this Court need not even consider whether he would suffer actual prejudice if the claim is not reviewed. *See, e.g., Bousley*, 523 U.S. at 623 (finding insufficient evidence to establish cause and thus proceeding to the actual-innocence inquiry); *Tolliver v. Sheets*, 594 F.3d 900, 930 n.13 (6th Cir. 2010) (“as we find that Tolliver cannot establish cause, we need not reach the prejudice question at all”); *Haliym v. Mitchell*, 492 F.3d 680, 699 (6th Cir. 2007) (same).

Collateral attack is not a substitute for direct appeal. Hagar cannot show cause “to excuse this procedural default, nor has he attempted to show that he suffered ‘actual prejudice’ from the alleged error that would undermine the entire integrity of the trial, as required under *Fraday*.” *Murr*, 200 F.3d at 900 (citing *Fraday*, 456 U.S. at 168-70). Accordingly, because Hagar failed to raise this claim in the proper forum when he had a chance to do so, and because Hagar has not established cause for this failure, this Court should find that he has procedurally defaulted this claim.

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IV. CONCLUSION

As explained above, a review of the record in this case and application of the relevant law shows that Hagar cannot meet his burden to prevail on his claim for relief pursuant to Section 2255. Therefore, his motion should be denied without an evidentiary hearing. “A hearing is unnecessary where, as here, the motion, files and records conclusively show that the prisoner is not entitled to relief.” Bryan v. United States, 721 F.2d 572, 577 (6th Cir. 1983). See also Arredondo v. United States, 178 F.3d 778, 782 (6th Cir. 1999) (no evidentiary hearing required if petitioner’s claims “cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact”) (quoting Engelen v. United States, 68 F.3d 238, 240 (8th Cir. 1995)). Therefore, a hearing on Hagar’s claims is not required.

For the foregoing reasons, the United States respectfully requests that the Court deny Hagar’s motion pursuant to 28 U.S.C. § 2255 without a hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2021, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by regular U.S. Mail to:

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FCI Complex Low,
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Beaumont, TX 77720

/s/ Daniel J. Riedl
Daniel J. Riedl
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FILED

OCT 25 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Clerk of Court, United States District Court
Ohio Northern District - CLEVELAND

MICHAEL A. HAGAR	:	CASE NO.	1:16CR273
	:		1:21CV1335
Defendant-Petitioner,	:	JUDGE DONALD C. NUGENT	
	:		
v.	:	DEFENDANT-PETITIONER'S REPLY	
	:	TO THE GOVERNMENT'S RESPONSE	
UNITED STATES OF AMERICA,	:	IN OPPOSITION TO THE MOTION	
	:	TO VACATE, SET ASIDE, OR	
Plaintiff-Respondent.	:	CORRECT SENTENCE	

Defendant-Petitioner, Michael Hagar replies to the government's response in opposition to his Motion to Vacate, Set Aside, or Correct sentence. (Doc #: 150, Doc #: 148). As Mr. Hagar is being held in violation of the Constitution and laws of the United States, and Mr. Hagar is entitled to relief, this Court should grant his relief.

Respectfully submitted,

Michael A. Hagar

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Beaumont, TX 77720

I hereby certify this reply, under the Section 2255 proceeding, has been assigned to the Administrative Track. I further certify this reply adheres to the page limitations set forth by Local Rule 7.1(f).

Michael A. Hagar
Michael A. Hagar

This reply meets the requirement of Local Rule 10.1, the relevant part provides: "This Rule does not apply to documents filed by pro se litigants."

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SUMMARY OF FACTS

On January 22, 2019, Hagar filed a Motion To Dismiss for violation of the Speedy Trial Act and the Sixth Amendment right to a speedy trial. Doc #: 81, PageID #: 250-254. The Government filed its Response In Opposition To Dismiss on February 12, 2019, Doc #: 82, PageID #: 255-261. The District Court never ruled on the Motion to Dismiss.

Hagar had a jury trial between February 26, 2019 to March 1, 2019. The jury convicted Hagar on all three counts. Hagar was sentenced on June 7, 2019 to 60 months for each count to be served consecutively, for a total sentence of 180 months. Doc #: 135, PageID #: 1316.

Hagar filed a notice of appeal on June 24, 2019, Doc #: 115, PageID #: 1230-1231. The Sixth Circuit affirmed the district court's judgment in August 2020. Hagar petitioned the Supreme Court for a Writ of Certiorari which was denied on January 11, 2021. On August 16, 2021, Hagar filed a Motion to Vacate under 28 U.S.C. § 2255, Doc #: 148, PageID #: 1435.

The Government filed the Government's Response In Opposition To Motion To Vacate, Set Aside, Or Correct Sentence Pursuant To 28 U.S.C. § 2255, on September 16, 2021. The Government summarized Hagar's claims as: 1) ineffective assistance of counsel; 2) Hagar's claims were fully litigated at trial and on appeal; 3) Hagar's claims could have been raised on direct appeal. The Government concludes that Hagar's motion should be denied without a hearing.

The Court ordered the Government to file an answer "within twenty (20) days from the date of this Order." Doc #: 149, PageID #: 1461, on August 18, 2021. September 7, 2021 was the deadline for the Government to file its answer. The Government filed an answer on September 16, 2021, nine days late. The Government did not request an extension of time under Rule 6 of the Federal Rules of Civil Procedure and has waived the defense of "excusable neglect" as provided by Rule 6(b)(1)(B).

As this Court said: "The Sixth Circuit has determined that Local Rule 7.1 applies to proceeding under § 2255," Doc #: 146, PageID #: 1426. Local Rule 7.1(h) provides: "Any motion served and filed beyond the motion deadline established by the Court may be denied solely on the basis of the untimely filing."

This Court should deny the Government's request to "deny Hagar's motion pursuant to 28 U.S.C. § 2255 without a hearing" Doc #: 150, PageID #: 1474, and proceed to review the merits of Hagar's claims. Alternatively the Court should deny the Government's request as its objections are without merit.

LAW

THERE ARE EXCEPTIONAL CIRCUMSTANCES FOR THE CLAIM RAISED ON DIRECT APPEAL

The Government's position that "Claims Already Raised On Direct Appeal" has no merit. With regard to Ground 1, the Government's position "[a] Section 2255 motion may not be used to relitigate an issue that was raised on appeal, (citation omitted). Doc #: 150,

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PageID #: 1468, ignores the "exceptional circumstances" of Hagar's situation. In Davis the Supreme Court said: "In Hill v United States, 368 U.S. 424, 429, 7 L.Ed. 2d 417, 82 S. Ct. 468 (1962), for example, we held that 'collateral relief is not available when all that is shown is a failure of a criminal procedure by the asserted technical error. We suggested that the appropriate inquiry was whether the claimed error of law was a 'fundamental defect which inherently results in a complete miscarriage of justice, and whether '[i]t ... present[s] exceptional circumstances where the need for remedy afforded by the writ of habeas corpus is apparent.' Id at 428-7 L Ed. 2d 417 (internal quotations marks omitted)." Davis v United States 417 U.S. 333, 346 (1974).

In Hill one of the cases that presented an "exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus [was] apparent," as the proceedings, like Hagar's situation, represented "a fundamental defect which inherently results in a complete miscarriage of justice, [and is] an omission inconsistent with the rudimentary demands of fair procedure, Id 368 U.S. at 428, is Escoe v Zerbst 295 U.S. 490 (1935).

Escoe exemplifies that Hagar is entitled to relief under the Speedy Trial Act, whether his superseding indictment is dismissed with or without prejudice. Escoe decided that the word "shall" is the language of command Id 493, and the Courts do not have the power to dispense "the will of Congress" Id.

The Government duplicitively includes Ground 2 and Ground 4 as issues that have been litigated on appeal. Ground 2 is as Hagar stated in his motion why it was not raised on direct appeal: "This issue is a result of the Appeals Court decision." Doc #: 148, PageID #: 1440, and represents an "exceptional circumstance" for Ground 1. Ground 4 was not raised on direct appeal as it is based on the Sixth Amendment right to a speedy trial and not the Speedy Trial Act.

HAGAR CAN DEMONSTRATE "CAUSE AND PREJUDICE" AND IS NOT PROCEDURALLY BARRED

Hagar can demonstrate the cause to excuse his failure to appeal Ground 3 and did suffer actual prejudice. In Coleman v Thompson 501 U.S. 722, 754 (1991), the Supreme Court said: "[A]s Carrier explains, 'if the procedural default is the result of ineffective assistance of counsel, the Sixth Amendment itself requires that responsibility for the default be imputed to the State' (citation omitted). In other words, it is not the gravity of the attorney's error that matters, but that it constitutes a violation of petitioner's right to counsel, so that the error must be seen as an external factor, i.e. 'imputed to the state.' (citation omitted). ('The constitutional mandate [guaranteeing effective assistance of counsel] is addressed to the action of the State in obtaining a criminal conviction through a procedure that fails to meet the standard of due process of law')." "

HAGAR'S COUNSELS DID NOT PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL AND HAGAR DID SUFFER PREJUDICE

Hagar's counsels were constitutionally ineffective and Hagar can demonstrate the prejudice which resulted from the inadequate performance. Strickland v Washington 466 U.S. 668, 687 (1984). Hagar

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can demonstrate his attorneys intentionally did not provide effective assistance. "[I]f counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that make the adversary process itself, presumptively unreliable." *United States v. Cronin* 466 U.S. 648, 659 (1984).

Hagar is able to establish prejudice by showing that but for his attorneys intentional sabotage of his case, the proceedings would have produced a different result. See *Strickland* 466 U.S. at 694. Hagar will prove "that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy. (citation omitted)." *Kimmelman v. Morrison* 477 U.S. 365, 384 (1986).

ARGUMENT

HAGAR IS NOT PROCEDURALLY BARRED FROM RAISING THE CLAIM OF GROUND 1

The relevant part of 18 U.S.C. § 3162(a)(2) provides: "If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by 3161(h), the ... indictment shall be dismissed on motion of the defendant. ... Failure of the defendant to move for dismissal prior to trial, ... shall constitute a waiver of the right to dismissal under this section."

In *Hill v. United States* 368 U.S. 424 (1962), the Supreme Court identified *Escoe v. Zerbst* 295 U.S. 490 (1935) as an example of an "exceptional circumstance." *Escoe* exemplifies Hagar's claim for relief. "[T]he power of lawmakers to [direct the process and procedures of the dismissal and waiver provisions] does not mean that a like [] power, in opposition to the will of Congress, has been confided to the Courts. The [statutory right] is no less real because its source is in the statute rather than in the Fifth Amendment. If the statement of Congress that the [indictment shall be dismissed on motion of the defendant and failure of the defendant to move for dismissal prior to trial ... shall constitute a waiver of the right to dismissal] is command and not advice, it defines and conditions power. (citation omitted). The [judgment of conviction] is invalid unless the command has been obeyed."

We find in this statute more than directory words of caution, leaving power unaffected. This is so if we consider the words alone, putting aside for the moment the ends and aims to be achieved. The [indictment] 'shall' be [dismissed on motion of the defendant; failure to move for dismissal prior to trial 'shall' constitute a waiver of the right to dismissal], it is the language of command, a test significant though not controlling. (citation omitted). Doubt, however, is dispelled when we pass from words alone to a view of ends and aims. Clearly the end and aim of [the dismissal provision is to sanction the courts and prosecutors for their failure to comply with the time limits of the Act, and the waiver provision ensures a defendant makes an 'affirmative showing' by motion to dismiss that the time limits of the Act have been violated]." *Escoe* 295 U.S. at 493.

The waiver provision was proposed by the Department of Justice. See Department of Justice Proposed Amendments to Title I of S. 895,

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Appendix to Letter to Senator Ervin from Assistant Attorney General William H. Rehnquist, Oct. 19, 1971 at 1971 Senate Hearing 262, reprinted in A. Partridge Legislative History of Title I of the Speedy Trial Act of 1974, 198-199 (Fed. Judicial Center, 1980). Herein after A. Partridge.

"[O]ur amended section insures that there must be a timely demand for dismissal and that after commencement of trial, the court has no further authority to dismiss. This would discourage assertions of allegedly unknowing or mistaken waivers after trial has commenced. The provision requiring the defendant to make an affirmative showing that the time limits have been exceeded is intended to preclude frivolous motions for dismissal and sue sponte dismissals by the court without having heard both parties on the issue." Explanation of Proposed Amendment in Letter to Senator Ervin from Assistant Attorney General William H. Rehnquist, Oct. 19, 1971 at 1971 Senate Hearing, reprinted in A. Partridge, 199.

The Government said: "Hagar claims the district court erred in denying his motion to dismiss, which was based on an alleged Speedy Trial Act violation." Doc #: 150, PageID #: 1471. They also said: "Ground 4 of Hagar's motion is an additional argument concerning his right to a speedy trial and the district's court denial of his motion to dismiss." PageID #: 1472. What Hagar wrote: "The District Court did not dismiss Mr. Hagar's Superseding Indictment, Doc #: 77, as mandated by the Speedy Trial Act." Doc #: 148, PageID #: 1439.

Hagar's position is the court cannot ignore Hagar's Motion to Dismiss. Doc #: 148, PageID #: 1447. "[T]he Act clearly assigns the responsibility of moving for dismissal to the defendant, 18 U.S.C. § 3162(a)(2), since both the government and the district court share responsibility for bringing cases to trial in a timely fashion, there is no reason to find that the Act permits a court to ignore a defendant's allegation of an STA violation solely based on the form this assertion takes." United States v Brown 819 F.3d 800, 823-824 (6th Cir., 2015).

As the Government considers that the district court denied Hagar's motion their position is in line with the Department of Justice when the Act was being considered in Congress. "Any such motion not ruled upon by the court prior to the commencement of trial shall be deemed denied." "Department of Justice Proposed Amendment to Title I of S. 895" Appendix to Letter to Senator Ervin from Assistant Attorney General William H. Rehnquist, Oct. 19, 1971 at 1971 Senate Hearing 262, reprinted in A. Partridge, 198.

The Government deceptively claims that Ground 2 was somehow litigated and that the claim was adversely decided against Hagar, but only presents the Sixth Circuit's conclusion that Hagar waived his Speedy Trial Act claims when he failed to seek a ruling. This is precisely what Ground 2 challenges and Ground 2 is an "exceptional circumstance" why this court should provide relief for Ground 1.

The Sixth Circuit concluded, with regard to the Motions to Dismiss that Hagar "failed to secure rulings on those motions. Similar claims are generally, treated as abandoned and therefore not reviewable on appeal." United States v Hagar 822 Fed. Appx. 361, 368 (6th Cir., 2020). "We agree with the government that 'failing to request and obtain rulings on such [raised-but-unruled-upon] claims is the

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functional equivalent of failing to bring the claims in the first place," and such claims are therefore waived." *Id.*

This conclusion that a Speedy Trial Act motion to dismiss and a Rule 12(b)(3) pretrial motion are similar ignores 28 U.S.C. § 2071, Rule-making power generally. The relevant part provides: "Such rules shall be consistent with Acts of Congress." The waiver provision of the Speedy Trial Act is an "Act of Congress," Rule 12(b)(3) is a rule under 28 U.S.C. § 2072. "The power of this Court to prescribe rules of procedure exist only in the absence of a relevant Act of Congress." See *Palermo v United States* 360 U.S. 343, 353, n.11 (1959). "United States v Brainer 691 F.2d 691, 697 (4th Cir., 1982).

Rule 12(b)(3) list the motions that must be made by pretrial motion. A motion to dismiss for violation of the Speedy Trial Act is not one of them. The cases the government and the Sixth Circuit relied on are Rule 12(b)(3) motions and Rule 12(c) governs such motions. Rule 12(c)(3) provides in part: "If a party does not meet the deadline for making a Rule 12(b)(3) motion, the motion is untimely." As the Sixth Circuit said in *Brown*: "there is no reason to find that the Act permits a court to ignore a defendant's allegation of an STA violation." 819 F.3d at 824. The same reasoning applies to pretrial motions, despite the Sixth Circuit's decision that unruly claims are abandoned.

In *Bank of Nova Scotia v United States* 487 U.S. 250, 254-255 (1988), the Supreme Court said: "[A] federal court may not invoke supervisory power to circumvent the harmless-error inquiry prescribed by Federal Rule of Criminal Procedure 52(a). ... It follows that Rule 52 is, in every pertinent respect, as binding as any statute duly enacted by Congress, and federal courts have no more discretion to disregard the Rules mandate than they do to disregard constitutional or statutory provisions."

As Rule 12(d) provides in part: "The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling." As the rule uses "language of unmistakably mandatory character requiring that certain procedures 'shall,' 'will,' or 'must' be employed," *Hewitt v Helms* 459 U.S. 460, 471 (1983), unruly motions under Rule 12 are subject to review under Rule 52.

The Sixth Circuit's conclusion: "Moreover, plain error review is unavailable because 'a defendant whose trial does not begin on time is deemed to have waived the right to move for dismissal' (citation omitted). *Hagar* 822 Fed. Appx. at 368-369, is disingenuous at best. *Hagar* filed his motion on January 22, 2019, Doc #: PageID #: 250-254. *Hagar*'s trial began on February 26, 2019. The Sixth Circuit's conclusion is an example of what *Hamilton* said in *Federalist No. 78*: "The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body." A. Dershowitz, *The Federalist Papers*, p. 461.

The definition of "waiver" is "the intentional relinquishment or abandonment of a known right. (citation omitted)" *United States v Olano* 507 U.S. 725, 733 (1993). [A] defendant waives an argument by, for instance, withdrawing a motion or objection, (citation omitted), stating that a proposition is not disputed, (citation omitted), or stating that they are not pressing an argument." *United States v*

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White 920 F.3d 1109, 1123, n.4 (6th Cir. 2019) (Clay, J. concurring in part and dissenting in part).

"Deviation from a legal rule is 'error' unless that rule has been waived." *United States v Soto* 794 F.3d 635, 655 (6th Cir. 2015). "First there must be an error or defect ... that has not been intentionally relinquished or abandoned, i.e. affirmatively waived by appellant." (quoting *Puckett v United States* 556 U.S. 129, 135 (2009)). *United States v Odum* 878 F.3d 508 521-522 (6th Cir. 2017).

"We hold that under current version of Rule 12(c)(3), we do not treat the failure to file a motion as a waiver unless the circumstances of the case indicate that the defendant intentionally relinquished a known right." *Soto* 794 F.3d at 655. "[O]ne of the primary reasons to eliminate the term 'waiver' from the rule was because the committee believed courts were incorrectly treating the failure to file a timely pretrial motion as an intentional relinquishment of a known right and therefore an absolute bar to appellate review. During the drafting process, Judge Sutton, the chair of the Standing Committee, emphasized that it was 'imperative to get rid of the term waiver in Rule 12(e),' noting that the language was drafted before *Olano* and makes no sense now. (citation omitted)" *Id* at 652..

As the Fifth Circuit recognized: "[D]ecisions [that] predate the 2014 amendment which eliminate the word 'waiver[]' ... do not assist our analysis of the current rule. (citation omitted)." *United States v Vasquez* 899 F.3d 363, 372-373 (5th Cir. 2018). As a result of the 2014 amendment, the cases the Sixth Circuit relied on are irrelevant if Hagar's Motion to Dismiss was a Rule 12(b)(3) motion. Hagar's motion was for a violation under the Speedy Trial Act, not a Rule 12(b)(3) pretrial motion, and a different analysis is required.

Hagar did not withdraw his Motion to Dismiss for violation of the Speedy Trial Act. The court ignored it. Hagar submitted his claim to dismiss for violation of the Speedy Trial Act as required by Section 3162 and because the Government did not request the court to rule on Hagar's motion the Government forfeited its claim at the appellant's court. The dismissal sanction is directed at the Courts and the Government. It is their responsibility to comply with the Act.

"A time limit without enforcement is merely an empty plea. The only effective enforcement mechanism anyone has suggested is the dismissal sanction. ... [I]t is now clear that no one will be motivated unless the penalty for delay is clearly stated." Opening Statement of Senator Ervin, 1973 Senate Hearing, 3-4, reprinted in A. Partridge, 201-202.

"The dismissal sanction has the effect of compelling judges and prosecutors to choose between speedy trial or no prosecution whatsoever." 1974 Senate Committee Report 21-22, reprinted in A. Partridge, 208.

The Sixth Circuit in *United States v Satterwhite* 893 F.3d 352, 359 (6th Cir. 2018); "The STA's thirty day speedy indictment rule, then appears to be a 'claims-processing rule' because it seeks to promote the orderly progress of litigation by requiring the parties to take certain procedural steps at specified times; (citation omitted) ... and is waived if the defendant waits too long to raise the challenge (citation omitted)." Consequently, the 70 day indictment to trial provision, the dismissal provision and the waiver provision describe

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the procedural steps the defendant, the court and the government must take.

"[M]andatory claim-processing rules must be enforced ... (citation omitted)." *Hamer v Neighborhood Housing Services*, 138 S. Ct. 13, 18-19 (2017). "Claims-processing rules" may be unalterable on a party's application; (citation omitted)." *Eberhart v United States* 546 U.S. 12, 15 (2005). "These claims -processing rules thus assure relief to a party properly raising them, but do not compel the same result if the party forfeits them. Here, where the Government failed [to request a ruling before the trial began], it forfeit [its claim on] appeal," *Id* at 19.

"The more severe sanction (dismissal with prejudice) is available for use where appropriate, and the knowledge that a violation could potentially result in the imposition of this sanction gives the prosecution a powerful incentive to be careful about compliance. The less severe sanction (dismissal without prejudice) ... imposes some cost on the prosecution and the court, which further encourages compliance." *Zedner v United States* 547 U.S. 489, 499 (2006).

Hagar fulfilled his responsibility, the Court did not. The Government did not fulfill its responsibility to ensure the motion was ruled on prior to trial. It is the prosecutor's responsibility under Article 2, Section 3; the Executive Department "shall take Care that the Laws be faithfully executed" the Government forfeited its claim at the appellant court.

"[B]oth the government and the district court share responsibility for bringing cases to trial in a timely fashion," *United States v Brown* 819 F.3d 800, 824 (6th Cir. 2015). "[A]s with any other argument the government can forfeit a waiver argument by failing to raise it in a timely fashion, (citation omitted)." *United States v Boudreau* 564 F.3d 431, 435 (6th Cir. 2009).

The Sixth Circuit's conclusion that Hagar's second Motion to Dismiss argument in its court was contradictory to the argument in the district court and its refusal to consider the argument, relying on *New Hampshire v Maine* 532 U.S. 742 (2001) as authority, Hagar 822 Fed. Appx. at 369, is another example of the Circuit court exercising its WILL instead of JUDGMENT. Hagar has a liberty interest in the dismissal of his superseding indictment. "The Speedy Trial right exist primarily to protect an individuals liberty interest." *United States v Gouveia* 467 U.S. 180, 190 (1984).

The Sixth Circuit's reliance on *New Hampshire v Maine* is in conflict with the Supreme Court's rejection of the Government's argument for judicial estoppel in *Zedner v United States* 547 U.S. 489 (2006). As the Supreme Court in *Zedner* cited *New Hampshire* as its reasons to reject the Government's argument, *New Hampshire* should be applied in favor of Hagar not against him.

First, Hagar's position in the Circuit Court was not "clearly inconsistent" with the District Court position. The motion to dismiss clearly states that "November 27, 2016 marked the Seventieth day" and since Hagar was arraigned on the original indictment, and the delay was "well past the seventy days," Doc #: 81, PageID #: 254. "[T]he defendant establishes a prima facie case that the government violated the Act (a simple matter of producing a calendar and showing that more than seventy days have passed since the indictment (or first

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appearance), and trial has yet to begin)... "United States v Jenkins 92 F.3d 430, 438 (6th Cir. 1996).

Second, the District Court never ruled on the second motion, making it impossible for Hagar to have "succeeded in persuading" the District Court to accept Hagar's position. And neither the District Court or the Appellant Court was misled in either argument because the time between September 19, 2018 and January 22, 2019 was never excluded under 3161(h). "[T]he Sixth Circuit has placed great emphasis on the need for a district court to comply with this statutory requirement." *Greenup v United States* 401 F.3d 758, n.3 (6th Cir. 2005).

Third, Hagar did not "derive an unfair advantage or impose an unfair detriment on the" government as the superseding indictment would have been dismissed at the district court. Even though the Sixth Circuit said: "Hagar also has not shown actual prejudice from the delay such as loss of evidence, and there is not a wiff of prosecutorial bad faith." Hagar 822 Fed. Appx. at 369. There was prosecutorial misconduct and Hagar contends that his Appellant attorney Mr. Jenkins, (also his trial attorney) intentionally avoid the original argument, as it would have shown the misconduct.

The Government includes Ground 4 as a claim Hagar is procedurally barred from seeking relief under Section 2255, because it was decided adversely against him on direct appeal. Doc #: 150, PageID #: 1471-1472. The Sixth Circuit never considered Hagar's claim for Ground 4. If they had the Government could not claim: "HAGAR IS PROCEDURALLY BARRED FROM RAISING CLAIMS NOT MADE ON DIRECT APPEAL." *Id.*, PageID #: 1472.

Ground 4 states: "The Petitioner is being held in violation of his Sixth Amendment right to a speedy trial, when the Government intentionally concealed the true location of Eaton's server for over two years." Doc #: 148, PageID 1442. The relevant fact states: "The Government's Prosecutorial Misconduct hampered Mr. Hagar's ability to prepare his defence. The relevant facts for Grounds ... 3 ... are herein incorporated as facts for Ground 4." *Id.* The facts of Ground 3 are the reason for delay and demonstrate the prejudice Hagar has suffered.

The Motion to Dismiss states: "His waivers of Speedy Trial should be set aside as they were signed under the mistaken belief that the federal government had evidence of the emails ... having traveled ... through this Court's jurisdiction. As proof that the government had no such evidence, a superseding indictment was filed September 11, 2018. To this day, defendant believes that the subject emails had no nexus to this Court's jurisdiction." Doc #: 81, PageID #: 253.

Hagar did not waive his Sixth Amendment right. "Courts 'should indulge every reasonable presumption against waiver' (citation omitted)." *Barker v Wingo* 407 U.S. 514, 525-526 (1972).

"To legally arrest and detain, the Government must assert probable cause to believe the arrestee has committed a crime." *United States v Marion* 404 U.S. 307, 320 (1971). The Government used false information, the location of Eaton's server, to obtain the arrest warrant.

"As we explained in *Marion*, 'the Due Process Clause ... would require dismissal of [an] indictment if it were shown at trial that [a] delay ... cause substantial prejudice to [a defendant's] rights to a

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fair trial and the delay was an intentional device to gain tactical advantage over the accused." 404 U.S. at 324." Doggett v United States 505 U.S. 647, 666 (1992). In Doggett the Supreme Court acknowledged that a "bad-faith delay" caused by the Government would "make relief virtually automatic." Id at 657.

HAGAR CAN SHOW BOTH CAUSE AND PREJUDICE AND IS NOT PROCEDURALLY BARRED FROM RAISING GROUND 3

The Government claims: "Hagar cannot demonstrate 'cause and prejudice' with respect to his claim in 'Ground 3.'" Doc #: 150, PageID #: 1472. Ground 3, which asserts the Government violated Due Process when it committed Prosecutorial Misconduct. The Government ignores Hagar's incorporation of the facts for Ground 5A as facts for Ground 3. Doc #: 148, PageID #: 1441. Ground 5A is Hagar's claim of ineffective assistance of counsel for their failure to obtain the email with the complete header information referred to in paragraph 13 of the affidavit for the complaint, Doc #: 1-1, PageID #: 6, listing an IP address belonging to Eaton Corporation and located in the Northern District of Ohio.

This email is the same email Hagar was charged with for count 3 of the original and superseding indictments. By the Government's own admission, Eaton's server is not located in the Northern District of Ohio. The question to be answered: Is the IP address listed on the header information the same as stated in the affidavit? If not, the Government used false information to obtain the arrest warrant against Hagar.

"Ineffective assistance of counsel claims are an exception to the procedural default doctrine." Massaro v United States 538 U.S. 500, 504 (2003). Item 13 of the motion, the question is: are "there any ground in this motion ... not previously presented in some federal court ... state your reasons for not presenting them." Hagar's answer: "Ground 3 was discussed with Petitioner's attorneys, but not pursued and was not raised due to their ineffective assistance of counsel." Doc #: 148, PageID #: 1446. Mr. Jenkins and Ms. Serrat's failure to obtain the document is not out of ignorance, nor is it inadvertent, it was intentional.

In the September 11, 2018 letter to James Jenkins, Hagar quotes paragraph 13 of the affidavit for the complaint. (See Appendix A, A.1 and A.2). In the November 14, 2018 letter from Ms. Serrat to Hagar she acknowledges Hagar requested the document and proceeded to explain why the document is not part of Hagar's case. (See Appendix E, E.1).

"Ineffective assistance of counsel can constitute cause to excuse a procedural default, ... in some circumstances. Typically, these circumstances arise only when a petitioner has a Sixth Amendment right to an attorney, such as at trial or direct review. In these instances, the default caused by the deficiency in counsel's representation is imputed to the State and thus deemed external to the petitioner himself." Young v Westbrooks 702 Fed. Appx. 255, 259-260 (6th Cir. 2017).

Hagar did suffer prejudice when the Government concealed the true location of Eaton's server for over two years as Hagar's original attorney, Mr. Thompson, was unable to prepare Hagar's defense during the 19 months he represented Hagar.

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The Government interfered and caused the delay to Hagar's right to a speedy trial under the Speedy Trial Act and the Sixth Amendment. At the May 30, 2018 hearing for Hagar Motion to Replace Counsel: The Court: "I would assume that you're prepared to go forward if we were to start trial on Monday?" Mr. Riedl: "Yes, your Honor." Doc #: 131, PageID #: 1259.

The Government used the Speedy Trial waivers as a tactic to delay and give them time for Hagar's attorneys to convince Hagar to accept a plea agreement. "[I]f he was deceived or coerced by the prosecutor into entering a guilty plea, he was deprived of a constitutional right." Walker v Johnston 312 U.S. 275, 286 (1941). Walker was an example of "exception circumstances and a fundamental defect which inherently results in a complete miscarriage of justice." Hill v United States 368 U.S. 424, 428 (1962). Prosecutorial Misconduct is a violation of due process, and is an exception to procedural default.

HAGAR WAS NOT AFFORDED EFFECTIVE ASSISTANCE OF COUNSEL AND DID SUFFER PREJUDICE AS A RESULT

The Government contends: "Hagar does not explain how the various invoices, records, and email would have effected the outcome of his trial." Doc #: 150, PageID #: 1469.

For Ground 5A Hagar did explain why the June 2, 2016 email with the header information would effect the outcome of his case. "The document was to establish the burden of proof for Mr. Hagar's second Motion to Dismiss." Doc #: 81." Doc #: 148, PageID #: 1442. As well as "The three Clackamas County Sheriff's reports and the June 2, 2016, email with the header information clearly demonstrates that venue was improper." Doc #: 148, PageID #: 1451.

The facts and argument for Ground 3 are relevant as facts for Ground 5A. See Doc #: 148, PageID #: 1441, and 1449-1450. The Government concealed the true location of Eaton's server for over two years which violated Hagar's Sixth Amendment right to effective assistance of counsel, when the Government interfered in Hagar's preparation of his case. The Government violated Hagar's right to a speedy trial by its misconduct. A "bad-faith delay" caused by the Government would "make relief virtually automatic," Doggett 404 U.S. at 657, for a violation of a speedy trial.

The Government's objection to Ground 5B of Hagar's ineffective assistance of counsel, with respect to improper venue, relies on the Sixth Circuit decision, United States v Hagar 822 Fed. Appx. 361, 369-371 (6th Cir. 2020), which is another example of the Court exercising its WILL and not JUDGMENT. The Government quotes: "And, even if he had not forfeited his venue claim, it would fail because one of the victims, C.B. worked in Beachwood, Ohio at Eaton's headquarters." Doc #: 150, PageID #: 1470.

The Sixth Circuit continued: "Hagar sent threatening emails to C.B.'s Eaton email address. She received and reviewed them at her office in Beachwood, Ohio. Thus, venue was proper because emails were sent from Oregon to C.B. in the Northern District of Ohio. See United States v Jefferies, 692 F.3d 473, 483 (6th Cir. 2012)," Hagar at 822 Fed. Appx. at 370.

The Sixth Circuit's conclusion parrot's the Government's conclusion

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in the Appellee brief, Case: 19-3591, Document: 51, Page: 45. The Court ignored "C.B. read the messages sent to her Eaton work email account for the first time during preparation for her trial testimony (R.102: Trial Trans. (C.B.), PageID 557)." in the Statement of the Case, for the Appellee, Document 51, Page: 20. As well as the following in the Appellant brief: "C.B. the only recipient in Ohio, testified that she never received any of the emails." Document: 44, Page: 18.

C.B. did not receive any emails from Hagar. Had Hagar's attorneys obtained the June 2, 2016 email with the header information and used the Clackamas County Sheriff's reports GO 10 2015-34425, (see Appendix B: B.1), GO 10 2016-11774, (see Appendix C: C.1), and GO 10 2016-14957 (see Appendix D: D.1 & D.2) at trial, the Circuit Court would not have been able to exercise its WILL, with respect to its conclusion about proper venue.

"[T]he locality of a crime shall extend over the whole area through which force propelled by an offender operates. Thus, an illegal use of ... instruments of commerce may subject the user to prosecution in the district he sent the goods, or in the district of their arrival, or in any intervening district." United States v Johnson 323 U.S. 273, 275 (1944). Ryan Keen transmitted the email Hagar sent at 6:19 pm EDT, seven minutes after Hagar sent it. Ryan Keen is not a "force propelled" by Hagar.

Hagar's email began in Oregon. It traveled through the locations identified by the IP addresses. It arrived at Eaton's server, which by the Government's own acknowledgment is not in the Northern District of Ohio. It was completed when it arrived in Ryan Keen's mailbox and when he read it. It never entered the Northern District of Ohio, and Mr. Jenkins knew this as Hagar informed him in the September 11, 2018 letter. (See Appendix A: A.1 & A.2).

In Jefferies: "Jefferies transmitted his video, 'from, through, or into' the Eastern District, just as the venue statute demands, 18 U.S.C. § 3237(a)." 692 F.3d at 483. "The route the words took once they left his mouth is only relevant to determine where, not if, he would be subject to Prosecution." United States v Houston 683 Fed. Appx. 434, 438 (6th Cir. 2017).

Hagar's attorneys intentionally used a lack of jurisdiction argument to fool Hagar into believing they were acting on his behalf. But when the opportunity arrived to express an improper venue defense Ms. Serrat did not; Ms. Serrat during closing argument: "Why is this case here? This case never should have been brought in the Northern District of Ohio. There is no direct connections to this case and the Northern District of Ohio."

Mr. Riedl: "Objection, Your Honor. That's not in the statement of facts." The Court: "Yes." Doc #: 105, PageID #: 1087.

Ms. Serrat said nothing about Hagar's Art. 3, Sec. 2, Cl. 3, right to have his trial in the State where the offense was committed.

For the claim of Ground 5C, "Hagar's attorneys failed to establish that C.B. is not an immediate family member to R.G. as defined by 18 U.S.C. § 1151(c)(2)(B) for count 1 of the Superseding Indictment." Doc #: 148, PageID #: 1443. Ms. Serrat failed to establish, C.B. did not live in the same household as R.G. during the Rule 29 motion at Hagar's trial. Doc #: 105, PageID #: 1025-1026.

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In the Government's Appellee brief they linked C.B. as a relative to R.G. during the venue argument. Document: 51, Page: 45. The Sixth Circuit validated the Government's position during their decision related to venue. "Count 1 of the superseding indictment reference those messages because R.G., the cyberstalking victim, was related to C.G. [sic]." Hagar 822 Fed. Appx. at 370, n.5.

In the Unfiled Motion to Replace Counsel, Hagar identified that C.B. was not an immediate family member to R.G., (see Appendix F: F.4). A copy of this unfiled motion was sent to Ms. Serrat, (see Appendix G: G.1 & G.2).

The Sixth Circuit's conclusion about C.B. being related to R.G. as a justification of proper venue is another example of the Court exercising its WILL and not JUDGMENT. 18 U.S.C. § 115(c)(2)(B) provides: "immediate family member of individual means any other person living in his household and related to him by blood or marriage." The conjunction "and" does not have an esoteric meaning, nor is it ambiguous it means "together with," "as well as." [T]he plain, obvious and rational meaning of a statute is always preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and ingenuity and study of an acute and powerful intellect would discover." *Lynch v Alworth-Stephens Co.* 267 U.S. 364, 370 (1925).

C.B. does not live in Oregon. R.G. does not live in Ohio. They do not live together in the same household. C.B. does not provide proper venue for the Northern District of Ohio for count 1 of the Superseding Indictment.

"Mr. Hagar's attorneys did provide ineffective assistance of counsel for Ground 5D, when they failed to request a ruling on Mr. Hagar's two Motions to Dismiss for Violation of Speedy Trial." Doc #: 148, PageID #: 1443. The Sixth Circuit concluded: Hagar waived his violation of the Speedy Trial Act claims by failing to obtain a ruling prior to the start of trial. Hagar's attorneys provided ineffective assistance of counsel.

The Government relies on the Sixth Circuit's decision against Hagar's speedy trial claim for the second motion to dismiss and concludes: "Hagar cannot show a reasonable probability that but for his attorney's failure to request a ruling on his motion to dismiss, the proceedings would have produced a different result." Doc #: 150, PageID #: 1470-1471.

The Government claims: "Hagar's own continuance motion on September 6, 2018 likewise, defeats his second claim on its merits, because it was Hagar's own actions that caused the continuance of his trial" Id. The Government now ignores the Sixth Circuit's statement: Hagar "merely mentioned venue in his second speedy trial motion." Hagar 822 Fed. Appx. at 370. In the Appellee brief the Government acknowledged: "While Hagar's second speedy trial motion mentioned venue-related argument, (R.81: Second Speedy Trial Motion, PageID 253), this was in the context of the speedy trial claim discussed above, and not a venue claim." Document: 51, Page: 40. For this reason the Sixth Circuit exercised its WILL and not JUDGMENT for both Hagar's Speedy Trial claims and his venue claim. Even with the Sixth Circuit decision that Hagar forfeited his venue claim, to agree that venue was improper would have made Hagar's Section 2255 relief guaranteed.

Hagar's attorneys intentionally did not obtain the June 2, 2016

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email with the header information to sabotage Hagar's Speedy Trial claim as well as his improper venue claim. They argued the court lacked jurisdiction and not improper venue to guarantee Hagar would not prevail on his Speedy Trial claims on Appeal. Then Mr. Jenkins did not argue the argument of the second motion to dismiss, but instead focused on the fact that Hagar never signed "a speedy trial waiver when the government filed the Superseding Indictment against him, nor did the District Court make an ends of justice determination," Document: 44, Page: 49, during the arraignment on September 19, 2018 and on November 27, 2018 at the pretrial hearing Hagar never attended. Mr. Jenkins did present the same argument for the first speedy trial motion. Document: 44, Page 34-38. Mr. Jenkins should have presented the original argument of the second motion, and included the fact that 125 days were never excluded between September 19, 2018 and January 22, 2019.

Hagar presented the facts for Ground 3 related to the Government's Prosecutorial Misconduct which violated Hagar's Sixth Amendment right to effective assistance of counsel when it interfered in Hagar's preparation of his case. Doc #: 148, PageID #: 1441, and the argument in the memorandum, Doc #: 148, PageID #: 1449-1450. The government's misconduct directly impacted Hagar's right to a speedy trial, as the Government concealed the true location of Eaton's server for over two years.

In *Zedner*, the Supreme Court discussing it reasons not to apply judicial estoppel against *Zedner* related to the not "clearly inconsistent" position of *Zedner*'s representation at the status conference. "This would be a different case if petitioner had succeeded in persuading the District Court at the January 31, status conference that the factual predicate for the statutorily authorized exclusion of delay could be established—for example, if defense counsel had obtained a continuance only by falsely representing that he was in the midst of working with an expert who might authenticate the Bonds." 547 U.S. at 505. The public interest is not served by deliberate deception by the Government.

Even if the September 6, 2018 continuance is excluded time from the Speedy Trial Act, it would only be thirteen days. As Hagar challenged all the waivers he signed and the continuances that resulted from them, Doc #: 81, PageID #: 250-254. "We do not exclude the possibility that in appropriate cases, for example where the government had procured a continuance by deliberate misrepresentation and the delay cause by the continuance was seriously prejudicial to the defendant, the trial court could revoke the continuance retroactively as a sanction for the misconduct and a protection for the defendant." *United States v Carlone* 666 F.2d 1112, 1116 (7th Cir. 1981).

Around August 2018 the Government asked Hagar to agree to stipulate that Eaton's server was located in the Northern District of Ohio. When Hagar refused the Government was forced to obtain a Superseding Indictment. Doc #: 77, PageID #: 237-242. The Government removed the allegation that Hagar's email traveled to Eaton's server in the NDOH. Compare original Indictment, Doc #: 10, PageID #: 34-39.

The Government concealed the location of Eaton's server for two years and deceived the Court. On May 30, 2018, the Court: "I would assume that you're prepared to go forward if we were to start trial Monday?"

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Mr. Riedl: "Yes, your Honor." Doc #: 131, PageID #: 1259.

"No continuance under sub paragraph (A) of this paragraph shall be granted because of ... lack of diligent preparation." 18 U.S.C. § 3161(h)(7)(C).

Hagar's Superseding indictment would have been dismissed with prejudice and Hagar is entitled to relief.

As stated previously, the Government said: "Hagar does not explain how the various invoices, records and email would have affected the outcome of his trial." Doc #: 150, PageID #: 1469. For Grounds 5E, 5F, and 5G, the Court is able to determine whether or not to correct Hagar's sentence based on the facts revealed by the documents and records and invoices. In order to present those facts, a hearing would be required as they were not presented at the sentencing hearing.

For Ground 5E Hagar in the memorandum stated: "Had Mr. Hagar's attorneys, ... obtained the information Eaton provided to the Oregon Employment Department it would have shown Ryan Keen's statement to Clackamas County Sheriff's Deputy Woodward was false." Doc #: 148, PageID #: 1452. Hagar also states: "At the sentencing hearing on June 7, 2019, Mr. Hagar pointed out the information in paragraph 69 of the PSR was false information, that was reported to ... Deputy Woodward," Doc #: 135, PageID #: 1307-1310." Doc #: 148, PageID #: 1443.

The information from Clackamas County Sheriff's report GO 10 2015-34425, (see Appendix B: B.1) was important enough to be used in the PSR as well as by Mr. Riedl at trial: Q. "At the Wilsonville facility is it common for people to be yelling or throwing chairs like that?" Doc #: 104, PageID #: 809. During Cross-examination Mr. Raulino testified he was not present on the day this alleged event occurred, and he was told about it by his manager and HR Rep. Shawn Wrathell. PageID #: 826-827. Mr. Raulino testified his manager, Kiarsten Moen and Shawn Wrathell had Hagar sign a "Harmony Statement" and Mr. Raulino took care of the verbal warning. These events took place in May 2015. PageID #: 827-829.

The Government is in possession of an attachment to some of Hagar's early emails, most likely identified as "Verbal Warning Notes." The document was given to Hagar by Mr. Raulino in October 2015. The document identifies that Hagar signed the Harmony Statement and the day Hagar received the alleged verbal warning, Both in May 2015. The document covers the period from October 1, 2014 to October 7, 2015. There is no documentation of Hagar throwing chairs, despite Ryan Keen's statement to Deputy Woodward, (See Appendix B: B.1) about an investigation into the matter.

The Oregon Employment Department letter, (see Appendix I:) under "Finding of Facts" number 2: "The claimant was discharged because his employer felt he was being disruptive to the company." Which is similar to Ryan Keen's November 30, 2015 email to Hagar. "As was communicated to you at the time of your termination, your employment was terminated for your repeated inappropriate behaviors in the work place despite being coached on this behavior on several occasions." (See Appendix J:).

This email lacks the specific statement about chairs being thrown or the company's policy about work place violence.

For Ground 5F Hagar stated: "Mr. Hagar's attorneys failed to obtain the invoices from Eaton's security, to show that Marc Elliott and Joseph Raulino gave false testimony at Mr. Hagar's trial." Doc #: 148, PageID #: 1444. Hagar also identified the dollar amount Eaton spent

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for the cost of the security service.

At trial Mr. Elliott testified he hire private security to be present on the day Hagar was terminated, November 23, 2015. He also testified he used the same company to provide security at the facility after Hagar was terminated. Doc #: 103, PageID #: 754-755, 761, 793. This is contradicted by his statement recorded in the FBI 302, where he said he had a Wilsonville Police Officer on-scene. (See Appendix L: L.1). It is shown by the Clackamas County Law Enforcement History Detail: C153270198, (see Appendix N:), that at 15:55:04 it is documented: "ONS-OK INFO PT."

Mr. Elliott testified about placing security at Mr. Raulino's home, which would be in the month of November 2015, Doc #: 103, PageID #: 753-754. Mr. Raulino, testified security was placed at his home in November 2015, after Hagar was terminated, Doc #: 104, PageID #: 813. Shortly after his original testimony, Mr. Elliott contradicts his prior testimony confirming he hired security for Mr. Raulino's home due to an email. Doc #: 103, PageID #: 761. The email, (exhibit 104) is dated February 27, 2016, 95 days later than November 24, 2015, the day Mr. Raulino testified it was decided to provide security at his home.

Matthew Colberly, Eaton's head of security testified about the email: Q. "[D]id you take any steps to provide surveillance for any of the Eaton employees?"

A. "I did not."

Q. Okay. Are you aware if Eaton did anything?"

A. I don't believe we did surveillance that I recall."

The PSR documents Eaton provided 2 weeks of 24-7 security at Mr. Raulino's home The FBI 302 documents Mr. Raulino had 6 weeks of security. (See Appendix M: M.2) The Clackamas County report GO 10 2016-11774, (see Appendix C: C.1 & C.2) does not mention Mr. Raulino having security at his home, but does document Mr. Raulino purchased a gun which Mr. Raulino testified to at Hagar's trial. Doc #: 104, PageID #: 815. Did Mr. Raulino's security begin in November 2015 or February 2016? Was it 2 weeks or 6 weeks? It should be noted the Sheriff's report is from April 26, 2016, Approximately 6 weeks later, Hagar is arrested on June 3, 2016. The invoices will demonstrate Mr. Elliott and Mr. Raulino lied about the time period Eaton paid for private security.

For Ground 5G, Hagar identified that Eaton employee Makram Bou-Ismail provided false information to the Wilsonville Police Department. Hagar stated: "The Ping Data from Mr. Hagar's Prepaid Cellphone will document Mr. Hagar did not travel to Wilsonville at 1500 hrs Mon-Fri." Doc #: 148, PageID #: 1444-1445. In the memorandum Hagar said related to possessing the Ping Data and invoices: "Mr. Hagar would have shown that Ryan Keen was not the only Eaton employee to provide false information to the Clackamas County Sheriff's Office / Wilsonville Police." Doc #: 148, PageID #: 1454.

Mr. Raulino's supervisor, Makarm Bou-Ismail initiated a call to Clackamas County Law Enforcement on March 14, 2016 (see Appendix P:), where he provided the following false information, that Hagar parked across the street daily. The following day he went to the Wilsonville Police Department and provided more false information, (see Appendices Q: Q.1 & R: R.1). The false information provided, claimed Hagar would sit in his car around 3pm Monday through Friday.

At Hagar's trial, Matthew Colberly testified Hagar was spotted on

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two occasions. The first, it is alleged Hagar drove through the parking lot. The second, Hagar is alleged to have been spotted standing across the street. (Doc #: 102, PageID #: 502-503. These two statements are false. Hagar did drive to the Wilsonville facility twice. He never drove through the parking lot nor did he stand across the street and he did not drive the 30.7 mile from his home to Wilsonville, dabbly. (see Appendix S: S.1 & S.2).

Hagar directed his attorney to obtain the FBI 302 for Makram Bou-Ismail from the Government, (see Appendix H: H.1), do to the information reported to local law enforcement. Hagar contends the false information Mr. Colberly offered at trial is documented in the FBI 302. Hagar agrees with the statement documented in Elliot's FBI 302: "In February 2016, Mark Lawsen, employee of Eaton, stated he saw a vehicle matching Hagar's drive by the facility." (See Appendix L: L.2). The Ping Data from Hagar's phone and the invoices detailing the mileage cost incurred by Goodyear from their private security, will demonstrate Makram Bou-Ismail lied to local law enforcement and later concealed the fact from the FBI.

Both Makram Bou-Ismail and Ryan Kee were liable under ORS 162.375(1) the relevant part provides: "A person commits the crime of initiating a false report if the person knowingly initiates a false ... report which is transmitted to ... law enforcement agency...." They had to conceal the fact from R.G., not just because of their criminal liability but also because of Eaton's Ethics Policy. As C.B testified:

Q. "Does Eaton have a Code of Ethics for their employees?"

A. "We do."

Q. "Is it something that is enforced with current employees, what their Code of Ethics would be?"

A. "We do, yes."

Q. "And one of those, of course, would be being truthful and being a good employee, would that be correct?"

A. "That's correct."

Q. "And obviously if someone violated the Code of Ethics, there would be consequences that could lead to termination?"

A. "That's correct." Doc #: 102, PageID #: 559.

In order to prevent Hagar from communicating to Eaton employees, Mr. Keen and Makram Bou-Ismail agreed to send the "Cease and Desist" letter to Hagar. (Government exhibit 4, see also Appendix C: C.5). Does Hagar have a right to communicate that individuals may have violated the law? If so, Hagar's communication has an objective purpose. "[T]he right of every private citizen of the United States to inform [the Government], of a violation of the ... laws of the United States; that this right is secured to the Citizen by the Constitution of the United States; and that a conspiracy to injure, oppress, threaten or intimidate him in the free exercise or enjoyment of this right, or because of his having exercised it is punishable under section [241 of Title 18]." In Re Quarles 158 U.S. 532, 537-538 (1895).

It was established at trial Hagar's email were routed to Ryan Keen. Matthew Colberly testified: Q. "And as you were monitoring them, where were you monitoring them?"

A. "Ryan Keen was monitoring them and forwarding them to me." Doc #: 102, PageID #: 486.

R.G. testified: Q: "Were you receiving all of these emails in real-

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time?"

A. "No. After a bit of time, it -- they -- Eaton decided to have them filtered through HR, and then they were brought to me when they thought I needed to know about them." Doc #: 104, PageID #: 900. Did R.G. need to know that Ryan Keen and Makram Bou-Ismail lied to law enforcement and was concealing the fact on April 24, 2016, when Hagar blamed R.G. for the false report filed against Hagar by Ryan Keen? Doc #: 104, PageID #: 899-907.

Ryan Keen and Makram Bou-Ismail concealed from R.G. that they provided false information to local law enforcement. They were also concealing the fact from Federal law enforcement. Both are liable under 18 U.S.C. § 1512(b)(3) and § 1512(b)(1)(C).

Marc Elliott and Joseph Raulino provided false testimony at trial, they are both liable under 18 U.S.C. § 1503(a) and 18 U.S.C. § 1512(c)(2), as the invoices will show Elliott and Raulino lied about the dates they hired private security. Because they did not provide the invoices to the Government they and possibly others (i.e. Mr. Keen) are liable under 18 U.S.C. § 1512(c)(1).

As the expenses incurred by Eaton documented in the PSR are a result of Ryan Keen and Makram Bou-Ismail concealing their unlawful activity as well as Marc Elliott and Joseph Raulino's false testimony, Hagar's restitution for Eaton is based on false or fraudulent pretenses and representations. Someone at Eaton either used a wire or the mail to transmit the information and the four individuals are liable under 18 U.S.C. § 1343 or § 1341.

As Eaton is an enterprise engaged in interstate and foreign commerce and the four individuals violated the above statutes in the conduct of the enterprise known as Eaton, they are liable under 18 U.S.C. § 1961(c) as well as § 1961(d). Their activity would continue to this day if interviewed by Federal law enforcement. Hagar's restitution order is predicated on the fraud Ryan Keen, Makram Bou-Ismail, Marc Elliott and Joseph Raulino perpetrated on local and Federal law enforcement as well as Eaton and Eaton employees. Had Hagar had the documents and invoices, Hagar would have been able to demonstrate the facts to the Court.

CONCLUSION

Hagar can meet the burden to prevail on his claim for relief pursuant to Section 2255. The Court should proceed to expand the record, See Rule 7 of Section 2255, and allow Hagar to request discovery. The Court should not grant the Government's request to deny Hagar's motion, as the June 2, 2016 email with the header information will demonstrate the Government's misconduct. "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this; you must first enable the government to control the governed; and in the next place oblige it to control itself." Federalist No. 51, A. Dershowitz, The federalist Papers, P. 304.

The Court should grant the relief Mr. Hagar seeks.

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CERTIFICATE OF SERVICE

As a Pro se litigant, Mr. Hagar request the Clerk to serve AUSA Riedl, through the court's electronic filing system.

Michael A. Hagar



I declare (or certify, verify, or state) under penalty of perjury that this Reply was placed in the prison mailing system on

October 13, 2021

Executed on October 13, 2021

Michael A. Hagar



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The documents in the Appendices are referred to in Hagar's Section 2255 motion and reply and are presented for evidentiary purposes. The appendices complies with Local Rule 7.1(f) page limitation requirement. The relevant part provides: "Appendices of evidentiary, statutory or other materials are excluded from these page limitations."

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

JAN 03 2022

MICHAEL A. HAGAR,

Defendant-Petitioner,

v.

UNITED STATES OF AMERICA,

Plaintiff-Respondent.

CASE NO. 1:16CR273
1:21CV1336
JUDGE DONALD C. NUGENT

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

DEFENDANT-PETITIONER'S MOTION
TO CONDUCT DISCOVERY PURSUANT
TO RULE 6 OF THE RULES GOVERNING
SECTION 2255 PROCEEDINGS

The Defendant-Petitioner, Michael Hagar, moves the Court leave to conduct discovery pursuant to Rule 6 of the Rules Governing Section 2255 Proceedings, Rules 27 through 37 of the Rules of Civil Procedure, and Rule 16 of the Rules of Criminal Procedure. Discovery is warranted in order to guarantee Mr. Hagar a full and fair opportunity to develop facts and claims set forth in his § 2255 motion and ensure adequate review of his claims.

Attached to this motion are a number of appendices, which documents evidence which supports the specific allegations of Hagar's claims and supports Hagar's need to conduct discovery to fully develop the facts to demonstrate he is entitled to relief.

The grounds for these request are set forth in the following memorandum.

Respectfully submitted,

Michael A. Hagar

Michael A. Hagar
64124060
FCC Complex Low
P.O. Box 26020
Beaumont, TX 77720

MEMORANDUM

Mr. Hagar moves the Court for leave to conduct discovery in support of the claims advanced in his motion to vacate under 28 U.S.C. § 2255. This request is authorized by Rule 6 of the Rules Governing Section 2255 proceedings ("A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal Procedure or Civil Procedure, or in accordance with the practices and principles of law.") The request is also consistent with the Supreme Court's directive that a federal habeas petitioner is "entitled to careful consideration and plenary processing of [his claims], including [the] full opportunity for presentation of the relevant facts." *Harris v. Nelson*, 394 U.S. 286, 298 (1968); see also *Blackledge v. Allison*, 431 U.S. 63, 82-83 (1977).

In his § 2255 motion, Hagar raised numerous claims for relief, including Ground 3, Prosecutorial Misconduct; Ground 4, violation of Sixth Amendment right to a Speedy Trial; and Ground 5, ineffective assistance of counsel. As his motion sets forth well-supported allegations regarding the deprivation of his constitutional rights, which, if proved, would necessitate vacating or correcting his sentence.

I. HAGAR HAS ESTABLISHED GOOD CAUSE TO WARRANT DISCOVERY

A. This Court has broad power in the type of discovery it can grant, including that provided for "under the Federal Rules of Criminal or Civil Procedure, or in accordance with the practices and principles of law." Habeas Rule 6. In fact, Rule 6 has been interpreted to authorize a court for example, to issue subpoenas to produce documents, information, or objects; to allow depositions; or to order the physical release of evidence. See e.g. *Payne v. Bell*, 89 F. Supp. 2d 967, 970, 971-76 (W.D. Tenn. 2000) (granting petitioner's request to serve interrogatories on state, obtain documents in state's possession, and depose assistant district attorney); *O'Neal v. Lampert*, 199 F. Supp. 2d 1064, 1065 (D. Or. 2002) (granting motion for subpoenas to produce records under Habeas Rule 6). That broad power of discovery should be exercised here.

Although the grant of discovery requested herein is not a matter of right, this Court may order parties to provide discovery if Hagar meets the liberal "good cause" standard. Hagar's specific ~~request~~ request establish good cause for discovery because he has provided specific allegations that, if fully developed will "demonstrate that he is entitled to relief." *Bracey v. Gramley*, 520 U.S. 899, 908-909 (1997); see *Williams v.*

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Bagley 380 F.3d 932, 974 (6th Cir. 2004). ("Rule 6 embodies the principle that a court must provide discovery in a habeas proceeding only 'where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is entitled to relief.'") (citing Bracey 520 U.S. at 908-909).

As set forth in his § 2255 motion and subsequent filing (Reply), Hagar has established there is reason to believe that discovery is necessary to fully develop the facts to demonstrate he is entitled to relief.

B. Hagar has submitted that the Government committed Prosecutorial Misconduct when it used false information, the location of Eaton's server, to obtain the arrest warrant and the original indictment. The Government then concealed the true location of Eaton's server for over two years, violating Hagar's Sixth Amendment right to a speedy trial, as well as, his right to a speedy trial under the Speedy Trial Act. See Grounds 3 and 4, Doc #: 148, PageID #: 1441-1442.

The June 2, 2016 email with the complete header information, referred to in paragraph 13 of the affidavit for the complaint, Doc #: 1-1, PageID #: 6, will demonstrate that the Eaton I.P. address, 151.110.126.183, is not the I.P. address listed in the header information.

Hagar, has shown good cause for the Court to grant discovery because the documents Hagar request for discovery will reveal the depth of the Government's misconduct.

C. Hagar, also, has submitted that his trial counsels, Mr. Jenkins and Ms. Serrat rendered ineffective assistance for failing to obtain a copy of the June 2, 2016 email referenced above, Doc #: 148, PageID #: 1442. Hagar has provided a copy of the November 14, 2018 letter from Ms. Serrat which acknowledges Hagar requested the June 2, 2016 email. See Appendix A: A.1

Hagar, also, has submitted that his trial counsels rendered ineffective assistance for failing to subpoena the Oregon Employment Department for the records Eaton provided to the Department related to Hagar's unemployment claim; failed to obtain the invoices from the security company Eaton hired; failed to subpoena T-Mobile for the Ping

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Data for Hagar's prepaid cellphone; and failed to obtain a copy of the Spend Sheet detailing the expenses incurred by Goodyear's private security company. Doc #: 148, PageID #: 1443-1444.

II HAGAR REQUEST DISCOVERY RELATED TO THE MOTIVE AND EXTENT OF THE GOVERNMENT MISCONDUCT

A. Hagar has identified the following as relevant to develop his claim of Government Misconduct.

1. Notification from an Eaton employee to Special Agent Michael G. Gerfin of the FBI, on or about June 2, 2016 referred to in paragraph 12 of the affidavit of the complaint. Doc #: 1-1, PageID #: 5.
2. Copy of the June 2, 2016 email with the complete header information referred to in paragraph 13 of the affidavit of the Complaint, Doc #: 1-1, PageID #: 6.
3. The documents in possession of the Government, detailing the true location of Eaton's Data Center Hagar's emails traveled to.
4. All email communications between Eaton employees and Federal Law Enforcement, between June 2, 2016 and June 18, 2016.
5. All email communications between the FBI and U.S. Attorneys Office in both the District of Oregon and the Northern District of Ohio, between June 2, 2016 and June 18, 2016.
6. All email communications between Law Enforcement in the State of Oregon, including but not limited to, Clackamas County Sheriff's Office, the Wilsonville Police Department, Multnomah County Sheriff's Office, Marion County Sheriff's Office, Multnomah County District Attorney's Office, the Oregon Department of Justice, and Federal Law Enforcement, including but not limited to the FBI Offices and the U.S. Attorneys Office in the District of Oregon and the Northern District of Ohio, between June 2, 2016 and June 18, 2016.
7. Email communication between AUSA Gorder, Oregon and AUSA Kakani, Cleveland on June 14, 2016.
8. The Detainer and documents related to the detainer sent to the Multnomah County Detention Center on June 14, 2016.
9. Transcripts from the August 5, 2016 Preliminary and Detention Hearing plus the Government's Exhibits #1-#18. See Docket

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10. Transcripts and documents from Grand Jury Proceeding related to the location of Eaton's Data Center, under Rule 6(e)(3)(E)(ii) of the Federal Rules of Criminal Procedure.
11. The email communication in or around July or August 2018 between AUSA Riedl or Kakani and Mr. Jenkins related to a Plea Agreement.
12. Copy of the original proposed stipulations for Hagar's trial scheduled to begin on September 17, 2018.
13. Communications between AUSA Riedl or Kakani to Mr. Jenkins on or around September 6, 2018, notifying Hagar of the Government's intent to supersede the indictment due to the fact that Eaton's Data Center is not located in the Northern District of Ohio.
- B. The documents Hagar seeks will reveal the motive and extent of the Government's misconduct. The notification by an Eaton employee to S/A Gersin of the FBI on June 2, 2016, see paragraph 12 of the affidavit of the complaint, Doc #1-1, PageID #: 5, will contain the email chain with Hagar's email as well as, Ryan Keen's portion and message as documented in Clackamas County Sheriff's report GO 10 2016-14957. See Appendix B: B.1 and B.2

The June 2, 2016 email with the complete header information, see paragraph 13 of the affidavit of the complaint, Doc #1-1, PageID #: 6, will reveal the I.P. address 151.110.126.183 for Eaton's server is not the I.P. address for Eaton's server. The documents detailing the true location of Eaton's server will demonstrate when the Government knew the location of Eaton's server.

The email communications of Eaton employees, Federal Law Enforcement and Oregon State and local officials, will reveal the extent of the coordination between the different entities to prevent Hagar's release from State custody. See emails from Special Agent Monica Hantz of the FBI, Doc #1-67-1, PageID #: 299-222.

The email communication between AUSA Gorder, Oregon, and AUSA Kakani, Cleveland on June 14, 2016, will reveal that Hagar was to be transferred to the custody of the U.S. Marshals on June 28, 2016.

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The transcripts from the Preliminary and Detention Hearing on August 5, 2016 and the Grand Jury Transcripts will reveal the testimony and any documents the Government offered as to the location of Eaton's Data Center.

The original stipulations will reveal the Government sought to have Hagar to agree that Eaton's server was located in the Northern District of Ohio. The communication between the U.S. Attorney's Office and Hagar's attorney will reveal why the Government superseded the indictment.

C. The discovery related to the Government's misconduct will demonstrate the ineffective assistance rendered by Hagar's counsel and establish the prejudice Hagar suffered as a result.

In order to prevent Hagar's release from the Multnomah County Detention Center (see Doc #: 67-1, PageID #: 219-222) the Government issued the Complaint, Doc #: 1, and used false information in the affidavit; the I.P. address 157.110.126.183, Doc #: 1-1, PageID #: 6, to obtain the arrest warrant, Doc #: 9. The Government sent a detainer to the Multnomah County Detention Center, which prevented Hagar's release. When the Government learned Hagar would be transferred to the custody of the U.S. Marshals, AUSA Riedl applied for a Writ of Habeas Corpus ad prosequendum, Doc #: 3, to avoid sending documents to the U.S. Attorney in Oregon.

At the Preliminary and Detention Hearing, S/A Monica Hantz testified Hagar's email went to Eaton's server with the I.P. address 157.110.126.183 and testified this server was located in the Northern District of Ohio. As counts 2 and 3 allege: "the e-mail travelled to data centers maintained by Eaton in the Northern District of Ohio," Doc #: 10, PageID #: 38-39. It is reasonable to conclude S/A Hantz testified at the Grand Jury proceedings.

As the Government superseded the indictment and removed the allegation that the emails traveled to the Northern District of Ohio, Doc #: 77, PageID: 241-242, Hagar has demonstrated "the materiality of the information requested." See *Williams v. Bagely* 380 F.3d 932, 974 (6th Cir. 2004).

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III. HAGAR REQUEST DISCOVERY RELATED TO HIS COUNSEL'S INEFFECTIVE ASSISTANCE

A. Hagar has identified the following as relevant to develop his claims of ineffective assistance of counsel.

1. The invoices from the security firm Eaton hired to provide security at the Wilsonville, Oregon facility; at the home of Hagar's former supervisor; and the security provided to Eaton employee, R.G., from November, 2015 to June, 2016.
2. The Spread Sheet information detailing the cost Goodyear incurred from the private security firm Goodyear hired to conduct surveillance of Hagar between February 22, 2016 to March 15, 2016.
3. The FBI 302 for Makram Bou-Ismael from the interview conducted in or around July, 2016.
4. All FBI 302s for Eaton employees, including but not limited to, R.G., C.B., John David Wheeler and Donald Tyron Frazer.

B. To further develop Hagar's claims of ineffective assistance of counsel, Hagar request authority to issue subpoenas under Rule 45(c)(2)(A) of the Federal Rules of Civil Procedures, to the following entities, for the identified documents and information.

1. To Eaton Corporation, Equifax Corporation and the Oregon Employment Department for the documents Eaton provided to the Oregon Employment Department, related to Hagar's unemployment claim.
2. To T-Mobile Corporation and Clackamas County Sheriff's Office, including the Wilsonville Police Department, for information related to Hagar's prepaid cellphone, 503 409 1423, between November 16, 2015 to March 15, 2016, to include but not limited to the Ping Data, Cellsite Location Information, GPS information and real-time location information.
3. To Eaton Corporation for email communication of Eaton employees: Marc Elliott, Ryan Keen, Shawn Wrathel, Joseph Raulino, Matthew Colberly, Amir Messiah and Andrea Russel related to Michael Hagar between November 16, 2015 and November 25, 2015. Plus any emails between Eaton and

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Equifax related to Hagar's unemployment claim, between November 23, 2015 and June 1, 2016.

H. If necessary to Eaton Corporation and the private security firm Eaton hired to provide security at the Wilsonville, Oregon facility, at the home of Hagar's former supervisor and for Eaton employee R.G., for the invoices of said security firm between November, 2015 to June, 2016.

C. If the Court grants Hagar's request to issue subpoenas, Hagar request the Court to appoint an attorney under 18 U.S.C. § 3006A, as provided by Rule 6 of the Rules Governing Section 2255 Proceedings, to effectuate the service of the subpoenas as provided by Rule 45 of the Federal Rules of Civil Procedures.

D. According to the PSR, Eaton spent \$41,016.00 for on-site security from November 2015 to May 31, 2016 at the Wilsonville, Oregon facility and \$5,898.00 for 2 weeks of 24-7 on-site security and surveillance outside Hagar's former supervisor's home.

Marc Elliott's original testimony, along with Joseph Raulino's testimony placed the hiring of security at Raulino's home on and after November 24, 2015, see Doc #: 103, PageID #: 753-754 and Doc #: 104, PageID #: 813. Elliott later contradicted his testimony, stating the security was hired as a result of a February 27, 2016 email, Government exhibit 104, Doc #: 103, PageID #: 761.

Elliott's testimony relating to hiring security on the day Hagar was terminated and using the same security company at the Wilsonville facility after Hagar's termination, Doc #: 103, PageID #: 750, 754 and Doc #: 104, PageID #: 793, is contradicted by his statement documented by the FBI 302 (see Appendix C: C.1-C.3). The 302 documents Elliott stated a Wilsonville Police Officer was present when Hagar was terminated. The Clackamas County Law Enforcement Event History Detail: C153270198 documents on November 23, 2015 at 15:55:04 an officer arrived on-scene. See Appendix D: D.1.

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The invoices will demonstrate the dates when Eaton employed private security and show that both Marc Elliott and Joseph Raulino lied under oath.

The Spread Sheet information, the FBI 302 for Makram Bou-Ismael and the information from Hagar's prepaid cell-phone, will demonstrate Makram Bou-Ismael lied to the Wilsonville Police on March 14, 2016 and March 15, 2016 when he claimed Hagar parked accross the street everyday, (see Appendices E: E.1 and F: F.1) and then concealed the fact from the FBI.

The documents Eaton sent to the Oregon Employment Department related to Hagar's unemployment claim will demonstrate the statement Ryan Keen made to Clackamas County Sheriff's deputy Woodward was false (that Hagar was fired for throwing chairs), (see Appendix G: G.1) and the chair throwing allegation was never made to the Oregon Employment Department, (see Appendices H: H.1 and I: I.1).

The email communications of Eaton employees between November 16, 2015 to November 25, 2015 will demonstrate what led to Hagar's termination.

Marc Elliott, Joseph Raulino, Makram - Bou-Ismael and Ryan Keen engaged in a pattern of deceit towards Local, State and Federal Law Enforcement, as well as, other Eaton employees. Misappropriated Eaton funds as part of their deception by using their position of trust within Eaton Corporation, and then fraudulently submitted, the deceptive use of Eaton's funds for the cost of Eaton's loss as part of Hagar's restitution order.

Hagar has demonstrated "the materiality of the information requested." See Bagely 380 F.3d at 974, to develop his ineffective assistance of counsel claim. The invoices for the security firm Eaton hired for security at the Wilsonville, Oregon facility and for Mr. Raulino, will demonstrate, at a minimum extent, the prejudice Hagar suffered from his counsels ineffective assistance. "As a matter of due process, an offender may not be sentenced on the basis of mistaken facts or unfounded assumptions. (citations omitted)" Robert v. United States 445 U.S. 552, 563 (1980).

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According to the PSR, Eaton Spent \$5,898.00 for security at Joseph Raulino's home. The false testimony Marc Elliott and Joseph Raulino provided, represents, they had a plan to obtain money from Hagar to cover the cost of the \$5,898.00 Eaton Spent. As part of their plan they Used a wire or the mails. Marc Elliott testified: "We had some feedback from employees about some commentary that Mike had made, and we put some Surveillance in front of Joe's house 24/7 as we were concerned for his, his family and his well-being." Doc#: 103, PageID #: 753-754.

Joseph Raulino testified: Q. "Okay. What happened after he was let go?"

A. "So then on the 24th, the next day, one of my employees came to me and said that on Saturday, Mike had come up to him. And this employee works in a different area of the factory, it's basically the other side of the factory. The employee said he had never really talked to Mike before, but Mike started telling him about how he was upset that he didn't get a promotion and that he was going to make Eaton management pay for this; that I was a liar and that he was going to make me hurt."

Q. "What did you do based on that information?"

A. "So I went to HR, Shawn Wrathell, and Marc and told them what I found out. They then called the individual in and talked to him to collaborate my story.

At this point I -- I started fearing for my own safety, and my family's safety, so Marc and Shawn got me security for my home." Doc #: 104, PageID #: 813.

This narrative is contradicted by Marc Elliott's testimony with regard to the Government's exhibit 104, the February 27, 2016 email with part of Mr. Raulino's address.

Q. "Okay. And in response to this e-mail, I think you already described earlier you had placed surveillance on Joseph's house, is that correct?"

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A. "That's correct." Doc #: 103, PageID #: 761.

The \$ 5,898.00 Hagar was ordered to pay Eaton as part of his restitution is a result of Marc Elliott's and Joseph Raulino's criminal conduct and violates Hagar's right to due process.

CONCLUSION

Hagar has demonstrated the materiality of the information he has requested for discovery. The Court should grant Hagar's motion to conduct discovery and authority to issue subpoenas. The court should also appoint counsel to Hagar in order to effectuate the service of the subpoenas.

NOTICE TO THE COURT AND GOVERNMENT

Mr. Hagar gives notice to the Court and Government his intent to Reply to the Government's response to this motion. Due to the delay in the mail service, Hagar believes his reply may be delayed by any time limit to file. Hagar will notify the Court if any extension is required to file a reply.

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CERTIFICATE OF SERVICE

As a Pro se Litigant, Mr. Hagar request the Clerk of Court to serve AUSA Riedl by operation of the Court's electronic filing system.

Michael A. Hagar

Michael A. Hagar

I declare (or certify, verify, or state) under penalty of perjury that this *motion* was placed in the prison mailing system on December 26, 2021

Executed on December 26, 2021

Michael A. Hagar

Michael A. Hagar

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL A. HAGAR,	)	CASE NO.: 1:16CR273
	)	
Defendant-Petitioner,	)	
	)	JUDGE DONALD C. NUGENT
v.	)	
	)	<u>GOVERNMENT'S RESPONSE IN</u>
UNITED STATES OF AMERICA,	)	<u>OPPOSITION TO DEFENDANT'S</u>
	)	<u>MOTION TO CONDUCT DISCOVERY</u>
Plaintiff-Respondent.	)	

Defendant Michael A. Hagar, who is currently serving a 180-month sentence for cyberstalking and making threatening communications, now moves this Court to conduct discovery pursuant to Rule 6 of the rules governing Section 2255 proceedings. As set forth below, Hagar's Motion is without merit and should be denied.

On August 16, 2021, Hagar filed a meritless Motion to Vacate under 28 U.S.C. § 2255 (R. 148: Motion, PageID 1435), to which the government responded on September 16, 2021¹. (R. 150: Response in Opposition, PageID 1463-75). Hagar's motion remains pending with this Court. The government continues to oppose Hagar's Motion to Vacate for the reasons stated in its original response, *i.e.*, he cannot meet his burden to prevail on his claim for relief pursuant to Section 2255. (R. 150: Response in Opposition, PageID 1436-75). The government likewise opposes Hagar's recently filed request for discovery, as he neither establishes that the discovery sought is essential to an adequate factual development of the record, nor demonstrates he would be entitled to relief if the facts were more fully developed through the requested discovery.

¹ The Government incorporates the factual and procedural background set forth in its Response in Opposition to Defendant's Motion to Vacate under 28 U.S.C. § 2255 as if fully restated herein. (See R. 150: Response in Opposition, PageID 1463-64).

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Hagar claims “[d]iscovery is warranted in order to guarantee [] a full and fair opportunity to develop facts and claims set forth in his § 2255 motion and ensure adequate review of his claims.” (R. 156: Motion, PageID 1553). But Hagar is not entitled to discovery as a matter of course. Indeed, where a defendant asserts a claim in a post-conviction proceeding, discovery relating to that claim is sometimes afforded, but is not a matter of right. Strickler v. Greene, 527 U.S. 263, 286 (1999) (“Mere speculation that some exculpatory material may have been withheld is unlikely to establish good cause for a discovery request on collateral review.”); Bracy v. Gramley, 520 U.S. 899, 904 (1997) (a habeas petitioner “is not entitled to discovery as a matter of ordinary course”); Stanford v. Parker, 266 F.3d 442, 460 (6th Cir. 2001). Upon a showing of good cause, district courts have discretion to allow discovery. See Rule 6 of the Rules Governing Section 2255 Proceedings. Good cause exists where petitioners make specific allegations showing that they may be entitled to relief if the facts were more fully developed. Bracy, 520 U.S. at 908-09.

The Sixth Circuit has said that:

a court must provide discovery in a habeas corpus proceeding only “where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore, entitled to relief....”

Lynott v. Story, 929 F.2d 228, 232 (6th Cir. 1991) (quoting Harris v. Nelson, 394 U.S. 286, 300, reh’g denied, 394 U.S. 1025 (1969)) (emphasis in original). In other words, Hagar “must present specific allegations which give reason to believe that, if the facts are fully developed, he may be entitled to habeas relief.” Franco v. United States, 187 F.3d 635, 1999 WL 623354, at *2 (6th Cir. 1999) (unpublished) (citation omitted). See also Lott v. Coyle, 261 F.3d 594, 602 (6th Cir. 2001) (construing analogous rule for Section 2254). The discovery sought must be essential to

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an adequate factual development of the record. Bracy, 520 U.S. at 909. See United States v. Roth, 2010 WL 200055, at *3 (E.D. Wis. Jan. 13, 2010) (unpublished) (conclusory allegations and sketchy statements did not warrant the issuance of a subpoena under Rule 6 of the Rules Governing Section 2255 Proceedings); United States v. Thompson, 2010 WL 1976880, at *3 (N.D. Ill. May 13, 2010) (unpublished). Additionally, “the scope and extent of such discovery is” at the district court’s discretion. Bracy, 520 U.S. at 909.

In Bracy, discovery was warranted because of the specific allegations related to Bracy’s case—not simply conclusory allegations. Bracy, at 909. Hagar has not pointed to any specific allegations related to his case, nor does he show how this discovery (which he seemingly already has) is essential to the development of the record. As such, Hagar has not satisfied, and given the facts and circumstances of this case, cannot satisfy the Supreme Court’s materiality standard. He cannot demonstrate that the outcome of his case would have been different had he been given the various emails, employment records, phone records, and internal communications requested in his motion.

To support his argument, Hagar cites Harris, which held that where a petitioner shows through specific allegations that if the facts are more fully developed, they would be entitled to relief when given the additional discovery. Hagar, however, only makes a conclusory allegation that the requested records would “reveal the motive and extent of the government’s misconduct” (R. 156: Motion, PageID 1557) and discredit various witnesses. (Id., PageID 1561-62). But Hagar cannot demonstrate that the alleged impeachment evidence would have been material and fails to show that access to the requested documents would have resulted in a different outcome. Moreover, Hagar conveniently ignores the strength of the evidence—among other things, a series of his very own emails, in which he made direct threats to shoot his victims. Indeed, none of the

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documents which Hagar requests in his discovery motion refute the overwhelming evidence presented against him at trial.

For the foregoing reasons, the United States respectfully requests that the Court deny Hagar's motion.

Respectfully submitted,

BRIDGET M. BRENNAN
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of January, 2022, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by regular U.S. Mail to:

Michael A. Hagar,
Reg. No. 64124-060,
FCI Complex Low,
P.O. Box 26020,
Beaumont, TX 77720

/s/ Daniel J. Riedl

Daniel J. Riedl
Assistant U.S. Attorney

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FILED

JAN 31 2022

Clerk of Court, United States District Court
Ohio Northern District - CLEVELAND

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

MICHAEL A. HAGAR

Defendant-Petitioner,

v.

UNITED STATES OF AMERICA,

Plaintiff-Respondent.

: CASE No. 1:16CR273
: 1:21CV1336
: JUDGE DONALD C. NUGENT
: DEFENDANT-PETITIONER'S
: REPLY TO THE GOVERNMENT'S
: RESPONSE IN OPPOSITION TO
: DEFENDANT'S MOTION TO
: CONDUCT DISCOVERY

The Defendant-Petitioner, Michael Hagar, reply's to the Government's Response In Opposition To Defendant's Motion To Conduct Discovery. The Government's Response In Opposition To Defendant's Motion To Conduct Discovery, Doc #: 157; PageID #: 1578-1582, should be considered by the Court as meritless and consequently ignored. The Government's Response sole purpose is to ignore Hagar's specific allegations and obfuscate the Court to the issues Hagar raised in his Motion to Vacate.

The Government submitted: "Hagar cannot demonstrate that the alleged impeachment evidence would have been material and fails to show that access to the requested documents would have resulted in a different outcome. Moreover, Hagar ~~conveniently~~ conveniently ignores the strength of the evidence - among other things, a series of his own emails, in which he made direct threats to shoot his victims. Indeed, none of the documents which Hagar request in his Discovery motion refute the overwhelming evidence presented against him at trial." Doc #: 157; PageID #: 1580-1581. Hagar does not challenge the evidence presented at trial in his motion to vacate and the Government acknowledged Hagar "does not assert he is actually innocent." See footnote #1 in Government's Response In Opposition To Motion To Vacate, Set Aside, Or Correct Sentence

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Pursuant To 28 U.S.C. § 2255, Doc #: 150, PageID #: 1468 and the Government's reference is intended to deflect the Court's attention to the merits of Hagar's motion for discovery.

Hagar has made specific allegations: for Ground 3, "The Petitioner is being held in violation of the Fifth Amendment Due Process Clause, when the Government committed Prosecutorial Misconduct, using false information, (the I.P. address for Eaton's server) to obtain an arrest warrant and later an indictment against Mr. Hagar, violating the Petitioner's Sixth Amendment right to effective assistance of counsel, when the Government concealed the true location of Eaton's server for over a two year period." Doc #: 148; PageID #: 1441; for Ground 4, "The Petitioner is being held in violation of his Sixth Amendment right to a speedy trial, when the Government intentionally concealed the true location of Eaton's server for over two years." Doc #: 148; PageID #: 1442. Hagar's ineffective assistance of counsel claim; Ground 5A, "Mr. Hagar's attorneys did not obtain a copy of the June 2, 2016 email for count 3 of the Superseding Indictment. Doc #: 77, PageID #: 242, with the complete header information, referred to in paragraph 13 of the affidavit for the Complaint, Doc #1-1; PageID #16. ... The document was to establish the burden of proof for Mr. Hagar's second Motion to Dismiss. Doc #: 81." Doc #: 148; PageID #: 1442.

The Court should grant Hagar's request for discovery for the documents related to the motive and extent of the government's misconduct as they are essential to the development of the record. As the Sixth Circuit concluded for Hagar's second motion to dismiss, "Hagar also has not shown actual prejudice from the delay such as loss of evidence, and there is not a wiff of prosecutorial bad faith." *United States v Hagar* 822 Fed. Appx. 361, 369 (6th Cir. 2020).

The documents will demonstrate the Government learned Hagar was to be released from the Multnomah County Detention Center; (see email from SA Monica Hantz), "Hagar is currently in custody and it appears that he is going to be release tomorrow, CV is schedule to sign a complaint in the northern district of Ohio for Hagar on 06/14/2016 at 10:30 AM ET." Doc #: 67-1; PageID #: 220, and how they learned; "Our AUSA has been in contact with the DA's office

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in Oregon and everybody is up to date in this matter." Doc #: 67-1; PageID #: 221, The government then used the I.P. address 151.110.126.183 to establish Hagar's emails traveled to the Northern District of Ohio, in order to obtain the arrest warrant.

On June 14, 2016 when the Government learned (the information Hagar transcribed from FBI document FD-1057, Date 6/24/2016); "AUSA Gorder contacted AUSA Kakani, Cleveland, and confirmed the details. AUSA Gorder stated Hagar was due to appear before a Oregon State Judge on June 28, 2016, and Hagar would be remanded to the U.S. Marshals." Doc #: 67; PageID #: 214, the government applied for and obtained a Writ of Habeas Corpus ad Prosequendum, Doc #: 3 and Doc #: 6, to avoid having to send the document with the I.P. address to the U.S. Attorney's Office in Oregon for Hagar's Preliminary and Removal Hearing.

The government obtained the false I.P. address, 151.110.126.183, either in collusion with an Eaton employee or by obtaining the header information from an email sent from Eaton's headquarters in Cleveland to Federal Law Enforcement, i.e. the FBI or AUSA. SA Monica Hantz testified at the Preliminary/Detention Hearing that Hagar's email went to Eaton's server with the I.P. address 151.110.126.183 and that the server was located in Beachwood, Ohio. As both Count 2 and 3 of the original indictment alleged, "the e-mail travelled to datacenters maintained by Eaton in the Northern District of Ohio." Doc #: 10, PageID #: 38-39, the same testimony SA Hantz provided at the Preliminary/Detention Hearing was presented to the Grand Jury.

"Dismissal of the indictment based on the prosecutor's misconduct before the grand jury is warranted only where the misconduct 'undermined the grand jury's ability to make an informed and objective evaluation of the evidence presented to it' (citation omitted)." *United States v. Griffith*, 756 F.2d 1244, 1250 (6th Cir 1985). The Government agreed to and signed every waiver for the Speedy Trial Act, as well as agreed to each continuance Hagar received, but never notified Hagar or the Court about the true location of Eaton's server. On May 30, 2018, the Court: "I would assume that you're prepared to go forward if we were to start trial

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on Monday?"
Mr. Riedl: "Yes, Your Honor."

But Mr. Riedl was not ready for trial which is why the Government attempted to have Hagar accept a Plea Agreement around July or August of 2018. It is also the reason the Government attempted to have Hagar agree to the stipulation that Eaton's server was located in the Northern District of Ohio prior to the commencement of Hagar's trial scheduled to begin on September 17, 2018.

When these tactics to conceal the misconduct failed, the Government was forced to Supersede the indictment and remove the allegation it was incapable of proving.

Hagar has demonstrated a particularized need for the grand jury transcripts and documents related to the location of Eaton's data center. See *FDIC v Ernst & Whinney* 921 F.2d 83, 86-87 (6th Cir. 1990), and has "demonstrat[ed] the materiality of the information requested," *Williams v Bagley* 380 F.3d 932, 974 (6th Cir. 2004).

As Hagar stated in his second motion to dismiss: "His waivers of Speedy Trial should be set aside as they were signed under the mistaken belief that the federal government had evidence of the emails (which are the subject of this prosecution) having traveled through this Court's jurisdiction. As proof that the government had no such evidence, a superseding indictment was filed September 11, 2018. To this day, defendant believes that the subject emails had absolutely no nexus to this Court's jurisdiction." Doc #: 81; PageID #: 253.

The requested documents will allow Hagar to fully develop the record and demonstrate that Hagar is entitled to relief as Hagar will show the overwhelming stench from the cesspool of the government's misconduct.

In relation to the requested discovery for Hagar's ineffective assistance of counsel claim the government said: Hagar "cannot demonstrate that the outcome of his case would have been different had he been given the various emails, employment records, phone records, and internal communications requested in his motion." Doc #: 157; PageID #: 1580. Only

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the Court can decide if it would correct Hagar's sentence as a result of the facts obtained from the requested documents and as those facts are absent from the record the Court cannot make a reasoned and informed decision.

As documented in the Sentencing Hearing transcript: Mr. Riedl: "So Ms. Serrat argued that he's learned his lesson and that he's learned. There's nothing in the record to support that. If anything, Mr. Hagar's testimony is that he still holds the grudges, he still hold these grievances.

He did not earn acceptance of responsibility in this case because he has not accepted responsibility for his criminal conduct.

He has ongoing grievances, and yet does not feel that he needs mental health treatment. That's what he told the presentence report writer. So if he doesn't think there's anything wrong with his behavior and he doesn't think there's anything wrong with his mental state, what is to lead us to believe that when he gets out of prison, he's going to want to do anything different than he intended to do before he was arrested?

The fact is Mr. Hagar is a danger, he is a danger to the community, and under the 3553(a) factors only a lengthy prison sentence will protect the community from Mr. Hagar."

The Court: "Now, in order to -- for me to consider either going above the Guidelines or below the Guidelines, does there have to be something specifically unique about the circumstances of this case?"

Mr. Riedl: "In order for a departure to apply, the Court would have to look at the specific departure factors that the Government set forth.

Now, for a variance, of course, the Court is free to sentence. The Guidelines are merely advisory, as the Court knows, and the Court is free to vary as it sees fit given the facts of this case." Doc#: 135; PageID #: 1298-1299.

As the Supreme Court said: "As a matter of due process, an offender may not be sentenced on the basis of mistaken facts or unfounded assumptions (citation omitted)." *Robert v. United States*, 445 U.S. 552, 563 (1980). The Court lacks the relevant facts related to the intentional deception of Eaton employees Ryan Keen, Makram Bou-Ismael, Marc Elliott and

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Joseph Raulino. The Court should decide if this deception influenced the perception law enforcement had about Hagar. As documented in the Sentencing Hearing transcript. Mr. Riedl: "Your Honor, given Mr. Hagar's -- the length of his behavior, he said when I was cross-examining him, one of the things I asked is 'At any point you could have stopped,' and his answer was yes."

He could have stopped. He could have, if he felt aggrieved, he could have written appropriate letters or e-mail to law enforcement, to prosecutors, or to people." Doc #: 135; PageID #: 1301-1302.

Hagar did send an email to Clackamas County Sheriff's Deputy Woodward on January 23, 2016 and attached a copy of the Oregon Employment Department Administrative Decision letter. This is documented in the Clackamas Report GO 10 2015-34425 on page 4. "Mr. Hagar reached out to me via email on 01/23/16 stating he wanted to sit down with Chief Smith, a member of the DA's office and myself because he doesn't know criminal law. On 01/29/16 I received an email from the DA's office attached to it was a copy of the email Mr. Hagar sent to the DA's office."

On 01/29/16 I emailed Mr. Hagar at Sergeant Zaitz advice. Mr. Hagar is upset because of his termination at EATON which is a civil matter, I simply told Mr. Hagar to contact an attorney in regards to his needs." (See Appendix B: B.1 to B.4 of Hagar's reply to the Government's Response in Opposition to Hagar's motion to Vacate, Doc #: 153).

Why did Deputy Woodward ignore Hagar? It is reasonable to conclude the lie Ryan Keen told her shaped her opinion of Hagar. "Mr. Keen said the reason Mr. Hagar was let go was because he would throw chairs and cuss and they have a policy against work place violence." Page 2 of GO 10 2015-34425. The same false statements Hagar pointed out at paragraph 69 of the PSR during the sentencing hearing. Doc #: 135; PageID #: 1307-1310.

Did the Court believe Hagar? No it did not. The Court: "So when you tell me that you just wanted somebody to straighten something out, you know, that does not ring true under any

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Circumstances whatsoever.

You had -- you were angry about something. That much I'll give you. What it was, I don't know. And then you did what you did in order to get even, be mean, to scare; I'm not sure what it is." Doc #: 135; PageID: 1312.

Mr. Hagar will fully develop the record with the requested discovery and demonstrate that Ryan Keen lied to Deputy Woodward about the reason for Hagar's termination. And that Ryan Keen was completely aware of the reason for Hagar's termination, Matthew Coberly during cross-examination.

Q. "Okay. Who is Ryan Keen?"

A. "Ryan Keen is an HR manager for Eaton."

Q. And what was Ryan Keen's involvement in Mr. Hagar's termination from Eaton Corporation?"

A. "Because the decision was made at the -- his place of employment to terminate his employment, that would have been within the HR process so he would have had oversight of that, that termination." Doc #: 102, PageID #: 506.

The documents and phone records will show that Makram Bou-Ismaïl lied to the Wilsonville Police on March 14 and 15, 2016 about Hagar parking across the street of Eaton's Wilsonville facility. And the documents will prove Marc Elliott and Joseph Raulino lied under oath at Hagar's trial. All these facts Hagar's attorneys failed to introduce at the trial and during the sentencing hearing.

The Court lacked these facts when it sentenced Hagar on June 7, 2019. "And if I have to reflect the seriousness of the offense in the sentence and deter criminal conduct, I think the maximum sentence is appropriate.

And the public has to be protected from what you did, and I just heard here again, I heard your testimony. Actually I couldn't believe your testimony when I heard it, and then I hear it here. And I don't see any remorse. I don't see any acceptance of responsibility for acting badly committing crime. Nothing. You're angry that somebody did some perceived wrong to you, and then that's where it stands.

And so I don't see any assurance that if you were on the street, that the public would be protected at all. In

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fact, I see just the exact opposite. " Doc #: 135; Page ID #: 1315.

The documents and records requested by Hagar will demonstrate the demonstrate the restitution order Hagar was ordered to pay under 18 U.S.C. § 3663A, for the \$155,654 Eaton spent was a result of the fraud committed by Ryan Keen, Makram Bou-Tsamir, Marc Elliott and Joseph Ravino. All of the \$155,654 was spent while Ryan Keen concealed his lie to Deputy Woodward. The \$5,898 spent for 2 weeks of 24-7 on-site security at Joseph Ravino's home is based on the false testimony of Marc Elliott and Joseph Ravino and represents fraud. The \$1,020 for 17 hours of Court preparation and trial time away from work, in addition to \$1,500 for 25 hours of the same time away from work represents the time Marc Elliott and Joseph Ravino were away from work. (How this is broken down and whether or not it include other Eaton employees is unknown, but some of this amount is likely attributed to Elliott and Ravino.) Mr. Hagar should not have to compensate Eaton for its management preparing for and committing perjury at Hagar's trial and represents fraud. For the reasons stated above the Court should grant Hagar's request for discovery. The discovery will allow Hagar to fully develop the facts and demonstrate that Hagar is entitled to relief.

Respectfully submitted,

Michael H. Hagar

Michael A. Hagar

64124060

FCC Complex Low

P.O. Box 26020

Beaumont, TX 77720

Mr. Hagar's housing unit is currently on Covid 19 quarantine lock down and does not have access to a typewriter and cannot type his address as required by Local Rule 10.1

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CERTIFICATE OF SERVICE

As a Pro se litigant, Mr. Hagar request the Clerk to Serve AUSA Riedl, through the court's electronic filing system.

Michael A. Hagar

Michael A. Hagar

I declare (or certify, verify, or state) under penalty of perjury that this Reply was placed in the prison mailing system on January 25, 2022

Executed on January 25, 2022

Michael A. Hagar

Michael A. Hagar

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL HAGAR,	)	CASE NO. 1:16 CR 273
	)	
Petitioner,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	MEMORANDUM OPINION
	)	AND ORDER
Respondent..	)	
	)	

This matter comes before the Court upon Michael Hagar's (hereinafter "Mr. Hagar") pro se Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. (ECF #148). The petition raises three grounds for relief: (1) ineffective assistance of counsel, (2) denial of the right to a speedy trial, and (3) prosecutorial misconduct. The Government filed a Response in Opposition and Mr. Hagar filed a Reply. (ECF #150, 153).

Background

On March 1, 2019, following a jury trial, Mr. Hagar was convicted of: (1) cyberstalking in violation of a protective order, in violation of 18 U.S.C. §§ 2261A(2)(B), and 2261(b)(6), and (2) two counts of making an interstate threatening communication, in violation of 18 U.S.C. § 875(c). (ECF # 98). He was sentenced to 180 months imprisonment on June 7, 2019. (ECF #112). The United States Court of Appeals for the Sixth Circuit affirmed the trial court's judgment on appeal. Subsequently, Mr. Hagar filed a petition for certiorari in the U.S. Supreme Court which was denied on January 11, 2021.

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Mr. Hagar filed the instant motion on August 16, 2021. He now seeks to correct his sentence pursuant to U.S.C. § 2255 on the basis that he is being held in violation of the right to effective assistance of counsel, the right to a speedy trial, and his right under Fifth Amendment Due Process Clause to be free from prosecutorial misconduct.

Legal Standard

A petitioner that moves to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255 must demonstrate that: (1) the sentence was imposed in violation of the Constitution or laws of the United States; (2) the court was without jurisdiction to impose the sentence; (3) the sentence was in excess of the maximum authorized by law; or (4) the sentence is otherwise subject to collateral attack. *See* 28 U.S.C. § 2255; *Hill v. United States*, 368 U.S. 424, 426-27 (1962). As such, a court may grant relief under § 2255 only if a petitioner has demonstrated “a fundamental defect which inherently results in a complete miscarriage of justice.” *Griffin v. United States*, 330 F.3d 733, 736 (6th Cir. 2003) (internal quotation and citation omitted). If a § 2255 motion, as well as the files and records of the case, conclusively show that the petitioner is entitled to no relief, then the court need not grant a hearing on the motion. *See* 28 U.S.C. § 2255; *see also Blanton v. United States*, 94 F.3d 227, 235 (6th Cir. 1996) (recognizing that evidentiary hearing is not required when the record conclusively shows that petitioner is not entitled to relief).

To “obtain collateral relief a prisoner must clear a significantly higher hurdle than would exist on direct appeal.” *United States v. Frady*, 456 U.S. 152, 166 (1982). Once a defendant has waived or exhausted his right to appeal, “we are entitled to presume he stands fairly and finally convicted.” *Id.* at 164. Thus, to prevail on a § 2255 motion, Mr. Hagar must prove by a preponderance of the evidence that his constitutional rights were denied or infringed. *United States v. Wright*, 624 F.2d 557, 558 (5th Cir. 1980).

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Analysis

A. Ineffective Assistance of Counsel

Mr. Hagar raised a claim of ineffective assistance of counsel on essentially three grounds: (1) counsel's failure to obtain certain documents and records; (2) counsel's failure to assert an improper venue argument; and (3) counsel's failure to request the District Court rule on his two Motions to Dismiss. In order to prevail on an ineffective assistance of counsel claim, a petitioner must show that his counsel's performance was deficient and "fell below an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 686-88 (1984). A petitioner must also establish prejudice. To establish prejudice, the petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. Judicial scrutiny of counsel's performance must be "highly deferential" and counsel's conduct should be evaluated from "counsel's perspective at the time." *Id.* at 689.

Mr. Hagar's first and primary allegation is that his trial attorney failed to obtain relevant documents, invoices, and records. In support of his ineffective assistance of counsel claim, Mr. Hagar asserts that his attorneys failed to obtain a copy of an email with the header listing the IP address, information from the Oregon Employment Department, invoices from Eaton's private security firm, data from T-Mobile for Mr. Hagar's prepaid cellphone, and the spreadsheet from Goodyear detailing their expenses incurred from hiring a private security firm to observe Mr. Hagar. In order to show that Mr. Hagar's counsel provided ineffective counsel by failing to obtain certain documents, Mr. Hagar must specifically explain what should have been obtained and why. *United States v. Robson*, 307 F. App'x 907, 910 (6th Cir. 2009).

Mr. Hagar claims that the email with the header listing the IP address would have established his burden of proof for his second motion to dismiss and would have demonstrated that venue was improper. However, the recipient of the email was in the Northern District of

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Ohio and therefore the location of the server outside the Northern District of Ohio was irrelevant and knowledge of the location of the server would not have resulted in a different outcome in terms of the motion or at trial.

Mr. Hagar also asserts that the information Eaton provided to the Oregon Employment Department regarding Mr. Hagar's termination would show that Ryan Keen's statement to Deputy Woodward about an investigation into Mr. Hagar throwing chairs at the workplace was false. He also argues that the invoices from Eaton's security company would show what dates security was hired for Mr. Raulino's home and for the Wilsonville facility and would prove that Marc Elliot and Joseph Raulino gave false testimony at trial. Lastly, Mr. Hagar claims that the spreadsheet from Goodyear and his cellphone data would show that he did not travel to Eaton's facility in Wilsonville at 3:00PM Monday through Friday, and, therefore, testimony given at trial that he was spotted outside the facility was false. The court is required to examine a counsel's conduct from the counsel's perspective at the time of the conduct. *Id.* At 689. Mr. Hagar's counsel, during discovery, had no reason to believe that false testimony would be given at trial. Further, even if this information had been introduced at trial, overwhelming evidence, such as the emails sent by Mr. Hagar himself, still existed for the jury to find Mr. Hagar guilty of cyberstalking and making interstate threatening communications. As a result, Mr. Hagar cannot show that a failure to procure this information deprived him of a fair trial and led to an unreliable result.

Mr. Hagar's second allegation is that the Northern District of Ohio was an improper venue, and his trial attorney was ineffective for failing to pursue this issue pre- and post-trial. Mr. Hagar claims that had his trial attorney obtained a copy of an email with the header listing the IP addresses, he could have demonstrated that venue was improper. The improper venue claim was raised on direct appeal and decided against Mr. Hagar. Mr. Hagar cannot relitigate an

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issue already raised on appeal unless “highly exceptional circumstances” exist, “such as an intervening change in the law.” *DuPont v. United States*, 76 F.3d 108, 110 (6th Cir. 1996); *Ford v. United States*, 36 F.3d 1097 (6th Cir. 1994).

Even if Mr. Hagar had not already raised the venue issue on direct appeal, his improper venue claim would fail because one of the victims received the threatening emails in the Northern District of Ohio. *United States v. Hagar*, 822 F. App’x 361, 370 (6th Cir. 2020), cert. denied, 141 S. Ct. 1115, 208 L. Ed. 2d 557 (2021). See also *United States v. Jeffries*, 692 F.3d 473, 483 (6th Cir. 2012) (finding venue proper in the district where the video link was received despite it being recorded and uploaded in another district). Venue is also not a jurisdictional issue and is therefore not cognizable under § 2255. *Williams v. U.S.*, 582 F.2d 1039, 1041 (6th Cir. 1978); see also *Patton v. U.S.*, 281 U.S. 276, 298 (1930) (stating that Article III, Section II of the Constitution is not jurisdictional). Therefore, this Court finds that Mr. Hagar’s counsel was not ineffective on these grounds.

Mr. Hagar claimed ineffective assistance of counsel for failure to request that the District Court rule on his two Motions to Dismiss for violation of a speedy trial. Although the Sixth Circuit did not reach the merits on the speedy trial grounds because they found that Mr. Hagar waived his claims by failing to request a ruling, the court opined that “even if we ruled on Hagar’s claims he would still lose.” *Hagar*, 822 F. App’x at 368. Therefore, even if counsel made an error, Mr. Hagar cannot establish reasonable probability of a different outcome sufficient to prove ineffective counsel.

Finally, Mr. Hagar claims ineffective assistance of counsel regarding his prosecutorial misconduct claim. Specifically, Mr. Hagar alleges that his counsel was ineffective in not obtaining information regarding the true location of Eaton’s server from the Government. It is unclear whether this claim applies to Mr. Hagar’s trial counsel or appellate counsel. Regardless,

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Mr. Hagar has failed to prove that the Government committed misconduct. Therefore, Mr. Hagar cannot prove that he was prejudiced by counsel's failure to obtain the information allegedly concealed by the Government. This Court concludes that Mr. Hagar has failed to show that his counsel was ineffective under *Strickland*. 466 U.S. 668 (1984).

B. Right to Speedy Trial

Mr. Hagar also claims that he is being held in violation of the Speedy Trial Act, 18 U.S.C. §§ 3161, et seq., and the Sixth Amendment right to a speedy trial. Mr. Hagar claims that the district court erred in failing to decide on his motions to dismiss, which were based on the alleged violation of the Speedy Trial Act. The Sixth Circuit found that Mr. Hagar waived his speedy trial claims. The Sixth Circuit stated that Mr. Hagar's failure to secure rulings on his motions in the district court amounted to an abandonment of the claims. 822 F. App'x at 368. *See also United States v. Harrits*, 165 F.3d 1062, 1066 (6th Cir. 1999) (finding the appellant abandoned his claim on appeal by failing to request a ruling on a discovery motion at trial or at the final pretrial conferences). In addition, "a § 2255 motion may not be used to relitigate an issue that was raised on appeal." *DuPont*, 76 F.3d at 110. Mr. Hagar, himself, admits that he already raised this issue in his appeal to the Sixth Circuit. This Court finds that Mr. Hagar is procedurally barred from bringing a claim for violation of the right to a speedy trial because he abandoned his claim, and the issue was already litigated on direct appeal.

C. Prosecutorial Misconduct

Mr. Hagar claims that the government committed prosecutorial misconduct by using false information to obtain an arrest warrant and later an indictment. He contends that the Government violated his right to effective assistance of counsel, when it concealed the true location of Eaton's server for over a two-year period. Mr. Hagar admitted he did not raise his prosecutorial misconduct argument on direct appeal. (ECF # 148). A "failure to raise an argument at trial or on

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direct appeal is waived on collateral review under § 2255, absent a showing of both cause and actual prejudice.” *Murr v. United States*, 200 F.3d 895, 900 (6th Cir. 2000) (citing *United States v. Frady*, 456 U.S. 152, 164-65, 167). A petitioner shows cause by establishing that he was prevented from raising a claim by an external impediment. *Murray v. Carrier*, 477 U.S. 478, 492 (1986). As discussed above, Mr. Hagar argues in his reply to the government’s response that he did not pursue a prosecutorial misconduct claim due to ineffective counsel. (ECF # 153). Mr. Hagar, himself, stated that the prosecutorial misconduct claim was not raised on direct appeal because his attorney was not required to raise every nonfrivolous issue (ECF #148). In addition, Mr. Hagar’s counsel was not ineffective in failing to obtain the information allegedly concealed by the Government. As a result, this Court finds that Mr. Hagar waived his claim of prosecutorial misconduct by not raising it on direct appeal and is procedurally barred from bringing it for review under § 2255.

D. Discovery Request

On January 3, 2022, Mr. Hagar filed a Motion to Conduct Discovery Pursuant to Rule 6 of the Rules Governing Section 2255 Proceedings. (ECF # 156). On January 18, 2022, the Government filed their Response in Opposition. (ECF # 157). Mr. Hagar filed a Reply to the Government’s Response in Opposition on January 31, 2022. (ECF #158). Under Rule 6, “a judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal or Civil Procedure.” 28 U.S.C.S. § 2255 Proc. R. 6(a). In order to meet the good cause requirement, a petitioner must make specific allegations that show that the petitioner may be able to demonstrate that he is entitled to relief if the facts are developed fully. *Bracy v. Gramley*, 520 U.S. 899, 908-09 (1997) (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)).

Mr. Hagar claims that discovery will allow him to support his claims of prosecutorial misconduct and ineffective assistance of counsel. (ECF # 156). As discussed above, Mr.

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Hagar's prosecutorial misconduct claims are procedurally barred and as a result he fails to make a showing of good cause. *See Pizzuti v. United States*, 809 F. Supp. 2d 164, 183-84 (S.D.N.Y. 2011) (stating that the petitioner's discovery request was procedurally barred because he failed to raise the claim on direct appeal and had not shown cause or prejudice). Mr. Hagar seeks to discover a copy of an email with the header listing the IP address, information from the Oregon Employment Department, invoices from Eaton's private security firm, data from T-Mobile, and the spreadsheet from Goodyear in order to fully support his ineffective counsel claim. As discussed above, although Mr. Hagar does make specific allegations, these allegations do not establish that if the facts were developed fully, he would be entitled to relief. The overwhelming evidence presented against Mr. Hagar at trial would not be refuted by the documents requested by Mr. Hagar in his Motion to Conduct Discovery. As a result, Mr. Hagar's Motion to Conduct Discovery is DENIED.

Certificate of Appealability

Pursuant to 28 U.S.C. § 2253, the Court must determine whether to grant a certificate of appealability as to any of the claims presented in the Petition. 28 U.S.C. § 2253 provides, in part, as follows:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from --

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

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In order to make “substantial showing” of the denial of a constitutional right, as required under 28 U.S.C. § 2255(c)(2), a habeas prisoner must demonstrate “that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issue presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 77 L. Ed. 2d 1090 (1983).)

Where a district court has rejected the constitutional claims on the merits, the petitioner must demonstrate only that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Slack*, 529 U.S. at 484. For the reasons stated above, the Court concludes that Mr. Hagar has failed to make a substantial showing of the denial of a constitutional right and there is no reasonable basis upon which to debate this Court's procedural rulings. Accordingly, the Court declines to issue a certificate of appealability.

For the reasons set forth above, Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 (ECF #148) is DENIED. Because the files and records in this case conclusively show that Petitioner is entitled to no relief under § 2255, no evidentiary hearing is required to resolve the pending Motion. Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed.R.App.P. 22(b).

IT IS SO ORDERED.

DATED: February 1, 2022


DONALD C. NUGENT
Senior United States District Judge

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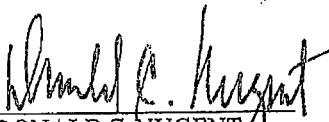
Case: 1:16-cr-00273-DCN Doc #: 160 Filed: 02/02/22 1 of 1. PageID #: 1602

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL HAGAR,	)	CASE NO. 1:16 CR 273
	)	
Petitioner,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	<u>ORDER</u>
	)	
Respondent.	)	
	)	

For the reasons set forth in this Court's Memorandum Opinion and Order, Petitioner's Motion to Vacate, Set Aside, or Correct Sentence in Accordance with Title 8 U.S.C. § 2255 is DENIED. The court hereby orders that this case be dismissed with prejudice. Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed.R.App.P. 22(b).

IT IS SO ORDERED.


DONALD C. NUGENT
Senior United States District Judge

DATED: February 1, 2022

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DEBORAH S. HUNT, Clerk

Respondent-Appellee.

ORDER

In 2019, a jury convicted Hagar of one count of cyberstalking in violation of a protective order, in violation of 18 U.S.C. §§ 2261(b)(6) and 2261A(2)(B) (Count 1), and two counts of making a threatening communication in interstate commerce, in violation of 18 U.S.C. § 875(c) (Counts 2 and 3). These charges arose from threatening, harassing, and intimidating emails that Hagar sent to employees of the Eaton Corporation and the Goodyear Tire and Rubber Company, his former employers, as well as law enforcement officials in Oregon. The district court sentenced Hagar to 60 months on each count to be served consecutively for a total of 180 months of imprisonment and ordered him to serve a three-year term of supervised release and to pay restitution in the total amount of \$559,486.41. On direct appeal, we affirmed Hagar's conviction and sentence. *United States v. Hagar*, 822 F. App'x 361 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 1115 (2021).

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Hagar filed a timely § 2255 motion to vacate, claiming a speedy trial violation, prosecutorial misconduct, and ineffective assistance of counsel. Hagar also filed a motion to conduct discovery pursuant to Rule 6 of the Rules Governing § 2255 Proceedings. The district court denied both motions and declined to issue a certificate of appealability. This timely appeal followed.

Hagar moves this court for a certificate of appealability. *See* Fed. R. App. P. 22(b). To obtain a certificate of appealability, Hagar must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Hagar may “satisf[y] this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Where the district court rejected a claim on procedural grounds, Hagar must “show[], at least, that jurists of reason would find it debatable whether [his § 2255 motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Venue: Some of Hagar’s claims relate to his argument that the Northern District of Ohio was not the proper venue for his prosecution because his criminal conduct occurred in Oregon. Hagar’s venue argument was raised and rejected on direct appeal. We first determined that Hagar had forfeited this argument by failing to challenge venue in a pre-trial motion for change of venue or in a motion for a judgment of acquittal. *Hagar*, 822 F. App’x at 369-70. We went on to determine that, even if Hagar had not forfeited his venue argument, it would fail on the merits. *Id.* at 370-71. C.B., one of the victims named in the superseding indictment, worked at Eaton’s headquarters in Beachwood, Ohio, and Hagar sent the threatening emails referenced in Counts 2 and 3 to C.B.’s Eaton email address. In addition, Count 1 referenced the emails that Hagar sent to C.B.’s Eaton email address as part of his course of conduct to harass and intimidate R.G., the cyberstalking victim, who was related by marriage to C.B. We concluded that venue was proper because Hagar sent the emails to C.B. in the Northern District of Ohio, regardless of whether C.B.

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actually read the emails. *Id.*; see 18 U.S.C. § 3237(a); *United States v. Jeffries*, 692 F.3d 473, 483 (6th Cir. 2012), *abrogated on other grounds by Elonis v. United States*, 575 U.S. 723 (2015). We also held that venue was proper under the “substantial contacts” test because Eaton and Goodyear addressed Hagar’s conduct from their respective headquarters in the Northern District of Ohio and because evidence and several witnesses were located in the district. *Hagar*, 822 F. App’x at 371; see *United States v. Brika*, 416 F.3d 514, 527 (6th Cir. 2005).

In his motion for a certificate of appealability, Hagar contends that our merits analysis of his venue argument was dicta and not binding in his § 2255 proceedings. “[A]lternative holdings are not dicta,” *Freed v. Thomas*, 976 F.3d 729, 738 (6th Cir. 2020), and our alternative holding on the merits of Hagar’s venue argument establishes the law of the case, see *Howe v. City of Akron*, 801 F.3d 718, 740 (6th Cir. 2015). And Hagar cannot use a § 2255 motion to relitigate an issue that he raised on direct appeal. See *DuPont v. United States*, 76 F.3d 108, 110 (6th Cir. 1996).

Hagar also argues in his motion for a certificate of appealability that this court erred in stating that C.B. received and reviewed Hagar’s emails at her office in Beachwood, Ohio because C.B. testified that she first saw the emails during her trial preparation. But we went on to state: “That C.B. did not see all of the messages because Eaton’s security office shielded her from them also does not matter.” *Hagar*, 822 F. App’x at 371 (citing *Jeffries*, 692 F.3d at 483).

Speedy Trial: Hagar claimed in his § 2255 motion that he is being held in violation of his right to a speedy trial under the Sixth Amendment and the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, and his right to due process under the Fifth Amendment. Hagar filed motions to dismiss, asserting that his right to a speedy trial had been violated; the district court never ruled on his motions. On appeal, we determined that Hagar had waived his speedy trial claims by failing to request and obtain rulings on his motions to dismiss before trial. *Hagar*, 822 F. App’x at 368-69. We went on to determine that Hagar’s speedy trial claims failed and that, even if there were a violation of the Speedy Trial Act, dismissal with prejudice was not warranted. *Id.* at 369.

In his § 2255 motion, Hagar first challenged the district court’s failure to grant his motion to dismiss the superseding indictment. The district court rejected Hagar’s claim, concluding that

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he had abandoned his speedy trial claim by failing to obtain a ruling on his motion to dismiss and that he could not use a § 2255 motion to relitigate an issue that had been raised on direct appeal. *See DuPont*, 76 F.3d at 110. Reasonable jurists could not debate the district court's resolution of this speedy trial argument.

As his second ground for relief, Hagar argued that we violated the separation-of-powers doctrine on direct appeal by creating a new waiver rule inconsistent with the Speedy Trial Act's waiver provision, 18 U.S.C. § 3162(a)(2). We recognized that claims under the Speedy Trial Act are waived unless raised before trial and held that the failure to obtain a pre-trial ruling on a motion raising such claims "is the functional equivalent of failing to bring the claims in the first place." *Hagar*, 822 F. App'x at 368. Our ruling is consistent with the Speedy Trial Act's waiver provision. In any event, we went on to address and reject Hagar's speedy trial arguments on the merits. Reasonable jurists therefore could not conclude that Hagar's separation-of-powers argument deserves encouragement to proceed further.

Hagar's fourth ground for relief asserted that he is being held in violation of his Sixth Amendment right to a speedy trial because the government concealed the true location of Eaton's server for over two years. Hagar did not raise this argument on direct appeal. "[C]laims that could have been raised on direct appeal, but were not, will not be entertained via a motion under § 2255 unless the petitioner shows: (1) cause and actual prejudice to excuse his failure to raise the claims previously; or (2) that he is 'actually innocent' of the crime." *Ray v. United States*, 721 F.3d 758 761 (6th Cir. 2013) (quoting *Bousley v. United States*, 523 U.S. 614, 622 (1998)). Although ineffective assistance of appellate counsel may serve as cause to overcome a procedural default, *see Huff v. United States*, 734 F.3d 600, 606 (6th Cir. 2013), Hagar conceded in his § 2255 motion that he did not raise this issue on direct appeal because an appellate attorney "does not have to raise every nonfrivolous issue." Nor can Hagar establish actual prejudice because, notwithstanding the location of Eaton's server, venue was proper given that he sent threatening emails to a person located in the Northern District of Ohio and that the case involved other contacts

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with the district. Hagar does not assert his actual innocence. Accordingly, reasonable jurists could not conclude that this argument deserves encouragement to proceed further.

Prosecutorial Misconduct: In his third ground for relief, Hagar claimed that the government used false information—the location of Eaton’s server—to obtain an arrest warrant and later an indictment. Hagar conceded that he did not raise his prosecutorial-misconduct claim on direct appeal because an appellate attorney “does not have to raise every nonfrivolous issue.” And, as discussed above, Hagar cannot establish prejudice or actual innocence. Reasonable jurists therefore could not debate the district court’s conclusion that Hagar had waived his prosecutorial-misconduct claim by not raising it on direct appeal and was procedurally barred from bringing it for review under § 2255.

Ineffective Assistance of Counsel: Hagar claimed ineffective assistance of counsel as his final ground for relief. To establish ineffective assistance of counsel, a defendant must show (1) “that counsel’s performance was deficient” and (2) that counsel’s “deficient performance prejudiced the defense.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The performance prong requires the defendant to “show that counsel’s representation fell below an objective standard of reasonableness.” *Id.* at 688. The prejudice prong requires the defendant to “show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694.

Hagar first argued that his attorneys failed to obtain a copy of an email showing the complete header information with the IP address for Eaton’s server. According to Hagar, this information would have supported his motion to dismiss the superseding indictment and demonstrated that venue was improper. As addressed above, Hagar sent this email to a person located in the Northern District of Ohio. Reasonable jurists therefore could not disagree with the district court’s conclusion that knowledge of the location of Eaton’s server would not have resulted in a different outcome.

Hagar next claimed that his attorneys were ineffective for failing to raise a venue challenge. Hagar’s venue argument was raised and rejected on direct appeal. *Hagar*, 822 F. App’x at 369-

APPENDIX FF

a.203

No. 22-3171

- 6 -

71. Accordingly, jurists of reason could not debate the district court's conclusion that Hagar's attorneys were not ineffective for failing to raise a venue challenge.

According to Hagar, his attorneys were ineffective for failing to establish that C.B. was not R.G.'s immediate family member as defined by 18 U.S.C. § 115(c)(2)(B). At trial, C.B. testified about her familial relationship with R.G., and the jury instructions defined "immediate family member" in accordance with § 115(c)(2)(B). Reasonable jurists could not conclude that this ineffective-assistance claim deserves encouragement to proceed further.

Hagar also argued that his attorneys were ineffective for failing to obtain a ruling on his motions to dismiss and that this failure resulted in our conclusion that he had waived his speedy trial claims. But we went on to determine that Hagar's speedy trial claims failed on the merits. *Hagar*, 822 F. App'x at 369. Accordingly, jurists of reason could not debate the district court's conclusion that Hagar could not show prejudice.

According to Hagar's motion for a certificate of appealability, his next three ineffective-assistance claims related to his sentencing. Hagar first claimed that his attorneys were ineffective for failing to subpoena the Oregon Employment Department to obtain the information that Eaton provided regarding his separation. Hagar argued that this information would show that Eaton's human resource director made a false report to the Clackamas County Sheriff's Department about him throwing chairs. Hagar next asserted that his attorneys were ineffective for failing to obtain invoices from Eaton's security company to show that witnesses provided false testimony at trial about the dates that Eaton hired security. Hagar also claimed that his attorneys were ineffective for failing to subpoena T-Mobile for his cellphone's ping data and failing to obtain a spreadsheet detailing Goodyear's expenses for hiring security to observe him. According to Hagar, this information would show that an Eaton supervisor provided false information to law enforcement that he traveled to Eaton's facility and sat across the street around 3:00 p.m. on Monday through Friday. Hagar failed to establish a reasonable probability that his sentence would have been different if his attorneys had obtained these documents. Accordingly, reasonable jurists could not conclude that these ineffective-assistance claims deserve encouragement to proceed further.

APPENDIX FF

a.204

No. 22-3171

- 7 -

Motion for Discovery: Hagar seeks a certificate of appealability as to the district court's denial of his motion to conduct discovery. Hagar's motion sought discovery to support his prosecutorial-misconduct and ineffective-assistance claims. In a § 2255 proceeding, the district court may allow discovery "where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief." *Thomas v. United States*, 849 F.3d 669, 680 (6th Cir. 2017). The district court pointed out that Hagar's prosecutorial-misconduct claim was procedurally barred and determined that his allegations failed to establish that, if the facts were fully developed, he would be entitled to relief on his ineffective-assistance claims. Reasonable jurists would not debate the district court's denial of Hagar's discovery motion.

For these reasons, this court **DENIES** Hagar's motion for a certificate of appealability and **DENIES** as moot his motion for leave to proceed in forma pauperis on appeal.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX FF

a.205

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 26, 2022
DEBORAH S. HUNT, Clerk

No. 22-3171

MICHAEL A. HAGAR,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

Before: CLAY, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Michael A. Hagar for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX GG

a.206

No. 22-3171

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Sep 16, 2022
DEBORAH S. HUNT, Clerk

MICHAEL A. HAGAR,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

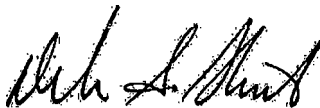
ORDER

Before: SUTTON, Chief Judge; GUY and COLE, Circuit Judges.

Michael A. Hagar, a pro se federal prisoner, petitions the court to rehear en banc its order denying his motion for a certificate of appealability. The petition has been referred to this panel, on which the original deciding judge does not sit, for an initial determination on the merits of the petition for rehearing. Upon careful consideration, the panel concludes that the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter. See Fed. R. App. P. 40(a).

The Clerk shall now refer the matter to all of the active members of the court for further proceedings on the suggestion for en banc rehearing.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX HH

a.207

No. 22-3171

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Oct 3, 2022

DEBORAH S. HUNT, Clerk

MICHAEL A. HAGAR,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

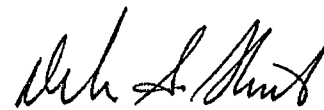
Respondent-Appellee.

ORDER

Before: SUTTON, Chief Judge; GUY and COLE, Circuit Judges.

Michael A. Hagar petitions for rehearing en banc of this court's order entered on July 26, 2022, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX II.

a.208

DAYS NOT EXCLUDED UNDER THE SPEEDY TRIAL ACT AS PROVIDED BY 18 U.S.C. § 3161(h):

§ 3161(h): The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offence must commence:

- (1): Any period of delay resulting from other proceedings concerning the Defendant, including but not limited to –
- (D): delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of such motion;
- (H): delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court;

DATE	EVENT / DOCUMENT	NON-EXCL. DAYS
8/24/2016	Indictment Filed (Doc. 10)	0
9/19/2016	Arraignment on Indictment (Doc. 12)	25
9/30/2016	USA Motion for Protective Order (Doc. 14)	10
10/13/2016	Hearing on Protective Order / STA Waiver #1 Signed (Docs. 15–17)	—
10/19/2016	Defendant Motion for Continuance (Doc. 18)	5
12/01/2016	Pretrial Conference Hearing (Doc. 20)	42
1/24/2017	Pretrial Conference / STA Waiver #2 Signed (Doc. 21)	53
2/02/2017	Pro Se Motion to Dismiss (Doc. 23)	8
2/27/2017	Pretrial Conference Hearing (Doc. 30)	5
3/02/2017	Defendant's Motion to Dismiss (Doc. 31)	3
4/11/2017	Pretrial Conference / STA Waiver Extended (Doc. 37)	—
5/24/2017	Pretrial Conference Hearing (Doc. 39)	26

APPENDIX II.

a.209

DATE	EVENT / DOCUMENT	NON-EXCL. DAYS
6/27/2017	Pretrial Conference Hearing (Doc. 41)	33
7/25/2017	Motions to Compel (Docs. 45 & 46)	26
9/22/2017	Pretrial Conference Hearing (Doc. 60)	1
10/30/2017	Pretrial Conference Hearing (Doc. 61)	37
12/06/2017	Pretrial Conference Hearing (Doc. 62)	36
1/09/2018	Pretrial Conference Hearing (Doc. 63)	32
2/06/2018	Pretrial Conference / STA Waiver #4 Signed (Doc. 64)	28
3/07/2018	Pretrial Conference Hearing (Doc. 66)	28
4/18/2018	Defendant's Motion to Replace Counsel (Doc. 67)	41
5/30/2018	Hearing on Motion to Replace Counsel — AUSA Riedl: Government READY FOR TRIAL. Court does NOT toll STA. (Doc. 70)	—
6/25/2018	Pretrial Conference Hearing (Doc. 73)	25
7/16/2018	Pretrial Conference Hearing (Doc. 74)	20
9/06/2018	Defendant's Motion to Continue Trial (Doc. 75) — triggered by government's disclosure that Eaton server NOT in NDOH	51
	SUBTOTAL — PRE-SUPERSEDING INDICTMENT	535
9/11/2018	Superseding Indictment Filed (Doc. 77)	4
9/19/2018	Arraignment on Superseding Indictment (Doc. 78)	7
11/27/2018	Pretrial Conference Hearing (Doc. 80)	68
1/22/2019	Defendant's Motion to Dismiss — Speedy Trial (Doc. 81)	55
	GRAND TOTAL NON-EXCLUDED DAYS	669

APPENDIX JJ, EXHIBIT 1 a.210

Hantz, Monica (CV) (FBI)

From: Hantz, Monica (CV) (FBI)
Sent: Monday, June 13, 2016 6:42 PM
To: Roberts, Stephen (PD) (FBI)
Subject: FW: Emailing - 16-28155
Attachments: pp81575011.pdf

Steve,

Below is the info we talked about:

CV received information from Eaton, 1000 Eaton Boulevard, Cleveland, OH 44122, about a previous employee, Michael A. Hagar, who has been threatening and harassing employees and clients of the company, in addition to attempting to extort Eaton and Goodyear.

Matt Coberly, mattcoberly@eaton.com and Ryan Keen, ryankeen@eaton.com, provided numerous emails that Hagar have been sending to employees from Eaton and Goodyear Tire. One of the emails included an attachment of a letter from the Oregon Employment Department, PO Box 14135, Salem, Oregon, titled "Benefits are Denied..ADMINISTRATIVE DECISION". The letter includes the following facts regarding Hagar's claim against his previous employer GoodYear Tire:

1. Claimant was employed by GOODYEAR TIRE - RUBBER CO from October 19, 2011 until August 9, 2013.
2. Claimant was discharged for accessing a managerial website page to look up a coworker's promotion.
3. Claimant had received prior warnings for making his coworkers information his business.

Eaton believes that Hagar may have gain unauthorized access to their databases and obtained records associated to the company's clients.

Some events of notice include:

On 2/28/2016, Hagar, using email address ronin62474@hotmail.com, sent an email claiming ownership of YouTube channel

<https://www.youtube.com/channel/UChnxnMrFC5MobS3H3y9dsBA>. Additionally, Hagar stated in the email 'Andrea I want you to tell Sandy if he finds himself on the "NO FLY LIST" it is because I used the email address with his name to sign up for a message board.' On the same day, Andrea Russell, andrearussell@eaton.com, received an email stating that the email was recently signed up for the blog <http://issdarat.wordpress.com>. [Writer's note: this blog is referenced in multiple 415 cases].

On 02/29/2016, Hagar, using email address theendofgoodyear@yahoo.com, sent an email to Eaton and Goodyear employees with a message that included the following:

"I AM GOING TO CONTINUE SENDING EMAILS UNTIL THE POLICE CONTACT ME. THE PUNISHMENT FOR YOUR ILLEGAL ACTIVITY HAS NOW INCREASED TO 15 MILLION DOLLARS. YOU SHOULD HAVE SETTLED FOR LESS WHEN YOU HAD THE OPPORTUNITY TO".

APPENDIX JJ, EXHIBIT 1 a.211

On 06/02/2016, Hagar augmented his threats and this time the message sent was "I AM GOING TO SHOOT ONE OF MY GUARDS SOON .. AND THE I WILL MAKES CERTAIN ALL OF YOU ARE SHOT ALSO."

Hagar is currently in custody and it appears that he is going to be release tomorrow. CV is schedule to sign a complaint in the northern district of Ohio for Hagar on 06/14/2016 at 10:30 AM ET.

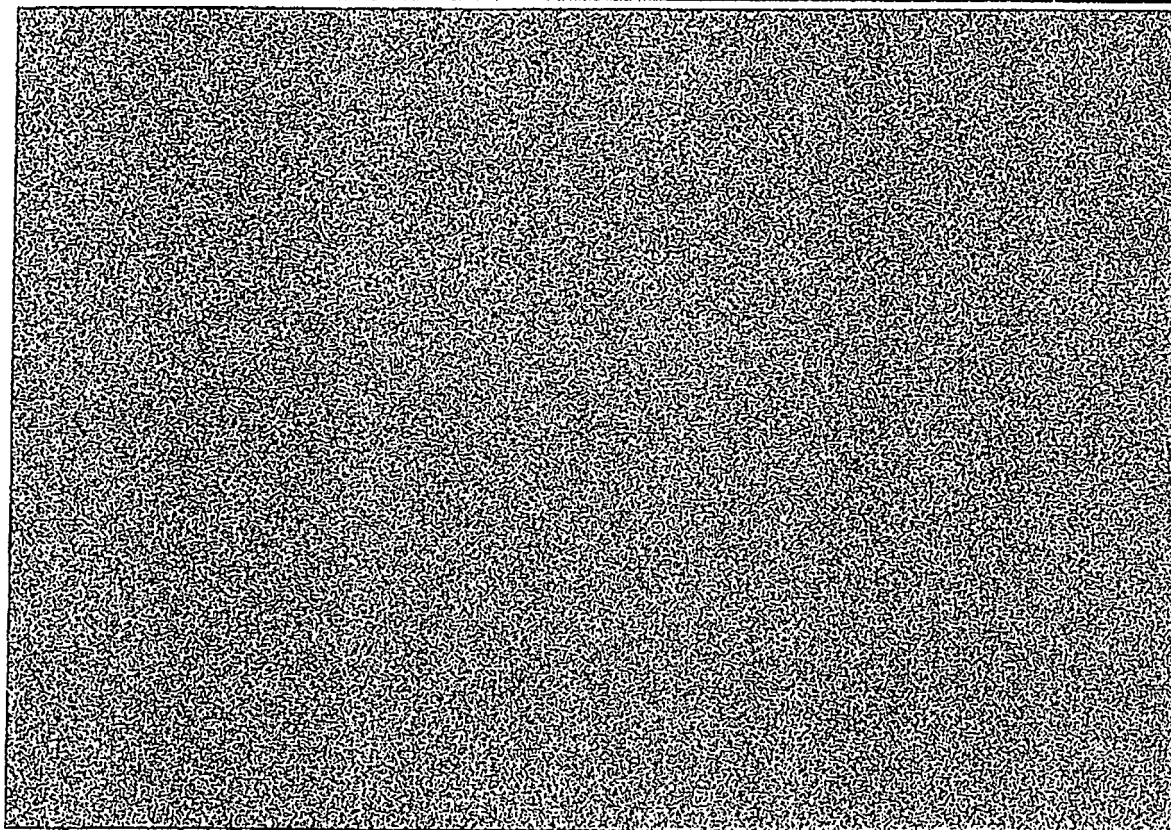
A copy of the police report from Multnomah County Sherri's is attached.

If you have any question, please call SA Monica Hantz 216-622-2801 or 216-798-9436.

-Monica

APPENDIX KK, EXHIBIT 2 a.212

Hantz, Monica (CV) (FBI)



----- Original message -----

From: "Hantz, Monica (CV) (FBI)" <Monica.Hantz@ic.fbi.gov>
Date: 06/14/2016 2:33 PM (GMT-05:00)
To: "Tricoli, Jeffrey A. (CV) (FBI)" <Jeffrey.Tricoli@ic.fbi.gov>
Subject: Complaint/Arrest

Jeff,

Just to keep you up to date on CV2 matters, today we got signed a complaint and arrest warrant for Michael A. Hagar on 18 USC 875 (c).

He is currently in the custody of the Multnomah Cty Sheriff's department on a misdemeanor in Oregon and scheduled to be released this afternoon.

FBI Portland is aware and has a copy of the warrant. They are going to execute the warrant as soon as he is released by the county. Our AUSA has been in contact with the DA's office in Oregon and everybody is up to date in this matter.

-Monica

Monica Hantz
Special Agent
FBI-Cleveland Division
Office: 216-622-2801

APPENDIX LL, EXHIBIT 3 a.213

Hantz, Monica (CV) (FBI)

From: Hantz, Monica (CV) (FBI)
Sent: Tuesday, June 14, 2016 4:25 PM
To: Kakani, Om (USAOHN)
Subject: RE: Message from "mcso233p-MBRCPT-RICOH-MPC6502"

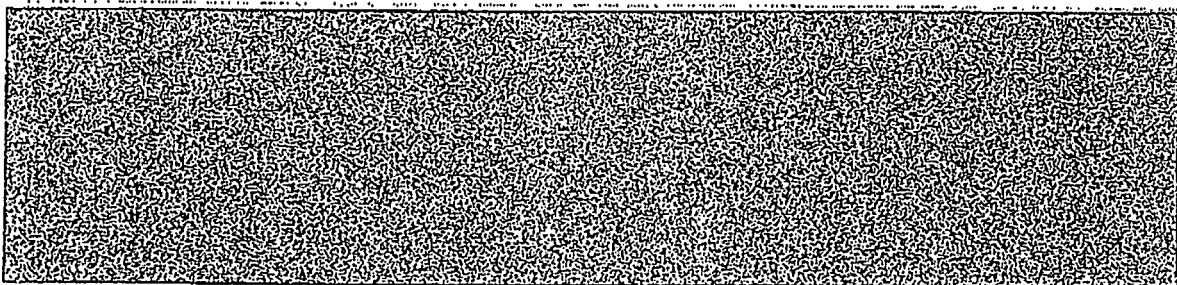
Om,

If you hear anything else regarding the release or changes on the status of Hagar let me know.

Thanks!

From: Hantz, Monica (CV) (FBI)
Sent: Tuesday, June 14, 2016 1:19 PM
To: Kakani, Om (USAOHN)
Subject: RE: Message from "mcso233p-MBRCPT-RICOH-MPC6502"

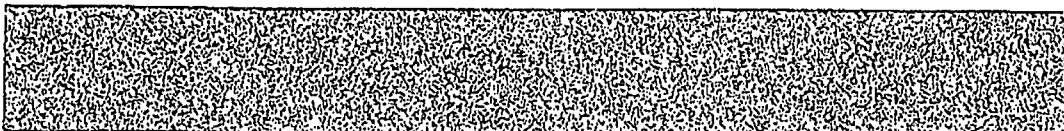
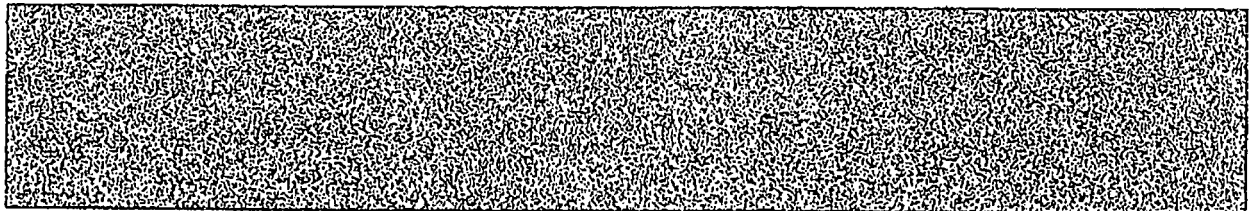
Ok – it should be in the system now.



From: Hantz, Monica (CV) (FBI) [<mailto:Monica.Hantz@ic.fbi.gov>]
Sent: Tuesday, June 14, 2016 12:13 PM
To: Kakani, Om (USAOHN)
Subject: FW: Message from "mcso233p-MBRCPT-RICOH-MPC6502"

FYI – see attached the report for the misdemeanor

Om – anything from the DA regarding his release?



APPENDIX MM, EXHIBIT 4 a.214

September 11, 2018

James,

I do not want to talk about this openly so I have written this information. Some people say they Government could be listening in Video Conference. I think it is not likely but better safe than sorry.

As I have not seen the new information in the superseding indictment I am going on the information we discussed last time you were here. If Eaton has servers in West Virginia and not Ohio then it would appear the Northern District of Ohio does not have jurisdiction over the offense. My emails start in Oregon and ended in North Carolina being sent to Ryan Keen. The information to support this is in the reports from Clackamas County. This maybe the reason the Government told you Ryan Keen was unavailable as a witness.

In the report GO 10 2015-34425 related to the call Ryan Keen made on December 26, 2015 it has written: Mr. Keen said the company's IT team was able to route all emails from Mr. Hagar's email address directly to himself (Mr. Keen).

In the report GO 10 2016-11774 which is related to the Telephone Harassment charge. For the date 04/26/2016 it has written: Eaton Corp had taken steps to route all incoming E-mails from Hagar to be sent to their HR Department to protect their employees from Hagar's bombardment of destructive E-mails. The HR department has saved almost 400 E-mails from Hagar for their records.

In the report GO 10 2016-14957 related to the email I am charged with sent on June 2, 2016, there is an email chain starting with Ryan Keen emailing the email to Marc Elliot 6 or 7 minutes after I sent it.

The only person in the Northern District of Ohio is Cynthia Burke. I believe she works for Eaton at their office in Cleveland. Because Ryan Keen routed all the emails to himself in North Carolina it never ended in Eaton Office in Cleveland. The charge for Cyberstalking (count 1) never traveled in Ohio and the District does not have jurisdiction.

I believe it is possible the Government knew they never had jurisdiction over the offense because of what is written in the Complaint. Item number 13 it has written: "On June 7, 2016 SA Gerfin received the full email communication from Eaton, to include the complete header information. This header information revealed that the email was sent from a hotmail.com server with IP address 65.55.90.200, located in San Antonio, Texas, and subsequently received by a server with domain etn.com, registered to Eaton, with IP address 151.110.126.183, located in Beachwood, Ohio."

I have been told by several people there is a way to find a location for an IP address. It is like a phonebook for the IP addresses. The information will tell you the physical location of the servers for the IP address. (Such as Eaton's servers in West Virginia.) One search tool is called "Who is" if you put in the IP address 151.110.126.183 we can find out what the location says it is. There is also a tool to trace the IP address. You can do a Google search for "IP Trace" to find one. I believe SA Michael G. Gerfin would have done an IP location search to establish jurisdiction over the offense.

I would like to have Michael Gerfin available to testify at the trial.

I would like you to also know that SA Monica Hantz wrote in the application for the search warrants for my email account under the heading JURISDICTION, item number 7. "This Court has jurisdiction to issue the requested warrant because it is 'a court of competent jurisdiction' as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703 (a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is 'a district court of the United States...that has jurisdiction over the offense being investigated.' 18 U.S.C. § 2711(3)(A)(i)."

If the Government knew they never had jurisdiction then they provided information to the court knowing it to be false. It maybe they did this because they knew I was about to be released from the Multhanomah Court Jail as is shown in the emails I have from Monica Hantz. Michael Gerfin took over the investigation from Monica Hantz in April, 2016 and Monica Hantz was brought back after the email was sent and did all the work for the Complaint. Monica Hantz testified at the Preliminary Hearing/ Bond

APPENDIX MM EXHIBIT 4 a.215

Hearing on August 5, 2016. I have always believed she was brought back on the investigation to prevent Darin from questioning Michael Gerfin at the Preliminary Hearing. I think the IP adress maybe the reason why.

I would like to go to trial and then show the jury that the Government has wasted everyone's time putting on a trial they never had Jurisdiction over. It is possible they may plan on dismissing the Indictment before trial instead of spending the money to bring everyone here. I am hoping that we could go through the whole trial and then motion to dismiss the Indictment after we have finished presenting the defense. As you have dealt with these issue more than I have you would be better able to determine how best to pursue this.

I have included a copy of part of a case dealing with venue related to a wire fraud charge as some background information.

As I have mentioned above I would rather not talk about this openly just in case CCA has the room bugged. I would much rather make the Government look foolish in court.

If I find I have forgot to write something related to this I will write it down and give it to you when you come here next time.

Michael Hagar

APPENDIX NN, EXHIBIT 5 a.216

SERRAT & SERRAT

ATTORNEYS AT LAW

SERRATLAW@HOTMAIL.COM
SERRATLAW.COM

55 PUBLIC SQUARE
2100 ILLUMINATING BUILDING
CLEVELAND, OHIO 44113

(216) 898-2150
FAX (216) 898-1718

November 14, 2018

Mr. Michael Hagar
Register # 64124-060
North East Ohio Correctional Center
2240 Hubbard Rd.
Youngstown, OH 44505

RE: *United States of America v. Michael Hagar*
Case No.: 1:16-cr-0027
Judge: Donald C. Nugent

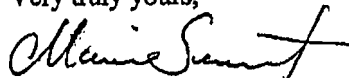
Dear Mr. Hagar:

Pursuant to your meeting with Attorney Jenkins yesterday, you requested the header information referenced in paragraph thirteen (13) of the affidavit in support of the Complaint in this case for a email communication that allegedly occurred on June 7, 2016. You are not currently charged with the allegations contained in the affidavit, you are facing the criminal allegations contained in the superseding indictment. *Enclosed*. This indictment does not include the allegations regarding this June 7, 2016 email and instead relies upon the your arrest at Eaton on March 11, 2016 and your emails from May 9, 2016 through June 3, 2018. *See* PAGE ID 240. Including specifically the emails on May 30, 2016 and June 2, 2016. The June 7, 2016 email is not listed in your superseding indictment.

The affidavit in support of the original complaint was used in part to establish probable cause that a crime had been committed. The final decision to prosecute a federal criminal case rests with a grand jury. If the grand jury decides the evidence presented establishes probable cause, the grand jury issues a criminal indictment. Here, the government went back to the grand jury and got a second indictment, i.e. a superseding indictment. You are not currently facing the criminal allegations contained in the complaint, affidavit, or original indictment, only the superseding indictment. I hope this clarifies your request for additional information.

Please feel free to contact my office at any time if you have any questions regarding your case. Thank you for your attention to this matter.

Very truly yours,


Marisa L. Serrat Esq.

MLS/jps
Enclosure

APPENDIX OO, EXHIBIT 6 a.217

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	:	CASE NO. 1:16CR273
	:	
Plaintiff,	:	
	:	JUDGE DONALD C. NUGENT
vs.	:	
MICHEAL A. HAGAR	:	<u>DEFENDANT'S MOTION</u>
	:	<u>TO REPLACE COUNSEL</u>
Defendant.	:	

Defendnat, Michael A. Hagar, respectfully moves this Court to replace his Counsels. A memorandum detailing the grounds for replacement of Counsels follows.

Respectfully submitted,

Michael A. Hagar

APPENDIX OO, EXHIBIT 6 a.218

On June 3, 2016 the Defendant Michael Hagar was arrested for violation of a Multnomah County Court's Temporary Stalking Protective Order. On June 14, 2016, a complaint was filed against the Defendant (Doc. 1: Complaint). An arrest warrant was issued on the same day, (Doc. 9: Arrest Warrant), and was submitted with the detainer to the Multnomah County Detention Center. On June 17, 2016, the Court issued a Writ of Habeas Corpus Ad Prosequendum to convey the Defendant to the Northern District of Ohio for arraignment on the complaint. (Doc. 6: Writ). The Defendant made his initial appearance on August 2, 2016, then had a Preliminary and Detention Hearing on August 5, 2016. The Defendant was indicted on August 24, 2016. (Doc 10: Indictment). The original indictment was superseded on September 11, 2018. (Doc 77: Superseding Indictment).

The Defendant was informed on September 10, 2018 by his Attorney James Jenkins the Government would be Supeseding the original indictment due to the fact that Eaton's data centers are located in Kentucky and not in the Northern District of Ohio. The Defendant informed his Attorney James Jenkins in a letter on September 11, 2018 the Government lacked venue based on the revelation of the true location of Eaton's data center and information in Clackamas County Sheriff's Office reports. The Defendant pointed out the affidavit in support of the Complaint (Doc 1-1: Affidavit), identified the email sent on June 2, 2016 had header information showing the email was received by an Eaton server with IP address 151.110.126.183, located in Beachwood, Ohio.

On November 20, 2018 the Defendant received a letter from his second Attorney Marisa Serrat, dated November 14, 2018. The letter stated the following: "Pursuant to your meeting with Attorney Jenkins yesterday, you requested the header information referenced in paragraph thirteen (13) of the affidavit of the Complaint in this case for a email communication that allegedly occurred on June 7, 2016. You are not currently charged with the allegations contained in the affidavit, you are facing the criminal allegations contained in the superseding indictment. Enclosed. This indictment does not include the allegations regarding this June 7, 2016 email and instead relies upon the your arrest at Eaton on March 11, 2016 and your emails from May 9, 2016 through June 3, 2018. See PAGE ID 240. Including the specifically the emails on May 30, 2016 and June 2, 2016. The June 7, 2016 email is not listed in your superseding indictment."

Because the Defendant was in custody at the Multnomah County Detention Center on June 7, 2016, the statement in the letter has left the Defendant with serious doubts to the ability of his Attorneys to provide effective assistance of counsel at trial. Paragraph thirteen of the affidavit states: "On June 7, 2016 SA Gerfin received the full email communication from Eaton, to include the complete header information. This header information revealed that the email was sent from a hotmail.com server with IP address 65.55.90.200, located in San Antonio, Texas, and subsequently received by a server with domain etn.com, registered to Eaton, with IP address 151.110.126.183, located in Beachwood, Ohio." Paragraph twelve of the affidavit starts: "On or about June 2, 2016, Special Agent Michael G. Gerfin of the FBI received notification from an Eaton employee that HAGAR used email account ronln62474@hotmail.com to email multiple Eaton employees a communication containing threats to injure them." Paragraph 12 continues stating the subject of the email and what was in the body of the message. The

APPENDIX OO, EXHIBIT 6 a.219

June 2, 2016 email is the email received by Michael Gerfin on June 7, 2016, not a different email. The June 2, 2016 with the header information referred to in paragraph 13 is the same email of count 3 in the Superseding Indictment.

The Defendant's Attorneys' conclusion the email referred to in paragraph 13 of the affidavit of the Complaint is an email from June 7, 2016 and not relevant to the Superseding Indictment, will lead to the results of the proceedings related to the Defendant's case to be different for the following reason listed below.

The Defendant wants his Attorneys to obtain the email with the header information to challenge the venue of the prosecution. Article III, Section 2, Paragraph 3 of the Constitution of the United States, provides: "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed." Amendment VI provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law" 18 U.S.C. § 3237(a) states: "Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed."

The Government's allegation from paragraphs 26 and 28 of the Superseding Indictment states in part "...Defendant MICHAEL HAGAR sent an e-mail from his residence in Oregon ..." Paragraph 13 of the affidavit of the Complaint states in part "...the email was sent from a hotmail.com server with IP address 65.55.90.200, located in San Antonio, Texas..." The Government admits the email traveled to Eaton's server in Kentucky. And the Clackamas County Sheriff's reports prove the email was received by Eaton employee Ryan Keen in North Carolina. The email did not begin, did not continue, and was not completed in the Northern District of Ohio.

The Government has admitted Eaton's server is located in Kentucky and not in the Northern District of Ohio. Paragraph nine of the Superseding Indictment states: "At all times relevant to this Superseding Indictment, e-mails sent to Eaton e-mail addresses were accessible by Eaton employees in the Northern District of Ohio." This statement does not give venue to the Northern District of Ohio. An Eaton IT Administrator in the Northern District of Ohio can access the server in Kentucky using a service like Telnet. This process is analogous to an individual accessing an answering machine in a distant location using a telephone. The message on the machine is not transmitted to the individual accessing the answering machine by the person who sent the message. Eaton's employees are not a "force propelled by an offender..." United States v. Johnson, 323 U.S. 273, 275, 65 S. Ct. 249, 89 L. Ed. 236 (1944).

Paragraph seventeen of the Superseding Indictment states: "The e-mails that HAGAR sent to C.B. were intended to reach her at her Eaton place of employment in Beachwood, Ohio, in the Northern District of Ohio. One or more of the e-mails HAGAR addressed to Eaton employees were forwarded and received

APPENDIX OO, EXHIBIT 6 a.220

by one or more Eaton employees in the Northern District of Ohio." Forwarding emails to the Northern District of Ohio is not a "force propelled by an offender..." United States v. Johnson, 323 U.S. 273, 275, 65 S. Ct. 249, 89 L. Ed. 236 (1944). Both the Government and the Defendant are in possession of reports from the Clackamas County Sheriff's Office which prove emails to Eaton never entered the Northern District of Ohio.

The Clackamas County Sheriff's Office report for case number GO 10 2015-34425 for a report by Ryan Keen on December 26, 2015, it is reported: "Mr. Keen said the company's IT team was able to route all emails from Mr. Hagar's email address directly to himself (Mr. Keen)." The Clackamas County Sheriff's Office report for case number GO 10 2016-11774 for a report by Ryan Keen and Marc Elliot on April 26, 2016, it is reported: "Eaton Corp had taken steps to route all incoming E-mails from HAGAR to be sent to their HR to protect their employees from Hagar's bombardment of destructive E-mails. The HR department has saved almost 400 E-mails from Hagar for their records." The Clackamas County Sheriff's Office report for case number GO 10 2016-14957 shows the June 2, 2016 email has been forwarded by Ryan Keen to other Eaton employees. Ryan Keen works for Eaton in North Carolina.

The Government also lacks venue for count 1 of the Superseding Indictment. Paragraph 21 of the Superseding Indictment states: "HAGAR sent e-mails to C.B. in order to cause and attempt to cause substantial emotional distress to R.G., R.G.'s immediate family members, and R.G.'s spouse or intimate partners." Paragraph 11 of the Superseding Indictment states: "C.B. and R.G., were related by marriage." 18 U.S.C. § 115(c)(2)(B) states "'immediate family member' of an individual means—any other person living in his household and related to him by blood or marriage" As paragraph 8 states: "C.B. an individual known to the Grand Jury but not named herein, was an employee of Eaton with an Eaton e-mail address. C.B. works in Beachwood, Ohio, in the Northern District of Ohio and lives in the Northern District of Ohio[.]" C.B. is not an immediate family member to R.G. because R.G. lives in the State of Oregon.

The Sixth Circuit's "substantial contacts" test further shows the Northern District of Ohio is not the proper venue for prosecution of the Defendant for Count 1. The Superseding Indictment puts the site of the defendant's acts, in the State of Oregon. The elements and nature of the crime, according to the Superseding Indictment occurred in the State of Oregon. The locus of the effect of the criminal conduct, occurred in the State of Oregon. The suitability of the Northern District of Ohio for accurate fact finding is improper as the " 'locus delicti [of the charged offense] must be determined from the nature of the crime alleged and the location of the act or acts constituting it.' " (citations omitted), United States v. Rodriguez-Moreno, 526 U.S. 275, 278, 119 S. Ct. 1239, 143 L. Ed. 2d 388 (1999).

"[D]eliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice.'" Giglio v. United States, 405 U.S. 150, 153, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972). [A] State may not knowingly use false evidence, including false testimony...and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend. As stated by the New York Court of Appeals in ..., People

APPENDIX OO, EXHIBIT 6 a.221

v Savvides, 1 NY2d 554, 557, 154 NYS 2d 885, 887, 136 NE2d 853, 854, 855. 'A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.'" Napue v Illinois, 360 US 264, 3 L Ed 2d 1217, 79 S Ct 1173 (1959).

SA Monica Hantz swore in the affidavit the June 2, 2016 email was "received by a server with domain etn.com, registered to Eaton, with IP address 151.110.126.183, located in Beachwood, Ohio." On August 5, 2016 SA Monica Hantz testified at the Preliminary and Detention Hearing the June 2, 2016 email was received by an Eaton server located in Beachwood, Ohio. The original indictment repeatedly stated Hagar's email traveled through Eaton's data centers in the Northern District of Ohio but now the Government admits the data center is in Kentucky. All these events prove the Government has committed prosecutorial misconduct. "In order to establish prosecutorial misconduct or denial of due process, the defendants must show (1) the statement was actually false; (2) the statement was material; and (3) the prosecution knew it was false." Peoples v. Lafier, 734 F.3d 503, 516 (6th Cir. 2013).

"Like the Hydra slain by Hercules, prosecutorial misconduct has many heads. ...The reported cases indicate that it has sometimes infected grand jury proceedings as well." (citations omitted) United States v. Williams, 504 U.S. 36, 60-61, 112 S. Ct. 1735, 118 L. Ed. 2d 352 (1992). The arrest warrant, (Doc. 9: Arrest Warrant), was used to deny the Defendant his liberty on June 14, 2016 when the Defendant was prevented from being released from the Multnomah County Detention Center. The Government misconduct continues with the use of the Writ of Habeas Corpus Ad Prosequendum, when on June 17, 2016, the Court issued the Writ to convey the Defendant to the Northern District of Ohio for arraignment on the complaint. (Doc. 6: Writ). The Defendant was due to appear before a Oregon State Judge on June 28, 2016, and would have been remanded to the U.S. Marshals. The Writ was used to deprive the Defendant of due process during a removal hearing. "[I]n order that anyone accused shall not be deprived of [his] constitutional right, the judge applied to to remove him from his domicile to a district in another state must find that there is probable cause for believing him to have committed the alleged offense, and in such other district." Tinsley v. Treat, 205 U. S. 20, 32, 51 L. ed. 689, 27 S. Ct. 430 (1907).

The Government's misconduct has resulted in a violation of the Defendant Sixth Amendment right to a speedy trial. The length of delay for Count 1; on December 4, 2018 is 833 days. The length of the delay for Counts 2 and 3 on December 4, 2018 is 903 days. The reason for the delay is the Government's false statements as to the location of Eaton's server. The Defendant has suffered prejudice as the delay will continue until the case is transferred to the proper district for prosecution and the time for new counsel to prepare for trial.

The Government's false statements has also resulted in the Defendants statutory right to a speedy trial under the Speedy Trial Act. 18 U.S.C. § 3161 (c) (1) States: "In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information

APPENDIX OO EXHIBIT 6 a.222

or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs." Since the affidavit of the Complaint on June 14, 2016 through to the filing of the Superseding Indictment on September 11, 2018, the Government held the position that Eaton's server was located in the Northern District of Ohio. All the waivers, related to the Speedy Trial Act, signed by the Defendant were under the belief that Eaton's server was located in the Northern District of Ohio. The Government concealing the fact that the location of Eaton's server is in Kentucky allowed the Government "to undermine the time limits established by the Act, [and] to subvert the very purpose the Act was designed to fulfill." *Henderson v. United States*, 476 U.S. 321, 333, 90 L. Ed. 2d 299, 106 S. Ct. 1871 (1986) (White, J., dissenting).

The Defendant wants all the time since the filing of the original indictment (August 24, 2016) to be counted toward the violation of the Speedy Trial Act, as the delay is a result of prosecutorial misconduct. The total number of days for Counts 2 and 3 equals 833 days on December 4, 2018. Due to the fact the Defendant was not arraigned on Count 1 until September 19, 2016, the total number equals 807 days on December 4, 2018. The Defendant's position is not inconsistent with his earlier position. "The last factor this Court must consider is the impact of the reprosecution on the administration of justice. 'The main considerations that courts have taken into account when examining this factor are whether the defendant suffered actual prejudice as a result of the delay and whether the government engaged in prosecutorial misconduct that must be deterred to ensure compliance with the Act.' *Howard*, 218 F.3d at 562 (internal citations and quotation marks omitted)." *United States v. Robinson*, 389 F.3d 582, 589 (6th Cir. 2004). The Defendant has always planned on going to trial. The Government gambled the Defendant would unknowingly waive his Constitution right to proper venue by accepting a Plea Deal.

Because the Defendant's Attorneys have failed to comprehend that the email with the Header Information in paragraph 13 of the affidavit of the Complaint is the same email for Count 3 of the Superseding Indictment, the Defendant believes he would have an ineffective assistance of counsel appeal based on *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The email demonstrates the Government lacks venue for prosecution in the Northern District of Ohio. The email proves the Government committed Prosecutorial Misconduct. The email supports the Defendant's assertion his Sixth Amendment right to a speedy trial was violated. And the email supports the fact the Government violated the Defendant's right to a speedy trial under the Speedy Trial Act. It is for these reasons that the Defendant request the Court to replace his Counsels James Jenkins and Marisa Serrat.

Respectfully submitted

Michael Hagar

APPENDIX PP, EXHIBIT 7 a.223



Clackamas County Sheriff's Office LAW ENFORCEMENT/CRIMINAL JUSTICE RELEASE

CASE NUMBER
GO 10 2015-34425

GENERAL OFFENSE									
REPORTED DATE/TIME 12/26/2015 0322		OCCURRED DATE/TIME 12/26/2015 0322			REPORTING OFFICER/DEPUTY NAME & # WOODWARD, SHAUNA (54571)				
LOCATION OF INCIDENT 26850 SW KINSMAN RD, WILSONVILLE							PLACE BASALT CREEK BUSINESS CENTER		
COUNTY CLACKAMAS		DISTRICT PT		BEAT PT1		GRID PT121			
SEVERITY	FAMILY VIOLENCE NO	GANG INVOLVEMENT		BIAS NONE (no bias)		SPECIAL STUDY			
RELATED INCIDENT NUMBERS									
TOTAL LOSS		TOTAL RECOVERED		DAMAGED TOTAL		DRUG TOTAL			
CLEARANCE STATUS NOT APPLICABLE				EXCEPTIONAL CLEARANCE NOT APPLICABLE					
DATE/TIME CLEARED 02/19/2016		CLEARED BY -							
INTERNAL STATUS NOT AN OFFENSE				APPROVED BY SWANSON, MATTHEW T (35134)			APPROVED ON 12/31/2015		
OFFENSES [1]									
OFFENSE INFORMATION				PREMISE TYPE Commercial/Office Building					
PERSON - SUBJECT #1									
NAME (LAST, FIRST MIDDLE) HAGAR, MICHAEL ANTHONY				SEX MALE	RACE WHITE		DOB 12/01/1970	AGE 45	
HOME ADDRESS - STREET, CITY ZIP [REDACTED]				HEIGHT 5'07	WEIGHT 160	HAIR COLOR	EYES		
HOME PHONE		CELL PHONE		WORK PHONE		EMAIL ADDRESS RONIN62474@YAHOO.COM			
DRIVERS LICENSE (STATE) [REDACTED]		SOCIAL SECURITY NUMBER [REDACTED]		POB		ETHNICITY UNKNOWN			
PERSON - MENTIONED #1									
NAME (LAST, FIRST MIDDLE) KEEN, RYAN				SEX MALE	RACE UNKNOWN		DOB	AGE 2	
HOME ADDRESS - STREET, CITY ZIP NC				HEIGHT	WEIGHT	HAIR COLOR	EYES		
HOME PHONE (517) 803-3419		CELL PHONE		WORK PHONE		EMAIL ADDRESS			
DRIVERS LICENSE (STATE)		SOCIAL SECURITY NUMBER		POB		ETHNICITY UNKNOWN			

APPENDIX PP, EXHIBIT 7 a.224

INFORMATION

Clackamas County Sheriff's Office LAW ENFORCEMENT/CRIMINAL JUSTICE RELEASE

CASE NUMBER
GO 10 2015-34425

NARRATIVE

AUTHOR
WOODWARD, SHAUNA (54571)

DATE/TIME
12/31/2015 0541

SUBJECT NARRATIVE

On 12/26/15 I was dispatched to a phone contact about harassment at 0322 hours. Dispatch informed me an employee was fired about a month ago and that ex-employee had been sending hundreds of emails. I was told none of them were direct threats but yesterday the ex-employee sent pictures of guns saying he wanted to go target shooting.

I called the reporting party, Ryan Keen, who said he is the director of Human Resources for the company Eaton. Mr. Keen said the ex-employee is Michael Hagar.

Mr. Keen said Mr. Hagar had been finding random employees emails and sending them emails in regards to his being fired and why he was upset. Mr. Keen said the companies IT team was able to route all emails from Mr. Hagar's email address directly to himself (Mr. Keen). Mr. Keen said he did not think any of the emails were direct threats and he was more worried about Mr. Hagar's mental state than the safety of current employees.

APPENDIX QQ, EXHIBIT 8 a.225

ALL OTHER OFFENSES

Clackamas County Sheriff's Office
LAW ENFORCEMENT/CRIMINAL JUSTICE RELEASE

CASE NUMBER
GO 10 2016-11774

NARRATIVE	
AUTHOR BLAIR, DANIEL (54930)	DATE/TIME 05/02/2016 1702
SUBJECT NARRATIVE	
Baton Corp had taken steps to route all incoming E-mails from Hagar to be sent to their HR department to protect their employees from Hagar's bombardment of destructive E-mails. The HR department has saved almost 400 E-mails from Hagar for their records.	

APPENDIX RR, EXHIBIT 9 a.226

INFORMATION

Clackamas County Sheriff's Office
LAW ENFORCEMENT/CRIMINAL JUSTICE RELEASE

CASE NUMBER
GO 10 2016-14957

From: Keen, Ryan
Sent: Thursday, June 02, 2016 3:19 PM
To: Nelson Jennifer A.; Elliott, Marc C
Cc: Coberly, Matt
Subject: Fwd: [Michael Hagar] I AM GOING TO SHOOT ONE OF MY GUARDS SOON

This one is pretty threatening. Marc please forward to your contacts at clackamas and for becky to send to portland. Burwell was on this one so he will see it. Jennifer use as you see fit for tomorrows hearing.

Begin forwarded message:

From: Michael Hagar <ronin62474@hotmail.com>
Date: Jun 2, 2016 at 6:12:59 PM EDT
To: "Mariel.Mota@mcda.us" <Mariel.Mota@mcda.us>,
"Jeffrey.Lowe@mcda.us" <Jeffrey.Lowe@mcda.us>,
"Christopher.Wyrostek@mcda.us" <Christopher.Wyrostek@mcda.us>,
"Mary.Ryan@mcda.us" <Mary.Ryan@mcda.us>,
"Diana.I.Fleming@doj.state.or.us" <Diana.I.Fleming@doj.state.or.us>,
"marccelliotti@eaton.com" <marccelliotti@eaton.com>,
"RebeccaEGentle@eaton.com" <RebeccaEGentle@eaton.com>,
"cynthiasburke@eaton.com" <cynthiasburke@eaton.com>,
"AmirMessih@eaton.com" <amirmessih@eaton.com>,
"josephraulino@eaton.com" <josephraulino@eaton.com>, Ted Burwell
<tburwell@co.marion.or.us>, "Erious.Johnson@doj.state.or.us"
<Erious.Johnson@doj.state.or.us>, "Michael.C.Kron@doj.state.or.us"
<Michael.C.Kron@doj.state.or.us>, "Fred.Boss@doj.state.or.us"

APPENDIX RR, EXHIBIT 9 a.227

INFORMATION

Clackamas County Sheriff's Office
LAW ENFORCEMENT/CRIMINAL JUSTICE RELEASE

CASE NUMBER
GO 10 2016-14957

<Fred.Boss@doj.state.or.us>

Subject: [Michael Hagar] I AM GOING TO SHOOT ONE OF MY
GUARDS SOON

AND THEN I WILL MAKES CERTAIN ALL OF YOU ARE SHOT ALSO.

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APPENDIX SS, EXHIBIT 10 a.228



Building Next-Generation Data Centers

Location:
Cleveland, Ohio

Segment:
Data center power quality

Problem:
Replace two aging data centers with state-of-the-art facilities employing the latest availability, efficiency and sustainability strategies.

Solution:
Two cutting-edge data centers outside Louisville, Ky., capable of supporting the company's needs reliably and cost-effectively for the next 20+ years.

Results:
Eaton's new data centers are:

- LEED Gold certified
- Projected to deliver \$23 million in energy savings over two decades
- Expected to achieve a Power Usage Effectiveness (PUE) rating of 1.5 or less
- Equipped to handle power densities of up to 180 watts per square foot and rack-level electrical loads of up to 8Kw

"Project BlueGrass vividly demonstrates how companies that take a disciplined approach to designing, building and equipping new data centers can deliver IT services reliably, cost-effectively and sustainably."

Rob Agar, Vice President, Enterprise Infrastructure Services

Helping companies efficiently plan, design, operate and eventually refresh or repurpose their data centers is a core part of Eaton's mission. So, too, is doing business in ecologically sustainable ways. Not surprisingly, then, when Eaton embarked on Project BlueGrass, a strategic effort to construct next-generation data centers, it employed today's most sophisticated tools, techniques and design methods in a manner that carefully balanced business priorities with environmental responsibility. The result is a set of state-of-the-art computing facilities that will reliably support Eaton's IT needs for the next two decades and deliver a projected \$23 million in energy savings along the way.

This case study provides an introduction to the Project BlueGrass data centers, as well as an overview of the strategy, best practices and technologies that will enable them to deliver industry-leading sustainability, efficiency and availability.

Background

Eaton currently houses most of its server, storage and network infrastructure in two data centers near Cleveland, Ohio. However, one of those facilities is 43 years old, and the second is a third-party leased facility; both are beginning to run short of space and power.

In 2005, IT leaders at Eaton commenced work on a strategic effort to design and build new data centers capable of supporting the company's needs reliably and cost-effectively for the next 20+ years. As sustainability is one of Eaton's core values, the project also aspired to lead the industry in environmental responsibility by achieving gold status under the Leadership in Energy & Environmental Design (LEED) certification process.

Realizing the vision

By the end of 2007, following 20 months of careful study, Eaton had developed a strategic plan of action. The company would construct two redundant data centers within 20 miles of each other. A third facility at least 250 miles away would provide out-of-

EATON

Powering Business Worldwide

Eaton Corporation is a diversified power management company ranked among the largest Fortune 500 companies. Eaton is a global leader in electrical components and systems for power quality, distribution and control; hydraulics components, systems and services for industrial and mobile equipment; aerospace fuel, hydraulics and pneumatic systems for commercial and military use; and truck and automotive drivetrain and powertrain systems for performance, fuel economy and safety. Eaton has approximately 73,000 employees and sells products to customers in more than 150 countries. www.eaton.com

APPENDIX SS, EXHIBIT 10 a.229

region disaster recovery support in the event that the primary facilities became inoperable for an extended period.

Eaton then spent 20 months carefully evaluating and selecting best-of-breed companies for its project team in specialties such as project management, engineering, architecture, commissioning and construction.

Next, Eaton employed a rigorous, risk tolerance-based selection process to identify ideal sites for the two core data centers. Based on our chosen networking provider's global footprint, project leaders narrowed their list of options to locations in the U.S. Then they looked for regions inside the U.S. with a low historical incidence of natural and man-made disasters. A review of disaster data from the federal government led them to 15 specific metropolitan areas. Each of those areas was then checked against a list of additional requirements, including access to adequate energy supplies at competitive rates and the availability of financial incentives from county and state governments.

In the end, the project team identified the corridor between Louisville and Lexington, Ky., as the area that best met Eaton's site selection criteria, and ultimately purchased two pieces of real estate east of Louisville and approximately 14 miles apart from one another.

One of the sites is located near the University of Louisville and was nicknamed the "Red site" in honor of the school's colors. The second site was named the "Blue site" in honor of the University of Kentucky's school colors. The overall project was then named Project BlueGrass in honor of Kentucky being known as the "Bluegrass State." Design and architectural specifics

Construction began on the Blue site in February 2010 and the Red site in June 2010. When fully operational in 2012, both data centers will be cutting-edge facilities from top to bottom.

Physical layout: Each site will initially occupy a little over 102,000 square feet of space, including:

- Two data halls of approximately 10,000 square feet each
- Approximately 35,000 square feet of electrical infrastructure space
- Approximately 14,000 square feet of mechanical (cooling) infrastructure space
- Approximately 10,000 square feet of office space
- Two 3,300 HP generators, capable of delivering 2MW of power for up to 10 days should utility power become unavailable. This is consistent with Eaton's N+1 redundancy requirements for these facilities.

Electrical systems: On day one, each data center's electrical infrastructure will support power densities of 90 watts per square foot, with upgrade steps at 120 and 180 watts per square foot.

Cooling systems: Both data centers use a computer room air handler that passes heat from the data hall over a coil containing cool water, resulting in cold air being distributed back into the room and warm water being transported to a chiller. There, after another exchange, heat is passed to the cooling towers, where it's discharged into the atmosphere.

Monitoring and management: Both new data centers will be equipped with an electrical power management system and an integrated building management system that will provide sophisticated centralized monitoring and administration capabilities. The two systems will also archive power monitoring data for future reference, so managers can

generate reports on topics such as energy consumption, load capacity and power quality.

Environmental responsibility efforts

In September 2011, Eaton took pride in receiving gold certification from LEED for both of its new data centers. To earn that honor, Eaton employed a mix of traditional and cutting-edge techniques in five areas.

Sustainable sites: To limit each facility's physical footprint, Eaton chose compact power distribution units and uninterruptible power systems (UPSs). It will also operate both facilities at 400V to eliminate step-down transformers and cut space requirements by 50 to 60 percent.

Water efficiency: To reduce cooling-related water consumption, Eaton will run its data centers at a target of 74 degrees Fahrenheit/23.33 degrees Celsius rather than the traditional 65 to 68 degrees Fahrenheit/18.33 to 20 degrees Celsius. In addition, a Dolphin WaterCare system will improve the efficiency and extend the life of the facilities' cooling infrastructure by preventing corrosion and algae growth in pipes without using environmentally-harmful chemicals.

Energy and atmosphere: The Project BlueGrass data centers will employ numerous strategies and technologies to maximize energy efficiency, including server virtualization, UPS hardware that delivers up to 99 percent efficiency, energy-efficient computer racking equipment and a water-side economizer. All told, Eaton expects its design and infrastructure decisions to produce power savings of at least \$23 million over 20 years, depending on how rapidly the company's IT requirements grow.

Materials and resources:

Throughout the construction of its new data centers, Eaton strove to reduce consumption of natural resources and overall environmental impact. For example, so far more than 92 percent of the wood products used at the Blue and Red sites are certified as sustainably harvested by the Forest Stewardship Council.

Environmental quality: Eaton has made environmental quality as high a priority inside its new data centers as outside of them. Among other measures, we installed sensor-based lighting systems, leveraged natural light wherever possible and built a 600-square-foot fitness center for our employees.

Conclusion

Project BlueGrass vividly demonstrates how companies that take a disciplined approach to designing, building and equipping new data centers can deliver IT services reliably, cost-effectively and sustainably. Thanks to the rigor with which vendors and locations were selected, as well as the leading-edge infrastructure resources, power quality equipment and monitoring systems we chose, Eaton will soon be equipped to support at least 20 more years of IT growth while conserving water, energy and natural resources in ways that will generate tens of millions of dollars in savings. The good news for other companies is that they can achieve similar results by employing the same best practices.

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