Appendix A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4621

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GREGORY KEITH CLINTON,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. Gina M. Groh, Chief District Judge. (3:17-cr-00005-GMG-RWT-1)

Submitted: April 29, 2019 Decided: May 14, 2019

Before GREGORY, Chief Judge, and MOTZ, Circuit Judge, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Gregory K. Clinton, Appellant Pro Se. David J. Perri, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Wheeling, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

error in the district court's factual finding that the officers did not prolong the stop. *See id.* at 382–83. Accordingly, we affirm the district court's denial of Clinton's motion to suppress.

Clinton also claims that the district court erred in denying his motion for judgment of acquittal or new trial, which concerned evidence that the Government allegedly withheld in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). The district court denied Clinton's motion on the ground that any evidence so withheld was not material. *See generally United States v. Bagley*, 473 U.S. 667, 682 (1985) (establishing materiality standard). We affirm for the reasons stated by the district court.

We have reviewed Clinton's claims concerning judicial misconduct, absence of jurisdiction, perjury, and forfeiture and find them entirely without merit. Finally, we decline to consider Clinton's claims of ineffective assistance of counsel because the record does not conclusively establish his counsel's ineffectiveness. *See United States v. Baptiste*, 596 F.3d 214, 216 n.1 (4th Cir. 2010). Clinton should assert this claim, if at all, in a 28 U.S.C. § 2255 (2012) motion. *Id.*

Accordingly, we affirm the judgment of the district court. We deny Clinton's motion for arrest warrants. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appendix B

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA
v.
GREGORY KEITH CLINTON

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:17CR5

USM Number: 03226-087

Nicholas F. Colvin
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☑ was found guilty on count(s) One (1) through Five (5)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(e)	Unlawful Possession of a Firearm	07/03/2016	One
21 U.S.C. § 844	Possession of Cocaine Base, Also Known as "Crack"	07/03/2016	Two
21 U.S.C. § 844	Possession of Cocaine Hydrochloride, Also Known as "Coke"	07/03/2016	Three

☑ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 8 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.

August 27, 2018
Date of Imposition of Judgment

Gina M. Groh
Signature of Judge

Honorable Gina M. Groh, Chief United States District Judge
Name and Title of Judge

August 29, 2018
Date

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 1A

DEFENDANT: GREGORY KEITH CLINTON
CASE NUMBER: 3:17CR5

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C)	Possession With Intent to Distribute Cocaine Base,	07/03/16	Four
21 U.S.C. §§ 841(a)(1) 841(b)(1)(C)	Possession With Intent to Distribute Cocaine Hydrochloride, Also Known as "Coke"	07/03/2016	Five

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: GREGORY KEITH CLINTON
CASE NUMBER: 3:17CR5

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: Two Hundred Sixty-Four (264) months: On Count One, a term of 264 months; On each of Counts Two and Three, a term of 12 months on each count; On each of Counts Four and Five, a term of 240 months on each count, all to run concurrent.

☑ The court makes the following recommendations to the Bureau of Prisons:
☑ That the defendant be incarcerated at an FCI or a facility as close to Eastern Panhandle of West Virginia, as possible;
☐ and at a facility where the defendant can participate in substance abuse treatment, as determined by the Bureau of Prisons;
☐ including the 500-Hour Residential Drug Abuse Treatment Program.

☐ That the defendant be incarcerated at _____ or a facility as close to his/her home in _____ as possible;
☐ and at a facility where the defendant can participate in substance abuse treatment, as determined by the Bureau of Prisons;
☐ including the 500-Hour Residential Drug Abuse Treatment Program.

☑ That the defendant be given credit for time served from July 3, 2016, to the present.

☑ That the defendant be incarcerated at a facility where he can participate in substance abuse treatment, as determined by the Bureau of Prisons.
☐ That the defendant be allowed to participate in any educational or vocational opportunities while incarcerated, as determined by the Bureau of Prisons.

☑ Pursuant to 42 U.S.C. § 14135A, the defendant shall submit to DNA collection while incarcerated in the Bureau of Prisons, or at the direction of the Probation Officer.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 12:00 pm (noon) on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

☐ on _____, as directed by the United States Marshals Service.

☐

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Appendix C

RUMBLINGS OF 922(g) UNCONSTITUTIONALITY

Even while the Supreme Court ponders *Rahimi* – the case that questions whether prohibiting people subject to domestic protection orders from having guns – lower courts are expressing doubts about whether 18 USC § 922(g), the statute prohibiting felons from possessing firearms, remains constitutional after the Supreme Court's 2022 *New York State Rifle & Pistol Assn v. Bruen* decision.

The leading decision against unconstitutionality, of course, is *Range v. Atty General*, a 3rd Circuit en banc decision last June. *Range* held that § 922(g)(1) was unconstitutional as applied to Bryan Range, who had been convicted of a welfare fraud offense 25 years ago. The government has filed for Supreme Court review in *Range* and asked SCOTUS to sit on the petition until it decides *Rahimi* next spring.

At the same time, the 8th Circuit went the other way in *United States v. Jackson*.

Down in the trenches, however, two federal district courts have held in the last several weeks that the felon-in-possession statute is unconstitutional.

In Chicago, Glen Prince – who the Government said had been robbing people at gunpoint on commuter trains – was arrested late one night while standing on a train platform with a gun. Ten days ago, a district court threw out his pending 18 USC § 922(g)(1) indictment – which alleged that Glen was *Armed Career Criminal Act*-eligible – as unconstitutional under *Bruen*.

The court ruled that *Bruen* did not hold that the Second Amendment categorically protects only law-abiding citizens, despite repeated use of such qualified language as "law-abiding citizens" in the decision. The district judge concluded instead that "the government has not met its burden to prove that felons are excluded from 'the people' whose firearm possession is presumptively protected by the plain text of the Second Amendment.

Because the right of a person with a prior felony conviction to possess a gun is presumptively protected by that Amendment, the court said, *Bruen* gives the government the authority to prohibit possession only when it can "demonstrate that the statute is part of this nation's historical tradition of firearm regulation... Where a 'distinctly modern' regulation is at issue, the government must offer a historical regulation that is 'relevantly similar' and... must determine whether historical regulations 'impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified' as the burden imposed by § 922(g)(1)."

The "first federal statute disqualifying certain violent felons from firearm possession was not enacted until... 1938," the court noted, finding "no evidence of any law categorically restricting individuals with felony convictions from possessing firearms at the time of the Founding or ratification of the Second or 14th Amendments." The district court concluded that § 922(g)(1) "imposes a far greater burden on the right to keep and bear arms than the historical categorical exclusions from the people's Second Amendment right. The government has not demonstrated why the modern ubiquity of gun violence, and the heightened lethality of today's firearm technology compared to the Founding, justify a different result."

Glen's *ACCA* count was dismissed.

Appendix C

A. The Second Amendment Revolution

Contemporary Second Amendment law revolves around three Supreme Court decisions: *Heller*, *McDonald*, and *Bruen*. They were issued in 2008, 2010, and 2022, respectively.

Mr. Clinton observes how the Second Amendment was interpreted before *Heller*, andsubmits a relevant dissent written by Justice Amy Coney Barrett during her service on the U.S. Court of Appeals for the Seventh Circuit.

The discussion proceeds in chronological order.

1. The Standard Before 2008

For 70 years, the Second Amendment was interpreted in accordance with *United States v. Miller*, 307 U.S. 174 (1939).

Supreme Court determined that "Jack Miller and Frank Layton, two Oklahoma bank robbers, did not have a constitutional right to carry an unregistered, homemade sawed-off shotgun. Brian L. Frye, *The Peculiar Story of* United States v. Miller, 3 NYUJ.L. & Liberty 48, 48, 79 (2008).

To quote Justice McReynolds' statement from the bench, "we construe the amendment as having relation to military service and we are unable to say that a sawed-off shotgun has any relation to the militia." Frye, 3 NYU J.L. & Liberty at 67 (citation omitted). The U.S. Department of Justice agreed with the Militia-based rationale, urging courts to conclude "that the Second Amendment does not apply to individual citizens." *United States v. Emerson*, 270 F.3d 203, 219 (5th Cir. 2001).

Emerson turned out to be a landmark Second Amendment decision. Its historical analysis paved the way for the re-examination and adoption of an individual's right to bear arms in *Heller*.

2. *District of Columbia v. Heller*

District of Columbia residents sued the D.C. government over its gun restrictions. They wanted permission to possess firearms in their homes for self-defense. They maintained that the Second Amendment protected their right to possess common firearms in the home for self-defense, regardless of militia service.

As DOJ later explained to the Supreme Court, a November 2001 memorandum from Attorney General John Ashcroft reflected the Department's new belief. "The Second Amendment," he wrote,

> "more broadly protects the rights of individuals, including persons who are not members of any militia or engaged in active military service or training, to possess and bear their own firearms, subject to reasonable restrictions designed to prevent possession by unfit

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persons or to restrict the possession of types of firearms that are particularly suited to criminal misuse."

The Court first determined that the phrase "well regulated Militia" was part of the "prefatory clause" that did not limit the words that followed. *Heller*, 554 U.S. at 577-78. It then found that the term "right of the people" creates "a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans." *Id.* at 581. Lastly, the Court held that "keep and bear arms" means the ability "to possess and carry weapons in case of confrontation." *Id.* at 592. "Putting all of these textual elements together, Mr. Clinton concludes that they guarantee the individual right to possess and carry weapons in case of confrontation." *Id.*

The US Supreme Court sought confirmation of this conclusion in the historical record, reviewing English history and excerpts from colonial newspapers. "No prior Supreme Court decision has ever gone to such great depth or length to mine the historical sources in its search for meaning." Rory K. Little, Heller *and Constitutional Interpretation: Originalism's Last Gasp,* 60 Hastings L.J. 1415, 1418 (2009).

The case merited no deference simply because "hundreds of judges . . . have relied on the view of the Amendment we endorsed there." *Heller*, 554 U.S. at 621 (cleaned up). Nor was it appropriate to consider whether the Court's new Second Amendment standard would lead to "a dramatic upheaval in the law." *Id.*

The Supreme determined in *Heller* that "We do not interpret constitutional rights that way." *Id.* "Just as the First Amendment protects modern forms of communications, and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding."

In its own way, the Court was endorsing the oft-stated principle that "the framers of the Constitution wisely spoke in general language and left to succeeding generations the task of applying that language to the unceasingly changing environment in which they would live." William H. Rehnquist, *The Notion of A Living Constitution*, 54 Tex. L. Rev. 693, 694 (1976); *see also N.L.R.B. v. Noel Canning*, 573 U.S. 513, 533-34 (2014) "The Founders knew they were writing a document designed to apply to ever-changing circumstances over centuries. After all, a Constitution is 'intended to endure for ages to come,' and must adapt itself to a future that can only be 'seen dimly,' if at all."

3. *McDonald v. City of Chicago, Illinois*

McDonald solved a simple but important legal problem. Technically, the Court's decision in *Heller* applied solely against the federal government. Residents of the 50 states still did not have full Second Amendment rights. So after *Heller*, Chicago residents and two advocacy groups filed suit seeking the same guarantee as D.C. residents: the right "to keep handguns in their homes for self defense." *Id.* at 750 and 752.

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The Supreme Court found in their favor. "The Second Amendment right is fully applicable to the States" through the Fourteenth Amendment, it held. *Id.* at 750. "Under our precedents, if a Bill of Rights guarantee is fundamental from an American perspective, then, unless *stare decisis* counsels otherwise, that guarantee is fully binding on the States." *Id.* at 784-85.

Because the critical Amendment this time was the Fourteenth Amendment, rather than the Second Amendment, much of this discussion highlighted the "extensive history of black people's inability to access guns during the days of chattel slavery, Reconstruction, and Jim Crow-an incapacity that left black people vulnerable to violence from private actors.

Mr. McDonald and his neighbors could keep their handguns at home.

4. Judge Barrett's Dissent in *Kanter v. Barr*

In 2011, Wisconsin resident Rickey Kanter pleaded guilty to federal mail fraud, a felony. *Kanter v. Barr*, 919 F.3d 437, 440 (7th Cir. 2019). He defrauded Medicare. *Id.* He paid a $50,000 criminal penalty, "reimbursed Medicare over $27 million in a related civil settlement," and served a year in federal prison. *Id.*

Mr. Kanter's conviction, like Mr. Clinton's, meant he was unable to ever again possess firearms or ammunition. Both the federal government and the State of West Virginia had felon-in-possession laws that threatened to return Mr. Clinton to prison if he ever knowingly possessed those things. *See* 18 U.S.C. § 922(g)(1);

Mr. Kanter believed that the Second Amendment invalidated those statutes. He filed suit in federal court seeking a declaration that they were unconstitutional as applied to him, "a nonviolent offender with no other criminal record." *Kanter*, 919 F.3d at 440

The District Court disagreed. It found that "even assuming felons are entitled to Second Amendment protection, the application of the federal and Wisconsin felon dispossession laws to Kanter is substantially related to the government's important interest in preventing gun violence." *Id.*

The Seventh Circuit affirmed. The federal government had articulated an interest in "preventing gun violence by keeping firearms away from persons, such as those convicted of serious crimes, who might be expected to misuse them," and then demonstrated "that prohibiting even nonviolent felons like Kanter from possessing firearms is substantially related to its interest in preventing gun violence." *Id.* at 448. That was enough. Mr. Kanter would remain subject to both the federal and state felon disarmament statutes.

Judge Barrett issued a lengthy dissent.

She thought the majority had proceeded down the wrong path by emphasizing Mr. Kanter's felony. The correct vector was whether he was " *dangerous*." *Id.* at 451 (Barrett, J., dissenting).

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"In 1791-and for well more than a century afterward-legislatures disqualified categories of people from the right to bear arms only when they judged that doing so was necessary to protect the public safety," she reasoned. *Id.* **"Absent evidence that he either belongs to a dangerous category or bears individual markers of risk, permanently disqualifying Kanter from possessing a gun violates the Second Amendment."** *Id.*

The Judge then asked whether *Heller* was an in-depth examination of felon disarmament laws.

"Like the majority, I am reluctant to place more weight on these passing references than the Court itself did. The constitutionality of felon dispossession was not before the Court in *Heller*, and because it explicitly deferred analysis of this issue, the scope of its assertion is unclear." *Id.* (cleaned up). In short, "*Heller*'s dictum does not settle the question before us." *Id.* at 454.

After an exhaustive analysis, Judge Barrett found no "founding-era laws explicitly imposing or explicitly authorizing the legislature to impose" permanent felon disarmament laws. Judge Barrett concluded by asking whether some firearms bans could be justified. In her view, the federal government and Wisconsin **"might still be able to show that Kanter's history or characteristics make him likely to misuse firearms," thereby posing a risk to public safety that warranted disarmament.** *Id.* at 468. But neither government had put forward any such evidence. *Id.* Accordingly, "the governments cannot permanently deprive him of his right to keep and bear arms." *Id.* at 469.

5. *New York State Rifle & Pistol Association v. Bruen*

First, in its opening paragraph, the Court built upon *Heller* and *McDonald* by formally holding "that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense *outside* the home." 142 S.Ct. at 2122 (emphasis added). The opinion later explained that "nothing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms." *Id.* at 2134. "To confine the right to 'bear' arms to the home would nullify half of the Second Amendment's operative protections." *Id.* at 2134-35.

Second, the Court modified the legal standard governing Second Amendment cases. It rejected the appellate courts' existing "'two-step' framework . . . that combines history with means-end scrutiny," *Id.* at 2125, and replaced it with a different two-step analysis:

When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'

The Court then added that judges should "follow the principle of party presentation" and are "entitled to decide a case based on the historical record compiled by the parties." *Id.*

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Several district courts suggested that Supreme Court dicta is binding upon them. *E.g.*, *United States v. Finney*, No. 2:23-CR-13, 2023 WL 2696203, at *2 n.4 (E.D. Va. Mar. 29, 2023). "We are not bound by dicta, even of our own court," says the Fifth Circuit. *United States v. Becton*, 632 F.2d 1294, 1296 n.3 (5th Cir. 1980) (citation omitted). Though Supreme Court dicta is, "as compared with other dicta, . . . 'another matter,'" it is "not fallible." It can be challenged.

Federal courts are instead bound by two rules: "one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other, never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Id.*; *see Yazoo & M.V.R. Co. v. Jackson Vinegar Co.*, 226 U.S. 217, 219 (1912) ("this court must deal with the case in hand, and not with imaginary ones.").

Treating dicta as binding violates the "one doctrine more deeply rooted than any other in the process of constitutional adjudication": "that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Spector Motor Serv. v. McLaughlin*, 323 U.S. 101, 105 (1944).

c. *Bruen* Step One

Mr. Clinton asks the court to consider § 922(g) under the *Bruen* standard. Recall that *Bruen*'s first step asks reviewing courts to determine whether "the Second Amendment's plain text covers an individual's conduct." 142 S.Ct. at 2126.

In one representative decision, the district court denied the defendant's motion to dismiss by reasoning at step one that "the activity regulated by the felon in possession statute falls outside the scope of the Second Amendment's protections because it does not impact 'law-abiding, responsible citizens.'" *Belin*, 2023 WL 2354900, at *2 (quoting *Bruen*, 142 S.Ct. at 2122). In other words, a convicted felon "is not considered to be a part of 'the people' for purposes of the Second Amendment as the Amendment's protections only extend to lawabiding citizens.... This is known as the civic virtue theory of the Second Amendment." *United States v. Rice*, No. 3:22-CR-36 JD, 2023 WL 2560836, at *6 (N.D. Ind. Mar. 17, 2023) (citations omitted).

With respect, this reasoning errs in several ways.

***Bruen* step one requires us to look at the "conduct" being regulated, not the status of the person performing the conduct.** 142 S.Ct. at 2126. In Mr. Clinton's case, the conduct the government seeks to punish is Mr. Clinton"s (alleged) knowing possession of a firearm in his home. It hasn't charged him with brandishing a weapon, firing one, domestic violence, assault, or battery. And *Heller* **already resolved that merely possessing a firearm within the home is the core of the right protected by the Second Amendment.** *See* **554 U.S. at 629-30.**

Heller also answered, for the purposes of step one, whether the Second Amendment covers the so-called "national community," or a subset of the Nation called the "political community." It chose the broader definition: "'the people' protected by the Fourth Amendment, and by the First and Second Amendments, . . . refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of

Appendix O

Neutrality Proclamation, 22 April 1793

Neutrality Proclamation

[Philadelphia, 22 April 1793]

Whereas it appears that a state of war exists between Austria, Prussia, Sardinia, Great-Britain, and the United Netherlands, of the one part, and France on the other, and the duty and interest of the United States require, that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent powers:

I have therefore thought fit by these presents to declare the disposition of the United States to observe the conduct aforesaid towards those powers respectively; and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may in any manner tend to contravene such disposition.

And I do hereby also make known that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding or abetting hostilities against any of the said powers, or by carrying to any of them those articles, which are deemed contraband by the modern usage of nations, will not receive the protection of the United States, against such punishment or forfeiture: and further, that I have given instructions to those officers, to whom it belongs, to cause prosecutions to be instituted against all persons, who shall, within the cognizance of the courts of the United States, violate the Law of Nations, with respect to the powers at war, or any of them.

In testimony whereof I have caused the Seal of the United States of America to be affixed to these presents, and signed the same with my hand. Done at the city of Philadelphia, the twenty-second day of April, one thousand seven hundred and ninety-three, and of the Independence of the United States of America the seventeenth.

Go. WASHINGTON.

By the President.

Th: Jefferson.

Printed copy, DNA: RG 46, Third Congress, 1793–95, Senate Records of Legislative Proceedings, President's Messages; LB, DLC:GW.

Appendix D

Although Alexander Hamilton had requested, and received, an outline of a proclamation of neutrality from John Jay, there is no evidence to suggest that GW saw this draft or that it influenced the wording of the final proclamation (Syrett, Hamilton Papers, 14:299–300, 307–10). Attorney General Edmund Randolph wrote the final proclamation, following cabinet deliberations on 19 and 22 April (GW to Cabinet, 18 April, and source note, and Minutes of a Cabinet Meeting, 19 April; JPP, 117).

Thomas Jefferson, at the behest of the president, enclosed printed copies of the proclamation in letters to state governors and to American and European foreign ministers. He submitted a "draught of a letter for the Ministers of France, England & Holland" to GW under cover of a letter of 23 April (DNA: RG 59, Miscellaneous Letters). Tobias Lear wrote Jefferson on that same date of GW's approval (DLC: Jefferson Papers; see also JPP, 118). For the final version of 23 April sent to Jean-Baptiste Ternant, George Hammond, and Franco Petrus Van Berckel, see Jefferson Papers, 25:583–84. Jefferson also submitted drafts of the letters he sent to the governors of the states and to the U.S. ministers Gouverneur Morris, Thomas Pinckney, and William Short. He received GW's approval in a letter from Lear of 26 April (DLC: Jefferson Papers; see also JPP, 118, 120). For these letters, dated 26 April, see Jefferson Papers, 25:588–89, 591–92. Newspapers quickly printed the Neutrality Proclamation, and it circulated as a broadside as well (National Gazette [Philadelphia], 24 April; Pennsylvania Gazette [Philadelphia], 24 April; broadside, Nc-Ar).

Appendix E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

UNITED STATES OF AMERICA,

Plaintiff,

v. CRIMINAL ACTION NO.: 3:17-CR-5 (GROH)

GREGORY KEITH CLINTON,

Defendant.

ORDER DENYING DEFENDANT'S PRO SE MOTION TO REFILE 28 U.S.C. § 2255 AND MOTION TO VACATE

Currently pending before the Court is the Defendant's *pro se* Motion to Refile 28 U.S.C. § 2255 and Motion to Vacate, filed on January 24, 2022. ECF No. 457. Therein, the Defendant explains that the Gilmer Federal Correctional Institution is no longer on a COVID-related lockdown, and he can access the law library and related materials, so he would like to begin working on his claim again. This Court previously dismissed the Defendant's § 2255 claim in this matter and in 3:19-cv-186 on May 1, 2020. ECF No. 417.

Further, this Court has also denied the Defendant's successive *pro se* motions due to lack of merit. As explained in the Court's Order Denying the Defendant's Pro Se Motions, "[a]ny future filings improperly filed in the Defendant's criminal case rather than through the appropriate post-conviction filing with be stricken from the Court's docket." ECF No. 405 at 1. Instead, the Defendant must file the complaint or habeas form and pay the filing fee or move for leave to proceed in forma pauperis, with the required inmate account statement. The Court will not continue to consider the same arguments filed by the Defendant in his criminal case.

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Accordingly, the Defendant's *pro se* Motion to Refile 28 U.S.C. § 2255 and to Vacate [ECF No. 457] is **DENIED**. The Defendant is **ORDERED** to seek any future relief by filing the appropriate post-conviction petitions and motions.

The Clerk is **DIRECTED** to mail a copy of this Order to the *pro se* Defendant by certified mail, return receipt requested, to his last known address as reflected on the docket sheet. The Court is **FURTHER DIRECTED** to transmit copies of this Order to all counsel of record herein.

DATED: January 26, 2022

Gina M. Groh

GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE

Appendix Q

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

GREGORY KEITH CLINTON,

Plaintiff,

v. **CIVIL ACTION NO.: 3:20-CV-178 (GROH)**

ELIZABETH D. GRANT, and
THE UNITED STATES OF AMERICA,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Now before the Court is the Report and Recommendation ("R&R") of United States Magistrate Judge Robert W. Trumble. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Trumble for submission of a proposed R&R. LR PL P 2; see also 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Trumble issued his R&R on January 4, 2021. ECF No. 33. Therein, Magistrate Judge Trumble recommends that the Plaintiff's Complaint [ECF No. 1] be denied and dismissed with prejudice for failure to state a claim upon which relief can be granted. ECF No. 33 at 6. The Plaintiff timely filed objections to the R&R on January 28, 2021. ECF No. 36. Accordingly, this matter is ripe for adjudication.

I. BACKGROUND

On September 18, 2020, the Plaintiff initiated this case by filing an action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). ECF No. 1. The complaint alleges that Defendants Elizabeth D. Grant, a United

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States Attorney in Criminal Action No. 3:17-CR-5, and the United States violated his Fifth, Tenth, and Fourteenth Amendment rights. Id. The Plaintiff lists various grounds for relief, including identity theft, fraud, "treason to the Constitution" and "collusion in the creation of Constructive Trust Accounts that created Bonds Request No. EOUSA-2020-004020." ECF No. 35 at 1–2. For relief, he requests the Court to award him monetary damages in the amount of 4 trillion, 3 billion, 839 million dollars ($4,003,839,000,000.00). ECF No. 1 at 9.

Upon reviewing the record, the Court finds that the background and facts as explained in the R&R accurately and succinctly describe the circumstances underlying the Plaintiff's claims. For ease of review, the Court incorporates those facts herein.

II. LEGAL STANDARDS

Pursuant to 28 U.S.C. § 636, a party may object to the magistrate judge's findings and recommendations by timely filing written objections. 28 U.S.C. § 636(b)(1)(C). Under this Court's Local Rules of Prisoner Litigation Procedure, the written objections must identify each portion of the magistrate judge's recommended disposition that is being challenged and must specify the basis for each objection. LR PL P 12(b). The Court will then conduct a de novo review of "those portions of the report . . . to which objection is made[,]" and "may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. 636(b)(1)(C); see also Thomas v. Arn, 474 U.S. 140, 150 (1985) (stating that the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge to which no objection is made).

However, the Court is not required to review objections to the magistrate judge's

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R&R that are not made with "sufficient specificity so as reasonably to alert the district court of the true ground for the objection." United States v. Midgette, 478 F.3d 616, 622 (4th Cir. 2007). Thus, "[w]hen a party does make objections, but the[] objections are so general or conclusory that they fail to direct the district court to any specific error by the magistrate judge," the party waives his right to de novo review. Green v. Rubenstein, 644 F. Supp. 2d 723, 730 (S.D. W. Va. 2009). Objections that do not call the Court's attention to "any specific error by the magistrate judge" are vague and conclusory, and do not merit review by the Court. Id.

III. DISCUSSION

The Plaintiff's objections are largely incomprehensible and fail to present new material facts or legal arguments to Magistrate Judge Trumble's findings and conclusions. For example, he objects to Magistrate Judge Trumble's findings that the Plaintiff failed to present a plausible Bivens claim against the Defendants because (1) he failed to allege that Defendant Elizabeth Grant was a federal employee or agent and that she deprived him of a federal right, and (2) the United States government or a federal agency are improper parties in a Bivens action under FDIC v. Meyer and Correctional Services Corp. v. Malesko.[1] ECF No. 33 at 6. However, the Plaintiff fails to allege plausible facts to support his claim that Defendant Grant deprived him of a federal right, and he inadvertently supports the findings in the R&R by stating, "The United States Attorn[ey's] Office is an agency of the Government." ECF No. 36 at 3. Because the Plaintiff

[1] See FDIC v. Meyer, 510 U.S. 471, 484–86 (1994) (holding that federal agencies may not be held liable in a Bivens action); Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 72 (2001) (clarifying that a federal prisoner may bring a Bivens claim against the offending individual federal officer and not the federal agency).

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presents no specific objections, this Court will review the R&R for clear error.

IV. CONCLUSION

Upon careful review of the R&R, it is the opinion of this Court that Magistrate Judge Trumble's Report and Recommendation [ECF No. 33] should be, and is hereby, **ORDERED ADOPTED** for the reasons more fully stated therein. Therefore, the Plaintiff's Complaint [ECF No. 1] is **DENIED** and **DISMISSED WITH PREJUDICE**. Additionally, the Plaintiff's Motion to Amend and Add Exhibits [ECF No. 37], wherein the Plaintiff seeks leave to file a letter that was attached to his objections, is **TERMINATED** as **MOOT**.

This matter is **ORDERED STRICKEN** from the Court's active docket. The Clerk of Court is **DIRECTED** to mail a copy of this Order to the pro se Plaintiff by certified mail, return receipt requested, at his last known address as reflected on the docket sheet.

DATED: March 23, 2021

GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE

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