# *Poterbin v. United States*

United States District Court for the District of Kansas

November 19, 2026, Decided; November 20, 2026, Filed

Case No. 2:19-cr-20079-JAR-7; Case No. 2:26-cv-02671-JAR

**Reporter**
2026 U.S. Dist. LEXIS 266855 *; 2026 LX 732769

JAMES MICHAEL POTERBIN, Petitioner, v. UNITED STATES OF AMERICA, Respondent.

**Counsel: [*1]** David Carr, Defendant(2:19cr20079), Pro se, Florence, CO, USA; Gregory M. Acton, LEAD ATTORNEY, Acton Law Office PC, Albuquerque, NM, USA; Chekasha Ramsey, Ramsey Law, Kansas City, MO, USA; Dionne M. Scherff, Joseph, Hollander & Craft, LLC - OP, Overland Park, KS; Dustin John Curry, Joseph, Hollander & Craft, LLC - Lawrence, Lawrence, KS, USA; John M. Duma, Duma Law Offices, Olathe, KS, USA; Timothy H. Burdick, Office of Federal Public Defender - KCKS, Kansas City, KS, USA.

For Michael Hammer, Defendant(2:19cr20079): John Jenab, LEAD ATTORNEY, Jenab Law Firm, PA, Lampe, MO, USA.

For Brandon West, Defendant(2:19cr20079): David J. Guastello, LEAD ATTORNEY, The Guastello Law Firm, LLC, Kansas City, MO, USA.

For Randi Serna, Defendant(2:19cr20079): Melanie S. Morgan, LEAD ATTORNEY, Morgan Pilate, LLC, Kansas City, MO, USA; John E. Cowles, Rokusek Stein Law, LLC, Shawnee, KS, USA.

For Bryan Spaulding, Defendant(2:19cr20079): Laquisha S. Ross, LEAD ATTORNEY, Office of Federal Public Defender - KCKS, Kansas City, KS, USA; Mark A. Thomason, LEAD ATTORNEY, Law Office of Mark Thomason, LLC, Independence, MO, USA; Mary Bailey Kennedy, Kansas Federal Public Defender, Kansas City, KS, USA.

For Michael **[*2]** Huggins, Defendant(2:19cr20079): Jeffrey D. Morris, LEAD ATTORNEY, Berkowitz Oliver, LLP - KCMO, Kansas City, MO, USA; Lydia Krebs Albert, LEAD ATTORNEY, Federal Public Defender - Topeka, Topeka, KS, USA.

For James Michael Poterbin, Defendant(2:19cr20079): Robert Nicholas Calbi, LEAD ATTORNEY, Law Offices of Robert N. Calbi, Kansas City, MO, USA; R. Bruce Kips, Shawnee, KS, USA.

For USA, U.S. Attorneys(2:19cr20079): Carrie Nicole Capwell, Donald Christopher Oakley, Ryan Huschka, LEAD ATTORNEYS, Office of United States Attorney - KCKS, Kansas City, KS, USA; Sheri Catania, Office of United States Attorney - KCKS, Kansas City, KS, USA.

James Michael Poterbin, Petitioner(2:26cv2671), Pro se, El Reno, OK, USA.

For USA, Respondent(2:26cv2671): Donald Christopher Oakley, Ryan Huschka, LEAD ATTORNEYS, Office of United States Attorney - KCKS, Kansas City, KS, USA.

**Judges:** JULIE A. ROBINSON, UNITED STATES DISTRICT JUDGE.

**Opinion by:** JULIE A. ROBINSON

## Opinion

**MEMORANDUM AND ORDER**

On October 26, 2026, Petitioner James Michael Poterbin filed his Motion to Vacate, Set Aside, or Correct Sentence Under *28 U.S.C. § 2255*, alleging his trial counsel was ineffective.[1] Before the Court is the Government's Motion to Compel Counsel to Provide Affidavit (Doc. 525), asking the Court to direct Petitioner's **[*3]** trial counsel, Robert Calbi, to provide an affidavit addressing a list of questions it claims is warranted by Petitioner's motion. Neither Petitioner nor Mr. Calbi responded to the Government's motion and the time to do so has expired.[2] For the reasons explained below, the Court grants in part and denies in part the Government's motion.

Petitioner raises the following two grounds for relief in his § 2255 motion: (1) ineffective assistance of counsel for failure to provide him with discovery before trial; and (2) ineffective assistance of counsel for failure to properly advise him of the evidence against him, the elements of the charged offenses, the Government's aiding-and-abetting theory, and the kidnapping evidence. As to the second ground, Petitioner argues that he could not understand the case against him, nor could he properly assess the risks of pleading guilty versus proceeding to trial, because he was not provided with discovery. In his memorandum in support of the motion, Petitioner represents that Mr. Calbi (1) told him that the Government cannot meet the elements of its case; (2) told him "he couldn't allow me to take the stand in my own defense even though I wanted to"; and **[*4]** (3) asked him "to sign a waiver to not use David Carr's negative impacting evidence, in exchange for not using negative impacting evidence against Government witnesses and codefendants, but didn't exclude the negative impacting evidence against me."[3]

The Tenth Circuit has made clear that "when a habeas petitioner claims ineffective assistance of counsel, he impliedly waives attorney-client privilege with respect to communications with his attorney necessary to prove or disprove his claim."[4] Thus, the Court finds that Petitioner has waived the attorney-client privilege with respect to communications that may prove or disprove the claims in his § 2255 motion.

Under Rule 7 of the Rules Governing Section 2255 Proceedings for the United States District Courts, the Court "may direct the parties to expand the record by submitting additional materials relating to the motion," including affidavits.[5] But when the Court imposes a waiver and directs an attorney to provide an affidavit in a habeas case such as this, it must carefully tailor the directive to the ineffective-assistance claims raised.[6]

In this case, the Government proposes a list of twelve multi-part questions for Mr. Calbi to address in his affidavit. The Court declines to direct Mr. Calbi to address these questions, some of which go **[*5]** beyond the scope of claims asserted in Petitioner's motion. Instead, the Court directs Mr. Calbi to execute an affidavit that addresses Petitioner's claims in the § 2255 motion: (1) that he did not provide Petitioner with discovery before trial; (2) that he did not advise Petitioner of the evidence against him, the elements of the charged offenses, the Government's aiding-and-abetting theory, and the kidnapping evidence; (3) that he told Petitioner that the Government cannot meet the elements of its case; (4) that he coerced Petitioner not to testify at trial on his own behalf; and (5) that he asked Petitioner to sign a waiver regarding whether to challenge certain evidence as set forth in Petitioner's memorandum in support.

**IT IS THEREFORE ORDERED BY THE COURT** that the Government's Motion to Compel Counsel to Provide Affidavit (Doc. 525) is **granted in part and denied in part**. Mr. Calbi shall submit an affidavit addressing the issues

---

[1] Doc. 521.

[2] *See* D. Kan. Rule CR1.2 (providing a 14-day deadline for responding to motions in criminal cases); D. Kan. Rule 6.1(d)(4) (providing a 14-day deadline for responding to non-dispositive motions in civil cases).

[3] Doc. 522 at 12.

[4] ***United States v. Pinson, 584 F.3d 972, 978 (10th Cir. 2009)***.

[5] Rules Governing Section 2255 Proceedings for the United States District Courts, Rule 7(a)-(b). The Government does not indicate whether it asked Mr. Calbi to produce an affidavit before filing this motion.

[6] ***Pinson, 584 F.3d at 979***.

identified in this Order by no later than **December 11, 2026**. The affidavit shall be filed in this case under seal and access shall be restricted to the parties and the Court.

**IT IS SO ORDERED**.

Dated: November 19, 2026

/s/ Julie A. Robinson

JULIE A. ROBINSON

UNITED STATES DISTRICT JUDGE

---

**End of Document**