

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA)
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) 4:15CR00001 BSM
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MICHAEL A. MAGGIO)

**UNITED STATES’ RESPONSE TO
MOTION FOR RELEASE PENDING HABEAS CORPUS PROCEEDING**

The United States of America, by and through its attorney Cody Hiland, United States Attorney for the Eastern District of Arkansas, and Julie Peters, Assistant United States Attorney for said district, for its response in opposition to defendant’s motion for release pending habeas corpus proceeding (docket no. 81), respectfully states as follows.

MAGGIO cites Rule 23 of the Federal Rules of Appellate Procedure in support of his request for release pending the disposition of his § 2255 motion. This Rule is not applicable to MAGGIO; Rule 23 applies only when the district court has already granted or denied the underlying habeas corpus petition. See Fed. R. App. P. 23(a) (“Pending review of a *decision* in a habeas corpus proceeding . . .”); 23(b) (“While a *decision* not to release a prisoner is under review . . .”); 23(c) (“While a *decision* ordering the release of a prisoner is under review . . .”) (emphasis supplied); see, e.g., *Hilton v. Braunskill*, 481 U.S. 770, 772 (1987). A district court may consider, however, the issue of bond pending a decision on a habeas petition pursuant to common law. “In spite of the lack of specific statutory authorization, it is within the inherent power of a District Court of the United States to enlarge a state prisoner on bond pending hearing and decision on his [or her] application or a writ of habeas corpus.” *Martin v. Solem*, 801 F.2d 324, 329 (8th Cir. 1986) (citing *In re Wainwright*, 518 F.2d 173, 174 (5th Cir. 1975)); *Muir v. United States*, 2018 WL 542229 (D.S.D. Jan. 23, 2018) (denying bail pending decision on § 2255 motion).

To obtain release pending review, the habeas petitioner must overcome a “formidable barrier.” *Muir*, 2018 WL 542229 at *1. Release on bail is not favored in § 2255 proceedings, and is rarely granted, because it supplies the sought-after remedy before the merits of the motion are determined. *See id.*; *Martin*, 801 F.2d at 329. To qualify for release, the movant must show a substantial federal constitutional claim that “presents not merely a clear case on the law, but a clear, and readily evident, case on the facts.” *Martin*, 801 F.2d at 329 (internal quotation omitted). In addition, the movant must demonstrate “some circumstance making the request exceptional and deserving of special treatment in the interests of justice.” *Id.* (internal citation omitted).

In his motion for release, MAGGIO fails to identify a specific “substantial constitutional issue.” MAGGIO generally refers to a “complex legal question as seen in the Petition.” MAGGIO motion for release, page 4. Simply stated, there are only two legal questions in MAGGIO’s § 2255 motion, and neither one is complex, much less a “substantial constitutional issue.” First, MAGGIO attacks the application of 18 U.S.C. § 666 to his conduct. Second, MAGGIO alleges that he received ineffective assistance of counsel in the negotiation of his guilty plea. With respect to the application of § 666 in this case, the Eighth Circuit has already soundly rejected MAGGIO’s attack on direct appeal:

Maggio’s arguments that there was no factual basis for finding him guilty are all easily resolved. The (again, nonjurisdictional) nexus theory is squarely foreclosed by *United States v. Hines*, in which we held “the plain language of [§ 666] does not require, as an element to be proved beyond a reasonable doubt, a nexus between the activity that constitutes a violation and federal funds.” *United States v. Hines*, 541 F.3d 833, 835-36 (8th Cir. 2008) (affirming the conviction of a deputy sheriff who took cash payoffs for enforcing eviction orders and seizing property, and who argued his conduct had nothing to do with the federal funding the sheriff’s office received); *see also Sabri v. United States*, 541 U.S. 600, 605, 124 S.Ct. 1941, 158 L.Ed.2d 891 (2004). The claim that Maggio was not an agent of the state government is belied by his stipulation that he “was an agent of the State of Arkansas and the Twentieth Judicial District.” *See United States v. Brown*, 331 F.3d 591, 595 (8th Cir. 2003) (making clear that the factual basis for a guilty plea can be established through facts recounted and stipulated in the plea agreement). Maggio’s

claim that there was no basis for finding any quid pro quo ignores his express admission of “accept[ing] ... financial support ... *intending to be influenced and induced* to remit the judgment” (emphasis added). *See id.*

United States v. Maggio, 862 F.3d 642 (8th Cir. 2017). The United States Supreme Court declined to review or disturb the Eighth Circuit’s opinion. *See United States v. Maggio, cert. denied*, 138 S. Ct. 437 (2017), *reh’g denied*, 138 S. Ct. 732 (2018).

MAGGIO contends that he is entitled to have his plea and sentence vacated based upon ineffective assistance of counsel. However, there is nothing “exceptional and deserving of special treatment” about a defendant making an ineffective assistance claim in a § 2255 motion, just as “there is nothing unusual about a claim of unlawful confinement in a habeas proceeding.” *Martin*, 801 F.2d at 330.

WHEREFORE, the United States respectfully requests that this Court deny MAGGIO’s Motion for Release (docket no. 81).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2018, a copy of the foregoing was filed electronically using the CM/ECF system and a copy was sent to counsel of record.

/s/ Julie Peters