UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ADRIAN MARTINEZ-MONTANEZ,

Petitioner,

-vs-

Case No. 1:14-CV-1456-CAP-ECS
1:11-CR-239-1-CAP-ECS

UNITED STATES OF AMERICA,

Respondent.

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MEMORANDUM IN SUPPORT OF FRANK L. AMODEO'S CONTINUED ASSISTANCE

American judicial tradition empowers a district judge——any judge for that matter——to manage his courtroom especially the decorum of the parties and the facility.[1/] Within that ambit, this court likely can prevent me from cosigning pro se pleadings.[2/] What is inexplicable, is why this court would want to. The positive effects of my openness and transparency are numerous and substantial; on the other hand, undisclosed "ghostwriting" is deceptive, fraudulent, sanctionable, and unethical.[3/] Not to mention, that the deleterious effects caused by such undisclosed authorship on the proceedings: courts often over-estimate the litigant's knowledge and skill, leading not just to unfair results, but also to the wasting of judicial resources (i.e., a court

1/. **Chambers v. NASCO, Inc.,** 501 U.S. 32, 43 (1991).

2/. Cf. **Sahyers v. Pugh Holliday & Karatinos, P.C.,** 560 F.3d 1241, 1244 (11th Cir. 2009).

3/. **Bailey v. United States,** 1997 U.S. Dist. LEXIS 17639 (N.D. Ill. 1997) ("This opinion characterize Bailey's submission as pro se only in the sense that no ccunsel signed the motion. It is obvious that nonlawyer Bailey has received legal assistance in connections with the memorandum").

misperceiving a filing as purely pro se tends to overlook valid arguments, thereby generating an excessive number of "do-overs"). The Constitution authorizes me——even as a nonlawyer——to assist these otherwise helpless prisoners.[4/] Thus, it seems to me, the best course of action is to tell the truth from the beginning. Of course, if this court finds our veracity viscerally repugnant, then I will refrain from cosigning the pleadings I write on behalf of the petitioners before this court.

With that said, in order to properly perfect the record, we present authority and argument, that suggest my cosigning the pro se pleadings is not only the appropriate course of action, but also the preferred course.

ARGUMENT

I. In order to avoid even the appearance of deception a defendant should always inform the court of all material facts. Similarly, in order to ensure confidence in administrative justice judicial proceedings should be subject to public scrutiny.

For many reasons the court, the government, and the public should know that I prepared the pro se pleading, here are four:

> First, and most important, it is the truth. Anything else would be a lie. Such conduct (not disclosing my writing) is a disservice to the public; disparages the law; displays disrespect for the court; could result in unfair surprise to the government, the court, or to the defendant; and may result in more than the normal expenditure of court resources.

4/. **Avery v. Johnson,** 393 U.S. 483 (1969).

Second, the federal procedural rules and this circuit's precedent prohibit the petitioner from signing the pleadings alone; thereby stating that from their own knowledge, the petitioner has good faith support for the pleadings legal basis, when they do not. Even the most intelligent of quasi-clients (M.D. from Duke University, J.D. from N. Carolina et al.) do not purport to fully comprehend the nuances of the criminal practice, thus cannot in good faith sign the pleadings alone. As for the vast majority of my quasi-clients, they do not know how to spell or pronounce the words; for them to represent that they prepared the pleadings is not only false, but also preposterous. **Fed. R. Civ. P. 11.**

Third, a variety of federal courts have expressed dissatisfaction with undisclosed "ghost-writing" because the conduct inherently involves making misrepresentations to the court. Cf. **Ricotta v. State,** 4 F. Supp. 2d 961, 986 (S.C. 1998); see **Smallwood v. NCsoft Corp.,** 730 F. Supp. 2d 1213, 1222 (D. Hawaii 2010).

Fourth, because of the nature of the "jailhouse lawyer" market, it is important to ensure that some individual does not claim that I prepared a pleading when I did not. If I do not sign the documents, then others will be tempted to use my name in order to gain some advantage with the court or "client." Actions, which will inevitably lead to improper reliance by a court or a client on my unsigned name being attached to a pleading.

II. My assisting the pro se prisoner serves the public interests as well as the prisoner's interests. Contrary to this court's view, the interests of justice are served by my willingness to act pro bono. My extensive criminal appellate experience, my intensive education, and my access to the "client", combine to generate a unique condition that not only optimizes the benefit to the petitioner, but also maximizes the petitioner's opportunity for success.

First, as to the quality of the work, a quick look at the samples of my current pleadings on my website are res ipso locquitor. Second, I took Justice Scalia's and Professor Garner's teachings to heart, particularly that the client is the expert in the facts. Thus, I take time to talk to the clients and learn the facts, something that never happens with a regular attorney,

true even for my friend who spent in excess of a million of dollars on his §2255 motion.[5/] Moreover, and just as atypical, I make sure the "clients" are familiar with the relevant law and how the law relates to their facts.[6/]

In other words, "my" pro se legal work is a cooperative effort. But, without the symbiotic relationship, none of these individuals could competently argue their grounds for relief. Their general competency rate is far less than the rate of which practicing attorneys properly frame appellate issues. Cf. **Bryan A. Garner, "A Winning Brief"**, p.55 Oxford Univ. Press; (2d Edition 2004) (less than 1% of all counseled briefs have well-reasoned and well-written questions or issues). Consequently, because of my knowledge, skill, and experience, virtually every prisoner is far better served with my assistance than without; and this regardless of my mental illness and disbarment.

It is also important for this court to understand the advantages of my assistance over that of counsel: for the court's reflection, I list a few of the advantages:

5/. Of those thousands of prisoners I have spoken with, less than 1% have met their appellate attorney in person and less that 10% spoke with appeals counsel for even an hour. Of course, when the trial attorney is also appointed as appeals attorney, a somewhat higher percentage met the attorney in person during district court proceedings. But, that only leads to the pathetic disattention that pervades the trial bar; augmenting my point even if dampening my statistics.

6/. Cf. generally Scalia and Bryan A. Garner, **"Making Your Case:"** The Art of Persuading Judges, p.9 (Thompson—West 2008).

Integrity

° Most importantly, unlike most attorneys, I have access to the person who is most familiar with the facts and who has the largest stake in the outcome. Thus, I get to know the people (I do not always like them, but that does not affect my advocacy or level of assistance), I can ask them questions, I can even get them to attend classes, so they have a better understanding of the legal process, i.e., what is meritorious, what is frivolous, the difference between validity and truth, etc. And I restore a measure of confidence that the justice system may still work fairly. Accordingly, we are always scrupulously honest and accurate in our allegations and argument; something not always present in the behavior of high competitive or commercially driven litigators.

Education

° While here at Coleman (Low), I have had the opportunity to engage in an intensive self-study course, which was the functional equivalent of an L.L.M. in criminal appellate advocacy.[7/] Education augmenting my formal education at Emory, et al., considerable amount of real-life litigation experience, and nearly unquantfiable business experience.[8/] Thus, the individuals who I assist are able to receive adequate advice, even though they are incarcerated and indigent.

7/. A list of course curriculum is contained on my website: FrankAmodeo.com. It is also important to remember that I have been emersed in the actual practice of my education 7 days a week no less than 12 hours ad day and usually 17 hours a day for nearly 4 years (and at least 83 hours a week for 5½). Thus, my expertise is earned, and earned in an intense environment where every day people's lives depend on my performance.—FLA

8/. The documentary "Nine Days in the Congo" may provide some insight into the breadth and depth of my experience.

Experience

° Regarding experience, because I operate on a strictly pro bono basis, and I am in the midst of near universal need, I have many, many cases. Thus, I gained considerable post-conviction experience, not just with numerous issues, but with numerous courts. I have "appeared" (in writing) before every circuit in the country, and in a majority of the district courts. This experience likely unrivaled by anyone now or ever, based on Justice Scalia's formula in **Padilla v. Kentucky,** 130 S. Ct. 1473 (2010) and the Bureau Justice Statistics compilations. Last year (2013), I assisted in filing approximately 2% of all §2255's, and nearly 1% of all post-conviction filings.

Success

Significantly, because I have had a measure of success during the last five years, the assessment of my skill has some objective support:

- In cases were I have been the primary or sole advocate; 362 sentences have been corrected, resulting in aggregate reduction of unneeded imprisonment of 620 years.9/

- 48 times I have been granted either a certificate of appealability or reconsideration of a previous order.

- Four cases have received oral arguments in three circuit court of appeals.

- Four times the reviewing court reversed or vacated the felony convictions altogether.

- In one case, a 20-year-old attempted murder conviction was vacated, through a writ of error coram nobis.

- In two cases the court of appeals recalled the mandate.

- In one case, which I guided to the Supreme Court, the Supreme Court ordered the Solicitor General to file a response (even after the United States waived its right to response).

9/. These do not include sentence modifications through ordinary §3582 motions, which are automatic, thus I do not count them.

See FrankAmodeo.com for case citations and PACER links.

III. My unique position permits me to zealously pursue significant issues; that would otherwise never be presented because of the litigant's poverty, ignorance and imprisonment.

Further, unlike most attorneys [99.9% it seems], I am dedicated to the client and the law's cause. Action and attitude well beyond the crass commercialism that now marks the legal profession; particularly the post-conviction criminal defense bar. Thus, the prisoners I help recognize they finally have a champion; and all other things aside, someone who is honestly trying to help. I am now shepherding cases in every circuit and in the Supreme Court. Cases, which present questions of substantial importance. To illustrate the significance here are a few examples:

1) With a single exception, the Constitution requires the government prove every element of a crime beyond a reasonable doubt in order to obtain a criminal conviction. A violation of the Armed Career Criminal Act requires three elemental facts to be proved. One of the those facts is the separateness of the predicate convictions. The government routinely fails to prove the separateness element. Thus, in a constitutional sense, the improperly convicted defendants are actually innocent of violating the Act, and the defendants' convictions are a miscarriage of justice.

2) The Constitution guarantees the accused the effective assistance of counsel during every critical stage of the criminal proceedings. The Supreme Court has identified the first appeal of right as a critical stage. But on a claim-by-claim basis the first opportunity to raise a claim may not ripen until the §2255 proceeding. Does the Constitution require the government to ensure the effective assistance of counsel for every initial-review claim or only for those claims that are discovered prior to the direct appeal?

The Untied States does not help prisoners seeking post-appeal relief, even those who are factually innocent. Thus, most of these men are unable to identify their claims, let alone present them. This proposition is more than an abstraction. I have experienced this sense of helplessness hundreds of times. If I had not been available to assist, and assist without charge,[10/] then these people would not only have floundered hopelessly, but also would have become deeply embittered members of an increasingly large underclass that does not respect the rule of law.

CONCLUSION

Finally, after 25,000 hours of practice and study, I find myself increasingly concerned, that my real opposition is not the United States attorneys, but rather the magistrates and the judges. It is most distressing that my opponent is (as Chief Justice Roberts says) the umpire.

Yet, even more distressing is the attitude of most government employees and many courts, that I should abandon these hopelessly outmatched people to their fate; forcing them to "prosecute" their cases alone. Even worse, forcing them to rely upon, the seemingly no longer neutral, courts to help develop their claims and the factual record, something both in theory and good

10/. Even in prison (jailhouse) lawyers charge anywhere from tens to tens of thousands of dollars to "assist", far more than these people have. Further, even the former attorneys lack the training in formal logic or the experience in "fact pleading" to effectively represent themselves or to assist others. Thus, usually, the prisoner is caught between Charybdis and Scylla - meaning their rights are hopelessly lost.

practice, the courts should not do. And conduct by tradition and precedent the courts are prohibited from doing.[11/] At least for the few cases in which I can help, I believe the best course is for the government, including the courts, to accept my service to its citizens.

Prepared by Frank L. Amodeo and respectfully submitted this 30 day of November 2014 by:

N/A

Adrian Martinez-Montanez #
FCC - Low
PO Box 1031
Coleman, Fl 33521-1031

Frank L. Amodeo, Writ Writer

Verification

Under penalty of perjury as authorized in 28 U.S.C. §1746, I declare the factual allegations and factual statements contained in this motion are true and correct to the best of my knowledge.

N/A

Adrian Martinez-Montanez

Certificate of Service

This motion was delivered in a pre-addressed, postage-paid envelope to prison authorities on the same day as signed, The United States of America is represented by counsel who is registered with, the CM/ECF docketing system: thus the defendant requests that notice of the filing and service to this motion on the United States occur through that system's electronic medium.

N/A

Adrian Martinez-Montanez

11/. A federal court has no duty to act as counsel or paralegal to a pro se litigant. **Pillar v. Ford,** 542 U.S. 225 (2004); **McKaskle v. Wiggins,** 465 U.S. 168 (1983). Also a federal court should not sally forth looking to right wrongs, but instead address only those issues properly presented by the parties. See **Greenlaw v. United States,** 554 U.S. 237 (2008).