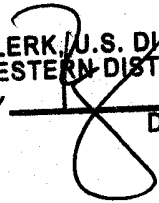


FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

JAN - 6 2011

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY  DEPUTY CLERK

1 CELERINO CASTILLO, III,

2 Movant,

CRIMINAL NO. SA-08-CR-193-FB

3 v.

CIVIL NO. SA-10-CV-818/JWP

4 UNITED STATES OF AMERICA,

5 Respondent.

6  
7  
8 PLAINTIFF'S RESPOND TO GOVERNMENT'S MOTION RESPOND TO VAGATE, SET  
9 ASIDE OR CORRECT SENTENCE

10 TO THE HONORABLE JUDGE OF SAID COURT:

11 Pursuant to Title 28, United States Code, Section 2255, and states:

- 12 (1) INEFFECTIVE ASSISTANCE BY COUNSEL
- 13 (2) ACTUAL CONFLICT OF INTEREST
- 14 (3) GOVERNMENT MISCONDUCT (PROSECUTORIL MISCONDUCT)

15 INEFFECTIVE ASSISTANCE AND ACTUAL CONFLICT OF INTEREST

16  
17 FACT ONE: Roberto "Eddie" DE LA GARZA, at no time advised me or the  
18 that he was under investigation by the STATE BAR OF TEXAS  
19 for allegations of stealing monies from clients involving  
immigration funds.

20 BRIGUGLIO v. U.S. (1982, CA 3NJ) 675 F2d81)

21 Was de la Garza under investigation by the U.S. Attorney's  
22 because of State Bar's investigation on Immigration Law  
violations?

23 Was this why I was forced on my Plea agreements?

24 FACT TWO: ACTUAL CONFLICK OF INTEREST

25 Whether officially or unofficially, de la Garza admitted  
26 that he represented his son and several occasions.

27 The first time, was when his son was arrested and by  
28 telephone order ATF Agent Robert Florez to stop interviewing  
his son, Andrew de la Garza. Please see arrest report by  
agent Florez.

1 The second time, was when his son was debriefed by ATF agents  
2 and AUSA Mr. Wells. Andrew de la Garza's attorney, former  
3 AUSA Jack Wolf was not able to attend the debriefing. Please  
4 review Debriefing report by ATF agents.

5 Emails between myslef and de la Garza will prove the above  
6 allegations. This emails will be send to U.S. Magistrate  
7 Judge, John W. Primomo by my family.

8 **FACT THREE:** de la Garza failed to show me a plea letter by the  
9 government where they had asked me to plea out to one  
10 count.

11 *Nunes v. Mueller*, 350 F-3d 1045 (9 Cir. 2003)

12 "...counsel was ineffective in "failing to inform (client) fully  
13 of the actual terms of the plea offer made by the prosecution".

14 Please see letter by ROOMBURG on the offer.

15 *U.S. V. Rodriguez* (1991, CA 1 Puerto Rico) 929 F2d 747

16 Petitioner's allegation that counsel, because of conflict of  
17 interest, failed to inform petitioner of offer by Government  
18 constitutes sufficient allegation of adverse effect on  
19 representation.

20 In the Conflict of Interest, respon by the government, the  
21 undersigned cited, *CUYLER v. SULLIVAN*, the Supreme Court rulled that  
22 a defendant demonstrate a Sixth Amendment violation by showing:

23 (1) that defense counsel was actively representing interest, and (2)  
24 that the conflict had an adverse effect on specific instance of  
25 counsel's performance.

26 **NOTE:** I have clearly demonstrated that de la Garza perfered to  
27 save his son, instead of me. If you look at Andrew de la Garza's case  
28 you will see that the pattern of condinunes against mine. He had been  
charged with several counts, and at the end he plead out to one count,  
and received 18 months incarceration. Was there a government deal  
made to de la Garza.

1           Once again, the government's motion, the undersigned cites Newell.  
2 "Counsel represents two clients with competing inerests and is torn  
3 between two duties. Counsel can properly turn in no direction. He must  
4 fail one or do nothing and fail both". de la Garza certainly fail me,  
5 by not representing me properly. The government makes the allegations,  
6 that I was asked in court, if I was satisfied on how de la Garza  
7 represented me. Of course I was going to say, YES, especially when I  
8 was promised probation and was forced to agree to plea out inside the  
9 court room, while reading the plea. This did not happen once, but  
10 several times. In Newell, "Conflicts between a lawyer's self-interest  
11 (his son) and his duty of loyalty to the client, however, fall along  
12 a wide spectrum of ethical sensitivity from merely potential danger to  
13 outright criminal misdeeds.

14  
15 FACT FOUR: de la Garza failed to edquately represent me by forcing me  
16 to agree to several plea bargans that the government force us to except.  
17 de la Garza kept promising me that I was going to get probation. On  
18 my first plea out in June of 2008, de la Garza failed to represent me  
19 by not objecting to my original charges. I ended pleading guilty to  
20 charges I was not guilty. The government had to find their own  
21 violations and dismissed the indictment.

22 CROTTS v. SMITH, 73 F.3d 861 (9 Cir 1995)

23 "...failing to object to highly prejudicial evidence which likely  
24 would have been excluded if objection had been made.

25 MOORE v BRYANT, 348 F. 3d 238 (7th Cir 2003)

26 "Where erroneous advice is provided regarding the sentence likely  
27 to be served if the defendant chooses to proceed to trial and that  
28 erroneous advised stems from the failure to preview the STATUTE OR CASE  
LAW that the attorney knew to be relevant. The attorney has failed to  
engage in the type of good-faith analysis of the relevant facts and  
applicable legal principles. that effective assistance requires)."

1 PHILLIPS v. Mills, 1999 U.S. app. Lexis 20628 (6th Cir. Aug. 25,  
2 1999) ...COUNSEL FAILED TO CONDUCT REASONABLE ADEQUATE INVESTIGATIONS  
3 BEFORE ADVISING PETITIONER TO PLEAD GUILTY.)

4 FACT FIVE: de la Garza did nothing to assist me in efforts to withdraw  
5 guilty plea before my sentencing and made statement to media indicating  
6 that motion to withdraw plea was meritless. See story of interview by  
7 de la Garza for NARCO News.

8 OSBORN v. SHILLINGER, 861 F. 2d 612 (10th Cir. 1988) Counsel did nothing  
9 to assist petitioner in efforts to withdraw guilty plea before  
10 sentencing and made statement to media indicating that motion to  
11 withdraw plea was meritless.

12 FACT SIX: de la Garza failed to obtain Grand Jury transcripes, after  
13 being asked several times. This would had prepared my  
14 defense to see the false allegations that were made on me.  
15 de la Garza replied that there were no transcripts on my  
16 indictment. As a former agent of the government, I knew  
17 he was not telling the truth. I made this know to the Judge  
18 in a letter to him.

19 Brown v. United States (1977, ED Okla) 442 F. Supp 150: United States  
20 v. Green (1981, DC Nev) 532 F Supp 381)

21 Before perjured testimony can provide grounds for vacation of  
22 conviction, petitioner must establish testimony was false, that is was  
23 material and that it was knowingly and intentionally used by government  
24 to obtain conviction.

25 In order for defendant's allegations to entitle him to post-  
26 conviction relief that government used false testimony, he must show  
27 that such testimony was in fact false, and he must prove that such  
28 testimony was material to his conviction in that it would have made  
witness vulnerable to prosecution for perjury and finally, he must prove  
that government knew or should have known falsity of testimony.

BURGESS v. United States (1963, CA9 Cal) 319 F2d 345

In absence of conclusive showing that petitioner's plea of guilty  
to offenses cahrged was freely and voluntarily made, denial of  
petitioner's motion to vacate judgment and sentence based upon said plea  
of guilty well be reversed and remanded for proper hearing.

1 There were several pleas that I had signed on what I thought was  
2 good advised by de la Garza. I even plea guilty to an indictment where  
3 I had been wrongfully charged. Apparently, ROOMBURG, did not know what  
4 he was doing. However, his office had known that POKE v. U.S had  
5 applied to me. It took them several months to figured out that they  
6 had charged me wrongfully. The question rises, did ROOMBURG violate  
7 my due process?

8 For the record, an attempt to obtain my last agreement was denied  
9 by the BOP. This is the only prove I have that will prove to the court  
10 that there were two exceptions to my agreement, which were Prosecutorial  
11 Misconduct and Ineffective Assistance by Counsel. Emails between de  
12 la Garza and myself will prove that he counseled me on placing my appeal  
13 on time right after sentencing.

14 Once again ROOMBURG is misleading the court by not stating the facts  
15 of the appeal. "As the government contends, the record reflects that  
16 Castillo knowingly and voluntarily waived his right to appeal his  
17 sentence ON ANY GROUNDS."

18 Once again, I can not defend myself if I do not have excess to my  
19 files. In page 11 of the government's respond, the underlined cites  
20 United States v. Payne claims that my issues were not raised on direct  
21 appeal and would, if condoned, result in a complete miscarriage of  
22 justice. My claims were address in the direct appeal, but my attorney,  
23 Judy Madewell, failed to address those two very important exceptions.  
24 See letter of complaint to Madewell in reference to my claims.  
25  
26  
27  
28

## GOVERNMENT MISCONDUCT

1           FACTS: In the government's respond, ROOMBURG failed to address my  
2 allegation that in his own motion, where he cited a weapons that had  
3 nothing to do with my case. This is another major lied that ROOMBURG  
4 HAS COMMITTED. ROOMBURG EXHIBITED CALLOUS AND DELIBERATE DISRE GARP  
5 FOR THE FUNDAMENTAL PRINCIPLES OF TRUTH AND FAIRNESS THAT UNDER LINE  
6 OUR Criminal Justice System by doing his work properly.

7           In government's respond, page 12; # 4 on my allegations on the  
8 convicted felon, I apoligize to the court for said allegation. There  
9 are two reasons that I made the allegation. First, Mr. Colubrito,  
10 personnally told me that he was not a convicted felon. Secondly, Mr.  
11 Colubrito continued to sell weapons at the gun show with the approval  
of the ATF, after he sold me the two handguns.

12           On the weapons that I allegedly purchase from the informant, Jay  
13 Lemire, that were found in Mexico. ATF agent claims that Lemire told  
14 him that "my backers" were having a hard time getting all the money  
15 across the border. Anyone who has been in law enforcement long enough,  
16 knows that money never goes North, it always goes South. So you can  
see that either the informant or the agent made false statements. Or  
the informant was told to make those false statements.

17           Both in the Criminal Complaint and the governments motion, Agent  
18 Darilek made false allegations. In the Criminal Complaint he used the  
19 same information on the "backer" story and the that I had conspired with  
20 Lemire, Colombrito, and others to smugggle firearms into foreign country  
21 in violation of Title 18 USC 554. Of course ROOMBURG at no time address  
22 this allegation in his respond. The FACT the United State magistrate  
23 Judge, John W. Primomo refused to approved said allegation in the  
24 complaint because their was no such evidence to his allegation. In the  
25 same criminal complaint, agent Darilek claims that I purchase 29  
26 firearms from Lemire. However, on his latest affidavit he is claiming  
27 50 weapons. In my plea agreement he cites a complete different number.  
28 In his new affidavit he also claims falsely that he never was able to  
determine how I was getting the firearms into Mexico. He was once again  
not telling the truth under oath. and paragraph 6 of his latest  
affidavit, he once again lied. de la Garza notes will prove that he  
lied and that there were over 20 entres in his report. Once again, I  
can not show the court this document because the BOP has not allowed  
it to given to me. However, the attached emails, that will be send to  
the court, will



1 confirm my allegations. This will be from de la Garza and Judy  
2 Madewell. They will speak for themselves.

3 The individual in question was arrested by ATF in May of 2010, for  
4 straw purchases, completely unrelated to my case. A claim by an ATF  
5 agent, claims that this individual had previously been under  
6 investigation. If the courts will check in the ATF computers, it will  
7 reveal the truth of my allegations against the government.

8 ROOMBURG failed submit several reports by ATF and ICE on my  
9 investigation that will prove without reasonal doubt my allegations,  
10 that ROOMBURG AND THE AGENTS lied to the court.

11 U.S. v. Pelullo, 105 F.3d 117 (3rd Cir. 1997)

12 Prosecutor withheld documents that could have been used to impeach the  
13 witness.

14 Killian v. Poole, 282 F. 3d 1204 (9th Cir. 2002).

15 "Prosecutor failed to disclose document by government. Star witness  
16 admitting perjury to gain sentencing concessions and revealing  
17 information that would have supported defense theory."

18 Fairman v. Vanderson (188 F.3d 635 (5th Cir. 1999)

19 Prosecutor knowingly used false testimon by sole eyewitness.

20 Miller and Jent v. Wainwright (nos. 86-98-CIV.-T-13 and T-13 (M.D. Fla.  
21 Nove. 13, 1987.

22 "Prosecutor exhibited "callous and Deliberate disregard for the  
23 fundamental principles of truth and fairness that underline our criminal  
24 Jutice system by suppression police reports...

25 Davis v. Zant,(36 F.3d 1538 (11th Cir. 1994)

26 "Prosecutor repeatedly and clearly intentional misrepresentations in  
27 objection and closing argument rendered trial fundamentally unfair in  
28 violation of due process clause."

"Which was laced with personal option (we believed, we thing, we  
suspect) attacks on opposing counsel, and undignified and unprofessional  
appeals to hatred and fear unconstitutionally...deliberaty misled...).

1 On page 8, of government respond, the undersigned claims, that he  
2 has requested, but not yet received at this point an affidavit from  
3 district court counsel, Eddie de la Garza. The government claims that  
4 it will file Mr. de la Garza's affidavit when it is received. ROOMBURG  
5 has not given me the opportunity to know what is in de la Garza's  
6 affidavit or given me an opportunity to respond to it. I will submit  
7 my emails from de la Garza, where he claims ciminal acts against  
8 ROOMBURG.

9 In regards to my allegations against Daniel Casey, I would like  
10 to see the OPR investigation to see if agent Casey was offered a  
11 polygraph examination. As a matter of fact, I would like to see, the  
12 OPR files on ROOMBURG and Darilek. OPR was suppose to led me know what  
13 the results were, if there ever was an investigation. See attached  
14 letter.  
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1 At this time I will submit as evidence the government report  
2 (Office of Inspector General) re: Project Gunrunner. This is important  
3 because this is how my case was started.

4 Need to address this case law on effective aid of counsel:

5 Friedman v. United States (1979, CA5 Fla) 588 F2d 1010.

6 Where petitioner supports claims of inadequate preparation, attorney  
7 indifference, failure to call witnesses, etc., with plausible factual  
8 allegations and evidence sufficient to raise substantial doubt that  
9 his attorney's in court performance was not as effective as it might  
10 seem to third party observers, court is obligated to delve behind scenes  
11 and ascertain whether attorney, either by inaction or through illtaken  
12 action, failed to meet standard of reasonably competent and devoted  
13 advocate, to ultimate prejudice of petitioner.

14 Baumann v. United States (1982, CA9 Ariz) 692 F2d 565

15 Generally, attack on validity of indictment is not properly raised  
16 collaterally pursuant to 28 USCS 2255 absent showing of cause why claim  
17 was not raised before trial, cause may be demonstrated where allegation  
18 is that indictment's validity was not challenged before trial because  
19 of ineffective assistance of defendant's counsel.

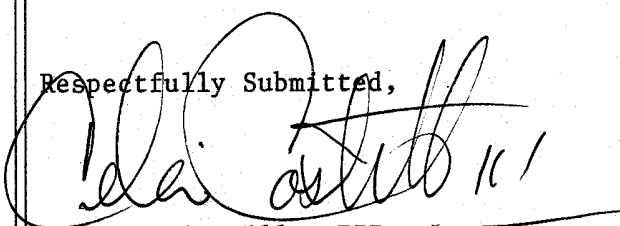
20 Dansby v. United States (1968, SD NY) 291 F Supp 790)

21 Conviction based on government's knowing use of perjury violates due  
22 process, but one seeking to vacate judgment of conviction allegedly  
23 based on perjured testimony has burden of establishing that (1)  
24 testimony was perjured: Grand Jury (2) it was material to his  
25 conviction; and (3) government either participated in or had knowledge  
26 of perjury.

CONCLUSION

1  
2 I, Celerino Castillo, III: am requesting that this honorable court grand  
3 my my Motion to Vacate, Set Aside or correct sentence. I also requests  
4 that it be allowed to supplement this response with evidences obtain  
5 by my family. Also if possible, to continue this motion until I am no  
6 longer incarcerated so that I can have a fair chance of winning this  
7 motion because of not having my files available to properly defend  
8 myself.

9 Respectfully Submitted,

10   
11 Celerino Castillo, III

Date: january 03, 2011