

No. 18-8724

FILED  
JUN 03 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE SUPREME COURT  
OF THE UNITED STATES

IN RE: ARCHIE CABELLO,

Petitioner,

vs.

NINTH CIRCUIT COURT OF APPEALS,

Respondent

PETITION FOR RECONSIDERATION  
ON WRIT OF PROHIBITION TO  
THE NINTH CIRCUIT  
COURT OF APPEALS

JUN 25 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

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QUESTIONS PRESENTED

When an officer of the court violates Federal Law, does a trial judge have any duty to investigate to determine what the facts are?

When a trial judge is made aware of a Federal Law violation and does not undertake steps to determine who, when, and why this occurred, does this meet the constitutional minimum for due process under the Fifth Amendment?

Does an open violation of a federal statute under title 18 by an officer(s) of the court "shock the conscience" and rise to the level of an extraordinary circumstance?

### STATEMENT OF THE CASE

On December 2, 2010 the grand jury handed down a fifty-one count sealed indictment accusing Cabello, his wife Marian and his adult son Vincent.

In due course Cabello's co-defendants entered into plea and co-operation agreements with the government.

Cabello was charged conspiracy to commit bank larceny, making false statements on Credit Cards, Count 2 charged Cabello with a 2005 bank larceny, Count 3 possession of stolen bank funds, Counts 4,9, 10, 11 and 12 each charged Cabello with making false statements on credit card applications. Count 15 with filing false tax return. Counts 16-50 accused Cabello of money laundering. Finally count 51 charged Cabello with conspiracy to commit money laundering.

Cabello then agreed to plead to count 1 and count 51 of the indictment. Both are conspiracy counts.

Three days later panel attorney Mr. Smith came to see Cabello with a copy of the plea that had added counts 3, 4, 9, 11, 12, and 15. This wholesale alteration of the plea is the crux of the argument. The plea was altered without Cabello's knowledge or input.

On March 20, 2013 Cabello was sentenced to 240 months on Count 51, concurrent with 240 months on forged counts 4, 9, 11, and 12. On forged count 15, 36 months and finally 60 months on count 1, all concurrent.

Also 5 years supervised release and restitution in the amount of \$3,755,000. Counts 2 and 10 and 16-50 were dismissed on

motion of the government. Since the money laundering counts were mere window dressing and no money had been laundered, the money laundering counts were dropped.

Cabello is presently detained at FCI La Tuna in Anthony, TX.

#### JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. §1651(a), the Supreme Court and all courts established by Act of Congress, may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

#### ARGUMENT

The controlling authority in this case is 18 U.S.C. §1521(c)(1). Nothing supercedes statutory text. This statute explicitly proscribes that under 1512(c)(1), whoever corruptly --alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the objects integrity or availability for use in an official proceeding is in violation of Federal Law.

It is plain, it is clear, there is no ambiguity.

There is of course plenty of case law that compels the government prosecutors to permit defendants to enforce the plea agreement that they signed. Santobello U.S. 257 30 L.Ed 427 92 S.ct 495 being the seminal case, and it certainly would apply in this case. However, this case goes beyond merely enforcing the plea that was signed. This case involves wholesale alteration of the plea followed by vigorous defense of a clearly fraudulent plea

by the government and the court. This case goes beyond fraud on the court, this case involves a violation of Federal Law.

The doctrine of ex parte Young allows Federal Courts to give relief for violations of Federal Law not only with respect to violations of Federal Law by state officials, but also with respect to violations of Federal Law by Federal Officials. While this was in a civil case it would be even more applicable in a criminal case. See Ex Parte Young 209 U.S. 123, 155-156 28 S.ct. 441, 52 L.Ed. 714 (1908); See American School of Magnetic Healing v. McAnnulty, 187 U.S. 94, 110 23 S.ct. 33, 47 L.Ed. 90 (1902); See generally L. Jaffe, Judicial Control of Administrative Action 152-196 (1965). District Courts have a duty to remedy violations of Federal Law. The exercise of independant duty is the Supreme Courts judicial duty. Let us be clear, this was not simply reckless disregard for the truth, this was a deliberate and willful decpetion.

Cabello has made these serious allegations at the district court, at the circuit court, and now at the Supreme Court, all under pain of perjury. In Appendix A, the pages of the plea that go to the crux of the matter are displayed. One page 1 and 2, line 3, the printed portion refers to counts 1 and 51. The counts that Cabello pleaded to. An unknown hand hastily scrawled in the additional counts. If the court will then look at page 6 and 7, line 23, the court will see that the unknown scribe in his or her haste neglected to forge the extra counts on line 23. There on pages 6 and 7 are the two counts that Cabello pleaded to. The very page that Cabello signed refers to two counts. The

rest of the plea is on file with the Writ of Prohibition. There are of course other misleading, confusing, and chaotic provisions but the forgeries on line 3 and the true plea which Cabello pleaded to, stand in stark and contradictory relief. The Supreme Court has construed pleas as a contract and are judged under the General Principles of Contract Law. If a contract can say one thing on one line, and something completely different on another, then there are no General Principles of Contract Law. The drafter of the plea can simply direct the court to enforce the part that is advantageous to them and the party adversely affected has no recourse. Circuit judges Canby, Wardlay, and Rawlinson denied the Mandamus on the grounds that this case does not warrant the intervention of the Circuit Court by means of the extraordinary remedy of mandamus. If violation of Federal Law does not rise to the level of extraordinary circumstances, it is difficult to imagine what does.

Each year district courts sentence thousands of individuals to imprisonment for violations of Federal Law. Yet, in this case Judge Robert E. Jones, having lost sight of his role as a neutral arbiter makes no effort to address the defendants complaints. Makes no effort to investigate the defendants claims. The author of the plea, panel attorney Mr. Michael Smith abruptly decamped for Alaska and was thereafter "unavailable". Cabello expressed to the court a desire to question Mr. Smith about the fraudulent plea petition. This request was ignored. Mr. Smith allegedly fled to Alaska to "practice law".

The question remains, who , when, and why was the plea

petition altered? Who; It could only have been someone with access to the plea and an interest in doing so. Who had access: AUSA's Mr. Thomas Edmonds and Ms. Claire Faye, Panel Attorney Mr. Michael Smith, and of course the court in the person of Honorable Judge Robert E. Jones, who was signatory to the plea. It is important to note that the government was not signatory to the plea. The plea was signed by the defendant, Mr. Smith, and Judge Jones. Who actually put pen to paper and altered the plea? The government attorneys come to mind first as they want to win the case and get rid of it. However, attorneys have a duty to the courts in which they serve and U.S. Attorneys especially because they must serve truth and the ends of justice. Panel attorney Mr. Smith as "author" of the plea had first access although his motives are not clear. Mr. Smith's hasty departure has to make one wonder. Judge Jones as signatory to the plea has a vested interest in the plea. It is not clear whether Judge Jones represents the government or the court. The government negotiates its plea agreements through the agency of specific U.S. Attorney's as necessarily it must, the agreements reached are those of the government. As no provisions are made in the plea for non-signatories, it falls to the court to defend the plea. It is not clear if the Judicial Branch of government can encroach on the Executive Branch of government under the separation of powers doctrine. At all events, it removed the courts as a neutral arbiter. The court was curiously incurious regarding who had tampered with the plea petition. And made no inquiries as to what the facts were. At no time did the court seek information

tion about this matter. Cabello's claims were ignored. When; It had to have happened sometimes after Cabello signed and several days later when panel defense attorney Mr. Smith appeared at the county jail to try and convince Cabello to sign the amendments that would "cure" the fraudulent and defective plea, not withstanding the fact that there is NO Rule 11 procedure to amend a plea. The defendant was not aware of this at that point in time but surely the officers of the court were. Why; The only reason that makes sense is to preserve a guilty plea. The fact that it violated Cabello's due process rights under the Fifth Amendment was not a factor in the equation. There was no legal basis doing so. On the contrary, this was against all legal principals. In summation, while who actually tampered with the plea, in violation of U.S.C. 18 §1512(c)(1), is still not known, it is known that all officers of the court, circled the wagons to first amend and when that failed, then defend it throughout the process. Circuit judges Canby, Wardlaw, and Rawlinson erred when they overlooked this plain and clear violation of Federal Law.

#### REASONS FOR GRANTING

This is a rare case in which the facts and the law are on the defendants side. U.S.C. 18 1512(c)(1) unambiguously forbids tampering with documents intended for use in an official Federal proceeding.

The plea is clearly defective and riddled with errors, not only because Cabello says so but also because AUSA Mr. Edmonds says so. See Writ of Prohibition pg. 15. It was this

fact that prompted the forgeries and the alterations in the plea. This violation of Federal Law was ill-advised and so the government called an audible and attempted to cure or cover the violation by inventing a procedure to amend the plea. There is however no rule 11 procedure to amend a plea. When the amendments gambit failed, the government and the court decided that to salvage the guilty plea they would proceed as if it were a legal plea. In addition to the inadequate and illegal plea, the plea colloquy was also inadequate, not only because Cabello says so, but because Judge Jones says so. Judge Jones in a draft disposition states clearly and I quote: "The court regrets that a better record was not initially made and takes full responsibility for inadequacies in the original plea colloquy, this is somewhat artful in that it implies that another plea colloquy cured the inadequate one. The record shows that there was only one plea colloquy and Cabello and Judge Jones agree that it was inadequate. Inadequate plea colloquys are one of the primary fair and just reasons for withdrawing a plea. Cabello filed numerous motions for withdrawal of plea, they were all summarily denied without a hearing or ignored.

Cabello is not inventing these allegations out of whole cloth. Cabello makes these allegations under pain of perjury. The defendant is 71 years old and would be fool-hardy to invite a perjury charge. Conversely, it does not require much imagination to conclude that neither the government nor the court would want a full blown trial on this issue.

The defendants assertions have the ring of truth because

they are indisputable true. This is evidenced by the fact that neither the government nor the court ever gainsay Cabello's claims. No officer of the court ever admits that they made the illegal interlineations. The changes in the plea were not initialed by any of the signatories to show agreement to the new terms. A review of the record does not in fact say who made these interlineations - nor when these scribblings were made.

The evidence presented in this petition is sufficient for a finding that the plea petition is null and void. By extension the judgement is void. The violation of Cabello's rights under the Fifth amendment was extensive, depriving him of the right to a fair trial. Denying Cabello his due process rights was a fundamental infirmity. The accused has a right to due process regardless of the evidence against him. overshadowing all of this is the matter of law. Statutory text is the law. U.S.C. 18 §1512(c)(1) proscribes tampering with court documents.

One of the considerations that the Supreme Court gives governing review is a decision by the court has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court as to call for an exercise of this court's supervisory power. See Court Rule 10(a). In other Federal Circuit Courts and Federal District Courts the government is required to insure precision in pleas submitted to the court and the court also has to insure precision and unambiguous terms. To permit a plea to be riddled with errors and forgeries is just such a departure and invites this court's guidance to bring the Ninth Circuit in line with

the other circuits.

In United States v. Collins, 684 F.3d 873 (9th Cir. 2012), the defendant was initially charged by indictment, and then by Superceding Indictment. Count 1 of each indictment was identical. The parties entered an agreement whereby defendant would plead to just the first count of the superceding indictment. After full rule 11 advisement, the court asked the defendant, "How do you plead to count 1 of the indictment [sic]?" The defendant replied "guilty". Later, the judge realized he had taken the defendant's plea to the original, now superceded, indictment. He re-convened the attorneys and defendant and explained the problem. He asked the defendant if there was anything from their prior colloquy he wanted to change, and the defendant said no. He then asked the defendant how he wished to plead to "count 1 on the First Superceding Indictment?", and the defendant again pleaded "guilty". *Id.*, at 880.

The difference between *Collins* and this case is stark. If the *Collins* trial court were to have acted as did the court below, he would simply announced to the defendant that he was going to "incorporate" the word "superceding" into what he had said at the original plea hearing and call it good, inviting no participation by the defendant. Instead, the court in *Collins* ensured that the defendant recalled and affirmed the content of their earlier Colloquy and understood what the purpose of the second hearing was. He addressed the defendant directly and asked if there was anything he wanted to change. He then re-asked him to submit a plea under the new and revised cir-

cumstances, and defendant willingly did so anew. As per rule 11(c)(5)(C).

That was not done in this case. Indeed, the trial court scrupulously avoiding "un-doing" Cabello's plea. He certainly did not invite Cabello to reaffirm his plea after hearing the now more fully described nature of the charges against him and the factual basis for his pleas. Although the prosecution practically begged the court to inquire of the defendant whether he did, in fact continue to affirm his guilty pleas.

AUSA Mr. Edmonds:"[W]e want acknowledgment from the defendant that he has entered pleas of guilty to the charges that are in this amended plea petition."

The Court: Judge Jones:"Well, counsel,...all you're doing is muddling up the record at this point."

Despite the governments persistance, the court refused to entertain the subject any further. See Appendix D. The court considered following established rule 11 procedures as, "muddling up the record."

The "shock the conscience" standard typically is employed when determining whether govermental actions violates due process rights under the fifth and fourteenth Amendments. See County of Sacramento v. Lewis, 523 U.S. 833 847, n.8, 118 S.ct. 1708, 140 L.Ed. 2d 1043 (1998); ("[I]n a due process challenge to executive action, the threshold question is whether the behavior or the governmental officer[s] is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience"). This court has said that the "shock the conscience" standard is satisfied where the conduct was "intended in some way unjustifiable by any government interest," or in some circumstances

if it resulted from deliberate indifference. The extra-legal maneuvers employed by AUSA Mr. Thomas Edmonds are unworthy of a government prosecutor, whose first duty is to serve truth and the ends of justice. It is equally unworthy of Judge Robert E. Jones to defend these strained maneuvers in open court. These actions were deliberate -i.e. purposeful and knowing. This court has repeatedly reversed judgements for plain error on the basis of inadvertent or unintentional errors of the court or the government. the errors and violations in this case are several orders of magnitude beyond "inadvertent" or "unintentional". The violations of federal law and due process were not done accidentally or negligently. The violation of 1512(c)(1) is a continuing violation in that the government defended it through the direct appeal with misrepresentations to the circuit court. The Court defended it through the §2255 appellate process. The defendant was sentenced on the basis of this extra-legal and forged plea and so the violation of federal law continues.

The Ex parte Young doctrine Supra gives life to the Supremacy Clause. Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law. See Pennhurst, 465 US at 105, 79 L.Ed.67, 104 S.ct. 900 (1921). [T]he young doctrine has been accepted as necessary to permit the federal courts to vindicate federal rights. This court should make clear that it is prohibited for anyone to alter, forge, or otherwise tamper with a document that is to be used in an official federal proceeding. The governments conduct caused substantial prejudice to

the defendant and was flagrant in its disregard for the limits of appropriate professional conduct. Open violation of a federal statute under title 18 does indeed "shock the conscience" and rises to the level of an extraordinary circumstance.

Violations of Federal Law, disregard of established Supreme Court and Ninth Circuit case law, disregard of Rule 11 procedures and violation of Fifth Amendment due process rights is about as far a departure from the usual course of judicial proceedings as this honorable court is likely to see. Circuit Judges Canby, Wardlaw, and Rawlinson erred in sanctioning such a departure.

#### CONCLUSION

Federal Law and defendants rights were clearly violated. His guilty pleas were not taken in conformance with either the United States Constitution or Fed.R.Crim. p.11.

This court should reconsider and grant the Writ of Prohibition and undo this manifest injustice.

#### RELIEF SOUGHT

Defendants convictions should be vacated, his pleas of guilty set aside, and the matter remanded to the circuit court with instructions.

Dated: June 18 of 2019

Respectfully Submitted,



Archie Cabello, Pro Se

Archie Cabello  
Reg. No: 73097-065  
Federal Correctional Institution LaTuna  
POB 3000  
Anthony, TX 88021

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IN THE SUPREME COURT  
OF THE UNITED STATES

---

IN RE: ARCHIE CABELLO,  
Petitioner,

vs.

THE NINTH CIRCUIT COURT OF APPEALS,  
Respondent

PROOF OF SERVICE

I, Archie Cabello, do swear or declare that on this date, June 18, 2019, as required by Supreme Court Rule 29, I have served the enclosed MOTION TO PROCEED IN FORMA PAUPERIS and PETITION FOR RECONSIDERATION FOR A WRIT OF PROHIBITION on each party to the above proceeding by depositing an envelope containing the above documents in the U.S. Mail at LaTuna Federal Prison, properly addressed to each of them with first-class postage prepaid. The names and addresses of those served are as follows:

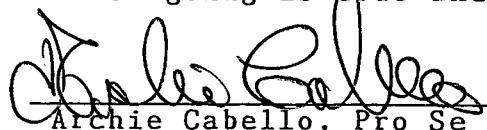
Clerk of the Court  
1 1st St. NE  
U.S. Supreme Court  
Washington, DC 20543

DOJ Solicitor General  
950 Pennsylvania Ave. NE  
Washington, DC 20530

Court of Appeals Ninth Circuit  
95 7th St.  
San Francisco, CA 94103

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 18, 2019



Archie Cabello, Pro Se

CERTIFICATE

Pursuant to Supreme Court Rule 44.2, this petition for reconsideration on Writ of Prohibition to the Ninth Circuit Court of Appeals is presented in good faith and not for delay. The grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented, the petition briefly and distinctly states its grounds. Petitioner makes this declaration and all statements in the petition under pain of perjury.

June 18, 2019

Respectfully Submitted,

  
Archie Cabello

**APPENDIX A**

False Statement (1. 3 is possession  
on credit cards of stolen funds

agreement between defendant and at least one other person to commit either Bank

Larceny, Possession of Stolen Bank Funds or Making False Statements on Credit Card

Applications; (2) that defendant became a member of the conspiracy knowing at least one of its objects and intending to help accomplish it; (3) an overt act performed by one of the conspirators for the purpose of carrying out the conspiracy; and (4) that some part of the

conspiracy took place within the District of Oregon.

Also Counts (3, 4, 9, 11, 12) 15 → False income tax  
For the charge of Money Laundering Conspiracy (Count 51 of the Indictment),

that (1) an agreement between defendant and at least one other person to commit Money Laundering; (2) that defendant became a member of the conspiracy knowing at least one of its objects and intending to help accomplish it; (3) an overt act performed by one of the conspirators for the purpose of carrying out the conspiracy; and (4) that some part of the conspiracy took place within the District of Oregon.

I have had a full and adequate opportunity to disclose to my attorney all facts known to me that relate to my case. I understand that the Court may ask whether I am satisfied with the advice I have received from my attorney.

4. I know that if I plead "GUILTY," I will have to answer any questions that the judge asks me about the offense(s) to which I am pleading guilty. I also know that if I answer falsely, under oath, and in the presence of my attorney, my answers could be used against me in a prosecution for perjury or false statement.

5. I am not under the influence of alcohol or drugs. I am not suffering from any injury, illness or disability affecting my thinking or my ability to reason except as follows: *none*. I have not taken any drugs or medications within the past seven (7) days except as follows: *none*.

harm caused by an offense. If imposed, the victim can use the order of restitution to obtain a civil judgment lien. A restitution order can be enforced by the United States for up to twenty (20) years from the date of my release from imprisonment, or, if I am not imprisoned, twenty (20) years from the date of the entry of judgment. If I willfully refuse to pay restitution as ordered, a judge may resentence me to any sentence which could originally have been imposed.

17. On any fine or restitution in an amount of \$2,500 or more, I know that I will be required to pay interest unless that fine or restitution is paid within fifteen (15) days from the date of the entry of judgment.

18. If I am on probation, parole, or supervised release in any other state or federal case, I know that by pleading guilty in this court my probation, parole or supervised release may be revoked and I may be required to serve time in that case, which may be consecutive, that is, in addition to any sentence imposed on me in this court.

19. If I have another case pending in any state or federal court, I know that my Petition and Plea Agreement in this case do not, in the absence of an express and written agreement, apply to my other case(s), and that I can be faced with consecutive sentences of imprisonment.

20. My plea of "GUILTY" is NOT based on a Plea Agreement.

21. N/A

22. My plea of "GUILTY" is not the result of force, thereat, or intimidation.

23. I hereby request that the judge accept my plea of "GUILTY" to the following counts Count 1: Conspiracy to Commit Bank Larceny (18 U.S.C. § 2113(b)). Possession of Stolen Bank Funds (18 U.S.C. § 2113(c) and Making False Statements on Credit

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Applications (18 U.S.C § 1014), all in violation of 18 U.S.C. § 371; and Count 51:

Money Laundering Conspiracy (18 U.S.C. § 1956(h)).

24. I know that the judge must be satisfied that a crime occurred and that I committed that crime before my plea of "GUILTY" can be accepted. With respect to the charge(s) to which I am pleading guilty, I represent that I did the following acts and that following facts are true: Beginning in or about August 1995 and continuing until 2012, in the District of Oregon, along with my co-defendants Marian Cabello and Vincent Cabello, I knowingly and intentionally conspired to commit Bank Larceny, Possession of Stolen Bank Funds, and Making False Statements on Credit Applications, and knowingly and intentionally conspired to commit Money Laundering,

25. I offer my plea of "GUILTY" freely and voluntarily and of my own accord and with a full understanding of the allegations as forth in the Indictment or Information, and with a full understanding of the statements set forth in the Petition and in the certificate of my attorney that is attached to this Petition.

SIGNED by me in the presence of my attorney, after reading (or having had read to me) all of the foregoing pages and paragraphs of this Petition on this        day of Sept 17, 2012.



Archie Cabello

000064

Law Office of Michael R. Smith  
Michael R. Smith  
806 SW Broadway, Suite 300  
Portland, Oregon 97205  
(503)972-9407  
MSmith@AlaskaOregonLawyer.com  
Attorney for Defendant Archie Cabellon

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

United States of America, ) Case No.: 3:10-cr-482 JO  
Plaintiff, )  
v. ) PETITION TO ENTER PLEA  
Archie Cabello ) OF GUILTY, CERTIFICATE  
Defendant. ) OF COUNSEL, AND ORDER  
ENTERING PLEA.

The defendant represents to the court

1. My name is Archie Cabello. I am 64 years old. I have gone to school up to and including the 12<sup>th</sup> Grade.
2. My attorney is Michael R. Smith.
3. My attorney and I have discussed my case fully. I have received a copy of the Indictment or information. I have read the Indictment or Information, or it has been read to me, and I have discussed it with my attorney. My attorney has counseled and advised me concerning the nature of each charge, any lesser-included offense(s) and the possible defense that I might have in this case. I have been advised and understood that the elements of the charge(s) alleged against me to which I am pleading "GUILTY" are as follows: Conspiracy to Commit Bank Larceny; Possession of Stolen Bank Funds; and Making False Statements on Credit Applications (Count 1 of the Indictment), (1) an

**APPENDIX B**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

JUN 25 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

In re: ARCHIE CABELLO.

No. 18-71205

ARCHIE CABELLO,

Petitioner,

v.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON,  
PORTLAND,

Respondent,

UNITED STATES OF AMERICA,

Real Party in Interest.

Before: CANBY, WARDLAW, and RAWLINSON, Circuit Judges.

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

The motion to proceed in forma pauperis is denied as moot.

No further filings will be entertained in this closed case.

**DENIED.**

**APPENDIX C**

Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

Scott S. Harris  
Clerk of the Court  
(202) 479-3011

May 13, 2019

Mr. Archie Cabello  
Prisoner ID # 73097-065  
F.C.I. LaTuna  
P.O. Box 3000  
Anthony, TX 88021

Re: In Re Archie Cabello  
No. 18-8724

Dear Mr. Cabello:

The Court today entered the following order in the above-entitled case:

The petition for a writ of mandamus and/or prohibition is denied.

Sincerely,



Scott S. Harris, Clerk

**APPENDIX D**

1 else will be part of the record.

2 Anything further for the Government?

3 █ MR. EDMONDS: Your Honor, at this stage what we  
4 have is a plea that --

5 THE COURT: Just a moment. Is there anything  
6 else for the Government that you want on this record for  
7 any purpose?

8 MR. EDMONDS: Well, we want acknowledgment from  
9 the defendant that he has entered pleas of guilty to the  
10 charges that are in this amended plea petition. It's clear  
11 to the Government that he's going to be contesting these  
12 matters.

13 THE COURT: Well, counsel, you're -- all you're  
14 doing is muddling up the record at this point. It's not  
15 clarifying it. He's pled guilty to these matters. It's on  
16 the record. It's done in writing, and it's done orally,  
17 and that's enough.

18 Anything further?

19 MR. SMITH: Nothing further, Judge. Thank you.

20 THE COURT: Sentencing will be imposed on the  
21 date for -- revised to December 3?

22 DEPUTY COURTROOM CLERK: December 5. 10:00 a.m.

23 THE COURT: Thank you. Court's in recess.

24 DEPUTY COURTROOM CLERK: Court is in recess.

25 (Proceedings concluded.)

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