

## **APPENDIX A**

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 Cabello

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   |
|                           | ) | OF GUILTY, CERTIFICATE   |
| Archie Cabello            | ) | OF COUNSEL, AND ORDER    |
|                           | ) | ENTERING PLEA.           |
| <u>Defendant.</u>         | ) |                          |

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

False Statements C. 3 is possession  
on credit cards & 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*.

6. I understand the conviction of a crime can result in consequences in addition to imprisonment. Such consequences include deportation, or removal from the United States, or denial of naturalization, if I am not a United States citizen, loss of eligibility to receive federal benefits, loss of certain civil rights (which may be temporary or permanent depending on applicable state or federal law), such as the right to vote, to hold public office, and to possess a firearm, and loss of the privilege to engage in certain occupations licensed by the state or federal government.

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7. I know that I may plead "NOT GUILTY" to any crime charged against me and that I may persist in that plea if it has already been made. I know that if I plead "NOT GUILTY" the Constitution guarantees me:

- a. The right to a speedy and public trial by jury, during which I will be presumed to be innocent unless and until I am proven guilty by the government beyond a reasonable doubt and by the unanimous vote of twelve jurors;
- b. The right to have the assistance of an attorney at all stages of the proceedings;
- c. The right to use the power and process of the court to compel the production of evidence including the attendance of witnesses in my favor;
- d. The right to see hear, confront, and cross-examine all witnesses called to testify against me;
- e. The right to decide for myself whether to take the witness stand and testify, and if I decide not to take the witness stand, I understand that no inference of guilt may be drawn from this decision, and

f. The right not to be compelled to incriminate myself.

8. I know that if I plead "GUILTY" there will be no trial before either a judge or a jury, and that I will not be able to appeal from the judge's denial of any pretrial motions I may have filed concerning matters or issues not related to the court's jurisdiction [see instructions].

9. In this case I am pleading "GUILTY" under Criminal Rule 11. My attorney

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has explained the effect of my plea under Rule 11 to be as follows:

My plea of guilty is under Rule 11(a) and (b), although the judge will consider the recommendations and agreements of both the prosecution and defense attorneys concerning sentencing, the judge is not obligated to follow those recommendations or agreements. If the judge imposes a sentence different from what I expected to receive I do not have a right to withdraw my plea.

10. I know the maximum sentence which can be imposed upon me for the crimes(s) to which I am pleading guilty is 5 years imprisonment on Count 1 and 20 years imprisonment on Count 51 and a fine of \$250,000 on Count 1 and \$500,000 on Count

*\$1,000,000 credit card charges*  
51. I also know there is a mandatory minimum sentence of -0- years imprisonment.

*credit cards 30yr; false tax 3yr felony ~\$250,000 fine.*

11. I know that the judge, in addition to any other penalty, will order a special assessment as provided by law in the amount of \$100 per count of conviction.

12. I know that if I am ordered to pay a fine, and I willfully refuse to pay that fine, I can be returned to court, where the judge can substantially increase the amount of the unpaid balance owed on the fine and I can be imprisoned for up to one year.

13. My attorney has discussed with me the Federal Sentencing Guidelines. I know that the Guidelines are advisory, not mandatory. I also know the sentencing judge, in determining the particular sentence to be imposed, must consider those factors set forth

in Title 18, United States Code, Section 3553(a), including but not limited to: the nature and circumstances of the offense, my own history and characteristics, the goals of sentencing (punishment, deterrence, protection and rehabilitation) and the sentencing range established by the advisory Guidelines. If my attorney or any other person has calculated a guideline range for me, I know that is only a prediction and advisory and that it is the judge who makes the final decision as to what the guideline range is and what

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sentence will be imposed. I also know that a judge may not impose a sentence greater than the maximum sentence referred to in paragraph (10) above.

14. I know from discussion with my attorney that, under the Federal Sentencing Guidelines, if I am sentenced to prison I am not entitled to parole. I will have to serve the full sentence imposed except for any credit for good behavior that I earn. I can earn credit for good behavior in prison at a rate of up to 54 days for each year of imprisonment served. Credit for good behavior does not apply to a sentence of one year or less.

15. I know that if I am sentenced to prison, the judge will impose a term of supervised release to follow the prison sentence. During my supervised release term I will be supervised by a probation officer according to terms and conditions set by the judge. In my case, a term of supervised release can be 2 to 3 years. If I violate the conditions of supervised release, I may be sent back to prison for up to 3 year(s) [see instructions].

16. I know that in addition to or in lieu of any other penalty, the judge can order restitution payments to any victim of any offense to which I plead guilty. I am also informed that, for certain crimes of violence and crimes involving fraud or deceit, it is mandatory that the judge impose restitution in the full amount of any financial loss or

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, threat, 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

**Applications (18 U.S.C. § 1014), all in violation of 18 U.S.C. § 371; and Count 54**

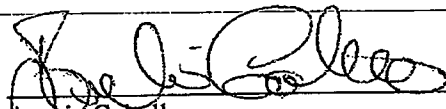
**Money Laundering Conspiracy (18 U.S.C. § 1956(h))**

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

SP-7



**CERTIFICATE OF COUNSEL**

The undersigned, as attorney for defendant Archie Cabello, hereby certifies:

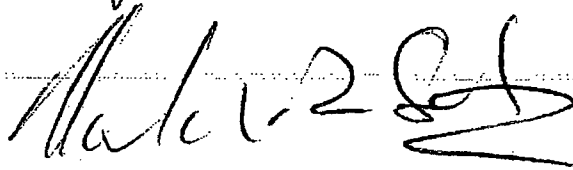
1. I have fully explained to the defendant the allegations contained in the Indictment or Information in this case, any lesser-included offense(s), and the possible defenses which may apply in this case.

2. I have personally examined the attached Petition To Enter Plea of Guilty And Order Entering Plea, explained all its provisions to the defendant, and discussed fully with the defendant all matters described an referred to in the Petition.

3. I have explained to the defendant the maximum penalty and other consequences of entering a plea of guilty described in paragraphs (6)-(20) of the Petition, and I have also explained to the defendant the applicable Federal Sentencing Guidelines.

4. I recommend that the Court accept the defendant's plea of "GUILTY."

SIGNED by me in the presence of the above named defendant, and after full discussion with the defendant of the contents of the Petition To Enter Plea of Guilty, and any Plea Agreement, on this 17 day of September, 2012.



**ORDER ENTERING PLEA**


I find that the defendant's plea of GUILTY has been made freely and voluntarily and not out of ignorance, fear, inadvertence, or coercion. I further find the defendant has admitted facts that prove each of the necessary elements of the crime(s) to which the defendant has pled guilty.

IT IS THEREFORE ORDERED that the defendant's plea of GUILTY be  

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accepted and entered as requested in the Petition and as recommended in the certificate of defendant's attorney.

Dated this 17<sup>th</sup> of Sept, 2012, in open court.

  
\_\_\_\_\_  
Honorable Judge Robert E. Jones  
Judge, U.S. District Court

## **APPENDIX B**

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUN 25 2018

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

In re: ARCHIE CABELLO.

No. 18-71205

ARCHIE CABELLO,

D.C. No. 3:16-cv-01780-JO

District of Oregon,

Portland

Petitioner,

ORDER

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.**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JUN 30 2017

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ARCHIE CABELLO, AKA Archibaldo  
Cabello, AKA Archie Cabello, Jr., AKA  
Archie P. Cabello, AKA Arquimedes  
Cabello, AKA Archie Palumbo,

Defendant-Appellant.

No. 17-35224

D.C. Nos. 3:16-cv-01780-JO  
3:10-cr-00482-JO-1

District of Oregon,  
Portland

ORDER

Before: BERZON and FRIEDLAND, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 4) is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

**DENIED.**

## UNITED STATES COURT OF APPEALS

JUL 15 2016

## FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARCHIE CABELLO, AKA Archibaldo  
Cabello, AKA Archie Cabello, Jr., AKA  
Archie P. Cabello, AKA Arquimedes  
Cabello, AKA Archie Palumbo,

Defendant - Appellant.

No. 13-30080

D.C. No. 3:10-cr-00482-JO-1  
District of Oregon,  
Portland

ORDER

Before: PAEZ, and IKUTA, Circuit Judges, and TIGAR,\* District Judge.

The appellant's motion to recall the mandate is DENIED. The appellant's request for a transcript of oral argument is DENIED. All other requests for relief contained in the appellant's motions are DENIED, and no further filings will be entertained in this closed case.

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\* The Honorable Jon S. Tigar, United States District Judge for the Northern District of California, sitting by designation.

## **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

March 18, 2019

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

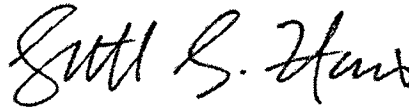
Re: In Re Archie Cabello  
No. 18-7754

Dear Mr. Cabello:

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

The petition for a writ of mandamus is denied.

Sincerely,



Scott S. Harris, Clerk





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

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

January 7, 2019

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

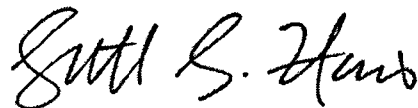
Re: Archie Cabello  
v. United States District Court for the District of Oregon  
No. 18-6871

Dear Mr. Cabello:

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

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk



## **APPENDIX D**

charges. The worst scenario is that the jury convicts on the larceny and possession charges and for good measure all the other charges resulting in a clusterf\*ck of a sentence.

Just to repeat, if you decide to plea to the larceny and possession of stolen funds charges, the remaining charges are less likely to go to trial. The government is less likely to pursue those charges and the judge is more likely to want to decide the motions without a trial. This is my opinion and is not based on anything that the AUSA's or the judge has said to me.

You are in possession of a great deal of legal knowledge and legal conjecture. What you decide now will effect whether or not I file all, some or no motions on June 18, 2012. Base on all our prior discussions, I am comfortable that you have the ability and facts to make a knowledgeable decision. What is your decision?

- Trial on all counts in the indictments?
- Plead to some counts in the indictment?
- Plead to all counts in the indictment?
- Wait and thus file all motions on June 18, 2012?

I will write motions and prepare for trial if you do not make a decision. By not making an affirmative decision you are making a silent decision to go to trial. At this point in your case, lethargy is apathy and this will lead to a conviction with the most time to serve.

As a reminder, I have NO WITNESSES to testify on your behalf at trial. I have NO EXPERTS to testify on your behalf at trial. I have NO PHYSICAL EVIDENCE to present on your behalf at trial. I realize that this paragraph is poor English as I am using the auxiliary in the negative without "do." It seems more effective than saying "I do not have any witnesses, experts or physical evidence to present on your behalf at trial." The defense at trial would be on based on reasonable doubt and, perhaps, hoping Vincent would go ballistic on the stand. Neither of the last two scenarios is, in my mind, an effective defense.

Regardless of the above thoughts and statements, I remain your attorney and will do as you direct. My only interest is to protect you from harm and that includes pointing out when your decisions or inaction has the potential of injuring your own-self. I look forward to your response(s) and as I am reading this letter to you on June 14, 2012, I close with this: "What do you want to do?"

Warmly,

  
Michael R. Smith

defendant had no intention to agree to amend the written plea petition and eliminated the answer. In hind-sight defendant's final denial should have been received, but is of no consequence. The court notes that the defendant did not object to the incorporation of the essential facts as recited by the court. He only excepted to credit cards and FDIC issues.

This defendant has fired three of the most gifted lawyers in this district and has finally chosen to proceed pro se. No further counsel shall be appointed to represent him on any pending issues. The court has honored his requests for full discovery and had him transported to FCI Sheridan arranging computer technology to prepare for issues he wishes to assert.

10) The court regrets that a better record was not initially made and takes full  
11) responsibility for inadequacies apparent during the original plea colloquy.

Nevertheless, this defendant knew or was advised of all of his legal rights. The court plans to adhere to the defendant's position as stated at the September 27, 2012 hearing that he did not wish to withdraw his original plea.

**THE COURT:** Well, why don't you just state your position for your client.

**MR. SMITH:** Okay. In regards to the plea that Mr. Cabello entered on the 17<sup>th</sup> of September 2012, Mr. Cabello pled guilty and is satisfied with that and does not desire to withdraw his plea. He thinks it was a lawful plea entered as stated on the record, as transcribed, and as stated in the

essential facts as recited by the court. He only excepted to credit cards and FDIC issues.

This defendant has fired three of the most gifted lawyers in this district and has finally chosen to proceed pro se. (Defendant fired a third lawyer who was appointed to help with the appeal.) No further counsel shall be appointed to represent him on any pending issues. The court granted his requests for full discovery, had him transported to FCI Sheridan and arranged for a computer to help him prepare for issues he wishes to assert. [REDACTED] ?

This defendant knew or was advised of all of his legal rights. The court plans to adhere to the defendant's position as stated at the September 27, 2012 hearing that he did not wish to withdraw his original plea.

**THE COURT:** Well, why don't you just state your position for your client.

**MR. SMITH:** Okay. In regards to the plea that Mr. Cabello entered on the 17<sup>th</sup> of September 2012, Mr. Cabello pled guilty and is satisfied with that and does not desire to withdraw his plea. He thinks it was a lawful plea entered as stated on the record, as transcribed, and as stated in the plea petition itself.

As for any amendments, Mr. Cabello takes the position that he's pled once already. He does not desire to change his plea or the basis of his plea, and — nor does he desire to withdraw his plea. So, that's his



U.S. Department of Justice  
Dwight C. Holton  
United States Attorney  
District of Oregon  
1000 SW Third Avenue, Ste. 600 (503) 727-1000  
Portland, OR 97204-2902 Fax: (503) 727-1117

December 17, 2010

Gerald P. Boyle  
Boyle, Boyle & Boyle, S.C.  
The Pettibone Mansion  
2051 West Wisconsin Avenue  
Milwaukee, WI 53233  
FAX (414) 343-3310

RECEIVED  
DEC 23 2010

Re: *United States v. Archie Cabello, et. al.*,  
Case No. 10-CR-482 (KI)

Dear Mr. Boyle:

I am in receipt of your letter dated December 17, 2010, wherein you indicate that you have been retained by Archie Cabello to represent him in the above-captioned case.

I believe you have a conflict of interest with regard to this case for several reasons. You have represented Archie Cabello and his codefendants, Marian P. Cabello and Vincent N. Cabello, in the investigation of this case. As a result, you have undoubtedly learned certain information and confidences of the codefendants that would hinder effective representation of Archie Cabello.

In addition, you and your law firm have received cash from Archie Cabello that is a proceed of criminal activity. A member of your law firm, Bridget Boyle, has filed at least one Form 8300 with the Internal Revenue Service indicating your receipt of such cash. This transaction forms the basis of Count 51 of the Indictment, charging Archie Cabello with money laundering in violation of 18 U.S.C. § 1956 (a)(1)(B)(i). This activity also forms the basis of overt acts 50 and 51 of the Conspiracy in Count 1 of the Indictment. In order to prove these allegations, the government plans on calling you and your law partner Bridget Boyle as witnesses in this case. I do not believe that a stipulation to the facts surrounding the payment of these funds and their subsequent disposition by you and your law firm will be adequate proof for the government's case.

Finally, your letter indicates that you will not render legal services to Archie Cabello without receiving a fee. Since Mr. Cabello is unemployed and has no known source of income other than his small monthly pension, the government contends that he will be compensating you with funds he stole from U.S. Bank. As I am sure you are aware, possession of stolen bank funds is a continuing offense, and your receipt of these funds aids and abets Mr. Cabello's crime and exposes you to possible criminal liability. I should also advise you that the government will seek to forfeit all funds that are paid to you by the Cabellos.

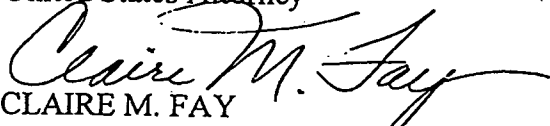
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Gerald P. Boyle  
December 17, 2010  
Page 2

Should you wish to discuss any of these matters, I can be reached at (503) 727-1022 or at my email address, [Claire.Fay@usdoj.gov](mailto:Claire.Fay@usdoj.gov).

Sincerely yours,

DWIGHT C. HOLTON  
United States Attorney

  
CLAIRE M. FAY  
Assistant United States Attorney

1 let Mr. Boyle stipulate, as he said, and there are letters  
2 that prove this, then give him a call and see. I don't  
3 know what his attitude is right now, but he was my lawyer  
4 for 15 years. He didn't just walk away because he doesn't  
5 like me anymore. He was forced and coerced off this case.  
6 Threatened with prosecution. Threatened with forfeiture.  
7 He was never charged on anything, and there was never a  
8 move on forfeiture.

9 Mr. Boyle is a man of utmost integrity. He  
10 represented the Milwaukee police unit <sup>Assoc.</sup> for years and years.  
11 All you have to do is pick up the phone and call Milwaukee  
12 and find out he is a man of utmost reputation.

13 MR. EDMONDS: I will correct the record in one  
14 factual submission he made. If we had gone to trial in  
15 this case, Mr. Boyle was on the witness list, would have  
16 traveled here and would have testified live in open court  
17 against the defendant as a Government's witness. That  
18 would have happened.

19 MR. LEVINE: Your Honor, as an officer at this  
20 point, or perhaps as Mr. Cabello's counsel, although I'm  
21 appointed -- I am his counsel. This is a serious issue,  
22 just from what I know and just listening to his colloquy,  
23 and that's all I know at the moment.

24 Clearly if Mr. Cabello -- if there is evidence  
25 that the Government in some way interfered with

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1 Mr. Cabello's right to retain his own counsel and if  
2 there -- I'm not suggesting there was -- but if there was  
3 some sort of improper conduct with respect to interfering  
4 with his right to counsel, that raises a very serious  
5 constitutional issue, which also affects the entry of  
6 guilty plea.

7 But even beyond that, it could affect the status  
8 of the indictment. These are all materials that -- I have  
9 never spoken to this Mr. Boyle. I don't know any of the  
10 underlying facts. I have heard the assertions on both  
11 sides. Clearly this is something that needs to be  
12 seriously investigated and looked into. That's all I want  
13 to say, Your Honor.

14 THE COURT: Well, in respect to this matter, it  
15 can be resolved by having a hearing. Mr. Boyle can  
16 testify under oath. He can do this with our electronics  
17 so he doesn't have to travel. We will find out what the  
18 facts are that are disputed.

19 MR. LEVINE: I think we can definitely do that.

20 THE COURT: Once again, I have appointed you,  
21 Mr. Levine, and you are his lawyer until I un-appoint you.

22 MR. LEVINE: Okay. Very well.

23 THE COURT: Proceed and see you at  
24 three o'clock.

25 MR. LEVINE: Three o'clock today.

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1 THE COURT: Well, instead of flying him clear out  
2 to say that, why don't you write out precisely what you'd  
3 have him say.

4 MS. FAY: All right.

5 THE COURT: See if counsel can stipulate to it.

6 MS. FAY: All right.

7 THE COURT: I just don't want to get into  
8 collateral issues that he was charged with this and we  
9 talked about this and that and so forth.

10 MS. FAY: That's not our intent.

11 THE COURT: If you write that out, I think it  
12 will eliminate a great deal of expense.

13 MS. FAY: All right.

14 MR. EDMONDS: We'd be happy to do that, Judge.  
15 The only problem for us, perhaps, ethically, doing that, is  
16 we never heard that from him ourselves. We believe that.

17 THE COURT: Well, you verify it and do that.

18 MS. FAY: Okay. I will do that, Your Honor.

19 THE COURT: Let's -- the attorney-client  
20 privilege issue. The witness list has been carved down now  
21 to 18 less.

22 The Government's exhibit list? Have you met and  
23 conferred over the exhibit list?

24 MR. EDMONDS: Yes, Your Honor. We showed  
25 Counsel, of course, the exhibit list when we filed it. He

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# BOYLE, BOYLE & BOYLE, s.c.

ATTORNEYS AT LAW

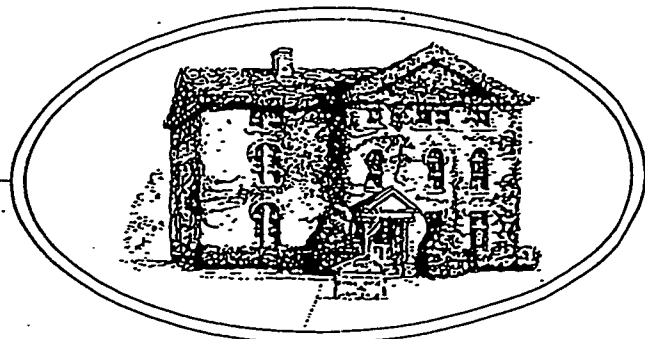
GERALD P. BOYLE  
COURT COMMISSIONER

BRIDGET E. BOYLE-SAXTON

GERALD H. BOYLE

K. RICHARD WELLS

PAULINE EDWARDS  
PARALEGAL



THE PETTIBONE MANSION

December 17, 2010

Patrick J. Ehlers  
101 SW Main St., Suite 1700  
Portland, OR 97204

Dear Patrick:

Thank you for your courtesy this past Thursday. It is my belief that Archie Cabello very much wants me to represent him which I will do if I am able to economically and professionally. Whatever the outcome I believe Archie wants me to be in his corner as I have for the past fifteen years and if he can take care of the financial aspect I have no reason not to continue in his representation. I have asked Claire Fay to indicate to me from the Government's perspective if she thinks because I had received \$7,400 in cash from Archie which I reported according to law could in some way or another constitute a conflict as she will be introducing the filed form into evidence. It is absurd in my opinion to think that is a conflict and I do not think any Federal Judge will see it as it is clearly an administrative matter and not anything relative to the case charged.

I know you believe Archie Cabello is guilty and has the money. I do not have the luxury of knowing or believing that on the basis of what I know, but in spite of that a lawyer must accept the representation of a person unless he is unable to by virtue of training, experience or a conflict. Clearly I have the training, clearly I have the experience and I absolutely do not have any conflict. Therefore under my obligation as an attorney I will accept this representation if the appropriate financial necessities are met. As an experience attorney I am sure you understand what I am saying and Archie or I will be talking to you in the not too distant future as to your position as his lawyer.

Sincerely,

BOYLE, BOYLE & BOYLE, S.C.

Gerald P. Boyle  
Attorney at Law

GPB/pe

1           THE DEFENDANT: Your Honor, also on page 2 of this  
2 plea agreement -- it's been penciled in. You won't find my  
3 initials next to any of this, as you would on any contract.

4           This plea agreement is defective, illegal, and void.  
5 That's why I asked the Court today, and in my motions, to pull  
6 my plea; reappointment of counsel of my choice; pretrial  
7 release, so I can retain or interview said counsel. Because  
8 this has been taken from me.

9           I had the best attorney in Wisconsin representing me.

10           I've had two ineffective Government attorneys. If  
11 you give me yet another Government attorney who's not going to  
12 defend me, it's pointless.

13           So I ask the Court to rule on pretrial release.

14           THE COURT: Anything further, sir?

15           THE DEFENDANT: No, just respond to the motions, if  
16 you would.

17           THE COURT: I'm denying your motions. We'll proceed  
18 as scheduled.

19           THE DEFENDANT: Very well, your Honor.

20           Then I request appointment of an appeal attorney for  
21 denial of pretrial release, so I can appeal directly to the  
22 Ninth Circuit.

23           THE COURT: I'll state on the record, I appoint  
24 Michael Levine to handle any appeal for you, but he won't be --  
25 only appointed after -- after sentencing.

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1 Mr. Cabello, you've already pled guilty, in essence,  
2 to what I've just read, and so then I will be incorporating  
3 this just to amplify what you've already told the Court.  
4 Do you understand, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Thank you. It will be so  
7 incorporated.

8 Is there anything further you wish to add for the  
9 Government?

10 MR. EDMONDS: Your Honor, the only issue is the  
11 defendant's acknowledgment to the material that's contained  
12 in the petition. I recognize that he's refusing to do that  
13 in writing. He's acknowledged having heard that this  
14 morning. I simply want to bring to the attention that this  
15 issue derives out of the method by which the petition was  
16 advanced to the Court.

17 As the Court well knows, plea petitions are a unique  
18 feature of Oregon proceedings. Most other districts don't  
19 use them. Oregon has used petitions for many, many years.  
20 And the petition in this case formed the basis for how the  
21 Court conducted the plea hearing with defendant back on the  
22 17th. It's undoubted, in looking at the petition that  
23 Mr. Smith completed, that it has errors in it.

24 — Number one, it didn't even include count 10, which had  
25 been part of the Government's agreement, on a false

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1 statement count that he just omitted. Secondly, it doesn't  
2 have any factual basis included in it for the false  
3 statement counts or the tax count. And so the Court, when  
4 it was given the petition on the 17th had an incomplete  
5 rendition of the agreement between the parties. It also  
6 didn't include anything about the waiver of appeal.

7 So what we're seeking here with the hearing is  
8 acknowledgment by the defendant of these elements of the  
9 crime and the factual basis, particularly for the false  
10 statement and the tax count that were somewhat incompletely  
11 addressed at the time, although were addressed by the Court  
12 and were acknowledged by the defendant in his plea.

13 We're just trying to complete the record. And my  
14 efforts with Mr. Smith to acknowledge some of the  
15 inadequacies of the petition fell on deaf ears, and so  
16 that's why we asked for the hearing.

17 THE COURT: I understand that, and we've covered  
18 this at the time of the original plea. I'm not going to  
19 ask him to plead guilty to additional matters that were not  
20 included at this time; but, as I've already notified to  
21 you, I'll take into -- those matters into consideration in  
22 sentencing as relevant conduct.

23 MR. EDMONDS: Thank you.

24 THE COURT: And that -- there's -- as far as the  
25 record is concerned, I've just had Mr. Cabello agree to

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|------------|------------|---|
| 09/17/2012 | <u>146</u> | ORDER Finding as Moot <u>130</u> Motion Pre-Trial Admission of Trial Exhibits as to Archie Cabello (1) by Judge Robert E. Jones (schm) (Entered: 09/18/2012)  |
| 09/17/2012 | <u>147</u> | ORDER Finding as Moot <u>139</u> Supplemental Motion In Support of Pretrial Admission of Trial Exhibits as to Archie Cabello (1) by Judge Robert E. Jones (schm) (Entered: 09/18/2012)  |
| 09/17/2012 | <u>148</u> | Plea Petition and Order Entering Plea as to Defendant Archie Cabello signed by Judge Robert E. Jones. (schm) (Entered: 09/18/2012)  |
| 09/17/2012 | <u>150</u> | <b>AMENDED Minutes of Proceedings:</b> AMENDED RECORD OF TIME SET FOR JURY TRIAL: Defendant advises he wishes to change his plea. Jury trial set for 9/17/12, is stricken. All pending motions are denied as moot. Defendant sworn and advised of his rights. Defendant waives his trial rights. Defendant reads his confession for the record. Plea of guilty to Counts 1, 3, 4, 9,11, 12, 15 and 51 of the Indictment received. Presentence Report ordered. Sentencing set for 12/11/12, at 10:00 a.m. in Courtroom 10A before Judge Robert E. Jones Counsel Present for Plaintiff: Claire Fay/Thomas Edmonds.Counsel Present for Defendant: Michael R. Smith.(Court Reporter Dennis Apodaca, 503-326-8182) (schm) (Entered: 09/20/2012)  |
| 09/19/2012 | <u>149</u> | Scheduling Order as to Archie Cabello. Status Conference is set for 9/27/2012, at 10:00AM in Judge Jones' Courtroom 15A before Judge Robert E. Jones. (schm) (Entered: 09/19/2012)  |
| 09/26/2012 | <u>151</u> | Scheduling Order as to Archie Cabello. Sentencing is reset from 12/11/12, to 12/5/2012, at 10:00AM in Judge Jones' Courtroom 10A before Judge Robert E. Jones. (schm) (Entered: 09/27/2012)   |
| 09/27/2012 | <u>154</u> | <b>Minutes of Proceedings:</b> RECORD OF TIME SET FOR STATUS CONFERENCE before Judge Robert E. Jones as to Archie Cabello. Government orally moved to clarify the record of the 9/17/12, plea hearing. Defendant objected to any amendment to the plea petition as previously signed. Governments motion is granted to the extent that the court summarized each charge, stated the statutory maximums applicable to each charge, reviewed in detail the elements of each charge to which defendant previously pled guilty, and ordered that this information be incorporated into the record. The Governments motion is denied to the extent that the court ruled that the plea petition shall not be amended to add Count 10; however, the conduct underlying this count shall be considered as relevant conduct at sentencing. Defendant was cautioned that his testimony remains under oath. Court heard defendants arguments and they were denied as previously stated on the record. Court will take into consideration defendants offer of proof regarding his credit card applications. Sentencing remains set for 12/5/12, at 10:00 a.m. in Courtroom 10A.Counsel Present for Plaintiff: Claire Fay/Thomas Edmonds.Counsel Present for Defendant: Michael R. Smith.(Court Reporter Jill Erwin 503-326-8191) (schm) (Entered: 09/27/2012) |
| 10/05/2012 | <u>155</u> | OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED Status Conference as to Defendant Archie Cabello for date of September 27, 2012, before Judge Robert E. Jones, Court Reporter Jill L. Erwin, telephone number (503)326-8191. Transcript may be viewed at Court's public terminal or purchased from the Court Reporter before the deadline for Release of Transcript Restriction. Afterwards it may be obtained   |

000347

did ask defendant whether he had filed a false tax return, and defendant orally acknowledged that he had. ER 258.

Any deficiency in describing the factual basis for the plea to each count was cured during the September 27, 2012, hearing. Defendant acknowledged that the court would be incorporating the amendments into the record of defendant's pleas. ER 221. Those amendments included a detailed outline of the elements of each offense, and the factual basis for each count. ER 217-220. The incorporated amendments stated: defendant conspired with his wife and son to commit bank larceny, he staged three thefts of money from federally insured institutions in Oregon and Wisconsin, he made false statements on credit card applications, he filed a false income tax return in 2006, and he conspired to commit money laundering by conducting financial transactions with proceeds of unlawful activity with the intent of concealing or disguising the nature, location, source ownership and control of proceeds of the larcenies. *Id.*

Although defendant continued to raise legal challenges relative to the embezzlement and FDIC issues, he never objected to the factual



1 that I submitted to you, and so you can start in and address  
2 that.

3 THE DEFENDANT: Thank you, Your Honor.

4 My argument today is based upon the foundational  
5 rules governing the withdrawal of guilty pleas, as set forth  
6 in Federal Rules of Criminal Procedure Rule 11(d) (2) (B),  
7 stating in relevant fact -- in relevant part, "Withdrawing a  
8 guilty plea or nolo contendere plea. A defendant may  
9 withdraw a plea of guilty or a nolo contendere after the  
10 court accepts the plea, but before it imposes sentence if  
11 the defendant can show a fair and just reason for requesting  
12 the withdrawal."

13 I have a few relevant cases here.

14 THE COURT: I don't need any cases on that.

15 THE DEFENDANT: Well, Your Honor --

16 THE COURT: The purpose is for you to tell me what  
17 is the basis for your -- not the law, but what is the  
18 factual basis as to what happened at the time of your plea  
19 that you feel was improper.

20 THE DEFENDANT: Well, I mean, inadequate +  
21 inadequate plea colloquies?

22 THE COURT: In what respect?

23 THE DEFENDANT: Well, there was no relationship  
24 between the colloquy and the plea agreement that I had in my  
25 head that day. And from this draft disposition that you

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1 sent me, Your Honor, on page 18, lines 10 and 11, "The Court  
2 regrets that a better record was not initially made and  
3 takes full responsibility for inadequacies apparent in the  
4 original plea colloquy."

5 Your Honor, the Government has to take  
6 responsibility for inadequacies or ambiguities in the plea  
7 colloquies.

8 THE COURT: Well, the plea colloquy was prepared  
9 by you and Mr. Smith.

10 THE DEFENDANT: I didn't -- I had nothing to do  
11 with it, the plea colloquy, Your Honor.

12 THE COURT: Well, you read your confession from  
13 it.

14 THE DEFENDANT: Well, I -- as Your Honor --

15 THE COURT: Don't tell me you had nothing to do  
16 with it. I'm talking about, when I say the colloquy, we're  
17 talking about me discussing giving you your rights and so  
18 forth. We were -- we did not in that colloquy address  
19 certain aspects which were supplemented later or which you  
20 already knew.

21 I'm asking you as to what is it that you say that  
22 you didn't know about or was not addressed.

23 THE DEFENDANT: Well, Your Honor -- in fact, if  
24 the Court would indulge me, could I see the Court's copy?  
25 Because --

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lack of competent counsel;" that he had been "misled by counsel" that "the plea agreement was for only counts 1 and 51;" that "defendant was forced to sign the original agreement under duress and at no time has truly admitted guilt of his own free and voluntary will." *Id.*

Other than defendant's coercion claims, which he abandons here on appeal, defendant's sole claim under Rule 11 stated: "There is, in fact, no factual basis for the plea as required by Rule 11 (b)(3), because defendant alleges that he is not guilty and indicated guilt only because he was informed that this would be the only way to avoid life in prison."

ER 152. At no point did defendant argue that there was a defect in the district court's Rule 11 colloquy.

During the hearing on his motion to withdraw his plea, defendant explicitly re-affirmed his desire to plead guilty to counts 1 and 51 several times. ER 109, 112, 131-32. Defendant said, "But if the court is willing to go by the plea agreement that I signed, which is count 1 and 51, I'll stand by that, Your Honor." ER 112. Defendant said this again:

Well, Your Honor, if this plea petition is for Count 1 and 51, then we can cut this off right now. That's the petition that I signed, Counts 1 and 51 . . . So if the Court is willing to abide by

1 Anything further?

2 THE DEFENDANT: Your Honor, I just -- if you will  
3 excuse me. I -- I do want to appeal pretrial release to the  
4 Ninth Circuit in San Francisco. I think that is also my right.

5 THE COURT: As far as -- you're not going to be  
6 released between now and the 5th of December.

7 And then, at that juncture, after sentencing, you can  
8 petition for release. It's -- I -- we'll deal with that at the  
9 appropriate time.

10 THE DEFENDANT: No, but I want to appeal the denial  
11 of pretrial -- or presentence --

12 THE COURT: There will be no --

13 THE DEFENDANT: -- release today, right now. I want  
14 to appeal right now.

15 THE COURT: There will be no intermediate appeal for  
16 release.

17 We'll have you back here. The marshal's office will  
18 have you back here by -- for your sentencing.

19 Anything further for the Government?

20 MR. EDMONDS: No, your Honor. Thank you.

21 THE COURT: All right. Mr. Smith, you'll be here?

22 MR. SMITH: On the 5th.

23 And just to clarify, Judge --

24 THE COURT: Your job -- from here on, he is allowed  
25 to proceed on his own, as his own lawyer. And he's waived any

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1 stated that before, and I'm stating it again today.

2 I do not see how -- I hesitate to say this, but a  
3 forged document that is committing fraud upon the Court can  
4 be allowed to stand. I don't understand that, Your Honor.

5 And I have other case law here. The Ninth Circuit  
6 has held over and over that the fair and just standard must  
7 be met --

8 THE COURT: You sent me --

9 THE DEFENDANT: And I --

10 THE COURT: You sent me 80-some pages of your  
11 position and cases, which I've read. Anything further?

12 THE DEFENDANT: Your Honor, a guilty plea is  
13 constitutionally valid only to the extent that it's  
14 voluntary and intelligent.

15 THE COURT: You said it was, under oath.

16 THE DEFENDANT: Well --

17 THE COURT: You said it was, under oath.

18 THE DEFENDANT: Yes, I did. Yes, I did, Your  
19 Honor, but --

20 THE COURT: What am I supposed to do? Say you're  
21 a liar?

22 THE DEFENDANT: No, sir.

23 THE COURT: You say --

24 THE DEFENDANT: Well, Your Honor, if this plea  
25 petition is for Count 1 and 51, then we can cut this off

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TRULINCS 73097065 - CABELLO, ARCHIE - Unit: LAT-C-A

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FROM: 73097065  
TO: Weppner, Robert  
SUBJECT: RE:Appeal  
DATE: 01/01/2014 07:14:25 PM

Dear Mr. Weppner,

I hope that the holidays were joyous for you and your family, happy new year. Your last e-mail said that you had extended to Jan. We haven't had any substantive communication so I don't know in what direction you are going. Please send me a copy or draft of the brief before you file. I know the court will try to obstruct you in every way possible. I don't even

know if they will give you that penciled over plea petition that the government did not sign or the amendments which I did not sign. If they haven't please let me know and I will send you a copy. Not to mention all the other issues which I raised in court and mentioned to you in my letters.

I don't want to waive any of them. As far as transcripts when I recieved the trial day transcripts half of them were missing (the first half). I don't know where you're going to get those, that's why I mentioned audio in case parts of the transcripts are "missing". If you mail the brief certified mail, clearly stamped legal mail the prison will open them in front of me and not read it.

This is our best bite of the apple and I want to make it a good one. There is no need to rush to file before we are ready. Thank you for your efforts on my behalf and may the new year bring many blessings.

Sincerely,  
Archie Cabello

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RULINCS 73097065 - CABELLO, ARCHIE - Unit: LAT-C-A

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FROM: Weppner, Robert  
TO: 73097065  
SUBJECT: RE: Appeal  
DATE: 01/22/2014 04:21:11 PM

(3)

Dear Mr. Cabello:

Yes, I did get your earlier letter, and perhaps should have responded to it at the time. I have requested and received what I believe will be the last extension of time I will need in your case, to mid-March. I would like to ask that you trust me to act in your best interests, but I realize that you do not know me from Adam, and I understand that your case is your only case and extremely important to you.

I have also received a copy of the letter you wrote to the Ninth Circuit. I doubt that they will send you a copy of the docket. It does not make for very interesting reading, but I can send you a copy if you want.

Briefly, in response to your earlier letter, I would make some points and observations, not in much detail in this less-than-perfectly-private forum:

It is unlikely in the extreme that I will raise all the arguments you have mentioned in your letters, for one or more of several reasons. Some of them simply lack merit. Others are not supported by the record or, at best, are not properly raised in a direct appeal, but later in a habeas corpus proceeding. Finally, to raise a ton of issues is called a "scatter-shot" approach. My practice is to raise a few -- the best -- issues. To do otherwise may smack of desperation in the eyes of the reviewing court. Moreover, since there is a page limit on opening briefs, it means paying attention to long-shot issues at the expense of ones that have better "legs."

I believe I have the plea petition prepared by Mr. Smith, with your pencilings and signature -- there is only one in the court record, as I recall -- but I cannot be 100% certain that you and I are talking about the same document. Please send me a copy.

While I hope that we do get to communicate about the contents of the brief, it is unlikely that I will be able to send you a draft of the brief. My brief-writing practice tends to crescendo up to the date that I file it, and it is really likely to be somewhat unreadable (by my standards), and not final, until it is final, which tends to happen if not at the eleventh hour, certainly at the tenth. But please rest assured that I will give every consideration to the arguments you refer to in your letters.

Anyway, though it may feel as though little has changed from your perspective, we are entering the home stretch.

Thanks for writing.

/s/ Robert A. Weppner

ARCHIE CABELLO on 1/22/2014 1:36:31 PM wrote

Mr. Weppner,  
Hope this note finds you in good health. I sent an e-mail three weeks ago and it is still unanswered. Since I'm out of the loop down here, I don't know if you have fallen ill or what. Please bring me up to speed on what's happening with my case. If you are unable to answer then have someone in your office respond. Our last communication in Nov. said that you had filed for an extension into Jan. Have you filed for another extension? I await your response.

Best Regards,  
Archie Cabello

(2)

- 04/12/2013 4 Filed Appellant Archie Cabello motion to proceed In Forma Pauperis and for appointment of counsel. Served on 04/08/2013. [8588719] (MT) [Entered: 04/12/2013 03:19 PM]
- 04/16/2013 5 Filed order (Appellate Commissioner): Appellant's motion for appointment of counsel is granted. Counsel will be appointed by separate order. The Clerk shall electronically serve this order on the appointing authority for the District of Oregon, who will locate appointed counsel. The appointing authority shall send notification of the name, address, and telephone number of appointed counsel to the Clerk of this court at counselappointments@ca9.uscourts.gov within 14 days of locating counsel. Appellant shall designate the reporter's transcript by May 29, 2013. The transcript is due June 28, 2013. The opening brief and excerpts of record are due August 7, 2013; the answering brief is due September 6, 2013; and the optional reply brief is due within 14 days after service of the answering brief. The Clerk shall serve this order on appellant individually. (MOATT Direct Criminal) [8591307] (KKW) [Entered: 04/16/2013 10:21 AM]
- 04/17/2013 6 **Streamlined request by Appellant Archie Cabello to extend time to file the opening brief until 7/25/2013 is not approved. Appellant is informed that pursuant to the 4/16/2013 order, the opening brief is due 8/7/2013.** [8593346] (LBS) [Entered: 04/17/2013 02:05 PM]
- 04/25/2013 7 Received copy of District Court order filed on 04/23/2013, appointing Robert A. Weppner, Esq., as CJA counsel of record for Archie Cabello, in case 13-30080. [8604707] (DL) [Entered: 04/25/2013 12:23 PM]
- 05/16/2013 8 Criminal Justice Act electronic voucher created. (Counsel: Mr. Robert A. Weppner for Archie Cabello) [8631825] (TG) [Entered: 05/16/2013 02:03 PM]
- 06/20/2013 9 Received letter from pro se re: status of case (sent docket sheet) [8675812] (MT) [Entered: 06/20/2013 02:20 PM]
- 07/29/2013 10 Filed (ECF) Appellant Archie Cabello Unopposed Motion to extend time to file Opening brief until 11/05/2013. Date of service: 07/29/2013. [8722067] (Weppner, Robert) [Entered: 07/29/2013 04:03 PM]
- 07/31/2013 11 Filed order (Appellate Commissioner): The appellant's unopposed motion for a 90-day extension of time in which to file the opening brief is granted. The opening brief is due November 5, 2013; the answering brief is due December 5, 2013; and the optional reply brief is due within 14 days after service of the answering brief. (Pro Mo) [8724194] (KKW) [Entered: 07/31/2013 08:51 AM]
- 11/19/2013 12 Filed (ECF) Appellant Archie Cabello Motion to extend time to file Opening brief until 01/21/2014. Date of service: 11/19/2013. [8869109] (Weppner, Robert) [Entered: 11/19/2013 03:23 PM]
- 11/20/2013 13 Filed (ECF) notice of appearance of Kelly A. Zusman for Appellee USA. Date of service: 11/20/2013. [8870797] (Zusman, Kelly) [Entered: 11/20/2013 02:18 PM]
- 11/20/2013 14 Added attorney Kelly A. Zusman for USA, in case 13-30080. [8871119] (MT) [Entered: 11/20/2013 03:24 PM]
- 11/21/2013 15