

Attachment B

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

UNITED STATES OF AMERICA,)	
)	
Plaintiff/Appellee,)	
)	
v.)	No. 23-2190
)	
MANUEL LUCERO, III,)	
)	
Defendant/Appellant.)	

APPOINTED COUNSEL’S MOTION TO WITHDRAW

In accordance with 10th Cir. R. 46.4(B), Ryan A. Ray, court-appointed counsel for Defendant/Appellant, Manuel Lucero, III, respectfully requests that the Court grant him leave to withdraw on the grounds that (i) an actual conflict of interest has arise, and (ii) the course that Mr. Lucero demands be followed is either wholly frivolous, outside the scope of counsel’s representation.

On March 11, 2025, this Court entered its Opinion (which was published) denying all of Mr. Lucero’s propositions of error.

The undersigned promptly transmitted the Opinion to Mr. Lucero, along with a letter explaining the theoretically available procedural options.

After receipt of that letter, Mr. Lucero has communicated with the undersigned counsel and the undersigned’s office. While the precise course of action Mr. Lucero wishes to pursue is a bit unclear, it involves one or more of

the following: (i) seeking certiorari from the United States Supreme Court on grounds that Mr. Lucero maintains must include a claim of ineffective assistance of appellate counsel against the undersigned,¹ (ii) seeking either executive clemency or a pardon, (iii) filing what Mr. Lucero calls a “Havens Action,”² and/or (iv) demanding that the undersigned direct his office staff to conduct various investigations in New Mexico to support one or more of the preceding issues.

The first issue described above gives rise to an actual conflict of interest, and, respectfully, the undersigned believes requires his withdrawal and the appointment of new, conflict-free counsel.

The second, third, and fourth issues are outside the scope of the undersigned counsel’s appointment, and the third issue in particular is something that the undersigned could not (and in any event would not) become involved. Such a case would have to be filed in New Mexico, and even assuming

¹ The primary basis appears to be the statement on page 12 of the Court’s Opinion: “But Lucero’s brief is void of supporting arguments which demonstrate there is a reasonable probability he would have received a lesser sentence but for the district court’s error. We decline to fashion arguments in his favor.” During the course of discussing those statements from the Opinion, Mr. Lucero made numerous accusatory and caustic statements to the undersigned. While the substance of those statements will not be detailed herein, they are denied in their entirety.

² The undersigned counsel believes that this is a reference to an action under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) against actors involved in his underlying arrest and prosecution.

for the sake of argument there was a non-frivolous basis for such a filing, it would have to be made by (or at least in association with) a member of the New Mexico bar (which the undersigned is not). But to be clear, in no event (including if Mr. Lucero could or would pay attorneys' fees to the undersigned) would the undersigned or his staff be involved in a *Bivens* action or an investigation to support it.

Since the undersigned counsel reasonably believes that an actual conflict of interest has arisen, because irreconcilable differences have also arise between the undersigned and Mr. Lucero have arisen, and because Mr. Lucero demands on pursuing numerous courses of action that are outside the scope of the undersigned counsel's appointment,³ which are wholly frivolous, and/or which the undersigned counsel and his staff are either prohibited from pursuing and/or that it is not reasonably practicable for them to pursue.

The undersigned counsel has contemporaneously filed a motion for extension of time to seek certiorari with the United States Supreme Court, which seeks the maximum extension of time of sixty (60) days, so as to permit new counsel to be appointed and give that counsel and Mr. Lucero time to confer about whether there is a good-faith basis for seeking certiorari.

³ The undersigned counsel declines to represent Mr. Lucero on such matters *pro bono*, on a contingent-fee basis, or retained.

WHEREFORE, Ryan A. Ray, court-appointed counsel for Defendant/Appellant, Manuel Lucero, III, respectfully requests that the Court grant him leave to withdraw and appoint conflict-free counsel for the reasons stated herein.

Respectfully submitted,

/s/ Ryan A. Ray

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**ATTORNEY FOR
DEFENDANT/APPELLANT,
MANUEL LUCERO, III**

CERTIFICATION OF DIGITAL SUBMISSION

In accordance with Section II(I) of this Court's CM-ECF User's Manual, I hereby certify that:

1. There were no privacy redactions made to this motion as there were none required by any privacy policy;
2. No hard copies of this motion are required for submission to the Court; and
3. The digital submission has been scanned for viruses with SentinelOne, which was last updated on June 3, 2025 and, according to the program, is free of viruses.

Dated: June 3, 2025.

/s/ Ryan A. Ray

Ryan A. Ray

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2025, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Jesse Pecoraro, Esq.

I further certify that, in accordance with 10th Cir. R. 46.4, I directed my office staff to transmit, via U.S. Mail, an exact copy of this Motion as filed to:

Manuel Lucero, III, #88163-509
USP Big Sandy
U.S. Penitentiary
P.O. Box 2068
Inez, KY 41224

/s/ Ryan A. Ray

Ryan A. Ray