



A Just Cause

3578 Hartsel Drive, Suite 362
Colorado Springs, CO 80920
(855) 529-4252

PURPOSE OF JUDICIAL COMPLAINT AGAINST JUDGE CHRISTINE ARGUELLO CASE # 09-CR-00266-CMA

Pursuant to 28 U.S.C. 351(a), A Just Cause is filing this judicial complaint on behalf of the aggrieved parties of Pastor Rose M. Banks of the Colorado Springs Fellowship Church (CSFC) and its members, Yolanda Walker, Kyle Walker and five codefendants in federal criminal case 09-cr-00266-CMA (David A. Banks, Demetrius Harper, Kendrick Barnes, Clinton Stewart and David Zirpolo) against Colorado district court Judge Christine M. Arguello for (1) displaying invidious religious animus and making demonstrably egregious, hostile and slanderous comments about Pastor Banks, (2) abusing a legal process and the Establishment Cause by using her bench for the impermissible purpose of conducting a religious inquisition against Pastor Banks and CSFC, (3) engaging in discriminatory sentencing practices by willfully disregarding prevailing 2255 habeas law and arbitrarily releasing a single defendant out of six who was found guilty in a jury trial of being an organizer/leader in a conspiracy to commit mail and wire fraud for impermissible purposes, and (4) engaging in a continuing "pattern and practice of arbitrarily and deliberately disregarding prevailing legal standards" related to the sentencing laws of the United States. See *In re: Judicial Misconduct*, 517 F.3d 558, 562 (U.S. Judicial Conf. 2008). Judge Arguello has engaged in conduct that is prejudicial to the effective and expeditious administration of the business of the courts.

BACKGROUND

In 2012, defendant Gary Walker, 49 years old and the CEO of IRP Solutions Corporation, was sentenced to 135 months in prison and immediately remanded by Judge Arguello after being found guilty by a jury of participating as a leader/organizer in a conspiracy to commit mail and wire fraud related to IRP Solutions and his previous company, Leading Team, Inc. (Case no. 09-cr-00266-CMA). After the 10th Circuit affirmed the conviction in late 2014 (*United States v. Banks, et al.*, 761 F.3d 1163 (10th Cir. 2014)) Walker filed a 2255 motion to vacate his sentence on the grounds (1) that he had received ineffective assistance of counsel, (2) received inadequate Faretta advisements, and (3) that he was not responsible for the decisions he made as CEO/President of his companies or to represent himself at trial because he was under the psychological control and religious influence of his Pastor, who also happens to be his mother-in-law.

Walker claimed that 12 to 15 years earlier, between 2002 and 2005 (the period of time government alleged crimes were being committed), he was only a front-man CEO, appointed to that position by Pastor Banks and that while he was busy being a lowly software developer, he was unaware that all his codefendants were busy making false statements to staffing companies -- a claim that was obliterated by the government's own staffing witnesses (See online at <http://bit.ly/2mkcn4k>). Walker said Pastor Banks was running the company and making all the strategic business decisions through her son, defendant David Banks (COO of IRP) based on direction from God. Walker lied that Pastor Banks prohibited church members from testifying which is proven in trial records showing five church members testified and were questioned by Walker during trial.

None of Walker's "my pastor made me do it" claims were brought up during trial or sentencing and the record is replete with Walker saying he made an "individual decision" to represent himself and vigorously defended himself and his codefendants actions and innocence pro se against all the charges of the government (See Govt. Answer Brief, Doc. 922). There is no hint of legitimacy or merit to Walker's claims anywhere nor a scintilla or shred of evidence in court records that would merit granting of the 2255 motion but Judge Arguello refused to deny Walker's 2255 motion and abused the 2255 legal process with the impermissible motive of persecuting and slandering Pastor Banks. Judge Arguello's actions during the 2255 hearings, including sealing court documents, disregarding the 10th Circuit law related to ineffective assistance of counsel claims and improperly resentencing Walker to time served based on a personal religious analysis of Pastor Banks. Arguello comments about Pastor Banks religious beliefs reflected her impermissible motive.

This is the same impermissible motive was used by AUSA Matthew T. Kirsch who only called church members who worked as staffing company contractors at IRP before a 2007 grand jury (no. 06-01) while dozens of others staffing

company contractors unaffiliated with the church were not called. Grand jury transcripts show church members were peppered with questions about Pastor Banks. The grand jury foreman said in open court that Pastor Banks was the target of the IRP investigation. See D.C. No. 1:09-cr-00151.

SLANDER OF PASTOR BANKS BY JUDGE ARGUELLO

From the bench, Judge Arguello viciously attacked and slandered Pastor Banks, painting her as a cult-like, witch-doctor, Jim Jones type of religious figure by saying she was a "vindictive," "mean-spirited" "Christian" and "Prophet of God" that controlled the minds, actions and decisions of defendant Walker, Walker's wife and son, church members and the five other codefendants (David Banks, Demetrius Harper, David Zirpolo, Clinton Stewart and Kendrick Barnes). Judge Arguello vilified Pastor Banks' prophecy, lied about her excommunication practices and claimed Pastor Banks forbid Walker's wife and son and the codefendants from interacting with him. Judge Arguello made these conclusions without giving Pastor Banks, the codefendants, Walker's wife and son (Yolanda and Kyle) or current church members the opportunity to defend against her dubious claims. Judge Arguello chose to consider affidavits and testimony from former disgruntled church members who personally chose to leave the church or were excommunicated years ago. Virtually all of them had no ties to the business and some were children at the time. Judge Arguello also permitted Chaplain Henderson from Florence federal prison camp to testify and challenge Pastor Banks' religious counsel to Walker concerning biblical scripture. An irascible Judge Arguello publicly slandered and maliciously demeaned and impugned the very reputation of Pastor Banks, Walker's wife and son, the codefendants, CSFC and its church members.

The Establishment Clause prohibits the government from being hostile towards religion or making disparaging remarks concerning any citizen's exercise of their religion. According to the Supreme Court of the United States, the Establishment Clause in American society "must be a private matter for the individual, family and the institutions of private choice," and the government must be neutral in matters of religious theory, doctrine or practice." SCOTUS also said that the principle of "separation and neutrality is to prevent the trivialization and degradation of religion by too close an attachment to the organs of government."

"Repeatedly and in many contexts, we have warned that courts must not presume to determine...the plausibility of a religious claim." *Burwell v. Hobby Lobby Stores Inc.* 134 S. Ct. 2751; 189 L. Ed. 2d 675 (2014). "For good reason, we have refused to take such a step" as to condemn a plaintiff by saying "that their religious beliefs are flawed." *id.*

Judge Arguello's rude and intemperate conduct and slander towards Pastor Banks and improperly resentencing Walker to time served with Kirsch's approval, reflects the impermissible motive by both Judge Arguello and the government and rendered the habeas proceeding illegitimate. This was judicial misconduct.

LEGAL STANDARD FOR INEFFECTIVE ASSISTANCE CLAIMS

The government points out in its answer brief (Doc. 922) that that to prevail on a claim of ineffective assistance of counsel, a defendant must show: (1) his counsel made errors so serious that counsel was not functioning as the 'counsel guaranteed the defendant by the Sixth Amendment," and (2) counsel's performance prejudiced him in that 'there is reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The government also addresses 10th Circuit habeas requirement that "a defendant may establish his entitlement to habeas relief only by providing evidence that failure to hear his claims will result in a miscarriage of justice, e.g., by showing that the claimed error in the trial proceedings probably resulted in the conviction of one who is actually innocent. See *United States v. Cervini*, 379 F.3d 987, 990-991 (10th Cir. 2004)."

The government appropriately argued that Walker could make no legitimate claim that his conviction was caused by ineffective assistance of counsel so he instead feebly argued that he received ineffective assistance of counsel during sentencing, based on his attorney Gwendolyn Solomon laboring under a conflict of interest after Walker agreed in open court to have Solomon represent him. Judge Arguello's impermissible motive for the 2255 proceeding raised its ugly head when Solomon was subpoenaed to testify on June 22, 2017. Solomon, who was not the lead attorney for Walker, was peppered with questions, not about ineffective assistance, but about Pastor Banks and CSFC. Solomon responded forcefully on the stand that she had not be asked a single question related to ineffective assistance of counsel claims. Case law from the 10th Circuit and others makes it clear Walker's claims of religious and other types of coercive influence are an inadequate evidentiary basis to warrant relief on direct appeal or a 2255 motion without threat of seriously bodily injury or death, especially when those claims are not raised during trial, sentencing or direct appeal, as was the case with Walker.

In the 1st Circuit case of *United States v. Paniagua* (1998 U.S. App. Lexis 12494), throughout the trial, Paniagua attempted to build a defense by eliciting testimony to demonstrate that his gang leader was a religious priest in the Santeria and Palerus religions and had exerted such extraordinary power and control, and influence over him, that he was incapable of resisting the priest's entreaties to commit the charged offense. The Paniagua court found that "neither the scant testimony concerning defendant's generalized fear of Rodriguez's position as a religious figure nor the testimony describing the pressure to commit crime that inures from gang association provides an adequate evidentiary basis from which a reasonable jury could find that Paniagua committed the charged offense under an immediate threat of serious bodily injury or death and had no reasonable opportunity to avoid committing it." See also *United States v. Contreras*, 180 F.3d 1204 (10th Cir. 1999) (held that parental influence and emotional coercion not a permissible basis for downward departure absent threat of immediate bodily harm and well-grounded fear that threat will be carried out).

"[A] defendant's religious beliefs regarding the merits of confessing one's wrongdoing and his desire to appease his family or give in to their desires are self-imposed coercive elements." said 10th Circuit Chief Judge Timothy Tymkovich in a 2015 opinion (case no. 14-4121).

It is well settled law, ubiquitous throughout the federal courts, that 2255 motions are not available to test the legality of a matter which should have been raised on direct appeal and that a defendant's failure to present an issue on direct appeal bars him from raising the issue in his 2255 motion. If defendant claims of mental competency and insanity during commission of crime are barred from 2255 relief, Walker's bald assertions of "my pastor was controlling my mind and influenced me to commit a crime and fire my attorney" are certainly barred. See *Bryant v. United States*, 468 F.2d 812 (8th Cir. 1972); *Hahn v. United States*, 178 F.2d 11 (10th Cir. 1948).

JUDGE ARGUELLO'S DISCRIMINATORY SENTENCING PRACTICES

At the completion of Walker's 2255 hearing, Judge Arguello improperly and arbitrarily granted Walker a reduction/departure from his original sentence of 135 months to 70 months based on what she said was "coercion" by Pastor Banks. In the *Contreras* case mentioned above, the 10th Circuit made it clear that "coercion" is not "an appropriate ground for departure" in the absence of serious threat of bodily harm, none of which were present in Walker's allegations. Furthermore, they were not raised during trial, sentencing or direct appeal and should be procedurally barred. The *Contreras* court said it was improper for the trial judge to use coercive "parental influence" and "sympathy" for Ms. *Contreras* being separated from her three children as factors in determining a downward departure. Just before resentencing Walker, Judge Arguello did exactly the same thing.

Judge Arguello referenced not only Walker's bald, post-conviction assertions of religious and pastoral coercion, but slandered Pastor Banks, her Christianity, and claiming cult-like influence over Walker, Walker's wife, who is Pastor Banks' daughter, Walker's son who is Pastor Banks' grandson, the codefendants and church members, alleged excommunication practices, prophecies, etc. Here is a portion of Judge Arguello's comments:

"And as you indicated to me that it took you two years (in prison) to break your allegiance from Pastor Banks and Colorado Springs Fellowship and had to accept full responsibility for your actions and your conduct...And I know it came at a heavy price and that you lost your wife and son and your tight social group including the comradery of your co-defendants and other parishioners because Pastor Banks forbid them to have contact with you," said Arguello. "Now during the evidentiary hearing there was evidence demonstrating the extent of coercion that you and others were subjected to by Pastor Banks and your inability to challenge or evade the directions received from her as a result of the duress that was imposed," Arguello added. "Now the court finds it hard to fathom how someone who holds herself out to be a prophet of God and as a Christian could be as vindictive and mean-spirited as Pastor Banks...But after your hearing, I have a better understanding of why you did what you did."

"I believe that a sentence of 70 months imprisonment and 3 years supervised release does reflect the seriousness of this offense and is sufficient and that I vary the necessary sentence to achieve the purpose is the same." said Arguello.

Judge Arguello made all of these conclusions and slandered Pastor Banks based solely on Walker's self-serving assertions and testimony of a few disgruntled former church members, most of whom have nothing to do with the case or associated with IRP. Judge Arguello didn't want the truth or she would have conducted a fair proceeding by hearing from Pastor Banks, Walker's wife and son, the codefendants or hundreds of people currently members of the church.

It is clear from Judge Arguello's statements to Walker, that she improperly resentenced him. Judge Arguello showed sympathy for Walker by discussing how he has lost his wife, son and comradeship with his codefendants and stating that she has a "better understanding" as to why the 54-year-old Walker couldn't make decisions for himself from being under the control of Pastor Banks and did what he did. Judge Arguello's resentencing Walker on this basis is impermissible under 10th Circuit law.

"While we share the sentencing court's sympathy for Ms. Contreras based on the fact the Guideline range will separate her from her three children for a prolonged period, this fact, neither alone nor in combination with the other impermissible grounds, can justify the downward departure," said the Contreras Court.

In feeling sympathetic and understanding what Walker was going through, Judge Arguello permitted Walker, who had proclaimed his innocence for 9 years prior to filing a habeas petition based on coercion, to plead guilty, accept responsibility and show remorse to receive a reduction in sentence. This too was improper under 10th Circuit law.

The 10th Circuit says that when a defendant pleads not guilty and denies that factual guilt by going to trial, "it is not considered true remorse for his criminal conduct." *United States v. Portillo-Valenzuela*, 20 F.3d 383 (10th Cir. 1994) (quoting *United States v. Ochoa-Fabian*, 935 F.2d 1139, 1143 (10th Cir. 1991)). In "rare situations" a defendant accepting responsibility in pre-trial statements and conduct, may be entitled to a sentence reduction, but not for post-conviction admissions of guilt and expression of remorse." *id.* See also U.S.S.G. 3E1.1 application note.

Judges are required under the law to apply U.S.S.G 3553(a) factors equally to all similarly situated defendants, including factors of nature and circumstances of the offense, history and characteristics of the defendant, amount of loss, and number of victims. Arbitrarily reducing Walker's sentence for an impermissible purpose such as post-conviction assertions of religious/pastoral coercion as an excuse for committing a crime or proceeding pro se, or post-conviction admissions of guilt and acceptance of remorse after denying factual guilt by going to trial to defend one's innocence frustrates the purpose of 3553(a) and was an unequal application of the law. Furthermore, it promoted, rather than reduced nationwide disparities by creating a new and entirely unwarranted disparity and set a dangerous precedent that the Sentencing Guidelines are subject to manipulation at the whims or personal bias of the judge.

Walker was found by Judge Arguello to be a leader/organizer in a conspiracy of six executives of a small, family-based, technology company where the COO, David Banks, is his brother-in-law by virtue of being married and sleeping with Banks' sister for 30 years. Judge Arguello apparently understood that Walker and the five other codefendants were friends for decades, have attended and see each other 4 times per week in church for 30 years. The defendants are similarly situated in every respect and if Judge Arguello felt the need to cut Walker's sentence below half as a leader/organizer, the same should have been applied equally to the codefendants. Judge Arguello and the government collectively agreeing to reduce Walker's sentence indicates their respective recognition that the defendants are indeed innocent or suffered unduly harsh sentences inconsistent with similarly situated defendants across the country.

JUDGE ARGUELLO'S HISTORY OF ABUSING SENTENCING LAWS

Judge Arguello has shown herself to be rogue and abuse her power when it comes to following sentencing laws of Congress and 10th Circuit instructions. In the case of *United States v. Evans* (case no. 13-1022) Judge Arguello refused to abide by the order of the 10th Circuit in resentencing Evans. Evans was forced to file a second appeal (case no 15-1461) where the second panel rebuked Judge Arguello for not following their sentencing instructions and removed her from the case. In the Evans case, Judge Arguello expressed regret about having to follow sentencing laws and not only told Evans he was a "liar" and she wanted to make him responsible for "the full \$12 million he stole from investors" but manufactured her own false loss theory and number of victims and sent Evans to prison for 10 years. On February 17, 2017, 10th Circuit judge Robert Bacharach rebuked Judge Arguello, telling her that "without loss there could be no victims" and that "there is no evidence that Mr. Evans stole money from investors." In removing Judge Arguello from the case, Bacharach said: "We rarely exercise this power (to assign a new judge) absent personal bias."

In a 2012 case (no. 10-1391), the 10th Circuit found that Judge Arguello disregarded the law, manipulated sentencing guidelines and imposed a sentence where the defendant would serve an additional 57 months in prison. The 10th Circuit said Judge Arguello "expressed intent" to disregard the law because, in Arguello's words, she felt the sentencing guidelines "under-represents the seriousness of criminal history..." "I find that guideline does not fit in [his] circumstances because that will result in a much lower sentence," said Arguello. "I am putting the [Defendant] on notice

that I intend to [increase his sentence] ..." The 10th Circuit rebuked Judge Arguello again, saying "[Judge Arguello] had no discretion in this matter."

Judge Arguello's roguish behavior and continuing abuse of sentencing laws is apparently motivated by a deep internal bias and disdain towards sentencing guidelines established by Congress. Judge Arguello's disdain is routinely manifested in irascible, intemperate comments made by her in court. "So, my view is that the sentencing guidelines are very lax when it comes to white collar crime," Arguello said in a recent July 13, 2017 sentencing hearing where she suggested a 15-year sentence after the government recommended 8 to 10 years for a white-collar defendant.

CONCLUSION

The aforementioned facts, evidence and supporting law shows that Judge Arguello took improper judicial action without an arguable legal basis and engaged in misconduct based on invidious religious animus and abused 2255 proceedings to conduct a religious inquisition against Pastor Banks, her church and its members. Judge Arguello abused the power of the federal bench to make demonstrable, hostile and slanderous comments against Pastor Banks. Additionally, Judge Arguello, with no arguable legal basis, discriminated against other codefendants and defendants nationwide by arbitrarily resentencing Gary Walker from 135 months to 70 months based on Walker's new post-conviction claims of being under the psychological control of Pastor Banks. Judge Arguello presumably released Walker in retaliation for his codefendants previously filing a judicial complaint against her for other misconduct during their trial for violating Rule 16 of the Federal Rules of Criminal Procedure and the 5th & 6th Amendment rights of the defendants (See 10th Cir. complaint nos. 10-16-90010 to 10-16-90013). Judge Arguello has a history of disregarding prevailing legal standards of the 10th Circuit and federal statutes related to the sentencing laws, and in this case, she unequally applied United States Sentencing Guidelines (USSG) 3553(a) factors requirement for similarly situated defendants.

Based on the aforementioned, I respectfully submit this complaint of judicial misconduct this 20th day of July 2017 and I also declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

Lamont Banks, Executive Director
A Just Cause
3578 Hartsel Drive, Suite 362
Colorado Springs, Colorado 80920