

In the matter of Rogério Chaves Scotton vs. United States

CASE NO: 17-CV-62428-KMW

RE: MOTION TO AMEND THE MOTION TO OBJECT THE MAGISTRATE REPORT AND A REQUEST FOR EVIDENTIARY HEARING.

**UNITED STATES DISTRICT COURT
IN THE
SOUTHERN DISTRICT OF FLORIDA**

FILED BY AG D.C.
MAY 25 2021
ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIAMI

**ROGERIO CHAVES SCOTTON,
Petitioner,**

CASE NO: 17-cv-62428-KMW

Vs.

**UNITED STATES OF AMERICA,
Respondent.**

**MOTION REQUESTING PERMISSION TO AMEND THE MOTION TO
OBJECT THE MAGISTRATE REPORT AND A REQUEST FOR
EVIDENTIARY HEARING**

Comes now, Rogério Chaves Scotton, by and through pro se, respectfully moves this Court with this motion to request permission to amend the motion to object the magistrate recommendation report because new evidence has become available. And to ask the Court to grant an evidentiary hearing in interest of justice.

In support of this motion, Scotton states as follows:

As an initial matter, Scotton respectfully request, as a prose litigant, that this Court construe his motion liberally pursuant to HAINES vs. KERNER, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), accepts all factual allegations contained herein and as detailed under this application as true, and evaluates all reasonable inferences derived from those facts in the light most favorable to Scotton. TANNENBAUM vs. UNITED STATES, 148 F.3d 1262 (11th Cir. 1998). Indeed, Scotton reminds the Court that this is a prose motion that should be deserving of the less stringent standard of consideration mandated under UNITED STATES vs. JONES, 125 F.3d 1418, 1428 (11th Cir. 1997), and the Court “must look beyond the labels of petition filed by prose detainees to interpret them under whatever statute would provide relief”. MEANS vs. ALABAMA, 209 F.3d 1241, 1242 (11th Cir. 2000) (per curiam); ANDREW vs. UNITED STATES, 373 U.S. 334, 337-38, 83 S. Ct. 1236, 10 L. Ed. 2d 383(1963). “[A]djudication upon the underlying merits of claims is not hampered by reliance upon the titles Scotton’s put upon their documents”. (quotation omitted). This practice acknowledges the importance of allowing meritorious claims to be heard and decided regardless of mere pleading defects introduced by legally unsophisticated litigants, as this one filed by Scotton. Because here Scotton seeks justice which was not done whatsoever in this case.

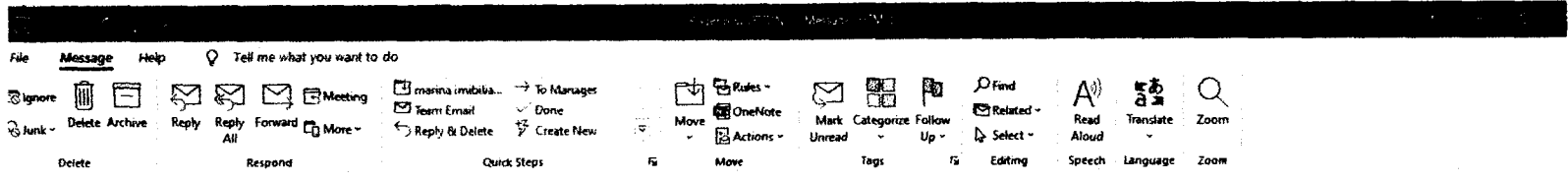
I. RELEVANT BACKGROUND

On April 18, 2021 (Sunday) attorney Kristy Figueroa Contreras sent an email to justiceforrogerioscotton@fmail.com requesting to talk and to resolve the matter of the money took from the Petitioner and his family on November 2014 in order for the attorney to represent the Petitioner during his direct appeal.

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Rogerio SCOTTON

Kristy Figueroa-Contreras <Kristy@figueroa-law.com>

To: justiceforrogerioscotton@gmail.com

You replied to this message on 4/18/2021 12:01 PM.

reetings. I received the message. I would like to speak with you on Monday if you are authorized to represent Rogerio. Please let me know what number I can reach you at and at what time.

Thank you.

Cordial regards,

Kristin Figueroa-Contreras, Esq., B.C.S.

- Immigration and Criminal Defense Practice
- Board-Certified Expert in Immigration & Nationality Law
- Member, Florida Bar 2020-2021 Immigration & Nationality Law Board Certification Committee

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Telephone: (+1) 305-639-8599 / Facsimile: (+1) 305-397-1384

E-mail: Kristy@figueroa-law.com

Web: <http://www.figueroa-law.com>

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Save trees, save paper. Please consider the environment before printing this e-mail.



Under numerous email the attorney confessed that took the money from Rogerio Scotton and thus, confessed that the Petitioner were submitted to injustice by the government. The attorney further told the Petitioner brother that his deportation as illegal and that the Petitioner should continue his fight for justice because his case must be reversed.

On previously motions, the Petitioner have asked this Court to intervene on the matter that he was prevented from an attorney of his choice during his direct appeal because Ms. CONTRERAS took over 60,000.00 from the Petitioner and never even submitted a motion to appear in Court on his behalf. The Petitioner further submitted numerous evidences and a

complaint to Florida bar against this attorney. Nothing was done from this court neither from the Florida Bar.

As this Court could clearly see now, the Petitioner have placed his case and numerous evidences on the public view demand justice. One of the issues placed under different social media as regarding attorney Contreras. The Petitioner further email the attorney partners and other co-leagues on the issue.

After being exposed to the public and after the Petitioner filed another complaint to the Florida Bar and one with the State of attorney's office, the attorney felt that there is no exit and that she could not get way with her misconduct and fraud anymore. She contacts the Petitioner's family requesting those videos be taken down that she would pay part of the money owed to the Petitioner.

There is a clear evidence here that attorney Contreras only decided to pay back some of the funds took, because she was exposed. Without this case been placed on public view, the attorney would have gotten away with the fraud. Thus, because this attorney bad behavior and misconduct, the Petitioner six amendment right to have an attorney of his choice during the direct appeal were violated by attorney Contreras, who have taken the only funds the Petitioner had at that moment, during his direct appeal. The Petitioner constitutional rights were violated. This Court should reverse the petitioner conviction and grant him his evidentiary hearing which is clear demand in this case in the interest of justice.

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Message Actions: Ignore, Delete, Archive, Reply, Reply All, Forward, Meeting, Move to?, Team Email, Create New, To Manager, Reply & Delete, Rules, OneNote, Actions, Mark Unread, Follow Up, Find, Related, Select, Read Aloud, Translate, Zoom

Re: Refund agreement to Rogerio Scotton for \$25,000

 Kristy Figueroa-Contreras <Kristy@figueroa-law.com>
To: Rogeno Scotton

Reply Reply All Forward ...
Tue 4/20/2021 8:33 PM

Thank you very much, Alexandre. I appreciate it. Yes, I think it's only fair that he wait until I make that first good faith payment before taking that last step on his website. I completely understand. Please take this email as confirmation of our discussion yesterday, that I will be sending 25,000, at the rate of \$5000 monthly, if not sooner, beginning next week. As per your email, as soon as I'm ready to transfer next week, I will let you know, and you will provide me the instructions as to the account where you want me to send the money. I will contact you via WhatsApp with both of my contact numbers, so you can always reach me directly through there. I will be in touch next week.

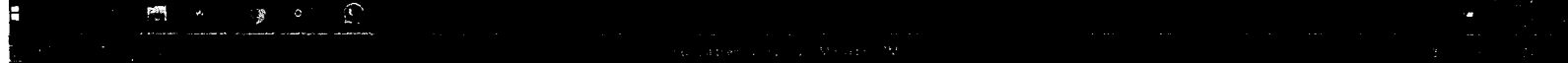
Kind regards,
Kristy Figueroa-Contreras, Esq., B.C.S.

- Immigration and Criminal Defense Practice
- Board-Certified Expert in Immigration & Nationality Law
- Member, Florida Bar 2020-2021 Immigration & Nationality Law Board Certification Committee

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email: Kristy@figueroa-law.com
 web: <http://www.figueroa-law.com>


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Re: Just tried calling you

 Kristy Figueroa-Contreras <Kristy@figueroa-law.com>
To: justiceforrogencotton@gmail.com

Reply Reply All Forward ...
Mon 4/19/2021 1:48 PM

From: Kristy Figueroa-Contreras <Kristy@figueroa-law.com>
 Sent: Monday, April 19, 2021 1:04 PM
 To: justiceforrogencotton@gmail.com
 Subject: Just tried calling you

Hi,
I did not get home until a little early and just tried you at the 561 and 954 numbers listed in your email. I left you a voice mail on the 954 number.

Thank you.
Kind regards,
Kristy Figueroa-Contreras, Esq., B.C.S.

- Immigration and Criminal Trial Practice
- Board-Certified Expert in Immigration & Nationality Law
- Member, Florida Bar 2020-2021 Immigration & Nationality Law Board Certification Committee
- Of Counsel to Michael J. Liberatore, P.A.

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Ignore Delete Archive Reply Reply All Forward More Meeting Move to: Search Email Create New To Manager Reply & Delete Move OneNote Actions Mark Follow Unread Tags Editing Speech Language Zoom

Phone call

Kristy Figueroa-Contreras <Kristy@figueroa-law.com>
To: justiceforrogenioscotton@gmail.com

image001.jpg
384 KB

Reply Reply All Forward Sun 4/19/2021 12:23 PM

Thank you, Alexandre. There are a lot of things that were not understood by your brother, but the reason I hadn't spoken to him directly anymore is because —at least according to the employees of my Angolan client who befriended him at FDC—, he made all sorts of untrue defamatory allegations about me of a sexual nature. He also used information I had provided him in pro se filings and filed a bar complaint containing untrue statements. I know Roger has been though a lot, and yes, I want to put this behind all of us, even if I still wholeheartedly disagree with his allegations against me.

will try you tomorrow that number. I can't promise you it will be at 11:30, but you can always call me back if anything. I hope your mom is doing ok.

Cordial regards,

- Kristin Figueroa-Contreras, Esq., B.C.S.
 • Board-Certified Expert in Immigration & Nationality Law
 • Member, 2019-2020 Florida Bar Immigration & Nationality Law Certification Committee

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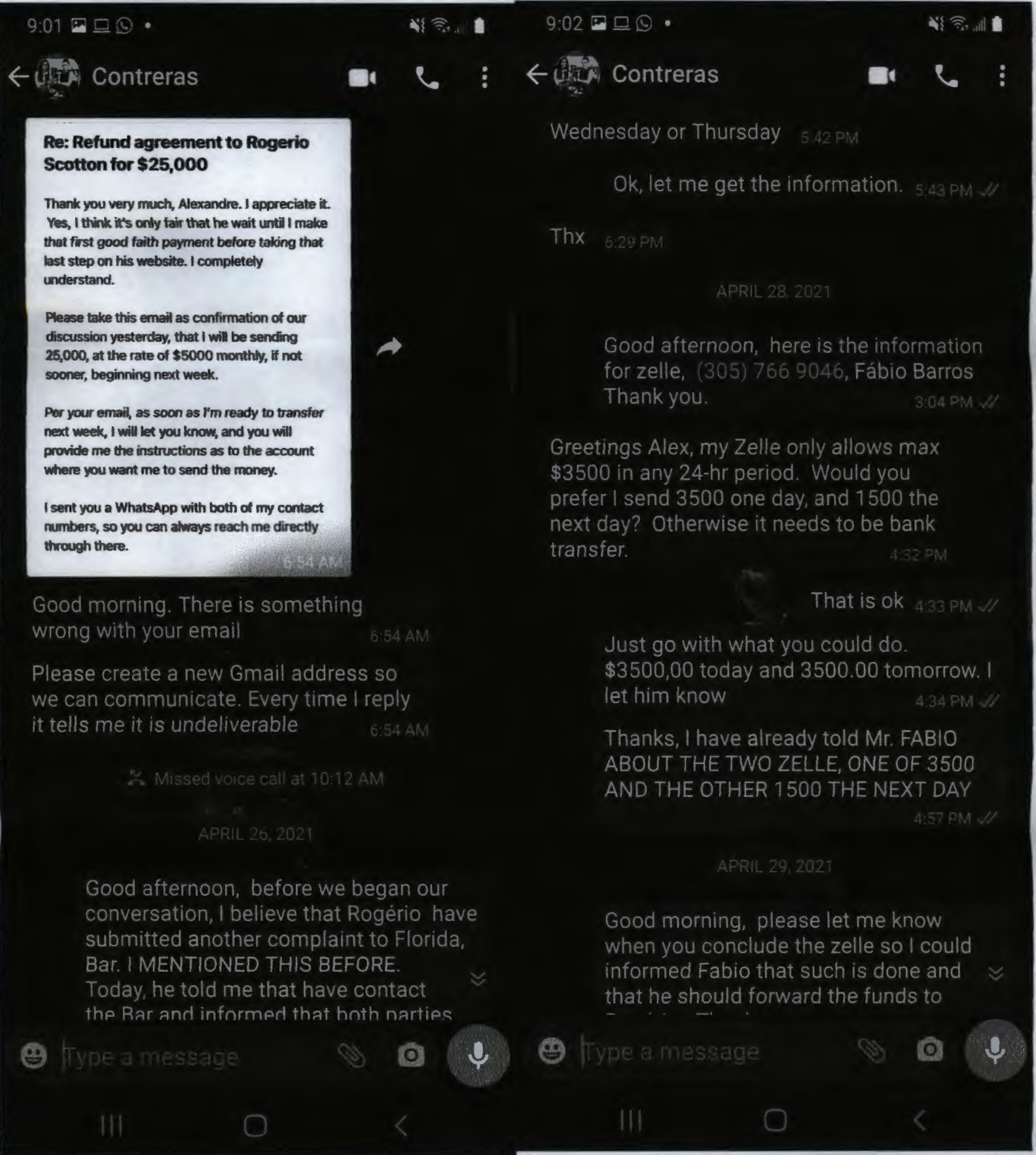
United States
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 E-mail: Kristy@figueroa-law.com
 Web: http://www.figueroa-law.com

Skype Name: k.figueroa-contreras
 Follow me on Twitter: https://www.twitter.com/immCrimDefense

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Re: Refund agreement to Rogério Scotton for \$25,000

Thank you very much, Alexandre. I appreciate it. Yes, I think it's only fair that he wait until I make that first good faith payment before taking that last step on his website. I completely understand.

Please take this email as confirmation of our discussion yesterday, that I will be sending 25,000, at the rate of \$5000 monthly, if not sooner, beginning next week.

Per your email, as soon as I'm ready to transfer next week, I will let you know, and you will provide me the instructions as to the account where you want me to send the money.

I sent you a WhatsApp with both of my contact numbers, so you can always reach me directly through there.

6:54 AM

Good morning. There is something wrong with your email
6:54 AM

Please create a new Gmail address so we can communicate. Every time I reply it tells me it is undeliverable
6:54 AM

Missed voice call at 10:12 AM

APRIL 26, 2021

Good afternoon, before we began our conversation, I believe that Rogério have submitted another complaint to Florida, Bar. I MENTIONED THIS BEFORE. Today, he told me that have contact the Bar and informed that both parties

Wednesday or Thursday 5:42 PM

Ok, let me get the information. 5:43 PM ✓✓

Thx 6:29 PM

APRIL 28, 2021

Good afternoon, here is the information for zelle, (305) 766 9046, Fábio Barros Thank you.
3:04 PM ✓✓

Greetings Alex, my Zelle only allows max \$3500 in any 24-hr period. Would you prefer I send 3500 one day, and 1500 the next day? Otherwise it needs to be bank transfer.
4:32 PM

That is ok 4:33 PM ✓✓

Just go with what you could do. \$3500,00 today and 3500.00 tomorrow. I let him know
4:34 PM ✓✓

Thanks, I have already told Mr. FABIO ABOUT THE TWO ZELLE, ONE OF 3500 AND THE OTHER 1500 THE NEXT DAY
4:57 PM ✓✓

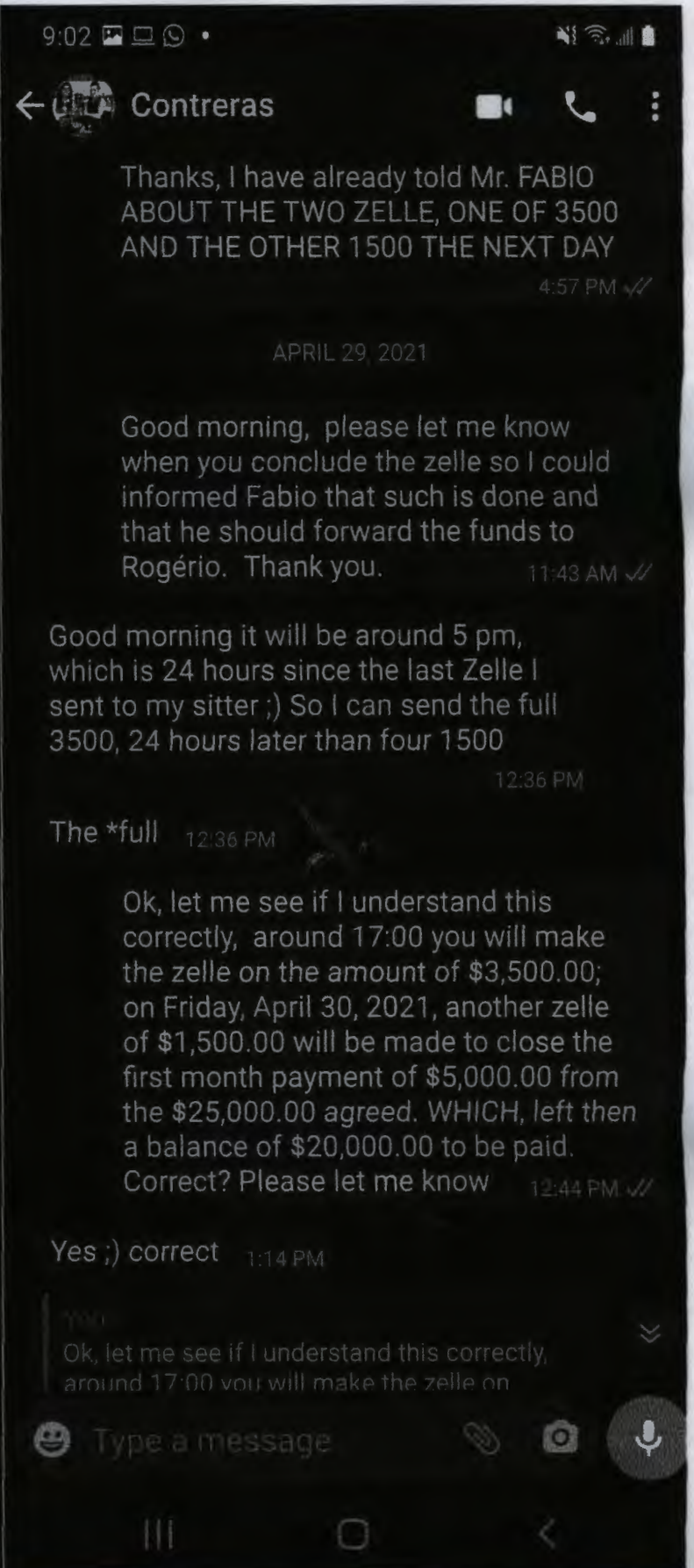
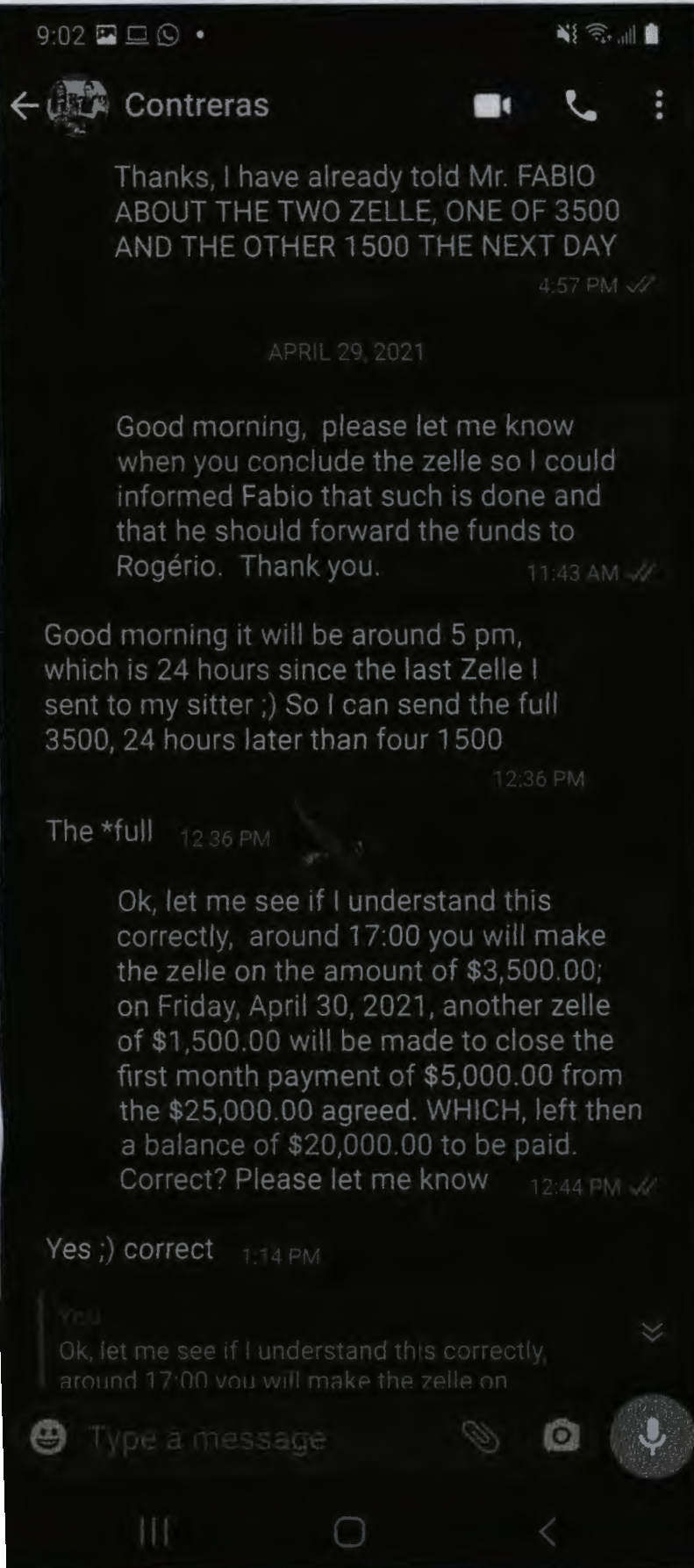
APRIL 29, 2021

Good morning, please let me know when you conclude the zelle so I could informed Fabio that such is done and that he should forward the funds to

In the matter of Rogerio Chaves Scotton vs. United States

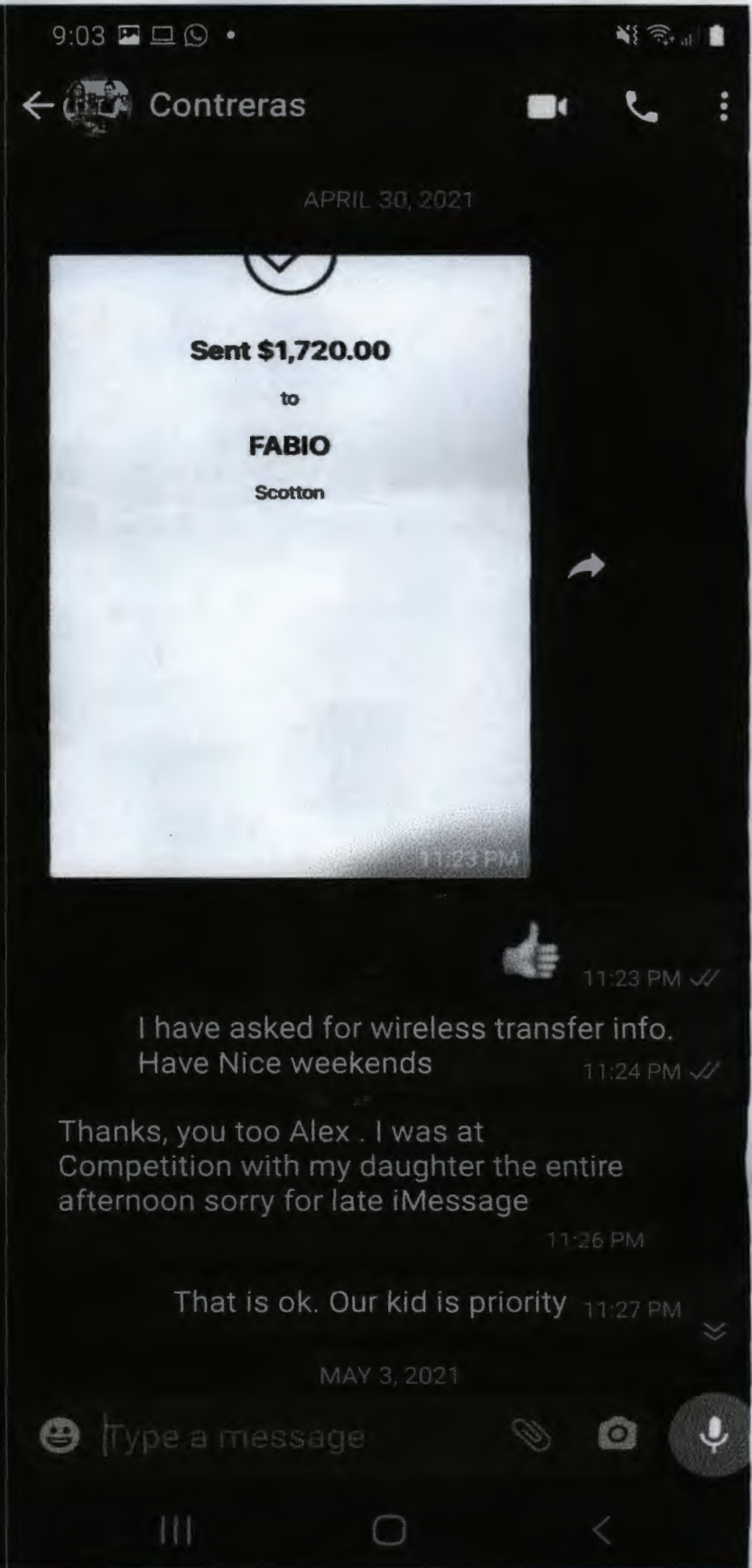
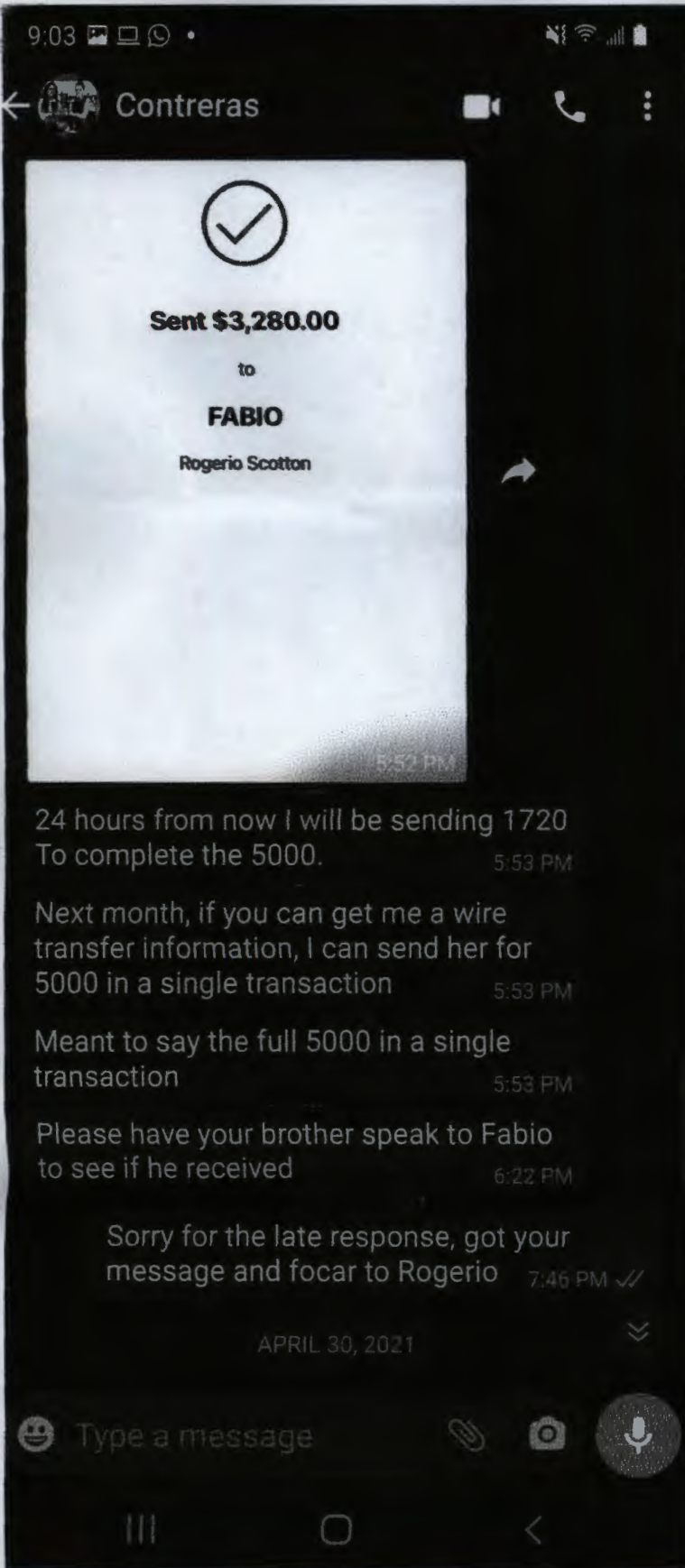
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The United States Supreme Court held in Townsend vs. Sain, 372 U.S. 293, 312-13, that this district court must hold an evidentiary hearing when a habeas petitioner “alleges facts which, if proved, would entitle him to relief,” and “the habeas applicant did not receive a full and fair evidentiary hearing” on the issue.

The Petitioner in this case have proved the facts that would entitle him to relief therefore, he is entire to an evidentiary hearing. Aron v. United States, 291 F.3d 708, 715 n. 6 (11th Cir. 2002) (“The law is clear that, in order to be entitled to an evidentiary hearing, a petitioner need only allege — not prove — reasonably specific, nonconclusory facts that, if true, would entitle him to relief.”) (emphasis in original). Indeed, if a factual dispute exists, a hearing must be held. See Bender v. United States, 387 F.2d 628, 630 (1st Cir. 1967) (Affidavit/counter affidavit established a disputed fact, hearing required). Again, this makes sense. Evidentiary hearings are designed to settle factual disputes.

In this case, attorney Contreras was retained to provide the Petitioner Scotton legal assistance during his direct appeal. The attorney failed to follow professional standards while promises to represent the Petitioner.

Second, there is numerous evidences that Richard Klugh legal assistance was ineffective and troubling and because Contreras have prevented the Petitioner to have an honestly and competent attorney durance his direct appeal, by taken the only funds, there is absolute clear and convince “reasonable probability” that both lawyer’s poor representation negatively affected the outcome of Petitioner’s direct appeal and the outcome to this case. Strickland v. Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674, 694 (1984) (“The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.”). The Petitioner have the right to have effective counsel during a direct post-conviction appeal. Evitts v. Lucey, 469 U.S. 387, 396, 105 S. Ct. 830,

836, 83 L. Ed. 2d 821, 830 (1985) (establishing that the defendant's 14th Amendment right to effective counsel during trial extends to a first appeal). A finding that the Petitioner had ineffective counsel during his first appeal demand "de novo" appeal and/or, a reversal of the Petitioner conviction. McHale v. United States, 175 F.3d 115, 119 (2d Cir. 1999) (reinstating appeal upon finding that appellate counsel's ineffectiveness caused dismissal of original appeal). Because such it is in the interest of justice. State v. Weeks, 166 So. 2d 892, 897 (Fla. 1964) ("Each case must be decided in the light of 5th Amendment Due Process requirements.").

The Petitioner contends that the U.S. Constitution guarantees effective appellate counsel, just as it guarantees effective counsel at trial. Evitts v. Lucey, 469 U.S. 387, 396 (1985). When trial counsel makes mistakes impacting the appeal, or appellate counsel was ineffective, the Petitioner may file a postconviction motion seeking section 2255 relief.

There are numerous records in this case as well as under the Court of Appeal records that shows that the Petitioner have instructed the Appeal attorney on numerous occasions to appeal specifically reversed issues and counsel failed to do so. See also Dowell v. United States, 694 F.3d 898, 903-04 (7th Cir. 2012) (Remand for IAC determination when allegation made that defendant instructed counsel to appeal a specifically reserved issue and counsel failed to do so); Ballard v. United States, 400 F.3d 404 (6th Cir. 2004). Section 2255 relief was granted when counsel provided ineffective assistance of counsel on appeal by failing to raise an Apprendi issue that would have been successful. See also Alaniz v. United States, 351 F.3d 365 (8th Cir. 2003)(Granting section 2255 relief when counsel failed to appeal an improper Guidelines aggregation that resulted in an otherwise inapplicable mandatory minimum); Brown v. United States, 167 F.3d 109 (2d Cir. 1998)(Failure to appeal constitutionally deficient jury instructions amounted to ineffective assistance of counsel, section 2255 relief granted); United States v. Williamson, 183 F.3d 458 (1999)(Section 2255 relief granted when counsel failed to raise on appeal dispositive precedent that would have resulted in a lower Guideline range); Stallings v. United States, 536 F.3d 624 (7th Cir. 2008)(Remand

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for IAC determination when counsel failed to raise Booker issue on appeal). Petitioner now urges this Court to hold that claims of ineffective assistance of counsel has occurred during the direct appeal. United States v. Frady, 456 U.S. 152, 167—168 (1982); Bousley v. United States, 523 U.S. 614, 621—622 (1998). In fact, the Supreme Court have hold in JOSEPH MASSARO, PETITIONER v. UNITED STATES that an ineffective-assistance-of-counsel claim may be brought in a collateral proceeding under §2255, whether the petitioner could have raised the claim on direct appeal.

There may be cases in which trial counsel's ineffectiveness is so apparent from the record that appellate counsel will consider it advisable to raise the issue on direct appeal. There may be instances, too, when obvious deficiencies in representation will be addressed by an appellate court sua sponte. In those cases, certain questions may arise in subsequent proceedings under §2255 concerning the conclusiveness of determinations made on the ineffective-assistance claims raised on direct appeal; but these matters of implementation are not before us. The Supreme Courts hold that failure to raise an ineffective-assistance-of-counsel claim on direct appeal does not bar the claim from being brought in a later, appropriate proceeding under §2255.

Nonetheless, the Petitioner have presented to this Court clear e substantial claims that he was provided with ineffective assistance during his direct appeal which shows even false claims made by his appeal attorneys that in federal Courts there is no verbal audio recordings. Now, there is clear evidence in this case that another license attorney, (Contreras) has prevent the petitioner from have an attorney of his choice when she took \$65,000 with false promises to represent him during his direct appeal. The direct appeal records, the evidence presented by the Petitioner here under this section 2255 and under the entire case record shows injustice, massacre judicial, corruption, prosecutorial misconduct, fraud upon this court and serious constitutional violation that the law demands the vacation of the Petitioner conviction, the dismissed of this case. All times the Petitioner have presented for this Court and others this matter of Contreras fraud. Nothing was ever done because everyone had believed on false statement

introduced on records by the trial judge. But here we are, years later a section 2255 filed on December of 2017 with more discovery evidence and a clear confession of fraud conduct from a License attorney Contreras who violated the petitioner constitutional rights to have a lawyer of his choice. That along with the others violation established and proved at bar. The Petitioner conviction must be vacated and reversed, this case completed dismissed and closed.

Conclusion

The time has come Honorable Judge William, there is too many evidence and too many misconduct and constitutional violation is this case that the law and justice required the vacated and dismiss of this case.

This case presents numerous violations and numerous acts of irreparable injustice. This court should not be looking at anything more or less than the law and the constitutional violations at this stage, regardless of any wrong attitudes of the defender or regarding his unprofessional way to litigate his own case.

Looking at the evidence presented here and during the entire case by the Petitioner, the logic could only be one. The Petitioner Scotton was accused of a revenge plot involving the agent wife, her friend Rosana Duarte and his ex-wife Cirlene Santos and provided with attorneys not interested in justice or law. Rather interest in they personal interesses. There can be no denial that Petitioner Rogério Scotton, a professional race car driver that contribute with this community, as records clearly shows, was unfairly tried, and convicted to only fulfill agent Vanbrunt's wife and Scotton' ex-wife Cirlene Santos desire to destroy his life as revenge for the divorce. Furthermore, there is no dispute that the court, attorney, and others have only fulfill they personal agent, rather than serve justice to a pro se defendant.

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There are more than fifty (50) respected attorneys that have review this case and had the same conclusion that the Petitioner did not receive a fair trial, rather he was executed.

The Petitioner has endeavored to bring justice to his case and prove that this case should have been dismissed eight years ago since the indictment failed state an offense of mail fraud, the amount of constitutional violation and prosecutorial misconduct done on a single defendant case.

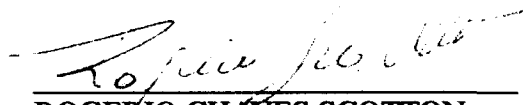
Therefore, this court cannot ignore those constitutional violations that is now on bar. As a result, led to a guilty verdict for a non-existent offense alleged the Petitioner did not committed. The public reputation toward the U.S. system is and has been forever affected.

This conviction should be vacated reverse and dismissed for all the reasons set forth by Scotton under this section 2255, evidence, and all records.

Wherefore, in the interest of justice and fairness, Scotton prays for the reasons stated above, that this Court grant him his 2255.

Scotton submits this motion in good faith and the interest of justice.

Respectfully Submitted,



ROGERIO CHAVES SCOTTON
5201 BLUE LAGOON DRIVE, STE 800
MIAMI, FL 33126

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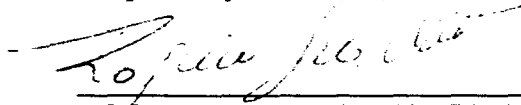
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PROOF OF SERVICE

I Rogerio Chaves Scotton, do certify that on this May 6, 2021, I have served the attached motion to amend Petitioner motion to the magistrate report (which is under Scotton's constitutional rights) on the Southern District of Florida in the above proceeding. I have served this motion via, United States Postal Service (USPS) certified mail.

Respectfully Submitted,



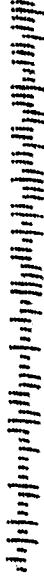
ROGERIO CHAVES SCOTTON
5201 BLUE LAGOON DRIVE, STE 800
MIAMI, FL 33126

Rosemary C. Scott
7997 Golf Club Dr # 204
Wynnton, FL 33063



US District Court
Southern District of Florida
400 N Miami Ave. Room 8N09
Miami FL 33128

3312891805 0075



USMS
INSPECTED RECEIVED

