

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUAN CARLOS HERRERA-GOMEZ,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

08 Civ. 7299 (JGK)

05 Cr. 495 (JGK)

MEMORANDUM OPINION AND
ORDER

JOHN G. KOELTL, District Judge:

The Court has received the attached correspondence from the petitioner, Juan Carlos Herrera-Gomez, in which the petitioner seeks a Certificate of Appealability to file a second or successive habeas petition pursuant to 28 U.S.C. § 2255. In his correspondence, the petitioner has attached a financial statement that contains personal financial information and is therefore filed under seal.

To the extent that the petitioner's motion requests a Certificate of Appealability to appeal the denial of his initial habeas petition, filed August 18, 2008 and denied in the Court's Memorandum Opinion and Order dated November 25, 2009, the petitioner's request is **denied**. The Court declined to issue a Certificate of Appealability in its opinion of November 25, 2009 because the petitioner had failed to make a substantial showing of the denial of a constitutional right, and the petitioner has

not proffered any additional basis in support of the required substantial showing.

To the extent that the petitioner requests a Certificate of Appealability in order to file a second and successive habeas petition pursuant to 28 U.S.C. § 2255, his request is **denied**, because the petitioner's request to file a second and successive habeas petition is properly made to the Court of Appeals for the Second Circuit. See 28 U.S.C. § 2255(h); see also, e.g., Ortiz v. New York, 75 F. App'x 14, 17 (2d Cir. 2003) (summary order). The petitioner should submit his request to file a second and successive motion under 28 U.S.C. § 2255 to the Court of Appeals for the Second Circuit. In petitioning the Court of Appeals for leave to file a second and successive habeas petition, the petitioner should explain the basis for his application, with specific reference to the factors provided in 28 U.S.C. § 2255(h), a copy of which is attached to this Order.

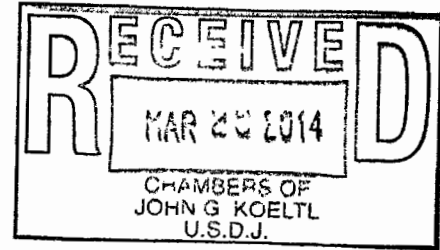
SO ORDERED.

**Dated: New York, New York
 March 31, 2014**

_____/s/_____
**John G. Koeltl
United States District Judge**

MARCH 22 2014

CLERK OF THE COURT
Honorable Judge: John G. Koeltl
UNITED STATES DISTRICT COURT
500 Pearl St.
NEW YORK, NEW YORK.
10007-1312



Case# S2-05-CR-495(JGK)

JUAN CARLOS HERRERA GOMEZ
58020-054
NEOCC
2240 Hubbard Rd.
YOUNGSTOWN, OHIO.
44505

**MOTION
REQUEST FOR CERTIFICATE OF APPEALABILITY**

I Juan Carlos Herrera Gomez, a Federal Inmate in Custody ask this Honorable Court for a Certificate of appealability to file a second or successive motion under section 2255.

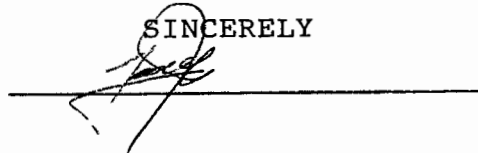
I ask this court to allow me to proceed in pro-se form and to grant this petition for appeal. The basis for appeal are with merit and evidence will be provided for review, I have been doing research on my case, and feel that I can proof the allegations within.

I am an incarcerated appellat who can not afford to pay the fee and asks this Court to allow me to proceed in FORMA PAUPERIS,. Attach is a copy of my Financial statement from this Facility (prison), for the past (6) six months, to state my case for indigent Inmate.

In doing so I ask this Court to proceed in a less stringent matter and consider the fact that I am not an expert of the interpretation of the Law, and that I am not a U.S Citizen therefore a language barrier has a burden on myself.

I will appreciate any consideration on the review and its contents,. I will also appreciate the granting of both issues for a proper proceeding, 1# Certificate of appealability and the Financial burden and allow me to proceed in Forma Pauperis. I want to thank you for your time and help in this matter.

SINCERELY

A handwritten signature in black ink is written over a solid horizontal line. The signature is somewhat stylized and appears to be a name with a surname. The line extends across the width of the signature.