

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

United States of America,

Plaintiff,

vs.

Joy Pope,

Defendant.

Court File No: CR-03-492
United States Court House,
Brooklyn New York

**NOTICE OF MOTION AND MOTION
TO REOPEN MATTER PURSUANT TO RULE 11 (E)/ COLLATERAL
ATTACK AND *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010)
IN THE ALTERNATIVE CORAM NOBIS MOTION
TO VACATE / SET ASIDE CONVICTION**

NOTICE OF MOTION

PLEASE TAKE NOTICE that as soon as Counsel can be heard, before United States District Court Judge, in Eastern District of New York, United States Court House, Brooklyn, New York, Defendant Joy Pope by and through her Counsel will bring the following

MOTION

Motion before the aforementioned Court requesting the Court to reopen this matter and to permit Defendant to withdraw the guilty plea entered in this matter on July 30, 2003 to Count One Mail fraud on the grounds that she received ineffective assistance of counsel, therefore abrogating her fundamental constitutional right to counsel. As a result of which Defendant was misled and was not accurately or appropriately advised, nor did she understand, the immigration consequences that would result from ill advised plea. The said guilty plea also failed to meet constitutional standards as there was no clear explanation or basis for the penalty, or monetary loss tied to the count one to which she pled guilty to, the said plea also lacks basis for the amount

of restitution of \$67,000.00 Defendant was asked to pay relating to Count one she pled guilty to. The plea was involuntary.

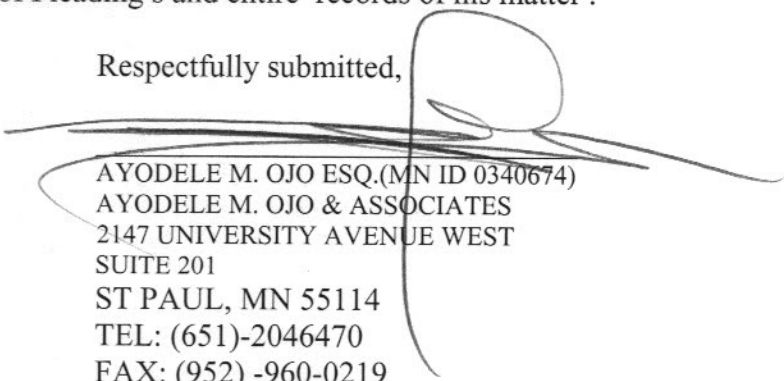
Defendant , through counsel, hereby moves the Court for an Order reopening this matter and allowing Defendant to withdraw her guilty plea to the charge of Count one Mail Fraud T.18, U.S.C § § 1341, 1010, 2 and 3551 et seq. entered on July 30, 20003.

This Motion is based on the grounds that the defendant did not receive effective assistance of counsel when defendant's counsel answered "no": on the record to the question by the Court on whether or not the plea agreement may lead to deportation of the Defendant. see transcript of pleading @ 7 page 5 . Defendant was misled and not aware of or advised – as required by the seminal case of *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010) – of the draconian immigration consequences that would result from pleading guilty or that the Department of Homeland Security would institute removal proceedings against her. This is neither fair nor just as it violates Petitioner's procedural and substantive due process rights guaranteed to every criminal defendant by the United States Constitution.

The motion is brought made pursuant to Rule 11 (e) Federal Rules of Criminal Procedures , *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), all other relevant case law, as well as attached Memorandum of Law, Transcripts of Pleadings and entire records of his matter .

Respectfully submitted,

Dated: November 14, 2012



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