

**DEC 16 1997**

**PATRICK FISHER**  
Clerk

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

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ANDRES T. DEPINEDA, named as  
petitioner on behalf of Manuel Sesario  
Depineda,

Petitioner-Appellant,

v.

RANDY HENDERSON, C.M.C.;  
ATTORNEY GENERAL FOR THE  
STATE OF COLORADO; SUSAN  
JONES, Assistant Superintendent; and  
FRANK MILLER, Assistant  
Superintendent,

Respondents-Appellees.

No. 97-1335  
(D.C. No. 97-D-1310)  
(District of Colorado)

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**ORDER AND JUDGMENT\***

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Before **PORFILIO, KELLY**, and **HENRY**, Circuit Judges.

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Andres T. Depineda filed a pro se action in the district court seeking a writ of habeas corpus on behalf of his brother Manuel Sesario Depineda. Manuel is an abusive filer already sanctioned by this court for his persistent frivolous litigation in an order

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

enjoining him from litigating unless represented by a licensed attorney. *Depineda v. Hemphill*, 34 F.3d 946 (10th Cir. 1994). This proceeding is a clumsy and thinly disguised attempt to evade our injunction and avoid the consequences. The district court properly held Andres Depineda lacked standing to bring this wholly frivolous action, and we **AFFIRM** that holding. Andres and Manuel Depineda are further put on **NOTICE** that any attempt by either or both of them to evade the injunction ordered restricting pro se litigation by Manuel Depineda may result in further sanctions by this court. The application to proceed without payment of fees is **DENIED** and the "Motion to Dismiss Sua Sponte" is **DENIED**. The mandate shall issue forthwith.

ENTERED FOR THE COURT

John C. Porfilio  
Circuit Judge