

19-6335

No. 19-_____

ORIGINAL

In the
Supreme Court of the United States

JAMES MORRIS BALAGIA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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OCTOBER 16, 2019

SUPREME COURT PRESS

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BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

1. Does *United States v. Gonzalez-Lopez*, 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006) abrogate *Flanagan v. United States*, 465 U.S. 259 (1984) and permit interlocutory appellate review of the denial of counsel of a defendant's choice pursuant to the Collateral Order Doctrine?
2. Does an appellate court have jurisdiction pursuant to the Collateral Order Doctrine to review an order denying a request for a continuance as a reasonable accommodation for a disability when such denial of continuance results in defendant not being represented by counsel of his choosing?
3. Is a defendant entitled to a reasonable accommodation for the disability of his counsel?

PARTIES TO THE PROCEEDING

1. Petitioner James Morris Balagia
2. Respondent United States of America

LIST OF PROCEEDINGS BELOW

- U.S. District Court for the Eastern District of *Texas*
No. 16-cr-176
United States, Plaintiff, v. James Morris Balagia (3) a.k.a. "DWI Dude,"
Defendant.
 - Order Denying Approval of Entry of Appearance, Decision Date: July 27, 2019.
 - Order Denying Opposed Motion to Continue, Decision Date: August 21, 2019.
- U.S. Court of Appeals for the Fifth Circuit
No. 19-40697
United States, Plaintiff-Appellee, v. James Morris Balagia – also known as
DWI Dude, Defendant-Appellant.
 - Decision Date: September 6, 2019.
 - Date of Rehearing Denial: September 27, 2019.

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PETITION FOR WRIT OF CERTIORARI

James Morris Balagia respectfully petitions for writ of certiorari to review the orders of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The court of appeals' opinion addressing the first question presented is unreported and is included in the Petitioner's Appendix at 1a. The district court's order denying the entry of appearance of Petitioner's counsel of choice, which addresses the first question is presented in Petitioner's Appendix at 4a.

The denial of the motion for reconsideration, which addresses the second and third questions presented is unreported and is included in the Petitioner's Appendix at 33a. The district court's order denying Petitioner's motion to continue as a reasonable accommodation for the disability of his counsel, which addresses the second and third questions presented is included in Petitioner's Appendix at 2a.

JURISDICTION

On July 29, 2019, the United States District Court for the Eastern District of Texas, Sherman Division, denied Petitioner's motion seeking to permit the attorney of his choice, Norman Silverman, to enter an appearance in the matter. Petitioner timely appealed to the Fifth Circuit Court of Appeals on August 8, 2019.

By Order dated August 21, 2019, the United States District Court for the Eastern District of Texas, Sherman Division, denied Petitioner's motion for a continuance to permit his counsel to attend necessary medical procedures related to

metastasized breast cancer. Petitioner timely appealed to the Fifth Circuit Court of Appeals on September 20, 2019.

On September 6, 2019, the Fifth Circuit Court of Appeals joined and then dismissed both appeals, reasoning that it did not have jurisdiction as a result of *Flanagan v. United States*, 465 U.S. 259 (1984). Petitioner timely filed a motion for reconsideration advising the Fifth Circuit Court of Appeals that the motion for a continuance was a request for reasonable accommodation. The Fifth Circuit Court of Appeals denied the motion for continuance by order dated September 27, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

This case involves the Rehabilitation Act of 1973:

... the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to— (A) make informed choices and decisions; and (B) achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency, for such individuals;...

29 U.S.C. §701(2)(a)(6).

STATEMENT OF THE CASE

This case presents the question of whether *Gonzalez-Lopez* abrogated *Flanagan*, providing appellate courts with interlocutory jurisdiction to review pre-trial orders denying defendants the right to counsel of their own choosing pursuant to the Collateral Order Doctrine. The Collateral Order Doctrine permits an appellate court to review an interlocutory order if it "(1) conclusively determined the disputed question, (2) resolved an important issue completely separate from the merits of the action, and (3) [is] effectively unreviewable on appeal from a final judgment." *Will v. Hallock*, 546 U.S. 345, 349, 126 S.Ct. 952, 163 L.Ed.2d 836 (2006) (quoting *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144, 113 S.Ct. 684, 121 L.Ed.2d 605 (1993)).

Mr. Balagia sought to exercise his right to be represented by counsel of his own choosing when he retained Daphne Silverman and Norman Silverman to represent him as a team in his criminal matter. When he retained the Silvermans as a team, Mr. Balagia was aware that Ms. Silverman had stage IV metastasized breast cancer and could not try the matter on her own. The Government sought to deny Mr. Balagia's right to counsel of his choosing at every turn in Mr. Balagia's criminal proceeding. In the end, the Government was successful, and the District Court required Mr. Balagia to proceed to trial without the counsel of his choosing. Not only is Mr. Balagia being required to proceed to trial without his chosen team, he must proceed without either member of that team.

Upon interlocutory appeal, the Fifth Circuit Court of Appeals determined that Mr. Balagia, and all defendants, in his situation have no alternative but to proceed through trial without counsel of their choosing because there is no jurisdiction for interlocutory appeal due to *Flanagan v. United States*, 465 U.S. 259 (1984).

1. Mr. Balagia's Sixth Amendment Right to Counsel of His Own Choosing Was Violated by the District Court.

A Fourth Superseding Indictment was entered against Mr. Balagia on January 9, 2019 as a result of his representation of Hermes Casanova Ordonez in *United States v. Hermes Casanova Ordonez, a.k.a. "Megatron,"* Criminal Number 4:13cr38; Segundo Villota-Segura in *United States v. Segundo Villota-Segura*, Criminal Number 4:13cr38; and Aldemar Villota-Segura in *United States v. Aldemar Villota-Segura*, Criminal Number 4:13cr38. Mr. Balagia was charged with 1) Conspiracy to Commit Money Laundering in violation of 18 U.S.C. §1956(h); 2) Obstruction of Justice and Aiding and Abetting in violation of 18 U.S.C. §§1503, 1512(h) and (i) and 2; 3) Violation, Endeavor, and Attempt to Violate the Kingpin Act in violation of 21 U.S.C. §1904(c)(2); 4) Conspiracy to Commit Wire Fraud in Violation of 18 U.S.C. §1343, which is a violation of 18 U.S.C. §1349; and 5) Conspiracy to Obstruct Justice in violation of 18 U.S.C. §371. See Petitioner's Appendix at 34a-54a.

The Government in this matter had enshrined itself in secrecy and misdirection. Making discovery arduous with the Government claiming that documents did not exist and then later "finding" them. Realizing the Government's

scheme, the Silverman's pushed for discovery to be timely provided. Prior to the entry of the Fourth Superseding Indictment, the Government had provided tens of thousands of pages of documents and hours of videos and recordings. Unfortunately, none of this contained discovery critical to Mr. Balagia's defense. In the midst of the long and heated battle over missing discovery and after multiple discovery violations by the Government, the Government filed ex parte "advisories" with the District Court seeking to have Defense Counsel Norm Silverman and Daphne Silverman removed from the matter.

Mr. Balagia filed his first Motion to Compel Discovery on November 6, 2018, little did he know it would not be his last and the issue would not be finalized timely. See Petitioner's Appendix 73a-83a. The delays were as a result of the Government attempting to conceal that at least one of its witnesses worked for the Government. In the coming months, the Government would attempt to persuade Defense Counsel that they were chasing shadows and engaging in conspiracy theories. However, after much pressure, the Government suddenly "found" a document proving that its witness did work for the Government. A document that the Government had insisted, for months, did not exist. Nevertheless, the Government continued to push back against discovery requests.

On November 16, 2018, the Government sought a continuance and the motion hearing regarding discovery was continued to December 12, 2018. See Petitioner's Appendix at 84a – 85a, 6a. On November 26, 2018, the Government sought a second continuance, which was again granted, and the hearing was continued to December

18, 2018. See Petitioner's Appendix at 86a – 74a. At the hearing, the parties reached a sealed agreement regarding discovery. The Government failed to comply, and a follow-up hearing was scheduled for January 4, 2019. See Petitioner's Appendix at 88a. During the January 4, 2019 hearing, the Government advised (insincerely) that they intended to comply with the prior agreement to provide discovery. Compliance was implemented by joint drafting of subpoenas to be served upon FBI, HSI, and DEA. The joint agreement was entered into the record. Despite projecting the appearance of cooperating and complying, it was learned that the Government made the date of compliance with the subpoenas the trial date, too late to be useful to the defense.

In an attempt to force the Government to comply with the agreement and order to provide discovery, Defense Counsel contacted Magistrate Judge Nowak regarding the ongoing issues. On January 9, 2019, a telephone conference was held with Judge Nowak. During that conference, the Government agreed to correct the return date on the subpoenas to the HSI, FBI and DEA with a production date of January 18, 2019. On January 14, 2019, Defense counsel forwarded to the Government a proposed Renewed Motion to Compel as requested by Judge Nowak reflecting additional discovery issues. See Petitioner's Appendix at 89a – 96a.

The Government, in what is believed to be an effort to maintain secrecy regarding its agents' and informants' manipulations in the underlying matter and avoid providing necessary discovery requested by Mr. Balagia, determined to interfere with Mr. Balagia's right to counsel of his choosing. Defense Counsel is now

aware that also on January 14, 2019, just 4 days before the return date on the subpoenas, the Government was filing ex parte “advisories” with the District Court seeking to have Defense Counsel removed from representation of Mr. Balagia.

On January 15, 2019, the Government advised that the FBI had completed its search for responsive documents. On January 15, 2019, Defendant filed his Amended Motion to Compel Discovery. See Petitioner’s Appendix at 89a – 96a. On January 17, 2019, Defendant filed his Amended Renewed Motion to Compel. See Petitioner’s Appendix at 97a – 106a. On January 18, 2019, the Government advised Defense Counsel that it had created a USAFX box for the discovery and that the discovery would be uploaded later that day. Nothing was uploaded.

On January 25, 2019, Defense Counsel inquired as to the status of the documents that were to be produced on January 18, 2019. No response was received. By Order dated February 15, 2019, Defendant and the Government were ordered to respond to any outstanding discovery issues and file any additional discovery motions by Friday, March 8, 2019. See Petitioner’s Appendix at 5a. Incredibly, Defense Counsel continues to await necessary production by the Government and expects that discovery will never be received.

Instead of focusing on providing necessary and relevant discovery to Mr. Balagia, the Government focused on denying Mr. Balagia his right to counsel of his choosing. On January 16, 2019, as a result of the Government’s “advisories” the Court issued Order to Show Cause to Defense Counsel. See *In Re: Norman Silverman*, 4:19-mc-0004-MAC and *In Re: Daphne Silverman*, 4:19-mc-00005-MAC.

Defense Counsel Norm Silverman was served with an Order to Show Cause on January 18, 2019, in *In Re: Norman Silverman*, 4:19-mc-0004-MAC. Defense Counsel Daphne Silverman was served several days later.

On February 15, 2019, the Honorable Marcia A. Crone, trial judge in Mr. Balagia's criminal matter, held a hearing regarding the Order to Show Cause. As a result of the hearing, she suspended Defense Counsel Norman Silverman from practice in the Eastern District of Texas for four months and removed him from representing Mr. Balagia, over Mr. Balagia's objections. See Petitioner's Appendix at 7a-32a.

Upon the completion of Mr. Silverman's 4-month suspension and his return to good standing in the Eastern District of Texas, Mr. Balagia sought Mr. Silverman's re-appearance in this matter. See Petitioner's Appendix at 55a-69a. The Government, without cause, opposed Mr. Silverman re-appearing as Mr. Balagia's counsel, despite being aware that Ms. Silverman was unable to try the case on her own due to stage IV metastasized breast cancer. Mr. Balagia advised the District Court that he had hired the Silvermans to represent him as a team and to deny him the representation of one of them was a denial of his right to counsel of his choosing.

The District Court disregarded Petitioner's assertions that he wanted the Silvermans to represent him as a team and instead focused on Ms. Silverman's inability to try the matter on her own. Therefore, the District Court appointed CJA counsel over Mr. Balagia's objection, incorrectly reasoning that as long as he was represented by two attorneys there was no harm to him, even if those attorneys

were not of his choosing. Appointing CJA counsel did not ensure that Mr. Balagia was represented by counsel of his choosing, nor did it even ensure effective assistance of counsel, because the CJA counsel had not participated in the year-long investigation performed by Norm and Daphne Silverman. The investigation caused Daphne and Norm Silverman to intimately familiar with countless facts and the source from which the facts could be derived as well as the attendant legal issues that pertain to those facts. Without this background, the CJA counsel was not able to assist Ms. Silverman in preparation. Instead, CJA counsel was a hindrance to Ms. Silverman because in addition to attempting to prepare herself for trial, she was forced to expend precious time sharing documents, information, defense theories and trial plans to the CJA counsel.

When presented with the District Court's erroneous deprivation of Petitioner's right to an attorney of his choosing, the Fifth Circuit, citing *Flanagan v. United States*, 465 U.S. 259 (1984), held that "a District Court's pretrial disqualification of defense counsel in a criminal prosecution is not immediately appealable under 28 U.S.C. §1291." See Petitioner's Appendix at 1a. The Fifth Circuit wrongly held that the denial of counsel of one's choosing was not effectively unreviewable after final judgment, thereby ignoring this Court's holding in *United States v. Gonzalez-Lopez*, 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006), that such an error is structural, pervades the entire trial, and requires automatic reversal. Despite the holding of the Fifth Circuit Court of Appeals, the issue is immediately appealable pursuant to the Collateral Order Doctrine because the order

denying Mr. Balagia his right to counsel of his choice fully and completely determined the disputed question, which is separate from the merits of the case, and it is unreviewable upon appeal from final judgment because the damage will have already been done. Specifically, Mr. Balagia's trial counsel, whom he did not choose, may make admissions that Mr. Balagia's chosen counsel would not have made; seek or fail to seek discovery that Mr. Balagia's chosen counsel might have sought; present evidence and witnesses that Mr. Balagia's chosen counsel would not have presented; and fail to present evidence and witnesses that Mr. Balagia's chosen counsel would have presented. Unfortunately, once it is done, the toothpaste cannot be put back into the tube.

2. The District Court and the Fifth Circuit Court Failed to Properly Apply *Gonzalez-Lopez* and Grant a Reasonable Continuance for Counsel's Disability.

On July 23, 2019, Defense Counsel Daphne Silverman received news from MD Anderson regarding new activity in her stage IV metastasized breast cancer. It appears the present treatment may no longer be working to keep her cancer under control. It is likely that the stress of handling this case on her own contributed to the new cancer activity. The tests, which were originally performed on July 22, 2019, must be repeated in 3 months on October 21, 2019 in order to evaluate the speed of progression and determine the next plan of treatment. Ms. Silverman has continued and will continue to see more doctors and receive additional testing continuing through and after October 21, 2019. Ms. Silverman promptly notified the attorneys for the Government and the Court upon learning of the new activity in her cancer.

Petitioner made a motion seeking a reasonable accommodation to continue trial to a date after the medical procedures were completed so the counsel he chose could represent him at trial. See Petitioner's Appendix at 70a-72a. A continuance in the criminal matter of *United States v. Balagia*, Criminal Number 4:16-cr-176, would not have resulted in any prejudice to the Government as the Government's case relied upon videos and documents that would be preserved despite passage of time. Additionally, the parties were (and are) still awaiting discovery from various federal agencies. Nevertheless, by Order dated August 21, 2019, the District Court summarily denied the request for continuance. See Petitioner's Appendix at 2a. Mr. Balagia timely appealed such denial. On September 6, 2019, the Fifth Circuit Court of Appeals dismissed the appeal. See Petitioner's Appendix at 1a. On September 27, 2019, the Fifth Circuit Court of Appeals stated "we lack Jurisdiction over the interlocutory appeal of the denial of continuance as it is not a final order for purposes of the collateral order doctrine." See Petitioners Appendix at 33a.

The Fifth Circuit failed to recognize that the Order denying Petitioner's request for a continuance as a reasonable accommodation for his counsel's medical procedure schedule was a final order denying him the right to his chosen attorney because his chosen counsel could not be available due to her medical disability. Because the failure to grant the continuance resulted in Ms. Silverman's inability to represent Mr. Balagia, he was denied his Sixth Amendment right to counsel of his own choosing. Such denial was reviewable by the Fifth Circuit Court of Appeals pursuant to the Collateral Order Doctrine because the order fully and completely

determined the disputed question as to whether Mr. Balagia could be represented by any counsel of his choosing – the District Court determined he could not. The issue of whether he could be represented by his chosen team, had already been decided by the District Court’s denial of Mr. Balagia’s motion to permit re-appearance by Norm Silverman. The result of the denial of Mr. Balagia’s motion for continuance was to preclude Mr. Balagia from being represented by Daphne Silverman as well. This issue of right to counsel of his choosing is separate from the merits of the case, and it is unreviewable upon appeal from final judgment because the damage will have already been done after trial.

3. Failure to Grant Defendant the Reasonable Accommodation of a Continuance for the Disability of His Counsel Violates the Rehabilitation Act of 1973.

The federal government recognizes that “millions of Americans have one or more physical or mental disabilities.” *Rehabilitation Act* §2(a)(1). Furthermore, “disability is a natural part of the human experience and in no way diminishes the right of individuals to ... (D) contribute to society; (E) pursue meaningful careers; and (F) enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society.” *Rehabilitation Act* §2(a)(3).

Defense Counsel Daphne Silverman is an individual with a disability because she has “a physical impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102(1). The inquiry is whether the impairment “substantially limits the ability of an individual to perform a major life activity as

compared to most people in the general population.” 29 C.F.R. § 1630.2(j)(1)(ii). Ms. Silverman’s ability to live a life free from regular cancer treatments, her ability to eat a “normal American diet,” her ability to live free from pain, her ability to lift weight/engage in aerobic activity, and her ability to breath normally have all been substantially limited by her cancer. As such, she is disabled and entitled to a reasonable accommodation for such disability.

The request for a continuance made by Petitioner was a request for a reasonable accommodation to permit Ms. Silverman to engage in the activity of representing Petitioner without undue hardship to the entity making the accommodation (the court). 45 C.F.R. Sec. 84.12(a). The continuance, necessary to permit Ms. Silverman to undergo her medical procedures and still represent Mr. Balagia would not have resulted in an undue hardship to the district court nor to the Government. The Government’s case is based upon recordings and documents that are not in danger of being lost or destroyed. The trial will proceed in the same manner and along the same schedule, just at a later date.

The district court’s decision to deny Ms. Silverman’s request for a reasonable accommodation has a profound effect on Ms. Silverman and precludes Ms. Silverman from contributing to society and having a career. Specifically, without the requested reasonable accommodation from the court, she is unable to represent her client because she must attend medical procedures to prolong her life. Without the ability to represent her client, she is unable to have a meaningful career or enjoy

full inclusion in the legal community, in which she labored and toiled to become a member.

REASONS FOR GRANTING THE WRIT

1. **The Writ of Certiorari Should be Granted to Clarify the Conflict Between *Gonzalez-Lopez* and *Flanagan*.**

The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense.” United States Constitution, Amendment VI. In 1932, this Court recognized that it is “hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice.” *Powell v. Alabama*, 287 U.S. 45, 53, 53 S.Ct. 55, 77 L.Ed. 158 (1932). Nevertheless, in 1984, this Court determined that “nothing about a disqualification order distinguishes it from the run of pretrial judicial decisions that affect the rights of criminal defendants yet must await completion of trial court proceedings for review.” *Flanagan v. United States*, 465 U.S. 259, 270 (1984). As such, appellate courts held that they do not have jurisdictions to hear interlocutory appeals regarding a defendant’s Sixth Amendment right to counsel of his own choosing, treating such appeal as akin to the right to effective representation.

In 2006, this Court recognized that the right to counsel of one’s own choosing is distinct from the right to effective representation, it is “the root meaning” of the Sixth Amendment. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147–148, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006). In *Gonzalez-Lopez*, this Court made it clear that depriving a defendant of counsel of his choosing is a “structural error” that

“pervades the entire trial.” *Gonzalez-Lopez*, 548 U.S. at 150, 126 S.Ct. 2557). The error occurs immediately “*whenever* the defendant’s choice is wrongfully denied.” *Id.* at 150. Structural errors require a reversal on appeal. *See Neder v. U.S.*, 527 U.S. 1, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999); *Weaver v. Massachusetts*, 137 S.Ct. 1899, 1905, 198 L.Ed.2d 420 (2017); *United States v. Bailon-Santana*, 429 F.3d 1258, 1261 (9th Cir.2005); *United States v. Duarte-Higareda*, 113 F.3d 1000, 1003 (9th Cir.1997).

The harm is immediate, it affects “the framework within which the trial proceeds,” such as “strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument.” *Gonzalez-Lopez*, 548 U.S. at 148-50 (*quoting Arizona v. Fulminante*, 499 U. S. 279 (1991)). As such the issue is immediately appealable pursuant to the Collateral Order Doctrine because the order denying a defendant his right to counsel of his choice fully and completely determined the disputed question, which is separate from the merits of the case, and it is unreviewable upon appeal from final judgment because the damage has already been done.

Unfortunately, this Court did not specifically reference the conflict with *Flanagan* when it issued its decision in *Gonzalez-Lopez*. The result is that a defendant is required to proceed through trial before being entitled to an automatic reversal, wasting the defendant’s, the government’s and the court’s resources in the process.

Unless the writ is granted, defendants will continue to be denied counsel of choice until after a trial has concluded, at which point it will be too late to correct certain decisions made, such as to reveal information, and actions taken, such as to make admissions, by trial counsel whom the defendant did not choose. As such, the Court's decision in *Gonzalez-Lopez* becomes meaningless. Additionally, if the writ is not granted, defendants, defense counsel, the government and the courts will continue to expend time and resources on matters that will be automatically reversed upon appeal. It is judicially expeditious to determine such matters at the interlocutory stage before experts and consultants are paid, attorney hours are expended, court calendars are filled and juries are called to service.

2. The Writ of Certiorari Should be Granted Because a Reasonable Continuance as an Accommodation for the Disability of Chosen Counsel is Required by *Gonzalez-Lopez*.

The Seventh Circuit has recognized that the failure to grant a continuance for a defendant to have the counsel of his choice may constitute a structural error under *Gonzalez-Lopez*. *United States v. Sellers*, 645 F.3d 830, 839 (7th Cir. 2011).

The Fifth Circuit, in denying Mr. Balagia's request for a continuance recognized it as a request for counsel of his own choosing, but wrongly held that a denial of such request is not reviewable on interlocutory appeal. Such denial is reviewable on interlocutory appeal pursuant to the Collateral Order Doctrine as set forth above. Unless the Writ is granted and the conflict between Flanagan and Gonzalez-Lopez is clarified, defendants will be required to proceed to trial without

counsel of their own choosing only to have the matter automatically reversed upon appeal after trial.

3. The Writ of Certiorari Should be Granted Because a Continuance is a Reasonable Accommodation for the Disability of Chosen Counsel.

Unless the writ is granted, defendants who choose counsel with a disability will have no guarantee that reasonable requests for accommodation will be granted. As such, defendants may be denied the counsel of their choosing due to counsel's need for medical treatment with no recourse. The Rehabilitation Act permits requests for accommodation to be made on behalf of the disabled individual. As such, defendants have the right to request accommodation on behalf of their attorneys. Courts should strive to exemplify the purpose of the Rehabilitation Act, not tread upon those with disabilities.

Furthermore, without appropriate guidance from this Court, attorneys who are disabled have no protection to ensure they can continue to obtain gainful employment as the courts can choose not to reasonably accommodate them, leaving them without the ability to practice.

CONCLUSION

For the foregoing reasons, Petitioner, James Morris Balagia, respectfully requests that this Court issue a writ of certiorari to review the judgment of the Fifth Circuit Court of Appeals.

Dated this 14 day of October 2019.

Respectfully submitted,

/s/ James Morris Balagia
By: James Morris Balagia, pro se