No. 19-7091

IN THE
SUPREME COURT OF THE UNITED STATES

ALAN MATTHEW CHAMPAGNE,
PETITIONER,
-vs-
STATE OF ARIZONA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARIZONA

BRIEF IN OPPOSITION

MARK BRNOVICH
ATTORNEY GENERAL

ORAMEL H. (O.H.) SKINNER
SOLICITOR GENERAL

LACY STOVER GARD
CHIEF COUNSEL
(Counsel of Record)

NATE CURTISI
ASSISTANT ATTORNEY GENERAL
CAPITAL LITIGATION SECTION
2005 N. CENTRAL AVE.
PHOENIX, ARIZONA 85004-1580
CADOCKET@AZAG.GOV
TELEPHONE: (602) 542-4686

ATTORNEYS FOR RESPONDENT

CAPITAL CASE

QUESTIONS PRESENTED FOR REVIEW

Has Champagne shown a compelling reason for this Court to grant certiorari to review his challenge to the state court's denial of his motion for change of counsel, where Arizona requires trial courts to inquire into the reasons for a defendant's change of counsel motion and uses a six-factor test—including whether an irreconcilable conflict exists between counsel and the accused—to determine whether the Sixth Amendment requires a change of counsel?

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On August 7, 2019, the Arizona Supreme Court unanimously affirmed Petitioner Alan Champagne's convictions and death sentences in a published opinion. Pet. App. 2a–37a. The court's opinion is reported at *State v. Champagne*, 447 P.3d 297 (Ariz. 2019). On September 6, 2019, the court denied Champagne's motion for reconsideration. Pet. App. 38a–39a.

STATEMENT OF JURISDICTION

Champagne timely filed the instant Petition for Writ of Certiorari within 90 days of the Arizona Supreme Court's order denying his motion for reconsideration. U.S. Sup. Ct. R. 13.1, 13.3. This Court has jurisdiction under Article III, Section 2 of the United States Constitution; 28 U.S.C. § 1257(a); and United States Supreme Court Rule 10.

PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

> 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.

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . .

STATEMENT OF THE CASE

In the early morning of June 24, 2011, Champagne murdered Philmon Tapaha and Brandi Hoffner. Pet. App. 19a–20a. A third person, Elise Garcia, witnessed the murders.[1] *Id.* Garcia was in the bathroom of Champagne's apartment when Tapaha and Hoffner entered the apartment with Champagne. Pet. App. 19a. As Garcia walked into the living room, she heard a gunshot. *Id.* She then saw Champagne standing and holding a gun. *Id.* Tapaha was on the couch with a bullet wound in his head and blood on the walls and couch. *Id.* Hoffner, Tapaha's girlfriend, began crying, and Champagne attempted to calm her by offering her methamphetamine and a bong, which she accepted. *Id.* Garcia testified that Hoffner understood Champagne would not allow Hoffner to leave. Pet. App. 19a–20a. As Hoffner smoked, Champagne approached her from behind holding an electrical cord fashioned into a noose. *Id.* Champagne slipped the cord around her neck and used a wrench to tighten it. Pet. App. 20a. Garcia recalled Hoffner clawing at the cord and her face turning purple as Champagne strangled her to death. *Id.*

Champagne kept the bodies in his apartment for about one week. *Id.* He eventually placed the bodies in a large wooden box and buried them in his mother's backyard. *Id.* A landscaper discovered the bodies about 20 months later. *Id.*

[1] Garcia was initially a co-defendant in this case before accepting a plea deal where she agreed to testify against Champagne. Pet. App. 26a.

The State charged Champagne with two counts of first-degree murder, one count of kidnapping, and two counts of abandonment or concealment of the bodies. *Id.* "The jury convicted on all charges, except that it found him guilty of second-degree murder for the killing of Tapaha." *Id.* The jury also found three aggravating circumstances. Pet. App. 20a. First, Champagne had been convicted previously of a serious offense. *See* A.R.S. § 13-751(F)(2) (2009). Second, his strangling of Hoffner was especially heinous, cruel, or depraved. *See* A.R.S. § 13-751(F)(6) (2009). Third, he committed multiple homicides during the commission of the offense. *See* A.R.S. § 13-751(F)(8) (2009). Pet. App. 20a. The jury further found his proffered mitigation was not sufficiently substantial to call for leniency and sentenced Champagne to death for Hoffner's murder. *Id.*

Champagne's appeal arises out of his pre-trial requests to change counsel. Pet. at 1. Champagne first moved for new counsel *pro se* on June 13, 2014. Pet. App. 40a–43a. The motion was one sentence long and did not include a reason for the request. *Id.* At a status conference on July 23, 2014, the trial court advised Champagne that he should put the "specific reason" he wanted to change counsel in writing. Pet. App. 48a.

Champagne's trial counsel informed the court at that same hearing that she agreed she and her co-counsel should be removed from the case, because "there is a bonafiable conflict of interest . . . based on [her] perceived behavior" when she represented Champagne in a previous case. Pet. App. 50a. It was her understanding that Champagne had either filed or was intending to file a bar complaint. Pet. at 4;

Pet. App. 50a. As she continued to explain, however, she did not like making the "request so far into the case." *Id.* She had put "about 600 hours" of work into the case and was "on track to proceed to trial." Pet. App. 50a–51a. The trial court told trial counsel and Champagne that he was not going to remove "capital counsel that's been working on the case for 18 months on an oral motion." Pet. App. 51a. He directed trial counsel to file a written motion if she believed it was "appropriate to be withdrawn" and told Champagne that he would "look at anything written and make a consideration of it[,] but I'll make no determination on a matter like this without an appropriate written motion." Pet. App. 51a–52a. Trial counsel never filed a motion asserting there was a conflict between her and Champagne.

At a capital case management conference on October 2, 2014, Champagne's counsel informed the trial court that Champagne wrote a letter that he would like to give to the court. Pet. App. 66a. The trial court filed the letter, which was a second *pro se* motion requesting a change of counsel. Pet. App. 054a–56a, 60a, 68a. The letter said that trial counsel had "refused" to file a motion for change of counsel. Pet. App. 55a. It further alleged that there was a conflict between Champagne and his trial counsel because counsel had fallen asleep in a previous case (the "2012 Case") in which she represented him and he had filed a bar complaint against her. *Id.* During the same hearing, however, Champagne and his counsel conferred resulting in his trial counsel informing the court, "Your Honor, at this time Mr. Champagne would like me to come see him at the jail to see if we can reach some type of an understanding or working relationship, and I'm willing to do that, so I'd

ask that you hold his request in abeyance at this time." Pet. App. 67a–68a. Champagne confirmed to the trial court that he was agreeable to his counsel's request. Pet. App. 68a.

After the meeting between Champagne and trial counsel failed to placate Champagne, the trial court took up the issue at a December 1, 2014, *ex parte* hearing. Pet. App. 74a–88a. Champagne told the trial court he wanted a new lawyer for three reasons: (1) trial counsel was not coming to see him enough; (2) she was not informing him about the proceeding; and (3) she fell asleep in the 2012 Case. Pet. App. 77a–78a. He also told the court that his counsel's visited most recent visit occurred since he filed the October 2 letter and that he had never refused a visit. Pet. App. 79a.

The trial court asked Champagne's counsel to describe her efforts to communicate with Champagne. Pet. App. 80a–81a. She explained she was assigned to the case since it began and "things went pretty well" initially. Pet. App. 81a. She met with Champagne regularly, as did the mitigation specialist. *Id.* She acknowledged she had a busy trial schedule in the preceding year and Champagne was very unhappy with her following the verdict in the 2012 Case. Pet. App. 81a–82a. She further explained that she and her team reduced the number of visits during the couple of months prior as a "cooling off period" and that Champagne had refused visits from her and her mitigation specialist, but she thought the previous visit she had with Champagne was "productive." *Id.*

She also made clear to the trial court that trial preparation—for both the guilt and the penalty phases—was on track. Pet. App. 82a. She noted she had conducted 25 interviews related to the guilt phase and she and her team had gathered over 5,500 pages of mitigation material. Pet. App. 82a. Her team had also consulted with experts and traveled across the United States to talk to mitigation witnesses. *Id.* She explained to the court that she had consulted with her co-counsel and supervisor about pursing a motion to withdraw, but she did not believe it was in Champagne's best interest. Pet. App. 83a.

She closed by telling the court that she thought her relationship with Champagne could be repaired. *Id.* She understood Champagne was upset, but their relationship was not "irretrievably broken" and they would be able to "work together." *Id.* She was also willing to assist Champagne in making a record and adequately preserving his allegations of what happened in the 2012 Case. Ultimately, she did "not believe that there [was] a basis . . . to join in Mr. Champagne's request [to] be removed from the case." *Id.*

The trial court denied Champagne's motion for new counsel. Pet. App. 86a. In doing so, it made several findings. First, it noted that Champagne had "one of the best capital defense attorneys in the State of Arizona representing" him. Pet. App. 84a. Second, there was not an irreconcilable breakdown in communication between Champagne and his lawyer. Pet. App. 84a–85a. Third, a change in counsel would cause a "substantial" delay that was "likely ultimately to impact and prejudice the State's case" and "would absolutely prejudice the victim's interest and the

community interest in a speedy resolution of this matter." Pet. App. 85a. Fourth, this was not a circumstance where Champagne has requested multiple changes of counsel. *Id.* Fifth, a change in counsel would likely result in the same conflict with regard to Champagne's complaint about the frequency of his counsel's visits. Pet. App. 85a–86a. Finally, the court found that Champagne and his counsel could communicate and that counsel was giving him effective representation. Pet. App. 86a.

On appeal, the Arizona Supreme Court affirmed the trial court's order. It acknowledged that a trial court's failure to inquire into an alleged conflict can serve as a basis for reversing a defendant's conviction. Pet. App. 19a. (citing *Holloway v. Arkansas*, 435 U.S. 475, 487–91 (1978)). It held, however, that this was not such a situation because the trial court had "sufficiently inquired into the purported conflict." *Id.* It further noted that Champagne's arguments relied too heavily on his counsel's initial statements that he had made the request in good faith while "ignor[ing] counsel's subsequent statements that the relationship was not irretrievably broken, that a change of counsel was not in his best interests, that she was dedicated to his current case, and that she was willing to help him establish a record of his allegations relating to her perceived behavior in his prior trial." Pet. App. 21a. This petition followed.

REASONS FOR DENYING THE WRIT

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." U.S. Sup. Ct. R. 10. Accordingly, this Court grants certiorari "only for

compelling reasons." *Id.* Champagne has not shown a compelling reason because the Arizona Supreme Court's opinion does not conflict with another state court of last resort or of a United States court of appeals, nor does it conflict with the relevant decisions of this Court. *See* U.S. Sup. Ct. R. 10(b), (c). His argument further alleges erroneous factual findings and the misapplication of a properly stated rule of law, which are also not grounds for granting the petition. *See* U.S. Sup. Ct. R. 10. Additionally, the petition's improper conflation of a conflict of interest with an ineffective assistance of counsel claim makes this petition a poor vehicle for considering the question presented.

I. CHAMPAGNE DOES NOT ALLEGE A CONFLICT BETWEEN THE ARIZONA SUPREME COURT'S OPINION AND ANOTHER COURT.

There are not compelling reasons to grant Champagne's petition because he has not argued the Arizona Supreme Court's opinion conflicts with any other state courts of last resort or of a United States court of appeals. A conflict between such courts is a "principal purpose" for granting certiorari. *Braxton v. United States*, 500 U.S. 344 (1991); *cf. F.T.C. v. Actavis, Inc.*, 570 U.S. 136, 146 (2013) (noting the Court granted certiorari because "different courts ha[d] reached different conclusions" about the appealed issue); *Kinder v. United States*, 504 U.S. 946, 951 (1992) (White, J., dissenting from denial of certiorari) (arguing a case that raised "a recurring issue of constitutional importance" with "varying conclusions" from the courts of appeals merited granting certiorari). Despite Champagne's claim that Arizona does not follow a more than four-decade-old precedent of this Court, his petition does not point to any opinion from a different jurisdiction that conflicts with

the Arizona Supreme Court's below. Without a conflict, a primary purpose of granting certiorari is not present.

II. THE ARIZONA SUPREME COURT'S OPINION IS CONSISTENT WITH *HOLLOWAY*.

Champagne asks this Court to review the Arizona Supreme Court's decision and argues Arizona "does not follow *Holloway* because it does not require trial courts to make adequate inquiry into defendant's motion to replace counsel." Pet. at 3. But Champagne's desire to correct this alleged error is not a compelling reason for granting his petition. *See* U.S. Sup. Ct. R. 10. Even if it were, the state court here did not err. Arizona's precedents, including the opinion below, are consistent with *Holloway*. Arizona requires trial courts to inquire into the basis of a defendant's request for a change of counsel, and, if the six-factor test Arizona uses to consider a motion to change counsel is different from *Holloway* in any meaningful sense, the inquiry it requires is *more* robust than *Holloway*'s requirement.

Champagne's petition argues "[t]he proper course" below "would have been to adhere to *Holloway*'s requirement that when counsel admits, as an officer of the court, that there is a conflict and asks to be replaced, the court should grant the motion." Pet. at 3. (citing *Flanagan v. United States*, 465 U.S. 259, 268 (1984)). *Holloway*, however, contains no such rule,[2] and its holding is much narrower than the petition states. It requires a trial judge, when defense counsel notifies the court

[2] Neither does *Flanagan*. In fact, it does not even deal with the same issue. *Flanagan* 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." 465 U.S. at 260. *Flanagan*'s one citation to *Holloway* was to support the proposition that a change of counsel motion can be effectively reviewed post-conviction. *Id.* at 267–68.

of a possible conflict of interest, "either to appoint separate counsel or to take adequate steps to ascertain whether the risk [of a conflict is] too remote to warrant separate counsel." 435 U.S. at 484; *see also Mickens v. Taylor*, 535 U.S. 162, 168 (2002) ("*Holloway* thus creates an automatic reversal rule only where defense counsel is forced to represent codefendants over his timely objection, unless the trial court has determined that there is no conflict."). Arizona recognizes and follows this holding.

In *Holloway*, this Court considered an attorney's conflict of interest where a single attorney represented three codefendants. *Id.* at 476–77. In pretrial motions, trial counsel had informed the trial court of a probable conflict of interest in representing testifying codefendants. *Id.* at 477–78. After the prosecution rested its case, trial counsel informed the court that all three codefendants would offer testimony that he could not examine or cross-examine them because he would be unable to so while protecting his other clients' interests. *Id.* at 478–79. The trial court told counsel, "There is no conflict of interest. Every time I try more than one person in this court each one blames it on the other one." *Id.* at 479. Without inquiring into the nature of the conflict, the court told counsel, "You can just put them on the stand and tell the Court that you have advised them of your rights and they want to testify; then you tell the man to go ahead and relate what he wants to. That's all you need to do." *Id.* at 480.

This Court held that, given trial counsel's motions and statements about a conflict, the trial court's failure "either to appoint separate counsel or to take

adequate steps to ascertain whether the risk was too remote to warrant separate counsel" deprived the codefendants of assistance of counsel. *Id.* at 484. The Court noted the State's "obvious interest" in avoiding defendants abusing conflict motions to delay or obstruct orderly conduct of trials. *Id.* at 486. It explained, however, that *Holloway*'s "holding does not undermine that interest." *Id.* "Nor does our holding preclude a trial court from exploring the adequacy of the basis of defense counsel's representations regarding a conflict of interests." *Id.* at 487. The trial court's failure was not taking "adequate steps in response to the repeated motions, objections, and representations made to it, and no prospect of dilatory practices was present to justify that failure." *Id.*

Arizona's case law governing a defendant's request for change of counsel, summarized in the opinion below, is consistent with *Holloway*'s directive to take adequate steps to explore a counsel's representations regarding a conflict of interest. As an initial matter, the opinion below recognized under *Holloway* that "[a] trial court's failure to conduct an inquiry into a purported conflict can, under certain circumstances, serve as a basis for reversing a defendant's conviction." Pet. App. 21a. It explained further that "[t]rial courts have a duty to inquire into the basis of a defendant's request for change of counsel." Pet. App. 21a. (citing *State v. Torres*, 93 P.3d 1056, 1059 (Ariz. 2004)). The nature of the inquiry depends on the nature of the defendant's request. *Id.* A specific, fact-based allegation in support of a request requires a court to "conduct a hearing into his complaint," while "generalized complaints about differences in strategy may not require a formal hearing or an

evidentiary proceeding." *Id.* (quoting *Torres*, 93 P.2d at 1059). Arizona law also acknowledges the State's interest in avoiding delay and the orderly conduct of trials: "Trial courts should examine requests for new counsel 'with the rights and interest of the defendant in mind tempered by exigencies of judicial economy.'" *Id.* (quoting *State v. LaGrand*, 733 P.2d 1066, 1069 (Ariz. 1987)).

Considering these interests, the Arizona Supreme Court in *LaGrand* articulated six factors —now commonly called the *LaGrand* factors—for trial courts to consider when a defendant motions for change of counsel. *Id.* The six factors are:

1. Whether an irreconcilable conflict exists between counsel and the accused, and whether new counsel would be confronted with the same conflict;
2. The timing of the motion;
3. The inconvenience to witnesses;
4. The time period already elapsed between the alleged offense and trial;
5. The proclivity of the defendant to change counsel;
6. The quality of counsel.

Pet. App. 21a (citing *LaGrand*, 733 P.2d 1069–70). The first factor—the presence of an irreconcilable conflict—will "ordinarily require[] the appointment of new counsel." *State v. Cromwell*, 119 P.3d 448, 453 (Ariz. 2005); *accord State v. Henry*, 944 P.2d 57, 61–62 (Ariz. 1997) (discussing *LaGrand* factors: "Unlike other factors, the presence of a genuine irreconcilable conflict *requires* the appointment of new counsel."). The rest of the factors—such as the timing of the motion, the convenience to witnesses, and the time period elapsed between the alleged offense and trial—concern the ability of the court to conduct orderly trials and keep defendants from abusing change of counsel motions in an attempt to delay trial.

There is no conflict between *Holloway* and Arizona law. When defendant's counsel informs a trial court of a probable risk of conflict of interests, *Holloway* requires trial courts to "either appoint separate counsel or take adequate steps to ascertain whether the risk [is] too remote to warrant separate counsel." 435 U.S. at 484. This "holding does not undermine" the State's interest in avoiding change of counsel motions for the "purposes of delay or obstruction of the orderly conduct of the trial." *Id.* at 486–87. It also "does not preclude a trial court from exploring the adequacy of the basis of defense counsel's representations regarding a conflict of interests." *Id.* at 486. Thus, Arizona's six-factor test is consistent with *Holloway*, and there is no compelling reason to grant certiorari. *See* U.S. Sup. Ct. R. 10(c).

III. GRANTING RELIEF TO CHAMPAGNE WOULD REQUIRE THIS COURT TO REJECT FACTS FOUND BY THE COURTS BELOW.

As explained above, Arizona law follows this Court's precedents. Champagne's petition asserts the courts below made erroneous factual findings or misapplied a properly stated rule of law. This is not the appropriate use of a cert petition. *See* U.S. Sup. Ct. R. 10 ("A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.")

Champagne alleges that trial counsel "agreed . . . there was a 'bonafiable' conflict of interest between them and the Petitioner, and asked the court to replace them, but the trial court refused to consider the motion." Pet. at 1. These factual allegations are not supported by the record, nor were they found below. As the

opinion explains, Champagne's argument that his counsel agreed there was an actual conflict of interest

> relies considerably on counsel's initial statement that he had a good-faith basis for requesting a change of counsel, maintaining that the court's denial of his request resulted in structural error tainting his entire trial. But that statement came shortly after Champagne informed his attorney that he intended to pursue a bar complaint against her. And Champagne ignores counsel's subsequent statements that the relationship was not irretrievably broken, that a change of counsel was not in his best interests, that she was dedicated to his current case, and that she was willing to help him establish a record of his allegations relating to her perceived behavior in his prior trial.

Pet. App. 21a. Unlike *Holloway*, the record here shows the trial court considered the concerns of Champagne and his counsel's subsequent statement that she did "not believe there [was] a basis . . . to join in Mr. Champagne's request that [they] be removed from the case." Pet. App. 83a.

Far from shutting down trial counsel's pleas of a conflict as happened in *Holloway*, the trial court set hearings regarding both of Champagne's motions for new counsel. At the first hearing, the court considered Champagne's one-sentence motion. Pet. App. 41a–52a. The trial court told Champagne that the motion was "[bare] bones"[3] and that he needed to set out his specific arguments in a written motion in order to allow the court to fully consider and adjudicate his motion. Pet. App. 47a–49a. It was at that point trial counsel told the court that Champagne informed her that he would be pursuing a bar complaint against her. Pet. App. 50a.

[3] The court reporter erroneously transcribed the phrase as "bear bones." Pet. App. 47a.

She thought it would put her "at odds" because she would be defending herself at the same time as defending Champagne. Pet. App. 50a. She also told the court she was on track to be ready for trial and had put hundreds of hours of work into Champagne's case. Pet. App. 50a–51a.[4]

The trial court denied the motion, instructing Champagne and his counsel again that he would consider a written motion with specific reasons for a change of counsel. Pet. App. 51a–52a. In denying the motion, he recognized the high probability of delay that granting the motion would cause. Pet. App. 51a ("Well, I'm not removing capital counsel that's been working on the case for 18 months on an oral motion. If you believe that it's appropriate for you to be withdrawn for the reasons you have cited, file an appropriate motion."). He also informed counsel and Champagne that filing a bar complaint against counsel does not automatically create an irreconcilable conflict. Pet. App. 51a; *see State v. Henry*, 944 P.2d 57, 64 (Ariz. 1997) ("As a matter of public policy, a defendant's filing of a bar complaint against his attorney should not mandate removal of that attorney. A rule to the contrary would encourage the filing of such complaints solely for purposes of delay.").[5] Instead of "summarily deny[ing]" the motion at the first hearing as

[4] Petitioner also argues "the trial court refused to act" on his first request, "even though it would be nearly three years until trial." Pet. at 6. The first request was made June 13, 2014. Pet. App. 40a. In an October 2, 2014, trial court order, however, the trial court affirmed an April 21, 2015, trial date. Therefore, at the time of the request, the court anticipated a much sooner trial date than what ultimately occurred. Pet. App. 58a–59a.

[5] This rule is not unique to Arizona. *See Galloway v. Howard*, 624 F.Supp.2d 1305, 1317 n.35 (W.D. Oklahoma) (citing cases in the Second, Fourth, Seventh, and Ninth Circuits that hold that filing a bar complaint against defense counsel by itself does

Champagne claims, the trial court explicitly instructed Champagne and his counsel what they needed to file in order for the court to be able to make appropriate findings.

The trial court held another hearing after Champagne filed a second motion for change of counsel. Pet. App. 54a–88a. The same judge who presided over his previous request presided over this *ex parte* hearing. Pet. App. 45a, 75a. At this hearing, the court explicitly inquired into the alleged conflict, asking Champagne, "Why do you want to change your lawyer?" Pet. App. 77a. He told the court she fell asleep in the 2012 case, was not coming to see him often, and not informing him about the current case. Pet. App. 78a–79a. He did not mention the bar complaint that he allegedly had filed. *See* Pet. App. 55a.

The court asked his trial counsel to respond, and she detailed her efforts representing Champagne along with her relationship with him. She explained that she had done extensive amount of work on this case and the previous one, that her trial schedule over the previous year had been burdensome, that he was unhappy with her and her team after the 2012 Case, that she had consulted other attorneys about whether she should ask to withdraw, that she thought her relationship with Champagne was not irretrievably broken, and that she was willing to make a record about his allegations against her regarding the 2012 Case. Pet. App. 81a–83a. She further informed the court that she did not believe it was in Champagne's best

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not establish an actual conflict of interest); *United States v. Holman*, 314 F.3d 837, 845 (7th Cir. 2002) ("The fact that [the defendant] initiated a disciplinary inquiry against his attorney is not enough to establish an actual conflict of interest. An actual conflict exists if an attorney is torn between two different interests.")

interest for her to ask to withdraw, and, after conferring with her co-counsel and her supervisor, she did not believe there was a basis to join Champagne's motion. Pet. App. 83a.

The trial court asked Champagne if he had anything else to tell the court. He repeated the same concerns as he did at the beginning of the hearing. Pet. App. 84. The Court then made findings regarding the six *LaGrand* factors explained above. Pet. App. 84a–86a.

Regarding the first factor—whether an irreconcilable conflict exists between counsel and the accused, and whether new counsel would be confronted with the same conflict—the court did not find that trial counsel slept through the previous matter but recognized that Champagne's allegations regarding the 2012 Case may create "trust issues." It ultimately found that there was not an irreconcilable breakdown in communication between Champagne and his trial counsel and that he was "receiving effective representation in the matter" from trial counsel. Pet. App. 86a. The court also found that if Champagne's motion were granted, "it would likely be to another lawyer who had other cases. That there may be times when that lawyer would not be able to visit Mr. Champagne as often as he would like, in which case we would find ourselves in the same circumstance." Pet. App. 85a–86a.

Regarding the second, third, and fourth factors—the timing of the motion, the inconvenience to witnesses, and the time elapsed between the alleged offense and trial—the court found that a "delay in a capital case would be substantial," would likely prejudice the State's case, and "would absolutely prejudice the victim's

interest and the community interest in a speedy resolution of this matter." Pet. App. 85a. Regarding the fifth factor—the proclivity of the defendant to change counsel—the trial court found that there was not a history of Champagne requesting multiple changes of counsel. Pet. App. 85a. Finally, for the sixth factor—the quality of counsel—the court noted his counsel was "one of the best capital defense attorneys in the state of Arizona" and was "aggressively working on [Champagne's] matter." Pet. App. 84a. Weighing all those factors, the court denied Champagne's request for substitute counsel. Pet. App. 86a.

On appeal, the Arizona Supreme Court ruled that the trial court's ruling considered the *LaGrand* factors without explicitly referencing *LaGrand*. Pet. App. 22a. In doing so, the only factor that weighed in favor of granting Champagne's motion was that he had no proclivity to change counsel. *Id.* This one factor in his favor did not require a change of counsel "when the other factors weighed in support of denying his request. Thus, the court did not abuse its discretion in denying Champagne's request for change of counsel." *Id.* (internal citations omitted).

Champagne essentially asks this Court to ignore these findings and find new facts without the benefit of live testimony during which one could observe a witness's demeanor and credibility. *Cf. Uttecht v. Brown*, 551 U.S. 1, 7 (2007) ("The judgment as to whether a venireman is biased . . . is based upon determinations of demeanor and credibility that are peculiarly within a trial judge's province."). In his view of the facts, trial counsel "avow[ed] to the trial court that there was a 'bonafidable' conflict that required her withdrawal" and the state courts "denied the

motions without the further inquiry required by *Holloway*." Pet. at 5–6. These allegations are not supported by the record, but, even if they were, Champagne is merely asking the Court to review a case where a rule of law was properly stated and he does not agree with the courts' factual findings below. This is not a compelling reason to grant certiorari. *See* U.S. Sup. Ct. R. 10.

CONCLUSION

Based on the foregoing authorities and arguments, Respondent respectfully requests this Court to deny Champagne's petition for writ of certiorari.

Respectfully submitted,

MARK BRNOVICH
Attorney General

ORAMEL H. (O.H.) SKINNER
Solicitor General

s/ Lacey Stover Gard
LACEY STOVER GARD
Chief Counsel
(Counsel of Record)

NATE CURTISI
Assistant Attorney General

Attorneys for Respondent

8382239