No. 20-_____

In The

Supreme Court of the United States

EDUARDO LOPEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Following *Class v. United States*, 138 S. Ct. 798 (2018), does a criminal defendant's guilty plea result in the automatic waiver of his right to appeal a structural defect in the underlying proceedings, to wit, an order disqualifying his retained counsel on Sixth Amendment grounds?

2. Where a law firm endeavors to jointly represent co-defendants, does *Wheat v. United States*, 486 U.S. 153 (1988), authorize a district court to override a criminal defendant's waiver of conflict-free representation, for the specifically limited purposes of discovery and motions, and disqualify the law firm where no cooperation agreement has been offered to any defendant and no trial has been scheduled?

PARTIES

Eduardo Lopez is the Petitioner in this action and was the Appellant in the proceedings below. The United States of America is the Respondent in this action and was Appellee in the proceedings below.

CORPORATE DISCLOSURE STATEMENT

No publicly traded company or corporation has an interest in the outcome of the case or appeal.

RELATED PROCEEDINGS

United States District Court (N.D. Ga.):

Mendoza, et al. v. Dhillon, No. Case No. 1:19-cv-0722-MLB (Voluntarily dismissed February 13, 2019).

United States v. Eduardo Lopez, No. 1:19-cr-00077 (Judgment entered March 2, 2020).

United States v. Fredrico Pacheco-Romero, No. 1:19-cr-00077 (Judgment entered February 24, 2020).

United States v. Carlos Martinez, No. 1:19-cr-00077 (Judgment entered February 25, 2020).

United States v. Jorge Mendoza-Perez, No. 1:19-cr-00077 (Judgment entered February 3, 2020).

United States v. Victor Sanchez, No. 1:19-cr-00077 (Judgment entered January 27, 2020).

United States v. Santana Cardenas, No. 1:19-cr-00077 (Judgment entered June 4, 2020).

RELATED PROCEEDINGS – Continued

United States Court of Appeals (11th Cir.):

United States v. Jerome Lee, et al., No. 19-14446 (Pending, oral arguments scheduled for March 22, 2021).

United States v. Jorge Mendoza-Perez, No. 20-10685 (Pending).

United States v. Fredrico Pacheco-Romero, No. 20-10965 (Pending).

United States v. Carlos Martinez, No. 20-10970 (Pending).

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PETITION FOR A WRIT OF CERTIORARI

Eduardo Lopez ("Petitioner"), an inmate currently incarcerated at Manchester Federal Correctional Institution ("FCI") in Manchester, Kentucky, by and through undersigned counsel, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Eleventh Circuit granting the government's motion for summary affirmance is attached to this petition as Appendix A ("App. A"). The order of the District Court for the Northern District of Georgia overruling Petitioner's objections to the magistrate judge's order disqualifying counsel is attached as Appendix B ("App. B"). The magistrate judge's order is attached as Appendix C. ("App. C").

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on November 19, 2020. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in relevant part: "In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defense." The Fifth Amendment to the United States Constitution provides, in relevant part: "No person shall be . . . deprived of life, liberty, or property, without due process of law . . . "

STATEMENT OF THE CASE

Following a wiretap investigation into an alleged methamphetamine trafficking ring, Petitioner was arrested and indicted on one count of criminal conspiracy in the United States District Court for the Northern District of Georgia. Shortly after entering an appearance, Petitioner's retained law firm was disqualified for endeavoring to jointly represent all six individuals charged in the alleged conspiracy. With the assistance of court-appointed counsel, Petitioner rejected the government's offered plea agreement (which included a waiver of appellate rights), entered a plea of guilty, and was sentenced to one-hundred and fifty-six months in prison. During the plea colloquy, the district court stated that Petitioner retained the right to appeal "any defect" in the proceedings.

Petitioner filed a direct appeal of his conviction, arguing that (i) the disqualification was premature and based on hypothetical conflicts of interest, violating his Sixth Amendment right to counsel of choice and

Fifth Amendment due process right to decide the parameters of his own legal defense; (ii) the disqualification order advocated for defense counsel who would decline to file pretrial motions and instead seek cooperation agreements to help the government "divide and conquer" the six co-defendants; and (iii) the government illegally detained Petitioner for ninety-six hours before a judicial determination of probable cause was made and denied Petitioner access to his counsel for approximately forty-eight hours, further evincing its intent to separate Petitioner from his chosen counsel and influence the outcome of the proceedings. The United States Court of Appeals for the Eleventh Circuit refused to consider Petitioner's constitutional claims and summarily affirmed his conviction, holding that by pleading guilty Petitioner waived "all non-jurisdictional defects" in the proceedings that resulted in his conviction. The Eleventh Circuit also held that invoking Rule 11(a)(2) of the Federal Rules of Criminal Procedure, and seeking permission from the government, is the exclusive means by which a constitutional claim may be raised on appeal following a guilty plea.

The Eleventh Circuit's opinion contravenes this Court's decision in *Class v. United States*, which held that only three discrete categories of constitutional claims are impliedly waived by a plea of guilty. 138 S. Ct. 798 (2018). The Eleventh Circuit's opinion also directly conflicts with the United States Court of Appeals for the Fifth Circuit's decision in *United States v. Sanchez-Guerrero*, which held that a district court's order disqualifying defense counsel could be challenged

after a guilty plea without first reserving appeal under Rule 11(a)(2). 546 F.3d 328 (5th Cir. 2008). The holding of *Sanchez-Guerrero* was based on *United States v. Gonzalez-Lopez*, which held the erroneous denial of a criminal defendant's Sixth Amendment right to counsel of choice a structural error that undermines the very legitimacy of the judicial proceedings themselves. 548 U.S. 140 (2006).

It is axiomatic that our criminal justice system prefers "that ten guilty persons escape than one innocent suffer." Sir William Blackstone, *Commentaries on the Laws of England in Four Volumes*, at 358 (J.P. Lipincott Co., 1893). With this fundamental principle in mind, the rights enshrined in the Constitution of the United States protect both the innocent *and* the guilty from government overreach. The Eleventh Circuit's waiver rule appears to be an extreme outlier in the Federal criminal justice system that carries dangerous implications for the rights of defendants. The overwhelming majority of Federal criminal cases end in guilty pleas, and a defendant cannot be precluded from challenging a structural error as significant as denial of the right to counsel of choice simply because he or she chose to accept culpability.

This case would also serve as a vehicle for the Court to clarify its holding in *Wheat v. United States* and further define "serious potential conflict of interest" in the context of joint representations. 486 U.S. 153 (1988). Here, the lower courts disqualified Petitioner's retained law firm without a single shred of evidence that the joint representation would render the firm's

representation of Petitioner constitutionally ineffective. The disqualification order logically implies that joint representation is *never* allowed, although this Court and various Federal appellate courts have repeatedly held that joint representation is not only allowed but often works to the strategic advantage of the defense. By summarily disqualifying Petitioner's retained law firm and appointing counsel, the lower courts usurped Petitioner's role in deciding the parameters of his own legal defense and made the strategic benefits of joint representation permanently unavailable to him. While this case is a clear example of the lower courts abusing their discretion to disqualify counsel and improperly influence the outcome of the proceedings, striking the proper balance between the Sixth Amendment right to counsel of choice and the Sixth Amendment right to effective assistance of counsel can be a difficult task, and the Federal criminal justice system will benefit from additional guidance from this Court.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner was arrested at his home on February 9, 2019. Later that day, Taylor, Lee & Associates, LLC (hereinafter "TLA") was engaged to represent him. TLA was also retained by several other individuals arrested in locations across metropolitan Atlanta on that day. After an attorney from TLA spoke with Petitioner at a local municipal jail, he was transferred to a

neighboring municipal jail and interrogated by law enforcement agents for more than forty-eight hours while being denied access to counsel.[1] TLA filed a habeas corpus action against the Drug Enforcement Administration ("DEA") on Petitioner's behalf, and he was presented to a Federal magistrate on February 13, 2019, more than ninety-six hours after his warrantless arrest. On February 26, 2019, an indictment was returned against the Petitioner, and he was arraigned on March 6, 2019.[2] All six co-defendants charged in the alleged conspiracy had retained TLA shortly after their arrests. Petitioner and his co-defendants were given "conflict advisories" each time they appeared in court, on February 13, February 15, March 6, and March 14, 2019. At each court appearance, all co-defendants (including Petitioner) maintained their desire to be represented by TLA.

On March 8, 2019, acting *sua sponte*, the presiding magistrate scheduled a hearing pursuant to Rule 44 of the Federal Rules of Criminal Procedure. Two days later, the government filed a motion seeking TLA's disqualification. On March 5, 2019, Petitioner filed a motion to vacate the magistrate's detention order pursuant to Rule 59 of the Federal Rules of Criminal Procedure: the motion was tabled until the disqualification issue was decided. At the Rule 44 hearing, no

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[1] *See Mendoza, et al. v. Dhillon*, Case No. 1:19-cv-0722-MLB.

[2] The indictment charged Petitioner and his five co-defendants with one count of conspiracy to distribute a controlled substance in violation of 21 U.S.C. § 846 and 21 U.S.C. § 841(b)(1)(A). (App. E. 52).

evidence or testimony was presented to justify disqualification. Instead, the magistrate relied on the allegations in the criminal complaint, the government's brief, TLA's response brief, sworn testimony of each of the six co-defendants, the conflict waivers executed by the co-defendants, and legal fee agreements provided by TLA under seal. The government also claimed that a superseding indictment "where there are separate substantive counts applying to different people" would be sought against all six co-defendants, but no superseding indictment was ever returned.

On March 22, 2019, the magistrate disqualified TLA from representing Petitioner or any of his co-defendants, asserting that a "serious potential, if not actual, conflict of interest" existed. (App. C.). On April 4, 2019, Petitioner objected to the magistrate's disqualification order pursuant to Rule 59 of the Federal Rules of Criminal Procedure, and an order denying the objections was entered shortly thereafter. (App. B.).[3] Petitioner was appointed indigent defense counsel, and the district court ultimately also denied Petitioner's motion to review the order detaining Petitioner, noting that Petitioner's appointed counsel "failed to file a supplement" to the motion to "specifically outline the reasons the Court should release [Petitioner], including

[3] After disqualifying TLA from the case, the magistrate initiated an extra-jurisdictional "fee inquiry" that culminated in the surrender of $15,000 into the court's treasury under the threat of civil and criminal contempt. The lower courts' orders regarding these funds are the subject of a parallel appeal currently pending in the Eleventh Circuit. *See United States of America v. Jerome Lee, et al.*, Docket No. 19-14446.

what specific steps will be taken to minimize [Petitioner's] risk of flight and danger to the community." (App. D.). Newly retained defense counsel entered her appearance on the next day.

Petitioner's motion to suppress wiretap evidence and statements was filed on July 26, 2019. At the July 30, 2019 pretrial conference, the magistrate gave Petitioner's counsel only two days to "perfect" the motion to suppress with an affidavit "to establish standing" and set a deadline of Friday, August 2, 2019. The deadline was not met, and the motion to suppress was deemed abandoned and denied on standing grounds. Following the summary denial of the motion to suppress, Petitioner dismissed his retained counsel and indigent defense counsel was re-appointed to his case. Less than two weeks after appointed counsel re-entered the case, a change of plea hearing was scheduled. On December 11, 2019, Petitioner was sworn, advised of rights, and a guilty plea was entered as to count one of the indictment. On March 2, 2020, the district court sentenced Petitioner to one hundred fifty-six months of imprisonment. The case was appealed to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit summarily affirmed Petitioner's conviction and held that pleading guilty waives appeal of all non-jurisdictional defects in the underlying proceedings. The Eleventh Circuit also held that reserving appeal pursuant to Rule 11(a)(2) of the Federal Rules of Criminal Procedure is the exclusive means by which

a criminal defendant who pled guilty can raise constitutional claims in the Federal appellate courts.

REASONS FOR GRANTING THE PETITION AS TO THE FIRST QUESTION PRESENTED

I. Only Three Categories Of Constitutional Appellate Claims Are Automatically Waived By A Guilty Plea.

First, a "valid guilty plea forgoes not only a fair trial, but also other accompanying constitutional guarantees," such as the privilege against compulsory self-incrimination and the right to confront accusers. *Class*, 138 S. Ct. at 805; *see also Boykin v. Alabama*, 395 U.S. 238 (1969) (holding that a guilty plea results in a waiver of the constitutional rights associated with the Sixth Amendment right to a jury trial). Other constitutional "privileges which exist beyond the confines of the trial," such as the right to counsel of choice, the due process right to challenge the admissibility of evidence through pretrial motions, and the due process right to a prompt determination of probable cause are *not* necessarily waived by a guilty plea. *Class*, at 805. In other words, appellate claims concerning *trial rights* are waived by a guilty plea because the defendant knowingly and voluntarily declined to exercise his or her right to a trial.

Second, this Court held in *Class* that "[a] valid guilty plea also renders irrelevant – and thereby prevents the defendant from appealing – the constitutionality of

case-related government conduct that takes place before the plea is entered." *Class*, at 805. This category concerns appellate challenges "to the admissibility of evidence obtained in violation of the Fourth Amendment" but may also include some procedural issues, such as the grand jury selection process. *Id.* Again, if there was no trial, the admissibility of evidence in a trial that did not occur is rendered irrelevant, as is law enforcement's arguably illegal conduct in obtaining that evidence. Here, Petitioner did not challenge the denial of his motion to suppress wiretap evidence on the merits. Indeed, due to his chosen counsel's disqualification, the merits were never even addressed by the lower courts. Rather, Petitioner appealed to the Eleventh Circuit to review the circumstances under which his chosen counsel was disqualified and argued that those circumstances resulted in a deprivation of his right to due process of law.

Instead of addressing the merits of Petitioner's argument, the Eleventh Circuit cited the above quote from *Class* drastically out-of-context to justify summary affirmance.[4] If the quote is read parsimoniously with the rest of the *Class* opinion, it becomes obvious that this Court did not intend for *all* appellate claims to be subsumed in this category. By "government conduct," this Court was referring primarily to law enforcement conduct that arguably violates the Fourth

[4] The Eleventh Circuit has also misquoted this language to summarily affirm at least one similar case. *See United States v. Montemayor*, Fed. Appx., 2020 WL 2787600 at *2 (11th Cir. 2020) (unpublished).

Amendment. Finally, this Court held that "a valid guilty plea relinquishes any claim that would contradict the admissions necessarily made upon entry of a voluntary plea of guilty." *Id.*, at 805. Here, the constitutional claims raised by Petitioner are not inconsistent with his admission that "he engaged in the conduct alleged in the indictment." As this Court held in *United States v. Gonzalez-Lopez*, "[t]he erroneous deprivation of the right to counsel of choice, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as structural error" and entitles the criminal defendant to an automatic reversal of his or her conviction. 548 U.S. 140, 140-41 (2006); (citing *Sullivan v. Louisiana*, 508 U.S. 275, 282 (1993)); *see also McCoy v. Louisiana*, 138 S. Ct. 1500, 1505 (2018) ("Violation of the defendant's Sixth Amendment-secured autonomy ranks as error of the kind that our decisions have called 'structural' "). Indeed, such "structural" error brings into question the voluntary and intelligent character of the guilty plea itself and renders all judicial proceedings that occurred after the error suspect. Therefore, Petitioner's admission of guilt is consistent with his argument on appeal that his Sixth Amendment right to counsel of choice was violated by the disqualification of his chosen counsel.[5]

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[5] Petitioner further submits that his constitutional claim "would extinguish the government's power to constitutionally prosecute [him] if the claim were successful." *Class*, at 806 (internal quotations omitted); *see also United States v. Stein*, 541 F.3d 130, 142 (2nd Cir. 2008) ("no remedy other than dismissal of the indictment would put [Petitioner] in the position [he] would have

II. In The Half-Century Since The *Tollett* Decision Federal Courts Have Routinely Held That Appellate Claims Are Not Automatically Waived By A Guilty Plea.

The principal Supreme Court case underlying the Eleventh Circuit's opinion was decided forty-seven years ago. *Tollett v. Henderson*, 411 U.S. 258 (1973). In the half-century since the *Tollett* decision, the Federal appellate courts have held that a diverse array of constitutional claims are *not* automatically waived by a guilty plea. *United States v. Brinkworth*, 68 F.3d 633 (2nd Cir. 1995) (claim that district court judge erred by denying motion to recuse); *United States v. Garcia-Valenzuela*, 232 F.3d 1003 (9th Cir. 2000) (challenge to district court's refusal to dismiss count of indictment on government's motion); *United States v. Trejo*, 610 F.3d 308 (5th Cir. 2010) (claim that factual basis for guilty plea failed to establish essential elements of crime of conviction); *United States v. Sturgis*, 869 F.2d 54 (2nd Cir. 1989) (constitutional challenge to sentencing statute); *United States v. Gaertner*, 583 F.2d 308 (7th Cir. 1978) (challenge to statute based on unconstitutional vagueness); *Menna v. New York*, 423 U.S. 61 (1975) (constitutional double jeopardy claim); *Blackledge v. Perry*, 417 U.S. 21 (1974) (appellate claim of vindictive prosecution). Petitioner's interpretation of this Court's decision in *Class* is consistent with these well-reasoned opinions, while the Eleventh Circuit's

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occupied absent the [denial of his Sixth Amendment right to counsel of choice]").

opinion is an extraordinary departure that ignores forty-seven years of precedent.

Moreover, the Eleventh Circuit's opinion creates a circuit split: in *United States v. Sanchez-Guerrero*, the United States Court of Appeals for the Fifth Circuit correctly held that a Sixth Amendment claim concerning defense counsel's disqualification was not waived by the defendant's "unconditional" plea of guilty. 546 F.3d 328, 331-32 (5th Cir. 2008). Citing this Court's decision in *United States v. Gonzalez-Lopez*, the Fifth Circuit reasoned "it is obvious that the choice of counsel may seriously impact a defendant's decision to plead guilty. If a defendant is erroneously denied the counsel of his choice, it is a structural error . . . that brings into question the voluntary and intelligent character of the guilty plea itself." *Sanchez-Guerrero*, 546 F.3d at 332. Therefore, "even in cases where a defendant has pled guilty, [the appellate court] must consider whether the district court erroneously denied a defendant the right to his counsel of choice, and waiver will not apply." *Sanchez-Guerrero*, at 332. Petitioner respectfully suggests that this Court should adopt the reasoning applied in *Sanchez-Guerrero* to correct the circuit split and remedy the Eleventh Circuit's dangerous misapplication of *Class*.

III. Petitioner Did Not Knowingly And Voluntarily Waive His Right To Review Of The Constitutional Issues Raised In This Appeal.

On December 11, 2019, Petitioner entered a non-negotiated plea of guilty to one count of conspiracy to possess a controlled substance with the intent to distribute. During the plea colloquy, the district court advised Petitioner that his guilty plea would result in the waiver of his right to proof of guilt beyond a reasonable doubt, right to confrontation of witnesses, right to call witnesses on his own behalf, right to the assistance of counsel during trial, right to testify and present evidence, right to remain silent and avoid self-incrimination, and right to a unanimous jury verdict. (App. F. 5, L. 18-8, L. 4). The district court also advised Petitioner that he would retain the right "to appeal *any* legal defect in [his] plea or sentencing" following the entry of his guilty plea. (App. F. 8, L. 5-11) (emphasis added). Moreover, the Petitioner expressly rejected the plea agreements offered by the government on the record, both of which included an express written waiver of the right to appeal his conviction and sentence. (App. F. 16, L. 20-17, L. 3).

In *Class*, even a statement from the district court that the defendant "was giving up his right to appeal his conviction" did not result in a waiver, and the defendant's "acquiescence neither expressly nor implicitly waived his right to appeal his constitutional claims." *Class*, at 807. Here, the district court expressly advised Petitioner that he was *not* waiving his right to appeal. (App. F. 8, L. 5-11). In *United States v. Avila*,

the defendant attempted to raise Fourth Amendment claims in an appellate proceeding following the entry of an unconditional guilty plea. 733 F.3d 1258, 1262 (10th Cir. 2013). The United States Court of Appeals for the Tenth Circuit held that "when a [district] court chooses to instruct a defendant that he has a right to appeal following the entry of an unconditional guilty plea, the court materially misinforms the defendant regarding the consequences of his plea when it fails to further advise him that the plea may limit that right." *Id.*, at 1259. Therefore, "[u]nder such circumstances, if the court tells the defendant without qualification that he has a right to appeal, a defendant's plea is not knowing and voluntary." *Id.* Further, for an appellate waiver to be effective, the government must demonstrate that the criminal defendant "made an informed and intentional relinquishment of his rights" under the specific constitutional provision he is raising on appeal. *United States v. Broce*, 753 F.2d 811, 822 (10th Cir. 1985). This is true even where the defendant signed a plea agreement that included an express written waiver of appellate rights. The rule enacted by the Eleventh Circuit is exactly backwards: Petitioner must *knowingly and voluntarily waive* his right to directly appeal his conviction. He is not required to seek the government's and the court's permission to *reserve* his right to appeal violations of his constitutional rights, especially structural violations.

IV. Rule 11(a)(2) Of The Federal Rules Of Criminal Procedure Does Not Provide The Exclusive Means By Which A Criminal Defendant Can Appeal After Pleading Guilty.

Under Rule 11(a)(2) of the Federal Rules of Criminal Procedure, a defendant can plead guilty, reserve the right to appeal an adverse ruling on a specified pretrial motion, and then withdraw the guilty plea if the appeal is successful. Fed. R. Crim. P. 11(a)(2). Contrary to the Eleventh Circuit's opinion, Rule 11(a)(2) is not "the exclusive procedure for a defendant to preserve a constitutional claim following a guilty plea." *Class*, 135 S. Ct. at 806. Instead, Rule 11(a)(2) was crafted to provide a mechanism by which a criminal defendant can appeal the denial of "unlawful search-and-seizure claims" after pleading guilty, and its drafters acknowledged that "certain [other] kinds of constitutional objections may be raised after a plea of guilty" irrespective of whether the rule is invoked. *Id.* Rule 11(a)(2) carves out an exception to the general rule, articulated in *Class*, that "the admissibility of evidence obtained in violation of the Fourth Amendment" becomes irrelevant after a guilty plea. *Id.*, at 805.

Further, to properly reserve appeal under Rule 11(a)(2), Petitioner was required to first obtain "the consent of the [district] court and the government." Fed. R. Crim. P. 11(a)(2). In other words, Petitioner would have to *obtain the consent of the parties that violated his constitutional rights* to address those same violations in a higher court. The Eleventh Circuit's rule would effectively bar appellate review in ninety-seven

percent of criminal proceedings unless the United States Attorney's office and the lower courts *choose to allow* such review.[6] This ridiculous position is contrary to fundamental notions of due process. "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

REASONS FOR GRANTING THE PETITION AS TO THE SECOND QUESTION PRESENTED

I. The Lower Courts Improperly Disqualified Petitioner's Counsel To Help The Government Avoid Pretrial Litigation And Induce A Guilty Plea.

"The right to counsel of choice commands not that a trial be fair, but that a particular guarantee of fairness be provided – to wit, that the accused be defended by the counsel he believes to be best." *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006). "The right to select counsel of one's choice has been regarded as the root meaning of the [Sixth Amendment] constitutional guarantee." *Id.*, at 147-48; *see also Wheat v. United*

[6] *See* United States Sentencing Commission Statistical Information Packet, Fiscal Year 2019, Northern District of Georgia, available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2019/gan19.pdf (last accessed August 10, 2020).

States, 486 U.S. 153, 165-66 (1988) (Marshall, J., dissenting) (a related "primary purpose" of the Sixth Amendment right to counsel of choice is "to grant a criminal defendant effective control over the conduct of his defense" as a means of respecting the constitutional values of individual dignity, autonomy, and free will); *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 646 (1989) (Blackmun, J., dissenting) (counsel of choice ensures "equality between the government and those it chooses to prosecute"). Further, "[t]he erroneous deprivation of the right to counsel of choice, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as structural error" and entitles the criminal defendant to an automatic reversal of his or her conviction. *Gonzalez-Lopez*, at 140-41; *see also McCoy v. Louisiana*, 138 S. Ct. 1500, 1505 (2018) ("Violation of the defendant's Sixth Amendment-secured autonomy ranks as error of the kind that our decisions have called 'structural' ").

This Court has observed that "[d]ifferent attorneys will pursue different 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. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial [or litigate pretrial motions]. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the framework within which

the trial [or pretrial litigation] proceeds – or indeed, whether it proceeds at all." *Gonzalez-Lopez*, at 150 (internal quotations omitted). Moreover, "[i]t is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings. Many counseled decisions, including those involving plea bargains and cooperation with the government, do not even concern the conduct of the trial at all." *Id*.

The question of disqualification directly implicates a criminal defendant's Sixth Amendment rights: therefore, "disqualification of defense counsel should be a measure of last resort, and 'the government bears a heavy burden of establishing that disqualification is justified.'" *United States v. Gearhart*, 576 F.3d 459, 464 (7th Cir. 2009) (internal quotation omitted); *United States v. Washington*, 797 F.2d 1461, 1465 (9th Cir. 1986) ("In seeking to disqualify a defendant's chosen counsel, the government bears a heavy burden of establishing that concerns about the integrity of the judicial process justify the disqualification"). "Attorney disqualification is 'a drastic measure which courts should hesitate to impose except when absolutely necessary.'" *Owen v. Wangerin*, 985 F.2d 312, 317 (7th Cir. 1993) (internal citations omitted); *United States v. Gorski*, 36 F.Supp.3d 256 (D. Mass. 2014) ("Disqualification of counsel is a remedy of last resort, and [t]he government bears a heavy burden in demonstrating that disqualification is justified . . . ") (internal quotation omitted).

Further, the "trial court must recognize a presumption in favor of defendant's counsel of choice. This presumption means that a trial court may not reject a defendant's chosen counsel on the ground of a potential conflict of interest absent a showing that both the likelihood and dimensions of the feared conflict are substantial. Unsupported or dubious speculation as to a conflict will not suffice. The Government must show a substantial potential for the kind of conflict that would undermine the fairness of the trial process." *Wheat*, 486 U.S. at 166; *United States v. Perez*, 325 F.3d 115, 125 (2nd Cir. 2003) ("[T]he choice as to which right [the right to conflict free counsel or the right to counsel of choice] is to take precedence must generally be left to the defendant and not dictated by the government"); *United States v. Gotti*, 782 F.Supp. 737, 742 (E.D.N.Y. 1992) ("This court is keenly aware of its obligation to balance [the defendant's] right to counsel against the integrity of the trial process, to consider alternatives less drastic than disqualification, and to make specific findings where disqualification is compelled by potential conflict").

A. The Lower Courts Misapplied Rule 44(c) Of The Federal Rules Of Criminal Procedure To Justify Disqualification.

The purpose of Rule 44(c) of the Federal Rules of Criminal Procedure is to safeguard a criminal defendant's Sixth Amendment right to effective assistance of counsel. The rule states, "[u]nless there is good cause to believe that no conflict of interest is likely to arise,

the court must take *appropriate measures to protect each defendant's right to counsel*." Fed. R. Crim. P. 44(c)(2) (emphasis added). To determine whether the extraordinary remedy of disqualification is an appropriate measure, "[t]he court must ascertain whether the conflict will interfere with the proper functioning of the adversarial process, namely, whether counsel's ethical dilemma *robs the client of a constitutionally effective advocate*." *United States v. White Buck Coal Co.*, No. 2:06-00114, 2007 WL 130322, at * 13 (S.D.W. Va. Jan. 16, 2007) (emphasis added); *see also Mickens v. Taylor*, 535 U.S. 162, 173 (2002) (to demonstrate ineffective assistance based on a conflict of interest, a defendant must show (1) a plausible alternative strategy that counsel might have pursued; (2) that the alternative strategy was reasonable; (3) some link between the conflict and the decision to forgo that strategy); *Lightbourne v. Dugger*, 829 F.2d 1012, 1023 (11th Cir. 1987) (a merely speculative conflict is not sufficient: rather, to show ineffective assistance, a defendant must show that his counsel actively represented conflicting interests).

Here, the magistrate court prematurely held that because hypothetical potential conflicts could be foreseen, the only "appropriate measure" under Rule 44 was disqualification. Further, the hypothetical conflicts proposed by the magistrate evince an intent to frustrate Petitioner's chosen strategy of employing pretrial motions. The magistrate found multiple "serious" potential conflicts of interest based on the assumption that "the government may be willing to offer

a favorable plea deal to one or more defendants in return for their cooperation and testimony against co-defendants, and [TLA] could not fulfill [its] duty to effectively represent all of the defendants by advising one defendant to take a plea deal that would be detrimental to [its] other clients." (App. C. 4). Indeed, the order puts forward the possibility of a "favorable plea deal" creating a potential conflict five times. (App. C. 4-5). Blindly seeking a plea bargain before having received a shred of discovery is not a reasonable "defense strategy," and no "favorable" plea agreement had been offered to Petitioner or any of his co-defendants at the time the magistrate disqualified TLA. Moreover, according to the magistrate, "the very decision of whether to file pretrial motions or pursue a potential plea agreement has very real consequences in this district as the United States Attorney's office [for the Northern District of Georgia] regularly reserves the most favorable plea terms for those defendants who do not file pretrial motions." (App. C. 5). If this policy were a legitimate basis for disqualification, any defense attorney practicing in the Northern District of Georgia who filed pretrial motions and did not immediately seek a plea bargain with the government would necessarily be constitutionally ineffective.

The order goes on to state that, "because there is an irrebutable presumption that [TLA] received confidential communications from [the defendants] during the course of [their] representation," TLA has "divided loyalties that prevent [them] from effectively representing the [defendants]." (App. C. 6). This is a *non*

sequitur, because there is no irrebutable presumption that receiving confidential communications from co-defendants prevents effective representation. If this were the case, then representing co-defendants would always present an actual conflict of interest and result in constitutionally ineffective assistance. *See Nix v. Whiteside*, 475 U.S. 157, 176 (1986) (This Court has never suggested "that all multiple representations necessarily result in an active conflict rendering the representation constitutionally infirm"). In fact, the opposite is true: sharing confidential communications between co-defendants often results in a strategic advantage by reducing the asymmetry of information between the government and the defense.

In a nutshell, the magistrate's disqualification order was erroneous because there was no showing that TLA's *constitutional effectiveness* would be jeopardized by the joint representation. *See United States v. Mers*, 701 F.2d 1321 (11th Cir. 1983) (no actual conflict of interest shown to have arisen from joint representation of multiple defendants, some of whom claimed entrapment and some of whom claimed nonparticipation, the defenses being neither antagonistic nor mutually exclusive); *United States v. Bradshaw*, 719 F.2d 907 (7th Cir. 1983) (defendant and co-defendant's joint strategy was agreed to by both, no defense theory was foreclosed as a result of joint representation, and defendants were therefore not deprived of effective assistance); *United States v. Ramsey*, 661 F.2d 1013 (4th Cir. 1981) (in drug case, one defendant introduced alibi evidence, another attempted to convince jury of an elaborate

hoax, and another rested his case on unequivocal denial of any involvement with illegal drugs: there was no conflict of interest precluding joint representation nor any apparent possibility of conflict requiring investigation under Rule 44(c)); *In Re Grand Jury Proceedings*, 859 F.2d 1021, 1026 (1st Cir. 1988) (in disqualifying counsel from representing grand jury witness, district court "did not identify any specific conflict, actual or potential" and improperly made *Wheat* finding "solely on tenuous inferential relationships").

Furthermore, no evidence or testimony was taken during the perfunctory Rule 44 proceedings conducted by the magistrate. The government therefore necessarily failed to meet its "heavy burden of establishing that disqualification [was] justified." *United States v. Gearhart*, 576 F.3d at 464. As a result, the magistrate court was unable to explain how Petitioner's defense would necessarily be antagonistic or mutually exclusive to those of his co-defendants. Instead, to justify disqualification, the magistrate proposed hypothetical conflicts based on the unfounded assumption that one or more of the defendants would necessarily enter into a plea agreement with the government and testify at trial. (App. C. 4-6). Although the magistrate's hypotheticals were certainly consistent with *his* desired outcome for the case, the fact that Petitioner and his co-defendants employed the same law firm in a joint defense strategy did not authorize the lower courts to interfere with Petitioner's right to counsel of choice.

B. The Lower Courts Improperly Rejected Petitioner's Knowing, Intelligent, and Voluntary Assent To Joint Representation.

It is well-established that criminal defendants can waive their right to conflict-free representation, even where an actual or serious potential conflict of interest exists. *Holloway v. Arkansas*, 435 U.S. 475, 482 (1978) ("permitting a single attorney to represent co-defendants . . . is not *per se* violative of constitutional guarantees of effective assistance of counsel"); *United States v. Garcia*, 447 F.3d 1327 (11th Cir. 2006) (written waivers sufficient to overcome concerns arising from joint representation of three co-defendants); *United States v. Lopez-Andino*, 831 F.2d 1164 (1st Cir. 1987) (although cautionary steps must be taken to protect a criminal defendant's right to counsel, courts must allow defendants to choose joint representation when they know the risks involved and insist on it).

The magistrate court failed to give proper deference to Petitioner's knowing, intelligent, and voluntary assent to the representation, explicitly affirmed in writing for the court's edification. Although "there can be no doubt that [a court] may decline a proffer of waiver" where "a court justifiably finds an actual conflict of interest," the magistrate's order relied entirely upon hypothetical potential conflicts in rejecting Petitioner's waiver, each premised on the unfounded assumption that some or all of his co-defendants were guilty as charged and would enter into plea and co-operation agreements. *Wheat*, 486 U.S. at 159; (App. C. 4-5). Further, the magistrate's order suggested that

Petitioner has "limited education and no prior experience with the United States criminal justice system" and his waiver was therefore "suspect" to the extent it relied on TLA's "dubious representations" regarding the tactical advantages of joint representation. (App. C. 9, fn. 6). However, "[o]ur system of laws generally presumes that the criminal defendant, after being fully informed, knows his own best interests and does not need them dictated by the State. Any other approach is unworthy of a free people." *Martinez v. Court of Appeals of Cal.*, 528 U.S. 152, 165 (2000) (Scalia, J., concurring); *see also United States v. Curcio*, 692 F.2d 14, 25 (2nd Cir. 1982) (Friendly, J.) ("[T]he defendants' choice is to be honored out of respect for them as free and rational beings, responsible for their own fates") (disapproved on other grounds by *Flanagan v. United States*, 465 U.S. 259, 263 (1984)). Although the magistrate was apparently "not persuaded" that there is any "distinct tactical advantage" to joint representation, this was neither the court's decision to make nor sufficient grounds for disqualification. (App. C. 9, fn. 6); *Holloway*, 435 U.S. at 483, fn. 5 ("[I]n some cases multiple defendants can be appropriately represented by one attorney; indeed, in some cases, certain advantages might accrue from joint representation. In Justice Frankfurter's view: 'joint representation is a means of insuring against reciprocal recrimination. A common defense often gives strength against a common attack.' ") (internal quotation omitted). Again, while the magistrate's order was clear that Petitioner was expected to "negotiate a favorable plea agreement," his desire to jointly litigate his case did not

provide a basis for disqualification. Indeed, joint representation for the purpose of pretrial motions can avoid issues of standing that arise when one co-defendant has an expectation of privacy that other co-defendants do not. For example, if the co-defendant with the privacy expectation does not raise the issue, then others "downstream" from the illegal search will be unable to challenge evidence obtained from them as fruit of the poisonous tree. As expected, the magistrate ultimately denied all suppression motions in this case on standing grounds, effectively thwarting the intended joint defense strategy.[7]

This Court should also consider the fact that conflict warnings were given by the presiding magistrate at *every stage* of the proceedings leading up to TLA's disqualification.[8] Despite these repetitive (and arguably coercive after a certain point) warnings, Petitioner consistently maintained his desire to be represented by TLA. Finally, the lower courts failed to properly consider the far less restrictive measure of *partial* disqualification for the purposes of trial only. (App. C. 7). Where a serious potential conflict could occur at a trial,

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[7] Attorneys from TLA have defended dozens of clients investigated and charged with controlled substance offenses by this specific DEA task force in both State and Federal courts. These cases have presented many of the same Fourth Amendment issues, including the extra-jurisdictional tracking of cell phone devices using State-level search warrants.

[8] Petitioner submits that these conflict advisories constitute "appropriate measures" as contemplated by Rule 44(c)(2) and were more than sufficient "to protect each defendant's right to counsel" in this case.

partial disqualification is both appropriate and respected in Federal courts across the country. *United States v. Hastie*, No. 14-00291, 2015 WL 13310083 (S.D. Ala. 2015) (affirming order disqualifying defense counsel from representing defendant at jury trial only); *United States v. Abbell*, 939 F.Supp. 860, 861-64 (S.D. Fla. 1996) ("[defense counsel] shall be disqualified only from participating as trial counsel, and may continue to represent [the defendant] until the time of trial"); *see also United States v. Castellano*, 610 F.Supp. 1151, 1163-67 (S.D.N.Y. 1985) ("[defense counsel] . . . is disqualified only from participating at the trial of this action. [Counsel] may continue to participate fully in the pretrial stage of this case . . . "). It appears that the magistrate court only considered total disqualification, disregarding Petitioner's numerous indications that the concurrent representation was for the purpose of pretrial litigation and motions only.

C. The District Court's Order Overruling Petitioner's Objections Misapprehends The Holding Of *Wheat v. United States*.

The district court's order characterized Petitioner's "main argument" as "an apparent misunderstanding regarding the types of conflicts the Court may consider in assessing whether 'there is good cause to believe that no conflict of interest is likely to arise.'" (App. B. 1). The order also asserted that because "it is evident from the record that there are at least serious potential conflicts – if not actual ones" the magistrate "correctly considered the conflict potentials in this case

and determined that waivers were not an appropriate remedy." (App. B. 2). The district court's order relied on *Wheat v. United States*, which held that a "showing of a serious potential for conflict" may overcome the presumption that a criminal defendant is constitutionally entitled to his choice of legal counsel. 468 U.S. 153, 164 (1988). However, because *Wheat* does not explicitly define "serious potential for conflict," granting the petition for writ of certiorari would give this Court an opportunity to clarify the holding.

Mark Wheat retained defense attorney Eugene Iredale shortly before his jury trial was scheduled to begin. *Id.*, at 153. Iredale also represented two other co-defendants in the "far-flung [marijuana] distribution conspiracy" Wheat was accused of participating in. *Id.*, at 155. One of the co-defendants represented by Iredale, Javier Bravo, *was scheduled to appear as a witness for the Government* in Wheat's trial. *Id.*, at 156. Iredale announced to the district court that he would be representing Wheat at Bravo's change of plea hearing, only "two court days" before Wheat's trial was scheduled to commence. *Id.*, at 153. In the majority opinion, this Court reaffirmed that the purpose of Rule 44(c) of the Federal Rules of Criminal Procedure is "to ensure that criminal defendants receive a trial that is fair and does not contravene the Sixth Amendment." *Id.*, at 161. Due to the probability that Iredale would be required to conduct "vigorous cross-examination" of Bravo and be "unable ethically to provide that cross-examination," Wheat's Sixth Amendment right to effective assistance of counsel was jeopardized by the

joint representation. *Id.*, at 164. While the dissent pointed out that the joint representation with Bravo was "no cause for concern" because Bravo "did not know and could not identify [Wheat]," the majority held that the scenario was nevertheless a serious potential conflict of interest. *Id.*, at 170. The serious potential conflict also justified the district court's exercise of its discretion to disqualify Iredale despite waivers from the co-defendants. *Id.*

Therefore, according to *Wheat*, a serious potential for conflict exists where an attorney endeavors to represent a criminal defendant in a jury trial during which another of the attorney's clients will testify as an adverse witness.[9] *See also Luis v. United States*, 136 S. Ct. 1083, 1089 (2016) (interpreting *Wheat* to mean that a criminal defendant has no right to choice of counsel "who has a conflict of interest due to a relationship with an *opposing party*") (emphasis added). At the time Iredale entered the case, Wheat's jury trial was imminent, and Bravo was certain to be called as a

[9] The other co-defendant represented by Iredale, Gomez-Barajas, had been acquitted at trial, and the Government subsequently agreed to significantly reduced charges in his case. *Wheat*, at 164. The majority found that "if [Gomez-Barajas' plea] agreement were rejected, [Wheat's] probably testimony at the resulting trial of Gomez-Barajas would create an ethical dilemma for Iredale . . . " *Id.* The dissent pointed out that "[t]his argument rests on speculation of the most dubious kind," as two highly unlikely scenarios would both have to occur for a conflict to result. It is also unclear whether this Court would have ruled the same way had Iredale represented only Gomez-Barajas, and not Bravo: the potential conflict with Bravo was clearly the more serious of the two.

witness for the government. No such plea and cooperation agreement had even been *offered* to Petitioner or his co-defendants prior to TLA's disqualification, and a jury trial was months if not years away. Moreover, the joint defense agreement between Petitioner and his co-defendants was for the purpose of pretrial litigation and motions only: potential conflicts would have been ripe for evaluation only if the motions were ultimately denied and jury trial was imminent. Even then, without evidence that the co-defendants' trial defenses would be mutually exclusive to the point of TLA's constitutional ineffectiveness, disqualification would not have been an appropriate remedy. The district court's assertion that "it is evident from the record that there are at least serious potential conflicts – if not actual ones" is also belied by a cursory examination of the Rule 44 proceedings. The only evidence of "potential conflicts" was the criminal complaint, and no evidence or testimony on the issue was taken at any point. The district court abused its discretion by adopting the magistrate's premature decision without any meaningful consideration of the record and by failing to hold the government to its heavy burden of establishing that disqualification of defense counsel was justified. As a result, Petitioner's Sixth Amendment right to counsel of choice was irreparably violated.[10]

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[10] The erroneous disqualification also violated Petitioner's Fifth Amendment due process right to present a common defense through joint representation with his co-defendants.

II. The Proper Remedy For the Government's Intentional Interference With Petitioner's Fifth And Sixth Amendment Rights Is Dismissal Of The Indictment.

When the government's violation of a criminal defendant's Sixth Amendment right to counsel interferes with his or her ability to mount a defense, dismissal of the indictment is the appropriate remedy. *See, e.g.*, *United States v. Stein*, 541 F.3d 130 (2nd Cir. 2008) (affirming dismissal of criminal indictment against employees of accounting firm where United States Attorney's office pressured the firm to stop paying legal fees for employees as a condition of the firm's "cooperation" with its investigation); *United States v. Carmichael*, 216 F.3d 224, 227 (2nd Cir. 2000) (although dismissal of an indictment is a remedy of last resort, it is appropriate where necessary to "restore the defendant to the circumstances that would have existed had there been no constitutional error"); *United States v. Morrison*, 449 U.S. 361, 365 (1981) (where the government's actions violate a defendant's Sixth Amendment right to counsel, the defendant must show an "adverse consequence" to his representation before dismissal of the indictment is appropriate). Although a Sixth Amendment violation may be remediable, interference with the Sixth Amendment right to counsel of choice qualifies as structural error and unquestionably affects the entire course of the proceedings. *See Gonzalez-Lopez*, 548 U.S. at 144 ("The right at stake here is the right to counsel of choice . . . and that right was violated because the deprivation of counsel was

erroneous. No additional showing of prejudice is required to make the violation 'complete'"); *Luis v. United States*, 136 S. Ct. 1083, 1089 (2016) ("Given the necessarily close working relationship between lawyer and client, the need for confidence, and the critical importance of trust," this Court has repeatedly held that the Sixth Amendment right to counsel of choice is "fundamental").

Here, the government engaged in a pattern of intentional and deliberate interference with Petitioner's Sixth Amendment rights. The government illegally detained Petitioner for approximately ninety-six hours: he was unnecessarily transferred from the Doraville municipal jail to the Atlanta municipal jail, denied access to his attorneys, and interrogated by government agents. *See County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) (Holding that a person arrested without a warrant has a Fourth Amendment right to have the probable cause for his or her continued detention reviewed by a neutral and detached magistrate as soon as reasonably feasible but, in any event, no later than forty-eight hours after the arrest). After indictment, the interference became even more drastic and prejudicial to Petitioner's defense.[11] Upon learning that

[11] The government's treatment of co-defendant Pacheco-Romero is further evidence of the Sixth Amendment violations in this case. The government intentionally held Pacheco-Romero's first appearance separately from his co-defendants and without his retained counsel present. Pacheco-Romero notified his court-appointed lawyer and the magistrate that he had retained TLA, he was advised by the magistrate to either retain different counsel or continue with appointed counsel.

Petitioner intended to pursue a joint defense strategy with his co-defendants and file pretrial motions, the magistrate scheduled a Rule 44 hearing where no evidence or testimony was presented and removed Petitioner's counsel from the case. In its order, the magistrate proposed hypothetical potential conflicts and advocated for defense counsel that would "negotiate" cooperation agreements to help the government prove its case, which was based almost entirely on wiretap intercepts, and the order was summarily adopted by the district court. At a minimum, Petitioner's guilty plea and sentence must be vacated because the erroneous disqualification of counsel constitutes structural error and prejudice is presumed. *Gonzalez-Lopez*, 548 U.S. at 144.

However, because it is impossible to restore Petitioner to the "circumstances he was in had there been no constitutional error," the proper remedy is dismissal of the indictment with prejudice. *Carmichael*, 216 F.3d at 227. Prior to disqualification, TLA filed a motion to vacate the magistrate's detention order on Petitioner's behalf, raised the government's *Riverside* violations as grounds for release, and provided evidence of his gainful employment and ties to the community. Following disqualification, the district court denied the objections because appointed counsel "failed to file a supplement" and "specifically outline the reasons the Court should release [Petitioner], including what specific steps will be taken to minimize [Petitioner's] risk of flight and danger to the community." (App. E.). As a result, Petitioner was faced with incarceration during the

pendency of his case, hampering his ability to assist in the preparation of his defense. *Stack v. Boyle*, 342 U.S. 1, 4 (1951) (the traditional "right to freedom before conviction permits the unhampered preparation of a defense"). The merits of Petitioner's objections were never addressed due to the disqualification order, and his defense was therefore adversely affected.

The disqualification also prevented Petitioner from utilizing pretrial motions to challenge the legality of the wiretap warrants and search warrants in this matter. A preliminary motion to suppress wiretap evidence and statements was filed on Petitioner's behalf. At the pretrial conference, the magistrate gave Petitioner's counsel only two days to "perfect" the motion to suppress with an affidavit "to establish standing." The deadline was not met, and the motion to suppress was deemed abandoned and denied on standing grounds. The magistrate also denied the motion on the grounds that Petitioner failed to properly adopt his co-defendant's motion to suppress pursuant to the local rules of the Northern District of Georgia. Had Petitioner and his co-defendants maintained their joint defense agreement with chosen counsel, this unfavorable outcome would have been avoided. Following the summary denial of the pretrial motions in this matter, five of the six co-defendants executed plea agreements with the government and all six co-defendants entered guilty pleas. Indeed, unless all six co-defendants' guilty pleas and sentences are vacated, Petitioner cannot be restored to the *status quo ante* because the benefits of a joint defense are now unavailable to him. The

disqualification of Petitioner's chosen counsel clearly had an "adverse" effect on the legal representation he received. *Morrison*, 449 U.S. at 365. Therefore, "no remedy other than dismissal of the indictment would put [Petitioner] in the position [he] would have occupied absent the government's misconduct." *Stein*, 541 F.3d at 142.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Honorable Court GRANT the petition for a writ of certiorari.

Respectfully submitted this 22nd day of March, 2021.

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