22-5271

No.

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

JOSE ERBO, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOSE ERBO
In Pro-Se Capacity
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QUESTION PRESENTED

Whether Autopsy Reports Are Testimonial For Purposes Of The Confrontation Clause, And Whether The Unreasonable Application Of Clearly Established Supreme Court's Precedents In This Case Warrants For The Judgment In Feliz To Be Reversed

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JOSE ERBO (hereinafter referred to as " The Petitioner"), respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 467 F.3d 227. The Opinion of the Court of Appeals in connection to Petitioner's Motion to Recall The Mandate (Appendix-A) ("App") in this case is unreported under the new assigned Docket No. 22-316.

JURISDICTION

The judgment of the Court of Appeals was entered on October 25, 2006. The Petition for Recall the Mandate was denied on March 15, 2022. And Petitioner for rehearing (Appendix-B) was denied on April 21, 2022. The jurisdiction of this Court is invoked under 28 U.S.C.,1254(1)).

CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment to the United States Constitution provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the Right * * * to be confronted with the witnesses against him[.]

STATEMENT

This case presents a straight forward question that have deeply divided the Federal Courts of Appeals, State Courts, and Three Panels, repeatedly, from the Second Circuit of last resort: Whether autopsy reports are testimonial for purposes of the Confrontation Clause. The current tally stands at 12-9, with the Court of Appeals in this case siding with the minority of courts in holding that such reports are not testimonial. Nearly every court to have addressed the question has recognized the conflict, with some expressly suggesting that this Court's intervention is necessary to resolve it.

Basically, there is a chaos in the lower courts on the question whether autopsy reports are testimonial for Confrontation Clause purposes, particularly in the wake of the Court of Appeals' conflicting decision in Garlick v. Lee, 1 F.4th 122 (2d Cir. 2021). Further, the Court of Appeals' Panels are sharply and deeply divided on that question, reflecting broader disagreement on how to go about determining whether statements are testimonial for Confrontation Clause purposes in the first place.

In 2001, Petitioner was indicted in the Southern District of New York on various charges relating to an alleged conspiracy to murder certain individuals, and, in some instances, alleged contract murder in aid of racketeering. Six persons allegedly died from multiple gun shot wounds and other violent injuries in connection with the conspiracy. At trial, the government called a Medical Examiner, Dr. James Gill ["Dr. Gill"], to testify concerning nine autopsies conducted by the New York City's Medical Examiner Office. Dr. Gill had not

conducted any of these autopsies in question but testified as a 'summary witness.' The government sought to introduce the document[s] into evidence as "business records" and they were admitted after the District Court established the foundation as such, i.e., that (1) they were kept in the regular course of business, (2) that they were made at about the time of the activities they reflect[ed], and (3) that they were in the custody of Dr. Gill's office. Petitioner objected to the introduction of these reports, claiming they were inadmissible hearsay and that they admission into evidence violated Petitioner's Sixth Amendment right to Confrontation. His objection was overruled; and Dr. Gill was permitted to describe the causes of death of each of the victims and their violent injuries. In short, none of the doctors [approximately nine Medical Examiners] who had prepared, certified and signed those nine autopsies reports did not testify.

Petitioner took prompt action through direct appeal (Dkt. No. 02-1665-Cr.), raising, i.e., a Crawford v. Washington, 541 U.S. 35 (2004) claim in connection to the admission of nine Autopsy Reports in violation to His Sixth Amendment Right to Confrontation. In denying Petitioner's appeal, the Second Circuit concluded that:

> "We conclude that autopsy reports are not testimonial evidence within the meaning of Crawford and thus, do not come within the ambit of the Confrontation Clause." See, e.g., United States vs. Feliz, 467 F.3d. 227 (2d Cir. 2006)(cert. denied, 549 U.S. 1238 (2007)).

More importantly, two Confrontation Clause cases were established by this Court in New Mexico and Massachusetts, repeatedly, both ultimately clearly became law in light of Crawford. See Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009); and Bullcoming v. New Mexico, 131 S.Ct. 2705 (2010).

As preliminary matter, however, in 2013 the Court of Appeals recognized that Feliz, its 2006 precedent Opinion in connection to the Confrontation Clause on which numerous District Courts had relied, had been "Call[ed] * * * Into Doubt" by Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009), and subsequent Confrontation Clause decisions. See, United States v. James, 712 F.3d 79 (2d Cir. 2013) (noting that "the district court's rationale for allowing the forensic reports into evidence [in light of Feliz] is of questionable validity." See United States v. James, 712 F.3d 79, 94 (2d Cir. 2013)).

Having concluded that Feliz was no longer a controlling precedent within the Second Circuit in connection to the Confrontation Clause, in 2021 the Court of Appeals sought to establish a "new governing standard" in light of Crawford for determining whether autopsy report[s] were testimonial. The Court of Appeals began by surveying this Court's pre-Williams, infra, cases, and from those cases, it derived the principles that: "Under the applicable Supreme Court's precedents, our conclusion is clear, the autopsy reports is testimonial and was erroneously admitted without an opportunity for cross-examination." (citing Melendez-Diaz, at *318-21; Bullcoming, infra, at *661-62; and Crawford, at * 68-69). See Garlick, supra, at * 128.

In 2022, Petitioner then considered whether the decision in Garlick "changed the rule in Feliz." The Court of Appeals disagree[ed] "because Petitioner does not present "exceptional circumstances" warranting Recall of the Mandate and Reinstatement of his appeal [Feliz]." Nearly every courts of appeals and State courts to have compared the holdings of Feliz with Garlick, has recognized the conflict within the Court of Appeals' Panels, with some expressly suggesting that this Court's intervention is necessary to resolve it. Indeed, the conflict between the Panel members on the question actually got worse after the "reasonable application" of "clearly established Federal Law" from the Supreme Court applied in the Garlick's case... but it has only compounded by uncertainly as to which (if any) of the two decisions--Feliz and/or Garlick is a controlling [Second Circuit's] precedent in connection to whether autopsy report[s] are testimonial for purposes of the Confrontation Clause.

In short, Petitioner respectfully submits that the out-of-court statements were testimonial in nature because the nine Medical Examiners who prepared these nine autopsy reports reasonably expect[ed] that their findings may later be used at a criminal trial, particularly when they conducted the autopsies reports (like the victims in this case) who allegedly die from multiple gun shot wounds and other violent injuries.

REASONS FOR GRANTING THE PETITION

Put Simply, the Feliz's decision contains one of the most extensive discussions by numerous defense attorneys, lower courts, prosecutors and commentators on the question whether autopsy reports are testimonial for Confrontation Clause purposes, particularly, in the wake of the Court of Appeals recent decision in Garlick v. Lee, supra. Apart from the lower courts, three Panels from the Court of Appeals are sharply and deeply divided on that question, reflecting disagreement between themselves. The conflict on the question presented actually indicates that the only, arguably, better result would be for this Court to declare the Second Circuit's 2006 [the Feliz's Opinion] jurisprudence unconstitutionally vague--because--before and after the decision in Garlick--no one could tell what the Feliz's decision means in light of this Court's precedents: Crawford, Bullcoming, and, Melendez-Diaz, and to a lesser extent Williams, infra.

It is undisputed that this petition is a suitable vehicle in which to resolve the conflict. Now, it is constitutionally appropriate for the Court to maintain uniformity of the lower courts' decisions and in proceedings that presents a question of "exceptional importance" if it involves an issue on which the Panels' decisions (like in this case) contradicts "Clearly Established Federal Law" as determined by this Court. See Crawford, at * 68. This petition is a suitable vehicle in which to resolve the conflict and discussions. By any measure, that conflict cries out for immediate review and resolution. The petition for certiorari should therefore be granted.

A. The Decisions In Garlick And Feliz Deepens A Conflict On The Question Whether Autopsy reports Are Testimonial For purposes Of The Confrontation Clause

The Second Circuit's decision in Garlick deepens a conflict of last result as to which (if any) of its Opinions in Feliz and/or Garlick is controlling in connection to the Confrontation Clause. For over a decade, and as matter currently stands, however, nine members of the Court of Appeals have taken separately different positions in connection to Petitioner's Confrontation Clause claim. In fact, the Court of Appeals have declined to exercise its inherent power to re-consider Petitioner's case [Feliz] en banc, violating Petitioner's privilege guaranteed by the Sixth Amendment to the United States Constitution. Clearly the Garlick's opinion undercut the reasoning in Feliz.

Admittedly, the Honorable Circuit Judge Wesley, participated and joined the three panels that decided each of the contradicted opinions... but took different approach in each of them. See, e.g., Feliz, Garlick, and Erbo, Dkt. No. 22-316 (Appendix-B)). It's demonstrable, it's ascertainable, and with justification, Petitioner may argue that this is one of the motivations that has brought about this "exceptional important" petition before the Court.

Petitioner respectfully submits, Your Honors, that it is undisputed that the opinion in Feliz directly contradicts with "clearly established" precedents from this Court, and the Court of Appeals has failed to address such specific claim. In a

general way, it cannot seriously be disputed, moreover, that by ignoring to review and decides which of the opinions [Feliz or Garlick] is controlling within the Second Circuit, the Court of Appeals created an additional intra-circuit split that most ultimately needs to be judicially restraint[ed] by this Court.

Consequently, it has been recognized by numerous courts, commentators, and defense attorneys that this case is an unprecedented one in light of Crawford. If this Court deny certiorari, this case will truly be an unprecedented case. In short, what is being requested here, if Your Honors please, do not go beyond the common understanding, or Petitioner's understanding, of his Sixth Amendment right to Confrontation. This Court's intervention is desperately needed to resolve a profound conflict on a question of indisputable legal and practical significance. Petitioner humbly ask the Court to compare the Feliz's decision with Garlick, supra. See also, Crawford, 541 U.S. at * 68-69; Melendez Diaz, 557 U.S. at * 318-21; and, Bullcoming, 564 U.S. at *661-62. There is one word used by this Court in the Crawford's Opinion that Petitioner think appropriate to this case, and that word is--"cross-examination." Crawford, U.S. at 67.

The Second Circuit's decision in Feliz conflicts with the decisions of eleven courts of appeals and state courts of last resort. And it has been recognized by numerous commentators and courts, with some decisions actually describing the conflict. See, e.g., United States v. Moore, 651 F.3d 30 (D.C. Cir. 2011) (per curiam); aff'd on other grounds sub nom. Smith v. United States, 133 S.Ct. 714 (2013). State v. Medina, 306 P.3d 48, 63-64 (Ariz. 2013) (comparing decision with United States v.

Ignasiak, 667 F.3d 1217 (11th Cir. 2012); Euceda v. United States, 60 A.3d 994, 1012-13 (D.C. 2013)(comparing with Moore, supra.); People v. Leach, 980 N.E.2d 570, 593 (Ill. 2012); and, State v. Mitchell, 4 A.3d 478, 489 (Me. 2010); United States v. Feliz, 467 F.3d 227 (2d Cir. 2006); United States v. James, 712 F.3d 79 (2d Cir. 2013); and Garlick v. Lee, 1 F. 4th 122 (2d Cir. 2021)). Marc Ginsberg, The Confrontation Clause and Forensic Autopsy reports--A 'testimonial,'__La. L. Rev.___(2013) (forthcoming) <tinyurl.com/mginsberg>. In short, that conflict plainly warrants this Court to grants review in this case.

There can be no doubt that, under any of the various standards set out in the decisions cited above, the Autopsies Reports at issue here would be testimonial and would therefore trigger the protections of the Confrontation Clause. Further, the North Carolina Supreme Court held in State v. Locklear, 681 S.E.2d 293(2009), that autopsy reports are testimonial Id. at 304-306. That court reasoned that Melendez-Diaz was sufficient to resolve the issue. Ibid. As the court explained, Melendez-Diaz "specifically referenced autopsy examination[s] as one * * * kind of forensic analys[i]s" covered by the Confrontation Clause. Ibid. See, e.g., Melendez-Diaz, at * 318 n.5-6.

Petitioner respectfully submits that "when the[S]tate seeks to introduce forensic analyses, [a]bsent a showing that the analyst [are] unavailable to testify at trial and that petitioner (like the Petitioner in this case) had a prior opportunity to cross-examine them[,] such evidence is inadmissible under Crawford [v.

Washington, 541 U.S. 36 (2004)]." Id. at *35 (second and fourth alterations in original)).

B. The Conflict On The Testimonial Nature Of Autopsy Reports Is Compounded By Broader Confusion In The Wake Of The Court Of Appeals' Decision In Garlick v. Lee

The sheer number of Judges from the Second Circuit to have weighed in on each side of the conflict[ed] decisions [Garlick and Feliz] on whether autopsies reports are testimonial should be sufficient, standing alone, to justify further review. The conflict within the Court of Appeals' Panels on the issue whether it 2006 jurisprudence [Feliz] is unquestionably inconsistent with the decision in Garlick and with this Court's precedents is one that can be effectively resolved by this Court alone. Perhaps more significantly, in United States v. James, 712 F.3d at *94, the Second Circuit recognized that:

> "No conclusion was reached in Feliz as to whether the Nine Autopsies reports were similarly completed for the purposes of establishing some facts at trial, in part because we did not think [at the time] that the reasonable expectation of the declarant[s] should be what distinguishes testimonial from non-testimonial statements--Feliz 467 at * 235, rending that factual inquiry unnecessary."

Significantly, it is time to "rethink" that autopsies reports are not analogous to business records in light of Crawford, and to withdraw and strike the misleading and unfairly prejudicial opinion in Feliz. It is also undisputed that this Court doesn't retain the authority to do so.

Remarkably, in 2012 the Eleventh Circuit recognized that the Feliz's decision has little persuasive value in connection to the Confrontation Clause. See, e.g., United States v. Ignasiak, 667 F.3 1217 (11th Cir. 2012)). More importantly, other courts have applied and relied on the test from Marks v. United States, 430 U.S. 188(1977), to determine the "governing standard" in a particular case. For example, in Deer v. State, 73 A.3d 254, 270 (M.D. 2013) that court concluded that "using the Marks approach * * * that the narrowest holding in Williams v. Illinois, 132 S.Ct. 2221 (2012) is that a statement, at a minimum, must be formalized to be testimonial"; Id. at 271 n.16 (adding that "one legal scholar * * * has concluded that Justice Thomas's concurring Opinion, which focuses on the need for a statement to be formalized to be testimonial[,] is the narrowest in terms of assessing whether forensic reports are testimonial and will control future cases involving forensic evidence" (internal quotation marks and citation omitted)). The big question remains: after the Court of Appeals path marked decision in Garlick-would the Petitioner have to wait another two decades for his case to be overturned as in Ohio v. Robert, 448 U.S. 56-57(1980)? See, e.g.., Crawford, effectively overruling Ohio v. Robert, supra after twenty four years.

The contradicted decisions in Garlick and Feliz [both decided in light of Crawford] had caused many defense attorneys, prosecutors, including Districts and Circuits Judges to scratch their heads as to which (if any) of the two opinions is controlling in connection to the Confrontation Clause under Crawford. The conflict on the question presented must be cured because those Defendant[s] who are currently facing trial [including Petitioner] should be the key turning point in this Court's opinion in connection to the autopsies reports concerns [in this case].

For over two decades, Petitioner's case [Feliz] have brought and will continue to bring lasting consequences for those Defendants faced with autopsies reports. First and foremost, at every level of his proceedings [trial and direct appeal] He contended that the admission of the nine autopsies reports violated his Sixth Amendment Right to Confrontation. It is undisputed that the Appellate court's analysis in this case in light of Crawford is absurd in the context of the Confrontation Clause. See Yee v. Escondido, 503 U.S. 519 (1992) ("once a federal claim is properly presented (like the one in this case) a party can make any argument in support of that claim")).

Moreover, the court of appeals' opinion in Feliz invalid Crawford's emphatic rejection of the reliability-based approach of Ohio v. Robert, 448 U.S. 56, 66 (1980). In this situation, if Crawford stands for any extent, "it is that the history, text, and purpose of the Confrontation Clause bar Judges from substituting their

own determinations of reliability for the method the Constitution guarantees." See Hemphill v. New York, 595 U.S._____, (2022) (quotation in original)).

In 2013, moreover, the court of appeals "revisited" its Confrontation Clause jurisprudence--Feliz; and recognized that Feliz is inconsistent[ly] with established binding Supreme Court's precedents. See James, 712 F.3d at *94. In charting a different path, the James's Court held that:

> "We are confronted in this case with the puzzle Justice Kagan described: Which of the foregoing principles enunciated by various members of the Supreme Court controls here? We begin by looking to our holding in Feliz--a case decided on facts similar to these--to determine how and to what extent the rule we established in that case [Feliz]. There we concluded that Autopsy Reports were business records. Feliz, 467 F. 3d at *236. But, as we have explained, Melendez-Diaz; and Bullcoming, and to a lesser extent Williams, 'Call This Categorical Conclusion Into Doubt.' "

Accordingly, if any Defendant[s] find themselves in a position similar to Petitioner and desire to object to the admission of autopsies reports into evidence, they should point to the opinions of Garlick and Crawford [not Feliz] for their constitutional support under the Sixth Amendment right. Compare Feliz at

*236, with Crawford at *56. Petitioner's well-reasoned and well supported arguments present a compelling case that, regardless of the nine autopsies reports issue involved, the Sixth Amendment Right can only function properly when the lower courts abide by the terms of the constitution--cross-examination. And a conflict involving 21-federal and state courts, and nine members of the court of appeals of a particular Nation, should, in fact, be resolved by Champions of this Court.

It is submitted, then, that indeed precedents and prevailing practices strongly favor[ed] this petition. It is commonsense that autopsies reports and the results of a crime scene investigation in general form the pillars of murder investigations. [T]he highly trained Medical Examiner of these reports knows that prosecutors will use these reports as trial evidence (like in this case--the manner of death found to be allegedly homicide caused by gun shot wound); in the language of this court, " 'Certificates of analysis' identifying a seized substances as an illicit drug should not have been introduced against the defendant absent an opportunity for the defendant to confront the person who prepared the certificate." Melendez-Diaz, supra.

Petitioner's former attorney--Richard D. Willstatter is "ashamed" with such decision [Feliz] recorded for 16-years as official Second Circuit's precedent, and what is worse, as having been adopted by the government and numerous courts--as an opinion sanctioning a particular course of criminal proceedings, unprecedented among this Court's precedents--which are clearly established

federal law, and yet the court of appeals did not dare to recall its [Feliz's] mandate. Why did they not do it? If the Feliz's opinion keep been carried into effect, it would not settle the conflict with this courts below, so far as it related to this unfortunate Petitioner, including but not limited to future defendants facing the admission of autopsy reports in criminal proceedings; they would be wrested from their Sixth Amendment protection, which above all things is [our] rights after [we] had been taken into custody by Order[s] of the Courts.

So the Court of Appeals, again, says "Petitioner does not present 'exceptional circumstances' warranting to recall the mandate in his appeal;' " accord, Petitioner must therefore go further, and since this Court is responsible for the clearly established authorities supporting this arguments, its must not only reverse[d] the judgment of the court of appeals in this case, but remand it for further proceedings consistent with Crawford, Melendez-Diaz, Bullcoming; in conjunction with Garlick, so that there may be no additional habeas corpus from future defendants coming to the rescuer of this Court as soon as they are wrongfully convicted in light of Feliz. Will this Court please consider for one moment the unreasonable application of its own clearly established federal law involved on that opinion [Feliz]? Will this Court inquire what, if that opinion had been successfully adjudicated in light of Crawford, would have been the tenure by which every defendant[s] being confronted with autopsy reports at trial, would have enjoy[ed] the blessing of the Sixth Amendment Right to Confrontation? Had the Court of Appeals 2006 precedent [Feliz} once been set and submitted to, which was the last court that adjudicated petitioner's claim on the merits,

snatched and disable for 16-years the effective power of the Supreme Judges of the Land at the time its incorrectly applied the established High Court's Precedents?

Petitioner further asks, if this court deem an incorrect application of established federal law, and precedents of this kind, published under such circumstances, worthy of consideration in this case, that this Court would advert to that incorrect adjudication and say whether it is a reasonable application recognized by this Court, as the ground on which its will decide future cases? Again that truth is "in all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witness[es] against him[.]' U.S. Const. VI. Again, is there one adjudication of clearly established Supreme Court precedent on which a particular decision is demanded from this Court on behalf of the Court of Appeals for the Second Circuit in connection to the Confrontation Clause? Compare Garlick with Feliz. No Defendant[s] has a Sixth Amendment Right to be confronted with the witnesses against him if he has a Court able to take it from him[.] There is the unreasonable application of Crawford. There is the whole argument of this petition.

Equally important, if cross-examination is indeed a Constitutional right—and this Court should hold that it is--it is hard to think of a right more important to criminal Defendants [like the Petitioner in this case] who is faced with nine autopsies reports that the government contend[ed] are highly indicative to guilt.

. Thus far, the Court of Appeals, neither the government has not and cannot provide this Court with a "fair assurance" that the offending autopsies reports testimonial evidence did not substantially influence[d] the jury. The government, neither the Court of Appeals has not demonstrated, or concluded that it was "Highly probable" that the admission of the nine autopsies reports evidence did not contribute[d] to the verdict. As Petitioner pointed out in his opening Brief [Feliz, at 35], the government repeatedly emphasized these autopsies reports statements in summation because the corroboration of its cooperators was crucial to the government's strategy. The unreasonable erroneousness admission of the nine autopsies reports at Petitioner's trial was not harmless.

No other medical evidence was offered at trial to establish the victims' death. The autopsies reports were the first Exhibits introduced at trial, and the government heavily relied on them in its closing and opening statements. The autopsies reports were the stronger evidence in the government's case and were not cumulative of other inculpatory evidence in connection to the victims' death. [Petitioner wish {please bear with me} to draw the Court's attention to the used of three guilty pleas allocutions submitted over objection as substantial evidence of Petitioner's guilt. The prosecutors (apart from the autopsies reports statements) spent a large amount of their summation going over the details of three guilty pleas emphasizing how those testimonial statements corroborated the cooperators' testimony. The government offered the allocutions statements as proof that the crimes were committed and were committed by the Petitioner.

They were used to shore up the questionable testimony of the killers and drug kingpins the government was offering to free in exchange for Petitioner's skin]. Whether and under the present circumstances that this Court's recent holding in Himphill, supra apply to the interest of this petition is a different issue that is not before this Court on this paper. But no objective observer of Petitioner's trial could fail to miss these facts.

For everyday matter, in light of this Court's precedents, that both of... the essential fact and requisite has been established in proof. The decision in Feliz is plain beyond controversy, this Court must examine the Court of Appeals' recent holding in Garlick, supra, including but not limited James, supra. Significantly, autopsies reports are testimonial evidence, and were unlawfully admitted at trial in violation of the laws and Constitution of this Nation. The courts are responsible for the protection of the rights of individuals; the court of appeals in this case was bound to respect Petitioner's rights as much as Garlick was subjected. For this reason this Court should overturn the decision of the lower court's in this case.

There is one notable justification to overturn the Feliz's opinion, Petitioner respectfully requests that this Court's precedents must be given the greatest--weight in the deliberation in this petition--because--the argument presented, in the discussion of the case, were clearly considered by this Court essential[ly] in its Opinions of Crawford, Melendez-Diaz, Bullcoming; and, to a lesser extend Williams, and were taken into notice in the Opinions of Garlick supra, and James supra, by the Court of Appeals, repeatedly, in 2013 and 2022. Given this Court's

precedents, Crawford in particular, had already shown the strength of the legal argument on behalf of the Petitioner in this case, allow Crawford speaks as a leader and allow it's 'Categorical Standards Approach' and strength come through in support of Petitioner's claim as a clearly established precedent voice and guide the Court in this case. Petitioners' position bear repeating: When comparing the opinion of Feliz with Garlick, it is undisputed that the Court of Appeals have not contradicted itself in connection to the question presented herein. See Feliz, at 236-37, and Garlick at *128-9.

At least as matter currently stand, however, nine Second Circuit judges are aligned with their sister Court's judges on the minority side of the "exceptional deep conflict" on the question presented. By any measure, that conflict, and split cries out for immediate review and resolution. For the most part, Petitioner have bracketed the issue of conflict throughout this petition, even though many of the violations that plague this case--inadmissible evidence, sixth amendment violation, incorrect adjudication of clearly established federal law, to name just a few--are only intelligible through the lens of the Crawford's opinion.

C. The Question Presented In This Case Is An Important One That Warrants The Court's Review

This case is a suitable vehicle for consideration and resolution of the question whether autopsy reports are testimonial for purposes of the Confrontation Clause. Petitioner respectfully submit that one of the Court's primary functions, of course, is to provide nationwide uniformity on question[s] of constitutional law. Petitioner simply add that it is the rare case indeed that comes to this Court, in pro-se capacity, with as deep and entrenched of an conflict on a question of constitutional law as the one presented here, with no fewer than 21 Courts of Appeals, State Courts; and, Second Circuit's Judges of last resort having taken conclusive positions on the question.

What is more, after the Second Circuit's opinion in Garlick, the conflict on the question presented has only gotten worse, not better. As a result, the lower courts, especially in the Eastern and Southern Districts of New York are in conflict as to which of the "governing standards" from the Second Circuit's precedents [Garlick and/or Feliz] is controlling for determining whether autopsy reports are testimonial for purposes of the Confrontation Clause.

It cannot seriously be disputed, moreover, that the question presented in this case is a recurring one of "exceptional circumstances". Autopsy [forensic pathology] Reports will often constitute the most important evidence of guilt--particularly in light of the well-known "CSI effect." whereby jurors attach disproportionate weight to forensic evidence in making judgments of guilt. See, e.g., Tom R. Tyler, Viewing CSI and threshold of Guilt: Managing Truth and Justice in Reality and Fiction, 115 Yale L.J. 1050, 1063-64(2006)). Cross-examination of

the declarant[s] who produce autopsy [forensic pathology] reports is the most effective and time-tested means of exposing the "careless and/or incompetent work" that leads to mistakes in those reports. See, Williams, 132 S.Ct. at *2274-75 (Justice Kagan, J., dissenting);---which, in turn, may produce convictions of innocents individuals. See also generally, National Forward Council of the National Academies, Strengthening Forensic Sciences in the United States of America: A Path Forward 44-49 (2009) (teaching that, because forensic analysis is a product of human discretion, it is vulnerable to error and fraud)). Petitioner is entitled to the same constitutional right as the wealthiest person[s] in the world [Crawford, Melendez-Diaz, Bullcoming and Garlick]; or as the poorest person in the world [Feliz]. If cross-examination is indeed a constitutional right--and this Court should hold that it is--it is hard to think of a right more important to criminal Petitioner[s], like Petitioner, who is faced with nine autopsies reports that the government contend[ed] are highly indicative of guilt. This Court clearly has the power to grant relief in this case, and at the same time to frame its decision in a manner that will protect the Sixth Amendment right of all accused who appear before the lower Courts today. Petitioner would like to state that the Sixth amendment to the United States Constitution exists. No one is a miracle worker, but the Constitution exists; and he is entitled to that right.

It is well settled that the decision in Garlick is unquestionably inconsistent with the Court of Appeals' decision in Feliz-warranting Petitioner's petition to be granted with instruction to recall the mandate in Feliz. It is undisputed; moreover, in the Garlick's decision the Court of Appeals effectively repudiated the regiment in Feliz. [T]herefore accepting formulation[s] of the admission of the autopsy

report is a violation of the Confrontation Clause "because" the report[s] are testimonial statements. Again, to no one's surprise and to prevent the lower district courts and state courts from additionally "Unreasonable Application[s]" of "Clearly Established Federal law," Garlick's rejection of the regime of Feliz's, seemed to have one and "only" one constitutional objective: "cross-examination." See, Crawford, at *67.

Consequently Petitioner finds support for his right to Confrontation in all specific guarantees enumerated in the decision of Crawford v. Washington. This Court, moved not by the conflict.. but by Petitioner's thirst for justice, can grant his request to the full. The Court can rule not only that autopsies reports are testimonial for purposes of the Confrontation Clause, but also rule that it was erroneously admitted without an opportunity for cross-examination. See, Williams, 566 U.S. at *57-58 (plurality opinion)). Petitioner respectfully submit that he should be returned back to the District Court, and not allow him to suffer any more by the "unreasonable application of clearly established this Court's precedents: Crawford, Melendez-Diaz; Bullcoming; and to a lesser extent Williams.

Indeed, the Court have seen enough to know that the unreasonable erroneous admission of the nine autopsies reports in this case was not harmless. No other medical evidence was offered at trial to establish the cause and manner of the victim[s'] death. The government also offered the reports as evidence of Petitioner's intent to cause serious physical injury to one of the victim--Carlos

Gonzales. The nine autopsy reports were the strongest evidence in the government case and were not cumulative of other inculpatory evidence connecting Petitioner to the victim[s'] death.

More significantly, Dr. Gill, who did not conduct[ed] or even participate[d] in the nine autopsies reports, could not testify with respect to the procedures and methods that were followed in reaching its conclusions or to the qualifications of the nine medical examiners whom conducted, prepared, and singed the nine autopsy reports. In addition, Dr. Gill could not have adequately reveal[ed] any defects in the autopsies' methods, conclusion and reliability.

There can be no doubt that, both Petitioners--Garlick and Feliz were similarly situated with the same position[s] in light of Crawford. And after 16-years of a conflict and "unreasonable application" of "clearly established federal law," the Court of Appeals effectively repudiated its precedent case [Feliz, 467 F.3d 227] and its [t]heretofore accepted that "under the Supreme Court Precedents [Bullcoming; Melendez-Diaz; and Crawford]our conclusion is clear: autopsy reports are testimonial for purposes of the Confrontation Clause. See, e.g., Garlick at * 22.

Having concluded that Feliz was no longer controlling, the Court of Appeals refused to recall the mandate in Feliz. Accordingly, this contested matter presents four legal questions: First, has the Petitioner demonstrated cause for the Court of

Appeals to reconsider its erroneous interpretation of Crawford as it was set out in Feliz? Second, if so, why this Court's precedents in this regard were applied differently in two similar cases [Feliz and Garlick]? Third, which of the two inconsistent decisions [Garlick or Feliz] best aligns with this Court's Opinion in Crawford? And, four, what impact these two contradictory decisions--which were situated on identical position--would have on other Court of Appeals, District Courts, and State Courts that would be addressing the governing standards in connection to autopsies reports in the near future?

Significantly, when medical examiners are conducting and preparing their autopsies reports, they are well aware that their finding[s] may well be used in criminal litigation, particularly when they are conducting autopsies of persons (like the victims in this case) who allegedly died from gun shot wounds and other violent injuries. It is commonsense that autopsy reports and the result of a crime scene investigation in general form the pillars of murder investigations. the Authors of these reports knows that prosecutors will use these reports as trial evidence, in the language of this Court, "Certificates of analysis identifying a seized substance as an illicit drug should not have been introduced against the Defendant absent an opportunity for the defendant to confront the person who prepared the certificate." see Melendez-Diaz, supra.

The decision in Feliz is not only contradictory with the opinion in Crawford, but it is wholly inconsistent with the fundamental principles of the Sixth Amendment and the purposes for which the Confrontation Clause was established, as well as

its policy providing Defendants the right to cross-examines the witnesses against him[.] It is submitted that the Court of Appeals is bound to administer the laws and precedents as they have been administered by this Court in all cases in which the laws or the established authorities of the High Court do not conflict with the United States Constitution.

And from thence, it is submitted that this Court as a High Court have prohibited the admission of Laboratory reports without an opportunity of cross-examination. Would this Court, which has been so cautious not to be misunderstood in connection to the United States Constitution, bound itself, under the term of the Sixth Amendment, to allow the lower Federal and Sate Courts of additional unreasonable application of clearly established federal law announced in Crawford?

The categorical standards of the entire Opinion in Crawford clearly shows that it was intended to apply to autopsies reports. For example, in this case the nine autopsies reports were delivered to the New York City's District Attorney's Office, which in the language of this Court, "Any objective witness--[Dr. Gill in particular] would have expected that the statements contained in the reports would be used in a later [petitioner's] prosecution." See Crawford, at * 51-52; see also, Melendez-Diaz, at * 310. This case, in its legal aspect, presents three additional questions:

1. Was the petitioner legally entitled to cross-examine the nine Medical Examiners who prepared, certified and signed the autopsies reports in question?

2. If he was not entitled to cross-examine the medical examiners, does autopsies reports constitute testimonial evidence in light of Crawford?; and,

3. Is the Petitioner arguing his Sixth Amendment Right in good Faith based on the United States Constitution?

Petitioner's position is that Crawford, the master opinion who guides the Petitioner, has a single object in view, that object is, cross-examination. And Petitioner's objective is to free himself from an unreasonable application of clearly established federal law announced in Crawford. But independently of this argument, the decision in Feliz cannot apply to the Confrontation Clause. Petitioner's argument before this Court accomplished the goals he had set forth: First, and foremost, autopsies reports are testimonial evidence. Second, the admission of the nine reports violated Petitioner's constitutional right to confrontation. Third, the erroneousness admission of the nine reports at trial were not harmless. And finally, the conclusion in Feliz contradicts clearly Supreme Court's precedents.

It is undisputed that this Court lacks the power to grant relief in this case, and at the same time to frame its decision in connection to autopsies reports in a manner that will protect the legitimate Sixth Amendment right interest of all future Defendant[s] who will appear before the lower Federal and State Courts.

In 2014, this Court has had one opportunity to consider whether autopsy reports are testimonial, denying a petition for certiorari in James v. United States, 134 S. Ct. 2660 (2014). This case is of greater proportion and further reach than the immediate facts and points of law that were suggested in James, supra. Petitioner's case is a suitable vehicle to consider that question because it presents a vastly superior vehicle to James for several reasons.

As an initial matter, to state the obvious, James was riddled with vehicle problems that prevented this Court from reaching the underlying Confrontation Clause question. For example, [the Petitioners] in James were convicted for allegedly committing four murders that were allegedly part of a scheme, and the victims were poisoned to death. Accord, the Medical Examiner in James was not aware that his findings would be used in criminal prosecution, and litigation.

In this case, the Medical Examiners who participated in the creation of the nine autopsies reports in question were well aware that their findings were going to be used on a criminal investigation and litigation, particularly when each autopsies reports described the manner of death to be homicide caused by allegedly gun

shot wounds. See State v. Locklear, 363 N.C. 438, 452, 681 S.E. Ed 293, 305 (2009)). This case presents no complication--because-- the Court of Appeals resolved the question whether autopsy reports are testimonial solely by reference to this Court's Opinion in Crawford. See Feliz at 236-37.

Finally, Petitioner anticipates a favorable outcome in this case. Normally, one can only fight for his own legal rights, and while it is true that Petitioner is technically asserting his Constitutional rights in Pro-se capacity, it is submitted that at the outset of his arguments, Petitioner respectfully requests from the Court to "please" assign Mr. Kannon K. Shanmugam to argue this cause, as an expert in Sixth Amendment Laws.

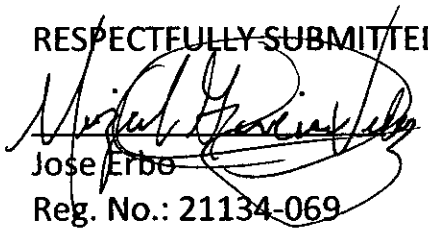
More significant, Mr. Shanmugam certainly is not a stranger to the present controversy, and conflict. Manifestly, Mr. Shanmugam would stand to assert Petitioner's rights--which he have been incompetent[ley] to do so for over two decades. Petitioner's question is straightforward, and he should receive all of the relief he had requested.

In sum, this case presents a question on which the lower Courts, and Nine Panel members of the Second Circuit are sharply and deeply divided. That question is recurring, substantial; and extraordinarily important. And it is clearly presented here in Pro-se capacity. In all respects, therefore, this case is an ideal candidate for this Honorable Court's review.

CONCLUSION

The Petition For Certiorari Should Be Granted.

RESPECTFULLY SUBMITTED,



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