

No. 22-6714 ORIGINAL

IN THE

FILED  
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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

WILSON LABORIEL — PETITIONER  
(Your Name)

vs.

WILLIAM LEE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS, SECOND CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

WILSON LABORIEL  
(Your Name)

OTTSVILLE CORRECTIONAL FACILITY, 57 SANITORIUM ROAD,  
(Address)

OTTSVILLE, NY 10963  
(City, State, Zip Code)

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(Phone Number)

**QUESTION(S) PRESENTED**

CAN THE UNITED STATES COURT OF APPEALS SANCTION THE DISTRICT COURT'S  
RECHARACTERIZATION OF A PETITIONER'S CLAIM AFTER SUCH CLAIM HAS BEEN  
LIBERALLY CONSTRUED BY THAT DISTRICT COURT ?

WHETHER HARMLESS ERROR ON TRIAL COURT'S FAILURE TO CONDUCT AN ADEQUATE  
INQUIRY TO DEFENDANT'S REQUEST FOR NEW COUNSEL HINGES ON TRIAL COUNSEL'S  
EFFECTIVE ASSISTANCE ? CONST. AMENDS. 6th & 14th.

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## **RELATED CASES**

PEOPLE V. LABORIEL, 146 A.D.3d 631 (1st Dept. 2017)

PEOPLE V. LABORIEL, 29 N.Y.3d 1002 (N.Y. 2017)

LABORIEL V. LEE, 2021 WL 76170 (S.D.N.Y. 2021)

LABORIEL V. LEE, 2022 WL 4479527 (2nd Cir. 2022)

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix K to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix I to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix G to the petition and is

reported at 146 A.D.3d 631 (1st Dept. 2017); or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was SEPTEMBER 27, 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: OCTOBER 31, 2022, and a copy of the order denying rehearing appears at Appendix L.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was JANUARY 24, 2017. A copy of that decision appears at Appendix G.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S.CONST. AMENDS. 6 & 14

28 U.S.C. § 2254(d)(1)

28 U.S.C. § 2254(d)(2)

## STATEMENT OF THE CASE

After being arrested and arraigned for criminal charges, Laboriel made two requests for reassignment of counsel. The first request was filed a month after Laboriel's arrest. However, the trial court denied the application pending Laboriel's next court appearance. At the next court appearance, Laboriel made a second request for new counsel. The trial court promised to deal with Laboriel's request on the following court date. Still, the trial court did not deal with Laboriel's request for new counsel on the following court date.

At a subsequent proceeding, a brief court appearance was held, where Laboriel was not able to reassert his request for new counsel. Laboriel's next and final chance to request for new counsel was during trial, where the trial court rebuffed his request.

During appeal, Laboriel asserted that the trial court never made an adequate inquiry into Laboriel's request for new counsel. The appellate State courts denied Laboriel's argument.

Laboriel then filed a federal habeas corpus petition. The District Court acknowledged that Laboriel's argument was raised under the Federal habeas statute clause 28 USC § 2254(d)(2). However, the District Court denied Laboriel's petition and granted COA under the condition that Laboriel's argument be raised under 28 USC § 2254(d)(1).

The Second Circuit court sanctioned the District Court's COA and made decisions that are in conflict with their own precedent, as well as decisions made by other Circuit courts.

This case calls for the exercise of this Court's supervisory power. In this case, the United States Court of Appeals sanctioned departures by the United States District Court. This Sanction departs from the accepted and usual course of judicial proceedings. Here, the District Court recharacterized the Petitioner's Sixth Amendment claim concerning his request for the substitution of counsel. The District Court converted the petitioner's intended argument, from one concerning the State Court's unreasonable determination of the facts, into one that requires a Supreme Court precedent that does not exist. This foreclosed the Petitioner's chance in obtaining federal habeas corpus relief in the Second Circuit Court of Appeals.

Here, Laboriel urges this Court to address the issue of whether a petitioner's claim can be recharacterized by the United States District Court. Further, Laboriel requests that this Court creates a standard of review for obtaining a substitution of counsel at the trial court level. A standard of review is required in order to resolve a conflict between the decisions of several Federal Circuit Courts on obtaining habeas corpus relief on this issue. There are differing views by Circuit Courts regarding the trial court's obligation to make an adequate inquiry when petitioners request for substitution of counsel. Also,

whether a petitioner can achieve habeas corpus relief on this right to counsel claim irrespective of counsel's performance at trial.

### **FACTUAL BACKGROUND**

On October 11<sup>th</sup>, 2012, Laboriel was arrested for criminal sales and possessions of firearms. The arraignment took place in New York County Supreme Court. Laboriel was represented by court appointed attorney, Mark A. Macron.

#### **Substitution of Counsel**

On November 21, 2012, Laboriel filed an application for new counsel. This application cited two cases: *People v. Medina*, 44 N.Y.2d 199 (N.Y.1978) and *People v. Corona*, 567 N.Y.S.2d 353 (Sup. Ct. Bronx Co. 1991). This application also explained, in part:

"Defendant is charged with very serious offenses as the court will judicially note, yet, present counsel does not visit with him to discuss law or facts relative to this defendant's case, nor is he ever available when I phone his office. Thus, the only time defendant has spoken with counsel is in the holding cells for 3-4 minutes only during court appearance date at which time counsel's only concern seems to be with extracting a guilty plea from this defendant."

(See Appendix A).

On January 7, 2013, the trial counsel ordered a decision on Laboriel's request for new counsel. The trial court held that the final decision would be deferred until later that day, "when the defendant and counsel are expected to be present in court." Further, the trial court noted that "[t]he factual

allegations in the affidavit appear to be generic. None are clearly identifiable as specific to this case." (January 7, 2013; Decision and Order for Reassignment of Counsel)(Appendix B).

Later that day, Laboriel's case was adjourned to January 15 because he had not been produced in court. At a calendar call on January 15, the trial court and defense counsel agreed to adjourn the case until January 31<sup>st</sup>. At the close of their discussion, Laboriel orally requested a new counsel: "I'd like to have a reassignment of counsel." (1/15/13 at 5). An exchange ensued between the trial court and Laboriel, where the trial court denied Laboriel's oral request pending the outcome of January 31<sup>st</sup>; the next court date. The exchange went as follows:

THE COURT: You told me that the last time. I dealt with it by what I've just said.

You're supposedly on tape.

What is a new lawyer going to do about that?

THE DEFENDANT: No. I just need a lawyer that can speak to me and communicate with me.

THE COURT: I'll deal with that January 31<sup>st</sup>.

Let me see and hear from you what happens between now and January 31<sup>st</sup> with regard to the video.

And you are getting some information from Mr. Macron related not only to the new case but the old case? But then, yes. You have my promise.

I'm not telling you what I'll do, but the situation will be different on January 31<sup>st</sup>. There would have been more time and you'll see whatever the prosecution thinks they have and you and I will talk about what a

lawyer—if not Macron, what a lawyer is supposed to do about your being on a video doing crimes.

So January 31<sup>st</sup>, denied pending whatever we talk about on January 31<sup>st</sup>.

(1/15/13 at 5 & 6) (emphasis added) (Appendix C).

On January 31<sup>st</sup>, 2013, Laboriel appeared in court. However, the court did not keep its explicit promise to deal with Laboriel's request for new counsel. (See 1/31/13) (Appendix D).

On April 23<sup>rd</sup>, 2013, Laboriel made a brief appearance in trial court. The appearance lasted two minutes, and Laboriel was not able to reassert his complaint against counsel because he was quickly escorted out of the courtroom. The proceeding was then adjourned until May 21<sup>st</sup>, 2013 (See 4/23/13) (Appendix E).

On May 21<sup>st</sup>, 2013, Laboriel commenced trial and made an effort to request new counsel. However, the trial court rebuffed Laboriel's request (See 5/21/13 at 10-11) (Appendix F).

Ultimately, Laboriel was found guilty of all charges. He was convicted and sentenced to 30 years imprisonment and five years post release supervision.

### **State Court Appeals**

On direct appeal, Laboriel's appellate counsel raised a relevant point: Trial court made an error in failing to make a minimal inquiry to Mr. Laboriel's request for reassignment of counsel.

The State Court Appellate Division rejected Laboriel's reassignment of counsel claim. The State Court Appellate Division stated that the trial court was not obligated to make a minimal inquiry:

Defendant's standard form motion for assignment of new counsel did not contain the specific factual allegations of serious complaints about counsel necessary to trigger the court's obligation to make a minimal inquiry. Although the court accorded defendant several opportunities to be heard, defendant failed to amplify his conclusory complaints about his attorney with any case-specific allegations.

*People v. Laboriel, 146 A.D.3d 631, 632 (1<sup>st</sup> Dept. 2017)*  
(citations omitted) (Appendix G).

The State Court Appellate Division then modified Laboriel's 30-year sentence, by directing all of the sentences to run concurrent to each other. Otherwise, Laboriel's conviction was affirmed. *Id.* Laboriel subsequently appealed to the highest State Court.

On April 27, 2017, the New York State Court of Appeals affirmed the lower court's decision (Appendix H). Laboriel then filed a petition of federal habeas corpus.

#### **Federal Habeas Corpus 28 U.S.C. § 2254**

On January 7, 2021, The Southern District Court of New York (Ronnie Abram, J) adjudicated Laboriel's federal habeas corpus petition. Laboriel raised the relevant argument in his petition. Laboriel asserted that the State Court's decision concerning his request for new counsel was "based on an

unreasonable determination of the facts in light of the evidence presented," under 28 U.S.C. § 2254(d)(2).

The District Court acknowledged that Laboriel's claim was to be analyzed under 28 U.S.C. § 2254(d)(2)<sup>1</sup>. Further, the District Court briefly described instances where Laboriel requested for new counsel in trial court. The District Court's adjudication of Laboriel's claim was focused on the intended federal habeas clause, 28 U.S.C. § 2254(d)(2). However, the District Court denied Laboriel's habeas corpus petition, finding that Laboriel bypassed several opportunities to raise his "conclusory complaints." *Laboriel v. Lee*, 2021 WL 76170, at 4 (S.D.N.Y. 2021).

A certificate of appealability ("COA") was issued by the District Court in regard to Laboriel's request for new counsel. However, the COA was "limited to the question as to whether, with respect to Laboriel's Sixth Amendment claim, the trial court 'adequately inquired into' Laboriel's motion for substitution of counsel and subsequent oral statements." *Laboriel v. Lee*, 2021 WL 76170 (S.D.N.Y. 2021) (Appendix I).

Mr. Laboriel was granted *in forma pauperis* status for the purpose of appeal (Appendix J). Mr. Laboriel was then represented by Lawrence Gerzog,

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<sup>1</sup> The district court stated, "Laboriel is correct that his petition asserted not only that the state courts misapplied Sixth Amendment law, but also that the Appellate Division unreasonably reached the factual conclusion that Laboriel failed to make sufficiently specific complaints about his attorney." *Laboriel v. Lee*, 2021 WL 76170 at 3.

Esq. Briefs were filed. An Oral argument was held. And the Second Circuit Court of Appeals made a decision.

### **Second Circuit Court of Appeals**

On September 27, 2022, the Second Circuit held that Laboriel has not identified a Supreme Court case precedent concerning the question posed by the District Court's COA. Further, the Second Circuit held that Laboriel's claim "raises a question of law about the appropriate standard" of adequate inquiry when requesting new counsel. Moreover, the Second Circuit held that "Laboriel has not identified clear and convincing evidence to disturb the appellate division's findings." Also, that Laboriel "had several opportunities to substantiate the form's generic allegations during other hearings. But he did not do so."

*Laboriel v. Lee, 2022 WL 4479527 (2d Cir. 2022).*

This Second Circuit concluded its findings by holding that even if "trial court's inquiry was inadequate," it would have been harmless. This is because: (1) Laboriel does not contend that he would rather have accepted a guilty than go to trial; and (2) Laboriel was competently represented by his trial counsel. *Id* (Appendix K).

Laboriel subsequently filed a petition for rehearing, with a suggestion for rehearing en banc. See, FRAP 35 & 40. On October 31, 2022, Laboriel's rehearing application was denied by the Second Circuit Court (Appendix L).

## REASONS FOR GRANTING THE PETITION

The issues in this case are of importance to the public because it can ensure that the public has a standard of review before a tribunal with the power to decide their case. Currently, there is no standard of review concerning the trial court's duty when a request for substitution of counsel is made in non-capital cases. Further, there is no standard of review over requests for substitution of counsel, or a trial court's obligation when such request is made. Also, no authority exists for the recharacterization of a petitioner's constitutional claim by federal courts.

Creating a needed standard of review for the Petitioner's issues will promote good public policy. For example, this Court can discourage the lower courts from arbitrarily recharacterizing a petitioner's claim and hindering his/her likelihood of federal habeas corpus relief. Further, it will provide clarity to the public on the required process of obtaining a substitution of counsel appointed by the court. Also, this Court's authority will settle the differing views on whether Strickland's ineffective assistance inquiry should be conflated with a defendant's motion to substitute counsel. In short, these issues ensure that the public's constitutional claims are not derailed or unfairly foreclosed by the lower courts.

## ARGUMENT

### **CAN THE UNITED STATES COURT OF APPEALS SANCTION THE DISTRICT COURT'S RECHARACTERIZATION OF A PETITIONER'S CLAIM AFTER SUCH CLAIM HAS BEEN LIBERALLY CONSTRUED BY THAT DISTRICT COURT?**

This Court authorizes that pro se complaints must be liberally construed.

*Haines v. Kerner*, 404 U.S. 519, 520-21(1972). However, this Court has yet to decide whether a State petitioner's federal habeas corpus claim can be recharacterized by the District Court.

After a State-convicted person, in custody, exhausted his/her appellate remedies in State court, that person can timely file a habeas corpus petition. 28 U.S.C. § 2244(d)(1). A petitioner held in State custody can file for a writ of habeas corpus if his/her custody is in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a). When seeking habeas corpus relief, a petitioner held in State custody can be granted relief for any claim "adjudicated on the merits in State court proceedings" if such claim:

- (1)** resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2)** resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

After the District Court acknowledged and analyzed Laboriel's claim under 28 U.S.C. § 2254(d)(2), it unreasonably placed Laboriel's claim into one governed by 28 U.S.C. § 2254(d)(1). This occurred when the District Court

granted COA to the extent of challenging the adequacy of trial court's inquiry into Laboriel's request for new counsel. As a matter of law, this means that the COA obligated Laboriel to involuntarily challenge the adequacy of the state's procedure, which forced Laboriel to argue his claim under 28 U.S.C. § 2254(d)(1). See, *Brumfield v. Cain*, 135 S.Ct. 2269, 2277 n.3, 192 L.Ed.2d 356 (2015)

But Laboriel did not intend to challenge the adequacy of the trial court's inquiry under the federal habeas statute clause of 28 U.S.C. § 2254(d)(1). Instead, he challenged the "determination of the facts" made by the State Court, under 28 U.S.C. § 2254(d)(2). Laboriel intended to demonstrate that his request for new counsel in the lower court necessitated an adequate inquiry. Also that he was not accorded with several opportunities to be heard on his request for new counsel. Federal habeas statute clauses §§ 2254(d)(1) and 2254(d)(2) are distinct from one another and carry separate requirements for relief.

Any challenges to the adequacy of a State's procedure are governed by the federal habeas corpus statute clause of 28 U.S.C. § 2254(d)(1), not § 2254(d)(2). See, *Brumfield*, 135 S.Ct. at 2277 n.3. (holding that challenges to the "adequacy of the procedures and standards the state court applied" are governed by § 2254(d)(1)).

The District Court placed Laboriel's claim under the habeas statute clause of 28 U.S.C. § 2254(d)(1) when it granted COA. This burdened Laboriel with the impossible task of citing a Supreme Court precedent that does not exist for his

constitutional claim. There is no Supreme Court precedent that establishes the procedure of conducting an adequate inquiry into requests for a new counsel. Because of this, the District Court's limited question posed within the COA placed Laboriel at a disadvantage; the COA granted by the District Court set Laboriel's argument up for failure.

Therefore, this Court must consider and grant this Writ of Certiorari.

**i. The State Court's Finding is an Unreasonable Determination of the Facts. 28 U.S.C. § 2254(d)(2).**

Laboriel's claim under the intended habeas statute clause of 28 U.S.C. § 2254(d)(2) requires a showing that the State Court's factual determination is unreasonable. Also, proof by a preponderance of evidence that his constitutional rights have been violated. *Cardoza v. Rock*, 731 F.3d 169, 178 (2d Cir. 2013). Laboriel established this requirement when he presented evidence negating the state court's determination of: (1) whether Laboriel's motion for new counsel contained "specific factual allegations of serious complaints" necessary to obligate the trial court to make a minimal inquiry; (2) whether Laboriel amplified his complaints "with any case-specific allegations," and; (3) whether Laboriel was accorded several opportunities to be heard on his request for new counsel. *Laboriel*, 146 A.D.3d at 632 (1<sup>st</sup> Dept. 2017).

Laboriel's circumstance entitled him to habeas corpus relief under 28 U.S.C. § 2254(d)(2). The State Court's finding that Laboriel bypassed several<sup>2</sup> opportunities to amplify his initial application for new counsel is an unreasonable determination of the facts.<sup>3</sup>

Laboriel's initial application, along with his January 15<sup>th</sup> oral request for new counsel, complained of a breakdown in communication. Complaints concerning a breakdown in communication between counsel and client are deemed substantial under State and Federal courts, which necessitates an inquiry. *People v. Sides*, 75 N.Y.2d 822 (N.Y. 1990) (a complete breakdown of communication and lack of trust between counsel and defendant obliged the trial court to make some minimal inquiry); *U.S. v. Calabro*, 467 F.2d 973, 986 (2d Cir. 1972) ("[i]n order to warrant a substitution of counsel...the defendant must show good cause, such as...a complete breakdown in communication...[i]f a

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<sup>2</sup> Websters Ninth New Collegiate Dictionary defines the word "Several" as: an indefinite number more than two and fewer than many. (emphasis added). There had not been more than two court appearances where Laboriel failed to amplify his initial application for new counsel. Nor is there evidence establishing the state court's finding.

<sup>3</sup> Laboriel appeared in a total of four court proceedings from the time he filed his initial application for reassignment of counsel until the commencement of trial: January 15, 2013; January 31<sup>st</sup>, 2013; April 23<sup>rd</sup>, 2013; and May 21<sup>st</sup>, 2013. Laboriel made an oral request on January 15 and May 21<sup>st</sup>. That leaves two court appearances where Laboriel did not get to amplify his application for new counsel, making the state court's determination unreasonable.

court refuses to inquire into a seemingly substantial complaint...the defendant may then properly claim denial of his Sixth Amendment right.")

The trial court's explicit promise to deal with Laboriel's January 15<sup>th</sup> request for new counsel was not contingent upon Laboriel reasserting his request on January 31, 2013. This is why Laboriel stood in silence during the January 31<sup>st</sup> proceeding; he anticipated an inquiry by the trial court, to no avail. Moreover, the April 23<sup>rd</sup>, 2013 proceeding was brief and hurried, causing Laboriel to be deprived of an opportunity to reassert his request for new counsel. In addition, Laboriel was rebuffed during his May 21<sup>st</sup>, 2013 request.

For these reasons, Laboriel did not bypass several opportunities to amplify his initial application for new counsel. Instead, the need to address Laboriel's request for new counsel contained subterfuge. To prevent an adequate inquiry into Laboriel's request for new counsel, the inquiry was delayed with a deferred order, a promise, a brief court appearance and a rebuff.

There fore, Laboriel's claim resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

For the above-stated reasons, Laboriel is entitled to relief under 28 U.S.C. § 2254(d)(2).

## ARGUMENT TWO

### **WHETHER HARMLESS ERROR ON TRIAL COURT'S FAILURE TO CONDUCT AN ADEQUATE INQUIRY TO DEFENDANT'S REQUEST FOR NEW COUNSEL HINGES ON TRIAL COUNSEL'S EFFECTIVE ASSISTANCE? U.S. CONST. AMENDS. 6 & 14.**

The Second Circuit Court's decision in this case conflicts with the authoritative decisions of other United States Court of Appeals. This Court is urged to create authority on this issue in order to lend guidance to the lower courts concerning the trial court's obligation to conduct an adequate inquiry when a petitioner raises an issue regarding a breakdown in communication with counsel. Also, whether harmless error on trial court's failure to conduct an adequate inquiry hinges on trial counsel's effective assistance of the defendant

Here, the Second Circuit held that the inadequacy of the trial court's inquiry into Laboriel's request for new counsel could be deemed harmless if Laboriel received competent representation by counsel. See, *Laboriel v. Lee*, 2022 WL 4479527 (2<sup>nd</sup> Cir. 2022). But this holding is in conflict with the authoritative decisions of the Ninth and Tenth Circuit Court of Appeals. This is because the Ninth and Tenth Circuit does not require counsel to be ineffective when a violation of a petitioner's Sixth Amendment right to counsel occurs.

According to the Ninth and Tenth Circuit, when a trial court makes an inadequate inquiry into a petitioner's request for new counsel, the petitioner's Sixth Amendment right to counsel may be violated even when the petitioner is competently represented by counsel. See, *United States v. Musa*, 220 F.3d 1096,

1102 (9<sup>th</sup> Cir. 2000) ("Even if a defendant's counsel is competent, a serious breakdown in communication can result in an inadequate defense."); *United States v. D'Amore*, 56 F.3d 1202 (9<sup>th</sup> Cir. 1995) ("all the evidence before the court showed a complete breakdown of communications which substantially interfered with the presentation of an adequate defense") (citation omitted); *U.S. v. Lott*, 310 F.3d 1231, 1252 (10<sup>th</sup> Cir. 2002) ("if we were to conflate Strickland's ineffective assistance inquiry with a defendant's motion to substitute counsel, we would in effect be analyzing motions to substitute counsel as ineffectiveness claims, which must almost always be brought on collateral attack. We would thus effectively eliminate a defendant's ability to bring a right to counsel claim on direct appeal. That we decline to do).

The Ninth and Tenth Circuit's views on this matter is rational and should be adopted by this Court. The ineffective assistance inquiry should not be conflated with a defendant's motion to substitute counsel. A right to counsel can be violated irrespective of trial counsel's representation when a breakdown in communication occurs between the defendant and counsel.

This conflict requires a standard of review in order to find uniformity and development of the law and administration of justice concerning a petitioner's request for substitution of counsel.

i. **Further Need for a Standard of Review, Where the Lower Courts Must Not Subterfuge the Trial Court's Failure to Conduct an Adequate Inquiry.**

The Second Circuit is also hinting at requiring petitioners to claim that they rather have pleaded guilty in order to overcome trial court's inadequate inquiry for substitution of counsel. But this holding contradicts its own precedent, where it has been held that "[i]f the reasons proffered on a motion to substitute counsel are insubstantial and the defendant receives competent representation from counsel, a court's failure to inquire sufficiently or to inquire at all constitutes harmless error." *U.S. v. John Doe No. 1*, 272 F.3d 116, 123 (2d Cir. 2001). This holding requires a conjunction of two conditions in order to be deemed harmless: an insubstantial complaint and competent representation. But the "breakdown in communication" complaint provided by Laboriel was substantial as a matter of law, so there was no need for Laboriel to also claim that he rather had pleaded guilty. Such a suggestion made by the Second Circuit Court of Appeals constructively denies Laboriel of his constitutional right to enjoy a public trial with adequate defense.

*John Doe No. 1* also conflicts with the Second Circuit's order in Laboriel's case. The reason being that Laboriel no longer needed to establish ineffective assistance of counsel when he provided his substantial complaint of a breakdown in communication with his trial counsel. For these reasons, this Writ of Certiorari must be granted.

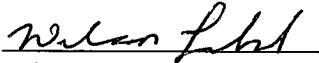
A standard of review on this issue will affect new pending cases, or affect the disposition of any case that this court is likely to see in the future. In other words, this Court's consideration will set a clear path on the law concerning substitution of counsel. This will develop law concerning the prerequisite for achieving habeas corpus relief, as well as obligating trial courts to conduct adequate inquiries when faced with a substantial complaint that requests new counsel. If such developments of law cannot be achieved, then the law interpreted by the lower courts concerning this issue was designed to be impossible for any petitioner to overcome, thereby diminishing the constitutional rights of the public.

### CONCLUSION

The Petition for a writ of certiorari should be granted.

Under 28 U.S.C. § 1746, I, Wilson Laboriel, declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

  
Wilson Laboriel

Date: January 28, 2023