No. 24-

IN THE

Supreme Court of the United States

LUIS IRAM MIRANDA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

District courts and parties in criminal cases do not have a standard way to address conflicts of interest when a defendant's attorney has previously represented a co-defendant or witness in the same case. The absence of clear procedural guidelines has lead to a division among the circuits on how the 6th Amendment right to "conflict free" counsel is applied resulting in situations where some criminal defendants are denied their right to "conflict free" counsel; unable to make voluntary and informed waivers of conflict; or worse, injured by less than candid counsel.

RELATED PROCEEDINGS

United States Court of Appeals for the Fifth Circuit: *United States v. Luis Iram Miranda*, No. 21-51156 (Feb. 11, 2025).

Appeal from the United States District Court for the Western District of Texas, *United States v. Luis Iram Miranda*, USDC No. 3:20-CR-1797-2.

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PETITION FOR A WRIT OF CERTIORARI

Luis Ivan Miranda respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, is an unpublished and only the Westlaw citation is currently available at *United States v. Luis Iram Miranda*, 2025 WL 457317 (February 11, 2025). The opinion is included in this petition in the Appendix.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit, entered its judgment on February 11, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment provides, in relevant part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defen[s]e." U.S. Const. amend. VI.

STATEMENT

In *Wood v. Georgia*, 450 U.S. 261 (1981), Justice Powell, writing for a unanimous Court, addressed the issue of "conflicted counsel" in an appeal from a state court conviction. This Court remanded the case back to the state court with instructions to hold a hearing to determine

if there was in fact an actual conflict of interest with regards to Wood's trial counsel. The Court stated a that if the state court found that an actual conflict of interest existed at the time of the attorney's representation of Wood, and that there was no valid waiver of the right to independent counsel, the state court must hold a new proceeding untainted by a legal representative serving conflicting interests. *Id.* at 273-274. Justice Brennan, with whom Justice Marshall joined, wrote that he agreed with the Court that "there is a clear possibility of conflict of interest" shown on this record. *Id.* Thus, the Court appeared to lay out a process that was both efficient and determinative: once a question of conflicted representation is raised, the court is to hold a hearing to determine whether the conflict is a potential or actual conflict, and if actual, see if the affected party wishes to waive the conflict. However, Justice Stewart, concurring in part and dissenting in part, prophesized that while the Court was correct in remanding the case because of the "clear possibility of [a] conflict of interest" was shown on the record, "'conflict of interests' is a term that was often used and seldom defined." *Id.* at 275 (*citing Cuyler v. Sullivan*, 446 U.S. 335 (1980). As a result, over the past 44 years, the issue of conflicted counsel and waiver of said counsel has become a procedural quagmire. There now exists a deep lower court divide where in some lower courts a potential conflict warrants a hearing and in other lower courts proof of an actual conflict must exist before the district court can become involved. The petitioner seeks relief from the latter procedure. The Court should grant certiorari and reverse.

1. Luis Iram Miranda was convicted of conspiracy to possess with intent to distribute 500 grams or more of

a mixture containing methamphetamine and possession with intent to distribute 500 grams or more of a mixture containing methamphetamine. [Appendix 1, pg. 2a].[1] Miranda pled not guilty while his co-defendant, Martin Rivera-Fuentes, entered into a plea agreement and agreed to testify against Miranda at trial. *Id.*

Before trial, the Government requested that the district court conduct a *Garcia* hearing for the purpose of informing Miranda that his trial counsel, Francisco Macias, has a potential conflict of interest due to having previously represented Rivera-Fuentes in a marijuana possession and trafficking case. *Id.* In addition, the Government advised the district court that Macias previously represented the husband of another potential witness—Rivera-Fuentes's sister. [Appendix 1, pg. 3a].

The district court ordered Miranda to respond to the Government's. Miranda responded by waiving the conflict. Then on the first day of trial, the district court asked Miranda if he was aware of the potential conflict, if he was aware he had the right to conflict-free counsel, and if he waived his right to conflict-free counsel in proceeding with Macias. *Id.* Miranda responded affirmatively to all of these questions. *Id.*

During Miranda's trial, Macias presented the defense's opening statement, conducted *voir dire*, cross-examined the case agent, and presented testimony of the sole defense

1. The facts of this case as recited in the 5th Circuit's *per curium* opinion are uncontroverted. As such, writ counsel wishes to use the facts as they are stated in the Court's opinion. Counsel will supplement the facts of the case if the Court so desires.

witness. Two weeks earlier, Macias hired co-counsel Luis Yanez for the purpose of cross-examining Rivera-Fuentes. Both attorneys made objections throughout trial and both made closing arguments. [Appendix 1, pg. 4a].

After the jury convicted Miranda, Miranda filed a motion for reconsideration of his waiver of his right to conflict-free counsel, which the district court denied, finding Miranda's waiver was knowing and voluntary. [Appendix 1, pg. 5a]. At sentencing, the district court sentenced Miranda to eighty-seven months of imprisonment and four years of supervised release. *Id.* Miranda filed a timely notice of appeal. The district court then entered an order denying Miranda's motion to reconsider, declining to determine whether an actual conflict existed but finding that the potential conflict was waivable, that Miranda waived the potential conflict, and that the waiver was knowing, voluntary, and intelligent. *Id.*

On appeal, Miranda asked the Court of Appeals vacate his convictions because the district court erred in failing to conduct a *Garcia* hearing in order to determine whether there existed an actual conflict and, consequently, his waiver was not knowing and voluntary. *Id.*

2. The Fifth Circuit, in its unanimous 3-panel discission, affirmed his conviction, holding that Miranda had not shown that his counsel labored under an "actual conflict of interest" and therefore, the district court was not required to conduct a *Garcia* hearing. *Id.* (*emphasis added*). [Appendix 1, pg. 2a–3a].

The lower court addressed whether Macias labored under an actual, as opposed to a potential conflict.

[Appendix 1, pg. 5a–6a]. The lower court stated that Miranda argued there was an actual conflict of interest because his defense counsel, Macias, due to his prior representation of Rivera-Fuentes, did not participate in the cross-examination of Rivera-Fuentes as a witness and, instead, allowed co-counsel Yanez to question the witness. *Id.* Miranda contends that "Rivera-Fuentes's testimony against [him] constituted a major part of the Government's case-in-chief" and that Macias's lack of participation gave Rivera-Fuentes "a free pass to testify." *Id.* Miranda also argued the addition of co-counsel Yanez "hurt Miranda's defense" because Macias "sat himself out of the most important part of the Government's case." Miranda argues that he would not have waived this conflict if he had full knowledge of the conflict and its impact on his defense. The Government argued that there was no actual conflict and, as a result, the district court was not required to hold a *Garcia* hearing. *Id.* The Government also maintained that Macias's former client testifying against his current client did not create an actual conflict because the prior offense did not involve Miranda or the same controlled substance. *Id.*

Because the lower court felt that there was nothing to show Macias labored under an actual, as opposed to a potential conflict, the district court's decision not to hold an evidentiary hearing into an alleged (potential) conflict of interest was not an abuse of discretion. *Id.*; *United States v. Reagan*, 725 F.3d 471, 487 (5th Cir. 2013) (*citing United States v. Garza*, 429 F.3d 165, 171 (5th Cir. 2005) (*per curiam*)).

REASONS FOR GRANTING THE WRIT

It has been a two decades since the Court has discussed "conflict free" representation. In what should have been a straight forward path to determine if counsel suffers from an actual conflict, over time, the lower courts have divided over whether a trial court must hold a hearing to determine if an actual conflict exists and what needs to happen in such an event to protect a person's Sixth Amendment right . . . to have the assistance of counsel for his defen[s]e." U.S. Const. amend. VI. This case provides an ideal opportunity to establish once and for all a procedure that the district courts can use to safeguard the right to "conflict-free" representation.

I. The lack of a standard method to identify and address potential conflicts of interest involving a defendant's trial attorney divided the lower courts resulting in a defendant's Sixth Amendment right to conflict free counsel depending totally on which circuit the defendant is prosecuted.

a. The right to conflict free representation.

"The representation to which a defendant is entitled under the Sixth Amendment of the Constitution must be free from any conflict of interest." *United States v. Burns*, 526 F.3d 852, 856 (5th Cir. 2008) (*citing United States v. Garcia-Jasso*, 472 F.3d 239, 243 (5th Cir. 2006)). Given that the "essential aim" of the Sixth Amendment "is to guarantee an effective advocate for each criminal defendant," *Wheat v. United States*, 486 U.S. 153, 159 (1988), this right to counsel of choice is necessarily limited by the "trial court's interest in ensuring that criminal

trials are conducted within ethical and professional standards." *United States v. Laureano-Perez*, 797 F.3d 45, 55-56 (1st Cir. 2015) (*quoting In re Grand Jury Proceedings*, 859 F.2d 1021, 1023 (1st Cir. 1988)).

The American Bar Association's definition of a conflict of interest, which has remained essentially unchanged since the promulgation of the Canons of Professional Ethics in 1908, is a fair statement of what is ordinarily meant by the term, and it is that meaning that the Court adopt here. *Wood v. Georgia*, 450 U.S. 261, 274 (1981). The ABA Standards state that a lawyer should not undertake multiple representation "if the duty to one of the defendants may conflict with the duty to another." ABA Project on Standards for Criminal Justice, Defense Function, Standard 4–3.5(b) (App.Draft, 2d ed. 1979). The Code of Professional Responsibility forbids multiple representation "if it would be likely to involve [the lawyer] in representing differing interests," unless the lawyer can adequately represent each client and obtains the informed consent of each. ABA Code of Professional Responsibility, Disciplinary Rule 5–105(A)–(B) (1976). The Code of Professional Responsibility superseded the Canons of Professional Ethics (1937), which spoke of "conflicting interests" rather than "differing interests." The term was defined in Canon 6: "[A] lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose." The ABA materials do not, of course, define the constitutional standard; however, they are consistent with Glasser's emphasis on the interests of the defendants, and the corresponding duties owed by the attorney, rather than on the empirical question of the effect of the conflict on the attorney's performance. *See*

Comment, Conflict of Interests in Multiple Representation of Criminal Co-Defendants, 68 J.Crim.L. & C. 226 (1977).

"Conflicts may arise when an attorney simultaneously represents clients with differing interests (multiple representation), or when an attorney representing a defendant has previously represented co-defendants or trial witnesses (successive representation)." *United States v. Shepard*, 675 F.2d 977, 979 (8th Cir. 1982); *Moss v. United States*, 323 F.3d 445, 459 (6th Cir. 2003). Successive representation occurs where defense counsel has previously represented a co-defendant or trial witness. *Moss v. United States*, 323 F.3d 445, 459 (6th Cir. 2003).

b. Actual Conflicts of Interest.

An actual conflict of interest arises when the defense attorney's interests diverge from those of the defendant concerning a material factual or legal issue or a course of action. This type of conflict affects the attorney's performance and forces the attorney to make choices that advance other interests to the detriment of the client. *United States v. Williamson*, 859 F.3d 843 (10th Cir. 2017). For example, an actual conflict exists if the attorney faces possible criminal charges or significant disciplinary consequences related to their representation of the defendant, as this situation creates a strong personal interest in avoiding certain inquiries that might be relevant and potentially exculpatory for the client. *United States v. Levy*, 25 F.3d 146 (2nd Cir. 1994).

c. Potential Conflict of Interest.

A potential conflict of interest occurs when the interests of the defendant may place the attorney under

inconsistent duties at some time in the future. *United States v. Perez*, 325 F.3d 115 (2nd Cir. 2003); *United States v. Arrington*, 941 F.3d 24 (2nd Cir. 2019). The Supreme Court has stated that only a serious potential conflict will justify overriding the defendant's choice of counsel. This requires an inquiry into the likelihood that the potential conflict will mature into an actual conflict and the degree to which it threatens the right to effective assistance of counsel. *United States v. Turner*, 594 F.3d 946 (7th Cir. 2010). Courts must evaluate the likelihood of the conflict occurring, the severity of the threat to counsel's effectiveness, and whether alternative measures are available to protect the defendant's right to effective counsel while respecting their choice of counsel. *Id.*

d. Presumed Conflict of Interest.

In some cases, a presumed conflict of interest may suffice for disqualification. The district court retains substantial latitude to disqualify counsel if there is a conflict of interest, real or potential, unless the likelihood and severity of the conflict are minimal compared to the defendant's interest in obtaining counsel of choice. *United States v. McKeighan*, 685 F.3d 956 (10th Cir. 2012). The court must balance the right to counsel of choice with the need for fair, efficient, and orderly administration of justice, which may overcome the right to counsel of choice where an attorney has an actual or serious potential conflict of interest. *United States v. Ross*, 33 F.3d 1507 (11th Cir. 1994).

e. Waiver of Conflict-Free Representation.

If the court determines that the attorney suffers from a lesser actual conflict or only a potential conflict,

it may accept a defendant's knowing and intelligent waiver of their right to conflict-free counsel and permit the defendant to be represented by the attorney of their choice. *United States v. Perez*, 325 F.3d 115 (2nd Cir. 2003). However, the court retains discretion to reject such a waiver when the attorney's conflict jeopardizes the integrity of judicial proceedings. *Id.*

II. The Government's inquest into an attorney's potential conflict.

In Miranda's case, as the Fifth Circuit correctly pointed out, the Government initiated the request that the district court conduct a *Garcia*[2] hearing for the purpose of informing Miranda that his counsel, Macias, had a potential conflict of interest due to having previously represented Rivera-Fuentes in a marijuana possession and trafficking case. [Appendix B, page 13]; see also *United States v. Santiago-Lugo*, 167 F.3d 81, 84 (1st Cir. 1999) (the Government raised conflict of interest in its pleadings). In fact, the Government's motion was entitled "United States' Motion for Determination of Conflicts of Interests (a.k.a. Motion for *Garcia* hearing). *Id.* In the motion, the Government stated that "at the defendant Luis Miranda's trial, the Government intends to call codefendant Martin Rivera-Fuentes. The Government anticipates that Mr. Rivera will testify about his and Mr. Miranda's involvement in the alleged criminal conspiracy. The Government anticipates that Mr. Rivera will implicate Mr. Miranda in the scheme and provide incriminating

2. *United States v. Garcia*, 517 F.2d 272 (5th Cir. 1975), *abrogated on other grounds by Flanagan v. United States*, 465 U.S. 259, 263 n.2 (1984)

evidence against Mr. Miranda. In 2008, Mr. Macias represented Mr. Martin Rivera-Fuentes in a federal narcotics case heard before this Honorable Court . . . in case number: 08-CR-03453-DB." [See Appendix B, page 13].

The Government wrote,

> "[o]nce a conflict of interest issue is raised, and if the defendant chooses to proceed with representation by that counsel who has a conflict of interest, a district court must conduct what is commonly known as a "*Garcia* hearing." *United States v. Garcia-Jasso*, 472 F.3d 239, 243 (5th Cir. 2006) (*referencing the procedures set forth in United States v. Garcia*, 517 F.2d 272 (5th Cir. 1975)). The purpose of a *Garcia* hearing is to review with a defendant the actual conflict of interest that his attorney may have in the current proceeding and determine whether the defendant wishes to proceed with that counsel or obtain new counsel. *Id.* (*citing Garcia*, 517 F.2d at 278). The Government respectfully requests that the Court conduct a Garcia hearing to advise defendant Luis Iram Miranda of the potential conflict of interest brought about by Mr. Macias prior representation of codefendant Luis Martin-Rivera, and to determine whether the defendant Luis Iram Miranda understands and knowingly, intelligently, and voluntarily waives the potential conflict of interest and wishes to continue to be represented by Mr. Macias." *Id.*

However, on appeal, the Government argued that there was no actual conflict and, as a result, the district court was not required to hold a *Garcia* hearing. *Id*. The Government maintained that Macias's former client testifying against his current client did not create an actual conflict because the prior offense did not involve Miranda or the same controlled substance. *Id*; *cf. United States v. Perez*, 325 F.3d 115, 123 (2nd Cir. 2003) (Government thus requested a new *Curcio* inquiry to explore the potential conflict of interest with the defendant).

So going forward, following the Fifth Circuit's rational in the *Miranda* opinion, the district court will have to deny the Government's trial Motion for Determination of Conflicts of Interests if the motion fails to set forth an "actual conflict". Under this *Miranda* principle, unless the Government or any other party can clearly define what constitutes the "actual conflict of interest," the district court is not obligated to conduct a *Garcia* hearing.

III. The district court's obligation to inquire into the existence of a conflict of interest.

According to the Fifth Circuit, "[a] district court need only conduct a *Garcia* hearing if there is an actual conflict of interest." *See United States v. Carpenter*, 769 F.2d 258, 263 (5th Cir. 1985). In essence, the Fifth Circuit requires there be an "actual conflict of interest" before the District Court needs to conduct a *Garcia* hearing. And it is this holding that conflicts with other jurisdictions as well as this Court's previous rulings.

In *Cuyler v. Sullivan*, 446 U.S. 335 (1980), this Court held thats in order to demonstrate a violation of the

Sixth Amendment's right to conflict free representation, a defendant must establish that an actual conflict of interest adversely affected his lawyer's performance. To ascertain this issue, the Court remanded the case for further proceedings consistent with this opinion, i.e. hold a hearing to make the determination.

The First Circuit follows the *Sullivan* Court's presumption in favor of a defendant's counsel of choice "may be overcome not only by a demonstration of actual conflict, but by a showing of serious potential for conflict." *United States v. Santiago-Lugo*, 167 F.3d 81, 84 (1st Cir. 1999)(*citing Wheat v. United States*, 486 U.S. 153, 164 (1988). In each case, the First Court stated, "[t]he evaluation of the facts and circumstances . . . under this standard must be left primarily to the informed judgment of the trial court." *Id*. Furthermore, the First Circuit held that "although a district court must inquire when advised of a potential conflict of interest, the court may rely on counsel's representations that no such conflict exists." *See also United States v. Kliti*, 156 F.3d 150, 153 (2d Cir. 1998). The First Circuit stated that after the appropriate hearing, the district court properly exercised its discretion in accepting Santiago–Lugo's waiver of the potential conflict of interest identified by the Government, and no actual conflict developed with respect to the evidence presented at trial. *Id*.

In *Amador v. United States*, the Government moved the district court to inquire into "[w]hether defense counsel have been retained or paid by someone other than the defendant . . . [i]f so, whether defense counsel have a potential conflict of interest and . . . [w]hether defendant waives any such conflict of interest; and . . .

[w]hether the Court should accept the waiver." *Amador v. United States*, 98 F.4th 28, 30–31 (1st Cir. 2024). The First Circuit held that "trial courts are under a duty to inquire when confronted with a potential conflict of interest that could impact a defendant's Sixth Amendment right to representation free from conflict." Accordingly, where a trial court is, or reasonably should be, aware of a possible conflict of interest, there is a duty for the court to investigate that possibility. *Id.; see Mountjoy v. Warden, New Hampshire State Prison*, 245 F.3d 31, 38 (1st Cir. 2001) ("[T]rial judges have a duty to inquire [into a potential conflict of interest] not only when defendants object to a possible conflict, but also when trial judges are or should be independently aware of a possible conflict."); *Wood*, 450 U.S. at 272 (finding that the "possibility of a conflict of interest was sufficiently apparent at the time of the revocation hearing to impose upon the court a duty to inquire further" (emphasis in original)).

In *United States v. Stein*, the district court in the Second District, stated that the right to conflict free counsel "may be violated if the attorney has a potential conflict of interest that result[s] in prejudice to the defendant; or an actual conflict of interest that adversely affect[s] the attorney's performance." *United States v. Stein*, 410 F. Supp. 2d 316, 323–24 (S.D.N.Y. 2006); *see also Perez*, 325 F.3d at 125 (*quoting Levy*, 25 F.3d at 152). The district court further wrote that an attorney has a potential conflict of interest if "the interests of the defendant could place the attorney under inconsistent duties in the future." *Id.* (*citing United States v. Kliti*, 156 F.3d 150, 153 n. 3 (2d Cir. 1998)); The district court also asserted that an attorney has an actual conflict of interest, however, when, "the attorney's and defendant's

interests diverge with respect to a material factual or legal issue or to a course of action". *Id.*; *see also United States v. Feyrer*, 333 F.3d 110, 116 (2d Cir. 2003); *United States v. Schwarz*, 283 F.3d 76, 91 (2nd Cir. 2002); *Winkler v. Keane*, 7 F.3d 304, 307 (2d Cir. 1993), or "when the attorney's representation of the defendant is impaired by loyalty owed to a prior client." *United States v. Jones*, 381 F.3d 114, 119 (2nd Cir. 2004). And in some cases, the district court held, the right to a defendant's counsel of choice conflicts with the right to an attorney of undivided loyalty. In such instances, "the choice as to which right is to take precedence must generally be left to the defendant and not be dictated by the Government." *Id.*; *Perez*, 325 F.3d at 125.

But in all cases, the district court "must ensure that the defendant makes this choice knowingly and intelligently." *Id.* Accordingly, after learning of the possibility of a conflict of interest, the district court first must determine "whether the attorney has an actual conflict, a potential conflict, or no conflict at all." *Id.* at 324 (*citing Levy*, 25 F.3d at 153). As the Second Circuit explained, "[i]f the court discovers no genuine conflict, it has no further obligation. *Id.* At the other end of the spectrum, if the court determines that counsel has an actual conflict that is so severe as to indicate per se that the rendering of effective assistance will be impeded or is analogous to such a conflict in breadth and depth, the court must . . . disqualify counsel. *Id.* And if, between these two extremes, the court determines that the attorney suffers from a lesser [actual] or only a potential conflict, then it may accept a defendant's knowing and intelligent waiver of his right to conflict-free counsel and permit the defendant to be represented by the attorney of his choice." *Id.* And

"[w]hen a possible conflict has been entirely ignored" by the district court, then "reversal is automatic." *United States v. Levy*, 25 F.3d 146, 153-54 (2d Cir. 1994). However, the Second Circuit held, this "automatic reversal rule applies only when a district court . . . fails to conduct an inquiry after either a timely conflict objection or if the [district] court knows or reasonably should know a particular conflict exists." *Id.* at 154.

When the district court knows or reasonably should know of the possibility of a conflict of interest, it has a threshold obligation to determine whether the attorney has an actual conflict, a potential conflict, or no conflict. *United States v. Kliti*, 156 F.3d 150, 153 (2d Cir. 1998); *see also Stantini*, 85 F.3d 9, 13 (2nd Cir. 1976); *Levy*, 25 F.3d at 155. In fulfilling this initial obligation to inquire into the existence of a conflict of interest, the trial court may rely on counsel's representations. *See Levy*, 25 F.3d at 154. If a district court ignores a possible conflict and does not conduct this initial inquiry, reversal of a defendant's conviction is automatic. *See Id.* at 153; *United States v. Jiang*, 140 F.3d 124, 127 (2d Cir.1998). However, if at the end of its inquiry the district court concludes that there is no conflict, "then there is no need to disqualify the attorney or to hold a *Curcio* hearing, a defendant's claim that such a conclusion was in error will not establish a violation of the Sixth Amendment right to effective assistance of counsel unless the defendant can demonstrate that the attorney had either "(1) a potential conflict of interest that resulted in prejudice to the defendant, or (2) an actual conflict of interest that adversely affected the attorney's performance." *Kliti*, 156 F.3d at 153; *United States v. Leslie*, 103 F.3d 1093, 1098 (2nd Cir. 1997); *Levy*, 25 F.3d

at 154–55; *Wood*, 450 U.S. at 272–73; *Cuyler*, 446 U.S. at 347; *Holloway v. Arkansas*, 435 U.S. 475 (1978).

The court must investigate the facts and details of the attorney's interests to determine whether the attorney in fact suffers from an actual conflict, a potential conflict, or no genuine conflict at all. *See Strouse v. Leonardo*, 928 F.2d 548, 555 (2d Cir. 1991). "In order to protect a defendant's right to conflict-free counsel, the trial court must initiate an inquiry when it knows or reasonably should know of the possibility of a conflict of interest." *Id.*; *see also United States v. Aiello*, 814 F.2d 109, 113 (2d Cir. 1987) (Sixth Amendment "imposes a duty upon a trial court to inquire"). The trial judge has a duty to explore a potential conflict when it is brought to his attention or when it is readily apparent from the record. *Cerro v. United States*, 872 F.2d 780, 786–87 (7th Cir. 1989; (*citing Wood v. Georgia*, 450 U.S. 261, 272 (1981); *United States v. Ellison*, 798 F.2d 1102, 1108 (7th Cir. 1986). In addition, the judge should normally discuss the matter with the defendant. *See United States v. Jeffers*, 520 F.2d 1256, 1263 n. 11 (7th Cir. 1975).

CONCLUSION

The Fifth Circuit's holding that "[a] district court need only conduct a "conflict hearing" if there is an actual conflict of interest. This holding conflicts with other jurisdictions as well as this Court's previous rulings. As such, the Court should grant certiorari and reverse.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED FEBRUARY 11, 2025

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21-51156

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS IRAM MIRANDA,

Defendant-Appellant.

Filed February 11, 2025

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:20-CR-1797-2

Before RICHMAN, SOUTHWICK, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

Appendix A

Luis Iram Miranda was convicted of conspiracy to possess with intent to distribute 500 grams or more of a mixture containing methamphetamine and possession with intent to distribute 500 grams or more of a mixture containing methamphetamine. Miranda pleaded not guilty while his co-defendant, Martin Rivera-Fuentes, entered into a plea agreement and agreed to testify against Miranda at trial. Before trial, the Government requested that the district court conduct a *Garcia*[1] hearing for the purpose of informing Miranda that his counsel, Francisco Macias, had a potential conflict of interest due to having previously represented Rivera-Fuentes in a marijuana possession and trafficking case. Miranda responded to the Government's motion by waiving his right to conflict-free counsel. On the first day of trial, the district court asked Miranda if he was aware of the potential conflict, if he was aware he had the right to conflict-free counsel, and if he waived his right to conflict-free counsel in proceeding with Macias. Miranda responded affirmatively to all of these questions. After the jury convicted Miranda on both counts, he filed a motion for reconsideration of his waiver of his right to conflict-free counsel, which the district court denied, finding Miranda's waiver was knowing and voluntary. On appeal, Miranda argues that this court should vacate his convictions because the district court erred in failing to conduct a *Garcia* hearing and, as a consequence, his waiver was not knowing and voluntary. Miranda also argues that the district court erred in denying his motion to reconsider his waiver. Because

1. *United States v. Garcia*, 517 F.2d 272 (5th Cir. 1975), *abrogated on other grounds by Flanagan v. United States*, 465 U.S. 259, 263 n.2, 104 S. Ct. 1051, 79 L. Ed. 2d 288 (1984).

Miranda had not shown that Macias labored under an actual conflict of interest, the district court was not required to conduct a *Garcia* hearing, and we therefore affirm.

I

Miranda and his co-defendant, Rivera-Fuentes, were charged under 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A)(viii) with conspiracy to possess with intent to distribute 500 grams or more of a mixture containing methamphetamine, and under 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(viii) for possession with intent to distribute 500 grams or more of a mixture containing methamphetamine. Rivera-Fuentes entered a guilty plea, while Miranda pleaded not guilty. The Government intended to call Rivera-Fuentes to testify against Miranda at trial.

One month before trial, the Government filed a motion asking the district court to conduct a hearing pursuant to *Garcia*[2] for the purpose of advising Miranda of a potential conflict of interest between Miranda and his trial counsel, Francisco Macias. In its motion, the Government stated it intended to call Rivera-Fuentes as a witness, and that Macias previously represented Rivera-Fuentes in 2008 in a case involving marijuana importation in violation of 21 U.S.C. § 952(a) and marijuana possession in violation of § 841(a)(1), in which Rivera-Fuentes entered into a plea agreement and pleaded guilty to the first count for

2. *United States v. Garcia*, 517 F.2d 272 (5th Cir. 1975), *abrogated on other grounds by Flanagan v. United States*, 465 U.S. 259, 263 n.2, 104 S. Ct. 1051, 79 L. Ed. 2d 288 (1984).

marijuana importation. In addition, the Government advised the district court that Macias previously represented the husband of a potential witness—Rivera-Fuentes's sister. Because of those prior representations, the Government asked the district court to conduct the hearing to ensure Miranda knew of the potential conflict and, if Miranda still wished to proceed with Macias, to determine whether Miranda knowingly, intelligently, and voluntarily waived his right to conflict-free counsel. Two weeks later, Luis Yanez filed an entry of appearance of co-counsel for the defense. Miranda then filed a response to the Government's motion and an affidavit acknowledging he was aware Macias had previously represented Rivera-Fuentes and that, if a conflict existed, Miranda knowingly, voluntarily, and intelligently asserted his right to waive that conflict. The district court then entered an order that Macias remain Miranda's counsel of record.

On the first day of trial, the district court held a status hearing addressing the Government's motion. The district court asked Miranda if he was aware Macias had a potential conflict, if he was aware he had the right to conflict-free counsel, and if he waived his right to conflict-free counsel in continuing with Macias. Miranda responded "yes" to each of the questions. During Miranda's trial, Macias presented the defense's opening statement, conducted voir dire, cross-examined the case agent, and presented testimony of the sole defense witness. Co-counsel Yanez cross-examined Rivera-Fuentes and a forensic chemist and also made objections throughout trial. Both made closing arguments.

At the end of trial, the jury found Miranda guilty on both counts alleged in the indictment. Five days before sentencing, Miranda filed a motion for reconsideration of the district court's order accepting Miranda's conflict waiver, arguing Macias's conflict was not waivable and the district court was required but failed to hold a *Garcia* hearing. The district court sentenced Miranda to eighty-seven months of imprisonment and four years of supervised release. Miranda filed a timely notice of appeal. The district court then entered an order denying Miranda's motion to reconsider, declining to determine whether an actual conflict existed but finding that the potential conflict was waivable, that Miranda waived the potential conflict, and that the waiver was knowing, voluntary, and intelligent.

II

We address whether Macias labored under an actual, as opposed to potential, conflict. "Whether counsel labored under an actual conflict is a mixed question of fact and law that we review de novo,"[3] and a district court's decision not to hold an evidentiary hearing into an alleged conflict of interest is reviewed for abuse of discretion.[4]

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3. *United States v. Preston*, 659 F. App'x 169, 179 (5th Cir. 2016) (unpublished) (citing *United States v. Burns*, 526 F.3d 852, 856 (5th Cir. 2008)).

4. *United States v. Reagan*, 725 F.3d 471, 487 (5th Cir. 2013) (citing *United States v. Garza*, 429 F.3d 165, 171 (5th Cir. 2005) (per curiam)).

Miranda argues there was an actual conflict of interest because his defense counsel, Macias, due to his prior representation of Rivera-Fuentes, did not participate in the cross-examination of Rivera-Fuentes as a witness and, instead, allowed co-counsel Yanez to question the witness. Miranda contends that "Rivera-Fuentes's testimony against [him] constituted a major part of the Government's case-in-chief" and that Macias's lack of participation gave Rivera-Fuentes "a free pass to testify." Miranda argues the addition of co-counsel Yanez "hurt Miranda's defense" because Macias "sat himself out of the most important part of the Government's case." Miranda argues that he would not have waived this conflict if he had full knowledge of the conflict and its impact on his defense. The Government argues there was no actual conflict and, as a result, the district court was not required to hold a *Garcia* hearing. The Government maintains that Macias's former client testifying against his current client did not create an actual conflict because the prior offense did not involve Miranda or the same controlled substance.

"The representation to which a defendant is entitled under the Sixth Amendment of the Constitution must be free from any conflict of interest."[5] "To establish a Sixth Amendment violation on the basis of a conflict of interest the defendant must demonstrate: (1) that his counsel acted under the influence of an actual conflict; and (2) that the

5. *United States v. Burns*, 526 F.3d 852, 856 (5th Cir. 2008) (citing *United States v. Garcia-Jasso*, 472 F.3d 239, 243 (5th Cir. 2006)).

conflict adversely affected his performance at trial."[6] A defendant may choose to proceed with counsel who has such a conflict if, following a *Garcia* hearing, the defendant validly waives his constitutional right to conflict-free representation.[7] In a *Garcia* hearing, the district court must "ensure that the defendant (1) is aware that a conflict of interest exists; (2) realizes the potential hazards to his defense by continuing with such counsel under the onus of a conflict; and (3) is aware of his right to obtain other counsel."[8] However, "[a] district court need only conduct a *Garcia* hearing if there is an actual conflict of interest."[9]

"Only if counsel had to choose between 'the divergent or competing interests of a former or current client' is there an actual conflict."[10] "This question is highly fact-sensitive,"[11] and "[w]hether a conflict of interest exists

6. *Id.* (citing *United States v. Culverhouse*, 507 F.3d 888, 892 (5th Cir. 2007)).

7. *United States v. Brown*, 553 F.3d 768, 799 (5th Cir. 2008).

8. *Garcia-Jasso*, 472 F.3d at 243 (quoting *United States v. Greig*, 967 F.2d 1018, 1022 (5th Cir. 1992)).

9. *Id.* (citing *United States v. Carpenter*, 769 F.2d 258, 263 (5th Cir. 1985)).

10. *Burns*, 526 F.3d at 856 (quoting *Garcia—Jasso*, 472 F.3d at 243); *see United States v. Infante*, 404 F.3d 376, 392 (5th Cir. 2005) ("A conflict [of interest] exists when defense counsel places himself in a position conducive to divided loyalties." (alteration in original) (quoting *United States v. Medina*, 161 F.3d 867, 870 n.1 (5th Cir. 1998))).

11. *Infante*, 404 F.3d at 392 (citing *Perillo v. Johnson*, 205 F.3d 775, 798-99 (5th Cir. 2000)).

depends on a number of factors, including, but not limited to, whether the attorney has confidential information that is helpful to one client but harmful to another; whether and how closely the subject matter of the multiple representations is related; how close in time the multiple representations are related; and whether the prior representation has been unambiguously terminated."[12] "Also relevant are the 'character and extent of the prior representation'"[13] and "whether counsel demonstrates 'an abundance of caution' by allowing co-counsel to cross-examine the prior client."[14] However, even if the affected counsel cross-examines the prior client, "the defendant must show more than that his attorney [merely] cross-examined a former client before a hypothetical conflict will be considered an actual one."[15] Ultimately, "[t]here must be an 'actual' conflict and not 'a speculative or potential' conflict,"[16] and the defendant must show "there was some plausible alternative defense strategy that could have been pursued, but was not, because of the actual conflict."[17]

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12. *Id.* (citing *Perillo*, 205 F.3d at 798-99).

13. *United States v. Preston*, 659 F. App'x 169, 179 (5th Cir. 2016) (unpublished) (quoting *Perillo*, 205 F.3d at 799).

14. *Id.* (quoting *Burns*, 526 F.3d at 857).

15. *Burns*, 526 F.3d at 856 (citing *Perillo*, 205 F.3d at 801-02).

16. *Id.* (citing *Infante*, 404 F.3d at 391).

17. *Id.* (quoting *Infante*, 404 F.3d at 393); *see United States v. Garcia-Jasso*, 472 F.3d 239, 243 (5th Cir. 2006) ("It must be demonstrated that the attorney made a choice between possible alternative courses of action. . . . If he did not make such a choice, the conflict remained hypothetical." (quoting *Stevenson v. Newsome*, 774 F.2d 1558, 1561-62 (11th Cir. 1985))).

In *United States v. Burns*,[18] this court concluded defense counsel did not labor under an actual conflict, even though that counsel represented a witness called by the government in a proceeding four years prior to trial.[19] In that case, we concluded, based on the factors enumerated above, that the conflict remained "purely hypothetical."[20] We explained that the affected counsel's representation of his prior client had been "unequivocally terminated"; that "the facts and issues of the previous representation had no relation to the charges brought against [counsel's current client]"; that counsel had "very limited contact with the former client" and, in those contacts, did not discuss matters of the current case; and that, "out of an abundance of caution, the affected attorney's co-counsel cross-examined the witness."[21] We also noted that the defendant failed to show "there was some plausible alternative defense strategy that could have been pursued, but was not, because of the actual conflict."[22] We concluded that although the defendant asserted that his counsel refrained from a certain line of inquiry because of the alleged conflict, the record did not support

18. 526 F.3d 852 (5th Cir. 2008).

19. *Id.* at 856-57 (citing *Infante*, 404 F.3d at 392).

20. *Id.* at 857.

21. *Id.*

22. *Id.* (quoting *Infante*, 404 F.3d at 393).

such a contention. Instead, the record demonstrated that counsel "challenged the witness'[s] credibility at length in an attempt to demonstrate that the witness really did not know [the defendant], and was testifying to obtain favorable treatment from the Government."[23] We concluded, based on the facts in the record, that "[t]here [wa]s nothing to indicate that the failure to [pursue the line of inquiry] was the result of the 'divided loyalties' which would result in an actual conflict as opposed to a tactical trial strategy."[24]

The record in the present case is similar. The record evinces that the subject matters of Miranda's and Rivera-Fuentes's cases were not related. There is no allegation made, and no record evidence to suggest, that Miranda was involved in any way in Rivera-Fuentes's prior case, and here, the charges involve conspiracy and possession with intent to distribute methamphetamine, while Rivera-Fuentes's case involved importation of and possession with intent to distribute marijuana. Macias did not have confidential information helpful to one client but harmful to another. Macias's representations of the two clients were separated by a significant length of time—more than a decade—and Macias's prior representation of Rivera-Fuentes was terminated when Rivera-Fuentes was convicted and sentenced, with there being no evidence to indicate that Macias maintained any relationship with Rivera-Fuentes after that time. Additionally, while

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23. *Id.*

24. *Id.* (quoting *United States v. Martinez*, 151 F.3d 384, 393 (5th Cir. 1998)).

cross-examination of a prior client is not itself grounds for finding an actual conflict,[25] Macias demonstrated "an abundance of caution,"[26] refusing to cross-examine his prior client and, instead, employing unaffected co-counsel to conduct that specific cross-examination.

Furthermore, Miranda puts forward no plausible defense strategy that was avoided because of the alleged conflict. Miranda argues only that "Rivera-Fuentes's testimony against [him] constituted a major part of the Government's case-in-chief" and that Macias's lack of participation gave Rivera-Fuentes "a free pass to testify." Miranda argues that the addition of co-counsel for this purpose "hurt Miranda's defense" because Macias "sat himself out of the most important part of the Government's case." While the focus of Miranda's complaint is on Macias's decision to allow allegedly less experienced co-counsel to cross-examine Rivera-Fuentes, Miranda does not raise a claim of ineffective assistance of counsel and does not identify any questions, follow-up questions, or topics of inquiry which were avoided. Miranda further fails to identify any defensive strategy that was not pursued due to Macias's prior representation of Rivera-Fuentes or because co-counsel Yanez, rather than Macias, cross-examined Rivera-Fuentes. Miranda does not provide any support for his assertion that Macias is a more experienced

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25. *See id.* at 856 (citing *Perillo v. Johnson*, 205 F.3d 775, 801-02 (5th Cir. 2000)).

26. *United States v. Preston*, 659 F. App'x 169, 179 (5th Cir. 2016) (unpublished) (citing *Burns*, 526 F.3d at 857).

trial attorney or that having Yanez cross-examine Rivera-Fuentes hurt his defense. Miranda ultimately fails to identify anything in the record indicating Macias had Rivera-Fuentes's interest in mind during Miranda's trial.

Because "[i]t must be demonstrated that the [affected] attorney made a choice between possible alternative courses of action" and "[i]f he did not make such a choice, the conflict remain[s] hypothetical,"[27] Miranda's argument that there was an actual, as opposed to merely a potential, conflict of interest falls short. Consequently, the district court was not required to conduct a full-fledged *Garcia* hearing.

* * *

The judgment of the district court is AFFIRMED.

27. *United States v. Garcia-Jasso*, 472 F.3d 239, 243 (5th Cir. 2006) (quoting *Stevenson v. Newsome*, 774 F.2d 1558, 1561-62 (11th Cir. 1985)).

APPENDIX B — MOTION OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, EL PASO DIVISION, FILED JUNE 16, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

CRIMINAL NO. EP-20-CR-01797-DB

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS IRAM MIRANDA(2),

Defendant.

UNITED STATES' MOTION FOR DETERMINATION OF CONFLICTS OF INTERESTS (A.K.A. MOTION FOR *GARCIA* HEARING)

Comes now the United States of America, by and through its United States Attorney for the Western District of Texas, and files this Motion for Determination of Conflicts of Interests, seeking a *Garcia* hearing, in the above entitled and numbered cause, and in support thereof the Government would show the following:

Appendix B

I. BACKGROUND

On August 12, 2020, a federal Grand Jury sitting in the Western District of Texas, El Paso Division, returned a two-count Indictment charging Defendants Martin Rivera-Fuentes and Luis Iram Miranda with Conspiracy to Possess a Controlled Substance with Intent to Distribute in violation of Title 21, United States Code, Sections 846 and 841(a)(1), and Possession with Intent to Distribute a Controlled Substance in violation of Title 21, United States Code, Section 841(a)(1). [ECF No. 1]. Defendant Martin Rivera-Fuentes pled guilty on February 18, 2021. [ECF No. 57]. Defendant Luis Iram Miranda requested a jury trial with jury selection to begin on July 20, 2021. [ECF No. 53].

At defendant Luis Miranda's trial, the Government intends to call codefendant Martin Rivera- Fuentes. The Government anticipates that Mr. Rivera will testify about his and Mr. Miranda's involvement in the alleged criminal conspiracy. The Government anticipates that Mr. Rivera will implicate Mr. Miranda in the scheme and provide incriminating evidence against Mr. Miranda. Defendant Miranda is represented by Francisco Macias. In 2008, Mr. Macias represented Mr. Martin Rivera-Fuentes in a federal narcotics case heard before this Honorable Court. The cause number for that case is: 08-CR-03453-DB. In that case, Mr. Rivera was indicted in a two-count indictment charging Importation of Controlled Substance in violation of Title 21, United States Code, Section 952(a) [Count 1], and Possession with Intent to Distribute a Controlled Substance in violation of Title 21, United States

Code, Section 841(a)(1) [Count 2]. Both charges involved a mixture or substance containing a detectable amount of marijuana. Pursuant to a plea agreement, Mr. Rivera pled guilty to Count 1 of that indictment. On June 16, 2019, this Honorable Court sentenced Mr. Rivera to five months imprisonment followed by two years of supervised release.

II. ARGUMENT

The Sixth Amendment guarantees defendants the right to effective assistance of counsel. *Wheat v. United States*, 486 U.S. 153, 158-159 (1988); *Strickland v. Washington*, 466 U.S. 668, 687-89 (1984). This guarantee includes the right to select and be represented by counsel of one's choice. *Wheat*, 486 U.S. at 159. However, "[t]he Sixth Amendment right to choose one's own counsel is circumscribed in several important respects." *Id.* The right to choose one's own counsel is a subordinate interest and may be outweighed by other concerns. *Id.* Where a right to counsel exists, there also exists a correlative right to conflict-free representation. *Wood v. Georgia*, 450 U.S. 261, 271 (1981). In weighing these two competing values, the Court must "preserve a balance, delicate though it may be, between an individual's right to his own freely chosen counsel and the need to maintain the highest ethical standards of professional responsibility." *Emle Indus., Inc. v. Patentex, Inc.*, 478 F.2d 562, 564–65 (2d Cir. 1973).

In *United States v. Garcia*, 517 F.2d 272, 276 (5th Cir. 1975), abrogated on other grounds, *see Flanagan v. United States*, 465 U.S. 259 (1984), the Fifth Circuit held, inter alia, that even though the right to competent and

conflict-free counsel is fundamental, it may nonetheless be waived. Defendants may waive the constitutional protections otherwise afforded them, regardless of their motivation, so long as their waiver is voluntary, knowing, and intelligent. *Garcia*, 517 F.2d at 276-77. Whether such a waiver is voluntary, knowing, and intelligently made depends on the particular facts and circumstances of the case. *Id.* at 277. Because of this, the trial court should actively participate in the defendant's waiver decision. *Id.* The Supreme Court has instructed that "Federal courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *Wheat*, 486 U.S. at 160; *see also United States v. Sanchez Guerrero*, 546 F.3d 328 (5th Cir. 2008) (holding district judge may disqualify counsel to ensure fairness despite a defendant waiving a conflict); *Woods v. Covington County Bank*, 537 F.2d 804, 810 (5th Cir. 1976) (holding federal courts have power to disqualify counsel based on conflict of interest under general supervisory authority over lawyers and litigation).

Once a conflict of interest issue is raised, and if the defendant chooses to proceed with representation by that counsel who has a conflict of interest, a district court must conduct what is commonly known as a "*Garcia* hearing." *United States v. Garcia-Jasso*, 472 F.3d 239, 243 (5th Cir. 2006) (referencing the procedures set forth in *United States v. Garcia*, 517 F.2d 272 (5th Cir. 1975)). The purpose of a *Garcia* hearing is to review with a defendant the actual conflict of interest that his attorney may have in the current proceeding and determine whether the

defendant wishes to proceed with that counsel or obtain new counsel. *Garcia*, 517 F.2d at 278. In *Garcia*, the Fifth Circuit further provided instructions for district courts in order to determine whether a defendant has knowingly, intelligently, and voluntarily waived his right to a conflict-free attorney. *Id*. The *Garcia* strictures have been described as a showing that the defendant: (1) was aware that a conflict of interest exists; (2) realized the potential hazards to his defense by continuing with such counsel under the onus of a conflict; and (3) was aware of his right to obtain "other counsel." *Garcia-Jasso*, 472 F.3d at 243; *United States v. Greig*, 967 F.2d 1018, 1022 (5th Cir. 1992); *United States v. Casiano*, 929 F.2d 1046, 1052 (5th Cir. 1991). Specifically, *Garcia* counsels district courts to "follow a procedure akin to that promulgated in F.R.Crim.P. 11 whereby the defendant's voluntariness and knowledge of the consequences of a guilty plea will be manifest on the face of the record." *Garcia*, 517 F.2d at 278. The district court should advise the defendant of potential dangers of representation by counsel with a conflict of interest and afford the defendant the opportunity to question the district court as to the nature and consequences of his legal representation. *Id*. Most importantly, the district court should "seek to elicit a narrative response from [the] defendant that he has been advised of his right to effective representation, the he understands the details of his attorney's possible conflict of interest and the potential perils of such a conflict, that he has discussed the matter with his attorney or if he wishes with outside counsel, and that he voluntarily waives his Sixth Amendment protections." *Id.*

III. CONCLUSION

WHEREFORE, the Government respectfully requests that the Court conduct a *Garcia* hearing to advise defendant Luis Iram Miranda of the potential conflict of interest brought about by Mr. Macias prior representation of codefendant Luis Martin-Rivera, and to determine whether the defendant Luis Iram Miranda understands and knowingly, intelligently, and voluntarily waives the potential conflict of interest and wishes to continue to be represented by Mr. Macias.

Respectfully submitted,

ASHLEY C. HOFF
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Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

CRIMINAL NO. EP-20-CR-01797-DB

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS IRAM MIRANDA(2),

Defendant.

ORDER ON MOTION FOR DETERMINATION OF CONFLICTS OF INTERESTS (A.K.A. MOTION FOR GARCIA HEARING)

On this date came to be considered the Government's Motion for Determination of Conflicts of Interests, filed in the above entitled and numbered case.

THE COURT FINDS that the Government's Motion for Determination of Conflicts of Interests should be GRANTED.

IT IS HEREBY ORDERED that the above entitled and numbered case is set for a *Garcia* hearing on _____, 2021, at ___ __m.

Appendix B

IT IS SO ORDERED this day ___ of _____,
2021.

_____
HONORABLE DAVID BRIONES
UNITED STATES DISTRICT JUDGE

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, EL PASO DIVISION, FILED JULY 2, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

EP-20-CR-1797-DB-(2)

UNITED STATES OF AMERICA

v.

LUIS IRAM MIRANDA.

ORDER

On this day, the Court sua sponte considered the above-captioned case. On June 16, 2021, the Government filed a "Motion for Determination of Conflicts of Interests" ("Motion"). Therein, the Government states that Attorney Francisco Macias ("Attorney Macias"), who currently represents Defendant Luis Iram Miranda ("Mr. Miranda"), previously served as counsel for an individual likely to testify against Mr. Miranda. According to Local Rule CR-47(b), a response to a motion shall be filed not later than 11 days after service of the motion. As of today, Attorney Macias has not responded to the Government's Motion. Upon due consideration, the Court enters the following order.

Appendix C

IT IS HEREBY ORDERED that **on or before July 9, 2021**, Attorney Francisco Macias **RESPOND** to Government's "Motion for Determination of Conflicts ofInterest," ECF No. 71, or **SHOW CAUSE** why the Court should not grant the Motion.

SIGNED this **2nd** day of **July 2021**.

/s/ David Briones
THE HONORABLE DAVID BRIONES
SENIOR UNITED STATES
DISTRICT JUDGE