No. 24-

In the Supreme Court of the United States

ROBERT ELLIS,

Petitioner,

v.

NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to the New York State Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has long recognized the "settled law that an indigent defendant has the same right to effective representation by an active advocate as a defendant who can afford to retain counsel of his or her choice." *McCoy* v. *Court of Appeals of Wis., Dist. 1*, 486 U.S. 429, 435 (1988). This Court has further acknowledged that "[e]xcept for the source of payment," the relationship between a defendant and appointed counsel is "identical to that existing between any other lawyer and client," *Polk County* v. *Dodson*, 454 U.S. 312, 318 (1981), and characterized this "necessarily close working relationship" as one with "the need for confidence, and the critical importance of trust." *Luis* v. *United States*, 578 U.S. 5, 11 (2016). Indeed, "[t]here are few of the business relations of life involving a higher trust and confidence than that of attorney and client." *Stockton* v. *Ford*, 52 U.S. 232, 247 (1850).

Yet these principles have been continuously eroded by courts across the nation holding that indigent defendants who have been assigned counsel and who have benefitted from this "close working relationship" with assigned counsel do *not* have a right to continued representation by their attorney. Although exceptions are made for case management, conflict of interest, and court scheduling, some courts extinguish an existing attorney-client relationship for no reason whatsoever.

This case is just the latest example. Petitioner's counsel had been assigned to represent him at lineups in the instant case. She had also been assigned to represent him at a related recent trial that resulted in acquittals of the top murder counts. And there were no obstacles preventing her from continuing to represent him. Rather than taking this ongoing relationship into account, the lower court assigned petitioner a different attorney – seemingly because she was "some attorney that [the judge] had never heard of." The instant case is yet another decision that minimizes the trust, confidence, and importance of an indigent defendant's ongoing relationship with his or her appointed attorney, treats all assigned counsel as interchangeable regardless of the history, and condones a judge's substitution of counsel for no valid reason.

The question presented is:

When counsel has been assigned to represent an indigent defendant, has developed a close working relationship, and faces no obstacles to continuing the representation, can a court arbitrarily assign different counsel without any inquiry or grounds or does the defendant have a Sixth Amendment right to continuity of assigned counsel?

RELATED PROCEEDINGS

State of New York Supreme Court, Queens County:

The People of the State of New York v. *Robert Ellis*, No. 2204/2010 (July 18, 2012)

State of New York Supreme Court, Appellate Division, Second Department:

The People of the State of New York v. *Robert Ellis*, No. 2012-07219 (November 28, 2018)

State of New York Supreme Court, Queens County:

The People of the State of New York v. *Robert Ellis*, No. 2204/2010 (March 15, 2022)

State of New York Supreme Court, Appellate Division, Second Department:

The People of the State of New York v. *Robert Ellis*, No. 2022-02809 (March 20, 2024)

State of New York Court of Appeals:

The People of the State of New York v. *Robert Ellis*, No. CLA-2024-00400 (August 12, 2024)

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OPINIONS BELOW

The order of the Court of Appeals (Pet. App. a14) is reported at 242 N.E.3d 677 (N.Y. 2024). The opinion of the Supreme Court, Appellate Division, Second Department (Pet. App. a11-a13), is reported at 207 N.Y.S.3d 647 (2024).

JURISDICTION

The Court of Appeals issued its order on August 12, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

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 have the Assistance of Counsel for his defence.

STATEMENT

It is well established that the Sixth Amendment right to counsel is "fundamental." *Kimmelman* v. *Morrison*, 477 U.S. 365, 374 (1986); *Gideon* v. *Wainwright*, 372 U.S. 335, 344 (1963); *Powell* v. *State of Alabama*, 287 U.S. 45, 68 (1932). Included within this Sixth Amendment right to counsel is "the right to select and be represented by one's preferred attorney," and this Court has "recognize[d] a presumption in favor of [a defendant's] counsel of choice." *Wheat* v. *United States*, 486 U.S. 153, 159, 164 (1988). But the right to choose counsel is not absolute. When an indigent defendant is unrepresented and requires court-assigned counsel, the Sixth Amendment does not afford the defendant the right to decide whom the court should assign. *United States* v. *Gonzalez-Lopez*, 548 U.S. 140, 151 (2006); *Caplin & Drysdale, Chartered* v. *United States*, 491 U.S. 617, 624 (1989).

This Court has yet to address, however, the recurring situation present in the instant case, where the indigent defendant had been assigned counsel and both the defendant and counsel sought to *continue* working together, but the court terminated that relationship and assigned new counsel. While an unrepresented indigent defendant has no Sixth Amendment right to select an attorney when counsel is first assigned – and indeed petitioner does not claim to have had such a right – the landscape is different once the attorney has been appointed and devoted time, energy, and resources to the case. In such a scenario, the circumstances have drastically changed. The Sixth Amendment must surely account for this difference.

The lower courts are divided over whether an indigent defendant who has already been assigned counsel has a Sixth Amendment right to continue to be represented by the same assigned counsel. Most courts have determined that once an attorney has been assigned, the defendant has a Sixth Amendment right to representation by that counsel and a court should not assign new counsel arbitrarily. Other courts have concluded differently, finding that since an indigent defendant has no Sixth Amendment right to initially choose counsel, they necessarily have no Sixth Amendment right to continued representation.

This case presents the ideal vehicle to resolve the continuing dispute. Petitioner was arrested in connection with two incidents that occurred a day apart, one in Queens in which the top count was attempted murder, and the second in Brooklyn, in which the top count was aggravated murder. The two incidents were related, with overlapping parties, witnesses, a co-defendant, and evidence. Petitioner was assigned counsel to the Brooklyn case.

Prior to the Brooklyn case going to trial, counsel was instructed by New York's Administrator of the Assigned Counsel Plan to represent petitioner at lineups in the Queens case. She did. And counsel believed she had been assigned to the Queens case and would continue to represent him in it.

The Brooklyn case subsequently proceeded to trial, at which the jury acquitted petitioner of the top murder counts but convicted him of other crimes. When petitioner was later arraigned in Queens, he sought to have the same attorney continue to represent him, due to her familiarity with both cases, her representation of petitioner

at the Queens lineups, and her statements to him that she was able to do so. The arraignment judge only asked petitioner if he wanted to hire her. When petitioner responded that he could not afford to, the court simply denied the request without any further inquiry and without providing any reason. Petitioner's later renewed request for the same assigned counsel was again denied because the court had apparently "never heard of her." Petitioner was ultimately convicted in Queens of all counts submitted to the jury.

On appeal, rather than considering the issue through the lens of the Sixth Amendment, the New York court, consistent with how other New York courts have evaluated the issue, asked only whether an "established attorney-client relationship existed" when petitioner was arraigned in Queens. Thus, under this New York precedent, an indigent defendant has no right to continue to be represented by assigned counsel – even when that counsel represented the defendant over the course of 18 months at a recent intertwined trial that resulted in acquittals of the top murder counts, even when that counsel represented the defendant at lineup procedures in this very case, and even when she was willing and able to continue to represent him and believed she was already doing so.

This Court should grant the petition on this recurring constitutional issue to ensure that indigent criminal defendants' Sixth Amendment rights are not so cavalierly dismissed and to guarantee that the benefits of continued counsel already recognized by this Court are preserved for both indigent and non-indigent defendants.

This Court's review is urgently needed to address the split among lower courts concerning the fundamental right to counsel.

A. Factual Background

Petitioner was arrested in connection with two incidents that occurred a day apart, one in Queens and the second in Brooklyn. Each incident involved largely the same parties, witnesses, and evidence, and an overlapping co-defendant. Pet. App. a5. The Brooklyn case proceeded first and because petitioner could not afford to retain an attorney, Danielle Eaddy, a former prosecutor, was assigned pursuant to New York's indigent defendant counsel plan. Pet. App. a12, a23. The admission of petitioner's videotaped statement was litigated in both cases, and the admission of the Queens allegations was litigated by Ms. Eaddy in the Brooklyn trial. *See* Pet. App. a5-a6, a24-a26.

While the Brooklyn case was still pending, Ms. Eaddy was assigned by the Administrator of the Assigned Counsel Plan to represent petitioner at lineups for the Queens case, and she appeared as his attorney at those lineups. Pet. App. a5, a12. After a month-long trial – the transcript for which spanned almost 5,000 pages – the Brooklyn jury acquitted petitioner of aggravated murder and attempted aggravated murder but convicted him of weapon possession counts. Pet. App. a5.

When petitioner was subsequently arraigned in Queens, he sought to have Ms. Eaddy continue to represent him, due to her familiarity with both cases, her success on obtaining acquittals of the top two counts, her representation of petitioner at the Queens lineups, and her statements to petitioner that she was ready, willing, and able

to represent him at the Queens trial. Pet. App. a5, a24-25. The Queens arraignment judge only asked petitioner a single question – if he wanted to hire her – and when he responded that he could not afford to, the court denied the application without any further inquiry and assigned the attorney present in court for the arraignment pursuant to New York's indigent defendant counsel plan. Pet. App. a5.

In a *pro se* motion, petitioner later reiterated his request to have Ms. Eaddy assigned, again noting that she represented him during the lineups in Queens, stating she had previously cross-examined the same witnesses at the Brooklyn trial, and recognizing that because she was familiar with the case and was ready to take the assignment, any delay in appointing her would be minimal. Pet. App. a5. The court denied the motion, adding Ms. Eaddy was "some attorney that [it had] never heard of," and calling the request a "dilatory tactic." Pet. App. a5.

Following a jury trial that spanned 17 court dates, petitioner was ultimately convicted in Queens of all counts submitted to the jury, including the top count of attempted second-degree murder, having been represented by a different assigned attorney. Pet. App. a5.

B. Decisions Below

On direct appeal, petitioner maintained that his Sixth Amendment right to counsel was violated because Ms. Eaddy had been assigned, the two had an extensive working relationship together in a recently related Brooklyn trial, and she had represented him at the Queens lineups. Pet. App. a3. The New York intermediate court unanimously agreed that the issue could not be raised on direct appeal and

stated that the proper vehicle to raise the issue was in a post-conviction motion to vacate the conviction. Pet. App. a3, a7.

In concurring with this decision, Justice Betsy Barros agreed that the right to counsel claim could not be reviewed on direct appeal because "the record discloses no information as to whether [Ms.] Eaddy was ready, willing, and able to accept the assignment"; Justice Barros added that if such information existed, "it was incumbent upon the court to assign her as counsel." Pet. App. a6.

Justice Barros identified the multiple reasons and "critical needs" why continuity of counsel is crucial: a defendant's necessity to "confide freely and fully in his [or her] attorney" to ensure that "communication and advice" "may remain free-flowing and unobstructed," the reality that "[m]utual cooperation between defendant and counsel is often times a critical prerequisite to legal representation," and the recognition that a defendant will more likely believe "that his [or her] presumed innocence and individual rights were scrupulously protected at trial." Pet. App. a6 (citation and internal quotation marks omitted).[1]

In accordance with the appellate court's directive, petitioner filed a motion to vacate his conviction on the ground he was denied his constitutional rights to counsel and due process under the Federal and State Constitutions, which was accompanied by a sworn affirmation from Ms. Eaddy. Ms. Eaddy, who was a prosecutor in the Kings

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[1] Leave to appeal was subsequently granted to the New York State Court of Appeals, and the two other issues upon which Justice Barros would have granted relief (petitioner's appearance in court in prison clothing and the denial of a cause challenge) were litigated. The Court of Appeals affirmed by a vote of six to one. *People* v. *Ellis*, 139 N.E.3d 1234 (N.Y. 2019).

County District Attorney's Office for 12 years from 1994 to 2006, a Trial Bureau Chief when she departed to private practice and subsequently represented petitioner, and again a Trial Bureau Chief at the Kings County District Attorney's Office since February 2017 when she returned to that office, confirmed that she was ready, willing, and able to represent petitioner at his Queens trial. Pet. App. a23, a25.

Ms. Eaddy further explained that while petitioner's Brooklyn trial was pending, and before he had been arraigned on his Queens case, she was assigned by the Administrator of the Assigned Counsel Plan to the Queens case and was instructed to represent petitioner at the Queens lineups, which she did. Pet. App. a24. When Ms. Eaddy learned that petitioner was being arraigned on the Queens indictment, she reached out to the Administrator of the Assigned Counsel Plan, reiterating that she had represented petitioner at the Brooklyn trial and the Queens lineups, noting that the two cases were related, and stating that she had already been assigned to represent petitioner in the Queens case. Pet. App. a24-a25. The Administrator responded that the decision to continue the assignment was up to the judge but "the case is yours as far as I am concerned." Pet. App. a25. Nevertheless, Ms. Eaddy's request to continue representing petitioner in the Queens case was rejected by the trial court. Pet. App. a25.

Based on this expanded factual record, petitioner argued in his motion to vacate the judgment that he had repeatedly requested Ms. Eaddy to represent him at his Queens trial, stated she was fully familiar with his case since she represented him at the Brooklyn trial and at the Queens lineups, recognized that Ms. Eaddy's

representation of petitioner had "indelibly attached" when she represented him at the Queens lineups, and noted that Ms. Eaddy had provided a sworn affidavit stating she was ready, willing, and able to represent him at the Queens trial.

The trial court summarily denied the motion. Pet. App. a15-22. It concluded that the arraignment court "properly exercised its discretion" when it denied the request to assign Ms. Eaddy because "[t]he information before the court did not establish an ongoing attorney-client relationship between Ms. Eaddy and [petitioner], only generally alerted the court that [petitioner] had a previous relationship with Ms. Eaddy and that she was familiar with certain aspects of the Queens case and had been assigned to represent him during the Queens lineups, and that [petitioner] preferred that Ms. Eaddy represent him . . . ." Pet. App. a19-a20. The court further found that Ms. Eaddy's representation of petitioner in "the Brooklyn case had ended by the time the Queens case had been indicted," and faulted Ms. Eaddy for not making "sufficient" efforts to alert the Queens trial court of her availability. Pet. App. a20.

On appeal, the intermediate court again denied this Sixth Amendment claim, following other New York cases that conditioned relief on whether an active attorney-client relationship was in place. Pet. App. a11-a13. The court recognized the well-established principle that once an attorney-client relationship has been formed between an indigent defendant and assigned counsel, the defendant has a right to continue to be represented by that attorney. Pet. App. a12. The court also noted that discharging assigned counsel can constitute reversible error and that a court may not interfere "arbitrarily" with the right to counsel of choice. Pet. App. a12 (citation and

internal quotation marks omitted). The court also stated that a court is prohibited from interfering with an "established attorney-client relationship" without making "threshold findings that [the attorney's] participation would have delayed or disrupted the proceedings, created any conflict of interest, or resulted in prejudice to the prosecution or the defense," and added that such findings must demonstrate that interference with the attorney-client relationship is "justified by overriding concerns of fairness or efficiency." Pet. App. a12 (citations and internal quotation marks omitted).

Nevertheless, the court affirmed. After noting Ms. Eaddy's efforts to continue representing petitioner at the Queens trial, her communications with the Administrator of the Assigned Counsel Plan, and that Ms. Eaddy had not filed a notice of appearance in Queens County, it disposed of petitioner's Sixth Amendment right to counsel claim in a paragraph:

> Under the circumstances here, by the time [petitioner] was indicted in Queens County, there was no established attorney-client relationship between [petitioner] and [Ms. Eaddy]. [Ms. Eaddy] represented [petitioner] in 2008, during lineups in Queens County, and last represented [petitioner] in the Kings County case, which had concluded in 2009. Accordingly, there was no interference with an established attorney-client relationship with respect to this case.

Pet. App. a12.

On August 12, 2024, leave to appeal to the Court of Appeals was denied. Pet. App. a14.

REASONS FOR GRANTING THE WRIT

Because this Court has not yet spoken on the issue whether an indigent defendant who has been assigned counsel has a Sixth Amendment right to continuity of that counsel, there is deep disagreement among courts across the nation. As one state high court observed just months ago, "the U.S. Supreme Court has not yet addressed whether there is a Sixth Amendment right to the continuity of court-appointed counsel." *State ex rel. Allen* v. *Carroll Cir. Ct.*, 226 N.E.3d 206, 214 (Ind. 2024). This vacuum of guidance has resulted in different results and an inconsistent application of the law, affording some defendants a Sixth Amendment right to continue to be represented by assigned counsel, while subjecting others – like petitioner – to having their lengthy relationship terminated for no valid reason and against the wishes of the defendant and counsel.

I. There Is An Irreconcilable And Entrenched Conflict Among the Lower Courts That Requires This Court's Attention

Citing a defendant's substantial interest in continued representation by a lawyer who has invested time, energy, and resources in the case, the high courts of ten jurisdictions have explicitly recognized a Sixth Amendment right to the continuity of assigned counsel. This is the law in the District of Columbia, Alaska, Arizona, Arkansas, California, Florida, Indiana, Iowa, Texas, and South Dakota. *McKinnon* v. *State*, 526 P.2d 18, 22-23 (Alaska 1974) ("Once counsel has been appointed, and the defendant has reposed his trust and confidence in the attorney assigned to represent him, the trial judge may not, consistent with the United States and Alaska

constitutions, rend that relationship by dismissing the originally appointed attorney and then thrusting unfamiliar and unwelcome counsel upon the defendant"); *State* v. *Madrid*, 468 P.2d 561, 563 (Ariz. 1970) (dismissal of assigned counsel over defendant's objection was improper); *Clements* v. *State*, 817 S.W.2d 194, 200 (Ark. 1991) ("we hold that where, as here, a trial court terminates the representation of an attorney, either private or appointed, over the defendant's objection and under circumstances which do not justify the lawyer's removal and which are not necessary for the efficient administration of justice, a violation of the accused's right to particular counsel occurs"); *Smith* v. *Superior Court of Los Angeles County*, 440 P.2d 65, 74 (Calif. 1968) ("once counsel is appointed to represent an indigent defendant, whether it be the public defender or a volunteer private attorney, the parties enter into an attorney-client relationship which is no less inviolable than if counsel had been retained. To hold otherwise would be to subject that relationship to an unwarranted and invidious discrimination arising merely from the poverty of the accused"); *Harling* v. *United States*, 387 A.2d 1101, 1105 (D.C. Ct. App. 1978) ("once an attorney is serving under a valid appointment by the court and an attorney-client relationship has been established, the court may not arbitrarily remove the attorney, over the objections of both the defendant and his counsel"); *Weaver* v. *State*, 894 So.2d 178, 189 (Fla. 2004) ("To allow trial courts to remove an indigent defendant's court-appointed counsel with greater ease than a non-indigent defendant's retained counsel would stratify attorney-client relationships based on defendants' economic backgrounds"); *State ex rel. Allen*

v. *Carroll Cir. Ct.*, 226 N.E.3d 206, 215 (Ind. 2024) ("a trial court cannot disqualify court-appointed counsel over the objection of both the defendant and appointed counsel unless (a) disqualification is a last resort; (b) disqualification is necessary to protect the defendant's constitutional rights, to ensure the proceedings are conducted fairly and within our profession's ethical standards, or to ensure the orderly and efficient administration of justice; and (c) those interests outweigh the prejudice to the defendant"); *State* v. *McKinley*, 860 N.W.2d 874, 880 (Iowa 2015) ("once an attorney is appointed, they should not be removed 'absent a factual and legal basis to terminate that appointment'") (citation omitted); *Stearnes* v. *Clinton*, 780 S.W.2d 216, 222 (Tex. Ct. Crim. App. 1989) ("once an attorney is appointed the same attorney-client relationship is established and it should be protected"); *see also In re Civil Contempt Proceedings Concerning Richard*, 373 N.W.2d 429, 432 (S.D. 1985) (counsel, who was appointed by the court, discharged when the charges were dismissed, but still representing petitioner as volunteer counsel, was wrongly barred by the lower court of further representation; removal of counsel exceeded court's authority, and once counsel is chosen by the court or the accused, "the accused is entitled to the assistance of that counsel") (citing *Harling*, 387 A.2d at 1105).

However, other jurisdictions – Colorado, Louisiana, and the Second, Fourth, and Sixth Circuits – have found that no such Sixth Amendment right to continuity of assigned counsel exists. *United States* v. *Basham*, 561 F.3d 302, 324 (4th Cir. 2009) ("an indigent criminal defendant has no constitutional right to have a particular lawyer

represent him. Thus, the only right implicated by the district court's disqualification of [assigned defense counsel] was the right to effective assistance of counsel") (citation omitted); *Daniels* v. *Lafler*, 501 F.3d 735, 740 (6th Cir. 2007) (rejecting Sixth Amendment claim when district court removed assigned counsel, holding "a defendant relying on court-appointed counsel has no constitutional right to the counsel of his choice"); *United States* v. *Parker*, 469 F.3d 57, 61 (2d Cir. 2006) (Sotomayor, J.) ("There is no constitutional right to continuity of appointed counsel"); *People* v. *Rainey*, 527 P.3d 387, 393 (Colo. 2023), *pet. for cert. filed* Oct. 2, 2024 ("since defendants who receive court-appointed counsel do not have a right to choose their attorneys, they do not have a constitutional right to continued representation by any particular appointed attorney"); *State* v. *Reeves*, 11 So.3d 1031, 1066 (La. 2009) ("there is nothing in either the federal or state constitutions which would provide [defendant] with the right to maintain a particular attorney-client relationship in the absence of a right to counsel of choice").

New York seemingly strikes a middle ground. It recognizes that individual defendants *do* have a right to be represented by a particular lawyer, but only if that lawyer has an active attorney-client relationship with the defendant. Such a formalistic inflexible approach allows cases like this to fall through the cracks. That a lawyer had been assigned in a related case, and even represented the defendant at an identification procedure in the instant case, would be of no moment unless an active attorney-client relationship exists, which presumably happens at arraignment. In

other words, a defendant is treated as having no attorney at all – when in fact he had been represented by one continuously for a significant amount of time – simply because the prior representation preceded an indictment.

It is plain that there exists widespread disagreement and confusion among the courts across the nation, with some appellate courts holding that there is a Sixth Amendment right to continuity of assigned counsel, while others conclude that no such right exists. As a result, there is a sweeping inconsistency in the manner in which courts handle requests by indigent defendants to continue their representation by assigned counsel, and no clear approach as to whether the Sixth Amendment requires a continued attorney-client relationship. This is especially troubling in a case like petitioner's, where the attorney-client relationship was lengthy and largely successful, and the court provided no valid reason for not continuing counsel's representation. The clear divergence among the lower courts requires clarification from this Court.

II. The Question Of Whether An Indigent Defendant Has A Right To Continuity Of Assigned Counsel Is One Of Vital Importance To Criminal Defendants Nationwide

Because the Sixth Amendment right to counsel "is indispensable to the fair administration of our adversary system of criminal justice," *Brewer* v. *Williams*, 430 U.S. 387, 398 (1977), and "assures the fairness" and "legitimacy" of the adversary process, *Kimmelman*, 477 U.S. at 374, all defendants, including those "too poor to hire a lawyer," "require[] the guiding hand of counsel at every step in the proceedings against [them]." *Gideon* v. *Wainwright*, 372 U.S. 335, 344-45 (1963). Indeed, "in all

cases," indigent defendants "have the right to have an attorney" who is "zealous for the indigent's interests." *Smith* v. *Robbins*, 528 U.S. 259, 278 n.10 (2000).

This Court has recognized that "the period from arraignment to trial was 'perhaps the most critical period of the proceedings,' during which the accused 'requires the guiding hand of counsel,' if the guarantee is not to prove an empty right." *United States* v. *Wade*, 388 U.S. 218, 225 (1967) (quoting *Powell*, 287 U.S. at 57, 69). The prosecution has "vastly superior resources," *United States* v. *Scott*, 437 U.S. 82, 91 (1978), and "[g]overnments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime." *Gideon*, 372 U.S. at 344. Faced with such immense resources, the "guiding hand of counsel" is especially vital, since an "accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction." *In re Winship*, 397 U.S. 358, 363 (1970).

With one's liberty at stake, the necessity and importance of having continuity of counsel is apparent. Because counsel is required "at any critical stage before trial, as well as at trial itself," *Rothgery* v. *Gillespie County, Texas*, 554 U.S. 191, 212 (2008), counsel is necessarily immersed and participating from the moment of assignment. Throughout the representation, appointed counsel communicates with the client, investigates the facts of the case, prepares legal defenses, develops legal theories, and formulates a strategy for the best possible outcome. Accordingly, "[t]he relationship

between attorney and client is highly confidential, demanding personal faith and confidence in order that they may work together harmoniously." *In re Mandell*, 69 F.2d 830, 831 (2d Cir. 1934). Due to the inherent nature of this relationship, it should be preserved where possible, not extinguished for no reason.

Significantly, a large majority of defendants facing criminal charges are indigent and rely upon appointed counsel, with estimates ranging between eighty and ninety-five percent. *See* Mark Pickett, *Congress Must Act to Protect Federal Public Defense*, 39-SPG Crim. Just. 59 (2024) ("Approximately 90 percent of persons charged with a federal crime require appointed counsel"); William S. Moreau, *Desperate Measures: Protecting the Right to Counsel in Times of Political Antipathy*, 48 Stetson L. Rev. 427, 428 (2019) ("roughly ninety-five percent of criminal defendants nationwide" are "represented by assigned counsel") (citing Laurence A. Benner, *Eliminating Excessive Public Defender Workloads*, 26 Crim. Just. 24, 25 (2011)); *Gideon's Promise Unfulfilled: The Need for Litigated Reform of Indigent Defense*, 113 Harv. L. Rev. 2062, 2065 (2000) ("According to most estimates, about eighty percent of all criminal defendants are represented by indigent defenders") (citing Steven K. Smith & Carol J. DeFrances, U.S. Dep't of Justice, Indigent Defense 1 (1996)). Because such a huge percentage of criminal defendants rely on assigned attorneys, the issue of whether there is a right to continuity of representation by appointed counsel is a recurring unresolved question that will remain ambiguous without this Court's intervention.

If indigent defendants are deprived of the right to continued representation by the same attorney, a judge can require a change of counsel at any time – despite the length of time the representation had occurred, the proceedings the attorney participated in, the identification procedures the attorney attended, the shared understanding between them, the tactical decisions they agreed upon, and the crucial information mutually conveyed over the course of the representation. And not only can a judge require a change of counsel at any time, but, as in the instant case, it can do so simply because it "never heard" of the counsel. There may be valid reasons for a court to appoint new counsel – such as case management, conflict of interest, the attorney's request, or the attorney's or court's calendar. But without any guidance from this Court, judges will be free to interfere and appoint new counsel at any time and for any reason – despite the lengthy history between the indigent defendant and appointed counsel.

For all these reasons, the question of whether indigent defendants have a right to continuity of assigned counsel is of vital importance nationwide.

III. The Decision Below Highlights The Inherent Problems With Terminating A Pre-existing Attorney-Client Relationship And Assigning New Counsel Over An Indigent Defendant's Objection

The court below recognized that Ms. Eaddy had represented petitioner in the Brooklyn case and during lineups in this Queens case. Nevertheless, consistent with other New York cases, the lower court reasoned that "there was no established attorney-client relationship between" the two – presumably because Ms. Eaddy had not been assigned at the Queens arraignment – and approved the appointment of new

counsel over the wishes of petitioner and Ms. Eaddy. The lower court's reasoning highlights how some courts, in concluding there is no right to continuity of assigned counsel, have minimized the significance of the prior protracted experience between a criminal defendant and appointed counsel.

A. Trust And Confidence Are Inherent In Dealings Between An Attorney And Client

"Lawyers in criminal cases 'are necessities, not luxuries.'" *United States* v. *Cronic*, 466 U.S. 648, 653 (1984) (quoting *Gideon*, 372 U.S. at 344). The attorney-client relationship is "an intimate process of consultation and planning which culminates in a state of trust and confidence between the client and his attorney," and the relationship is "particularly essential" "when the attorney is defending the client's life or liberty." *Smith*, 440 P.2d at 74. *See also Luis* v. *United States*, 578 U.S. 5, 11 (2016) (recognizing "the necessarily close working relationship between lawyer and client, the need for confidence, and the critical importance of trust"); *Stockton* v. *Ford*, 52 U.S. 232, 247 (1850) ("There are few of the business relations of life involving a higher trust and confidence than that of attorney and client"). Because "[t]rust and good communication are crucial features of an attorney-client relationship," "[o]nce established, the interest in maintaining a relationship of trust with counsel is of no less importance to an indigent client than to one with ample resources to hire counsel." *McKinley*, 860 N.W.2d at 880.

Fully aware that assigned counsel is the indigent defendant's representative to battle the immense power and resources of the prosecution, defendants naturally

confide in their counsel and discuss confidential information, communications that are protected by "one of the oldest recognized privileges," the attorney-client privilege. *Swidler & Berlin* v. *United States*, 524 U.S. 399, 403 (1998). As the purpose of this privilege is "to encourage clients to make full disclosure to their attorneys," *Fisher* v. *United States*, 425 U.S. 391, 403 (1976), and the "privilege rests on the need for the advocate and counselor to know all that relates to the client's reasons for seeking representation if the professional mission is to be carried out," *Trammel* v. *United States*, 445 U.S. 40, 51 (1980), continued representation of assigned counsel is especially important.

Since the attorney-client privilege is "'rooted in the imperative need for confidence and trust,'" *id.*, clients necessarily share crucial information with appointed counsel, and the knowledge about the case that the attorney accumulates over time is what enables counsel to be an effective advocate. *See Strickland* v. *Washington*, 466 U.S. 668, 688 (1984) ("From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution"); *Smith*, 440 P.2d at 74 (attorney-client relationship is "an intimate process of consultation and planning which culminates in a state of trust and confidence between the client and his attorney," which is "particularly essential" "when the attorney is defending the client's life or liberty"). Accordingly, it is apparent that attorney-client relationships, including those

between indigent defendants and assigned counsel, are based upon trust, confidence, the exchange of crucial information, and open communication.

B. Petitioner's Continued Relationship With His Assigned Attorney Was Crucial To His Ongoing Defense

As stated above, petitioner recognizes that an unrepresented indigent defendant has no right to choose who the court initially appoints. *Gonzalez-Lopez*, 548 U.S. at 151; *Caplin & Drysdale, Chartered*, 491 U.S. at 624. This makes practical sense, as it would be impossible for every indigent defendant to select assigned counsel from the many attorneys on an assigned panel or from a public defender office. *See Morris* v. *Slappy*, 461 U.S. 1, 23 n. 5 (1983) (Brennan, J., concurring in the result) (identifying "the State's interest in economy and efficiency" as considerations that may preclude an indigent defendant from initially choosing counsel). Indeed, since violating the Sixth Amendment can be a standalone ground for reversal not subject to harmless error, *Gonzalez-Lopez*, 548 U.S. at 151-52, courts are careful to ensure that the right does not extend to the initial assignment of counsel, lest a defendant claim that the assignment of a specific lawyer was not his or her choice.

But petitioner was not demanding to change counsel; rather, he sought to *continue* the confidential three-plus year relationship that *already existed*. And the scope and extent of this relationship between petitioner and Ms. Eaddy was significant, substantive, and considerably successful: Ms. Eaddy represented petitioner at an interrelated month-long Brooklyn trial that had overlapping witnesses, evidence, and a co-defendant; Ms. Eaddy successfully obtained acquittals in the Brooklyn case of the

top two counts of aggravated murder and attempted aggravated murder; Ms. Eaddy represented petitioner at lineups in both cases; Ms. Eaddy litigated in the Brooklyn case whether the Queens allegations were admissible at the Brooklyn trial; and Ms. Eaddy vehemently objected to the introduction of petitioner's videotaped interrogation on right to counsel grounds, laying the groundwork that ultimately led to appellate rulings that the statements were improperly admitted in both trials.

In other words, petitioner was not requesting to be appointed an attorney who had no prior involvement in his case. Instead, he was requesting to continue to be represented by an attorney who had already achieved positive results and litigated issues directly related to the Queens case and had been assigned by the indigent defendant counsel plan to represent him at the Queens lineups. This was crucial. As this Court recognized:

> Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the "framework within which the trial proceeds[]"—or indeed on whether it proceeds at all.

Gonzalez-Lopez, 548 U.S. at 150 (quoting *Arizona* v. *Fulminante*, 499 U.S. 279, 310 (1991)).

By denying petitioner the continuity of his defense counsel, the court interfered with his Sixth Amendment right to counsel – for no valid reason. That is not to say

that valid reasons for interfering never exists. On the contrary, this Court has cited with approval a number of grounds limiting counsel of choice, but these grounds were simply irrelevant in the present case. Ms. Eaddy was admitted to practice law in New York. *Cf. Wheat*, 486 U.S. at 159 ("an advocate who is not a member of the bar may not represent clients"). There was no conflict-of-interest with Ms. Eaddy representing petitioner. *Cf. Id.* at 159-60 (the right to counsel is limited by conflict-of-interest rules). And Ms. Eaddy's representation of petitioner would not have delayed the proceedings or affected case management, as petitioner requested her continued representation at the earliest possible time, his arraignment. *Cf. Morris*, 461 U.S. at 14-15 (case management considerations are relevant in the context of representation by preferred counsel).

Significantly, Ms. Eaddy's continued representation of petitioner would have expedited matters, not delayed them. *See* Pet. App. a6 ("[Ms.] Eaddy's familiarity with [petitioner] and the case, as well as [petitioner's] preference for her as his assigned counsel, would most likely have expedited matters") (Barros, J.); *McKinnon*, 526 P.2d at 24 ("We also cannot understand the logic of relieving counsel on the eve of trial for unnecessarily delaying the proceedings, when the appointment of another attorney necessarily results in a still more protracted trial postponement while newly appointed counsel acquaints himself with the case").

This Court has specifically "recogniz[ed] the enormous importance and role that an attorney plays at a criminal trial." *Patterson* v. *Illinois*, 487 U.S. 285, 298 (1988)

(citing *Faretta* v. *California*, 422 U.S 806, 835–36 (1975)). Yet the lower court's reasoning essentially dismissed this "enormous importance." Indisputably, Ms. Eaddy was largely successful in her representation of petitioner, obtaining acquittals of the top aggravated murder and attempted aggravated murder counts in Brooklyn. Fully familiar with both cases, and already assigned to represent petitioner at his Queens lineups, Ms. Eaddy was ready, willing, and able to continue representing him at the Queens trial.

But under the lower court's reasoning, the passage of time – due to the delay in seeking to indict petitioner in the Queens case – erased the significant and protracted attorney-client relationship between petitioner and Ms. Eaddy. This is directly contrary to this Court's recognition that "[o]nce an accused has a lawyer, a distinct set of constitutional safeguards aimed at preserving the sanctity of the attorney-client relationship takes effect." *Patterson*, 487 U.S. at 290 n. 3.

It is not difficult to imagine the problematic effects of New York's approach. Take the situation of an indigent defendant who invokes *Miranda* at the precinct when being questioned. An assigned attorney arrives, meets with the defendant, discusses the allegations, and is present for questioning. The police decide after questioning to release the defendant. Months elapse, the investigation continues, the attorney is involved in potential plea negotiations that ultimately fail, and the defendant is eventually indicted and appears for arraignment. Under New York's rule, the defendant would have no Sixth Amendment entitlement to be represented by the attorney who appeared at the precinct, was knowledgeable about the case, and

participated in plea negotiations. Instead, they would be treated no differently than a defendant who had never had any interaction with counsel and a new attorney, completely unfamiliar with the case, could be appointed. The Sixth Amendment right to counsel would not apply to the ongoing continuing relationship that had occurred between the defendant and attorney – all because, under New York's approach, representation at arraignment is what controls.

IV. This Case Is The Ideal Vehicle To Resolve The Issue

More than forty years ago, Justice Brennan forecast the issue now squarely before this Court, stating that the relevant considerations why indigent defendants do not have the right to initially choose appointed counsel

> should not preclude recognition of an indigent defendant's interest in continued representation by an appointed attorney with whom he has developed a relationship of trust and confidence.

Morris, 461 U.S. at 23 n. 5 (1983) (Brennan, J., concurring in the result). But the passage of time has not clarified the issue. Rather, because of divergent decisions across the nation, some indigent defendants in certain jurisdictions have a fundamental right to continuity of assigned counsel while others do not. Plainly, this is a recurring issue that needs to be resolved by the Court. Indeed, a variation of this issue was brought to this Court's attention just weeks ago.[2]

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[2] *See Rainey* v. *Colorado*, No. 24-436, *cert. petition filed* Oct. 2, 2024; *Davis* v. *Colorado*, No. 23-1096, *cert. denied*, ___ U.S. ___, 2024 WL 4486359 (Oct. 15, 2024).

This case is an ideal vehicle for the Court to bring certitude to a recurring issue of great importance. The question is squarely presented, as petitioner specifically requested that Ms. Eaddy continue to represent him at the earliest possible time, his Queens arraignment. Ms. Eaddy's representation of petitioner was also significant, as she represented him not only at his recent related Brooklyn trial, obtaining acquittals of the top aggravated murder and attempted aggravated murder counts, but she also represented him at the Queens lineups for this very case.

Significantly, there were no scheduling issues, case management reasons, or other barriers for not permitting Ms. Eaddy's assignment at arraignment. Both petitioner and Ms. Eaddy wanted this attorney-client relationship to continue. Ms. Eaddy's appointment at arraignment would have expedited the case due to her great familiarity with the case. And far from being accused of a minor offense that could possibly be handled by any attorney, the Queens case spanned 17 court dates and the top count was attempted murder. The Brooklyn case that Ms. Eaddy tried to verdict was similarly lengthy and complicated, and had overlapping witnesses and evidence with the Queens case. Ms. Eaddy was largely successful in her representation of petitioner, having obtained acquittals of the top two murder counts and laying the groundwork for appellate rulings in both case suppressing petitioner's videotaped statement.

For all these reasons, certiorari should be granted because this case is an ideal vehicle to resolve the issue of whether the Sixth Amendment affords an indigent defendant of a right to continue to be represented by his or her attorney. In the

alternative, the petition for a writ of certiorari should be held pending the disposition in *Rainey* v. *Colorado*, No. 24-436. If the Court grants certiorari and reverses in *Rainey*, it should grant this petition, vacate the order below, and remand this case to the state courts.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be granted. Alternatively, if the Court grants certiorari and reverses in *Rainey*, it should grant this petition, vacate the order below, and remand this case to the state courts.

Respectfully submitted,

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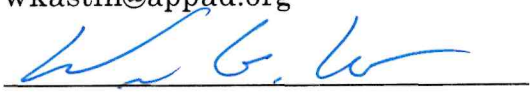

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