

## **APPENDIX**

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**APPENDIX C — DECLARATION OF  
JOHN F. CARROLL IN THE UNITED STATES  
DISTRICT COURT FOR THE WESTERN  
DISTRICT OF TEXAS, SAN ANTONIO DIVISION,  
DATED JANUARY 10, 2021**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

CRIMINAL ACTION NO. 5:15-CR-00820-DAE-1

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

JOHN XAVIER PORTILLO,

*Defendant.*

**DECLARATION OF JOHN F. CARROLL**

John F. Carroll, being at least eighteen years of age, and pursuant to 28 U.S.C. § 1746, deposes and states as follows:

1. I was appointed under the Criminal Justice Act to represent John Xavier Portillo on direct appeal from his conviction in the above referenced case.
2. As appellate counsel, I conducted an extensive review of the record in this case.

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3. I was aware that, early in the case, the District Court disqualified Jay Norton as counsel for Mr. Portillo based upon an alleged conflict of interest.
4. I understood that, in general, the disqualification of Mr. Norton might be a strong issue at some stage of the proceedings to obtain relief for Mr. Portillo given that he was denied his counsel of choice. I was aware that, if the disqualification of Mr. Portillo's counsel of choice was improper, Mr. Portillo would not be required to show prejudice.
5. Nevertheless, following my review of the record on appeal, I did not believe the record was sufficiently developed to allow me to properly raise the disqualification issue on direct appeal and I believed it would need to be developed further to be raised in a post-conviction motion pursuant to 28 U.S.C. § 2255.
6. I believe that the record was not sufficiently developed to raise this issue on direct appeal for the following reasons: The likely or expected testimony of the Client A was not sufficiently developed. It could not be determined from the Government's representations to what extent the expected testimony of Client A would support the allegations in the indictment. Further, the record was not developed to show how the expected testimony might fit in with the theory of the defense. Specifically, Mr. Norton indicated to the Court at the hearing on the Government's notice to the court of a potential conflict that

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the defense of Mr. Portillo would not involve challenging the expected testimony of Client A. The Government's argument, which the Court relied upon in its order of disqualification, focused on the conflict that Mr. Norton would face in being called upon to cross examine Client A, that is, using confidential information (Rule 1.05) in cross examining the former client on behalf of the present client, Mr. Portillo. The expected content of Client A's expected testimony and its impact on the theory of defense would have an important bearing on whether counsel for Mr. Portillo would even need to cross examine Client A at trial and whether there was in fact any realistic potential for a violation of a disciplinary rule in Mr. Norton's continued representation of Mr. Portillo.

7. I have reviewed a copy of the Government's Notice to Court of Potential Conflict and Motion to Seal. It refers to two attachments including an affidavit describing facts within the knowledge of Client A and states that the attachments were provided to the Court *ex parte*. I do not recall seeing the affidavit regarding Client A as part of the appellate record.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 10th day of January 2021.

/s/ John F. Carroll  
JOHN F. CARROLL