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Casenote

Methamphetamine, Money, and a Motion to Withdraw as Counsel: *United States v. Jimenez-Antunez* All Boils Down to the Appropriate Standard.

I. INTRODUCTION

In *United States v. Jimenez-Antunez*,¹ the United States Court of Appeals for the Eleventh Circuit held that a defendant is not required to show good cause to dismiss his retained counsel, even if the defendant then intends to request appointed counsel.² The issue was one of first impression in the Eleventh Circuit,³ and one that has caused some disagreement between the other circuits.⁴ There are distinct differences between the right to appointed counsel and the right to retained counsel under the Sixth Amendment of the United States Constitution.⁵ This case continues to uphold those distinctions by keeping the standards to substitute counsel separate.

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1. 820 F.3d 1267 (11th Cir. 2016).
2. *Id.* at 1271.
3. *Id.* at 1269.
4. *Id.* at 1271-72.
5. U.S. CONST. amend. VI.

II. FACTUAL BACKGROUND: METHAMPHETAMINE, MONEY, AND MOTION TO WITHDRAW

Gabriel Jimenez-Antunez was a drug distributor for a Mexican drug supplier named Chato. Chato's couriers transported drugs into the United States and delivered them to Jimenez-Antunez. Chato instructed Jimenez-Antunez to deposit the profits from the drug sales in several different bank accounts. On May 12, 2013, Jimenez-Antunez was arrested by agents of the Drug Enforcement Administration (DEA).⁶

On June 4, 2013, Jimenez-Antunez was indicted by a federal grand jury for conspiracy to distribute and possess with the intent to distribute 500 grams of methamphetamine, possession of 500 grams of methamphetamine with intent to distribute, conspiracy to commit money laundering, and illegal reentry after deportation. After Jimenez-Antunez was indicted, Attorney Ash Joshi entered notice of appearance as Jimenez-Antunez's retained counsel. Joshi negotiated a plea agreement with the government and Jimenez-Antunez pleaded guilty to the two conspiracy charges.⁷

On October 24, 2014, Jimenez-Antunez sent a letter to Joshi requesting that he withdraw as counsel so the judge would appoint an attorney to represent him. On November 3, 2014, Joshi moved to withdraw as counsel and stated that he expected Jimenez-Antunez to request appointed counsel immediately after Joshi's withdrawal.⁸

At Jimenez-Antunez's sentencing hearing on December 16, 2014, the district court reviewed Joshi's motion to withdraw.⁹ "Joshi stated that he and Jimenez-Antunez had disagreements and that Jimenez-Antunez felt that Joshi had coerced him into pleading guilty."¹⁰ The district court determined there was no evidence that Joshi had coerced Jimenez-Antunez into pleading guilty, the judge had explained the nature of the proceedings during the plea hearing, and Joshi had visited Jimenez-Antunez in the last six months.¹¹ The court denied Joshi's motion to withdraw on the basis that Jimenez-Antunez had been provided effective counsel.¹² The

6. *Jimenez-Antunez*, 820 F.3d at 1269.

7. *Id.*

8. *Id.* at 1269-70.

9. *Id.* at 1270.

10. *Id.*

11. *Id.* The district court suspected that Jimenez-Antunez was actually disappointed with the sentencing guideline range that was determined in the presentence investigation report. *Id.*

12. *Id.*

court then proceeded with the sentencing hearing, in which Jimenez-Antunez was sentenced to 300 months and 240 months of imprisonment, to be served concurrently.¹³

Jimenez-Antunez appealed the district court's decision.¹⁴ The Eleventh Circuit determined that "[t]he district court applied the wrong standard when it denied Joshi's motion to withdraw" on the basis that Jimenez-Antunez was given effective counsel.¹⁵ Furthermore, the district court did not give any reasons for concluding that granting Joshi's motion would have affected the fair, orderly, and effective administration of the courts.¹⁶ In conclusion, the Eleventh Circuit held that a criminal defendant does not have to show good cause to dismiss retained counsel, even if the defendant then intends to request appointed counsel.¹⁷

III. LEGAL BACKGROUND: RIGHT TO COUNSEL

A. The History of the Right to Retained and Appointed Counsel

A defendant's right to counsel arose out of early English common law, the constitutions of the original colonies, and the Sixth Amendment.¹⁸ Originally, in England, a person was only entitled to full assistance of counsel in criminal cases where a person was accused of a misdemeanor.¹⁹ It was not until 1836 that an act by Parliament granted the full right to counsel in respect to felonies.²⁰

The American colonies rejected England's original limitation on the full assistance of counsel, which was only afforded in misdemeanor trials.²¹ When the Constitution was adopted, twelve of the thirteen colonies had constitutional provisions that rejected the English rule and recog-

13. *Id.*

14. *Id.* at 1269.

15. *Id.* at 1272-73.

16. *Id.*

17. *Id.* at 1269, 1271.

18. *Powell v. Alabama*, 287 U.S. 45, 60-65, 66 (1932).

19. *Id.* at 60.

20. *Id.*

21. *Id.* at 60, 61.

nized that a defendant had a right to counsel in all criminal prosecutions.²² The Sixth Amendment rejected the English rule as well and "provide[d] that in all criminal prosecutions the accused shall enjoy the right 'to have the assistance of counsel for his defense.'"²³

While *Powell v. Alabama*²⁴ was not a Sixth Amendment case, it still had an important role in the interpretation of the Sixth Amendment.²⁵ The case involved a group of young African-American males who were convicted of raping two Caucasian females and were sentenced to death. The Supreme Court of the United States considered the case after the Supreme Court of Alabama affirmed the trial court's judgment, which included denying the defendants the right to counsel.²⁶ The U.S. Supreme Court first held that an accused person should be given reasonable time and a fair opportunity to retain counsel of his own choice.²⁷ The Court relied on the Fourteenth Amendment of the United States Constitution²⁸ and stated that depriving a defendant of the right to retain counsel was a denial of due process.²⁹ Second, the Court held that it is a requirement for counsel to be appointed in capital cases where the accused is unable to employ counsel.³⁰ The Court reasoned that the denial of appointed counsel was a denial of due process under the Fourteenth Amendment because it would deny the defendant a fair trial.³¹ This case stands for the proposition that there are two separate rights to counsel afforded by the Constitution, which include both the right to retained counsel and the right to appointed counsel.³²

22. *Id.* at 64-65; WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 11.1(a), at 580 (3d ed. 2007). The original Constitution of Georgia (1777) did not have a provision that guaranteed the right to counsel, "but the Constitution of 1798 (Art. III, § 8) provided that ' . . . no person shall be debarred from advocating or defending his cause before any court or tribunal, either by himself or counsel, or both.'" *Powell*, 287 U.S. at 63 (quoting GA. CONST. art. III, § 8 (1798)).

23. *Powell*, 287 U.S. at 66 (quoting U.S. CONST. amend. VI).

24. 287 U.S. 45 (1932).

25. LAFAVE ET AL., *supra* note 22, at 579.

26. *Powell*, 287 U.S. at 49, 50.

27. *Id.* at 53, 71.

28. U.S. CONST. amend. XIV.

29. *Powell*, 287 U.S. at 71.

30. *Id.*

31. *Id.* at 71-72; LAFAVE ET AL., *supra* note 22, at 581.

32. LAFAVE ET AL., *supra* note 22, at 581.

In 1938, the Supreme Court held in *Johnson v. Zerbst*³³ that the Sixth Amendment guarantees a defendant the right to both retained and appointed counsel.³⁴ The case involved two defendants who were charged and convicted with possessing and uttering counterfeit money. Neither of the defendants could employ counsel of their choice because they lacked financial ability. A request was made for appointed counsel to the District Attorney, who responded that the court would not appoint counsel because the defendants had not been charged with a capital offense.³⁵ The Supreme Court stated that the right to counsel is one of the protections the Sixth Amendment “deemed necessary to insure fundamental human rights of life and liberty.”³⁶ The Court also determined that it is consistent with the Sixth Amendment that a defendant be appointed counsel by the state if he cannot afford counsel on his own.³⁷ Consequently, the Court concluded that federal courts cannot deprive a defendant of life or liberty in any criminal proceeding, unless the accused “has or waives the assistance of counsel.”³⁸

In 1963, the Supreme Court decided *Gideon v. Wainwright*,³⁹ which extended the Sixth Amendment to the states through the due process clause of the Fourteenth Amendment.⁴⁰ Gideon was charged and convicted in a Florida state court of breaking and entering a poolroom with the intent to commit a misdemeanor. Gideon requested appointed counsel, but the court denied his request on the basis that Florida state laws only require an appointment of counsel where a defendant is charged

33. 304 U.S. 458 (1938).

34. *See id.* at 462-63; LAFAYE ET AL., *supra* note 22, at 581.

35. *Johnson*, 304 U.S. at 460.

36. *Id.* at 462.

37. *Id.* at 463.

38. *Id.* The Court also stated that the Sixth Amendment right to counsel was essential for a federal court to have jurisdiction over a case and to have the authority to deprive a defendant of life or liberty. *Id.* at 467. In *Johnson*, the Court held that the defendant had been convicted without being afforded the right to counsel and that “the trial court did not have jurisdiction to proceed to judgment and conviction of petitioner . . .” *Id.* at 469.

39. 372 U.S. 335 (1963). *Gideon* overruled *Betts v. Brady*, in which the Supreme Court refused to extend the Sixth Amendment to the states by incorporating it through the due process clause of the Fourteenth Amendment. 316 U.S. 455, 461-62 (1942). In *Betts*, the Court held that states were only required to appoint counsel where under the totality of the facts and circumstances, the denial of due process would “constitute a denial of fundamental fairness, shocking to the universal sense of justice . . .” *Id.* at 462. The Court reasoned that the majority of states deemed the issue as one of legislative policy that should be left to the individual states to decide. *Id.* at 471.

40. *Gideon*, 372 U.S. at 342.

with a capital offense.⁴¹ After granting writ of certiorari, the Court explained that any provision of the Bill of Rights⁴² that is deemed fundamental and essential to a fair trial is extended to the states through the Fourteenth Amendment.⁴³ It concluded that the Sixth Amendment right to counsel is fundamental and essential to a fair trial.⁴⁴

In 1972, the U.S. Supreme Court further extended the reach of the right to counsel in *Argersinger v. Hamlin*.⁴⁵ The defendant was charged with carrying a concealed weapon, which is a crime punishable by imprisonment up to six months, a fine of \$1,000, or both. The defendant was not represented by counsel at his trial and was sentenced to ninety days in jail.⁴⁶ The defendant "brought [a] habeas corpus action in the Florida Supreme Court," which ruled that the right to appointed counsel was only required in trials "for non-petty offenses punishable by more than six months imprisonment."⁴⁷ After granting certiorari, the U.S. Supreme Court held that no person may be imprisoned for any crime, whether petty, a misdemeanor, or a felony, without being represented by counsel at trial.⁴⁸ The Court explained there was no historical support for limiting the right to counsel to serious criminal cases.⁴⁹ The Court also reasoned that the possibility of imprisonment will rarely "be viewed by the accused as a trivial or 'petty' matter . . ."⁵⁰

B. Standards for Retained Counsel

The Supreme Court stated in *Powell* that a defendant should be given a fair opportunity to obtain counsel of his choice.⁵¹ The right of a person who does not require appointed counsel to choose the counsel that he prefers is protected by the Sixth Amendment.⁵²

41. *Id.* at 336-37.

42. U.S. CONST. art. V.

43. *Gideon*, 372 U.S. at 338, 342.

44. *Id.* at 342. The Court relied in part on the opinion in *Powell*, in which the Court determined that "the right to the aid of counsel is of this fundamental character." *Id.* at 342-43 (quoting *Powell*, 287 U.S. at 68).

45. 407 U.S. 25 (1972).

46. *Id.* at 26-27.

47. *Id.*

48. *Id.* at 27, 37. The Supreme Court also stated, "no person may be deprived of his liberty who has been denied the assistance of counsel as guaranteed by the Sixth Amendment. This holding is applicable to all criminal prosecutions . . ." *Id.* at 37-38 (quoting *Stevenson v. Holzman*, 254 Or. 94, 102, 458 P.2d 414, 418 (1969)).

49. *Id.* at 30.

50. *Id.* at 38 (quoting *Baldwin v. New York*, 399 U.S. 66, 73 (1970)).

51. *Powell*, 287 U.S. at 53.

52. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144, 146 (2006).

In *Wheat v. United States*,⁵³ the Supreme Court held that a defendant's right to retained counsel of choice could be restricted in some important instances.⁵⁴ In *Wheat*, the defendant and several codefendants were charged with participating in a drug distribution conspiracy. The defendant contacted his codefendants' counsel and asked the attorney to represent him as well. The Government argued that the substitution of counsel would create a substantial conflict of interest. The defendant argued he had a right to counsel of his choice and that he and the codefendants were willing to waive the right to conflict-free counsel. The district court held that there was an irreconcilable conflict of interest and denied the defendant's request to substitute counsel.⁵⁵ The defendant was convicted, and the United States Court of Appeals for the Ninth Circuit upheld the conviction.⁵⁶ The Ninth Circuit reasoned that, within the limits of the Sixth Amendment, the district court had discretion when deciding whether to allow a defendant to substitute counsel.⁵⁷

The Supreme Court granted certiorari and affirmed the decision.⁵⁸ The Court reasoned that the purpose of the Sixth Amendment was to guarantee effective counsel and a fair trial, not to guarantee that criminal defendants will be represented by preferred counsel.⁵⁹ The Court stated that the decision of whether to allow a defendant to substitute counsel was within the discretion of the district court and did not violate the defendant's Sixth Amendment rights in this case.⁶⁰ The Court further explained that "[a] [d]istrict [c]ourt must recognize a presumption in favor of [a defendant]'s counsel of choice, but that presumption may be overcome not only by a demonstration of actual conflict but by a showing of a serious potential for conflict."⁶¹

53. 486 U.S. 153 (1988).

54. *Id.* at 159. Some of these important respects are:

[A]n advocate who is not a member of the bar may not represent clients (other than himself) in court. Similarly, a defendant may not insist on representation by an attorney he cannot afford or who for other reasons declines to represent the defendant. Nor may a defendant insist on the counsel of an attorney who has a previous or ongoing relationship with an opposing party, even when the opposing party is the Government.

Id.

55. *Id.* at 154-57.

56. *Id.* at 157.

57. *Id.*

58. *Id.* at 158, 164.

59. *Id.* at 159.

60. *Id.* at 164.

61. *Id.*

In 2006, the Supreme Court held in *United States v. Gonzalez-Lopez*⁶² that the right to retained counsel is violated “when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received.”⁶³ In *Gonzalez-Lopez*, the Government argued that a denial of the defendant’s right to retained counsel of choice was not violated, unless the defendant could establish that he had been prejudiced.⁶⁴ The Court explained that conducting an inquiry into ineffectiveness or prejudice when a defendant’s right to counsel of choice is denied confuses the right to counsel of choice with the right to effective counsel.⁶⁵ The Court reasoned that the right to retain counsel of the defendant’s choice has never been the result of the Sixth Amendment’s aim of guaranteeing a fair trial, but “has been regarded as the root meaning of the constitutional guarantee.”⁶⁶

The right to counsel of choice is not as absolute as the right to assistance of counsel under the Sixth Amendment.⁶⁷ The right to counsel of choice “must be weighed and balanced against an equally desirable public need for the efficient and effective administration of criminal justice.”⁶⁸ In *United States v. Koblitz*,⁶⁹ the Eleventh Circuit explained the standard for replacing retained counsel, which is that the court must allow replacement of retained counsel of choice as long as it does not impede on the “fair, orderly, and effective administration of the courts”⁷⁰

C. Standards for Appointed Counsel

A criminal defendant without funds has an unconditional right to be represented by counsel, but does not have a right to be represented by a lawyer of his choice.⁷¹ Additionally, an indigent defendant does not have the right to demand that a different attorney be appointed to represent him, absent good cause.⁷² Essentially, an indigent defendant has no legitimate complaint of his appointed counsel as long as he is adequately

62. 548 U.S. 140 (2006).

63. *Id.* at 148.

64. *Id.* at 145.

65. *Id.* at 148.

66. *See id.* at 147-48.

67. *United States v. Sexton*, 473 F.2d 512, 514 (5th Cir. 1973).

68. *Gandy v. Alabama*, 569 F.2d 1318, 1323 n.9 (5th Cir. 1978).

69. 803 F.2d 1523 (11th Cir. 1986).

70. *Id.* at 1528.

71. *Thomas v. Wainwright*, 767 F.2d 738, 742 (11th Cir. 1985).

72. *United States v. Young*, 482 F.2d 993, 995 (5th Cir. 1973).

represented.⁷³ The “good cause” exception ensures that a defendant is not deprived of his Sixth Amendment right to effective counsel.⁷⁴

In *United States v. Young*,⁷⁵ the United States Court of Appeals for the Fifth Circuit held that absent a clear violation of the defendant’s Sixth Amendment right to counsel, it is up to the court’s discretion to decide whether good cause exists to appoint a different attorney to an indigent defendant who expresses dissatisfaction with his current appointed counsel.⁷⁶ In *Young*, the defendant argued that he did not receive effective counsel in his second trial, where he was convicted of assaulting a federal officer and destruction of government property. The defendant claimed his attorney did not inform him he would be transferred from Atlanta, Georgia to the location of his trial in Jackson, Mississippi. He also stated that he suspected his attorney had communicated confidential matters of his defense to the prosecutor. The district court declined to replace the defendant’s appointed counsel.⁷⁷

The Fifth Circuit affirmed the district court’s decision on the basis that both of the defendant’s contentions lacked merit and the defendant received vigorous and able representation at his trial.⁷⁸ The Fifth Circuit reasoned that the record did not show any occurrences constituting good cause.⁷⁹ Some of the instances that constitute good cause include “a conflict of interest, a complete breakdown in communication or an irreconcilable conflict which leads to an apparently unjust verdict.”⁸⁰

Accordingly, the determination of whether there is good cause is not based on “the subjective standard of what the defendant perceives.”⁸¹ The Eleventh Circuit held in *Thomas v. Wainwright*⁸² that a defendant’s loss of confidence or trust in his attorney, or the defendant’s unreasonable silence or uncooperativeness, does not constitute good cause.⁸³ In *Thomas*, the defendant was convicted of first-degree murder, sexual battery, robbery, and burglary, and was sentenced to death. The Florida Su-

73. *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 624 (1989).

74. *Jimenez-Antunez*, 820 F.3d at 1271.

75. 482 F.2d 993 (5th Cir. 1973).

76. *Id.* at 995.

77. *Id.* at 994-95.

78. *Id.* at 995-96.

79. *Id.* at 996.

80. *Id.* at 995 (quoting *United States v. Calabro*, 467 F.2d 973, 986 (2d Cir. 1972)).

81. *Thomas*, 767 F.2d at 742 (quoting *McKee v. Harris*, 649 F.2d 927, 932 (2d Cir. 1981)).

82. 767 F.2d 738 (11th Cir. 1985).

83. *Id.* at 742.

preme Court affirmed the defendant's conviction and sentence. The defendant brought a federal petition for writ of habeas corpus, which was denied by the district court. The defendant appealed, claiming the lack of communication with his attorney deprived him of his right to effective assistance of counsel.⁸⁴

The Eleventh Circuit affirmed the district court's decision, denying the defendant's petition for writ of habeas corpus.⁸⁵ The court reasoned that the defendant could not establish a good cause for the substitution of appointed counsel solely on the basis of his own refusal to communicate with his attorney.⁸⁶ The court stated that the defendant's voluntary refusal to communicate with his attorney "effectively waived any right to more effective counsel than was possible under the circumstances."⁸⁷ The court further stated that the inquiry did not stop there, but that it would still have to determine whether the counsel represented his client to the best of his ability under the circumstances.⁸⁸ The Eleventh Circuit concluded that the defendant's counsel was reasonably effective under the particular circumstances of the case.⁸⁹

However, there are some circumstances where the courts will replace appointed counsel against the defendant's wishes. In *Morris v. Slappy*,⁹⁰ the Supreme Court held that trial courts have discretion to replace a defendant's appointed counsel when the initial appointed counsel's availability would interrupt the court's schedule.⁹¹ In *Morris*, the defendant's appointed counsel was admitted to a hospital for emergency surgery. Consequently, the court appointed another attorney to represent the defendant six days prior to the scheduled trial date. The defendant refused to cooperate with the new appointed counsel and was convicted of five felonies. The Ninth Circuit determined that the defendant timely and in good faith moved for a continuance so that his original attorney could represent him. Further, the Ninth Circuit held that the Sixth Amendment right to counsel included the right to a meaningful attorney-client relationship.⁹²

84. *Id.* at 739-40. The district court stated that "[a] defendant cannot be allowed to refuse to cooperate with his attorney and the trial court and then attempt to create an issue of ineffective counsel on the basis of his own refusal." *Id.* at 741 (alteration in original).

85. *Id.* at 748.

86. *See id.* at 743.

87. *Id.*

88. *Id.*

89. *Id.* at 744.

90. 461 U.S. 1 (1983).

91. *Id.* at 12-13; LAFAYETTE ET AL., *supra* note 22, § 11.4(b), at 613-14.

92. *Morris*, 461 U.S. at 5-13.

The Supreme Court, however, reversed the Ninth Circuit's decision.⁹³ First, the Court concluded that the defendant did not timely and in good faith move for a continuance.⁹⁴ The defendant did not express any concerns about his new appointed counsel until the third day of trial, which was eleven days after his counsel was replaced.⁹⁵ Second, the Court stated that the Ninth Circuit's determination that the Sixth Amendment included the right to a meaningful attorney-client relationship was "without basis in the law."⁹⁶ The Court further explained that courts could not possibly assure that a defendant will have a meaningful relationship with his attorney.⁹⁷ The Court held that the Sixth Amendment does not guarantee that a defendant will have a meaningful relationship with his counsel.⁹⁸

IV. COURT'S RATIONALE: KEEPING THE STANDARDS SEPARATED

The Eleventh Circuit, in *United States v. Jimenez-Antunez*, vacated Jimenez-Antunez's conviction and remanded the case for further proceedings.⁹⁹ The Eleventh Circuit held that a defendant is not required to show good cause in order to dismiss his retained counsel, even if the defendant intends to request appointed counsel afterwards.¹⁰⁰ In so holding, the Eleventh Circuit ultimately concluded that the standard to substitute retained counsel and the standard to substitute appointed counsel should be kept separate.¹⁰¹

The Eleventh Circuit unanimous panel opinion, delivered by Circuit Judge William Pryor, addressed the first impression issue of whether a criminal defendant is required to show good cause to dismiss his retained counsel when the defendant then plans on requesting appointed counsel.¹⁰² The court began with a brief discussion of the differences between the right to retained counsel and the right to appointed counsel.¹⁰³ The court then explained that it must decide which standard to apply in the

93. *Id.* at 15.

94. *Id.* at 12-13.

95. *Id.* at 13. The Court stated that the trial court could have reasonably determined that the defendant's motion for a continuance was not made in good faith, but was "a transparent ploy for delay." *Id.*

96. *Id.*

97. *Id.* at 13-14.

98. *Id.* at 14.

99. *Jimenez-Antunez*, 820 F.3d at 1269.

100. *Id.* at 1271.

101. *See id.* at 1272.

102. *Id.* at 1269.

103. *Id.* at 1270-71.

situation at hand, which is either the standard for substituting retained counsel or the standard for substituting appointed counsel.¹⁰⁴ The Eleventh Circuit concluded that the standard for substituting retained counsel applied first and then the standard for substituting appointed counsel applied after the defendant was appointed counsel.¹⁰⁵

The Eleventh Circuit reasoned that the Sixth Amendment right to retained counsel of choice is not complete if it does not encompass the right to dismiss counsel that one no longer desires to choose.¹⁰⁶ The court held that "[a] defendant exercises the right to counsel of choice when he moves to dismiss retained counsel, regardless of the type of counsel he wishes to engage afterward."¹⁰⁷ A district court cannot require a defendant to show good cause in order to dismiss retained counsel because the defendant has the right to retained counsel of choice.¹⁰⁸ However, the court explained that an indigent defendant that dismisses his retained counsel might be required to replace the retained counsel with appointed counsel in order to comply with the right to effective representation.¹⁰⁹ Nonetheless, that requirement does not affect the defendant's Sixth Amendment right to hire and fire retained counsel of choice.¹¹⁰

In addition, the Eleventh Circuit explained that it agreed with the holding of a Ninth Circuit decision.¹¹¹ In *United States v. Brown*,¹¹² the Ninth Circuit held that when a defendant moves to dismiss his retained counsel and then intends to request appointed counsel, the defendant still has the right to counsel of one's choice.¹¹³ In *Brown*, the defendant's retained counsel filed a motion to withdraw and substitute appointed counsel.¹¹⁴ The district court denied the motion on the basis that the defendant's retained attorney was qualified and had already been paid.¹¹⁵ The defendant was sentenced to concurrent 180-month sentences for advertising, transporting, and receiving child pornography, and a concur-

104. *Id.* at 1271.

105. *See id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* The court explained that the right to effective representation "derived . . . from the purpose of ensuring a fair trial." *Id.* (alteration in original) (quoting *Gonzalez-Lopez*, 548 U.S. at 147).

111. *Id.*

112. 785 F.3d 1337 (9th Cir. 2015).

113. *Jimenez-Antunez*, 820 F.3d at 1271; *Brown*, 785 F.3d at 1344.

114. *Brown*, 785 F.3d at 1341.

115. *Id.* at 1343.

rent 180-month suspended sentence for possession of child pornography.¹¹⁶ The defendant appealed and the Ninth Circuit vacated and remanded the defendant's sentence on the basis that district court abused its discretion in denying the defendant's motion to dismiss his retained counsel.¹¹⁷

Further, the Eleventh Circuit relied on the reasoning of the Ninth Circuit in *Brown*.¹¹⁸ The Ninth Circuit explained that "[e]ven though the defendant was not 'entitled to, or seeking, counsel of choice,' the Sixth Amendment right to counsel of choice means that a defendant has a right to fire his retained . . . lawyer . . . for any reason or [for] no reason."¹¹⁹ The Ninth Circuit established that a defendant with retained counsel, who wishes to replace the retained counsel with appointed counsel, has a Sixth Amendment right to dismiss his retained counsel of choice.¹²⁰ The Ninth Circuit held that a district court should use the standard for substituting retained counsel, which is that a defendant's motion to dismiss retained counsel should be granted unless it interferes with the "fair, efficient and orderly administration of justice."¹²¹

Moreover, the Eleventh Circuit acknowledged that other courts, including the Court of Criminal Appeals of Oklahoma, the Supreme Court of California, and several state intermediate courts, have also held that a defendant who wishes to dismiss retained counsel and then request appointed counsel "may do so unless the substitution would delay court proceedings, prejudice the parties, or disrupt the 'orderly process of justice.'"¹²²

The Eleventh Circuit then rejected the view of the United States Court of Appeals for the First Circuit, which applied the standard of good cause when a defendant moved to dismiss his retained counsel and then intended to request appointed counsel.¹²³ In *United States v. Mota-Santana*,¹²⁴ the First Circuit reasoned that the retained counsel's motion to withdraw and the request for appointed counsel merged into one action.¹²⁵ The First Circuit explained that the defendant was dependent on

116. *Id.* at 1340, 1343.

117. *Id.* at 1343, 1347, 1352.

118. *Jimenez-Antunez*, 820 F.3d at 1271-72.

119. *Id.* at 1271 (quoting *Brown*, 785 F.3d at 1344).

120. *Id.*

121. *Id.* (quoting *Brown*, 785 F.3d at 1347).

122. *Id.* at 1271-72 (discussing *Dixon v. Owens*, 1993 OK CR 55, 865 P.2d 1250, 1252 (Okla. Crim. App. 1993); *People v. Ortiz*, 800 P.2d 547, 555 (Cal. 1990)).

123. *Id.* at 1272.

124. 391 F.3d 42 (1st Cir. 2004).

125. *Jimenez-Antunez*, 820 F.3d at 1272; *Mota-Santana*, 391 F.3d at 46-47.

the court's permission to substitute the retained counsel, because he lacked the funds to hire another attorney and requested appointed counsel.¹²⁶ Consequently, the court held that it was appropriate to apply the standard for replacing appointed counsel.¹²⁷

The Eleventh Circuit criticized the First Circuit for not offering any additional reasons for concluding that the only relevant action was the request for appointed counsel, or that a defendant no longer has the right to counsel of choice when dismissing retained counsel.¹²⁸ The Eleventh Circuit also determined that the First Circuit's merger of the two rights was contrary to *United States v. Gonzalez-Lopez*, where the Supreme Court held that the rights were separate and distinct.¹²⁹

Finally, the Eleventh Circuit emphasized that a district court has other safeguards that allow it to deny a motion to dismiss counsel without having to apply the standard for substituting appointed counsel.¹³⁰ A district court reviewing a motion to dismiss counsel must determine how the defendant plans to proceed so that he will not be deprived of his Sixth Amendment right to counsel by being left without representation.¹³¹ The court must verify that the defendant will be represented by other retained counsel or has knowingly and voluntarily waived the right of counsel.¹³² Additionally, if the defendant intends to request appointed counsel, then the court must establish that the defendant is eligible for appointed counsel.¹³³ Even if the district court establishes that the defendant will have counsel, "[the] court may still deny a motion to substitute retained counsel if it will interfere with the 'fair, orderly, and effective administration of the courts.'"¹³⁴ By using the standard for substituting retained counsel, the district court will still be able to assure that a defendant has representation and can prevent potential manipulations.¹³⁵

126. *Jimenez-Antunez*, 820 F.3d at 1272; *Mota-Santana*, 391 F.3d at 47.

127. See *Jimenez-Antunez*, 820 F.3d at 1272; *Mota-Santana*, 391 F.3d at 47.

128. *Jimenez-Antunez*, 820 F.3d at 1272.

129. *Id.*; *Gonzalez-Lopez*, 548 U.S. at 148.

130. *Jimenez-Antunez*, 820 F.3d at 1272.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.* (quoting *Koblitz*, 803 F.2d at 1528).

135. *Id.* One of the manipulations that the standard for retained counsel prevents is when the defendant tries to substitute counsel in order to delay court proceedings. *Id.*

V. IMPLICATIONS

The Eleventh Circuit's holding in *United States v. Jimenez-Antunez* provides support to judges who encounter difficulty determining what standard to use when reviewing a defendant's motion to dismiss retained counsel. Moreover, the Eleventh Circuit decision upholds the importance of the right to counsel and speaks to the underlying historical differences in the treatment of criminal defendants with funds and criminal defendants without funds.

The court, in *Jimenez-Antunez*, emphasizes the importance of the Sixth Amendment right to counsel and the right to counsel of choice. It has long been held that the right to counsel is "necessary to insure fundamental human rights of life and liberty."¹³⁶ Further, the right to counsel itself has been deemed fundamental and is considered essential for a fair trial.¹³⁷ In addition, the right to retained counsel of choice has been historically recognized as an important right and "has been regarded as the root meaning of the constitutional guarantee."¹³⁸ The Eleventh Circuit upheld these important rights when it declared that a defendant is deprived of the fundamental right to counsel of choice if he is not given the right to both hire and fire retained counsel.¹³⁹ The right to counsel of choice is so crucial that it should be extended to all defendants, regardless of his financial situation.¹⁴⁰

Furthermore, it is apparent from extensive case law that indigent defendants have historically been treated differently with respect to the Sixth Amendment right to counsel.¹⁴¹ The Sixth Amendment was not originally interpreted as including the right to appointed counsel.¹⁴² Initially, appointed counsel was limited to capital cases to ensure a fair trial.¹⁴³ Once the right to appointed counsel was considered a fundamental right guaranteed by the Sixth Amendment, there were still limitations.¹⁴⁴ Indigent defendants were only guaranteed appointed counsel in non-petty cases, which were trivial in nature.¹⁴⁵ Even after the Supreme Court extended the right to appointed counsel to all criminal cases with

136. *Johnson*, 304 U.S. at 462.

137. *Gideon*, 372 U.S. at 342.

138. *Gonzalez-Lopez*, 548 U.S. at 147-48.

139. *Jimenez-Antunez*, 820 F.3d at 1271.

140. *See id.*

141. *See, e.g., Morris*, 461 U.S. 1; *Argersinger*, 407 U.S. 25; *Powell*, 287 U.S. 45; *Koblitz*, 803 F.2d 1523; *Thomas*, 767 F.2d 738; *Young*, 482 F.2d 993.

142. *See Powell*, 287 U.S. at 71.

143. *Id.*

144. *Johnson*, 304 U.S. at 462-63.

145. *Argersinger*, 407 U.S. at 26.

the possibility of imprisonment, there were, and still are, major differences between the two types of defendants.¹⁴⁶

The standard for replacing appointed counsel is difficult to meet, whereas the standard for replacing retained counsel is fairly easy to meet.¹⁴⁷ There are only very narrow circumstances when motion to dismiss retained counsel will be denied.¹⁴⁸ Further, a criminal defendant with funds can choose the counsel that he prefers or that he believes will do the best job.¹⁴⁹ In contrast, a criminal defendant without funds will be forced cooperate with appointed counsel, even when he does not get along with his attorney or does not believe that the attorney has his best interest at heart.¹⁵⁰ Also, an indigent defendant does not have the right to have a meaningful relationship with his attorney.¹⁵¹

Additionally, *Jimenez-Antunez* has the underlying effect of treating indigent defendants equal to those who have the money to retain counsel of choice under the specific circumstances presented in the case. The conclusion is that a defendant who hires an attorney has the right to dismiss that counsel under the standard for replacing retained counsel, regardless of whether he has funds or later plans on requesting appointed counsel.¹⁵²

Finally, the case may protect a criminal defendant whose attorney is experiencing a conflict of interest.¹⁵³ One situation where a conflict of interest arises is when a defendant is arrested for a drug charge, while under the employment of a drug supplier.¹⁵⁴ The drug supplier might hire the defendant's attorney to control the situation and to assure that the defendant does not cooperate with the Government.¹⁵⁵ The defendant may not feel comfortable telling the attorney that he wishes to cooperate and may think the only option is to go to trial out of fear that the attorney will relay information to the drug supplier.¹⁵⁶ Additionally, the defendant

146. *Id.* at 37-38.

147. *See Young*, 482 F.2d at 995 (appointed counsel); *Koblitz*, 803 F.2d at 1528-29 (retained counsel).

148. *See Koblitz*, 803 F.2d at 1528-29.

149. *Gonzalez-Lopez*, 548 U.S. at 146, 148.

150. *See Thomas*, 767 F.2d at 742.

151. *Morris*, 461 U.S. at 14.

152. *Jimenez-Antunez*, 820 F.3d at 1271.

153. David Orentlicher, *Fee Payments to Criminal Defense Lawyers from Third Parties: Revisiting United States v. Hodge and Zweig*, 69 FORDHAM L. REV. 1083, 1103 (2000).

154. *Id.*

155. *Id.*

156. *Id.*

might be in fear of his life, his family's life, or possible unknown repercussions.¹⁵⁷

Under this situation, the defendant may try to contact the Government directly to cooperate. The court may be able to set up a hearing without the retained counsel to address possible dismissal. If the defendant had to dismiss the attorney under the standard for replacing appointed counsel, it might be difficult to show good cause. However, after *Jimenez-Antunez*, the defendant would be able to dismiss the counsel under the standard for replacing retained counsel—a much easier standard to meet.¹⁵⁸ The defendant could then be appointed an attorney. As a result, the defendant would be more comfortable cooperating with the Government, the defendant's rights would be upheld, and the defendant would be protected from coercion.

Ultimately, *Jimenez-Antunez* establishes that criminal defendants have an important right when replacing counsel. That right could have positive effects on defendants' cases and may result in a fairer experience in the criminal justice process. For now, the application of this right remains unknown, and only time will tell how this decision will affect defendants in the lower court. Without a consensus among the circuits, the Eleventh Circuit and the judges within the circuit will remain interested to see how other circuits approach and decide this issue.

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157. *Id.* at 1110 n.106.

158. The defendant would be able to dismiss his counsel using the standard for replacing retained counsel because of *Jimenez-Antunez*, which held that a defendant is not required to show good cause to dismiss his retained counsel, even if the defendant then intends to request appointed counsel. *Jimenez-Antunez*, 820 F.3d at 1271.

