

**01-1559 MASSARO v. UNITED STATES**

Ruling Below: CA 2, No. 00-2720, 11/2/01 unpublished.

QUESTION PRESENTED

Whether a federal criminal defendant, whose new appellate counsel fails to raise, on direct appeal, a claim of ineffective assistance of trial counsel, is procedurally barred from asserting that constitutional claim in a habeas corpus proceeding brought pursuant to 28 U.S.C. § 2255.<sup>1</sup>

<sup>1</sup> The scale and urgency of this issue is amplified by the direct conflict between the Second Circuit and virtually all other Circuit courts that have considered this issue. The fact that the Solicitor General advocates that all ineffectiveness claims should be raised in § 2255 proceedings, rather than on direct appeal, lends enormous force to this Petition as well.

CERT. GRANTED: 10/1/02