No. _____

IN THE SUPREME COURT OF THE UNITED STATES

STEPHEN M. PATTERSON, JR., PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

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

PETITION FOR A WRIT OF CERTIORARI

STEVEN R. JAEGER, ESQ.
Counsel of Record for Petitioner
THE JAEGER FIRM, PLLC
23 ERLANGER ROAD
ERLANGER, KENTUCKY 41018
(859) 342-4500
(859) 342-4501
srjaeger@thejaegerfirm.com

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QUESTION PRESENTED

Indiana v. Edwards, 554 U.S. 164 (2008) establishes a heightened competency standard that courts must apply when denying a questionably competent defendant's request to proceed to trial *pro se*. However, this Court has not yet addressed the question of whether lower, trial courts must apply *Edwards*' heightened competency standard in cases where a court grants a borderline mentally competent defendant's request to proceed to trial *pro se*, when such a standard should be imposed, and what such an inquiry might require to protect the constitutional safeguards given under the Fifth and Sixth Amendments.

The time is ripe for this issue to be decided by this Court.

In this case, the Court finds Patterson mentally competent to stand trial. By extension, the trial court (and by its affirmance the Sixth Circuit Court of Appeals) determines, without hearing or inquiry prior to doing so, that Patterson is also competent to represent himself at trial and thereby waive his Sixth Amendment right to representation. Throughout the underlying conduct, pre-trial and trial, Patterson exhibits bizarre behavior contrary to his interests, questionable for any rational person to do, and visible for all the world to see. The courts below conclude that Patterson is not entitled to a higher standard of inquiry under *Edwards* and that even if he is, his conduct at trial supports that he is "competent" to represent himself. Thus, the courts reason that no violation of Patterson's rights occurred.

In light of this, the questions presented for this Court's review are:

1. Whether *Edwards*' heightened competency standards apply when a court grants a borderline competent and mentally ill defendant's request to represent himself at trial and waive his Sixth Amendment rights to representation of counsel.
2. Whether the trial court is required to conduct an additional inquiry and first ascertain that a borderline competent and mentally ill defendant is capable of self-representation prior to allowing that defendant to waive his Sixth Amendment right to representation.

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Stephen Patterson is currently serving a term of imprisonment of ten years after exhibiting unquestionably bizarre behavior that raises doubt as to his competency. After he is questionably determined to be competent to stand trial, he is also permitted to waive his Sixth Amendment right to counsel and thus, represents himself before a jury of his peers. As a result, Patterson is convicted and sentenced to a decade of imprisonment.

For the reasons given below, Patterson now respectfully asks this Court to issue a Writ of Certiorari to review his case.

OPINIONS BELOW

The Sixth Circuit Court of Appeals (which is not recommended for full-text publication), issues its Opinion on October 06, 2020, found at 828 Fed. Appx 311 (6th Cir.), and is attached to this Petition. (App. A, 1a).

The United States District Court for the Western District of Kentucky issues its final Judgment on October 16, 2019, and is found at *United States v. Patterson*, 5:17-cr-19, and is also attached hereto. (App. B, 11a).

Panel reconsideration and *En Banc* review is not pursued.

The district court's order finding Patterson competent to stand trial and represent himself at trial is unreported, but attached hereto to this Petition. (App. C, 19a).

JURISDICTION

This matter originates in the United States District Court, Western District of Kentucky, pursuant to 18 U.S.C. § 3231. Patterson is determined guilty after a trial by jury and is sentenced to ten years imprisonment, which disposes of his case in the district court.

Patterson timely files a Notice of Appeal to the Sixth Circuit Court of Appeals, which issues a decision affirming his conviction and sentence on October 06, 2020. (App. D, 27a). Neither panel nor *En Banc* review is requested. Jurisdiction is generally conferred upon the Court of Appeals pursuant to 28 U.S.C. §1291.

Jurisdiction to review the Judgment of the Sixth Circuit by Writ of Certiorari is conferred on this Court by 28 U.S.C. §1254(1) and United States Supreme Court Rule 10.

This petition is timely filed pursuant to Supreme Court Rule 13.1 and 13.3.

STATUTORY AND CONSTITIUTIONAL PROVISIONS

This case implicates the Due Process Clause of the Fifth Amendment to the United States Constitution, which prohibits the government from depriving "any person of life, liberty, or property, without due process of law..." U.S. Const. amend. V. Inherent to this right is the right to fundamental elements of fairness in a criminal trial, including verification that a defendant possesses a satisfactory level of mental capacity to understand and comprehend the proceedings in order to stand trial.

In addition, this case invokes concerns over whether elements of fairness in a criminal trial allow for a criminal defendant with questionable competency to represent themselves before a jury, or whether such violated the Sixth Amendment right "to have the assistance of counsel for his defense." U.S. Const. amend. VI.

STATEMENT OF THE CASE

The indictment in this case alleges a simple allegation that Stephen Patterson is a felon in possession of a firearm, thereby violating 18 U.S.C. §922(g)(1) and §924(a)(2). The Sixth Circuit acknowledges that it is "doubtless true" that "the record is filled with examples of his bizarre demeanor and irrational behavior." (App. A, 6a).

Examples of this are plenty. For instance, during the underlying incident, Patterson's girlfriend finds him "sitting on the floor and acting strangely, like an animal." (App. A, 6a, citing R. 123 at 104, 131-132). He is also found on the living room floor talking to objects in the room and states that he does not know how many individuals are in the house during the incident. Then, at the police station, Patterson bites a police dog "because the dog bit me and that was the only way to defend myself." (App. A, 3a, citing R. 120 at 8). During his initial appearance, he disputed his name, claiming that the name Stephen Patterson "belongs to the United States of America" (App. A, 3a, citing R. 126 at 6) and that he "was a representative of or agent of Mr. Patterson, which I wish no longer to be a representative of." (Id., citing R. 126). He claims that he is a "vice generate...an overseer, leader, or king sent by God to oversee the earth." (App. A, 7a, citing R. 25 at 6). He admits to hearing voices. (App. A, 7a, citing R. 25 at 10). Throughout the case, he informs that court about his paranoia, specifically that he believes there are chemicals in his water and that something is done to his food.

The behavior Patterson exhibits warrants the court to appoint an attorney to represent him. His appointed attorney immediately questions whether he is suffering from some mental health deficiency. The court itself classifies Patterson's behavior as

demonstrating "some possible mental- significant mental health issues.". Thus, a request for a competency determination is made.

During a competency evaluation, he is determined to be "competent to proceed with his legal case" and that he does "not have a severe mental disease or defect that would have an adverse impact on his ability to reason." (App. A, 3a). During interviews, Patterson identified the charged crime, the potential ten-year sentence, the role of the various players in the process (defense counsel, prosecutor, judge, witnesses, and jury), and the consequences of pleading (or not pleading) guilty. As for Patterson's ability to assist in his defense, he expressed willingness to work with his court-appointed attorney and "described appropriate strategies for resolving any disagreements" they might have. But the psychiatric evaluation reveals that:

> Antisocial personality disorder is diagnosed when an individual has a long-standing pattern of violating the rights of others or the laws and norms of society as well as other behavioral tendencies, such as being deceitful, irritable, aggressive...disregard for one's own safety or the safety of others. And based on Mr. Patterson's long-standing criminal history starting as a child and demonstrated in a variety of different environments from school, the community, and even while still incarcerated of breaking the rules, I felt he met diagnostic criteria for that personality disorder.

Nevertheless, the trial court concludes that Patterson is "fully capable of rationally understanding the proceedings against him...and assisting in his defense." (App. C, 23a). This is despite the fact that Patterson does not remember the incident. Thus, defense counsel continues questioning his competence on at least two additional occasions to the court, and the court itself recognizes that Patterson continues to "take actions....contrary to his best interests..."

Following the competency determination, the court allows Patterson to represent himself during his jury trial. However, during the course of the trial, the court witnesses

Patterson making "wild allegations against the government without any support." The jury adjudicates Patterson guilty, and ultimately the court sentences him to ten (10) years imprisonment. (App. B, 13a).

The Sixth Circuit affirms the trial court, explaining that "requiring that a criminal defendant be competent has a modest aim: It seeks to ensure that he has the capacity to understand the proceedings and to assist counsel." (App. A, 4a, citing *Godinez v. Moran*, 509 U.S. 389, 402 (1993)). The Court affirms that "A defendant is not necessarily incompetent even if he suffers from a severe mental illness." (App. A, 4a, citing *Indiana v. Edwards*, 554 U.S. 164, 178 (2008). The Court concludes that "Patterson understood the proceedings against him and could support his defense. (App. A, 7a).

Then the Sixth Circuit addresses the issue of Patterson's "mental competence to quarterback his own defense." (App. A, 8a). In its evaluation, the court heavily relies on its understanding that "the Court has indicated that a defendant competent to stand trial is necessarily competent to represent himself." (App. A, 8a, citing *Godinez*, 509 at 399). When addressing Patterson's argument that *Edwards v. Indiana* establishes "a higher standard of competence" in order "to permit self-representation," the Court comments that "We have our doubts: *Edwards* granted *permission* to impose counsel on defendants competent enough to stand trial but not competent enough to represent themselves. It did not *require* counsel in those circumstances." (App. A, 9a, citing *Edwards v. Indiana*, 554 U.S. at 164; 174). Then, the Court decides that Patterson satisfies even a heightened competency standard. (App. A, 9a). The Court points to the following facts:

> Patterson effectively pursued pre-trial discovery, removed potential jurors with peremptory strikes, participated in bench conferences, had a consistent defense that he pressed through cross-examination, and through it all followed the rules about as well as can be expected of a layperson. All of that, plus Dr. Schenk's report and the

district court's record-supported observations, confirm that Patterson was fully competent to conduct trial proceedings under *Edwards.* (App. A, 9a).

As a result of this Opinion, this Petition follows.

REASONS FOR GRANTING THE PETITION

A. INTRODUCTION

Criminal defendants have a Sixth Amendment right to self-representation. *Faretta v. California,* 422 U.S. 806, 807 (1975). However, a criminal defendant's right to self-representation is not absolute. *Id.* at 834 n.46. Thus, a defendant's request to represent himself can be denied or restricted where "the government's interest in ensuring the integrity and efficiency of the trial...outweighs the defendant's interest in acting as his own lawyer." *Martinez v. Court of Appeals of California, Fourth Appellate Dist.,* 528 U.S. 152, 162 (2000). In addition, "one might not be insane in the sense of being incapable of standing trial and yet lack the capacity to stand trial without the benefit of counsel." *Massey v. Moore,* 348 U.S. 105, 108 (1954).

Courts can deny a borderline mentally competent or mentally ill defendant's request to proceed to trial *pro se* where the defendant is "competent enough to stand trial ... but ... still suffers from severe mental illness." *Indiana v. Edwards,* 554 U.S. 164 at 171, 178 (2008). *Edwards* "concerned a mental-illness-related limitation on the scope of the self-representation right." *Id.* at 171. The standard governing a defendant's mental competence to stand trial with counsel is an inadequate standard for determining whether a borderline mentally competent defendant should be permitted to proceed to trial without counsel. This Court notes that the standard governing a defendant's competence to stand trial "assumes representation by counsel and emphasizes the importance of counsel." *Id.* at 174. This Court also indicates that a "gray-area" mentally competent defendant may "be able to

work with counsel at trial, yet at the same time ... may be unable to carry out the basic tasks needed to present his own defense without the help of counsel." *Id.* at 175-77. The application of the standard governing such a defendant's competence to stand trial *pro se* creates the risk that "a defendant's lack of mental capacity will result in an improper conviction or sentence." *Id.* Thus, this Court indicates that criminal trials "must not only be fair, they must 'appear fair to all who observe them.'" *Id.* at 177.

The law is clear that the Constitution permits courts to deny a borderline mentally competent criminal defendant's request to represent himself at trial when the defendant's mental state does not meet a "higher competency standard," which "seeks to measure the defendant's ability to conduct trial proceedings." *Id.* at 173. Under this "higher standard," a court can deny a borderline mentally competent or mentally ill defendant's request to proceed to trial *pro se* where the defendant is "competent enough to stand trial ... but ... still suffers from severe mental illness..." *Id.* at 178. However, the question remains unanswered as to whether this same heightened competency standard is mandatory when a court grants a borderline mentally competent and mentally ill defendant's request to represent himself at trial, and if so, what that heightened competency standard might require. This case presents this Court the opportunity to address these important and recurring questions.

I. This case offers this Court the opportunity to expand on existing jurisprudence regarding a defendant who is mentally ill but competent to stand trial's right to self-representation.

This Court's decision in *Godinez v. Moran,* 509 U.S. 389 (1993) addresses a defendant who is entering a plea, not one who is participating in a full trial by jury without the benefit of representation. Under that circumstance, this Court rejects "the notion that

competence to plead guilty or to waive the right to counsel must be measured by a standard that is higher than (or even different from)" the trial competency standard. *Id.* at 398. When that happens, this Court concludes, "the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right,* not the competence to represent himself." *Id.* at 399 (emphasis in original).

The later *Edwards* decision addresses whether the Constitution *permits* a court to *force* counsel on a criminal defendant who, although mentally ill, is nonetheless competent to stand trial. *Indiana v. Edwards*, 554 U.S. at 177-78. It does not directly address the inverse question of whether the Constitution permits a court to allow a borderline competent or mentally ill defendant to waive his right to be represented under the Sixth Amendment, and if so, what competency standard should be used. While not changing the holding in *Godinez*, *Edwards* expands the parameters and concludes that the state has the right to force counsel on a defendant in such circumstances. *Id.* at 174.

Patterson's case, the current case at bar, is the next evolution of this jurisprudence. Here, the Sixth Circuit addresses Patterson's rights under the guidance of both of these cases. (App. A). In doing so, the Court cites the following: "Requiring that a criminal defendant be competent has a modest aim: It seeks to ensure that he has the capacity to understand the proceedings and to assist counsel." (App. A, 4a, citing *Godinez v. Moran*, 509 U.S. 389, 402 (1993)). The ability to "understand the proceedings and to assist counsel" is vastly different from the capacity to capably represent one's self during a trial by jury. After all, in *Edwards*, it is explained that the *Godinez* holding addresses only the level of competency required to waive the right to counsel when the defendant intends to enter a guilty plea and, accordingly, that a different standard may be used when the defendant

asserts his right to self-representation to defend himself at trial. *See Edwards* at 172–73. Thus, *Godinez* and *Edwards* direct that it is constitutional for a state to allow a defendant to conduct trial proceedings on his behalf when he has been found competent to stand trial, but that the state may insist on counsel and deny the right of self-representation for defendants who are "competent enough to stand trial ... but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." *Id.* at 178.

Neither case directly addresses what competency standard should be used by a court and whether or not such an inquiry should be mandated when a court grants a borderline mentally competent or mentally ill defendant's request to proceed *pro se* to a trial by jury. Further guidance on this is warranted from this Court to ensure meaningful safeguards to one's due process rights under the Fifth Amendment, and one's right to representation under the Sixth Amendment to the Constitution. Certiorari should be granted.

II. This Court should mandate a trial court to participate in a formal inquiry into a defendant's competency before allowing it to grant the waiver of the right to counsel.

As mentioned, Patterson acknowledges that the right to counsel pursuant to the Sixth Amendment can be validly waived. Unlike the Sixth Circuit in this case, other Circuits direct that the validity of such a waiver, however, contains two distinct inquiries by a court. *Maynard v. Boone,* 468 F.3d 665, 676 (10th Cir.2006). The court must first ensure that the defendant is competent to waive counsel and then determine that the waiver is knowing and voluntary. *Id.* This analysis centers on the defendant's understanding of the significance and consequences of his decision, as well as whether the decision was coerced.

Id. at 677. Thus, "it is ideal when the trial judge conducts a thorough and comprehensive formal inquiry including topics such as the nature of the charges, the range of punishment, possible defenses, and a disclosure of risks involved in representing oneself *pro se*." *United States v. Turner,* 287 F.3d 980, 983 (10th Cir.2002).

This is contrary to the trial court's actions in this case and the Sixth Circuit's affirmation thereof. For Patterson, the trial court fails to participate in any meaningful assessment of his ability and competency to represent himself. Instead, the court merely seems to conclude that because he was competent to stand trial, he was also competent to proceed *pro se*. But the standard of competency to stand trial equates to one's ability to assist in his own defense or waive counsel in a plea setting, not in a jury trial situation. Presently, this Court's lack of guidance under such circumstances leaves a borderline competent and mentally ill criminal defendant subject to clear violations of Fifth and Sixth Amendment constitutional safeguards. Certiorari is necessary to allow this Court to direct and mandate that a trial court participate in a formal inquiry into one's competency and ability to proceed *pro se* in a jury trial before granting a borderline competent and mentally ill defendant's right to waive his Sixth Amendment right to representation.

III. This Court should grant review to resolve the conflict among the lower courts regarding the meaning, scope, and appropriate application of the *Indiana v. Edwards'* holding.

In *Edwards*, this Court finds that permitting a defendant to represent himself when he is incompetent to do so undermines the powerful interest in ensuring a fair trial. Thus, a "higher standard" of competency should apply when a defendant is denied his right to self-representation. Predictably, this holding has been applied differently across the Circuits and results in conflict and confusion. Some courts invoke the case to give flexibility to the

courts, and others invoke its rationale to hold that no flexibility is permitted. Likewise, the holding is incomplete. For instance, what happens when the Court allows a borderline defendant to waive his Sixth Amendment right to representation and proceed *pro se*? *Edwards* fails to instruct. As such, a review of this case is warranted to expand the holding of *Edwards* to include a finding that the Constitution requires courts to adopt a higher competency standard when allowing a borderline competent and mentally ill defendant to waive his Sixth Amendment right to representation and to proceed *pro se* to a jury trial. This Court should grant review.

The guidance of this Court in *Edwards* that the Constitution permits States "to insist upon representation by counsel" for those who are "not competent to conduct trial proceedings by themselves," *Edwards*, 554 U.S. at 178, has been applied differently by the lower courts. For instance, some courts require a separate determination concerning the defendant's competence to conduct trial proceedings before permitting self-representation. These states include Alaska, Connecticut, Florida, Iowa, Michigan, Rhode Island, Wisconsin, and the District of Columbia. *See Shorthill v. State,* 354 P.3d 1093, 1109 (Alaska Ct. App. 2015); *State v. Connor,* 973 A.2d 627, 633 (Conn. 2009); *Williams v. United States,* 137 A.3d 154, 160 (D.C. 2016); *In re Amendments to Fla. Rule of Crim. Pro. 3.111,* 17 So. 3d 272, 275 (Fla. 2009); *State v. Jason,* 779 N.W.2d 66, 77-78 (Iowa Ct. App. 2009); *People v. Brooks,* 809 N.W.2d 644, 654-55 (Mich. Ct. App. 2011), *vacated on other grounds,* 807 N.W.2d 303 (Mich. 2012); *State v. Cruz,* 109 A.3d 381, 391 & n.5 (R.I. 2015); *State v. Klessig,* 564 N.W.2d 716, 724 (Wis. 1997). Courts in other states, like Texas, have held that competency to waive counsel is the only determination that must be made before allowing a defendant to

proceed *pro se.* The Court should grant review to resolve this conflict, and should find in favor of the former position.

More specifically, in *State v. Connor,* the Connecticut Supreme Court rules that "when a trial court is presented with a mentally ill or mentally incapacitated defendant who, having been found competent to stand trial, elects to represent himself, the trial court also must ascertain whether the defendant is, in fact, competent to conduct the trial proceedings without the assistance of counsel." *State v. Connor*, 973 A.2d at 655. That court notes that the exercise of that right comes with a significant cost "when a mentally ill or incapacitated defendant is permitted to represent himself at trial despite his or her lack of competence to do so, the reliability of the adversarial process, and thus the fairness of the trial itself, inevitably is cast in doubt." *Id.* The court thus concludes that the defendant's interest in self-representation "is outweighed by the interest of the state, the defendant and the public in a fair trial when, due to mental illness, the defendant is incompetent to conduct trial proceedings without the assistance of counsel." *Id.*

In *State v. Jason,* the Iowa Court of Appeal likewise notes that the defendant's "competency to stand trial does not equate to competency to represent himself at trial in light of mental illness," as it remands the case to the trial court "for a hearing which may include the presentation of evidence, to determine if the defendant was competent to represent himself under the standards established in *Edwards." State v. Jason*, 779 N.W.2d at 77-78.

Similarly, in response to *Edwards,* the Florida Supreme Court *sua sponte* adopts amendments to the Florida Rules of Criminal Procedure that prohibit a trial court from allowing a defendant to waive the right to counsel unless, among other things, "the court

makes a determination of record that the defendant ... does not suffer from severe mental illness to the point where the defendant is not competent to conduct trial proceedings by himself or herself." *In re Amendments to Fla. Rule of Criminal Procedure 3.111,* 17 So. 3d at 274.

Each of the above cases is illustrative of the standard Patterson encourages this Court to adopt. After all, in his case, the trial court decides that he is competent to stand trial and to assist in his defense, but never pre-determines his competency to self-represent throughout a trial by jury. This is despite the court's observance of Patterson's bizarre behavior and the psychiatrist's findings that he suffers from antisocial personality disorder that leads him to disregard his own safety and well-being. The competency evaluation also assessed his willingness to cooperate with his attorney and work with them in forming his defense, not to proceed to a jury trial *pro se.*

Unfortunately for Patterson, the Sixth Circuit adopts the minority view, which states like Maryland, Oklahoma, South Carolina, Texas, and Utah also utilize. In their opinion, a trial court need only consider whether the defendant is competent to waive counsel under the same standard as competence to stand trial under *Dusky. See, e.g., State v. Barnes,* 753 S.E.2d 545, 550 (S.C. 2014) (ruling that *Edwards* does not require consideration of competence to conduct trial proceedings and reversing trial court decision to deny defendant's request to proceed *pro se* on account of his mental illness and inability to conduct trial proceedings); *State v. Maestas,* 299 P.3d 892, 962 n.330 (Utah 2012) *("Edwards* allows, but does not require, states to have heightened standards for determining competency to waive the right to counsel. The standard that we impose in Utah is that the defendant must (1) be competent and (2) intelligently and knowingly waive

the right to assistance of counsel." (internal quotation marks omitted)); *Stewart-Bey v. State,* 96 A.3d 825, 839 (Md. Ct. Spec. App. 2014); *Mathis v. State,* 271 P.3d 67, 74 n.21 (Okla. Crim. App. 2012).

With such a stark conflict in the lower courts, it is clear that borderline mentally competent and mentally ill defendants across the country are being treated differently based on their location. While that conflict has not yet been as clearly displayed on the Federal level, a conflict among the Circuit Courts already exists as to whether and when a higher competency standard for self-representation should be imposed.

In *Godinez v. Moran,* 509 U.S. 389, 402 (1993), this Court explains that "*States are free to adopt* competency standards that are *more elaborate*..." even though "the Due Process Clause does not *impose* these additional requirements." *Godinez*, 509 U.S. at 402 (emphasis added). The "free to adopt" statement has prompted judicial disagreement with respect to the right to self-representation at trial for a borderline mentally defendant. In the wake of *Godinez*, a well-developed, growing conflict has emerged among federal circuits as to whether courts may deny self-representation at trial to defendants who, though competent, are functionally unable to defend themselves. To date, this conflict has not been resolved by this Court. Many courts read *Godinez* to permit a different standard for waiving counsel than for standing trial, but many others read it to require the same standard as for trial competency. Unfortunately, the *Edwards* decision did little to resolve this conflict.

In fact, the Seventh Circuit exemplifies the need for this Court to grant certiorari on this issue. That court accepts the proposition that the right to self-representation may be limited beyond the mere competency to stand trial. *See Brooks v. McCaughtry,* 380 F.3d 1009, 1013 (7th Cir. 2004). Judge Posner, writing for a unanimous court, concludes that "no

federal policy, whether found in the due process clause...or anywhere else, is offended by" the prevention of a mentally impaired defendant representing themselves. *Id.* at 1012. Alternatively, other Circuits, contrary to the Seventh Circuit's decision, require different standards of competency for waiving counsel than for standing trial. For instance, the Third, Fourth, Fifth, Eighth, Ninth, Tenth, and D.C. Circuits mandate use of the same standard of competency for standing trial and waiving the right to assistance of counsel. See *United States v. Ellerbe,* 372 F.3d 462, 466 (D.C. Cir. 2004); *Shafer v. Bowersox,* 329 F.3d 637, 650 (8th Cir. 2003); *United States v. Peppers,* 302 F.3d 120, 131 n.9 (3d Cir. 2002); *United States v. Frazier-El,* 204 F.3d 553, 559 (4th Cir. 2000); *Dunn v. Johnson,* 162 F.3d 302, 307-08 (5th Cir. 1998); and *United States v. Boigegrain,* 155 F.3d 1181, 1186 (10th Cir. 1998).

Again, the above conflict results in borderline mentally competent defendants in different Circuits around the country being treated differently. Review of this issue should be granted to resolve these conflicts and create a clearly articulated standard and for when a borderline mentally competent and mentally ill defendant may or may not proceed to a jury trial *pro se,* and to instruct the lower courts on the nature of the required inquiry to be made.

IV. Review is warranted because this case presents a question of national importance concerning the rights of borderline mentally impaired defendants to waive their Sixth Amendment right to representation and proceed *pro se*, which is likely to reoccur in the future.

The competency standard for trial requires only that a criminal defendant be aware of the charges against him and be able to assist counsel with his defense. *See Dusky v. United States,* 362 U.S. 402, 402 (1960). The criminal justice system, at a minimum, is supposed to be fair. *See Ford v. Wainwright,* 477 U.S. 399, 424 (1986) (Powell, J.,

concurring). Affording self-representation to even the borderline mentally impaired or mentally ill defendant undermines this important goal and often leaves the system with the appearance of a failed administration of justice. This Court has long held that "the most basic of the Constitution's criminal law objectives, providing a fair trial," *Edwards,* 554 U.S. at 176-77, cannot be achieved when a mentally incompetent defendant is permitted to represent himself at trial because "no trial can be fair that leaves the defense to a man who is insane, unaided by counsel, and who by reason of his mental condition stands helpless and alone before the court." *Massey,* 348 U.S. at 108.

In this case, the Sixth Circuit's holding directly conflicts with these guideposts. In establishing the heightened competency standard, this Court seeks to protect the integrity of criminal trials by preventing the constitutionally unacceptable risk that "a defendant's lack of mental capacity will result in an improper conviction or sentence," and by avoiding "the spectacle that could well result from the self-representation at trial" by a defendant who lacks the mental capacity to conduct trial proceedings without counsel. *Edwards*, 554 U.S. at 176. In sum, criminal trials must be "not only ... fair, [but] they [must] 'appear fair to all who observe them.' " *Wheat v. United States,* 486 U.S. 153, 160 (1988)).

By leaving the decision of the Sixth Circuit unreviewed, this Court would directly undermine these objectives. Unless trial courts are required to find that a borderline mentally competent and mentally ill defendant warrants a heightened competency standard prior to proceeding to jury trial *pro se*, defendants who lack the requisite mental capacity to proceed to trial *pro se* will continue to be permitted to do so, unrepresented. This paradigm is catastrophic to the fair administration of justice. As this Court observes in *Edwards*, a borderline mentally competent defendant may "be able to work with counsel at

trial, yet at the same time he may be unable to carry out the basic tasks needed to present his own defense without the help of counsel." *Id.* at 175-76. This illustrates the need for the heightened competency standard and review in circumstances where this Court grants such a defendant the right to proceed *pro se* during a jury trial.

The Sixth Circuit holding that the district court is not required to apply *Edwards'* heightened competency standard because Patterson requested to proceed to trial *pro se* and, unlike in *Edwards*, this request was granted and not denied, illustrates the need for this Court to intervene. (App. A, 9a). This position finds no support in *Edwards.* Although *Edwards* involves the denial of a motion to proceed to trial *pro se*, nothing in that decision supports the conclusion that this Court intended to limit the heightened competency standard for self-representation at trial to only instances where a request for self-representation is denied. Instead, this Court makes clear that this heightened standard should be applied whenever a borderline mentally competent or mentally ill defendant seeks to represent himself at trial because "a right of self-representation at trial will not 'affirm the dignity' of a defendant who lacks the mental capacity to conduct his own defense without the assistance of counsel." *Edwards* at 176-77.

The determination of what standard must be satisfied before a borderline mentally competent criminal defendant is permitted to exercise the right of self-representation during a jury trial will have a profoundly significant impact on the integrity and fairness of criminal trials. This determination will also establish the scope of a borderline mentally competent criminal defendant's Sixth Amendment right of self-representation, and guide when and under what circumstances that right may be waived. This Court should therefore take this case to resolve whether the Sixth Amendment and fundamental fairness permit

courts to allow a borderline mentally competent and mentally ill defendant to proceed with waiving his Sixth Amendment right to representation and proceed with self-representation during a jury trial without inquiry into the competency to do so.

Finally, defendants in this country regularly seek to proceed to trial *pro se.* "Once mostly the practice of political dissidents or lawyer haters, self-representation in court has gone mainstream." Laura Parker & Gary Fields, *Do-It Yourself Law Hits Courts*, USA Today, Jan. 22, 1999, at 3A; *accord* Sarah Livingston Allen, Note, *Faretta: Self-Representation or Legal Misrepresentation?,* 90 Iowa L. Rev. 1553, 1572 n.122 (2005); Marie Higgins Williams, Comment, *The Pro Se Criminal Defendant, Standby Counsel, and the Judge: A Proposal for Better-Defined Roles,* 71 U. Colo. L. Rev. 789, 815 (2000). This is even more accurate for defendants with severe or borderline mental illness like Patterson. Trial courts regularly have to determine whether a borderline mentally competent and mentally ill defendant should be allowed to represent himself at trial - a determination that requires trial courts to draw the appropriate balance between protecting the integrity and fairness of our criminal justice system and a defendant's Sixth Amendment right of self-representation. Thus, this Court's review will provide lower courts clarity and guidance on a critically important and recurring question.

CONCLUSION

This court should grant review of this matter to address the important issue presented herein. Certiorari should be granted.

Respectfully Submitted,

STEVEN R. JAEGER, ESQ.
(KBA 35451)
THE JAEGER FIRM, PLLC

23 Erlanger Road
Erlanger, Kentucky 41018
TELE: (859) 342-4500
EMAIL: srjaeger@thejaegerfirm.com
Counsel for Appellant - Defendant

Submitted: December 28, 2020