

No. 26-_____

In the
Supreme Court of the United States

Carlos Javier Figueroa,
Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *McCoy v. Louisiana*, 584 U.S. 414 (2018), this Court held that (1) the Sixth Amendment guarantees a criminal defendant the autonomy to decide the objective of his defense, including maintaining innocence at trial despite overwhelming evidence of guilt; and (2) counsel who overrides that decision by conceding defendant's guilt commits structural error requiring reversal. This Court rejected counsel's justification that he conceded defendant's guilt because he believed the innocence claim was false or incredible in light of the evidence, holding that counsel's belief in his client's guilt does not authorize counsel to override a defendant's choice to pursue innocence at trial.

The question presented is:

Whether counsel violates the Sixth Amendment when counsel overrides the defendant's express request to call a witness he identifies as essential to his innocence defense, on the ground that the witness would commit perjury if called -- even though counsel hadn't spoken to the witness -- because counsel believed the defendant was guilty.

PARTIES TO THE PROCEEDING

Petitioner is Carlos Javier Figueroa, also known as "Javi" and "Big Bro," defendant-appellant below.

Respondent is the United States of America.

RELATED PROCEEDINGS

United States v. Figueroa, No. 18-cr-6094 (W.D.N.Y.) (judgment entered May 6, 2022).

United States v. Poncedeleon, No. 22-1062-cr (2d Cir.) (summary order issued Aug. 11, 2025).

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OPINION AND ORDER BELOW

The summary order of the United States Court of Appeals for the Second Circuit is unreported but available at 2025 WL 2301663 (2d Cir. Aug. 11, 2025) and appears at Pet. App. 001-004. The Circuit denied rehearing without opinion.

JURISDICTION

The district court had jurisdiction under 18 U.S.C. § 3231. The Second Circuit had jurisdiction under 28 U.S.C. § 1291. It issued its decision on August 11, 2025.

Following a timely request for extension, petitioner timely petitioned the Second Circuit for rehearing on September 30, 2025. The Circuit denied rehearing without comment on October 28, 2025. Ninety days from that date is January 26, 2026.

This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition, filed January 23, 2026, is timely under Supreme Court Rule 13.1.

RELEVANT STATUTORY PROVISIONS

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 OF THE CASE

A. Introduction

Petitioner Carlos Figueroa was convicted after trial of drug conspiracy, using a firearm, and murder. He is serving a life sentence. Figueroa has steadfastly maintained his innocence since his 2018 arrest. Paul Vacca was his lawyer for most of that time.

The Second Circuit later removed Vacca and referred him to its Grievance Panel for sanctions due to misconduct in this case -- he filed a brief for Figueroa almost entirely plagiarized from a brief filed by another lawyer in a separate case for a different defendant, and then refused to explain his misconduct.

New counsel argued that Vacca's disregard for Figueroa began earlier, while representing him in the district court. Vacca repeatedly

disparaged Figueroa as a liar, demonstrated ignorance of decades-old law, and failed to make viable arguments at critical junctures.

In particular, Vacca rejected Figueroa's request to call a witness whom he identified as critical to his defense of innocence -- co-defendant Leitscha Poncedeleon, who wanted to testify that the Government's cooperating witnesses were lying and had been pressured to testify falsely against Figueroa. Vacca admitted that he hadn't spoken to Poncedeleon, but nonetheless told the court, "I don't want to call her as a witness because if she does, she's going to lie."

Vacca rested without calling a witness. The jury convicted Figueroa.

A panel of the Second Circuit affirmed, rejecting Figueroa's argument that Vacca's unilateral refusal to call Poncedeleon deprived him of his Sixth Amendment autonomy right to maintain innocence. *McCoy* was not implicated, the Circuit said, because "the decision to call a witness rests within the province of the lawyer, who is trained to make thoughtful assessments as to whether a witness would be potentially perjurious." Pet. App. 002-003.

The panel followed the Second Circuit's narrow reading of *McCoy* as applying only when defense counsel concedes the defendant's guilt to the jury. *E.g., United States v. Rosemond*, 958 F.3d 111, 122-23 (2d Cir. 2020) (counsel may concede that defendant committed the *actus reus* of the offense without violating *McCoy*).

B. The case against Figueroa

In January 2018, police arrested Figueroa and seven co-defendants, accusing him of heading a drug-trafficking organization based in Rochester, New York, responsible for distributing kilogram quantities of cocaine and heroin. A superseding indictment charged him with: (1) conspiracy to distribute cocaine and heroin, in violation of 21 U.S.C. §§ 846 and 841(a), (b)(1)(A); (2) possessing and discharging a firearm during and in relation to the drug conspiracy, in violation of 18 U.S.C. § 924(c); and (3) murdering Walter Ross while engaged in the drug conspiracy, in violation of 21 U.S.C. § 848(e)(1)(A).

The district court severed Figueroa's case from that of co-defendant Xavier Torres. He was tried before a Rochester jury from April to June 2021.

The Government presented a strong case against Figueroa over the 6-week trial, offering multiple kinds of evidence contradicting his claim that he was not a drug dealer and did not possess firearms. The prosecution offered physical evidence seized from premises controlled by him, including multiple kilograms of cocaine and heroin, several hundred thousand dollars in cash, and several firearms; wiretap evidence recording Figueroa's phone conversations with co-conspirators about distributing drugs; video evidence from surveillance cameras mounted near Figueroa's residence showing his activities; and testimony from at least four co-conspirators who cooperated with the Government, including Figueroa's older brother Roberto. The cooperators testified, in accordance with the physical, wiretap, and video evidence, that Figueroa headed a drug business and possessed firearms.

However, the only evidence that Figueroa was responsible for murdering Walter Ross came from the killer himself -- co-defendant Carmona-Cruz. After he was sentenced to 30 years in prison, Carmona-Cruz turned government's witness, eventually telling Figueroa's jury that he shot Ross on Figueroa's order.

C. Vacca repeatedly tells the court that Figueroa is not credible

Vacca repeatedly disparaged Figueroa as a liar to the district court. At a pretrial conference in December 2020, Petitioner complained to the court that "he has been trying to communicate with his attorney, but his attorney is not communicating with him." Vacca contradicted him: "Judge, I speak to him at least once a week, sometimes two or three times a week." The court accepted Vacca's version.

During trial, as the court read a party stipulation regarding the murder victim's identity and cause of death, Figueroa reacted with visible displeasure. When the court excused the jury and asked what the problem was, Figueroa said he had not agreed to the stipulation: "I said no from the very beginning, no stipulation, no stipulation of any kind at all. None."

Vacca contradicted him, claiming Petitioner had agreed to the stipulation twice, including just "this morning." Figueroa protested, "I'm not lying," but the court sided with Vacca.

At sentencing, when Petitioner said he had never been told about a Probation interview for the presentence report, Vacca contradicted him once more, and the court again took Vacca's side. A.344-46.

D. Vacca refuses to call an exculpatory witness because he believes Figueroa is guilty

After the Government rested, the court asked Figueroa whether he intended to testify. He said he did not, but wanted to call a witness for his defense.

Vacca told the court that this witness was Leitscha Poncedeleon, Figueroa's co-defendant (and paramour) who had pleaded guilty to drug distribution and was serving her sentence on home confinement. Poncedeleon would have testified that "the cooperating witnesses [against Figueroa] are lying and . . . [have been] pressured [by the Government] to testify" falsely, and that "she's been trying to get ahold of [Vacca] so she can testify in the case."

Vacca told the court that Poncedeleon was "outside the courtroom" at the start of trial, but "she never contacted me." Thus, he "hadn't spoken to her."

Vacca nonetheless refused to call Poncedeleon. He told the court: "I don't want to call her as a witness because if she does, she's going to lie." Vacca did not explain how he knew this, since he "hadn't spoken to her."

The defense thus rested without calling a witness.

The jury convicted Figueroa on all counts. The district court sentenced him to life imprisonment on the drug and murder counts, to run concurrently, followed by a consecutive 25-year sentence on the firearms count.

E. The Second Circuit removes Vacca and refers him for sanctions

Vacca continued as Figueroa's counsel on appeal to the Second Circuit. In that capacity, he filed a brief that led the Second Circuit to eject him from this case.

Vacca stole nearly all of that brief from a brief someone else previously filed on behalf of co-defendant Torres. But the two men were tried on different charges, convicted after separate trials on different evidence, and sentenced separately to different penalties. As a result,

Vacca's brief raised arguments irrelevant to Figueroa. It also failed to contest his murder conviction, because Torres wasn't charged with murder and thus Vacca had nothing to steal.

Vacca then stonewalled the Circuit, repeatedly ignoring its directive to explain his filing. Hearing nothing from Vacca, the Circuit removed him, referred him for sanctions, and assigned new counsel for Figueroa.

F. The Second Circuit's decision

New counsel argued *inter alia* that Vacca's refusal to call Poncedeleon, overriding Figueroa's explicit request, violated the defendant's Sixth Amendment right to autonomy under *McCoy v. Louisiana*, 584 U.S. 414 (2018) -- his right "to decide that the objective of [his] defense is to assert innocence." *Id.* at 422. This structural error warranted a new trial.

A panel of the Second Circuit affirmed. The panel acknowledged that Petitioner "wanted to call Poncedeleon as a defense witness" and that "Vacca apparently concluded that her testimony would be untruthful." Pet. App. 002. But "Vacca did not violate Figueroa's right to

autonomy because the decision to call a witness rests within the province of the lawyer, who is trained to make thoughtful assessments as to whether a witness would be potentially perjurious or beneficial to the defense's case." Pet. App. 002-003. Vacca's refusal was a "strategic decision well within the bounds of professional representation, and one that appellate courts are ill-suited to second-guess." Pet. App. 002 (internal quotation marks omitted).

Figueredo timely sought panel and *en banc* rehearing. The Circuit denied rehearing without explanation.

REASONS FOR GRANTING THE PETITION

This case presents a question of exceptional importance that has divided the lower courts: whether *McCoy v. Louisiana*'s guarantee of a defendant's autonomy over the objective of the defense can be circumvented when counsel, rather than expressly conceding guilt to the jury, achieves the same result by otherwise undercutting the defendant's goal of maintaining innocence, such as by refusing to present the innocence defense.

The Second Circuit held that counsel's refusal to call a witness whom the defendant identified as essential to his innocence defense — without ever speaking to the witness — was a "strategic decision" within counsel's "province" to make "thoughtful assessments as to whether a witness would be potentially perjurious." Pet. App. 003. That holding eviscerates *McCoy* by permitting counsel to effectively nullify a defendant's autonomy right based on nothing more than counsel's belief that the defendant is guilty, in light of the prosecution's evidence. It conflicts with decisions of other courts that have applied *McCoy* to counsel conduct tantamount to overriding the defendant's chosen objective even without an explicit admission of guilt.

The Court should grant the writ to resolve this split among the lower courts. Their disagreement on *McCoy*'s scope is longstanding. This Court's intervention is necessary to ensure uniformity.

Moreover, the Second Circuit got it wrong. Counsel's refusal to call the only witness that Figueroa wanted to call to maintain his innocence defense, solely because he believed in the defendant's guilt, violates the Sixth Amendment.

I. Counsel must abide by the defendant's choice to maintain innocence at trial, even where there is overwhelming evidence of guilt.

Prior to *McCoy*, only four decisions in a criminal case belonged to the defendant alone and not to counsel – “whether to plead guilty, waive the right to a jury trial, testify in one’s own behalf, and forego an appeal.” *McCoy*, 584 U.S. at 422. *McCoy* adds a fifth to this rarified list -- the decision to maintain innocence as a defense at trial.

"Autonomy to decide that the objective of the defense is to assert innocence" is "reserved for the client." *Id.* "When a client expressly asserts that the objective of '*his* defense' is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt." *Id.* at 423 (emphasis in original). A "[v]iolation of a defendant's Sixth Amendment-secured autonomy" is "structural error . . . not subject to harmless-error review." *Id.* at 427.

This is so even where evidence of guilt is prodigious and counsel reasonably believes that conceding guilt leads to the best outcome. A defendant may wish to maintain innocence because he “wish[es] to avoid, above all else, the opprobrium that comes with admitting” that he

committed heinous acts. *Id.* at 423. Or a defendant may simply value “the possibility of an acquittal, . . . however small . . . [or] minuscule,” over the more certain consequences of admitting guilt. *Id.*

McCoy rejected the argument that counsel's belief in the defendant's guilt, even if warranted “in view of the prosecution's evidence,” justified overriding the defendant's desire to maintain innocence. *Id.* at 425. “It is for [the defendant], not counsel, to decide” the objective of the defense, even when counsel believes maintaining innocence is futile or unwise. *Id.* at 423. As the Ninth Circuit summarized, “[T]he decision whether to admit guilt, even in the face of overwhelming evidence, is one of the choices that must remain with the defendant.” *United States v. Read*, 918 F.3d 712, 720 (9th Cir. 2019).

II. The lower courts are divided on *McCoy*'s scope.

Since *McCoy*, several circuits and state courts of last resort have divided sharply over whether its holding extends beyond counsel expressly telling the jury that the defendant is guilty.

Several courts, including the Second Circuit, have confined *McCoy* to its facts, holding that only an express concession of guilt by counsel to the jury triggers *McCoy*'s protection.

In the decision below, the Second Circuit held that *McCoy* does not apply to counsel's refusal to call a witness necessary to the defendant's innocence defense. *McCoy* was irrelevant even if this was the only witness Figueroa wanted to call, the court claimed, because "the decision to call a witness rests within the province of the lawyer, who is trained to make thoughtful assessments as to whether a witness would be potentially perjurious or beneficial to the defense's case." Pet. App. 003.

This followed from the Second Circuit decision in *United States v. Rosemond*, 958 F.3d 111 (2d Cir. 2020), which declined to extend *McCoy* to counsel's decision to concede, over the defendant's objection in a murder-for-hire prosecution, that defendant hired the hitmen, but only to injure and not kill the victim. This was "reasonable," the court said, because "there [was] 'overwhelming evidence in the case.'" *Id.* at 121.

"Conceding an element of a crime while contesting the other elements falls within the ambit of trial strategy." *Id.* at 122. "We read

McCoy as limited to a defendant preventing his attorney from admitting he is guilty of the crime with which he is charged.” *Id.* at 123.

Several courts adopt this position. *Thompson v. United States*, 826 F. App’x 721, 727-28 (11th Cir. 2020) (*McCoy* not violated when counsel conceded in Hobbs Act prosecution that his client committed the robbery, but argued that the interstate-commerce element was not met); *United States v. Lancaster*, 2021 WL 1811735, at *4 - *7 (Army Ct. Crim. App. May 6, 2021) (citing and follows *Rosemond*); *State v. Crump*, 848 S.E.2d 501, 507-08 (N.C. Ct. App. 2020) (same); *Yoney v. State*, 962 N.W.2d 617, 622 (N.D. 2021) (same). As the North Dakota Supreme Court puts it, “when there is overwhelming evidence against a defendant, counsel may make certain concessions without prejudicing the defendant.” *Id.*

Other courts reject this narrow reading of *McCoy*, holding that *McCoy* applies whenever counsel’s actions effectively override the defendant’s chosen objective, regardless of whether counsel technically concedes the defendant’s guilt.

The Ninth Circuit led the way in *Read*, 918 F.3d 712 (9th Cir. 2019). There, counsel pursued an insanity defense over the defendant’s

objection. The defendant wanted to maintain complete innocence; counsel instead conceded that the defendant committed the acts but argued he was not criminally responsible due to mental illness. The Ninth Circuit held this violated the defendant's autonomy under *McCoy*. Although counsel never said "my client is guilty," pursuing the insanity defense "is tantamount to a concession of guilt," contradicting the defendant's stated objective. *Id.* at 720.

McCoy's "logic extends to any situation in which counsel takes actions that the defendant has expressly objected to and that effectively concede the defendant's guilt with respect to the *actus reus*." *Id.* Counsel must abide by the defendant's choice to maintain innocence, however "bizarre" it may appear, because the defendant's *objective* at trial – something that is *his* choice alone -- may be "to avoid contradicting his own deeply personal belief" in his innocence or simply to "avoid . . . the social stigma" of admitting either that he committed a terrible act or is mentally ill. *Id.* at 721.

"[E]ven in the face of overwhelming evidence, the choice[] [to maintain innocence] must remain with the defendant." *Id.* at 720. Other

courts agree with the Ninth Circuit that counsel violates the Sixth Amendment by conceding that defendant committed the *actus reus*, even if counsel contests the proof on *mens rea*, *People v. Flores*, 246 Cal. Rptr. 3d 77, 85-86 (Cal. Ct. App. 2019), or by conceding defendant's guilt on a lesser-included offense, even while contesting guilt on the greater offense, *People v. Bloom*, 508 P.3d 737, 761 (Cal. 2022).

This split is mature, entrenched, and outcome-determinative. Under the Ninth Circuit's approach in *Read*, Figueroa would be entitled to a new trial. Vacca's refusal to present the innocence defense Figueroa wanted from the start of this case, based on counsel's own belief in his client's guilt, overrode Figueroa's Sixth Amendment right and constitutes structural error.

III. The question presented is exceptionally important

McCoy ruled that the Sixth Amendment guarantees a defendant autonomy to control the objective of *his* trial: If he chooses to assert innocence, counsel must accept that decision and pursue that goal, regardless of counsel's personal views as to the defendant's guilt. The

right is hollow if counsel can nullify that choice through means short of an explicit concession of guilt.

The question presented arises regularly. Criminal defendants routinely identify witnesses they believe will support their claim of innocence. Defense counsel routinely decline to call some of those witnesses, often for legitimate strategic reasons -- the witness may be cumulative, unreliable, or subject to damaging cross-examination. But sometimes counsel's refusal rests not on strategy but on counsel's belief -- in *McCoy* and in this case -- that the defendant is guilty and that any witness who would say otherwise must be lying.

Without this Court's intervention, defendants in such cases will have no remedy. Courts in the Second Circuit, for instance, will continue to defer to counsel's "strategic" judgment without examining whether that judgment was actually strategy, informed by investigation and evaluation of the evidence, or merely counsel's conclusion that the defendant was guilty, given the strength of the prosecution's case.

McCoy protects their right to maintain innocence, defendants are told, but that protection will extend only to the unusual case where

counsel announces to the jury that the defendant is guilty. Counsel who achieves the same result more subtly -- by refusing to call witnesses, refusing to investigate, refusing to present a defense -- will be free of *McCoy*.

That outcome is inconsistent with the principle that animates *McCoy*: "Autonomy to decide that the objective of the defense is to assert innocence" belongs to the defendant. 584 U.S. at 422. The right to choose an objective is meaningless without the right to have that objective pursued. A defendant who is permitted to say "I am innocent" but whose lawyer refuses to present any evidence of that innocence has been denied the very autonomy *McCoy* protects.

IV. The decision below is wrong.

The Second Circuit's decision cannot be reconciled with *McCoy*. What counsel did here is not materially different from what counsel did in *McCoy*. Moreover, the justification Vacca offered is precisely the one *McCoy* rejected.

A. Vacca's refusal to call Poncedeleon eviscerated Figueroa's goal of maintaining innocence.

In *McCoy*, counsel told the jury his client was guilty. Here, counsel effectively told the court, on the record, that he believed his client was guilty. When asked about Poncedeleon, Vacca stated: "I don't want to call her as a witness because if she does, she's going to lie."

Vacca's statement is tantamount to a declaration of belief in his client's guilt. Vacca had never spoken to Poncedeleon. He had no independent basis to know what she would say. The only way Vacca could conclude that Poncedeleon would "be lying" by giving exculpatory testimony is if Vacca had already concluded that Figueroa was guilty: Because if he was guilty, then anyone who testified that the government's cooperating witnesses were lying must herself be lying.

This was not an isolated statement. Vacca repeatedly disparaged Petitioner as a liar in open court, contradicting him about communication, contradicting him about the stipulation, and contradicting him about the Probation interview. Vacca's statement about Poncedeleon was of a piece with his evident disbelief in everything his client said.

Vacca's conclusion that Poncedeleon would "be lying" thus operated as a statement of his own client's guilt. He did not say the words "my client is guilty" to the jury. But he decided that his client was guilty and acted on that belief by refusing to present the only witness who could support Figueroa's innocence defense.

Petitioner did not testify. Poncedeleon was his only opportunity to maintain his innocence through a live witness.

The functional effect of counsel's action was the same as in *McCoy*. In both cases, counsel's belief in the defendant's guilt led counsel to override the defendant's choice of maintaining innocence. In *McCoy*, counsel expressed that belief by telling the jury his client committed the crime. Here, counsel expressed that belief by refusing to present evidence that his client did not commit the crime, while publicly declaring that any such evidence would be a lie. The method differed but the result was the same -- the defendant's innocence defense was nullified by his own lawyer.

B. Vacca's reason for not calling Poncedeleon was rejected by *McCoy*

McCoy expressly addressed the argument that counsel's belief in the falsity of the defendant's position justifies overriding the defendant's choice. The Court rejected it.

"McCoy's counsel harbored no doubt that McCoy believed what he was saying." 584 U.S. at 425. Counsel in *McCoy* was not acting on information from his client that the client intended to lie. He was acting on his own judgment that the client's position was false. That judgment, however reasonable in light of the evidence of guilt, did not justify overriding the client's choice to maintain innocence.

The same here. Figueroa never told Vacca that Poncedeleon would lie. He never admitted guilt. Instead, he maintained throughout that he was innocent and that Poncedeleon could support his innocence by testifying that the government's cooperating witnesses were lying.

Vacca's conclusion that Poncedeleon would "be lying" rested on his own belief, given the strength of the Government's case, that Figueroa was guilty. This is the same kind of belief that counsel in *McCoy* held,

and that this Court ruled did not justify overriding the defendant's choice.

C. The Second Circuit's approach permits easy circumvention of *McCoy*.

The Second Circuit reduces *McCoy* to a rule about form rather than substance. Under the decision below, *McCoy* is violated only when counsel says the magic words "my client is guilty" to the jury. Counsel who achieves the same result through other means escapes constitutional scrutiny.

That approach makes *McCoy* trivially easy to circumvent. A lawyer who believes his client is guilty and wishes to act on that belief need only avoid an express concession. He can refuse to investigate. He can refuse to call witnesses. He can refuse to cross-examine. He can refuse to argue innocence in closing. He can, in short, present no defense at all. So long as he does not affirmatively tell the jury his client is guilty, the Second Circuit insulates his conduct from *McCoy*.

That cannot be right. *McCoy* rests on the principle that "autonomy to decide that the objective of the defense is to assert innocence" belongs to the defendant alone, not counsel. 584 U.S. at 422. The Sixth

Amendment right to choose an objective encompasses the right to have counsel pursue that objective. A defendant whose lawyer refuses to present any evidence of innocence has not been permitted to "assert innocence" in a meaningful sense.

The Second Circuit characterized Vacca's witness decision as falling "within the province of the lawyer." But *McCoy* draws a clear line between trial management and the objective of the defense. Counsel controls "what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence." 584 U.S. at 422. But counsel may not "override" the defendant's "autonomy" to "decide the objective of the defense." *Id.* at 417.

Vacca's refusal to call Poncedeleon was not trial management. It was not a tactical assessment that her testimony would be ineffective, cumulative, or subject to damaging cross-examination. Vacca never spoke to her; he could not have made any such assessment. His refusal was a determination that Petitioner's objective of maintaining innocence should not be pursued because Vacca believed he was guilty.

That is the decision *McCoy* reserves to the defendant. Vacca usurped it. The Constitution requires reversal and a new trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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