

No. 26-_____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL FLETCHER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether district courts are required to conduct a *Faretta*¹ inquiry when a defendant invokes his right to self-representation for a second time.
2. Whether a defendant's waiver of his right to counsel is equivocal where a defendant makes directly contradictory statements, within minutes of each other, about his desire to be represented.

¹ *Faretta v. Cal.*, 422 U.S. 806 (1975).

LIST OF PARTIES

Pursuant to Rule 14.1(b), Petitioner states the parties include:

1. Michael Fletcher, Defendant and Petitioner;
and
2. United States of America, Plaintiff and
Respondent.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (the “Sixth Circuit”) was issued on August 2, 2024. (App. A). The Sixth Circuit then denied Petitioner’s request for rehearing *en banc*. (App. B).

The Sixth Circuit’s opinion affirmed the judgment of the United States District Court for the Eastern District of Kentucky, which was issued on July 25, 2022. (App. E). This case involved a bench trial, and a transcript of the court’s verdict is included with this petition. (App. D). Also included is the district court’s opinion and order denying Petitioner’s motion for new trial—the motion that first raised the issues presented for review in this petition. (App. C).

STATEMENT OF JURISDICTION

The judgment of the Sixth Circuit was entered on March 25, 2026. The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS

This case involves the right to counsel as set forth in the Sixth Amendment of the United States Constitution, which provides as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and

to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI.

STATEMENT OF THE CASE

This case demonstrates the need for district courts to carefully safeguard a defendant's constitutional right to counsel. The Petitioner, Michael Fletcher, M.D., was convicted of writing three improper prescriptions. Dr. Fletcher represented himself at trial and the district court then appointed Dr. Fletcher counsel for post-trial proceedings, including sentencing. What undersigned counsel soon discovered was that a disgraced former attorney had been manipulating Dr. Fletcher's defense, in the background, for his personal ends. That manipulation

was enabled by the district court's failure to obtain a proper waiver of Dr. Fletcher's right to counsel.

Dr. Fletcher initially waived his right to counsel and proceeded *pro se* for a significant portion of the pretrial process, but he changed his mind as the case moved towards trial. In the court below, both parties agreed that Dr. Fletcher explicitly revoked his waiver when he subsequently retained new counsel. During a hearing on his retained counsel's potential conflict of interest, where Dr. Fletcher said he wanted to be represented "if it's at all possible," he abruptly changed course and said, "I don't want or need a lawyer." (Transcript of Conflict Hearing, R. 264, PAGEID ## 3555, 3558).² Without conducting any further inquiry, the district court immediately accepted Dr. Fletcher's offer to proceed *pro se*. (*See id.*

² "R." designates a citation to the district court docket, Case No. 2:21-cr-00063-2.

at 3558). Indeed, the court expressly abandoned its duty to inquire further, as it simply responded: “Okay. ... I’m not involved in that.” (*Id.*).

The court’s swift, unblinking acceptance of Dr. Fletcher’s purported waiver was improper in two regards, as the court (1) accepted an equivocal, and therefore defective, waiver of Dr. Fletcher’s right to counsel, and (2) it did so without conducting a *Faretta* inquiry. Those two errors are the subject of this petition.

I. Factual Background

Dr. Michael Fletcher was indicted on November 18, 2021, on charges that he wrote three improper prescriptions for opiates in 2016.³ The government subsequently filed a second superseding indictment,

³ The first indictment was filed under a separate case number in the Eastern District of Kentucky: No. 2:21-cr-00064.

which further alleged that Dr. Fletcher conspired to improperly prescribe opiates with Dr. Kendall Hansen, who was the owner of the pain clinic that Dr. Fletcher worked at in 2016. (Indictment, R. 43, PAGEID # 458). Dr. Hansen's trial was severed and he was acquitted by a jury on all counts, while Dr. Fletcher tried his case to the bench, *pro se*, and was acquitted of the conspiracy charge but convicted of the three substantive counts. (See Transcript of Verdict Hearing, R. 251, PAGEID # 3421; Judgment, R. 305, PAGEID # 5448).

Those convictions stand in stark contrast to Dr. Fletcher's outstanding reputation in the medical field and his work in combatting this country's opioid epidemic. Dr. Fletcher served as the President of the Kentucky Society of Addiction Medicine and was lauded for being the "voice of addiction medicine" during his time on the Kentucky Board of Medical

Licensure. (Doc. 299, Sentencing Memorandum, PAGEID ## 5336-5338). One of the nurses who worked with Dr. Fletcher described him as the “most conservative” prescriber of opiates at the pain clinic. (Trial Transcript Day 4, R. 269, PAGEID # 4646). And Dr. Fletcher worked aggressively to curb drug addiction by creating an addiction service called ICAN (“Integrated Chemical Addiction Network”), which was highly successful and became integrated into state-wide addiction programming. (Doc. 299, Sentencing Memorandum, PAGEID # 5336).

A. Dr. Fletcher’s Representation

After proceeding *pro se* for part of the pretrial process, Dr. Fletcher—in a letter dated April 30, 2024—requested that the district court appoint him counsel. (Letter Requesting Counsel, R. 224, PAGEID # 3130). Less than a month later, Dr. Fletcher retained Alan Statman as private counsel. (Notice of

Appearance, R. 230, PAGEID # 3145). The government quickly responded by arguing that Mr. Statman's representation in civil litigation against Dr. Hansen created a potential conflict of interest. (Notice of Potential Conflict, R. 231, PAGEID # 3147). The government acknowledged, however, that it did "not have enough information to take a position on whether the facts at issue here give rise to an actual conflict and whether the conflict is waivable." (*Id.* at 3148). Mr. Statman filed a response requesting permission to withdraw, stating he would not challenge the conflict and that Dr. Fletcher had not waived the conflict. (Response to Order, R. 233, PAGEID # 3176).

The district court conducted a conflict hearing by phone, where Mr. Statman acknowledged he did not fully analyze the conflict issue prior to undertaking Dr. Fletcher's representation.

(Transcript of Conflict Hearing, R. 264, PAGEID # 3554). But after considering the issue, Mr. Statman did not believe Dr. Fletcher could waive the conflict. (*Id.* at 3552). The district court asked Dr. Fletcher whether he would be willing to waive the conflict and Dr. Fletcher indicated he would, because he wanted Mr. Statman to represent him “if it’s at all possible”:

Sir, I’m very surprised and shocked by these developments. I obviously did not anticipate for this to occur. If you’re asking me do I or do I not waive my conflict, I might ask for clarification because if it’s at all possible, I would like for Mr. Statman to be able to represent me. But if that’s not possible, then it’s just not possible.

(*Id.* at 3555).

After some back and forth with counsel, the district court began to move through a conflict analysis, acknowledging that Mr. Statman’s interests—as counsel adverse to Dr. Hansen in concurrent civil litigation—were potentially aligned

with Dr. Fletcher, and that to the extent any conflict existed, Dr. Fletcher was “willing to waive it.” (*Id.* at 3557). When the district court returned to Dr. Fletcher and asked whether he had spoken about the conflict issue with anyone other than Mr. Statman, Dr. Fletcher expressed confusion about “the protocols and the legalities.” (*Id.* at 3558). Dr. Fletcher then did an abrupt about-face. Just minutes after clearly expressing (1) his desire for Mr. Statman to represent him, and (2) his willingness to waive any potential conflict, Dr. Fletcher stated, “I don’t want or need a lawyer” and “I’m not going to waive my right to this conflict.” (*Id.*). ***Without conducting any further inquiry***, the district court ***immediately*** accepted Dr. Fletcher’s offer to proceed *pro se* (without addressing the potential of appointing standby counsel).

B. Mr. Deters’ Manipulation

If Dr. Fletcher sounds confused, that is because he was. What undersigned counsel learned after taking over Dr. Fletcher's defense was that a former, unlicensed attorney had been managing Dr. Fletcher's defense from the shadows. Eric Deters is a disgraced former attorney whose Kentucky law license has remained suspended since 2013. *Deters v. Ky. Bar Ass'n*, 627 S.W.3d 917, 919 (Ky. 2021). Mr. Deters has been disciplined for, *inter alia*, making false statements to a tribunal and making false statements concerning the qualifications or integrity of a judge. *Id.* at n.3.

The Kentucky Supreme Court denied Mr. Deters' most recent application for reinstatement in 2021. *Id.* In denying his application for reinstatement, the Kentucky Supreme Court found that Mr. Deters "act[ed] in a fashion beyond what it believed permissible for a suspended lawyer." *Deters v. Ky. Bar*

Ass’n, 627 S.W.3d 917, 923 (Ky. 2021). The court explained:

What Deters fails to understand is that the adversary system, and our profession, is governed by rules. As we understand Deters’ concept of the practice of law, no Rules of Professional Responsibility, no statute, no case law bind him. ***Deters’ practice of law is not governed by constitution, rule of law or procedure. It is anarchy.*** To paraphrase from an earlier opinion, “[Deters] seems as indifferent to his duties and responsibilities in his own case as he was in that of his client. Citizens and, in particular, attorneys are not permitted to pick and choose which laws they wish to obey.”

Id. at 928-29 (quoting *Skaggs v. Ky. Bar Ass’n*, 954 S.W.2d 311, 314 (Ky. 1997)) (emphasis added). The court did not bother to hide its contempt for Mr. Deters, stating that his “lack of self-awareness is utterly amazing.” *Id.* at 928.

That same year, the Supreme Court of Ohio fined Mr. Deters for engaging in the unauthorized

practice of law. *Disciplinary Counsel v. Deters*, 165 Ohio St. 3d 537 (Ohio 2021). The court found that Mr. Deters improperly rendered legal advice to clients, rejecting his contention that “trial consultants make a living by offering the same kinds of opinions.” *Id.* at 541. Indeed, the court squarely rejected Mr. Deters’ attempts to characterize his activities as those of a paralegal or trial consultant: “Simply stated, his actions were not those of a paralegal conveying general information or relaying case-specific information under the supervision of an attorney—they were the actions of a nonlawyer engaging in the practice of law.” *Id.* at 543. The Supreme Court of Ohio was “most troubled by Deters’s struggle to accept his diminished role in the legal profession following his Kentucky suspension and his Ohio retirement” and permanently enjoined him from engaging in the unauthorized practice of law in Ohio. *Id.* at 544.

In this case, Mr. Deters' involvement in Dr. Fletcher's case was so extensive that the government reported Mr. Deters to multiple state bar associations and further noted that "Deters himself can be criminally prosecuted for his conduct." (Government Br., p. 39). Mr. Deters consistently dictated the defense's legal strategy, telling Dr. Fletcher that everything would go as he "plot[ted] and choreographed" as another member of his office urged Dr. Fletcher to "[f]ollow Mr. Deters' game plan." (*Id.* at 4795, 4812).

Critically, Mr. Deters was not motivated by a benevolent desire to help Dr. Fletcher; rather, Mr. Deters planned to use Dr. Fletcher to pursue civil litigation against his co-defendant, Dr. Hansen. Indeed, Mr. Deters essentially initiated the federal government's investigation into Dr. Fletcher by providing information that Mr. Deters obtained in

connection with the potential civil lawsuit. (See Supplement to Motion for New Trial, R. 293, PAGEID ## 5266-5267). After latching himself on to Dr. Fletcher, Mr. Deters sought to obtain information about the government's investigation into Dr. Hansen by instructing Dr. Fletcher to share case discovery with him, even though those documents were subject to a protective order. (Fletcher Decl., R. 273-1, PAGEID # 4790).

Mr. Deters' involvement in this case continues to generate headlines in local news, with a recent article from the Cincinnati Enquirer detailing how Mr. Deters' involvement in every aspect of this case "blurred the lines between law enforcement and civil litigation."⁴ The article correctly notes that "Deters

⁴ Quinlan Bentley, *DOJ Pushed an Opioid Crackdown. Eric Deters Used the Mandate to His Advantage*, THE CINCINNATI ENQUIRER (June 14, 2026, 12:00 AM), <https://www.cincinnati.com/story/news/2026/06/14/eric-deters->

stepped in without disclosing his prior involvement to Fletcher,” “persuaded Fletcher to represent himself,” and “advised Fletcher to discuss his entire defense with prosecutors, an unorthodox strategy for anyone accused of a crime.”⁵

But when Mr. Deters’ improper representation of Dr. Fletcher failed to secure dismissal of the charges and the case hurdled towards trial, Dr. Fletcher—who never intended to try the case without an attorney—sent a letter to the district court requesting appointed counsel. (Letter Requesting Counsel, R. 224, PAGEID # 3130). Mr. Deters quickly nipped Dr. Fletcher’s burgeoning independence in the bud by reprimanding Dr. Fletcher and instructing

[gave-feds-info-on-nky-doctors-then-advised-one-in-court/89715141007/](#)

⁵ *Id.*; see also Motion for New Trial, R. 273, PAGEID ## 4757-4766 (detailing Mr. Deters’ manipulation of Dr. Fletcher and his self-serving “legal strategy” by citing numerous text messages and other communications)

him to drop his request. (Fletcher Decl., R. 273-1, PAGEID # 4792). Mr. Deters instead arranged for Alan Statman to represent Dr. Fletcher—at no cost to Dr. Fletcher, but with strings attached. Dr. Fletcher could not afford to retain private counsel, so Mr. Deters set up an explicit *quid pro quo* whereby Mr. Statman would provide legal services to Dr. Fletcher in exchange for an affidavit, which Mr. Deters and Mr. Statman planned to use in concurrent civil litigation against Dr. Hansen. (*Id.* at 4793-94).

Even as Mr. Statman became the frontman for Dr. Fletcher’s defense, Mr. Deters continued to run the show. Mr. Deters instructed Dr. Fletcher not to communicate with Mr. Statman “without checking with me.” (*Id.* at 4804). And Mr. Deters continued to write the “script” for Dr. Fletcher’s defense, even drafting an email from Mr. Statman to the prosecution. (*Id.* at 4795).

Mr. Statman's involvement in this case was short-lived. As discussed in Section I(A), *supra*, the district court held a hearing on Mr. Statman's alleged conflict of interest. At the motion hearing, Dr. Fletcher expressed his desire for Mr. Statman to represent him, if at all possible. Mr. Deters—likely knowing that he would be caught red-handed if the court pressed Mr. Statman's conflict—urged Dr. Fletcher to quickly drop the matter, advising him that Mr. Statman could no longer represent him and instructing Dr. Fletcher to “[r]emember your script.” (*Id.* at 4797). Mr. Deters transmitted these instructions to Dr. Fletcher **during the motion hearing**, while Mr. Deters stealthily sat with Mr. Statman during the conference call. When Dr. Fletcher abruptly contradicted his request for counsel, which he unambiguously reiterated just minutes earlier, the district court immediately accepted Dr.

Fletcher's purported waiver of his right to counsel and allowed Dr. Fletcher to represent himself at trial without any further inquiry.

Dr. Fletcher moved for a new trial based on Mr. Deters' improper involvement in the case and the two errors raised in this petition. (Motion for New Trial, R. 273, PAGEID # 4745). The district court denied that motion. (Order, R. 295, PAGEID # 5300).

II. The Appeal

Dr. Fletcher appealed his convictions, arguing that (1) he was deprived of his right to counsel because his purported waiver of the right was equivocal and did not follow a *Faretta* inquiry; (2) Mr. Deters' unauthorized practice of law deprived Dr. Fletcher of his due process rights; (3) the district court erred in admitting records under the business records exception; and (4) his convictions were not supported by sufficient evidence. (See App. A, pp. 8-23). The

Sixth Circuit rejected each argument and affirmed Dr. Fletcher’s convictions. (*Id.*).

Dr. Fletcher filed a petition for rehearing *en banc*, arguing that the panel’s decision—which held that “a second [*Faretta*] colloquy is not always needed after a defendant reasserts his waiver of the right to counsel” (App. A, p. 19)—conflicted with existing Sixth Circuit precedent requiring renewed *Faretta* inquiries when there is an “explicit revocation by the defendant” of his earlier waiver. *United States v. McBride*, 362 F.3d 360, 367 (6th Cir. 2004). The Sixth Circuit denied the petition, thereby creating a circuit split on the issue, as discussed below. (App. B).

REASONS FOR GRANTING THE PETITION

I. This Court Must Resolve the Split Among the Circuits as to Whether District Courts Must Conduct A *Faretta* Inquiry When a Defendant Invokes His Right to Self-Representation for a Second Time.

“While the Constitution ‘does not force a lawyer upon a defendant,’ it does require that any waiver of the right to counsel be knowing, voluntary, and intelligent.” *Iowa v. Tovar*, 541 U.S. 77, 87–88 (2004) (internal citation omitted) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942)). This Court has held that a defendant “should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that ‘he knows what he is doing and his choice is made with eyes open.’” *Faretta v. California*, 422 U.S. 806, 835 (1975) (quoting *Adams*, 317 U.S. at 279). In other words, “before a defendant may be allowed to proceed

pro se, he must be warned specifically of the hazards ahead.” *Tovar*, 541 U.S. at 88-89. Lower courts have developed standard *Faretta* inquiries that are designed to satisfy the foregoing requirements, and they administer those inquiries before accepting a defendant’s waiver of his right to counsel. See *United States v. McBride*, 362 F.3d 360, 366 (6th Cir. 2004) (discussing “the model inquiry set forth in the *Bench Book for United States District Judges*”).

Before this case, the circuits had uniformly required a renewed *Faretta* inquiry whenever there was an intervening revocation of the waiver or some other substantial change in circumstances—a condition ***the government agrees was satisfied*** by Dr. Fletcher’s retention of private counsel before he reinvoked his right to self-representation. See *United States v. Fazzini*, 871 F.2d 635, 643 (7th Cir. 1989) (“Once the defendant has knowingly and intelligently

waived his right to counsel, only a substantial change in circumstances will require the district court to inquire whether the defendant wishes to revoke his earlier waiver.”); *United States v. Hantzis*, 625 F.3d 575, 580-581 (9th Cir. 2010) (“A properly conducted *Faretta* colloquy need not be renewed in subsequent proceedings unless intervening events substantially change the circumstances existing at the time of the initial colloquy.”); *United States v. Miller*, 728 F.3d 768, 774 (8th Cir. 2013) (“changed circumstances” would “necessitat[e] another *Faretta* inquiry”); *United States v. Nunez*, 137 Fed. Appx. 214, 215 (11th Cir. 2005) (“If we were to place upon the district court an obligation to reassess its *Faretta* hearing decision, we would do so only on a showing of a substantial change in circumstances since the initial hearing.”); *United States v. Unger*, 915 F.2d 759, 762 (1st Cir. 1990) (waiver of right to counsel remains in effect “in the

absence of any evidence of an intervening event”); *United States v. Tate*, 535 Fed. Appx. 359, 361 (5th Cir. 2013) (quoting *United States v. McBride*, 362 F.3d 360, 367 (6th Cir. 2004)) (a waiver of right to counsel “remains in effect at subsequent proceedings in the absence of an explicit revocation by the defendant or a change in circumstances that would suggest that the district court should make a renewed inquiry of the defendant”); *United States v. Norwood*, 566 Fed. Appx. 123, 126 (3d Cir. 2014) (“Absent an express revocation of the criminal defendant’s waiver or some other change in circumstances, a district court has no standing obligation to revisit the waiver question and conduct another *Faretta* colloquy at a later stage in criminal proceedings.”).

Before this case, the Sixth Circuit appeared to be among those courts, having previously held that a valid waiver of the right to counsel no longer remains

in effect at subsequent proceedings if there is an “explicit revocation by the defendant or a change of circumstances that would suggest that the district court should make a renewed inquiry of the defendant.” *United States v. McBride*, 362 F.3d 360, 367 (6th Cir. 2004). But in this case, the Sixth Circuit held that “a second colloquy is not always needed after a defendant reasserts his waiver of the right to counsel.” (App. A, p. 19). The court held that although “[p]rudence would counsel the district court to ask *some* questions,” no *Faretta* inquiry is necessary. (*Id.* at 21). Notably, the newly created circuit split does not center on the content of the inquiry. This Court might ultimately decide that a renewed *Faretta* inquiry can be shorter than the original inquiry, but the circuits are now split on the need for ***any inquiry*** whatsoever.

There is no reason to believe that *Faretta* inquiries should be one-and-done. When a defendant

waives his right to counsel, that waiver must be knowing, voluntary, and intelligent. *Tovar*, 541 U.S. at 87–88. That requirement applies each time the right is waived, and an earlier *Faretta* inquiry does not establish those essential elements for any subsequent waivers. The Sixth Circuit said this case “reminds us that waiver-of-counsel proceedings can burden ‘the efficient and effective administration of criminal justice,’” but constitutional rights are not administrative impediments—they are the bedrock of our criminal justice system. (App. A, pp. 20-21) (quoting *United States v. Coles*, 695 F.3d 559, 562 (6th Cir. 2012)). And the need for well-established procedural safeguards (i.e. the *Faretta* inquiry) is especially pronounced in this case, where Dr. Fletcher was being pressured to waive his right to counsel by a former, unlicensed attorney who was manipulating Dr. Fletcher for his own personal ends. And the odd

nature of Dr. Fletcher’s purported waiver was visible to the district court, as he made nonsensical statements—saying he would not “waive my right to this conflict”—and offered directly contradictory statements about his desire to have counsel within just minutes of each other (as discussed more fully in the following section). If any case demanded a second *Faretta* inquiry, it is this one.

II. This Court Should Hold that *Faretta*’s Requirement of an Unequivocal Waiver Is Not Satisfied Where a Defendant Makes Directly Contradictory Statements, Within Minutes of Each Other, About His Desire to be Represented.

In addition to requiring that any waiver of the right to counsel be knowing, intelligent, and voluntary, *Faretta* further requires such waivers to be clear and unequivocal. *Faretta*, 422 U.S. at 835 (finding the defendant “clearly and unequivocally declared to the trial judge that he wanted to represent

himself”); see also *Shoop v. Cassano*, 142 S. Ct. 2051, 2053 (2022) (Thomas, J., dissenting from denial of certiorari) (quoting *Faretta*, 422 U.S. at 835) (cleaned up) (“a defendant must knowingly, intelligently, clearly, and unequivocally” waive the right); *United States v. Cromer*, 389 F.3d 662, 683 (6th Cir. 2004) (courts “require a clear and unequivocal assertion of a defendant’s right to self-representation before his right to counsel may be deemed waived”).

In this case, Dr. Fletcher’s waiver was equivocal when considering all the necessary context. At the hearing on Mr. Statman’s potential conflict of interest, Dr. Fletcher clearly expressed his desire to be represented by counsel, telling the district court he wanted Mr. Statman to represent him “if it’s at all possible.” Dr. Fletcher was confused about the conflict-of-interest situation—seeking “clarification” from the district court—but he initially maintained

his desire to be represented. After some discussion on the conflict issue, Dr. Fletcher expressed further confusion about “the protocols and the legalities” and described the situation as “insanity.” In light of this confusion, and Dr. Fletcher’s prior assertions of his right to counsel, his abrupt remark that he did not “want or need a lawyer” does not constitute an unequivocal waiver of the right to counsel. Considering all the necessary context, it is clear the statement was made in haste, during a hearing where he was being commanded by a con artist to act against his own interests. At that moment, everyone appeared against Dr. Fletcher and he, in his disoriented state, said the thing that would most quickly resolve his personal nightmare, one way or another.

The Sixth Circuit nevertheless found that Dr. Fletcher’s waiver was unequivocal, largely by dismissing Dr. Fletcher’s contradictory remarks. The

court focused on “five clear statements in short order indicating his desire to proceed pro se”—statements, of course, that followed a clear display of confusion. (App. A, p. 15). And the court disposed of Dr. Fletcher’s statement that he wanted to be represented “if it’s at all possible” in conclusory fashion, holding that “the fact that he conditioned his preference to proceed pro se on the impossibility or undesirability of Statman’s representation does not diminish the validity of his waiver.” (*Id.* at 16).

The Sixth Circuit’s decision is wrong, but it presents this Court with an opportunity to elucidate the “clear and unequivocal” requirement for waivers of the right to counsel, as this Court’s post-*Faretta* cases have not expounded on that requirement. This Court should clarify that whether a waiver is “clear and unequivocal” depends on the context, and that courts may not shutter their eyes by simply

isolating the statement constituting the purported waiver. Some statements will show equivocation in isolation, such as a defendant saying, “I might want to represent myself.” But that should not be the only way to demonstrate equivocation or lack of clarity.

Here, the relevant context certainly includes directly contradictory statements made minutes before the purported waiver. Those contradictory statements alone render the waiver fatally equivocal, as the district court made no attempt to reconcile them. That failure is especially egregious because the other pieces of relevant context suggest that Dr. Fletcher was offering to represent himself simply to avoid the procedural confusion attending his retention of private counsel.

Simply put, when a defendant insists he wants to be represented by the private attorney he retained and then announces, minutes later, that he does not

need to be represented by any attorney, a district court should not meet that announcement with a simple “okay.”

CONCLUSION

For the foregoing reasons, Dr. Fletcher respectfully requests that this Court grant a writ of certiorari.

Respectfully submitted,

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