

No. 26-_____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH MCNORIELL,
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 excluding a *pro se* defendant from all sidebar conferences violates his Sixth Amendment rights by infringing upon his right to self-representation and/or his right to be represented during all critical stages of a criminal proceeding.

LIST OF PARTIES

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

1. Joseph McNoriell, 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 April 6, 2026. (App. A). The Sixth Circuit then denied Petitioner’s request for rehearing *en banc*, which was prepared and filed without the assistance of counsel, on May 2, 2026. (App. C). The Sixth Circuit’s opinion affirmed the judgment of the Western District of Michigan, which was issued on May 9, 2025. (App. B).

STATEMENT OF JURISDICTION

The judgment of the Sixth Circuit was entered on April 6, 2026. The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1254(1).

**RELEVANT STATUTORY AND
CONSTITUTIONAL PROVISIONS**

This case implicates two independent constitutional rights—(1) the right to self-representation, and (2) the right to be represented during all critical stages of a criminal proceeding—each stemming from 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 involves a *pro se* defendant who, despite serving as his own lawyer, was ***excluded from every sidebar conference*** during trial. Petitioner Joseph McNoriell elected to represent himself at trial with the assistance of standby counsel. That assistance quickly became substitution. During *voir dire*, Mr. McNoriell was excluded from all sidebar conferences—a practice that continued throughout the entire trial. The district court assured Mr. McNoriell that he would have full control over his defense and that his standby counsel would merely relay his messages during the sidebar conferences, yet several of the sidebars were conducted without any opportunity for Mr. McNoriell to provide input. His wholesale exclusion from those portions of the trial violated both his right to self-representation and his

right to be represented during critical stages of the proceeding, thereby requiring reversal.

I. Factual Background

Mr. McNoriell was convicted of two counts after a jury trial: (1) Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances, and (2) Possession with Intent to Distribute 500 Grams or More of Cocaine. (Judgment, R. 189, PAGEID # 1580). The facts concerning those underlying convictions are not germane to the constitutional issues raised in this Petition; this Section therefore focuses on Mr. McNoriell's self-representation and related aspects of the trial process.

A. Mr. McNoriell Elects to Represent Himself

During the pretrial process, Mr. McNoriell was first appointed CJA counsel by the district court. (See Revised CJA Affidavit, R. 14). Mr. McNoriell subsequently retained private counsel, who was later

replaced by a different CJA-appointed attorney, Scott Graham. (See Consent Order Granting Substitution of Counsel, R. 24, PAGEID # 45; Order Granting in Part Motion to Substitute Counsel, R. 35, PAGEID # 66). Mr. McNoriell ultimately filed a motion to represent himself, which the district court granted after a *Faretta*¹ hearing. (See January 17, 2024 Hearing, R. 53, PAGEID # 128). The district court ordered that Mr. Graham remain in the case as standby counsel for Mr. McNoriell. (Order, R. 45, PAGEID # 86).

B. The District Court Restricts Mr. McNoriell's Participation at Trial

During the final pretrial conference, the district court set restrictions on Mr. McNoriell's conduct at trial. The district court ordered that both Mr. McNoriell and the government would conduct their arguments and questioning from their tables, rather

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

than from the lectern. (Final Pretrial Hearing, R. 141, PAGEID ## 780-81). Further, the court ordered that Mr. McNoriell could not approach the witnesses with exhibits and instead must delegate that task to Mr. Graham. (*Id.* at 781) (The Court: “If you have exhibits that you want to show the jury, you can ask Mr. Graham, can you please bring that, right?”).² The district court imposed a similar limitation on the government. (*Id.* at 781-82).

The district court’s restrictions, however, did not end there. Instead of merely requiring Mr. McNoriell to delegate administrative tasks to Mr. Graham, the court entirely prevented Mr. McNoriell from leaving the defense table—a restriction which excluded Mr. McNoriell from all sidebar conferences

² See, e.g., Transcript of Jury Trial – Volume 1, R. 142, PAGEID # 999 (refusing to allow Mr. McNoriell to approach the witness with an exhibit).

with the court. The district court first explained this restriction in the context of *voir dire*:

Now, in this circumstance representing yourself the government will come up and Mr. Graham -- you will tell Mr. Graham, this is what I want to do, strike for cause. You can write that down and tell the judge, they can't be fair because they said A, B, and C. Mr. Graham will communicate to me who you want, right?

(Final Pretrial Hearing, R. 141, PAGEID # 771).

During those sidebar conferences, the court erroneously referred to Mr. McNoriell as Mr. Graham's "client" on multiple occasions. (*See, e.g.*, Transcript of Jury Trial – Volume 1, R. 142, PAGEID # 875) (The Court: "The defendant has raised a challenge to juror in seat number one. Mr. Graham, what is your client's position in this regard?"); (*id.* at 912) (The Court: "Mr. Graham, is it true that your client was seen being escorted out by the marshals?").

Mr. McNoriell was told that Mr. Graham would act as a telephone and merely relay his messages, as the district court emphasized Mr. McNoriell's continued control over the process: "It's your decision. This is your jury." (*Id.*). Yet Mr. Graham's role went beyond that, as the district court held sidebar conferences where Mr. McNoriell was afforded no opportunity to provide input. (*See, e.g., id.* at 887-890) (where the court held a sidebar to learn about a prospective juror's previous experience with a rape case); (*id.* at 902-903) (where the court initiated a sidebar and Mr. Graham unilaterally assented to a prospective juror's excusal due to scheduling concerns).

Notably, Mr. McNoriell was excluded from a sidebar conference during the defense's cross-examination of a government witness. (Transcript of

Jury Trial – Volume 2, R. 143, PAGEID # 1199).³ In total, the district court held nine sidebar conferences and Mr. McNoriell—pursuant to court order—***was excluded from all of them.*** (*Id.*); (Transcript of Jury Trial – Volume 1, R. 142, PAGEID ## 875, 881, 887, 894, 902, 905, 909, 912).

Despite excluding Mr. McNoriell from the sidebar conferences and occasionally referring to him as Mr. Graham’s “client,” the district court otherwise recognized that Mr. McNoriell was representing himself and had the complete right to control his defense. The court told Mr. McNoriell during the final pretrial conference that “when we go to trial you have standby counsel, and that happens, but you are in control.” (Final Pretrial Hearing, R. 141, PAGEID #

³ Undersigned counsel learned, in speaking with Mr. McNoriell, that he intended to offer information and argument at the sidebar in question, but there is no record of this because he was not permitted to be present at this critical stage.

765). And the district court rejected the government's proposed jury instruction on hybrid counsel arrangements, specifically refusing to "call it hybrid" and finding that "Mr. McNoriell represented himself," with Mr. Graham assisting as standby counsel. (Transcript of Jury Trial – Volume 2, R. 143, PAGEID # 1223).

II. The Appeal

On appeal, the Sixth Circuit inexplicably determined that Mr. McNoriell "engaged in a form of hybrid representation." (App. A, p. 8). That pronouncement is contrary to the entire trial process, where the district court repeatedly found that Mr. McNoriell was representing himself, and assured both Mr. McNoriell and the jury of that fact. It is also contrary to this Court's precedent in *McKaskle v. Wiggins*, which, as further discussed below, recognized that a defendant maintains his right to

self-representation even when standby counsel's involvement exceeds a purely advisory role. 465 U.S. 168 (1984).

The Sixth Circuit focused its analysis on Mr. McNoriell's consent to the sidebar procedure, while ignoring that Mr. McNoriell never consented to his complete exclusion from any sidebar conferences. (*See* App. A, pp. 10-11). That was not how the district court described the process, yet it is how the trial functioned on several occasions. The Sixth Circuit used Mr. McNoriell's purported consent to dispense with the constitutional violations addressed in this Petition, without ever addressing how the actual procedure differed from the one that was described to Mr. McNoriell.⁴

⁴ Troublingly, during oral argument before the Sixth Circuit, one of the judges demonstrated a fundamental misunderstanding of how *voir dire* works. Despite serving on the Sixth Circuit for 35 years, Judge Alice M. Batchelder believed

REASONS FOR GRANTING THE PETITION

I. The District Court Improperly Excluded Mr. McNoriell From All Sidebar Conferences in Violation of His Sixth Amendment Rights

The district court's exclusion of Mr. McNoriell from all sidebar conferences implicates two independent constitutional rights, each stemming from the Sixth Amendment: (1) the right to be represented during all critical stages of a criminal proceeding, and (2) the right to self-representation. The violation of either right constitutes structural error and therefore mandates reversal. *Greer v.*

that Mr. McNoriell would have heard the sidebar questioning of prospective jurors, even though only the judge and the attorneys (at least, the attorneys permitted to be present) would hear the questions. A recording of the oral argument is located at: https://www.opn.ca6.uscourts.gov/internet/court_audio/audio/02-04-2026%20-%20Wednesday/24-2067%20USA%20v%20Joseph%20McNoriell.mp3 (timestamp 7:30).

United States, 593 U.S. 503, 513 (2021) (quoting *United States v. Davila*, 569 U. S. 597, 611 (2013)) (structural errors include “denial of self-representation”); see also *United States v. Cronin*, 466 U.S. 648, 659 (1984) (“The presumption that counsel’s assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial.”); *Holloway v. Arkansas*, 435 U.S. 475, 489 (1978) (“when a defendant is deprived of the presence and assistance of his attorney, either throughout the prosecution or during a critical stage in, at least, the prosecution of a capital offense, reversal is automatic”).

**A. The Exclusion Violated Mr. McNoriell’s
Right to Be Represented During
Critical Stages of the Proceeding**

“[T]he Sixth Amendment guarantees a defendant the right to have counsel present at all ‘critical’ stages of the criminal proceedings.” *Montejo*

v. Louisiana, 556 U.S. 778, 786 (2009). Mr. McNoriell was excluded from sidebar conferences during both *voir dire* and the trial itself, each of which constitute critical stages of the proceeding. *Gomez v. United States*, 490 U.S. 858, 873 (1989) (*voir dire* is a critical stage of the criminal proceeding); *Burdine v. Johnson*, 262 F.3d 336, 347 (5th Cir. 2001) (“the trial itself remains a critical stage of any criminal proceeding”).

Although Mr. Graham served as standby counsel at trial, Mr. McNoriell unambiguously asserted his right to self-representation and the district court recognized as much following its *Faretta* colloquy. Because he elected to proceed *pro se*, Mr. McNoriell’s right to be represented during critical stages meant that he, as counsel for the defense, must be present during all sidebar conferences. Yet the district court unilaterally excluded Mr. McNoriell

from sidebar conferences during *voir dire*, and then again at trial.

Although this fact pattern is rare, courts have held that such exclusions violate the defendant's Sixth Amendment right to be represented during critical stages of the proceeding. For example, the Kentucky Supreme Court has held that a trial court's exclusion of a *pro se* defendant from sidebar conferences violated both the defendant's right to be represented during critical stages and the right to self-representation. *Allen v. Commonwealth*, 410 S.W.3d 125, 144 (Ky. 2013). In that case, as here, the trial court specifically ordered that the defendant "will be confined to his counsel table" and must utilize standby counsel to "handle exhibits" and "approach for bench conferences." *Id.* at 133. The Kentucky Supreme Court expressed agreement with this Court's decision that "generally, standby counsel does not satisfy a

defendant's Sixth Amendment right to counsel" and held that the defendant "[a]s his own attorney ... had the right to be present at all critical stages of the criminal proceeding." *Id.* at 139 (quoting *King v. Bobby*, 433 F.3d 483, 490 (6th Cir. 2006)).

In so holding, the Court noted that "[t]he trial court repeatedly made clear" standby counsel was acting in an advisory capacity and the defendant "could present his case in his own way." *Id.* at 142. Indeed, the trial court "informed the jury that [the defendant] had chosen to represent himself and would not have an attorney to represent him." *Id.*

Similarly here, the district court told Mr. McNoriell during the final pretrial conference that "when we go to trial you have standby counsel, and that happens, but you are in control." The district court also instructed the jury that Mr. McNoriell was representing himself, even rejecting the government's

proposed jury instruction on hybrid counsel arrangements. The trial court specifically refused to “call it hybrid” and found that “Mr. McNoriell represented himself,” with Mr. Graham assisting as standby counsel.

The Sixth Circuit evaded the straightforward conclusion that Mr. McNoriell’s wholesale exclusion from all sidebar conferences violated his right to representation at all critical stages only by mischaracterizing the nature of the “agreed” sidebar procedure. Mr. McNoriell agreed that Mr. Graham could function as a telephone and relay his decisions to the district court, but he never agreed that Mr. Graham could make tactical legal decisions—including which jurors would be excused—without his involvement. This Court should view those secret sidebars for what they were: the deprivation of Mr. McNoriell’s right to representation.

**B. The Exclusion Violated Mr. McNoriell's
Right to Self-Representation**

The district court's sidebar exclusions also violated Mr. McNoriell's separate Sixth Amendment right to represent himself. The "right to represent oneself in a criminal trial is an independent and affirmative right that inheres in the structure of the Sixth Amendment." *Jones v. Jamrog*, 414 F.3d 585, 591 (6th Cir. 2005) (citing *Faretta v. Cal.*, 422 U.S. 806, 819 (1975)). This Court has held that this right can be violated by the unsolicited participation of standby counsel. *McKaskle v. Wiggins*, 465 U.S. 168, 177 (1984). The right can be violated in two ways. First, the right is violated where standby counsel infringes on the defendant's "actual control over the case." *Id.* at 178. Standby counsel cannot "make or substantially interfere with any significant tactical decisions" and cannot "speak *instead* of the defendant

on any matter of importance.” *Id.* (emphasis original). Second, standby counsel’s participation cannot “destroy the jury’s perception that the defendant is representing himself.” *Id.* After all, “the right to appear *pro se* can lose much of its importance if only the lawyers in the courtroom know that the right is being exercised.” *Id.*

Mr. Graham’s unsolicited participation in all sidebar conferences, without Mr. McNoriell’s presence or consent, violated each of the foregoing prohibitions. During *voir dire*, the district court required Mr. McNoriell to provide instructions to Mr. Graham, who would then participate in the sidebar conference on his behalf. Mr. McNoriell was afforded no opportunity to personally argue why a juror should be excluded, or to engage in back-and-forth argument during the sidebars. Worse yet, Mr. McNoriell could provide no input whatsoever when the sidebar was prompted by

the prosecution or the court. In those situations, Mr. McNoriell did not know why the sidebar was being held and could not offer even general guidance to Mr. Graham; rather, Mr. McNoriell was kept in the dark while other lawyers discussed and managed his case—thereby infringing on Mr. McNoriell’s “actual control over the case,” as forbidden by *McKaskle*.

Mr. Graham’s sole participation in the sidebar conferences also destroyed the jury’s perception that Mr. McNoriell was representing himself. That most of these sidebars occurred during *voir dire* is especially pernicious. Each time the court met privately with the prosecution and the defense, the jury saw Mr. Graham rise and speak on behalf of the defense. Thus, as the jury was first introduced to Mr. McNoriell, their perception became that Mr. Graham was in fact controlling the defense. Mr. Graham’s unsolicited participation therefore violated *McKaskle*’s second

prohibition by damaging “the jury’s perception that the defendant is representing himself.”

Unsurprisingly, both federal and state appellate courts have held that a defendant’s right to self-representation is violated by his categorical exclusion from sidebar conferences. *United States v. McDermott*, 64 F.3d 1448, 1454 (10th Cir. 1995) (ordering a new trial where the defendant was excluded from all sidebar conferences); *People v. Rosen*, 81 N.Y.2d 237, 241 (N.Y. 1993) (“A defendant in a criminal trial who has exercised the right to self-representation may not be arbitrarily and categorically excluded from sidebar conferences.”); *Snowden v. State*, 672 A.2d 1017, 1022 (Del. 1996) (ordering a new trial because the defendant’s “exclusion from all bench conferences was a denial of his Sixth Amendment right of self-representation”); see also *Frantz v. Hazey*, 533 F.3d 724, 740 (9th Cir.

2008) (standby counsel’s “solo participation in the chambers conference may well have violated [the defendant]’s right to self-representation”).

This Court similarly should give effect to its holding in *McKaskle* by granting this Petition and reversing Mr. McNoriell’s convictions.

CONCLUSION

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

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