

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

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**GONZALEZ v. UNITED STATES****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT**

No. 06–11612. Argued January 8, 2008—Decided May 12, 2008

If the parties consent, a federal magistrate judge may preside over the *voir dire* and jury selection in a felony criminal trial. *Peretz v. United States*, 501 U. S. 923, 933. Before petitioner’s federal trial on felony drug charges, his counsel consented to the Magistrate Judge’s presiding over jury selection. Petitioner was not asked for his own consent. After the Magistrate Judge supervised *voir dire* without objection, a District Judge presided at trial, and the jury returned a guilty verdict on all counts. Petitioner contended for the first time on appeal that it was error not to obtain his own consent to the Magistrate Judge’s *voir dire* role. The Fifth Circuit affirmed the convictions, concluding, *inter alia*, that the right to have a district judge preside over *voir dire* could be waived by counsel.

*Held*: Express consent by counsel suffices to permit a magistrate judge to preside over jury selection in a felony trial, pursuant to the Federal Magistrates Act, 28 U. S. C. §636(b)(3), which states: “A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.” Under *Gomez v. United States*, 490 U. S. 858, 870, 875–876, and *Peretz, supra*, at 933, 935–936, such “additional duties” include presiding at *voir dire* if the parties consent, but not if there is an objection. Generally, where there is a full trial, there are various points at which rights either can be asserted or waived. This Court has indicated that some of these rights require the defendant’s own consent to waive. See, e.g., *New York v. Hill*, 528 U. S. 110, 114–115. The Court held in *Hill*, however, that an attorney, acting without indication of particular consent from his client, could waive his client’s statutory right to a speedy trial because “[s]cheduling matters are plainly among those for which agreement by counsel generally controls.” *Ibid.* Similar to

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the scheduling matter in *Hill*, acceptance of a magistrate judge at the jury selection phase is a tactical decision well suited for the attorney's own decision. The presiding judge has significant discretion over jury selection both as to substance—the questions asked—and tone—formal or informal—and the judge's approach may be relevant in light of the approach of the attorney, who may decide whether to accept a magistrate judge based in part on these factors. As with other tactical decisions, requiring personal, on-the-record approval from the client could necessitate a lengthy explanation that the client might not understand and that might distract from more pressing matters as the attorney seeks to prepare the best defense. Petitioner argues unconvincingly that the decision to have a magistrate judge for *voir dire* is a fundamental choice, cf. *Hill, supra*, at 114, or, at least, raises a question of constitutional significance so that the Act should be interpreted to require explicit consent. Serious concerns about the Act's constitutionality are not present here, and petitioner concedes that magistrate judges are capable of competent and impartial performance when presiding over jury selection. *Gomez, supra*, at 876, distinguished. Pp. 2–12.

483 F. 3d 390, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SOUTER, GINSBURG, BREYER, and ALITO, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment. THOMAS, J., filed a dissenting opinion.