No. 21-5978

IN THE SUPREME COURT OF THE UNITED STATES

DEREK LEVERT HALL, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner validly waived his right to counsel where he refused to accept the services of his court-appointed attorney, after being warned that doing so would require him to represent himself, and after being warned of the dangers and disadvantages of proceeding pro se.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (N.D. Ala.):

United States v. Hall, No. 18-cr-524 (Sept. 26, 2019)

United States Court of Appeals (11th Cir.):

United States v. Hall, No. 19-14012 (Apr. 8, 2021)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is not published in the Federal Reporter but is available at 852 Fed. Appx. 450.

JURISDICTION

The judgment of the court of appeals was entered on April 8, 2021. A petition for rehearing was denied on May 12, 2021 (Pet. App. 11a). On March 19, 2020, this Court extended the time within which to file a petition for a writ of certiorari due on or after that date to 150 days from the date of the lower-court judgment or order denying a timely petition for rehearing. The petition for

a writ of certiorari was filed on Oct. 12, 2021 (Tuesday following a holiday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Alabama, petitioner was convicted of possessing with the intent to distribute cocaine base, cocaine hydrochloride, and 3, 4-methylenedioxy methamphetamine (MDMA), in violation of 21 U.S.C. 841(a)(1); possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i); and possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 480 months of imprisonment, to be followed by 15 years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-10a.

1. In June 2018, the West Alabama Narcotics Task Force conducted a controlled purchase of about two grams of crack cocaine from petitioner. Presentence Investigation Report (PSR) ¶ 8. In July 2018, task-force agents conducted another controlled purchase of 14 grams of crack cocaine from petitioner. PSR ¶ 10.

On July 27, 2018, task-force agents conducted a traffic stop of petitioner, and he was taken into custody based on two outstanding warrants for unlawful distribution of a controlled

substance within three miles of a school. PSR ¶ 11. A drug-sniffing dog alerted to the possible presence of controlled substances by the front passenger door. PSR ¶ 12. Agents then conducted an interior search of the car, where they found roughly four grams of crack cocaine, about one gram of marijuana, approximately five unknown pills consistent with MDMA, and a loaded Charter Arms, Model Undercover, .38 caliber revolver. Ibid.

2. Petitioner appeared at his arraignment in November 2018 with court-appointed counsel. See D. Ct. Doc. 33, at 3 (Feb. 20, 2020). Petitioner asserted that his name was not Derek Levert Hall, but Derek Levert Hall Bey, that he was a Moorish American national, and that he was not the individual charged in the indictment. Id. at 2-3, 5. When the district court explained to petitioner that it had appointed counsel to represent him, petitioner responded, "I don't understand that." Id. at 3. Petitioner was served with a copy of the indictment, and the court explained the charges against him. Id. at 2-3. Petitioner confirmed that he understood his rights, waived reading of the indictment, and entered a plea of not guilty. Id. at 4-6.

On December 11, 2018, the district court held a status conference that petitioner's court-appointed counsel had requested because of problems that he was having communicating with petitioner, who continued to claim that he was a Moorish American

citizen, that his named was Derek Levert Hall Bey, that he was not the Derek Levert Hall referenced in the indictment, and that the United States did not have jurisdiction over him. Pet. App. 13a-14a, 18a. Petitioner told the court that "I'm Moorish American national and the Government that I am in is the United States of America Republic," and "I keep trying to tell you that you keep saying what they have me charged with. That's not me. I am Derek Levert Hall Bey." Id. at 14a, 23a-24a.

Petitioner also told the district court that "I asked [court-appointed counsel] to release himself off of this case because I talked to my government and they are going to represent me." Pet. App. 15a. When the court asked who exactly from petitioner's government would represent him, petitioner answered, the "United States of America Republic," and specifically a person named "Maurice Parham Bey," who would arrive at the courthouse on the day of the trial. Id. at 15a, 17a-18a, 27a. The court then inquired whether Parham Bey was a "lawyer" or an "advisor," and petitioner responded that "[h]e is an advisor of the Moorish American National." Id. at 15a-16a. The court explained to petitioner that he had an "absolute right to represent" himself, but that he could not be represented by someone who was not a lawyer. Id. at 16a. The court then informed petitioner that if he insisted on dismissing his court-appointed counsel, and if

Parham Bey was not an attorney, then petitioner would have to represent himself:

> If you decide you want to represent yourself, you can do that. But if somebody wants to represent you that's not a lawyer -- they're not practicing law, they're not licensed to practice law -- then by the laws of the United States of America you will not be able to use them as a lawyer.
>
> You obviously have certain disputes about who has got jurisdiction or what-not, and I understand that. But I need to make sure that you understand what I have just said to you: that if your advisor shows up you and your advisor doesn't have a bar card, he or she is not licensed to practice, then they are not going to be allowed to represent you and you are going to be stuck by yourself in a case.

Ibid. The district court stated that, when Parham Bey appeared on the morning of petitioner's trial, "I will look at their credentials, who they are, and see. * * * If they show up, I will talk to them and I will ask them the questions about them being legally qualified to represent you. And you will be here." Id. at 27a.

The district court also made clear to petitioner that while different types of defenses could be raised at trial, a jurisdictional defense based on petitioner's claimed Moorish-American citizenship would not be effective as a defense to the charges against him. See Pet. App. 18a ("There [are] two ways you can approach this case. One way is * * * [to] say[] 'the United States government has no jurisdiction over me because I am a citizen of a different sovereign.' The other way is to say 'I am not guilty of the crimes the government has me charged with.'").

Petitioner told the court that he did not understand its explanation of the possible defenses, and the court provided an expanded explanation. See id. at 19a-23a. After the government read aloud each of the charges against petitioner and the court asked him if he understood each charge, petitioner responded that "I heard it," "I heard what they were saying," or "I heard what they was saying." Id. at 27a, 29a, 30a.

In response to the district court's statement that court-appointed counsel could help subpoena witnesses, petitioner told the court that "I would like [court-appointed counsel] to leave today and not say anything else to me from this day forward." Pet. App. 30a. The court explained that court-appointed counsel, who would act as standby counsel, would "not * * * even [be] sitting beside [petitioner] in the trial." Ibid. Petitioner responded, "I don't care to see him, period. * * * I don't care for him to be around in my presence representing me, being even in your building with me." Id. at 30a-31a.

When the district court asked if petitioner needed anything to prepare for his trial, petitioner stated that he wanted to have his "people" represent him. Pet. App. 33a. The court again explained that, "[w]hen they show up [on the day of trial], you will be here and we'll talk to them." Ibid. Petitioner clarified, "I am saying represent me. I ain't saying just showing up," and

the court reiterated, "I am going to talk to them when they get here with you present. Okay? I have already told you they have to be a lawyer." Ibid. Petitioner responded, "I don't understand that." Ibid.

The district court then communicated to petitioner that the charges against him could carry a possible life sentence. Pet. App. 35a-36a. Petitioner replied, "I heard that." Id. at 35a. Noting the significant sentence that could be imposed if petitioner were found guilty, the court "urge[ed] [petitioner] to reconsider and let [court-appointed counsel] help [petitioner] negotiate a plea or try the case or whatever." Id. at 36a. Petitioner stated that he would not plead guilty. Ibid. The court replied, "If you change your mind and you want [court-appointed counsel] to help you, will you please send us a note?" Ibid. Petitioner replied, "Oh, I will not." Ibid.

Court-appointed counsel asked the district court to clarify his role, and the court stated that he would act as standby counsel. Pet. App. 36a. The court then conducted a colloquy with petitioner to assess whether petitioner could represent himself. See id. at 37a-39a. During that colloquy, the court confirmed that petitioner had prior experience in criminal courts, had earned his GED, and had maintained a job in the past. See id. at 37a-38a. The court also asked petitioner, "Do you have any questions

whatsoever * * * about what it would mean to you to not have court-appointed counsel to help you or anything? I think you understand, but I need make sure that you do." Id. at 38a. Petitioner replied, "You answered all the questions I need to know." Id. at 38a-39a.

After the colloquy, the district court stated that "It appears to me that [petitioner] is competent to waive his counsel if he wants to do that. I have asked him to take this counsel; he is competent counsel. There has not been any indication of a reason not to." Pet. App. 39a. The court then explained to petitioner that "I will allow you to represent yourself. If you get a lawyer that shows up here that you have called your advisor, I am going to talk to them, no matter who they are, with you here * * * . And we'll go from there." Ibid. Petitioner did not object to that statement. Id. at 39a-40a.

3. On the morning of petitioner's trial, the district court addressed petitioner's advisor, who introduced himself as "D. Maurice Parham Bey doing business as Derek Levert Hall." 1 C.A. App. 76; see also id. at 76-78.[1] The court questioned whether Parham Bey was an "attorney practicing law," and Parham

[1] The court of appeals appendix is not consecutively paginated. This brief treats Volume I as if consecutively paginated with the cover page to Volume I as 1 C.A. App. 1, and Volume II as if consecutively paginated with the cover page to Volume II as 2 C.A. App. 1.

Bey answered "No." Id. at 78. The court accordingly explained that Parham Bey was ineligible to represent petitioner. Ibid.[2]

The district court then reminded petitioner that court-appointed counsel was present as standby counsel even though petitioner did not want that attorney to represent him, and the court reiterated to petitioner the dangers of self-representation. 1 C.A. App. 78-79. The court explained: "Jury trials are very difficult. * * * That's stuff that's very complicated and it's a lot better for you to have the assistance of counsel, and that's why I have [court-appointed counsel] here today." Ibid. When asked if he understood, petitioner answered that he did not "understand any of that," and followed up by informing the court that what he did not understand in particular was court-appointed counsel "being here." Id. at 79. The court again asked petitioner if he wanted court-appointed counsel to represent him, and petitioner answered, "I still want D. Maurice Parham Bey." Ibid. The court responded that Parham Bey "is not an attorney so he can't represent you." Id. at 80. The court then asked petitioner, "I just need a yes or no. Do you want [court-appointed counsel] to represent you?" Ibid. When petitioner responded, "No," the court

[2] Parham Bey was ultimately removed from the courtroom by U.S. Marshals after ignoring the court's instructions and being disruptive. See 1 C.A. App. 145-146.

informed him that court-appointed counsel "is over there if you change your mind. Okay?" Ibid. Petitioner replied, "No." Ibid.

Petitioner prepared an opening statement, which his stand-by counsel read to the jury, that began by explaining, "I do not represent Derek Levert Hall." 1 C.A. App. 141-142; 2 C.A. App. 20. Stand-by counsel was the one to address the jury during the trial, but counsel informed the district court while the jury was deliberating that petitioner had allowed him to ask only the questions that petitioner provided, not counsel's own questions. See Pet. 8. The jury found petitioner guilty on all three counts. See Judgment 1.

4. On May 23, 2019, the district court held a sentencing hearing in which petitioner again appeared pro se. 2 C.A. App. 166-167. The court "urge[d]" petitioner to "reconsider" his decision to proceed pro se rather than have his previous court-appointed counsel represent him. Id. at 167. The court also offered to allow another 30 days to offer objections to the presentence report if petitioner decided that he wanted court-appointed counsel to represent him. Id. at 167-168. Petitioner replied, "I [am] still going to represent myself." Id. at 168.

Because petitioner had not had the presentence report for the required 35 days, see generally Fed. R. Crim. P. 32(e)(2), sentencing was rescheduled. See 2 C.A. App. 177. A second

sentencing hearing was held on September 26, 2019. Id. at 181-204. At that hearing, petitioner allowed a public defender to represent him. Ibid. Petitioner was sentenced to a total of 480 months of imprisonment, to be followed by 15 years of supervised release. Judgment 2.

5. The court of appeals affirmed. Pet. App. 1a-10a.

The court of appeals found that petitioner had voluntarily, knowingly, and intelligently waived his right to counsel. See Pet. App. 6a. The court recognized that, before permitting a defendant to represent himself, a district court must verify that the defendant's decision is knowing and voluntary and that the defendant understands "the dangers of proceeding pro se." Id. at 7a-8a (quoting United States v. Garey, 540 F.3d 1253, 1267 (11th Cir. 2008) (en banc), cert. denied, 555 U.S. 1144 (2009)). The court of appeals also observed that an indigent defendant "does not have the right to demand that a different lawyer be appointed except for good cause," and explained that "[w]hen a defendant, expressly or implicitly, rejects both appointed counsel and self-representation, the district court may determine that he has waived his right to appointed counsel." Id. at 6a-7a.

The court of appeals then "consider[ed] eight factors * * * to determine whether [petitioner's] waiver of counsel was knowing and voluntary," and it determined that, "on this record, * * *

the [district] court did enough." Pet. App. 7a-9a. The court of appeals observed that the district court had "attempted to explain to [petitioner] the dangers of proceeding with his jurisdictional defense"; "had the prosecutor read [petitioner] the charges against him and explained the charges to [petitioner] and that the charges carried a possible life sentence"; and had "made it clear" to petitioner that, if he insisted on rejecting his appointed counsel, "his only remaining options were representing himself [or] finding another licensed attorney." Id. at 9a. The court of appeals then observed that petitioner had "remained uncooperative throughout the pretrial hearing, asserting that he wasn't subject to the jurisdiction of the United States[,] * * * claiming that he wasn't Derek Levert Hall but Derek Levert Hall-Bey, and refusing to acknowledge that he understood the charges against him or anything that the court was telling him." Ibid.

The court of appeals determined that "[t]he district court did all that it could to inform an uncooperative defendant of the dangers of proceeding without licensed counsel and assured itself that [petitioner] understood the choices before him, knew the potential dangers of proceeding pro se, and rejected his appointed attorney." Pet. App. 9a. And the court of appeals noted that the district court "ensured that [petitioner] was able to subpoena witnesses and made [court-appointed counsel] standby counsel so

that [petitioner] would have an attorney as a resource both leading up to and during trial." Id. at 10a. The court of appeals accordingly found that "the record establishes that [petitioner] knowingly and voluntarily waived his right to counsel and elected to represent himself." Ibid.

ARGUMENT

Petitioner renews his contention (Pet. 11-15) that the district court erred by conducting the trial with court-appointed counsel as standby counsel, following express warnings that petitioner's rejection of his appointed counsel required him to find another licensed attorney or else represent himself, and its colloquy to establish that petitioner was competent to do so. The court of appeals' decision is correct and does not conflict with any decision of this Court or another court of appeals. This Court has previously denied petitions for a writ of certiorari raising similar issues, see Mesquiti v. United States, 138 S. Ct. 421 (2017) (No. 17-5164); Garey v. United States, 556 U.S. 1258 (2009) (No. 08-8487), and the same course is warranted here.

1. The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defence." If the defendant cannot afford an attorney, the government must provide one to represent him. See Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

But an indigent defendant has no right to counsel of his choosing. See Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 624 (1989); see also United States v. Gonzalez-Lopez, 548 U.S. 140, 144 (2006).

As with most other constitutional rights, a defendant can waive his Sixth Amendment right to counsel, so long as the waiver is knowing, voluntary, and intelligent. See, e.g., Iowa v. Tovar, 541 U.S. 77, 87-88 (2004); Patterson v. Illinois, 487 U.S. 285, 292-293 (1988). A defendant's "waiver of his right to counsel is 'knowing' when he is made aware" of "the usefulness of counsel to the accused at the particular proceeding, and the dangers to the accused of proceeding without counsel." Patterson, 487 U.S. at 298. A waiver is "intelligent" when the defendant "'knows what he is doing and his choice is made with eyes open.'" Tovar, 541 U.S. at 88 (quoting Adams v. United States ex rel. McCann, 317 U.S. 269, 279 (1942)); see ibid. (noting that whether a waiver is "intelligent" will "depend on a range of case-specific factors"). And whether a defendant's waiver of a constitutional right was "'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973) (discussing Fourth Amendment rights); see Brady v. United States, 397 U.S. 742, 749 (1970) ("The voluntariness of

Brady's plea can be determined only by considering all of the relevant circumstances surrounding it.").

This Court has held that a defendant who is competent to execute a knowing and voluntary waiver of counsel and has the capacity to represent himself during the necessary proceedings must be permitted to waive the right to counsel if he wishes to do so. See Indiana v. Edwards, 554 U.S. 164, 169-174 (2008) (explaining Faretta v. California, 422 U.S. 806 (1975), and Godinez v. Moran, 509 U.S. 389 (1993)). It follows that, as "[t]he lower courts uniformly agree," Pet. 16, if a defendant is provided competent, conflict-free counsel and cannot obtain a substitute attorney, the defendant must either accept the government-provided lawyer or waive the right to counsel and proceed pro se.

2. The court of appeals correctly applied those principles to the facts of this case. The court carefully reviewed the record, which showed that petitioner's waiver of his right to counsel was knowing, intelligent, and voluntary. Pet. App. 9a-10a.

The district court clearly explained to petitioner the consequences of his decision to refuse the assistance of his court-appointed counsel: petitioner would be required to find another licensed attorney, and if he could not, to represent himself. See, e.g., Pet. App. 16a (court instructing petitioner that, "[i]f you decide you want to represent yourself, you can do that. But if

* * * your advisor shows up * * * and your advisor * * * is not licensed to practice, then they are not going to be allowed to represent you and you are going to be stuck by yourself in [the] case"). Despite that clear instruction and the district court's warning of the potential dangers of proceeding pro se, petitioner continued to insist on dismissing his appointed attorney. When, for example, the court granted petitioner's request to no longer be represented by that attorney, the court asked if petitioner had any "questions whatsoever * * * about what it would mean to you to not have court-appointed counsel to help you or anything." Petitioner replied, "You answered all the questions I need to know." Id. at 38a-39a. The court also conducted a colloquy to assess petitioner's background and experience with legal proceedings and the law generally, in order to ensure that petitioner understood the charges against him and was competent to represent himself. See pp. 7-8, supra. At the end of the hearing, the court informed petitioner that "I will allow you to represent yourself," and petitioner made no objection. Pet. App. 39a.

On the first day of trial, Parham Bey stated that he was not a licensed attorney, and the district court again offered petitioner the opportunity to be represented by court-appointed counsel rather than to proceed pro se. See pp. 8-10, supra. Petitioner unequivocally refused to accept appointed counsel's

representation, and instead had that attorney (acting as stand-by counsel) read a statement to the jury stating that he "d[id] not represent" petitioner. See 1 C.A. App. 141-142; 2 C.A. App. 20; see p. 10, supra.

Those circumstances, in combination with the pretrial proceedings, support the court of appeals' determination that petitioner's waiver of his right to counsel was knowing, intelligent, and voluntary.

3. Petitioner errs in asserting (Pet. 15-20 & n.5) that the court of appeals' decision conflicts with decisions of the First, Third, Fourth, Fifth, Eighth, and Tenth Circuits. The courts of appeals broadly agree that a defendant can waive his right to counsel by rejecting his court-appointed counsel when it is clear to the defendant that the alternative is to proceed pro se. See, e.g., United States v. Kneeland, 148 F.3d 6, 11-12 (1st Cir. 1998) (defendant validly waived his right to counsel by dismissing his third court-appointed attorney after being cautioned that the court would not appoint a fourth, even though defendant also said that he did not want to proceed pro se); McKee v. Harris, 649 F.2d 927, 929-931 (2d Cir. 1981) (same, when defendant insisted on dismissing his appointed attorney), cert. denied, 456 U.S. 917 (1982); United States v. Fields, 483 F.3d 313, 350 (5th Cir. 2007) ("[A] defendant's refusal without good cause to proceed with able

appointed counsel constitutes a voluntary waiver of that right." (quoting Richardson v. Lucas, 741 F.2d 753, 757 (5th Cir. 1984)), cert. denied, 552 U.S. 1144 (2008); United States v. Green, 388 F.3d 918, 922 (6th Cir. 2004) (unreasonable insistence on hybrid representation "functioned as a valid waiver of the right to counsel"); United States v. Oreye, 263 F.3d 669, 670 (7th Cir. 2001) ("Oreye never said he wanted to proceed pro se, but a defendant can waive his right to counsel through conduct as well as words."), cert. denied, 535 U.S. 933 (2002); Meyer v. Sargent, 854 F.2d 1110, 1111, 1114 (8th Cir. 1988) (decision to seek removal of a counsel during trial "cannot be termed anything other than a voluntary waiver of his right to have counsel represent him" even though defendant insisted "I don't wish to represent myself"); Kates v. Nelson, 435 F.2d 1085, 1085-1087, 1089 (9th Cir. 1970) (defendant waived his right to counsel by discharging counsel on the first day of trial and then refusing to represent himself); United States v. Garey, 540 F.3d 1253, 1266 (11th Cir. 2008) (en banc) ("[A] defendant may waive counsel by his uncooperative conduct as well as by his express request."), cert. denied, 555 U.S. 1144 (2009); see also United States v. Kosow, 400 Fed. Appx. 698, 702 (3d Cir. 2010) (defendant knowingly and intelligently waived the right to counsel by conduct when defendant "fired or alienated" multiple attorneys after being warned that

unreasonable demands of his attorneys would constitute waiver); United States v. Sayan, 968 F.2d 55, 65 (D.C. Cir. 1992) ("[W]hile her case was pending, Sayan dismissed at different times two court appointed lawyers who were prepared to try the case. In dismissing these lawyers, she may have waived by implication her right to counsel.") (footnote omitted) (citing United States v. Moore, 706 F.2d 538, 540 (5th Cir.), cert. denied, 464 U.S. 859 (1983)).

The decisions that petitioner proffers as illustrating that a defendant's waiver of the right to counsel must be clear, see Pet. 17-18 & n.5, do not demonstrate that any court would grant relief in this case. Two of those decisions -- United States v. Long, 597 F.3d 720 (5th Cir. 2010), cert. denied, 561 U.S. 1034 (2010), and United States v. Miles, 572 F.3d 832 (10th Cir. 2009) -- rejected claims that a defendant was denied his right to self-representation. See Long, 597 F.3d. at 722-729; Miles, 572 F.3d at 833-837. And the cases that did grant relief for the denial of the right to counsel are circumstance-specific and do not show that the court would treat petitioner's unequivocal statements here -- refusing to be represented by appointed counsel even after being informed that the only alternative would be to proceed pro se -- as something less than a clear waiver.[3]

[3] See United States v. Proctor, 166 F.3d 396, 400 (1st Cir. 1999) (defendant re-invoked his right to counsel, after having refused his appointed counsel, by stating "at this point, why don't

Petitioner invokes, for example, the Fourth Circuit's statement in United States v. Ductan, 800 F.3d 642 (2015) (per curiam), that a defendant cannot "validly waive the right to counsel by conduct or implication." See id. at 650. In Ductan, however, the defendant "repeated throughout the proceedings that he planned to hire private counsel, did not want to represent himself, and did 'not want to waive his Sixth Amendment right to private counsel,'" id. at 647 (brackets and citation omitted), yet the magistrate judge concluded that the defendant "had 'forfeited his right to counsel in this matter,"' id. at 651 (emphasis added; citation omitted). The Fourth Circuit emphasized that the right to counsel cannot be forfeited and cannot "be relinquished by means short of waiver." Id. at 649. But nothing in Ductan shows that petitioner's statements here, expressly declining representation by court-appointed counsel, should not be treated as a deliberate waiver of the right to counsel.

I go ahead and get another lawyer and -- because this is just too confusing for me anymore") (emphasis omitted); Fischetti v. Johnson, 384 F.3d 140, 145-147 (3d Cir. 2004) (defendant refused to continue representation by his court-appointed counsel but "also refused to represent himself," and the district court never warned defendant "that his refusal to proceed with his appointed counsel would result in losing counsel altogether"); United States v. Brown, 956 F.3d 522, 523-524 (8th Cir. 2020) (defendant repeatedly sought to dismiss his court-appointed counsel and proceed pro se, only to change his mind each time and request re-appointment of counsel).

Allowing district courts to proceed to trial in circumstances like this case prevents defendants from manipulating the trial courts' process and the right to counsel, and avoids placing the courts in an untenable position in which no course is viable. Proceeding under these circumstances is also fully consistent with this Court's decisions. Although the Court has held that a waiver of the right to counsel must be knowing, intelligent, and voluntary, see, e.g., Godinez, 509 U.S. at 400, the Court has never held that an express oral invocation is the only way that a defendant can execute a waiver. Indeed, the Court made clear in its pathmarking decision in Faretta that, in the converse situation -- a criminal defendant's waiver of the right to proceed pro se -- the waiver can be effected by conduct. See 422 U.S. at 834 n.46 ("[T]he trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct.") (citing Illinois v. Allen, 397 U.S. 337 (1970)); accord Edwards, 554 U.S. at 171. And here, the district court's repeated warnings to petitioner, combined with its insistence that petitioner clearly state his refusal to be represented by appointed counsel, were more than sufficient to demonstrate that petitioner "kn[ew] what he [was] doing and [that] his choice [was] made with eyes open." Faretta, 422 U.S. at 835 (citation omitted).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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