No. 23-_____

IN THE
SUPREME COURT OF THE UNITED STATES

SANDRA DENISE CURL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner, who lacked a high school diploma and who suffered from post-traumatic stress disorder (but was not taking her prescribed medication), purported to waive her Sixth Amendment right to trial counsel in a pretrial colloquy with the district judge conducted on Zoom. At the time of the colloquy, petitioner had not yet been arraigned on the complex tax fraud charges in the 18-page indictment, and there was no indication that she had discussed the charges with her court-appointed counsel except briefly at petitioner's initial appearance nine months before. At that initial appearance, petitioner had expressed confusion about the charges when the magistrate judge had asked her whether she understood them.

During petitioner's subsequent waiver colloquy with the district judge, the district judge failed to inquire whether petitioner understood the elements of the charges; failed to assure that petitioner understood that the maximum "years" of penalties that she faced were years of *imprisonment* (as opposed to years of probation); and failed to inquire about petitioner's education level and her mental health history (despite the fact that the magistrate judge had ordered a mental health assessment as a condition of petitioner's release on bail and despite two bizarre *pro se* filings by petitioner by that point – one of which indicated that petitioner believed she faced *civil* rather than criminal charges).

The questions presented are:

I. Whether, for a waiver of the Sixth Amendment right to trial counsel to be effective, a defendant must understand the elements of the charged offenses – as part of the defendant's understanding of the "nature of charges," *Von Moltke v. Gillies*, 332 U.S. 708, 724 (1948) (plurality op.)); *cf. Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) ("Where a defendant pleads guilty to a crime without having been informed of the crime's elements, th[e] [due process] standard is not met and the plea is invalid.")

II. Whether a trial judge must provide *unambiguous* information about the maximum criminal penalties that a defendant faces upon conviction before accepting the defendant's waiver of her right to trial counsel.

III. Whether, when the record indicates that a criminal defendant has mental illness, a trial judge must make specific inquiries about the defendant's mental health history before accepting the defendant's waiver of her right to trial counsel.

IV. Whether a trial judge must address the factors set forth in the plurality opinion in *Von Moltke, supra*, in a waiver colloquy in order for a defendant's waiver of the Sixth Amendment right to counsel to be valid.

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Percy Leroy Jacobs & Sandra Denise Curl*, No. 8:19-cr-444, United States District Court for the District of Maryland. Judgment entered on February 4, 2023.

- *United States v. Percy Leroy Jacobs & Sandra Denise Curl*, Nos. 23-4122 & 23-4123, United States Court of Appeals for the Fourth Circuit. Judgment entered on April 23, 2024.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Sandra Curl petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Court of Appeals' opinion (App. A) is unreported but is available at 2024 WL 1736700. The Court of Appeals' order denying rehearing *en banc* (App. B) is unreported.

JURISDICTION

The Court of Appeals entered its opinion and judgment on April 23, 2024. The Court of Appeals denied rehearing *en banc* on May 28, 2024. This petition has been filed within 90 days of the latter date. *See* Sup. Ct. R. 13.1 & 13.3. This Court thus has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION INVOLVED IN THIS CASE

The Sixth Amendment to the U.S. Constitution provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defen[s]e." U.S. Const. Amend. VI.

STATEMENT OF THE CASE

A. Procedural History

On September 25, 2019, in an 18-page indictment, a federal grand jury charged petitioner and a codefendant, Percy Jacobs, with multiple felony offenses related to their filing of income tax returns. JA40.[1] Both petitioner and Jacobs, who represented themselves at a jury trial presided over by former U.S. District Judge George Hazel, were convicted by the jury on March 22, 2022. JA27. On February 23, 2023, Judge Hazel sentenced both petitioner and Jacobs to terms of 30 months in the Federal Bureau of Prisons. JA34.

After Judge Hazel retired from the bench, a new district judge, the Honorable Lydia Kay Griggsby, granted petitioner release on bail pending appeal. Judge Griggsby concluded that the petitioner's challenge to the validity of her waiver of the right to counsel at trial was a "substantial question" under 18 U.S.C. § 3143(b), the federal bail statute. JA1509.

[1] "JA" refers to the Joint Appendix filed in the court below.

On April 23, 2024, without conducting an oral argument, a three-judge panel of the Court of Appeals affirmed the convictions of petitioner and Jacobs in a short unpublished opinion. Appendix A.

B. Relevant Facts

At the time of her *Faretta* hearing, petitioner was a 55-year-old woman who had dropped out of high school in the twelfth grade (and who never obtained a high school diploma or a GED). JA1562, JA1571. She also had been diagnosed with Post-Traumatic Stress Disorder (PTSD), had been seeing a physician for that condition on a weekly basis, and had been prescribed medication for it (which she had never taken). JA1571. She had two prior criminal convictions from the mid-1980s (both resulting from guilty pleas) – for (1) bad checks and (2) grand theft in state court in Prince George's County, Maryland. JA1567.

On November 25, 2019, petitioner made her initial appearance before a federal magistrate judge, qualified for appointed counsel, and was assigned a public defender. JA9-10. On that same day, petitioner was released on bail with the condition that she "submit to a mental health assessment" based on her PTSD diagnosis. JA59. (The judgment signed by Judge Hazel after he sentenced petitioner similarly includes the condition of petitioner's supervised

release that she "must participate in a mental health treatment program. . . ." JA1497.)

At petitioner's initial appearance, the federal magistrate judge asked the prosecutor to summarize the charges in the indictment. The prosecutor did so and also stated the maximum penalties, including the terms of imprisonment per charge, that petitioner faced. JA63-65. After the prosecutor explained the charges and penalties, the magistrate judge asked petitioner whether she understood the charges, to which she replied: "I'm not understanding." JA65. Petitioner then conferred with the public defender who had just been appointed to represent her. The magistrate judge then asked, "do you understand what it is the Government is claiming you've done wrong," to which petitioner responded, "To a certain degree." JA65. The magistrate judge stated, "A lot of it flows from their belief that you've done something naughty with taxes." JA65. The magistrate judge next asked petitioner whether she suffered "from any mental illness, injury or illness that may affect your judgment," to which Curl responded, "No, sir." JA66. However, both the prosecutor and pretrial services officer recommended "mental health treatment" for petitioner based on her PTSD. JA66-67. The magistrate judge ruled that a mental health assessment would be a condition of petitioner's release on bond. JA69.

Two weeks later, on December 6, 2019, another public defender who had taken over petitioner's case sent a letter to Judge Hazel, asking him to conduct a "hearing pursuant to *Faretta*" because petitioner wished to represent herself. JA74. The *Faretta* hearing, which took place on Zoom, did not occur until over nine months later, on August 12, 2020. JA86.

During the nine-month period between the public defender's letter and the *Faretta* hearing, petitioner was never arraigned on the charges in the indictment. Instead, she was arraigned only *after* the *Faretta* hearing. JA101. The only relevant events on the docket sheet between the time of the public defender's letter and the *Faretta* hearing over nine months later were two utterly bizarre *pro se* filings by petitioner. The first was on December 4, 2019, entitled "MOTION FOR LIMINE GROUNDS FOR DISMISSAL DEFECTIVE WARRANT." JA73. That *pro se* pleading stated that:

> Whereas, I, Sandra Kenan,[2] (HEREINAFTER and at "All" times when "I" is used it will mean Sandra Kenan acting on behalf of and not as a named party) acting on behalf of the named parties and not be a Bar Attorney or educated in any law school to interrupted your language and in the communication as terms of words as pointed out by President Clinton, in his impeachment on the word "is" and it depend on what the word is, is.
>
> 1. I, move this court on behalf of the defendant to have a LIMINE placed on all evidence and all claims toward the defendant suppressed and dismissed as the Warrant issued on 08/9/2016 by

[2] Kenan is petitioner's married name (which she currently uses instead of Curl). JA1570.

> U.S. "Magistrate Judge Thomas M. DiGirolamo" to be served before Aug 23, 2016 TMD 16-2029 was defective.

JA73.

Petitioner's second bizarre filing, on July 13, 2020 – a month before the *Faretta* hearing – was a *pro se* pleading entitled, "MOTION TO TRANSER THIS CASE TO THE UNITED STATES FEDERAL COURT OF CLAIMS PURSUANT TO 28 U.S. Code 1292(4)b." JA83. That motion, which referred to the United States as a "Plaintiff Bankrupt Debtor" and petitioner as "Defendant Creditor," asked that her federal criminal case in the District of Maryland be transferred to the Federal Court of Claims (which, of course, does not have jurisdiction over criminal cases). *Id.* Clearly, in that pleading, petitioner erroneously believed that her case was civil (as opposed to criminal) in nature.

A *Faretta* hearing finally occurred on August 12, 2020. JA86. The transcript of that hearing shows, among other things, that:

> • Judge Hazel asked petitioner whether she had ever "represented yourself before in any criminal proceeding," to which petitioner (inaccurately) responded that she had represented herself at a "trial" in state district court "many, many years ago." JA90-91. In fact, petitioner never had represented herself at a previous "trial."[3]

[3] All of her prior criminal charges were resolved with guilty pleas or were dismissed without a trial. JA1567-1568. A review of the pretrial services report, which included petitioner's

• Judge Hazel asked the prosecutor to "read off the charges." The prosecutor responded by stating: "She has been charged with conspiracy to defraud the United States under 18 U.S.C. Section 371; also with aiding and assisting the preparation of a false return on a number of counts under 26 U.S.C. 7206(2); also with theft of government property under 18 U.S.C. 641; and aiding and abetting, 18 U.S.C. Section 2, and then various forfeiture-related counts." *Id.* at 6. Judge Hazel asked petitioner whether she understood the fact that she was "charged with those counts" – as opposed to asking her whether she understood the *nature* of those charges – to which she responded, "Yes." JA91.

• Judge Hazel asked the prosecutor to advise petitioner of the "maximum penalty for those counts," to which the prosecutor responded: "For Section 371, it's five years; for Section 7206(2), it's three years; and for the Section 641 charge, it's 10 years." JA92. The prosecutor never clarified that "years" meant years of "prison," "imprisonment," or "incarceration." In response to Judge Hazel's question, petitioner responded that she understood the potential penalties. JA92.[4]

Judge Hazel found that "the defendant has knowingly and voluntarily waived the right to counsel . . . and that she is, in fact, competent to make this decision. I will, therefore, permit this defendant to represent herself." JA95.

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criminal history, would have given Judge Hazel the basis to question petitioner about the meaning of a "trial."

[4] The presentence report reflects that both times that she was convicted in the past (including for a state felony offense), petitioner's incarceration sentences were *fully suspended* and she was placed on probation (a sentencing procedure that does not exist in the federal system). JA1567-1568.

Significantly, the transcript of Judge Hazel's Zoom colloquy with petitioner, which primarily consisted of yes-or-no-type questions, shows that Judge Hazel did *not* ask petitioner:

> • Whether petitioner had any level of formal education (including whether she had a high school diploma or GED) – instead, only asking her whether she had ever "studied law" (JA 89-90);
>
> • Whether petitioner could read and write the English language in a manner that would permit her to represent herself (and whether she herself had written the two bizarre *pro se* pleadings mentioned above);
>
> • Whether petitioner suffered from any mental health or physical health condition that affected her ability to represent herself (despite the fact that the magistrate judge's bond conditions required a mental health assessment);
>
> • Whether petitioner understood the *elements* of the charged tax offenses, including the heightened "willfulness" *mens rea* required by *Cheek v. United States*, 498 U.S. 192 (1991); and
>
> • Whether petitioner understood that the potential "sentence" that she faced upon conviction was a *prison* sentence (as neither Judge Hazel nor the prosecutor ever referred to "prison" or "imprisonment" or any similar word in describing the "years" mentioned by the prosecutor in summarizing the maximum "penalty" that petitioner faced).

On appeal, petitioner, represented by appointed counsel, and Jacobs, who was separately represented, contended that their purported waivers of the right to counsel were invalid based on numerous deficiencies in the waiver colloquys conducted by Judge Hazel. The three-judge panel of the Court of Appeals rejected their arguments without mentioning the specific deficiencies

identified in their consolidated opening and reply briefs:

> Here, the district court had the Government review the charges against Appellants and the maximum potential penalties, which Appellants confirmed they understood. The court warned Appellants of the risks of proceeding *pro se* and advised them that it would be in their best interests to continue being represented by counsel. And it confirmed Appellants were freely and voluntarily choosing to relieve counsel and proceed *pro se*. The colloquies satisfied the district court's obligation to ensure Appellants' waivers of their right to counsel were knowing, intelligent, and voluntary. On the facts of these cases, no more searching inquiry was required.

Appendix A, at 4-5.

Although petitioner's briefs extensively addressed several specific defects in Judge Hazel's waiver colloquy – including (1) his failure to discuss the elements of the charged offenses, (2) his failure to inquire about petitioner's mental illness history, and (3) his failure to provide an unambiguous explanation of the penalties that petitioner faced[5] – the Fourth Circuit's opinion did not mention those specific defects.

[5] *See* Appellants' Corrected Consolidated Opening Brief, Nos. 23-4122 & 23-4123, 2023 WL 4996016, at *16-*42 (4th Cir.; filed July 26, 2023).

REASONS FOR GRANTING THE PETITION

This Court Should Grant Certiorari in Order to Resolve the Wide Division Among the Lower Courts Concerning the Content of a Colloquy Required to Assure a Valid Waiver of a Criminal Defendant's Sixth Amendment Right to Trial Counsel and also to Clarify Confusion Concerning the Factors Set Forth in the Plurality Opinion in *Von Moltke v. Gillies*, 332 U.S. 708 (1948).

Since this Court's 1975 decision in *Faretta v. California*, 422 U.S. 806 (1975), which permitted criminal defendants to represent themselves at trial, the lower courts increasingly have been divided over the question of what information a trial judge must convey to a criminal defendant who wishes to waive her right to trial counsel in order for the defendant's waiver to be constitutionally valid. *See, e.g.*, *McDowell v. United States*, 484 U.S. 980, 980 (1987) (White, J., joined by Brennan, J., dissenting from the denial of certiorari) (discussing the division among state and federal appellate courts concerning the type of colloquy required by *Faretta* when a defendant wishes to represent herself at trial). The disagreements among the lower courts include whether the factors identified by the plurality in *Von Moltke v. Gillies*, 332 U.S. 708 (1948),[6] are mandatory factors to be addressed by a trial judge in

[6] "To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a

a waiver colloquy with the defendant. As discussed below, petitioner's case presents this Court with an excellent vehicle to address the recurring and important questions concerning the required content of a *Faretta* waiver colloquy.

I. The Fourth Circuit's Approval of Judge Hazel's Flawed Waiver Colloquy Conflicts with Decisions of Both this Court and Three Other U.S. Courts of Appeals.

In petitioner's case, Judge Hazel did not satisfy "the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver [of the right to counsel] by the accused;" his insufficient questioning thus failed to overcome the "strong presumption against waiver of the constitutional right to counsel." *Von Moltke*, 332 U.S. at 723; *see also Faretta v. California*, 422 U.S. 806, 835 (1975) ("When an accused manages his own defense, he relinquishes . . . many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently' forgo those relinquished benefits.") (citing, *inter alia*, *Von Moltke*).

Only a colloquy with "a penetrating and comprehensive examination of all the circumstances" by the trial judge permits a reviewing court to determine

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penetrating and comprehensive examination of all the circumstances under which such a plea is tendered." *Von Moltke*, 332 U.S. at 724.

that this strong presumption has been rebutted. *Von Moltke*, 332 U.S at 724. As this Court has stated: "[R]ecognizing the enormous importance and role that an attorney plays at a criminal trial, we have imposed the most rigorous [requirements concerning] the information that must be conveyed to a defendant, and the procedures that must be observed, before permitting him to waive his right to counsel at trial." *Patterson v. Illinois*, 487 U.S. 285, 298 (1988) (citing *Faretta* and *Von Moltke*).

Although this Court has not "prescribed any formula or script to be read to a defendant who states that he elects to proceed without counsel," this Court has held that the "information a defendant must possess in order to make an intelligent election . . . depend[s] on a range of case-specific factors, including the defendant's education or sophistication [and] the complex or easily grasped nature of the charge . . . ." *Iowa v. Tovar*, 541 U.S. 77, 88 (2004).

Judge Hazel's colloquy with petitioner – who lacked a high school diploma and GED and had untreated mental health issues and who faced complex federal tax offenses charged in the 18-page indictment (JA40-JA57) – failed to satisfy the "rigorous" requirements required by this Court's precedent. The Fourth Circuit's decision also conflicts with decisions of other circuits, as discussed below.

Among other things, before accepting their waivers of the right to

counsel, Judge Hazel failed:

> (1) to inquire about petitioner's mental health issues or her level of formal education or literacy – despite evidence in the existing record that petitioner had a mental health diagnosis and had filed nearly incomprehensible *pro se* pleadings;
>
> (2) to explain the elements of the charged offenses – a procedure which the Tenth Circuit requires in a *Faretta* colloquy (in order to assure a defendant understands the "nature" of a charged offense), *United States v. Hamett*, 961 F.3d 1249, 1257 (10th Cir. 2020), and which this Court requires in an analogous context, *see Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) ("Where a defendant pleads guilty to a crime without having been informed of the crime's elements, this [due process] standard is not met and the plea is invalid."); [7]
>
> (3) to assure that petitioner, *who had not yet been arraigned on the indictment*,[8] understood even the general nature of the complex criminal tax charges – about which she previously had expressed confusion at her initial appearance and in her *pro se* filings;[9]

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[7] Although *Bradshaw* addressed the requirements of a valid guilty-plea colloquy rather than a *Faretta* colloquy, the requirements should be the same for both. Indeed, during a typical guilty-plea colloquy, the defendant has been represented by counsel and presumably already has had the elements explained by his or her counsel. Such an assumption cannot be fairly made in the *Faretta* context, at least where a defendant (like each appellant here) had moved to proceed *pro se* from an early stage of the case. Therefore, the requirement that the court explain the elements of the charged offenses applies *a fortiori* in the *Faretta* context.

[8] At the arraignment that occurred immediately after her *Faretta* hearing, petitioner objected to proceeding with the arraignment on the ground that she did not have the indictment with her – stating "I wasn't aware that we were doing an arraignment today." JA102. She then stated: "However, under duress, I will say not guilty." JA102. It is thus unclear that, when Judge Hazel had asked petitioner during the *Faretta* hearing about the charges, she actually had read the 18-page indictment or had discussed its contents with her public defender.

[9] At petitioner's initial appearance, she told the magistrate judge that she did not fully understand the nature of the charges even after briefly conferring with the public defender whom she just had met. JA65. The magistrate judge took no steps to assure that petitioner understood the charges. Also notable is that petitioner's second *pro se* filing before the *Faretta* hearing indicates that she believed that her case should be transferred to the Federal

(4) to assure that appellants understood potential defenses to the complex tax charges (including a lack of a "willfulness" *mens rea*, *see Cheek*, 498 U.S. 192), *see Von Moltke*, 332 U.S. at 724 ("To be valid such waiver must be made with an apprehension of . . . possible defenses to the charges and circumstances in mitigation thereof . . . ."); and

(5) to "unambiguously" explain to petitioner that she faced potential *imprisonment*, as the Eleventh Circuit requires, *United States v. Hakim*, 30 F.4th 1310, 1324-25 (11th Cir. 2022).[10]

Furthermore, these deficiencies in the waiver colloquy were exacerbated by Judge Hazel's use of simple yes-or-no questions. *See Wilkins v. Bowersox*, 145 F.3d 1006, 1012 (8th Cir. 1998) ("While Wilkins' simple 'yes' and 'no' answers indicated an intention to waive his right to counsel, this does not conclusively establish that his waiver of counsel was valid."). Merely asking

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Court of Claims (JA83) – a court with *civil* jurisdiction only. That suggests she did not understand that she was charged with serious criminal offenses.

[10] As explained *supra*, when Judge Hazel asked the prosecutor to explain the penalties at the *Faretta* hearing, the prosecutor merely referred to "years" but never said "prison" or any other word indicating incarceration. As noted *supra*, in both of petitioner's prior criminal cases, she received no incarceration. Under the circumstances, Judge Hazel failed to adequately convey sufficient information about the potential penalties that petitioner faced. *See Von Moltke*, 332 U.S. at 724 ("To be valid such waiver must be made with an apprehension of . . . the range of allowable punishments thereunder . . . .").

Although nine months beforehand, at petitioner's initial appearance, the prosecutor there provided accurate information about the maximum penalties associated with the charges, the magistrate judge did *not* then ask petitioner whether she *understood* those maximum penalties. JA64-65. Instead, the magistrate judge only asked her whether she understood the nature of the "allegations" and "the charges they're bringing against you" and whether she understood "what it is the Government is claiming you've done wrong." JA65. In addition, as noted above, the record of the initial appearance shows that petitioner expressed misunderstanding about the nature of the charges – which indicates she also may not have understood the penalties mentioned by the prosecutor.

yes-or-no type questions fails to accomplish the "penetrating and comprehensive examination" required for there to be a constitutionally valid waiver of the Sixth Amendment right to counsel. *Von Moltke*, 332 U.S at 724.

The Fourth Circuit's approval of Judge Hazel's *Faretta* colloquy with petitioner conflicts with decisions of these other circuits and also failed to satisfy the "rigorous" requirements set forth many decades ago in *Von Moltke*.

Significantly, the lower federal and state courts are divided about the precedential value of the plurality opinion *Von Moltke* with respect to the types of information that a trial judge must convey to a defendant wishing to represent herself. *Compare, e.g.*, *United States v. Hamett*, 961 F.3d 1249, 1255-56 (10th Cir. 2020) ("A proper *Faretta* hearing apprises the defendant of the following: 'the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.' [citing prior Tenth Circuit cases] (noting that these factors are known as the "*Von Moltke* factors," as such areas of inquiry are taken from the Supreme Court's opinion in *Von Moltke*, 332 U.S. at 724). . . . Importantly, this court has reiterated that the *Von Moltke* factors 'must be conveyed to the defendant by the trial judge and must appear on the record so that our review may be conducted without speculation.' *United States*

v. Padilla, 819 F.2d 952, 957 (10th Cir. 1987)."); *United States v. Peppers*, 302 F.3d 120, 131-32 (3d Cir. 2002) (requiring district court to address *Von Moltke* factors during a *Faretta* colloquy); *State v. Parsons*, 437 S.W.3d 457, 481 (Tenn. Crim. App. 2011) (noting that the Tennessee Supreme Court in *State v. Northington,* 667 S.W.2d 57, 60 (Tenn.1984), required the *Von Moltke* factors to be addressed during a *Faretta* colloquy), *with United States v. Bailey*, 675 F.2d 1292, 1299 (D.C. Cir. 1982) (refusing to require a trial court to address the *Von Moltke* factors in a *Faretta* colloquy); *Washington v. State*, 539 So.2d 1089, 1092-93 (Ala. Crim. App. 1988) (same); *see also Smith v. Grams*, 565 F.3d 1037, 1046 (7th Cir. 2009) ("The Supreme Court has not provided extensive direction on the nature of the 'rigorous restrictions . . . [and] procedures' that a court must observe before finding valid waiver of a defendant's right to trial counsel. *See [United States v.] Moya-Gomez*, 860 F.2d [706,] 732 [(7th Cir. 1988)]; *see also United States v. Hill*, 252 F.3d 919, 925 (7th Cir. 2001) (expressing doubt 'that any [procedural] list can be mandated'). *But see Von Moltke*, 332 U.S. at 724 (Black, J., plurality opinion) (stating that a valid waiver 'must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter').").

II. Petitioner's Case Presents this Court with An Excellent Vehicle to Offer Needed Guidance to the Lower Courts Concerning a *Faretta* Colloquy When a Defendant Wishes to Represent Herself at Trial.

The conflicts between the Fourth Circuit and the other circuits discussed above are part of a broader division among the lower courts over the type of waiver colloquy required by *Faretta* before a defendant may represent herself at a trial.[11] This division has existed for several decades, as reflected in an opinion dissenting from denial of certiorari by Justice White in 1987. *See McDowell v. United States*, 484 U.S. 980, 980 (1987) (White, J., joined by Brennan, J., dissenting from the denial of certiorari) (discussing the division among state and federal appellate courts concerning the type of colloquy required by *Faretta* when a defendant wishes to waive her right to counsel and represent herself at trial); *see also Dallio v. Spitzer*, 343 F.3d 553, 563 n.4 (2d Cir. 2003) (noting the division among the lower courts); *Buhl v. Cooksey*, 233 F.3d 783, 798 n.17 (3d Cir. 2000) (same); *United States v. Bell*, 901 F.2d 574, 577 n.2 (7th Cir. 1990) (noting "a split in the circuits over the extent of inquiry

[11] In *Iowa v. Tovar*, 541 U.S. 77 (2004), this Court provided guidance concerning a proper *Faretta* colloquy when a defendant waived his right to counsel ***at a guilty-plea proceeding***. But *Tovar* obviously did not provide guidance about the proper colloquy in a case in which a defendant wishes to waive her right to counsel ***at a jury trial*** – particularly one involving complex tax charges (such as the charges set forth in the 18-page indictment in the present case).

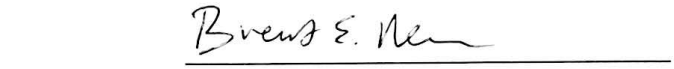
necessary before allowing an accused to waive his right to counsel"; citing cases); *see generally* Wayne R. LaFave *et al.*, 3 CRIM. PROC. § 11.5(c) ("Requisite Warnings and Judicial Inquiry") (4th ed. Dec. 2023 update) (discussing the differing approaches of federal and state appellate courts concerning the requirements of a proper *Faretta* colloquy).

Petitioner's case presents this Court with an excellent vehicle to provide needed guidance about the type of colloquy required when a defendant wishes to waive her Sixth Amendment right to counsel and represent herself at a trial. As discussed above, petitioner's case involves several different issues related to the manner in which a trial judge should conduct a proper *Faretta* colloquy – including the types of questions and warnings required for an undereducated defendant with mental illness; whether a specific advisement about the elements of the charged defenses is required (as is required for a defendant's guilty plea to be constitutionally valid); and whether a trial court must provide unambiguous warnings about the potential criminal penalties that the defendant faces.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari and reverse the judgment of the U.S. Court of Appeals for the Fourth Circuit.

Respectfully submitted,



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