NO._____

# In The
# Supreme Court of the United States

PERCY LEROY JACOBS,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

During petitioner's 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 he faced were years of *imprisonment* (as opposed to years of probation); and failed to inquire about petitioner's education.

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 his right to trial counsel.

III. 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.

IV. Whether the district court violated the Speedy Trial Act.

## 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, Percy Leroy Jacobs, 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, Percy Jacobs, and a codefendant, Sandra Curl, with multiple

felony offenses related to their filing of income tax returns. Both petitioner and Curl, 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. On February 23, 2023, Judge Hazel sentenced both petitioner and Curl to terms of 30 months in the Federal Bureau of Prisons.

**B. Relevant Facts**

At the time of his *Faretta* hearing, petitioner was a 56-year-old man who had dropped out of high school in the twelfth grade (and who never obtained a high school diploma or a GED). He had one prior criminal conviction from 1997 for Loan Fraud in the US District Court for the District of Maryland.

On November 18, 2019, petitioner made his initial appearance before a federal magistrate judge, qualified for appointed counsel, and was appointed an attorney from the court's Criminal Justice Act panel. On that same day, petitioner was released on bail.

On August 5, 2020, the Petitioner's appointed attorney filed a Motion to Withdraw as counsel. As a result of contents of that filing, a *Faretta* hearing was held on August 17, 2020. The arraignment was held on that date also.

The *Faretta* Hearing was deficient in the following ways:

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 he had a high school diploma or GED) – instead, only asking him whether he had ever "studied law";

- Whether petitioner could read and write the English language in a manner that would permit him to represent himself;

- Whether petitioner suffered from any mental health or physical health condition that affected his ability to represent himself;

- 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 he 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).

- Judge Hazel asked the prosecutor to "read off the charges." The prosecutor responded by stating: "He 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 he understood the fact that he was "charged with those counts" – as opposed to asking him whether he understood the *nature* of those charges – to which he responded, "Yes."

- 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." The prosecutor never clarified that "years" meant years of "prison," "imprisonment," or "incarceration." In response to Judge Hazel's question, petitioner responded that he understood the potential penalties.

Judge Hazel found that the defendant had knowingly and voluntarily waived his right to counsel and that he was, in fact, competent to make this decision and allowed the defendant to represent himself.

On appeal, petitioner, represented by appointed counsel, and Curl, who was separately represented, contended that their purported waivers of the right to counsel were invalid based on numerous deficiencies in the waiver colloquies conducted by Judge Hazel. The three-judge panel of the Court of Appeals disagreed and found the waiver by the petitioner to be valid.

On appeal, petitioner, represented by appointed counsel, and Curl, who was separately represented, contended that their purported waivers of the right to counsel were invalid based on numerous deficiencies in the waiver colloquies conducted by Judge Hazel. The three-judge panel of the Court of Appeals rejected their arguments without mentioning the specific deficiencies. 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 the petitioner's educational background, and (3) his failure to provide an unambiguous explanation of the penalties that petitioner faced, the Fourth Circuit's opinion did not mention those specific defects.

## REASONS FOR GRANTING THE PETITION:

## I.

## THE FARETTA ISSUE

**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 his 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 himself 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), are mandatory factors to be addressed by a trial judge in 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.

### A. 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 whether the waiver was knowingly and intelligently made. *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 who faced complex federal tax offenses charged in the 18-page indictment, 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 counsel, Judge Hazel failed:

> (1) to inquire about petitioner's mental health issues or his level of formal education or literacy;
>
> (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.");
>
> (3) to assure that petitioner, understood even the general nature of the complex criminal tax charges – about which he previously had expressed confusion at his initial appearance and in his *pro se* filings;

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

Furthermore, these deficiencies in the waiver colloquy were exacerbated by Judge Hazel's use of simple yes-or-no questions.

The use of yes or no 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 himself. *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 of, and all other facts essential to a broad understanding of the whole matter')."').

### B. 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 Himself 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 himself at a trial. 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 his right to counsel and represent himself 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 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).

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.

## II.

## THE SPEEDY TRIAL ISSUE

**This Court Should Grant Certiorari in Order to ensure that the Constitutional Right to a Speedy Trial is preserved for this Defendant.**

"The trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs." 18 U.S.C. § 3161(c). As noted above, Appellant Jacobs had his initial appearance on November 18, 2019. The trial in this case did not commence until March 21, 2022. Section 3161(h) includes a list of filings or events that toll the 70-day speedy trial "clock." They include: (1) "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion," §

3161(h)(1)(D); and (2) "delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court." 18 U.S.C. § 3161(h)(1)(H).

In this case, the speedy trial "clock" began running on November 18, 2019 when Jacobs had his initial appearance. The sole "pretrial motion" that was filed in the four-month period thereafter was the government's "motion for disclosure" (seeking a protective order concerning taxpayer information), which was filed on December 24, 2019. That motion remained pending until January 7, 2021, when it was orally granted by the district court at a pretrial status conference. Yet, as explained below, because that motion did not require a hearing (and was not granted after a hearing), it only tolled the speedy trial clock for 30 days under § 3161(h)(1)(D). Therefore, the clock began running again on January 24, 2020. Because no additional motions were filed until March 31, 2020 – 67 days later – the total time not tolled between November 25, 2019, and March 31, 2020, was well over 70 days, the Speedy Trial Act was violated.

As Jacob's case was consolidated for trial with Curl's case, there is no difference as to how the Speedy Trial Act should be applied to the two appellants. As discussed above, both appellants consistently objected to the proceedings in the district court as violations of the Speedy Trial Act. Appellant Jacobs's right to a speedy trial was thus violated.

## 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.

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June 5, 2024

NO._____

# In The
# Supreme Court of the United States

PERCY LEROY JACOBS,

*Petitioner,*

**v.**

UNITED STATES OF AMERICA,

*Respondent.*

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

## APPENDIX

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# APPENDIX A

## Opinion of the Court of Appeals Affirming the District Court's Judgment

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 23-4122**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PERCY LEROY JACOBS, a/k/a Percy El Jacobs, a/k/a Percy Jacobs El, a/k/a Minister Percy El Jacobs,

Defendant - Appellant,

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**No. 23-4123**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SANDRA DENISE CURL, a/k/a Sandra Curl Jacobs, a/k/a Sandra Curl-Jacobs El, a/k/a Minister Sandra El,

Defendant - Appellant.

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Appeals from the United States District Court for the District of Maryland, at Greenbelt. George Jarrod Hazel, District Judge. (8:19-cr-00444-GJH-2; 8:19-cr-00444-GJH-1)

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Submitted: December 15, 2023 Decided: April 23, 2024

Before WILKINSON, KING, and RUSHING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

**ON BRIEF:** Brent Evan Newton, Gaithersburg, Maryland; Marc G. Hall, Greenbelt, Maryland, for Appellants. David A. Hubbert, Deputy Assistant Attorney General, S. Robert Lyons, Chief, Criminal Appeals & Tax Enforcement Policy Section, Katie Bagley, Joseph B. Syverson, Hannah Cook, DEPARTMENT OF JUSTICE, Washington, D.C.; Erek L. Barron, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Percy Leroy Jacobs and Sandra Denise Curl[1] (collectively, "Appellants"), appeal their convictions following a jury trial for conspiracy to defraud the United States, in violation of 18 U.S.C. § 371; multiple counts of aiding and assisting the preparation of a false return, in violation of 26 U.S.C. § 7206(2); and aiding and abetting theft of government property, in violation of 18 U.S.C. §§ 2, 641. The district court sentenced them each to 30 months' imprisonment. On appeal, Appellants contend that the district court (1) erred by granting their requests to waive their right to counsel, and (2) violated the Speedy Trial Act, 18 U.S.C. § 3161. Finding no error, we affirm.

Beginning with Appellants' waiver of their right to counsel, "[t]he Sixth Amendment guarantees to a criminal defendant the right to the assistance of counsel before he can be convicted and punished by a term of imprisonment."[2] *United States v. Ductan*, 800 F.3d 642, 648 (4th Cir. 2015). But it also guarantees a defendant's right to self-representation. *Faretta v. California*, 422 U.S. 806, 821 (1975). Thus, a defendant may relinquish the right to counsel upon a valid waiver. A waiver of the right to counsel is valid if it is "(1) clear and unequivocal, (2) knowing, intelligent, and voluntary, and (3) timely." *United States v. Ziegler*, 1 F.4th 219, 226 (4th Cir. 2021) (internal quotation marks omitted).

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[1] Curl also used the name Sandra Kenan during the underlying proceedings.

[2] The parties dispute the standard of review applicable to these claims. We need not resolve this issue because Appellants' arguments fail under their requested standard of de novo review.

"The Supreme Court has not prescribed any formula or script to be read to a defendant who states that he elects to proceed without counsel." *United States v. Roof*, 10 F.4th 314, 359 (4th Cir. 2021) (internal quotation marks omitted). And a court need not conduct a "searching or formal inquiry" for a waiver of the right to counsel to be valid. *Ductan*, 800 F.3d at 649 (internal quotation marks omitted). In other words, "no particular form of interrogation is required" for a valid waiver. *Ziegler*, 1 F.4th at 229 (internal quotation marks omitted).

Accordingly, a district court must simply "assure itself that the defendant knows the charges against him, the possible punishment and the manner in which an attorney can be of assistance, as well as the dangers and disadvantages of self-representation," *Roof*, 10 F.4th at 359 (cleaned up), such that the defendant "knows what he is doing and his choice is made with his eyes open," *Ziegler*, 1 F.4th at 229 (cleaned up). The district court does this "by examining the record as a whole and evaluating the complete profile of the defendant and the circumstances of his decision as known to the . . . court at the time." *Roof*, 10 F.4th at 359 (internal quotation marks omitted).

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.

"We review a district court's decision to exclude time under the Speedy Trial Act de novo and its factual findings for clear error." *United States v. Pair*, 84 F.4th 577, 582 (4th Cir. 2023). "The Speedy Trial Act requires that a criminal defendant's trial commence within seventy days from the filing date of the indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs." *Id.* (cleaned up). However, it also "specifies various periods of delay that are excluded from the speedy trial clock." *Id.* As relevant here, such excludable delay includes any "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." 18 U.S.C. § 3161(h)(1)(D). The filing of a pretrial motion "stops the speedy trial clock from running automatically." *United States v. Tinklenberg*, 563 U.S. 647, 653 (2011).

The parties agree that Appellants' speedy trial clock commenced on November 25, 2019. And Appellants concede that the district court properly tolled all time from March 31, 2020, through the start of their trial. Accordingly, the relevant period for this appeal covers the 127 days from November 25, 2019, to March 30, 2020. Our review of the record reveals that all but 11 days of this period were tolled by Curl's December 6, 2019, motion for a *Faretta* hearing. Contrary to Appellants' contentions on appeal, this filing was a motion within the meaning of § 3161(h)(1)(D). The motion said Curl wished to waive her right to counsel and specifically requested a *Faretta* hearing, and the district court

ultimately granted that request and held a hearing. That hearing was necessary for the district court's resolution of the motion, as the court could not permit Curl to waive her right to counsel without first holding the requested hearing. The filing of this motion thus automatically tolled the speedy trial clock from December 6 through the date of that hearing, which was held after the period Appellants challenge in this appeal. *See United States v. Henderson*, 476 U.S. 321, 326-30 (1986); *see also United States v. Harris*, 491 F.3d 440, 445 (D.C. Cir. 2007); *United States v. Bush*, 404 F.3d 263, 274 (4th Cir. 2005).

We therefore affirm the criminal judgments. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

# APPENDIX B

## Order of the Court of Appeals Denying Rehearing *En Banc*

FILED: May 28, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 23-4122 (L)
(8:19-cr-00444-GJH-2)

---

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

PERCY LEROY JACOBS, a/k/a Percy El Jacobs, a/k/a Percy Jacobs El, a/k/a Minister Percy El Jacobs

Defendant - Appellant

---

No. 23-4123
(8:19-cr-00444-GJH-1)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

SANDRA DENISE CURL, a/k/a Sandra Curl Jacobs, a/k/a Sandra Curl-Jacobs El, a/k/a Minister Sandra El

Defendant – Appellant

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk