No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RAYMOND CRESPO,

Petitioner,

v.

STATE OF NEW YORK,

Respondent.

On Petition for Writ of Certiorari
to the New York Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

"How soon in the criminal proceeding must a defendant decide between proceeding by counsel or pro se?" *Faretta v. California*, 422 U.S. 806, 852 (1975) (Blackmun, J., dissenting).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Raymond Crespo respectfully petitions for a writ of certiorari to review the judgment of the New York Court of Appeals.

OPINIONS BELOW

The decision of the New York Court of Appeals (Pet. App. at 1a-29a) is published at 32 N.Y.3d 176 (2018). The opinion of the New York Appellate Division (Pet. App. at 30a-34a) is published at 40 N.Y.S.3d 423 (2016). The relevant trial court proceedings (Pet. App. at 37a-52a) are unpublished.

JURISDICTION

The New York Court of Appeals entered its judgment on October 16, 2018, (Pet. App. at 29a), making this petition due January 14, 2019. On January 9, 2019, Justice Ginsburg extended the time within which to file this petition to and including February 13, 2019. This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to ... have the Assistance of Counsel for his defence."

The Fourteenth Amendment to the Constitution provides in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

INTRODUCTION

This case raises the important question posed by Justice Blackmun more than 40 years ago: "How soon in the criminal proceeding must a defendant decide between proceeding by counsel or pro se?" *Faretta v. California*, 422 U.S. 806, 852 (1975) (Blackmun, J., dissenting).

This question has since divided many federal appellate courts and state courts of last resort, which have noted the lack of guidance from this Court on the issue. In this case, a bare majority of the New York Court of Appeals held that petitioner's *Faretta* request, made during jury selection, was untimely as a matter of law. Under the rules of many other jurisdictions, however, petitioner's request would have been held timely as a matter of law.

Justice Blackmun's question bears directly on the assertion of a fundamental constitutional right. And it has immediate practical implications for every single criminal defendant considering whether to proceed to trial. The Court should answer Justice Blackmun's important question now.

STATEMENT OF THE CASE

A. Legal Background

A criminal defendant enjoys the right to the assistance of counsel. U.S. Const. Amend. VI. He also enjoys the right to refuse counsel and represent himself, so long as his decision is knowing and voluntary. *Faretta v. California*, 422 U.S. 806, 807 (1975). This self-representation right is "necessarily implied by the structure of the [Sixth] Amendment," which affords a defendant the right to make "his defence," and which relegates to counsel the role of "Assistan[t]." *Id.* at 818-19. That is so because the defendant "suffers the consequences if the defense fails." *Id.* at 820.

The *Faretta* Court said little about the contours of the self-representation right. And because the defendant in *Faretta* made his self-representation request "weeks before trial," *id.* at 835, the Court had no occasion to comment on the extent to which states may abridge the right as untimely asserted.

Justice Blackmun, dissenting in *Faretta*, listed a series of concerns, framed as legal questions, that flowed from the Court's ruling, which he predicted would either "be answered with finality in due course" or "haunt the trial of every defendant who elects to exercise his right to self-representation." *Id.* at 852 (Blackmun, J., dissenting). Among his questions that remain consigned to the latter

category is: "How soon in the criminal proceeding must a defendant decide between proceeding by counsel or pro se?" *Id.*[1]

Although this Court has observed in passing that "most courts" require that the right be asserted in a "timely manner," *Martinez v. Court of Appeal of California, Fourth Appellate Dist.*, 528 U.S. 152, 162 (2000), it has never clarified precisely when a trial court may curtail a defendant's self-representation right on timeliness grounds. Lower appellate courts struggling with the timeliness question have expressly noted this Court's silence. *See, e.g.*, *Hill v. Curtin*, 792 F.3d 670, 679 (6th Cir. 2015) (stating that although "timing was one of the unanswered concerns that vexed the dissenting Justice Blackmun ... the Supreme Court has never defined the precise contours of *Faretta*'s timing element"); *Marshall v. Taylor*, 395 F.3d 1058, 1061 (9th Cir. 2005) ("[W]e know that *Faretta* clearly established some timing element, but we still do not know the precise contours of that element. At most, we know that *Faretta* requests made 'weeks before trial' are timely."); *U.S. v.*

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[1] The other questions Justice Blackmun posed, *see id.*, have either been resolved by this Court or have not become serious grounds for dispute among lower courts. This Court has, for instance, already resolved Justice Blackmun's question of whether a defendant has a "constitutional right to standby counsel." *See McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) (He does not). The *McKaskle* Court also resolved Justice Blackmun's question of whether "violation of the right to self-representation [can] ever be harmless error." *Id.* at 177 n. 8 (It cannot.). And we are unaware of any lower court requiring that a defendant be "advised of his right to proceed pro se." *See, e.g.*, *U.S. ex rel. Maldonado v. Denno*, 348 F.2d 12, 15-16 (2d Cir. 1965) (rejecting such a requirement); *U.S. v. Martin*, 25 F.3d 293, 295-96 (6th Cir. 1994) (same); *Munkus v. Furlong*, 170 F.3d 980, 983 (10th Cir. 1999) (same).

Teague, 953 F.2d 1525, 1540 (11th Cir. 1992) (concurring opinion) (noting "the [*Faretta*] Court's silence as to the timeliness question").

B. Factual and Procedural Background

1. Raymond Crespo was indicted for attempted murder and other charges arising from a stabbing outside a Manhattan restaurant (Pet. App. at 3a). Mr. Crespo elected to proceed to trial.

The day before jury selection, Mr. Crespo's assigned counsel moved to withdraw, citing a "complete breakdown of communication and trust" with his client (*id.* at 37a–38a). Mr. Crespo, too, told the trial court that he did "not feel[] comfortable going to trial" with his lawyer (*id.* at 39a–40a). The court urged Mr. Crespo to give counsel another chance, but Mr. Crespo was adamant: "I made a decision. I don't want my lawyer [to] represent me" (*id.* at 41a–42a).

On the second day of jury selection, Mr. Crespo again protested "being forced to go to court with a lawyer" that he did not want (*id.* at 43a). He asked to represent himself:

> MR. CRESPO: I don't want my lawyer to represent me, so I don't want him to say nothing, so that is the case I represent myself. I am entitled to represent myself.
>
> THE COURT: ... [T]hat you could have done at an earlier stage of the trial, but it is too late to make that request now in the middle of trial. At least at this stage of the proceeding. If you want me to consider whether after we complete the jury selection I will pause for a second and allow you to represent yourself and go pro se, I can do that.

MR. CRESPO: That is exactly what I want to do.

(*id.*). The trial court was unsure whether Mr. Crespo's request was "too late" but promised to "check on that" (*id.* at 44a–45a). The court changed course moments later, however, and deemed the request untimely because jury selection was underway:

> THE COURT: Because we are in the middle of the round of jury selection. ... This is not a timely request.
>
> MR. CRESPO: So you still force me to go to trial with a lawyer that I don't get along with and now you deny me the right to represent myself because you saying that I am in the middle of the grand—
>
> THE COURT: This is the first time you have asked to represent yourself in the middle of trial. ...
>
> MR. CRESPO: It is because I don't have the knowledge that I could represent myself. I didn't—if that could be the case I would have been represent myself.
>
> THE COURT: So that is not happening at this stage of the trial. You are not going to be able to represent yourself because we are in the middle of jury selection, we are about to start the trial in less than half an hour.

(*id.* at 46a–47a). Still before the jury was empaneled, Mr. Crespo pressed his request, but the trial court held firm, telling him: "you cannot represent yourself at this point in the trial" (*id.* at 48a). The court later stated that he would have granted Mr. Crespo's request had he "asked to go pro se the week before trial" (*id.* at 49a–50a).

The jury convicted Mr. Crespo of first-degree assault and third-degree weapon possession (*id.* at 51a). He was sentenced to twenty years to life imprisonment (*id.* at 52a).

2. On appeal, the Appellate Division, First Department, reversed Mr. Crespo's conviction, holding that Mr. Crespo's "requests to proceed pro se, made during jury selection, were timely asserted" (Pet. App. at 32a). The court rejected "the People's argument that the request to proceed pro se must be made before jury selection" (*id.*). It further held that Mr. Crespo had otherwise adequately invoked his self-representation right—his requests were "clear and unequivocal" and he had not engaged in "any disruptive behavior" before the trial court's denial of his request (*id.* at 33a). The Appellate Division accordingly court remanded for a new trial (*id.* at 34a).

3. After full briefing and two rounds of oral argument, a bare majority of the New York Court of Appeals reversed, holding that Mr. Crespo's mid-jury-selection request was untimely (Pet. App. at 12a). The majority stated that the "timeliness of the [self-representation] request ... is a prerequisite under both federal and state law" and that "the commencement of trial is established as the point at which the application may be denied as untimely as a matter of law." (*id.* at 2a) (citing *Martinez*, *supra*, 528 U.S. at 161-162; *People v. McIntyre*, 324 N.E.2d 322 (1974)). The majority then looked to New York's Criminal Procedure Law, which defines "trial" to include "the selection of the jury." (Pet. App. at 8a) (quoting N.Y. Crim.

Proc. L. § 1.20(11)). It reasoned that because Mr. Crespo's request was made during jury selection, it was made during "trial," and was therefore an untimely *Faretta* request (Pet. App. at 12a). The majority cited federal habeas cases that used *Faretta*'s "weeks before trial" language as a "broad reference point" to deny requests, like Mr. Crespo's, made at or near the time of jury selection. (*id.* at 11a–12a) (citing *Hill*, *supra*, and *Stenson v. Lambert*, 504 F.3d 873 (9th Cir. 2007)). The majority also expressed a general concern with avoiding "significant delay or confusion in the trial proceedings." (Pet. App. at 6a–7a).

Judge Jenny Rivera, joined by two colleagues, dissented (*id.* at 13a–29a) (dissenting opinion). The dissent emphasized the "great historical significance of the right to self-representation, and its status as a constitutional right of the first order." (*id.* at 24a) (quotation omitted). The dissent would have granted Mr. Crespo's request under a prior case allowing requests "[a]fter the jury had been drawn but not yet impaneled," (*id.* at 6a) (quoting *McIntyre*, *supra*, 36 N.Y.2d at 12). But the dissent also noted "clear, non-statutory reasons for drawing the line" after jury selection. (Pet. App. at 18a). It urged that a defendant should be able to assert his right up until his "actual trial" begins—i.e., "when the jury is constituted and ready to consider the People's arguments and evidence." (*id.* at 28a).

4. In light of court's reversal, upon remittitur from the Court of Appeals, the intermediate court affirmed the judgment of conviction (Pet. App. at 35a).

REASONS FOR GRANTING THE WRIT

I. Federal appeals courts and state courts of last resort are deeply divided over the timeliness issue.

Courts are deeply divided over when a trial judge may deny a defendant's self-representation request as untimely. Two distinct timeliness rules have emerged, and most federal appeals courts and many state courts of last resort have expressly adopted one rule or the other.

A. *The "timely-before-empanelment" rule*

Most federal appeals courts have adopted a bright-line rule that a *Faretta* request is timely anytime until the jury is empaneled. *See, e.g.*, *U.S. v. Betancourt-Arretuche*, 933 F.2d 89, 96 (1st Cir. 1991) ("In general, a *Faretta* request is timely only if it is asserted before the jury is empaneled.");[2] *U.S. v. Bankoff*, 613 F.3d 358, 373 (3d Cir. 2010) (A request is untimely if made "after trial has commenced—i.e. ... after the jury has been empaneled."); *Chapman v. U.S.*, 553 F.2d 886, 894 (5th Cir. 1977) (A *Faretta* request is timely if asserted "before the jury is empaneled."); *U.S. v. Johnson*, 223 F.3d 665, 668 (7th Cir. 2000) ("[A] motion for self-representation is timely if made before the jury is empaneled."); *U.S. v. Smith*, 830 F.3d 803, 809 (8th Cir. 2016) (same); *Fritz v. Spalding*, 682 F.2d 782, 784 (9th Cir. 1982) (same); *U.S. v. Simpson*, 845 F.3d 1039, 1053 (10th Cir. 2017) (citing prior decision that created a "new bright-line rule" that "a motion for self-representation is timely if it is made

[2] For clarity, citations and internal quotation marks are omitted throughout. All omissions are non-substantive.

before the jury is impaneled."); *U.S. v. Young*, 287 F.3d 1352, 1355 (11th Cir. 2002) (A trial court must "honor as timely a defendant's demand for self-representation if the defendant asserts the right before the jury is selected.").[3]

The logic behind the "timely-before-empanelment" rule "leans upon a Supreme Court holding that in a criminal trial, jeopardy attaches when the jury is sworn." *Betancourt-Arretuche*, 933 F.2d at 96 (citing *Serfass v. U.S.*, 420 U.S. 377 (1975)); *see also Crist v. Bretz*, 437 U.S. 28 (1978) (extending to states the rule that jeopardy attaches when the jury is empaneled and sworn). The Fifth Circuit, which endorses the "timely-before-empanelment" rule, also noted practical concerns about a defendant's inability to make an informed decision about self-representation before jury selection:

> If there is to be a Rubicon beyond which the defendant has lost his unqualified right to defend pro se, it makes far better sense to locate it at the beginning of defendant's trial, when the jury is empaneled and sworn ... [A defendant's] first opportunity directly to address the court regarding his counsel may be the day of his trial [and] ... the defendant may acquire disconcerting information about the substance or manner of his counsel's planned defense only once his counsel begins the voir dire.

Chapman, 553 F.2d at 894.

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[3] Most of these courts have created an exception to their bright-line rule where the defendant's request is made for the purpose of delay. *See, e.g.*, *Chapman*, 553 F.2d at 894. Here, however, the intermediate appellate court expressly held that the "record d[id] not reflect any disruptive behavior" (Pet. App. 33a), and the state did not appeal on delay grounds. Notably, Mr. Crespo's request was not accompanied by a request for a continuance.

Under the "timely-before-empanelment" rule endorsed by these jurisdictions, Mr. Crespo's self-representation request would have been deemed timely. *See, e.g.*, *U.S. v. Price*, 474 F.2d 1223, 1226-27 (9th Cir. 1973) (rejecting argument that self-representation motion was untimely even though made "[a]fter the jury had been impaneled and before it was sworn").

B. *The "meaningful-trial-proceedings" rule*

Many state courts of last resort, and some federal appellate courts, have held this majority "federal rule" to be "too rigid in circumscribing the discretion of the trial court." *People v. Burton*, 48 Cal. 3d 843, 854 (1989). These courts require that a *Faretta* request be made a "reasonable time" before trial, *id.* at 852, or before "meaningful trial proceedings" have commenced—standards uniformly held to encompass the jury selection process. *U.S. v. Lawrence*, 605 F.2d 1321, 1324-25 (4th Cir. 1979) (holding it "entirely compatible with the defendant's constitutional rights ... to require that the right of self-representation be asserted at some time before meaningful trial proceedings have commenced," and denying request made just before jury was sworn); *see also Robards v. Rees*, 789 F.2d 379, 384 (6th Cir. 1986) (to deny as untimely a request made after the "clerk had called the roll of jurors" was "not tantamount to a constitutional violation"); *State v. Cornell*, 179 Ariz. 314, 326 (1994) ("[A]ll motions for pro per status made after jury selection has begun are untimely."); *Russell v. State*, 270 Ind. 55, 57, 62 (1978) (Request first made on the morning of trial after prospective jurors were already "here" was untimely: "the

right of self-representation must be asserted within a reasonable time prior to the day on which the trial begins. Morning of trial requests are thus per se untimely."); *State v. Nix*, 327 So.2d 301, 354 (La. 1975) (*Faretta* request "coming as it did after the trial had commenced with the selection of the jury ... was not a timely assertion of [the] right to conduct a defense in proper person"); *State v. Hardy*, 415 Md. 612, 628 (2010) ("[A]fter a trial court has begun the voir dire process in a criminal trial," a self-representation request is no longer timely.); *O'Neill v. State*, 123 Nev. 9 (2007) ("[T]he district court did not err in failing to perform a *Faretta* canvass" because "O'Neill made his request only three judicial days before the trial date."); *State v. Sheppard*, 172 W. Va. 656, 669-70, 672 (1983) (observing that *Faretta* "left unresolved serious practical questions involved in the implementation of the [self-representation] right at trial" before holding that a request made "on the morning of trial" is left to the "discretion of the trial court").[4]

II. The question presented is an important and recurring one warranting this Court's review.

Resolution of this conflict is of immense practical importance to both criminal defendants and trial courts.

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[4] The Second Circuit would apparently follow this minority rule. *See U.S. v. Walker*, 142 F.3d 103, 108 (2d Cir. 1998) (request made when "voir dire of jurors was virtually completed" was made during "trial" and was thus untimely); *but see Maldonado, supra*, 348 F.2d at 16 ("We hold that if [the defendants] clearly sought to represent themselves, after their cases had been called on the calendar but before the jury had been chosen, they had an unqualified right to have their requests granted.").

1. Criminal defendants of every jurisdiction are equally entitled to a last clear chance to assert their *Faretta* rights. For defendants in "timely-before-empanelment" jurisdictions, the contours of the *Faretta* right are clear enough: the right must be asserted before the jury is empaneled. Yet criminal defendants in jurisdictions without a bright-line rule have only vague notice about the deadline to make a *Faretta* request, which may be left to a trial judge's post hoc discretion.

The decision to abandon counsel is not so easily made "weeks before trial." *Faretta*, 422 U.S. at 835. Criminal defendants are generally—and quite understandably—reluctant to abandon counsel until they are able to adequately determine whether "the potential advantage of [the] lawyer's training and experience [might] be realized." *Id.* at 834. But not until the threshold of trial does a defendant possess the necessary information to make an informed decision about that potential advantage. Voir dire is often a defendant's first opportunity to assess his lawyer's competency, and only at this stage might a defendant learn that his lawyer misunderstands key facts or that the lawyer's defense strategy conflicts with his own. *See Chapman*, *supra*, 553 F.2d at 894; Anne Bowen Poulin, *The Role of Standby Counsel in Criminal Cases: In the Twilight Zone of the Criminal Justice System*, 75 N.Y.U. L. REV. 676, 688 (2000) ("Only as the trial date approaches does the defendant discover her attorney's strategy and level of preparation for trial.").

These problems are heightened for indigent defendants, who are represented by assigned counsel who may lack the time or resources to meaningfully engage

with clients before trial. Indigent criminal defendants are also less likely to make bail, limiting their opportunity to interact with counsel. In some cases, an indigent client and his assigned lawyer do not meet until the day of trial. *See* Laura I. Appleman, *The Ethics of Indigent Criminal Representation: Has New York Failed the Promise of Gideon?*, 16 No. 4 PROF. LAW. 2, 17 (2005) ("[T]hese overloaded public defenders and assigned counsel often meet their clients for the first time at trial.").

2. Judges, too, deserve clear and uniform guidance on this matter, yet the timeliness issue "ha[s] proven troublesome to administer in the trial courts." *See* Jason R. Marks, *State Competence Standards for Self-Representation in a Criminal Trial: Opportunity and Danger for State Courts After* Indiana v. Edwards, 44 U.S.F. L. REV. 825, 834 (2010). That trouble was manifest in this case—the trial judge was uncertain about the timeliness of Mr. Crespo's *Faretta* request, first promising to "check on that" and later suggesting the request should have been made "the week before trial." There are hundreds of other written appellate opinions grappling with the precise issue of timeliness, to say nothing of the trial judges who must confront this issue on a regular basis in real time.

Because defendants are reluctant to waive counsel early, courts are often asked to resolve *Faretta* requests on the eve of trial, when judges are, perhaps understandably, in no mood to view them favorably. *See* Poulin, *supra*, 75 N.Y.U. L. REV. at 688 ("Both trial courts and appellate courts often seem impatient with defendants who request new counsel on the eve of trial."); *see also U.S. v. Griswold*,

525 F. App'x 111, 113 (3d Cir. 2013) ("The Court's desire to prevent trial delay is certainly understandable, as is its frustration at Griswold's last minute decision to proceed pro se.").

This Court should intervene to ensure the fundamental protections announced in *Faretta* are not eroded by trial judges' very human "incentive to make their lives easier," *Indiana v. Edwards*, 554 U.S. 164, 189 (2008) (Scalia, J., dissenting), by dismissing a *Faretta* request on procedural grounds.

III. This case is an ideal vehicle.

For three reasons, this case is an excellent vehicle for resolving the question presented.

1. The case is procedurally clean. It presents a single, clear-cut federal constitutional question that was properly presented on direct appeal in the state court below. The New York Court of Appeals decided the case on constitutional grounds in a full-dress opinion, set in relief by a robust dissenting opinion.

2. The timing of Mr. Crespo's request—made on the cusp of jury empanelment—highlights the contrasting positions of the lower courts. Every jurisdiction with a bright-line "timely-before-empanelment" rule would hold Mr. Crespo's request timely; every jurisdiction with a "meaningful-trial-proceedings" (or similar) rule would hold his request untimely. The timing of Mr. Crespo's *Faretta* request therefore lends itself to resolving the precise dispute on which lower courts are decisively split.

3. The Court's decision will be outcome-determinative. If the Court holds that *Faretta* requests made during jury selection are timely, Mr. Crespo will be entitled to a new trial. If the Court holds they are not timely, Mr. Crespo will have no further legal recourse.

IV. The decision below is incorrect.

The New York Court of Appeals' decision to cut off a criminal defendants' *Faretta* right before jury selection runs afoul of the Sixth Amendment. The decision is flawed for three reasons:

1. The court below erroneously concluded that the scope of the *Faretta* right is controlled by state procedural law. The majority reasoned that if mid-"trial" requests are untimely, and New York procedural law defines "trial" to include jury selection, then any request made during jury selection is untimely. That analysis fails to consider that the *Faretta* right is a federal constitutional right. Its boundaries are not defined by a state procedural definition. If they were, a state legislature could control the scope of the *Faretta* right merely by amending the definition of "trial" to encompass ever-earlier stages of the criminal proceeding. Constitutional rights define the boundaries of state laws, not the other way around. *See Crawford v. Washington*, 541 U.S. 36, 68 (2004) (State rules about testimonial hearsay must conform to what "the Sixth Amendment demands."); *Apprendi v. New Jersey*, 530 U.S. 466, 497 (2000) (State law divisions between elements and sentencing factors do not control what constitutes an element for Sixth Amendment

purposes.); *Virginia v. Moore*, 553 U.S. 164, 176 (2008) (State arrest laws do not alter Fourth Amendment's protections.).

2. Nor do the majority's abstract concerns about "delay or confusion" justify restricting the *Faretta* right. Granting an eve-of-trial *Faretta* request would result in delay only if the court also exercises its discretion to adjourn the trial in light of the request. But courts have broad discretion to deny adjournment requests, thereby preventing delay without invading any constitutional right.[5] In any event, the concern is irrelevant here because Mr. Crespo's *Faretta* request was not accompanied by an adjournment request.

We do not know what "confusion" would flow from a defendant's decision, during jury selection, to proceed pro se. If the court was implying that prospective jurors would be confused by counsel's sudden absence, that issue could easily be resolved with a simple instruction to those prospective jurors, explaining that the defendant has decided to represent himself, which is his constitutional right, and which is not to be held against him or otherwise considered. Any minimal "confusion," would regardless be justifiable to protect a fundamental constitutional right.

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[5] *See Maldonado*, *supra*, 348 F.2d at 16 ("The State argues that if [defendants] had been allowed to represent themselves the trial judge would have been obliged also to grant them a continuance so that they might prepare their defenses. On the contrary, the trial judge would have been entirely justified, once their cases had been called, in insisting that the two men proceed to trial at once, with or without the lawyer who had been assigned to them.").

3. Most fundamentally, the court below ignored that cutting off a defendant's *Faretta* right before jury selection effectively deprives him or her of that right when it matters most. Although the Sixth Amendment "grants to the *accused personally* the right to make his defense," *Faretta*, 422 U.S. at 819 (emphasis added), our system paternalistically assumes that defendants want lawyers, who are automatically assigned to every uncounseled defendant. But if a defendant is to retain the personal right to make "his defence," U.S. Const. Amend. VI, he must have an opportunity to meaningfully assess whether the abstract "potential advantage" of a lawyer's assistance might, in fact, "be realized," 422 U.S. at 834, or whether, "once his counsel begins the voir dire," *Chapman*, *supra*, 553 F.2d at 894, it becomes clear that the defendant would be wise to exercise his "correlative right to dispense with [his] lawyer's help." 422 U.S. at 814. Depriving a defendant of his *Faretta* right just before jury selection—i.e., just before he can make a fully-informed choice about whether to waive counsel—amounts to a deprivation of the personal right to make "his defence."

If there is to be any timeliness restriction on the *Faretta* right, the logical point to draw the line is at the jury's empanelment, as most federal courts have already done. Just as the point of empanelment "serves as the lynchpin for all double jeopardy jurisprudence," *Crist*, 437 U.S. at 38, that point would here too serve to strike a clear and fair balance between a defendant's freedom to make an unfettered and informed choice about abandoning counsel and the government's interest in prosecuting an orderly trial once jeopardy has attached.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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