

No. _____

IN THE
Supreme Court of the United States

THOMAS GAFFNEY WALKER,

Petitioner,

v.

CHRISTOPHER PIERCE, Warden, et. al.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Faretta v. California*, 422 U.S. 806 (1975), this Court held that criminal defendants have a Sixth Amendment right to conduct their own defense and that California courts violated Anthony Faretta’s right by denying his voluntary and intelligent request for self-representation made “weeks before trial.”

Although circuit courts agree that *Faretta*’s holding “clearly established,” for purposes of 28 U.S.C. § 2254(d)(1), that a request made “weeks before trial” is timely, the Ninth Circuit ruled it was reasonable for the California courts to deny Thomas Walker’s request—made *two weeks and one day* before trial—as untimely because of the “inherent ambiguity” in *Faretta*’s “weeks before trial” rule. The Ninth Circuit also concluded that Walker’s case was materially distinguishable from *Faretta* by comparing the timing of the requests *in relation to the date the charges were filed* rather than in relation to the trial date. The questions presented here are:

- (1) Did the Ninth Circuit err in holding that *Faretta* did not “clearly establish,” for purposes of 28 U.S.C. § 2254(d)(1), that a request for self-representation made two weeks before trial is timely?
- (2) Did the Ninth Circuit err in holding that Walker’s case was materially distinguishable from *Faretta* by comparing the timeliness of the requests in relation to the date the charges were filed instead of in relation to the trial date?

LIST OF PARTIES TO THE PROCEEDING

The habeas petitioner is Thomas Gaffney Walker, currently imprisoned at Ironwood State Prison. The current warden of that facility is Christopher Pierce. Prior case captions reflected Warren Montgomery and Patrick Covello—prior wardens at different facilities where Walker was previously imprisoned. In the United States District Court and in the 9th Circuit Court of Appeal, a listed respondent is Xavier Becerra.

LIST OF PRIOR PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit

Walker v. Montgomery, No. 24-5585 (April 27, 2026)

U.S. District Court for the Central District of California

Walker v. Montgomery, No. 8:21-cv-00626-SSS-JPR (August 15, 2024)

California Supreme Court

People v. Walker, No. S260628 (April 15, 2020)

California Court of Appeal

People v. Walker, Nos. G055929, G055950 (January 7, 2020)

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**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Thomas Walker petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit’s unpublished decision is available at 2026 WL 674351 and reproduced in the appendix at Pet. App. 003–6. The district court’s rulings are reproduced at Pet. App. 007–42. The state-court opinions and orders are reproduced at Pet. App. 043–61.

JURISDICTION

The Ninth Circuit issued its memorandum disposition on March 10, 2026. (Pet. App. 003–006). The Ninth Circuit had jurisdiction under 28 U.S.C. §§ 1291 and 2253. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Cons. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of

the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Title 28 U.S.C. § 2254(d)(1)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States[.]

STATEMENT OF THE CASE¹

Following two jury trials, Walker was convicted of committing various residential burglaries, sexual assaults, and related crimes. (3-ER-447, 449-450, 565-566; 8-ER-1548, 1550-1553, 1599-1600). He was sentenced to an aggregate term of 75 years to life plus 18 years for both cases. (3-ER-565-566; 8-ER-1599-1600).

¹ The “ER” citations that follow refer to the excerpts of record filed in the Ninth Circuit case at Docket 14. The number preceding the citation is the volume number.

A. Trial Court Proceedings

The prosecution charged Walker in two separate cases with committing several residential burglaries and sexual crimes. (1-ER-72-74). The first case was filed in Santa Ana on March 4, 2013; the second was filed in Costa Mesa on August 21, 2013. (2-ER-97-100; 7-ER-1179-1183).

Following a successful *Marsden*² motion, Frederick McBride was appointed to represent Walker in both cases on January 30, 2014. (1-ER-74). Walker thereafter twice sought to replace McBride, once on October 28, 2016, and again on September 13, 2017. (1-ER-76-78; 4-ER-616-622). At the hearings for these motions, Walker explained that he had continuous “communication breakdowns” with McBride. (*Id.*). He also shared his sentiment towards McBride: “I can’t stand him. I don’t want him. Get him away from me. He’s the antichrist.” (*Id.*). Yet, the trial court denied both motions and instructed Walker that he had to “work together” with McBride. (*Id.*).

Immediately after the court denied his last *Marsden* motion, Walker requested to represent himself in both his trials that were scheduled to begin fifteen days later, on September 28, 2017. (*Id.*; 2-ER-247-248). But noting that Walker’s cases had “been around for three and a half years” and that it

² *People v. Marsden*, 2 Cal. 3d 118 (1970).

was the “eve of trial,” the trial court denied Walker’s request as untimely. (4-ER-632). The court thus forced Walker to proceed to trial in both cases with appointed counsel he did not want.

B. Appellate Proceedings

On January 7, 2020, the California Court of Appeal (“CCA”) affirmed the trial court’s denial of Walker’s *Faretta* request, concluding that the untimely ruling “was not beyond the bounds of reason” since Walker made his request “over three years after the cases had been filed” and “virtually on the eve of trial.” (1-ER-83).

On April 15, 2020, the California Supreme Court summarily denied Walker’s petition for review. (1-ER-68).

C. Federal Court Proceedings

On March 30, 2021, Walker filed a timely federal habeas petition raising his *Faretta* claim. (12-ER-2492-2522). The Magistrate Judge recommended granting relief on this claim, finding that *Faretta* “clearly established” that a request made “weeks before trial” is timely.³ (1-ER-61-62). The District Judge, however, concluded that *Faretta*’s “weeks before trial” language was “ambiguous” because it did not clearly establish “how many

³ There was no dispute that Walker’s *Faretta* request was knowing, intelligent, and unequivocal. (1-ER-61-67). There was also no evidence that Walker made his request to delay his criminal proceedings. (*Id.*).

weeks before trial a *Faretta* motion must be made for the motion to be timely.” (1-ER-38). The district court thus denied Walker’s *Faretta* claim. (1-ER-40).

On March 10, 2026, the Ninth Circuit affirmed this judgment, concluding that the “inherent ambiguity” in *Faretta*’s “weeks before trial” rule made it “reasonable for the CCA to conclude that Walker’s request, made fifteen days before trial, was not timely.” (Pet. App. 005). The Ninth Circuit further concluded that Walker’s case was “not materially indistinguishable from *Faretta*, as the defendants submitted their requests for self-representation at vastly different times—*Faretta* the day after charges were filed and Walker over four years after charges were filed.” (*Id.*).

On April 17, 2026, the Ninth Circuit denied Walker’s petitions for panel rehearing and for rehearing en banc. (Pet. App. 002).

REASONS FOR GRANTING THE WRIT

This case raises two important questions of federal law that have no authoritative answer. *First*, for purposes of 28 U.S.C. § 2254(d)(1), does *Faretta* “clearly establish” that a request for self-representation made *two weeks* before trial is timely? *Second*, should the timeliness of a *Faretta* request be measured in relation to the date the charges were filed, or in relation to the trial date? This Court should grant certiorari to settle these

important questions concerning the Sixth Amendment right to self-representation at trial.

A. The Ninth Circuit has reached conflicting conclusions on whether *Faretta*’s “weeks before trial” rule encompasses requests made two weeks before trial.

In *Faretta*, this Court explicitly noted that, “*weeks before trial*, Faretta clearly and unequivocally declared to the trial judge that he wanted to represent himself and did not want counsel.” 422 U.S. at 835 (emphasis added). This Court then held, “[i]n forcing Faretta, *under these circumstances*, to accept against his will a state-appointed public defender, the California courts deprived him of his constitutional right to conduct his own defense.” *Id.* at 836 (emphasis added).

To date, the circuit courts agree that *Faretta*’s holding established a timeliness element to a *Faretta* request.⁴ *E.g.*, *Marshall v. Taylor*, 395 F.3d 1058, 1061 (9th Cir. 2005) (“[W]e know that *Faretta* clearly established some timing element”); *Hill v. Curtin*, 792 F.3d 670, 678 (6th Cir. 2015) (“[*Faretta*’s] holding [] necessarily incorporate a loose timing element.”). These courts further agree that, for purposes of Section 2254(d)(1), *Faretta*’s holding only “clearly established” that a request made “weeks before trial” is

⁴ Under *Marshall v. Rodgers*, 569 U.S. 58, 64 (2013), circuit courts may look to their own precedent to determine what law is “clearly established.”

timely. *Hill*, 792 F.3d at 678 (“[T]o the extent that *Faretta* addresses timeliness, as a matter of clearly established law it can only be read to require a court to grant a self-representation request when the request occurs weeks before trial.”); *Taylor*, 395 F.3d at 1061 (“[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.”); see *Imani v. Pollard*, 826 F.3d 939, 947 (7th Cir. 2016) (“*Faretta* held it was constitutional error to deny [a] request made “weeks before trial.”).

The Ninth Circuit below endorsed these conclusions, finding that *Faretta* “clearly established” that a self-representation request made “weeks before trial” is timely. (Pet. App. 004). Yet, the Ninth Circuit then concluded that *Faretta*’s “weeks before trial” rule does not encompass a request made *two weeks* before trial. (Pet. App. 005). But previously, the Ninth Circuit concluded otherwise.

In *Moore v. Calderon*, 108 F.3d 261, 265 (9th Cir. 1997), and later in *Tamplin v. Muniz*, 894 F.3d 1076, 1089 (9th Cir. 2018), the Ninth Circuit determined that *Faretta*’s “weeks before trial” rule included requests made two weeks before trial. Other circuits, likewise, appear to read *Faretta*’s “weeks before trial” rule as including requests made two weeks or more before trial See, e.g., *Imani*, 826 F.3d at 947 (noting that a request made “four

weeks before trial” would be timely because “*Faretta* held it was constitutional error to deny [a] request made “weeks before trial.”). Indeed, Walker has not identified any other federal case in which a request made two weeks or more before trial was considered untimely under *Faretta*.

These conflicting decisions reveal the need for this Court to clarify whether *Faretta*’s “weeks before trial” rule encompasses requests made two weeks or more before trial. See Supreme Court Rule 10(c) (noting that a petition for a writ of certiorari may be granted when a United States court of appeals has “decided an important question of federal law that has not been, but should be, settled by this Court”).

B. The Ninth Circuit measured the timeliness of Walker’s request in relation to the date his charges were filed even though *Faretta* only considered the timing of *Faretta*’s request in relation to the trial date.

Under Section 2254(d)(1), a state court decision is “contrary to” clearly established law “if the state court confronts a set of facts that are *materially* indistinguishable from a decision” of this Court but nevertheless arrives at a different result. *Williams v. Taylor*, 529 U.S. 362, 406 (2000) (emphasis added).

Here, the Ninth Circuit determined that Walker’s case was materially distinguishable from *Faretta* because the requests were made “at vastly different times—*Faretta* the day after charges were filed and Walker over

four years after charges were filed.” (Pet. App. 005). But *Faretta* never considered, let alone discussed, the timing of Faretta’s request *in relation to the date the charges were filed*.⁵ Rather, on each of the three occasions that *Faretta* discussed the timing of the request, it did so only in relation to the trial date. 422 U.S. at 807-08, 835.

Circuit courts that have touched upon this issue also only speak about the timing of a *Faretta* request in relation to the trial date. *See, e.g., Clark v. Broomfield*, 83 F.4th 1141, 1152 (9th Cir. 2023) (“Because the Supreme Court has not held that the actual start date of a trial is the lynchpin for the [timeliness] analysis, or ‘squarely addressed’ whether and in what circumstances the prospect of a continuance affects the timing of a *Faretta* request, the California Supreme Court’s decision not to tether the analysis to the actual start date of the trial was not unreasonable within the meaning of § 2254(d).”); *see also Williams v. Bartlett*, 44 F.3d 95, 101 (2d Cir. 1994) (noting that the state court was wrong to have “expressly relied on the advanced stage of the proceedings” to deny the petitioner’s *Faretta* request since his request was made “substantially in advance of trial”). Furthermore, the Ninth Circuit previously concluded that a request for self-representation

⁵ The Ninth Circuit pulled this fact from the Respondent’s Brief in *Faretta*, not the *Faretta* opinion itself. (Pet. App. 005).

made two weeks before trial was “identical” to the request made in *Faretta*.
Moore, 108 F.3d at 265.

This Court should also grant certiorari to clarify whether the timeliness of a *Faretta* request is measured in relation to the date criminal charges were filed or in relation to the trial date, and to clarify whether a request made two weeks before trial is materially indistinguishable from the request made in *Faretta*.

CONCLUSION

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

Respectfully submitted,

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