No. 05-1107

In the Supreme Court of the United States

VINCENT TODD, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

PAUL D. CLEMENT
Solicitor General
Counsel of Record

ALICE S. FISHER
Assistant Attorney General

NINA GOODMAN
Attorney
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTIONS PRESENTED

1. Whether petitioner's waiver of his right to counsel during pretrial proceedings in his criminal case was knowing and intelligent.

2. Whether the district court was required to conduct a competency hearing in this case.

3. Whether the court of appeals improperly applied an abuse-of-discretion standard, rather than reviewing petitioner's claim de novo, in sustaining the district court's determination that petitioner's waiver of his right to counsel was knowing and intelligent.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 424 F.3d 525.

JURISDICTION

The judgment of the court of appeals was entered on September 7, 2005. A petition for rehearing was denied on December 27, 2005 (Pet. App. 15a). The petition for a writ of certiorari was filed on March 1, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of attempting to board an airplane while in possession of a concealed dangerous weapon, in violation of 49 U.S.C. 46505(b)(1). He was sentenced to 12 months of im-

prisonment, to be followed by three years of supervised release. The court of appeals affirmed. Pet. App. 1a-14a.

1. On January 27, 2003, petitioner was preparing to fly from Chicago to Los Angeles when an airport security screener noticed that petitioner's carry-on bag contained an opaque box. A security employee opened petitioner's bag and found a fully activated, 300,000-volt stun gun. After petitioner was arrested, he told a federal agent that he had purchased the stun gun for protection and that he believed that people, and particularly law enforcement officers, were following him. Pet. App. 1a-2a.

2. On January 28, 2003, at his initial appearance before a magistrate judge, petitioner was advised of his right to counsel, including the right to appointed counsel if petitioner could not afford to retain an attorney. The magistrate judge asked the prosecutor to state the charge against petitioner and the maximum penalty. Petitioner acknowledged that he understood his right to counsel, the nature of the charge against him, and the penalties to which he was potentially subject. The magistrate judge appointed Mary Judge of the Federal Defender Program to represent petitioner and granted petitioner's request for pretrial release, conditioned on his being confined to his father's home with electronic monitoring. Pet. App. 2a; Gov't C.A. Br. 5-6.

The government subsequently moved to revoke petitioner's pretrial release because he had tampered with the electronic monitoring bracelet. Pet. App. 2a. On February 19, 2003, at a revocation hearing before the district court, the government also asked the court to order a psychiatric evaluation to determine whether petitioner posed a safety risk. *Ibid.* The prosecutor explained that petitioner had shown signs of "paranoid thinking," noting petitioner's expressed belief that police officers were following him and that the criminal case was part of a larger conspiracy

against him. *Ibid.*; 2/19/03 Tr. 12-13. Petitioner's counsel acknowledged that petitioner had "some mental health paranoid kind of issues," but she assured the court that petitioner understood the "seriousness of the offense * * * [and] the consequences of his behavior." *Id.* at 10; see Pet. App. 2a. The defense attorney offered to arrange for petitioner to undergo a psychiatric evaluation, and the government agreed. *Id.* at 2a-3a; 2/19/03 Tr. 16. The district court revoked petitioner's release and ordered him detained pending the results of the evaluation. Pet. App. 3a.

The psychologist who evaluated petitioner issued a report stating that petitioner understood that bringing a stun gun on an airplane was illegal. Psychological Evaluation Report 5. The psychologist further concluded, however, that petitioner lacked a "significant appreciation of the nature of the crime and its seriousness," explaining that petitioner attributed his arrest to an "overall pattern of police harassment." *Ibid.* The psychologist reported that petitioner's test results showed "significant psychopathology," and he concluded that petitioner was "intensely paranoid" and "suffering from persecutory delusions." *Id.* at 7, 9.

Petitioner did not agree with the psychologist's assessment, and his disagreement with attorney Judge about whether to disclose the results of the evaluation to the government or the district court led him to file a motion to dismiss her as his counsel. Pet. App. 3a. On April 1, 2003, the district court granted the motion and appointed a second attorney, Eugene Steingold, to represent petitioner. *Ibid.*; 4/1/03 Tr. 6. During the ensuing months, petitioner became increasingly suspicious of Steingold's motives, and both petitioner and Steingold filed motions for substitution of counsel. Pet. App. 3a; Gov't C.A. Br. 6. At a June 20, 2003, hearing on the motions, the court reminded petitioner that counsel had been appointed to represent him because "you

don't have a good understanding of the procedures and the processes by which we * * * determine whether or not you're guilty or innocent." 6/20/03 Tr. 6. The court warned petitioner that it would not appoint another attorney and required him to choose between continuing with Steingold as his counsel and representing himself. *Id.* at 7-9. Petitioner elected to continue with his appointed counsel. *Id.* at 10-11.

The government then raised the issue of petitioner's competency to stand trial, noting that petitioner had accused both of his attorneys of conspiring with the government. 6/20/03 Tr. 11, 13. The defense attorney assured the court that although petitioner had "some mental problems," he was competent and understood the proceedings. Pet. App. 3a; 6/20/03 Tr. 11. The district court declined to conduct an inquiry into petitioner's competency, noting that petitioner's motion for substitute counsel showed that he had a "grasp of the facts," that he understood the charges against him, and that he was "rational in his complaints about his attorney." *Id.* at 13-15.

On July 10, 2003, Steingold again moved to withdraw as petitioner's counsel, citing petitioner's lack of cooperation and refusal to meet with him. 7/10/03 Tr. 3. The district court again required petitioner to choose between continuing with Steingold as his attorney and proceeding without counsel, and petitioner insisted that he would not allow Steingold to represent him. Pet. App. 3a; 7/10/03 Tr. 8. The court granted Steingold's motion to withdraw and appointed him as standby counsel. Pet. App. 3a; 7/10/03 Tr. 8.

Petitioner proceeded without counsel for three weeks. Pet. App. 3a. At a hearing on July 30, 2003, the court noted that it had not received the results of petitioner's psychiatric evaluation. 7/30/03 Tr. 2. The prosecutor also pointed out that the government had not received the evaluation

report. *Id.* at 3. Attorney Steingold, who was serving as standby counsel for petitioner, confirmed that he had received the evaluation and had concluded that there was "no need to file any sort of motion with respect to either a possible defense or competency," explaining that petitioner "is objecting to any kind of motions with respect to that." *Id.* at 2-3. At the conclusion of the hearing, the court offered to appoint another attorney for petitioner. *Id.* at 25-26. Petitioner accepted the offer, *id.* at 27, and the court appointed a third attorney, Gerald Collins, to represent him. Pet. App. 4a.

At a hearing on August 18, 2003, Collins offered to submit petitioner's psychiatric evaluation report to the court, noting that it "seem[ed] to indicate that [petitioner] has extreme paranoia." 8/18/03 Tr. 9. Collins stated that petitioner understood the charges and was able to cooperate with counsel. *Ibid.* Noting that all three of petitioner's attorneys had concluded that he was competent, the court told Collins that he could submit the report "for the Court's consideration on the question of whether or not the issue of competency needs to be raised," but that "[r]ight now, the record doesn't show any basis for doing so." *Id.* at 9-10. On September 2, Collins submitted to the court under seal a copy of petitioner's psychiatric evaluation.[1] Pet. App. 4a; 9/4/03 Tr. 17.

On September 4, 2003, petitioner moved to dismiss Collins as his counsel. The court asked whether petitioner wanted to proceed to trial "representing yourself or with a new lawyer," and petitioner responded that he wished to represent himself. 9/4/03 Tr. 15. The court granted petitioner's motion and appointed Collins as standby counsel.

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[1] The evaluation was never disclosed to the government during the district court proceedings. Gov't C.A. Br. 12.

Id. at 15-16. Petitioner also moved to exclude his psychological evaluation at trial, arguing that it was "false." *Id.* at 17. The prosecutor responded that the government had not requested or received the evaluation and did not intend to use it at trial. *Id.* at 17-18.

At the final pretrial hearing on October 2, 2003, the court warned petitioner of the disadvantages of proceeding without counsel:

> [I]t is extremely dangerous to represent yourself in a criminal proceeding. Even if you have had expert training in legal proceedings, it would be dangerous to represent yourself but it is even more so if you are not familiar with the rules of evidence and the rules of criminal procedure that apply in these cases.
>
> You are, at the very least, likely to make errors in omission—that is, errors [in] failing to present evidence that might be helpful to you because of your inability to do so in accordance with the rules of evidence and the rules of criminal procedure. Although I can relax the rules to some small extent during the course of the trial, I do have to hold you to a reasonable degree of compliance with all the rules of evidence that apply in any criminal case. And because of that and your lack of knowledge of those rules, your lack of knowledge as to what is a leading question and what is a non-leading question, your likely inability to distinguish between questions and statements, your lack of understanding as to the rules of hearsay, what evidence is admissible and what evidence is not admissible, how to lay a proper foundation for documents or other objects that might be useful in your defense and how to object if the prosecution fails to do so, all of those things are going to make it extremely difficult for you to represent yourself and

are going to give the prosecution the large advantage in the case.

Similarly, the process of opening statements and closing arguments to the jury are procedures that are tightly regulated and controlled by the rules of evidence and the rules of criminal procedure. And unless you're familiar with those rules, you're likely to be ineffective in making either opening statements or closing arguments. You will find the prosecution objecting to many of the things you say and I will unfortunately have to sustain many of those objections if you are, in fact, violating the rules. This will make it very frustrating for you in your attempts to explain to the jury what you believe happened and is likely to make your case ineffective.

Further, at the end of every trial, the Court—and sometimes during the course of the trial—will instruct the jury as to the law that they must follow in deciding the case. A trained attorney will be able to present instructions on the law for the Court to give to the jury that would be favorable to you and that would help the jury decide the case in your favor. Being untrained in the law and unfamiliar with this process, it's going to be very difficult for you to do an effective job of submitting to the Court appropriate jury instructions for the Court to give to the jury.

There are many other instances and examples of difficulties that you're going to encounter because of your lack of knowledge of the law and which therefore indicate that it would be much, much better for you to allow a court-appointed attorney to represent you during the proceedings.

> I don't expect you to change your mind. I'm just advising you of these things so that you understand, to the best of my ability to explain, the dangers in representing yourself. Are there any questions you want to ask the Court about this?

10/2/03 Tr. 22-25. Petitioner assured the court that he did not "want a court-appointed attorney." *Id.* at 25.

Petitioner went to trial with Collins acting as standby counsel. At trial, petitioner made objections, 10/8/03 Tr. 34, 36; 10/9/03 Tr. 125, 127, 170-171, 174, 221-222, introduced exhibits, *id.* at 87-88, conducted cross-examination, *id.* at 77-92, 95, 99-100, 107-112, 160, 178-179, 192-193, and attempted to impeach a witness, *id.* at 82-87. Petitioner also consulted with Collins throughout the trial, 10/8/03 Tr. 53; 10/9/03 Tr. 62, 83, 85, 110, 125, 199, and he allowed Collins to speak on his behalf with regard to objections, the handling of evidence, and jury instructions, *id.* at 83, 110, 132-133, 194-195, 200-211, 215-222.

3. On appeal, petitioner (represented by counsel) argued, inter alia, that his waiver of counsel in the district court was not knowing and intelligent. The court of appeals affirmed. Pet. App. 1a-14a.

Notwithstanding the shared view of petitioner and the government that the district court's finding of a knowing and intelligent waiver of the right to counsel should be reviewed de novo, the court of appeals concluded that "the proper standard of review is for abuse of discretion." Pet. App. 5a n.1. The court stated, however, that it "would have reached the same result in this case had [it] reviewed the district court's decision *de novo*." *Ibid.* The court of appeals agreed with the district court that petitioner had "understood the risks of proceeding *pro se* and nonetheless

knowingly and intelligently waived his right to counsel." *Id.* at 11a; see *id.* at 5a-11a.

The court of appeals identified several factors that are relevant to the determination whether such a waiver was knowing and intelligent: "(1) whether and to what extent the district court conducted a formal hearing into the defendant's decision to represent himself; (2) other evidence in the record that establishes whether the defendant understood the dangers and disadvantages of self-representation; (3) the background and experience of the defendant; and (4) the context of the defendant's decision to waive his right to counsel." Pet. App. 6a. The court noted that "[t]he most reliable way for a district court to ensure that the defendant has been adequately warned of the dangers and disadvantages of self-representation is to conduct a formal inquiry." *Ibid.* The court explained, however, that the "failure to conduct a full inquiry is not necessarily fatal" because "[t]he ultimate question is not what was said or not said to the defendant but rather whether he in fact made a knowing and informed waiver of counsel." *Ibid.* (quoting *United States* v. *Moya-Gomez*, 860 F.2d 706, 733 (7th Cir. 1988), cert. denied, 492 U.S. 908 (1989)).

In considering the relevant factors in the context of the record in this case, the court of appeals found that the district court had allowed petitioner to proceed without counsel for two brief pretrial periods without adequately "prob[ing] whether [petitioner] recognized the disadvantages of proceeding *pro se*." Pet. App. 7a. The court concluded, however, that petitioner had ultimately received adequate warnings about the dangers and disadvantages of self-representation, and that other evidence indicated that petitioner had understood the seriousness of the charge and the dangers of self-representation even during the pretrial periods before those warnings were given. See *id.* at 7a-8a.

The court of appeals further observed that petitioner's representation of himself before and during trial—which included making motions, offering evidence that was admitted, and conducting cross-examination—reflected his familiarity with criminal proceedings, and that his reliance on standby counsel during trial showed "an appreciation for the difficulties of self-representation." *Id.* at 11a. Finally, the court found that petitioner had chosen to represent himself "because he believed that his court-appointed attorneys would employ a weak and ineffective defense," and it viewed that "tactical decision" as further evidence that petitioner had waived his right to counsel knowingly. *Ibid.* The court concluded that the district court's error in failing to conduct a "formal inquiry into [petitioner's] understanding of the risks of proceeding without counsel when he first waived his right to an attorney * * * was not fatal because the remaining factors weigh in favor of finding a knowing and intelligent waiver." *Ibid.*

The court of appeals also rejected petitioner's contention that the district court should have considered his psychiatric evaluation before finding that he had validly waived his right to counsel. The court observed that petitioner's argument was contrary to the position he had taken in the district court, where petitioner had "adamantly refused to disclose the results of his evaluation" and had "prohibited his attorneys from even mentioning" the evaluation. Pet. App. 9a. The court further found that, "though the results of [petitioner's] psychiatric evaluation are disquieting, they do not demonstrate that his waivers were not knowing or voluntary." *Ibid.* The court explained that the district court and petitioner's attorneys had all agreed that petitioner "was capable of understanding the seriousness of the proceedings," and it concluded that "their observations carry more weight than those of the psychologist, who

formed his conclusions after observing [petitioner] for only a day." *Id.* at 9a-10a.

ARGUMENT

1. Petitioner contends (Pet. 7-14) that he was allowed to appear pro se during pretrial proceedings without receiving adequate warnings about the dangers and disadvantages of self-representation. That claim does not warrant this Court's review.

a. In *Faretta* v. *California*, 422 U.S. 806 (1975), this Court held that the Sixth Amendment guarantees a criminal defendant the right to forgo counsel and conduct his own defense. Because a defendant who represents himself "relinquishes * * * many of the traditional benefits associated with the right to counsel," a defendant seeking to proceed pro se at trial "must 'knowingly and intelligently'" waive that right. *Id.* at 835 (citing *Johnson* v. *Zerbst*, 304 U.S. 458, 464-465 (1938)). To ensure that an election to forgo counsel satisfies that standard, the Court in *Faretta* stated that a defendant who is contemplating proceeding pro se "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *Ibid.* (quoting *Adams* v. *United States*, 317 U.S. 269, 279 (1942)).

In *Iowa* v. *Tovar*, 541 U.S. 77 (2004), this Court rejected the Iowa Supreme Court's conclusion that the Sixth Amendment required a trial court to give two specific warnings to an uncounseled defendant before accepting a guilty plea. The Court held that "[t]he constitutional requirement is satisfied when the trial court informs the accused of the nature of the charges against him, of his right to be counseled regarding his plea, and of the range of allowable punishments attendant upon the entry of a guilty plea." *Id.* at

81. The Court further emphasized that it "ha[s] not * * * prescribed any formula or script to be read to a defendant who states that he elects to proceed without counsel," *id.* at 88, and that the determination whether a defendant has knowingly and intelligently waived his right to counsel "will 'depend, in each case, upon the particular facts and circumstances surrounding that case,'" *id.* at 92 (quoting *Johnson*, 304 U.S. at 464). Although this case does not involve a defendant's decision to enter an uncounseled guilty plea, the "pragmatic approach," *id.* at 90 (quoting *Patterson* v. *Illinois*, 487 U.S. 285, 298 (1988)), that the Court took in resolving the waiver issue in *Tovar* accords with the approach taken by the courts below.

b. This Court has repeatedly denied petitions for writs of certiorari seeking clarification of the warnings that criminal defendants must be given before being permitted to represent themselves at trial. See, *e.g.*, *Arterberry* v. *United States*, 541 U.S. 1044 (2004) (No. 03-8235); *Egwaoje* v. *United States*, 541 U.S. 958 (2004) (No. 03-691); *Oreye* v. *United States*, 535 U.S. 933 (2002) (No. 01-7073); *Hill* v. *United States*, 536 U.S. 962 (2002) (No. 01-6987). But even if further clarification of the applicable standards in that area were needed, this case would not warrant the Court's review. Petitioner does not contest the adequacy of the warnings that the district court gave him on October 2, 2003, before the court allowed petitioner to represent himself *at trial*. See pp. 6-8, *supra*; Pet. App. 7a. Rather, petitioner contends (see Pet. 6-7, 9) that the district court acted improperly by allowing petitioner to proceed pro se during two brief *pretrial* periods (July 10-August 4 and September 4-October 2, 2003, see Pet. App. 7a) without adequately

warning petitioner of the dangers and disadvantages of self-representation.[2]

This Court has recognized that a defendant's waiver of the right to counsel at trial requires a "more searching or formal" inquiry than does a waiver of counsel before trial has commenced. *Patterson* v. *Illinois*, 487 U.S. 285, 299 (1988) (post-indictment questioning). Because this case does not present any question about the warnings that must be given before a criminal defendant will be allowed to represent himself *at trial*, it would not provide a suitable vehicle for clarification of the legal rules that apply in that setting. And in light of petitioner's continued insistence on representing himself even after extensive warnings were given, there is no reason to suppose that petitioner would have pursued a different course if he had received the warnings three months earlier.

c. The various courts of appeals have employed somewhat different methods of ensuring that a defendant's waiver of his Sixth Amendment right to counsel at a criminal trial is knowing and intelligent. The Third and Tenth Circuits require an extensive colloquy on the hazards of self-representation, including specific warnings and a discussion of the nature of the charges, the statutory offenses included within them, the range of potential punishments, possible defenses to the charges, and mitigating circumstances. See, *e.g.*, *United States* v. *Peppers*, 302 F.3d 120, 135-136 (3d Cir.), cert. denied, 537 U.S. 1062 (2002); *United*

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[2] In the court of appeals, petitioner also contested the adequacy of the October 2 warning, asserting that the warning "was *pro forma* and also encouraged him to proceed *pro se*." Pet. App. 7a n.2. The court of appeals disagreed with that characterization, stating that "the [district] court's lengthy warning [on October 2] was neither inadequate nor improperly suggestive." *Ibid.* Petitioner does not renew his challenge to the October 2 warning in this Court.

States v. *Moskovits*, 86 F.3d 1303, 1306 (3d Cir. 1996), cert. denied, 519 U.S. 1120 (1997); *United States* v. *Silkwood*, 893 F.2d 245, 248 (10th Cir. 1989), cert. denied, 496 U.S. 908 (1990); *United States* v. *Padilla*, 819 F.2d 952, 958-959 (10th Cir. 1987). Although the Sixth and D.C. Circuits do not view *Faretta* as mandating such procedures, they have exercised their supervisory powers to require district courts to conduct on-the-record inquiries to verify a defendant's awareness of the dangers and disadvantages of self-representation. See, *e.g.*, *United States* v. *McDowell*, 814 F.2d 245, 249-250 (6th Cir.) (court of appeals found defendant's waiver of counsel valid based on trial record but invoked supervisory power "in order to avoid future appeals of a similar nature" by requiring that district courts conduct a specific waiver inquiry in future cases), cert. denied, 484 U.S. 980 (1987); *United States* v. *Bailey*, 675 F.2d 1292, 1300-1301 & n.13 (D.C. Cir.) (similar), cert. denied, 459 U.S. 853 (1982).

d. Although the courts of appeals have issued somewhat different directives about the warnings that a court should give before a defendant is allowed to represent himself in a criminal trial, no circuit has adopted a rule of automatic reversal whenever a district court fails to conduct the mandated colloquy. Rather, the courts of appeals have looked to the record as a whole to determine whether the defendant's waiver of his right to counsel was knowing and intelligent. See, *e.g.*, *United States* v. *Manjarrez*, 306 F.3d 1175, 1179-1181 (1st Cir. 2002); *Torres* v. *United States*, 140 F.3d 392, 401 (2d Cir.), cert. denied, 525 U.S. 1042 (1998); *Government of the V.I.* v. *James*, 934 F.2d 468, 473-474 (3d Cir. 1991); *United States* v. *Singleton*, 107 F.3d 1091, 1098-1099 (4th Cir.), cert. denied, 522 U.S. 825 (1997); *Neal* v. *Texas*, 870 F.2d 312, 314-315 (5th Cir. 1989); *McDowell*, 814 F.2d at 249; *United States* v. *Best*, 426 F.3d 937, 942-

944 (7th Cir. 2005); *Ferguson* v. *Bruton*, 217 F.3d 983, 985 (8th Cir. 2000) (per curiam); *United States* v. *Massey*, 419 F.3d 1008, 1010 (9th Cir. 2005); *United States* v. *Willie*, 941 F.2d 1384, 1388-1390 (10th Cir. 1991), cert. denied, 502 U.S. 1106 (1992); *United States* v. *Cash*, 47 F.3d 1083, 1088 (11th Cir. 1995); *United States* v. *Klat*, 156 F.3d 1258, 1265-1266 (D.C. Cir. 1998).

Those decisions are consistent with this Court's holding in *Johnson* v. *Zerbst* that "[t]he determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." 304 U.S. at 464; see pp. 11-12, *supra*. Thus, the mode of analysis employed by the court of appeals in this case, under which the determination whether petitioner's waiver was knowing and voluntary turned on the totality of the circumstances rather than on the presence or absence of a particular prespecified warning or colloquy, is appropriate even in reviewing challenges to the enforceability of a defendant's waiver of the right to counsel at trial.

2. Petitioner argues (Pet. 14-18) that the district court erred in not conducting a hearing to determine his competency before allowing petitioner to waive his right to counsel. To the extent that this issue was presented, the court of appeals correctly rejected petitioner's contention, see Pet. App. 9a-10a, and further review is not warranted.[3]

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[3] The court of appeals examined the issue of petitioner's competence in considering the evidence that petitioner understood the dangers and disadvantages of self-representation. Pet. App. 7a-8a, 9a-10a. It rejected petitioner's reliance on *United States* v. *Sandles*, 23 F.3d 1121, 1127 (7th Cir. 1994), for the view that the district court should have engaged in additional "reality testing" before allowing self-representation. Pet. App. 10a; cf. *Sandles*, 23 F.3d at 1127 ("The results of

The Seventh Circuit has held that a district court must conduct a competency hearing whenever there is "sufficient evidence to establish reasonable cause to believe that a defendant is mentally incompetent." *United States* v. *Morgano*, 39 F.3d 1358, 1373 (1994), cert. denied, 515 U.S. 1133 (1995); see *Godinez* v. *Moran*, 509 U.S. 389, 401 n.13 (1993) ("[A] competency determination is necessary only when a court has reason to doubt the defendant's competence."). The court of appeals' decision in this case is consistent with that standard. Contrary to petitioner's contention (Pet. 17), the court's determination that the district court did not err was not based solely on the fact that neither petitioner nor his attorneys had requested a competency hearing. Rather, the court of appeals noted that the district court and petitioner's lawyers had agreed, based on their observations of petitioner during pretrial proceedings, that petitioner was competent. Pet. App. 9a-10a. The court of appeals found that the observations of the district court and petitioner's counsel "carr[ied] more weight than those of the psychologist, who formed his conclusions after observing [petitioner] for only a day." *Id.* at 10a.

Petitioner's fact-bound claim that a competency hearing was required in the circumstances of this case does not warrant this Court's review. In any event, the record of petitioner's demeanor and conduct during the district court proceedings supports the district court's conclusion that

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Sandles' psychological evaluation, indicating that he suffered from grandiose delusions about his own capabilities, also at least hinted at the need for the trial court to engage in some level of 'reality testing' to determine if Sandles was indeed up to the task of representing himself."). It is not clear that the Seventh Circuit understood petitioner to claim that the district court had an obligation to conduct a full-blown competency examination, as opposed to a degree of additional questioning.

there was no reasonable basis to doubt petitioner's competency to stand trial and to waive his right to counsel. In assessing a defendant's competency, the focus is on the defendant's "mental capacity" to participate in the conduct of his defense with a "reasonable degree of rational understanding" and his capacity for "a rational as well as factual understanding of the proceedings against him." *Dusky* v. *United States*, 362 U.S. 402, 402 (1960) (per curiam); *Godinez*, 509 U.S. at 398, 401 n.12. Petitioner was consistently coherent and responsive during his pretrial appearances before the district court and demonstrated a rational and factual understanding of the proceedings. See, *e.g.*, 7/30/03 Tr. 8-9 (petitioner makes discovery request for photographs of his luggage from airport scanning machine and videotapes from security cameras); 10/2/03 Tr. 36 (petitioner advises court that he is familiar with courtroom evidence-projection system); see also 6/20/03 Tr. 13-15 (district court finds that petitioner's motion for substitute counsel showed an understanding of the charges against him, and that petitioner's complaints about his attorney were "rational").

3. Petitioner contends (Pet. 18-21) that review by this Court is needed to resolve a conflict among the courts of appeals on the standard of review to be applied to a district court determination that a defendant's waiver of the right to counsel was knowing and intelligent. That claim does not warrant this Court's review.

As petitioner explains (Pet. 18-20), the courts of appeals have generally applied a de novo standard of review to district court determinations that a defendant's waiver of counsel was knowing and intelligent. Consistent with that body of precedent, the government took the position in the court of appeals that a de novo standard of review applied. See Pet. App. 5a n.1. Although the court of appeals re-

jected that submission and stated that "the proper standard of review is for abuse of discretion," *ibid.*, other panels of the Seventh Circuit have conducted de novo review of district court findings that defendants had knowingly and intelligently waived their right to counsel. See *United States* v. *Kosmel*, 272 F.3d 501, 505 (2001) ("We review *de novo* the district court's finding of a waiver of the right to counsel."); *United States* v. *Hoskins*, 243 F.3d 407, 410 (2001) (same). Because the Seventh Circuit has not adopted a clear position on this question, and because "[i]t is primarily the task of a Court of Appeals to reconcile its internal difficulties," *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam), this Court's review is not warranted.

In any event, this case would not be an appropriate vehicle for resolving any disagreement among the circuits. Although the court of appeals found the abuse-of-discretion standard to be applicable in this setting, the court made clear that it "would have reached the same result in this case had [it] reviewed the district court's decision *de novo*." Pet. App. 5a n.1. Because the court of appeals specifically stated that its choice between the competing standards would not affect its ultimate disposition of the case, further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General
ALICE S. FISHER
Assistant Attorney General
NINA GOODMAN
Attorney

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