No. [redacted]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

[redacted]

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Hon. Cormac J. Carney, Presiding
[redacted]

APPELLANT'S OPENING BRIEF

Timothy A. Scott
Nicolas O. Jimenez
Scott Trial Lawyers, APC
1350 Columbia Street, Suite 600
San Diego, California 92101
619-794-0451

Attorneys for [redacted]

TABLE OF CONTENTS

Table of Authorities....iv

Introduction and Issues Presented....1

I. Sixth Amendment Violations....1

A. Choice-of-counsel....1

B. Faretta....2

C. Conflict with Appointed Counsel....2

II. Competency to Stand Trial....2

Statement of Jurisdiction and Bail Status....3

Statement of the Case and the Facts....4

I. The Alleged Murder-Conspiracy Scheme at Lompoc (as Told by Jailhouse Informants)....4

A. Career prison-inmate informants claim that Mr. [redacted] solicited them to murder a federal judge....4

B. [redacted] was not the first inmate that Rodriguez and Trejos tried to involve in this scheme....14

II. Mr. [redacted] is held incommunicado pending trial, despite explicit requests to obtain "independent counsel." 17

A. "Defendant is not allowed to communicate with anyone except his public defender": The magistrate judge sua sponte orders Mr. [redacted] held incommunicado. 17

B. A written motion to set aside the communication ban is put off, then forgotten. 19

C. "If there is anybody out there who can get me an attorney, in the name of God please help me. Get me an attorney": Mr. [redacted] repeatedly objects to the communications ban on choice-of-counsel grounds. 23

III. Mr. [redacted] is found competent to stand trial, but is not allowed to represent himself. 26

A. Mr. [redacted] writings and courtroom behavior provoke a sua sponte competency examination. 26

B. The district court finds Mr. [redacted] competent to stand trial on the grounds that he was not suffering from a "severe mental illness"—but still denies him his Faretta rights. 31

C. Additional evidence of mental illness develops at trial. 34

D. Mr. [redacted] behavior deteriorates further after the first trial. 40

SUMMARY OF THE ARGUMENT 44

ARGUMENT 46

I. Mr. [redacted] Sixth Amendment rights were violated by forcing an unwanted attorney upon him, while denying him the opportunity to try to hire independent counsel or to represent himself...46

A. Standard of review. 47

B. Holding Mr. [redacted] incommunicado was structural error because it violated his Sixth-Amendment right to obtain independent counsel.......... . .47

C. The district court also violated Mr. [redacted] Sixth-Amendment right to self-representation...50

D. At a minimum, the district court erred in failing to explore Mr. [redacted] conflicts with his attorney and considering the possibility of substitute appointed counsel. 54

II. If the district court properly denied Mr. [redacted] his Faretta rights, then it erred in simultaneously concluding that Mr. [redacted] was competent to stand trial. 57

A. Standard of review. 57

B. The district court erroneously determined that Mr. [redacted] was competent to assist his attorney at trial. 58

C. The district court erred in failing to reevaluate competency after Mr. [redacted] behavior at his first and second trial. 64

CONCLUSION 65

CERTIFICATE OF RELATED CASES 67

CERTIFICATE OF COMPLIANCE 69

CERTIFICATE OF SERVICE

Table of Authorities

Cases

Amaya-Ruiz v. Stewart, 121 F.3d 486 (9th Cir. 1997) 66
Bradley v. Henry, 510 F.3d 1093 (9th Cir. 2007) 49
Brown v. Craven, 424 F.2d 1166 (9th Cir. 1970) 55
Caplin & Drysdale, *Chartered v. United States*, 491 U.S. 617 (1989) 48, 50
Daniels v. Woodford, 428 F.3d 1181 (9th Cir. 2005) 56, 57
Drope v. Missouri, 420 U.S. 162 (1975) 59, 60, 65, 66
Dusky v. United States, 362 U.S. 402, (1960) (per curiam) 59
Frazer v. United States, 18 F.3d 778 (9th Cir. 1994) 47
Godinez v. Moran, 509 U.S. 389 (1993) 51
Indiana v. Edwards, 554 U.S. 164 (2008) .... *passim*
Kaley v. United States, 134 S. Ct. 1090 (2014) 48
Maxwell v. Roe, 606 F.3d 561 (9th Cir. 2010) 59, 66
Pate v. Robinson, 383 U.S. 375 (1966) 60
Powell v. Alabama, 287 U.S. 45 (1932) 48, 49
Savage v. Estelle, 924 F.2d 1459 (9th Cir. 1991) 52-53
Schell v. Witek, 218 F.3d 1017 (9th Cir. 2000) 55
United States v. Arlt, 41 F.3d 516 (9th Cir. 1994) 52
United States v. Berry, 565 F.3d 385 (7th Cir. 2009) 53, 54
United States v. Dreyer, 705 F.3d 951 (9th Cir. 2013) 66
United States v. Farias, 618 F.3d 1049 (9th Cir. 2010) 51
United States v. Garza, 751 F.3d 1130 (9th Cir. 2014) 60
United States v. Gonzalez-Lopez, 548 U.S. 140, 147-148, (2006) 48, 50
United States v. Heard, 762 F.3d 538 (6th Cir. 2014) 54
United States v. Johnson, 610 F.3d 1138 (9th Cir. 2010) 58
United States v. Lopez-Osuna, 232 F.3d 657 (9th Cir. 2000) 48
United States v. Loughner, 672 F.3d 731 (9th Cir. 2012) 58
United States v. Lynch, 367 F.3d 1148 (9th Cir. 2004) 58
United States v. Marks, 530 F.3d 799 (9th Cir. 2008) 60, 62, 63, 64

United States v. Moore, 159 F.3d 1154 (9th Cir. 1998) 47
United States v. Saya, 247 F.3d 929 (9th Cir. 2001) 58

Statutes

18 U.S.C. § 373(a) 3
18 U.S.C. § 4241 60
28 U.S.C. § 1291 3

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. [redacted] Defendant-Appellant.	Case No. [redacted] [redacted] **APPELLANT'S OPENING BRIEF**

Introduction and Issues Presented

I. Sixth Amendment Violations.

A. Choice-of-counsel.

The Sixth Amendment right to choice-of-counsel guarantees defendants the opportunity to seek out counsel of their own choosing. Denial of that right is structural error. Here, a magistrate judge forbade the defendant from communicating with anyone except his public defender. Despite a written challenge to the order—and the defendant's repeated pleas that he was being prevented from obtaining independent counsel—the communication ban was never lifted. Mr. [redacted] went to trial with a court-appointed lawyer against his will. Was that structural error?

B. *Faretta*.

The Sixth Amendment also provides the right to self-representation, subject only to narrow limitations. Here, the district court found Mr. [redacted] competent to stand trial, but denied him his *Faretta* rights without finding that he suffered from a severe mental illness that would prevent him from representing himself. Does the Sixth Amendment allow the denial of *Faretta* rights under those circumstances?

C. Conflict with Appointed Counsel.

Defendants are also entitled to the right to the effective assistance of counsel. Here, the defendant's distrust and paranoia about his court-appointed attorney led to a complete breakdown of communication. But the district court did not conduct an inquiry into the breakdown nor try to provide an attorney with whom the defendant was willing to work. Did that violate the Sixth Amendment also?

II. Competency to Stand Trial.

A defendant cannot stand trial unless he is mentally competent to do so, which includes the ability to consult with counsel and to aid in his own defense. Here, all of the medical experts agreed that the defendant suffered from some form of mental illness, that there was no evidence malingering, and that the mental

illness was the reason for the defendant's self-defeating behaviors. But the district court found the defendant competent on the premise that he did not have a "major mental disorder" like schizophrenia or organic brain damage. Was this finding contrary to the constitutional and statutory competency standards, as well as the ongoing evidence adduced throughout the proceedings?

Statement of Jurisdiction and Bail Status

██ ████ appeals his conviction and sentence for solicitation to commit a crime of violence, 18 U.S.C. § 373(a). The district court had jurisdiction under 18 U.S.C. § 3231. It entered judgment on December 2, 2016.[1] ████ filed his notice of appeal the same day.[2] This Court has jurisdiction under 28 U.S.C. § 1291.

████ is in custody serving his 240-month sentence. His projected release date is December 2040.[3]

---

1 Clerk's Record (hereafter "CR") at 322; Excerpts of Record (hereafter "ER") at 9.

2 CR 320, ER 14.

3 *See* www.bop.gov/inmateloc (searching for inmate by name).

Statement of the Case and the Facts

I. The Alleged Murder-Conspiracy Scheme at Lompoc (as Told by Jailhouse Informants).

This alleged offense began and ended within the four walls of the Federal Correctional Institution in Lompoc, California. Mr. [redacted] was serving a 168-month prison sentence for fraud.

A. Career prison-inmate informants claim that Mr. [redacted] was soliciting them to murder a federal judge.

After arriving at Lompoc, [redacted] a sixty-year-old Caucasian man of average build,[4] was approached by two inmates who would become star government witnesses—Antonio Rodriguez and Crisanto "Diego" Trejos. Both men were serving lengthy sentences: Rodriguez had received a 30-year sentence for drug-trafficking;[5] Trejos was serving 15 years for firearms trafficking.[6] Both were influential figures within the prison hierarchy. Rodriguez served as the "shot caller" for the Hispanic inmates at the facility.[7] Trejos was an influential, feared

---

[4] ER 1171.

[5] ER 798.

[6] ER 504.

[7] ER 261-262.

inmate as well.[8] Both purported to protect ██████ from other inmates at Lompoc.[9]

Rodriguez and Trejos were career jailhouse informants. The evidence showed that they had spent years attempting to sell the government information about supposed crimes in exchange for reductions in their sentences. Rodriguez, for example, had pitched information about at least seven different cases to the government over the years—all of which had been rejected.[10] He had even tried to use the Boston Marathon bombing to extort and blackmail the government into giving him time off his sentence, to no avail.[11]

Trejos had also repeatedly tried to sell information to the government. But he had no compunctions about playing both sides, admitting that he also tried to

---

[8] ER 218.

[9] *See e.g.* ER 223-224.

[10] *See* ER 801-808.

[11] ER 819-828. Mr. Rodriguez also perjured himself at trial trying to explain away this sordid past—even admitting on the stand that he lied under oath to the jury. ER 718-720.

sell the identity of a government witness to a defendant, and that he had repeatedly lied to federal agents during previous attempts at cooperation.[12]

In the instant case, Rodriguez and Trejos provided a new pitch to the government. They claimed that [redacted] had solicited them to murder his sentencing judge. And they provided handwritten documents that [redacted] had apparently written, with convoluted descriptions of the purported plot:[13]

---

12 ER 506, 564-565.

13 ER 17.

PART D:

IMPLEMENTATION NOTES FOR LASER-BASED "FREE SPACE-OPTICS" COMMUNICATION RELAYS:

THE INTENT IS TO PLACE IN A HOME RENTED IN THIS VALLEY, A PRIMARY LASER BROADCAST AND RECEPTION UNIT. WHICH HAS THE REQUISITE BROADCAST POWER, AND RECIEVER SENSITIVITY, SO AS TO ENABLE THE WIDEST POSSIBLE LOCATION CHOICES, WHILE REMAINING INVISIBLE, BEHIND A HOME OR OFFICE BUILDING'S WINDOWS. IF NOT INSIDE, THEN A PACKAGE DESIGNED FOR OUTDOOR USE. SUCH AS "BATTLEFIELD COMMUNICATIONS" PACKAGES, IDEALLY FROM ISREAL, LISTED IN "JANES."
WITH THIS INTERIOR PLACEMENT, COMES THE POSSIBILITY OF PLACING IT EITHER INSIDE OR ON TOP OF HOME OR OFFICE BUILDINGS WITHOUT IT BEING NOTICED, BY CAMOUFLAGING IT. OUR PURPOSE IS TO CREATE A "LOCAL AREA NETWORK," OR "LAN", TO HOST A "VIRTUAL PRIVATE NETWORK" A "VPN", WHICH IS ENCRYPTED. WHICH, IN TURN, CONNECTS TO "WIRELESS PORTABLE COMMUNICATION DEVICES."

NEXT, IS THE POSSIBLE NEED FOR A SECONDARY, LOCAL AREA, HIDDEN OR DISGUISED, OR LOW PROFILE, SOLAR POWERED "RELAY POINT," OR BOX, THAT IS ABLE TO SATURATE, OR, TO TARGET, EITHER A BROAD AREA, SUCH AS A 10 ACRE FACILITY, WITH "HIDDEN LIGHT." OR, TARGET SPECIFIC DORMS, WITH AN INTENSE

[REDACTED] writings described "targets" and a "conversion-in-place" of their assets:[14]

SECONDARY COMMUNICATIONS OPTIONS – SECOND TIER CHOICES ARE SEVERAL DIFFERENT TYPES OF CELLPHONES, WITH ALTERNATIVE DELIVERY METHODS. ALL OF WHICH, THOUGH NOT AS SECURE AS OUR FIRST CHOICE, CAN BE EASILY IMPLEMENTED BY PHONE CALLS TO MEXICO CITY, WITHIN 10 DAYS OF THESE MESSAGES. ACCOMPLISHING THIS, WILL FACILITATE THE QUICK LIQUIDATION, AND CONVERSION, INTO CASH, GOLD, AND DIAMONDS, OF THESE 7 GROUPS OF TARGETS, WHICH, BASED ON AN 80% DISCOUNT AGAINST ALL OF THEIR COMBINED ASSETS, AMOUNTS TO NO LESS THAN $100,000,000, MADE ACCESIBLE BY A "CONVERSION-IN-PLACE" YOU'LLBE GUIDED IN EXECUTING.

[14] ER 18.

And while the writings described harming certain persons, the motivation for doing so was a hopelessly tangled web of conspiracy theory and delusion:[15]

ASSET CONFISCATION AND "WRITS": WE HAVE IDENTIFIED CANDIDATE, AFFLUENT TARGETS, WHOSE
LIQ VIDATION WOULD ALLOW A MUCH FASTER IMPLEMENTATION, OF THE CONVERSION-IN-PLACE OF THE
7 PREVIOUSLY DESCRIBED, VULNERABLE GROUPS, DUE TO USE OF LOOPHOLES ALLOWING OUR IMMEDIATE RELEASE.
THE TARGETS, WHICH WOULD BE ULTIMATELY LIQUIDATED, AFTER THEY INDIVIDUALLY MADE NOTARIZED,
SIGNED, INITIALED, AND CREDENTIAL OVER-LAYED, WITH ALL TYPES OF PHOTOCOPIED IDENTIFICATION, SUCH
AS BADGES, DRIVERS LISCENCES, AND BUSINESS CARDS, ALONG WITH THEIR WORK STATIONERY OR LETTERHEADS,
COMPROMISING STATEMENTS ABOUT EACH AND EVERY SINGLE CASE THEY HAD EVER BEEN INVOLVED IN.
WE WOULD ALSO GET SEPERATE VIDEO, AND AUDIO ONLY AFFIRMATIONS, NOT SHOWING WOUNDS, OF THESE.
WITH THE INTENT TO REPLICATE, A MAJOR EVENT, THAT FREED 3,500 PERSONS, FALSELY CONVICTED
AND IMPRISONED, CALLED "THE RAMPART STATION LAPD SCANDAL," WHERE THE ENTIRE LOS
ANGELES POLICE DEPARTMENT WAS FOUND, WITH ALL PROSECUTORS AND JUDGES INVOLVED, GUILTY
OF PERJURY AND ENTRAPMENT, ALONG WITH MANUFACTURING AND TAMPERING WITH EVIDENCE AND
WITNESSES. GOOGLE THE ABOVE, TO GET A PERSPECTIVE ON WHAT WE WILL DO HERE, AT THE
FEDERAL LEVEL, AND CALIFORNIA, NEBRASKA AND FLORIDA STATE LEVELS, TO FREE KEY MAJOR FIGURES
TYPE OF
BY A COPYCAT EXPOSURE OF THE SAME SO CALLED "GOVERNMENT" MISCONDUCT.
OUR INTENT IS TO MASSACRE ALL OF THESE THUGS, QUIETLY, AND WIPE THEM OUT, WHILE TAKING ALL ASSETS.
BY APPREHENDING IN A CAREFUL, WELL THOUGHT OUT MANNER, THE FOLLOWING TARGETS AND THEIR
IMMEDIATE CIRCLES OF ASSOCIATES AND FAMILY, FORCING THEM TO COMPLETELY UPLOAD TO
WITH THE U.S.
INTERNATIONAL WEBSITES ALL OVER THE EARTH, IN NON-COOPERATIVE HOST COUNTRIES, ALL THEIR
ENTIRE PHYSICAL FILES, WHEREVER THEY ARE STORED, AND ALL ELECTRONIC FILES AT THEIR AGENCIES,
LIKE SNOWDEN OF THE NATIONAL SECURITY AGENCY (NSA) DID REGARDING THE CRIMES OF
THIS GRINGO CRIMINAL REGIME. WHICH HAS DOOMED ITSELF BY ITS HYPOCRISY. GOOGLE THIS
SO YOU COMPREHEND THE IMPACT. WE WILL DELEGATE, AT THEIR EXPENSE, UNDER THEIR NAMES, TO "DOCUMENT
MANAGEMENT" AND "DOCUMENT SCANNING FIRMS" THE IMAGING, AND UPLOADING OF EVERYTHING COMPROMISING.
UNDER WHAT IS CALLED A "WRIT OF HABAUS CORPUS" AND "NEW EVIDENCE", AMONGST OTHER THINGS
REVEALED IN THESE FILES, AND THESE TARGETS COURT ADMISSIBLE LAST STATEMENTS THEY MAKE
PLAUSIBILY UNDER VARIOUS "COVER STORIES" TO "AVOID PROSECUTION AND RETALIATION"
BE FORE THEY DISSAPPEAR, ALONG WITH THEIR ASSOCIATES, AND FAMILIES OF THESE PREDATORS,
EXPENDITURE
BY JUST ONE EXTRA CLIP OF AMMO, AND APPROPRIATE DISPOSAL OF THE CARCASSES, THERE IS NO
ONE LEFT TO CONTRADICT, WHAT IS NOW USABLE, TO FREE ALL OF US WITHIN A RELATIVELY SHORT TIME.

15 ER 26.

They continued:[16]

JUST AS THEY HAVE ACCOMPLISHED BY AMBUSH AGAINST US, AND OUR FAMILIES, SO THEY WILL EXPERIENCE WHAT THEY HAVE DONE TO LITERALLY THOUSANDS, FROM OUR HANDS, WHILE ROBBING THESE ROBBERS. EACH OF THEM HAVE ACCUMULATED MILLIONS IN BLACK FUNDS WE WILL TAKE, WHILE WE DISSAPPEAR THEM ALL. WE WILL USE THE METHODS OUTLINED EARLIER, WHICH THESE PARTICULAR TARGETS ARE ESPECIALLY VULNERABLE TO, BECAUSE OF OVER CONFIDENCE AND BACKDOORS TO THEIR ABDUCTION, INTERROGATION, COMPLIANCE, LIQUIDATION, AND PLAUSIBLE "FLIGHT" COVER STORIES TO ACCOUNT FOR THEIR DISSAPEARANCES, INTO OUR WOOD CHIPPERS, AND UNDER ELECTRIC SAWS, AND SAUSAGE GRINDING MACHINES.

THE FIRST IS THE PREVIOUSLY MENTIONED "KEYSTONE" TO THE REST IN THE ORANGE AND LOS ANGELES COUNTIES AREAS, THE REPTILE NAMED <u>JAMES RIDDET</u>, HIS PARTNER <u>STUKEY</u>, THEIR OFFICE MANAGER 'PAM' AND HER SPOUSE, AND <u>ALL</u> OTHER ATTORNEYS AND STAFF PRESENT, IN THEIR NEWPORT BEACH OFFICE, ADJACENT TO OUR FIRST TARGET NEAR THE FASHION ISLAND MALL, ALONG WITH THEIR FAMILIES OF PSYCHOPATHIC MATES, AND THEIR LITTERS OF LIZARD OFFSPRINGS LIKE THEM.

HE HAS, AS THE 42 YEARS AS THE "CHAIRMAN OF THE TRIAL LAWYERS ASSOCIATION" BETRAYED PERSONALLY, WITH HIS PARTNER STUKEY, ALONG WITH <u>ALL</u> OTHER DEFENSE AND FEDERAL/STATE PUBLIC DEFENDER ATTORNIES IN ORANGE AND LA COUNTIES, MANY TENS OF THOUSANDS OF DEFENDENTS FALSELY ACCUSED, ALONG WITH DESTROYING THEIR SPOUSES, INNOCENT CHILDREN BEYOND COUNTING, INTO PRISON, THEIR GRAVES, THE STREET, ORPHANAGES AND ABUSE IN "FOSTER HOMES". HE PERSONALLY KNOWS THE NAMES, PHONES, ELECTRONIC AND PERSONAL HOME AND OFFICE ADDRESSES OF THE REST OF THE OTHER TARGETS IN THESE 2 LOCAL INITIAL COUNTIES. ASIDE FROM HIM AND ALL HIS FIRM, <u>BRAD HOWARD</u>, SO CALLED "SPECIAL" AGENT, AND ALL HIS FBI TEAM MEMBERS. <u>FRANK BERNAL</u>, HIS BODYGUARD/ENFORCER, <u>STEVE BUSH/OR BUSCH</u>, AND THE REST OF HOWARDS FBI TEAM. <u>HOWARD SENIOR</u>, HOWARD'S FATHER, HAS BEEN PARTNERS IN CRIME WITH HIS FBI SON, AS THE "BAGMAN" FOR THEIR CRIMES, ROBBING AND MURDERING CITIZENS UNDER COLOR OF BADGE. LOCATE RIDDET AND TAKE HIM AND ALL HIS RELATIVELY SMALL OFFICE DOWN FIRST. THEN THE HOWARDS, THEIR FBI THUGS, AND ALL STOLEN PROPERTIES IN THE MULTIPLE TENS OF MILLIONS IN BLACK MONEY. SUBSEQUENTLY, THEN <u>MARK TALLA</u> AND <u>IVEY WANG</u>, ASSISTANT US ATTORNIES, ALONG WITH <u>THEIR 3 BOSSES</u>. ALL OF THESE GRINGO THUGS, THESE DOGS, HAVE ACCESS TO THE SO CALLED DEPARTMENT OF JUSTICE AND FBI FILES WE CAN UPLOAD, LIKE SNOWDEN DID WITH THE NSA, LIKE "THE RAMPART STATION," BY REVEALING AND CAPTURING THEIR LOCAL "INFORMATION TECHNOLOGY" OR "IT GUY", AND GETTING ALL CASE FILES FOR EVERYONE. OUR STRATEGY IS, IN THE MASSES OF FILES, OUR FILES ARE NOW AVAILABLE, WITH THEIR STATEMENTS, ONLINE FOREVER. ALLOWING NOT ONLY ALL OF US, BUT, UNDER COVER OF THIS CROWD, ALL OF US TO BE ABLE TO FORCE RELEASE BY THE ONLY LOOPHOLE THE FEDS CAN'T PLUG YET, "THE WRIT OF HABAUS CORPUS". THIS CONCLUDES OUR PLANNED ASSET CONFISCATION AND WRITS. MORE INSRUCTIONS WILL FOLLOW. 2

16 ER 27.

At the FBI's behest, Rodriguez secretly recorded a conversation with made disturbing statements about killing his judge and feeding him into a wood-chipper. He described torturing and killing the FBI agent and others in similar graphic fashion. But the recording showed Rodriguez repeatedly redirecting more incoherent ramblings back to the judge and the supposed plot.[17]

Rodriguez and Trejos also met repeatedly with to prepare him for a meeting with a supposed "hit man." The "hit man" was actually an FBI agent who was recording the encounter. The substance of the recording, while including similar disturbing and graphic descriptions by [18] also revealed that had been put up to the meeting and "coached up" on what to say by Rodriguez and Trejos. explained to the agent that "Tony" (Rodriguez) was "coaching him up on what to say and what not to say" to the undercover operative.[19] explained that "Tony" had been "talking with Mr. over and over and over again, and Tony said to stick to the immediate thing."

---

[17] *See* ER 856-858.

[18] ER 1130-1131.

[19] ER 317. *See also* ER 326 (explaining that Rodriguez had "been trying to coach me . . . to make sure I don't short-circuit you.")..

The recording also proved revealing as to state of mind. The statement included descriptions of "seven groups" that "ripped off over $100 million."[20] described that "people who are zombies [had] tried to murder [him.]"[21] He talked about a connection somehow between his case and the Rampart scandal, and the fact that in his mind 3500 innocent persons had been wrongly convicted.[22] He described proprietary plasma torch technology, and how it would make them wealthy.[23] also stated that everything that they would be doing was "righteous."[24]

Importantly, this evidence—which was engineered and provided exclusively by Rodriguez and Trejos—contrasted starkly with reality. The truth was that had no contact with the outside world, and that there was no impeding danger to anyone. As the FBI agent in charge of the case later testified:

> Q: All right. And was there any indication of Mr. communicating with people on the outside about hurting the judge?
>
> A: Not that we found.

---

20 ER 322.

21 ER 324.

22 ER 326.

23 ER 327-328.

24 ER 328-329.

> Q: And there's no information that you found about Mr. [redacted] communicating with anyone on the outside about hurting an FBI agent?
>
> A: No, sir.
>
> Q: Same thing with the prosecutors?
>
> A: Correct, nothing.
>
> Q: And so there didn't seem to be, from what you could tell, that impending danger in terms of somebody on the outside actually making steps towards hurting somebody?
>
> A That we were aware of, no.[25]

In fact, the case agent confirmed that [redacted] had never been on the telephone suggesting violence to anyone.[26] He had absolutely no money on his prison account.[27] He never received social visits.[28] No email or letter correspondence suggested any threats either.[29] Ultimately, literally every statement or writing about alleged violence came through Rodriguez and Trejos.[30]

---

[25] ER 734.

[26] ER 736.

[27] ER 736-737.

[28] ER 739.

[29] ER 740-741.

[30] ER 742.

And both men admitted—despite years remaining on their respective sentences—that they expected to be released, with credit for time-served, after they testified against [redacted] As Rodriguez testified:

> Q: Mr. Rodriguez, you have served your time and you feel like it's time?
>
> A: That's how I feel, yes.
>
> Q: It's time for you to get out of jail as far as you're concerned?
>
> A: I feel like that, yes.
>
> . . . .
>
> Q: Getting out of jail now is what you're expecting if you're honest; right?
>
> A: If I'm honest, yes.[31]

Trejos acknowledged having the same expectations.[32]

B. [redacted] was not the first inmate that Rodriguez and Trejos tried to involve in this scheme.

But [redacted] was not the first person that Trejos and Rodriguez had tried to ensnare in a plot so that they could get out of prison. Inmate Henry Jones told the government that, two years before the events of this case, Rodriguez and Trejos

---

[31] ER 707-708.

[32] ER 550-551.

had approached him to ask if he "wanted to go home."[33] When Jones said that he did, Trejos answered that they had a plan where the judge and prosecutor involved in his case "could get their comeuppance… we could arrange it so that, you know, they're taken care of."[34] Jones not only rejected Trejos's offer but, upon later realizing that Rodriguez and Trejos had also approached [redacted] advised Lompoc officials that [redacted] was being set up. He warned that Rodriguez and Trejos were "in the process of framing a man that I think may be innocent, because these two gentlemen had approached me months earlier about such a scheme."[35] His concerns went unheeded.[36]

Inmate Glenn Bosworth expressed similar concerns. He informed the FBI that in the months before their investigation, Rodriguez had approached him to ask if he wanted to hurt the judge that had sentenced him.[37] Bosworth rejected Rodriguez's offer, but became concerned that Rodriguez was trying to set someone

---

[33] ER 215.

[34] *Id.*

[35] ER 225.

[36] *Id.*

[37] ER 60.

up in hopes of securing a sentence reduction.[38] As Bosworth later testified: "Mr. has been targeted and set up for an offense that is heinous, that is terrible. I believe that Antonio Rodriguez asked the same thing he asked me. Unfortunately, -- I apologize for saying this, but I don't think mental clarity was what it should have been."[39] Despite there being no apparent reason for Bosworth to fabricate his story, his warning too was cast aside.

Another inmate, Allen Nye, who slept in a bunk adjacent to testified that Rodriguez would consistently visit bunk, wake him from his sleep, and take him away to "work" on him. Nye would also hear Rodriguez ask about conspiracies, just so he could laugh at him once went on a "rant". Yet another inmate confirmed that Rodriguez had taken under his wing and appeared to be giving him protection. Importantly, these witnesses consistently described as a "nut," as a strange man with odd beliefs who had plainly been manipulated by Rodriguez and Trejos.[40]

---

38 ER 60-61.

39 ER 70.

40 *See e.g.*, ER 79, 273.

Nevertheless, the government indicted Mr. [REDACTED] and brought him to federal court to answer charges of the solicitation of murder.

II. Mr. [REDACTED] is held *incommunicado* pending trial, despite explicit requests to obtain "independent counsel."

Mr. [REDACTED] arrived back in the district court for arraignment. But based on the unproven allegations alone, the court and the government held Mr. [REDACTED] *incommunicado* for the duration of his case—despite his specific requests to lift the communications ban and his stated desire to try to obtain "independent counsel."

A. "*Defendant is not allowed to communicate with anyone except his public defender*": The magistrate judge *sua sponte* orders Mr. [REDACTED] held *incommunicado.*

At the arraignment on the indictment, the magistrate judge advised Mr. [REDACTED] of his constitutional rights, including the promise that "[y]ou have a right to retain and be represented by an attorney *of your choosing* at all stages of the proceedings."[41] But that promise was betrayed almost immediately.

At the detention hearing that immediately followed, the government provided an oral proffer of the alleged evidence against Mr. [REDACTED][42] No witnesses testified; the government provided no documents in support of its case.

---

[41] ER 1125-1126.

[42] ER 1129.

The oral proffer included allegations that Mr. [redacted] had solicited the murder of his sentencing judge and other officials, the graphic details of Mr. [redacted] alleged statements, and the fact that he had bail revoked in the underlying case.[43]

The defense rejected the government's proffer, but given the fact that Mr. [redacted] was already serving a prison sentence, did not contest the request for detention. After the proffer, the magistrate judge exclaimed: "Well, obviously I'd have to be nuts to let somebody like that out."[44] Then, *sua sponte*, the magistrate forbid Mr. [redacted] from communicating with anyone but his public defender: "THE COURT: Okay. Well, I'm going to order that he not be allowed to communicate with anybody except [one federal defender attorney], on top of everything else, and that he be, also, not permitted to have any contact with any other prisoners -- or detainees. Let me say that."[45]

The appointed attorney asked that the ban at least be broadened to include her law office (the Federal Public Defenders generally.)[46] The magistrate refused.

---

[43] ER 1129-1133.

[44] ER 1134.

[45] ER 1135.

[46] ER 1136.

He ruled that only a small legal team could communicate with Mr. [redacted] adding that "I want, frankly, most of the contact to be just through you."[47]

B. A written motion to set aside the communication ban is put off, then forgotten.

The public defenders' office later filed a written objection to the communication ban, and moved to lift it.[48] The motion raised constitutional objections to the magistrate's order—including the specific objection that it infringed on Mr. [redacted] Sixth Amendment right to counsel.[49] The government opposed the defense motion, despite not having requested the pretrial conditions in the first place.[50] But the district court never ruled upon the motion.

---

[47] *Id.* A later written order also confirmed the communications ban: "Defendant is not allowed to communicate with anyone except his public defender, Georgina Wakefield, her co-counsel, one investigator from the Public Defender's Office, and one paralegal from the Pubic [sic] Defender's Office. However, the Court strongly suggests that the majority of defendant's contact be conducted through Ms. Wakefield. Defendant is not permitted to have any contact with any other prisoners/detainees." *See* ER 4.

[48] CR 23.

[49] *See e.g*. CR 23 at 5,6.

[50] CR 26. The government did express a willingness to "compromise" on certain facets of Mr. [redacted] pretrial detention. But, as explained *infra*, the district court never changed the conditions, and the government maintained its opposition to granting the defense motions. *See e.g*. CR 26 at 9.

As described below, this Sixth-Amendment issue became a casualty of Mr. [redacted] mental-health proceedings and the non-existent relationship between the defendant and the court-appointed lawyers who were foisted upon him.

The district court did initially schedule a hearing to address the motion.[51] At the hearing, Mr. [redacted] addressed the district court directly, and made his attorney's Sixth Amendment objection even more specific: "I object to being given unconstitutional cruel and unusual punishment *where I'm thrown into the hole before I'm convicted of anything and then denied any communication with private counsel.*"[52] And although his complaints to the district court sometimes meandered, he stated explicitly that the magistrate's order had compromised his Sixth Amendment choice of counsel.[53]

---

[51] *See* CR 32.

[52] ER 1113-1114.

[53] *Id. See also* ER 1403 (describing "the Honorable Nakazato . . . that from Day 1, when I became involved with the federal system on November of 2009, I did not have unbiased or uncompromised counsel from that day forward till today. *At no point in time,* including everything we're here for today, everything that's related to it and separately apart from it *have I ever had independent counsel of my choice. . . .*").

Accordingly, Mr. [redacted] moved to represent himself.[54] The district court agreed that Mr. [redacted] had a conflict with the Federal Defenders' Office.[55] The district court accepted a lengthy ex parte filing from Mr. [redacted][56] continued the proceedings for a *Faretta* hearing, and moved the hearing on the motion to lift the communications ban along with it.[57]

But based on Mr. [redacted] oral presentation to the court—and the contents of the voluminous filing Mr. [redacted] submitted—the district court began to harbor doubts about his competency for trial. It ordered a competency examination,[58] and continued the communications-ban motion along with the competency and *Faretta* hearings.

But before either hearing occurred, the public defender's office declared an actual conflict, and the district court relieved them from representing Mr.

---

54 *Id*.

55 *See* ER 1415 (THE COURT: "That's all I need to know. And so they have a conflict. They cannot represent you.").

56 *Id.*

57 CR 32, CR 37.

58 *See* CR 38 (minute order sua sponte ordering competency evaluation); CR 40 (written order, same).

[59] The district court appointed a different attorney under the Criminal Justice Act.[60] It set a hearing for Mr. *Faretta* hearing, a competency hearing, and for resolution of the communications ban.[61] Unfortunately, before the hearing date arrived, the new attorney also declared a conflict.[62] The trial court relieved that attorney and appointed present counsel, who ultimately represented Mr. for the remainder of the district court case.[63]

The competency examination was continued,[64] and the parties litigated whether a defense representative could observe the competency examination.[65] The district court continued the competency examination a final time to allow the court-appointed doctors time to complete the examination and resulting report.[66]

But at some point in the proceedings, the communications-ban motion

---

59 CR 41, 45.

60 CR 46.

61 CR 46.

62 CR 47.

63 Counsel continues to represent Mr. against his wishes, as described in more detail infra—on this appeal.

64 CR 59, 69.

65 CR 84.

66 CR 91.

simply fell by the wayside. Though it had been listed earlier as trailing the competency and *Faretta* issues, the motion simply disappeared from the docket.[67] Neither the district court nor the government ever addressed the issue again. Nor did new appointed counsel—who was two attorneys removed from its filing and who had no meaningful communication with Mr. [redacted] throughout the case.[68]

As a consequence, Mr. [redacted] was held completely *incommunicado* for the duration of his case—and despite a written motion on file asking that the conditions be lifted.

C. *"If there is anybody out there who can get me an attorney, in the name of God please help me. Get me an attorney":* Mr. [redacted] repeatedly objects to the communications ban on choice-of-counsel grounds.

But Mr. [redacted] consistently objected to being held incommunicado—and often specifically complained that it compromised his specific right to "independent counsel." For example:

---

[67] *Cf*. CR 46 (April 6, 2015 minute order resetting hearing on communications-ban motion) with CR 91 (October 30, 2015 minute order resetting dates but failing to mention communications motion at all).

[68] The record reflects that shortly after the last C.J.A. counsel was appointed, Mr. [redacted] stopped accepting visits from him, terminating any communication between client and attorney whatsoever. *See e.g*. ER 1097.

- In May of 2015, he stated that “I object to being given unconstitutional cruel and unusual punishment where I'm thrown *into the hole before I'm convicted of anything and then denied any communication with private counsel.*”[69]
- “I object to having conflicted counsel interfere with my constitutional rights, to have a defense.”[70]
- After his first trial ended in deadlock, he asserted: “I've been held without any *legal representation* or due process without a trial or conviction *incommunicado* for roughly 20 plus -- 21 months in the hole . . . .”[71]
- He repeated his claim about an independent attorney: “I have no attorney, and I am denied due process. And I have tried to summarize this as briefly as I can, *and I hope somewhere somehow somebody can bring me independent counsel.*”[72]

---

[69] ER 1113-1114 (emphasis provided).

[70] ER 1114.

[71] *See* ER 981.

[72] ER 990.

Finally, Mr. [redacted] was removed from his retrial after interrupting his defense attorney's opening statements and begging the audience to communicate his desire for "independent counsel":

> THE DEFENDANT: Enough of this. You don't represent me. You were terminated 60 weeks ago.
>
> THE COURT: Mr. [redacted] please be quiet.
>
> . . . .
>
> THE DEFENDANT: This is a false defense, and I need representation. I did not have a defense of insanity. It was entrapment solely. This is enough of this. *If there is anybody out there who can get me an attorney, in the name of God please help me. Get me an attorney.*"[73]

He repeated the same entreaty when returned to trial later that afternoon.

> THE COURT: Mr. [redacted] I'm just going to ask you to be quiet during the trial proceedings and not be disruptive. Do you understand?
>
> THE DEFENDANT: I desperately need independent counsel, Your Honor.
>
> THE COURT: You're not going to be appointed independent counsel. Mr. Scott is the lawyer that's been appointed to you for this case.[74]

He continued to object, including on First Amendment grounds, until the day he was sentenced.[75] His communications ban was never changed.

---

73 ER 898-899 (emphasis provided).

74 ER 727.

75 ER 1307.

III. Mr. [redacted] is found competent to stand trial, but is not allowed to represent himself.

A. Mr. [redacted] writings and courtroom behavior provoke a *sua sponte* competency examination.

The first time he appeared in district court after arraignment, Mr. [redacted] addressed the trial judge himself. He stated that his public defender was conflicted, and that the prosecution was conspiring against him.[76] The district court frequently had to interrupt him to steer the conversation back to the conflict that Mr. [redacted] described with the Federal Defenders' Office.[77]

> MR. [redacted] It was witnessed by the officers of that bank and signed by the partners authorizing the wire transfer specifically to purchase an asset, which we were in the business of acquiring precious metal, gold. And I signed that with him, and the prosecutor hid their signatures with the cooperation --
>
> THE COURT: Let me interrupt you again. Let's try to focus, Mr. [redacted] on the Public Defender's Office. . . .

---

76 *See* ER 1403 (arguing that the prosecutor was responsible for appointing his previous attorney in the underlying case).

77 *See* ER 1406.

[REDACTED] continued to describe a conspiracy to harm him that purportedly included the government, the F.B.I., and the Bureau of Prisons.[78]

Mr. [REDACTED] also filed a massive, eleven-volume *pro se* pleading with the district court. The first page alone described "872 reasons to recuse," "false arrest and imprisonment for centuries," "over three-dozen Entrapment Episodes," and that the government was "using Gangsters, Serial-Murderers, and Professional Terrorists, from Mexico, Columbia and Nigeria" in a wide-ranging conspiracy against him. It looked this this: [79]

---

[78] *See e.g.* ER 1408("I want to also mention, Your Honor, that I've been injured repeatedly since November of 2009 by employees of the FBI and the BOP and proxies. And it isn't myself, Your Honor, saying that I've been injured severely -- it's 27 -- literally, doctors from seven different hospitals. . . .").

[79] *See* ER 41-46.

[IN CAMERA]

PG-1

SWORN AFFIDAVIT OF [redacted] - IN LOS ANGELES - CALIFORNIA
& WITH PRAYER FOR RELIEF BE ALLOWED - FOR EMERGENCY NON-CONFORMING MOTION(S)

INTRODUCTION/SUMMARY - HERE IS WHAT'S TRUE -RECUSAL ISSUES - 872 REASONS TO RECUSE
ENTRAPMENT(S) - FALSE ARREST & IMPRISONMENT FOR CENTURIES - FOR ADVANTAGE - IN CIVIL ISSUE(S)

The testimony contained, and referenced in this Affidavit, is about this instant matter. And examining independent third-party documentation, and my own. And knowledge, and exposure of a multitude, of relevant facts. That pertain completely to what is at hand, and supporting recusal

Comprising an Entrapment Campaign, to accomplish multiple coverups. In a multiplicity, of over three-dozen Entrapment Episodes. Which collectively, along with other facts, expose this instant matter, as a Rule-35 driven, Prosecutorial Fraud Upon the Court(s) again. In not just this, but across several District Courts. And those of the Ninth Circuit Court of Appeals, and is another of many Entrapment Episodes. Originally, to obtain illegal advantage in civil proceedings.

EXTORTION - OF A "CONVALESCENT PATIENT" - DIAGNOSED AS "INCAPACITATED" - "FOR...YEARS" UNCONSTITUTIONAL & ILLEGAL USE OF "CRUEL & UNUSUAL PUNISHMENT(S)" - TO EXTRACT THE "POISONED FRUIT" - OF INADMISSABLE FALSE "EVIDENCE" - OF TESTIFYING AGAINST ONES-SELF - OBTAINED BY 5TH AMENDMENT VIOLATION-ENTRAPMENT(S) - THREAT(S) - COERCION - DURESS - AND FORCE & FRAUDS ON THE COUR

To obtain, and use, false "evidence", under horrific duress, repeatedly, in an organized, and systematic manner, by threats of murders, of my family, and self. Along with numerous relentless assaults, in many different manners, on numerous occasions. Since this coverup, and series of Entrapment Episodes began. Openly, by DOJ/FBI/BOP-employee directed, and controlled Entrapment Operatives. Using Gangsters, Serial-Murderers, and Professional Terrorists, from Mexico, Columbia, and Nigeria. To extort, and split monies, and fabricate under their personel's direction, staged, coerced behaviors, in not only this instant matter, but in and with many others. While helpless, per DOJ's own Expert Medical Witness's Opinion. Referencing 6,000 pages, from 27 Physicians consensus, from 7 hospitals, from prior DOJ/FBI orchestrated assaults, till now, to gain advantage.

Therefore, I, John Arthur Walthall, hereby swear that all of the above and following content are true, to the best of my knowledge. Along with the documents I am appending to this Affidavit by reference. Making an integral, inseperable part of this continuation of my Affidavit of 2012.

The document continues for hundreds of pages, but the content all closely resembled the excerpt above excerpt.[80]

80 *Id.*

The trial court, understandably, began to question Mr. [redacted] competency. As it later stated, "what started it for me was I received a filing from Mr. [redacted] I want to say it was about six inches thick, and there were many things in that stack that concerned me that I'm not sure he can fully appreciate these proceedings [or that] [h]e can fully communicate and cooperate with counsel."[81] The district court ordered a competency evaluation accordingly.[82]

Before the competency examination occurred, additional evidence showed that communication had completely broken down between Mr. [redacted] and his attorney. In a letter to the district court, [redacted] purported to fire his appointed counsel. The letter provided additional insight into his delusional conspiracies, including recurring concepts of "equitable sharing" "multiple conflicts" and "conflicted interlocking law partnerships." [83]

---

[81] ER 1059.

[82] CR 40.

[83] ER 48.

UNITED STATES FEDERAL COURTHOUSE
DISTRICT COURT - c/o CLERK OF THE COURT
THE HONORABLE DISTRICT JUDGE CARNEY
411 W. 4TH ST., SANTA ANA CA 92703

FED CASE # CR 14-0192 CJC

RE: TERMINATION(S); 2255; "EQUITABLE SHARING"; MULTIPLE CONFLICTS; FRAUDULENT ACTION(S); CONSTITUTIONAL VIOLATIONS; RULE (8)(a)(2) - MALICIOUS PROSECUTION

YOUR HONOR, I HAVE TERMINATED THE FALSE REPRESENTATION OF TIMOTHY SCOTT, AND HIS ASSOCIATE JOSHUA BRADDOCK AS OF 6/28/15 IN PERSON. WITH THEIR ORGANIZATION TOO, RAN BY KATE CORRIGAN - OF 'PANEL ATTORNIES'. AND DUE TO HER WRITTEN ADMISSION OF CONFLICTED INTERLOCKING LAW PARTNERSHIPS. INVOLVED HERE IN 'FRAUDS UPON THE COURT(S)' - GOING BACK YEARS. OF WHOM, I DISAVOW ALL ACTS AND OMISSION(S). I RECIND, REPUDIATE, AND DISCLAIM ANY RESPONSIBILITY - FOR INTENTIONS TO COMPROMISE MY DEFENSES, ATTEMPTED BY SUBTERFUGE(S)

I HAVE RECIEVED NO ACKNOWLEDGMENT(S) AFTER DOING THIS AGAIN BY PHONE - FRIDAY 7/17/15 - FROM EITHER OF THEM, NOR THE COURT. THEREFORE AGAIN, I AM WRITING REGARDING MY TERMINATION OF AND FOR THEIR ACTION(S). UNKNOWN TO, AND NOT AUTHORIZED BY ME. WHICH I DISAVOW - AND THEIR PURPORTED REPRESENTATION(S) VIOLATING THE CONSTITUTION - AND ANY OF THEIR ACTIVITIES. EXACTLY DONE AS THE CONFLICTED 'PUBLIC DEFENDER' ORGANIZATION DID WITH KOREN BELL/GEORGINA WAKEFIELD - WHO IN TURN - IN WRITING - ADMITTED THE SAME MALICIOUS DECEPTION(S).

And in another ancillary proceeding that occurred before the competency hearing,[84] the trial court was forced to remove Mr. ██████ from the courtroom after he continued to object to being represented by a lawyer who he had "fired."[85] His attorney reported that Mr. ██████ had stopped receiving all attorney visits and had cut off all communication with counsel.[86]

---

[84] The defense had litigated whether a defense representative should be permitted to observe the competency examination, or in the alternative to have it videotaped. CR 53, 79. The district court denied the motion. CR 84.

[85] ER 1095.

[86] ER 1097.

B. The district court finds Mr. [redacted] competent to stand trial on the grounds that he was not suffering from a "severe mental illness"—but still denies him his *Faretta* rights.

Doctors from the Bureau of Prisons conducted the competency evaluation. They concluded that he had a DSM-V-diagnosable mental illness—"Obsessive-Compulsive Personality Disorder with Narcissistic Traits." The report described some of the general features of the disorder as: [87]

> • "enduring patterns of perceiving, relating to, and thinking about the environment and oneself that . . . are inflexible and maladaptive and cause significant functional impairment or subjective distress. . . ."
>
> • "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture and is manifested in at least two of the following areas: cognition, affectivity, interpersonal functioning, or impulse control."
>
> • "attempt[ing] to maintain a sense of control through painstaking attention to rules, trivial details, procedures, lists, schedules, or form to the extent that the major point of the activity is lost."
>
> • "Mr. [redacted] rigid thinking invades his ability to do what is in his best interest. Specifically, he does not follow the directives of the court, nor does he regularly answer questions posed to him. Instead, at every opportunity, he verbalizes his own agenda, which continues to revolve around the individuals involved in his conviction for wire fraud and money laundering. This has resulted in the defendant speaking out of turn, and being removed from court."

His defense attorney reported that the defendant's mental illness had completely prevented him from assisting in the defense, including the following facts:

---

[87] ER 1338-1343.

- "The defense team has literally never had a substantive attorney/client conversation about the facts of the case or the charges against Mr. [REDACTED]
- "Mr. [REDACTED] has never been able to discuss possible witnesses. He has not been able to discuss whether to pursue a plea."
- "He has not been able to discuss the elements of the offense."
- "He has not been able to discuss affirmative defenses."
- "He has not been able to discuss whether to testify."
- Early conversations with Mr. [REDACTED] (before legal visits stopped altogether) "never progressed beyond his fixation on a conspiracy against him, the principles of 'equitable sharing,' and the merits of his underlying case."
- "Simply put, Mr. [REDACTED] has never assisted counsel with his defense. Due to his apparently earnestly held beliefs, he has been an active impediment to the defense effort."[88]

Nevertheless, the BOP doctor opined that Mr. [REDACTED] was competent to stand trial on the theory that "there is no objective evidence to indicate Mr. [REDACTED] suffers from signs or symptoms of a major mental disorder, such as an affective disorder (e.g., Bipolar Disorder), psychotic disorder (e.g., Schizophrenia), or an organic disorder that would impair his present ability to understand the nature and consequences of the court proceedings against him, or his ability to properly assist counsel in his defense, or to represent himself."[89]

---

[88] CR 90 at 7.

[89] ER 1345.

At an evidentiary hearing, both doctors who contributed to the competency report testified that Mr. [redacted] mental illness was legitimate and that there was no evidence of malingering.[90] They also testified that Mr. [redacted] behaviors were the direct result of his mental illness.[91]

The district court found Mr. [redacted] competent to stand trial, ruling that:

> First of all, Mr. [redacted] is competent to understand the nature and consequences of the proceedings against him. Second of all, I think he could properly assist Mr. Scott in his defense if he wanted to, but he has voluntarily decided not to talk to Mr. Scott. *He is not suffering from a mental condition that would prevent him from doing so if he wanted to.*[92]

But in the next breath, the district court denied Mr. [redacted] request to represent himself—and without making any finding that Mr. [redacted] *was* nevertheless suffering from a "severe mental illness."[93]

> And, finally, I am not going to let him represent himself because he is not willing or capable to perform what I believe are the essential tasks needed to present his defense in this very serious case. He is not capable of organizing

---

90 *See* ER 1009-1010 (Dr. Hope: "A: No. There was no evidence of any kind of malingering with Mr. [redacted] *See also* ER 1016 (same, other doctor).

91 *See* ER 1019-1020.

92 ER 2-3 (emphasis provided).

93 *Cf. Indiana v. Edwards*, 554 U.S. 164, 178 (2008) ("the Constitution permits [the government] to insist upon representation by counsel for those . . . [who] suffer from *severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.*") (emphasis provided).

> a relevant legal defense to these very serious charges of trying to solicit the murder and assault of a federal judge as well as the U.S. Attorney and others.
>
> He's not able or capable of making the proper motions. He's not going to participate in meaningful voir dire. He's not going to be able to question the witnesses appropriately. He's not going to be able to address the Court and the jury, and he's not going to be able to argue the relevant points of the law.
>
> He's adamant, as I think the record in this proceeding and the several ones we've had before, about asserting his – what I believe is a delusional widespread conspiracy to deny him of his constitutional rights, convict him of fraud, and force him to solicit the assault and murder of Judge Guilford. Those are the findings of the Court.[94]

The district court never conducted a traditional *Faretta* colloquy with Mr. [REDACTED] nor asked him about any of the tasks or issues described in the findings set forth above. Mr. [REDACTED] continued towards trial with an attorney appointed to him against his will.

C. Additional evidence of mental illness develops at trial.

As the case progressed towards trial, Mr. [REDACTED] mental issues continued to stand between him and his attorney. Months after the competency hearing, Mr. [REDACTED] still had not met with his counsel nor assisted in his own defense.

At trial, evidence showed that Mr. [REDACTED] had suffered from similar delusions and conspiracy ideation since at least 2012—before the alleged solicitation offense. Defense exhibit 606 was a 517-page filing that Mr. [REDACTED]

---

[94] ER 2-3.

had presented in the underlying case. It reflected his belief that his own defense attorney was conspiring with the government; that his attorney was a puppet master engineering Mr. [redacted] doom; that the defense attorney was conspiring with the FBI; and that the Archdiocese of San Bernadino was somehow involved in the case.[95]

Witnesses confirmed that none of this was true, of course.[96] There was no $100-million fraud scheme.[97] There was no RICO conspiracy against him.[98] His prior defense attorney had not, in fact, been hired by the prosecutor, or vice-versa.[99] In summary, all of these ideas were objectively false according to the evidence at trial—including the AUSA's and FBI agents assigned to the case.[100]

---

95 ER 1272-74.

96 *Id.*

97 ER 922.

98 ER 923.

99 *Id.*

100 ER 929-930.

Mr. [redacted] also took the stand in his own defense.[101] He repeated that he was the victim of a "$100 million gold investment fraud conspiracy,"[102] and explained the "Entrapment/cover-up of Lehman/Archdiocese and Tony/Mary Ganje, Steger, officers of court and law, Howard, Riddet, Takla."[103] In his own words, Mr. [redacted] described the "conspiracy" against him as "so overwhelming and so unreal and so unbelievable that either it's true or you're nuts, one of the two, the bottom line."[104]

For example, Mr. [redacted] testified:

> If what I have to say is not an admitted evidence, it might as well be pretended to not exist. Because without any representation, I can't get it into admitted evidence. It's a Catch-22 situation imposed by the cleverness of the people that I'm unfortunately up against. And then here I go on to say in 12 different courts. This was at that time when I started writing this in August of 2011, at this point in time there are approximately 22 or 23 different courts where one I have to say can be corroborated. And again, that's so ridiculous sounding and unbelievable. If I heard this and I didn't know the circumstances or the facts, my reaction would be is this guy crazy or what? But this is what I'm dealing with."[105]

---

101 ER 1176 *et seq.*

102 ER 1179.

103 ER 1180.

104 ER 1180-81. It was, in fact, the latter.

105 ER 1184.

He continued:

> But let me just skip around and say on this point, in reference to one person mentioned here, Wilfrid C. Lemann, an attorney out of San Bernardino, who is a primary principal and what has brought this present court case around, he was involved in eight previous fraud cases which amount to in the segment of the investment advisory business that I was in, usually the type of financial instrument we're talking about, which is called a charitable remainder annuity trust or CRAT in capital letters."[106]

He testified that his prior lawyers had all been in league against him.[107] And despite testifying in stream-of-conscious format until essentially stopped by the district court, Mr. ██████ asserted that he did not scratch the surface in describing the conspiracy against him to the jury.[108]

The defense called lay witnesses from Lompoc, who provided additional mental-health evidence. One witness who had been incarcerated with Mr. ██████ testified, "I mean no offense by this, but ████ a nut" and that [h]e has very

---

106 *Id. See also* ER 1189 ("I'm attempting to alert you to a far wider judicially disguised wrongdoing that only the highest judicial appellate authority such as your own could initiate potent inquiry into. That's because apparently at the district level of the federal court system, I am stymied because it's a Catch-22 unless you're admitted into practice. You're out of luck the way they've got it set up.")

107 ER 1193-1199.

108 *See e.g.* ER 1271 ("THE DEFENDANT: I want to exercise my right to address the jury. I didn't intend to just address an empty room . . . . I haven't had but a fraction of the things that pertain to my defense or the facts presented.").

distinct conspiratorial theories and philosophies. If he were to tell you 50 things, you might pull two cohesive thoughts out of it and the rest of it would be puffery and conspiracies."[109] Another testified that "[a]ll you had to do was mention government to him and then the whole conversation takes a turn, you know. He would think they were trying to poison him. They were -- that they had put trackers under his skin. There was a lot of things like that. They tried to have his wife kill him. And I thought he was just a little delusional. You know what I mean?"[110]

Expert medical witnesses called by both the defense and the government agreed that Mr. [redacted] suffered from a mental illness—the only dispute was the severity. The defense called Dr. Manuel Saint Martin, a board-certified psychiatrist and a specialist in forensic psychiatry.[111] Based on the available writings and records,[112] Saint Martin diagnosed a delusional disorder, with possible

---

109 ER 1260

110 ER 1269.

111 ER 1240.

112 Dr. Saint Martin, like the BOP doctors and the government's expert, was unable to conduct a forensic interview of Mr. [redacted] because he did not believe that Dr. Saint Martin was a real doctor who was there to try to help him. ER 1245.

paranoid schizophrenia.[113] The doctor confirmed that each of these problems were "serious mental disease or defects."[114]

The government's expert testified that while Mr. ████ appeared to have a personality disorder with "paranoid features," he did not have a delusional disorder or paranoid schizophrenia. [115] But on cross-examination, the doctor admitted that delusions are fixed untrue beliefs that are not amenable to change;[116] that Mr. ████ conspiratorial beliefs (which had existed, unchanged, since at least 2012) appeared to be simply untrue;[117] and, importantly, that there was no evidence that Mr. ████ was malingering or exaggerating his mental-health

---

[113] ER 1247.

[114] ER 1249.

[115] ER 600. See also ER 603 (suggesting that perhaps he had "paranoid personality disorder."). *See also* ER 659. (Government expert: "In my opinion it's a personality disorder, yes. Q: Okay. And would you agree with me at least that this writing is consistent with a mental disorder that he has, whatever it is, even if you and I disagree on what disorder he actually has? A: Yes."). To conserve space in the ER, these citations are to the doctor's identical testimony in the second trial.

[116] ER 615.

[117] *See* ER 638 (no $100 million fraud); *id.* (no conspiracy against Mr. ████ orchestrated by his attorney); *id.* (FBI not taking bribes); *id.* (FBI Agent's father not part of the conspiracy).

symptoms.[118] Ultimately the doctor admitted that while he diagnosed a paranoid personality disorder, it was possible that these examples were in fact evidence of a delusional disorder featuring persecutory delusions.[119]

After presentation of this evidence, the jury deadlocked.

D. Mr. [redacted] behavior deteriorates further after the first trial.

Mr. [redacted] condition—and his relationship with his attorney—continued to deteriorate after the mistrial. He continued to deny that he was represented by his court-appointed attorney. He continued to assert that there was a conspiracy against him that included his lawyer.[120] And he complained bitterly, and with unintended irony, about the mental-health defense that his attorney had tried to present at the first trial:

> I have clearly put in the three-and-a-half hours roughly of the six or seven times I've been forced to say something only this recording that's been presented. I clearly embedded the same identical time of passive resistance that the captain of the USS Pueblo, for example, and other military personnel have done. And all of this reasonably should have caused, if this was anything other than a cover-up, this to be dropped if these were legitimate proceedings. But I say again, the rule of law -- I'll wrap this up -- false in one thing, false in all things shows that there's no way that I'm mentally ill, because where I can allow for an honorable prosecutor to have an indictment and to make a

---

[118] ER 634.

[119] ER 640.

[120] ER 984-985.

> mistake and to drop it, even once, perhaps twice even, but there's no way that I can be indicted for seven different crimes that are all heinous unless there is an organized effort on the part of all the officers of the Court presently who, under the equitable sharing program of the Department of Justice, all of whom, according to senators on the judiciary committee that were reported by the billionaire publisher Bloomberg on April 22nd and July 1st of 2015, there's no way that this is a figment of my imagination or paranoid schizophrenia when Senator Chuck Grassley, Senator Rand Paul articulate exactly what I'm talking about.[121]

The district court maintained its position on competency.[122] It did not conduct any further *Faretta* inquiry. And Mr. [REDACTED] remained in segregation *incommunicado*, unable to contact an "independent lawyer."

In the second trial, Mr. [REDACTED] attorney sought again to present a mental-health defense. In opening statements, he asserted: "He talks about . . . the archdiocese and fraud conspiracies and millions upon millions of dollars in gold and centrifuges and Opus day and the Lion's Den and foreign banks and religious corporations and sovereign societies and charitable trusts and cover-ups and being betrayed in biblical verses and . . . the plasma torch, the light saber, gold dust."[123] He continued, "[REDACTED] documents tie it all in, ties it all in in the mind of [REDACTED]

---

121 ER 989.

122 ER 990.

123 ER 899.

[REDACTED] This was the tangled web that existed in his brain and in his head by the time Diego Trejos Ortiz . . .” But Mr. [REDACTED] interrupted the opening statement:

> THE DEFENDANT: Enough of this. You don't represent me. You were terminated 60 weeks ago.
>
> THE COURT: Mr. [REDACTED] please be quiet.
>
> THE DEFENDANT: I want to make a statement.
>
> THE COURT: Mr. [REDACTED] if you're not quiet, I'm going to have to remove you, sir.
>
> THE DEFENDANT: Your Honor, I terminated this man.
>
> THE COURT: Ladies and gentlemen, would you please give me a moment with Mr. [REDACTED]
>
> (Jury not present)
>
> THE DEFENDANT: That's enough of this.
>
> THE COURT: Mr. [REDACTED] please be quiet, sir.
>
> THE DEFENDANT: This is a false defense, and I need representation. I did not have a defense of insanity. It was entrapment solely. *This is enough of this. If there is anybody out there who can get me an attorney, in the name of God please help me. Get me an attorney.*”[124]

But Mr. [REDACTED] entreaties fell on deaf ears. He did not receive the opportunity to obtain his own lawyer. Instead, the district court removed him from his own trial until the following afternoon session.[125]

---

[124] ER 889-890.

[125] ER 889-890.

And although some of the trial unfolded largely as it had in the first trial (including Mr. [redacted] bizarre testimony on his own behalf[126]) Mr. [redacted] began to interrupt the presentation of the defense case-in-chief too. He objected during the defense psychiatrist's direct:

> Q: Is it unusual . . .for these types of delusions to not be reported or treated because the person doesn't think they're delusional?
>
> THE DEFENDANT: This is such outrageous fraud. Who are you kidding?
>
> THE COURT: Mr. [redacted] you need to be quiet, sir.
>
> THE WITNESS: Yes.[127]

It happened more than once, again forcing the district court to remove Mr. [redacted] from his own trial:

> A: Well, because his writings and his plot is to get drones in prison. But when you go into context, why is he doing this, it's because of his manifesto, because of these people who are after him or who are trying to persecute him that he needs to basically get back at all or retaliate against them before they could harm him.
>
> THE DEFENDANT: You're my defense attorney?
>
> THE COURT: Mr. [redacted] Mr. [redacted] please be quiet, sir.
>
> THE DEFENDANT: This is my record.
>
> THE COURT: Mr. [redacted] Please be quiet.

---

[126] *See* ER 99 et seq.

[127] ER 160.

THE DEFENDANT: Please put this in the record and I'll shut up.

THE COURT: Ladies and gentlemen, could you give me a moment with Mr. ███ please.

(Open court out of the presence of the jury.)

THE COURT: Would the marshals please remove Mr. ███ Put him in the cell where he can watch and listen to the proceedings.

(The defendant left the courtroom.)[128]

After this second trial—including the outbursts that had not occurred during the first trial—the jury convicted Mr. ███[129] Mr. ███ and his attorney had almost literally no communication whatsoever.[130] The trial court ultimately sentenced him to the statutory maximum for the one count of conviction—twenty years in prison, consecutive to the underlying offense.[131]

SUMMARY OF THE ARGUMENT

███ conviction should be set aside due to four interrelated violations of his constitutional rights.

First, Mr. ███ was deprived of his right to seek independent counsel of his choice. A magistrate judge's order forbid Mr. ███ from speaking to

---

128 ER 163-164.

129 CR 282.

130 ER 1274

131 ER 9.

anyone except for his public defender. This issue was preserved by a written motion to lift the condition (including on Sixth Amendment grounds) and by Mr. [redacted] repeated objections that he was being denied "independent counsel." Because denial of choice-of-counsel is structural error, automatic reversal should result.

Second, Mr. [redacted] was also wrongly denied his right to represent himself. Although his attorney argued below that he was mentally incompetent either to stand trial or to represent himself, the district court ruled that he was competent to assist his attorney. But the trial court simultaneously denied him the constitutional right to self-representation—without finding that a severe mental illness prevented it. This finding seems to have been based, if anything, on the perception that Mr. [redacted] would not be an effective advocate, rather than a finding of mental incapacity. This too is structural error warranting reversal.

Third, after Mr. [redacted] was prohibited from choosing his own attorney and from representing himself, all communication broke down between him and his court-appointed attorney. The trial court did not inquire into the issues between Mr. [redacted] and his attorney, try to allay Mr. [redacted] distrust, or provide a lawyer with whom he could work. This too ran afoul of this Court's precedent and the Sixth Amendment right to effective counsel, and it is another ground for reversal.

And *fourth,* the district court erred in holding that Mr. was competent to stand trial. Even the government's expert and the court-appointed doctors agreed that Mr. bizarre and self-defeating behavior—including his profound distrust of court-appointed counsel—was the product of a diagnosable mental illness. All agreed that there was no evidence to suggest that he was malingering. But the district court held him competent to stand trial essentially because those experts believed that his mental disorder was a personality disorder rather than a "major" or "severe" mental disorder like schizophrenia or organic brain damage. That was error because 1) that is not the constitutional standard for incompetency; 2) the evidence showed that Mr. mental disorder prevented him from contributing to his defense; and 3) the district court failed to reevaluate its position after Mr. first and second trials yielded ever-increasing evidence of his incompetency.

For all of these reasons, this conviction should be reversed.

ARGUMENT

I. Mr. Sixth Amendment rights were violated by forcing an unwanted attorney upon him, while denying him the opportunity to try to hire independent counsel or to represent himself.

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his

defense." Mr. [redacted] suffered three different violations of this right: 1) his right to choice-of-counsel was impeded by the communications ban that held Mr. [redacted] *incommunicado*; 2) his self-representation right was wrongly denied given the district court's finding that Mr. [redacted] did not suffer from a "severe mental illness"; and 3) the right to effective assistance of counsel was violated when the district court failed to inquire adequately into Mr. [redacted] conflict and distrust of the attorney that the district court forced upon him. Each error requires reversal.

A. Standard of review.

This Court reviews *de novo* whether a defendant was denied his Sixth Amendment right to counsel. *See Frazer v. United States*, 18 F.3d 778, 781 (9th Cir. 1994); *United States v. Moore*, 159 F.3d 1154, 1158 (9th Cir. 1998). *Faretta* issues present a mixed question of law and fact, which this Court also reviews *de novo*. *United States v. Lopez-Osuna*, 232 F.3d 657, 663-64 (9th Cir. 2000).

B. Holding Mr. [redacted] *incommunicado* was structural error because it violated his Sixth-Amendment right to obtain independent counsel.

The Sixth Amendment's "root meaning" is the "right to retain counsel of [one's] own choosing." *Kaley v. United States*, 134 S. Ct. 1090, 1102 (2014). *See also United States v. Gonzalez-Lopez*, 548 U.S. 140, 147-148, (2006). "The Sixth Amendment guarantees a defendant the right to be represented by an otherwise

qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds." *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 624-625 (1989).

And over eighty years ago, the Supreme Court held that "[i]t is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded *a fair opportunity to secure counsel of his own choice.*" *Powell v. Alabama*, 287 U.S. 45, 53 (1932) (emphasis provided). *Powell* confirms that the right to counsel includes the *fair opportunity to seek private counsel*—and that the denial of that opportunity violates the Sixth Amendment. There, defendants were not asked whether they could obtain private counsel, nor given the chance to do so. *Id.* at 52. The Court held that "the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process." *Id.* at 71.

Mr. [redacted] was forced to trial with an attorney he did not want. He had no opportunity to secure private counsel, because the magistrate judge ordered him detained *incommunicado*. The Federal Defender objected to this communications ban on Sixth Amendment grounds.[132] Mr. [redacted] did too—explicitly objecting to being "*thrown into the hole before I'm convicted of anything and then denied*

[132] CR 23.

any communication with private counsel."[133] This perfected a Sixth Amendment violation under *Powell.*

The government may speculate that Mr. ██████ could not have afforded private counsel. But the Constitution does not permit this kind of analysis in evaluating the accused's Sixth Amendment rights. *See Bradley v. Henry*, 510 F.3d 1093, 1097-98 (9th Cir. 2007) (right to counsel was violated because "petitioner was given no chance to contest the conclusion, apparently reached by the judge even prior to the in-camera proceeding, that she could not pay."). "Due process does not permit a judge to decide such a question without hearing the affected party." *Id.*

Indeed, family or friends might have been willing to assist Mr. ██████ Or a lawyer might have decided to represent Mr. ██████ *pro bono* in this high-profile matter. *See Caplin & Drysdale,* 491 U.S. at 624-625 ("the Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, *or who is willing to represent the defendant even though he is without funds.*") (emphasis provided). Either way, Mr. ██████ right to choice-of-counsel does not turn on a post-hoc evaluation of his ability to pay.

---

[133] ER 1113-1114.

Finally, reversal should be automatic, without any prejudice analysis. The "erroneous deprivation of the right to counsel of choice" carries "consequences that are necessarily unquantifiable and indeterminate," and therefore "unquestionably qualifies as structural error." *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006) (internal punctuation omitted). It does not matter whether counsel who represented Mr. [REDACTED] performed adequately or not. "Where the right to be assisted by counsel of one's choice is wrongly denied, therefore, it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation." *Id.* at 148. "Deprivation of the right is 'complete' when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received." *Id.*

For all of these reasons, the conviction should be reversed, and Mr. [REDACTED] should receive a new trial.

C. The district court also violated Mr. [REDACTED] Sixth-Amendment right to self-representation.

In addition to the right to counsel, the Sixth Amendment "also guarantees the converse right to proceed without counsel at trial." *United States v. Farias*, 618 F.3d 1049, 1051 (9th Cir. 2010) (citing *Faretta v. California*, 422 U.S. 806, 807 (1975)). *Faretta* extrapolated this right from: 1) a "nearly universal conviction,"

that "forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so," *id.*, at 817-818; 2) the language of the Sixth Amendment, 817-821; 3) the absence of historical examples of forced representation, *id.*, at 821-832; and 4) "respect for the individual," *id.*, at 834.

Until the Supreme Court's 2008 decision in *Indiana v. Edwards*, 554 U.S. 164 (2008), a defendant who was determined to be competent to stand trial was also automatically deemed competent to represent himself. *See Godinez v. Moran*, 509 U.S. 389, 399 (1993). The Supreme Court clarified in *Edwards*, however, that "the Constitution permits [the government] to insist upon representation by counsel for those competent enough to stand trial . . . but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." 554 U.S. at 178.

But *Edwards* did not apply to this case. Here, the district court and the government rejected the idea that Mr. █████ suffered from a "severe mental illness"—and that is the only exception that *Edwards* carves out to the general *Faretta* rule. Given the findings that Mr. █████ was *not* compromised by a severe mental illness, the district court had the duty to at least conduct a *Faretta* colloquy to determine whether Mr. █████ could endeavor to represent himself. While Mr. █████ attorney strongly believed—and still believes—that he was incompetent either to stand trial or the represent himself, the district court

and the government did not share that view. And once the district court ruled that Mr. [redacted] was not suffering from a severe mental illness that rendered him incompetent, it could not deny *Faretta* rights without further findings that severe mental illness nevertheless precluded self-representation.

As with other Sixth Amendment rights, the improper denial of a request to proceed *pro se* at trial is structural error requiring automatic reversal; it is not amenable to any harmless error analysis. *See United States v. Arlt*, 41 F.3d 516, 524 (9th Cir. 1994). Because Mr. [redacted] was wrongly denied his *Faretta* rights, reversal should result.

The government may argue that regardless of mental illness, the trial court can deny *Faretta* rights to a defendant who is unable to communicate in an understandable manner. *See, e.g., Savage v. Estelle*, 924 F.2d 1459, 1464 (9th Cir. 1991). However, the prevailing view is that decisions like *Savage* "rest on a misunderstanding of *Faretta*, as they go far beyond assessing the character of defendant's waiver." 3 LaFave, Criminal Procedure § 11.5(d), at 757-58. Moreover, the Supreme Court apparently rejected this approach in *Edwards*. There, the Court declined the State's invitation "to adopt, as a measure of a defendant's ability to conduct a trial, a more specific standard that would 'deny a criminal defendant the right to represent himself at trial where the defendant cannot communicate coherently with the court or a jury.'" *Edwards*, 554 U.S. at

178. The Court was "sufficiently uncertain, however, as to how that particular standard would work in practice to refrain from endorsing it as a federal constitutional standard here. We need not now, and we do not, adopt it." *Id.*

The Seventh Circuit analyzed this issue persuasively in *United States v. Berry*, 565 F.3d 385, 391 (7th Cir. 2009). The Court of Appeals held that *Edwards* "would only apply when the defendant is suffering from a 'severe mental illness.' Nothing in [*Edwards*] suggests that a court can deny a request for self-representation in the absence of this. Because there was no evidence before the trial court showing that Berry had such an affliction, *Edwards* was simply off the table." *Id.*[134]

This Court's post-*Edwards* jurisprudence also emphasizes this severe-mental-illness requirement. *See United States v. Thompson*, 587 F.3d 1165, 1171-72 (9th Cir. 2009) ("the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from *severe mental illness* to the point where they are not competent to conduct trial proceedings by themselves." (emphasis in original, quoting *Edwards* at 2387-88).

---

[134] *See also United States v. Heard*, 762 F.3d 538, 543 (6th Cir. 2014) (distinguishing *Edwards* because defendant was not schizophrenic and trial court found that he did not suffer from a "severe mental illness.")

In any event, the district court did not give *Faretta* rights and then take them away due to Mr. ██████ being obstructionist. If anything, it did so preventatively, on the *assumption* that Mr. ██████ would be unable to comport himself properly in trial. And the record reflects that Mr. ██████ was only ever removed from the courtroom when trying to speak for himself. It is not at all clear that he would have misbehaved if permitted to act as his own lawyer.

Because the improper denial of *Faretta* rights was structural error, reversal should result for this reason too.

D. At a minimum, the district court erred in failing to explore Mr. ██████ conflicts with his attorney and considering the possibility of substitute appointed counsel.

Finally, even setting aside the choice-of-counsel and *Faretta* issues, the district court also failed to conduct a meaningful inquiry into the extent of the conflict between Mr. ██████ and his appointed attorney. Where a court "compel[s] one charged with [a] grievous crime to undergo a trial with the assistance of an attorney with whom he has become embroiled in [an] irreconcilable conflict [it] deprive[s] him of the effective assistance of any counsel whatsoever."[135] Thus, a reviewing court must assess the nature and extent of the conflict and whether that conflict deprived the defendant of representation

135 *Brown v. Craven*, 424 F.2d 1166, 1170 (9th Cir. 1970).

guaranteed by the Sixth Amendment.[136] In making that assessment, this Court "consider[s] (1) the timeliness of the motion; (2) the adequacy of the trial court's inquiry; and (3) the extent of conflict created."[137]

Here, all three of those factors weighed in favor of granting the request for substitute counsel. First, all of ██████ request were timely made. He objected early and often to being represented by appointed counsel. This factor, then, weighed heavily in favor of granting the substitution.

The second factor—the adequacy of the trial court's inquiry—also weighs heavily in favor of reversal. This Court has held that "*for an inquiry regarding substitution of counsel to be sufficient, the trial court should question the attorney or defendant 'privately and in depth,'* and examine available witnesses."[138] While the trial court held a competency hearing, it found Mr. ██████ competent. It was then incumbent on the court, if Mr. ██████ was really competent, to explore what the problem was between he and his attorney. Whether defense counsel is performing adequately is not the standard to evaluate a request for substitution of counsel. Indeed, this Court has clearly held that "[a] court *may not deny a*

---

136 *Schell v. Witek*, 218 F.3d 1017, 1027 (9th Cir. 2000).

137 *Nguyen*, 262 F.3d at 1004.

138 *Nguyen*, 262 F.3d at 1004 (citations omitted and emphasis provided).

substitution motion simply because [it] thinks current counsel's representation is adequate."[139] Because there was no specific conflict inquiry here, this prong also weighs in favor of reversal.

Lastly, the third factor—the extent of the conflict—weighed heavily toward appointment of new counsel. This Court has noted that "a complete lack of communication constitutes sufficient conflict to warrant the substitution of new counsel."[140] Further, "even if [trial] counsel is competent, a serious breakdown in communications can result in an inadequate defense."[141] In *Daniels v. Woodford*, 428 F.3d 1181, 1199 (9th Cir. 2005), for example, a defendant refused to cooperate with his court-appointed attorney. His "paranoia led him particularly to distrust a lawyer who had spent most of his career as a prosecutor and whom he thought was appointed to see that he was convicted and sentenced to death." *Id.* "Although Daniels's belief may have been unwarranted," this Court held, "the court still had an obligation to try to provide counsel that Daniels would trust." *Id.* This Court held that the deprivation of counsel meant that his habeas petition should have been granted, and his conviction and death sentence reversed. *Id.* at 1214.

---

[139] *Daniels v. Woodford*, 428 F.3d 1181, 1198 (9th Cir. 2005) *quoting United States v. D'Amore,* 56 F.3d 1202, 1206 (9th Cir. 1995).

[140] *Nguyen*, 262 F.3d at 1005

[141] *Id*. at 1003

Daniels is informative here. It stands for the proposition that when a paranoid, distrustful defendant wrongly but earnestly believes that his attorney is against him, then the Court should "try to provide counsel that [the Defendant] would trust." That is the rule for the mere substitution of one appointed counsel for another. The application of the rule should be even stronger, and the deprivation even more clear, when a defendant is also prohibited from obtaining private counsel of his own choosing or representing himself either. Given those deprivations, the trial court should have sought to resolve the issues between Mr. [redacted] and his court-appointed attorney.

Because all three factors support a finding that [redacted] was entitled to new counsel, the district court erred in finding to the contrary. Reversal should result accordingly.

II. If the district court properly denied Mr. [redacted] his *Faretta* rights, then it erred in simultaneously concluding that Mr. [redacted] was competent to stand trial.

A. Standard of review.

A district court's factual determinations regarding a defendant's competence to stand trial are reviewed for clear error. *See United States v. Loughner*, 672 F.3d 731, 766 n.17 (9th Cir. 2012); *United States v. Johnson*, 610 F.3d 1138, 1145 (9th Cir. 2010). But whether a defendant is denied Due Process is an issue that is reviewed *de novo*. *See e.g. United States v. Saya*, 247 F.3d 929,

937 (9th Cir. 2001) (Sixth Amendment); *United States v. Lynch*, 367 F.3d 1148, 1159 (9th Cir. 2004) (Due Process). Mr. [redacted] argument is that even taking the government's experts' opinions at face value, he had a mental condition that prevented him from assisting in his own defense. Given these undisputed facts, the competency issue should be reviewed *de novo.*

B. The district court erroneously determined that Mr. [redacted] was competent to assist his attorney at trial.

A criminal defendant has a constitutional due process right not to be tried or convicted while incompetent to stand trial. *See Maxwell v. Roe*, 606 F.3d 561, 564 (9th Cir. 2010). This right "assures that a defendant has the present ability to consult with counsel, to understand the nature and object of the proceedings against him, and to aid in the preparation of his defense." *Id.* (quoting *Dusky v. United States*, 362 U.S. 402 (1960)).

Two seminal cases set forth this constitutional competency standard, *Dusky v. United States*, 362 U.S. 402, (1960) (per curiam), and *Drope v. Missouri*, 420 U.S. 162 (1975). Both specify that the Constitution forbids a criminal trial against an individual who lacks "mental competency." *Dusky* defines the competency standard as including both (1) "whether" the defendant has "a rational as well as factual understanding of the proceedings against him" and (2) whether the defendant "has sufficient present ability *to consult with his lawyer with a*

reasonable degree of rational understanding." 362 U.S. at 402 (emphasis added). *Drope* repeated that standard, stating that it "has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, *to consult with counsel, and to assist in preparing his defense* may not be subjected to a trial." 420 U.S. at 171 (emphasis provided). The right to be competent enough to understand the proceedings and participate in the defense is considered "fundamental to an adversary system of justice." *Drope v. Missouri*, 420 U.S. 162, 172 (1975). *See also Pate v. Robinson*, 383 U.S. 375 (1966).

Title 18 U.S.C. § 4241 provides statutory guidance to competency questions as well, providing that criminal proceedings must be suspended if "the [trial] court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense."

Evidence that is relevant to this inquiry falls into three broad categories: medical history, the defendant's behavior in and out of court, and defense counsel's statements about the defendant's competency. *United States v. Garza*, 751 F.3d 1130, 1134 (9th Cir. 2014). *See also United States v. Marks*, 530 F.3d 799, 814

(9th Cir. 2008). A review of each category of evidence shows that the district court erred in determining that Mr. [REDACTED] was competent to stand trial.

First, defense counsel's statements about Mr. [REDACTED] competency strongly argued against his fitness to stand trial. Defense counsel unequivocally asserted that:

- "The defense team has literally never had a substantive attorney/client conversation about the facts of the case or the charges against Mr. [REDACTED]
- "Mr. [REDACTED] has never been able to discuss possible witnesses. He has not been able to discuss whether to pursue a plea."
- "He has not been able to discuss the elements of the offense."
- "He has not been able to discuss affirmative defenses."
- "He has not been able to discuss whether to testify."
- Early conversations with Mr. [REDACTED] (before legal visits stopped altogether) "never progressed beyond his fixation on a conspiracy against him, the principles of 'equitable sharing,' and the merits of his underlying case."
- "Simply put, Mr. [REDACTED] has never assisted counsel with his defense. Due to his apparently earnestly held beliefs, he has been an active impediment to the defense effort."[142]

At sentencing, the attorney explained that Mr. [REDACTED] had completely compromised his own defense for no apparent benefit, that he had declined visits since almost the inception of the case, and that he remained convinced that the

---

142 CR 90 at 7.

attorney was conspiring against him.[143] This prong tilts heavily against competency.

Second, medical testimony also weighed against competency. Expert medical witnesses called by both the defense and the government agreed that Mr. [redacted] suffered from a mental illness—the only dispute was the severity. The defense called Dr. Manuel Saint Martin, a board-certified psychiatrist and a specialist in forensic psychiatry. Based on the available writings and records, Saint Martin diagnosed a delusional disorder, with possible paranoid schizophrenia. The doctor confirmed that each of these problems were "serious mental disease or defects."

The government's expert confirmed that Mr. [redacted] appeared to have a personality disorder with "paranoid features," although he believed that he did not have a delusional disorder or paranoid schizophrenia. [144] The doctor also admitted that delusions are fixed untrue beliefs that are not amenable to change;[145] that Mr.

---

143 ER 1301-1303.

144 ER 600. See also ER 603 (suggesting that perhaps he had "paranoid personality disorder."). See also ER 659. (Government expert: "In my opinion it's a personality disorder, yes. Q: Okay. And would you agree with me at least that this writing is consistent with a mental disorder that he has, whatever it is, even if you and I disagree on what disorder he actually has? A: Yes.").

145 ER 615

conspiratorial beliefs (which had existed, unchanged, since at least 2012) appeared to be simply untrue;[146] and, importantly, that there was no evidence that Mr. was malingering or exaggerating his mental-health symptoms.[147] Ultimately the doctor admitted that while he diagnosed a paranoid personality disorder, it was possible that these examples were in fact evidence of a delusional disorder featuring persecutory delusions.[148]

Doctors from the Bureau of Prisons concluded that had a DSM-V-diagnosable mental illness—"Obsessive-Compulsive Personality Disorder with Narcissistic Traits." At the evidentiary hearing, both doctors who contributed to the competency report testified that Mr. mental illness was legitimate and that there was no evidence of malingering.[149] They also testified that Mr. behaviors were the result his mental illness.[150]

---

[146] ER 638 (no $100 million fraud); *id.* (no conspiracy against Mr. orchestrated by his attorney); *id.* (FBI not taking bribes); *id.* (FBI Agent's father not part of the conspiracy).

[147] ER 634.

[148] ER 640.

[149] See ER 1009-1010 (Dr. Hope: "A: No. There was no evidence of any kind of malingering with Mr. *See also* ER 1016 (same, other doctor).

[150] See ER 1019-1020.

Unfortunately, both the BOP doctors and the trial court seemed to embrace a legal standard that is simply not reflected in § 4241 or the constitutional case law—that the defendant suffer a "major" or "severe" mental illness that is similar to schizophrenia, psychosis, or organic brain damage. As the BOP doctor explained at the competency hearing, "the first part of that prong is that we're looking for any evidence of a major mental illness that would essentially result in an involuntary interference with mental functioning, meaning something in his brain he didn't have control over, say a voice or something like that telling him to do something and commanding him."[151]

But there is simply no requirement that a defendant hear voices or have a "major" mental illness—whatever this doctor's subjective definition of that concept may entail. The law requires that the defendant suffer from "*a* mental disease or defect rendering him mentally incompetent to the extent that he is unable to . . . assist properly in his defense." 18 U.S.C. § 4241. *Drope* requires only that defendant's "*mental condition* is such that he lacks the capacity . . . *to consult with counsel, and to assist in preparing his defense*." 420 U.S. at 171 (emphasis provided). The district court erred by allowing the BOP doctors to raise this standard higher than what the law requires.

---

[151] ER 999-1000.

Ultimately, the doctors here believed that Mr. [REDACTED] 1) had *a* mental defect; 2) that he was not faking it; and 3) that the mental defect caused his self-defeating behaviors—including the distrust and unwillingness to work with his attorney. That is enough to render a person incompetent, and the district court erred in finding otherwise. Reversal should result.

Finally, Mr. [REDACTED] behavior in and out of court strongly weighed against competency. His writings and speech reflected wide-ranging conspiracy ideation and delusions since long before the instant offense. His out-of-court recordings, while disturbing, reflecting the same disorganized thought and breaks with reality. And Mr. [REDACTED] outbursts in court led to his removal from the courtroom and badly hurt his chances before the jury.

For all of these reasons, the district court erred in finding Mr. [REDACTED] competent to stand trial.

C. The district court erred in failing to reevaluate competency after Mr. [REDACTED] behavior at his first and second trial.

The government may argue that some of the facts and evidence described above only arose after Mr. [REDACTED] competency evaluation. That makes no difference legally because "[t]he obligation to determine competency to stand trial is continuing, and persists throughout a proceeding including through the sentencing phase." *United States v. Dreyer*, 705 F.3d 951, 961 (9th Cir. 2013). It

continues even if an earlier competency examination had taken place: “This responsibility continues throughout trial . . . and we apply the same bona fide doubt standard to determine whether *an additional competency hearing* was required.” *Maxwell v. Roe*, 606 F.3d 561, 568 (9th Cir. 2010) (emphasis provided). *See also Amaya-Ruiz v. Stewart*, 121 F.3d 486, 489 (9th Cir. 1997). "[E]vidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining *whether further inquiry is required*," and "one of these factors standing alone may, in some circumstances, be sufficient." *Drope*, 420 U.S. at 180 (paraphrasing Pate, 383 U.S. at 385).

After Mr. [REDACTED] behavior continued throughout the first trial, grew worse, and then grew worse still during the second trial, the district court should have reevaluated competency. The failure to do so was also error. For this reason too, reversal should result.

CONCLUSION

For all these reasons, [REDACTED] convictions should be reversed and the case remanded for a new trial.

Dated: December 18, 2017

Respectfully submitted,

s/ Timothy A. Scott

s/ Nicolas O. Jimenez

TIMOTHY A. SCOTT

NICOLAS O. JIMENEZ
SCOTT TRIAL LAWYERS, APC

Attorneys for

CERTIFICATE OF RELATED CASES

Counsel is not aware of any cases pending before this Court that are related to this matter.

Dated: December 18, 2017

s/ Timothy A. Scott

TIMOTHY A. SCOTT

Attorney for [redacted] [redacted]

Certificate of Compliance

Pursuant to Fed. R. App. P. 32(a)(7) and Ninth Circuit Rule 32-1, the attached Opening~~/Answering/Reply~~ Brief is:

Proportionately spaced, has a typeface of 14 points or more, and contains 13,437 words.

Dated: December 18, 2017

s/ Timothy A. Scott
TIMOTHY A. SCOTT

9th Circuit Case Number(s) [redacted]

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

****

CERTIFICATE OF SERVICE
When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) 12/18/2017 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) s/ Timothy A. Scott

****

CERTIFICATE OF SERVICE
When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)