NOT FOR PUBLICATION

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. HUSSIEN FAWAS ELTAREB, Defendant - Appellant.	No. 24-6029 D.C. Nos. 5:21-cv-01733-JGB 5:17-cr-16-JGB-2 MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Jesus G. Bernal, District Judge, Presiding

Submitted October 27, 2026[**]
Pasadena, California

Before: R. NELSON and H.A. THOMAS, Circuit Judges, and MARTÍNEZ-OLGUÍN, District Judge.[***]

Hussien Fawas Eltareb was sentenced to a 15-year term of imprisonment

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable Araceli Martínez-Olguín, United States District Judge for the Northern District of California, sitting by designation.

after being convicted, following a bench trial, of federal drug and firearm offenses. We previously affirmed Eltareb's conviction and sentence on direct appeal. *United States v. Eltareb*, 853 F. App'x 128 (9th Cir. 2021). Eltareb now appeals the district court's denial of his motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. We granted a certificate of appealability on the following issues: (1) whether Eltareb's waiver of his right to a jury trial was knowing, voluntary, and intelligent, and (2) whether trial counsel was ineffective for failing adequately to advise Eltareb of his right to a jury trial.

We have jurisdiction under 28 U.S.C. § 2253. "We review *de novo* a district court's decision to deny a § 2255 motion . . . ." *United States v. Gordon*, 151 F.4th 1090, 1097 (9th Cir. 2025). "We review the district court's decision to deny a defendant's request for an evidentiary hearing for an abuse of discretion." *Id.* We affirm.

1. Eltareb has not rebut the presumption that his written jury trial waiver was "a voluntary, knowing, and intelligent one." *United States v. Cochran*, 770 F.2d 850, 851 (9th Cir. 1985). Eltareb primarily argues that his jury trial waiver was invalid because he did not know the district court would admit expert testimony subsequent to his waiver. But Eltareb's lack of awareness of a later evidentiary ruling does not "bear[] upon the question whether [Eltareb's] waiver was voluntary, knowing and intelligent." *Id.* What matters is that Eltareb understood

"the nature and import of the right he was waiving." *United States v. Shorty*, 741 F.3d 961, 969 (9th Cir. 2013).

In *Cochran*, we "'implored'—but did not mandate—district courts to ensure jury trial waivers are knowing, voluntary, and intelligent by engaging in a 'substantial colloquy' that informs the defendant of four facts: '(1) twelve members of the community compose a jury; (2) the defendant may take part in jury selection; (3) jury verdicts must be unanimous; and (4) the court alone decides guilt or innocence if the defendant waives a jury trial.'" *United States v. Ceja*, 23 F.4th 1218, 1224 (9th Cir. 2022) (quoting *Cochran*, 770 F.2d at 852–53). Eltareb's declaration confirms that he understood that by waiving his right to a jury trial, there would be no jury in his case and a judge would decide the case instead. He also understood that a jury is composed of 12 people. That Eltareb was not made aware of two *Cochran* elements—his right to participate in jury selection and the requirement for a unanimous verdict—did not render his waiver invalid under the circumstances. *See id.* at 1224 (explaining that "substantial colloquy" is not required unless "defendant's mental or emotional state is a salient fact").

2. For related reasons, Eltareb's claim of ineffective assistance of counsel fails because he has not shown that his "counsel's representation fell below an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

3. The district court did not abuse its discretion in denying Eltareb's request for an evidentiary hearing because "the motion and the files and records of the case conclusively show[ed] that [he was] entitled to no relief." 28 U.S.C. § 2255(b).

AFFIRMED.