EXECUTION SET FOR OCTOBER 15, 2025

No. 25-385
No. 25A378 (connected case)

IN THE

Supreme Court of the United States

CHARLES RAY CRAWFORD,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSISSIPPI

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

The State now concedes that petitioner is entitled to the benefit of *McCoy* v. *Louisiana*, 584 U.S. 414 (2018), in postconviction review of his conviction and death sentence. That concession eliminates any doubt that petitioner's conviction was obtained in violation of the Sixth Amendment: petitioner's counsel told the jury, over petitioner's vehement objection, that petitioner was "legally responsible" for the charged crimes and "dangerous to the community." The State's concession also confirms the general importance of definitively establishing that *McCoy* did not announce a new rule: by the State's own admission, the Mississippi Supreme Court erred on that question, and the State does not dispute that the lower courts are divided, that the question is recurring, and that the legitimacy of numerous convictions hinges on resolution of this retroactivity issue. The criteria for certiorari are thus amply satisfied.

The State nonetheless insists that this Court should not be permitted to consider the petition in the normal course because petitioner must be executed on October 15. But the weakness of the State's effort to justify that outcome only underscores the strength of petitioner's claims. The State can defend the constitutionality of petitioner's conviction only by misrepresenting the factual record and by advancing legal arguments that fly in the face of *McCoy* itself.

The State's jurisdictional arguments are just as misconceived. Remarkably, the State misrepresents the Mississippi Supreme Court's actual holding that *McCoy* announced a new rule—no doubt because that holding is indisputably based on federal law and cannot bar review. The State instead contests jurisdiction based on the opposite (and false) premise that the court held that *McCoy* was *not* new. Given that the

State successfully urged the opposite below, judicial estoppel should bar that argument—especially considering that a man's life hangs in the balance. In any event, the argument is wrong on its own terms, as Mississippi courts have often granted relief in similar situations. The bottom line is clear: no adequate and independent state ground bars review.

This Court's immediate intervention is needed. Petitioner is scheduled to be executed based on a conviction that was obtained in blatant violation of the Sixth Amendment. The State effectively concedes that the court below erred in refusing to consider *McCoy*'s application to petitioner's case. The question whether *McCoy* announced a new rule easily satisfies this Court's certiorari criteria. The Court should stay petitioner's execution in order to consider this case in the normal course.

ARGUMENT

I. The State's Brief Confirms the Urgent Need for This Court's Review.

A. In a stunning about-face, the State concedes that *McCoy* did not announce a new rule, but rather "reinforce[d] or clarifie[d] existing law." Opp.15. The State made precisely the opposite argument to the Mississippi Supreme Court, which adopted it. Mot. to Dismiss at 7. That reversal is a confession of error: the State now *agrees* with petitioner that the Mississippi Supreme Court erred in holding that *McCoy* should not "be given retroactive effect." Pet.App.3a. That holding necessarily rested on the conclusion that *McCoy* in fact announced a new rule of federal law—otherwise, the court would not have understood the question before it to be whether *McCoy* should be given *retroactive* effect.

All of that confirms the urgent need for this Court's

review. The State now concurs that *McCoy* "appl[ied] a settled rule"—which necessarily means that petitioner "may * * * avail [him]self of the decision on collateral review." *Chaidez* v. *United States*, 568 U.S. 342, 347 (2013); *Whorton* v. *Bockting*, 549 U.S. 406, 416 (2007); Pet.16-24. And *McCoy*, applied to petitioner's case, eliminates any doubt that petitioner's conviction was obtained in clear violation of the Sixth Amendment. Although the State argues otherwise, Opp.22, its whitewashing of the trial record is easily refuted. See pp. 4-7, *infra*. Petitioner's trial unquestionably violated *McCoy*: over petitioner's vociferous objections, counsel told the jury that petitioner had in fact committed the offense, and that "[n]o one else is *legally responsible* for what happened here." Tr. 1179 (emphasis added).

It is equally indisputable that *McCoy*'s clarification of what the Sixth Amendment requires would have changed the outcome here. In his postconviction proceedings, petitioner argued that counsel improperly conceded guilt. The Mississippi courts rejected that claim, holding that conceding guilt was a "strategic" judgment committed to counsel. *Crawford* v. *State*, 867 So. 2d 196, 212 (Miss. 2003); see also *Crawford* v. *State*, 218 So. 3d 1142, 1165 (Miss. 2016); *Crawford* v. *Epps*, 2008 WL 4419347, at *46 (N.D. Miss. Sept. 25, 2008). That reasoning was, as the State now implicitly concedes, wrong under then-existing Sixth Amendment precedents. Pet.18-20. In all events, *McCoy* removed any doubt, by clarifying that whether to concede guilt is *not* a strategic judgment committed to counsel, but instead a fundamental decision that is committed to the defendant himself. 584 U.S. at 422.

Petitioner's conviction thus violated *McCoy*'s rule—a rule that the State now agrees should have applied in petitioner's case. The State thus seeks to execute

petitioner even though his conviction was obtained in violation of the Sixth Amendment, and even though the Mississippi courts have consistently disregarded this Court's precedents in this case. That result would be deeply unjust.

The question presented, moreover, has significant importance beyond this case. The State does not dispute that the Mississippi Supreme Court's holding that *McCoy* is a new rule conflicts with other lower-court decisions. Pet.23-24. Nor does the State dispute that the question is recurring. Pet.30. And at least one state executive branch now agrees that, contrary to its own supreme court's view, *McCoy* applies retroactively. That only confirms that the question presented is one on which disagreements will persist unless this Court intervenes. And given that retroactivity questions consistently recur and can affect the legitimacy of numerous convictions, it is particularly important that this Court grant review to ensure a uniform nationwide rule.

B. Rather than contest *McCoy*'s applicability to this case, the State contends that petitioner's conviction did not violate *McCoy*. Opp.22. The State never pressed that argument below, and the court never addressed it. In all events, the State's newfound arguments mischaracterize both the record and *McCoy*.

The State's lead contention—that, unlike in *McCoy*, petitioner supposedly "never told counsel * * * to maintain innocence," Opp.22—is false. Petitioner's own trial counsel stated that "Mr. Crawford objected to the concession of his guilt and the pursuit of an insanity defense before and during trial." Bell Affidavit ¶ 4. And petitioner's objections to the trial court could not have been clearer. See, *e.g.*, Tr. 409 (petitioner objecting that his lawyers "told the jury that I was already guilty * * * I do not recognize them as my attorneys

any more [sic]"); Tr. 819 (moving for mistrial because counsel said he "didn't expect that he could prove or disprove what the * * * prosecution was going to put on."); Tr. 819-820 (objecting that counsel "told the jury that they couldn't prove that I was innocent. They might as well been sitting over there with the prosecution."). Petitioner made his views every bit as clear as McCoy did. *McCoy*, 584 U.S. at 419. Nothing more is—or could be—required.

The State next argues that trial counsel did not concede guilt because counsel pursued an insanity defense. That hairsplitting contention is both inaccurate and irrelevant. Factually, there is no question that trial counsel expressly conceded guilt, telling the jury, "[w]e *do not anticipate a defense* or that the defense is going to be able to show or to attack the State's case and prevent them from showing that this Defendant did in fact commit the acts that he is charged with." Tr. 309-310 (emphasis added). Moreover, insofar as the State suggests that counsel conceded factual guilt but contested petitioner's legal responsibility, that too is erroneous. Counsel told the jury that "[n]o one else is *legally responsible* for what happened here" and that petitioner was "*still dangerous to the community*." Tr. 1179, 1190 (emphasis added). Those unequivocal concessions are even more damning than those in *McCoy*, where counsel merely told the jury it would be persuaded that "McCoy was the cause of these individuals' death." 584 U.S. at 419.

Legally, *McCoy* establishes that counsel's pursuit of an insanity defense does not excuse counsel's concession of guilt. *McCoy* holds that the defendant has "[a]utonomy to decide that the objective of the defense is to *assert innocence*." *Id*. at 422 (emphasis added). Asserting innocence is a categorically different objective than asserting an insanity defense. The former

contends that the defendant did not commit the offense and seeks "exoneration," *id*. at 423, while the latter concedes that the defendant committed the offense but seeks a "not guilty by reason of insanity" verdict that generally leads to commitment. See Miss. Code Ann. § 99-13-7. *McCoy* holds that the defendant has a Sixth Amendment right to decide "*what* [his] objectives in fact are"—that is, whether to assert insanity or to insist that "I was not the murderer." 584 U.S. at 422, 424. Petitioner sought to do exactly that, "object[ing] to the concession of his guilt and the pursuit of an insanity defense." Bell Affidavit ¶ 4. By nonetheless admitting that petitioner *was* the murderer in the course of seeking an insanity verdict, trial counsel plainly overrode petitioner's right to "decide * * * the objective of the defense," 584 U.S. at 422, which here was to have the trial result in exoneration, see Pet.7-10.

McCoy thus forecloses the State's argument that counsel never "conceded guilt" in the relevant sense, but instead merely "conceded underlying facts" while arguing that petitioner was not guilty "by reason of insanity." Opp.23. Under *McCoy*, what matters is that counsel concedes that the defendant committed the charged acts, even if—as in *McCoy* itself—counsel simultaneously urges the jury not to convict, including because of the defendant's mental illness. 584 U.S. at 424 (counsel conceded factual guilt but urged against conviction); *ibid*. (citing as example of a Sixth Amendment violation a case where counsel conceded "factual" guilt but sought a verdict of "guilty but mentally ill").

In the end, the State's effort to square petitioner's conviction with *McCoy* must be seen for what it is: a blatant attempt to cut back on *McCoy* itself. Just as in *McCoy*, petitioner's counsel unequivocally conceded that petitioner had committed the charged offenses,

while also mounting a defense that sought to avoid conviction. *McCoy*, 584 U.S. at 424. Just as in *McCoy*, petitioner's objections were unmistakable. If the State were correct that petitioner nonetheless has no claim under *McCoy*, merely because counsel put on *some* defense, the *McCoy* right would be meaningless.

II. This Court Has Jurisdiction.

This Court has jurisdiction to review the Mississippi Supreme Court's federal-law determination that *McCoy* does not apply retroactively.

A. The State largely ignores what the Mississippi Supreme Court said in denying petitioner relief. The court dismissed the petition as procedurally barred on the grounds that (1) Mississippi's "intervening decision" exception to the successive-petition bar does not apply, because petitioner "ha[d] not shown that *McCoy* should be given retroactive effect"; and (2) the petition was untimely. Pet.App.2a-3a.

The first ground—that *McCoy* does not count as an intervening decision because it is not retroactive—straightforwardly rests on federal law. The court necessarily had to reject petitioner's argument that *McCoy does* apply retroactively because it "did not announce a new rule of federal constitutional law." Resp. to Mot. to Dismiss at 13. The State does not dispute that whether *McCoy*'s holding constitutes a new federal constitutional rule for retroactivity purposes is a federal question that turns on construing this Court's federal-law precedents. *Chaidez*, 568 U.S. at 347. The decision below thus "depend[s] on a federal holding." *Glossip* v. *Oklahoma*, 604 U.S. 226, 242 (2025).[1]

[1] The State's argument that Mississippi is not bound by *Teague* v. *Lane*, 489 U.S. 288 (1989), is misplaced. Mississippi follows *Teague*. Pet.27. Even if it did not, whether this Court's decision

The Mississippi Supreme Court's reliance on the timeliness bar and the prohibition on successive petitions are entirely dependent on its federal-law *McCoy* holding. But cf. Opp.12-13. Under Mississippi law, if the "intervening decision" exception applies, then neither the timeliness bar nor the second-successive bar apply. Miss. Code Ann. § 99-39-27(9); *Bell* v. *Mississippi*, 66 So. 3d 90, 93 (Miss. 2011). The applicability of those procedural bars is thus entirely dependent on the court's holding that *McCoy* is not an "intervening decision," which in turn rested on its federal-law retroactivity holding. As a result, no *independent* state ground precludes this Court's review.

B. Unable to avoid the straightforwardly federal basis of the Mississippi Supreme Court's decision, the State spends most of its brief defending a conclusion that the court never reached. *McCoy*, the State argues, is *not* a new rule, and so cannot constitute an "intervening decision" under state law. Opp.15-19. That is, of course, not what the Mississippi Supreme Court held. It reached the opposite conclusion *at the State's urging*, determining that *McCoy is* a new rule that does not apply retroactively. Pet.App.2a-3a; Mot. to Dismiss at 7. Judicial estoppel therefore bars the State's argument. *New Hampshire* v. *Maine*, 532 U.S. 742, 749 (2001). In any event, a rationale that the state court did not adopt cannot provide an adequate state-law ground precluding this Court's review. See *Michigan* v. *Long*, 463 U.S. 1032, 1040-1041 (1983).

Regardless, as petitioner has already explained, the State's newly minted argument is meritless. The Mississippi Supreme Court has repeatedly applied the intervening-decision exception to decisions of this Court

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announces a new rule of constitutional law is necessarily a federal question.

that, like *McCoy*, clarified existing law rather than announcing new rules. See *Gilliard* v. *Mississippi*, 614 So. 2d 370 (Miss. 1992); *Irving* v. *Mississippi*, 618 So. 2d 58, 61 (Miss. 1992). The State asserts that those decisions held that this Court's recent rulings must have "changed the legal landscape" to qualify as "intervening" decisions. Opp.17. The opposite is true. In both, the Mississippi Supreme Court applied the intervening-law exception where this Court's decisions "did *not* 'break new ground,'" but rather were "controlled by," and clarified, this Court's existing precedent. *Gilliard*, 614 So. 2d at 374 (emphasis added); see *Irving*, 618 So. 2d at 61 (intervening-law exception applies to decisions that "did not constitute 'new rules' under *Teague*"). The same is true here: *McCoy* makes clear that petitioner should have been entitled to relief under then-existing law.

The State's citation to other Mississippi cases that have refused to treat clarifying decisions as "intervening decisions," Opp.15, only reinforces the absence of an adequate state ground. Mississippi courts' wildly inconsistent application of its state procedural rules (which the State tellingly describes as a "case-by-case" approach) demonstrates that the "intervening decision" rule does not remotely qualify as the kind of "firmly established and regularly followed" procedural rule that can serve as an adequate and independent state ground. *Lee* v. *Kemna*, 534 U.S. 362, 376 (2002).

Finally, the State's brief vividly illustrates that Mississippi law traps petitioners in an untenable and unjust Catch-22—and therefore cannot constitute an adequate state ground precluding review. Opp.18. As the State itself puts it, "[i]f this Court were to agree with petitioner that *McCoy* did not create a new rule, then his claim that the intervening-decision exception should apply to permit his barred claim is doubtful at

the least." Opp.25 (citations omitted). The State thus argues that even if this Court were to hold that *McCoy* applies retroactively, the state courts could disregard *McCoy* as not "intervening" under state law, and this Court would be powerless to review the State's refusal to give effect to this Court's governing precedents. That underscores the need for this Court to grant review in order to ensure that state courts faithfully apply this Court's decisions—not only their precise holdings, but their reasoning. See Pet.30-31.

III. A Stay of Execution Is Warranted.

As petitioner has demonstrated in his stay application, this Court should stay petitioner's execution to permit this case to be adjudicated in the normal course. The State's contrary arguments are meritless.

The State advances the startling assertion that petitioner will not be irreparably harmed absent a stay. Opp.27. That flies in the face of this Court's jurisprudence and common sense. *E.g.*, *Ford* v. *Wainwright*, 477 U.S. 399, 411 (1986). The State argues that a capital petitioner suffers no harm from execution where "[h]is guilt is not in question," Opp.27—even where he has meritorious constitutional claims that have not yet been adjudicated. But it is a bedrock principle of habeas law that factual guilt is irrelevant to a petitioner's entitlement to relief upon demonstrating prejudicial constitutional error. See, *e.g.*, *Cunningham* v. *Neagle*, 135 U.S. 1, 69-71 (1890). That, of course, is because prejudicial constitutional errors raise serious questions about the reliability of the conviction. It therefore cannot be right to say, as the State does, that a petitioner with meritorious constitutional claims can *never* obtain a stay of execution to permit adjudication of those claims, unless he claims (and proves) actual innocence. That view is irreconcilable with the rule of law and the values it exists to serve, as well as the

supremacy of federal law. This Court should not countenance it.

The State does not rebut petitioner's showing that the equities favor a stay. The State faults petitioner for bringing emergency litigation, Opp.11, 26-28, but petitioner diligently filed this claim while still exhausting other remedies. Petitioner sought certiorari less than three weeks after the decision below issued. And petitioner cannot be faulted for the Mississippi Supreme Court's delay.

All told, the State is rushing to execute petitioner before this Court can consider his petition in the normal course, while effectively admitting that the court below erred, and that the question presented is one that will recur frequently and on which lower courts have disagreed. And there can be no real question that petitioner's conviction violated the Sixth Amendment as clarified in *McCoy*. This Court's intervention is urgently needed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 14, 2025