

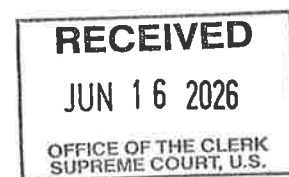
**IN THE
Supreme Court of the United States**

DOUGLAS DEAN SCYPHERS,
Petitioner,
v.
STATE OF WASHINGTON,
Respondent.

ON PETITION FOR REHEARING OF THE ORDER DENYING A
PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF
APPEALS OF THE STATE OF WASHINGTON, DIVISION THREE

PETITION FOR REHEARING
(Pursuant to Rule 44.2 of the Rules of this Court)

Douglas Dean Scyphers
Petitioner, Pro Se
DOC No. 404358
Coyote Ridge Corrections Center
1301 N. Ephrata Ave., P.O. Box 769
Connell, Washington 99326-0769



QUESTIONS PRESENTED ON REHEARING

This petition for rehearing presents two substantial grounds that were not presented in, and so were not considered upon, the petition for a writ of certiorari. See Sup. Ct. R. 44.2.

1. Whether rehearing is warranted because neither the petition for certiorari nor the courts below squarely confronted that the state procedural grounds invoked to dismiss petitioner’s personal restraint petition—untimeliness and successiveness—are neither “adequate” nor “independent” of the federal questions, and therefore present no obstacle to this Court’s jurisdiction under 28 U.S.C. § 1257, where the Court of Appeals’ untimeliness holding rests on the demonstrably false premise that petitioner “does not address the time bar, nor does he make an argument that one of the exceptions applies,” and its successiveness holding rests on the premise that a claim never adjudicated on the merits was nonetheless “previously” decided.

2. Whether rehearing is warranted to address the substantial ground—not previously presented in this posture—that the Fourth Amendment’s threshold requirement that a warrant issue from a neutral and detached magistrate raises a disputed question of historical fact (did any magistrate ever authorize this warrant at all?) that a state court may not resolve against the accused on a cold, silent record and without any evidentiary or reference hearing, and that the State’s categorical refusal to permit such factfinding negates the “full and fair” litigation predicate on which any state-court foreclosure of a Fourth Amendment claim depends.

TABLE OF CONTENTS

QUESTIONS PRESENTED ON REHEARING.....	i
TABLE OF AUTHORITIES	iii
RULE 44.2 STATEMENT AND CERTIFICATE OF GOOD FAITH	1
INTRODUCTION	2
STATEMENT OF THE CASE	3
GROUND FOR REHEARING	6
I. Adequate and Independent State Ground—A Ground	
Not Previously Presented.....	6
II. Disputed Historical Fact Resolved Without a Hearing	9
CONCLUSION.....	11
CERTIFICATE OF SERVICE	13

TABLE OF AUTHORITIES

Cases

Beard v. Kindler, 558 U.S. 53 (2009)
Carnley v. Cochran, 369 U.S. 506 (1962)
Chatrie v. United States, No. 25-112 (U.S. argued Apr. 27, 2026)
Coleman v. Thompson, 501 U.S. 722 (1991)
Coolidge v. New Hampshire, 403 U.S. 443 (1971)
Ford v. Georgia, 498 U.S. 411 (1991)
Groh v. Ramirez, 540 U.S. 551 (2004)
Jackson v. Virginia, 443 U.S. 307 (1979)
James v. Kentucky, 466 U.S. 341 (1984)
Johnson v. United States, 333 U.S. 10 (1948)
Lee v. Kemna, 534 U.S. 362 (2002)
Michigan v. Long, 463 U.S. 1032 (1983)
NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958)
Shadwick v. City of Tampa, 407 U.S. 345 (1972)
Stone v. Powell, 428 U.S. 465 (1976)
Walker v. Martin, 562 U.S. 307 (2011)
In re Pers. Restraint of Greening, 141 Wn.2d 687, 9 P.3d 206 (2000)
Kurtz v. Fels, 63 Wn.2d 871, 389 P.2d 659 (1964)

Constitutional Provisions, Statutes, and Rules

U.S. Const. amend. IV
U.S. Const. amend. XIV
28 U.S.C. § 1257
Sup. Ct. R. 44.2
RCW 10.73.090
RCW 10.73.100(1)
RCW 10.73.140

RULE 44.2 STATEMENT AND CERTIFICATE OF GOOD FAITH

Petitioner Douglas Dean Scyphers respectfully petitions for rehearing of this Court's order entered **May 26, 2026** denying his petition for a writ of certiorari in No. 25-7096. This petition is filed within 25 days of that order. See **Sup. Ct. R. 44.2**.

Rule 44.2 limits the grounds for rehearing of an order denying certiorari to “intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.” Petitioner does not rest this petition on a mere reargument of the points the Court has already declined to review. He instead presents two substantial grounds not previously presented—a threshold jurisdictional ground and a structural Fourth Amendment ground—each of which, properly understood, removes the apparent obstacle that may have counseled denial and supplies an independent reason for review.

CERTIFICATE. Pursuant to **Rule 44.2**, the undersigned petitioner, appearing pro se, certifies that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in **Rule 44.2**.

INTRODUCTION

This is the rare case in which the judge whose signature appears on a search warrant has twice stated, in writing, after personally reviewing the court file, that he never signed it—that “the warrant you seek signed by my department ... does not exist,” and that he “signed no warrants or Court Orders in this case at all.” The judge’s own contemporaneous docket and the Clerk’s Journal for the date the warrant purports to bear confirm the point: no application, no finding of probable cause, no on- or off-docket order. Yet a facsimile of that judge’s signature appears on the warrant that authorized the search of petitioner’s home and computers and produced the evidence on which he was convicted.

No court has ever held a hearing to resolve how that signature came to be there. The state courts instead disposed of the claim on procedural grounds that, on inspection, do not hold. The order of the Court of Appeals states that petitioner “does not address the time bar, nor does he make an argument that one of the exceptions applies.” That is incorrect: petitioner expressly invoked the newly-discovered-evidence exception of RCW 10.73.100(1) and briefed it under the governing state standard. And the “successive” bar was applied to a claim—that no magistrate ever issued the warrant—that the state courts had never actually adjudicated on the merits. Because these procedural rulings rest on a mistaken view of the record, they are not “adequate” state grounds, and they do not insulate the federal questions from this Court’s review. That jurisdictional point was not presented before. It should be now.

STATEMENT OF THE CASE

1. In December 2017, a Spokane County jury convicted petitioner of multiple offenses. The convictions rested on evidence seized from his home and computers under a search warrant dated “June 2, 2014 10:39 a.m.,” bearing the facsimile signature of Spokane County Superior Court Judge Michael P. Price. The judgment became final on July 8, 2020, upon issuance of the mandate on direct appeal.

2. After a superior court ordered the State to produce discovery, petitioner sought a copy of the warrant directly from Judge Price. In a letter dated December 1, 2021, the judge responded, in pertinent part:

I have personally reviewed the Superior Court File under this cause number [14-1-02950-1] and have specifically searched for a warrant which this Judicial Officer may have signed in this case in either 2014 or 2015. In fact, no warrants in this case were signed in any fashion in 2014 or 2015, or, for that matter, in any other year that I was able to discover in my review of the file. As such, I am providing this correspondence to you without any enclosure since an original warrant signed by this department in 2014 or 2015 does not exist.

3. After the State produced the warrant in mid-December 2021, petitioner forwarded a copy to Judge Price and asked him to search again. In a second letter dated January 6, 2022, the judge wrote:

While there are multiple Orders in the Superior Court File signed by Judicial Officers to include Judge Tompkins, Judge Sypolt, Judge Cozza, Judge Harold Clarke III, and Judge Moreno, this case was never assigned to my department and I signed no warrants or Court Orders in this case at all. ... As before, I am providing this correspondence to you without any enclosure since the warrant you seek signed by my department in 2014 or 2015 does not exist.

4. In July 2023, the Spokane County Superior Court Administrator provided petitioner with Judge Price’s docket for June 2, 2014, together with the Clerk’s Journal for that date. Petitioner’s case does not appear on the judge’s docket, and the Journal reflects no “off-docket” orders signed

by Judge Price that day. The warrant's facsimile signature is thus contradicted both by the judge's sworn-equivalent written statements and by the contemporaneous court records.

5. Petitioner pursued this evidence through successive collateral filings. In its order of May 15, 2025, the Court of Appeals, Division Three, dismissed the operative personal restraint petition as "time-barred and successive." In re Pers. Restraint of Scyphers, No. 41141-9-III. On the time bar, the court stated that petitioner "does not address the time bar, nor does he make an argument that one of the exceptions applies." That statement is contradicted by the petition itself, which invoked the newly-discovered-evidence exception of **RCW 10.73.100(1)** and analyzed it under the governing state standard for newly discovered evidence.

6. On June 17, 2025, a Deputy Commissioner of the Washington Supreme Court denied discretionary review. The Deputy Commissioner characterized the letters as evidence in which "the judge seems to suggest he did not sign the search warrant," observed that it was "not entirely clear ... what materials Scyphers supplied to the judge," and concluded that "nowhere does the judge state specifically that he did not sign the particular warrant involved in this case, nor does he dispute that the signature ... is his." The Deputy Commissioner further reasoned that "[w]hether Judge Price signed the warrant was discoverable before trial in the exercise of reasonable diligence," and that the 2025 filing was not diligent in relation to evidence received in early 2022.

7. On October 8, 2025, the Washington Supreme Court (Department II) denied petitioner's motion to modify the Deputy Commissioner's ruling and "also denied" his "request for a reference hearing." No court has ever held a hearing—reference, evidentiary, or otherwise—to determine whether any magistrate in fact authorized the warrant.

8. Petitioner filed his petition for a writ of certiorari, pro se, on December 9, 2025. The petition argued the merits of his Fourth and Fourteenth Amendment claims and the denial of an evidentiary

hearing. It did not separately frame the threshold question whether the state procedural grounds were adequate and independent so as to bar this Court's review under 28 U.S.C. § 1257. This Court denied the petition on May 26, 2026. This timely petition for rehearing follows.

GROUNDS FOR REHEARING

I. THE JUDGMENT BELOW DOES NOT REST ON AN ADEQUATE AND INDEPENDENT STATE GROUND; THE FEDERAL QUESTIONS ARE THEREFORE REVIEWABLE—A SUBSTANTIAL GROUND NOT PREVIOUSLY PRESENTED.

This Court “will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment.” Coleman v. Thompson, 501 U.S. 722, 729 (1991). The premise of that rule is that an adequate and independent state ground actually exists. Where it does not—where the asserted state ground is inadequate or is not in fact independent of the federal claim—the rule supplies no barrier, and the federal questions are open to review under 28 U.S.C. § 1257. Petitioner’s pro se certiorari petition argued the federal merits but did not present this threshold point. It is a “substantial ground[] not previously presented” within the meaning of Rule 44.2, and it is dispositive of the posture in which this case reaches the Court.

A. An exorbitant or mistaken application of a state procedural rule is not an “adequate” state ground.

A state procedural ground bars this Court’s review only if it is both “firmly established and regularly followed.” Ford v. Georgia, 498 U.S. 411, 423-24 (1991) (quoting James v. Kentucky, 466 U.S. 341, 348 (1984)). Even a generally sound rule will not suffice in “exceptional cases in which exorbitant application of a generally sound rule renders the state ground inadequate to stop consideration of a federal question.” Lee v. Kemna, 534 U.S. 362, 376 (2002). The adequacy of a state ground is itself a federal question for this Court. See NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 455-58 (1958). While discretionary state rules are not categorically inadequate, see Beard v. Kindler, 558 U.S. 53, 60-61 (2009); Walker v. Martin, 562 U.S. 307, 316-21 (2011), a procedural ruling that rests on a demonstrable misreading of the record is the paradigm of an

inadequate ground: it is neither a faithful application of the state rule nor a ruling “regularly followed.”

B. The untimeliness ground rests on a misstatement of the record.

The Court of Appeals dismissed the petition as untimely on the express ground that petitioner “does not address the time bar, nor does he make an argument that one of the exceptions applies,” and that he had therefore “failed” to carry his burden of establishing an exception. That premise is false. The operative petition squarely invoked the newly-discovered-evidence exception of RCW 10.73.100(1)—the only statutory exception that could apply to the Price letters and docket—and analyzed it under the controlling Washington standard for newly discovered evidence. A dismissal predicated on the supposed absence of an argument that was in fact made does not reflect the “regular” application of Washington’s time bar; it reflects a mistake of fact. Such a ruling cannot be an “adequate” ground to foreclose this Court’s review. Lee, 534 U.S. at 376.

C. The successiveness ground rests on a merits adjudication that never occurred.

The courts below also invoked the successive-petition bar of RCW 10.73.140, deeming petitioner’s claims “previously” heard. But under Washington’s own standard, an issue is “heard and determined on the merits” only if it was “sufficiently argued to command judicial consideration and discussion,” such that “there is no reasonable basis to conclude that the merits were [not] reviewed.” In re Pers. Restraint of Greening, 141 Wn.2d 687, 700, 9 P.3d 206 (2000). The newly-discovered-evidence claim founded on Judge Price’s disavowal was never so reviewed. The January 11, 2023 order addressed a different theory—the cross-referencing of an “Attachment A” to the probable-cause affidavit—and did not analyze the letters as newly discovered evidence. The December 20, 2023 order addressed the docket and Clerk’s Journal, again without adjudicating the letters under the newly-discovered-evidence standard. A claim that no court has

decided on the merits cannot have been “previously” decided. Applying the successiveness bar to such a claim is, once more, an inadequate ground.

D. The state grounds are not “independent” of the federal questions.

Independence is equally lacking. Whether the evidence is “newly discovered” turned, in the courts below, on whether petitioner could, with “reasonable diligence,” have discovered before trial that the magistrate never signed the warrant. That inquiry is interwoven with the federal merits: a defendant has no duty to look behind the facial regularity of a warrant bearing a judge’s signature, and his reliance on that facial validity is itself a matter of federal Fourth Amendment law. See Kurtz v. Fels, 63 Wn.2d 871, 874-75, 389 P.2d 659 (1964) (due diligence does not require looking behind facts on which one may reasonably rely). Where the state ground “fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion,” this Court presumes that there is no independent and adequate state ground and proceeds to the merits. Michigan v. Long, 463 U.S. 1032, 1040-41 (1983).

Because the threshold obstacle that ordinarily counsels against review of a state collateral judgment is absent here—and because that point was not presented before—rehearing is warranted so that the Court may consider the federal questions free of a procedural bar that does not, in fact, bar them.

II. WHETHER A NEUTRAL MAGISTRATE EVER AUTHORIZED THE WARRANT IS A DISPUTED HISTORICAL FACT THAT COULD NOT BE RESOLVED AGAINST PETITIONER ON A SILENT RECORD WITHOUT A HEARING.

The second ground not previously presented in this posture is structural. The state courts treated petitioner's claim as a rehash of his pre-trial challenges to the warrant's staleness and supporting affidavit. But the claim founded on Judge Price's disavowal is categorically different. It is not that the warrant was supported by a stale or deficient affidavit; it is that no neutral magistrate ever issued the warrant at all. That distinction implicates the bedrock of the Fourth Amendment and could not be resolved against petitioner on a paper record.

A. Authorization by a neutral and detached magistrate is the Fourth Amendment's threshold requirement.

The Fourth Amendment's central protection is that the decision to search be made not by the officer "engaged in the often competitive enterprise of ferreting out crime," but "by a neutral and detached magistrate." Johnson v. United States, 333 U.S. 10, 13-14 (1948). A warrant not issued by such a magistrate is no warrant at all. See Coolidge v. New Hampshire, 403 U.S. 443, 449-53 (1971) (warrant invalid where not issued by a "neutral and detached magistrate"); Shadwick v. City of Tampa, 407 U.S. 345, 350 (1972). And a warrant that is facially defective in a basic respect cannot support a search, even where officers acted in subjective good faith. See Groh v. Ramirez, 540 U.S. 551, 558-65 (2004). If, as Judge Price twice attested and as the contemporaneous docket confirms, no magistrate ever authorized this warrant, then the search rested on a document that the Fourth Amendment treats as a nullity, and the evidence it produced was the fruit of a warrantless intrusion into the home—the place where the Fourth Amendment's protections are most heightened.

B. Whether the magistrate authorized the warrant is a question of historical fact reserved to a factfinder.

Whether Judge Price’s facsimile signature reflects an authorization he made, or instead was affixed without his act, is a question of historical fact. The Washington Supreme Court itself recognized as much when petitioner asked for a reference hearing—and then denied it. Resolving that disputed fact against petitioner on the papers usurped the role reserved to the trier of fact, “to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” Jackson v. Virginia, 443 U.S. 307, 319 (1979). The Deputy Commissioner’s observations—that the judge only “seem[ed] to suggest” he did not sign, and did not “dispute that the signature ... is his”—are precisely the kind of credibility and inference determinations that a cold record cannot bear and that a hearing exists to resolve. The judge’s letters are not equivocal: he stated he “signed no warrants or Court Orders in this case at all” and that the warrant “does not exist.” At a minimum, the conflict between those statements and the facsimile signature presents a genuine dispute that no appellate court could resolve by fiat.

This Court has long refused to permit findings adverse to a federal right to be presumed from a silent record. “Presuming waiver from a silent record is impermissible.” Carnley v. Cochran, 369 U.S. 506, 516 (1962). The principle applies with equal force here: the State may not presume, from a record that contains no application, no probable-cause finding, and no docket entry, that a valid judicial authorization nonetheless occurred.

C. The refusal of any hearing negates the “full and fair” litigation predicate.

This ground also answers the concern that ordinarily limits review of Fourth Amendment claims on collateral review. Under Stone v. Powell, 428 U.S. 465, 482, 494 (1976), a Fourth Amendment claim is foreclosed only “where the State has provided an opportunity for full and fair litigation” of it. A State that dismisses such a claim on a mistaken procedural premise and

categorically refuses any hearing to develop the dispositive facts has not provided that opportunity; it has withheld it. The Stone predicate is therefore absent, and this case does not present the routine Fourth Amendment claim that collateral-review doctrine is designed to channel away. It presents the opposite: a substantial constitutional claim that has never been heard on the merits at all.

Rehearing should be granted so that the Court may consider directing the development of these facts—whether by granting certiorari, by summarily vacating and remanding for the reference hearing the state court denied, or by calling for a response from the State.

CONCLUSION

For the foregoing reasons, the petition for rehearing should be granted, the order denying certiorari should be vacated, and the petition for a writ of certiorari should be granted. In the alternative, the Court should vacate the judgment below and remand for the evidentiary or reference hearing that the state courts declined to hold, or should call for a response from respondent.

As a further alternative, and at a minimum, petitioner respectfully requests that this petition be held pending the Court’s decision in Chatrie v. United States, No. 25-112 (U.S. argued Apr. 27, 2026). Although the question on which the Court granted review in Chatrie concerns the execution of a geofence warrant, the case implicates the role of the neutral magistrate in the warrant process and the circumstances under which reliance on a warrant later shown to be constitutionally deficient may be deemed objectively reasonable. To the extent the Court’s decision in Chatrie bears on the validity of a warrant that issued without any neutral-magistrate authorization, or on the reasonable-reliance question presented here, its resolution may affect the questions petitioner raises. Petitioner therefore asks, in the alternative, that this petition be held and then disposed of as the decision in Chatrie may direct.

Respectfully submitted,



Douglas Dean Scyphers

Petitioner, Pro Se

DOC No. 404358

Coyote Ridge Corrections Center

1301 N. Ephrata Ave., P.O. Box 769

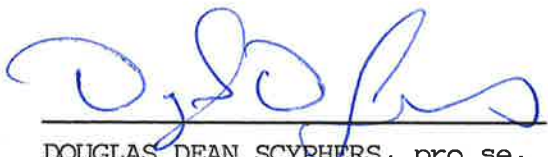
Connell, Washington 99326-0769

Dated: JUNE 4, 2026

Executed on this 4th day of June, 2026.

AT: Franklin County; Connell, WA. 99326

I, DOUGLAS DEAN SCYPHERS, hereby certifies under penalty of perjury, under the laws of the United States, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.



DOUGLAS DEAN SCYPHERS, pro se,
Petitioner

CERTIFICATE OF SERVICE

I, Douglas Dean Scyphers, declare under penalty of perjury under the laws of the United States, pursuant to 28 U.S.C. § 1746, that on the 4th day of June, 2026, I served a copy of the foregoing Petition for Rehearing by depositing it in the institutional legal-mail system at Coyote Ridge Corrections Center, with first-class postage prepaid, addressed to counsel for respondent at the Office of the Attorney General of Washington / Spokane County Prosecuting Attorney, and that I caused the original of this petition to be transmitted to the Clerk of this Court.

The foregoing is true and correct.


Douglas Dean Scyphers

Addressed to:

1. Washington State Attorney General
Nickolas Brown
P.O. Box 40100
Olympia, WA. 98504

by USPS cert. mail, trkg. no. : 9589 0710 5270 3375 4292 44

2. Supreme Court of the United States
1 First Street, NE
Washington, D.C. 20543

by USPS cert. mail, trkg. no. : 9589 0710 5270 3375 4292 37