

No. 25A-\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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No. 25-

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**SCOT GAITHER**

*Petitioner*

v.

**TIM LANE, WARDEN,  
GREEN RIVER CORRECTIONAL COMPLEX**

*Respondent*

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**APPLICATION TO THE HONORABLE JUSTICE BRETT KAVANAUGH  
FOR A THIRTY (30) DAY EXTENSION OF TIME TO FILE A PETITION FOR  
A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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To the Honorable Justice Brett Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit, Greetings:

Petitioner, Scot Gaither, respectfully requests that this Court grant him a thirty (30) day extension, to and including July 10, 2026 in which to file a Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, pursuant to Supreme Court Rules 13.5 and 30.3. The Petition for Certiorari is presently due to be filed on June 10, 2026, and this application is being filed prior to 10-days prior to the due date as required by Rules 13.5 and 30.3. As noted below, good cause exists for granting the extension.

**Background:** Petitioner, Scot Gaither, is a Kentucky prisoner who filed a petition for habeas corpus under 28 U.S.C. § 2254, challenging his conviction and life sentence for kidnapping and manslaughter. The district court denied relief, and the Sixth Circuit granted a certificate of appealability on two issues, (a) whether Mr. Gaither knowingly, voluntarily and intelligently waived his right to counsel in his direct appeal, and (b) whether counsel was ineffective in his representation related to the kidnapping charge. On March 12, 2026, the Court of Appeals issued an opinion, denying relief on all issues.

As pertinent to this application, Gaither’s claim of denial of counsel on direct appeal was that he was simply permitted to proceed without counsel at his request and Kentucky state courts had not conducted a hearing or taken any other measures to ensure that his waiver was made knowingly, voluntarily and intelligently. The Sixth Circuit presumed that Gaither had no remedy in state court for the claim and reviewed the matter de novo. Opinion, pg. 7. Not citing to any of the pertinent decisions of this Court, the Sixth Circuit denied relief because “it is difficult to imagine how Gaither could have made it any clearer that he didn’t want counsel on appeal.” Opinion, pg. 9. However, the issue presented by Gaither was not whether he had requested to proceed without counsel, but whether the state court was required to ensure that his request was made knowingly, voluntarily and intelligently before granting it.

**Jurisdiction:** This Court has jurisdiction under 28 U.S.C. §1254(1).

**Issues to be Presented:** This case presents the issue of what the procedural requirements are to waive counsel on direct appeal. In *Martinez v. Court*

*of Appeal of California, Fourth Appellate Dist.*, 528 U.S. 152, 161-162. (2000), this Court held that before proceeding pro se on appeal, “[t]he defendant must voluntarily and intelligently elect to conduct his own defense, and most courts require him to do so in a timely manner. He must first be made aware of the dangers and disadvantages of self-representation.” Since that time, courts have differed about whether a hearing is required before the waiver can be accepted, or whether the waiver can be achieved on the written documents alone. This issue is squarely presented in this case, as the Sixth Circuit found that Gaither’s waiver was properly accepted in the absence of a hearing or even a finding in the state court that it was knowing, voluntary and intelligent.

This case also presents an issue of whether the limitations on evidentiary hearings in *Shinn v. Ramirez*, 596 U.S. 366 (2022) applies where a litigant had not “failed to develop the record”, but had been prevented from doing so by the lack of a state process.

**Request for Extension:** The undersigned certifies that he is not seeking this extension for hindrance or delay, but to ensure that the issues are properly presented to the Court. Since the Sixth Circuit opinion was issued, undersigned counsel has filed 13 major pleadings (principal briefs, reply briefs, motions for discretionary review, and the like). Undersigned counsel has filed two principal briefs in the Kentucky appellate courts in the 30 days before this extension is filed, and he has another brief likely to be filed on June 4, 2026. He is also required by his employer to attend an out-of-town CLE conference from June 8-10, where he is giving two presentations. This petition is presently due on the last day of that conference. Due

to his substantial workload and other responsibilities, counsel will not be able to timely complete the petition for certiorari in the time allotted.

The undersigned believes that a thirty (30) day extension of time is the minimum needed to ensure that the issues are properly framed and presented for this Court's review. Accordingly, for the reasons expressed above, Petitioner respectfully requests that this Court grant him a thirty (30) day extension, to and including July 10, 2026 in which to file the Petition for Certiorari.

Respectfully submitted,

s/Timothy G. Arnold  
TIMOTHY G. ARNOLD  
Assistant Public Advocate  
Appeals Branch,  
Department of Public Advocacy  
5 Mill Creek Park  
Frankfort, KY 40601  
(502) 564-8006  
(502) 695-6769 (fax)  
[tim.arnold@ky.gov](mailto:tim.arnold@ky.gov)

*Counsel for Petitioner*