26-5035
No. ________

IN THE

Supreme Court of the United States

DAVID HARRIS MILLER,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

David Harris Miller
Petitioner Pro Se
20109 Waterside Drive
Germantown, Maryland 20874
(571) 668-0837
dhm12211948@gmail.com

QUESTIONS PRESENTED

Question One

In *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006), this Court held that the erroneous deprivation of a criminal defendant's chosen counsel is structural error requiring reversal without any showing of prejudice. The deprivation in that case was caused by the trial court. Here, the deprivation was engineered by the prosecution, which obtained a pretrial restraint of the assets petitioner needed to retain his chosen counsel by presenting both a grand jury and a *Farmer* hearing with an indictment charging a money-laundering conspiracy that was supported by no evidence of petitioner's agreement or knowledge. The question presented is:

Whether the structural-error rule of *Gonzalez-Lopez* applies when the Government—rather than the trial court—engineers the loss of a defendant's counsel of choice through a pretrial asset restraint resting on a charge the grand jury was given no evidence to support, and whether *Kaley v. United States*, 571 U.S. 320 (2014), forecloses any remedy for that deprivation.

Question Two

Whether a court of appeals satisfies 28 U.S.C. § 2253(c), as construed in *Miller-El v. Cockrell*, 537 U.S. 322 (2003), and *Buck v. Davis*, 580 U.S. 100 (2017), when it denies a certificate of appealability in a single sentence and without analysis, in a case where the district court rejected a freestanding structural-error claim by applying the prejudice standard of *Strickland v. Washington*, 466 U.S. 668 (1984), and without addressing controlling circuit precedent.

PARTIES TO THE PROCEEDING

Petitioner David Harris Miller was the defendant-appellant below. Respondent the United States of America was the plaintiff-appellee below. There are no other parties to the proceeding.

RELATED PROCEEDINGS

United States v. Miller, No. 1:17-cr-213 (E.D. Va.) (judgment entered Jan. 24, 2020).

United States v. Miller, Nos. 20-4095(L), 20-4121 (4th Cir.) (direct appeal).

United States v. Miller, No. 18-4158 (4th Cir.) (interlocutory appeal of asset-restraint order).

Miller v. United States, No. 1:23-cv-1434 (E.D. Va.) (§ 2255 proceeding; order entered Sept. 11, 2024).

In re Miller / certificate-of-appealability proceeding (4th Cir.) (order entered May 18, 2026).

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

Constitutional Provisions and Statutes

PETITION FOR A WRIT OF CERTIORARI

Petitioner David Harris Miller respectfully petitions for a writ of certiorari to review the order of the United States Court of Appeals for the Fourth Circuit denying a certificate of appealability.

OPINIONS BELOW

The order of the United States District Court for the Eastern District of Virginia denying petitioner's motion under 28 U.S.C. § 2255 is unreported and is reproduced at App. A. *United States v. Miller*, No. 1:17-cr-213 (E.D. Va. Sept. 11, 2024). The order of the United States Court of Appeals for the Fourth Circuit denying a certificate of appealability is unreported and is reproduced at App. B.

JURISDICTION

The court of appeals entered its order denying a certificate of appealability on May 8, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). Petitioner proceeds in forma pauperis under this Court's Rule 39.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right … to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

28 U.S.C. § 2253(c) provides in relevant part that an appeal may not be taken from the final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability, which "may issue … only if the applicant has made a substantial showing of the denial of a constitutional right."

28 U.S.C. § 2255(a) provides in relevant part that a prisoner in custody may move the sentencing court to vacate, set aside, or correct the sentence on the ground that it "was imposed in violation of the Constitution or laws of the United States."

STATEMENT OF THE CASE

Petitioner David Harris Miller is 77-years-old and is a retired, disabled Army Special Forces veteran. This case arises from the Government's decision to charge Petitioner with a single, sprawling "tripartite" conspiracy and a companion money-laundering conspiracy in order to solve a forfeiture problem of the Government's own making. The crimes for which Petitioner was convicted were, by the Government's own admission, committed by his former wife alone. The Government used the resulting indictment—one that supplied no evidence of Petitioner's participation in the money-laundering conspiracy—to freeze the assets Petitioner needed to keep his retained counsel, and then secured a conviction after the only witness who could exonerate him was driven from the stand. The courts below never engaged these constitutional claims under the correct legal standard.

A. The Government's Forfeiture Problem and the Tripartite Indictment

On October 15, 2015, Linda Diane Wallis—Petitioner's then-wife—pleaded guilty to a single count of conspiring with Petitioner to defraud his former employer, SkyLink. She separately admitted that, acting alone, she had embezzled funds from the campaign of State Senator Richard Saslaw, for which she served as treasurer, and had misappropriated funds from the Community College Consortium on Autism and Intellectual Disabilities (CCCAID), for which she served as executive director. Wallis refused to plead to a charging document alleging that Petitioner conspired in those two frauds; she pleaded only after the Government amended the information to remove Petitioner from them. At her sentencing, the Government told the court, on the record, that "during our investigation, and our conversations with Ms. Wallis, her contention is that her husband was not aware of two of the three frauds."

The Government nonetheless sought to forfeit two homes that Petitioner owned individually in order to compensate Wallis's victims. For more than two years Petitioner—represented by retained counsel—blocked those efforts, because Wallis did not own the homes and her own assets were insufficient. The Government candidly explained its solution at Wallis's sentencing: "unless [petitioner] is conclusively tied to additional fraud, we potentially have two out of three victims who would not be able to receive any recovery unless … her husband is tied to those … crimes."

The Government's answer was a single "tripartite" conspiracy count joining the SkyLink fraud—which it could prove—with the Saslaw and CCCAID frauds, which Wallis said Petitioner knew nothing about, together with a money-laundering conspiracy count under 18 U.S.C. § 1956(h) predicated on §§ 1956(a)(1)(B) and 1957. By charging one conspiracy embracing all three frauds and submitting a general verdict form, the Government ensured that a jury could convict Petitioner of the entire $1.6 million scheme by finding only that he participated in the SkyLink fraud—without ever finding that he agreed to, knew of, or committed any act in furtherance of the other crimes. The indictment alleged no overt act by Petitioner as to the money-laundering conspiracy or the Saslaw and CCCAID frauds; its allegations uniformly recited that "Wallis deposited," "Wallis caused," or "Wallis authorized."

B. The Asset Freeze and the Loss of Retained Counsel

Petitioner's retained counsel—William Cowden, a former prosecutor and money-laundering specialist, with Steven Webster, a former public defender—had spent years contesting the forfeiture and had filed a motion for a bill of particulars demonstrating that the indictment contained no factual allegation tying Petitioner to the Saslaw or CCCAID frauds. On February 22, 2018, the Government used the new indictment at a *Farmer* hearing to establish the probable cause needed to freeze the assets Petitioner required to pay that counsel. The district court froze the assets; the court of appeals affirmed the restraint on December 20, 2018, reasoning that it could not "second-guess a grand jury's finding of probable cause." *United States v. Miller*, 911 F.3d 229 (4th Cir. 2018). Deprived of the funds to pay him, Cowden withdrew.

Critically, the grand jury had been presented no evidence connecting petitioner to any money-laundering transaction. The grand jury testimony showed only that Wallis—the sole signatory on the relevant accounts—moved and spent funds, and that bank statements for a joint account were mailed to the family home. The forfeiture-driving charge thus rested on a marital joint account and nothing more. Yet because the asset-restraint ruling rested on the grand jury's probable-cause finding, the court of appeals declined to examine whether that finding had any evidentiary basis at all.

Court-appointed counsel, Drew Hutchinson, replaced Cowden roughly six months before trial. Hutchinson withdrew the bill-of-particulars motion without explanation, later swore that he did not understand what "duplicity" or "constructive amendment" meant in this context, and called the indictment "one of the best I have seen in forty years." He thus left unchallenged the very charging instrument the Government had used to strip Petitioner of his chosen counsel.

C. The Suppression of the Sole Exculpatory Witness

Wallis was the only person other than Petitioner with personal knowledge of whether Petitioner participated in or knew of the Saslaw and CCCAID frauds and the money laundering. She had told the FBI—including in a call to Senator Saslaw recorded without her knowledge—that Petitioner knew nothing; she repeated that account in a series of FBI 302 reports and a handwritten statement; she passed polygraph examinations on the point; and she had agreed to testify for Petitioner. Her plea documents implicated Petitioner only in SkyLink.

At trial, the Government told the court it intended to cross-examine Wallis about whether she had signed Petitioner's name on 2002 mortgage documents, and that this exposure justified a blanket Fifth Amendment privilege. That threat was legally empty. The supposed offense was time-barred: bank fraud carries a ten-year limitations period under 18 U.S.C. § 3293, and trial occurred in 2019. And the alleged lender was a private hard-money lender, not a federally insured institution, so an essential element of bank fraud under 18 U.S.C. § 1344 was missing as a matter of law. The threat could not have produced a viable prosecution; its only function was to keep Wallis off the stand.

The trial court sustained a blanket invocation of privilege without the particularized, question-by-question inquiry the Fourth Circuit requires. See *United States v. Sayles*, 296 F.3d 219, 223 (4th Cir. 2002). It did so based on a demonstrable factual error: the court stated that Wallis had pleaded guilty to conspiring with Petitioner to defraud Saslaw and CCCAID, and reasoned that she would commit perjury if she testified otherwise. Wallis's own counsel corrected the court, explaining that her plea implicated Petitioner only as to SkyLink and that "[t]he other two she stated previously were done on her own." Hutchinson neither produced the plea documents that would have dispelled the error, nor objected, nor requested a question-by-question inquiry, nor raised the Government's legally impossible threat. With Wallis silenced, Petitioner was forced to take the stand, and the Government told the jury he was "throwing his wife under the bus."

D. Conviction, Direct Appeal, and Collateral Proceedings

The jury convicted Petitioner on the conspiracy and substantive counts, and the district court entered judgment on January 24, 2020, together with a forfeiture order reaching both homes.

On direct appeal, the Fourth Circuit affirmed. Petitioner's appellate counsel raised, among other things, the duplicity of the tripartite count, the Sixth Amendment counsel-of-choice violation, and the erroneous blanket Fifth Amendment ruling.

Petitioner then moved under 28 U.S.C. § 2255, presenting claims that the courts had not resolved on the merits on direct appeal: that the Government's asset-freeze maneuver effected a structural deprivation of counsel of choice under *Gonzalez-Lopez*; that the prosecution's legally impossible threat drove his sole exculpatory witness from the stand in violation of *Webb v. Texas*, 409 U.S. 95 (1972); and that appointed counsel was constitutionally ineffective in failing to challenge the indictment, interview Wallis, correct the court's factual error, and preserve the record. The district court initially found sufficient merit to require a response. The case was later reassigned, and on September 11, 2024, the district court denied relief in a thirty-six-page opinion that converted each constitutional claim into an ineffective-assistance claim and rejected it for lack of *Strickland* prejudice. The opinion did not address Petitioner's freestanding structural-error theory under *Gonzalez-Lopez* on its own terms, and it denied an evidentiary hearing even though the central factual question—whether the Government's threat caused Wallis to invoke the privilege—was disputed and unresolved.

Petitioner sought a certificate of appealability. Fifteen months later, on May 18, 2026, the Fourth Circuit denied a COA in a single sentence, without analysis.

REASONS FOR GRANTING THE PETITION

This petition presents two questions that recur throughout the federal system and that the courts below resolved by avoiding them. The first is a substantive Sixth Amendment question this Court has never answered: whether the structural-error rule for deprivations of counsel of choice extends to deprivations the Government engineers through pretrial asset restraints, and how that rule interacts with the limits this Court drew in *Kaley* and *Luis*. The second is a recurring procedural question on which this Court has twice had to correct the courts of appeals: what 28 U.S.C. § 2253(c) demands before a circuit may deny a certificate of appealability. The two questions converge in this case, because the Fourth Circuit's unexplained denial is precisely what allowed a substantial, unresolved constitutional claim to escape any merits review.

I. The Court Should Decide Whether the *Gonzalez-Lopez* Structural-Error Rule Reaches a Government-Engineered Deprivation of Counsel of Choice.

1. This Court held in *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006), that the erroneous deprivation of a defendant's chosen counsel is "structural" error that "def[ies] analysis by harmless-error standards" and requires reversal without any showing of prejudice. *Id.* at 148–50. The right to counsel of choice, the Court explained, is "the root meaning of the constitutional guarantee" and "commands, not that a trial be fair, but that a particular guarantee of fairness be provided—to wit, that the accused be defended by the counsel he believes to be best." *Id.* at 146, 147–48. Because the consequences of losing one's chosen advocate are "necessarily unquantifiable and indeterminate," the violation is complete upon the deprivation. *Id.* at 150.

The deprivation in *Gonzalez-Lopez* was caused by the trial court, which erroneously denied chosen counsel's admission. The Court had no occasion to decide—and did not decide—whether the same structural rule governs when it is the prosecution that brings about the deprivation, by freezing the assets a defendant needs to retain the lawyer he has chosen. That question is squarely presented here and is undecided in this Court.

2. This Court's asset-restraint decisions leave the question open rather than answering it. In *Luis v. United States*, 578 U.S. 5 (2016), a plurality held that the pretrial restraint of *untainted* assets needed to retain counsel of choice violates the Sixth Amendment, balancing that interest

against the Government's, and warning that the Government's interest in eventual forfeiture "lie[s] somewhat further from the heart of a fair, effective criminal justice system." Justice Thomas concurred in the judgment on historical grounds. *Luis* thus establishes that an asset restraint can violate the right to counsel of choice—but it did not address the remedy when such a restraint has already produced the loss of chosen counsel and a conviction has followed, nor whether that loss is structural under *Gonzalez-Lopez*.

3. *Kaley v. United States*, 571 U.S. 320 (2014), supplies the other half of the unresolved problem. *Kaley* held that an indicted defendant may not relitigate the grand jury's probable-cause determination at a pretrial hearing to free assets for counsel. But *Kaley* assumed an indictment that validly charged a forfeitable offense; it addressed the *weight* of the evidence, not its total absence. It did not decide whether *Kaley*'s bar forecloses all review—pretrial or post-conviction—when the very charge driving the forfeiture was presented to the grand jury with no evidence of the defendant's participation, and when the resulting restraint costs the defendant his chosen counsel. Read as the courts below read it, *Kaley* would convert a probable-cause shortcut into an absolute immunity for prosecutorial overreach that defeats a structural Sixth Amendment right. That cannot be right, and this Court has never said it is.

4. The interaction of these three decisions is a recurring and important problem, particularly in white-collar and forfeiture-driven prosecutions, where the Government routinely controls whether a defendant can afford the lawyer he has chosen. The lower courts have no guidance on whether a government-engineered deprivation is structural, whether it is subject to harmless-error review, or whether *Kaley* bars any remedy. The logic of *Gonzalez-Lopez* points strongly toward treating the deprivation as structural regardless of its source: the injury—the loss of "a particular lawyer" with his "own style" and strategy—is identical whether a judge or a

prosecutor causes it and is equally "unquantifiable." *Id.* at 150. Indeed, this Court has since reaffirmed that the Sixth Amendment protects a defendant's autonomy-based choices about his own defense as structural matters not measured by outcomes. See *McCoy v. Louisiana*, 584 U.S. 414, 427–28 (2018).

5. This case is a particularly stark illustration. The Government did not merely restrain assets incident to an ordinary charge; it constructed a money-laundering conspiracy count unsupported by any evidence of petitioner's agreement, used it to manufacture probable cause at a *Farmer* hearing, and thereby removed the very lawyer who had spent years exposing the charge as baseless. The causal chain from deliberate prosecutorial action to the loss of chosen counsel is documented in the record. Whether that deprivation is structural error—and whether any forum may remedy it—is a question of national importance that only this Court can resolve.

II. The Fourth Circuit's Unexplained One-Sentence COA Denial Cannot Be Reconciled with *Buck* and *Miller-El*.

1. A certificate of appealability "may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This Court has twice explained what that means, and twice reversed courts of appeals for getting it wrong. In *Miller-El v. Cockrell*, 537 U.S. 322 (2003), the Court held that the COA inquiry asks only whether "jurists of reason could disagree with the district court's resolution" of the claim or "conclude the issues presented are adequate to deserve encouragement to proceed further," *id.* at 327, and that the threshold question must be decided "without full consideration of the factual or legal bases adduced in support of the claims," *id.* at 336. A court that "sidesteps [the] process by first deciding the merits of an appeal and then justifying its denial of a COA based on its adjudication of the actual merits, ... is in essence deciding an appeal without jurisdiction." *Id.* at 336–37.

In *Buck v. Davis*, 580 U.S. 100 (2017), the Court reaffirmed that "[a]t the COA stage, the only question is whether the applicant has shown that jurists of reason could disagree" with the district court, and again reversed a court of appeals that had "reach[ed] its conclusion only after essentially deciding the case on the merits." *Id.* at 115. As the *Buck* petition itself framed the problem, the courts of appeals remain divided over how the COA standard applies—a division this Court's repeated interventions have not closed. Scholarly analysis confirms this assessment: the circuit courts have taken "remarkedly divergent approaches" to the COA requirement, with some circuits effectively disregarding substantial constitutional claims while others apply the standard inconsistently, producing different levels of review for similarly situated federal prisoners. See Margaret A. Upshaw, "The Unappealing State of Certificates of Appealability", 82 U. Chi. L. Rev. 1609 (2015).

2. The Fourth Circuit's disposition here does not satisfy that standard—and indeed makes it impossible to tell whether the standard was applied at all. The Court denied a COA in a single sentence, after fifteen months, with no written analysis. Where the district court has resolved substantial constitutional claims by applying a concededly inapplicable framework, an unexplained one-line denial cannot show that the court asked the only question the statute permits: whether reasonable jurists could debate the district court's resolution. Silence is not the "substantial showing" analysis the statute requires; it is the absence of one.

3. The debatability here is not close. The district court rejected petitioner's freestanding structural-error claim by demanding a showing of *Strickland* prejudice. But this Court's structural-error jurisprudence forecloses that move: structural errors—including the deprivation of counsel of choice—are "not subject to harmless-error analysis" and require no showing of prejudice at all. *Gonzalez-Lopez*, 548 U.S. at 148–50; *Arizona v. Fulminante*, 499 U.S. 279, 309–10 (1991). At a

minimum, reasonable jurists could debate whether *Strickland*'s prejudice requirement governs a structural claim. That debatability is itself sufficient to require a COA under *Miller-El* and *Buck*.

4. The same is true of petitioner's *Webb* claim. In *Webb v. Texas*, 409 U.S. 95 (1972), this Court held that government conduct that drives a defense witness from the stand violates due process. The lower courts are unsettled on whether and when *Webb* reaches threats by the *prosecutor*—as opposed to the judge—that cause a witness to invoke the privilege, and on the showing a defendant must make. Reasonable jurists could surely debate whether a prosecutor's *legally impossible* threat of prosecution—one barred by limitations and missing an element—that silenced the sole exculpatory witness states a constitutional violation. The district court resolved none of this; it recharacterized the claim as one of attorney error and denied a hearing on a disputed, outcome-determinative fact.

III. This Case Is an Exceptionally Clean Vehicle.

1. The questions are squarely presented and outcome-determinative. The order under review is the COA denial itself, so Question Two is presented directly. Question One is presented because the district court's refusal to apply the correct structural-error framework—and the court of appeals' refusal to say anything at all—are the rulings that kept a substantial Sixth Amendment claim from any merits review.

2. The record is complete. There is a full trial record, a fully briefed § 2255 record including the Government's response and appointed counsel's sworn affidavit, and a complete COA application. No further factual development is necessary to decide the legal questions presented, and the disputed factual question that does remain—whether the Government's threat caused the witness's silence—only underscores why a hearing should have been held.

3. The equities are compelling and reinforce the "deserve encouragement to proceed" prong of the COA standard. Petitioner stands convicted of crimes the Government acknowledged at his wife's sentencing that she committed without his knowledge. His chosen counsel was removed through a charge unsupported by evidence; his sole exculpatory witness was silenced through a threat that could not lawfully have been carried out; and the trial court's ruling rested on a misreading of a plea document that defense counsel stood by without correction. These are not abstractions; they are the kind of "extraordinary" circumstances that make a case worthy of this Court's attention.

4. Finally, certiorari here would not require the Court to wade into any vehicle-obscuring procedural thicket. Petitioner does not ask the Court to relitigate matters resolved on direct appeal; he asks it to decide a Sixth Amendment question it has never answered and to enforce the COA standard it has already announced. Cf. *Davila v. Davis*, 582 U.S. 521 (2017) (describing the limits of collateral review). Both questions are legal, both are recurring, and both are cleanly teed up by the orders below.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: June 22, 2026

David Harris Miller
Petitioner Pro Se
20109 Waterside Drive
Germantown, Maryland 20874
(571) 668-0837
dhm12211948@gmail.com