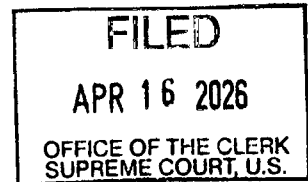


26-5792

NO.

ORIGINAL

IN THE
SUPREME COURT OF THE
UNITED STATES



TARENCE NELSON,
PETITIONER

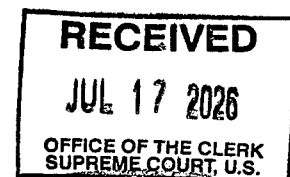
V.

JOHNNY FITZ, WARDEN,
RESPONDENT

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

PETITION FOR A WRIT OF CERTIORARI

Tarence Nelson # 352541, Pro Se
West Tennessee State Prison / Site II
P.O. Box 1150
Henning, Tn. 38041-11



QUESTIONS PRESENTED

1. Whether the presumed prejudice standard of *Cuyler v. Sullivan*, 446 U.S. 335 (1980), applies when a defense attorney labors under an actual conflict of interest created by his own criminal conduct—specifically, by personally retrieving and concealing the alleged murder weapon to avoid his own prosecution for evidence tampering—in a question that has deeply divided the Circuits.
2. Whether a state’s self-defense jury instruction violates the Fourteenth Amendment’s Due Process Clause when it effectively negates the right to self-defense and shifts the burden of proof to the defendant, based solely on the defendant’s legal *status* as a felon in possession of a firearm, without requiring any causal link between that status and the imminent threat faced.
3. Whether a federal court of appeals renders a decision based on an “unreasonable determination of the facts” under 28 U.S.C. § 2254(d)(2) when it denies a Certificate of Appealability by concluding a petitioner cannot show prejudice because critical corroborating evidence was never found, when the state-court record unequivocally documents that the evidence was, in fact, recovered from state custody.

LIST OF PARTIES

The Petitioner is Tarence Nelson, an individual currently incarcerated at the West Tennessee State Penitentiary in Henning, Tennessee. Petitioner was the Petitioner-Appellant in the court below. The Respondent is Johnny Fitz, Warden, or his successor of the West Tennessee State Penitentiary, in his official capacity. Respondent was the Respondent-Appellee in the court below.

LIST OF RELATED PROCEEDINGS

1. *State v. Nelson*, No. W2011-0222-CCA-R3-CD, 2013 WL 1218527 (Tenn. Crim. App. May 24, 2013, perm. app. denied (Tenn. Oct 16, 2014) (direct appeal of criminal conviction)
2. *Nelson v. State*, No. W2017-0263-CCA-R3-PC (Tenn. Crim. App. Aug. 12, 2019), perm. app. denied (Tenn. Jan. 15, 2020) (post-conviction appeal)
3. *Nelson v. State*, No. 2021-00896-CCA-R3-ECN, 2022 WL 1134772, (Tenn. Crim. App. Apr. 2022)
3. *Nelson v. State*, No. 2024-01516-CCA-R3-ECN (Tenn. Crim. April 3, 2025), perm. app. Denied (August 7, 2025)
4. *Nelson v. Fitz*, No. 2:20-cv-02557-MSN-temp, Federal Western District Court. (Unpublished)
5. *Nelson v. Fitz*, No. 25-5349, United States Court of Appeals for the Sixth Circuit, (Unpublished)

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PETITION FOR A WRIT OF CERTIORARI

Tarence Nelson respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The order of the United States Court of Appeals for the Sixth Circuit denying the petition for rehearing was entered on April 6, 2026, and is unpublished. A copy of this order is attached hereto as Appendix A.

The order of the United States Court of Appeals for the Sixth Circuit denying a certificate of appealability was entered on January 14, 2026, and is unpublished. A copy of this order is attached hereto as Appendix B.

The order and opinion of the United States District Court for the Western District of Tennessee denying Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254 was entered on March 31, 2025 and is unpublished. A copy of this order is attached hereto as Appendix C.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered its order denying Petitioner's certificate of appealability on January 14, 2026.

Petitioner timely filed a petition for rehearing, which the United States Court of Appeals for the Sixth Circuit denied on April 6, 2026.

This Petition for a Writ of Certiorari is filed within 90 days of the denial of the petition for rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Prefatory Statement

The petitioner, Tarence Nelson, respectfully submits this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit. This case presents a profound constitutional crisis at the intersection of the Sixth Amendment right to effective assistance of counsel and the Fourteenth Amendment's guarantee of due process. At its core, this matter involves a defense attorney who, after being informed by his client of the location of critical physical evidence—the alleged murder weapon and a secondary weapon used by the victim—personally retrieved and suppressed the primary weapon, instructed his client to provide misleading testimony regarding its location, and thereafter labored under an actual conflict of interest to avoid his own criminal and ethical exposure.

The Sixth Circuit's refusal to grant a Certificate of Appealability (COA) was predicated on a manifest misapprehension of the factual record, specifically concluding that no prejudice existed while ignoring the subsequent 2023 recovery of the victim's firearm from state custody—a recovery that physically corroborated the petitioner's long-dismissed account of self-defense. This petition seeks to resolve a deep circuit split regarding whether the presumed prejudice standard of *Cuyler v. Sullivan* applies when counsel's personal legal exposure creates a conflict of interest, and to address the nationwide importance of a lawyer's responsibility for real evidence. Furthermore, this case challenges the constitutionality of status-based jury instructions that effectively negate self-defense claims for individuals with prior felony convictions, a practice that shifts the burden of proof and violates the fundamental principles of the adversarial system.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defence".

The Fourteenth Amendment to the United States Constitution provides in pertinent part: "No State shall... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

Tennessee Code Annotated § 39-11-611(b)(1) provides: "Notwithstanding § 39-17-1322, a person who is not engaged in unlawful activity and is in a place where the person has a right to be has no duty to retreat before threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force".

Tennessee Code Annotated § 39-16-503(a)(1) provides: "It is unlawful for any person, knowing that an investigation or official proceeding is pending or in progress, to... [a]lter, destroy, or conceal any record, document or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding".

STATEMENT OF THE CASE

This case presents a catastrophic failure of the adversarial process, where a defense attorney's concealment of critical evidence and a trial court's erroneous jury instruction deprived Petitioner Tarence Nelson of his Sixth and Fourteenth Amendment rights, resulting in a conviction for a crime he maintains was an act of self-defense. The attorney's active concealment of the alleged murder weapon was confirmed during post-conviction proceedings when, at an evidentiary hearing on February 6, 2016, he admitted under oath to having the gun. At a subsequent hearing on March 24, 2017, he recanted his prior testimony, falsely claiming the weapon he possessed was a .44 magnum, a firearm entirely inconsistent with the evidence in the case.

A. The Incident and the Claim of Self-Defense

On September 25, 2009, Tarence Nelson, a network engineer with no history of violent crime, drove from his home in Murfreesboro to Memphis in a rental car. He visited the home of Tonya Johnson, with whom he had a tumultuous relationship. An argument ensued, and Mr. Nelson testified that Ms. Johnson, in a jealous rage, retrieved his Sig Sauer P229 handgun from his rental vehicle. She pointed it at his head and pulled the trigger three times, but the weapon malfunctioned. As she attempted to clear the jam, Mr. Nelson, believing his life was in imminent danger, drew his personal firearm—an HK 9mm USP—and fired twice, fatally wounding her. (*Nelson I*, 2013 WL 12185279, at *4).

In a state of panic, Mr. Nelson, a convicted felon aware of the legal peril of possessing firearms, took both weapons and fled the scene. He later hid the HK 9mm USP (the “murder weapon”) under a shed in Murfreesboro. He concealed the Sig Sauer

P229 (the “victim’s weapon”) inside a large IBM Eserver X346 computer at his home, believing it was the only way to preserve Ms. Johnson’s fingerprints on the weapon and prove she was the initial aggressor. (Appendix E, *Third Writ of Error Coram Nobis*, p. 5).

B. Trial Counsel’s Unethical Seizure and Suppression of Evidence

Shortly after his arrest, Mr. Nelson’s family retained attorney Stephen Leffler¹. Mr. Nelson immediately and repeatedly informed Mr. Leffler of the specific locations of both firearms. He explained that the victim’s weapon was inside the IBM server—which had since been seized by the Memphis Police Department (MPD)—and that the murder weapon was under the Murfreesboro shed. (*Id.* at p. 5-6). He implored Mr. Leffler to recover both weapons for forensic testing to corroborate his self-defense claim.

Mr. Leffler’s response was a betrayal of his professional, ethical, and constitutional duties. He personally drove to Murfreesboro and retrieved the HK 9mm USP. Instead of surrendering it to the authorities or an independent lab, he took it to his home, where it remained for years. (*Nelson II*, 2019 WL 3777030, at *7). In doing so, he likely committed a Class C felony under Tenn. Code Ann. § 39-16-503 (Tampering with Evidence). His own criminal exposure instantly created an actual conflict of interest: his duty to use the weapon to defend Mr. Nelson was now diametrically opposed to his personal interest in concealing his own illegal conduct.

This conflict dictated his entire trial strategy. Mr. Leffler failed to have the HK 9mm tested for its alleged “hair trigger,” which Mr. Nelson claimed contributed to the second shot. He failed to take any steps to have the MPD search the IBM server for the Sig Sauer. At trial, the prosecution built its case around the absence of both weapons,

¹ Attorney Leffler died in May of 2026.

arguing Mr. Nelson's self-defense story was a complete fabrication and that he had shot an unarmed, pregnant woman. (*Trial Transcript*, p. 275-76).

Knowing this narrative was false, and with the murder weapon in his possession, Mr. Leffler instructed Mr. Nelson to testify that he hid both guns under the barn in Murfreesboro. (*Nelson I*, 2013 WL 12185279, at *4). This fabricated testimony destroyed Mr. Nelson's credibility and concealed Mr. Leffler's role in suppressing the evidence.

C. The Unconstitutional Jury Instruction

The trial court's jury instructions sealed Mr. Nelson's fate. Because he was a felon in possession of a firearm, the court instructed the jury that he was engaged in "unlawful activity" and therefore had a "duty to retreat" before using deadly force, pursuant to Tenn. Code Ann. § 39-11-611. This instruction created an insurmountable hurdle. It informed the jury that Mr. Nelson's legal *status* as a felon—a fact wholly unrelated to whether Ms. Johnson was pointing a gun at his head—stripped him of the right to self-defense in a place he was lawfully present. The instruction effectively shifted the burden of proof, requiring Mr. Nelson to prove not only that he was in imminent danger, but that he had also fulfilled a duty to retreat that Tennessee law would not have imposed on a non-felon.

The jury, having heard the State call his self-defense claim a lie and the court instruct that his status as a felon essentially negated that defense, convicted Mr. Nelson of two counts of first-degree murder. He was sentenced to two consecutive life terms.

D. Post-Conviction Revelations and the Recovery of the Corroborating Evidence

The truth about the weapons emerged during state post-conviction proceedings. At evidentiary hearings in 2015 and 2017, Mr. Leffler's testimony was evasive and

contradictory. He admitted retrieving weapons but then misidentified the murder weapon as a “.44 magnum,” a caliber completely inconsistent with the 9mm shell casings found at the scene or from Nelson's residence. (*Nelson II*, 2019 WL 3777030, at *7). The post-conviction trial court, however, made a dispositive factual finding: “The gun used to kill the victim was still in the possession of the attorney at the time of the hearing.” (*Id.* at *10).

For years, Mr. Nelson fought pro se to prove the existence of the second gun. Finally, after filing a petition under the Tennessee Post-Conviction Fingerprint Analysis Act of 2021, the state was compelled to act. In 2023, the IBM Eserver was opened in the MPD property room. Concealed inside, just as Mr. Nelson had claimed for over a decade, was the Sig Sauer P229 and its magazines. (Appendix F, *Fingerprint Analysis - Writ Ruling*, p. 4). This recovery provided the physical corroboration for his self-defense claim that his own attorney had actively suppressed. The TBI report on the recovered weapon noted no usable DNA or fingerprints, a predictable result after 14 years in police storage without climate control. (*Id.* at p. 5-6).

E. Federal Habeas Proceedings and the Sixth Circuit’s Factual Error

Mr. Nelson filed a timely § 2254 petition, raising, among other claims, ineffective assistance of counsel due to the conflict of interest and trial court error on the jury instruction. The district court denied the petition and a COA.

On appeal, the Sixth Circuit also denied a COA. The panel’s decision rested on a stunning factual error. Acknowledging Mr. Nelson’s argument about the Sig Sauer, the panel wrote: “he provides no citation to back up that statement... he fails to show the gun actually was found.” (Appendix B, *COA denial*, p. 7). This conclusion is flatly

contradicted by the state-court record, particularly the coram nobis court's order from September 17, 2024, which explicitly details the recovery of the Sig Sauer from the IBM server in 2023. (Appendix F, *Fingerprint Analysis - Writ Ruling*, p. 4).

Based on its erroneous belief that the key corroborating evidence did not exist, the Sixth Circuit held that Mr. Nelson could not demonstrate prejudice from his counsel's deficient performance. (Appendix B, *COA denial*, p. 7). The Sixth Circuit denied Mr. Nelson's petition for en banc rehearing on April 6, 2026. It is from this factually and legally flawed judgment that Mr. Nelson now seeks certiorari.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari for three compelling reasons. First, this case presents a profound and recurring question that has deeply divided the federal circuits: whether prejudice must be presumed under *Cuyler v. Sullivan* when an attorney's own criminal misconduct creates an actual conflict of interest. Second, it raises a vital due process issue concerning the constitutionality of self-defense instructions that penalize a defendant's legal status. Finally, the Sixth Circuit's decision is based on a clear and outcome-determinative factual error that warrants this Court's supervisory intervention.

I. This Case Presents a Deep Circuit Split Regarding the Standard of Prejudice for Attorney Conflicts of Interest Rooted in Personal Criminality.

The Sixth Amendment's guarantee of effective assistance of counsel requires representation by an attorney whose loyalty is absolute and undivided. This Court has long recognized that when representation is corrupted by a conflict of interest, the adversarial process itself breaks down. In *Cuyler v. Sullivan*, 446 U.S. 335 (1980), this Court held that a defendant who shows that a conflict of interest "adversely affected his lawyer's performance" need not demonstrate prejudice in the manner required by *Strickland v. Washington*, 466 U.S. 668 (1984). Prejudice is presumed. *Id.* at 349-50; *see also Mickens v. Taylor*, 535 U.S. 162, 172-73 (2002).

While *Sullivan* involved the concurrent representation of multiple clients, its underlying principle—that a breach of the duty of loyalty can be so profound as to be presumptively prejudicial—is not so limited. A deep and unresolved circuit split has emerged over whether to apply *Sullivan*'s standard to conflicts arising from an attorney's

own personal interests, particularly when those interests involve potential criminal liability.

The Sixth Circuit, in this and other cases, has adopted a narrow view, restricting *Sullivan* to cases of multiple representation and applying the stringent *Strickland* prejudice standard to all other conflicts. This approach aligns with the Fifth and Seventh Circuits, which have held that conflicts based on an attorney's personal, financial, or ethical interests do not warrant a presumption of prejudice unless they are functionally equivalent to dual representation. *See, e.g., Beets v. Collins*, 65 F.3d 1258, 1275-76 (5th Cir. 1995) (en banc).

In stark contrast, other circuits have recognized that an attorney's personal entanglement in criminal activity related to the client's case creates the most pernicious type of conflict, demanding the application of *Sullivan*. The Fourth Circuit, in *Rubin v. Gee*, 292 F.3d 396 (4th Cir. 2002), granted habeas relief where defense lawyers, to protect their fee, coached their client into a false narrative and concealed evidence. The court found an actual conflict that "adversely affected their client's representation at every critical stage" and applied a presumption of prejudice. *Id.* at 402. The court correctly reasoned that the lawyers' "personal interests fundamentally conflicted with the objectives of [the] representation from the moment they arrived at the scene of the crime." *Id.*

The conflict in Mr. Nelson's case is even more severe. Attorney Leffler was not merely advising his client on how to conceal evidence; he became the physical custodian of the murder weapon, exposing himself to felony prosecution for evidence tampering.

From that moment forward, his duty to Mr. Nelson was irrevocably subsumed by his need for self-preservation. Every strategic decision was tainted:

- **The Duty to Investigate vs. The Need to Conceal:** A loyal attorney would have immediately submitted the HK 9mm for ballistics and trigger-pull analysis. A conflicted attorney, however, cannot create a paper trail leading to evidence he is illegally concealing. Leffler's choice to "test" the gun himself was an act of self-protection, not zealous advocacy.
- **The Duty of Candor vs. The Need for Deception:** A loyal attorney would have used the recovered weapon to rebut the State's claim that Mr. Nelson ditched the evidence. A conflicted attorney must hide his involvement by ensuring the weapon and his role in its concealment never came to light. Leffler's solution was to suborn misleading testimony from his own client, a catastrophic decision that destroyed Mr. Nelson's credibility.
- **The Duty to Uncover Evidence vs. The Need to Avoid Scrutiny:** A loyal attorney would have aggressively pursued the recovery of the Sig Sauer from the seized computer. A conflicted attorney fears what might be found and what questions might be asked about his own failure to act.
- **The Duty to Object vs. The Need for Silence:** At a critical hearing, the prosecution argued that unrelated firearms—an AR-15 assault rifle and a .480 Range Bull revolver—should be admitted to infer that Mr. Nelson disposed of the murder weapon. A loyal attorney, knowing he possessed that very weapon, would have eviscerated the State's argument by revealing its false premise. A conflicted attorney must remain silent, as producing the weapon would expose his own

crime. Leffler's silence was a strategic choice dictated by his conflict; it directly resulted in the jury seeing and handling highly prejudicial weapons, cementing the State's false narrative and leading to a sentencing enhancement based on the revolver.

This was not a potential or hypothetical conflict: it was an actual, ongoing conflict that placed Leffler's liberty and livelihood in direct opposition to his client's. This case provides the ideal vehicle for this Court to resolve the circuit split. Attorney Leffler's actions represent a textbook example of an actual conflict of interest that had a clear, demonstrable, and adverse effect on his performance. The Sixth Circuit's application of *Strickland* ignores the structural corrosion of the adversarial process that occurs when a defense lawyer's primary loyalty shifts from his client to himself. This Court should grant certiorari to clarify that when an attorney's own criminal exposure is at stake, the duty of loyalty is so compromised that prejudice must be presumed under *Sullivan*.

II. This Case Involves an Issue of Extraordinary National Importance Concerning the Ethical and Constitutional Duties of Counsel Toward Real Evidence.

The question of a defense attorney's responsibility upon receiving physical evidence from a client is a "dilemma" that has long plagued the legal profession, yet it lacks a clear, uniform standard. *See, e.g.,* Stephen Gillers, *Guns, Fruits, Drugs, and Documents*, 63 Stan. L. Rev. 813 (2011). This ambiguity leaves attorneys in a precarious position and clients vulnerable to the kind of constitutional catastrophe that occurred here.

When Mr. Leffler took possession of the murder weapon, he stepped out of his role as an advocate and into the role of a potential witness and criminal actor. The lower courts'

failure to recognize the gravity of this transgression effectively blesses a dangerous rule: that a defense attorney may act as a private evidence locker, suppressing inculpatory and exculpatory evidence alike, with no consequence unless a defendant can later meet the near-impossible *Strickland* standard.

This creates perverse incentives. It encourages attorneys to hide evidence that might be exculpatory (like the hair trigger) for fear it might also be inculpatory (by confirming it is the murder weapon). It allows the state to build a false narrative based on missing evidence, while the defense attorney—the one person who knows the narrative is false—remains silent to protect himself. As one scholar noted, allowing attorneys to withhold physical evidence “seems to contradict the lawyer’s duty to the court.” Norman Lefstein, *Incriminating Physical Evidence, The Defense Attorney’s Dilemma, and the Need for Rules*, 64 N.C. L. Rev. 897, 915 (1986).

The recovery of the Sig Sauer in 2023 underscores the stakes. For fourteen years, Mr. Nelson was labeled a liar in part because the weapon the victim allegedly used was missing. Its recovery validates his account and demonstrates that his attorney’s failure to secure it from the outset was a devastating lapse. This Court has a compelling interest in establishing a clear constitutional standard for the handling of real evidence to protect the integrity of the adversarial process and ensure the Sixth Amendment right to counsel is not an empty promise.

III. The Unlawful Activity Exception in Self-Defense Instructions Violates the Due Process Clause by Creating a Mandatory Presumption of Guilt for Status Offenders.

The Due Process Clause requires the prosecution to prove every element of an offense beyond a reasonable doubt. Jury instructions that create mandatory presumptions or shift the burden of proof to the defendant are unconstitutional. The jury instruction in Mr. Nelson's case did precisely that.

By instructing the jury that Mr. Nelson's status as a felon in possession of a firearm constituted "unlawful activity" that imposed a "duty to retreat," the trial court created a conclusive presumption against self-defense. This status-based rule has no required nexus to the actual events of the confrontation. Mr. Nelson's prior felony conviction did not make Ms. Johnson's act of pointing a gun at his head any less of an imminent threat. Yet, the instruction told the jury that, unlike any other citizen in that situation, Mr. Nelson first had a legal duty to flee.

This practice is a recurring constitutional problem. In *State v. Perrier*, 536 S.W.3d 388 (Tenn. 2017), the Tennessee Supreme Court confirmed that being a felon-in-possession triggers the duty to retreat, solidifying this status-based penalty on the right to self-defense. Other states have struggled with similar issues, highlighting the need for this Court's guidance. The practice essentially allows the state to use a prior conviction to pre-emptively defeat a claim of self-defense, relieving prosecutors of their burden to disprove the defense beyond a reasonable doubt. It permits the jury to convict not because the defendant's actions were unreasonable, but because of his past.

This Court has not squarely addressed whether a defendant's legal status, untethered to his conduct during a confrontation, can constitutionally extinguish or diminish the fundamental right of self-defense. This case presents the perfect opportunity

to hold that such status-based jury instructions violate due process by creating an impermissible mandatory presumption and improperly shifting the burden of proof.

IV. The Sixth Circuit's Decision Rests on an Unreasonable Determination of the Facts and Conflicts with This Court's Precedent.

A writ of certiorari is not typically granted to correct factual errors. But where, as here, a lower court's legal analysis is predicated on a clear, outcome-determinative misreading of the record, this Court's intervention is necessary to prevent a manifest injustice. The Sixth Circuit denied Mr. Nelson a COA because he could not show prejudice. The central pillar of that holding was its conclusion that Mr. Nelson "fails to show the gun [the Sig Sauer] actually was found." (Appendix B, *COA denial*, p. 7). This finding of fact is patently and demonstrably false. The state-court record, which was before the Sixth Circuit, contains the Shelby County Criminal Court's September 17, 2024 order, which states:

In the presence of Petitioner's appointed counsel, the Sig Sauer and magazines were discovered concealed inside a computer. The Sig Sauer and magazines were submitted to the Tennessee Bureau of Investigation ("TBI") for testing. (Appendix F, *Fingerprint Analysis - Writ Ruling*, p. 4).

This is not an ambiguous point; it is a judicially recognized fact. The recovery of the Sig Sauer is the most critical factual development in this case since the trial. It is the physical evidence that corroborates Mr. Nelson's testimony—the very evidence the State claimed was a fabrication and his own lawyer failed to secure.

By overlooking this dispositive fact, the Sixth Circuit's decision constitutes an "unreasonable determination of the facts in light of the evidence presented in the State

court proceeding” under 28 U.S.C. § 2254(d)(2). This error was not harmless; it was the sole basis for the court’s no-prejudice finding. Had the court acknowledged the recovery of the weapon, its prejudice analysis would have been completely different. The question would no longer be whether Mr. Nelson could prove the existence of a mythical gun, but whether there is a reasonable probability the outcome would have been different if the jury had known that Mr. Nelson’s account of being threatened with a real, physical weapon was true.

The standard for a COA requires only that a petitioner make “a substantial showing of the denial of a constitutional right.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). This is a threshold inquiry, not a final determination on the merits. The confirmed recovery of the Sig Sauer, coupled with counsel’s conflict-driven suppression of the murder weapon, easily clears this bar. Reasonable jurists would undoubtedly find it debatable whether Mr. Nelson was prejudiced by his counsel’s failures. The Sixth Circuit’s contrary holding, based on a blatant factual error, conflicts with the standard set forth by this Court in *Miller-El* and warrants summary reversal under *Hohn v. United States*, 524 U.S. 236 (1998).

CONCLUSION

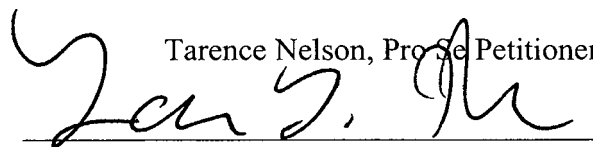
The petitioner's case represents a cascade of constitutional failures. It began with an attorney who suppressed the primary evidence of the case to protect himself, continued with a jury instruction that legally mandated a duty to retreat for a specific class of citizens, and concluded with a federal appellate court that refused to acknowledge the physical recovery of the evidence in its assessment of prejudice.

The circuit split on the application of *Sullivan* to personal-interest conflicts has left defendants like Nelson in a no-man's land where their counsel can actively obstruct justice with impunity, provided the obstruction is effective enough to prevent the defendant from meeting the *Strickland* prejudice hurdle. This case offers a unique opportunity to clarify the responsibilities of defense counsel toward real evidence and to ensure that the Sixth Amendment remains a shield for the accused, not a cloak for the attorney.

For the reasons stated above, the petition for a writ of certiorari should be granted. In light of the manifest misapprehension of the state court record by the Sixth Circuit, the petitioner further requests that the judgment denying the Certificate of Appealability be summarily reversed and the case remanded for an evidentiary hearing to resolve the material factual conflicts regarding the missing weapons.

Respectfully submitted,

Tarence Nelson, Pro Se Petitioner

A handwritten signature in black ink, appearing to read "Tarence Nelson", is written over a horizontal line.

Tarence Nelson #352541

NOTARY STAMP

PERSONALLY APPEARED BEFORE ME, the undersigned, a Notary Public in and for the said County and State, Tennessee, whose identity I have personally verified, and who acknowledged that he executed the foregoing document for the purposes therein contained.

WITNESS MY HAND AND OFFICIAL SEAL, this the 7th day of July, 2026.

Teresa Ann Bernard
Notary

1-13-2030
My Commission Expires

