CAPITAL CASE

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM HARRY MEECE, Petitioner

v.

THE HONORABLE JOHN R. GRISE, JUDGE
WARREN COUNTY CIRCUIT COURT,
Respondent,

and

COMMONWEALTH OF KENTUCKY,

Real Party in Interest.

On Petition for Writ of Certiorari
to the Supreme Court of Kentucky

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In 2013, Mr. Meece filed a motion for post-conviction relief in Kentucky state courts, challenging multiple convictions and sentences of death. As required by Kentucky law, Mr. Meece's counsel attached along with that petition a verification of the petition signed by Mr. Meece. In an effort to meet Kentucky's pleading requirements and avoid summary dismissal, counsel also attached several affidavits, including an affidavit of Mr. Meece himself. Twelve years later, during penalty-phase post-conviction evidentiary hearings in which Mr. Meece chose not to testify, the Commonwealth notified the parties of its intent to call Mr. Meece as it's sole witness. On a writ, the Kentucky Supreme Court ruled that Mr. Meece had waived his Fifth Amendment privilege in submitting the affidavit and petition verification, and that the Commonwealth could therefore call him to testify. As a basis for its ruling, the court cited to *Mitchell v. United States*, 526 U.S. 314 (1999) for the proposition that, "a witness, in a single proceeding, may not testify voluntarily about a subject and then invoke the privilege against self-incrimination when questioned about the details." Pet. App. 6a.

While this Court in *Mitchell v. United States* did "note" (*Id.* at 323) the general rule cited by the Kentucky Supreme Court, it decidedly narrowed its application, ruling that a limited waiver for one portion of criminal proceedings does not constitute a broad waiver of all Fifth Amendment privileges for subsequent proceedings which are distinct in purpose from the proceeding in which the testimony was given. *Id.*, at 323-325.

This case thus presents the following question:

Whether a capital post-conviction movant's written affidavit and verification, submitted with a post-conviction Motion, constitutes a full and complete waiver of the person's Fifth Amendment privilege for any subsequent proceedings on the Motion, such that the State may call the postconviction movant as the sole witness for the State and against himself in any evidentiary hearing, even though neither the affidavit nor verification contain any express waiver of the affiant's Fifth Amendment privilege or acknowledgment that the affiant was advised of or understood that signing the affidavit meant he could later be called to the witness stand to testify as a witness against himself?

PARTIES TO THE PROCEEDING

Petitioner William Meece was the petitioner in the Supreme Court of Kentucky.

The Honorable John R. Grise, Judge of the Warren County Circuit Court, was named as the respondent in the original proceeding filed in the Supreme Court of Kentucky pursuant to that court's writ practice and is named as respondent here. Judge Grise took no adversarial position on the merits of Petitioner's Fifth Amendment claim below and is named solely because the writ sought to prohibit action he would otherwise take in the underlying proceeding.

The Commonwealth of Kentucky was the real party in interest and appellee below, and is named as the Real Party in Interest here. The Commonwealth is the party that opposed Petitioner's claim on the merits and defended the judgment now under review.

This case does not involve a corporation, so no statement is required under Rule 29.6.

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OPINIONS BELOW

The opinion and order of the Supreme Court of Kentucky denying the petition for a writ of prohibition (Pet. App. A) is reported at *Meece v. Grise*, 739 S.W.3d 590 (Ky. 2026) and is reproduced at Pet. App. 1a–13a. *Meece v. Grise*, No. 2025-SC-0299-OA (Ky. Feb. 19, 2026).

The order of the Supreme Court of Kentucky denying Petitioner's petition for rehearing (Pet. App. B) is unreported and is reproduced at Pet. App. 14a. Meece v. Grise, No. 2025-SC-0299-OA (Ky. June 25, 2026).

JURISDICTION

The Supreme Court of Kentucky entered its opinion and order denying the petition for a writ of prohibition on February 19, 2026. Pet. App. 1a. Petitioner timely sought rehearing, which the Supreme Court of Kentucky denied by order entered June 25, 2026. Pet. App. 14a. An Application for Extension of Time to File the Petition for Certiorari was granted on September 21, 2026, extending the time for filing the Petition for Certiorari to October 23, 2026. *Meece v. Grise, et.al.,* No. 26A362. This Court has jurisdiction under 28 U.S.C. § 1257(a).

Although the underlying Ky. R. Crim. P. 11.42 proceeding remains pending in the Warren Circuit Court, the judgment below is final for purposes of this Court's jurisdiction. The Supreme Court of Kentucky conclusively resolved the federal constitutional question of whether Mr. Meece's affidavit waived his Fifth Amendment rights and may be compelled to testify as the Commonwealth's own witness. That resolution will not be altered by, and does not depend upon, further proceedings in the trial court. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482–83 (1975).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part:

> "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ."

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

> "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

Section 11 of the Kentucky Constitution provides, in relevant part:

> "In all criminal prosecutions the accused . . . cannot be compelled to give evidence against himself . . . ."

Kentucky Rule of Criminal Procedure 11.42 provides, in relevant part, that a motion to vacate, set aside, or correct a sentence "shall be signed and verified by the movant" and "shall state specifically the grounds on which the sentence is being challenged and the facts on which the movant relies in support of such grounds," and that failure to comply may result in summary dismissal. *See* Pet. App. 18a-19a (full text)

STATEMENT OF THE CASE

A. Relevant Legal Background

The Kentucky Rule of Criminal Procedure governing the submission of a motion for post-conviction relief, like the post-conviction rules of many other states[1], requires that in order for a hearing to be granted on a post-conviction Motion, the petitioner must submit with the Motion a signed and notarized statement verifying the truth of the facts stated in the petition. Ky. R. Crim. P. 11.42. The rule also requires that the petition "state specifically the grounds" on which relief is being sought and, "the facts" being relied on in support of those grounds. In order to meet this second requirement, it is common practice for Kentucky practitioners to submit affidavits, both from the postconviction movant and others, along with a Motion for Postconviction Relief. In this case, the Kentucky Supreme Court ruled that the submission of both such an affidavit by the Petitioner and the required verification itself constituted a full waiver of the Fifth Amendment privilege against self-incrimination for any subsequent proceedings in the post-conviction case.

This Court set out the framework for analyzing Fifth Amendment waivers in the context of ongoing court proceedings in *Mitchell v. United States*, 526 U.S. 314 (1999). In that case, this Court determined that a defendant's agreement to a set of stipulated facts in the context of a plea proceeding did not constitute a "broad" and "expansive" waiver of Fifth Amendment privileges that subsisted at a later sentencing hearing in the same case. This Court acknowledged at the outset of its opinion (as is common sense) the well-established rule that a

[1] See note 5, *infra.*

defendant may not testify to particular facts and then refuse to be cross-examined regarding those same facts in the context of a single proceeding, because permitting that would undermine the integrity of the fact-finding proceedings. 526 U.S., at 321. However, it then found that nothing in the context of the plea hearing established that the defendant either, "consents to take the stand in the sentencing phase or to suffer adverse consequences from declining to do so." *Id*. at 323. Looking to the purpose of a plea proceeding that the stipulation supported, this Court found that where the stipulation was necessary to establish a factual basis for the plea, once that specific purpose had been completed, the statement could be "later admissible against the Defendant" but that did not mean that it was a waiver of the Fifth Amendment privilege. *Id.,* at 324. Treating it as such would be "a grave encroachment on the rights of defendants." *Id.*

B. Factual and Procedural Background

William Harry Meece was convicted in Warren Circuit Court of three counts of murder committed during an alleged 1993 robbery and burglary in Adair County, Kentucky, and was sentenced to death. Pet. App. 2a. His convictions and sentences were affirmed on direct appeal in 2011. *Meece v. Commonwealth,* 348 S.W.3d 627 (Ky. 2011).

On September 23, 2013, Mr. Meece, through counsel, filed a motion under Ky. R. Cr. P. 11.42 to vacate his convictions and sentences, raising numerous claims regarding the constitutional fairness of his trial, including ineffective assistance of counsel at both the guilt and penalty phases. Pet. App. 2a. Because Ky. R. Crim. P. 11.42(2) requires that such a motion be signed, verified, and

supported by specific facts on pain of summary dismissal, Mr. Meece signed a verification to that motion. Counsel also attached to the motion a sworn affidavit from Mr. Meece addressing, among other things, his family background, childhood, and interactions with trial counsel and other facts counsel believed necessary to establish his ineffective-assistance claims and secure an evidentiary hearing. Pet. App. 6a–7a; Pet. for Writ of Prohibition at 14–15.

The trial court divided the Ky. R. Crim. P. 11.42 proceedings into three phases: pretrial and juror claims, guilt-phase claims, and penalty-phase claims, and conducted separate evidentiary hearings on each. Pet. App. 2a. The pretrial, juror, and guilt-phase claims were denied following the first two hearings. *Id.* The circuit court scheduled an evidentiary hearing on Mr. Meece's penalty-phase claims for July 22, 2025. Pet. App. 3a. Mr. Meece, through counsel presented fourteen witnesses in support of his post-conviction sentencing phase claims, including three expert witnesses[2]. VR: 7/22/2025-7/25/2025. He did not testify, and counsel did not enter into evidence the affidavit that had been submitted with the original petition.

Prior to the hearing and pursuant to the court's scheduling order, the Commonwealth filed a witness list on June 30, 2025, indicating that the sole witness it sought to call in its case against Mr. Meece was Mr. Meece himself. Mr. Meece's Counsel moved on Fifth Amendment grounds to preclude the Commonwealth from calling Mr. Meece as a witness, and the court denied the Motion. Pet. App. 15a-16a. Mr. Meece moved to reconsider. During argument on

[2] One of these witnesses, Dr. Fabian had testified at the guilt-phase proceedings. Several were presented through video or prior deposition testimony.

that motion, both parties acknowledged that the affidavit had not been admitted as evidence in any prior hearing, and Mr. Meece's counsel expressly withdrew the affidavit from consideration in evidence to any extent it might be before the court. Pet. for Writ of Prohibition ¶ 11. The trial court nonetheless denied reconsideration.

Mr. Meece sought a writ of prohibition from the Supreme Court of Kentucky, which has original jurisdiction over such original actions in capital cases without intervening review by the Court of Appeals. Pet. App. 2a n.1. The court denied the writ. Relying on Black's Law Dictionary's definition of "affidavit" as a form of testimony, the court held that "by filing an affidavit alongside his RCr. 11.42 motion, Meece submitted testimony and thus waived his Fifth Amendment privilege." Pet. App. 7a. Invoking this Court's acknowledgment in *Mitchell v. United States*, 526 U.S., at 321, that "a witness, in a single proceeding, may not testify voluntarily about a subject and then invoke the privilege against self-incrimination when questioned about the details," the court, without any explanation as to why, treated the 2013 filing of the affidavit and the 2025 evidentiary hearing as a single "proceeding" for waiver purposes. Pet. App. 8a, 11a–12a. In a footnote, the court further held that the verification itself waived the right to the extent it relied on incriminating information. *Id.*, note 4.

The court acknowledged that Ky. R. Crim. P. 11.42's verification requirement "creates some tension" because it forces a movant to disclose potentially incriminating information merely to obtain a hearing on constitutional claims that, under Kentucky law, cannot otherwise be raised. Pet.

App. 7a, n.4. It attempted to resolve that tension by limiting the waiver to matters "germane" to the Ky. R. Crim. P. 11.42 claims and by holding that any information so disclosed could not be used against Mr. Meece at a future retrial or resentencing. Pet. App. 11a. The court did not address the use of Mr. Meece's compelled testimony in proceedings other than a retrial or resentencing, such as clemency proceedings, competency-to-be-executed litigation, execution-protocol litigation, or federal habeas review, all of which Mr. Meece argued were real concerns in light of his sentence of death. See Pet. for Writ of Prohibition at 16–18; Pet. for Reh'g at 9–11.

Though Mr. Meece had not submitted the affidavit as evidence in the hearing, and it would not have been admissible as evidence in the hearing on Mr. Meece's behalf under Kentucky Rules of Evidence[3], the Court nonetheless held that Mr. Meece could not "withdraw" the affidavit at the time of the hearing, and he was thus subject to cross-examination on it. Pet. App. 12a.

Finally, the court asserted that because Mr. Meece had taken the witness stand and given live testimony at the guilt and penalty phases of his 2006 trial almost twenty years previously, he somehow "understood the implications of asserting claims and affirming facts" by submitting a written affidavit, and therefore knowingly, voluntarily, and intelligently waived his privilege by signing the affidavit. Pet. App. 12a.

Mr. Meece argued on rehearing that this reasoning failed to acknowledge the clear difference between taking the witness-stand to give live oral testimony and submitting oneself to cross-examination, versus signing a sworn pleading

[3] *See* p. 21, *infra*.

that was to be submitted as a written exhibit attached to his Motion. He further argued that no waiver of a constitutional privilege may be presumed from silence or from a completely different act of giving oral testimony at his 2006 trial. Mr. Meece also argued that because he had not entered his affidavit as evidence and not given oral testimony in post-conviction proceedings and because the hearings themselves were a separate proceeding from a written pleadings submitted for purposes of being granted a hearing, his counsel's original submission of the affidavit and verification could not be considered a waiver for purposes of subsequent proceedings. Pet. for Reh'g at 6–7 (citing *Miranda v. Arizona*, 384 U.S. 436 (1966)).

Four months after the writ was denied, the Supreme Court of Kentucky denied rehearing without opinion. Pet. App. 14a.

REASONS FOR GRANTING THE PETITION

This Court has described "the essence" of the Fifth Amendment Privilege as, "'the requirement that the State which proposes to ***convict and punish*** an individual produce the evidence against him by the independent labor of its officers, not by the simple, cruel expedient of forcing it from his own lips.'" *Estelle v. Smith*, 451 U.S. 454, 462 (1981) (citing *Culombe v. Connecticut*, 367 U.S. 568, 581–582 (1961)) (opinion announcing the judgment) (emphasis added). The Kentucky Supreme Court, by its ruling, has set a dangerous precedent, giving a green light to the Commonwealth to do exactly what *Estelle* proscribed in the context of these proceedings – permitting the Commonwealth to establish the facts necessary to punish Mr. Meece, not by "the independent labor of its officers" but "by the simple, cruel expedient of forcing it from his own lips."

This Court's review is warranted because this case presents an important question of federal law that this Court has never addressed, and that the Kentucky Supreme Court, without guidance from this Court, resolved incorrectly by applying this Court's existing waiver doctrine in a manner that is completely antithetical to what it supports. *See* Sup. Ct. R. 10(c). The question recurs by the structure of post-conviction practice itself: more than twenty other States require verified pleadings or supporting affidavits as a prerequisite to receiving a hearing on post-conviction claims, and the reasoning the Kentucky Supreme Court applied here is fully transferable to each of them. It also arises in a posture — a discretionary original writ, resolved before final judgment — that structurally forecloses the kind of appellate conflict that would otherwise flag the

question for this Court's attention even where lower courts might disagree. And it is a question this record presents cleanly, on undisputed facts, without any adequate and independent state-law ground standing in the way. Whether analyzed under the totality-of-the-circumstances standard for a knowing and voluntary waiver, the narrower rule that testimony given in a proceeding waives the privilege as to related matters in that same proceeding, or this Court's holding in *Mitchell v. United States* that a limited waiver in one proceeding does not reach a separate, later proceeding, the decision below cannot be reconciled with this Court's Fifth Amendment doctrine. Because the error inflicts irreparable harm on a capital defendant that cannot be remedied on later review, this case is the vehicle in which the question should be resolved now.

I. The Decision Below Misapplies *Mitchell v. United States*, Which Specifically Rejected the Very Broad-Waiver Theory the Kentucky Supreme Court Adopted.

A. The Framework For Analyzing Waivers Under *Mitchell* Establishes That Any Limited Waiver That Occurred In Submitting The Verification And Affidavit Did Not Extend To Subsequent Hearings Granted After The Court Determined That Summary Dismissal Was Not Appropriate.

Mitchell v. United States, 526 U.S. 314 involved a defendant who entered a guilty plea and did not testify at her sentencing despite disputed issues regarding drug quantities involved. The sentencing court found that she had waived her Fifth Amendment privileges at the time of the plea and thus held her

failure to testify could be used against her. The Supreme Court held that the guilty plea did not waive the privilege at sentencing because the plea and sentencing were distinct phases with different purposes, and such a broad waiver was not implied by the stipulation of fact at a guilty plea. *Id*. at 323. In analyzing the question of whether any Fifth Amendment waiver that occurred at the time of the plea extended to the sentencing hearing, this Court looked to both the purpose of the proceeding in which the waiver had occurred and the nature of the testimony given, and found that, the "narrow inquiry at the plea colloquy" could not justify "such an extensive waiver of the privilege." *Id.* Moreover, though part of the same criminal case and separated by only months, the plea colloquy and sentencing hearing were sufficiently distinct in purpose. The plea colloquy and the sentencing hearing, though part of the same criminal case and separated by only months, were sufficiently distinct in purpose that the limited disclosures made in the first did not waive the privilege in the second. *Id.* at 321–25.

The Kentucky Supreme Court's decision adopts precisely the reasoning *Mitchell* rejected. Mr. Meece's affidavit, like Ms. Mitchell's plea colloquy, was a limited disclosure made for a specific, narrow purpose. Specifically in Mr. Meece's case, this was the purpose of satisfying Ky. R. Crim. P. 11.42(2)'s pleading-specificity requirement so that his ineffective-assistance claims could proceed to a hearing. Pet. App. 6a–7a. The same is true of his verification, which was specifically required by Ky. R. Crim. P. 11.42(2). Just as the lower court in *Mitchell* had incorrectly treated a limited admission as a waiver reaching an entirely separate proceeding devoted to a different purpose, the Kentucky

Supreme Court found a limited written pleading as a waiver reaching an adversarial evidentiary hearing conducted twelve years later, addressed to the separate question of whether he is entitled to post-conviction relief on the merits. Pet. App. 8a, 11a–12a.

The Kentucky Supreme Court reached its conclusion by quoting, out of context, *Mitchell*'s acknowledgment of the settled rule that "a witness, in a single proceeding, may not testify voluntarily about a subject and then invoke the privilege against self-incrimination when questioned about the details." Pet. App. 8a (quoting *Mitchell*, 526 U.S., at 321). That sentence describes the uncontroversial rule against selective, mid-proceeding invocation of the privilege. But this was the rule that *Mitchell* court actually limited by looking at the purpose of the proceeding in which the testimony was given and the nature of the testimony itself to determine whether proceedings were single or separate for purposes of Fifth Amendment waiver analysis. By treating that background recitation as if it were *Mitchell*'s holding, and by treating a written pleading exhibit as equivalent to live testimony, the Kentucky Supreme Court inverted Mitchell's actual rule. Specifically, it used a case that clearly rejected a broad-waiver theory to justify its adoption of an even broader one.

Like with the stipulation of fact at issue in *Mitchell*, the purpose of the verification and of the affidavit in Mr. Meece's case had already been fulfilled at the time that the Commonwealth sought to call Mr. Meece to the stand in order to question him regarding his prior statements. Specifically, the circuit court had already ordered a hearing, which meant that it had already conducted the necessary review and determined that the procedural requirements had been

met and sufficiently specific grounds for relief and a factual basis for those grounds had been alleged in order to merit a hearing and defeat summary dismissal under Ky. R. Crim. P. 11.42(2). Also like in the context of the stipulated facts in *Mitchell,* at the summary dismissal stage of a Ky. R. Crim. P. 11.42 proceeding at which the verification and affidavit are being evaluated, "nothing [is] in dispute." 526 U.S., at 323. That is because at that point in the proceedings under the relevant rule, a court is not determining whether or not it believes the facts in the petition as supported by the verification and any affidavits are true, but rather whether the procedural requirements of the rule have been met and the petition was sufficiently plead to require a hearing.

Also, like the lower court in *Mitchell*, the Kentucky Supreme Court conflated the effects of the prior statement – seemingly reading the idea that a prior statement could be used against a person as the equivalent of a Fifth Amendment waiver. But that is not the case. Though it is clear that a prior Fifth Amendment waiver means that a statement can later be used against a person, it does not mean that that person has waived the Fifth Amendment privilege for all future proceedings. *Mitchell* makes that clear, consistent with other jurisprudence from this Court dealing with Fifth Amendment waivers. *Mitchell*, at 324 ("A statement admissible against a defendant, however, is not necessarily a waiver of the privilege against self-incrimination.). While this Court has generally held that a statement made under a prior waiver of Fifth Amendment rights could be used against a person in a subsequent proceeding (See, e.g.

Berghuis v. Thompkins, 560 U.S. 370 (2010))[4], it has not ever held that the admissibility of a prior statement based on such a waiver automatically meant that the person could be called to the stand and compelled to testify against himself in a subsequent proceeding.

Mitchell also made clear that even in the context of in-court proceedings like this, the required analysis of whether a waiver was knowingly given cannot be foregone. Specifically, this Court analyzed Rule 11 and the plea colloquy actually conducted by the trial judge, and found that nothing in it would have informed the defendant that she was consenting to either take the witness stand at sentencing or would suffer adverse consequences. *Id.* at 323. Similarly here, nothing in the affidavit or verification advised Mr. Meece that in signing them he was consenting to take the witness stand and answer questions from an adverse party. Signing an affidavit or verification does not require one to take the witness stand, to answer questions, or to even say a single word out loud. In this sense, the Kentucky Supreme Court again took a very narrow waiver and completely broadened its scope, using as its justification a case from this Court that decidedly limited the scope of waivers in this context.

B. Other Jurisprudence Prior To *Mitchell* Suggests That This Was Not A "Single Proceeding" For Purposes of *Mitchell*'s Waiver Analysis.

Rather than being a "single proceeding" as asserted by the Kentucky Supreme Court when quoting *Mitchell*'s acknowledgment of the general rule of

[4] There are even limits to this rule. *See Simmons v. United States*, 390 U.S. 377 (1968)(holding that statements made by a Defendant at a suppression hearing are not admissible against him in a subsequent trial).

waiver, this is a case synonymous to *Simmons v. United States*, 390 U.S. 377 (1968) where Mr. Meece's sworn statement was necessary to raise a claim. In *Simmons,* this Court decided the question of whether one's testimony at a suppression hearing that was required to establish facts necessary to a Fourth Amendment claim constituted a waiver of the Fifth Amendment privilege against self-incrimination, such that that testimony could later be used against him at trial: Finding that it did not, this Court stated:

> Those courts which have allowed the admission of testimony given to establish standing have reasoned that there is no violation of the Fifth Amendment's Self-Incrimination Clause because the testimony was voluntary. As an abstract matter, this may well be true. A defendant is 'compelled' to testify in support of a motion to suppress only in the sense that if he refrains from testifying he will have to forego a benefit, and testimony is not always involuntary as a matter of law simply because it is given to obtain a benefit. However, the assumption which underlies this reasoning is that the defendant has a choice: he may refuse to testify and give up the benefit. When this assumption is applied to a situation in which the 'benefit' to be gained is that afforded by another provision of the Bill of Rights, an undeniable tension is created. Thus, in this case Garrett was obliged either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim or, in legal effect, to waive his Fifth Amendment privilege against self-incrimination. In these circumstances, we find it intolerable that one constitutional right should have to be surrendered in order to assert another.

Simmons, 390 U.S., at 393–94 (emphasis added). In *Simmons*, like in *Mitchell,* the Court emphasized the purpose of the testimony during a suppression hearing (i.e. establishing standing, a purpose that could not be met without the Defendant's testimony) and that where that purpose required the testimony, the giving of it could not be considered a voluntary waiver under the Fifth Amendment for purposes of all future proceedings. *Simmons*, like *Mitchell* counsels in favor of a more narrow reading of any Fifth Amendment waiver,

acknowledging that separate proceedings with separate purposes, even within the context of the same criminal case, often require different findings with regard to Fifth Amendment waiver.

The narrow waiver contemplated by *Mitchell* in no way encompassed the broad and all-encompassing waiver contemplated by the Kentucky Supreme Court in Mr. Meece's case.

II. The Decision Below Cannot Be Reconciled With This Court's Waiver Doctrine, Under Either the Totality-of-the-Circumstances Standard or the Narrower Waiver-by-Testimony Rule.

This Court's cases recognize two distinct routes by which a waiver of the Fifth Amendment privilege may be found: (A) a knowing, voluntary, and intelligent relinquishment assessed under the totality of the circumstances, and (B) the narrower, notice-independent rule that a witness who gives testimony on a subject in a proceeding may not selectively invoke the privilege as to related details in that same proceeding. Neither route supports the decision below.

A. The Totality of the Circumstances Does Not Support a Knowing and Voluntary Waiver.

Waiver of the Fifth Amendment privilege requires both voluntariness and a full understanding of what is being given up: relinquishment of the privilege "must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception," and it "must have been made with a full awareness of both the nature of the right being

abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). "Only if the totality of the circumstances reveals both an uncoerced choice and that level of comprehension may a court properly find [the privilege] waived." *Id.* No express, on-the-record colloquy is required to satisfy that standard. *North Carolina v. Butler*, 441 U.S. 369, 373 (1979); *see also Berghuis v. Thompkins,* 560 U.S., at 384–86 (waiver may be implied from conduct during questioning).

The absence of a specific written waiver is thus not alone the problem with the decision below. The defect is that nothing in the totality of the circumstances supports an inference that Mr. Meece understood that the consequence of signing of a document to be submitted with a motion was that he would completely relinquish any right he had to later refrain from testifying. The affidavit recites only that Mr. Meece was "cautioned and sworn". Pet. App. 6a–7a. In both *Butler* and *Berghuis,* the conduct found sufficient to establish waiver occurred within the same interaction in which the Fifth Amendment privilege was at stake. *See Butler*, 441 U.S., at 372 (Mr. Butler indicated a willingness to answer questions and answered questions after being read his rights); *Berghuis*, 560 U.S., at 385 (Defendant proceeded to answer questions after being given a written *Miranda* form, confirming he could read, and reading one of the warnings out loud). In Mr. Meece's case, nothing occurred in temporal or functional proximity to the consequence the Kentucky courts drew from it. Mr. Meece signed his affidavit and his verification in 2013; the purported waiver was invoked against him in an adversarial hearing in 2025. No advice of counsel, no colloquy, and no conduct at or near the time of either event indicates he understood that signing the affidavit

would expose him to being compelled to submit to oral examination by the prosecution at a later evidentiary hearing. Moreover, the court inferred from one act – the signing of a written affidavit or verification while sitting with his lawyer in a room in a prison – a full and complete waiver and consent to a completely different act – taking the stand in a courtroom to give sworn oral testimony and submitting oneself to examination by an adverse party. The very differing nature of these acts counsels against any finding that Mr. Meece knew the consequences the first act would have with regard to the second.

The Kentucky Supreme Court's sole basis for finding a knowing and voluntary waiver was that Mr. Meece testified at his 2006 trial and therefore "understood the implications" of signing the affidavit years later. Pet. App. 12a. That is not totality-of-the-circumstances analysis; it is precisely the kind of inference from an unrelated act, divorced from the circumstances of the act said to constitute the waiver itself, that *Moran*'s demanding standard forecloses. Even if the circumstances arguably demonstrated a decision to abandon his Fifth Amendment privilege (they do not), there is no indication that Mr. Meece understood that "the consequences of the decision to abandon" the privilege (*Moran,* 475 U.S. at 421) were that he could be forced to take the stand as a witness against himself to testify on behalf of the very party that is seeking not only to uphold his conviction, but also to carry out his execution.

B. The Narrower Rule That Testimony Waives the Privilege for Purposes of Cross-Examination Does Not Apply Because the Affidavit Was Never Received as Testimony in the Proceeding at Issue.

A separate line of authority holds that a witness who voluntarily testifies about a subject waives the privilege as to related details for purposes of cross-examination in that same proceeding, without any separate showing that the witness understood testifying would have that effect. *See Brown v. United States*, 356 U.S. 148, 154–56 (1958); *Rogers v. United States*, 340 U.S. 367, 371 (1951); *Johnson v. United States*, 318 U.S. 189, 195 (1943). The principle behind that rule is fairness to the fact-finder — a witness who offers testimony that the fact-finder may rely on may not then use the privilege to prevent full exploration of that testimony's basis. *Mitchell*, 526 U.S., at 321–22 (rule justified because a witness may not "pick and choose what aspects of a particular subject to discuss" without "casting doubt on the trustworthiness of the statements").

That doctrine assumes, however, both that the individual actually gave testimony, and that that testimony was received and relied upon by the fact-finder in the proceeding in which cross-examination is sought. Neither Mr. Meece's affidavit nor his verification supports either of these assumptions. Mr. Meece did not present either of these as evidence during the hearing at issue, and his counsel specifically withdrew the affidavit from consideration at the time of the hearings; the trial court's orders denying his pretrial, juror, and guilt-phase claims never cite to them. Both parties agreed on the record that the affidavit had not been treated as evidence. VR: 7/22/25; 10:26:25-10:26:30; VR: 7/24/25; 4:32:30 – 4:34:40. The verification and affidavit were both filed in September 2013 to satisfy Ky. R. Crim. P. 11.42(2)'s verification and specificity requirements (respectively), not as evidence at the penalty-phase evidentiary hearing that took place in July 2025. This Court's jurisprudence regarding cross-

examination is premised on protecting the integrity of a fact-finder's assessment of live testimony. It has no application to a document that was not offered as evidence.

Nor could the documents have been considered as evidence on Mr. Meece's behalf absent some stipulation or waiver of applicable rules. Ky. R. Crim. P. 11.42 provides the primary procedure for asserting claims of ineffective assistance of counsel in Kentucky. The rule requires that relief should be granted and the conviction may be vacated only if, "at the conclusion of the hearing or hearings," a court determines that, "it appears that the movant is entitled to relief." Ky. R. Crim. P. 11.42(6). A hearing under Ky. R. Crim. P. 11.42 is, like most hearings (with some limited exceptions as outlined in Ky. R. Evid 1101) governed by the Kentucky Rules of Evidence. See Ky. R. Evid 101 ("Scope"). Those rules are clear that "hearsay is not admissible." Ky. R. Evid. 802. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ky. R. Evid. 801(c). The affidavit of Mr. Meece would clearly be hearsay and not admissible on his behalf as evidence at a hearing on the question of whether Mr. Meece's Ky. R. Crim. P. 11.42 motion should be granted, unless he adopted it as part of his testimony at a hearing. He did not testify in his Ky. R. Crim. P. 11.42 proceedings, and did not do so.

The Kentucky Supreme Court's own reasoning illustrates the problem. Rather than identify testimony Mr. Meece gave in the proceeding at issue, the court reasoned from Black's Law Dictionary's general definition of "affidavit" as a form of testimony, without ever asking whether this particular affidavit was

received, relied upon, or even before the fact-finder as evidence in the hearing the in which the Commonwealth sought to use it to justify its examination or Mr. Meece. Pet. App. 6a–7a. Under that reasoning, the mere existence of a notarized document would permanently waive the affiant's privilege as to its contents regardless of whether it was ever offered, admitted, or considered as evidence anywhere. No decision of this Court supports such a broad and sweeping rule, and the waiver-by-testimony doctrine's own rationale forecloses it.

III. The Question Presented Is Recurring and Important, and This Case Is an Ideal Vehicle for Resolving It.

A. The Question Presented Falls Within This Court's Core Certiorari Criteria Independent of Any Circuit Conflict.

This Court's Rule 10 identifies "an important question of federal law that has not been, but should be, settled by this Court" or that question being decided, "in a way that conflicts with relevant decisions of this Court" as basis for certiorari distinct from a conflict among lower courts. Sup. Ct. R. 10(c). This case falls squarely within these categories. This Court has addressed the Fifth Amendment privilege and in the context of a defendant's own prior testimonial acts in several distinct settings — a guilty plea and its effect on a later sentencing hearing, (*Mitchell*, 526 U.S. 314); a psychiatric interview and its effect on a capital sentencing proceeding, (*Estelle*, 451 U.S. 454) custodial interrogation and the requirements for a valid *Miranda* waiver (*Moran*, 475 U.S. 412). It has never addressed whether a sworn affidavit or verification filed to satisfy a state post-conviction pleading rule can function as testimonial waiver

reaching an adversarial hearing conducted years later. Petitioner is aware of no other decision, state or federal, that has squarely confronted that question. Left without guidance from this Court, the Kentucky Supreme Court extended prior distinct doctrines of this Court to reach a result none of them supports. The very novelty of the question and the fact that no other court has yet had occasion to resolve it is itself a reason for this Court to supply the governing rule now, before the reasoning below is adopted elsewhere as the only available guidepost.

The absence of a documented split among state courts of last resort on this precise question does not suggest that the question is unimportant or well settled. Rather, it reflects that the question rarely reaches a posture capable of generating one. Claims of this kind would arise almost exclusively through discretionary original writs of prohibition or mandamus, which state courts "have always been cautious and conservative both in entertaining petitions and in granting such relief," *Gilbert v. McDonald-Burkman*, 320 S.W.3d 79, 83 (Ky. 2010)(citing *Bender v. Eaton*, 343 S.W.2d 799, 800 (Ky.1961)), and which are often denied without the kind of reasoned, published opinion that could be cited as a conflicting authority elsewhere. And once such a writ is denied and the defendant is compelled to testify, the harm the privilege exists to prevent has already occurred; there is no later appeal in which a cleaner circuit conflict could develop, because the very injury at issue cannot be undone by reversing a subsequent judgment. A rule of law that structurally evades the ordinary mechanisms by which conflicts among courts become visible is not thereby placed beyond this Court's reach. If anything, it is a reason for the Court to resolve the question the first time it is squarely presented on a clean record, as it is here,

rather than wait for a conflict that this category of claim will rarely live long enough to produce.

B. This Case Presents An Important Question That Will Recur In Many Jurisdictions.

The question of whether a mandatory post-conviction verification requirement or an affidavit submitted in an attempt to meet pleading specificity requirements constitutes a complete Fifth Amendment waiver allowing a State to force an unwilling defendant to take the stand and answer questions is not unique to Kentucky. At least twenty-five other states require that post-conviction pleadings be either verified or supported by sworn affidavits or other documentary evidence as a precondition to obtaining review of ineffective-assistance and similar claims.[5] Of these states, sixteen carry the death penalty.

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[5] See Ala. R. Crim. P. 32.6(b)(requiring verification by the petitioner or petitioner's attorney), 32.7(d) (permitting summary dismissal of Rule 32 petitions that are not "sufficiently specific"); Alaska R. Crim. P. 35.1(b) ("Facts within the personal knowledge of the applicant shall be set out separately from other allegations of facts and shall be under oath." Also requiring the application to identify supporting affidavits, records, or other evidence, or to explain why none is available); Ariz. R. Crim. P. 33.6 (requiring the petition to be supported by affidavits, records, or other available evidence); Ark. R. Crim. P. 37.1 (Petition must be verified by petitioner's affidavit); Cal. Penal Code § 1474 ("petition must be verified by the oath or affirmation of the party making the application"); Del. Super. Ct. Crim. R. 61 (motion "shall be signed under penalty of perjury by the movant. . . ." and "set forth in summary form the facts [supporting the motion]"); Haw. R. Penal P. 40 (Petition shall "set forth in summary form the facts supporting each of the grounds . . . and shall be signed and sworn to by the petitioner."); Idaho Code § 19-4903 ("Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be verified . . . [and] Affidavits, records, or other evidence supporting its allegations shall be attached. . . ."); 725 Ill. Comp. Stat. 5/122-2 (requiring affidavits, records, or other evidence supporting the petition's allegations to be attached, or an explanation of why they are not attached); Mass. R. Crim. P. 30 (requiring the moving party to submit an affidavit detailing the factual basis for the claim); Mich. Ct. R. 6.502(C)(2)-(3) (requiring verification by petitioner or his attorney and also permitting attached affidavits); Miss. Code Ann. § 99-39-9 (1)(e)

In many of these states, postconviction hearings are the only forum in which Sixth Amendment concerns at trial are reviewed and remedied. See *Martinez v. Ryan,* 566 U.S. 1, 11 (2012). This means that in order to raise post-conviction claims in each of the states, a postconviction litigant must waive his Fifth Amendment rights and consent to testify on behalf of the State that is trying to kill him. "In these circumstances, . . . [it is] intolerable that one constitutional right should have to be surrendered in order to assert another." *Simmons v. United States*, 390 U.S. 377, 394 (1968). The tension created by the Kentucky Supreme Court's broad waiver ruling must be addressed by this Court.

This case presents a clean vehicle for resolving the question. The relevant facts are undisputed: Mr. Meece filed the affidavit and verification to satisfy Ky.

(requiring a separate sworn statement of facts within the personal knowledge of petitioner); Mont. Code Ann. § 46-21-104 (requiring identification of all facts supporting the claim, including relevant affidavits, records, or other evidence); Neb. Rev. Stat. Ann. § 29-3001 (Motion must be verified); N.J. Ct. R. 3:22-10(c) ("Any factual assertion that provides the predicate for a claim of relief must be made by an affidavit or certification . . . and based upon personal knowledge of the declarant before the court may grant an evidentiary hearing"); N.Y. Crim. Proc. Law § 440.30 (Motion must be supported by sworn affidavit by the defendant or otherwise); N.C. Gen. Stat. Ann. § 15A-1420(b)(1) (requiring affidavits or other documentary evidence in support of the motion); Ohio Rev. Code Ann. § 2953.21(A)(1)(b) (petition may be, but is not required to be supported by affidavits); Okla. Stat. Ann. tit. 22, § 1081 (Petition must be verified and "Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct."); S.C. Code Ann. § 17-27-40 ("Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits . . . must be sworn to affirmatively as true and correct); *Harris v. State*, 301 S.W.3d 141, 151 (Tenn. 2010)(writ of error coram nobis must be under oath of petitioner or counsel); Tex. Code Crim. Proc. Art. 11.14 (Motion must be on oath of applicant or attorney-petitioner); Utah R. Civ. P. 65C (affidavits and other evidence should be attached if available to the applicant); Wash. R. App. P. 16.7 (Petition must be signed by petitioner or his attorney and verified under penalty of perjury); Wyo. Stat. Ann. § 7-14-101 (Petition must be verified by affidavit).

R. Crim. P. 11.42(2)'s pleading requirements and avoid summary dismissal, Mr. Meece did not seek to enter either as evidence at the hearing at issue, and he expressly withdrew the affidavit to the extent the Court might consider it. The trial court and Supreme Court of Kentucky nonetheless treated Mr. Meece's signature on the written statements as a full waiver reaching an evidentiary hearing conducted twelve years later despite the lack of any evidence that Mr. Meece knew at the time he was signing the affidavit or verification that he was waiving his Fifth Amendment privileges and could be forced to take the witness stand and testify against himself at a later date. Pet. App. 11a–12a. No factual development is needed, and no adequate state-law ground independent of the federal question supports the judgment: the Supreme Court of Kentucky's ruling rests entirely on its interpretation of the Fifth Amendment privilege and this Court's decisions construing it. See Pet. App. 6a–12a.

IV. The Error Below Will Cause Irreparable Harm to a Capital Defendant That Cannot Be Remedied on Later Review

The harm at stake is not speculative. Statements protected by the Fifth Amendment include any statement that could provide, "a link in the chain of evidence" establishing death as the appropriate sentence. *Estelle,* 451 U.S. 454, 462 (1981); *Hoffman v. United States*, 341 U.S. 479, 486 (1951). In a capital proceeding where every aspect of Defendant's life, and mental and physical health is relevant, anything – either in terms of the actual answers to questions or as to one's demeanor in or ability to answer questions or follow the advice of counsel, can be used to provide that link. Thus, there is little distinction between incriminating and non-incriminating statements.

Moreover, certain issues in a death penalty case cannot be dealt with in the context of these postconviction proceedings and do not become ripe for review until an execution date is set. *See, e.g., Panetti v. Quarterman*, 551 U.S. 930, 943, 946, (2007); see also *Stewart v. Martinez-Villareal*, 523 U.S. 637, 644-45 (1998) (explaining that "because his execution was not imminent ... his competency to be executed could not be determined at that time"). This ripeness doctrine, which is largely unique to capital litigation, means that proceedings in a death penalty case include guilt phase proceedings, penalty phase proceedings, and litigation under warrant. A person's competency to be executed is a prime issue on which a person's demeanor and responsiveness when testifying may provide relevant evidence at a later date. Forcing Mr. Meece (or any capital defendant) to the witness stand during postconviction proceedings makes it very possible that evidence adduced will "provide a link in the chain of evidence" and make the person the instrument of his own execution, as specifically proscribed by *Estelle.*

Moreover, in criminal cases, the right to remain silent is absolute, and does not permit the prosecution to put a defendant on the stand to answer even those questions which it deems non-incriminating. *Lefkowitz v. Turley,* 414 U.S. 70, 77 (1973)("The Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.").

Once Mr. Meece is forced to take the stand against his will, the damage cannot be undone. Given Mr. Meece's death sentence and the multiple

proceedings in which his compelled testimony may be used against him unconstrained by Kentucky's retrial-specific limitation, review now, before the harm occurs, is not merely appropriate but necessary.

V. This Court Should Exercise Its Jurisdiction To Hear This Claim Now.

Because of the Kentucky Supreme Court's ruling, Mr. Meece is now subject to being called by the Commonwealth as the sole witness against himself at the postconviction hearing. And indeed, the Commonwealth has clearly indicated its intent to do so. This Court must review this case now because once the underlying case reaches appeal, Mr. Meece will already have been compelled to take the stand and testify, and the issue will largely be moot.

While the Supreme Court of Kentucky did rule that the waiver extended to his post-conviction proceedings only and that "incriminating information" may not be used in any further retrial or resentencing proceeding", (Pet. App. 8a), that does not eliminate the irreparable harm that will occur if Mr. Meece is required to take the witness stand. First, it does not protect him from the use of his compelled testimony against him in his post-conviction hearing. Nor does the limitation extend to clemency proceedings, competency-to-be-executed litigation, execution protocol or warrant litigation. Nor can that order bind federal courts, which would not be bound by the ruling of the Kentucky Supreme Court.
This Court has found that, the constitutional privilege against self-incrimination extends to information "which would furnish a link in the chain of evidence' against the defendant" (*Hoffman v. United States,* 341 U.S. at 486) and further that just as the Fifth Amendment protects a person from being the "deluded

instrument of his own conviction", it similarly protects him from being, "the deluded instrument of his own execution." *Estelle*, 451 U.S. at 462-63. The reality is, that given the plethora of relevant issues in a capital sentencing process, in clemency decisions, and in execution and warrant litigation, anything Mr. Meece would say at a postconviction proceeding that can and be used against him in later proceedings almost certainly would be and could potentially provide that "link in the chain of evidence" that persuades a decision-maker on the issue of whether Mr. Meece should live or die, and thereby make Mr. Meece "the deluded instrument of his own execution," in clear contravention of *Estelle*. Once he is forced to take the stand, his words and actions will become a part of the record in the case that is a basis for every further action that will be taken by any party to the litigation. Decision-makers in his case will use that information, not only as evidence of whatever words he speaks, but also to inform their decisions regarding mental health defenses to a capital sentence and ultimately to execution. Moreover, regardless of whether the words could be used against him in Court in any particular proceeding, they would also inform and effect the strategy of every prosecutor fighting to kill him. There is no remedy that can prevent this harm.

Delaying review until final judgment on the Ky. R. Crim. P. 11.42 motion would render the federal question effectively unreviewable and would inflict the precise injury the privilege exists to prevent. This Court should therefore exercise jurisdiction now is, despite the pendency of further proceedings below.

Conclusion

WHEREFORE, for the foregoing reasons, Mr. Meece respectfully requests that his Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

Appendix A: Opinion and Order by Justice Bisig Denying Petition for Writ of Prohibition, Supreme Court of Kentucky, No. 2025-SC-0299-OA (entered Feb. 19, 2026) ..... Pet. App. 1a

Appendix B: Order Denying Petition for Rehearing, Supreme Court of Kentucky, No. 2025-SC-0299-OA (entered June 25, 2026) ..... Pet. App. 14a