CAPITAL CASE

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT WOODALL

Petitioner,

v.

COMMONWEALTH OF KENTUCKY

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF KENTUCKY

PETITION FOR A WRIT OF CERTIORARI

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October 26, 2026

CAPITAL CASE

QUESTION PRESENTED

Where a state prisoner has yet to be provided with "one fair opportunity" to litigate the merits of a claim of constitutional error in federal court even after the district court entered its judgment with respect to the state prisoner's habeas petition, and the §2254 petition is pending on appeal in the circuit court, should an exception to this Court's *Rivers* rule be recognized to allow a petitioner to move to remand his §2254 habeas petition to the district court and to amend his §2254 habeas petition under Federal Rule of Civil Procedure 15, rather than forever being denied one fair opportunity to litigate the claim of constitutional error because the amended petition is considered a second or successive petition for § 2244(b) purposes, and the claim presented in the amended petition is considered one that was presented in a prior habeas application that "shall be dismissed" under §2244(b)(1).

PARTIES TO THE PROCEEDINGS

AND RULE 29.6 STATEMENT

Petitioner is Robert Woodall; Respondent is Laura Plappert, Warden.

There are no corporate parties involved in this case.

RELATED PROCEEDINGS

Woodall v. Commonwealth, No. 1998-SC-0755-MR, Supreme Court of Kentucky Judgment entered Jan. 15, 2002 (Opinion on direct appeal affirming convictions and sentence) Reported at 63 S.W.3d 104 (Ky. 2002).

Woodall v. Commonwealth, No. 2003-SC-475-MR, Supreme Court of Kentucky, Judgment entered Nov. 23, 2005 (Opinion affirming denial of Ky. RCr. 11.42 state post-conviction motion.) Available at 2005 WL 3131603 (Ky. 2005).

Woodall v. Commonwealth, No. 2004-SC-0931-MR, Supreme Court of Kentucky, Judgment entered October 20, 2005 (Opinion affirming denial of Ky. CR 60.02 state post-conviction motion.) Available at 2005 WL 2674989 (Ky. 2005).

Woodall v. Simpson, 5:06CV-P216-R U. S. District Court, Western District of Kentucky. Judgment entered on February 24, 2009 ((opinion denying 28 U.S.C. § 2254 petition for habeas corpus relief) Available at 2009 WL 464939 (W.D. Ky. February 24, 2009).

Woodall v. Simpson, 09–5352, 09–5406, Judgment entered July 12, 2012 (Opinion granting habeas petition in part and denying habeas petition in part) Reported at 685 F.3d 574 (6th Cir. 2012)).

White v. Woodall, 12–794 Decided on April 23, 2014 (reversed and remanding 6th Cir. Opinion) Reported at 572 U.S. 415 (2014).

Woodall v. Commonwealth, 2022-SC-0232-MR, Supreme Court of Kentucky, Judgment entered April 18, 2024, (Opinion affirming denial of intellectually disability claim) Reported at 709 S.W.3d 71 (Ky. 2024).

Woodall v. Plappert, 09-5352/5406, Sixth Circuit Court of Appeals,
Order entered February 26, 2026. (Motion to remand to the district court and to amend petition construed as motion for leave to file a second or successive habeas petition, and dismissed as a second or successive habeas petition that presented a claim that was presented in a prior application. § 2244(b)(1).

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS ii

RELATED PROCEEDINGS ii

TABLE OF CONTENTS iv

INDEX OF APPENDICES v

TABLE OF AUTHORITIES vi

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS AND ORDERS BELOW 1

STATEMENT OF JURISDICTION 2

CONSTITUTIONAL PROVISIONS 3

STATUTORY PROVISIONS 3

STATEMENT OF THE CASE 3

REASON FOR GRANTING THE WRIT 6

CONCLUSION 11

INDEX OF APPENDICES

Order denying Petitioner's motion to amend habeas petition.
February 26, 2026 (Construing motion to amend as an application for leave to file a second or successive habeas petition) ……Appendix A

Order denying Petitioner's timely petition for rehearing
May 27, 2026……...Appendix B

Decision of the Supreme Court of Kentucky
April 18, 2024 (affirming denial of intellectual disability (ID) claim) ….. Appendix C

Order, granting habeas petition in part, denying ID claim at *43-44…….Appendix D
District Court (W.D. Kentucky)
February 24, 2009

TABLE OF AUTHORITIES

Cases

Atkins v. Virginia, 536 U.S. 304 (2002) ..... *passim*

Bannister v. Davis, 590 U.S. 504 (2020) 6, 9

Hall v. Florida, 572 U.S. 701 (2014) ..... *passim*

Harrington v. Richter, 562 U.S. 86 (2011) 7

Moore v. Texas, 581 U.S. 1 (2017) 4

Rivers v. Guerrero, 605 U.S. 443 (2025) ..... *passim*

Woodall v. Commonwealth, 563 S.W.3d 1 (Ky. 2018) 4

Woodall v. Commonwealth, 63 S.W.3d 104 (2001) 3

Woodall v. Commonwealth, 709 S.W.3d 71 (Ky. 2024) 1, 5

Woodall v. Kentucky, 537 U.S. 835 (2002) 3

Statutes

28 U.S.C. § 2254 ..... 1, 3, 7

28 U.S.C. § 1254 (1) 2

28 U.S.C. §2244(b) ..... *passim*

Rules

CR 60.02 4

CR 60.03 4

Federal Rule of Civil Procedure 59 (e) 9

Rule 15 of the Federal Rules of Civil Procedure 8, 9, 10

Constitutional Provisions

U.S. CONST. AMEND. VIII U.S. CONST. AMEND. VIII ..... *passim*

U.S. CONST. AMEND. XIV ..... *passim*

PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert Woodall is a death-sentenced inmate. He respectfully petitions for a writ of certiorari to review the Order of the Sixth Circuit in which it construed his motion to amend the intellectual disability claim presented in his habeas petition (before *Hall v. Florida*, 572 U.S. 701 (2014) was decided), as an application for leave to file a second or successive habeas petition under §2244, and dismissed for raising a claim that was presented in a prior application under §2244(b).

OPINIONS AND ORDERS BELOW

The Sixth Circuit Court of Appeals February 26, 2026 order denying Petitioner's motion to amend §2254 petition is unpublished and unreported. The order is reproduced at Appendix A. The court's May 27, 2026 order denying rehearing en banc is reproduced at Appendix B.

The decision of the Supreme Court of Kentucky affirming the trial court's denial of Woodall's motion to vacate his death sentence due to his intellectual disability, is reported at *Woodall v. Commonwealth*, 709 S.W.3d 71 (Ky. 2024), and appears at Appendix C.

The decision of the District Court Judge (W.D. Kentucky) at * 44 granting the habeas petition in part, but denying the intellectual disability claim as speculative, appears at Appendix D.

STATEMENT OF JURISDICTION

The Order of the Sixth Circuit Court of Appeals at issue here was entered on February 26, 2026. Appendix A. Petitioner's timely petition for rehearing was denied on May 27, 2026, Appendix B. By order, Justice Kavanaugh granted an extension of time to file this petition to and including August 24, 2026, a Saturday, which extended the time in which to file a timely petition until October 26, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISIONS

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

The Fourteenth Amendment 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."

STATUTORY PROVISIONS

28 U.S.C. §2244(b)(1) provides: A claim presented in a second or successive habeas application under section 2254 that was presented in a prior application shall be dismissed.

STATEMENT OF THE CASE

The facts of this case are set forth in *Woodall v. Commonwealth*, 63 S.W.3d 104, 114 (Ky. 2001). In short, Mr. Woodall pleaded guilty to murder, kidnapping and rape. A jury recommended a sentence of death, which the trial court accepted. Woodall appealed, and the Kentucky Supreme Court affirmed. *Woodall v. Commonwealth*, 63 S.W.3d 104 (2001). On October 7, 2002, the Supreme Court denied certiorari. *Woodall v. Kentucky*, 537 U.S. 835 (2002). After unsuccessful post-conviction litigation in state court, Mr. Woodall filed a petition for writ of habeas corpus in federal court. While Woodall's petition was pending in the Sixth Circuit Court of Appeals, the Supreme Court decided *Hall v. Florida*, 572 U.S. 701 (2014), which invalidated Kentucky's

bright-line-70 IQ score as used by its courts in determining intellectual disability. *Id.* at 714. The statute declared unconstitutional provided the only standard under which Mr. Woodall's constitutional claim of ineligibility for the death penalty was evaluated for intellectual disability prior to the *Hall* decision. Mr. Woodall then moved the Sixth Circuit court for a stay and abeyance for the presentation of his ID claim under a constitutional standard. 6thDkt. 182-1. Over Kentucky's objection, the Sixth Circuit granted Woodall's request. 6thDkt. 188-1.

On April 9, 2015, Woodall filed his Motion pursuant to Kentucky CR 60.02/60.03 alleging he is intellectually disabled applying Atkins/Hall factors. The trial court entered an order denying Woodall's motion without an evidentiary hearing. *Woodall v. Commonwealth*, 563 S.W.3d 1, 2 (Ky. 2018). On appeal, the Supreme Court of Kentucky acknowledged that despite the decision in *Atkins v. Virginia*, 536 U.S. 304 (2002), declaring the execution of intellectually disabled persons a violation of the Eighth Amendment, Kentucky law contained a rigid bright line test for intellectual disability, which, consistent with *Hall,* continued to violate the Eighth Amendment. *Woodall v. Commonwealth*, 563 S.W.3d 1, 6 (Ky. 2018). The Court proceeded to reverse and remand for the trial court to conduct a hearing consistent with its decision and the holdings of the Supreme Court including *Atkins v. Virginia*, 536 U.S. 304 (2002), *Hall v. Florida*, 572 U.S. 701 (2014) and *Moore v. Texas*, 581 U.S. 1 (2017). See *Woodall*, 563 S.W.3d at 7.

Upon remand, in 2021, the state trial court conducted an *Atkins/Hall* hearing. Mr. Woodall presented the testimony of his expert witness, forensic

neuropsychologist, Robert Fabian, Psy.D., who conducted a neuropsychological evaluation of Mr. Woodall under the ID standard required by *Hall*. Dr. Fabian concluded that Mr. Woodall "meets the criteria for an intellectual disability." The Commonwealth presented no testimony or contrary opinion from any expert who conducted an ID evaluation applying the *Hall* standards.

The trial court again denied relief, relying in significant part on the 1998 intellectual disability evaluation report (and testimony) of Dr. Richard Johnson, the Commonwealth's expert, that was presented at Woodall's pre-*Atkins* 1998 trial. There is no reasonable dispute that Johnson evaluated Woodall under Kentucky's pre-*Atkins/Hall* standards for determining intellectual disability. To make matters worse, Mr. Woodall was denied the opportunity to cross-examine Johnson regarding his 1998 evaluation of Woodall. Nevertheless, the Supreme Court of Kentucky affirmed the trial court. *Woodall v. Commonwealth*, 709 S.W.3d 71 (Ky. 2024). Petitioner filed a Petition for Certiorari with the United State Supreme Court which was denied. --- S.Ct. ---- (2026) WL 135633 (Mem).

On May 14, 2025, the Warden moved to remove Mr. Woodall's appeal from abeyance, asking this Court "to set a briefing schedule pertaining to whether Woodall is entitled to a COA on his intellectual-disability claim. And, if this Court declines to do so, the Warden asked the Sixth Circuit to remand to the district court to conduct that briefing." 6thDkt. 314-1. Mr. Woodall agreed with the warden's request to return his appeal to the active docket but asked that his case be remanded to the district court to allow Woodall an opportunity to amend his habeas petition with the recently

exhausted intellectual disability claim, rather than first briefing whether he is entitled to a COA on the claim. 6thDkt. 316. On August 7, 2025, the Sixth Circuit ordered simultaneous supplemental briefing to address "the scope of any potential remand to the district court and any potential limitations under (AEDPA) on petitioner' ability to amend the petition on and supplement the record at this stage of the litigation." Order, 6th Dkt., 318-1. Following the briefing a majority of the three-judge panel entered an order construing Petitioner's motion to amend as a motion for leave to file a second or successive habeas petition under 28 U.S.C. § 2244, and dismissed it as a second or successive habeas petition that presented a claim that was presented in a prior habeas petition. § 2244(b)(1).

It is from that decision that this writ is taken.

REASON FOR GRANTING THE WRIT

"A state prisoner is entitled to one fair opportunity to seek federal habeas relief from his conviction." *Banister v. Davis*, 590 U.S. 504, 507 (2020). In general, however, "once the district court has entered its judgment with respect to a state prisoner's first application for federal habeas relief," a subsequent motion to amend a claim within the petition is considered a "second or successive" petition, and subject to § 2244(b)(1), which prohibits habeas petitioners from filing a subsequent petition that relitigates the merits of a previously denied claim. *Rivers v. Guerrero*, 605 U.S. 443, 446-447 (2025). Any claim brought in the second application that relitigates the merits of a previously denied claim "shall be dismissed." §2244 (b)(1).

Petitioner, Robert Woodall, who was sentenced to death by a state court in Kentucky, filed a § 2254 habeas petition in the district court, asserting that the Eighth Amendment forecloses his execution because he is intellectually disabled. *Atkins v. Virginia*, 536 U.S. 304 (2002). Persons facing a death sentence, the "most severe" penalty our society may impose, "must have a fair opportunity to show that the Constitution prohibits their execution." *Hall*, 572 U.S. 701, 724 (2014). And federal habeas corpus exists to be a "guard against extreme malfunctions in the state criminal justice systems, *Harrington v. Richter*, 562 U.S. 86, 102 (2011). Certainly, one obvious "extreme malfunction of the state criminal justice system" is the execution by the State of an intellectually disabled person.

But Mr. Woodall did not have a chance of prevailing on his Eighth Amendment intellectual disability claim in his initial petition because the district court denied it using Kentucky's strict-IQ cut-off standard later declared unconstitutional in *Hall v. Florida*, 572 U.S. at 723. After *Hall* was decided, Mr. Wooodall returned to state court presenting expert testimony from a forensic neuropsychologist who conducted a neuropsychological evaluation upon Woodall under the constitutional intellectual disability standard established in *Hall.* The neuropsychologist concluded that Petitioner was intellectually disabled. No contrary opinion, using the *Hall* standard, was offered by the Warden. Consistent with *Atkins*/Hall, Woodall should have been declared constitutionally ineligible for the death penalty and thus protected from being executed by the Eighth Amendment. *Atkins,* 536 U.S. at 321. After Woodall

exhausted his intellectual disability claim in state court without success, he filed a motion to remand his habeas petition to the district court and requested that he be allowed to amend the intellectual disability claim under Rule 15 of the Federal Rules of Civil Procedure with the evidence of intellectual disability newly developed in state court, so that his Eighth Amendment intellectual disability claim could be decided under a constitutional standard as established in *Hall* - for the first time in federal court. However, a majority of a Sixth Circuit three-judge panel construed Petitioner's motion to amend under Rule 15 as a motion for leave to file a second or successive habeas petition under 28 U.S.C. § 2244 and dismissed it as a second or successive habeas petition that presented a claim that was presented in a prior application. § 2244(b)(1). See Appendix A, Order filed February 26, 2026, 6th DKt. 323-2.

If Woodall, who had no chance of prevailing on the intellectual disability claim raised in the habeas petition because the district court denied it using an unconstitutional standard, and if Woodall is deprived of the any opportunity to prevail on the intellectual disability claim raised under the constitutional *Hall* standard in the motion to amend the habeas petition under Rule 15 of the Federal Rules of Civil Procedure because such a motion is considered a second or successive petition subject to §2244 (b), and must be dismissed under § 2244(b)(1), then he has been denied his entitlement "to one fair opportunity to seek federal habeas relief from his death sentence. See *Bannister v. Davis*, 590 U.S. 504, 507 (2000.) What's worse, is that Mr. Woodall has been denied the protection of the Eighth and Fourteenth

Amendments which forbid the execution of persons with intellectual disability. *Atkins v. Virginia*, 536 U.S. 304, 321 (2002).

At first blush it appears that this Court's *Rivers* decision goes too far, by prioritizing "AEDPA's scheme to prevent delay and protect finality" under *Bannister*, 590 U.S. at 519, over a state prisoner's entitlement "to one fair opportunity to seek federal habeas relief from his conviction," *id.*, at 507. In fact, *Rivers* left open the question of whether "second-in-time filings that request amendment of the initial habeas petition under Rule 15 of the Federal Rules of Civil Procedure," are subject to § 2244(b).

Petitioner does not argue here that no Rule 15 motions to amend should be considered a successive petition subject to §2244 (b) Rather, Petitioner asks the Court to carve out the following exception to the general rule announced in *Rivers*:
once the district court has entered its judgment with respect to the initial petition, where a Rule 15 motion to amend ***is the first fair opportunity for a petitioner to seek federal habeas relief from his conviction***, in his attempt to vindicate his right under the Eighth Amendment to be free from wrongful execution due to intellectual disability, the Rule 15 motion to amend should be "part and parcel of his first habeas proceeding," as are motions brought under Federal Rule of Civil Procedure 59 (e). The Court ruled in *Bannister*,

> The question here is whether a motion brought under Federal Rule of Civil Procedure 59(e) to alter or amend a habeas court's judgment qualifies as such a successive petition. We hold it does not. A Rule 59(e) motion is instead part and parcel of the first habeas proceeding.

590 U.S. at 507. Such a rule should apply here, and in all cases where the state is attempting to execute an intellectually disabled individual – an individual whom this Court, applying the principles imbedded in the Eighth Amendment, has determined to be ineligible for the death penalty.

This Court should grant the writ because Petitioner, and others like him, will never have one fair opportunity to guard against wrongful execution in federal habeas if his motion to amend is construed as a motion for leave to file a second or successive petition under § 2244(b), and dismissed as a claim that was decided in a prior habeas petition. See § 2244 (b)(1). On the other hand, federal habeas corpus can protect Petitioner and other habeas petitioners caught in the same unjust conundrum, if this Court grants the writ and recognizes second-in-time filings that request amendment of the initial habeas petition under Rule 15 of the Federal Rules of Civil Procedure do not qualify as second or successive filings under § 2244(b), but are instead part and parcel of the initial habeas petition.

CONCLUSION

For the reasons provided, Robert Woodall's petition for writ of certiorari should be granted.

Respectfully submitted,

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