CAPITAL CASE
NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

BRYAN LEE HALL,

Petitioner,

v.

STATE OF NEVADA,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Nevada

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

Whether the Fifth Amendment's privilege against self-incrimination, as construed in Estelle v. Smith, 451 U.S. 454 (1981), prohibits the State from using a defendant's compelled statements from mandated psychological evaluations as evidence to secure a death sentence, or whether, as the Nevada Supreme Court reasoned below, that protection does not apply when the compelled examination predates the offense for which the defendant is later capitally sentenced.

PARTIES TO THE PROCEEDING

Petitioner Bryan Lee Hall was the appellant in the Nevada Supreme Court. Respondent State of Nevada was the respondent below. No other parties appeared below.

RELATED PROCEEDINGS

Pursuant to Supreme Court Rule 14.1(b)(iii), Petitioner identifies the following:

- State v. Hall, No. 09C254922, Eighth Judicial District Court, Clark County, Nevada (judgment of conviction and sentence of death entered Feb. 21, 2013).
- Hall v. State, No. 62663, 2015 WL 6447296 (Nev. Oct. 22, 2015) (order affirming judgment of conviction and sentence of death) (direct appeal).
- State v. Hall, No. 09C254922, Eighth Judicial District Court, Clark County, Nevada (findings of fact and conclusions of law denying postconviction habeas petition without evidentiary hearing filed Sept. 22, 2020).
- Hall v. State, No. 81994, 2022 WL 17543910 (Nev. Dec. 8, 2022) (order affirming in part, reversing in part, and remanding) (first postconviction appeal).
- State v. Hall, No. 09C254922, Eighth Judicial District Court, Clark County, Nevada (findings of fact, conclusions of law, and order denying postconviction habeas petition following remand evidentiary hearing filed July 29, 2023).
- State v. Hall, No. 09C254922, Eighth Judicial District Court, Clark County,

Nevada (order on motion for rehearing or alternatively, to amend and/or make additional findings, denying claims of ineffective assistance of appellate counsel, filed May 15, 2024).

- Hall v. State, No. 88788 (Nev. May 21, 2026) (order of affirmance) (second postconviction appeal), reh'g denied (Nev. Aug. 7, 2026).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Bryan Lee Hall respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Nevada.

OPINIONS BELOW

The order of the Nevada Supreme Court affirming the denial of postconviction relief, Hall v. State, No. 88788 (Nev. May 21, 2026), is unpublished. Pet. App. 1a-8a. The order of that court denying rehearing (Nev. Aug. 7, 2026) is unpublished. Pet. App. 117a.

The prior order of the Nevada Supreme Court affirming in part, reversing in part, and remanding, Hall v. State, No. 81994, 2022 WL 17543910 (Nev. Dec. 8, 2022), is unpublished. Pet. App. 74a-94a.

The order of the Eighth Judicial District Court, Clark County, Nevada, denying the postconviction habeas petition following the remand evidentiary hearing, State v. Hall, No. 09C254922 (Nev. Dist. Ct. July 29, 2023), is unpublished. Pet. App. 95a-106a.

The order of the Eighth Judicial District Court, Clark County, Nevada, granting in part Petitioner's motion for rehearing or, alternatively, to amend and/or make additional findings, and denying his remaining claims of ineffective assistance of appellate counsel, State v. Hall, No. 09C254922 (Nev. Dist. Ct. May 15, 2024), is unpublished. Pet. App. 107a-116a.

The order of the Eighth Judicial District Court, Clark County, Nevada, denying the postconviction habeas petition without evidentiary hearing, State v.

Hall, No. 09C254922 (Nev. Dist. Ct. Sept. 22, 2020), is unpublished. Pet. App. 9a-73a.

JURISDICTION

The Nevada Supreme Court entered its Order of Affirmance on May 21, 2026. Pet. App. 1a. On June 3, 2026, the deadline to file a petition for rehearing was extended to July 20, 2026. Pet. App. 118a. On July 15, 2026, Petitioner timely sought rehearing, which that court denied on August 7, 2026. Pet. App. 117a. This petition is filed within 90 days of the order denying rehearing and is therefore timely. Sup. Ct. R. 13.1, 13.3. This Court has jurisdiction under 28 U.S.C. § 1257(a).

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

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Section 1 of 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 . . . ."

STATEMENT OF THE CASE

A. The Offense and Trial

Petitioner Bryan Lee Hall was convicted by a jury in the Eighth Judicial District Court, Clark County, Nevada, of first-degree murder and robbery, and was sentenced to death for the murder of Bradley Flamm. Pet. App. 1a. During the penalty phase, the State introduced extensive evidence obtained from psychological evaluations and treatment records generated years earlier, when Hall was a juvenile in the California system, including Hall's own statements to evaluators and professional opinions derived therefrom.

The principal evaluation was conducted on June 2, 1997, while Hall, then sixteen, was detained in juvenile hall on pending charges of rape with a foreign object. He was referred by his juvenile probation officer "to determine psychological state and the need for treatment." XIX Appellant's Appendix ("AA")[1] 4276. The examination took place after the juvenile petition was filed, XIX

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[1]Citations to "AA" are to the Appellant's Appendix filed October 17, 2024, in Hall v. State, No. 88788 (Nev.). "Opening Br.," "Answering Br.," and "Reply Br." refer to the parties' briefs in that appeal, and all record citations in this petition are to the record in No. 88788.

AA 4272-4274, and before the juvenile court sustained the charges of sexual battery and false imprisonment, XIX AA 4290, and adjudged him a ward on September 10, 1997, XIX AA 4302-4303. Later evaluations were conducted during the treatment he was required to undergo after his commitment. XIX AA 4461-4472; XVI AA 3719-3721. Hall did not request or volunteer for the evaluations and did not attempt to introduce psychiatric evidence of his own. The district court found that he was court-mandated to participate. Pet. App. 99a-100a.

The State made those materials the centerpiece of its case for death. In its penalty-phase opening statement, the prosecutor told the jury that "one of the most compelling statements is from the defendant's own mouth as he's being interviewed by psychologists," that Hall had been "assessed to be . . . a sexual sadist" and as having "an antisocial personality disorder." XVI AA 3659-3660. The State's first penalty-phase witness, an investigator, then read extended passages of the evaluations to the jury, including Hall's statements to the evaluating psychologist. XVI AA 3700-3724. In reading the psychologist's discussion of sexual sadism, he omitted the very next sentence: "This diagnosis needs to be ruled out." XIX AA 4286; see XVI AA 3716-3717. In closing, the prosecutor told the jury that Hall "was a sexual sadist" and read the final evaluation's description of "psychopathy, domination, callous exploitation, gross lack of empathy, and an exaggerated sense of self." XVII AA 3876-3877. In rebuttal, the State acknowledged that the jury "may have thought, and with good reason, that this might have been a crime of passion, anger," but argued that "[t]hese two binders" of juvenile records showed it

was "the worst of the worst": "It was sadistic." XVII AA 3901-3902. The State further argued that a life sentence requires remorse as a "precondition," and that the proof of its absence was "right there . . . in those two volumes." XVII AA 3904. The State later conceded that Hall had not been diagnosed as a sexual sadist. XVII AA 3959-3960; see Pet. App. 36a-37a, 76a.

Trial counsel objected under Redmen v. State, 108 Nev. 227, 828 P.2d 395 (1992), overruled on other grounds by Alford v. State, 111 Nev. 1409, 906 P.2d 714 (1995). Pet. App. 3a, 100a.

B. Direct Appeal

On direct appeal, appellate counsel challenged the psychological evidence on the same Redmen ground. Pet. App. 3a. The Nevada Supreme Court affirmed Hall's convictions and death sentence. Hall v. State, No. 62663, 2015 WL 6447296 (Nev. Oct. 22, 2015).

C. First Postconviction Proceedings and Remand

Hall timely petitioned for postconviction habeas relief, arguing, among other claims, that trial and appellate counsel were constitutionally ineffective for failing to challenge the State's use of his California juvenile psychological records under the Fifth Amendment. Hall filed his petition on May 26, 2016, and, through appointed counsel, a supplemental petition on August 26, 2019. Pet. App. 96a. The district court denied the petition without an evidentiary hearing; its findings of fact and conclusions of law were filed September 22, 2020. Id.

On appeal, the Nevada Supreme Court affirmed in part, reversed in part, and

remanded, concluding that Hall had alleged specific facts, not belied by the record, that, if true, might entitle him to relief concerning trial and appellate counsel's investigation of, and litigation surrounding, the State's procurement and use of his juvenile psychological records. Hall, 2022 WL 17543910, at *1-2; Pet. App. 76a-79a. The court directed that, at an evidentiary hearing, "the district court should focus on whether trial and appellate counsel's performance was deficient in investigating and addressing the State's procurement and use of his juvenile file and challenging the admissibility of the juvenile psychological records," and that, "[i]n assessing any potential prejudice during the penalty phase, the district court should consider the weight of the juvenile evidence considering the other evidence presented and the extent to which the State relied on the juvenile evidence." Pet. App. 78a-79a.

D. Remand Proceedings and the Decision Below

On remand, the district court held an evidentiary hearing on April 14, 2023. Pet. App. 97a. Trial counsel Jeffrey Banks agreed that the juvenile records "weren't helpful to the defense by any stretch of the imagination" and were "pretty horrific." XVII AA 4001, 4011. He testified that the defense objected in an effort to keep them out, XVIII AA 4027-4028, and that "without all of the prior stuff," he did not know that the case "would have gotten past the death penalty committee." XVIII AA 4013-4014. Appellate counsel Howard Brooks testified that he chose not to raise a claim under Estelle v. Smith, 451 U.S. 454 (1981), and explained why: "When he made these statements, there was no potential criminal liability in the

Flamm matter. . . . The law is crystal clear. The law is, the Fifth Amendment does not protect testimony that might become incriminating in the future." XVIII AA 4065-4066. When Hall's counsel sought to examine Brooks on whether that understanding of the privilege was correct, the State objected, and the objection was sustained. XVIII AA 4074.

In findings of fact, conclusions of law, and order filed July 29, 2023, the district court recognized that counsel had objected to the juvenile records only under Redmen and on notice grounds, and that "defense counsel did not object to the use of the psychological records based on [Hall's] Fifth Amendment rights." Pet. App. 100a (citing Estelle, 451 U.S. at 469). The court found that Hall "met his burden by a preponderance of the evidence that his counsel's actions and inactions relevant to the juvenile record were not reasonable." Pet. App. 101a. It nonetheless denied relief on the sole ground that Hall had not shown prejudice. Pet. App. 101a-104a.

Hall moved for rehearing or, alternatively, to amend and make additional findings. On May 15, 2024, the district court granted the motion in part and made additional findings on Hall's claim that appellate counsel was ineffective for failing to raise the Fifth Amendment claim on direct appeal. Pet. App. 107a. The court found that appellate counsel had made a strategic decision not to raise the claim and that Hall had not shown prejudice, and it thus denied the claims of ineffective assistance of both trial and appellate counsel. Pet. App. 112a-114a. The court stated that its order "resolve[d] all issues relevant to the Remand." Pet. App. 114a.

Hall timely appealed, and the Nevada Supreme Court affirmed. Rejecting the

district court's finding, the court held that Hall had not demonstrated deficient performance "for two reasons." Pet. App. 3a.

First, the court concluded that trial counsel "made a reasonable objection to the use of the psychological records at trial based on Redmen," and that because trial counsel preserved that objection, appellate counsel "made a reasonable strategic decision to challenge the use of the psychological records on the same basis." Pet. App. 3a.

Second, and independently, the court held that Hall "ha[d] not shown that counsel omitted a clearly meritorious challenge," reasoning that "the psychological evaluation at issue here was conducted in an unrelated matter, many years before Hall was tried in the instant case," and that "[t]hus, the evaluation was not being used to incriminate Hall for crimes already committed when the evaluation was conducted." Pet. App. 4a. On the same basis, the court distinguished its own decision in Brown v. State, 113 Nev. 275, 288-90, 934 P.2d 235, 243-45 (1997), which, relying on Estelle, had held that a sentencing court abused its discretion by basing a sentence on information obtained from a court-ordered psychological examination. Pet. App. 4a. The court rested its chronological distinction on United States v. Harvey, 869 F.2d 1439, 1446 (11th Cir. 1989) (en banc), for the proposition that "[i]n general, the privilege against self-incrimination only prohibits compelled testimony that might incriminate a witness for crimes he had already committed, or was in the process of committing, at the time the testimony was given." Pet. App. 4a.

The court addressed prejudice only in a footnote attached to its discussion of Hall's separate California-law theory: "Although the district court erred in determining trial counsel performed deficiently, we conclude the district court properly denied the claim on the prejudice prong." Pet. App. 5a n.1. In a second footnote, it rejected without analysis Hall's argument that the district court erred in applying Strickland v. Washington, 466 U.S. 668 (1984), rather than requiring the State to prove the error harmless. Pet. App. 7a n.2.

E. Petition for Rehearing and Denial

Hall timely petitioned for rehearing, arguing that the order misapprehended Estelle, which did not condition Fifth Amendment protection on the chronological relationship between the examination and the offense, and that Harvey addressed materially different questions in a materially different posture. Pet. for Reh'g at 1-6 (Pet. App. 120a-125a). Hall further argued that the order could not be reconciled with the remand instructions in Hall, 2022 WL 17543910, which contemplated a reliance-and-prejudice inquiry the order largely bypassed. Pet. for Reh'g at 8-12 (Pet. App. 127a-131a). The Nevada Supreme Court denied rehearing without opinion on August 7, 2026. Pet. App. 117a.

F. How the Federal Question Was Raised and Decided Below

Hall raised the federal question in his postconviction habeas petition, claiming that trial and appellate counsel were ineffective for failing to object under the Fifth Amendment and Estelle to the State's penalty-phase use of his compelled juvenile statements. Pet. App. 137a-147a. The district court identified the claim in

its findings and found counsel's performance unreasonable. Pet. App. 99a-101a.

The timing rule adopted below surfaced during appellate counsel's testimony at the evidentiary hearing, see supra Statement of the Case, Part D, and both parties briefed it on appeal. Hall argued that the privilege turns on whether compelled statements carry a real potential for incrimination, not on whether they relate to the offense later prosecuted, and that compelled disclosures in mandatory sex-offender treatment carry exactly that risk. Opening Br. 39-45 (Pet. App. 154a-160a). The State responded that Hall's authorities involved "reports and statements made for the case at bar, not statements made years prior where there is no reasonable foreseeability that they are of a self-incriminating nature." Answering Br. 41. Hall replied that the privilege extends to answers that "might incriminate him in future criminal proceedings," Lefkowitz v. Turley, 414 U.S. 70, 77 (1973), and that this Court has recognized only one narrow exception to Estelle, rebuttal of a defense mental-health presentation, which has no application here. Reply Br. 25-27 (citing Kansas v. Cheever, 571 U.S. 87 (2013), and Buchanan v. Kentucky, 483 U.S. 402 (1987)).

The Nevada Supreme Court expressly decided the federal question, holding that an Estelle objection was not "clearly meritorious" because the compelled evaluation predated the offense. Pet. App. 4a. Hall renewed the argument in his petition for rehearing, Pet. App. 120a-125a, which was denied, Pet. App. 117a.

REASONS FOR GRANTING THE WRIT

The order below holds that the Fifth Amendment's protection against the State's penalty-phase use of compelled psychiatric statements turns on whether the compelled examination occurred before or after the charged offense. That holding conflicts with this Court's decision in Estelle and the Ninth Circuit's decision in United States v. Bahr, 730 F.3d 963, 966 (9th Cir. 2013). It rests on a misreading of the Eleventh Circuit's decision in Harvey, and presents a recurring, exceptionally important question about the Fifth Amendment rights of juveniles compelled into treatment and evaluation programs whose records may resurface, years later, as aggravating evidence at a capital sentencing. Because a death sentence is at stake and because the courts below did not apply the correct legal standard to Hall's claim, review is warranted.

I. The Decision Below Conflicts With This Court's Decision in Estelle v. Smith

In Estelle, this Court held that "[a] criminal defendant, who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if his statements can be used against him at a capital sentencing proceeding." 451 U.S. at 468.

The violation the Court identified was defined by the State's later use of compelled statements at sentencing, not by any temporal relationship between the examination and the offense being prosecuted. The examination in Estelle happened

to be ordered in the same prosecution in which the statements were later used, but nothing in the Court's reasoning suggests that this sequence was constitutionally significant. To the contrary, the Court grounded the privilege in the principle that a person may not be made "the deluded instrument of his own conviction," id. at 462 (quoting Culombe v. Connecticut, 367 U.S. 568, 581 (1961)). That concern is implicated whenever the government uses compelled statements against the person who made them, regardless of when those statements were extracted. The Court could "discern no basis to distinguish between the guilt and penalty phases of [a] capital murder trial so far as the protection of the Fifth Amendment privilege is concerned." Id. at 462-63.

Since Estelle, this Court has recognized a single, limited exception: when a defendant presents expert mental-health evidence, the prosecution may use a court-ordered evaluation to rebut it. Cheever, 571 U.S. at 93-94; Buchanan, 483 U.S. at 422-24. Hall presented no such evidence. The Court has never recognized a chronological exception, and its precedent forecloses one. The privilege protects a person from answering official questions "in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." Lefkowitz, 414 U.S. at 77. And it applies with full force at sentencing. Mitchell v. United States, 526 U.S. 314, 327-28 (1999).

The decision below nonetheless creates that exception. Pet. App. 4a (reasoning that because the evaluation "was conducted in an unrelated matter, many years before Hall was tried in the instant case," it "was not being used to incriminate

Hall for crimes already committed when the evaluation was conducted"). The court thus cut back its own precedent applying Estelle at sentencing, distinguishing Brown, 113 Nev. at 288-90, 934 P.2d at 243-45, on the same chronological ground. Pet. App. 4a. The holding is all the more anomalous here because the principal evaluation was conducted while Hall, a detained sixteen-year-old, faced pending charges for the very conduct he was questioned about. XIX AA 4276. That holding cannot be reconciled with Estelle. See Sup. Ct. R. 10(c).

II. The Decision Below Misapplies United States v. Harvey and Conflicts With Decisions of the Ninth Circuit

The Nevada Supreme Court rested its chronology-based rule entirely on a single sentence from Harvey: that "[i]n general, the privilege against self-incrimination only prohibits compelled testimony that might incriminate a witness for crimes he had already committed, or was in the process of committing, at the time the testimony was given." Harvey, 869 F.2d at 1446; Pet. App. 4a. The Nevada Supreme Court's reliance on this sentence is misplaced. Harvey was an immunity case; the question was whether an informal grant of transactional immunity, given in exchange for Harvey's 1980 cooperation with DEA agents, barred his later prosecution for tax offenses, including offenses committed in the years after the 1980 grant. Harvey, 869 F.2d at 1440, 1445. The court construed the grant as coextensive with the privilege and asked whether Harvey's 1980 disclosures created a "substantial and real" hazard of incrimination for tax crimes not yet committed. Id. at 1446-48. As they did not, those later crimes fell outside the immunity

agreement. Id. at 1448-49.

Even in that setting, Harvey refused to adopt a rigid temporal rule. Immediately after the sentence quoted by the Nevada Supreme Court, the Eleventh Circuit explained that this Court "rejected a rigid chronological test under the fifth amendment privilege, focusing instead on the substantiality of the risk the witness faced." Id. at 1446 (discussing Marchetti v. United States, 390 U.S. 39 (1968)); see id. at 1447 (Marchetti "explicitly rejected the notion that the fifth amendment privilege offers protection only as to past and present acts"). The Nevada Supreme Court converted Harvey's qualified, risk-based observation into precisely the categorical, chronology-based rule Harvey disclaimed.

In any event, the decision below fails even on its own terms. Harvey's sentence protects compelled statements that "might incriminate a witness for crimes he had already committed." 869 F.2d at 1446. When Hall was examined, he was detained on pending charges of rape with a foreign object, and the evaluator questioned him about that very conduct. XIX AA 4276; XVI AA 3714-3717. His statements were incriminating when made, for crimes already committed and then being prosecuted. The State later presented those statements and the diagnostic opinions to the jury that sentenced Hall to death. XVI AA 3714-3717; XVII AA 3876-3877. The premise of the decision below, that the evaluation "was not being used to incriminate Hall for crimes already committed when the evaluation was conducted," Pet. App. 4a, is incorrect.

Nor does United States v. Freed, 401 U.S. 601 (1971), on which appellate

counsel relied below, XVIII AA 4065-4066; Pet. App. 158a, support the rule the court adopted. Freed rejected the argument that the fingerprints and photograph a firearm transferee must supply would incriminate him in the future, because the privilege does not insulate "a career of crime about to be launched." Freed, 401 U.S. at 606-07. Freed rejected the challenge as to past and concurrent offenses for two reasons: the Act barred using the information to prove them, and the information was never shared with other agencies. Id. at 604-06. Freed thus confirms, rather than undercuts, the principle Estelle applied: compelled disclosures may not be used against the declarant to prove his past conduct.

Harvey's own test confirms the error. Harvey asks whether, at the time the statements were made, the witness faced a "substantial and real" hazard of incrimination. 869 F.2d at 1446-48. The Ninth Circuit has held that mandatory sex-offender treatment requiring disclosure of one's sexual history creates precisely that hazard: such a requirement "triggered a real danger of self-incrimination, not simply a remote or speculative threat," because "any admissions of past crimes would likely make their way into the hands of prosecutors." United States v. Antelope, 395 F.3d 1128, 1135 (9th Cir. 2005). That court has also held that using a defendant's treatment disclosures to determine his sentence violates the privilege. Pens v. Bail, 902 F.2d 1464, 1465-66 (9th Cir. 1990); see also Bahr, 730 F.3d at 965 (holding that "the use of unconstitutionally compelled statements to determine a sentence in a later, unrelated criminal proceeding is unconstitutional").

Hall's evaluations arose from a juvenile sex-offense proceeding. The

principal evaluation was conducted, at the request of his probation officer, while Hall was detained on pending charges, to assess his psychological condition and need for treatment; later evaluations were conducted during the treatment he was required to undergo after his commitment. XIX AA 4276-4288, 4461-4472; XVI AA 3719-3721. They required him to discuss the charged conduct and his sexual history. XVI AA 3714-3717. Like Antelope, who was compelled into treatment after his conviction, Hall faced a real, not speculative, risk that his disclosures would be used against him, and that risk materialized when the State introduced them at his capital sentencing. His statements therefore fell within the privilege at the moment they were compelled, and Harvey's chronology language, which addressed whether a witness may claim protection for crimes not yet committed, has no application.

Nor did Harvey involve compulsion or the direct use of compelled statements. Harvey volunteered information as part of a bargain. As to use immunity, the court held only that dismissal was premature because the government had not been allowed to prove that its evidence derived from sources independent of Harvey's disclosures. Harvey, 869 F.2d at 1444-45; see Kastigar v. United States, 406 U.S. 441, 460 (1972). Here, by contrast, the State never granted Hall immunity; the juvenile evaluations were compelled and Hall's own statements were used directly against him at a capital sentencing, precisely the scenario Estelle addresses and Harvey does not.

Hall does not contend that the State lacked sufficient evidence to prosecute

the homicide, or that the prosecution itself should have been barred for taint. He challenges the State's direct use, at the penalty phase of his capital trial, of the psychological evaluations, treatment records, and derivative opinions that his compelled participation in mandatory treatment generated. Those materials were not investigative leads later corroborated through independent proof; they became the aggravating evidence itself. XVII AA 3876-3877, 3901-3902, 3904. Since Harvey never addressed the government's direct evidentiary use of compelled statements, it does not resolve the question this case presents, and the court below erred in treating it as controlling.

By transplanting Harvey's language into an Estelle-type direct-use claim, the decision below placed Nevada in conflict with the Ninth Circuit. In Bahr, the defendant was required, as a condition of supervision for a 2003 Oregon conviction, to participate in sex-offender treatment, and during treatment he was compelled to disclose his sexual history. Bahr, 730 F.3d at 965. Years later, the government used those disclosures against him at sentencing on a new federal offense. Id. The Ninth Circuit held that "the use of unconstitutionally compelled statements to determine a sentence in a later, unrelated criminal proceeding is unconstitutional." Id. Relying on this Court's recognition that the privilege extends to sentencing, Mitchell, 526 U.S. at 327-28, and on its own precedent extending the privilege to separate criminal proceedings, United States v. Saechao, 418 F.3d 1073, 1081 (9th Cir. 2005), the court concluded, "in accord with [its] precedent," that the sentencing court's consideration of the treatment disclosures violated the Fifth Amendment.

Bahr, 730 F.3d at 966. The Nevada Supreme Court's ruling cannot be reconciled with Bahr. Only this Court can resolve that conflict. See Sup. Ct. R. 10(b), (c).

III. The Question Presented Is Recurring and Exceptionally Important

The question reaches well beyond Hall's case. The juvenile justice system rests on a simple premise: a troubled child can be diagnosed, treated, and rehabilitated. See In re Gault, 387 U.S. 1, 15-16 (1967). Diagnosis and treatment depend upon full disclosure; a clinician cannot treat what the child will not reveal. That is why the juvenile system so often conditions treatment, probation, or parole on a psychological evaluation and a candid account of the child's conduct. The decision below turns that candor into a liability. Under its rule, everything the child discloses and every diagnosis based on those disclosures can be preserved for years and used to secure a death sentence if the child, as an adult, ever faces a capital charge. No conscientious lawyer can ignore that risk. Defense counsel will advise juvenile clients to disclose as little as possible, or to forgo evaluation altogether, even at the cost of treatment, probation, or release. The child who follows that advice goes undiagnosed and untreated, and the system loses the very opportunity it was built to seize.

IV. This Case Is a Suitable Vehicle for Resolving the Question Presented

The question presented was squarely raised and expressly decided below. See supra Statement of the Case, Part F; Pet. App. 4a. The Nevada Supreme Court rested its deficiency holding on two grounds: that counsel reasonably chose to challenge the evidence under Redmen rather than Estelle, and that an Estelle objection was

not "clearly meritorious" because the compelled evaluation predated the offense. Pet. App. 3a-4a. The second ground is a pure question of federal constitutional law. Neither the first ground nor the court's footnote on prejudice is an obstacle to review.

The strategy issue is not independent of the question presented. The record supplies only one explanation for appellate counsel's decision not to raise Estelle: his testimony that "the Fifth Amendment does not protect testimony that might become incriminating in the future," the same chronological rule the court below adopted. XVIII AA 4065-4066. A decision grounded in a misunderstanding of the governing law is not a reasonable strategic choice. Hinton v. Alabama, 571 U.S. 263, 274 (2014) (per curiam); Kimmelman v. Morrison, 477 U.S. 365, 385 (1986). Trial counsel, who, for his part, objected because the defense wanted the juvenile evidence excluded, agreed that the records "weren't helpful to the defense by any stretch of the imagination," and documented no strategic reason for forgoing an Estelle objection. XVII AA 4001, 4011; XVIII AA 4027-4028. The only court to hear said testimony found that counsel's "actions and inactions relevant to the juvenile record were not reasonable." Pet. App. 101a. Because a reasonably competent capital defense attorney weighs the relative strength of available theories, see Strickland, 466 U.S. at 690-91, whether the court's strategy rationale can stand turns on whether its chronology rule is correct.

Nor does the court's one-sentence footnote invoking the prejudice prong insulate the judgment from review. Pet. App. 5a n.1. The footnote appears in the

court's discussion of Hall's separate California-law theory, contains no analysis, and rests on the state-law rule that a correct result will be affirmed even if reached on a wrong ground. Id. It does not engage Hall's extensive briefing on prejudice, Opening Br. 17-37; Reply Br. 16-17, and does not undertake the weighing of the State's reliance on the juvenile evidence that the court's own remand order required, Pet. App. 78a-79a. Moreover, the district court ruling the footnote endorsed rested on its own misreading of Estelle: it reasoned that even a successful Fifth Amendment objection would have excluded "[o]nly statements Mr. Hall made to clinical social workers and/or psychologists," so that "the majority of the evidence would still be heard by the jury panel." Pet. App. 114a. However, Estelle barred not only the defendant's statements but also the examining expert's diagnosis and opinions derived from them. 451 U.S. at 464-65, 468. Here, those derived opinions, that Hall displayed "psychopathy, domination, callous exploitation, [and] gross lack of empathy" and had "a number of elements of that of a sexual sadist," were the core of the State's case for death. XVI AA 3716-3717; XVII AA 3876-3877; see supra Statement of the Case, Part A. Trial counsel testified that "without all of the prior stuff," he did not know that the case "would have gotten past the death penalty committee." XVIII AA 4013-4014. Whether that evidence could constitutionally be used is thus central to prejudice as well as deficiency. See Kimmelman, 477 U.S. at 375.

Finally, the court's second footnote summarily rejected Hall's argument that, because the underlying error is an Estelle violation, the State should bear the burden

of proving it harmless. Pet. App. 7a n.2. Hall does not ask this Court to resolve that question. If the question presented is resolved in his favor, the Nevada courts can assess prejudice in the first instance under a correct understanding of Estelle. The federal question is therefore embedded in the very ground on which the judgment rests, and its resolution will directly affect the disposition of this case on remand.

V. The Gravity of a Death Sentence Underscores the Need for Review

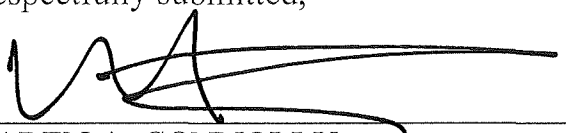
The "fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any capital case." Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (quoting Woodson v. North Carolina, 428 U.S. 280, 305 (1976) (plurality opinion)); see also Gardner v. Florida, 430 U.S. 349, 363-64 (1977) (White, J., concurring in judgment). For that reason, this Court "has gone to extraordinary measures to ensure that the prisoner sentenced to be executed is afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or mistake." Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring). Where a death sentence may rest substantially on compelled statements the jury received in violation of the Fifth Amendment, the stakes for correct application of Estelle could not be higher, and the interests of justice favor this Court's review before that sentence is carried out.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

DATED this 5th day of November, 2026.

Respectfully submitted,



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