No. ________

In the Supreme Court of the United States

MICHIGAN GAMING CONTROL BOARD, RICHARD KALM, GARY POST, DARYL PARKER, RICHARD GARRISON, BILLY LEE WILLIAMS, JOHN LESSNAU, AND AL ERNST, PETITIONERS

v.

JOHN MOODY, DONALD HARMON, RICK RAY, AND WALLY MCILLMURRAY, JR.

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

PETITION FOR A WRIT OF CERTIORARI

Bill Schuette
Michigan Attorney General

Aaron D. Lindstrom
Solicitor General
Counsel of Record
P.O. Box 30212
Lansing, Michigan 48909
LindstromA@michigan.gov
(517) 373-1124

Melinda A. Leonard
Assistant Attorney General
Alcohol and Gambling
Enforcement Division

Attorneys for Petitioners

QUESTIONS PRESENTED

Faced with evidence that licensed harness-racing drivers were accepting money to fix the results of horse races, gambling regulators from the Michigan Gaming Control Board (MGCB) interviewed the driver licensees. Though each driver had agreed to cooperate in investigations as a condition of receiving a license, each, relying on the advice of counsel, asserted his Fifth Amendment privilege and refused to answer any questions. MGCB officials suspended the drivers' licenses for failure to cooperate and later excluded them from MGCB-regulated tracks. The Sixth Circuit said these regulatory actions violated the drivers' Fifth Amendment rights and denied the regulators qualified immunity.

1. Whether *Garrity* v. *New Jersey*, 385 U.S. 493 (1967), and its progeny require regulators either to obtain a formal grant of immunity from all potential prosecutorial agencies or to issue a prophylactic notice about *Garrity* immunity before the regulators may take licensing action against a licensee who invokes the Fifth Amendment to avoid answering regulatory-related questions.

2. Whether an occupational licensee who shields himself from regulatory questioning with the Fifth Amendment and suffers licensing consequences can successfully wield the Fifth Amendment as a sword in a § 1983 action, even though the licensee provided no incriminating statements to the regulators and faced no criminal proceedings.

PARTIES TO THE PROCEEDING

The caption reflects all the parties to the proceeding. While the lower courts incorrectly added the Criminal Division of the Department of Attorney General to the case caption after the Criminal Division responded to a subpoena, the Criminal Division was never named in a complaint or joined as a party. See Compl. ¶¶ 1–10, 4:12-cv-13593, Docket entry No. 1 (E.D. Mich. Aug. 14, 2012) (listing parties); see also Order at 13, 4:12-cv-13593, Docket entry No. 92 (E.D. Mich. June 18, 2013) (denying leave to file a first amended complaint).

TABLE OF CONTENTS

Questions Presented i
Parties to the Proceeding ii
Table of Authorities vi
Opinions Below 1
Jurisdiction 1
Constitutional and Statutory Provisions Involved.... 1
Introduction 2
Statement of the Case 4
A. Licensed harness racing 4
B. The race-fixing investigation......................... 4
C. District-court proceedings 5
D. Sixth Circuit proceedings 6
Reasons for Granting the Petition 9
I. The Sixth Circuit's decision conflicts with other circuits and a state high court by failing to recognize that *Garrity* immunity arises automatically. 10
A. The Sixth Circuit's decision creates a conflict as to whether *Garrity* immunity arises automatically.................................... 11
B. The decision also conflicts with a decision of a state supreme court. 15
C. If the Sixth Circuit imposed a notice requirement, that both creates a circuit split and improperly permits relief based on a prophylactic rule. 16

D. The Sixth Circuit's rule is unworkable. 18

II. The Sixth Circuit's decision creates a circuit split over whether a self-incrimination violation can occur when the individual is never charged with a crime............................... 20

A. The decision conflicts with a Ninth Circuit decision that addresses self-incrimination during governmental inquiries into job-related misconduct.......... 20

B. The decision conflicts with the rule adopted by eight other circuits that statements must be used in a criminal case to implicate the Fifth Amendment...... 23

C. The other circuits correctly apply this Court's decision in *Chavez*.......................... 25

III. The fact that this appeal is interlocutory is not a vehicle problem. 28

Conclusion.. 30

PETITION APPENDIX TABLE OF CONTENTS

United States Court of Appeals
for the Sixth Circuit
14-1511
OPINION and JUDGMENT
Issued June 16, 2015 .... 1a–25a

United States District Court
Eastern District of Michigan
4:12-cv-13593
Order Granting Defendants' Motion for
Summary Judgment…and Dismissing Case
Issued November 27, 2013.............................. 26a–46a

United States Court of Appeals
for the Sixth Circuit
14-1511
Order denying motion to stay
Issued August 25, 2015.. 47a

United States Court of Appeals
for the Sixth Circuit
14-1511
Order denying petition for rehearing en banc
Issued August 12, 2015.. 48a

U.S. Constitution
Amendment 5.. 49a

TABLE OF AUTHORITIES

Cases

Aguilera v. *Baca*,
510 F.3d 1161 (9th Cir. 2007) .... passim

Atwell v. *Lisle Park Dist*.,
286 F.3d 987 (7th Cir. 2002) 18

Burrell v. *Virginia*,
395 F.3d 508 (4th Cir. 2005) 23

Camreta v. *Greene*,
131 S. Ct. 2020 (2011) 29

Chavez v. *Martinez*,
538 U.S. 760 (2003) .... passim

Confederation of Police v. *Conlisk*,
489 F.2d 891 (7th Cir. 1973) 13, 17

Gardner v. *Broderick*,
392 U.S. 273 (1968) 22

Garrity v. *New Jersey*,
385 U.S. 493 (1967) .... passim

Gulden v. *McCorkle*,
680 F.2d 1070 (5th Cir. 1982) 3, 12, 13, 17

Hannon v. *Sanner*,
441 F.3d 635 (8th Cir. 2006) 23

Hester v. *Milledgeville*,
777 F.2d 1492 (11th Cir. 1985) 14

Higazy v. *Templeton*,
505 F.3d 161 (2d Cir. 2007)................................ 23

Hill v. *Johnson*,
160 F.3d 469 (8th Cir. 1998) 14, 17

Hill v. *Rozum*,
447 F. App'x 289 (3d Cir. 2011) 24

Kastigar v. *United States*,
406 U.S. 441 (1972) 27

Koch v. *City of Del City*,
660 F.3d 1228 (10th Cir. 2011) 24

Lefkowitz v. *Cunningham*,
431 U.S. 801 (1977) 7, 15, 28

Lefkowitz v. *Turley*,
414 U.S. 70 (1973) 15, 27

Lingler v. *Fechko*,
312 F.3d 237 (6th Cir. 2002) 10, 25

Livers v. *Schenck*,
700 F.3d 340 (8th Cir. 2012) 24

Manness v. *Meyers*,
419 U.S. 449 (1975) 27

McKinley v. *City of Mansfield*,
404 F.3d 418 (6th Cir. 2005) 6, 7, 11, 24

Mitchell v. *Forsyth*,
472 U.S. 511 (1985) 29

Murray v. *Earle*,
405 F.3d 278 (5th Cir. 2005) 23

Renda v. *King*,
347 F.3d 550 (3d Cir. 2003)................................ 23

Salinas v. *Texas*,
133 S. Ct. 2174 (2013) 20, 26

Sher v. *U.S. Department of Veterans Affairs*,
488 F.3d 489 (1st Cir. 2007)............ 13, 16, 17, 19

Sornberger v. *City of Knoxville*,
434 F.3d 1006 (7th Cir. 2006) 23

Spielbauer v. *Cnty. of Santa Clara*,
45 Cal. 4th 704 (2009) 3, 15, 16, 19

Stoot v. *City of Everett*,
582 F.3d 910 (9th Cir. 2009) 24

Uniformed Sanitation Men Ass'n v.
Commissioner of Sanitation,
426 F.2d 619 (2d Cir. 1970)............. 12, 13, 17, 18

United States v. *Hubbell*,
530 U.S. 27 (2000) 27

United States v. *Veal*,
153 F.3d 1233 (11th Cir. 1998) 13

United States v. *Verdugo-Urquidez*,
494 U.S. 259 (1990) 25

Weston v. *U.S. Dep't of Housing & Urban Dev.*,
724 F.2d 943 (Fed. Cir. 1983)....................... 14, 17

Wiley v. *Mayor & City Council of Baltimore*,
48 F.3d 773 (4th Cir. 1995) 13

Statutes

28 U.S.C. § 1254(1) 1

42 U.S.C. § 1983... passim

Ky. Rev. Stat. Ann. § 230.990(5) 4

Rules

Sup. Ct. R. 10(a)... 16

Regulations

Mich. Admin. Code, R. 431.1035(2)............................ 5

Mich. Admin. Code, R. 431.1035(2)(d) 4

Mich. Admin. Code, R. 431.1035(3)............................ 5

Ohio Admin. Code 3769-12-26(A)(12) 4

Constitutional Provisions

U.S. Const. amend. V...................................... 1, 20, 25

OPINIONS BELOW

The Sixth Circuit's opinion, App. 1a, is reported at 790 F.3d 669. The district court's opinion granting petitioners summary judgment, App. 26a, is not reported but is available at 2013 WL 6196947.

JURISDICTION

The court of appeals issued its opinion on June 16, 2015. App. 1a. It issued an order denying rehearing en banc on August 12, 2015, and an order denying a stay of the mandate on August 25, 2015. App. 47a, 48a. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Self-Incrimination Clause of the Fifth Amendment provides:

> "No person shall be . . . compelled in any criminal case to be a witness against himself." U.S. Const. amend. V.

42 U.S.C. § 1983 provides:

> Every person who, under color of [state law] subjects . . . any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

INTRODUCTION

In the Sixth Circuit, the Fifth Amendment now prevents gambling regulators from suspending a horse-racing licensee for refusing to answer regulatory questions—unless the regulator first persuades potential prosecutors to grant the licensee immunity. To grasp this decision's reach, envision the Kentucky Derby, simulcast and wagered on in jurisdictions nationwide, being run under a specter of fraud because Kentucky's regulators cannot immediately suspend a licensed jockey for failing to cooperate with questioning about drugging a horse moments before he begins the race. Similarly, the Fifth Amendment now prohibits liquor regulators in the Sixth Circuit from closing a bar when the licensed owner refuses to answer questions about a shooting that just occurred—unless the regulator first obtains immunity deals from all relevant prosecutors for the owner.

This case asks whether regulatory licensees can shield themselves from cooperation requirements by relying on the Fifth Amendment and then, after facing administrative penalties for failing to cooperate, wield the amendment as a sword against regulators in a § 1983 action. The Sixth Circuit allowed them to do just that—even though the licensees made no incriminating statements and were not even charged.

The Sixth Circuit held that the regulators violated the licensees' Fifth Amendment rights. The Sixth Circuit distorted the rule of *Garrity* v. *New Jersey*, 385 U.S. 493 (1967), by failing to recognize that any statements the drivers might have given would be immunized from use in a later criminal case. In so doing, the Sixth Circuit disagreed with other circuits and with

California's highest court by disregarding the *automatic* nature of *Garrity* immunity, opining that the regulators had to grant the licensees immunity—despite their lack of authority to do so. E.g., *Gulden* v. *McCorkle*, 680 F.2d 1070 (5th Cir. 1982); *Spielbauer* v. *Cnty*. *of Santa Clara*, 45 Cal. 4th 704 (2009). Alternatively, the Sixth Circuit may have been creating a new prophylactic rule by requiring the government to *notify* the drivers of their *Garrity* immunity. Either way, it created a circuit split.

Although six justices concluded in *Chavez* v. *Martinez*, 538 U.S. 760 (2003), that coercive questioning alone—without any criminal proceedings being brought—cannot sustain a Fifth Amendment-based § 1983 claim, the Sixth Circuit also concluded that *Chavez* applies only when the plaintiff has succumbed to coercive questioning, unlike the drivers here (who remained silent). The Sixth Circuit's view of *Chavez* conflicts with that of every circuit to consider it. Most overtly, it conflicts with *Aguilera* v. *Baca*, 510 F.3d 1161 (9th Cir. 2007), by adopting *Aguilera*'s dissent.

The Sixth Circuit's incorrect decision puts regulators in a chokehold. Because regulators lack authority to grant immunity in criminal matters, the opinion forces them to obtain immunity agreements from potential prosecutors before enforcing cooperation requirements. This burden severely hampers a regulator's ability to protect the public interest. And this decision reaches far beyond regulatory agencies—every public employer (including the federal government) in the Sixth Circuit now must obtain an immunity agreement before it requires cooperation in an employment situation. Certiorari is warranted.

STATEMENT OF THE CASE

A. Licensed harness racing

Michigan law permits wagering on horse racing under strict regulation, including requiring individuals involved in racing to hold occupational licenses. Requiring licensees to cooperate in investigations serves as one of the most vital tools a regulator has to achieve regulatory goals. Like racing licensees in other Sixth Circuit states, horse racing licensees in Michigan know that they must cooperate completely with regulators. By applying for a license, each licensee agrees to "cooperate in every way . . . during the conduct of an investigation, including responding correctly, to the best of his or her knowledge, to all questions pertaining to racing matters" as a condition of holding a license. Mich. Admin. Code, R. 431.1035(2)(d); *see also* Ohio Admin. Code 3769-12-26(A)(12), & Ky. Rev. Stat. Ann. § 230.990(5). Each licensee expressly agrees to this duty to cooperate by signing a licensing application: "I agree to fully cooperate with the MGCB Horse Racing Section regulatory investigations and law enforcement investigations relating to racing." App. 30a.

B. The race-fixing investigation

After receiving tips that the drivers were involved in a race-fixing scheme and had accepted money in exchange for altering race results, racing stewards (officials that officiate and regulate horse racing) from the Michigan Gaming Control Board conducted stewards' hearings to question each driver about the allegations; at the same time a parallel criminal investigation was underway. App. 27a–29a.

At each hearing, each driver, with his attorney present, asserted his Fifth Amendment privilege and refused to answer any questions, whether incriminating or not. App. 29a–30a. Each driver also failed to produce the bank records he had been directed to provide. App. 30a. The stewards reminded the drivers of their obligation to cooperate as a condition of licensure, Mich. Admin. Code, R. 431.1035(2), and that failing to cooperate could result in license suspension, Mich. Admin. Code, R. 431.1035(3). Further, the regulators did not ask the drivers to waive immunity from use of their statements in a later prosecution. Despite their duty to cooperate and despite the fact they were not asked to waive immunity, the drivers remained silent. App. 29a–30a.

As a result of the hearings, the stewards suspended the drivers' licenses for failure to cooperate. App. 30a. Several months later, shortly before the suspensions expired, the Michigan Gaming Control Board's Executive Director issued exclusion orders that barred the drivers from MGCB-regulated tracks and facilities and prevented their future license applications from being considered until they cooperated. App. 32a. The drivers faced no criminal consequences—they were not arrested or prosecuted for race-fixing. App. 44a.

C. District-court proceedings

The drivers brought this § 1983 action, contending that the regulators violated their Fifth Amendment right against self-incrimination. They asserted that the regulators had imposed on them an unconstitutional condition by requiring them to give up their

Fifth Amendment rights in exchange for retaining their licenses. App. 4a, 6a.

In deciding the regulators' motion for summary judgment, the district court granted the regulators qualified immunity from the damages claims. App. 36a. The district court held that the regulators did not violate the drivers' Fifth Amendment rights because, in *McKinley* v. *City of Mansfield*, 404 F.3d 418, 430 (6th Cir. 2005), the Sixth Circuit had applied *Chavez* to conclude that coercion alone does not violate the Self-Incrimination Clause; a successful § 1983 claim based on the Fifth Amendment requires that compelled statements were used in a criminal case. App. 44a. The district court also recognized that *Garrity* and its progeny did not support the drivers' claims because the regulators did not require the drivers to waive their Fifth Amendment rights. App. 41a–43a.

D. Sixth Circuit proceedings

The Sixth Circuit reversed the grant of qualified immunity on the drivers' Fifth Amendment claims. It stated that unless the State immunized the drivers, the Constitution permitted the drivers to refuse to answer potentially incriminating questions. App. 6a. The Sixth Circuit repeatedly faulted the regulators for failing to "offer" immunity to the drivers. App 8a, 9a n.9, 13a.

Despite acknowledging that "[n]one of the plaintiffs has been charged with a crime related to the original criminal and administrative inquiry," App. 9a n.9, the court concluded that punishing the drivers by suspending and then excluding them violated their self-incrimination rights. App. 6a. "To ban them from

horse racing for refusing to answer was exactly the sort of 'grave consequence solely because [t]he[y] refused to waive immunity from prosecution and [to] give self-incriminating testimony' that the Supreme Court has said unconstitutionally compels self-incrimination." App. 9a (quoting *Lefkowitz* v. *Cunningham*, 431 U.S. 801, 807 (1977)).

Although recognizing that Justice Thomas' plurality opinion in *Chavez* distinguished the Fifth Amendment right against self-incrimination from the prophylactic privilege to assert the Fifth Amendment in response to questioning, the Sixth Circuit regarded his conclusion—that mere compulsion does not violate the Fifth Amendment right—as non-binding in distinguishable situations because it viewed Justice Souter's concurrence in the judgment as fact-dependent. App. 10a–11a.

The instant case, the court reasoned, is factually distinguishable because the drivers made no incriminating statements. The court then relied on the dissent in the Ninth Circuit's *Aguilera* decision: "*Chavez* only applies where a party actually makes self-incriminating statements. . . . [T]he Fifth Amendment would be violated if a public employee were fired for refusing to make self-incriminating statements, even though no self-incriminating statement could ever have been used against the employee." App. 11a–12a (quoting *Aguilera*, 510 F.3d at 1179 (Kozinski, J., dissenting)).

The court also disposed of its own precedent in *McKinley* by noting that the plaintiff in *McKinley* had been promised use immunity. In the court's view, *Chavez* requires the government to first immunize employees and contractors before it can penalize them

to induce them to answer questions. App. 13a. Because the regulators here had not offered the drivers immunity, the court determined that the regulators had violated this condition on their ability to penalize the drivers. *Id.* In a footnote, the court also recognized a circuit split between the Ninth Circuit, on the one side, and the "Second, Seventh and Federal Circuits" on the other, over whether the government "must tell public employees that they have immunity before it can constitutionally punish them for refusing to make self-incriminating statements." App. 13a n.11.

The Sixth Circuit affirmed the district court's grant of qualified immunity on the drivers' due-process claim related to their suspensions but reversed the district court's grant of qualified immunity on the drivers' due-process claim related to their exclusions. App. 19a, 22a. The court remanded for further proceedings on that issue and the clearly established prong of qualified immunity as to the Fifth Amendment and exclusion-related due-process claims. App. 23a. The court also encouraged the drivers to renew, via a motion for reconsideration, their request to amend the complaint to state a claim for First Amendment retaliation—a request that the district court had previously denied and the drivers had not appealed. App. 23a.

The court denied the regulators' subsequent petition for rehearing or consideration en banc and their motion to stay the mandate while pursuing certiorari in this Court. App. 47a, 48a. Thus, although aspects of this case remain subject to further proceedings in the district and circuit courts, the Sixth

Circuit's opinion improperly ties regulators' and public employers' hands throughout the circuit now.

REASONS FOR GRANTING THE PETITION

The Sixth Circuit's decision conflicts with the decisions of other circuits on two different aspects of Fifth Amendment law.

First, the Sixth Circuit's conclusion that the regulators had to grant the drivers immunity before taking administrative action against them conflicts with the decisions of numerous circuit courts and with a California Supreme Court decision, all of which recognize that *Garrity* immunity attaches automatically. And if the Sixth Circuit's opinion can be read instead as requiring the government to notify the employee of *Garrity*'s automatic immunity, it splits with circuits that have declined to create such a prophylactic rule. The decision also conflicts with this Court's holdings permitting the government to terminate employees who refuse to answer work-related questions as long as the government does not require the employee to waive his immunity from use of compelled testimony against him in a criminal case. Denying the automatic nature of *Garrity* immunity hampers the government's ability to obtain necessary information by requiring government agencies to obtain unnecessary immunity agreements if they cannot grant immunity themselves.

Second, the Sixth Circuit's decision creates a conflict with other circuit courts of appeals that have understood *Chavez* to hold that the Fifth Amendment is not violated by mere compulsion, but rather is

violated only if coerced statements are actually *used* in a criminal proceeding.

I. The Sixth Circuit's decision conflicts with other circuits and a state high court by failing to recognize that *Garrity* immunity arises automatically.

Although the Sixth Circuit properly recognized that the government may penalize an employee if the employee's statements " 'are immunized from use in any criminal case against the speaker,' " App. 13a (quoting *Chavez*, 538 U.S. at 768 (plurality opinion)), it failed to recognize that the immunity *Garrity* provides is automatic; no formal grant of immunity is necessary.

The court's analysis of what would have happened if the drivers had provided statements reveals its misunderstanding. The court said that because the regulators "did not offer" the drivers immunity before the hearings, the drivers had reason to fear that any answers they provided would have been used as evidence against them, even though, under *Garrity*, "a court would have been unlikely to admit those answers." App. 8a, 9a. A court would not have merely been "unlikely" to admit those answers; it would have been legally prohibited from admitting those answers. *Garrity*, 385 U.S. at 500; *see also Lingler* v. *Fechko*, 312 F.3d 237, 239, 240 (6th Cir. 2002) (stating that *Garrity* prohibited the officers' statements from being used against them and rendered any waiver of the privilege ineffective). Instead of recognizing that *Garrity* establishes that immunity arises by operation of law, the Sixth Circuit thought it was significant that "for four years" after the drivers refused to

answer questions, "the state declined to offer immunity." App. 13a.

The opinion thus indicates that the Sixth Circuit failed to appreciate that *Garrity* immunity arises automatically, even if no offer is made. But other language in the opinion suggests that the Sixth Circuit could have been making a different error—that it was creating a new prophylactic rule by requiring the regulators to *notify* the drivers of their automatic *Garrity* rights. The court emphasized the notice the police department provided to the officer being questioned in *McKinley*, viewing it as an explicit promise of immunity. App. 12a. It also pointed to the circuit split that dissenting Judge Kozinski recognized in *Aguilera*, recognizing that in " 'the Second, Seventh, and Federal Circuits, the government must tell public employees that they have immunity before it can constitutionally punish them for refusing to make self-incriminating statements.' " App. 13a, n.11 (quoting *Aguilera*, 510 F.3d at 1178 (Kozinski, J., dissenting)) (brackets omitted). Regardless of which reading of the opinion is correct, it creates a circuit split worthy of this Court's review.

A. The Sixth Circuit's decision creates a conflict as to whether *Garrity* immunity arises automatically.

The Sixth Circuit's decision conflicts with the decisions of other circuits that accept the automatic nature of *Garrity* immunity and accordingly allow governmental entities to require individuals to answer job-related questions.

For example, the Second Circuit upheld the dismissal of employees of the City of New York who refused to answer questions despite being told that their testimony could not be used against them in a criminal proceeding and that they could face disciplinary action if they refused to answer employment-related questions. *Uniformed Sanitation Men Ass'n* v. *Commissioner of Sanitation*, 426 F.2d 619, 627 (2d Cir. 1970). Writing for the court, Judge Friendly recognized that public employees lack the right to refuse to account for their actions and still keep their jobs, although they have the right not to have their statements used against them in a later prosecution. *Id*. While the district-court judge had thought that "the City lacked authority to grant immunity," *id*. at 622, Judge Friendly reasoned that in *Garrity*, "the very act of the attorney general in telling the witness that he would be subject to removal if he refused to answer was held to have conferred [use] immunity." *Id*. at 626.

Similarly, in *Gulden* v. *McCorkle*, 680 F.2d 1070, 1074 (5th Cir. 1982), the Fifth Circuit held that use immunity attaches automatically when a public employee is required to answer questions or face penalties. In *Gulden*, the employees "asserted that because the Defendants have failed to tender them immunity in regard to use of their polygraph answers in subsequent criminal proceedings, the Defendants have implicitly required them to waive such immunity in contravention of the [F]ifth [A]mendment right against self-incrimination." *Id*. at 1071. The Fifth Circuit rejected that argument: "An employee who is compelled to answer questions (but who is not compelled to waive immunity) is protected by *Garrity*

from subsequent use of those answers in a criminal prosecution." *Id.* at 1075. Indeed, "[i]t is the very fact that the testimony was compelled which prevents its use in subsequent proceedings, *not any affirmative tender of immunity*." *Id.* (emphasis added).

The First Circuit followed the same path in *Sher* v. *U.S. Department of Veterans Affairs*, 488 F.3d 489 (1st Cir. 2007). There, a pharmacist employed by a VA hospital refused to cooperate in an investigation in violation of a federal regulation, and as a result he was suspended for a period and demoted. *Id.* at 493, 496. In his lawsuit, he argued that he had a legitimate reason for refusing to answer questions: the letter he received from the VA about the investigation "stated only that the U.S. Attorney had declined to prosecute as of a certain date, not that it conferred immunity." *Id.* at 499–500. The First Circuit rejected that argument, just as the Second and Fifth Circuit had. *Id.* at 502 (citing *Uniformed Sanitation Men*, 426 F.2d at 626, and *Gulden*, 680 F.2d at 1075). *Garrity* immunity, the First Circuit explained, is " 'self-executing; it arises by operation of law; no authority or statute needs to grant it.' " *Id.* (quoting *United States* v. *Veal*, 153 F.3d 1233, 1239 n.4 (11th Cir. 1998)).

And other circuits have also followed the same reasoning. *Wiley* v. *Mayor & City Council of Baltimore*, 48 F.3d 773, 777 n.7 (4th Cir. 1995) ("The *Garrity* immunity is self-executing."); *Confederation of Police* v. *Conlisk*, 489 F.2d 891, 895 n.4 (7th Cir. 1973) (responding to argument that the investigating entity was "not empowered to grant immunity" by pointing out that such power was "not necessary"

because "[i]n *Garrity* the Supreme Court indicated that the Fifth Amendment itself prohibited the use" of compelled statements); *Hill* v. *Johnson*, 160 F.3d 469, 471 (8th Cir. 1998) ("Even if Hill was not expressly told that his answers at the meeting and polygraph examination could not be used against him in the criminal prosecution, the mere failure affirmatively to offer immunity is not an impermissible attempt to compel a waiver of immunity."); *Hester* v. *Milledgeville*, 777 F.2d 1492, 1496 (11th Cir. 1985) ("We fail . . . to see how the city's failure to offer the plaintiffs use immunity could make any constitutional difference. . . . [T]he privilege against self-incrimination affords a form of use immunity which, absent waiver, *automatically* attaches to compelled incriminating statements as a matter of law.") (emphasis added); *Weston* v. *U.S. Dep't of Housing & Urban Dev.*, 724 F.2d 943, 948 (Fed. Cir. 1983) ("[T]he threat of removal from one's position constitutes coercion which renders any statements elicited thereby inadmissible in criminal proceedings against the party so coerced.").

Had this case arisen in any of these other circuits, the court would have concluded that the drivers automatically received immunity, by operation of law, when they were forced to choose between answering questions or facing job-related consequences. Accordingly, the court would have recognized that the Fifth Amendment's protections were in place and not being violated. Granting certiorari here will permit the Court to put the Sixth Circuit back on track, restore certainty and authority for public entities throughout the circuit, and eliminate the split the Sixth Circuit has created.

B. The decision also conflicts with a decision of a state supreme court.

The Sixth Circuit's decision also conflicts with the decision of the California Supreme Court in *Spielbauer* v. *County of Santa Clara*, 45 Cal. 4th 704 (2009). There, a public employer (the county) fired an employee (a deputy public defender) who declined to answer job-related questions, and in his suit for reinstatement, the employee claimed that he should have been provided, "in advance, a formal grant of immunity" from use of his answers against him in a criminal case. *Id*. at 709. The court concluded that the Fifth Amendment did not require the employer to "seek, obtain, and confer a formal guarantee of immunity before requiring its employee to answer questions related to [its] investigation." *Id*. at 710, 714.

The *Spielbauer* court, relying on *Chavez* and the *Garrity* line of cases, concluded that a person may assert his constitutional privilege without fear of penalty until he receives a formal grant of immunity. *Spielbauer*, 45 Cal. 4th at 716 (citing *Chavez*, 538 U.S. at 771; *Cunningham*, 431 U.S. at 806; *Lefkowitz* v. *Turley*, 414 U.S. 70, 78 (1973)). But it also recognized that the Supreme Court "has never held, in the context of a noncriminal investigation of public employee job performance, that an employee must be offered *formal immunity* from criminal use before being compelled, by threat of job discipline, to answer questions on that subject." *Spielbauer*, 45 Cal. 4th at 718. The *Spielbauer* court recounted that the Second Circuit had concluded that immunity did not have to be provided through a statute because the Fifth

Amendment itself conferred the immunity. 45 Cal. 4th at 721–22.

In the end, the Sixth Circuit decision conflicts not only with other circuits, but also with "a decision by a state court of last resort." Sup. Ct. R. 10(a).

C. If the Sixth Circuit imposed a notice requirement, that both creates a circuit split and improperly permits relief based on a prophylactic rule.

As mentioned above, some of the Sixth Circuit's language suggests that it was imposing a new notice requirement on the regulators. To the extent that it did, its decision both conflicts with other circuits and permits § 1983 relief based on a prophylactic-rule violation.

Although the *Spielbauer* court limited its decision to instances where the employee had been advised that his statements could not be used against him, it expressly did not decide that such notice is constitutionally required. 45 Cal. 4th at 724 n.5. As it noted, the circuit courts of appeals are split on that issue. *Id*. Indeed, Judge Kozinski noted the same split in his *Aguilera* dissent. 510 F.3d at 1177–78 (Kozinski, J., dissenting) (summarizing circuit split and stating that he "would hold that if the government does not expressly inform public employees that any statements they give can't be used against them in criminal proceedings, it may not punish them for refusing to speak"); See also *Sher*, 488 F.3d at 503 ("The circuits have taken different approaches to the issue of whether a government employer is required to provide such notice to an employee.").

Like the Ninth Circuit in *Aguilera*, the Fifth and Eighth Circuits decline to impose a notice requirement. See *Hill*, 160 F.3d at 471 ("Even if Hill was not expressly told that his answers at the meeting and polygraph examination could not be used against him in the criminal prosecution, the mere failure to affirmatively offer immunity is not an impermissible attempt to compel a waiver of immunity."); *Gulden*, 680 F.2d at 1076 ("Gulden and Sage were told only that they must take the polygraph exams to retain employment. This was a permissible requirement.").

On the other side of the split, the Second, Seventh, and Federal Circuits require the government to advise the person being questioned of his *Garrity* rights. See *Uniformed Sanitation Men*, 426 F.2d at 627 (describing "proper proceedings" as those in which "the employee is asked only pertinent questions about the performance of his duties and is duly advised of his options and the consequences of his choice"); *Conlisk*, 489 F.2d at 895 n.4 (finding discharges unconstitutional where the officers were not advised that their answers would not be used against them in criminal proceedings); *Weston*, 488 F.2d at 948 ("Invocation of the *Garrity* rule for compelling answers to pertinent questions . . . is adequately accomplished when that employee is duly advised of his options to answer under the immunity granted or remain silent and face dismissal.").

Significantly, the First Circuit, in *Sher*, 488 F.3d at 504, declined to decide the notice issue where, as here, the employee was represented by counsel; the court recognized that "no circuit has held that an employee who is represented by his counsel is entitled

to notice from his employer of his *Garrity* immunity." Indeed, when an employee or licensee is represented by counsel, as here, one would think that the Second Circuit's requirement that he be "duly advised" of his options and their consequences has been fulfilled. *Uniformed Sanitation Men*, 426 F.2d at 627.

Even if the Sixth Circuit is now among the circuits that require notice, violating this requirement cannot support the drivers' § 1983 action because the notice constitutes no more than the *Garrity* version of a *Miranda* warning. In *Atwell* v. *Lisle Park Dist*., 286 F.3d 987 (7th Cir. 2002), the Seventh Circuit justified the notice requirement by stating that "[u]ncounselled persons are much more likely to know about their 'Fifth Amendment' right than they are to know about the immunity that qualifies the right. . . . [T]hey may instinctively 'take the Fifth' and by doing so unknowingly set themselves up to be fired without recourse.'" *Id*. at 990. But the notice requirement does not arise from the Constitution itself; it exists as a prophylactic rule designed to protect the employee's employment and the right against self-incrimination in a later criminal proceeding. Just as *Chavez* (discussed below in more detail) precludes granting relief based on a *Miranda* violation, the Sixth Circuit cannot properly grant relief based on a *Garrity* notice violation.

D. The Sixth Circuit's rule is unworkable.

The regulators have no authority to grant immunity in criminal proceedings. Despite this, the Sixth Circuit has required them, as well as every other governmental agency lacking that authority within

the Sixth Circuit, to seek and obtain a formal immunity agreement from prosecuting authorities before being able to penalize someone who refuses to answer questions about their performance of public responsibilities. This requirement will cause a regulatory logjam, leaving regulators and similarly situated government entities to negotiate immunity agreements with prosecuting attorneys *before* they may enforce their cooperation requirements, even in emergency situations. And this logjam will affect not only the States in the Sixth Circuit but also the federal agencies operating in those States. Consider, for example, the VA pharmacist in the First Circuit's *Sher* decision, 488 F.3d at 493; under the Sixth Circuit's approach, the VA would lack the authority to suspend a pharmacist's license unless it first secured formal immunity agreements for the pharmacist.

Policies underlying this Court's cases favor applying *Garrity*'s automatic immunity. As the *Spielbauer* court stated, employers need to be able to promptly, even urgently, investigate whether their employees are living up to the trust bestowed on them, and an employee cannot delay the employer's inquiry until a formal immunity agreement can be obtained. 45 Cal. 4th at 725–26. Echoing the regulators' predicament here, the *Spielbauer* court could not determine how the employer could even obtain the immunity agreement because no law specifically permitted the employer to confer immunity. *Id.* at 726. "The employer's ability to investigate an employee's performance of his or her public responsibility cannot be hamstrung, as a matter of constitutional law, by such concerns." *Id.* at 726. This is especially true because the employee does not even have to assert the Fifth

Amendment for the privilege to apply. *See Salinas* v. *Texas*, 133 S. Ct. 2174, 2180 (2013) (Alito, J., for a three-justice plurality) (citing the *Garrity* cases as circumstances where the "exercise of the privilege [is] so costly that it need not be affirmatively asserted") (Alito, J., plurality opinion). If an employee does not even have to affirmatively assert the privilege, the Sixth Circuit's opinion leaves government employers and regulators to obtain immunity agreements before they even know if one will be necessary. Especially in emergency circumstances, this hurdle defeats regulation.

II. The Sixth Circuit's decision creates a circuit split over whether a self-incrimination violation can occur when the individual is never charged with a crime.

In this case, the Sixth Circuit held that compelling an individual to answer questions relating to his or her government-issued license violates that person's Fifth Amendment right not to be "compelled in any criminal case to be a witness against himself," U.S. Const. amend. V, even when the person has not been charged with a crime. App. 9a n.9. That holding creates a circuit split and conflicts with both the Constitution's text and this Court's precedents.

A. The decision conflicts with a Ninth Circuit decision that addresses self-incrimination during governmental inquiries into job-related misconduct.

This case would have come out differently had it arisen in the Ninth Circuit. In a parallel situation in *Aguilera*, sheriff's deputies brought a § 1983 suit, claiming that their supervisors violated their Fifth

Amendment rights by requiring them to choose between giving potentially incriminating statements and suffering what they viewed as adverse employment actions (being transferred to different assignments). 510 F.3d at 1171. On the advice of counsel, each deputy had declined to answer questions about possible misconduct on duty. *Id.* at 1165–66. The deputies decided to remain silent despite the fact that "[u]nder the Sheriff's Department's Manual of Policies and Procedures, officers have an affirmative duty to cooperate during such an investigation." *Id.* at 1165. Because the deputies failed to cooperate, the supervisors reassigned the deputies to desk duties. *Id.* The Ninth Circuit held "that the supervisors did not violate the deputies' Fifth Amendment rights when they were questioned about possible misconduct, given that the deputies were not compelled to answer the investigator's questions or to waive their immunity from self-incrimination." *Aguilera*, 510 F.3d at 1172.

The Ninth Circuit began its analysis by recognizing that while "the Supreme Court has made clear that public employees cannot be compelled to choose between providing unprotected incriminating testimony or losing their jobs," this Court was also careful "to preserve the right of a public employer to appropriately question an employee about matters relating to the employee's possible misconduct while on duty." *Id.* at 1171. This Court preserved that public-employer right by explaining that a constitutional violation arises "not when a public employee [is] compelled *to answer* job-related questions, but when that employee [is] required *to waive his privilege* against self-incrimination while answering his

employer's legitimate job-related questions." *Id*. (citing *Gardner* v. *Broderick*, 392 U.S. 273, 278 (1968)) (emphasis added). Because "the deputies were never even *asked* to waive their immunity," the Ninth Circuit concluded that "it is clear that the deputies' Fifth Amendment right against self-incrimination was not implicated by the supervisor's conduct." *Id*. at 1172. And after recognizing that the Fifth Amendment was not even implicated, the court further recognized that "[t]he deputies' Fifth Amendment claim also fails because the deputies were never charged with a crime, and no incriminating use of their statements was ever made." *Id*. at 1173 & n.9 (relying on *Chavez* "for the proposition that since no statement was ever used against the deputies, there is no cognizable Fifth Amendment claim").

If the harness-racing drivers here had been denied their licenses by a State in the Ninth Circuit, the Ninth Circuit would have concluded that no Fifth Amendment violation occurred. As in *Aguilera*, the drivers willingly accepted the affirmative duty to cooperate with investigations relating to the licenses that allow them to perform their jobs. App. 30a ("I agree to fully cooperate with the MGCB Horse Racing Section regulatory investigations and law enforcement investigations relating to racing."). And like the deputies, the drivers breached that duty by refusing to answer questions about misconduct on the job. Because the drivers were never asked to waive their Fifth Amendment immunity, were never charged with a crime, and never had any incriminating statements used against them, their Fifth Amendment claim would have been dismissed if their case had occurred in the Ninth Circuit. Indeed, the

final proof that this case would have come out differently in the Ninth Circuit is that the Sixth Circuit expressly relied on the dissent in *Aguilera*. App. 11a–12a.

B. The decision conflicts with the rule adopted by eight other circuits that statements must be used in a criminal case to implicate the Fifth Amendment.

In fact, this case would have come out differently had it arisen in almost any other circuit, for a simple reason: every circuit to address the issue has recognized that the Self-Incrimination Clause is not violated when the plaintiff's statements (or silence) have not been used against the plaintiff in a criminal proceeding. See, e.g., *Higazy* v. *Templeton*, 505 F.3d 161, 171–72 (2d Cir. 2007) (" 'it is not until [statements compelled by a police interrogation are used] in a criminal case that a violation of the Self–Incrimination Clause occurs' ") (alteration in original); *Renda* v. *King*, 347 F.3d 550, 557–59 (3d Cir. 2003) (a defendant's "right against self-incrimination was not violated" even if "coerced statements" were "obtained from a custodial interrogation" because the criminal charges against him were dropped); *Burrell* v. *Virginia*, 395 F.3d 508, 513–14 (4th Cir. 2005); *Murray* v. *Earle*, 405 F.3d 278, 285 n.11 (5th Cir. 2005) ("The Supreme Court has held that § 1983 plaintiffs do not have a Fifth Amendment claim against law-enforcement officials who have elicited unlawful confessions if those confessions are not then introduced against the plaintiffs in criminal proceedings."); *Sornberger* v. *City of Knoxville*, 434 F.3d 1006, 1023–25 (7th Cir. 2006); *Hannon* v. *Sanner*, 441 F.3d 635, 637–38 (8th Cir. 2006); *Livers* v. *Schenck*, 700

F.3d 340, 351 n.9 (8th Cir. 2012) ("A Fifth Amendment violation of [an individual's] protection against self-incrimination, based upon a coerced confession, only arises when the coerced statements are used in the criminal case."); *Stoot* v. *City of Everett*, 582 F.3d 910, 922–24 (9th Cir. 2009) ("coercive police questioning does not violate the Fifth Amendment, absent use of the statements in a criminal case"); *Koch* v. *City of Del City*, 660 F.3d 1228, 1244–45 & n.9 (10th Cir. 2011) ("a violation of the Fifth Amendment right against self-incrimination 'occurs only if one has been compelled to be a witness against himself in a criminal case' ").

These cases required some use of the compelled statements to sustain a § 1983 claim, even though they did not involve the additional point that cuts against the drivers here—that they had promised to cooperate as a condition of maintaining a government-issued license.

Thus, in the Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, and Tenth Circuits, courts would have rejected the drivers' Fifth Amendment claim because no constitutional violation occurred; only in the Sixth Circuit could a public employer potentially face liability under these circumstances. In fact, *Aguilera* and *Hill* v. *Rozum*, 447 F. App'x 289, 290 (3d Cir. 2011), applied *Chavez* in this manner when the plaintiff had remained silent.

Granting certiorari in this case will permit the Court to resolve the split that the Sixth Circuit has created by adopting the dissent in *Aguilera*—in conflict with its own precedent. See *McKinley*, 404 F.3d at 430 ("It is only once compelled incriminating

statements are used in a criminal proceeding, as a plurality of six justices held in *Chavez* v. *Martinez*, that an accused has suffered the requisite constitutional injury for purposes of a § 1983 action."); *Lingler*, 312 F.3d at 239 ("By its terms, the Fifth Amendment does not prohibit the act of compelling a self-incriminating statement other than for use in a criminal case.").

C. The other circuits correctly apply this Court's decision in *Chavez.*

These circuits all reached this proper understanding by following this Court's decision in *Chavez* v. *Martinez*, 538 U.S. 760 (2003). In *Chavez*, six justices agreed that a Fifth Amendment claim fails if the compelled, incriminating statement is never used against the witness in a criminal case. *Aguilera*, 510 F.3d at 1173 & n.8. The four-justice plurality observed that the Fifth Amendment "requires that '[n]o person . . . shall be compelled *in any criminal case* to be a *witness* against himself.' " *Chavez*, 538 U.S. at 766 (plurality) (quoting U.S. Const. amend. V and adding emphases).

This holding flows directly from the amendment's text: "[B]ased on the text of the Fifth Amendment," the defendant in *Chavez* could not even "allege a violation of this right, since [he] was never prosecuted for a crime, let alone compelled to be a witness against himself in a criminal case." 538 U.S. at 766; *id.* at 767 ("Although conduct by law enforcement officials prior to trial may ultimately impair that right, *a constitutional violation occurs only at trial*." (quoting *United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 264 (1990), and adding emphasis)). Concurring in the judgment,

Justices Souter and Breyer agreed that "the text of the Fifth Amendment . . . focuses on *courtroom use* of a criminal defendant's compelled self-incriminating testimony." *Id.* at 777 (emphasis added).

As the string cite above (at 23–24) illustrates, the circuits have all—except the Sixth Circuit in this case, App. 10a–11a—understood *Chavez* to stand for the proposition that merely compelling testimony does not amount to a self-incrimination violation. Accord 538 U.S. at 790 (Kennedy, J., concurring in part and dissenting in part) (interpreting the opinions of Justices Thomas and Souter "to maintain that in all instances a violation of the Self-Incrimination Clause simply does not occur unless and until a statement is introduced at trial . . . ."). Rather, a violation occurs only if that compelled testimony is *used* against the witness in a criminal case.

The Sixth Circuit's analysis jumped the rails by focusing on non-criminal circumstances in which the privilege against self-incrimination may be asserted. App. 7a. But this § 1983 action does not hinge on whether the drivers may assert the Fifth Amendment *privilege* in an administrative proceeding; they may assert it whenever there is the potential for self-incrimination. Rather, it hinges on whether the regulators violated the Fifth Amendment *right*. They did not.

"[T]he Fifth Amendment guarantees that no one may be 'compelled in any criminal case to be a witness against himself'; it does not establish an unqualified 'right to remain silent.' " *Salinas*, 133 S. Ct. at 2182–83 (Alito, J., for a three-justice plurality). "The term 'privilege against self-incrimination' is not an entirely

accurate description of a person's constitutional protection against being 'compelled in any criminal case to be a witness against himself.'" *United States* v. *Hubbell*, 530 U.S. 27, 34 (2000). That is why in *Chavez*, the plurality distinguished a violation of the Fifth Amendment *right*, which occurs only in a criminal case, from the ability to assert the Fifth Amendment *privilege*, which extends to any type of proceeding. *Id*. at 770 (citing *Turley*, 414 U.S. at 77). That privilege, which the drivers rely on here, serves as a prophylactic rule to safeguard the core right against self-incrimination. *Chavez*, 538 U.S. at 770–71 (citing *Kastigar* v. *United States*, 406 U.S. 441, 453 (1972); *Manness* v. *Meyers*, 419 U.S. 449, 461–62 (1975)).

But as seven justices concluded in *Chavez*, judicially created prophylactic rules are not rights protected by the Constitution, and violating a prophylactic rule does not provide grounds for a § 1983 action. *Chavez*, 538 U.S. at 772 (Thomas, J., joined by Rehnquist, C.J., O'Connor, J., and Scalia, J.) (holding that "Chavez's failure to read *Miranda* warnings to Martinez did not violate Martinez's constitutional rights and cannot be grounds for a § 1983 action"); *id*. at 780 (Scalia, J., concurring in part in the judgment) ("Section 1983 does not provide remedies for violations of judicially created prophylactic rules, such as the rule of *Miranda* . . . ."); *id*. at 789 (Kennedy, J., joined by Stevens and Ginsburg, JJ., concurring in part and dissenting in part) ("I agree with Justice Thomas that failure to give a *Miranda* warning does not, without more, establish a completed violation when the unwarned interrogation ensues.").

The fact that the drivers did not make any statements, but rather remained silent, is not a reason, as the Sixth Circuit would have it, to find a Fifth Amendment violation. App. 11a (arguing that " '*Chavez* only applies where a party actually makes self-incriminating statements' " (quoting *Aguilera*, 510 F.3d at 1179 (Kozinski, J., dissenting)). Because the drivers have never even been charged with a crime, neither statements nor their silence have been used as testimony against them. And the Sixth Circuit's position especially fails here, where the drivers' refusal to answer related to duties exercised under a governmental license. See *Cunningham*, 431 U.S. at 806 ("Public employees may constitutionally be discharged *for refusing to answer* potentially incriminating questions concerning their official duties if they have not been required to surrender their constitutional immunity" against later use of statements in criminal proceedings.) (emphasis added).

III. The fact that this appeal is interlocutory is not a vehicle problem.

The Sixth Circuit remanded to the district court for a determination on the second qualified-immunity prong: "Whether these rights [against self-incrimination] were clearly established at the time remains a question," so "[w]e remand the case for further proceedings." App. 6a. This fact might suggest that the regulators should wait for a final judgment before seeking review. But this Court has recognized that a denial of qualified immunity is immediately appealable because it is "an *immunity from suit*" that "is effectively lost if a case is erroneously permitted to

go to trial." *Mitchell* v. *Forsyth*, 472 U.S. 511, 526 (1985).

Further, even if the regulators win on remand on the "clearly established" prong, they would still have a right to appeal the "constitutional violation" prong, because the Sixth Circuit's determination on that prong is what establishes the controlling law of the circuit. As this Court explained in *Camreta* v. *Greene*, 131 S. Ct. 2020 (2011), "qualified immunity cases" fall "in a special category when it comes to this Court's review of appeals brought by winners." *Id.* at 2031. Even if the regulators were to prevail on remand, the Sixth Circuit's ruling would continue to "have a significant future effect on the conduct of public officials—both the prevailing parties and their co-workers—and the policies of the government units to which they belong." *Id.* at 2030. Indeed, "they are rulings self-consciously designed to produce this effect, by establishing controlling law and preventing invocations of immunity in later cases." *Id.* "No mere dictum, a constitutional ruling preparatory to a grant of immunity creates law that governs the official's behavior." *Id.* at 2033.

In short, review is appropriate now both because of the decision's effect on these particular officials (without it, these officials will lose their immunity from suit) and because the ruling establishes a rule of law that binds government officials in the Sixth Circuit *now*. It forces on each official an "unenviable choice": "He must either acquiesce in a ruling he had no opportunity to contest in this Court, or 'defy the views of the lower court, adhere to practices that have been declared illegal, and thus invite new suits and

potential punitive damages.' " *Id.* at 2032. And waiting would also "undermine the very purpose served by the two-step process [of qualified-immunity review], 'which is to clarify constitutional rights without undue delay.' " *Id.*

CONCLUSION

For these reasons, the petitioners request that the Court grant the petition and reverse the Sixth Circuit.

Respectfully submitted,

Bill Schuette
Michigan Attorney General

Aaron D. Lindstrom
Solicitor General
Counsel of Record
P.O. Box 30212
Lansing, Michigan 48909
LindstromA@michigan.gov
(517) 373-1124

Melinda A. Leonard
Assistant Attorney General
Alcohol and Gambling
Enforcement Division

Attorneys for Petitioners

Dated: NOVEMBER 2015