DOCKET NO. ____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018

MICHAEL T. RIVERA,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

CAPITAL CASE

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QUESTIONS PRESENTED

Context

In *Hurst v. State*, 202 So. 3d 40, 57-58 (Fla. 2016), the Florida Supreme Court held:

> **[A]ll the findings necessary for imposition of a death sentence are "elements"** that must be found by a jury, and Florida law has long required that jury verdicts must be unanimous. Accordingly, we reiterate our holding that before the trial judge may consider imposing a sentence of death, the jury in a capital case must **unanimously and expressly find all the aggravating factors** that were proven beyond a reasonable doubt, **unanimously find that the aggravating factors are sufficient** to impose death, **unanimously find that the aggravating factors outweigh** the mitigating circumstances, and **unanimously recommend a sentence of death.** We equally emphasize that by so holding, we do not intend to diminish or impair the jury's right to recommend a sentence of life even if it finds aggravating factors were proven, were sufficient to impose death, and that they outweigh the mitigating circumstances.

(emphasis added).[1] Chapter 2017-1, Laws of Florida, was enacted on March 13, 2017. It revised § 921.141, F.S. by

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[1] At the time of the decision in *Hurst v. State*, Article X, section 9 of the Florida Constitution provided: "**Repeal of criminal statutes.-Repeal** or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." The Florida Supreme Court has explained that "the purpose of the 'Savings Clause' [wa]s to require the statute in effect at the time of the crime to govern the sentence an offender receives for the commission of that crime." *Horsley v. State*, 160 So. 3d 393, 406 (Fla. 2015). The homicide at issue in *Hurst v. State* occurred on May 2, 1998. Thus, Florida's substantive law as of May 2, 1998, governed as to the elements of the criminal offenses with which Hurst was charged.

confirming and incorporating *Hurst v.* State and its construction of the statute and the elements necessary for the range of punishment to include death. *See Foster v. State*, 258 So. 3d 1248, 1251 (Fla. 2018) (discussing "section 921.141, Florida Statutes, which was revised to incorporate the *Hurst* requirements; and chapter 2017-1, Laws of Florida, which amended section 921.141 to require that a jury's recommendation of death be unanimous").

After it issued *Hurst v. State*, the Florida Supreme Court treated its construction of the statute and the facts required to be established before a death sentence was permissible to be a procedural matter. Accordingly, it ruled that its statutory construction announced in *Hurst v. State* was applicable to death sentences that were not final before June 24, 2002. The date of the criminal act for which a death sentence was imposed was not relevant in determining if *Hurst v. State* had rendered the death sentence invalid because the State had not established the statutorily required facts to the satisfaction of a unanimous jury.

The Unresolved Questions

1. Whether the Federal Due Process Clause requires a state to apply a new interpretation of a state criminal statute retroactively to cases on collateral review, and if

so, when?[2]

2. When a judicial decision provides a new interpretation of a controlling criminal statute to require additional facts or elements to be proven by the State beyond a reasonable doubt before a judge may consider imposing a death sentence, is it a ruling setting forth substantive law or one adopting a rule of procedure?

3. Whether Petitioner was denied his rights under the Due Process Clause or the Eighth Amendment when: (1) the Florida Supreme Court in his case refused to apply its recent construction of § 921.141, F.S., that before death was an available sentence, the State had to prove beyond a reasonable doubt, not just one aggravating circumstance, but also that the aggravating circumstances found were sufficient and that they outweighed the mitigating circumstances; and

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[2] This is the same question that this Court found worthy of certiorari review in *Fiore v. White*, 531 U.S. 225, 226 (2001) ("We granted certiorari in part to decide when, or whether, the Federal Due Process Clause requires a State to apply a new interpretation of a state criminal statute retroactively to cases on collateral review."). However, this question was not resolved in *Fiore* due to this Court's conclusion that there had not been a new interpretation of a criminal statute; rather, there had merely been a definitive decision of the criminal statute's plain meaning. *Id.* at 228 ("[T]he interpretation of § 6018.401(a) set out in *Scarpone* 'merely clarified' the statute and was the law of Pennsylvania—as properly interpreted—at the time of Fiore's conviction.").

(2) the Florida Supreme Court applied the recent construction of § 921.141 in homicide prosecutions where the homicides at issue were committed as many as four years before the one in Petitioner's case.

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CAPITAL CASE

Petitioner, **MICHAEL T. RIVERA,** is a condemned prisoner in the State of Florida. Petitioner respectfully urges that this Honorable Court issue a writ of certiorari to review the decision of the Florida Supreme Court issued on December 20, 2018.

CITATION TO OPINION BELOW

The Florida Supreme Court's opinion is reported as *Rivera v. State*, 260 So. 3d 920 (Fla. 2018). The opinion is attached to this Petition as "Attachment A."

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction to grant the Petition for Writ of Certiorari to the Florida Supreme Court on the basis of 28 U.S.C. § 1257. The Florida Supreme Court entered its opinion on December 20, 2018.

Mr. Rivera filed an application for an extension of time in which to file this petition for a writ of certiorari. On March 14, 2019, Justice Thomas granted the application and extended the time for filing this petition until Sunday, May 19, 2019. The order granting Mr. Rivera's application for an extension of time is attached as "Attachment B."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the Constitution of the United States provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

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

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On August 6, 1986, Mr. Rivera was charged by indictment with the first-degree murder of Staci Jazvac (R. 2164). Assistant State Attorney Kelly Hancock, the prosecutor assigned to the case, signed the indictment. Mr. Rivera was found guilty on April 16, 1987, and on April 17, 1987, the jury recommended a sentence of death (R. 2296, 2307). On May 1, 1987, the trial court imposed a death sentence (R. 230813). On direct appeal, the Florida Supreme Court affirmed Mr. Rivera's conviction and sentence of death, while overturning the trial court's finding of the cold, calculated, and premeditated aggravating circumstance in his case. *Rivera v. State*, 561 So. 2d 536 (Fla. 1990). Mr. Rivera's conviction and sentence of death became final on September 20, 1990, when the time for filing a petition for a writ of certiorari with this Court expired. *Id.*

On October 31, 1991, Mr. Rivera filed a Rule 3.850 motion pursuant to an agreement between the Capital Collateral Representative (CCR) and former Governor Chiles in order to avoid a death warrant (1PC-R. 726). Thereafter, Mr. Rivera's collateral counsel sought public records. On November 2, 1994, having determined that Mr. Rivera had received the public records to which it believed he was entitled, the court allowed the 3.850 motion to be amended with any new claims and/or

factual allegations by January 1, 1995 (1PCR. 1279). An amended motion was served on December 30, 1994 (1PC-R. 1559). Besides amending factual allegations in a number of Mr. Rivera's claims, the amended motion also included a new claim, Claim XX, which was premised upon *Brady v. Maryland,* 373 U.S. 83 (1963), and *Napue v. Illinois,* 360 U.S. 264 (1959) (1PC-R. 1551). The circuit court ordered a limited evidentiary hearing on guilt phase issues and summarily denied the remaining claims (1PC-R. 1205-06). The evidentiary hearing was conducted in April and May of 1995, and the court subsequently denied all relief. On appeal, the Florida Supreme Court reversed the summary denial of the penalty phase ineffective assistance of counsel claim but affirmed the denial of relief on all other claims. *Rivera v. State,* 717 So. 2d 477 (Fla. 1998).

On remand, the circuit court held an evidentiary hearing on April 26-28, 2001. Following the hearing, the court denied relief, and Mr. Rivera again appealed. On September 11, 2003, the Florida Supreme Court affirmed the denial of Mr. Rivera's penalty phase ineffective assistance of counsel claim. *Rivera v. State,* 859 So. 2d 495 (Fla. 2003). While his penalty phase ineffective assistance of counsel claim was pending, the Florida Supreme Court relinquished jurisdiction to the circuit court so that it could consider Mr. Rivera's second Rule 3.850 motion and its amendment. In the ensuing proceedings, additional public

records were disclosed, and DNA testing of evidence was ordered to be conducted. The circuit court granted Mr. Rivera leave to file one new amendment of his Rule 3.850 motion containing all of the new information disclosed and/or discovered in the course of the proceedings following the Florida Supreme Court's remand. The amended motion was filed on January 20, 2004, and it included, among other new information, the results of the DNA testing (3PC-R. Supp. Record, 1-58). On May 10, 2005, the circuit court issued an order denying an evidentiary hearing and denying relief (3PC-R. Supp. Record, 171-80). Mr. Rivera appealed. The Florida Supreme Court again reversed and remanded for an evidentiary hearing on his claims for relief. *Rivera v. State*, 995 So. 2d 191 (Fla. 2008).

On remand, an evidentiary hearing was conducted. Thereafter, the circuit court denied all relief. On appeal, the Florida Supreme Court affirmed. *Rivera v. State*, 187 So. 3d 822 (Fla. 2015).

The successive Rule 3.851 motion that was the subject of the proceedings at issue in this Petition was initiated on December 5, 2016. The motion was amended on August 31, 2017 and presented five separate claims for relief.

On September 27, 2017, the circuit court entered an order denying 3.851 relief (5PC-R. 382). On the same date that the circuit court entered an order denying the 3.851 motion, it

entered an order directing the State to file a response to the 3.851 motion within 60 days of the date of the order. The order was dated and signed on September 27, 2017, the same date that the order denying 3.851 relief was filed (5PC-R. 381, 382). Hearing nothing further, Mr. Rivera filed a notice of appeal on October 27, 2017 (5PC-R. 406).

After the Florida Supreme Court received the record on appeal, it issued an order directing Mr. Rivera to show cause why the trial court's denial of the 3.851 motion should not be affirmed in light of the decision in *Hitchcock v. State*, 226 So. 3d 216 (Fla. 2017). On February 22, 2018, after Mr. Rivera filed a response to the show cause order and a reply to the State's reply, the Florida Supreme Court issued an order "direct[ing] further briefing on the non-*Hurst* issues in this case."

Mr. Rivera argued that identifying the elements of a criminal offense or the facts to be proven beyond a reasonable doubt before a particular sentence is authorized is a matter of Florida substantive law and a legislative function under the separation of powers provision in the Florida Constitution. *See* § 921.002(1) ("The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature."); *Smith v. State*, 537 So. 2d 982, 986 (Fla.

1989).

Mr. Rivera quoted from *Alleyne v. United States*, 570 U.S. 99, 111 (2013):

> When a finding of fact alters the legally prescribed punishment so as to aggravate it, **the fact necessarily forms a constituent part of a new offense and must be submitted to the jury.** It is no answer to say that the defendant could have received the same sentence with or without that fact. It is obvious, for example, that a defendant could not be convicted and sentenced for assault, if the jury only finds the facts for larceny, even if the punishments prescribed for each crime are identical. One reason is that each crime has different elements and a defendant can be convicted only if the jury has found each element of the crime of conviction.]

Alleyne, 570 U.S. at 114-15 (emphasis added).

Mr. Rivera relied upon the Due Process Clause and cited to *In re Winship*, 397 U.S. 358 (1970), which requires the State to prove the elements of capital murder "beyond a reasonable doubt.":

> *Winship* presupposes as an essential of the due process guaranteed by the Fourteenth Amendment that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof-defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.

Jackson v. Virginia, 443 U.S. 307, 316 (1979).

Mr. Rivera argued that the *Winship* holding that the Due Process Clause required the State to prove elements of a criminal offense beyond a reasonable doubt was applied in *Fiore v. White*, 531 U.S. 225, 226 (2001). There, this Court

in a federal habeas proceeding overturned a state court conviction on the basis of *Winship* and the Due Process Clause. Thus, Mr. Rivera's due process argument was premised upon the statutory construction in *Hurst v. State* and this Court's decisions in *In re Winship* and *Fiore v. White*. Specifically, Mr. Rivera asserted the significance of a change in Florida's substantive criminal law required a fundamentally different analysis than the analysis of the retroactivity of an announcement of a new constitutional rule that was procedural in nature.

The importance of this distinction was recognized in *Schriro v. Summerlin*, 542 U.S. 348 (2004):

> New *substantive* rules generally apply retroactively. This includes decisions that narrow the scope of a criminal statute by interpreting its terms, *see Bousley v. United States*, 523 U.S. 614, 620-621, 118 S. Ct. 1604, 140 L.Ed.2d 828 (1998), as well as constitutional determinations that place particular conduct or persons covered by the statute beyond the State's power to punish, *see Saffle v. Parks*, 494 U.S. 484, 494-495, 110 S. Ct. 1257, 108 L.Ed.2d 415 (1990); *Teague v. Lane*, 489 U.S. 288, 311, 109 S. Ct. 1060, 103 L.Ed.2d 334 (1989) (plurality opinion). Such rules apply retroactively because they "necessarily carry a significant risk that a defendant stands convicted of 'an act that the law does not make criminal'" or faces a punishment that the law cannot impose upon him.

Schriro, 542 U.S. at 451-52 (footnote omitted).

Mr. Rivera argued that identifying the facts or elements necessary to increase the authorized punishment is a matter

of substantive law. *Alleyne*, 570 U.S. at 113-14 ("Defining facts that increase a mandatory statutory minimum to be part of the substantive offense enables the defendant to predict the legally applicable penalty from the face of the indictment.").

In his reply brief, Mr. Rivera maintained that the State's arguments were refuted by *Bunkley v. Florida*, 538 U.S. 835 (2003). There, this Court found a violation of the Due Process Clause when Florida's retroactivity analysis set forth in *Witt v. State*, 387 So. 2d 922 (Fla. 1980), was used to deny a collateral litigant the benefit of a judicial decision changing Florida's substantive law. In *Bunkley v. Florida*, the Florida Supreme Court's *Witt* analysis in *Bunkley v. State*, 833 So. 2d 739 (Fla. 2002), was the issue. This Court concluded:

> It has long been established by this Court that "the **Due Process Clause . . . forbids a State to convict a person of a crime without proving the elements of that crime beyond a reasonable doubt.**" [Fiore], at 228-229,121 S. Ct. 712. Because Pennsylvania law-as interpreted by the later State Supreme Court decision-made clear that Fiore's conduct did not violate an element of the statute, his conviction did not satisfy the strictures of the Due Process Clause. Consequently, "retroactivity [was] not at issue." *Id.*, at 226, 121 S. Ct. 712.
>
> *Fiore* controls the result here. As Justice Pariente stated in dissent, "application of the due process principles of *Fiore*" may render a retroactivity analysis "unnecessary." 833 So. 2d, at 747. The question here is not just one of retroactivity.

> Rather, as *Fiore* holds, "retroactivity is not at issue" if the Florida Supreme Court's interpretation of the "common pocketknife" exception in *L.B.* is "a correct statement of the law when [Bunkley's] conviction became final." 531 U.S., at 226, 121 S. Ct. 712. **The proper question under *Fiore* is not whether the law has changed. Rather, *Fiore* requires that the Florida Supreme Court answer whether, in light of *L.B.*, Bunkley's pocketknife of 2 ½ to 3 inches fit within § 790.001(13)'s "common pocketknife" exception at the time his conviction became final.**

Bunkley v. Florida, 538 U.S. at 840 (emphasis added).

Mr. Rivera also cited *Card v. Jones*, 219 So. 3d 47 (Fla. 2017) in his reply brief. There Card's death sentence was vacated and his case remanded to give the State the opportunity to prove the elements of capital murder beyond a reasonable doubt to the satisfaction of a unanimous jury. Because *Hurst v. State* and Chapter 2017-1 would govern the new proceeding in a homicide prosecution in which the criminal offense was committed in 1981, Mr. Rivera argued that the same substantive criminal law must govern his case and require his death sentence to be vacated and a new trial be ordered to determine if the State could prove the elements of the highest degree of murder beyond a reasonable doubt to the satisfaction of a unanimous jury.

After briefing was complete, the Florida Supreme Court denied Petitioner's appeal on December 20, 2018. *Rivera v. State*, 260 So. 3d 920, 927 (Fla. 2018), stating:

> Rivera attempts to circumvent our decision on the retroactivity of *Hurst* by dubbing the death penalty statute as substantive, rather than procedural. In doing so, Rivera cites *Fiore* and *In re Winship* in support of his argument that *Hurst* relief should be applied retroactively because the substantive aggravators were present in the statute since its creation, thus warranting full retroactive application of *Hurst*. **These arguments, however, are "nothing more than arguments that *Hurst v. State* should be applied retroactively to [Rivera's] sentence, which became final prior to *Ring*. As such, these arguments were rejected when [this Court] decided *Asay*."** *Hitchcock*, 226 So. 3d at 217. Therefore, we conclude that this claim is meritless, based on our clear and repeated precedent on the retroactive application of *Hurst*.

(emphasis added).

However, Mr. Rivera's *Winship/Fiore/Bunkley* argument resting upon the Due Process Clause was neither made nor addressed in *Asay v. State*, 209 So. 3d 1248 (Fla. 2016). The Florida Supreme Court's implicit ruling was Mr. Rivera's claim lacked merit because the statutory construction set out in *Hurst v. State* as to what facts Florida law required to be found before a death sentence was authorized was an announcement of a procedural rule.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT CERTIORARI REVIEW TO ANSWER THE QUESTION THIS COURT FOUND WORTHY OF CERTIORARI REVIEW IN *FIORE V.* WHITE, BUT WHICH WAS ULTIMATELY NOT ANSWERED THERE. IT IS AN IMPORTANT QUESTION THAT HAS ESCAPED RESOLUTION. THIS COURT SHOULD ALSO ADDRESS THE RELATED QUESTION AS TO HOW TO DETERMINE WHETHER A JUDICIAL DECISION IS PROCEDURAL OR SUBSTANTIVE WHEN IT ADOPTS A NEW STATUTORY CONSTRUCTION OF A CRIMINAL STATUTE IN ORDER TO FIND IT CONSTITUTIONAL.

This Court has been inundated with petitions for writs of certiorari to the Florida Supreme Court in capital collateral cases due to the significant change in Florida law that resulted after this Court issued *Hurst v. Florida.* Most of the petitions that this Court has seen ask it to review the Florida Supreme Court's ruling on the retroactivity of *Hurst v. Florida* itself.

In all the hubbub, litigants have failed to sort through the seismic shift in Florida law that followed this Court's decision in *Hurst v. Florida.* Unlike what happened in Arizona after this Court issued its decision in *Ring v. Arizona,* the Florida Supreme Court adopted a new construction of Florida's capital sentencing statute. It held for the first time that the facts appearing in the statute that a judge was to find when imposing a death sentence were in essence elements of a higher degree of murder and would henceforth have to be proven by beyond a reasonable doubt to the satisfaction of a

unanimous jury. *Hurst v. State,* 202 So. 3d at 53 ("[B]efore a sentence of death may be considered by the trial court in Florida, the jury must find the existence of the aggravating factors proven beyond a reasonable doubt, that the aggravating factors are sufficient to impose death, and that the aggravating factors outweigh themitigating circumstances."). Because Florida law required elements of a criminal offense to be found proven by a unanimous jury, a unanimous jury verdict was required. *Id.* at 53-54 ("[J]ust as elements of a crime must be found unanimously by a Florida jury, all these findings necessary for the jury to essentially convict a defendant of capital murder—thus allowing imposition of the death penalty—are also elements that must be found unanimously by the jury.").

The Florida Supreme Court acknowledged it had not previously recognized these facts as elements. *Asay v. State,* 210 So. 3d 1, 15-16 (Fla. 2016) (noting it had not previously "treat[ed) the aggravators, the sufficiency of the aggravating circumstances, or the weighing of the aggravating circumstances against the mitigating circumstances as elements of the crime that needed to be found by a jury to the same extent as other elements of the crime"). Consequently, the elements of capital murder in Florida changed. Previously, the Florida Supreme Court had regarded

the existence of one aggravating factor as all that was necessary to authorize the imposition of death.

Because of the focus on *Hurst v. Florida* and the Florida Supreme Court's retroactivity ruling, an examination of the new interpretation of what facts have to be proven before the range of punishment includes death as a possible sentence is needed.

The Florida Supreme Court's reading of the statute in *Hurst v. State* was different from how the statute had been previously understood. It changed the facts or elements that were necessary for a death sentence to be authorized. The Florida Supreme Court had previously regarded the existence of one aggravating factor as all that was necessary to authorize the imposition of death. *State v. Steele,* 921 So. 2d 538, 545 (Fla. 2005), *abrogated by Hurst v. Florida,* 136 S. Ct. 616 (2016) ("Under the law, therefore, the jury may recommend a sentence of death so long as a majority concludes that at least one aggravating circumstance exists."); *see also Ault v.* State, 53 So. 3d 175, 206 (Fla. 2010) ("Under Florida law, in order to return an advisory sentence in favor of death a majority of the jury must find beyond a reasonable doubt the existence of at least one aggravating circumstance listed in the capital sentencing statute.").

Subsequently in *Card v.* Jones, 219 So. 3d 47, 48 (Fla.

2017), the Florida Supreme Court vacated a death sentence on the basis of *Hurst v. State* because all of the facts or elements necessary for the defendant to be subject to a death sentence had not been found proven beyond a reasonable doubt by a unanimous jury at a 1999 resentencing. The homicide at issue in *Card* occurred in June of 1981. Card's conviction of first-degree murder was final in 1984. *Card v. State*, 453 So. 2d 17, 18 (Fla. 1984).[3]

The homicide in Petitioner's case occurred on January 30, 1986. His conviction and death sentence became final on September 20, 1990, when the time for filing a petition for a writ of certiorari with this Court expired. *See Rivera v. State*, 561 So. 2d 536 (Fla. 1990). When Mr. Rivera sought collateral relief *on* the basis of *Hurst v. State* and *Card v. Jones*, the Florida Supreme Court found no merit to his argument because Petitioner was attempting "to circumvent our decision on the retroactivity of *Hurst* by dubbing the death penalty statute as substantive, rather than procedural."

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[3] In addition to *Card v. Jones*, the Florida Supreme Court applied the statutory construction announced in *Hurst v. State*, vacated death sentences, and ordered a new "penalty phase" in another case in which the homicides occurred before the homicide in Petitioner's case. In *Johnson v. State*, 205 So. 3d 1285, 1287 (Fla. 2016), three death sentences were vacated and a new "penalty phase" was ordered on the basis of *Hurst v.* State. The three homicides at issue occurred on January 9, 1981.

Rivera v. State, 260 So. 3d 920, 927 (Fla. 2018).

The overlooked reality is that the decision in *Hurst v. State* announced a new interpretation of state criminal statute. The question that this Court has already found worthy of certiorari review is once again presented here. *Fiore v. White*, 531 U.S. at 226 ("We granted certiorari in part to decide when, or whether, the Federal Due Process Clause requires a State to apply a new interpretation of a state criminal statute retroactively to cases on collateral **review.")**.

The validity of the Florida Supreme Court's reliance upon its retroactivity analysis from *Witt v. State* to deny collateral relief to those whose death sentences were final before June 24, 2002, can only be sustained if a judicial decision announcing a new interpretation of a state's criminal statute is not one substantive law, but one that is procedural in nature. This Court should grant certiorari review to consider and address what the Due Process Clause requires in deciding if the new judicial decision is one that is substantive in nature, and if so, when a state is required to apply the new substantive law to those seeking to collaterally benefit.

This Court has already found that the constitutional question Mr. Rivera presents was worthy of certiorari review

when the writ issued in *Fiore v. White*. However, this Court's resolution of *Fiore* left the question on which the writ issued unanswered. This Court should grant Mr. Rivera's petition and undertake certiorari review.

CONCLUSION

Based on the foregoing, Petitioner submits that certiorari review is warranted to review the decision of the Florida Supreme Court in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing petition has been furnished by electronic service and by United States Mail in accordance with this Court's rules to counsel of record for Respondent, Ilana Mitzner, Assistant Attorney General, Office of the Attorney General, 1515 North Flagler Drive, Suite 900, West Palm Beach, Florida 33401, on May 20, 2019.

Respectfully submitted,

FL BAR 0174114

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