DOCKET NO. 20-6769

IN THE SUPREME COURT OF THE UNITED STATES

JUAN DAVID RODRIGUEZ,

Petitioner,

vs.

MARK INCH, Secretary,

Florida Department of Corrections,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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Capital Case

QUESTION PRESENTED

Whether the Eleventh Circuit Court of Appeals correctly determined 1) that the Florida Supreme Court reasonably applied this Court's holding in *Atkins v. Virginia*, 536 U.S. 305 (2002), which held only that intellectually disabled individuals cannot be executed, not that states must "defer to scientific understanding in any specific way," and 2) that the Florida Supreme Court made reasonable factual determinations in light of the evidence before it in determining that Rodriguez is not intellectually disabled.

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The decision of the United States Court of Appeals, Eleventh Circuit (Pet. App. A) is reported at *Rodriguez v. Sec'y, Fla. Dep't of Corr.*, 818 Fed. Appx. 945 (11th Cir. 2020). The United States District Court for the Southern District of Florida order is unpublished, but provided at Pet. App. C.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on June 22, 2020. A motion for rehearing was denied on July 27, 2020. Rodriguez adduces that this Court's jurisdiction is based upon 28 U.S.C. § 1254(1). Respondent acknowledges that § 1254 sets out the scope of this Court's certiorari jurisdiction, but submits that this case is inappropriate for the exercise of this Court's discretionary jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eight Amendment to the United States Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Amend. VIII, U.S. Const.

The Fourteenth Amendment to the United States Constitution states in pertinent part: "[N]or shall any State 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." Amend. XIV, U.S. Const., § 1.

The United States Code 28 Section 2254(d),(e) states:

> **(d)** An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted

with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.
(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

Florida Statute Section 921.137(1) states:

As used in this section, the term "intellectually disabled" or "intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Agency for Persons with Disabilities shall adopt rules to specify the standardized intelligence tests as provided in this subsection.

STATEMENT OF THE CASE

Petitioner, Juan David Rodriguez, is a Florida prisoner under sentence of death after being convicted in the Circuit Court in and for Miami-Dade County, Florida, for robbing and murdering Abelardo Saladrigas. Rodriguez was charged by indictment with first-degree murder, armed robbery, conspiracy to commit a felony, attempted armed robbery, armed burglary with an assault, aggravated assault, and attempted first-degree murder. The charges stem from a two-day crime spree that were tried together. Rodriguez was found guilty and the jury recommended Rodriguez be sentenced to death for the murder of Mr. Saladrigas. *Rodriguez v. State*, 609 So. 2d 493, 495-97 (Fla. 1992), *cert. denied*, *Rodriguez v. Florida*, 510 U.S. 830 (1993). "The [trial] court followed [the jury] recommendation, finding three aggravating factors: 1) a prior conviction of violent felony; 2) the murder was committed during a robbery and for financial gain; and 3) the murder was especially heinous, atrocious, or cruel [(HAC)]." *Rodriguez*, 609 So. 2d at 497. The trial court found one nonstatutory mitigating factor: Rodriguez had a good family life and marriage. *Id.*

On direct appeal, the Florida Supreme Court affirmed the convictions and sentences. The court found

> [a]fter the shooting, Rodriguez bragged that when Mr. Saladrigas would not turn over his belongings, Rodriguez shot the man twice, first in the knee and then in the stomach. As his victim ran, pleading for his life, Rodriguez shot him again because Saladrigas still had not given up his watch. After being wounded, Mr. Saladrigas ran over 200 feet with his attacker in pursuit only to be shot a fourth time behind a car where he sought cover. These facts set this murder apart from the norm of capital felonies and support the conclusion that Rodriguez enjoyed or was utterly indifferent to the suffering of his victim.

Rodriguez, 609 So. 2d at 501.

In September 1994, Rodriguez filed his first motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. Rodriguez raised multiple claims including allegations that counsel failed to provide him with an adequate mental health evaluation pursuant to *Ake v. Oklahoma*, 470 U.S. 68 (1985),[1] and that counsel was ineffective for failing to adequately investigate mitigation. *Rodriguez v. State*, 919 So. 2d 1252, 1260 (Fla. 2005), *as revised on denial of reh'g* (Jan. 19, 2006). The postconviction court granted an evidentiary hearing on claims regarding the adequacy of Rodriguez's mental health evaluation and counsel's investigation of possible mental health mitigating evidence. *Id.* at 1261.

Initial 3.850 Motion Evidentiary Hearing

At the initial postconviction evidentiary hearing, the court heard from Dr. Haber, the court appointed psychologist, who evaluated Rodriguez for competency pretrial. Dr. Haber interviewed Rodriguez on two separate occasions. His report included information about Rodriguez's childhood in Cuba; his immigration to the United States as part of the Mariel Boatlift; his injury after falling off a horse; imprisonment for four years in Washington, D.C., for cocaine trafficking; his desertion from the Merchant Marines that resulted in his incarceration in a Cuban prison; temporary confinement in a Cuban psychiatric hospital; and two suicide attempts. Dr. Haber also noted that Rodriguez was able to explain his rejection of the

[1] Requiring that when a defendant has made a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial, the Constitution requires that a State provide access to a psychiatrist's assistance on this issue if the defendant cannot otherwise afford one.

plea offer, deny his participation in the murder, and appreciate the seriousness of the charges against him. *Rodriguez*, 919 So. 2d at 1252, 1265.

Dr. Haber administered several tests to Rodriguez that indicated possible visual-motor difficulties. Visual-motor difficulties are sometimes related to organic brain damage syndrome. Dr. Haber suggested a complete neurological examination to determine if Rodriguez, in fact, suffered from organic brain damage. Dr. Noble David, a professor and acting chairman of the Department of Neurology at the University of Miami School of Medicine, was retained by defense counsel to conduct a complete neurological evaluation of Rodriguez. Dr. David's reported examination revealed "no evidence of significant neurologic or brain disease." *Rodriguez*, 919 So. 2d at 1265.

During a pretrial deposition, Dr. Haber admitted he never tested Rodriguez's IQ, but "[a]ccording to Dr. Haber, the activities in which Rodriguez engaged (e.g., running a drug trafficking operation, balancing a bank account of $7000 at the time he was arrested, and understanding the mechanics of financing a new car) belied a finding of [intellectual disability]." *Rodriguez*, 919 So. 2d at 1265.

Dr. Ruth Latterner, a psychologist and mental health expert, who examined Rodriguez for the postconviction proceedings testified at the evidentiary hearing. She opined that Rodriguez was likely born intellectually disabled, had a long-standing organic impairment, and had difficulty appreciating the criminality of his actions with an impaired ability to conform his behavior to the requirements of the law. Dr. Latterner administered Rodriguez a series of cognitive exams and concluded

Rodriguez had a full-scale IQ of 64 with a mental age of seven years old. *Rodriguez*, 919 So. 2d at 1252, 1265-66.

Rodriguez's behavior throughout the trial proceedings indicated his awareness and understanding of what was going on in the courtroom. Rodriguez made comments about evidence presented by the prosecutors and statements made. In denying postconviction relief on Rodriguez's claim on an inadequate mental health evaluation, the postconviction court stated: "No doubt the defendant has a low IQ, but a low IQ does not mean [intellectual disability]. For a valid diagnosis of [intellectual disability] under the DSM IV[2] there must also be deficits in the defendant's adaptive functioning. All the evidence points to no deficits." *Rodriguez*, 919 So. 2d at 1266. The postconviction court found Dr. Latterner's testimony lacking credibility because her diagnosis was incompatible with the facts of the crime and inconsistent with the DSM IV. Dr. Haber's testimony, on the other hand, was supported by the evidence. *Id.* The court denied Rodriguez relief on his 3.850 postconviction claims and Rodriguez appealed the denial of his postconviction motion to the Florida Supreme Court.

During the pendency of Rodriguez's appeal, he moved the court to relinquish jurisdiction so he could file a motion for the determination of an intellectual disability, under Florida Rules of Criminal Procedure 3.203. At the time, remand to allow the filing of a motion to determine intellectual disability was the proper procedure because Rodriguez's appeal was pending on October 1, 2004, when Fla. R. Crim. P.

[2] The DSM IV is the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders.

3.203 became effective.[3] The Florida Supreme Court denied Rodriguez's motion to relinquish without prejudice to Rodriguez's right to file a 3.203 motion upon disposition of his postconviction appeal. *Rodriguez*, 919 So. 2d at 1252, 1262. The state supreme court ultimately affirmed the denial of postconviction relief.

In 2006, Rodriguez filed a motion pursuant to Florida Rule of Criminal Procedure 3.203 alleging he is intellectually disabled and entitled to relief under *Atkins v. Virginia*, 536 U.S. 304 (2002). On May 1, 2006, the Miami-Dade Circuit Court summarily denied Rodriguez relief. On appeal, the Florida Supreme Court remanded for an evidentiary hearing on Rodriguez's intellectual disability claim. *Rodriguez v. State*, 968 So. 2d 557 (Fla. 2007) (table).

Intellectual Disability Evidentiary Hearing

Pursuant to Florida law, a capital defendant claiming intellectual disability must prove the following elements by clear and convincing evidence: 1) significantly subaverage general intellectual functioning; 2) deficits in adaptive behavior; and 3) condition must have manifested before age eighteen. § 921.137, Fla. Stat. In an effort to establish he is intellectually disabled, Rodriguez called Ms. Sagle, a psychological specialist with the Department of Corrections, as a witness at the evidentiary hearing. Ms. Sagle conducted seven ninety-day assessments of Rodriguez between January 2006 and November 2007. Ms. Sagle stated Rodriguez was able to

[3] The then-existing rule specified the time for filing a motion for determination of intellectual disability as a bar to execution when the death-sentenced prisoner has filed a motion for postconviction relief that has been ruled on by the trial court and an appeal was pending on or before the effective date of the rule. In those circumstances, the prisoner could file a motion to relinquish jurisdiction for determination of intellectual disability. Fla. R. Crim. P. 3.203(d)(4)(E) (2004). *Rodriguez*, 919 So. 2d at 1252, 1262 n.4.

communicate with her in English and spoke frequently about which family members were writing to him and which were not. Rodriguez exposed himself to Ms. Sagle at their last ninety-day assessment and received a disciplinary report. On cross-examination, Ms. Sagle testified that during the assessments Rodriguez was neatly dressed, with good hygiene, coherent, goal oriented, not confused, and able to converse in English. (Pet. App. pgs. 139a-140a).

Officer John Flaherty, a correctional officer who came in daily contact with Rodriguez for five years, testified that Rodriguez was able to complete canteen forms in English, conversed in English, and asked for things when he needed them. (Pet. App. pgs. 137a, 143a-144a).

Rodriguez also presented the testimony of Dr. Ricardo Weinstein, a psychologist who determined Rodriguez is intellectually disabled based on his assessment of Rodriguez's current adaptive behaviors and a series of mental tests. *Rodriguez*, 818 Fed. Appx. at 945, 954. Dr. Weinstein administered the Mexican version of the Weschler Adult Intelligence Scale-Third Edition (WAIS), the Spanish version of the Woodcock Test, the Comprehensive Test of Nonverbal Intelligence (CTONI), Test of Memory Malingering (TOMM), the Rey 15-Item Test, the Rey Complex Figure Test, the Wisconsin Card Sort Test, and the Color Trails Test.[4] (Pet.

[4] The WAIS is a general test of intelligence developed to assess cognitive ability of adults. The Woodcock Test evaluates strengths and weaknesses in measures of achievement, oral language, and cognitive abilities. The CTONI is a comprehensive test of nonverbal intelligence. The TOMM is based on research in neuropsychology and cognitive psychology – it is a 50-item visual recognition test designed to help distinguish malingering from genuine memory impairments. The Rey 15-Item Test is frequently used to detect malingering. The Rey Complex Figure Test measures visuospatial ability and visuospatial memory. The Wisconsin Card Sort Test assesses perseveration and abstract reasoning. The Color Trails Test measures sustained attention and sequencing.

App. 137a pg. 149a). Dr. Weinstein testified that he used the Mexican WAIS because he found it to be well translated. Dr. Weinstein explained that the scores obtained from an individual's IQ tests are normed, which means they are compared against the scores of a representative group. Even though Dr. Weinstein chose to administer Rodriguez the Mexican WAIS, he did not use the norms associated with it because he believed that the standard error of measure in the scores was too broad. Dr. Weinstein admitted that he ignored the testing instructions and scored Rodriguez's WAIS using the norms of the United States. (Pet. App. pgs. 148a-154a).

Dr. Weinstein testified that he did not conduct any objective tests to determine whether Rodriguez's intellectual disability manifested before age eighteen because the deficits currently existed. (Pet. App. pgs. 148a-153a). Dr. Weinstein admitted that he was aware that Rodriguez had purchased a home, several luxury cars, expensive jewelry, and traveled internationally while in the Cuban Merchant Marines. Dr. Weinstein insisted that an eleven-year-old child could make his own travel arrangements, engage in business dealings, and purchase homes and cars. (Pet. App. pg. 156a). Dr. Weinstein also admitted that he did not pay attention to Rodriguez's mental health records because he considered them irrelevant. (Pet. App. pgs. 154a-155a).

The State called Dr. Enrique Suarez, a psychologist, who concluded that Rodriguez is not intellectually disabled. In formulating his opinion, Dr. Suarez reviewed the reports of other experts, the depositions of witnesses, all of Rodriguez's incarceration records, testimony from prior proceedings, police reports, and

Rodriguez's own statements. (Pet. App. pgs. 137a, 168a). "Dr. Suarez testified that Rodriguez's test scores were consistent with malingering and were questionable for methodological reasons, that Rodriguez's life activities were inconsistent with an intellectual disability, that he had no deficits in adaptive behavior, and that the evidence of manifestation before the age of 18 was thin." *Rodriguez*, 818 Fed. Appx. at 954.

Dr. Suarez noted that Rodriguez's prison records indicated that Rodriguez played pool and baseball in his leisure time and was known to use false identities. The ability to use false identifications reflected abstract reasoning and problem-solving abilities inconsistent with intellectual disability. Rodriguez told Dr. Suarez that he always supported his family, was able to purchase a home, and purchased several luxury cars for his family. This information was corroborated by the depositions of witnesses including Rodriguez's wife. (Pet. App. pg. 171a).

Dr. Suarez testified that Dr. Weinstein's use of the Mexican WAIS was questionable because of cultural differences between Mexico and Cuba. Additionally, Dr. Suarez explained that norming the Mexican WAIS to United States standards is to likely underestimate the IQ of a subject without a high school education. *Rodriguez*, 818 Fed. Appx. at 945, 961.

Dr. Suarez administered the WAIS normed in Spain because, among other considerations, the cultural background of the population of Spain and Cuba are closer than the cultural population of Cuba and Mexico. (Pet. App. pg. 172a). According to the test results, Rodriguez had a verbal IQ of 70, a performance IQ of

58, and a full-scale IQ score of 60. However, Dr. Suarez explained that the test scores were not reliable because Rodriguez did no better on extremely easy questions on the Validity Indicator Profile than on extremely hard ones, suggesting that Rodriguez was answering at random and was malingering. *Rodriguez*, 818 Fed. Appx. at 945, 961. Dr. Suarez also noted Rodriguez's life activities were incongruent with an intellectual disability.[5] A finding of adaptive behavior deficits was undermined by aspects of Rodriguez's life history, and there was no solid evidence that there was a manifestation before age eighteen. *Id.* at 945, 954, 961.

At the conclusion of the evidentiary hearing, the state circuit court concluded that Rodriguez did not meet the criteria for intellectual disability under Florida Rules of Criminal Procedure 3.203 and denied Rodriguez relief. Rodriguez then appealed the denial of relief to the Florida Supreme Court. The court affirmed the denial of Rodriguez's postconviction motion to determine intellectual disability.

Federal Petition for Writ of Habeas Corpus

Rodriguez filed a petition for writ of habeas corpus in the United States District Court for the Southern District of Florida reasserting several of the claims he made in state court. The only issue relevant to the present case is his assertion that the Florida court's conclusion that Rodriguez is not intellectually disabled was contrary to an unreasonable application of clearly established federal law and was an

[5] Petitioner admitted that he began traveling in the Cuban Merchant Marines as a teenager as an assistant to the engineer, ran a wrecker business, managed a restaurant, and worked as an electrician, and that he purchased a home, cars, and jewelry. Petitioner's federal prison records indicated that Petitioner had worked as a furniture refinisher, landscaper, unit orderly, and food service worker. Petitioner had been involved in cocaine trafficking to Georgia, Washington, D.C., Virginia, and Michigan by making telephone contacts with buyers and negotiating deals.

unreasonable determination of the facts in light of the evidence presented. *Rodriguez* (S.D. Fla. Jan. 4, 2016).

The district court concluded that the Florida Supreme Court's denial of Rodriguez's *Atkins* claim did not involve an unreasonable application of clearly established law or an unreasonable determination of the facts in light of the evidence presented, and his petition was denied. The district court found that the Florida Supreme Court reviewed the testimony from the Rule 3.203 hearing and determined, not only did Rodriguez not establish a reliable IQ of 70 or below, but it also found that Rodriguez failed to show that he exhibits adaptive deficits and determined the court's legal analysis was not unreasonable. With respect to the "unreasonable application" prong of § 2254(d)(1), which applies when a state court identifies the correct legal principle but purportedly applies it incorrectly to the facts before it, a federal habeas court "should ask whether the state court's application of clearly established federal law was objectively unreasonable." *Rodriguez* (S.D. Jan. 4, 2016). The court also noted that when making a determination of whether the court made an unreasonable application of federal law, "[a] state court's determination of the facts, however, is entitled to deference under §2254(e)(1)." *Id.*

Moreover, the United States District Court for the Southern District of Florida noted that in order to grant Rodriguez federal habeas relief, he had to show that the State's findings of fact resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence Rodriguez presented in the state court proceeding. The determination as to whether a person is intellectually disabled

is a finding of fact and Rodriguez must rebut, by clear and convincing evidence, the presumption of correctness given to the state court's factual finding. *Rodriguez* (S.D. Jan. 4, 2016). The court commented on the multitude of evidence which showed Rodriguez's adaptive behavior both before and after his incarceration.

The district court found there was ample evidence to support the Florida Supreme Court's finding that Rodriguez had not met his burden of establishing adaptive deficits. The Florida Supreme Court's determination is supported by the record and was not an unreasonable decision and Rodriguez has not provided by clear and convincing evidence to rebut the presumption this Court is to apply to the factual findings of the state court. The district court denied habeas relief.

United States Court of Appeals, Eleventh Circuit

The Eleventh Circuit Court of Appeals granted a certificate of appealability on Rodriguez's claim that the Supreme Court of Florida rejected his *Atkins* claim based on an unreasonable determination of the facts. The Eleventh Circuit Court of Appeals expanded the certificate of appealability to include Rodriguez's argument that the Supreme Court of Florida's rejection of his *Atkins* claim was an unreasonable application of clearly established law. *Rodriguez*, 818 Fed. Appx. at 945, 955. Rodriguez argued that the Florida Supreme Court's decision conflicted with the basic principle of *Atkins*, which he alleged required deference to scientific understandings of intellectual disability. In making his case, Rodriguez relied heavily on *Hall v. Florida*, 572 U.S. 701 (2014), *Brumfield v. Cain*, 576 U.S. 305 (2015), and *Moore v. Texas*, 137 S. Ct. 1039 (2017).

The Eleventh Circuit found that Rodriguez misapprehended the holding of *Atkins* because he referred to a footnote in *Atkins* that stated the statutory definition of intellectual disability generally conformed to clinical definitions. The Eleventh Circuit noted that "footnotes did not clearly establish that states had to defer to scientific understandings." *Rodriguez*, 818 Fed. Appx. at 945, 960-61. The court also found that decisions that postdated *Atkins*, such as *Hall* and *Moore*, are not clearly established law for purposes of habeas review. *Id.*

The Eleventh Circuit determined that Rodriguez's

> "argument is exactly the kind of argument foreclosed by the Antiterrorism and Effective Death Penalty Act, which limits habeas relief based on legal error to violations of '*clearly established*' Federal law, as determined by the Supreme Court." 28 U.S.C. § 2254(d)(1) (emphasis added). ***Hall*, *Brumfield*, and *Moore* had yet to be decided** when the Supreme Court of Florida affirmed the finding that Rodriguez is not intellectually disabled. So none provided legal principles that were "clearly established" when the Supreme Court of Florida rendered its decision.

Rodriguez, 818 Fed. Appx. at 961 (emphasis added), citing *Shoop v. Hill*, 139 S. Ct. 504, 507 (2019); *Lockyer v. Andrade*, 538 U.S. 63, 71-72, 123 S. Ct. 1166 (2003); *Williams v. Taylor*, 529 U.S. 362, 412, 120 S. Ct. 1495 (2000).

Rodriguez now seeks certiorari review of the United States Court of Appeals, Eleventh Circuit's decision.

REASONS FOR DENYING THE WRIT

THE ELEVENTH CIRCUIT OF APPEALS PROPERLY AFFIRMED THE DENIAL OF HABEAS RELIEF BECAUSE THE FLORIDA SUPREME COURT'S DECISION DOES NOT CONFLICT WITH THIS COURT'S DECISION IN *ATKINS V. VIRGINIA* AND THE PETITION PRESENTS NO IMPORTANT OR UNSETTLED QUESTION OF CONSTITUTIONAL LAW THAT WOULD MERIT CERTIORARI REVIEW.

Rodriguez seeks certiorari review of the decision of the Eleventh Circuit Court of Appeals, which analyzed his intellectual disability claim under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), and determined that the state courts' denial of relief was not "contrary to" or an "unreasonable application of" this Court's precedent. 28 U.S.C. § 2254(d)(1). The Eleventh Circuit properly analyzed this claim within the framework of the AEDPA and its decision does not conflict with any of this Court's precedent. The fact specific decision of the court of appeals does not present any important or unsettled question of law that would merit certiorari review. Moreover, as the several reviewing courts have found, the outcome of such a fact intensive review is not fairly debatable. Rodriguez is not intellectually disabled.

The Antiterrorism and Effective Death Penalty Act of 1996

As previously noted, Rodriguez brings this petition from the Eleventh Circuit Court's decision affirming the denial of federal habeas relief; therefore, this Court's inquiry is limited by the AEDPA. 28 U.S.C. § 2254(d)(1). Pursuant to the AEDPA, a federal court may not grant a state prisoner's habeas application unless the relevant state court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or "[the state court's determination of facts was] unreasonable . . . in light of the evidence." *See Yarborough v. Gentry*, 124 S. Ct. 1 (2003) (noting that the focus is on the state court's application of governing federal law). Clearly established law "refers to the holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decision." *Yarborough v. Alvarado*, 541 U.S. 652, 653, 655

(2004) (citation omitted). "[Section] 2254(d)(1) requires federal courts to 'focu[s] on what a state court knew and did,' and to measure state-court decisions 'against this Court's precedents as of "the time the state court renders its decision."'" *Greene v. Fisher*, 565 U.S. 34, 38 (2011) (citation and emphasis omitted).

Additionally, "[i]n a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C.A. § 2254(e)(1). The Eleventh Circuit properly reviewed and resolved this claim under the deferential AEDPA standards.

This Court's holding in *Atkins* is the clearly established federal law applicable to Rodriguez's claim.

Rodriguez asserts in his petition for writ to this Court that the decisions in *Hall*, *Brumfield*, and *Moore* are extensions of this Court's holding in *Atkins*. Rodriguez contends that the "underpinnings" of *Atkins* require courts to accept or defer to prevailing clinical and medical standards regarding intellectual disability. According to Rodriguez, this mandated deference to prevailing clinical and medical standards was this Court's clearly established law at the time the Supreme Court of Florida affirmed the denial of Rodriguez's claim of intellectual disability.

Rodriguez's argument fails on a number of counts. First, *Atkins* held that the Eighth Amendment categorically prohibits executing intellectually disabled defendants, but this Court declined to define how courts must determine intellectual

disability. Second, decisions that post-date the Supreme Court of Florida's determination to affirm the denial of his intellectual disability claim cannot be considered clearly established law for purpose of federal habeas review. Finally, the state court did not disregard clinical and medical standards in determining that Rodriguez is not intellectually disabled.

The clear holding of *Atkins* is that the Eighth Amendment categorically prohibits executing intellectually disabled defendants. The Court specifically declined to define who, among those who claim to be intellectually disabled, are members of the class of people impacted by its decision. *Atkins*, 122 S. Ct. at 2242, 2243. The Court noted that the then existing statutory definitions of intellectual disability "generally conform with the clinical definition." That is, 1) significantly subaverage intelligence; 2) deficits in adaptive functioning; and 3) onset during the developmental period. *Id.* Indeed, Florida's statutory definition reads, in part: "As used in this section, the term 'intellectually disabled' or 'intellectual disability' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18." § 921.137(1), Fla. Stat. Even so, the Court never adopted a definition of intellectual disability nor mandated deference to any specific clinical standard or understanding of intellectual disability for purposes of deciding an Eighth Amendment claim. Instead, this Court expressly stated that the task of developing appropriate ways to enforce the constitutional restrictions of execution sentences will be left to the states. *Atkins*, 536 U.S. at 317.

Recently, in *Shoop v. Hill*, 139 S. Ct. at 508, this Court rejected an argument that *Moore*, a decision rendered after *Atkins*, is merely an extension of *Atkins* and should be considered the clearly established law for purposes of habeas review. This Court noted that,

> [a]lthough the Court of Appeals asserted that the holding in *Moore* was "merely an application of what was clearly established by *Atkins*," the court did not explain how the rule it applied can be teased out of the *Atkins* Court's brief comments about the meaning of what it termed "mental retardation." While *Atkins* noted that standard definitions of mental retardation included as a necessary element "significant limitations in adaptive skills ... that became manifest before age 18," *Atkins* did not definitively resolve how that element was to be evaluated but instead left its application in the first instance to the States.

Id. (citations omitted). This Court vacated the Ohio court's decision because it was based on the holdings in *Moore* and this Court acknowledged that "[o]rdinarily, Supreme Court decisions that post-date a state court's determination cannot be 'clearly established law' for the purposes of [the federal habeas statute]." *Id.* at 506 (citation omitted).

Likewise, Rodriguez's argument that *Hall*, *Moore*, and *Brumfield* are mere application of the stated rule in *Atkins* finds no support in the actual holding in *Atkins*. Hence, the Eleventh Circuit correctly determined "[t]he Supreme Court of Florida did not unreasonably apply *Atkins*, which held only that the intellectually disabled cannot constitutionally be executed, 536 U.S. at 307, 321, 122 S. Ct. 2242, not that states must 'defer to scientific understandings' in any specific way." *Rodriguez*, 818 Fed. Appx. at 960.

Furthermore, the state court did not disregard or ignore the clinical understanding of intellectual disability. In *Hall* this Court specifically recognized that "[t]he science of psychiatry . . . *informs but does not control* ultimate legal determinations. . . ." *Hall*, 527 U.S. at 721 (emphasis added), quoting *Kansas v. Crane*, 534 U.S. 407 (2002). This Court further stated, "[t]he legal determination of intellectual disability is distinct from a medical diagnosis. . . ." *Hall*, 572 U.S. at 721. Nonetheless, this Court observed that Florida completely disregarded established medical practice by refusing to consider the standard error of measurement applicable to an IQ score for determining intellectual disability. *Id.* at 714 ("Florida law used the test score as a fixed number, thus barring further consideration of other evidence bearing on the question of intellectual disability. For professionals to diagnose—and for the law then to determine—whether an intellectual disability exists once the SEM applies and the individual's IQ score is 75 or below the inquiry would consider factors indicating whether the person had deficits in adaptive functioning."). Similarly, in *Moore* this Court addressed reliance on medical standards no longer employed by the medical community and the Texas court's overemphasis on *Moore*'s adaptive strengths. 137 S. Ct. at 1048.

Here, the state circuit court allowed Rodriguez to present evidence regarding all three prongs of Florida's intellectual disability statute before determining that he was not intellectually disabled pursuant to Florida Statute Section 921.137(1). The state court considered the medical and clinical authorities and opinions that were presented by both parties before determining that Rodriguez was not intellectually

disabled. Rodriguez's complaint, at its core, is that the state court did not accept and defer to *his* experts' assessment of and conclusions regarding the scientific understanding of intellectual disability.

The state court's determinations of fact are not unreasonable in light of the evidence presented and are entitled to deference by the federal courts.

In addition to determining that the state court did not unreasonably apply this Court's clearly established precedent, the Eleventh Circuit also found that Rodriguez did not rebut the state court's factual determinations by clear and convincing evidence.

Rodriguez asserts that the trial court's decision is in contravention to *Atkins* because the trial court made a credibility assessment between experts with conflicting opinions. This Court advised in *Brumfield* that a factual determination cannot be seen as unreasonable merely because a different conclusion could be reached. "Instead, § 2254(d)(2) requires that we accord the state trial court substantial deference. If "'[r]easonable minds reviewing the record might disagree" about the finding in question, "on habeas review that does not suffice to supersede the trial court's ... determination."'" *Brumfield*, 576 U.S. at 313-14 (quoting *Rice v. Collins*, 546 U.S. 333, 341-42, 126 S. Ct. 969, 163 L. Ed. 2d 824 (2006)).

The Florida Supreme Court held that the "postconviction court did not make credibility findings that conflicted with medical standards, [and the] postconviction court sufficiently evaluated manifestation before age eighteen in considering intellectual disability claim." *Rodriguez v. State*, 219 So. 3d 751 (Fla. 2017). The court

also noted Rodriguez contends that credibility findings made by the circuit court contradict medical standards and the circuit court wrongfully discarded the opinions of medical experts in evaluating Rodriguez's intellectual disability. *Id.* at 756. Faced with conflicting expert testimony, the state court credited Dr. Suarez's opinion instead of Dr. Weinstein's and determined that Rodriguez was not intellectually disabled. *Rodriguez*, 818 Fed. Appx. at 945, 962.

The United States Court for the Southern District of Florida found that Rodriguez had the opportunity to present evidence of his alleged intellectual disability during the evidentiary hearing in state court. "While Rodriguez disagrees with the state court's factual findings (Claim IV), the application of the clearly established federal law to the facts is not unreasonable." *Rodriguez* (S.D. Fla. Jan. 4, 2016). The court determined that in order for Rodriguez to be granted federal habeas relief, he must show that the findings of fact resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding and Rodriguez must rebut, by clear and convincing evidence, the presumption of correctness given to the state court's factual findings. *See* 28 U.S.C. § 2254(d)(2) & (e)(1). *Id.* The court found that Rodriguez did not meet the burden and denied relief.

Rodriguez had two evidentiary hearings related to his claim of being intellectually disabled. Rodriguez was given the opportunity to present evidence to the court in considering his claim. The record is clear that there are conflicting opinions among doctors of whether Rodriguez is intellectually disabled, although

most found that he was not. The court considered not only his scores on IQ tests but also looked extensively at Rodriguez's adaptive functioning. The court listened to testimony that examined Rodriguez's reported childhood history; his time in the merchant marines; his immigration to the United States; his work history; and testimony of doctors who examined Rodriguez, his prison records and reviewed deposition testimony. Rodriguez did not provide any clear and convincing evidence that his intellectual disability manifested before the age of eighteen.

The decision of the Eleventh Circuit Court of Appeals does not merit certiorari review because it does not conflict with federal or state appellate courts and does not present important, unsettled questions of federal law.

The primary purpose for certiorari jurisdiction is to resolve conflicts among the United States courts of appeals and state courts "concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991). There is no conflict between the Eleventh Circuit and this Court or any other circuit court regarding the denial of relief, and Rodriguez has not established any reason for this Court to grant review of this fact-specific claim. *See Bartlett v. Stephenson*, 535 U.S. 1301, 1304 (2002) (issues with few, if any, ramifications beyond the presenting case do not satisfy any of the criteria for exercise of certiorari jurisdiction); *United States v. Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts.").

This Court should deny certiorari review because Rodriguez has not shown that the Eleventh Circuit's decisions conflict with this Court's or another court's

decisions applying the AEDPA to intellectual disability claims. To the contrary, as previously explained, the decision of the Eleventh Circuit Court of Appeals is entirely consistent with this Court's precedent in applying the AEDPA to intellectual disability claims. Therefore, Rodriguez has not given this Court any compelling reason to grant certiorari review.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Honorable Court deny the petition for writ of certiorari.

Respectfully submitted,

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