No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH MARTIN DANKS,

Petitioner,

vs.

RONALD BROOMFIELD,
Warden of California State Prison at San Quentin,

Respondent.

On Petition for Writ of Certiorari to
the Court of Appeal for the State of California

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED

1. Does the Eighth Amendment preclude the execution of a seriously mentally ill inmate whose homicidal behavior was the reasonably known, foreseeable, and preventable product of his illness and the direct result of the State's failure, in violation of the Eighth Amendment, to provide him with minimally adequate mental health care that was necessary to control his behavior?

2. Consistent with *Johnson v. United States*, 544 U.S. 295, 296 (2005), is this Court's holding in *Brown v. Plata*, 563 U.S. 493, 532 (2011), a "fact" that must be considered by a state court in fairly and accurately assessing whether the State violated rights secured by the Eighth Amendment?

LIST OF PARTIES TO THE PROCEEDINGS

Petitioner, defendant-appellant below, is Joseph Martin Danks.

Respondent, respondent below, is the Warden of California State Prison at San Quentin.

LIST OF RELATED PROCEEDINGS

California Supreme Court

In re Joseph Martin Danks, No. S271569, petition for review of denial of habeas corpus denied on January 5, 2022

In re Joseph Martin Danks, No. S196398, habeas corpus petition transferred to Kern County Superior Court on May 22, 2019

In re Joseph Martin Danks, No. S121004, habeas corpus petition denied on September 15, 2010

People v. Joseph Martin Danks, No. S032146, judgment affirmed on direct appeal on February 2, 2004

California Court of Appeal, Fifth Appellate District

In re Joseph Martin Danks, No. F083411, certificate of appealability regarding denial of habeas corpus petition, denied on October 22, 2021

Kern County Superior Court

In re Joseph Martin Danks, No. HC016213A (Calif. Supreme Court No. S196398), habeas corpus petition transferred from the California Supreme Court and certificate of appealability denied on September 10, 2021

People v. Joseph Martin Danks, No. SC 44842, judgment entered on April 2, 1993

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PETITION FOR WRIT OF CERTIORARI

Petitioner Joseph Martin Danks respectfully petitions this Court for a writ of certiorari to review the judgment of the California Court of Appeal denying his timely filed petition for writ of habeas corpus.

INTRODUCTION

On December 8, 2003, Mr. Danks filed an initial state habeas corpus petition in the California Supreme Court challenging the constitutionality of his conviction and death sentence for the murder of his cellmate, committed while he was serving six consecutive life sentences for murder. Petition for Writ of Habeas Corpus, *In re Joseph Martin Danks* (Dec. 3, 2003, S121004) [hereinafter 2003 Pet.]. A principal ground for relief, supported by eighteen volumes of exhibits, established the nexus between Mr. Danks's chronic, grossly impaired psychotic dysfunction – which dated from his teenage years – and the State's unlawful acts that led to the commission of the capital offense.

Mr. Danks alleged that the killing of his cellmate was the direct result of the State's failure, in violation of the Eighth Amendment, to provide any psychiatric treatment for his psychotic illness and mitigate his uncontrollable behaviors. 2003 Pet. at 20-71. Voluminous medical evidence, including unrefuted expert declarations, demonstrated that custodial officials reasonably knew that Mr. Danks's psychotically induced assaultive behaviors required the ameliorative effects of psychotropic medications to prevent him from harming others. *See*, *e.g.*, 2003 Pet. Exs. 203, 206-08. This fact was dramatically illustrated by records from Atascadero State Hospital,

where Mr. Danks was treated after being found incompetent during prior, non-capital proceedings on six murder charges in Los Angeles County. *See* 2003 Pet. Exs. 1-2. After a regimen of psychotropics reduced Mr. Danks's paranoid delusions and hypervigilant symptoms, and he became increasingly socially appropriate, the medical staff decided to discontinue his medication. *See* 2003 Pet. at 94-95; 2003 Pet. Ex. 207. Deprived of the ameliorative effects of medication, Mr. Danks's mental condition deteriorated, and he soon became assaultive and stabbed another patient in the eye with a pencil. *Id*.

Supporting evidence also documented the pervasive denial of minimal medical and psychiatric care for inmates at the California Correctional Institution (CCI) when Mr. Danks was incarcerated there, as well as the record evidence and district court's findings in *Coleman v. Wilson*, 912 F. Supp.1282 (E.D. Cal. 1995), describing the statewide failure of the California Department of Corrections and Rehabilitation to deliver required care to mentally ill inmates. *See* 2003 Pet. Ex. 148.

Although the California Supreme Court took "as true" Mr. Danks's allegations, (i.e., that state prison officials were aware of, but intentionally disregarded, his serious mental illness and need for minimally adequate care to prevent violent behaviors) it summarily denied relief on September 15, 2010. Order, *In re Joseph Martin Danks* (Sept. 15, 2010, S121004).

Following the state court's denial of relief, subsequent legal and factual developments substantially buttressed Mr. Danks's claim. First, in May 2011, this Court decided *Brown v. Plata*, 563 U.S. 493 (2011) [hereinafter *Plata*], affirming the findings in *Coleman v. Wilson*, 912 F. Supp. 1282 (E.D. Cal. 1995), and of the United

States Court of Appeals for the Ninth Circuit that the "mental health care provided by California's prisons [fell] below the standard of decency that inheres in the Eighth Amendment." *Plata*, 563 U.S. at 545.

Then, in September 2011, the psychiatric staff at San Quentin State Prison obtained a judicial order permitting them to administer psychotropic medication to Mr. Danks without his consent because he was mentally incompetent and a danger to others as a result of his mental condition. Petition for Writ of Habeas Corpus, *In re Joseph Martin Danks* (Sept. 13, 2011, S196398) [hereinafter 2011 Pet.], Ex. 1. The State's psychiatric expert testified that psychotropic medication is medically necessary to curb Mr. Danks's psychologic symptomatology and violent behaviors. 2011 Pet. Ex. 1, Ex. 3 at 506, Ex. 4 at 24-25. The psychiatrist also confirmed that the medical necessity to administer medication to control Mr. Danks's violent behaviors has been documented in Mr. Danks's records since at least his confinement at Atascadero State Hospital in 1990. 2011 Pet. Ex. 3 at 7, Ex. 4 at 14-15.

Pursuant to state law permitting previously denied habeas claims to be re-presented if supported by changes in the law or facts that substantially affect the rights of the petitioner, Mr. Danks filed a second petition for writ of habeas corpus in the California Supreme Court on September 13, 2011.

Following the California Supreme Court's transfer of this second habeas petition to the trial court, the lower court concluded that Mr. Danks had not alleged that this Court's decision in *Plata* "personally affected him," because he did not allege that the unconstitutional deprivation of appropriate psychotropic medications resulted from "overcrowding" of the prison. Pet. App. a20. The trial court thus

characterized Mr. Danks's Eighth Amendment claim for relief as "a quasi-malpractice claim," and denied the petition without conducting an evidentiary hearing. *Id*. The California Court of Appeal denied a certificate of appealability under the mistaken view that even if the holdings in *Plata* enabled Mr. Danks to prevail on his Eighth Amendment claim, it would not spare him from the death penalty. Pet. App. a29. The California Supreme Court summarily denied review of the Court of Appeal's denial of the certificate of appealability. Pet. App. a30.

OPINIONS BELOW

The Kern County Superior Court order denying the petition for writ of habeas corpus in *In re Joseph Danks*, Case No. HC016213A (Cal. Superior Ct. Sept. 10, 2021) is unreported. Pet. App. a1. The California Court of Appeal for the Fifth District's order denying a certificate of appealability in *In re Joseph Martin Danks*, Case No. F083411 (Cal. Ct. App. Oct. 22, 2021) is also unreported. Pet. App. a26. The order of the California Supreme Court denying discretionary review in *In re Joseph Martin Danks*, Case No. S271569 (Cal. Jan. 5, 2022) is also unpublished. Pet. App. a30.

JURISDICTION

The California Court of Appeal issued its order on October 22, 2021, denying a certificate of appealability of the Kern County Superior Court's order, filed September 10, 2021, which denied Mr. Danks's petition for writ of habeas corpus. Pet. App. a26. The final judgment of the California Supreme Court denying discretionary review of the Court of Appeal's order was entered on January 5, 2022. Pet. App. a30. On March

17, 2022, the Honorable Justice Kagan extended the time for filing a petition for writ of certiorari to June 4, 2022. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Eighth Amendment provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The Fourteenth Amendment 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." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

I. Mr. Danks's Capital Trial

A. Prior murders underlying special circumstance allegation

In 1987, Mr. Danks was charged in Los Angeles County Superior Court with six counts of murder. While Mr. Danks was in a psychotic, mentally incompetent state, his defense counsel induced him to plead guilty to the murder counts in return for six consecutive life sentences. The Los Angeles County Superior Court accepted this plea and sentenced Mr. Danks on July 24, 1990. To overcome the impediment of Mr. Danks's delusional belief that the homicide victims were, in fact, still alive, his defense counsel, the prosecutor, and the trial court engineered a "*People v. West*" plea. *See People v. West*, 3 Cal. 3d 595 (1970) (permitting the entry of a plea of guilty or nolo contendere as part of a plea bargain where defendant understood the consequences of the plea and had the benefit of counsel, and no misrepresentation or

duress occurred). Under California law, this stratagem allowed the trial court to accept the guilty pleas despite Mr. Danks's assertion of his innocence and without requiring him to acknowledge the existence of a factual basis for the plea.

Motivated by humanitarian concerns for Mr. Danks's obvious and serious mental illness, however, the trial judge recommended that Mr. Danks be confined at the California Medical Center in Vacaville, where he could receive psychiatric treatment.

B. Capital trial

Rather than heed the sentencing court's recommendation, the State confined Mr. Danks to the California Correctional Institution (CCI), where he received virtually no psychiatric care. Indeed, every federal court to have reviewed the unconscionable level of mental health care to which Mr. Danks was subjected, including this Court in *Plata*, agrees that it was marked by "gross systematic deficiencies," which, along with the "actual suffering experienced by mentally ill inmates," were deliberately ignored by prison officials. *Coleman*, 912 F. Supp. at 1319. Prison officials also knew, but deliberately ignored, that "[s]eriously mentally ill inmates," such as Mr. Danks, "who do not receive needed treatment can worsen severely," and "can also become suicidal or can pose significant risks to others or to the safety of the institution." *Id*. at 1316 & n.49.

Their indifference had tragic consequences. Mr. Danks's extensive psychiatric records documented precisely the trajectory of decompensation, suicidality, and risk to others that prison officials should have known would result from denying him treatment. Nevertheless, Mr. Danks was disparaged as a "nut," deprived of

medication and – also contrary to proper institutional procedures – housed with an inmate whose security level was below his own. Within hours of the cell assignment, Mr. Danks reported to guards that he had followed God's command to kill his cellmate.

Mr. Danks was arrested on September 21, 1990, and on February 4, 1991, he was charged in Kern County with one count of murder pursuant to California Penal Code section 187, subdivision (a), with the special circumstance alleged that he had previously been convicted of murder, Cal. Penal Code §190.2 (a)(2); and one count of assault with force likely to create great bodily injury by a life prisoner while serving a life sentence pursuant to California Penal Code section 4500. His trial began on January 22, 1993, and he was convicted on January 26, 1993; the jury found true the alleged prior-murder special circumstance. The same jury heard the penalty trial and returned a death verdict on both counts on February 9, 1993. The superior court sentenced Mr. Danks to death on April 2, 1993.

II. Postconviction Review

On December 8, 2003, Mr. Danks filed an initial state habeas petition in the California Supreme Court, challenging the constitutionality of his conviction and death sentence. 2003 Pet. A major ground for relief alleged the State's unconstitutional denial of minimal psychiatric care leading to Mr. Danks's psychotic, homicidal behavior. Following the completion of informal briefing, the California Supreme Court summarily denied Mr. Danks's initial petition on September 15, 2010. Order, *In re Joseph Martin Danks* (Sept. 15, 2010, S121004).

Less than a year later, in May 2011, *Plata* affirmed the findings in *Coleman v. Wilson*, 912 F. Supp. 1282, and of the United States Court of Appeals for the Ninth Circuit, finding that the California prison system's failure to provide minimally adequate mental health care violated the Eight Amendment. *Plata*, 563 U.S. at 545. The *Plata* decision substantially buttressed the factual accuracy of the allegations in Mr. Danks's initial 2003 claim that California state prison officials were aware of, but intentionally disregarded, his serious mental illness and failed to provide him with minimally adequate care. *See* 2011 Pet. at 19-25. Then, in September 2011, Mr. Danks was adjudged to be mentally incompetent and a danger to others because of a mental defect or mental disorder and was subjected to the involuntary administration of psychotropic medication at San Quentin State Prison. 2011 Pet. Ex. 1. The involuntary medication order was based on the reliable, expert opinion testimony of San Quentin psychiatrist Paul Burton, M.D., that psychotropic medication is medically necessary to curb Mr. Danks's violent behaviors. 2011 Pet. Ex. 1, Ex. 3 at 506, Ex. 4 at 24-25. Dr. Burton also confirmed that the connection between Mr. Danks's mental health symptoms, behavior, and the medical necessity to administer medication to control his behaviors and symptoms has been documented in Mr. Danks's records since at least his 1990 confinement at Atascadero State Hospital, where Mr. Danks was sent after being found incompetent to stand trial during the Los Angeles County proceedings. 2011 Pet. Ex. 3 at 7, Ex. 4 at 14-15.

Following the September 2011 adjudication of Mr. Danks's incompetency and the need for medication, the State continued to seek renewal of the involuntary medication orders. *See* Additional Exhibits in Support of Petition for Writ of Habeas

Corpus, *In re Joseph Martin Danks* (Super. Ct. Kern County, Nov. 25, 2019, No. HC016213A) [hereinafter 2019 Additional Exhibits]; Additional Exhibits in Support of Petition for Writ of Habeas Corpus, *In re Joseph Martin Danks* (Super. Ct. Kern County, Nov. 4, 2020, No. HC016213A [hereinafter 2020 Additional Exhibits].

Based on these new factual and legal developments, Mr. Danks filed a second petition for writ of habeas corpus in the California Supreme Court on September 13, 2011, re-alleging, inter alia, the Eighth Amendment violation arising from the State's unconstitutional acts in causing the commission of the capital offense. 2011 Pet. at 19-71.

To ensure compliance with the federal statute of limitations, on September 14, 2011, Mr. Danks filed a federal habeas corpus petition, which included the unexhausted factual basis for the Eighth Amendment claim that he had presented to the California Supreme Court in a second habeas corpus petition filed the day before, on September 13, 2011. On November 9, 2011, the United States District Court for the Eastern District of California found that Mr. Danks satisfied the requirements of *Rhines v. Weber*, 544 U.S. 269 (2005), and ordered, inter alia, that the claim would be held in abeyance during the pendency of state exhaustion proceedings.

The district court observed that in light of the 2011 initiation of forcible medication procedures, the California Department of Corrections and Rehabilitation "may be said to have conceded that Danks has suffered from a serious psychotic illness since adolescence and that appropriate medication can control his aggressive behaviors," which was "quite different from the position taken by the State of California at Danks' trial, on appeal, and on state habeas." *Danks v. Martel*, Order,

2011 WL 4905712, at *6 (E.D.Cal., Oct. 14, 2011, Civ. A. No. 1:11-00223). The District Court also addressed the State's argument that this Court's decision in *Plata* was independent of and added nothing to the holding in *Coleman*, rejecting the contention as "disingenuous." *Id.* at *6.

On May 22, 2019, the California Supreme Court transferred the second petition to the Kern County Superior Court. Without holding an evidentiary hearing, on September 10, 2021, the Kern County Superior Court denied Mr. Danks's second habeas petition and neither granted nor denied a certificate of appealability. Pet. App. a1. On October 8, 2021, Mr. Danks filed a Notice of Appeal and Request for Certificate of Appealability.

The Court of Appeal for the Fifth District denied a certificate of appealability on October 22, 2021, stating: "Appellant fails to set forth in the certificate request newly available facts or a change in the law that substantially affect his rights regarding his 1993 conviction." Pet. App. a28. On November 1, 2021, Petitioner filed a timely petition for review of the Court of Appeal's denial in the California Supreme Court. On January 5, 2022, the California Supreme Court denied the petition for discretionary review. Pet. App. a30.

REASONS FOR GRANTING THE WRIT

I. Certiorari Should Be Granted To Confirm That The Eighth Amendment Prohibits The Execution Of A Seriously Mentally Ill Inmate Whose Capital Crime Was The Reasonably Known And Foreseeable Result Of The State's Deliberate Indifference.

The Eighth Amendment of the United States Constitution provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and

unusual punishments inflicted." U.S. Const. amend. VIII. As part of the Court's comprehensive review of the constitutionality of capital punishment, the prevailing opinion in *Gregg v. Georgia*, 428 U.S. 153 (1976), "consider[ed] whether the punishment of death is disproportionate in relation to the crime for which it is imposed." *Id*. at 187. Examining that question with respect to a murder deliberately committed by an offender, the *Gregg* plurality concluded that "the infliction of death as a punishment for murder is not without justification and thus is not unconstitutionally severe," nor "invariably disproportionate to the crime." *Id*. Whether a particular punishment is cruel and unusual "is determined not by the standards that prevailed when the Eighth Amendment was adopted in 1791 but by the norms that 'currently prevail.'" *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (quoting *Atkins v. Virginia*, 536 U.S. 304, 311 (2002)). Thus, the Eighth Amendment is not static, but is guided by "the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958) (plurality opinion); Gregg, 428 U.S. at 172-73; *Atkins*, 536 U.S. at 311-12.

Contemporary and evolving standards of decency require the state to provide adequate medical care to those whom it punishes by incarceration, including an effective mental health care delivery system that screens and identifies mentally ill prisoners when they enter the prison system and throughout their incarceration. *See*, *e.g.*, *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976). While the accidental or inadvertent failure to provide for an inmate's medical care does not violate the Eighth Amendment, "deliberate indifference to serious medical needs of prisoners" does because the denial of medical care offends contemporary standards of decency.

Estelle, 429 U.S. at 104. Decades later, this Court held in *Plata*, 563 U.S. at 545, that "[t]he medical and mental health care provided by California's prisons falls below the standards of decency that inheres in the Eighth Amendment," based on the state's denial of minimum treatment to mentally ill prisoners.

Here, the state was aware that Mr. Danks suffered from severe mental illness beginning in adolescence, continuing throughout the prior murder proceedings in the Los Angeles County Superior Court, and enduring throughout his subsequent incarceration at CCI. The state also was aware of the direct connection between Mr. Danks's untreated mental illness and his violent behavior at the time he entered state prison but failed to properly screen him upon his arrival or provide him with any treatment, despite the documentation of his requirement for psychotropic medication to prevent him from harming others. While Mr. Danks was in an unmedicated state, and having received no mental health care treatment from state prison staff, he committed the homicide for which he is currently on California's death row. After having denied that Mr. Danks was severely mentally ill throughout his capital trial and during state postconviction proceedings, in 2011 the state, through mental health clinicians at San Quentin State Prison, ultimately conceded that Mr. Danks has suffered from a severe mental illness, schizophrenia, since at least adolescence and that his mental illness is linked to his violent behavior.

In such circumstances, where the homicide would not have occurred but for the state's own unconstitutional conduct, a prisoner does not possess the level of moral culpability warranting execution, nor does the imposition of the death penalty in such a case serve a retributive or deterrent effect. Despite this, the state trial and

appellate courts summarily denied Mr. Danks an evidentiary hearing and opportunity to prove his claim, even though Mr. Danks established a prima facie case under California law by "stat[ing] fully with particularity the facts on which relief is sought," having provided "reasonably available" documentary support, and having complied with California Penal Code section 1474's requirements. *People v. Duvall*, 9 Cal. 4th 464, 474 (1995). Through this petition, Mr. Danks seeks to confirm that the Eighth Amendment's prohibition against cruel and unusual punishment prohibits the imposition of the death penalty in his case.

A. The imposition of the death penalty in Mr. Danks's case is grossly disproportionate to his moral and individual culpability.

Individual culpability is the cornerstone of the constitutional administration of the death penalty under this Court's Eighth Amendment jurisprudence. The Eighth Amendment's cruel and unusual punishment clause is directed, in part, "'against all punishments which, by their excessive length or severity, are greatly disproportionate to the offenses charged.'" *Weems v. United States*, 217 U.S. 349, 371 (1910) (quoting *O'Neil v. Vermont*, 144 U.S. 323, 339-40 (1892) (Field, J., dissenting)). In seminal cases decided by this Court post-*Weems*, the Court has further underscored the importance of an offender's individual culpability and the characteristics of the offense in determining whether a punishment is disproportionate. In *Woodson v. North Carolina*, 428 U.S. 280 (1976), decided on the same day as *Gregg*, the Court considered whether North Carolina's mandatory death sentence for first-degree murder for defendants who participated in an armed robbery resulting in the death of a store cashier violated the Eighth and Fourteenth

Amendments. In holding that the state statute at issue was unconstitutional, the Court stated that the Eighth Amendment "requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." *Id*. at 304. Mr. Woodson's involvement in the crime was as a lookout driver and he further claimed he had been coerced into participating in the crime. Although the Court did not reach the question of Mr. Woodson's individual culpability, it framed the constitutional question with respect to him as "whether imposition of the death penalty on petitioner Woodson would have been so disproportionate *to the nature of his involvement in the capital offense* as . . . to violate the Eighth and Fourteenth Amendment." *Id*. at 305 n.40 (plurality opinion) (emphasis added). This Court's decision in *Enmund v. Florida*, 458 U.S. 782 (1982), is also highly instructive. There, the Court examined the imposition of the death penalty against a defendant who participated in a robbery during which a murder was committed but the defendant did not kill, attempt to kill, or intend that the killing occur or that lethal force be used. *Id*. at 787. Focusing on "the validity of capital punishment for Edmund's own conduct," as opposed to the disproportionality of the death penalty as a punishment for murder, the Court stressed that "'individualized consideration as a constitutional requirement in imposing the death sentence,' . . . means that [the Court] must focus on 'relevant facets of the character and record of the individual offender.'" *Id*. at 798, citations omitted. Since Mr. Enmund did not kill or intend to kill, the Court found that "his culpability is plainly different from that of the robbers who killed; yet the State treated them alike and attributed to Enmund the culpability

of those who killed," which "was impermissible under the Eighth Amendment." *Id*. Thus, this Court's jurisprudence reiterates that the determination of proportionality of a capital sentence cannot be based solely upon the magnitude of the harm resulting from the defendant's conduct but must be "tailored to [a defendant's] personal responsibility and moral guilt." *Enmund*, 458 U.S. at 801.

Although Mr. Danks's psychotic and uncontrollable conduct resulted in the homicide, the role of the state's deliberate indifference in relation to the homicidal act significantly diminishes his level of personal and moral culpability. At the time Mr. Danks was incarcerated in state prison, the state was aware of his long history of severe mental illness. Based on the proceedings in his prior murder case in the Los Angeles County Superior Court, the state knew that Mr. Danks was diagnosed with a severe psychotic disorder. 2011 Pet. at 8-9. The trial court suspended criminal proceedings and declared Mr. Danks incompetent to stand trial. Mental health staff at the jail determined that Mr. Danks's psychotic illness required treatment with antipsychotic medications at Atascadero State Hospital. 2011 Pet. at 8-9. While there, mental health staff determined that Mr. Danks's mental illness was linked to his violent behavior and that to regain and maintain his competency, and address his violent conduct, he must remain medicated. 2011 Pet. at 9, 26; Pretrial RT, 2/11/92 at 47.[1] Upon Mr. Danks's return to the Los Angeles County Superior Court after regaining his competency, county jail mental health experts confirmed that Mr. Danks required appropriate medication and constant monitoring to remain

[1] "RT" refers to the Reporter's Transcript of the trial.

competent. 2011 Pet. at 9. After a plea bargain was reached in the case, even the sentencing judge recognized the severity of Mr. Danks's illness and recommended that the California Department of Corrections and Rehabilitation house and treat Mr. Danks at the California Medical Facility in Vacaville, a psychiatric facility for state prison inmates. 2011 Pet. at 10, 20.

Despite this knowledge of Mr. Danks's severe mental illness, the state imprisoned Mr. Danks with deliberate indifference to "the gross inadequacies in their system" and "[t]he actual suffering experienced by mentally ill inmates," which a court later characterized as "overwhelming." *Coleman*, 912 F. Supp. at 1319. State prison officials intentionally disregarded the fact that "[s]eriously mentally ill inmates," such as Mr. Danks, "who do not receive needed treatment can worsen severely," and "can also become suicidal or can pose significant risks to others to the safety of the institution." *Id*. at 1316 & n.49. Had minimally adequate screening and treatment procedures been in place upon Mr. Danks's arrival at CCI, the state prison could have easily identified Mr. Danks as someone who needed further psychological evaluation and ultimately mental health treatment.

Indeed, the state ultimately conceded the existence and severity of Mr. Danks's mental illness in 2011 when its own mental health expert diagnosed petitioner as having a chronic psychotic disorder. 2011 Pet. at 20; 2011 Pet. Ex. 1 at 7 (noting his psychiatric hospitalizations in state psychiatric facilities). Specifically, during state-initiated proceedings by San Quentin State Prison medical staff seeking authorization of the administration of involuntary anti-psychotic medication, the state's own mental health clinician concluded that if Mr. Danks did not receive the

recommended treatment "the probability of him engaging in an act of violence towards others would increase," and "[h]e would be at increased risk for physical injury if he were to engage in a physical fight with another." 2011 Pet. at Ex. 3 at 6. The significance of these proceedings is clear – they confirm that the state reasonably knew at the time of Mr. Danks's initial incarceration at CCI that his violent behavior was inextricably linked to, and the direct result of, his untreated serious mental illness, and therefore the resulting homicide was directly foreseeable. Had the state provided Mr. Danks with constitutionally adequate mental health care, the capital crime could have been prevented.

Given that the Eighth Amendment forbids the treatment of "all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass," *Woodson*, 428 U.S. at 304 (plurality opinion), the state court's rejection of this claim and failure to properly consider Mr. Danks's personal culpability and the context in which the homicide occurred is improper. Logically, if "'causing harm intentionally must be punished more severely than causing the same harm unintentionally,'" the same must be said for a harm that would not have been caused at all but for the deliberate indifference of the state. *Edmund*, 458 U.S. at 798 (quoting H. Hart, Punishment and Responsibility 162 (1968)). As this Court stated in the context of examining when a prison official's conduct makes them liable under the Eight Amendment for acting with deliberate indifference, "Having incarcerated 'persons [with] demonstrated proclivit[ies] for antisocial criminal, and often violent, conduct,' having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the

government and its officials are not free to let the state of nature take its course." *Farmer v. Brennan*, 511 U.S. at 833 (internal citations omitted).

B. The death penalty is excessive in Mr. Danks's case because it fails to serve the purposes of retribution or deterrence and therefore makes no measurable contribution to the acceptable goals of punishment.

In *Gregg*, this Court stated that "[t]he death penalty is said to serve two principal social purposes: retribution and deterrence of capital crimes by prospective offenders." 428 U.S. at 183 (footnote omitted). "[T]he sanction imposed cannot be so totally without penological justification that it results in the gratuitous infliction of suffering." *Id.* (citing *Wilkerson v. Utah*, 99 U.S. 130, 135-36 (1878), *In re Kemmler*, 136 U.S. 436, 447 (1890)); *Furman*, 408 U.S. at 280 (Brennan, J., concurring) (stating punishment is excessive within meaning of Punishments Clause if it "serves no penal purpose more effectively than a less severe punishment"), 312 (White, J., concurring) (finding that when the death penalty ceases realistically to further social ends it was enacted to serve, it violates the Eighth Amendment, results in "pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes," and is a "patently excessive and cruel and unusual punishment violative of the Eighth Amendment")). Capital punishment inflicted on individuals who the state knew were mentally ill at the time of the in-prison offense but for whom the state failed to provide mental health care and treatment makes no measurable contribution to the acceptable goals of punishment and fails to serve any legitimate purpose more effectively than a less severe penalty.

1. Imposition of the death penalty in this case serves no retributive purpose.

The concept of retribution has long been connected to the defendant's level of moral guilt and degree of criminal culpability. *Mullaney v. Wilbur*, 421 U.S. 684, 697-98 (1975). The Court has held criminal penalties to be excessive where there is no intentional wrongdoing. *Enmund*, 458 U.S. at 801. In other words, the purpose of retribution "reflects society's and the victim's interests in seeing that the offender is repaid for the hurt he caused." *Kennedy v. Louisiana*, 554 U.S. 407, 442 (2008). It grants society the ability to "express its condemnation of the crime and to seek restoration of the moral imbalance caused by the offense." *Graham v. Florida*, 560 U.S. 48, 71 (2010). Thus, the punishment is dictated by the severity of the crime and the blameworthiness of the offender – the worse the offense, the worse the punishment – and it is directly tied to the defendant's blameworthiness. *Id.* "The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." *Tison v. Arizona*, 481 U.S. 137, 149 (1987).

Traditionally, society and the courts have looked to the mental element of crimes when analyzing the moral guilt and personal responsibility of an offender, and the intentionality of the act. *See*, *e.g.*, *Gregg*, 428 U.S. at 184 n.30, 187; *Green v. Georgia*, 442 U.S. 95, 97 (1979) (noting intent to kill as a "critical issue" at the penalty phase of a capital trial); *Furman*, 408 U.S. at 388 (Chief Justice Burger, dissenting) (stating that motive or lack thereof is a common basis upon which juries decide whether to impose the death penalty); *Robinson v. California*, 370 U.S. 660, 667

(1962); *Weems*, 217 U.S. at 367; *O'Neil v. Vermont*, 144 U.S. at 339 (Justice Field, dissenting). In a case such as this one, retribution falls away where the criminal act is the direct and foreseeable result of the state's action and would not have otherwise occurred, as described above. The imposition of the death penalty here would "not measurably contribute to the retributive end of ensuring that the criminal gets his just deserts." *Enmund*, 458 U.S. at 801.

2. Imposition of the death penalty in this case has no deterrent effect.

In examining the death penalty's deterrent value, the Court has noted that the proper inquiry is not whether the death penalty deters crime in an undifferentiated, generalized way, but rather *for whom and for which crimes* it can be found rationally to serve as an effective deterrent. *See Gregg*, 428 U.S. at 186 (noting that "[t]he value of capital punishment as a deterrent of crime is a complex factual issue the resolution of which properly rests with the legislatures"); *Furman*, 408 U.S. at 455 (Powell, J., dissenting) (quoting Royal Commission on Capital Punishment 1949-53, Report at 24). Thus, the Court recognized that in some situations "the threat of death has little or no deterrent effect." *Gregg*, 428 U.S. at 185. For instance, in *Enmund* the Court was "unconvinced . . . that the threat that the death penalty will be imposed for murder will measurably deter one who does not kill and has no intention or purpose that life will be taken." 458 U.S. at 798-99. This is because "if a person does not intend that life be taken or contemplate that lethal force will be employed by others, the possibility that the death penalty will be imposed for vicarious felony murder will not 'enter into the cold calculus that precedes the decision to act.'" *Id.* at 799 (quoting

Gregg v. Georgia, 428 U.S. at 186 (footnote omitted)). Likewise, in a case like Mr. Danks's where the state has been found to be deliberately indifferent to treating his mental illness, which resulted in violent conduct, there is similarly no deterrent effect.

II. Certiorari Is Warranted To Ensure That This Court's Decision In *Johnson V. United States* And Federal Courts' Factual Findings Are Respected By State Courts.

When the California Court of Appeal for the Fifth District denied Mr. Danks's Request for a Certificate of Appealability, it failed to give full effect to the significance of this Court's finding in *Plata*, 563 U.S. at 503, as a new fact tending to establish Mr. Danks's ineligibility for the death penalty, a failure also inconsistent with this Court's holding in *Johnson v. United States,* 544 U.S. 295 (2005). The California Supreme Court, in denying Mr. Danks's Petition for Review of the Court of Appeal's denial of his request, repeated the lower court's error.

In *Johnson v. United States*, 544 U.S. at 307, this Court held that the lower court's entry of judgment vacating a federally incarcerated petitioner's prior conviction was a "crucial fact," which triggered a renewed period of limitation under federal law. In Mr. Danks's case, this Court's decision in *Plata* operated as just such a crucial fact, establishing the accuracy of the allegations in Mr. Danks's initial habeas claim that the State of California acted in violation of his right to minimal psychiatric care at the time of the capital offense.

Moreover, *Plata* explicitly affirmed the findings of the United States District Court in *Coleman v. Wilson*, 912 F. Supp. 1282 (E.D. Cal. 1995), holding that

"[p]risoners in California with serious mental illness do not receive minimal, adequate care." *Plata*, 563 U.S. at 503. Thus, *Plata* elevated the holding in *Coleman*, and its affirmance by the United States Court of Appeals for the Ninth Circuit (*see Coleman v. Wilson*, 101 F.3d 705 (9th Cir. 1996)) to clearly established federal law, as determined by this Court and binding on California state courts and left no question that the state deprived Mr. Danks of mental health treatment in violation of "the standard of decency that inheres in the Eighth Amendment." *Plata,* 563 U.S. at 545. This holding applies to Mr. Danks and fully vindicates his allegation of the unconstitutional deprivations to which he was subjected when he was incarcerated at CCI, where the killing for which he was sentenced to death occurred, after the State failed to provide him with necessary mental health treatment.

By comparison, the California state courts ignored the significance of this Court's decision by characterizing it as a decision limited to merely identifying the *cause* of the constitutional violations – i.e., prison overcrowding – rather than finding a substantive abridgement of the Eighth Amendment that would preclude Mr. Danks's execution. Pet. App. a20, a29.

Contrary to the state courts' analyses, this Court's binding affirmation of the *Coleman* courts' findings in *Plata*, establishes the accuracy of the allegations in Mr. Danks's 2003 Petition that the capital homicide for which he was sentenced to death was the direct and avoidable consequence of the State's pervasive Eighth Amendment violation in denying mental health care to seriously mentally ill prisoners, including Mr. Danks. As the District Court observed in is order holding the federal habeas proceedings in abeyance, the attempt to characterize *Plata* as independent of the

Eighth Amendment violations alleged by Mr. Danks "is disingenuous." *Danks v. Martel*, 2011 WL 4905712, at *6. It demonstrates a failure to acknowledge the full weight of this Court's *Plata* decision as a substantial factual and legal development tending to show Mr. Danks is ineligible for the death penalty; there is no penological justification for the state to impose the death penalty on a prisoner whose homicidal mental state was the direct result of the state's violation of his rights under the Eighth Amendment.

CONCLUSION

This Court should grant certiorari to resolve the questions presented.

Dated: June 1, 2022

Respectfully submitted,
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