DOCKET NO. 22-6882

IN THE SUPREME COURT OF THE UNITED STATES

DAVID BYRON RUSS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

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QUESTION PRESENTED

[Capital Case]

Whether the Florida Supreme Court's holding that Petitioner's claim of incompetency to stand trial—a claim raised nearly ten years after his case became final, and which Petitioner had knowingly and voluntarily waived when he declined to pursue an earlier postconviction motion—was procedurally barred violates the Due Process Clause.

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STATEMENT OF THE CASE

Petitioner was convicted for the May 7, 2007 murder of Madeleine Leinen. The night before, May 6, 2007, Petitioner was found asleep in his car by a Longwood Police Officer. *Russ v. State*, 73 So.3d 178, 183 (Fla. 2011). He had been on a ten-day crack binge and had drugs in the car, so when the office tried to make contact, Petitioner sped off. *Id.* During the pursuit, Petitioner abandoned his car and was able to hide on a roof adjacent to the home of his eventual victim. *Id.* The next morning he saw Leinen leave her home and decided to make her his victim. *Id.* Leinen returned home shortly after 6:00 p.m., which is when Petitioner killed her and absconded with her car and many of her valuables. *Id.* at 184. He immediately attempted to withdraw her money from an ATM but was unsuccessful, then started making his way toward Texas. *Id.* On May 8, 2007, Leinen's body was found by one of her friends, facedown in a bathroom, her hands and feet tightly bound with rope and rope ligature around her neck. *Id.* The medical examiner observed a variety of injuries on Leinen: injuries from strangulation with a neck ligature; three lacerations to her scalp consistent with blunt force trauma; four stab wounds, three to her back and one to her head; facial bruising; fractured ribs; and a dislocated clavicle. *Id.* Several items of the victim's jewelry were recovered from a pawnshop in Texas, and Petitioner was ultimately apprehended in Denton, Texas on May 16, 2007. *Id.*

Petitioner was indicted on five charges: 1) first-degree premeditated murder; 2) kidnapping with a deadly weapon; 3) carjacking; 4) robbery with a deadly

weapon; and 5) burglary with assault or battery. *Id.* On February 6, 2008[1], knowing the State intended to seek the death penalty and without a plea offer in place, Petitioner pled guilty as charged to four of the charges, and to the lesser-included offense of grand theft to count 3. *Id.* Petitioner first expressed a desire to waive mitigation and a penalty phase jury through counsel on April 9, 2008, and despite the court's urgings to change his mind, maintained this stance. *Id.* at 184-5. On April 30 and May 1, 2008 the court held a *Koon*[2] hearing to ensure Petitioner understood the implications of his waiver. *Id.* at 185. Following the hearing the court accepted Petitioner's waivers, ordered a presentence investigation report, and appointed special counsel to present mitigation. *Id.*

Following the penalty phase the trial court found the existence of four aggravating factors: the capital felony was 1) committed while the defendant was engaged in the commission of a kidnapping; 2) committed for pecuniary gain; 3) especially heinous, atrocious, or cruel; and 4) committed in a cold, calculated, and premeditated manner. *Id.* at 187. The court found the existence of two statutory mitigators and seven nonstatutory mitigators. *Id.* After weighing the aggravators and mitigators, Petitioner was sentenced to death. *Id.* Petitioner's convictions and sentences were upheld on direct appeal, and he did not seek review by this Court. *Id.* at 200.

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[1] While the Florida Supreme Court opinion reads, "February 6, 2009", this appears to be a scrivener's error as a review of the trial docket and plea form confirms a date of February 6, 2008.

[2] *Koon v. Dugger*, 619 So.2d 246 (Fla. 1993)

Shortly after his postconviction proceedings commenced, Petitioner filed a motion to dismiss those proceedings and discharge his collateral counsel on November 1, 2011. *Russ v. State*, 107 So.3d 406 (Fla. 2012). On January 19, 2012, the court held a hearing pursuant to *Durocher v. Singletary*, 623 So. 2d 482 (Fla. 1993) to determine Petitioner's competency and evaluate whether he understood the consequences of waiving counsel and collateral proceedings. *Russ*, 107 So.3d at 406. Following that hearing and a lengthy colloquy the court found him competent and issued an order discharging counsel and collateral proceedings. *Id.* His collateral counsel appealed that order, and the Florida Supreme Court approved of the trial court's procedure and affirmed the finding that he was competent to waive his postconviction proceedings. *Id.*

Petitioner's case then lay dormant for several years until June 2018, when the Capital Habeas Unit of the Federal Public Defender for the Northern District of Florida ("CHU") moved to be appointed as Petitioner's federal counsel. Pet. App. at 452-7. The district court granted the motion, and CHU ultimately filed a habeas petition on December 23, 2018, as well as a motion to stay the federal proceedings pending exhaustion of the claims in state court, which was granted.

On April 17, 2019, the state circuit court appointed Collateral Capital Regional Counsel – North to represent Petitioner, and on December 30, 2020, Petitioner filed a motion for postconviction relief, alleging, among other things, his incompetency at the time of his plea, penalty phase waivers, and postconviction waivers. The state filed a response on January 19, 2021, and on July 16, 2021, the

motion was summarily dismissed as untimely and procedurally barred. On February 8, 2022, these findings were affirmed by the Florida Supreme Court on appeal. *Russ v. State*, 2022 WL 1055029 (Fla. 2022).

REASONS FOR DENYING THE WRIT

Petitioner asks this Court to review the Florida Supreme Court's decision affirming the denial of his postconviction motion. In support, he points to a perceived lack of consensus among federal courts as to whether a state procedural bar is applicable in cases like his. But the facts of his case do not implicate that circuit split; his case would be a poor vehicle for resolving it in any event; and the courts that recognize that a defendant can procedurally default a claim of substantive competency are correct.

A. Petitioner's case does not implicate the circuit split he alleges, which is illusory in any event.

1. Petitioner identifies an alleged federal circuit split on the question whether a defendant's failure to raise a substantive competency claim in state court procedurally bars him from raising that claim in a federal habeas corpus proceeding. *Compare Medina v. Singletary*, 59 F.3d 1095, 1111 (11th Cir. 1995); *Rogers v. Gibson*, 173 F.3d 1278, 1289 (10th Cir. 1999), *with Martinez-Villareal v. Lewis*, 80 F.3d 1301, 1306–07 (9th Cir. 1996); *Weekley v. Jones*, 76 F.3d 1459, 1461 (8th Cir. 1996) (en banc); *Burket v. Angelone*, 208 F.3d 172, 191 (4th Cir. 2000); *Sawyer v. Whitley*, 945 F.2d 812, 823–24 (5th Cir. 1991). For several reasons, his case does not implicate that perceived split.

First, the cases on Petitioner's preferred side of the split address the circumstance where a defendant has actively challenged his conviction and sentence in state court but merely failed to present the state courts with a substantive

competency challenge. In that circumstance, the Tenth and Eleventh Circuits say, the defendant's failure to raise the claim in state court should not bar him from raising it in a federal habeas proceeding under 18 U.S.C. § 2254.

But the trial court and Florida Supreme Court in Petitioner's case did not base their finding of procedural default on the mere failure to raise a substantive competency claim in state court. Rather, they pointed to Petitioner's delay in bringing the claim in state court and inability to meet any of the time limitation exceptions. *Russ*, 2022 WL 1055029 at 1. It is one thing when a defendant fails to raise a claim in state court but otherwise promptly raises the claim in federal court; it is quite another when the defendant engages in a decade-long, unexplained failure to present the claims for timely adjudication.[3]

Second, the courts on Petitioner's preferred side of the split were not presented with another unique feature of this case: that Petitioner himself voluntarily, knowingly, and intelligently waived his right to challenge his conviction and sentence in state postconviction proceedings. Florida law guaranteed Petitioner

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[3] The Eleventh Circuit decisions Petitioner cites at page 9 of the Petition involve varying degrees of procedural defaults in the state courts, but none involved a claim of lengthy and unexcused delay. *See Medina v. Singletary*, 59 F.3d 1095, 1111 (11th Cir. 1995) (considering a substantive competency claim even though defendant did not raise it on direct appeal); *Wright v. Sec'y Dep't of Corr.*, 278 F.3d 1245, 1258–59 (11th Cir. 2002) (same); *Battle v. United States*, 419 F.3d 1292, 1298 (11th Cir. 2005) (same); *Pardo v. Sec'y, Fla. Dep't of Corr.*, 587 F.3d 1093, 1101 n.3 (11th Cir. 2009) (same); *Lawrence v. Sec'y, Fla. Dep't. of Corr.*, 700 F.3d 464, 481 (11th Cir. 2012) (considering a substantive competency claim even though defendant did not raise the claim either on direct appeal or in state habeas); *Raheem v. GDCP Warden*, 995 F.3d 895, 929 (11th Cir. 2021) (same, but where defendant raised his mental health throughout the state-court proceedings).

a full and fair opportunity to present postconviction challenges to his sentence, including the claim that newly discovered evidence established his incompetency to proceed at the trial stage. Fla. R. Crim. Pro. 3.851 (d)(2)(a). But in 2011, Petitioner announced that he wished to waive his pending postconviction proceedings. Following a hearing at which Petitioner was thoroughly colloquied on that decision, the trial court found that Petitioner was competent and understood the rights he was giving up. The Florida Supreme Court affirmed that ruling, and Petitioner did not seek certiorari.

Though Petitioner asserts that he would be entitled to raise his substantive competency claim in the Eleventh Circuit, that is not the case. True enough, the Eleventh Circuit has said that a defendant's failure to raise a competency claim in state court will "generally" not preclude him from raising a substantive competency claim on federal habeas review. *Wright v. v. Sec'y Dep't of Corr.*, 278 F.3d 1245, 1259 (11th Cir. 2002). But Petitioner ignores the Eleventh Circuit's decision in *Thomas v. Wainwright*, 788 F.2d 684 (11th Cir. 1986), which carves out an exception to that general rule. In *Thomas*, the court of appeals refused to entertain the same type of claim Petitioner raises here, distinguishing its earlier cases on the ground that the defendant in *Thomas* (1) failed to raise the claim on direct appeal; (2) failed to raise the claim in his first rounds of state and federal habeas corpus petitions; and (3) failed to adequately explain those earlier failures. *Id.* at 688. Because a "defendant is [not] free to drop the [competency] issue or later pick it up as it suits his purposes," the Eleventh Circuit held that the defendant's claim was

procedurally defaulted. Moreover, the court pointed to the weakness of the defendant's factual support for the claim, noting that—not unlike in Petitioner's case—"[p]resent counsel have employed experts who, nine years after the fact on the eve of the scheduled execution, have concluded that Thomas was incompetent to stand trial." *Id.*

Based on that ruling, it is likely that the Eleventh Circuit, were it to consider Petitioner's theories, would reject them. Even now, Petitioner has offered no credible explanation for why, at some earlier point in the proceedings, he could not have raised his competency claim. And as explained in depth below, the factual support for his current claim is scant and late-breaking.

It makes sense that the reasoning of Petitioner's preferred cases does not stretch so far as to cover these facts. When a defendant is in fact incompetent, the Tenth and Eleventh Circuits appear to reason that it is unfair to hold him accountable for the failure to challenge the conditions under which his conviction and sentence were obtained. Those cases therefore turn on the assumption that the defendant may have been incompetent at all times throughout direct appeal and postconviction proceedings, thus excusing the failure to litigate the claim. But that is decidedly not true in Petitioner's case. The trial court in 2011 carefully adjudicated the question of Petitioner's mental fitness for the materially identical purpose of waiving his right to counsel and his right to level a postconviction challenge. That court and the Florida Supreme Court found that Petitioner *was* competent. From then on, no conceivable justification could exist for Petitioner's

failure to litigate any alleged concern for his competency at the trial stage.

In other words, the unique facts of Petitioner's case do not implicate the split he alleges because he would lose even in the jurisdictions where the law in this area is most favorable.

Third, at any rate, the split is largely illusory. Though Petitioner touts two circuits that allow defendants to raise substantive competency claims, he produces no case in which a defendant actually obtained habeas relief. Rather, every case he cites addressing the merits of a procedurally defaulted substantive competency claim holds that the claim warranted no ultimate relief; in each, the defendant failed to meet his burden of offering clear and convincing evidence of his incompetency at the time of trial. As a result, none of those discussions of procedural default mattered to the outcome, and it is far from clear that those cases involve anything more than dicta. *See* "Obiter dictum," Black's Law Dictionary (11th ed. 2019) (defining dicta as "[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive)").

As for a couple of state-court decisions that Petitioner asserts as part of his alleged split, none resulted in a ruling in favor of the defendant, and none hold that the Due Process Clause forbids States from imposing procedural bars in the competency context. Though Petitioner cites *State v. Painter*, 426 N.W.2d 513 (Neb. 1988), as a case that goes his way, it actually goes the opposite. The Nebraska Supreme Court there declined to consider the defendant's freestanding competency

claim based on its "longstanding rule that a motion for postconviction relief may not be used to obtain review of issues which could have been raised on direct appeal." *Id.* at 280. It considered only the defendant's ineffective-assistance-of-counsel claim predicated on counsel's failure to timely investigate the defendant's competency—a claim which, under state rules of procedure, need not have been raised on direct appeal. *See id.* at 280, 283–84. The court ultimately denied relief. *Id.* at 284; *see also State v. Rehbein*, 455 N.W.2d 821, 287 (Neb. 1990).

Petitioner also relies on cases from Mississippi, but those appear to be based not on any constitutional requirement that state courts consider procedurally defaulted substantive competency claims, but on Mississippi's interpretation of its own statute governing postconviction proceedings. *See Smith v. State*, 149 So.3d 1027, 1031 (Miss. 2014); *Rowland v. State*, 42 So.3d 503, 506–08 (Miss. 2010) (interpreting Mississippi's Uniform Post–Conviction Collateral Relief Act to permit defaulted claims involving "fundamental rights"). And even assuming those cases recognize a constitutional rule in the State of Mississippi, it is unlikely to apply in the case of Petitioner's extreme delay and knowing, voluntary, and intelligent waiver of the right to seek postconviction relief.

Finally, any split perceived by Petitioner is irrelevant to his case. Petitioner litigated his alleged incompetency in state court and his claim was rejected as untimely and procedurally barred under Florida state case law. This has no implication on his ability or non-ability to raise a substantive competency claim without a procedural bar in federal court, and so again, his case does not implicate

any split among the courts.

B. This case is a poor vehicle.

If this case implicates a split, it is a poor vehicle for other reasons. To begin with, Petitioner has presented no meaningful evidence in support of his substantive competency claim, and thus no reason to believe that he could prevail on remand even if the Florida courts were required to consider his claim on the merits. *See Coleman v. Thompson*, 501 U.S. 722, 730 (1991) ("When this Court reviews a state court decision on direct review pursuant to 28 U.S.C. § 1257, it is reviewing the judgment; if resolution of a federal question cannot affect the judgment, there is nothing for the Court to do."). As this Court explained in *Herb v. Pitcairn*, 324 U.S. 117 (1945) its "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights." 324 U.S. 117, 125–126 (1945). Consequently, the Court is "not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." *Id.* at 126.

Here, had the Florida Supreme Court addressed the merits of Petitioner's competency claim the outcome of the proceedings would not have been different. Petitioner was seeking an evidentiary hearing on the issue of his competency at the time of his guilty pleas, penalty phase hearing and sentencing, and postconviction waivers. "A defendant is considered competent to stand trial if 'he has sufficient present ability to consult with his lawyer with a reasonable degree of rational

understanding and [if] he has a rational as well as factual understanding of the proceedings against him.'" *James v. Singletary*, 957 F.2d 1562, 1574 (11th Cir. 1992) (quoting *Dusky v. United States*, 362 U.S. 402 (1960)). To show entitlement to a postconviction evidentiary hearing on a substantive competency claim, "the standard of proof is high [and] the facts must positively, unequivocally, and clearly generate the legitimate doubt." *Medina*, 59 F.3d at 1106 (citations omitted). "[T]he petitioner must present a preponderance of 'clear and convincing evidence' of 'positive', 'unequivocal', and 'clear' facts 'creating a real, substantial and legitimate doubt' as [to] his competence." *Pardo*, 587 F.3d at 1101 (quoting *Medina*, 59 F.3d at 1106).

Despite his arguments to the contrary, Petitioner fell well short of presenting the required clear and convincing evidence that would give rise to a real, substantial, and legitimate doubt as to his competency at any part of the proceedings. The crime in this case occurred in 2007, and he pled guilty, waived a penalty phase jury, and waived mitigation in 2008. His attorneys appealed and his convictions and sentence were upheld in 2011, and he waived postconviction proceedings and discharged collateral counsel that same year. It wasn't until 2018 when CHU was appointed to representation that the topic of competency was ever mentioned. At no time during any of these proceedings, from 2007 to 2018, did any of Petitioner's trial, appellate, or postconviction attorneys, prosecutors, or judges ever express any concern as to his competency to proceed. To this day, current counsel has been unable to produce a statement from any of those attorneys

expressing such concerns.

The four experts Petitioner cites now did not see him until 2018, 11 years after his crimes. Importantly, not one of the four experts claims that Petitioner was incompetent when they evaluated him or that he was incompetent at the time of his pleas or postconviction waivers. They instead merely express that Petitioner's mental issues impacted his ability to function and make rational choices; this is a far cry from the standard of "incompetent to proceed". While they express in different ways he is less able to cope with stress or is negatively impacted by his upbringing and drug use, none can say that he was incompetent to proceed, just that his ability to make good choices was lower than a person without those deficits. Pet. App. at 468-518. The best example of how none of these doctors were able to establish incompetency either today or at the time he pled actually comes from Dr. Edwards's report:

> The best analogy from my experience is that . . . he was like a car whose headlights only extend 10 feet. The headlights in this analogy represent Mr. Russ's forethought. A fully functioning adult of his intelligence could see the long term implications of one's actions and take appropriate or corrective steps.

Pet. App. at 505. That is not the description of someone who meets the criteria for being incompetent to proceed. In fact, that analogy could likely apply to the vast majority of criminal defendants; when people commit crimes they are typically not thinking about the consequences, looking ahead, or being worried about what happens next. They are in the moment. Dr. Edwards merely described the mindset of the typical criminal defendant, not one who is so functionally impaired that he is

incompetent to proceed with his case. While Petitioner's retained experts consistently use the word "impaired" and similar terms throughout their reports, they never once assert that he is now, or was then, *incompetent*.

This case is also a poor vehicle for resolving any purported split because of the numerous other avenues Petitioner himself claims to possess to litigate his substantive competency claim. As Petitioner points out, Florida law itself affords defendants the right to present otherwise procedurally barred substantive competency claims if the circumstances strongly suggest actual incompetency. *See Thompson v. State*, 88 So.3d 312, 317 n.1 (Fla. 2012) (citing *Jones v. State*, 478 So. 2d 346, 347 (Fla. 1985); *Hill v. State*, 473 So. 2d 1253 (Fla.1985)). That Petitioner failed to meet that exception does not mean that Florida's procedural rules unconstitutionally preclude him from litigating a valid incompetency claim. And even if Petitioner had raised such a claim in the state court and sought to challenge the state court's denial on that basis, "[p]ostconviction claims of incompetency are extremely fact-dependent." *Id.* The law is well-settled that this Court does not grant a certiorari "to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925); *Texas v. Mead*, 465 U.S. 1041 (1984).

More than that, Petitioner claims to have the right to raise his substantive competency claim in the Eleventh Circuit despite his procedural default in state court. Pet. 7. If he is correct (which he is not), then this Petition is largely irrelevant—whatever the outcome here, he will be allowed to raise his claim in federal court. By Petitioner's own reasoning, then, this issue is unimportant in the

context of this case.

C. Petitioner's due process claim fails on the merits.

Finally, Petitioner fails to demonstrate any constitutional infirmity in the procedural bar applied by the Florida Supreme Court or the Fourth, Fifth, Eighth, and Ninth Circuits. In a concurring opinion, Judge Briscoe of the Tenth Circuit Court of Appeals gave a breakdown of the differences between waiver and procedural default, and offered good policy reasons why substantive competency claims should be subject to procedural default:

> The problem with our using the Supreme Court's statement in *Pate* as our guide, as some of our sister circuits have aptly noted, is that the defenses of waiver and procedural default are very different. The waiver doctrine rests upon a defendant's "voluntary knowing relinquishment of a right." *Green v. United States*, 355 U.S. 184, 191, 78 S.Ct. 221, 2 L.Ed.2d 199 (1957); see *United States v. Curtis*, 344 F.3d 1057, 1066 (10th Cir. 2003). In contrast, the procedural default rule is designed "to ensure that state prisoners not only become ineligible for state relief before raising their claims in federal court, but also that they give state courts a sufficient opportunity to decide those claims." *O'Sullivan v. Boerckel*, 526 U.S. 838, 853, 119 S.Ct. 1728, 144 L.Ed.2d 1 (1999). Moreover, the procedural default rule relies solely on the fact that a "claim was rejected by the state court on independent and adequate state grounds." *Martinez–Villareal v. Lewis*, 80 F.3d 1301, 1307 (9th Cir. 1996). Given this distinction, some of our sister circuits have reasonably held that substantive competency claims, while not subject to waiver, are subject to the usual procedural default rules that apply to most other constitutional issues. *E.g.*, *Hodges v. Colson*, 727 F.3d 517, 540 (6th Cir. 2013) ("Although it is true that substantive competency claims cannot be waived, they can be procedurally defaulted. We hereby hold that substantive competency claims are subject to the same rules of procedural default as all other claims that may be presented on habeas."); *Smith v. Moore*, 137 F.3d 808, 819 (4th Cir. 1998); *Martinez–Villareal*, 80 F.3d at 1306–07.

Lay v. Royal, 860 F.3d 1307, 1318-19 (10th Cir. 2017, Briscoe, concurring).

Judge Briscoe went on to explain that circuit courts that do not recognize these state procedural bars run counter to the restrictions Congress placed on federal habeas review under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *Id.* at 1319. AEDPA was enacted not only to "afford the appropriate respect for the finality of state court proceedings," but also "to conserve judicial resources and to streamline the federal habeas process." *Id.* (quoting *Case v. Hatch*, 731 F.3d 1015, 1045 (10th Cir. 2013)). Petitioner's proposed approach—which lends him no support in any event—undermines those interests. It also puts federal courts in an odd procedural posture because it would allow a court to grant federal habeas relief based on a claim that was never addressed on the merits by state courts. *Id.*

The sweeping rule Petitioner apparently advances—that a state defendant can procedurally default a substantive competency claim under no set of circumstances—makes little sense. Even granting that the Due Process Clause requires some limited exception to normal rules of procedural default, that exception would apply only insofar as the defendant nevertheless raised the substantive competency claim at the earliest practicable moment. For example, under the best-case scenario for Petitioner, the Due Process Clause might have afforded him some limited window after he regained competency within which to challenge his conviction and sentence. Further delay *after* that point would be unjustifiable. But Petitioner has not shown that he acted swiftly upon reattaining competency (again, the State disputes that he was ever incompetent to begin with);

as the Florida Supreme Court noted, Petitioner failed so much as to attempt to explain why it took him nearly a decade to raise his current claim, and never alleged that he filed his most recent claim within a year of reattaining competency, as Florida Rule of Criminal Procedure 3.851 would otherwise demand. *James v. State*, 323 So.3d at 158, 160–61 (Fla. 2021); *see* Fla. R. Crim. P. 3.851(d)(1), (2) (requiring postconviction motions to be filed within one year after the judgment and sentence become final unless the "facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence"); *Jimenez v. State*, 997 So. 2d 1056 (Fla. 2008) (1-year statute of limitations governing claims of newly discovered evidence in the capital habeas context runs from the "date upon which the claim became discoverable through due diligence").

Thus, whatever the merits of the rule in the Tenth and Eleventh Circuits, the rationale of cases like *Medina* and *Rogers* affords defendants no right to flout indefinitely the rules that states have created to ensure the orderly administration of justice and the finality of criminal convictions.

CONCLUSION

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

Respectfully submitted,

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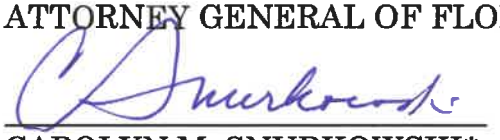
ATTORNEY GENERAL OF FLORIDA



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