NO:

IN THE SUPREME COURT OF THE UNITED STATES

NAFTALI DOMINGUEZ ZENON, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

On Petition For a Writ of Certiorari to
The Fourth District Court of Appeal of Florida

PETITIONER FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Sixth and Fourteenth Amendments guarantee the right to a trial by a twelve-person jury when the defendant is charged with a life felony?

II. Whether a mandatory life without parole sentence for a non-homicide offense violates the Eighth Amendment of the United States Constitution?

RELATED PROCEEDINGS

The proceedings listed below are directly related to the above-captioned case in this Court.

Dominguez Zenon v. State, No. 4D2022-1092, 2024 WL 103662, *1 (Fla. 4th DCA Jan. 10, 2024).

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PETITION FOR A WRIT OF CERTIORARI

Naftali Dominguez Zenon respectfully petitions for a writ of certiorari to review the judgement in this case of the Fourth District Court of Appeal of Florida.

OPINION BELOW

The opinion of Florida's Fourth District Court of Appeal is reported as *Dominguez Zenon v. State*, 373 So. 3d 349 (Fla. 4th DCA 2023). A motion for written opinion was denied and is reprinted in

appendix. A1. The District Court's order denying a motion for written opinion is also reprinted in the appendix. A4.

JURISDICTION

Florida's Fourth District Court of Appeal affirmed Dominguez Zenon's conviction and sentence on January 10, 2024. A1. The District Court denied Dominguez Zenon's timely motion for a written opinion on the constitutional issues on February 14, 2024. A4. The Fourth District's decision was final, as the Florida Supreme Court has no jurisdiction to review a decision that was affirmed without discussion. *See Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980); *see also Hobbie v. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136, 139 n.4 (1987) (acknowledging that "[u]nder Florida law, a per curiam affirmance issued without opinion cannot be appealed to the State Supreme Court" and therefore petitioner "sought review directly in this Court."). This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment of the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be

informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

The Eighth Amendment of the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Section 1 of the Fourteenth Amendment of the United States Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . ."

STATEMENT OF THE CASE

Petitioner, Naftali Dominguez Zenon, was convicted by a six-person jury of capital sexual battery[1] and he was sentenced to mandatory life imprisonment. He appealed to the Fourth District Court of Appeal of Florida. Relying on *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), he argued that he was entitled under the Sixth and Fourteenth Amendments to a twelve-person jury. A6-31. The District Court previously rejected this argument in *Guzman v. State*, 350 So.

[1] When Petitioner was tried and convicted capital sexual battery was not eligible for the death penalty.

3d 72 (Fla. 4th DCA 2022), *rev. denied*, No. SC22-1597 (Fla. June 6, 2023). In his concurring opinion in *Guzman*, Judge Gross said that "*Ramos* . . . suggests that *Williams* was wrongly decided," that "Guzman has a credible argument that the original public meaning of the Sixth Amendment right to a 'trial by an impartial jury' included the right to a 12-person jury," and that "*Williams* hovers in the legal ether, waiting for further examination by the [United States] Supreme Court." *Id.* at 78 (emphasis and citations omitted). Guzman's petition is pending in this Court under case no. 23-5173, and the conference has been rescheduled.[2]

Additionally, relying on the death is different jurisprudence and the fact that Florida is an outlier requiring mandatory life sentence for a non-homicide crime, he argued his sentence violated the Eighth Amendment. A33-43.

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[2] There are 18 other cases raising the same question presented. *Cunningham v. Florida*, No. 23-5171; *Arellano-Ramirez v. Florida*, No. 23-5567; *Sposato v. Florida*, 23-5575; *Morton v. Florida*, No. 23-5579; *Jackson v. Florida*, No. 23-5570; *Crane v. Florida*, No. 23-5455; *Aiken v. Florida*, No. 23-5794; *Manning v. Florida*, No. 23-6049; *Enrriquez v. Florida*, No. 23-5965; *Bartee v. Florida*, No. 23-6143; *Tillman v. State*, No. 23-6304; *Owensby v. Florida*, No. 23-6723; *Quinn v. Florida*, 23-6558; *Anderson v. Florida*, No. 23-6527; *Sanon v. Florida*, No. 23-6289; *Mejia v. Florida*, No. 23-6597; *Luviano v. Florida*, No. 23-6622; and *Tansil v. Florida*, No. 23-6901. This case should at least be held pending resolution of *Guzman* and those other petitions.

The District Court rejected both constitutional arguments without written reasons, and it denied his motion for a written opinion on those two issues. A4.

REASONS FOR GRANTING THE PETITION

I. The reasoning of *Williams v. Florida* has been rejected and the case should be overruled

This Court's decision in *Williams v. Florida,* 399 U.S. 78 (1970), is impossible to square with the ruling in *Ramos v. Louisiana,* 140 S. Ct. 1390 (2020), that the Sixth Amendment's "trial by an impartial jury" requirement encompasses what the term "meant at the Sixth Amendment's adoption," *id.* at 1395. What the term meant was a jury of twelve.

As this Court stated in *Ramos,* Blackstone recognized that under the common law, "no person could be found guilty of a serious crime 'unless the truth of every accusation . . . should . . . be confirmed by the unanimous suffrage of twelve of his equals and neighbors[.]'" *Id.* at 1395 (quoting 4 W. BLACKSTONE, *Commentaries on the Laws of England* 343 (1769)). "A verdict, taken from eleven, was no verdict at all." *Id.* (internal quotations and citations removed).

This Court said in *Thompson v. Utah,* 170 U.S. 343, 349-350 (1898), that since the time of Magna Carta, the word "jury" had been understood to mean a body of twelve people. Given that that understanding had been accepted since 1215, the Court reasoned, "[i]t must" have been "that the word 'jury'" in the Sixth Amendment was "placed in the constitution of the United States with reference to [that] meaning affixed to [it]." *Id.* at 350.

This Court continued to cite the basic principle that the Sixth Amendment requires a twelve-person jury in criminal cases for seventy more years. In 1900, the Court explained that "there [could] be no doubt" "[t]hat a jury composed, as at common law, of twelve jurors was intended by the Sixth Amendment to the Federal Constitution." *Maxwell v. Dow,* 176 U.S. 581, 586 (1900). Thirty years later, this Court reiterated that it was "not open to question" that "the phrase 'trial by jury'" in the Constitution incorporated juries' "essential elements" as "they were recognized in this country and England," including the requirement that they "consist of twelve men, neither more nor less." *Patton v. United States,* 281 U.S. 276, 288 (1930). And as recently as 1968, the Court remarked that "by the time our Constitution was written, jury trial in criminal cases had

been in existence for several centuries and carried impressive credentials traced by many to Magna Carta," such as the necessary inclusion of twelve members. *Duncan v. Louisiana,* 391 U.S. 145, 151-152 (1968).

In 1970, however, the *Williams* Court overruled this line of precedent in a decision that Justice Harlan described as "stripping off the livery of history from the jury trial" and ignoring both "the intent of the Framers" and the Court's long held understanding that constitutional "provisions are framed in the language of the English common law [] and . . . read in the light of its history." *Baldwin v. New York,* 399 U.S. 117, 122-123 (1970) (citation omitted) (Harlan, J., concurring in the result in *Williams).* Indeed, *Williams* recognized that the Framers "may well" have had "the usual expectation" in drafting the Sixth Amendment "that the jury would consist of 12" members. *Williams,* 399 U.S. at 98-99. But *Williams* concluded that such "purely historical considerations" were not dispositive. *Id.* at 99. Rather, the Court focused on the "function" that the jury plays in the Constitution, concluding that the "essential feature" of a jury is it leaves justice to the "commonsense judgment of a group of laymen" and thus allows "guilt or innocence" to be determined via "community

participation and [with] shared responsibility." *Id.* at 100-01. According to the *Williams* Court, both "currently available evidence [and] theory" suggested that function could just as easily be performed with six jurors as with twelve. *Id.* at 101-102 & n.48; *cf. Burch v. Louisiana,* 441 U.S. 130, 137 (1979) (acknowledging that *Williams* and its progeny "departed from the strictly historical requirements of jury trial").

Williams's ruling that the Sixth Amendment (as incorporated to the States by the Fourteenth) permits a six-person jury cannot stand in light of *Ramos*. There, this Court held that the Sixth Amendment requires a unanimous verdict to convict a defendant of a serious offense. In reaching that conclusion, the *Ramos* Court overturned *Apodaca v. Oregon,* 406 U.S. 404 (1972), a decision that it faulted for "subject[ing] the ancient guarantee of a unanimous jury verdict to its own functionalist assessment." 140 S. Ct. at 1401-1402.

That reasoning undermines *Williams* as well. *Ramos* rejected the same kind of "cost-benefit analysis" this Court undertook in *Williams,* observing that it is not the Court's role to "distinguish between the historic features of common law jury trials that (we think) serve 'important enough functions to migrate silently into the

Sixth Amendment and those that don't.'" 140 S. Ct. at 1400-01. Rather, the *Ramos* Court explained, the question is whether "at the time of the Sixth Amendment's adoption, the right to trial by jury included" the particular feature at issue. *Id.* at 1402. As the history summarized above establishes, there can be no serious doubt that the common understanding of the jury trial during the revolutionary War era was that twelve jurors were required—"a verdict, taken from eleven, was no verdict at all." *See* 140 S. Ct. at 1395 (quotation omitted).

Even setting aside *Williams's* disfavored functionalist logic, its ruling suffered from another flaw: it was based on research that was out of date shortly after the opinion issued. Specifically, the *Williams* Court "f[ou]nd little reason to think" that the goals of the jury guarantee-including, among others, "to provide a fair possibility for obtaining a representative[] cross-section of the community"—"are in any meaningful sense less likely to be achieved when the jury numbers six, than when it numbers 12." 399 U.S. at 100. The Court theorized that "in practice the difference between the 12-man and the six-man jury in terms of the cross-section of the community represented seems likely to be negligible." *Id.* at 102.

In the time since *Williams,* that determination has proven incorrect. This Court acknowledged as much eight years later in *Ballew v. Georgia,* 435 U.S. 223 (1978), when it concluded that the Sixth Amendment barred the use of a five-person jury. Although *Ballew* did not overturn *Williams,* the *Ballew* Court observed that empirical studies conducted in the handful of intervening years highlighted several problems with *Williams'* assumptions. For example, *Ballew* noted that more recent research showed that (1) "smaller juries are less likely to foster effective group deliberation," *id.* at 233; (2) smaller juries may be less accurate and cause "increasing inconsistency" in verdict results, *id.* at 234; (3) the chance for hung juries decreases with smaller juries, disproportionally harming the defendant, *id.* at 236; and (4) decreasing jury sizes "foretell[] problems . . . for the representation of minority groups in the community," undermining a jury's likelihood of being "truly representative of the community," *id.* at 236-37. Moreover, the *Ballew* Court "admit[ted]" that it "d[id] not pretend to discern a clear line between six members and five," effectively acknowledging that the studies it relied on also cast doubt on the effectiveness of the six-member jury. 435 U.S. at 239; *see also id.* at 245-46 (Powell, J.)

(agreeing that five-member juries are unconstitutional, while acknowledging that "the line between five- and six-member juries is difficult to justify").

Post-Ballew research has further undermined *Williams*. Current empirical evidence indicates that "reducing jury size inevitably has a drastic effect on the representation of minority group members on the jury." DIAMOND ET AL., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. OF EMPIRICAL LEGAL STUD. 425, 427 (Sept. 2009); *see also* HIGGINBOTHAM ET AL., *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 JUDICATURE 47, 52 (Summer 2020) ("Larger juries are also more inclusive and more representative of the community. . . . In reality, cutting the size of the jury dramatically increases the chance of excluding minorities."). Because "the 12-member jury produces significantly greater heterogeneity than does the six-member jury," DIAMOND ET AL., *Achieving Diversity on the Jury, supra*, at 449, it increases "the opportunity for meaningful and appropriate representation" and helps ensure that juries "represent adequately a cross-section of the community." *Ballew*, 435 U.S. at 237.

Other important considerations also weigh in favor of the twelve-member jury. Studies indicate that twelve-member juries deliberate longer, recall evidence better, and rely less on irrelevant factors during deliberation. *See* SMITH & SAKS, *The Case for Overturning Williams v. Florida and the Six-Person Jury,* 60 FLA. L. REV. 441, 465 (2008). Minority views are also more likely to be thoroughly expressed in a larger jury, as "having a large minority helps make the minority subgroup more influential," and, unsurprisingly, "the chance of minority members having allies is greater on a twelve-person jury." *Id.* at 466. Finally, larger juries deliver more predictable results. In the civil context, for example, "[s]ix-person juries are four times more likely to return extremely high or low damage awards compared to the average." HIGGINBOTHAM ET AL., *Better by the Dozen, supra,* at 52.

In *Guzman v. State,* 350 So. 3d 72 (Fla. 4th DCA 2022), the District Court cited *State v. Khorrami,* 1 CA-CR 20-0088, 2021 WL 3197499 (Ariz. Ct. App. July 29, 2021). At the time of the District Court's decision, Khorrami's petition for writ of certiorari was pending in this Court. Khorrami's petition was denied, over dissents

by Justices Kavanaugh and Gorsuch. *Khorrami v. Arizona,* 143 S. Ct. 22 (2022).

Although there is no legal significance to the denial of a petition for writ of certiorari,[3] there are important differences between Florida's and Arizona's systems. In Arizona, criminal defendants are guaranteed "a twelve-person jury in cases when the sentence authorized by law is death or imprisonment for thirty years or more. . . . Otherwise, a criminal defendant may be tried with an eight-person jury." *State v. Khorrami,* 2021 WL 3197499, at *8 (citations omitted). Florida juries are smaller (six versus eight), and those smaller juries are mandated in every case except capital cases. Art. I, § 22, Fla. Const.; § 913.10, Fla. Stat.; Fla. R. Crim. P. 3.270.

More importantly, the history of Florida's rule can be traced to the Jim Crow era. Justice Gorsuch observed that "[d]uring the Jim Crow era, some States restricted the size of juries and abandoned the demand for a unanimous verdict as part of a deliberate and

[3] *See Ramos,* 140 S. Ct. 1390 at n.56 ("The significance of a denial of a petition for certiorari ought no longer require discussion. This Court has said again and again and again that such a denial has no legal significance whatever bearing on the merits of the claim.") (cleaned up).

systematic effort to suppress minority voices in public affairs." *Khorrami,* 143 S. Ct. at 27 (Gorsuch, J., dissenting) (citations omitted). He noted, however, that Arizona's law was likely motivated by costs not race. *Id.* But Florida's jury of six did arise in that Jim Crow era context of a "deliberate and systematic effort to suppress minority voices in public affairs." *Id.*

The historical background is as follows:

In 1875, the Jury Clause of the 1868 constitution was amended to provide that the number of jurors "for the trial of causes in any court may be fixed by law." *See Florida Fertilizer & Mfg. Co. v. Boswell,* 34 So. 241, 241 (Fla. 1903). The common law rule of a jury of twelve was still kept in Florida while federal troops remained in the state. There was no provision for a jury of less than twelve until the Legislature enacted a provision specifying a jury of six in Chapter 3010, section 6, Laws of Florida (1877). *See Gibson v. State,* 16 Fla. 291, 297-98 (1877); *Florida Fertilizer,* 34 So. at 241.

The Florida Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson,* 16 Fla. 294. This was less than a month after the last federal troops were withdrawn from Florida in January 1877. *See* JERRELL H. SHOFNER, *Reconstruction and*

Renewal, 1865-1877, in THE HISTORY OF FLORIDA 273 (Michael Gannon, ed., first paperback edition 2018) ("there were [no] federal troops" in Florida after 23 January 1877").

The jury-of-six thus first saw light at the birth of the Jim Crow era as former Confederates regained power in southern states and state prosecutors made a concerted effort to prevent blacks from serving on jurors.

On its face the 1868 constitution extended the franchise to black men. But the historical context shows it was part of the overall resistance to Reconstruction efforts to protect the rights of black citizens. The constitution was the product of a remarkable series of events including a coup in which leaders of the white southern (or native) faction took possession of the assembly hall in the middle of the night, excluding Radical Republican delegates from the proceedings. *See* RICHARD L. HUME, *Membership of the Florida Constitutional Convention of 1868: A Case Study of Republican Factionalism in the Reconstruction South,* 51 FLA. HIST. Q. 1, 5-6 (1972); SHOFNER at 266. A reconciliation was effected as the "outside" whites "united with the majority of the body's native whites to frame a constitution designed to continue white dominance." HUME at 15.

The purpose of the resulting constitution was spelled out by Harrison Reed, a leader of the prevailing faction and the first governor elected under the 1868 constitution, who wrote to Senator Yulee that the new constitution was constructed to bar blacks from legislative office: "Under our Constitution the Judiciary & State officers will be appointed & the apportionment will prevent a negro legislature." HUME, 15-16; *see also* SHOFNER, 266.

Smaller juries and non-unanimous verdicts were part of a Jim Crow era effort "to suppress minority voices in public affairs." *Khorrami*, 143 S. Ct. at 27 (Gorsuch, J., dissenting); *see also Ramos*, 140 S. Ct. at 1417 (Kavanaugh, J., concurring) (non-unanimity was enacted "as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African Americans, especially in voting and jury service."). The history of Florida's jury of six arises from the same historical context.

And this history casts into relief another negative consequence of having six-person juries. Six-person juries necessarily deny a great number of cituzens the "duty, honor, and privilege of jury service." *Powers v. Ohio*, 499 U.S. 400, 415 (1991). Many consider jury service an "amazing and powerful opportunity and experience—one that will

strengthen your sense of humanity and your own responsibility." UNITED STATES COURTS, *Juror Experiences.*[4] Jury service, like civic deliberation in general, "not only resolves conflicts in a way that yields improved policy outcomes, it also transforms the participants in the deliberation in important ways—altering how they think of themselves and their fellow citizens." John Gastil & Phillip J. Weiser, *Jury Service as an Invitation to Citizen: Assessing the Civic Values of Institutionalized Deliberation,* 34 POL'Y STUD. J. 605, 606 (2006). Jury service is a "means of affording every citizen the chance to step into the state's shoes, to see the inner workings of the justice system, and to feel first-hand the power of self-government. In other words, the jury is a sacred, institutionalized opportunity for citizens to experience the transformative power of public deliberation." *Id.* at 22-23.[5]

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"[I]n *Ramos v. Louisiana*, the Court explained why *Apodaca* was wrong; and, by unavoidable implication, why *Williams* must be

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[4] Available at: https://www.uscourts.gov/services-forms/jury-service/learn-about-jury-service/juror-experiences

[5] Pincite is based on the downloaded .pdf document of Gastil's journal article.

wrong." *State v. West*, 30 Fla. L. Weekly Supp. 607a (Fla. 11th Cir. Dec. 2, 2022). This Court should grant the petition to correct this mistake.

II. This Court should resolve whether the death is different jurisprudence applies to LWOP sentences for crimes not death eligible.

Death is different because of its finality. "Death is truly an awesome punishment" and "involves, by its very nature, a denial of the executed person's humanity." *Furman v. Georgia*, 408 U.S. 238, 290 (1972) (Brennan, J., concurring). A mandatory life without parole (LWOP) sentence rejects the potential for rehabilitation and is an "absolute renunciation of all that is embodied in our concept of humanity." *Id.* at 306 (Brennan, J., concurring). There is no viable path to resurrect the individual's life, liberty, or basic rights after that sentence has been imposed. *See Miller v. Alabama*, 567 U.S. 460, 473-75 (2012).

Individuals convicted on non-capital crimes have no access to post-conviction attorneys and limited access to courts once the sentence and judgment has become final. This makes it even more critical that the LWOP be the correct sentence for that individual. Mandatory sentences take away the court's discretion yet it is

"abundantly clear" that the individual sentenced to LWOP will die in prison. *Ratliff v. State*, 914 So. 2d 938, 940 (Fla. 2005) (rejecting the argument that a life sentence is unconstitutional because it is an "indefinite imprisonment").

The death is different jurisprudence rests on the fundamental principle to ensure that the ultimate sentence only be imposed in select circumstances. Rape of a child is not one of those circumstances. *See Kennedy v. Louisiana*, 554 U.S. 407, 413 (2008).

"Because of the parallels between a sentence of death and a sentence of life imprisonment without parole, the Court has drawn on certain Eighth Amendment requirements developed in the capital sentencing context to inform the life-without-parole sentencing context." *Campbell v. Ohio*, 138 S. Ct. 1059 (2018) (Sotomayor, J., concurring). This Court is specifically suited to instruct the states on why LWOP should not be imposed on crimes that are not death eligible.

A. Most jurisdictions do not required mandatory life sentence for a child sexual battery conviction—Florida is an outlier.

Outside of Florida, there is only one state that mandates LWOP in similar circumstances—Louisiana. *See* La. Stat. § 42 D.(1) (LWOP

when first degree rape and victim is under thirteen). That makes Florida one of two states that mandate LWOP for a child sexual offense. Five additional states require LWOP when additional facts are present. Ark. Stat. §§ 5-14-103(a)(1) (child rape involving "forcible compulsion"), 5-4-104(c)(2)(A) (mandatory LWOP); Iowa Stat. §§ 709.2 (Class A felony when sexual abuse of child causes "serious injury"), 902.1 1. (mandatory LWOP for Class A felonies); Utah Stat. § 76-5-402.1(3)(b) (mandatory LWOP for rape of a child if defendant caused serious bodily injury to victim); Nev. Stat. § 200.336(3)(a) (mandatory LWOP for child sexual assault causing "substantial bodily harm"); Minn. Stat. § 609.3455 Sub. 2. (mandatory LWOP if "egregious" first-time offense).

Forty-four states do not mandate an individual die in prison after being convicted of a child sex crime. It is critical that this Court rectify the inconsistencies in how the states are imposing mandatory LWOP sentences for non-death eligible convictions.

B. This case is an ideal vehicle to answer the question presented.

This case is an ideal vehicle to resolve the question presented for three reasons.

First, there are no procedural obstacles that would complicate this Court's review. The question presented was raised and ruled on at the trial phase and then briefed and affirmed on appeal.

Second, this case presents a clean legal question: Does a mandatory LWOP sentence for a non-death eligible offense violate the Eighth Amendment? The death is different jurisprudence started with this Court therefore it is well suited to answer this question.

Three, in Florida clemency is not an option for those serving LWOP sentences. Florida's Governor DeSantis "unilaterally exercised his clemency powers to deny the pending clemency applications of all murderers and felony sex offenders." *Press Release,* FLORIDA COMMISSION ON OFFENDER REVIEW.[6] Therefore, the resolution in this case could be limited to other states where clemency is not an option for those serving mandatory LWOP sentences.

C. The question presented is one of exceptional importance.

Whether a mandatory death by incarceration sentence for a non-homicide crime violates the Eighth Amendment's cruel and

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[6] Available at https://www.fcor.state.fl.us/docs/media/PressReleases/2021/2021%20Clemency%20Rule%20Change%20Press%20Release.pdf (last visited on March 20, 2024).

unusual punishment clause is of exceptional importance because of its constitutional significance.

This Court has held strong on the prohibition against non-homicide crimes being death eligible. *See Jones v. Mississippi*, 593 U.S. 98, 106 (2021); *Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008). LWOP has become a replacement for a death sentence because the result is the same—death. Yet people sentenced to die in prison do not have the same safeguards as those sentenced to die by execution. When a sentence is so final that the event that terminates the sentence is the person's death, the Eighth Amendment protections must be applied.

This question allows the Court to ensure that the Eighth Amendment protections are relevant to today's society where far more people are serving LWOP sentences in Florida than death sentences. Specially, there are over "13,600 individuals serving LWOP [sentences] in Florida, far more than any other state and almost a quarter of the total nationwide." Cary Aspinwall, et al., *Two Strikes and You're in Prison Forever*, THE MARSHALL PROJECT, NOV. 11, 2021.[7]

[7] Available at https://www.themarshallproject.org/2021/11/11/two-strikes-and-you-re-in-prison-forever (last visited March 21, 2024).

In comparison, of the 2,331 individuals on death row across the nation, there are only 313 individuals currently on death row in Florida (second highest population in the nation). *Death Row USA*, DEATH PENALTY INFORMATION CENTER (as of Jan. 1, 2023).[8] The sheer number of these sentences illuminates the need for Eighth Amendment protections. This question allows the Court to ensure that people cannot be sentenced to die in prison without one of the most basic Eighth Amendment protections—judicial discretion at sentencing. That is a question of exceptional importance.

CONCLUSION

The petition for a writ of certiorari should be granted on both issues. If this Court denies Issue II, then this petition should be pending the resolution of *Guzman* and all other identical petitions.

Respectfully submitted,

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[8] Available at https://deathpenaltyinfo.org/death-row/overview/death-row-usa (last reviewed March 21, 2024).

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