No. 24-6775

IN THE

Supreme Court of the United States

EDWARD THOMAS JAMES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

REPLY TO BRIEF IN OPPOSITION

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, MARCH 20, 2025, AT 6:00 PM

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ARGUMENT IN REPLY

I. Petitioner's Eighth Amendment non-unanimous jury claim.

A. This claim implicates the Eighth Amendment.

Respondent has repeatedly attempted to recharacterize Mr. James' claim as procedural and falling only within the Sixth Amendment's purview. This is a red herring. Mr. James made clear in his petition that his claim rests on evolving standards of decency and a societal consensus about which classes of criminal defendants may be subjected to—or exempted from—the ultimate punishment. Such a claim is substantive and falls squarely under the Eighth Amendment.

Because Respondent mischaracterized the nature of Mr. James' claim, the cases it cites (*i.e.*, *Hurst*, *McKinney*, and *Ring*) are inapposite. However, to the extent that this Court's recent Sixth Amendment precedent regarding the right to jury unanimity may inform—but not fully dictate—the contours of Mr. James' Eighth Amendment claim, this only underscores the need for this Court's certiorari review. *See, e.g.*, *Ramos v. Louisiana*, 590 U.S. 83 (2020). As Florida becomes more of an outlier for its execution of non-unanimously sentenced capital defendants, and as more rights are articulated regarding unanimous juries in other contexts, this Court should clarify the contours of these rights, including any interplay between them.

Respondent also distorts the substance of Mr. James' historical contextualization of the requirement of jury unanimity. Historical understanding at the time of the Founding is not wholly divorced from evolving standards of decency. Rather, these two dimensions complement one another: historical context is a useful

lens through which courts can trace what our societal values are, which then can assist in determinations of present societal consensus supporting those values. And, while Respondent is correct that mandatory death sentences accompanied certain crimes at the time of the Founding, this again underscores Mr. James' point: that a guilt-phase verdict **was** a sentencing verdict, and that was required to be unanimous.

B. No state-law ground precludes this Court's review.

Respondent's assertion of an adequate and independent state bar should be given no credence for multiple reasons. First, as Mr. James detailed in his petition, his Eighth Amendment claim is timely and not procedurally barred because it relies on a societal consensus at present. Second, the Florida Supreme Court squarely addressed the merits of this claim.

Further, contrary to Respondent's argument, the merits ruling implicitly relies on Florida's conformity clause, which makes it inextricable from federal law. *See* BIO at 20. In deciding this claim on the merits, the Florida Supreme Court deemed the claim meritless specifically because "the Supreme Court's Eighth Amendment precedent to which we are bound does not require a unanimous jury recommendation for death[.]" *James v. State*, 2025 WL 798376 at *8 (Fla. Mar. 13, 2025).

Respondent fails to understand the nuance in such a ruling. It is not a simple "refus[al] to expand this Court's Eighth Amendment jurisprudence." BIO at 22. Rather, the Florida Supreme Court has ruled that because this Court has not explicitly stated that the Eighth Amendment requires death sentences to be rendered by a unanimous jury, Mr. James' claim that he is exempt from execution under the

Eighth Amendment is **automatically meritless**. This, coupled with the Florida Supreme Court's precedent that this Court's "interpretation of the Eighth Amendment **is both the floor and the ceiling** for protection from cruel and unusual punishment in Florida," *Barwick v. State*, 361 So. 3d 785, 794 (Fla. 2023), makes clear that regardless of the terminology the lower court used, it was relying on the conformity clause to reach its merits decision in Mr. James' case.

C. Florida's extreme outlier status justifies rather than precludes this Court's review

Mr. James' argument regarding the Florida Supreme Court's reliance on the conformity clause in no way argues that state courts are *required* to extend protections not mandated by this Court. Rather, he is arguing that a state cannot wholly opt out of Eighth Amendment considerations just because the right being asserted has not been mandated verbatim by this Court.

Respondent is wrong that this claim is not worthy of this Court's review due to a lack of conflict in the lower courts. BIO at 9, 18, 20-21. Rather, this only exemplifies Florida's status as an extreme outlier when it comes to imposition of non-unanimous death sentences,[1] as well as the conformity clause. Florida is the only state with a sweeping provision of this kind. There can therefore be no circuit split when Florida is the only state in which this issue will arise. Further, the Florida Supreme Court has made clear that it is constrained by its conformity clause. As all lower Florida

[1] Florida and Alabama are the only two jurisdictions that, in practice, expressly allow for juror non-unanimity in capital sentencing proceedings. And, Florida's threshold is the lowest in the country, requiring only eight jurors for a death sentence.

courts are bound by the Florida Supreme Court's precedent, there can not only be no "deep conflict" in the lower courts—there can be no conflict at all. Thus, absent this Court's intervention, there is no judicial mechanism by which this unconstitutionality can be remedied. It would be "Kafkaesque" for Florida to evade this Court's review simply by virtue of the unique harm it creates. *Cf. Bowles v. Florida*, 140 S. Ct. 2589 (2019) (Sotomayor, J., respecting denial of certiorari).

Similarly insidious is Respondent's argument that because Florida's conformity clause is written in a way that purports to follow this Court's precedent, its implementation cannot be unconstitutional. In truth, the "lack of conflict" between this Court's explicit precedent and the Florida Supreme Court's decision is illusory. Florida's conformity clause may at first blush appear to put Florida "in conformity with" this Court's caselaw. Art. I § 17, Fla. Const. But in reality, the conformity clause subverts the well-established role of state courts to act as laboratories that inform, not just parrot, this Court's Eighth Amendment caselaw. *See, e.g.*, *Chandler v. Florida*, 449 U.S. 560, 579 (1981) (referring to the ability of individual states to serve as laboratories as "one of the happy incidents of the federal system").

Further, regardless of its initial design, the implementation of the conformity clause over the past decade has served only to *reduce* rights, not ensure their protection. Whereas Florida has relied on the conformity clause to deny protections

to those with intellectual disability;[2] low mental age;[3] mental illness;[4] and who face disproportionate sentencing,[5] Florida has also repeatedly and intentionally violated the conformity clause in order to lower the "floor" of Eighth Amendment rights. For instance, a legislator introducing Florida SB 2-B, which makes the death penalty mandatory for capital offenses committed by "unauthorized aliens," stated:

> I did read [*Woodson v. North Carolina*, 428 U.S. 280 (Fla. 1976)]….The Supreme Court changes its mind on things as we have seen in the time that many of us have been in the legislature. In fact in this legislature, **we have chosen to pass things that we knew were unconstitutional at the time that we passed them** because we believed that the Supreme Court would change their mind[.]

1/28/25 Senate Special Session B, available at https://thefloridachannel.org/videos/1-28-25-senate-special-session-b/ (34:05-34:48) (Senator Randy Fine). And, Florida has also recently enacted a law authorizing the death penalty for sexual battery committed on a person less than 12 years of age, despite its clear contravention of *Kennedy v. Louisiana*, 554 U.S. 407 (2008). *See* Fla. Stat. § 921.1425 (2023).

Regardless of whether Florida's lip service to this Court's precedent uses the words "bound to" or "in conformity with," it is a false reality—one in which Florida staunchly insists it cannot raise the ceiling on federal constitutional rights but continues undaunted to lower the floor. As Respondent identifies, this Court opted not to intervene in analogous situations in 2023. BIO at 17 (citing *Dillbeck* and *Zack*).

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[2] *Zack v. State*, 371 So. 3d 335 (Fla. 2023); *Bowles v. State*, 276 So. 3d 791, 796 (Fla. 2019).
[3] *Barwick v. State*, 361 So. 3d at 794.
[4] *Covington v. State*, 348 So. 3d 456, 479-80 (Fla. 2022).
[5] *Lawrence v. State*, 308 So. 3d 544, 545 (Fla. 2020).

Since then, Florida has become more of an outlier with its respective practices, and more brazen in its attempts to curtail Eighth Amendment rights. Without this Court's review, Florida will continue to "do[] what the Constitution forbids because of [this Court's nonintervention]." *Cunningham v. Florida*, 144 S. Ct. 1287 (2024) (Gorsuch, J., dissenting from denial of certiorari).

II. Petitioner's claim under the Sixth, Eighth, and Fourteenth Amendments that Florida's procedural rulings precluded a merits review of his constitutional claims.

A. This claim was properly presented in state court.

Respondent has asserted that Mr. James failed to raise this claim in state court. BIO at 22-23. However, to the contrary, Mr. James raised this issue in his state court habeas petition, as stated in the court's opinion. *See James v. State*, 2025 WL 798376 at *9 (Fla. Mar. 13, 2025). In reference to Mr. James' state habeas petition, the court found:

> James argues that … he has been precluded from receiving merits review of constitutional claims, and he maintains that manifest injustice has resulted. He argues that the ends of due process warrant reconsideration of this Court's rulings regarding the timeliness of his ineffective assistance of counsel and competency claims.

Id. Although the state court disagreed with Mr. James, he did indeed raise this issue before the state court in his post-warrant litigation.

Furthermore, in his state habeas petition, Mr. James also alleged that "there is no adequate state remedy to protect [his] constitutional rights" in this instance. See Petition for Writ of Habeas Corpus *James v. Sec'y, Fla. Dept. of Corr.*, SC2025-0281 (Fla. March 13, 2025), at 12. In his Petition for a Writ of Certiorari, Mr. James

further explains *why* there is no adequate state remedy to protect his constitutional rights under these circumstances involving timeliness of claims and his competency. PET at 33-34. Briefly stated, Florida law has allowed substantive competency claims to be procedurally barred, as in Mr. James' case. However, the Eleventh Circuit has explained that a "substantive [competency] claim is not subject to procedural default and must be considered on the merits." *Medina v. Singletary*, 59 F. 3d 1095 (11th Cir. 1995).

This Court should review this case in order to resolve the disparity between state and federal courts when it comes to an individual's ability to obtain relief from a judgment obtained when they were incompetent.

B. Mr. James' 2022 petition for a writ of certiorari does not preclude this Court's review.

At the outset, this Court should disregard Respondent's characterization of Mr. James' current petition as a rehearing from 2022 litigation. Under Supreme Court Rule 44.2, rehearing of a certiorari denial "shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented." As the new, non-cumulative information in Mr. James' case was not available to him until February 14, 2025, there was no viable opportunity for Mr. James to avail himself of rehearing in 2022.

Respondent has further asserted that Mr. James is really arguing that fundamental fairness mandates that he be allowed to relitigate his competency in 2003 to waive state postconviction proceedings. BIO at 26. This assertion misconstrues Mr. James' arguments before this Court.

Mr. James' argument here is that his postconviction proceedings have not comported with fundamental fairness because he has never received a merits review of his substantive incompetency claims, as Florida has deemed them procedurally barred. Mr. James further argues that his postconviction proceedings have not comported with fundamental fairness in that new evidence obtained from the neuroimaging following his near-fatal heart attack, casts doubt on the state court's previous findings of competency in his case.

Respondent has argued that '[f]undamental fairness does not mandate relitigation, and certainly not based on new evidence that has not been shown to relate back in time to 2003, much less on the eve of a warrant." BIO at 26. It should be noted yet again, that despite defense counsel's efforts over a span of two years, this critical neuroimaging, was not actually turned over to the defense until four days before the signing of Mr. James' execution warrant. PET at 36. Despite this, Mr. James endeavored to have this crucial information reviewed by experts and bring it before the state court as part of his post-warrant litigation. To say that this information was only brought before "on the eve of a warrant," disregards the fact that it was only provided to Mr. James on the eve of his execution warrant being signed. Moreover, this neuroimaging most certainly relates back to 2003, if not further back than that. Experts that reviewed the scans opined that the brain atrophy they observed reflected a chronic brain condition wherein the structural brain changes likely began during adolescence. PET at 36.

This Court should review this case to ensure that Mr. James receives the fundamental fairness that postconviction proceedings must comport with under the Due Process Clause of the Fourteenth Amendment. *See Evitts v. Lucey*, 469 U.S. 387, 400-01 (1985).

CONCLUSION

This Court should grant Mr. James' application for stay of execution and grant a writ of certiorari to review the decision below.

Respectfully submitted,

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March 19, 2025
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