*** CAPITAL CASE ***

No. _____

IN THE

Supreme Court of the United States

ANTHONY FLOYD WAINWRIGHT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

THIS IS A CAPITAL CASE WITH AN EXECUTION SCHEDULED FOR TUESDAY, JUNE 10, 2025, AT 6:00 PM.

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*** CAPITAL CASE ***

QUESTIONS PRESENTED

1. Whether the Florida Supreme Court's persistent and fundamental misapprehension of this Court's holding in *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny warrants correction to ensure Florida citizens, including Mr. Wainwright, are not deprived of their due process rights?

2. Whether the Florida Supreme Court's refusal to consider properly presented mitigating evidence that provides a mitigating cause to cognitive and neurobehavioral impairments violates the Eighth Amendment?

3. Whether the Florida Supreme Court's imposition of a time-bar to preclude relief on meritorious Eighth Amendment claims based on new scientific evidence raises "troubling" due process concerns, as one Justice of this Court has observed?

LIST OF DIRECTLY RELATED PROCEEDINGS

Underlying Criminal Trial

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 1994 CF 150

Direct Appeal

Florida Supreme Court (No. 86022)
Anthony Floyd Wainwright v. State of Florida, 704 So. 2d 511 (Fla. 1997)
Judgment Entered: November 13, 1997 (affirming)
Rehearing Denied: January 16, 1998

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 97-8324)
Anthony Floyd Wainwright v. State of Florida, 118 S. Ct. 1814 (1998)
Judgment Entered: May 18, 1998

Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: April 12, 2002 (denying motion for postconviction relief)

Florida Supreme Court (Nos. SC02-1342; SC02-2021)
Anthony Floyd Wainwright v. State of Florida, 896 So. 2d 695 (Fla. 2004)
Judgment Entered: November 24, 2004 (affirming denial of postconviction relief and denying state habeas corpus relief)
Rehearing Denied: March 1, 2005

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 05-5025)
Anthony Floyd Wainwright v. State of Florida, 126 S. Ct. 188 (2005)
Judgment Entered: October 3, 2005

Federal Habeas Proceedings

District Court for the Middle District of Florida
Wainwright v. Sec'y, Fla. Dep't of Corr., Case No. 3:05-cv-276-TJC
Judgment Entered: March 10, 2006 (dismissing habeas petition as untimely)
Reconsideration Denied: May 12, 2006

Eleventh Circuit Court of Appeals (No. 06-13453)

Wainwright v. Sec'y, Fla. Dep't of Corr., 537 F.3d1282 (11th Cir. 2007)
Judgment Entered: November 13, 2007 (affirming habeas dismissal)
Rehearing Denied: December 26, 2007

First Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: September 20, 2007 (summarily denying)

Florida Supreme Court (No. SC07-2005)
Anthony Floyd Wainwright v. State of Florida, 2 So. 3d 948 (Fla. 2008)
Judgment Entered: November 26, 2008 (affirming)
Rehearing Denied: February 6, 2009

Second Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: June 15, 2009 (dismissing)

Florida Supreme Court (No. SC09-1411)
Anthony Floyd Wainwright v. State of Florida, 43 So. 3d 45 (Fla. 2010)
Judgment Entered: May 6, 2010 (affirming)
Rehearing Denied: August 3, 2010

Third (Amended) Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: June 15, 2012 (denying)

Florida Supreme Court (No. SC11-1669)
Anthony Floyd Wainwright v. State of Florida, 77 So. 3d 648 (Fla. 2011)
Judgment Entered: December 2, 2011 (affirming)

Fourth Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: June 15, 2012 (denying)

Florida Supreme Court (No. SC11-1669)
Anthony Floyd Wainwright v. State of Florida, 77 So. 3d 648 (Fla. 2011)

Judgment Entered: December 2, 2011 (affirming)

Fifth Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: February 6, 2014 (denying)
Judgment Amended: April 24, 2014

Sixth Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgments Entered: June 2, 2015 and September 22, 2015 (denying)

Florida Supreme Court (No. SC15-2280)
Anthony Floyd Wainwright v. State of Florida, 2017 WL 394509 (Fla. Jan. 30, 2017)
Judgment Entered: January 30, 2017

Seventh Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: July 15, 2022 (denying)
Rehearing Denied: August 4, 2022

Florida Supreme Court (No. SC22-1187)
Anthony Floyd Wainwright v. State of Florida, 2022 WL 4282149
Judgment Entered: September 16, 2022 (striking)
Rehearing Denied: January 12, 2023

Proceedings Under Federal Rule of Civil Procedure 60(b)

District Court for the Middle District of Florida
Wainwright v. Sec'y, Fla. Dep't of Corr., Case No. 3:05-cv-276-J-TJC
Judgment Entered: January 27, 2020 (denying relief from judgment in part and dismissing in part)
Reconsideration Denied: August 24, 2020

Eleventh Circuit Court of Appeals
Wainwright v. Sec'y, Fla. Dep't of Corr. (No. 20-13639)
Judgment Entered: July 18, 2023 (affirming)
Rehearing Denied: October 13, 2023

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 23-6737)
Anthony Floyd Wainwright v. Sec'y, Fla. Dep't of Corr., 144 S. Ct. 1363 (2024)
Judgment Entered: April 15, 2024

Eighth (Amended) Successive Postconviction Proceedings and State Habeas (under warrant)

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: May 20, 2024 (denying)

Florida Supreme Court (No. SC25-0708)
Anthony Floyd Wainwright v. State of Florida, 2025 WL 1561151 (Fla. June 3, 2025)
Judgment Entered: June 3, 2025 (affirming)

Florida Supreme Court (No. SC25-0709) (state habeas)
Anthony Floyd Wainwright v. Sec'y Fla. Dep't of Corr., 2025 WL 1531495
Judgment Entered: May 29, 2025 (striking)

Related Proceedings Under 42 U.S.C. § 1983 (under warrant)

District Court for the Middle District of Florida
Wainwright v. Governor of Florida, et al., Case No. 3:25-cv-607
Judgment Pending

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Petitioner Anthony Floyd Wainwright, a prisoner on Florida's death row whose execution is scheduled for June 10, 2025, respectfully urges this Honorable Court to issue its writ of certiorari to review the decision of the Florida Supreme Court issued on June 3, 2025.

DECISION BELOW

The Florida Supreme Court's opinion affirming the denial of Mr. Wainwright's motion for postconviction relief appears as *Wainwright v. State*, 2025 WL 1561151 (Fla. June 3, 2025), and is reproduced in the Appendix at A1.

JURISDICTION

The judgment of the Florida Supreme Court was entered on June 3, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment provides, in relevant part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law.

Florida Rule of Criminal Procedure 3.851(d)(2)(A) provides, in relevant part:

> (2) No [postconviction] motion shall be filed or considered pursuant to this rule if filed beyond the [one-year] time limitation provided in subdivision (d)(1) unless it alleges:
>
> (A) 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[.]

STATEMENT OF THE CASE

I. Introduction

Mr. Wainwright's death sentence is the product of multiple failures in the legal system that occurred at every stage of his proceedings, in both the state and federal courts. These failures have continued throughout Mr. Wainwright's warrant litigation and culminated in the opinion below. Certiorari review is necessary to correct the Florida Supreme Court's comprehensive misapplication of this Court's line of precedent regarding suppression of material evidence on the part of the State, as well as the lower court's persistent refusal to meaningfully consider meritorious Eighth Amendment claims despite the Court's clear mandate that such consideration is constitutionally required.

II. Procedural History

In 1994, Mr. Wainwright and his co-defendant Richard Hamilton were indicted in Hamilton County for first-degree murder and associated charges. R. 1-2. They were convicted after a joint trial before two separate juries. R. 1473, 1903. After a penalty phase, Mr. Wainwright's jury unanimously recommended an advisory sentence of death, which the trial court imposed.[1] R. 1170-77, 3738-39,

[1] The trial court found the following aggravating circumstances: (1) committed while under sentence of imprisonment; (2) previous felony conviction involving use or threat of violence; (3) committed while engaged in the commission of armed kidnapping and sexual battery; (4) committed to avoid arrest; (5) especially heinous, atrocious or cruel; and (6) committed in a cold, calculated and premeditated manner. R. 1171-73. The court found no statutory mitigating circumstances. R. 1174-75. As for non-statutory mitigation, the court found that "defendant's

3790. The Florida Supreme Court affirmed, and this Court denied certiorari. *Wainwright v. State*, 704 So. 2d 511, 513 n.4 (Fla. 1997), *cert. denied*, *Wainwright v. Florida*, 523 U.S. 1127 (1998). Mr. Wainwright's sentence was upheld on postconviction review, *Wainwright v. State*, 896 So. 2d 695 (Fla. 2004) (also denying state habeas relief), *cert. denied*, *Wainwright v. Florida*, 546 U.S. 878 (2005), and his subsequent efforts to raise meritorious issues in state court were summarily rejected.

In 2005, Mr. Wainwright filed a petition for writ of habeas corpus in federal district court, which the court ultimately dismissed as untimely due to federal counsel filing the petition after the one-year statute of limitations under the Antiterrorism and Effective Death Penalty Act had expired. *Wainwright v. Sec'y, Fla. Dep't of Corr.*, 537 F.3d 1282 (11th Cir. 2007) (affirming). In 2019, Mr. Wainwright unsuccessfully moved for relief from that judgment under Federal Rule of Civil Procedure 60(b)(6). *Wainwright v. Sec'y, Fla. Dep't of Corr.*, No. 3:05-cv-00276 (M.D. Fla. Jan. 27, 2020). The Eleventh Circuit affirmed, *Wainwright v. Sec'y, Fla. Dep't of Corr.*, No. 20-13639, 2023 WL 4582786 (11th Cir. July 18, 2023), and this Court denied certiorari review. *Wainwright v. Dixon*, 144 S. Ct. 1363 (2024).

On May 9, 2025, Governor Ron DeSantis signed a death warrant for Mr. Wainwright, setting his execution for June 10 at 6:00PM. On May 15, Mr.

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difficulties in school and his social adjustment problems, due in part to his problems associated with bed-wetting do provide some measure of mitigation." R. 1176.

Wainwright filed an amended eighth successive postconviction motion raising three claims: (1) that his due process rights had been violated under *Brady v. Maryland*, 373 U.S. 83 (1963), when the State suppressed evidence that two critical witnesses who testified at the joint trials expected to receive sentencing benefits in exchange for their testimony; (2) that his execution would violate the Eighth Amendment in light of new scientific evidence regarding his transgenerational exposure to Agent Orange through his father's combat service in the Vietnam War; and (3) a claim that his sentencing proceedings violated the Sixth and Fourteenth Amendments under this Court's recent opinion, *Erlinger v. United States*, 602 U.S. 821 (2024). The circuit court summarily denied Mr. Wainwright's successive postconviction motion without an evidentiary hearing on May 20, 2025. Mr. Wainwright appealed to the Florida Supreme Court, which affirmed the circuit court's decision on June 3, 2025. *Wainwright v. Florida*, 2025 WL 1561151 at *1; App. A1 at 1.

III. Facts Relevant to Mr. Wainwright's Postconviction Claims

A. The State's suppression of evidence that it knew a key witness at Mr. Wainwright's trial expected to receive a sentencing benefit from the State in exchange for his testimony

At Mr. Wainwright's trial, the State presented the testimony of jailhouse informant Robert Allen Murphy, who was then serving a 12-year sentence. R. 2702-04. Murphy met Mr. Wainwright in confinement after Murphy used his "trustee" status to have sex with a female prisoner. R. 2705.

Murphy testified that, while at the jail, Mr. Wainwright had told him he and

Hamilton came to Florida after escaping jail or prison. They abducted a woman at "some kind of store" and "went off into the woods." Mr. Wainwright said he strangled the woman, but she wouldn't die, "kind of like when you hit a puppy in the head and it kind of shakes a little bit[,]" so Mr. Wainwright shot her in the head twice then dragged her off and left her. R. 2708.

Murphy could not initially identify Mr. Wainwright in the courtroom. R. 2705. But after his testimony, the State asked him to "specifically [] direct your attention to [defense] counsel table over there. Do you recognize anybody seated at that table right there?" At that point, Murphy said a man sitting there "does look like Anthony Wainwright, but he didn't have any hair and he didn't have no mustache [when I talked to him]." R. 2710.

On cross-examination, Murphy said that he had a pending "modification of sentence" to lower his sentence, but he was "not necessarily" hoping to get a sentence reduction. R. 2712-13. On redirect, Murphy said the State did not promise anything in exchange for his testimony. R. 2726.

At Hamilton's trial, the State presented testimony from Dennis Givens, another jailhouse informant who was placed in confinement at the Taylor County Jail with Mr. Wainwright after bringing tobacco in. R-RH. 3375-77.

Givens testified that Mr. Wainwright claimed to have been the dominant actor in the murder. R-RH. 3385. He "took a scarf or shirt or something and wrapped it around her neck and tried to strangle her, and that didn't work, so he

said he punched her in the back of the head a few times." R-RH. 3384. "I put a bullet in the gun, walked over there and I shot her in the back of the head [twice]. I kicked her to make sure she was dead, and I drug her off in some bushes and threw some bushes over her." R-RH. 3385. Givens said Mr. Wainwright called Hamilton a "pussy" for not killing her. R-RH. 3385. Givens characterized Mr. Wainwright as a "lunatic" who would say things like "it is a good night for a homicide" or "I finally did it[.]" R-RH. 3387, 3392. He said Mr. Wainwright was "evil" and called himself a maniac. R-RH. 3392-93.

On May 13, 2025, Murphy admitted for the first time that, contrary to his trial testimony, he expected a sentencing benefit in exchange for testifying against Mr. Wainwright. He also disclosed that Dennis Givens likewise expected a benefit in return for testifying against Mr. Wainwright.

Murphy disclosed that while he was housed with Mr. Wainwright in confinement, Mr. Wainwright "was talking crazy about everything, including his case. What he was saying about his case was not believable to me, because it was so sensational and seemed more like he was trying to act tough." PCR8. at 240. When he informed law enforcement of Mr. Wainwright's purportedly inculpatory statements, he told them, "I didn't believe it all because it was so crazy. I remember asking them, 'Would you even believe that?'" PCR8. at 240. But law enforcement ignored this. Without any prior notice, Murphy was later transported from where he was serving his prison sentence to the county jail so that he could testify against

Mr. Wainwright. PCR8. at 240. Murphy's upcoming hearing regarding a modification of his sentence, which had been scheduled prior to his testimony, was "pushed back until after my testimony in Wainwright's case." PCR8. at 240.

While at the county jail, Murphy and Dennis Givens met and "kept discussing the case and our testimony before we gave it." *Id*. Givens "told [Murphy] that he was receiving a benefit in exchange for his testimony against Anthony." PCR8. at 240. He specified what it was to Murphy, although Murphy no longer remembers what he said. PCR8. at 240. This prompted Murphy to seek a benefit before testifying as well. He contacted his defense attorney, who spoke with the State about it. PCR8. at 240. Murphy's attorney assured him that he would receive a benefit in exchange for testifying. PCR8. at 240.

> Then, when I met with the prosecutor prior to testifying, he said that he could not make a promise but **the way he said it made it clear to me that I would get a benefit if I testified.** He repeated that so much that it became annoying, and I found it unusual because **everyone knew the elephant in the room. We all knew what was going on and that I would be receiving something in exchange for my testimony.**

PCR8. at 240-41 (emphasis added). And, just as he had been assured, Murphy's benefit was realized after his testimony against Mr. Wainwright. "At the [modification of sentence] hearing, the judge called the prosecutor on the phone and he provided information about my testimony. After the phone call, I was given a choice of doing time in prison or a lengthier probation. I chose the probation." PCR8. at 241.

The Florida Supreme Court denied the claim, finding that "[Mr.] Wainwright failed to exercise reasonable diligence in pursuing" it. *Wainwright*, 2025 WL 1561151 at *8; App. A1 at 5. The court also found that "the allegations [in the Murphy affidavit] are insufficient to establish that the State suppressed evidence" because there was no evidence that Murphy had entered into an explicit deal with the State in exchange for his testimony. *Id.* at *9; App. A1 at 6. As to materiality, the state court found the evidence was not material because "there was other significant evidence introduced against Wainwright . . . [t]he alleged evidence of Murphy's expectation of a benefit for his testimony would not undermine confidence in the outcome." *Id.*; App. A1 at 6.

B. Mr. Wainwright's transgenerational exposure to Agent Orange through his father's combat service in the Vietnam War

> From conception, Anthony had a minimal chance of developing into a fully functioning adult….His low cognitive functioning impaired his ability to make independent and normative decisions regarding his behaviors. Anthony's condition is the result of his father's heroism in Vietnam, and a Nation that chose to turn a blind eye to the problems manifest in children like him.

PCR8. at 238 (report of Dr. Victoria Cassano).

At the time of Mr. Wainwright's trial and sentencing 30 years ago, little research was being done into the *in utero* transmission of the dioxin TCDD (more commonly referred to as Agent Orange). This was a calculated decision by the Veterans Administration, an agency in the same government that had sent its citizens off to fight in the combat zones that would be heavily sprayed with Agent

Orange and the other toxic "rainbow herbicides" in the Vietnam War. As a result of this concealment, it is only recently that the scientific and medical communities have begun to research the transgenerational effects—including cognitive and neurobehavioral impacts—of this exposure on the children of Vietnam combat Veterans, like Mr. Wainwright.

Ken Wainwright's Agent Orange exposure and Anthony's afflictions

Anthony was conceived approximately six months after his father, Ken, returned from a ten-month Vietnam War deployment for which he received multiple awards including a Bronze Star.[2] PCR8. at 221. While deployed, Ken was assigned to the III Corps Tactical Zone as a Field Wireman. PCR8. at 221. This was in the region Northeast of Saigon, amidst some of the heaviest fighting and heaviest spraying with "rainbow herbicides" including Agent Orange and Agent Blue, an arsenic-containing herbicide. PCR8. at 221. Due to the specifics of Ken's service, there exists "[c]ompensable, irrefutable evidence of [his] Agent Orange exposure." PCR8. at 237. Agent Orange contains "the most potent dioxin manufactured." PCR8. at 225.

It is now understood that Ken's defoliant exposure had a lifelong impact on Anthony. "Even as a tiny baby there was something 'off' about Anthony…. [H]e never stopped crying." PCR8. at 237. In the first year of his life, he was in and out of the hospital with bronchitis and asthma. As a child, he displayed many of the same

[2] For clarity, the Wainwrights' first names are used.

ailments that were present in Ken after his service and that are presumptively associated with Agent Orange exposure. PCR8. at 237-38 (detailing tremors, speech difficulties, and dermatological problems).

The physical afflictions were increasingly accompanied by cognitive and emotional deficits. Anthony was taken for mental and behavioral evaluations beginning at the age of six, due to behavioral struggles, an inability to sit still, immaturity, and poor impulse control. PCR8. at 222. In fourth grade, he was tested for learning disabilities and placed in a classroom for learning disabled students. PCR8. at 222. At age 11, he was found to be "borderline mentally retarded" based on his intellectual and adaptive functioning. PCR8. at 222. He could not read. PCR8. at 224. "In today's lexicon, he would be considered to have an 'intellectual disorder.'" PCR8. at 222. His struggles grew more pronounced with age, and by 12 his developmental and neurological functioning was equivalent to a child four to five years younger. PCR8. at 223. He had to repeat the seventh grade and was in remedial classes. PCR8. at 222.

Continuing into his teens, Anthony suffered from impulsivity, excessive talking, a tendency to follow others, negative attention-seeking behaviors, enuresis, defiance, trauma symptoms, social and emotional impairment, poor academic performance, low self-esteem, detachment, substance dependence, despondence, continued tremors, and global intellectual and learning difficulties. PCR8. at 223-25. Minimal therapeutic interventions were utilized, and those that were proved not

only inadequate but affirmatively worsened his symptoms and contributed to further behavioral struggles. PCR8. at 223-5. His prognosis was "not very promising" for becoming an independent and functioning adult. His family was warned that without admission to a long-term treatment facility, he would likely end up in training school or prison, PCR8. at 224, a prediction realized by July 1987, when he was placed on probation for a nonviolent offense. PCR8. at 224. A counselor noted that Anthony appeared "despondent, but not disrespectful." PCR8. at 224. A few months later, he was "very depressed and almost catatonic." PCR8. at 224. His tremors were apparent. PCR8. at 224.

A 2019 evaluation concluded that Anthony's history was defined by cognitive impairment, below-average intellectual functioning, and immaturity. PCR8. at 224. He lagged behind his peers in his ability to develop age appropriate social-emotional skills and displayed depression, "hyperkinetic activity," trauma symptoms, and social impairment. These longstanding impairments impacted his ability to "formulate, crystalize, and express his thoughts and feelings." PCR8. at 224-25. Anthony's afflictions, while ameliorated to a degree by the structured prison environment in which he lives, have never gone away.

Anthony's deficits are directly attributable to Agent Orange exposure

Anthony's father, Ken, was a Vietnam combat Veteran who was exposed to tactical herbicides. PCR8. at 225. The "rainbow herbicides," including Agent Orange, were a class of chlorinated phenoxy compounds used to defoliate large

areas of dense forest during the Vietnam war. PCR8. at 225. Agent Orange (hereinafter "TCDD", its chemical formulation) is the most potent dioxin manufactured. PCR8. at 225. The intense combat operations in the area sprayed earth and flora disrupted by various munitions, spreading herbicide-laden dust which was inhaled, ingested, and permeated clothing and skin. PCR8. at 225.

Catastrophic risks of TCDD to the child of an exposed Veteran are now established by scientific study, but medical advancements regarding this topic have been very limited due to governmental decisions:

> [T]here is an increasing body of literature indicating that children of Vietnam Veterans have a proportionally greater incidence of cognitive disorders and neurobehavioral disorders than the general population. In the 22 years that The Institute of Medicine (IOM) published its Reports on Veterans and Agent Orange, **it never once investigated neurobehavior effects in offspring of Vietnam Veterans**…. There is a reason for this that is not readily apparent to those not intimately involved in the process of developing these reports. While initially mandated by congress, each…report, [until] 2018, was produced under contract with the VA….A VA representative presents the "charge" to the committee, in which it directs…what it wishes to be investigated. The IOM is bound by this charge, and by contract, cannot exceed the authority given to it in the charge. Despite all the evidence over the years, **VA never asked IOM to investigate it.**

PCR8. at 225-26 (emphasis added). Research now shows that TCDD accumulates in fat tissue, affecting numerous aspects of cell metabolism and altering the expression of a large number of genes. PCR8. at 225-26. Due to TCDD's long half-life, the levels in Ken's body were "great and persisted long after his son, Anthony, was conceived. In fact, his body burden of these compounds contributed to his ultimate demise from esophageal cancer." PCR8. at 226-27. TCDD's damage to genes means that second

and third generational effects, especially neurocognitive effects in a child, can be attributed to parental exposure. PCR8. at 226-27.

Though literature supports the link, the VA has done little to investigate it. In November 2023, a United States Senator held a hearing on a Children's Toxic Exposure Research law. PCR8. at 227-28. There, a VA representative testified that if a connection was found between a parent's toxic exposure to TCDD during military service and a child's illness, the VA would be responsible for providing health care and compensation, and that would greatly increase their budget. PCR8. at 228. This suggests VA knowledge of the link. PCR8. at 228.

TCDD is the most toxic chemical produced by humans. It causes genomic instability, where genetic damage is observed several generations later in the progeny of exposed cells. PCR8. at 228. TCDD promotes transgenerational inheritance of disease via changes in the chemical structure of DNA. PCR8. at 228. This happens from the male germline after fertilization, resulting in changes to the offspring's genome that can lead to disease in future generations. PCR8. at 228. For example, one study on an Italian town that was exposed to dioxins in World War II documented health effects in the grandchildren of women that conceived children even more than 25 years after exposure. PCR8. at 229.

Agent Orange exposure and parental PTSD have a complex interaction as contributing factors to cognitive and neurobehavioral effects in the children of Vietnam Veterans. PCR8. at 229. When disabilities in children of Vietnam Veterans

were compared to those of non-veterans, the comparison yielded an emerging pattern of functional problems in the Veterans' children, including significant increases in all types of learning and attention disorders and emotional/behavioral disorders. PCR8. at 229. This is attributed to parental damage to the immune system induced by TCDD and similar compounds. PCR8. at 229.

A striking study was conducted on the reproduction of Agent Orange-exposed women, **or the wives of soldiers exposed to dioxins**. PCR8. at 230. Less than 10% resulted in miscarriages and 14% in still- or premature births. Of the successful births, 14 children died at an early age, and **66% of children had developed a physical or mental disability**. PCR8. at 230. Similarly, a recent 2023 study of Vietnamese children living near the previous Da Nang Airbase 40 years after the Vietnam War showed that perinatal exposure to TCDD impacts social, emotional, and cognitive functions, leading to sex-specific neurodevelopmental disorders. PCR8. at 230. By the age of eight, girls with high TCDD levels had ADHD-like behaviors and autism spectrum disorder, whereas boys showed neurodevelopmental disorder and learning disabilities of the same ilk as evident in Anthony by the time he was in 4th grade. PCR8. at 230.

The studies' conclusions now can be corroborated and extrapolated to children of American Vietnam Veterans. PCR8. at 230. At the end of the Vietnam War, the level of TCDD present in Vietnam Veterans was at least 35 times, and up to 1500 times, greater than that of the general population. PCR8. at 230. A child

like Anthony, who was conceived only six months after his father returned from Vietnam, would have been affected by that TCDD, either due to epimutations, or to direct exposure of TCDD during fertilization of the maternal gamete. PCR8. at 230.

The effects of TCDD exposure on Anthony's development are further complicated by Ken's likely undiagnosed, untreated PTSD. PCR8. at 230. Children of Vietnam combat Veterans with PTSD exhibit a substantially greater degree of dysfunctional social and emotional behavior (including inadequate self-control manifesting in behaviors like aggression, hyperactivity, and delinquency) than those of non-combat Veterans without PTSD. PCR8. at 231. Even among children whose fathers all served in combat, those whose fathers had PTSD symptoms showed more problems with activity, social and school conduct, behavior, emotional difficulties, and neuroticism. PCR8. at 231.

Information on transgenerational effects of Agent Orange exposure is not readily accessible or widely known by the general medical community, let alone the general public. Prior IOM reports did not address the neurobehavioral or cognitive effects of transgenerational exposure, and most clinicians review only those reports when seeking available information on the effects of Agent Orange. PCR8. at 231. Further, the stringent requirements placed on the IOM for accepting research studies vastly limited the available information in these reports.

Research regarding transgenerational effects is even newer and more obscure to the general medical community. PCR8. at 231. Modes of transmission to

offspring were not established until the early 2020s, and the studies discussing this phenomenon only began to be published in 2023 at the earliest. PCR8. at 231. Thus, the ability to integrate studies into a cogent medical, much less legal, theory has only recently become possible. PCR8. at 231.

Dr. Cassano concluded that many neurobehavioral and cognitive issues linked to transgenerational exposure to TCDD manifested in Anthony from an early age, including learning disabilities, poor impulse control, and low social functioning. PCR8. at 231. Anthony was exposed to the effects of Agent Orange through his father's service in Vietnam. This detrimentally affected Anthony's development and strongly contributed to his cognitive and behavioral disorders. PCR8. at 232-33. From the moment of conception, Anthony had a slim chance of developing into a fully functioning adult. The effects of his Agent Orange exposure were exacerbated by a lack of appropriate medical treatment, and his subjection to harsh behavioral modification techniques at wilderness camps, training school, and detention centers, which only magnified his emotional and behavioral instability. PCR8. at 232-33.

REASONS FOR GRANTING THE WRIT

I. The Florida Supreme Court's persistent, fundamental misapplication of *Brady* and its precedent warrants correction by this Court to ensure uniform protection of criminal defendants' Due Process rights.

In a long line of cases, this Court has etched out the contours of the due process violation that occurs when the State resorts to evidentiary gamesmanship in its efforts to prosecute a criminal defendant. *Brady v. Maryland*, 373 U.S. 83, 87

(1963). "Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." *Id.* In *Brady*, this Court held that due process is violated when "the suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.*

The Court extended this principle to impeachment evidence in *United States v. Bagley*, 473 U.S. 667, 676 (1985). The *Bagley* Court explained that such evidence, "if disclosed and used effectively, [] may make the difference between conviction and acquittal." *Id*; *cf. Napue v. Illinois*, 360 U.S. 264, 269 (1959) ("The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.").

In *Kyles v. Whitley*, this Court clarified that *Brady* materiality must be analyzed cumulatively, "not item by item." 514 U.S. 419, 437 (1995). Finally, the Court held in *Banks v. Dretke* that the prosecution's disclosure obligation is a continuing one: When police or prosecutors conceal exculpatory or impeaching material in the State's possession, it is "incumbent on the State to set the record straight." 540 U.S. 668, 676 (2004). Collectively, this Court's *Brady* line of cases delineates well-defined obligations on the State, as well as clear analytical parameters for lower courts to follow when considering such claims.

The Florida Supreme Court's ruling on Mr. Wainwright's *Brady* claim flouted this Court's holdings in multiple critical respects. Given the pervasive nature of this misapplication in the lower court's opinion, and in light of the seriousness of the punishment imposed on Mr. Wainwright as a result, this Court's review is warranted to correct the Florida Supreme Court's understanding of *Brady* and its precedent in order to ensure that criminal defendants in Florida are able to meaningfully raise and litigate due process claims based on prosecutorial misconduct.

First, the court found that no violation occurred because there was no evidence in Murphy's affidavit that the State ever made a formal or informal deal with him in exchange for his testimony. *Wainwright*, 2025 WL 1561151 at *8; App. A1 at 5. Yet this Court confronted this exact scenario in *Bagley* and held that that is not the standard. There,

> Defense counsel asked the prosecutor to disclose any inducements that had been made to witnesses, and **the prosecutor failed to disclose that the possibility of a reward had been held out . . . if the information [the witnesses] supplied led to 'the accomplishment of the objective sought to be obtained [by the Government]. This possibility of a reward gave [them] a direct, personal stake in respondent's conviction. The fact that the stake was not guaranteed through a promise or binding contract, but was expressly contingent on the Government's satisfaction with the end result, served only to strength any incentive to testify falsely in order to secure a conviction**. . . . While the Government is technically correct that [there was not] a 'promise of reward,' [it] misleadingly induce[d] defense counsel to believe that [the witnesses] provided [their statements] . . . without any "inducements."

Bagley, 473 U.S. at 683-84 (emphasis added). That is exactly what happened here. At Mr. Wainwright's trial, defense counsel attempted to impeach Murphy's testimony by asking about his pending motion to modify his twelve-year sentence. Murphy admitted that he had such a motion pending. R. 2712. However, he stated that he was "not necessarily" hoping to get a sentence reduction. R. 2713. On redirect, Murphy testified that the State had not promised him anything in exchange for his testimony. R. 2726.

His 2025 statement now shows that he had actively pursued—and expected to receive—a deal with the State in exchange for testifying against Mr. Wainwright. As in *Bagley*, no "promise or binding contract was made" prior to his testimony, *Bagley*, 473 U.S. at 683-84, but "everyone knew the elephant in the room. We all knew what was going on and that I would be receiving something in exchange for my testimony." PCR8. at 240-41. That expectation came to pass after Murphy testified to the State's satisfaction against Mr. Wainwright. "[T]he judge called the prosecutor on the phone and he provided information about my testimony. After the phone call, I was given a choice of doing time in prison or a lengthier probation. I chose the probation." PCR8. at 241.

The Florida Supreme Court's persistent refusal to recognize that a *Brady* violation may occur even absent an "explicit deal"—and that, in fact, the absence of an express promise can be even stronger motivation for a witness to modify his testimony to please the prosecution and secure a deal—flies in the face of *Bagley*

and is a recurring issue in the state court's opinions that warrants this Court's review to ensure the uniform application of *Brady* nationwide. *See, e.g.*, *Stein v. State*, 406 So. 3d 171, 175 (Fla. 2024) (denying *Brady* claim in the absence of an explicit deal); *Sheppard v. State*, 338 So. 3d 803, 827 (Fla. 2022) (same); *Davis v. State*, 928 So. 2d 1089, 1115-16 (Fla. 2005) (no *Brady* violation where there was "no evidence that a deal was in fact made or a promised conclusively extended").

The Florida Supreme Court's finding that "Wainwright failed to exercise reasonable diligence in pursuing" the claim is likewise predicated on a misapprehension of this Court's *Brady* precedent. *Wainwright*, 2025 WL 1561151 at *8; App. A1 at 5. The court framed the issue as a question of diligence, but this Court has never held that diligence is an element that must be satisfied to establish a *Brady* violation. Even so, Mr. Wainwright *was* diligent—at trial and afterwards—in attempting to uncover this evidence.

At trial, defense counsel asked Murphy about his pending motion for a sentence modification, but Murphy stated that he was "not necessarily" hoping to get a sentence reduction. R. 2713. And on redirect by the State, Murphy reiterated that the State had not promised him anything in exchange for his testimony. R. 2726. Mr. Wainwright made subsequent post-trial efforts to contact Murphy regarding his testimony, to no avail. Thus, Mr. Wainwright was diligent. On the contrary, the State failed to uphold its ongoing *Brady* obligations by disclosing this evidence to Mr. Wainwright, instead continuing to suppress it. But as this Court

held in *Banks*, when police or prosecutors conceal exculpatory or impeaching material in the State's possession, it is "incumbent on the State to set the record straight." 540 U.S. at 676. That never happened here.

Additionally, the state court's diligence finding rested on a critical factual error: that Murphy's affidavit did not establish any *Brady* violation because "it was clear from the trial testimony that Murphy had a [pending] motion for modification of sentence . . . . And it was a matter of public record that [he] was released on probation shortly after his testimony." *Wainwright*, 2025 WL 1561151 at *8; App. A1 at 5-6. But this entirely ignores the crux of Mr. Wainwright's *Brady* claim. Until Murphy's affidavit, there was no evidence demonstrating the *nexus* between his testimony in Mr. Wainwright's case and his release to probation shortly thereafter. Murphy's affidavit provided that missing link—one that Mr. Wainwright diligently attempted to uncover, even after his conviction, but that was continuously suppressed by the State.

The Florida Supreme Court's flawed application of *Brady*'s principles did not stop there. The court's materiality analysis erroneously focused exclusively on the impact of the evidence on the guilt phase, and failed to analyze its impact on Mr. Wainwright's sentence. *Wainwright*, 2025 WL 1561151 at *9; App. A1 at 6. Yet as this Court held in *Brady*, a due process violation occurs "where the evidence is material to guilt **or to punishment**." *Brady*, 373 U.S. at 87 (emphasis added). Murphy's testimony, which detailed inflammatory statements Mr. Wainwright

supposedly made regarding his role in the murder, played an outsized role in sentencing Mr. Wainwright to death. The trial court relied on Murphy's testimony to find the 'HAC' and 'CCP' aggravating factors. *See* R. 1173. It also used his testimony to reject a statutory mitigator. R. 1174.[3] The lower court's exclusive focus on the guilt phase did not comport with this Court's instruction that a *Brady* analysis must be conducted with respect to both the conviction and the sentence.

Finally, the Florida Supreme Court failed to conduct the cumulative materiality analysis that this Court mandated in *Kyles*. When such an analysis is properly undertaken, Murphy's affidavit paints the State's case against Mr. Wainwright in an entirely new light. If the jury had been told that Murphy expected to receive a sentencing benefit from the State in exchange for his testimony against Mr. Wainwright, it would have potentially altered how the jury viewed all of the jailhouse informant testimony against Mr. Wainwright, as well as the State's case for death as a whole.[4] *See Kyles*, 514 U.S. at 445 (evidence can be material for

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[3] As for the guilt phase, the State clearly relied on the jailhouse informant testimony to secure Mr. Wainwright's conviction. *See* R. 3552 (closing argument at guilt phase stating that "the defendant Wainwright by his own lips has convicted himself of all four of these crimes of which he is accused"); R. 3555-57 (detailing Murphy's inculpatory statements not only for the purpose of establishing Mr. Wainwright's guilt but also to convince the jury not to believe any defensive statements attributed to him); R. 3579 (State attempting to bolster Murphy's credibility).

[4] Murphy's statement also called into question the testimony of jailhouse informant Dennis Givens, who testified at the trial of Mr. Wainwright's co-defendant. Although Mr. Wainwright's jury did not hear Givens's testimony, the same trial judge who was responsible for deciding his sentence presided over both

impeaching a witness and attacking the "thoroughness and . . . good faith" of the investigation). Yet the Florida Supreme Court did not address this possibility, instead conclusorily stating that "[t]he alleged evidence of Murphy's expectation of a benefit for his testimony would not undermine confidence in the outcome." *Wainwright*, 2025 WL 1561151 at *9; App. A1 at 6.

In light of the seriousness of the punishment imposed on Mr. Wainwright and the pervasive misapplication of this Court's precedent, certiorari review is warranted to correct the lower courts' fundamental misunderstanding of *Brady* and to ensure that the due process rights of criminal defendants in Florida are safeguarded from prosecutorial misconduct as this Court requires.

II. This Court should enforce its longstanding precedent recognizing the need for individualized sentencing determinations under the Eighth Amendment.

The Eighth Amendment applies with special force in capital cases. *See Roper v. Simmons*, 543 U.S. 551, 568 (2005) (citing *Thompson v. Oklahoma*, 487 U.S. 815, 856 (1988) (O'Connor, J., concurring in judgment)). This Court "insists upon confining the instances in which the punishment can be imposed," *Kennedy v. Louisiana*, 554

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trials and so heard the inflammatory statements Givens testified Mr. Wainwright made to him. Furthermore, evidence of Givens's anticipation of a deal in exchange for inculpating Mr. Wainwright would have further impeached Murphy, who by his own admission was influenced by Givens to seek a deal from the State in exchange for his testimony against Mr. Wainwright. See PCR8. at 240 (Murphy crediting his decision to pursue a deal to Givens' statement that he was receiving one); PCR8. at 240 (Murphy admitting that he and Givens repeatedly discussed their upcoming testimony against Mr. Wainwright). The Florida Supreme Court did not discuss Givens at all in its analysis.

U.S. 407, 420 (2008); otherwise, the law "risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint." *Id.* Thus, states must administer the death penalty "in a way that can rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not." *Spaziano v. Florida*, 468 U.S. 447, 460 (1984) (overruled on other grounds by *Hurst v. Florida*, 577 U.S. 92 (2016); *see also Godfrey v. Georgia*, 446 U.S. 420, 428, 433 (1980) (setting death sentence aside in order to avoid "arbitrary and capricious infliction of the death penalty" because the situation did not reflect "a consciousness materially more 'depraved' than that of any person guilty of murder.").

"With respect to retribution—the interest in seeing that the offender gets his 'just deserts'—the severity of the appropriate punishment necessarily depends on the culpability of the offender." *Atkins v. Virginia*, 536 U.S. 304, 319 (2002). For this reason, the death penalty is reserved not only for "a narrow category of the most serious crimes[,]" but must be limited even further to those "whose extreme culpability makes them 'the most deserving of execution.'" *Roper*, 543 U.S. at 568 (citing *Atkins*, 536 U.S. at 319); *see also Miller v. Alabama*, 567 U.S. 460 (2012). Thus, under this Court's longstanding precedent, a capital defendant's "punishment must be tailored to [his] personal responsibility and moral guilt." *Enmund v. Florida*, 458 U.S. 782, 800 (1982).

Over the years, this Court's "narrowing jurisprudence, which seeks to ensure

that only the most deserving of execution are put to death," has enumerated classes of individuals whose "lesser culpability" does not merit imposition of the death penalty as retribution. *Atkins*, 536 U.S. at 314-15, 319. *See id.* (categorically exempting individuals with intellectual disability from execution); *Roper*, 543 U.S. at 571 ("Retribution is not proportional if the law's most severe penalty is imposed on one whose blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.").

And, in addition to categorical exemptions, this Court has repeatedly emphasized the need for individualized sentencing that evaluates a particular defendant's culpability by "focus[ing] on 'relevant facets of the character and record of the individual offender.'" *Enmund*, 458 U.S. at 798 (citing *Lockett v. Ohio*, 438 U.S. 586 (1978), and *Woodson v. North Carolina*, 428 U.S. 280 (1976)); *see also Abdul-Kabir v. Quarterman*, 550 U.S. 233, 264 (2007) (a sentencer faced with the "grave task of imposing a death sentence" must "decide whether death is an appropriate punishment for that individual in light of his personal history"); *Tennard v. Dretke*, 542 U.S. 274, 285-87 (2004) (rejecting requirement that "an individual must establish a nexus between [their] mental capacity and the crime" in order for such mitigating evidence to be considered).

Here, Mr. Wainwright's circumstances exemplify the appropriateness of a recognition that the ultimate penalty—that reserved for only the most culpable offenders—would be disproportionate, excessive, and cruel as applied to his

individual circumstances. In *Porter v. McCollum*, 558 U.S. 30 (2009), the United States Supreme Court reaffirmed that "[e]vidence about [a] defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background…may be less culpable." 558 U.S. at 41 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989)) (quotations omitted). And, in particular, wartime combat injuries are precisely the "kind of troubled history [the Court has] declared relevant to assessing a defendant's moral culpability." *Id.* (quoting *Wiggins v. Smith*, 539 U.S. 510, 535 (2003)). Although Mr. Wainwright did not serve in the Vietnam War, and was not even a viable life at that point, he was catastrophically and immutably cognitively damaged from it. Unlike Veterans, who make knowing sacrifices for our country in the face of grave risks, Mr. Wainwright had no such choice. This does not diminish the mitigating force of *Porter*—it underscores why such individualized considerations and grants of mercy are necessary.

The evidence Mr. Wainwright presented to the state courts on his *in utero* exposure to Agent Orange and the lifelong cognitive and neurobehavioral impacts from which he suffered as a result completely alters the mitigation narrative compared to what was available to Mr. Wainwright's sentencing jury thirty years ago. It provided a sympathetic explanation—one that was entirely out of Mr. Wainwright's control—that tied together many disparate threads in his life,

including his delinquent behavior as a juvenile and his cognitive and neurobehavioral impairments as an adult.

But contrary to this Court's well-espoused and repeatedly reaffirmed Eighth Amendment principles, the circuit court did not engage with the constitutional dimension of Mr. Wainwright's claim. The circuit court's denial rested on a procedural bar and on the ground that the evidence would not have made a difference to Mr. Wainwright's proceedings. PCR8. at 451-54. The court failed entirely to address the constitutional merits underlying the claim.

Given the circumstances of the circuit court's denial, the Florida Supreme Court had a duty to construe in Mr. Wainwright's favor all allegations as to the impact of the newly presented evidence on his sentencing outcome. *See, e.g.*, *Hunter v. State*, 29 So. 3d 256, 261 (Fla. 2008). But instead, in upholding the lower court's denial of relief, the Florida Supreme Court dismissed the Eighth Amendment component of Mr. Wainwright's claim in a single sentence as being "inadequately briefed and without merit." *Wainwright*, 2025 WL 1561151 at *7; App. A1 at 5, n.16.[5] However, the lower court's comments on the substantive merit of the evidence Mr. Wainwright presented flew in the face of decades of this Court's Eighth Amendment jurisprudence on the importance of mitigating evidence to an

[5] This finding was erroneous, as Mr. Wainwright put both the State and the lower courts on notice as to the constitutional nature of his claim. *See* PCR8. at 153-155 (briefing in the circuit court), 449 (circuit court ruling characterizing the claim as arguing that "newly discovered evidence establishes his execution would violate the Eighth Amendment.").

individualized sentencing procedure.

First, the court downplayed the significance of the evidence because Mr. Wainwright's "intellectual, behavioral, and psychological issues have been an issue throughout the postconviction proceedings. Thus, it is unlikely that one additional cause to explain this set of behaviors would result in a life sentence." *Wainwright*, 2025 WL 1561151 at *7; App. A1 at 5. Contrary to the Florida Supreme Court's statement, Mr. Wainwright was not previously able to pinpoint a unifying cause that explained his cognitive and neurobehavioral deficits and their impacts on his behavior. And such knowledge of a cause can be powerful mitigating evidence.

For instance, this Court explained in *Atkins* that symptoms of intellectual disability "may create an unwarranted impression of lack of remorse . . . [and] as a mitigating factor [they] can be a two-edged sword." 536 U.S. at 320-21 (2002). Thus, the *cause* of those symptoms was pivotal to properly contextualizing them—so much so that this Court imposed a sweeping categorical protection for individuals whose otherwise potential aggravating symptoms were caused by the mitigating condition of intellectual disability. *Id.* Similarly, in *Roper*, the Court recognized that the factors attributable to youth could unfairly be viewed as "aggravating rather than mitigating":

> An unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where [the defendant's] objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death.

543 U.S. at 572-73. The Florida Supreme Court's casual dismissal of Mr. Wainwright's evidence as "one additional cause" improperly downplayed its significant mitigating impact in determining Mr. Wainwright's personal culpability.

Similarly, the court rejected any potential mitigating value because of the number of aggravating factors involved and in light of the trial court's finding that "the mitigating circumstances were outweighed by any single aggravating circumstance." *Wainwright*, 2025 WL 1561151 at *7; App. A1 at 5. But as this Court held in *Eddings*, a sentencer must consider and carefully weigh *all* mitigating evidence. *Eddings v. Oklahoma*, 455 U.S. 104, 113 (1982). The state court's pre-emptive determination that the evidence Mr. Wainwright presented would not have made any difference in light of the aggravation—without ever substantively considering it for Eighth Amendment purposes—contravenes this Court's precedent.

"This is not a case in which the new evidence 'would barely have altered the sentencing profile[.]'" *Porter*, 558 U.S. at 43 (quoting *Strickland v. Washington*, 466 U.S. 668, 700 (1984)). Had the trial court and Mr. Wainwright's jury been fully aware of the pervasive neurocognitive damage that took place before he even drew his first breath, they would have been "able to place [Mr. Wainwright's] excruciating life history on the mitigating side of the scale." *Wiggins*, 539 U.S. at 536, and the balance of aggravators and mitigators would have been profoundly different. The new evidence "might not have made [Mr. Wainwright] any more likeable…but it might well have helped" his jury contextualize otherwise adverse

facts, including the aggravating factors presented as well as any sensational inculpatory statements testified to by witnesses against him. *Sears v. Upton*, 561 U.S. 945, 951 (2010). Ultimately, it would have helped his jury understand why, despite his role in the offenses for which he stood convicted, his moral culpability was diminished and he was deserving of mercy. The state courts' failure to address the constitutional dimensions of Mr. Wainwright's claim conflicts with this Court's longstanding caselaw regarding the need for proportional sentencing and individualized culpability assessments, and it necessitates this Court's review.

III. Without this Court's intervention, Florida will unjustly foreclose any meaningful opportunity for a condemned individual to demonstrate that his unique vulnerabilities render his execution unconstitutional.

The Eighth Amendment prohibits cruel and unusual punishment as a categorical imperative. *See, e.g.*, *Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986) (Eighth Amendment-based exemptions from execution not only protect death-sentenced individuals but also protect "the dignity of society itself from the barbarity of exacting mindless vengeance[.]"). Thus, no state-law waiver provision may trump this Court's mandate that death-sentenced individuals "must have a fair opportunity to show that the Constitution prohibits their execution[,]" *Hall v. Florida*, 572 U.S. 701, 724 (2014). Just as it would be unconstitutional for Florida to invoke timeliness as justification to execute individuals subject to categorical exemptions or exclusions, so too would it be unconstitutional to execute Mr. Wainwright on the grounds that he failed to raise his claim at the "appropriate" procedural time. But this Court need

not make such a finding to provide unencumbered review of the constitutionality of Mr. Wainwright's death sentence, because the lower court's imposition of a time bar, *Wainwright*, 2025 WL 1561151 at *7; App. A1 at 4-5, was erroneous and inadequate to prevent this Court's review.

The Florida Supreme Court found that Mr. Wainwright's claim was untimely because the primary expert report he presented in support of his claim is "based on preexisting studies dating years back[,] [a]nd while it points to shortcomings in the investigation of the effects of toxins on the children of Vietnam veterans, it does not suggest the information was unavailable." *Wainwright*, 2025 WL 1561151 at *7; App. A1 at 4-5. This ruling was flawed and, as one Justice of this Court has observed in a similar context, raises troubling due process concerns.

The Florida Supreme Court's timeliness analysis failed to grapple with the necessarily incremental nature of scientific progress and consensus making. As Dr. Cassano's report explained, the most widely recognized reports on Agent Orange effects on Vietnam Veterans deliberately did not explore the link between Agent Orange exposure in Vietnam combat Veterans and cognitive and neurobehavioral effects in their children. PCR8. at 233. Thus,

> [t]he research regarding transgenerational effects is even newer and more obscure to the general medical community . . . Epimutations and transgenerational transmission were not established as modes of transmission of disorders until the early 2020s, and . . . were not published until 2023 to 2025. **Therefore, the ability to integrate these various studies into a cogent medical treatise is only recently possible.**

PCR8. at 232-33 (emphasis added). Thus, contrary to the lower court's finding, this information only recently started to become available. But although one study on the phenomenon of transgenerational Agent Orange exposure was published in 2023, a single study does not make a consensus.

Scientific understanding does not change overnight. The nature of scientific progress—and what makes such evidence so important and reliable—is inherently incremental. As Justice Sotomayor recently observed, "because science evolves slowly rather than in conclusive bursts, it can be hard to pinpoint when someone should have discovered [newly-discrediting evidence] through the exercise of reasonable diligence." *McCrory v. Alabama*, 144 S. Ct. 2483, 2486 (2024) (statement of Sotomayor, J., respecting the denial of certiorari) (internal quotation marks omitted; alteration in original). Each new step builds on the previous one until, gradually, a new understanding is reached that may lead to entirely different conclusions than the starting point of the original research. Just because a new scientific advancement appears in one scientific journal does not equate to it being generally accepted in the medical community.

Here, while the general research about transgenerational exposure to Agent Orange was taking place within the relevant scientific communities, that research was neither widely disseminated nor had culminated to the point where it could be used in any meaningful way. Under the Florida Supreme Court's flawed interpretation of timeliness, a litigant was apparently required to access

preliminary research and conclusions before they were disseminated beyond the scientific community. Yet, by the time any given scientific principle has been reliably established, the state courts would impose a time bar, pointing to the research and review period that accompanies the scientific process as rendering the evidence not newly discovered.[6] Such an approach raises "troubling" due process concerns, *id.*, 144 S. Ct. at 2483, and should not stand in the way of this Court's review.[7]

CONCLUSION

The Court should grant the petition for a writ of certiorari and review the decision of the Florida Supreme Court.

Respectfully submitted,

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[6] Florida courts routinely deny meritorious Eighth Amendment claims on these grounds. *See, e.g.*, *Barwick v. State*, 361 So. 3d 785 (Fla. 2023) (imposing a time-bar on an Eighth Amendment claim); *Melton v. State*, 367 So. 3d 1175 (Fla. 2023) (same); *Hutchinson v. State*, 2025 WL 1155717 (Fla. Apr. 21, 2025) (same).

[7] In addition to the constitutionally flawed legal analysis, the Florida Supreme Court's timeliness ruling was factually erroneous as well. Mr. Wainwright had no reason to raise a claim regarding the cognitive and neurobehavioral effects of Agent Orange exposure through his father until he became aware that his father may have been exposed to Agent Orange in the first place. That only happened recently, after his sister developed breast cancer—also presumptive of Agent Orange exposure under VA standards—and thought to mention the possibility of their father's exposure to Agent Orange to Mr. Wainwright. On this point the Florida Supreme Court stated, without elaboration, that "we reject Wainwright's argument." *Wainwright*, 2025 WL 1561151 at *7; App. A1 at 5.

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