*** CAPITAL CASE ***

No. 24-7365

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

REPLY BRIEF IN SUPPORT OF 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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Many of Respondent's arguments in its Brief in Opposition (BIO) are irrelevant and serve only to distract from the issues before this Court. As such, Mr. Wainwright will reply only to the most salient arguments.

I. Preliminary Matter

Respondent attempts to distract from the significant federal issues presented in Mr. Wainwright's petition for writ of certiorari. Respondent's references to undersigned, Mr. Wainwright's counsel of record and a member of the bar of this Court, as "pro bono second chair counsel" are simply inaccurate and unprofessional. BIO at 1, 8.

Pursuant to Rule 9: "[t]he attorney whose name, address, and telephone number appear on the cover of a document presented for filing is considered counsel of record." Undersigned is a well-qualified, experienced capital postconviction attorney, and member of the Bar of this Court, who agreed to represent Mr. Wainwright *pro bono* before the Florida state courts because his court-appointed counsel, who had been found to be inadequate to represent another under-warrant capital postconviction defendant two years ago, failed to confer with his client and waived Mr. Wainwright's rights. *See Dillbeck v. Sec'y, Fla. Dep't of Corrs.*, No. 4:07-cv-388, ECF No. 73 at 3 (N.D. Fla. Jan. 26, 2023) (finding, "*based on this Court's familiarity with Mr. Harrison, that his solo representation of Petitioner in [under-warrant state-court litigation] is not sufficient to meet Petitioner's need for adequate representation*" and that Mr. Harrison's solo representation was not in line with the

ABA Guidelines) (emphasis added).

The state circuit court and Florida Supreme Court unreasonably limited undersigned's role in the state court proceedings to Mr. Wainwright's detriment and in violation of his right to Due Process and Equal Protection. This Court has long held that denying a litigant's choice of counsel when there are no adverse considerations to judicial administration violates the U.S. Constitution. *See Powell v. Alabama*, 287 U.S. 45, 69 (1932) ("If in *any* case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, *employed by and appearing for him*, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.") (emphasis added). Further, a state circuit court does not bind this Court to rulings related to choice of counsel. Mr. Wainwright's choice of counsel is governed by this Court's rules and procedures; Respondent's discourtesy to undersigned and this Court should not be tolerated.

Likewise, Respondent unprofessionally speculates and attacks Mr. Wainwright's federal counsel in a proceeding to which they are not counsel and have no opportunity to respond. BIO at 9, fn. 1. Respondent misrepresents the state court record referencing findings that were never made and speculative comments from the state court judge who may never have represented a client under the extreme time pressures of an active death warrant. However, undersigned has. Undersigned has also previously represented Mr. Wainwright and other capital postconviction defendants in their state and federal appeals, including under-warrant litigation. The

obligations of defense counsel differ from that of Respondent; however, at a minimum, professional, dedicated, and coordinated representation are ethically required by defense counsel. Respondent has failed in its responsibilities, undersigned and Mr. Wainwright's federal counsel have not.

II. *Brady* Claim

The above provides an appropriate segue to respond to Respondent's argument related to Mr. Wainwright's *Brady* claim. Initially, Respondent attempts to confuse the issue by suggesting that the due process issue that occurred in Mr. Wainwright's case when the State extended benefits to jailhouse informants in exchange for a possible reward is a state law issue. BIO at 9, 10-11. However, Respondent's argument is flawed. This Court's *Brady* jurisprudence dates back decades and clearly indicates the elements of a *Brady* claim: "The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281-282 (1999). This Court has made abundantly clear that "[a] rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process." *Banks v. Dretke*, 540 U.S. 668, 696 (2004). Thus, Respondent's argument that the state court's diligence requirement was appropriate to the *Brady* analysis should not dissuade this Court from correcting the Florida Supreme Court's misunderstanding of *Brady* and its precedent.

First, Respondent argues that Mr. Wainwright's knowledge that jailhouse

informant Murphy was seeking a modification of sentence was sufficient to satisfy the *Brady* disclosure requirement. BIO at 9-10. Here, the impeachment information extended well beyond Murphy and Givens' hope for a sentencing benefit. Rather, the jailhouse informants expected rewards based upon their communications with the prosecutor where he held out the possibility of a reward, creating the exact situation this Court identified in *United States v. Bagley*, wherein the "possibility of a reward gave [Murphy] 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. . . ." 473 U.S. 667, 683-84 (1985). Respondent fails to cite or address *Bagley* in its brief in opposition though it provided significant support for Mr. Wainwright's claim and is directly contrary to the Florida Supreme Court's continued erroneous application of *Brady* and its progeny.

Respondent's separate dodge of the *Brady* violation that occurred at Mr. Wainwright's capital trial proceedings is to claim that the evidence is not material because it is cumulative to other impeachment presented to the jury about Murphy's motion to modify his sentence. BIO at 10, 12. First, Respondent's argument unreasonably cabins the evidence to Murphy's specific revelation that his communications with the prosecutor made clear that he would receive a reward after his testimony in Mr. Wainwright's case. Respondent's argument as to the materiality of Murphy's recent disclosure is too limited. Murphy also made clear that another

jailhouse informant was also provided an incentive to testify against Mr. Wainwright. And, because Murphy's testimony formed the basis for weighty aggravating circumstances considered by the jury and sentencing judge (who was also privy to Givens' testimony), the jury and sentencing judge may have completely disregarded their testimony. *See Glossip v. Oklahoma*, 145 S. Ct. 612, 628 (2025) ("Even if [the details] were wholly irrelevant,…[Murphy's] willingness to lie about it to the jury was not. 'A lie is a lie, no matter what its subject.'").

Further, the evidence was not simply limited to significant impeachment of Murphy, but also it was more than reasonable for the defense to assert that none of the jailhouse informants could be believed and the State's evidence in general could not be trusted. *See Kyles v. Whitley*, 514 U.S. 419, 445 (1995) (evidence can be material for impeaching a witness and attacking the "thoroughness and . . . good faith" of the investigation). Overlooked by Respondent: "[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Id*. at 434. Finally, the evidence cited by Respondent was not completely unchallenged. Based upon the recent disclosure, confidence in Mr. Wainright's verdict and most certainly death sentence is undermined. This Court should grant certiorari review.

III. Claim Related to Agent Orange Exposure

Respondent devotes most of its discussion of Mr. Wainwright's claim regarding *in utero* transgenerational Agent Orange exposure to an attempt to confine the claim

within non-constitutional contours. Respondent characterizes the claim as "newly discovered evidence of mitigation" and argues it is "solely a matter of state law" with no federal corollary. BIO at 15. But contrary to Respondent's hollow assertions that "no federal case entertain[s] such a concept" as sentencing relief "based on new mitigation discovered years after the sentence was final[,]" BIO at 18-19, the Eighth Amendment cannot be divorced from Mr. Wainwright's claim. Rather, this Court's clearly established precedent makes clear that death sentences are only constitutional when imposed upon individuals with the most "extreme" personal culpability. *Roper v. Simmons*, 543 U.S. 551, 568 (2005). Determinations of this culpability, in turn, require an individualized "personal history" assessment which take into account "facets of [the individual's] character and record." *Abdul-Kabir v. Quarterman*, 550 U.S. 233, 265 (2007); *Lockett v. Ohio*, 438 U.S. 586 (1978). Thus, in determining whether a particular death sentence comports with this Court's longstanding Eighth Amendment precedent, it is not only appropriate but necessary to consider evidence of the death-sentenced individual's diminished personal moral culpability (evidence which can also be termed 'mitigation'). *See Enmund v. Florida*, 458 U.S. 782, 800 (1982). Respondent cites no authority that such a consideration is limited to trial. *See* BIO at 22, 24, 26, 27.

Respondent contends that examining whether Mr. Wainwright's death sentence is disproportionate under the Eighth Amendment would "require this Court to overrule its decades-old precedent of *Pulley v. Harris*, 465 U.S. 37 (1984)" and *Jurek v. Texas*, 428 U.S. 262 (1976). BIO at 19. However, this conflates two nuanced

but distinct concepts. Mr. Wainwright is not asking for the type of proportionality review contemplated in *Pulley*, wherein before a death sentence is affirmed it must be compared to the broad universe of capital case outcomes in which similar crimes have been committed. Mr. Wainwright seeks a far narrower remedy in the form of an individualized assessment of his personal moral culpability, as contemplated by legions of this Court's Eighth Amendment caselaw.

Respondent also misunderstands the significance of *Porter v. McCollum*, 558 U.S. 30 (2009). *Porter*'s relevance to Mr. Wainwright's case is not based on which constitutional amendment was vindicated, but rather the twin recognitions that "defendants who commit criminal acts that are attributable to a disadvantaged background…may be less culpable[,]" and that lifelong mental injuries resulting from war are precisely the "kind of troubled history [this Court has] declared relevant to assessing a defendant's moral culpability." *Id*. at 41.

Contrary to Respondent's statements, no adequate and independent time bar precludes this Court's intervention. While Respondent is correct that the Florida Supreme Court mentioned only state law in conducting its timeliness assessment, this is not sufficient to establish an adequate and independent state law ground to bar review. Respondent neglects to address the "adequacy" portion of the state court assessment. And, the state court's timeliness determinations cannot possibly be adequate because as Mr. Wainwright's petition laid out in great detail, they are in fact incorrect. Petition at 30-33. Even if Eighth Amendment claims can be subject to a time bar, neither a valid scientific understanding of the effects of transgenerational

Agent Orange exposure–nor Mr. Wainwright's awareness that he had been exposed in the first place—existed prior to this year. Thus, under Florida law, the state-court's timeliness ruling was erroneous.

To the extent Respondent relies on the Florida Supreme Court's finding that the Eighth Amendment claim was inadequately briefed, BIO at 22-23, this also does not preclude review from this Court. The state court record is clear that Respondent was fully on notice of the claim's constitutional dimensions at the trial court level. See PCR8. 153-55 (detailing Eighth Amendment implications of Mr. Wainwright's claim), PCR8. 202 (stating the specifics of Mr. Wainwright's prenatal Agent Orange exposure "lessens [his] culpability…and "remov[es] him from the narrow class of persons who should be put to death[;]" thus his execution "would be cruel and disproportionate."); PCR8. 417 (defense counsel explicitly identifying the Eighth Amendment against cruel or excessive punishment" as a basis for relief). PCR8. 429 (Respondent specifically arguing about the claim's Eighth Amendment dimensions during a hearing before the trial court). *See also Davis v. State*, 26 So. 3d 519, 527, 528 (Fla. 2009) (under Florida law, initial pleading deficiencies can be cured through oral presentation of information during state-court hearing). And, the Eighth Amendment issue was thoroughly briefed in the Florida Supreme Court.

To the extent the Florida Supreme Court found the claim "meritless" under state or federal law, this is also incorrect and should not be allowed to stand without this Court's intervention. Although Respondent attempts to obfuscate the ultimate issue by devoting paragraphs to inapposite federal habeas caselaw related to the

Antiterrorism and Effective Death Penalty Act and allegations of actual innocence of the death penalty, none of this is relevant to Mr. Wainwright's Eighth Amendment claim or the Florida Supreme Court's ruling rejecting it. The Florida Supreme Court's cursory finding of meritlessness under the Eighth Amendment appears to be tied to its determination that the evidence of Mr. Wainwright's Agent Orange exposure—in the newly discovered evidence context—would not have resulted in a lesser sentence at trial. *See Wainwright v. State*, 2025 WL 1561151 at *7 (Fla. June 3, 2025); App. A1 at 5 n.16. Mr. Wainwright has already exhaustively addressed these state-court findings, Petition at 27-30, and nothing in Respondent's BIO engages with his position. This Court's review is not only appropriate, it is necessary to ensure that the State of Florida does not—in its misunderstanding of the federal issues at hand—unconstitutionally execute an individual who possesses a greatly diminished culpability. This Court should grant certiorari review.

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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