*** CAPITAL CASE ***

No. _____

IN THE

Supreme Court of the United States

ANTHONY FLOYD WAINWRIGHT,
Petitioner,

v.

GOVERNOR OF FLORIDA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Eleventh Circuit Court of Appeals

APPENDIX TO 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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INDEX TO APPENDIX

A1

Eleventh Circuit Order

Denying Motion for Stay of Execution

June 9, 2025

[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-11910

Non-Argument Calendar

ANTHONY FLOYD WAINWRIGHT,

Plaintiff-Appellant.

versus

GOVERNOR OF FLORIDA,
FLORIDA ATTORNEY GENERAL,
WARDEN, FLORIDA STATE PRISON,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
CHIEF JUSTICE OF FLORIDA SUPREME COURT,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:25-cv-00607-WWB-PDB

Before JORDAN, GRANT, and BRASHER, Circuit Judges.

PER CURIAM:

Anthony F. Wainwright is imprisoned on Florida death row and is scheduled to be executed at 6:00 pm on Tuesday, June 10, 2025. He appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint and moves for a stay of execution. We ordered expedited briefing, and now deny a stay of execution.

I

The district court thoroughly laid out the procedural history in its opinion, and we reiterate it here. In summarizing Mr. Wainwright's claims, we take as true the facts alleged in his complaint. *See, e.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A

In 1995, a jury found Mr. Wainwright guilty of first-degree murder, kidnapping, armed sexual battery, and armed battery. The jury unanimously recommended that he be sentenced to death, and the trial court imposed that sentence. In 1997, the Florida Supreme Court affirmed Mr. Wainwright's convictions and sentence

on direct appeal. *See Wainwright v. State*, 704 So.2d 511, 512 (Fla. 1997).

In 2014, the trial court appointed Baya Harrison, an attorney from the capital collateral registry, as Mr. Wainwright's postconviction counsel during his Rule 3.851 proceedings in state court. Mr. Harrison has remained Mr. Wainwright's state court postconviction counsel since his appointment. Mr. Wainwright has attempted several times to remove Mr. Harrison as his counsel, but he was unsuccessful. *See* Amended Complaint ¶ 15; Wainwright Br. at 3 n.3 (detailing Mr. Wainwright's attempts to discharge Mr. Harrison as his counsel). Over the years, Mr. Wainwright has filed a number of unsuccessful postconviction challenges.[1]

On May 9, 2025, Governor Ron DeSantis signed Mr. Wainwright's death warrant and the Florida Department of Corrections ("FDOC") scheduled his execution for June 10, 2025. FDOC officials immediately transported Mr. Wainwright to Florida State Prison where he was placed on "death watch," which included having his tablet confiscated and his visitation and phone privileges restricted.

That same day, Mr. Harrison and Linda McDermott from the Capital Habeas Unit of the Office of the Federal Public

[1] For example, we affirmed the district court's dismissal of Mr. Wainwright's federal habeas corpus petition as untimely. *See Wainwright v. Secretary*, 537 F.3d 1282 (11th Cir. 2007). Over a decade later, we affirmed the district court's denial of Mr. Wainwright's Rule 60(b) motion. *See Wainwright v. Secretary*, 2023 WL 4582786 (11th Cir. July 18, 2023).

Defender for the Northern District of Florida ("CHU") exchanged amicable emails about working together on Mr. Wainwright's death warrant litigation. Mr. Harrison, Ms. McDermott, and Katherine Blair (another CHU attorney) discussed by phone potential claims to raise on Mr. Wainwright's behalf. According to Ms. McDermott's declaration, during the phone call, Mr. Harrison mentioned pursuing a claim under *Erlinger v. United States*, 602 U.S. 821 (2024), and CHU attorneys suggested pursuing a petition for writ of habeas corpus in the Florida Supreme Court, which Mr. Harrison said "sound[ed] good."

Mr. Harrison sent Mr. Wainwright a letter on May 10, advising him about the death warrant, explaining that he was consulting with federal postconviction counsel about potential post-warrant claims to pursue, and stating that he could not visit Mr. Wainwright in prison due to time constraints. Mr. Harrison said that he would try to call the prison and speak with Mr. Wainwright but asked that Mr. Wainwright try calling Mr. Harrison himself. According to Mr. Wainwright, he did not receive Mr. Harrison's letter until over ten days later, he received no call from Mr. Harrison, and because he was on death watch he was unable to make a phone call himself.

On May 11, without consulting Mr. Wainwright, Mr. Harrison filed a response to the state's proposed scheduling order, advising the trial court that no evidentiary hearing was needed for Mr. Wainwright's forthcoming successive Rule 3.851 motion. Also without consulting his client, Mr. Harrison filed with the trial court a notice advising that Mr. Wainwright did not seek additional public

records from DOC Secretary Ricky Dixon or any other state agency in preparation for his filing.

On May 14, 2025, Mr. Harrison, on behalf of Mr. Wainwright, filed with the trial court an eighth successive Rule 3.851 motion raising a single claim. That same day, Terri Backhus, pro bono counsel for Mr. Wainwright, filed with the trial court a second eighth successive Rule 3.851 motion raising two additional claims based on newly discovered evidence (a claim pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and an Eighth Amendment claim) and a motion for substitution of counsel. Mr. Wainwright also filed a request for substitution of counsel, in which he advised the trial court that he had consulted with Ms. Backhus and consented to the filing of her successive Rule 3.851 motion on his behalf. The state objected to Ms. Backhus' motion for substitution and moved to strike her successive Rule 3.851 motion.[2]

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[2] With respect to postconviction counsel, Florida Rule of Criminal Procedure 3.851(b) provides in part as follows:

> (4) In every capital postconviction case, one lawyer shall be designated as lead counsel for the defendant. The lead counsel shall be the defendant's primary lawyer in all state court litigation. No lead counsel shall be permitted to appear for a limited purpose on behalf of a defendant in a capital postconviction proceeding.
>
> (5) After the filing of a notice of appearance, Capital Collateral Regional Counsel, Registry Counsel, or a private attorney shall represent the defendant in the state courts until a judge allows withdrawal or until the sentence is reversed, reduced, or

The trial court conducted an emergency hearing on the substitution request. During the hearing, Mr. Harrison told the trial court that he did not have faith in the claims that Ms. Backus sought to raise in her motion and did not believe he could successfully work with her. According to Mr. Wainwright and Ms. McDermott, Mr. Harrison also "falsely represented that Ms. McDermott agreed to communicate with Mr. Wainwright on his behalf[.]" *See* Amended Complaint at ¶ 27. On behalf of the state, Attorney General James Uthmeier opposed Ms. Backhus' involvement in any state court postconviction proceedings.

Following the hearing, the trial court granted in part the motion for substitution of counsel, granted the state's motion to strike Ms. Backhus' successive Rule 3.851 motion, and explained that although Mr. Harrison would retain all decision-making authority, Ms. Backhus could appear as second-chair counsel.

Mr. Harrison provided Ms. Backhus twenty minutes to review his amended eighth successive Rule 3.851 motion, but Ms. Backhus believed he did not provide her with enough time and she

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> carried out, regardless of whether another attorney represents the defendant in a federal court.
>
> (6) A defendant who has been sentenced to death may not represent himself or herself in a capital postconviction proceeding in state court. The only basis for a defendant who has been sentenced to death to seek to discharge postconviction counsel in state court must be pursuant to statute due to an actual conflict of interest. . . .

shared her concerns about preserving Mr. Wainwright's claims. According to Ms. Backhus' declaration, Mr. Harrison responded that Ms. Backhus' "improper delay tactics never change," and said he would be filing the amended motion without her input, and she could "tell it to the judge." Mr. Harrison, on behalf of Mr. Wainwright, then filed his amended eighth successive Rule 3.851 motion, which included a claim that the prior violent felony aggravator violated Mr. Wainwright's Sixth Amendment right to trial by jury under *Erlinger* and Ms. Backhus' two fact-intensive claims (newly discovered evidence of an Eighth Amendment claim and newly discovered evidence of a *Brady* violation). The trial court denied all three claims.

B

After the trial court denied the amended Rule 3.851 motion, Ms. Backhus advised Mr. Harrison that Mr. Wainwright requested her to file a state petition for writ of habeas corpus with the Florida Supreme Court. Ms. Backhus offered to provide Mr. Harrison with a draft of the petition before filing it and explained that she hoped Mr. Harrison would sign on to the petition. In an email response, Mr. Harrison "stated that he was busy with the initial brief [for the appeal of the denial of the amended Rule 3.851 motion] and wanted nothing to do with the state habeas petition," D.E. 3 at 41, and he "defended the actions of [Mr. Wainwright's trial attorneys], whose conduct and representations were challenged in the [proposed] state habeas petition." D.E. 12 at 9. Mr. Harrison filed an appeal of the denial of the amended Rule 3.851 motion on May 20.

Despite Mr. Harrison's opposition, on that same day Ms. Backhus, with the consent of Mr. Wainwright, filed with the Florida Supreme Court a state petition for a writ of habeas corpus seeking reconsideration of its prior adversarial rulings because "pervasive[,] systemic failures that occurred at every stage of his proceedings hindered his ability to obtain meaningful review of his constitutional claims, rendering his death sentence manifestly unjust." Petition for Writ of Habeas Corpus at 6 in *Wainwright v. Secretary*, No. SC2025-0709 (Fla. S. Ct. May 20, 2025). Ms. Backhus' habeas petition mentioned but did not contain the Eighth Amendment claim or the *Brady* claim included in the amended Rule 3.851 motion. *See id*. Ms. Backhus also filed a notice of appearance, a motion for stay of execution, and a notarized authorization from Mr. Wainwright explaining that he consented to Ms. Backhus representing him in the state habeas proceeding.

Chief Justice Carlos Muñiz, on behalf of the Florida Supreme Court, issued an acknowledgement of the new habeas corpus case and a scheduling order directing Secretary Dixon, through Attorney General Uthmeier, to file a response to the state habeas corpus petition and providing a deadline for Mr. Wainwright to reply. Secretary Dixon, through Attorney General Uthmeier, responded on May 27, arguing, among other things, that the state habeas petition should be dismissed because Mr. Harrison was Mr. Wainwright's lead postconviction counsel.

That same day, Chief Justice Muñiz entered an order recognizing Mr. Harrison as lead postconviction counsel for Mr.

Wainwright, directing Mr. Harrison to file a notice adopting the state habeas corpus petition and motion for stay of execution, and advising the parties that Mr. Harrison's failure to file an adoption would result in the striking of the habeas corpus petition filed by Ms. Backhus. Mr. Harrison responded the next day, advising the Florida Supreme Court that he did not adopt the state habeas petition or the motion for stay of execution and explaining that he had advised Ms. Backhus of his position as soon as he learned of the filings.

Given Mr. Harrison's representations, Mr. Wainwright, through Ms. Backhus, filed with the Florida Supreme Court an emergency motion for rehearing raising due process and equal protection arguments (including that the state should not be allowed to influence matters related to Mr. Wainwright's postconviction counsel, that Mr. Wainwright was never afforded notice or an opportunity to respond to the state's argument about his choice of counsel, and that because non-indigent defendants can proceed with counsel of their choice, Mr. Wainwright has a right to enjoy the same benefit). Relying on Rule 3.851(b)(4)-(6), Chief Justice Muñiz, on behalf of the Florida Supreme Court, denied Mr. Wainwright's emergency motion for rehearing, struck as unauthorized the state habeas corpus petition and motion for stay of execution, and closed the case that had been opened through the filing of the state habeas corpus petition. *See* Order in *Wainwright v. Secretary*, No. SC 2025-0709 (May 29, 2025).

On June 3, 2025, in a separate order, the Florida Supreme Court affirmed the trial court's denial of the amended Rule 3.851 motion. *See* Order in *Wainwright v. Florida*, No. SC2025-0708 (June 3, 2025).

C

The district court appointed the CHU as federal habeas counsel for Mr. Wainwright in 2018. The CHU has since remained his federal counsel. *See Wainwright v. Secretary*, No. 3:05-cv-00276-TJC, D.E. 47 (M.D. Fla. June 22, 2018).

Following the dismissal of state habeas corpus petition, the CHU filed a § 1983 complaint in federal district court on Mr. Wainwright's behalf against five defendants in their official capacities: Governor DeSantis; Attorney General Uthmeier; Secretary Dixon; Warden David Allen, and Chief Justice Muñiz.

Mr. Wainwright alleged in the complaint that that he was denied due process and equal protection in violation of the Fourteenth Amendment because he was not allowed to have his counsel of choice (Ms. Backhus serving as pro bono counsel) pursue a state habeas corpus petition and provide a sufficiently pled Eighth Amendment claim in his amended eighth successive Rule 3.851 motion. He argued that Chief Justice Muñiz violated these rights when, on behalf of the Florida Supreme Court, he struck Ms. Backhus' state habeas corpus petition without affording Mr. Wainwright an opportunity to be heard on the choice of counsel issue. Mr. Wainwright also alleged that Chief Justice Muñiz and Attorney General Uthmeier improperly "dictat[ed]" that Mr. Harrison be his

sole postconviction counsel, thereby depriving him of the opportunity to present habeas corpus claims of his choice and sufficiently pled claims to the Florida Supreme Court. *See* Amended Complaint at ¶ 61.

In addition, Mr. Wainwright alleged that the denial of his right to counsel of his choice violated his equal protection rights. He asserted that "he is being treated differently than any other non-capital litigant and any other non-indigent litigant who could have retained counsel [to] represent them," and there was no rational basis to treat him differently than other death-sentenced individuals who were allowed choice of counsel. *See id.* at ¶¶ 95-96.

Mr. Wainwright alleged that Governor DeSantis, Secretary Dixon, and Warden Allen violated his right of access to the courts. Specifically, he alleged that Governor DeSantis signed a death warrant with a short time period in which the execution was to be carried out (32 days) and without providing him with advance notice of the warrant, and that Mr. Dixon and Mr. Allen imposed restrictions on his confinement under death watch. *See id.* at ¶¶ 81-94.

Mr. Wainwright requested (1) a preliminary injunction prohibiting the defendants from executing him until the district court had an opportunity to consider his claims, (2) a declaration that the defendants violated his federal constitutional due process and equal protection rights, and (3) a permanent injunction barring the defendants from executing him until they provide him with a state

court postconviction proceeding that comports with the U.S. Constitution. *See id.* at ¶¶ 97-99.

The defendants filed a motion to dismiss, arguing that Mr. Wainwright had failed to state a claim upon which relief could be granted. The district court granted the motion to dismiss and denied the emergency motion for a stay of execution as moot.

The district court began by rejecting the due process and equal protection claims against Governor DeSantis, Attorney General Uthmeier, Secretary Dixon, and Warden Allen, concluding that Mr. Wainwright had failed to allege that a policy or custom of any of the relevant entities violated federal law, as required in official capacity suits. Construing Mr. Wainwright's complaint liberally, the district court went on to analyze the claims against these defendants as though the complaint had been filed against them in their personal capacities, but concluded that none of these defendants had a role in the Florida Supreme Court's decision to strike Mr. Wainwright's state habeas corpus petition as unauthorized.

The district court ruled that only Chief Justice Muñiz had engaged in the conduct forming the basis of Mr. Wainwright's due process and equal protection claims, but rejected the claims against him in his official capacity because Mr. Wainwright did not allege that an institutional policy contributed to the alleged constitutional violations. The court also concluded that Chief Justice Muñiz was immune from any claims against him in his individual capacity. It explained that under 42 U.S.C. § 1983, injunctive relief against a judicial officer acting in his judicial capacity "shall not be granted

unless a declaratory decree was violated or declaratory relief was unavailable." The court reasoned that Mr. Wainwright had not alleged the violation of a declaratory decree, the unavailability of declaratory relief, or the absence of an adequate remedy at law. As a result, it was barred from granting injunctive relief against Chief Justice Muñiz.

The district court ruled in the alternative that Mr. Wainwright's underlying due process and equal protection claims lacked merit. With respect to the due process claim, the court explained that even if Florida law afforded Mr. Wainwright a state-created property interest in postconviction counsel of his choice, Mr. Wainwright had received the process he was due because he had the opportunity to be heard in the state trial court, the opportunity to appeal the trial court's decisions, and the opportunity to be heard on his emergency motion for rehearing of the Florida Supreme Court's order concerning his state habeas corpus petition. The court also reasoned that any right to choose a specific lawyer could be overridden if it interfered with judicial proceedings. With respect to the equal protection claim, the court concluded that Mr. Wainwright failed to allege that similarly situated individuals received more favorable treatment or that the alleged discriminatory treatment was based on his membership in a constitutionally protected class.

Mr. Wainwright, through his court-appointed federal habeas counsel, appealed the district court's decision and moved for a stay of execution.

II

We review the district court's grant of a Rule 12(b)(6) motion to dismiss for failure to state a claim *de novo*, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. *See Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

We normally review the denial of a motion for stay of execution for abuse of discretion. *See Powell v. Thomas*, 641 F.3d 1255, 1257 (11th Cir. 2011). But here the district court did not rule on the motion for stay of execution because it dismissed Mr. Wainwright's complaint. So we consider the motion for stay of execution filed in this court.

To obtain a stay of execution Mr. Wainwright must show that "(1) he has a substantial likelihood of success on the merits; (2) he will suffer irreparable injury unless the injunction issues; (3) the stay would not substantially harm the other litigant; and (4) if issued, the injunction would not be adverse to the public interest." *Id.* (citing *In re Holladay*, 331 F.3d 1169, 1176 (11th Cir. 2003)). A stay is not a matter of right, even if the movant might otherwise suffer irreparable harm. *See Nken v. Holder*, 556 U.S. 418, 427 (2009).

We conclude that Mr. Wainwright is not entitled to a stay of execution because he has not shown a substantial likelihood of success on the merits of his claims, which is the "first and most important question" in the stay analysis. *See Jones v. Commissioner, Ga. Dept. of Corrections*, 811 F.3d 1288, 1292 (11th Cir. 2016). We do not address, at this time, the ultimate merits of Mr. Wainwright's appeal from the dismissal of his complaint.

III

Mr. Wainwright seeks a stay of his execution pending resolution of his appeal from the dismissal of his § 1983 complaint, which sought, among other things, (1) a declaration that the Florida Supreme Court (through Chief Justice Muñiz) had violated his due process and equal protection rights by striking (and not considering) the habeas corpus petition filed on his behalf by Ms. Backhus, and (2) a preliminary and permanent injunction preventing his execution until the Florida Supreme Court "provide[d] him with a postconviction proceeding that comports with the United States Constitution." Amended Complaint at ¶¶ 97-99. In his motion for stay, Mr. Wainwright argues that he has shown a substantial likelihood of success on his due process, equal protection, and access to courts claims. We address the due process and equal protection claims first, and then turn to the access to courts claim.

A

Mr. Wainwright has not shown a substantial likelihood of success on his claims that the Florida Supreme Court violated his due process and equal protection rights by striking the habeas corpus petition filed by Ms. Backhus. Without definitively deciding the matter, we believe it is probable that these claims are precluded by the *Rooker-Feldman* doctrine.

The authority to review a state court's judgment is vested solely in the Supreme Court. *See* 28 U.S.C. § 1257. Federal district courts and circuits courts therefore lack subject-matter jurisdiction to review state court judgments outside of the habeas corpus context. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283 (2005).

The *Rooker-Feldman* doctrine—which takes its name from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983)—prevents parties "from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy,* 512 U.S. 997, 1005–06 (1994). This doctrine is narrow, and applies only where the "resolution of [an] individual claim requires review and rejection of a state court

judgment." *Behr v. Campbell*, 8 F.4th 1206, 1213 (11th Cir. 2021). *See also Exxon Mobil*, 544 U.S. at 284.[3]

Here, after the Florida Supreme Court issued its order requiring Mr. Harrison to adopt the habeas corpus petition filed by Ms. Backhus, and stating that the petition would be stricken if he did not adopt it, Mr. Wainwright (through Ms. Backhus) filed an emergency motion for rehearing. *See* Amended Complaint at ¶¶ 39-41; Order in *Wainwright v. Secretary*, No. SC2025-0709 (Fla. S. Ct. May 28, 2025). In that motion for rehearing, Mr. Wainwright argued that the Florida Supreme Court's order (which would result in the striking of the habeas corpus petition were it not adopted by Mr. Harrison) violated his due process and equal protection rights. *See* Motion for Rehearing at 7-18 in *Wainwright v. Secretary*, No. SC2025-0709 (Fla. S. Ct. May 28, 2025). The Florida Supreme Court

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[3] When applicable, the *Rooker-Feldman* doctrine is jurisdictional in the subject-matter sense. *See Efron v. Candelario*, 110 F.4th 1229, 1235 (11th Cir. 2024). We therefore consider the applicability of the *Rooker-Feldman* doctrine *sua sponte*. *See Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012) ("When a requirement goes to subject-matter jurisdiction, courts are obligated to consider sua sponte issues that the parties have disclaimed or have not presented. Subject-matter jurisdiction can never be waived or forfeited.") (citation omitted). In considering the *Rooker-Feldman* doctrine, we examine each claim individually. *See Feldman*, 460 U.S. at 487. We need not conclude that all claims in a complaint are barred in order to apply the doctrine to a given claim. *See id.* (determining that the district court had jurisdiction over some claims but not others); *Behr*, 8 F.4th at 1213 ("The question isn't whether the whole complaint seems to challenge a previous state court judgment, but whether resolution of each individual claim requires review and rejection of a state court judgment.").

considered and expressly denied the motion for rehearing, struck the habeas corpus petition because Mr. Harrison had not adopted it, and dismissed the case that had been opened by the filing of the habeas corpus petition. *See* Amended Complaint at ¶ 42; Order in *Wainwright v. Secretary*, No. SC2025-0709 (Fla. S. Ct. May 29, 2025).[4]

Significantly, the § 1983 due process and equal protection claims did not challenge the constitutionality of Rule 3.851(b)(4)-(6), which prevented Mr. Wainwright from substituting appointed postconviction counsel at will and moving forward with his state habeas corpus petition through pro bono counsel (Ms. Backhus). Presumably such a challenge was available to him. *See Skinner v. Switzer*, 562 U.S. 521, 532 (2011) (explaining that even though "[a] state-court decision is not reviewable by lower federal courts, . . .a statute or rule governing the decision may be challenged in a federal action"); *Reed v. Goertz*, 598 U.S. 230, 235 (2023) (finding that a claim was not barred by *Rooker-Feldman* where it challenged the constitutionality of an underlying statute rather than the adverse state court decision applying the statute to the plaintiff).

Instead, Mr. Wainwright's due process and equal protection claims take aim at, and directly challenge, the Florida Supreme

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[4] Mr. Wainwright's complaint incorporated by reference the filings and orders in his state habeas corpus proceeding in the Florida Supreme Court. We therefore consider those documents. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 323 (2007). And we take judicial notice of the filings and orders for what they contain (though not for the truth of any matters asserted). *See, e.g., FDIC v. North Savannah Properties, LLC*, 686 F.3d 1254, 1257 n.1 (11th Cir. 2012); *United States v. O'Steen*, 133 F.4th 1200, 1213 n.25 (11th Cir. 2025).

Court's decision to strike the habeas corpus petition filed by Ms. Backhus. Those claims mirror the due process and equal protection arguments that Mr. Wainwright raised in his emergency motion for rehearing and that were rejected by the Florida Supreme Court in its order striking the habeas corpus petition.

For purposes of *Rooker-Feldman*, "the claim for relief *does* matter." *Behr*, 8 F.4th at 1214 (emphasis in original). Mr. Wainwright does not seek damages against any of the defendants, but rather a declaration that the Florida Supreme Court, through Chief Justice Muñiz, violated his due process and equal protection rights, and a preliminary and permanent injunction barring his execution until the Florida Supreme Court provides him with a post-conviction proceeding that comports with the U.S. Constitution. *See* Complaint ¶¶ 92-94.

It seems to us that granting the relief sought by Mr. Wainwright on his due process and equal protection claims would probably amount to us effectively reversing the Florida Supreme Court's decision striking Mr. Wainwright's habeas corpus petition and its judgment dismissing and closing the habeas corpus case. Although we do not definitively decide the matter, we find it probable that his due process and equal protection claims fall within the narrow category of claims that we lack subject-matter jurisdiction to review under *Rooker-Feldman*. *See Alvarez v. Att'y Gen. for Fla.*, 679 F.3d 1257, 1262-63 (11th Cir. 2012) (concluding that the *Rooker-Feldman* doctrine barred jurisdiction where "the success of the federal claim would effectively nullify the state court judgment") (internal

quotation marks and citation omitted); *Hooper v. Brnovich*, 56 F.4th 619, 627 (9th Cir. 2022) (holding that due process claims "seek[ing] to undo the state courts' judgment" in a capital case were barred by *Rooker-Feldman*). As a result, Mr. Wainwright has not shown a substantial likelihood of success on the merits of his due process and equal protection claims.

B

Mr. Wainwright's remaining claim is that Governor DeSantis, Secretary Dixon, and Warden Allen violated his right of access to the courts by respectively (a) setting a 32-day warrant period and (b) moving him to death watch at Florida State Prison, where he is now in near total isolation. He alleged in his complaint that he has "no feasible way to meaningfully contribute to his legal proceedings and is more dependent on his counsel than at any prior juncture." Amended Complaint at ¶ 84.

Prisoners have a right of access to the courts. *See Barbour v. Haley*, 471 F.3d 1222, 1225 (11th Cir. 2006). To show a denial of access to the courts, Mr. Wainwright must "demonstrate that the alleged shortcomings . . . hindered his efforts to pursue a legal claim." *Lewis v. Casey*, 518 U.S. 343, 351 (1996).

We conclude that Mr. Wainwright has not shown a substantial likelihood of success on this claim either. First, he has cited no authority (and we have found none) standing for the proposition that a 32-day warrant period per se violates the right of access to the courts of a capital defendant who is represented by appointed postconviction counsel and is able to file an application for relief.

Second, the complaint indicates that Mr. Wainwright was able to communicate with his pro bono counsel, Ms. Backhus. *See* Amended Complaint at ¶ 25. He approved the two claims that she wanted to assert on his behalf in the Rule 3.851 proceedings (the *Brady* and Eighth Amendment claims), and those claims were included in the amended motion. *See id.* at ¶¶ 25, 31. Mr. Wainwright was also able to communicate with Ms. Backhus and approve the habeas corpus petition she wanted to file in the Florida Supreme Court. *See id.* at ¶ 32. Third, Mr. Harrison and Ms. Backhus filed and litigated a Rule 3.851 motion on behalf of Mr. Wainwright, and Ms. Backhus separately filed the state habeas corpus petition that Mr. Wainwright wanted her to submit.

The problem for Mr. Wainwright was that Mr. Harrison refused to adopt the state habeas corpus petition filed by Ms. Backhus and as a result the Florida Supreme Court struck that petition. That judicial action was not related to or caused by the 32-day warrant period or by Mr. Wainwright's transfer to death watch. *See Barbour*, 471 F.3d at 1225 ("[I]n order to assert a claim arising from the denial of meaningful access to the courts, an inmate must first establish an actual injury.").

IV

Mr. Wainwright's motion for a stay of execution is denied.

JORDAN, J, concurring:

I am concerned by the allegations in the complaint—which have to be accepted as true—that Mr. Harrison did not meet with or consult with Mr. Wainwright before the filing of the Rule 3.851 motion and that Mr. Harrison falsely represented that Ms. McDermott from the CHU agreed to communicate with Mr. Wainwright on his behalf. *See* Amended Complaint at ¶¶ 19-23, 27. But although his attempts to seek state habeas corpus relief may have been hindered to some degree, I agree with the court that Mr. Wainwright has not substantially shown that he was denied access to the courts.

A2

District Court Order

Dismissing § 1983 Complaint

June 6, 2025

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANTHONY F. WAINWRIGHT,

Plaintiff,

v. Case No. 3:25-cv-607-WWB-PDB

RON DESANTIS, et al.,

Defendants.

ORDER

I. Status

Plaintiff Anthony F. Wainwright, a Florida death row inmate who is scheduled to be executed on Tuesday, June 10, 2025, initiated this case, with help from court-appointed counsel, by filing a Complaint under 42 U.S.C. § 1983 (Doc. 1), a memorandum of law (Doc. 2), and exhibits (Doc. 3). He is proceeding on an Amended Complaint. (Doc. 12). He sues five Defendants in their official capacities: Governor Ron DeSantis; Attorney General James Uthmeier; Secretary of the Florida Department of Corrections (**"FDOC"**) Ricky D. Dixon; Warden David Allen; and the Honorable Carlos G. Muñiz. (*Id.* at 2-3).

Before the Court are Defendants' Amended Motion to Dismiss, in which they argue that Plaintiff fails to state a claim upon which relief may be granted (Doc. 15), and Plaintiffs' Emergency Motion for a Stay of Execution (Doc. 4). Plaintiff filed a response to Defendants' Amended Motion to Dismiss (Doc. 17); Defendants responded to Plaintiff's Motion for Stay of Execution (Doc. 16); and with the Court's leave, Plaintiff filed a reply to

Defendants' response to the Motion for Stay of Execution (Doc. 22). The motions and this matter are ripe for review.

II. Procedural History and Plaintiff's Allegations

In 1995, a jury found Plaintiff guilty of first degree murder, kidnapping, armed sexual battery, and armed battery. (Doc. 3 at 43). By a 12-0 vote, the jury recommended that Plaintiff be sentenced to death, and the trial court followed that recommendation, sentencing Plaintiff to death. (*Id.*). The Florida Supreme Court affirmed Plaintiff's convictions and sentence in November 1997. *See Wainwright v. State*, 704 So. 2d 511, 512 (Fla. 1997). In 2014, during Plaintiff's successive Florida Rule of Criminal Procedure 3.851 proceedings in state court, the trial court appointed Baya Harrison, an attorney from the capital collateral registry, as Plaintiff's postconviction counsel. (Doc. 12 at 4); *see also State v. Wainwright*, No. 1994-CF-000150 (Fla. 3d Cir. Ct.).[1] Harrison has remained Plaintiff's state court postconviction counsel since his 2014 appointment. Plaintiff alleges he has made "several unsuccessful attempts . . . over the following eleven years to have Harrison removed as his appointed registry counsel," but he does not explain the circumstances of those attempts. (Doc. 12 at 4-5). In June 2018, this Court appointed the Capital Habeas Unit of the Office of the Federal Public Defender for the Northern District of Florida ("**CHU**") as Plaintiff's federal habeas counsel. *See Wainwright v. Sec'y, Dept. of Corr.*, No. 3:05-cv-00276-TJC (Doc. 47). The CHU has remained Plaintiff's federal habeas counsel since its appointment.

[1] The Court takes judicial notice of Plaintiff's state court docket. *See McDowell Bey v. Vega*, 588 F. App'x 923, 927 (11th Cir. 2014) (holding that district court did not err in taking judicial notice of the plaintiff's state court docket when dismissing § 1983 action); *see also Mangiafico v. Blumenthal*, 471 F.3d 391, 398 (2d Cir. 2006) ("docket sheets are public records of which the court could take judicial notice.").

On May 9, 2025, Defendant DeSantis signed Plaintiff's death warrant and FDOC scheduled his execution for June 10, 2025. (Doc. 12 at 4). That same day, Defendant Muñiz issued an expedited briefing schedule for Plaintiff's final successive state court postconviction proceedings, (*id.*; *see also* Doc. 3 at 4-5), and FDOC officials transported Plaintiff from Union Correctional Institution to Florida State Prison ("**FSP**") where officials placed him on "death watch," which included the confiscation of his tablet and restriction of his visitation and phone privileges. (Doc. 12 at 4). The day DeSantis signed the warrant, Harrison and CHU's Linda McDermott communicated amicably and exchanged emails about working together on Plaintiff's death warrant litigation. (Doc. 12 at 5; Doc. 3 at 10-12). Harrison, McDermott, and CHU's Katherine Blair discussed by phone potential claims to raise on Plaintiff's behalf. (Doc. 12 at 5-6). According to McDermott's declaration, during the phone call, Harrison mentioned pursuing an *Erlinger*[2] claim, and CHU attorneys suggested pursuing a petition for writ of habeas corpus in the Florida Supreme Court, to which Harrison said "sound[ed] good." (Doc. 3 at 15). On May 10, 2025, Harrison sent Plaintiff a letter advising him about the death warrant, explaining that he was consulting with federal postconviction counsel about potential post-warrant claims to pursue, and indicating that he could not visit Plaintiff in prison due to time constraints. (Doc. 12 at 6). Harrison said he would try to call the prison to speak with Plaintiff but asked that Plaintiff try calling Harrison himself. (*Id.*). According to Plaintiff, Plaintiff did not receive Harrison's letter until ten days later, (*id.* at 6); he received no call from Harrison; and because he was on "death watch," Plaintiff was unable to make a phone call himself, (Doc. 2 at 16).

[2] *Erlinger v. United States*, 602 U.S. 821 (2024).

On May 11, 2025, without consulting Plaintiff, Harrison filed with the trial court a response to the state's proposed scheduling order, advising the trial court that no evidentiary hearing was needed for Plaintiff's forthcoming successive Rule 3.851 motion. (Doc. 12 at 6). The trial court issued its scheduling order on May 12, 2025. (*Id.*). Also, without consulting Plaintiff, Harrison filed with the trial court a notice advising that Plaintiff did not seek more public records from Defendant Dixon or any other agency in preparation for his filing. (Doc. 12 at 6-7). On May 14, 2025, Harrison, on behalf of Plaintiff, filed with the trial court an eighth successive Rule 3.851 motion raising a single claim. (*Id.*). That same day, Terri L. Backhus, pro bono counsel for Plaintiff, filed with the trial court a second eighth successive Rule 3.851 motion raising two additional claims (a *Brady*[3] claim and an Eighth Amendment claim) and a motion for substitution of counsel. (*Id.* at 7). Plaintiff also filed a request for substitution of counsel, in which he advised that he consulted pro bono counsel Backhus and consented to the filing of her successive Rule 3.851 motion on his behalf. (*Id.*).

The state objected to Backhus's motion for substitution and moved to strike her successive Rule 3.851 motion. (*Id.*). The trial court conducted an emergency hearing on the substitution request. During the hearing, Harrison told the trial court he did not have faith in the claims that pro bono counsel Backhus sought to raise in her successive Rule 3.851 motion, referring to the claims as "gobbledygook," and that he did not believe he could successfully work with pro bono counsel Backhus. (*Id.* at 7-8). According to Plaintiff and McDermott, Harrison also "falsely represented that McDermott agreed to communicate with [Plaintiff] on his behalf." (*Id.*; Doc. 3 at 16). On behalf of the state,

[3] *Brady v. Maryland*, 373 U.S. 83 (1963).

Defendant Uthmeier also protested pro bono counsel Backhus's involvement in any of Plaintiff's state court postconviction proceedings. (*Id.* at 8). The trial court granted in part the motion for substitution of counsel; granted the state's motion to strike pro bono counsel's successive Rule 3.851 motion; and explained that while Harrison "would retain all decision-making authority," Backhus could appear as second-chair counsel. (Doc. 3 at 40; Doc. 12 at 8).

Following the hearing, Harrison provided Backhus twenty minutes to review his amended eighth successive Rule 3.851 motion; but Backhus believed he did not provide her with enough time and shared her concerns about preserving Plaintiff's claims. (Doc. 12 at 8; Doc. 3 at 40). According to Backhus's declaration, Harrison responded that Backhus's "improper delay tactics never change," he would be filing the amended motion without her input, and she could "tell it to the judge." (Doc. 3 at 40). Harrison, on behalf of Plaintiff, then filed Plaintiff's amended eighth successive Rule 3.851 motion, which included Harrison's single claim (that the prior violent felony aggravator violated Plaintiff's Sixth Amendment right to trial by jury under *Erlinger*) and Backhus's two fact-intensive claims (newly discovered evidence of an Eighth Amendment claim and newly discovered evidence of a *Brady* violation). (Doc. 12 at 8; *see also Wainwright v. State*, No. SC2025-0708 (Fla. June 3, 2025)).[4] The day Harrison filed the amended Rule 3.851 motion, the trial court summarily denied all three claims. (Doc. 12 at 8).

[4] A copy of Plaintiff's amended eighth successive Rule 3.851 motion is available in the record on appeal found on the Florida Supreme Court's docket of Plaintiff's postconviction appeal. (*See Wainwright*, No. SC2025-0708). The Court takes judicial notice of Plaintiff's state court docket, including the record on appeal.

After the trial court denied Plaintiff's amended Rule 3.851 motion, Backhus advised Harrison that Plaintiff requested she file a state petition for writ of habeas corpus with the Florida Supreme Court. (Doc. 12 at 8; Doc. 3 at 41). Backhus offered to provide Harrison with a draft of the petition before filing it and explained that she hoped Harrison would sign on to the petition. (Doc. 3 at 41). In an email response, Harrison "stated that he was busy with the initial brief [for the appeal of the denial of the amended Rule 3.851 motion] and wanted nothing to do with the state habeas petition," (*id.*), and he "defended the actions of [Plaintiff's trial attorneys], whose conduct and representation were challenged in the state habeas," (Doc. 12 at 9).

Despite Harrison's opposition, on May 20, 2025, pro bono counsel Backhus, on behalf of Plaintiff, and with his consent, filed with the Florida Supreme Court Plaintiff's state petition for writ of habeas corpus seeking reconsideration of "its prior adversarial rulings . . . because . . . pervasive, systemic failures that occurred at every stage of his proceedings hindered his ability to obtain meaningful review of his constitutional claims, rendering his death sentence manifestly unjust." (*Id.* at 9 n.4; *see also Wainwright v. Sec'y, Dep't of Corr.*, No. SC2025-0709 (Fla. 2025)). Backhus also filed a notice of appearance, a motion for stay of execution, and Plaintiff's notarized authorization explaining he consented to Backhus representing him in the state habeas proceeding. (Doc. 12 at 9-10). Defendant Muñiz issued an acknowledgment of new case and a scheduling order directing Defendant Dixon, through counsel Defendant Uthmeier, to file a response to the state habeas petition and providing a deadline for Plaintiff to reply. (*Id.* at 10; Doc. 3 at 107). Dixon, through Uthmeier, responded on May 27, 2025, arguing, *inter alia*, that the state habeas petition should be dismissed because Harrison is

Plaintiff's lead postconviction counsel. (*Wainwright*, No. SC2025-0709). That same day, Defendant Muñiz entered an order recognizing Harrison as lead postconviction counsel for Plaintiff, directing Harrison to file a notice adopting the state habeas petition and motion for stay of execution, and advising the parties that Harrison's failure to file an adoption would result in the striking of Plaintiff's filings. (Doc. 12 at 11).

Harrison responded the next day, advising the Florida Supreme Court that he did not adopt the state habeas petition or the motion for stay of execution and explaining that he advised Backhus of his position as soon as he learned of the filings. (*Id.*). Considering Harrison's representations, Plaintiff, with help from pro bono counsel Backhus, filed with the Florida Supreme Court an emergency motion for rehearing raising due process and equal protection arguments including, *inter alia*, that the state should not be allowed to influence matters related to Plaintiff's postconviction counsel; Plaintiff was never afforded notice or an opportunity to respond to the state's argument about his choice of counsel; and because non-indigent defendants can proceed with counsel of their choice, Plaintiff has a right to enjoy the same benefit. (*Wainwright*, No. SC2025-0709; Doc. 12 at 11). Relying on Rule 3.851(b)(4)-(6), Defendant Muñiz denied Plaintiff's emergency motion for rehearing and struck as unauthorized Plaintiff's state habeas petition and motion for stay of execution. (*Wainwright*, No. SC2025-0709; Doc. 12 at 11).

The day Backhus filed Plaintiff's state court habeas petition, May 20, 2025, Plaintiff, with help from both Harrison and Backhus, appealed the trial court's summary denial of his amended eighth successive Rule 3.851 motion. (*Id.* at 9). On June 3, 2025, the Florida Supreme Court affirmed the trial court's denial. (*Id.* at 12). As to the Eighth Amendment claim (newly discovered evidence of Plaintiff's father's exposure to toxins

during the Vietnam War), the Florida Supreme Court addressed the trial court's denial on the merits and stated in a footnote:

> To the extent [Plaintiff] argues this additional information makes his sentence unconstitutional under the Eighth Amendment to the United States Constitution, we reject the claim. The argument is inadequately briefed and without merit. *See, e.g.*, *Hutchinson v. State*, 50 Fla. L. Weekly S71, 2025 WL 1198037 (Fla. Apr. 25, 2025), *cert. denied*, No. 24-7087, 2025 WL 1261217 (U.S. May 1, 2025).

(*Wainwright*, No. SC25-708 at 22 n.16.) Plaintiff now alleges that the Defendants' refusal to allow Backhus, Plaintiff's counsel of choice, to file his amended eighth successive Rule 3.851 motion and pursue his state habeas petition amounted to a federal due process and equal protection violation under the Fourteenth Amendment. (Doc. 12 at 13).

Plaintiff sets forth his claims in both his Amended Complaint and supporting memorandum of law, but he presents them somewhat differently in each filing. The gravamen of his Amended Complaint is that he was denied due process and equal protection because he was denied the right to have his counsel of choice pursue a state habeas proceeding and provide a "sufficiently pled" Eighth Amendment claim in his amended eighth successive Rule 3.851 motion. He faults Defendant Muñiz for striking his chosen counsel's pro bono state habeas petition and doing so without affording him an opportunity to be heard on the choice-of-counsel issue. He faults Defendants Muñiz and Uthmeier for improperly "dictat[ing]" that Harrison be his sole postconviction counsel, thereby depriving him of the opportunity to present habeas claims of his choice and "sufficiently pled" claims to the Florida Supreme Court. He further alleges that the denial of his right to counsel of his choice violated his equal protection rights "because he is being treated differently than other non-capital litigants and any other non-indigent litigant who could have had retained counsel [to] represent them" and there was no rational basis

to treat him differently than other death sentenced individuals who were allowed choice of counsel (*id.* at 23). Plaintiff does not allege the remaining Defendants (DeSantis, Dixon, and Allen) participated in the conduct that he claims amounts to a due process or equal protection violation—i.e., striking his state habeas petition, depriving him of his choice of counsel, or denying him the opportunity to raise sufficiently pled claims of his choice in state court. Rather, he vaguely alleges those Defendants violated his rights by signing a death warrant with a short time period in which to be carried out (thirty-two days) and without providing him advance notice (DeSantis), and denying him access to the state habeas process because of the restrictive nature of his conditions of confinement on "death watch" (Dixon and Allen).

As relief, Plaintiff requests a preliminary injunction prohibiting Defendants from executing him until this Court has had an opportunity to consider his claims; declare that Defendants violated his federal constitutional due process and equal protection rights; and grant a permanent injunction barring Defendants from executing him until they provide him with a state court postconviction proceeding that comports with the United States Constitution. (*Id.* at 24).

III. Standard of Review

"A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Pursuant to Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." In determining whether to dismiss under Rule 12(b)(6), a court accepts the factual allegations in the complaint as true and construes them in a light most favorable to the

non-moving party. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1269 (11th Cir. 2009). Nonetheless, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions," and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Furthermore, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

IV. Florida's Procedures for Appointment of Capital Postconviction Counsel

This case involves Florida's rules governing the required appointment of postconviction counsel for all capital defendants. Florida Rule of Criminal Procedure 3.851 provides:

> (1) Upon the issuance of the mandate affirming a judgment and sentence of death on direct appeal, the Supreme Court of Florida shall at the same time issue an order appointing the appropriate office of the Capital Collateral Regional Counsel or directing the trial court to immediately appoint counsel from the Registry of Attorneys maintained by the Justice Administrative Commission. The name of Registry Counsel shall be filed with the Supreme Court of Florida.
>
> . . . .
>
> (4) In every capital postconviction case, one lawyer shall be designated as lead counsel for the defendant. The lead counsel shall be the defendant's primary lawyer in all state court litigation. No lead counsel shall be permitted to appear for a limited purpose on behalf of a defendant in a capital postconviction proceeding.
>
> (5) After the filing of a notice of appearance, Capital Collateral Regional Counsel, Registry Counsel, or a private attorney shall represent the

> defendant in the state courts until a judge allows withdrawal or until the sentence is reversed, reduced, or carried out, regardless of whether another attorney represents the defendant in a federal court.
>
> (6) A defendant who has been sentenced to death may not represent himself or herself in a capital postconviction proceeding in state court. The only basis for a defendant who has been sentenced to death to seek to discharge postconviction counsel in state court must be pursuant to statute due to an actual conflict of interest. Upon a determination of an actual conflict of interest, conflict-free counsel must be appointed pursuant to statute.

Fla. R. Crim. P. 3.851(b)(1), (b)(4)-(6).

The appointed postconviction attorney "may designate another attorney to assist him or her if the designated attorney" is qualified under section 27.710, Florida Statutes. But counsel is prohibited from filing "repetitive or frivolous pleadings that are not supported by law or by the facts of the case." Fla. Stat. § 27.711(10).

V. Defendants' Motion to Dismiss and Plaintiff's Response

Defendants argue that Plaintiff's Amended Complaint should be dismissed because (1) § 1983 bars Plaintiff's claim for injunctive relief against Defendant Muñiz because he was acting in his judicial capacity; (2) Plaintiff fails to state a due process claim upon which relief may be granted; and (3) Plaintiff fails to state an equal protection claim upon which relief may be granted. (*See generally* Doc. 15).

In his Response, Plaintiff argues that he has alleged specific facts relating to Defendants' preclusion of his chosen counsel that establish a violation of his due process and equal protection rights under the Fourteenth Amendment. (Doc. 17 at 4). According to Plaintiff, Florida has created a mandatory right to postconviction counsel for death-sentenced inmates, which includes a right to counsel of choice where it would pose no additional cost to the state, no delay, and no prejudice to opposing counsel. (*Id.* at 4-5).

According to Plaintiff, Defendants misconstrue Plaintiff's due process claim as being based on the Sixth Amendment and erroneously assume that Plaintiff is asserting that the state is required to provide him with chosen counsel. (*Id.* at 6). Instead, he maintains that his claims turn on his Fourteenth Amendment rights and whether he is entitled to representation by counsel that he has obtained on his own and who is willing to assist him at no cost to the state. (*Id.* at 6). He contends that he need not demonstrate prejudice, and he has alleged enough facts to overcome a motion to dismiss. (*Id.* at 7-9, 14). He also maintains that Rule 3.851 "ensure[s] counsel for capital postconviction defendants" and places no limitations on a defendant's ability to choose his counsel. (*Id.* at 11). Finally, Plaintiff argues that judicial immunity does not protect Defendant Muñiz from Plaintiff's claims for injunctive and declaratory relief. (*Id.* at 16-17).

VI Analysis

a. Defendants DeSantis, Uthmeier, Dixon, and Allen

Plaintiff sues all Defendants solely in their official capacities. (*See* Doc. 12 at 1-3). To state a claim under § 1983, a plaintiff must allege that a person acting under the color of state law deprived him of a right secured under the United States Constitution or federal law. However, more is required when the plaintiff sues a "person" in his or her official capacity. *See Kentucky v. Graham*, 473 U.S. 159, 166 (1985). "[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). "[I]n an official-capacity suit the entity's 'policy or custom' must have played a part in the violation of federal law." *See Graham*, 473 U.S. at 166. Plaintiff does not allege a policy or custom of the state of Florida, the Attorney General's Office, the FDOC,

or the Florida Supreme Court "played a part in the violation of federal law." (*See generally* Doc. Nos. 2, 12, 17). Instead, he alleges he was treated differently than other "similarly situated" litigants. (*See* Doc. 12 at 23). Thus, he fails to state a plausible claim for relief.

To the extent that Plaintiff intended to proceed against the named Defendants in their individual capacities, his claims still fail.[5] Before addressing the discrete allegations against Defendants DeSantis, Uthmeier, Dixon, and Allen, the Court notes that Plaintiff appears to proceed solely on a due process claim against these Defendants given he does not name them or mention them in his two-paragraph equal protection claim. (*Id.* at 23). To the extent that the equal protection claim was intended to apply to all Defendants, the Court separately addresses that claim later in this Order.

Plaintiff names DeSantis as a Defendant in his role as the Governor of Florida. (*Id.* at 1-2). DeSantis allegedly signed Plaintiff's death warrant "arbitrarily and without warning, setting an extremely restrictive 32-day deadline for all stages of briefing to be completed" and without providing Plaintiff advance notice that the warrant would be signed when it was. (*Id.* at 4, 16, 20). But Plaintiff neither alleges in his Amended Complaint, nor cites case law in his memorandum, suggesting that he has a liberty interest in how or when DeSantis, as Governor, issues or signs death warrants. (*See id.*; *see also* Doc. 2 at 23). Indeed, the Florida Supreme Court has specifically observed that there is "[no] authority holding that [a prisoner] must be provided notice before a death warrant is signed or that the Governor may not sign the death warrant of an individual whose death sentence is final and who has had the benefit of a clemency proceeding."

[5] Although Plaintiff is not proceeding pro se and thus is not entitled to liberal construction of his Amended Complaint, given Plaintiff is under an active death warrant, the Court will extend him the benefit of liberal construction for purposes of this review.

Marek v. State, 14 So. 3d 985, 998 (Fla. 2009) (citing *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272 (1998)).

Plaintiff sues Uthmeier in his role as the Attorney General of Florida who is tasked with representing the interests of the state of Florida and the FDOC; he sues Dixon in his role as Secretary of the FDOC who "supervises and ultimately enforces all regulations concerning [Plaintiff's] conditions of confinement"; and he sues Allen in his role as warden of FSP, which is "where [Plaintiff] is currently incarcerated." (Doc. 12 at 2-3).

In conclusory fashion, Plaintiff alleges all Defendants "obstructed [his] ability to access the state habeas process entirely," refused "to permit [him] to proceed with the claims he wanted raised in his state postconviction proceedings," and "inappropriately influenced [Plaintiff's] ability to exercise choice of counsel." (*See id.* at 16, 19, 22). But he does not allege facts permitting the reasonable inference that Uthmeier, Dixon, or Allen engaged in conduct that allegedly violated his due process rights. He merely lumps all Defendants together when setting forth his seemingly separate but substantively similar claims, without asserting separate factual allegations against Defendants Uthmeier, Dixon, or Allen that plausibly state a claim under § 1983. (*See, e.g.*, *id.* at 16,19).

As to Defendants Dixon and Allen, Plaintiff merely complains that they "moved [him] to Death Watch at [FSP] . . . where he is now held in near total isolation" and confiscated his tablet, restricting his ability to communicate with anyone, including his lawyer. (*Id.* at 21). Such conduct does not suggest a due process violation because "the Due Process Clause . . . [does not] protect a duly convicted prisoner against transfer from one institution to another within the state prison system," even when conditions at the new prison are "much more disagreeable" than at the former institution. *Meachum v.*

Fano, 427 U.S. 215, 225 (1976); *see also Sandin v. Conner*, 515 U.S. 472, 486 (1995) (holding that placing a convicted prisoner in "segregated confinement did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest"). Notably, Plaintiff concedes that he is entitled to legal calls to the extent that they are "initiated by counsel." (Doc. 12 at 4, 21).

As to the Attorney General, Plaintiff appears to complain that Defendant Uthmeier, through his employees, "misrepresent[ed]" to the Florida Supreme Court that because the postconviction court concluded Harrison was Plaintiff's lead counsel for purposes of his state court Rule 3.851 proceedings, the Florida Supreme Court was bound by the same ruling in his original habeas proceedings. (*Id.* at 8, 16). According to Plaintiff, Defendant Uthmeier "successfully dictated, despite being a party-opponent, that only Harrison [could] represent [Plaintiff] in his original proceedings." (*Id.* at 16). Plaintiff's characterization of Defendant Uthmeier's argument is incorrect. Defendant Uthmeier primarily addressed Plaintiff's habeas claims on the merits. (*Wainwright v. Sec'y, Dep't of Corr.*, No. SC25-0709 (Fla.)). Only two pages of the forty-one-page brief were dedicated to an analysis of an apparent violation of Rule 3.851 providing that "[i]n every capital postconviction case, one lawyer shall be designated as lead counsel." (*Id.* at 3 (quoting Fla. R. Crim. P. 3.851(b)(4))).

Defendant Uthmeier brought to the Florida Supreme Court's attention what appeared to be an unauthorized filing, and in doing so, he summarized the proceedings in the postconviction court—that Backhus moved to substitute herself as counsel of record for Plaintiff, and the trial court, after holding a hearing, granted the motion in part, permitting Backhus to be second-chair counsel, not lead counsel. (*Id.* at 2-3). Even if the

trial court's order did not bind the Florida Supreme Court on the issue of lead counsel designation, Defendant Uthmeier's zealous advocacy of his client cannot be described as a due process violation. Plaintiff did not file a similar motion to substitute counsel in the Florida Supreme Court. And when Defendant Uthmeier brought to the court's attention the fact that Backhus was not Plaintiff's lead counsel of record, the court afforded Plaintiff, through his lead appointed counsel, an opportunity to respond before striking the filing. Harrison responded and opted not to adopt Backhus's filings. Moreover, the Florida Supreme Court did not strike the petition until after Plaintiff, through Backhus, filed a motion for rehearing, which addressed his due process and equal protection concerns. Plaintiff's disagreement with his lead counsel's decision and with the Florida Supreme Court's ruling does not mean he was denied due process by the judge, the Attorney General, or the state.

As Plaintiff emphasizes in his Response, his claims revolve around the alleged denial of his right to have counsel of his choice pursue his post-warrant state habeas proceedings. (*See* Doc. 17 at 1, 6). Defendants DeSantis, Uthmeier, Dixon, and Allen had no role (other than through legitimate advocacy in Uthmeier's case) in the Florida Supreme Court's decision to strike Plaintiff's state habeas petition as unauthorized. For the reasons stated, Plaintiff fails to state a plausible claim against Defendants DeSantis, Uthmeier, Dixon, or Allen.

b. Defendant Muñiz

The only Defendant who engaged in the conduct forming the basis of Plaintiff's claims was Defendant Muñiz, who acted in his official capacity as the Chief Justice of the Florida Supreme Court. For the same reasons the official capacity claims against the

other Defendants fail, so too does this claim. Additionally, however, to the extent Plaintiff sues Defendant Muñiz in his individual capacity, it is well settled that "a judge enjoys absolute immunity [in a suit for damages under § 1983] where he or she had subject matter jurisdiction over the matter forming the basis for such liability." *Dykes v. Hosemann*, 776 F.2d 942, 943 (11th Cir. 1985) (per curiam); *see also Stump v. Sparkman*, 435 U.S. 349, 356-357 (1978); *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000) (per curiam). As the Eleventh Circuit has observed, "[f]ew doctrines [are] more solidly established" than the doctrine of judicial immunity. *Tarver v. Reynolds*, 808 F. App'x 752, 754 (11th Cir. 2020) (alteration in original). Even when a judge arguably acts in error, maliciously, or in excess of his authority, he will "not be deprived of immunity." *Stump*, 435 U.S. at 356. "[R]ather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction." *Id.* at 356–57 (internal quotation marks and citation omitted).

Judicial immunity extends to claims brought under § 1983, even if a plaintiff seeks solely injunctive relief. Indeed, in 1996, Congress amended § 1983 to expressly provide for judicial immunity in actions for injunctive relief. That section provides in relevant part: "[I]n any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983 (abrogating in part *Pulliam v. Allen*, 466 U.S. 522, 536-37 (1984), which held that judicial immunity did not extend to claims for injunctive relief). And the Eleventh Circuit has recognized that to receive declaratory relief, "[a] plaintiff[] must establish that there was a violation, that there

is a serious risk of continuing irreparable injury if the relief is not granted, and the absence of an adequate remedy at law." *Bolin*, 225 F.3d at 1242

Plaintiff neither alleges that "a declaratory decree was violated or declaratory relief was unavailable" nor that there is an "absence of an adequate remedy at law." (*See generally* Doc. 12; *see also* Doc. 17 at 17). Moreover, the case he cites in his Response is inapposite and its legal principle misstated. (*See* Doc. 17 at 17 (citing *Sweet v. Chief Just. of Fla. Supreme Ct.*, No. 23-13025, 2025 WL 915740 (11th Cir. Mar. 26, 2025))). In *Sweet*, inmates sued the Chief Justice of the Florida Supreme Court in his official capacity, and the Eleventh Circuit affirmed the district court's dismissal of the action for lack of jurisdiction. *See* 2025 WL 915740, at *1. Contrary to Plaintiff's contention, the court did not "[find] that the Chief Justice of the Florida Supreme Court is not completely immune from a lawsuit." (*See* Doc. 17 at 17). Judicial immunity was not even addressed. Rather, the Eleventh Circuit in *Sweet* addressed solely issues of standing and sovereign immunity. *See generally id.* And upon review of the underlying district court order granting Judge Muñiz's motion to dismiss, the Court notes that a judicial immunity defense was not asserted or considered. (*See* Case No. 3:22-cv-574-TJC-LLL (M.D. Fla.)).

Given Defendant Muñiz is entitled to judicial immunity, and Plaintiff provides no valid argument to the contrary, the claims against Defendant Muñiz will be dismissed.

c. Due Process and Equal Protection

Alternatively, Plaintiff's underlying due process and equal protection claims lack merit. According to Plaintiff, he has a state-created right to capital postconviction counsel; and thus Defendants' actions in safeguarding that state-created right must comport with

the federal Due Process and Equal Protection Clauses of the Fourteenth Amendment. (Doc. 2 at 3-4). Plaintiff, however, alleges that Defendants violated his federal due process and equal protection rights when they prohibited his counsel of choice, Backhus, from litigating his amended eighth successive Rule 3.851 motion and his state habeas petition where Backhus appeared pro bono and her representation would not have resulted in delay or prejudice. (Doc. 17 at 1).

i. Due Process

Courts "examine procedural due process questions in two steps." *Kentucky Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989) (citations omitted). First, the court "asks whether there exists a liberty or property interest which has been interfered with by the [s]tate[;]" and second, the court "examines whether the procedures attendant upon that deprivation were constitutionally sufficient." *Id.*

Florida has established a statutory right to postconviction counsel for death-sentenced inmates for pursuing any collateral attack on their convictions and sentences. Fla. Stat. § 27.702(1) ("The capital collateral regional counsel shall represent each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed . . . ."). And the Florida Rules of Criminal Procedure reinforce this right and mandate the appointment of counsel while prohibiting self-representation in capital postconviction cases. *See* Fla. R. Crim. P. 3.851(b)(1), (b)(4)-(6).

Relying on these state statutes and rules, Plaintiff argues that because Florida has created this procedural entitlement to postconviction counsel, the Fourteenth Amendment's guarantee of due process automatically applies to that right. (Doc. 17 at

4). And he asserts that considering that vested federal constitutional right, he has a right to counsel of choice where counsel of choice poses no delay, prejudice, or additional costs to the state. (*Id.* at 4-5).

But the United States Supreme Court and the Eleventh Circuit have consistently held that there is no federal constitutional right to counsel in postconviction proceedings, including those involving death-sentenced inmates. *See Murray v. Giarratano*, 492 U.S. 1 (1989); *Barbour v. Haley*, 471 F.3d 1222, 1227-28 (11th Cir. 2006) (collecting cases). Indeed, recognizing that postconviction review is a discretionary proceeding removed from the arduous circumstances of a criminal trial, the Supreme Court has explained that when a state provides an inmate with postconviction review, "neither the Due Process Clause nor the Equal Protection guarantee of meaningful access require[] states to provide [death-sentenced] indigents legal representation to pursue those [postconviction] claims." *Barbour*, 471 F.3d at 1228-29 (citing *Pennsylvania v. Finley*, 481 U.S. 551(1987); *Giarratano*, 492 U.S. at 11-12). While the federal courts recognize that states have the discretion to provide counsel for postconviction proceedings as a matter of legislative policy, that state-created policy is not constitutionally mandated. *See Ross v. Moffitt*, 417 U.S. 600, 610 (1974) (noting that states may choose to provide counsel at various stages of judicial review, but such provisions are not required by the Constitution).

The underlying premise of Plaintiff's due process claims is that he has a federally protected due process right to counsel of his choice in his postconviction proceedings. Even though his "qualified pro bono counsel" was ready and able to appear and accepting that her appearance would have caused "no delay or prejudice," the law simply does not support Plaintiff's premise. It is beyond dispute that Plaintiff does not have a

constitutionally protected right to counsel in his postconviction proceedings. *See Murray*, 492 U.S. at 1; *Barbour*, 471 F.3d at 1227-28. And even though Florida has created a statutory scheme to provide counsel to him as a death-sentenced inmate, that does not automatically implicate a Fourteenth Amendment right to counsel of his choice. On the contrary, "the Due Process Clause provides [merely] that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985).

Nevertheless, accepting as true that Florida affords Plaintiff a state created property interest, Plaintiff received the process he was due. Notably, the Court finds persuasive Defendants' argument on this point:

> [Plaintiff] had the opportunity to be heard at the circuit court hearing on counsel where the circuit court emphasized state-appointed counsel's decision-making authority. He had the opportunity to appeal that decision and chose not to do so. *Cf. Merck v. State*, 216 So. 3d 1285 (Fla. 2017). And he had the opportunity to be heard on his emergency motion for rehearing of the Florida Supreme Court's order. *See Link v. Wabash R. Co.*, 370 U.S. 626, 631-32 (1962). [Plaintiff], through his unauthorized counsel of choice, had three opportunities to be heard and took just one of them. He can hardly cry [a] due process violation based on evidence he never provided to the state courts.

(*See* Doc. 16 at 11). Also, Plaintiff himself seemingly acknowledges in his Reply to the Defendants' Response to his Motion to Stay that a civil plaintiff's right to counsel of choice "is not absolute." (Doc. 22 at 2; citing *In re BellSouth Corp.*, 334 F.3d 941, 946 (11th Cir. 2003)). The right to "hire [a] lawyer of [one's] choice can be overridden if a court finds that the choice would interfere with the orderly administration of justice." *Id.* at 956. As Defendants aptly explain:

> The State has a strong interest in assuring continuity of counsel for capital defendants and thus precluding changes after a warrant is signed except in narrow, statutorily authorized circumstances. It has established rules and

> a system to minimize counsel changes in furtherance of that objective. Whatever limited right [Plaintiff] could have to postconviction counsel of choice must give way to Florida's interest in the fair, orderly, and efficient administration of its system.

(Doc. 15 at 15). Plaintiff, through pro bono counsel Backhus, was given an opportunity to be heard on the counsel issue in both the trial court (during the evidentiary hearing) and the Florida Supreme Court (through Backhus's motion for rehearing). Plaintiff simply disagrees with the results, but his disagreement does not create a federal due process claim. Thus, Plaintiff's Amended Complaint fails to state a due process claim.[6]

ii. Equal Protection

Plaintiff also argues that Defendants violated his equal protection rights because he is being treated differently than non-capital litigants and non-indigent litigants who can retain counsel of their choice to represent them. (Doc. 12 at 23).

"The Equal Protection Clause requires the State to treat all persons similarly situated alike." *Glenn v. Brumby*, 663 F.3d 1312, 1315 (11th Cir. 2011). "To establish an equal protection claim, a prisoner must demonstrate that (1) 'he is similarly situated with other prisoners who received' more favorable treatment; and (2) his discriminatory treatment was based on some constitutionally protected interest such as race." *Jones v.*

[6] Access to courts is a right grounded in several constitutional amendments, including the First and Fourteenth Amendments. *Chappell v. Rich*, 340 F.3d 1279, 1282 (11th Cir. 2003); *see Barbour v. Haley*, 471 F.3d 1222, 1224 n.2 (11th Cir. 2006) (noting that the prisoners' claim that they had been denied meaningful access to the courts implicated both the First and Fourteenth Amendments). But a difference in opinion between Plaintiff's lead counsel and second-chair counsel on what claims should be raised and in what courts does not amount to an access to courts violation

Ray, 279 F.3d 944, 946-47 (11th Cir. 2001) (quoting *Damiano v. Fla. Parole & Prob. Comm'n*, 785 F.2d 929, 932–33 (11th Cir. 1986)).

Here, Plaintiff has not alleged that other similarly situated individuals received more favorable treatment. *See Hernandez v. Fla. Dep't of Corr.*, 281 F. App'x 862, 867 (11th Cir. 2008) (concluding that the prisoner-plaintiff "failed to state an equal protection claim because he did not allege facts showing that any similarly situated prisoners received more favorable treatment"). And likely of more import, he fails to assert that Defendants' alleged discriminatory treatment was based on Plaintiff being a member of a protected class or some other constitutionally protected interest.

Also, to the extent that Plaintiff argues that he is not required to allege facts supporting that element because he is asserting a "class of one" equal protection claim, his argument is unpersuasive. Even a "class of one" equal protection claim requires some comparison to other similarly situated individuals. *See Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) ("Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment."); *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1205 (11th Cir. 2007) ("We see no reason that a plaintiff in a 'class of one' case should be subjected to a more lenient 'similarly situated' requirement than we have imposed in other contexts. Adjudging equality necessarily requires comparison, and 'class of one' plaintiffs may (just like other plaintiffs) fairly be required to show that their professed comparison is sufficiently apt.").

Plaintiff seemingly argues that he was treated differently from the similarly situated plaintiffs in *Howell v. State*, 109 So. 3d 763 (Fla. 2013), and *State v. Dailey*, No. SC20-934 (Fla.). (Doc. 17 at 11-12). But the facts underlying Plaintiff's claim here are distinguishable from the plaintiffs in *Howell* and *Dailey*. Indeed, *Howell* was decided before the additions of subsections (b)(4) through (b)(6) of Rule 3.851; and thus the rules governing the appointment and substitution of collateral counsel in *Howell* were not like the current rules applicable to Plaintiff. *See In re Amends. to Fla. Rules of Jud. Admin.; The Florida Rules of Crim. Procedure; and The Fla. Rules of App. Proc.--Cap. Postconviction Rules*, 148 So. 3d 1171, 1173-74, 1177 (Fla. 2014) (directing that the amendments become effective on January 1, 2015, and advising that "the only basis on which a defendant may seek to dismiss counsel is pursuant to statute due to an actual conflict, or pursuant to rule 3.851(i) (Dismissal of Postconviction Proceedings)"). Also, as to *Dailey*, Plaintiff provides no facts showing he is similarly situated to the plaintiff in that case. Rather, Plaintiff simply cites to a motion to withdraw filed by an attorney with the Office of the Capital Collateral Regional Counsel – Middle Region ("**CCRC**") who explained that he needed to withdraw because he no longer worked for CCRC. *Dailey*, SC20-934. The motion clarified that other attorneys with CCRC would remain as Dailey's counsel "along with pro bono counsel." *Id.* Upon review of that motion alone, the Court infers that CCRC explicitly agreed to private pro bono counsel appearing as co-counsel and that the attorneys otherwise followed the procedures outlined in Rule 3.851. Here, however, during the trial court's proceedings on Plaintiff's amended eighth successive Rule 3.851 motion, the trial court ruled that while Backhus could appear as second-chair counsel, Harrison "would retain all decision-making authority." (Doc. 3 at 40; Doc. 12 at

8). And when Backus filed Plaintiff's state court habeas petition, she did so in contravention to the dictates of "lead counsel" as outlined in Rule 3.851, and Harrison, as Plaintiff's designated lead counsel, explicitly declined to adopt Backhus's filings.[7] As such, Plaintiff has not alleged that any other similarly situated individuals were treated more favorably. Thus, he has failed to state a plausible equal protection claim.

Accordingly, it is **ORDERED:**

1. Defendants' Amended Motion to Dismiss (Doc. 15) is **GRANTED**.
2. The claims against Defendants are **DISMISSED with prejudice**.
3. Plaintiff's Emergency Motion for a Stay of Execution (Doc. 4) is **DENIED as moot**.
4. The Clerk shall enter judgment dismissing this case with prejudice, terminate any pending motions, and close the file.

DONE AND ORDERED in Jacksonville, Florida, on June 6, 2025.

WENDY W. BERGER
United States District Judge

[7] Indeed, the Court is aware of at least one case similar to Plaintiff's state habeas case. *See Bates v. Jones*, No. SC16-119, 2016 WL 6205332, at *1 (Fla. July 18, 2016). In *Bates*, the Florida Supreme Court granted the respondents' motion to strike because the case was filed by non-lead counsel. The court directed counsel who filed the case to either confer with lead counsel and refile the document as co-counsel or obtain an order of substitution of counsel in the trial court.

A3

Petitioner's Amended Complaint

Under § 1983

June 3, 2025

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANTHONY FLOYD WAINWRIGHT
Plaintiff,

v.

RON DeSANTIS, Governor,
in his official capacity;

JAMES UTHMEIER, Attorney General,
in his official capacity;

RICKY D. DIXON, Secretary, Department of Corrections,
in his official capacity;

DAVID ALLEN, Warden, Florida State Prison,
in his official capacity;

THE HONORABLE CARLOS G. MUÑIZ, Chief Justice
of the Florida Supreme Court,
in his official capacity;
_____/

CASE NO. 3:25-cv-607

EMERGENCY INJUNCTION SOUGHT

EXECUTION OF STATE DEATH SENTENCE SET: JUNE 10, 2025 @ 6:00 P.M.

AMENDED[1] 42 U.S.C. § 1983 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. NATURE OF ACTION

1. This is a civil action brought under 42 U.S.C. § 1983 for violations of Plaintiff Anthony Floyd Wainwright's federal constitutional due process and equal protection rights.

[1] Pursuant to Fed. R. Civ. P. 15(e), Mr. Wainwright amends this complaint to include facts supporting his claims for relief. These facts arose upon the issuance of the Florida Supreme Court's opinion, issued just hours ago, finding that Mr. Wainwright's underlying postconviction claim for relief was inadequately pled by counsel Baya Harrison. For ease if review, information that has been newly added to this amended complaint appears in italics.

2. Mr. Wainwright, a death-sentenced Florida prisoner, seeks declaratory relief, injunctive relief, and a stay of his scheduled June 10, 2025, execution, pending this Court's review of this action and, ultimately, the defendants' provision of postconviction proceedings that comport with the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

II. PARTIES TO THE COMPLAINT

PLAINTIFF

3. Anthony Floyd Wainwright is a prisoner on Florida's death row pursuant to his 1994 conviction for first-degree murder and associated charges originating from Hamilton County. *Wainwright v. State,* 704 So. 2d 511 (Fla. 1997), *cert denied,* 523 U.S. 1127 (1998). He is a citizen of the United States and a resident of the State of Florida. On May 9, 2025, Governor Ron DeSantis signed a warrant for Mr. Wainwright's execution, setting it for June 10, 2025, at 6:00 pm at Florida State Prison, in Raiford, Florida.

DEFENDANTS

4. Defendant Ron DeSantis is the Governor of Florida. Governor DeSantis is responsible for the selection, timing, and signing of Florida death warrants. He is sued in his official capacity.

5. Defendant James Uthmeier is the Attorney General of Florida. He represents the interests of the State of Florida and the Florida Department of Corrections. He is sued in his official capacity.

6. Defendant Ricky D. Dixon is the Secretary of the Florida Department of Corrections. He supervises and ultimately enforces all regulations concerning Mr. Wainwright's conditions of confinement. He is sued in his official capacity.

7. Defendant David Allen is the warden of Florida State Prison in Raiford, Florida, in the Middle District of Florida, where Mr. Wainwright is currently incarcerated. He is sued in his official capacity.

8. Defendant Honorable Carlos G. Muñiz is the Chief Justice of the Florida Supreme Court. He is sued in his official capacity.

III. JURISDICTION AND VENUE

JURISDICTION

9. This action arises under federal statute and presents a federal question within this Court's jurisdiction under Article III of the Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3). This action is brought pursuant to 42 U.S.C. § 1983. This Court has the authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. § 2201(a), § 2202, and Federal Rule of Civil Procedure 65.

VENUE

10. Pursuant to 28 U.S.C. § 1391(b), venue is appropriate in the Middle District of Florida because Defendant David Allen resides in this district and, as discussed below, a substantial part of the events or omissions giving rise to this claim occurred in this District.

IV. RELEVANT FACTUAL AND PROCEDURAL HISTORY

11. On May 9, 2025, Defendant Ron DeSantis signed Mr. Wainwright's death warrant and scheduled him for execution on June 10, 2025, at 6:00 p.m. The warrant period set by Defendant Ron DeSantis is a mere thirty-two days.

12. That same day, Defendant Muñiz issued an expedited briefing schedule for the circuit court proceedings. App. A (Florida Supreme Court's Scheduling Order).

13. Mr. Wainwright has been on death row since 1994, over thirty years. Upon receipt of the warrant, Mr. Wainwright was transported from Union Correctional Institution to Florida State Prison where he began Phase I of death watch.

14. Under Phase I, Mr. Wainwright's visitation and contact with the outside world is even more restricted than on death row. His tablet issued by Defendant Dixon, which generally allows inmates to contact friends and family through email, access movies, eBooks, audiobooks, music, and educational content, was confiscated. His visitation is restricted to only individuals who were already on his approved visitation list. Legal phone calls are restricted to thirty-minute durations and are scheduled only upon the request of the attorney.

15. Baya Harrison was appointed as Mr. Wainwright's counsel on February 6, 2014, by the Circuit Court of the Third Judicial Circuit, in and for, Hamilton County, Florida. The appointment was in response to prior counsel's motion to withdraw. The circuit court had previously ordered Capital Collateral Regional Counsel-North to represent Mr. Wainwright for postconviction purposes, but because the office was not yet operational, the court appointed Harrison from the capital collateral registry. On February 24, 2014, Harrison filed a notice of appearance in Mr.

Wainright's state postconviction proceedings.[2] He has remained counsel of record despite several unsuccessful attempts by Mr. Wainwright over the following eleven years to have Harrison removed as his appointed registry counsel. App. B (Anthony Wainwright Declaration).

16. On May 9, 2025, at 9:51 p.m., Harrison emailed Linda McDermott, Mr. Wainwright's court-appointed counsel in his federal habeas proceedings, asking if she wished to work together on Mr. Wainwright's death-warrant litigation:

> "Linda, are you wishing to be in on this? Needless to say it would be appreciated. Please advise via email and know I am available to discuss this weekend. Please include Steve Alex."

App. C (Email from Baya Harrison to Linda McDermott).

17. McDermott had also emailed Harrison several hours prior to inform him that her office represents Mr. Wainwright in his federal proceedings and that Harrison could contact her if he wanted to discuss anything regarding Mr. Wainwright's death warrant litigation. App. D (Email from Linda McDermott to Baya Harrison). Both agreed to speak the following morning over the phone. App. E (Linda McDermott Declaration).

18. During the May 10, 2025, phone call between Harrison and McDermott, McDermott and Katherine Blair shared some ideas for claims and issues that could be raised on Mr. Wainwright's behalf. Harrison affirmed that the ideas sounded good and the parties agreed to confer after the status hearing on May 12, 2025. App. E.

[2] Harrison initially and erroneously filed the notice of appearance in the Florida Supreme Court, which was then transferred to the circuit court.

19. Also on May 10, 2025, a day after Mr. Wainwright's warrant was signed and he was transported to Florida State Prison, Harrison mailed Mr. Wainwright a letter informing him that Defendant DeSantis signed his death warrant. Harrison stated:

> "I am doing all in my power to come up with additional grounds for post conviction relief for you to include a stay of execution and a new trial. I will consult with Ms. McDermott. I will keep you posted.
>
> Because so much work needs to be done here, I cannot travel to the prison. Therefore I ask that you write me and call me. I will place a call to the prison to speak to you as well."

App. F (Letter from Baya Harrison to Anthony Wainwright).

20. The letter was dated May 10, 2025, and postmarked May 13, 2025. The letter took over ten days to reach Mr. Wainwright, and was addressed sent to the incorrect institution and incorrect address, likely contributing to its delay in reaching Mr. Wainwright.

21. On May 11, 2025, without consulting his client, Harrison filed a response to the State's proposed scheduling order in which, even though the Rule 3.851 had not been filed, he indicated that there was no need for an evidentiary hearing. App. G (Defendant's Response to State's Motion for Scheduling Order).

22. On May 12, 2025, the circuit court issued a scheduling order directing Defendant Dixon to provide Mr. Wainwright updated inmate records, and directing Mr. Wainwright to file any additional agency public records demands by May 13, 2025, at 3:00 p.m. App. H (Circuit Court Scheduling Order).

23. That same day, Harrison filed a notice that Mr. Wainwright did not seek additional public records from Defendant Dixon despite the circuit court's order. App. I (Defendant's Notice Regarding Public Records Demands). Harrison further

represented that Mr. Wainwright did not seek any additional public records from any other agency. App. I. Harrison did not consult with Mr. Wainwright before filing the notice. App. B.

24. Harrison filed a single-claim Rule 3.851 motion on May 14, 2025, and mailed a copy to Mr. Wainwright.

25. That same day, Terri L. Backhus, pro bono counsel for Mr. Wainwright, timely filed a Rule 3.851 motion containing two fact claims, including a *Brady* claim *and a claim that Mr. Wainwright's execution would violate the Eighth Amendment*, a motion for substitution of counsel, and a request for substitution of counsel by Mr. Wainright. In the request, Mr. Wainwright represented that he consulted with pro bono counsel regarding the claims she intended to raise, and consented to the filing of the motion for postconviction relief on his behalf. App. J (Anthony Wainwright Authorization for Circuit Court).

26. The State objected to the motion for substitution of counsel, which it later amended, on May 14, 2025. It also moved for an emergency hearing on the motion for substitution of counsel, and moved to strike the successive postconviction motion filed by pro bono counsel.

27. An emergency hearing on the motion to substitute counsel was held on May 15, 2025. At the emergency hearing, Harrison falsely represented that McDermott agreed to communicate with Mr. Wainwright on his behalf; that filing public records request as general practice in death-warrant proceedings was a "complete and total waste of time"; that he did not have faith in the claims pro bono counsel sought to raise in her Rule 3.851 motion, referring to them as

"gobbledygook"; and that while he had never worked with pro bono counsel, he did not believe that he could successfully.

28. Defendant Uthmeier protested pro bono counsel's involvement in any capacity at the emergency hearing and in its filings.

29. The circuit court granted, in part, the State's motion for substitution of counsel, and granted the State's motion to strike pro bono counsel's Rule 3.851 motion. It gave pro bono counsel and Harrison until 6:00 p.m. that evening to file an amended Rule 3.851 motion, with Harrison's sole approval.

30. Following the hearing, Harrison provided pro bono counsel twenty minutes to review the amended Rule 3.851 motion. Pro bono did not think that was sufficient time and shared her concerns about properly preserving Mr. Wainwright's claims. App. K (Terri Backhus Declaration). Harrison responded that pro bono counsel's "improper delay tactics never change," that he would be filing without her input, and that she could "tell it to the judge." App. K.

31. Harrison then filed the amended Rule 3.851 motion including his single claim, and pro bono counsel's two fact-intensive claims in a combined six pages. App. L (Amended 3.851 Motion for Postconviction Relief).

32. That day Mr. Wainwright's Rule 3.851 was denied, pro bono counsel informed Harrison that Mr. Wainwright specifically requested pro bono counsel to file a state petition for writ of habeas corpus. App. K. She offered to provide Harrison a draft before filing the petition, and clarified that she hoped he would sign on to the petition. App. K.

33. Harrison issued two responses: in the first he indicated that he was preoccupied with the initial brief and wanted nothing to do with the state habeas petition; in the second he defended the actions of Clyde Taylor, Victor Africano, and Jerry Blair, whose conduct and representation were challenged in the state habeas petition. App. K. Harrison provided that they represent the "best of the legal profession," and that, in his opinion, they did not trample Mr. Wainwright's rights.[3] App. K.

34. On May 20, 2025, Mr. Wainwright, through Harrison and pro bono counsel filed a notice of appeal in the Florida Supreme Court under case number SC2025-0708.

35. That same day, Mr. Wainwright, through pro bono counsel only, filed a timely state petition for writ of habeas corpus[4] pursuant to the Florida Supreme Court's scheduling order, under case number SC2025-0709. App. A. The state habeas petition constituted an original proceeding under Florida Rule of Appellate Procedure 9.100(a), and the Florida Supreme Court had original jurisdiction under Florida Rule of Appellate Procedure 9.030(a)(3), and Art. V, §§ 3(b)(1) and (b)(9), Fla. Const.

36. Pro bono counsel also contemporaneously filed a Notice of Appearance, Motion for Stay of Execution, and a Notice of Filing an attached, notarized authorization

[3] On April 6, 2015, Harrison, on behalf of Mr. Wainwright, filed a sixth successive motion for postconviction relief which raised four claims, including that Victor Africano was ineffective for failing to explain the plea agreement to Mr. Wainwright and prepare him for questioning by law enforcement. *See State v. Wainwright*, Hamilton Cnty., Case No. 1994-CF-00150-A (Mar. 6, 2015).

[4] Mr. Wainwright alleged that the Florida Supreme Court should reconsider its prior adversarial rulings in Mr. Wainwright's case because the pervasive, systemic failures that occurred at every stage of his proceedings hindered his ability to obtain meaningful review of his constitutional claims, rendering his death sentence manifestly unjust.

by Mr. Wainwright. App. M (Anthony Wainwright's Authorization of Pro Bono Counsel for State Habeas). In the authorization, Mr. Wainwright indicated that he authorized pro bono counsel to represent him in the original matter before the Court. App. M. Mr. Wainright further indicated the following:

> I have been informed and have consulted with Ms. Backhus about the issues to be raised in the petition for writ of habeas corpus. I have had no communication with court-appointed Registry Counsel about the petition or any other matter concerning my under-warrant litigation Ms. Backhus has consulted with me about the arguments she intends to raise in the petition and I hereby consent to her representing me in this litigation.

App. M.[5]

State Habeas Litigation

37. Also on May 20, 2025, Defendant Muñiz entered an Acknowledgement of New Case confirming its receipt of Mr. Wainwright's state habeas petition and motion for stay of execution. Defendant Muñiz also issued a scheduling order for briefing on the state habeas petition and directed Defendant Ricky Dixon, represented by Defendant James Uthmeier, to file a response to the state habeas petition by Tuesday, May 27, 2025, at 10:00 a.m. Defendant Muñiz directed Mr. Wainwright to file a reply to Defendant Dixon's response by Wednesday, May 28, 2025, at 10:00 a.m. App. N (Florida Supreme Court's State Habeas Scheduling Order).

38. No other docket entries were entered until seven days later on May 27, 2025, when Defendant Ricky Dixon, through Defendant James Uthmeier, filed the

[5] *Because the state habeas petition was adjudicated under a different case number and on a different timeline than Mr. Wainwright's appeal of the 3.851 denial, this fact section has broken out the litigation of each into different sections (first, the state habeas; second, the 3.851 appeal).*

response to the petition for writ of habeas corpus, and response to the motion for stay of execution.

39. Without notice to Mr. Wainwright, Defendant Muñiz entered an order on May 27, 2025, recognizing Baya Harrison as lead postconviction counsel and directing him to file a notice adopting the petition and motion for stay of execution, where failure to do so would result in the striking of said filings.

40. Harrison filed a response to the order on May 28, 2025, indicating that that he did not adopt the state habeas petition nor the motion for stay of execution.

41. Mr. Wainwright, through pro bono counsel, filed an emergency motion for rehearing attaching a proposed reply to the response to the petition for writ of habeas corpus, and Defendant Dixon, through Defendant Uthmeier, filed a Response to the motion.

42. Defendant Muñiz denied the emergency motion for rehearing, and struck the state habeas petition, stay motion, and reply.

Litigation Regarding Appeal of 3.851 Denial

43. On May 27, 2025, the State filed an answer brief in the Florida Supreme Court. In urging the Florida Supreme Court to affirm denial of postconviction relief, the State argued regarding Mr. Wainwright's Eighth Amendment claim:

> *Furthermore, the Eighth Amendment claim consisted of two sentences in the amended successive motion that did not even use the phrase the "Eighth Amendment." The State did not even recognize it as an Eighth Amendment claim and, for that reason, did not address it in its answer to the amended successive motion. It was only at the Huff hearing, that it became clear that there was an Eighth Amendment claim buried within the newly discovered evidence claim but at [sic] point it was too late for the State to respond in writing….*
>
> *The Eighth Amendment claim was not properly presented below and, for that reason, is not properly before this Court….This*

> *Court should not address the Eighth Amendment issue except to hold that it was forfeited for failing to properly plead below.*

5/27/25 Answer Brief, Wainwright v. State, Case No. SC25-708 at 54-55 (citations omitted).

44. The Florida Supreme Court affirmed the denial of postconviction relief on June 3, 2025. In its order, regarding the Eighth Amendment claim, the Florida Supreme Court stated:

> *To the extent Wainwright argues this additional information makes his sentence unconstitutional under the Eighth Amendment to the United States Constitution, we reject the claim. The argument is inadequately briefed and without merit.*

6/3/2025 Order Wainwright v. State, Case No. SC25-708 at 22 (citations omitted).

45. Defendants' actions deprived Mr. Wainwright of consideration of his Eighth Amendment claim. The Florida Supreme Court's ruling that the claim was insufficiently pled is attributable to deficient pleading by Mr. Wainwright's appointed counsel, Baya Harrison. Defendants' actions in refusing to permit Mr. Wainwright to proceed with the claims he wanted raised in his state postconviction proceedings, and by the counsel he had authorized to represent him, deprived him of the ability to fairly present his constitutional claims for relief in the state courts. Had Mr. Wainwright been permitted his choice of counsel in these proceedings, the Eighth Amendment claim would have been sufficiently pled. This is demonstrated by the legally and facially sufficient postconviction motion filed by Ms. Backhus, with Mr. Wainwright's authorization, a day before the filing deadline. However, as laid out above, the legally sufficient 3.851 motion was stricken by the trial court due to the fact that it was not filed by Mr. Harrison. When Mr. Harrison

amended the Rule 3.851 motion, he did not include any language about the Eighth Amendment. See Supp. App. A.

V. CAUSES OF ACTION

46. As described in more detail in Mr. Wainwright's accompanying memorandum in support of this complaint, Defendants violated his federal due process and equal protection rights by striking Mr. Wainwright's state habeas petition as unauthorized due to the unconstitutional restrictions on Mr. Wainwright's right to counsel of his choice.[6]

47. Mr. Wainwright hereby incorporates by reference paragraphs 1-45 as though fully set forth herein.

A. Defendants Violated Mr. Wainwright's Due Process Rights

i. Mr. Wainwright's Liberty Interest in State-Created Right to Habeas Process

48. Mr. Wainwright was convicted and sentenced to death in 1994, and is currently in the custody of Defendant Dixon and Defendant Allen.

49. Mr. Wainwright petitioned the Florida Supreme Court for a writ of habeas corpus on May 20, 2025. He did so through pro bono counsel who contemporaneously filed a notice of appearance indicating her designation as lead counsel in the habeas proceeding, and in accordance with the Florida Rules of Appellate Procedure. Pro bono counsel also filed an authorization from Mr. Wainright.

[6] This complaint provides the factual background and basis for the cause of action. Mr. Wainwright has filed a separate memorandum outlining the legal support for his positions, in addition to a motion for a stay of execution, so that this Court may consider these arguments without the exigencies of an active death warrant.

50. The habeas petition, notice of appearance, and notice of filing remained pending in the Florida Supreme Court before Defendant Muñiz for seven days until Defendant Uthmeier replied with his objection to Mr. Wainwright's ability to substitute counsel. Harrison's representation in the circuit court and the Florida Supreme Court in the separate postconviction appeal entitles him to compensation paid for by Florida taxpayers. *See* §§ 27.711, Fla. Stat.

51. Mr. Wainwright did not seek to substitute Harrison as counsel in the habeas proceeding, as there was no prior proceeding before pro bono counsel electronically filed the petition, electronically served it on opposing counsel, and otherwise complied with the appellate rules.

52. Mr. Wainwright initiated the new state habeas proceeding through pro bono counsel, as demonstrated by Defendant Muñiz' May 20, 2025, issuance of the Acknowledgement of New Case and assignment of a case number distinct from that of his under-warrant postconviction appeal from the circuit court. This is further demonstrated by the Defendant Muñiz' briefing schedule that was issued soon after the acknowledgement of the new case.

53. Only after Defendant Uthmeier responded to the petition seven days after Defendant Muñiz acknowledged and accepting the filings and issued a briefing schedule did Defendant Muñiz issue an order that Harrison had to file a notice adopting the habeas petition and stay motion by 10:00 a.m. the following day or else both filings would be stricken. Defendant Muñiz provided no notice or opportunity to be heard by Mr. Wainright.

54. Harrison filed a response to Defendant Muñiz' order indicating that he did not adopt the habeas petition nor the stay motion.

55. Defendant Muñiz then struck both filings in its May 28, 2025, order, eight days after accepting them and issuing a briefing schedule. Defendant Muñiz cited Fla. R. Crim. P. 3.851(b)(4)-(6).

56. Defendant Muñiz deprived Mr. Wainwright of his liberty interest in accessing the state-created habeas corpus process by initially accepting and then striking the filings eight days later; and by providing Mr. Wainwright opportunity to reply to Defendant Uthmeier's response to the habeas petition and stay motion and then revoking it without notice or opportunity to be heard on the issue of counsel.

57. Defendant Muñiz further precluded Mr. Wainwright from petitioning for writ of habeas corpus *pro se* when it struck the petition pursuant to Fla. R. Crim. P. 3.851(b)(6), which forbids capital defendants from engaging in self-representation in a capital postconviction proceeding in state court.

58. Defendants Muñiz, Uthmeier, and DeSantis' actions left Mr. Wainwright with no ability to access the state-created habeas corpus process.

59. Defendant Muñiz has further failed to monitor the quality of Harrison's performance in capital collateral proceedings. § 27.711(12) of the Florida Statutes provides that Harrison's performance is to be monitored by the court "to ensure that the capital defendant is receiving quality representation." Defendant Muñiz has failed to do so, as demonstrated by striking Mr. Wainright's habeas petition, stay motion, and reply.

60. Defendant Muñiz adopted the misrepresentations made by Defendant Uthmeier in his response to the state habeas petition without allowing for further briefing on the dispute of whether Harrison's representation in the postconviction appeal was controlling over the original proceeding.

61. Defendant DeSantis signed Mr. Wainwright's death warrant on May 9, 2025. Defendant Uthmeier is actively prosecuting Mr. Wainwright's death warrant. Defendant Uthmeier objected to the state habeas petition and successfully dictated, despite being a party-opponents, that only Harrison may represent Wainwright in his original proceedings.

62. Defendants Muñiz, Uthmeier, Dixon, Allen, and DeSantis have obstructed Mr. Wainwright's ability to access the state habeas process entirely.

63. Florida's process for petitioning for state habeas corpus is constitutionally inadequate where Defendants Muñiz, Uthmeier, Dixon, Allen, and DeSantis' actions have prohibited Mr. Wainwright from accessing the process.

64. Additionally, Defendants Muñiz, Uthmeier, Dixon, Allen, and DeSantis's actions deprived Mr. Wainwright of consideration of his Eighth Amendment claim. The Florida Supreme Court's ruling that the claim was insufficiently pled is attributable to deficient pleading by Mr. Wainwright's appointed counsel, Baya Harrison. Defendants' actions in refusing to permit Mr. Wainwright to proceed with the claims he wanted raised in his state postconviction proceedings, and by the counsel he had authorized to represent him, deprived him of the ability to fairly present his constitutional claims for relief in the state courts. Had Mr. Wainwright been permitted his choice of counsel in these proceedings, the Eighth Amendment claim

would have been sufficiently pled. This is demonstrated by the legally and facially sufficient postconviction motion filed by Ms. Backhus, with Mr. Wainwright's authorization, a day before the filing deadline. However, as laid out above, the legally sufficient 3.851 motion was stricken by the trial court due to the fact that it was not filed by Mr. Harrison. When Mr. Harrison amended the Rule 3.851 motion, he did not include any language about the Eighth Amendment. See Supp. App. A.

65. As a result of Defendants Muñiz, Uthmeier, Dixon, Allen, and DeSantis's actions, Mr. Wainwright suffered deprivations of the rights secured to him by the Fourteenth Amendment of the United States Constitution.

ii. Mr. Wainwright's Property Interest in Having Pro Bono State Habeas Counsel

66. Mr. Wainwright was convicted and sentenced to death in 1994 and has since been in the custody of Defendant Dixon.

67. After Mr. Wainwright's death warrant was signed, he obtained representation by pro bono counsel for the purpose of litigating the expedited warrant proceedings in the state courts.

68. Pro bono counsel has litigated numerous cases in death warrant proceedings and meets the minimum qualifications set forth in Fla. R. Crim. P. 3.112(k).

69. Mr. Wainwright petitioned the Florida Supreme Court for a writ of habeas corpus on May 20, 2025. He did so through pro bono counsel who contemporaneously filed a notice of appearance indicating her designation as lead counsel in the habeas proceeding, and in accordance with the Florida Rules of Appellate Procedure. Pro bono counsel also filed an authorization from Mr. Wainright.

70. The habeas petition, notice of appearance, and notice of filing remained pending in the Florida Supreme Court before Defendant Muñiz for seven days until Defendant Uthmeier replied with his objection to Mr. Wainwright's ability to substitute counsel. Harrison's representation in the circuit court and the Florida Supreme Court in the separate postconviction appeal entitles him to compensation paid for by Florida taxpayers. *See* §§ 27.711, Fla. Stat.

71. Mr. Wainwright did not seek to substitute Harrison as counsel in the habeas proceeding, as there was no prior proceeding before pro bono counsel electronically filed the petition, electronically served it on opposing counsel, and otherwise complied with the appellate rules.

72. Only after Defendant Uthmeier responded to the petition did Defendant Muñiz issue an order that Harrison had to file a notice adopting the habeas petition and stay motion by 10:00 a.m. the following day or else both filings would be stricken. Defendant Muñiz provided no notice or opportunity to be heard by Mr. Wainright.

73. Harrison filed a response to Defendant Muñiz's order indicating that he did not adopt the habeas petition nor the stay motion.

74. Defendant Muñiz then struck both filings in his May 28, 2025, order, eight days after accepting them and issuing a briefing schedule. Defendant Muñiz cited Fla. R. Crim. P. 3.851(b)(4)-(6).

75. Defendant Muñiz deprived Mr. Wainwright of his property interest in having pro bono counsel in the state habeas proceeding when it awarded, and then revoked Mr. Wainwright's opportunity to reply to Defendant Uthmeier's response to the state habeas petition without notice or opportunity to be heard.

76. Defendant Muñiz' further precluded Mr. Wainwright from petitioning for writ of habeas corpus *pro se* when it struck the petition pursuant to Fla. R. Crim. P. 3.851(b)(6), which forbids capital defendants from engaging in self-representation in a capital postconviction proceeding in state court.

77. Mr. Wainwright seeks a state habeas proceeding compliant with due process. By allowing counsel in a separate proceeding to dictate whether Mr. Wainwright's state habeas petition is heard by the Florida Supreme Court, Defendants Muñiz, Uthmeier, Dixon, Allen, and DeSantis have deprived Mr. Wainwright of his due process property interest in the appointment of pro bono counsel to file a state habeas petition.

78. Florida's process for petitioning for state habeas corpus is constitutionally inadequate as Defendants Muñiz, Uthmeier, Dixon, Allen, and DeSantis' actions have simultaneously prohibited Mr. Wainwright from having pro bono counsel represent him in the proceeding, or from representing himself in the proceeding.

79. As a result of Defendants Muñiz, Uthmeier, Dixon, Allen, and DeSantis's actions, Mr. Wainwright suffered deprivations of the rights secured to him by the Fourteenth Amendment of the United States Constitution.

80. *Additionally, Defendants Muñiz, Uthmeier, Dixon, Allen, and DeSantis's actions deprived Mr. Wainwright of consideration of his Eighth Amendment claim. The Florida Supreme Court's ruling that the claim was insufficiently pled is attributable to deficient pleading by Mr. Wainwright's appointed counsel, Baya Harrison. Defendants' actions in refusing to permit Mr. Wainwright to proceed with the claims he wanted raised in his state postconviction proceedings, and by the counsel he*

had authorized to represent him, deprived him of the ability to fairly present his constitutional claims for relief in the state courts. Had Mr. Wainwright been permitted his choice of counsel in these proceedings, the Eighth Amendment claim would have been sufficiently pled. This is demonstrated by the legally and facially sufficient postconviction motion filed by Ms. Backhus, with Mr. Wainwright's authorization, a day before the filing deadline. However, as laid out above, the legally sufficient 3.851 motion was stricken by the trial court due to the fact that it was not filed by Mr. Harrison. When Mr. Harrison amended the Rule 3.851 motion, he did not include any language about the Eighth Amendment. See Supp. App. A.

B. Defendants Violated Mr. Wainwright's Due Process Right to Access to the Courts

81. Defendant DeSantis signed Mr. Wainwright's death warrant arbitrarily and without warning, setting an extremely restrictive 32-day deadline for all stages of briefing to be completed. Mr. Wainwright received no notice that the warrant would be signed and he would be transferred to death watch until his execution. Aside from knowing he was eligible for a death warrant, Mr. Wainwright's counsel was equally unaware that his execution was looming until the date had been set.

82. At that time, Mr. Wainwright was among about 100 death-warrant eligible Florida inmates. Mr. Wainwright's is the sixth death warrant the Governor has signed this year. The Governor is on track to carry out a record number of executions in 2025, even more than the six executions he carried out in 2023 when he was running for president.[7]

[7] James Call, *Gov DeSantis Nears Record as Florida Ramps Up Executions in 2025,* USA TODAY (May 30, 2025).

83. Neither the time from signing a warrant to immediately moving the condemned to near total isolation conforms with the practices of most other active death penalty states. Generally, much more notice of an execution is provided and inmates remain incarcerated as they were until much closer to their execution date.

84. In Florida, immediately upon Defendant DeSantis signing his death warrant, Defendants Dixon and Allen moved Mr. Wainwright to Death Watch at Florida State Prison (FSP), within the Middle District of Florida, where he is now held in near total isolation. From death watch, Mr. Wainwright has no feasible way to meaningfully contribute to his legal proceedings and is more dependent on his counsel than at any prior juncture.

85. Mr. Wainwright has virtually no access to the outside world, which includes his counsel. Any communication with Mr. Wainwright must be initiated by counsel or his family. He is unable to send emails or access his tablet. Mr. Wainwright's ability to communicate is solely through U.S. Mail, which can take as long as three weeks to reach a recipient. *See* FLA. ADMIN. CODE. ANN. R. 33-601.830(15), 33-602.205(1).

86. Upon being moved to FSP, without Harrison's initiation, Mr. Wainwright lost all ability to effectively communicate with him due to the severe time restrictions of the death warrant. Mr. Wainwright was completely dependent in the dark as to what Harrison chose to investigate or litigate on his behalf.

87. Harrison, himself, displayed a troubling unfamiliarity with the conditions of death watch by instructing Mr. Wainwright to call him to discuss his case. Had pro bono

counsel not stepped in, Mr. Wainwright would have had no contact with his state court counsel during his death warrant proceedings.

88. Just days after the death warrant was signed, Harrison refused to entertain any claim or issue preferring instead to file a single-claim Rule 3.851 motion, despite the viability of that claim or any other potential claims. Harrison refused to file the state habeas petition without even reading it.

89. Mr. Wainwright expressly authorized pro bono counsel to file a state habeas petition on his behalf.

90. By striking the state habeas petition, Defendant Muñiz denied Mr. Wainwright any avenue to present a viable claim in the final weeks of his warrant period and deviated from the court's typical practice of allowing for the substitution of counsel and / or for different counsel to represent a capital defendant in state habeas proceedings and the appeal from the denial of a Rule 3.851 motion.

91. The State, overseen by Defendant Uthmeier, inappropriately influenced Mr. Wainwright's ability to exercise choice of counsel. Permitting the Defendant Uthmeier to select counsel for Mr. Wainwright, when there was no prejudice or delay to the proceedings, violates Mr. Wainwright's right to a fundamentally fair proceeding.

92. Defendants Uthmeier and Muñiz hindered Mr. Wainwright's choice of counsel and his ability to present issues to the court.

93. Because the death warrant schedule is so truncated, and Mr. Wainwright is completely barred from representing himself pro se in these proceedings, there was no feasible way for Mr. Wainwright to challenge the representation he received

in the most important proceedings of his life. There was no feasible way for Mr. Wainwright to seek a *Nelson* hearing. He could not be present during any of the state-court proceedings concerning Mr. Harrison's representation of him. Fla. R. Crim. P. 3.851(b)(6).

94. In sum, despite the protection of the Due Process Clause, Mr. Wainwright faced three opponents during the postconviction review that concerned whether he is executed on June 10, 2025: the State, the courts, and his registry counsel.

C. Defendants Violated Mr. Wainwright's Equal Protection Rights

95. It is a bedrock principle of the Sixth Amendment that criminal defendants who are not indigent are entitled to proceed with their chosen counsel. While the right does not extend for an indigent defendant to obtain specific counsel of his choice at the State's expense, Mr. Wainwright's choice of pro bono counsel was well qualified and willing to proceed at no cost or delay to the state.

96. Disallowing Mr. Wainwright's choice of pro bono counsel is a violation the Equal Protection Clause because he is being treated differently than any other non-capital litigant and any other non-indigent litigant who could have had retained counsel represent them before the courts.

VI. REQUEST FOR RELIEF

97. Mr. Wainwright requests a preliminary injunction prohibiting Defendant's from executing him until this Court has had the opportunity to meaningfully consider his federal constitutional arguments. Mr. Wainwright's meritorious cause of action should not be decided in the context of an active death warrant.

98. Mr. Wainwright requests that the Court declare that Defendant's violated his federal constitutional rights to due process and equal protection guaranteed by the Fourteenth Amendment.

99. Mr. Wainwright finally requests that this Court grant a permanent injunction barring Defendants from executing him until Defendants provide him with a postconviction proceeding that comports with the United States Constitution.

VII. CERTIFICATION

100. Katherine A. Blair, attorney for Plaintiff Wainwright in the above-entitled action, certifies that to the best of her knowledge and belief, the facts set forth in this complaint are true and correct.

Respectfully submitted,

/s/ Katherine A. Blair
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANTHONY FLOYD WAINWRIGHT
Plaintiff,

v.

RON DESANTIS, et. al,
Defendants

CASE NO. 3:25-cv-607

EMERGENCY INJUNCTION SOUGHT

EXECUTION OF STATE DEATH SENTENCE SET: JUNE 10, 2025 @ 6:00 P.M.

_____/

SUPPLEMENTAL INDEX TO 42 U.S.C. § 1983 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

A Eighth Successive Motion for Post Conviction Relief

Respectfully submitted,

/s/ Katherine A. Blair
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Counsel for Mr. Wainwright

Appendix A

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT IN AND FOR HAMILTON COUNTY, FLORIDA

CASE NO.: 1994-CF-00150-A

STATE OF FLORIDA,

Plaintiff

EMERGENCY MOTION, CAPITAL CASE, DEATH WARRANT SIGNED; EXECUTION SET FOR JUNE 10, 2025, AT 6:00PM

v.

ANTHONY FLOYD WAINWRIGHT,

Defendant.
_____/

EIGHTH SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF

Defendant, Anthony Floyd Wainwright, pursuant to Rule 3.851 of the Florida Rules of Criminal Procedure, respectfully moves to vacate and set aside his convictions and death sentence.

PROCEDURAL HISTORY[1]

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.[2] R. 1473, 1903.[3] After a penalty phase, Mr. Wainwright's

[1] Citations are as follows: "R. _" refers to the record on appeal (ROA) for Mr. Wainwright's direct appeal to the Florida Supreme Court (SC60-86022). "RH-R. _" refers to co-defendant Hamilton's direct appeal. "PCR. _" refers to the ROA for the initial postconviction appeal (SC02-1342); successive postconviction appeals are noted as "PCR1.", "PCR2.", and so on. Other citations are explained.

[2] The trial was moved to Clay County after a failure to seat two impartial juries in Hamilton County. R. 831, 1668.

[3] Some witnesses testified before both juries simultaneously. Others testified before one jury as the other defendant and jury remained outside of the courtroom. *See* R. 1936, 1701, 1936, 2249.

jury unanimously recommended an advisory sentence of death, which the trial court imposed.[4] R. 1170-77, 3738-39, 3790. The Florida Supreme Court affirmed. *Wainwright v. State*, 704 So. 2d 511, 513 n.4 (Fla. 1997), *cert. denied*, *Wainwright v. Florida*, 523 U.S. 1127 (1998).[5]

In 2000, Mr. Wainwright timely filed, and later amended, a motion for postconviction relief.[6] PCR. 3-33. After an evidentiary hearing, the circuit court denied relief, which the Florida Supreme Court affirmed. *Wainwright v. State*, 896 So. 2d 695 (Fla. 2004) (also denying state habeas relief), *cert. denied*, *Wainwright v. Florida*, 546 U.S. 878 (2005). Mr. Wainwright's

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Although Mr. Hamilton's jury quickly returned a guilty verdict with no questions, R-RH. 2048-50, Mr. Wainwright's jury deliberated for hours, returning a guilty verdict only after two questions regarding principal actors, which were inaccurately answered by the trial court. R. 3651-53.

[4] 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 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.

[5] Mr. Wainwright raised nine claims on direct appeal: the trial court erred in (1) allowing introduction of pretrial statements; (2) allowing final three DNA loci to be introduced; (3) allowing joint trial before separate juries; (4) allowing introduction of other crimes; (5) removing juror on the tenth day of trial; (6) allowing testimony that victim routinely picked up her children from preschool; (7) overlooking State's failure to establish sexual assault; (8) allowing introduction of Mr. Wainwright's statement to the police that he had AIDS; and (9) imposing mandatory minimum portions of the noncapital sentences, and in retaining jurisdiction over the life sentences.

[6] The claims were of trial counsel's ineffectiveness regarding: (1) DNA; (2) introduction of statements/admissions; (3) evidence of out-of-state crimes; (4) the bugging of Mr. Wainwright's cell; (5) failure to object to instructions on aggravators; (6) failure to object to prosecutor's argument at both phases; (7) failure to maintain attorney-client relationship, ensure adequate mental health evaluations, or to investigate and present additional mitigating evidence; (8) victim's family testimony at sentencing; (9) failure to object to alleged *Caldwell* error; (10) pretrial representation of attorney Africano; (11) failure to prepare for trial; (12) introduction of codefendant statements; (13) discovery violation; (14) trial counsel's illness during trial.

subsequent efforts to raise meritorious issues in state court were summarily rejected.[7]

In 2005, Mr. Wainwright filed a petition for writ of habeas corpus, which the federal district court ultimately dismissed as untimely due to federal counsel filing the petition after the statute of limitations. *Wainwright v. Sec'y, Fla. Dep't of Corrs.*, 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 Corrs.*, No. 3:05-cv-00276, ECF Nos. 52, 60. The Eleventh Circuit affirmed. *Wainwright v. Sec'y, Fla. Dep't of Corrs.*, No. 20-13639, 2023 WL 4582786 (11th Cir. July 18, 2023).

In 2022, Mr. Wainwright filed his seventh successive motion, which was summarily denied.[8] After his counsel declined to appeal, the Florida Supreme Court struck Mr. Wainwright's attempt to do so *pro se*. Mr. Wainwright then sought substitution of counsel pursuant to *Nelson v.*

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[7] Mr. Wainwright filed seven successive motions for postconviction relief in state court. The first, raising newly discovered evidence of co-defendant Hamilton's sworn statement that Mr. Wainwright did not commit sexual battery, was summarily denied in 2007. *Wainwright v. State*, 2 So. 3d 948 (Fla. 2008). The second, filed pro se in 2009 and raising three related claims of mental age at mitigation, was summarily denied and affirmed on appeal. *Wainwright v. State*, 43 So. 3d 45 (Fla. 2010). The third and fourth sought reconsideration of prior ineffectiveness issues in 2010 in light of *Porter v. McCollum*, 558 U.S. 30 (2009), and were denied with the appeals stricken as unauthorized pro se filings. *Wainwright v. State*, 77 So. 3d 648 (Fla. 2011). A fifth in 2013 raised: (1) a due process violation for failing to turn over DNA evidence until after defense counsel had given an opening statement; (2) denial of due process and the right of confrontation because of late discovery disclosures and inadequate time to prepare for trial; and (3) juror misconduct. The trial court denied the motion, and it was not appealed A sixth filed in 2013 by then newly-appointed counsel Baya Harrison raised four claims: (1) ineffective assistance of pretrial counsel Africano, which deprived Mr. Wainwright of an available plea agreement to a life sentence; (2) due process violation regarding DNA evidence that the State did not disclose until after opening statements; (3) a *Ring* and *Apprendi* claim; and (4) panel taint from a biased juror. PCR6. 190-215. The motion was denied and affirmed on appeal. *Wainwright v. State*, No. SC15-2280, 2017 WL 394509 (Fla. Jan. 30, 2017).

[8] The motion raised newly discovered evidence of jury questions posed at trial and incorrectly answered by the trial court; and fundamental error of trial court considering extra-record evidence when imposing a death sentence.

State, 274 So. 2d 256 (Fla. 4th DCA 1973), which the Florida Supreme Court denied.

GROUNDS FOR RELIEF

Claim 1: Newly discovered evidence establishes that Mr. Wainwright's execution would violate the Eighth Amendment, and that he would probably receive a life sentence upon a retrial[9]

"Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines," *Porter v. McCollum*, 558 U.S. 30, 43 (2009) (per curiam). And, in recognition of the bravery and sacrifice of those who served, the State of Florida has proclaimed a commitment "to remaining the most military- and veteran-friendly state in the nation."[10] However, in the case of Vietnam-era combat Veterans who were heavily exposed to Agent Orange, any laudatory promises have been overshadowed by the long-unrecognized damage that was caused to their greatest lasting legacies: their children.

Newly discovered evidence—based on scientific and medical developments that have been willfully stunted and shielded from public awareness by the same government systems tasked with providing care and protection for Veterans—definitively establishes that Mr. Wainwright was damaged in visible and invisible ways due to his father's Agent Orange exposure during the Vietnam War. The trajectory of his life was forever altered by a factor he could not control:

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[9] Pursuant to Fla. R. Crim. P. 3.851(e)(2)(C), the witnesses who will testify under oath in support of claims raised in this motion are: (1) Dr. Victoria Cassano, M.D., 19967 Telegraph Springs Rd., Purcellville, VA 20132, (646) 963-3316; (2) David Ferrier, 979 Pineland Dr., Rockledge, FL 32955 (321) 735-7510; (3) Krista Wainwright, 111 Bell Arthur Dr., Cary, NC 27519, (919) 452-9078.

[10] FLORIDA DEPARTMENT OF VETERANS' AFFAIRS, Florida Veterans' Benefits Guide (2025) at 3, available at https://floridavets.org/wp-content/uploads/2012/08/FDVA-Benefits-Guide.pdf?v=2025b (last accessed May 14, 2025); *see also* FLORIDA DEPARTMENT OF VETERANS' AFFAIRS, *Governor Ron DeSantis Highlights Florida's Commitment to Being the Most Veteran and Military Friendly State in the Nation* (Nov. 10, 2023), https://floridavets.org/governor-ron-desantis-highlights-floridas-commitment-to-being-the-most-veteran-and-military-friendly-state-in-the-nation/.

poisonous exposure that did not just begin prior to his birth, but from the very moment of his conception. Because Mr. Wainwright and his family had no knowledge of this, he has been deprived of the opportunity to raise this tragic and highly mitigating information at any prior stage of his criminal proceedings. Now, with his imminent state-sanctioned death only weeks away, Mr. Wainwright has finally been provided the ability to raise this issue. He deserves this Court's review and ultimate intervention in the form of sentencing relief.

A. New evidence that Mr. Wainwright's profound and lifelong neurocognitive deficits are the result of birth defects attributable to genetic Agent Orange exposure

> *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. This must be taken into consideration when assessing the appropriateness of the punishment to which he is sentenced.*

Att. B at 14 (Report of Dr. Cassano, MD, MPhil., MPH, FACPM, FACOEM)

At trial, one lay mitigation witness was presented on Mr. Wainwright's behalf—his mother. And, throughout every stage of his appellate process, his mental health history has been incomplete. Even in recent years, despite increasing expert opinions that Mr. Wainwright had long suffered from post-traumatic stress disorder, a learning disability, behavioral issues, and a neurocognitive disorder, there has never been a satisfactory explanation for the global deficits in his functioning. Today, there is finally a conclusive answer: "**Anthony was exposed to the effects of agent orange through his father's service in Vietnam….[which] had a deleterious effect on Anthony's development as a child and adolescent. Anthony's cognitive and behavioral disorders clearly stem from his father's combat experience in Vietnam.**" Att. B at 13-14.

Ken Wainwright's exposure to Agent Orange

Mr. Wainwright's father, Ken, voluntarily enlisted in the Army National Guard at the age of 17 and was deployed to Vietnam in November of 1968. Att. B at 1; Att. C at 1. He was assigned to Bear Cat Combat Base in Long An Province. Att. C at 1.

> [Ken] Wainwright's deployment to Vietnam occurred during the heaviest fighting of the Vietnam Conflict and the period of the heaviest saturation of the Agent Orange defoliant in the ten year history of the war…. Fire bases such as the one at Bear Cat were heavily defoliated along their perimeters to deny the enemy cover and create open firing zones around the encampment.

Att. C at 2.

> His initial Military Occupational Specialty was Field Wireman. These soldiers installed electrical cables and wires either on poles or underground in order to provide energy for field operations. In such a capacity, Mr. Wainwright would have been in areas heavily sprayed with the "rainbow herbicides" including Agent Orange and Agent Blue, an arsenic containing herbicide. He was later designated a personnel specialist. He was awarded the Bronze Star Medal for bravery during combat operations, while serving in the 9th Infantry Division, 9th Administrative Company. On deployment the division was assigned to the III Corps Tactical Zone of the Vietnamese Army. This area included the region Northeast of Saigon, where some of the heaviest fighting, and therefore the heaviest herbicide spraying occurred.

Att. B at 2.

> The intensity of combat operations in the area would have previously sprayed earth and flora disrupted by bombs, mortars, grenades and other munitions, creating herbicide laden dust on everyone in the area. This dust would be inhaled and ingested during a firefight. Needless to say, clean clothes and daily personal hygiene are not paramount in a combat zone, so these chemicals would also have permeated clothing and skin.

Att. B at 6.

Due to the specifics of Ken's service, there exists "[c]ompensable, irrefutable evidence of [his] Agent Orange exposure." Att. C at 3. Agent Orange contains "the most potent dioxin manufactured." Att. B at 6.

Ken died in 2015 of esophageal cancer, "a condition that can be attributed to exposure to herbicides in Vietnam." Att. B at 2. Interviews with family members confirm that he "most probably had undiagnosed, untreated PTSD." Att. B at 11.

The lifelong impact of Ken Wainwright's defoliant exposure on his son, Anthony

> *The indisputable research suggests that the toxic chemicals in Agent Orange, like TCDD (dioxin), can affect sperm cells and potentially alter genetic or epigenetic mechanisms, which can then influence the development and physical and mental health of the child.*

Att. C at 3 (Report of David O. Ferrier).

Mr. Wainwright was conceived only six months after his father returned from Vietnam. His maternal aunt and caregiver, Linda Alexander, noted that "[e]ven as a tiny baby there was something 'off' about Anthony. As a baby he hardly ever stopped crying. We were never able to determine a physical reason for his crying but it was incessant." Att. C at 3. In the first year of his life, he was in and out of the hospital with bronchitis and asthma. Att. B at 3. And, as his childhood and adolescence progressed, the physical ailments that had been apparent from his infancy progressed—including many of the same issues that were present in his father, Ken, after his Vietnam service, and are presumptively associated with a Veteran's Agent Orange exposure. Att. C at 3-4 (detailing tremors, speech difficulties, and severe dermatological problems).

More strikingly, those afflictions in the young Mr. Wainwright were increasingly accompanied by cognitive and emotional deficits. He 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. App. B at 3. During his childhood, he was diagnosed with a learning disability and, based on his intellectual and adaptive functioning, "[i]n today's lexicon, he would be considered to have an 'intellectual disorder.'" App. B at 3. These problems grew more pronounced with age, and by the time he was twelve years old his developmental and neurological

functioning was equivalent to a child four to five years younger. App. B at 4. Continuing into his teens, he 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. App. B at 4-6. Those afflictions, while ameliorated to a degree by the structured prison environment in which Mr. Wainwright has lived for the past 30 years, have never gone away. And, for the first time in his life, Mr. Wainwright knows the cause: "his condition is the result of his father's heroism in Vietnam," which resulted in a poisoned genetic inheritance, "and a Nation that chose to turn a blind eye to the problems manifest in children like [Mr. Wainwright]" by depriving his family of the information and tools to intervene in the devastating trajectory to which his *in utero* exposure led. App. B at 14.

Dr. Victoria Cassano, MD, MPhil., MPH, FACPM, FACOEM, was the Acting Chief Consultant for Environmental Health and the Senior Medical Advisor to the Office of Disability and Medical Assessment at the Department of Veterans Affairs. Att. B at 1. She is a preeminent expert in the evaluation of Veterans exposed to Agent Orange. Att. B at 1. As Dr. Cassano explained in her May 14, 2025, report regarding the effect of Agent Orange on Anthony Wainwright's development, the catastrophic risks of Agent Orange to the child of an exposed Veteran are established by scientific study, but medical advancements regarding this topic have been very limited due to governmental decisions:

> While only spina bifida is a presumptive condition in offspring of male Vietnam Veterans, there 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 biennial committee report, from 1994 through 2018, was produced under contract with the VA. At the initial committee meeting, a VA representative presents the "charge" to the committee, in which it directs the committee regarding 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.

Att. B at 6-7.

What is now known, however, is striking. Specifically, "[Ken] Wainwright's body burden of dioxin, and the dioxin-like chlorophenoxy herbicides was great and persisted long after his son, Anthony was conceived." Att. B at 8. This chemical is considered "the most toxic chemical produced by humans. It produces a state of genomic instability in which genetic damage is observed several cell generations later in the progeny of exposed cells." Att. B at 9. And, it "promotes epigenetic transgenerational inheritance of disease and DNA methylation epimutations in sperm." Att. B at 9. Put more simply, the damage from Agent Orange can pass from the father to the child during conception.

The damage is not limited to physical maladies, but also profound mental impairments:

> [A prior study focused on] the reproductive health of Agent Orange exposed women, **or the wives of soldiers exposed to dioxins**. In total 30 women who had 148 pregnancies were studied. Less than 10% resulted in miscarriages and 14 % in still [births] or premature births. Out of the rest of the successful births, 14 children passed at an early age, and **66% of the children had developed a physical or mental disability**.

Att. B at 11. Other noted impairments from exposure are "significant increases in all areas of learning and attention disorders and emotional / behavioral disorders." Att. B at 10.

A 2023 study detailed Agent Orange-inherited developmental effects on Vietnamese children living near the previous Da Nang Airbase, forty years after the end of the Vietnam War:

> By the age of eight years, girls with high levels of TCDD showed increased attention deficit hyperactivity disorder -like behaviors and autistic spectrum

> disorder; boys, with high levels of TCDD, on the other hand, showed reading learning difficulties, a neurodevelopmental disorder. These findings indicated suggested that perinatal exposure to TCDD impacts social, -emotional cognitive functions, leading to sex-specific neurodevelopmental disorders, learning difficulties in boys, and ADHD in girls.
>
> **The effect found in boys is the same dysfunction that was evident in Anthony, by the time he was in 4th grade (age 9)**.

Att. B at 11 (emphasis added). Data that has been extrapolated since 2023 now makes "clear" that "a child conceived only six months after his father returned from Vietnam would have been directly affected by TCDD in his father's semen, either due to epimutations, or to direct exposure of TCDD during fertilization of the maternal gamete." Att. B at 11.

Although inheritance of the effects of Agent Orange exposure is now confirmed as a direct cause of Mr. Wainwright's lifelong neurocognitive deficits and behavioral struggles, this came too little too late to provide any appropriate interventions. For the entirety of his childhood, adolescence, young adulthood, and more than 50 years of his life, Mr. Wainwright and his family were never provided with the knowledge or tools to address his immutable vulnerabilities. This is through no fault of Mr. Wainwright or his caretakers; rather, it was in many ways a systemic failure.

> The fact that these compounds are known to cause genetic damage as well as endocrine disruption (vide supra) indicates that **2nd and 3rd generational effects, especially neurocognitive effects in a child, can be ascribed to a parent's exposure** to them. While there is a body of literature that supports this conclusion, the VA has done precious little to investigate this association. In November 2023, Senator John Tester, held a hearing on a Children's Toxic Exposure Research law, the VA testified that if a connection was found between a parent's toxic exposure and a child's illness, they would be responsible for health care and compensation, which would greatly increase their budget.

Att. B at 8-9 (emphasis added). Both the information regarding the potential extremity of the effects of Agent Orange exposure, and the likely cost to the VA if public knowledge caught up to medical advances, are reflected by the fact that health effects have been documented in the

grandchildren of women who conceived more than 25 years after dioxin exposure during World War II. Att. B at 9.

Further, the presence of PTSD in the returning father has been linked to exacerbated effects of inherited dioxin exposure. Children of Vietnam-era Veterans with PTSD are significantly more likely than those without PTSD, to exhibit an inadequate level of self-control; aggression; hyperactivity; delinquency; problems with social and school conduct; behavioral problems; competencies; emotional difficulties; neuroticism; alcohol and other substance dependence; depression; and anxiety. Att. B at 12-13. "The studies regarding neurobehavioral effects show a complex interaction between exposure to agent orange and parental PTSD as contributing factors to cognitive and neurobehavioral effects in children of Vietnam Veterans." Att. B at 10.

All of this scientific development is borne out in Mr. Wainwright's life, and would have profoundly changed the considerations of his sentencing jury and judge.

<u>This critical evidence is newly discovered</u>

The evidence of Mr. Wainwright's lifelong impairment and the tragically heroic circumstances under which it was caused could not previously "have been known by the trial court, the party, or counsel at the time of trial, and…[Mr. Wainwright and] defense counsel could not have known of it by the use of diligence." *Long v. State*, 183 So. 3d 342, 345 (Fla. 2016) (quoting *Tompkins v. State*, 994 So. 2d 1072 (Fla. 2008)). As Dr. Cassano explained:

> It must be realized that much of this information is not readily accessible by the general medical community, let alone the general public…. As noted above, none of the IOM reports through 2018 addressed neurobehavioral or cognitive effects in the children of Vietnam Veterans. Most clinicians do not look further than these reports for available information on the effects of Agent Orange, and I would suspect that most attorneys dealing with these issues would not either. However, the stringent requirements placed on the IOM for accepting research studies to review seriously limits the available information in these reports. The research regarding transgenerational effects is even newer and more obscure to the general medical community. Genetics is a highly complex field of medicine and difficult to

> understand without substantial training in it. The human genome project was not completed until 2003. Epimutations and transgenerational transmission were not established as modes of transmission of disorders until the early 2020s, and, as can be determined by reviewing the citations above, were not published until 2023 to 2025. Therefore, the ability to integrate these various studies into a cogent medical treatise is only recently possible.

Att. B at 13.

Additionally, Krista Wainwright, Mr. Wainwright's younger sister, can testify that Mr. Wainwright was never aware that he had been exposed to Agent Orange, as their father's service in the Vietnam War was not something that was discussed within the family during his lifetime. And, no family members who had any knowledge of Ken's exposure ever thought it relevant to Mr. Wainwright. It was only this year—after the death of both of their parents, in the wake of Krista's breast cancer diagnosis and pervasive alopecia following the cessation of chemotherapy,[11] and during a discussion about Mr. Wainwright's worsening tremors—that Krista thought to mention the possibility of their father's exposure. The evidence is newly discovered.

If there is a dispute regarding whether evidence is newly discovered, an evidentiary hearing is necessary. *Hildwin v. State*, 141 So. 3d 1178, 1184 (Fla. 1999); *see also Maharaj v. State*, 684 So. 2d 726, 728 (Fla. 1996) (factual allegations as to the merits of a constitutional claim, as well as to issues of diligence, must be presumed true); *Card v. State*, 652 So. 2d 344, 346 (Fla. 1995) (in successive postconviction motions, allegations of previous unavailability of new facts, as well as diligence of the movant, warrant evidentiary development if disputed or a procedural bar does not "appear[] on the face of the pleadings.").

[11] Both the presence of cancer without a family history and the persistent alopecia, when manifest in Vietnam-deployed Veterans in the time period of Ken Wainwright's service, are presumptive of Agent Orange exposure under the VA's own standards.

B. The new evidence demonstrates that Mr. Wainwright's execution would be unconstitutional

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)). The United States Supreme Court "insists upon confining the instances in which the punishment can be imposed," *Kennedy v. Louisiana*, 554 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*, 577 U.S. at 101; *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 the longstanding Supreme Court 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, the 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 ("[r]etribution 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, the United States Supreme 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*, the 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.

C. The impact of this new evidence is such that Mr. Wainwright would probably receive a life sentence upon a retrial

To warrant relief under Florida law, newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial or, in the context of sentencing, would probably result in a life sentence rather than the death penalty. *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991) (*Jones I*); *see also Brown v. State*, 304 So. 3d 243, 273 (Fla. 2020) (quoting *Swafford v. State*, 125 So. 3d 760, 767 (Fla. 2013)). In making this determination, a reviewing postconviction court must "consider all newly discovered evidence which would be admissible" and must "evaluate the weight of both the newly discovered evidence and the evidence which was introduced at trial." *Jones*, 591 So. 2d at 916.

Further, under the expanded guidance of *Jones v. State*, 709 So. 2d 512, 526 (Fla. 1998), a postconviction court "must consider the effect of the newly discovered evidence, in addition to all of the admissible evidence that *could be introduced* at a new trial, and conduct a cumulative analysis of all the evidence so that there is a 'total picture' of the case and 'all the circumstances of the case.'" *Hildwin*, 141 So. 3d at 1187-88 (emphasis added) (quoting *Swafford v. State*, 125 So. 3d 760, 776 (Fla. 2013)). This includes evidence "previously excluded as procedurally barred or presented in another postconviction proceeding[.]" *Id.* at 1184 (citing *Swafford*, at 775-76, and *Lightbourne v. State*, 742 So. 2d at 247). If there is a dispute regarding the quality of the evidence,

an evidentiary hearing is necessary. *Id.*; *see also Maharaj*, 684 So. 2d at 728; *Card*, 652 So. 2d at 346.

Here, in addition to the profoundly mitigating information regarding the effects of Mr. Wainwright's Agent Orange exposure, the "total picture" of Mr. Wainwright's case available to the court now is vastly different from what was presented at his 1995 trial. Notably, substantial doubts have been raised as to Mr. Wainwright's involvement in the victim's sexual assault, as developments in the understanding of DNA have called into question the scientific analysis presented at his trial. Mr. Wainwright's lack of involvement in the sexual assault was subsequently corroborated by a statement signed by Hamilton indicating that he had lied when he said that he and Mr. Wainwright had both assaulted the victim. Furthermore, recognition of the mitigating nature of mental health issues and trauma, as well as their effect on an individual's development, is significantly more nuanced and evolved than it was in 1995. When these issues, along with the defects that occurred at every stage of Mr. Wainwright's proceedings, are considered cumulatively, it is "probable" that Mr. Wainwright would receive a life sentence if his trial took place today.

"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 v. Smith*, 539 U.S. 510, 536 (2003), 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.

In light of the quantum of new and previously known evidence, it is probable that a jury possessing the full context would not have sentenced Mr. Wainwright to death. He is entitled to sentencing relief.

Claim 2: The State violated Mr. Wainwright's rights under the Fourteenth Amendment by suppressing favorable, material evidence[12]

The State is obligated to disclose evidence or information in its possession that is favorable to the defense. *Brady v. Maryland*, 373 U.S. 83 (1963). This requirement applies to both exculpatory and impeachment evidence. *United States v. Bagley*, 473 U.S. 667 (1985). But in Mr. Wainwright's case, the State failed to comply with this obligation by suppressing evidence that at least two jailhouse informants who testified during the course of the joint trial expected to receive a benefit in exchange for their testimony.

A. Relevant trial testimony regarding Mr. Wainwright

At Mr. Wainwright's trial, Robert Allen Murphy, a jailhouse informant, testified that Mr. Wainwright made numerous inculpatory statements to Murphy while the two were housed in confinement in the Taylor County Jail. Although Murphy could not even identify Mr. Wainwright in the courtroom, he claimed Mr. Wainwright had made a number of inflammatory statements, including that he was the sole triggerman after the victim did not die of strangulation, and that it

[12] Pursuant to Fla. R. Crim. P. 3.851(e)(2)(C), the witnesses who will testify under oath in support of claims raised in this motion are: (1) Robert Allen Murphy, 9587 Woodville Hwy, Tallahassee, FL 32305, (850) 295-2810; (2) Holly Ayers, 227 N Bronough St, Ste 4200, Tallahassee, FL 32301, (850) 942-8818; (3) Daniel Ashton, 227 N Bronough St, Ste 4200, Tallahassee, FL 32301, (850) 942-8818; (4) Nels Roderwald, 227 N Bronough St, Ste 4200, Tallahassee, FL 32301, (850) 942-8818.

was "kind of like when you hit a puppy in the head and it kind of shakes a little bit." R. 2708. On cross-examination, Murphy testified that although he had a "modification of sentence" pending, he was "not necessarily" hoping his twelve-year sentence (to which he had been sentenced mere months prior) would be reduced. R. 2711, 2713. Murphy repeatedly refused to acknowledge any desire to obtain a lesser sentence. R. 2711-14. On redirect, Murphy reiterated that he had not been promised anything in exchange for his testimony. R. 2726.

Dennis Givens ultimately testified at the joint trial in front of Hamilton's jury that Mr. Wainwright claimed to have been the dominant actor in the murder. R-RH. 3385. Givens testified that Mr. Wainwright then retrieved the gun himself, loaded it, and shot the victim twice in the back of the head, before kicking her to make sure she was dead. R-RH. 3385. Givens further testified that Wainwright told him Hamilton "was a pussy" for not killing the victim, and bragged that "[he] finally killed one, [he] finally killed the bitch." R-RH. 3385; *see also* R-RH. 3391-92 ("[Mr. Wainwright] would sit in his cell and just start saying '[i]t is a good night for a homicide," or "I finally did it'").

B. New disclosure that Murphy and Givens expected benefits from their testimony

On May 13, 2025, Robert Allen Murphy admitted for the first time[13] that, contrary to his trial testimony, he expected a sentencing benefit in exchange for his testimony against Mr. Wainwright. He also provided evidence that Dennis Givens, who also provided inculpatory information regarding Mr. Wainwright, was likewise expecting a benefit in return.[14]

[13] Mr. Wainwright's defense team has previously made diligent attempts to obtain this information, and have interviewed Murphy more than once over the past six years.
[14] Murphy also knew Gary Gunter, who testified against Mr. Wainwright, from his concurrent time at the Taylor County Jail. R. 2722-23.

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." Att. D at 1. At the time he informed law enforcement of Mr. Wainwright's purportedly inculpatory statements, he told law enforcement that "I didn't believe it all because it was so crazy. I remember asking them, 'Would you even believe that?'" Att. D at 1. 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, for the State's aim of presenting testimony against Mr. Wainwright. Att. D at 1. His 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." Att. D at 2.

While at the county jail, Murphy and Givens met and "kept discussing the case and our testimony before we gave it." Att. D at 1. Givens "told [Murphy] that he was receiving a benefit in exchange for his testimony against Anthony." Att. D at 1. He specified what it was to Murphy, although he no longer remembers what it was. Att. D at 1. This prompted Murphy to seek a benefit before testifying as well. He contacted his defense attorney, who spoke with the State about it. Att. D at 1. Murphy's attorney assured him that he would receive a benefit in exchange for testifying. Att. D at 1.

> 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.

Att. D at 2. 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 provide 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." Att. D at 2.

C. The suppression of information disclosed by Murphy entitles Mr. Wainwright to relief from his death sentence

The State is obligated to disclose evidence or information in its possession that is favorable to the defense. *Brady v. Maryland*, 373 U.S. 83 (1963). This requirement applies to both exculpatory and impeachment evidence. *United States v. Bagley*, 473 U.S. 667 (1985). Relief is warranted if the undisclosed information is material, which means it creates a reasonable probability of a different result. *Id.* at 680. "The 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." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995); *Strickler v. Green*, 527 U.S. 263, 290 (1999). In evaluating materiality, the standard is less than a preponderance, and the suppressed evidence must be considered "collectively, not item-by item." *Kyles*, 514 U.S. at 436; *see also Swafford v. State*, 125 So. 3d 760, 776 (Fla. 2013) (reviewing postconviction court must consider all of the evidence, including any new evidence developed since trial).

Mr. Wainwright meets the standard for relief under *Brady*. First, the information revealed by Murphy was never disclosed to trial or subsequent counsel and therefore was suppressed by the State. 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." *Banks v. Dretke*, 540 U.S. 668, 676 (2004). With respect to any information only known by investigators, it is imputed to the State. *See Kyles*, 514 U.S. at 437.

Second, the suppressed evidence was favorable because it constituted critical impeachment of the State's case against Mr. Wainwright, both as it pertained to the reliability of the jailhouse informant testimony and associated reliability of the State's case for death. *See Bagley*, 473 U.S. at 676. *Brady*, 373 U.S. at 87 (favorable material evidence can be related "either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution."). Although Givens did not testify before Mr. Wainwright's jury, evidence of his anticipation of a deal in exchange for inculpating Mr. Wainwright would have been additional helpful impeachment for Murphy, who by his own admission was influenced by Givens. *See* Att. D at 1 (Murphy crediting his decision to pursue a deal to Givens' statement that he was receiving one); *id.* (Murphy admitting that he and Givens repeatedly discussed their upcoming testimony against Mr. Wainwright).

Third, the evidence is material because it would have undermined not only the credibility of jailhouse informant testimony against Mr. Wainwright, but also the reliability of the State's case for death generally. *See Kyles*, 514 U.S. at 445 (evidence can be material for impeaching a witness and attacking the "thoroughness and . . . good faith" of the investigation); *Davis v. Alaska*, 415 U.S. 308, 318 (1974) (when defense counsel is prevented from exposing "facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness," a defendant is denied the right to effective cross-examination). This is particularly important in the context of Mr. Wainwright's case, where the State committed other severe violations, such as bugging Mr. Wainwright's cell, including during attorney-client meetings which took place there; improperly shocking Mr. Wainwright during his trial via a stun belt; and failing to timely disclose critical DNA evidence which created a false impression to the jury. And, it is particularly important where, as in Mr. Wainwright's case, evidence has surfaced since trial demonstrating that (1) the DNA evidence purportedly connecting Mr. Wainwright to any

sexual assault was inaccurate and that no sperm cells of his were found; (2) codefendant Richard Hamilton signed a sworn statement absolving Mr. Wainwright of any sexual assault; and (3) even without the aforementioned favorable evidence, Mr. Wainwright's jury was conflicted about whether to convict him based on his role relative to that of co-defendant Hamilton.

Further, the State clearly relied on the jailhouse informant testimony. *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). Further, in sentencing Mr. Wainwright to death, the trial court relied on Murphy's testimony to find the 'especially heinous, atrocious and cruel' and 'cold, calculated, and premeditated' aggravating factors. *See* R. 1173. The court also relied on Murphy's testimony to reject a statutory mitigator. R. 1174.

In addition to impacting Mr. Wainwright's trial, Murphy's testimony has infected Mr. Wainwright's ability to obtain postconviction relief. *See, e.g.*, *Wainwright v. State*, 896 So. 2d 695, 700 (Fla. 2004) (finding a lack of prejudice due to introduction of jailhouse informant testimony and DNA evidence); *Wainwright v. State*, 2 So. 3d 948 (Fla. 2008) (denying relief because "Hamilton's recent assertion that Wainwright did not rape Gayheart does not weaken the more than sufficient evidence of premeditation present in this case. . . Robert Allen Murphy, a fellow Taylor County prisoner, testified that Wainwright told him that he tried to strangle the victim, but she would not die, so he shot her in the back of the head twice."); *id*. at 951-52 (relying on Murphy's testimony); *Wainwright v. Sec'y, Fla. Dep't of Corrs.*, No. 20-13639, 2023 WL 4582786, *7 (11th

Cir. July 18, 2023) (finding new evidence "insufficient" when considered with other evidence including Murphy's testimony).

D. Alternatively, Mr. Wainwright is entitled to relief under Florida law regarding newly discovered evidence

Even if this Court does not find that the disclosed evidence from Murphy establishes a violation of Mr. Wainwright's constitutional rights, this Court must separately analyze the newly discovered evidence under the *Jones* test. *See Lightbourne v. State*, 742 So. 2d 238, 247 (Fla. 1999).[15] This claim is timely. Any filing deadline begins to run at the time the withheld evidence is discovered. *See, e.g.*, *Jiminez v. State*, 997 So. 2d 1056, 1064-65 (Fla. 2008); *Jones v. State*, 709 So. 2d 512, 519 (Fla. 1998). Thus, this claim could not have been brought until Murphy's disclosure on May 13, 2025. And, when the new disclosure is viewed in light of all the additional evidence that would be admissible on a retrial—including but not limited to the facts that DNA evidence introduced against Mr. Wainwright was inaccurate, that his codefendant took sole sworn responsibility for the sexual assault at issue, and which establish Mr. Wainwright's profoundly diminished culpability due to his inherited Agent Orange exposure—it is probable that he would have received a life sentence over death.

CONCLUSION AND RELIEF SOUGHT

Based on his *prima facie* allegations demonstrating violations of his constitutional rights, Mr. Wainwright respectfully requests:

(1) that this Court stay his execution to properly adjudicate his claims without the exigencies of an expedited death warrant;

(2) that an evidentiary hearing be scheduled on his claims;

(3) that he be allowed leave to amend and/or supplement this motion should new claims, facts, or legal precedent become available to him or counsel;

[15] The full legal standard for newly discovered evidence is set out above, supra, in Claim 1.

(4) that his judgment and death sentence be vacated; and

(5) that this Court grant any other relief it deems appropriate.

CERTIFICATION OF COUNSEL

Pursuant to Rule 3.851(f), undersigned counsel certifies that counsel has discussed the contents of this motion with Mr. Wainwright. Counsel further certifies that the motion is filed in good faith and counsel is in compliance with Rule 4-1.4 of the Rules of Professional Conduct.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the demand has been electronically furnished to opposing counsel of record, on this 14th day of May, 2025.

Respectfully submitted,

/s/. Terri L. Backhus
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Proposed *Pro Bono* Counsel for Anthony Wainwright

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing motion have been furnished by electronic service to all counsel of record on this 14th day of May, 2025.

/s/. Terri L. Backhus
TERRI L. BACKHUS

Attachment A
Judgment and Sentence

_____ Probation Violator

_____ Community Control Violator

_____ Retrial

_____ Resentence

In the Circ Court, THIRD Judicial Circuit,

in and for HAMILTON County, Florida

Division FELONY CRIMINAL

Case Number 94-150CF

State of Florida
v.
ANTHONY FLOYD WAINWRIGHT
Defendant

JUDGMENT

The defendant, ANTHONY FLOYD WAINWRIGHT, being personally before this court represented by CLYDE TAYLOR, the attorney of record, and the state represented by STATE ATTORNEY JERRY BLAIR, and having

XX been tried and found guilty by jury/by court of the following crime(s)

___ entered a plea of guilty to the following crime(s)

___ entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number	OBTS Number
I	FIRST DEGREE MURDER	782.04(1)(a)	1° - CF	94-150CF	0006574848

XX and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

___ and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch. 794) or lewd and lascivious conduct (ch. 800) the defendant shall be required to submit blood specimens.

___ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

State of Florida
v.

ANTHONY FLOYD WAINWRIGHT
Defendant

Case Number 94-150CF

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by: Willie Jackson — Deputy
Name — Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, ANTHONY FLOYD WAINWRIGHT, and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in Jasper, Hamilton County, Florida, this 12th day of June, 19 95.

Judge

Defendant ANTHONY FLOYD WAINWRIGHT Case Number 94-150CF OBTS Number 0006574848

SENTENCE

(As to Count I)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, CLYDE TAYLOR, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown

(Check one if applicable.)

XX ___ and the Court having on May 30, 1995 (date) deferred imposition of sentence until this date

___ and the Court having previously entered a judgment in this case on _____ (date) now resentences the defendant

___ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

It Is The Sentence Of The Court that:

XX The defendant pay a fine of $ 15,000.00, pursuant to section 775.083, Florida Statutes, plus $ 750.00 as the 5% surcharge required by section 960.25, Florida Statutes.

XX The defendant is hereby committed to the custody of the Department of Corrections.

___ The defendant is hereby committed to the custody of the Sheriff of _____ County, Florida.

___ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (Check one; unmarked sections are inapplicable.):

___ For a term of natural life.

XX For a term of DEATH BY ELECTROCUTION PER ATTACHED ORDER.

___ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

___ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

___ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

Defendant ANTHONY FLOYD WAI IGHT Case Number 94 OCF

SPECIAL PROVISIONS

(As to Count I)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Firearm	___	It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.
Drug Trafficking	___	It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.
Controlled Substance Within 1,000 Feet of School	___	It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.
Habitual Felony Offender	___	The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
Habitual Violent Felony Offender	___	The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
Law Enforcement Protection Act	___	It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes.
Capital Offense	XX	It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.
Short-Barreled Rifle, Shotgun, Machine Gun	___	It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.
Continuing Criminal Enterprise	___	It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.

Other Provisions:

Retention of Jurisdiction	___	The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).
Jail Credit	___	It is further ordered that the defendant shall be allowed a total of 0 days as credit for time incarcerated before imposition of this sentence.
Prison Credit	___	It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

Defendant: ANTHONY FLOYD WAINWRIGHT Case Number: 95-150CF

Other Provisions, continued:

Consecutive/Concurrent As To Other Counts

___ It is further ordered that the sentence imposed for this count shall run (check one) ____ consecutive to ____ concurrent with the sentence set forth in count _____ of this case.

Consecutive/Concurrent As To Other Convictions

___ It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) ____ consecutive to ____ concurrent with the following: (check one)

___ any active sentence being served.

___ specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of HAMILTON County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends _____

DONE AND ORDERED in open court at Jasper Hamilton County, Florida, this 12th day of June, 19 95.

Judge

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR HAMILTON COUNTY, FLORIDA.

STATE OF FLORIDA

-vs-

ANTHONY FLOYD WAINWRIGHT,
Defendant.

CASE NO. 94-150-CF

JUDGEMENT AND SENTENCE OF DEATH

THIS COURT, after due consideration of the facts presented at the guilt and penalty phases of the trial, the Sentencing Memorandum submitted by the Defendant and the State, the testimony and arguments presented at the Sentencing Hearing and after weighing the aggravating and mitigating circumstances and being otherwise fully advised in the premises, finds and decides as follows:

1. The defendant, ANTHONY FLOYD WAINWRIGHT was found guilty by a jury verdict on May 30, 1995 of the following offenses:

a) Murder in the first degree
b) Robbery while armed with a firearm
c) Kidnapping while armed with a firearm, and
d) Sexual battery with great force while armed with a firearm.

2. Thereafter, on June 1, 1995, the jury returned an Advisory Sentence as to Count 1, Murder in the First Degree, recommending imposition of the death penalty against ANTHONY FLOYD WAINWRIGHT for the murder of Carmen Gayheart, by a vote of 12 to 0.

3. Present before the Court this 12th day of June, 1995 is the defendant, ANTHONY FLOYD WAINWRIGHT and his appointed counsel, Clyde Taylor.

4. The Court inquired of Clyde Taylor as to whether there was any legal cause why judgement and sentence should not be pronounced, and no legal cause was given.

5. The Court, independent of the jury, has considered the aggravating and mitigating circumstances presented in the evidence in this case. As required by the provisions of Section 921.141(3), Florida Statutes, this Court makes the following findings:

AGGRAVATING CIRCUMSTANCES: Florida Statutes 921.141 (5)

(a) *The capital felony was committed by a person under sentence of imprisonment or placed on community control.*

Finding: The unrefuted testimony at trial established that ANTHONY FLOYD WAINWRIGHT was, until his escape from Carteret Correctional Center in Newport, North Carolina on April 24, 1994, serving a sentence of imprisonment. Accordingly, it has been proved beyond a reasonable doubt that the capital felony committed on April 27, 1994 was committed by ANTHONY FLOYD WAINWRIGHT while he was under a sentence of imprisonment.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

Finding: The evidence established that ANTHONY FLOYD WAINWRIGHT was convicted on September 9, 1994, in Lincoln County, Mississippi, of aggravated assault on a law enforcement officer, a felony involving the use or threat of violence to the person. Although the State argued to the jury that ANTHONY FLOYD WAINWRIGHT was convicted on May 30, 1995, contemporaneous with his conviction of first degree murder, of the felonies of robbery while armed with a firearm, kidnapping while armed with a firearm, and sexual battery with great force while armed with a firearm, these convictions involve the same victim as the capital felony, Carmen Gayheart. Accordingly, these three convictions were not considered by the Court. However, it has been established by proof beyond a reasonable doubt that ANTHONY FLOYD WAINWRIGHT was previously convicted of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

No evidence was presented as to this aggravating circumstance, the jury was not instructed on it and no consideration has been given it by the Court.

d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, sexual battery, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

Finding: ANTHONY FLOYD WAINWRIGHT was found guilty by the jury of robbery while armed with a firearm, kidnapping while armed with a firearm, and sexual battery with great force while armed with a firearm. Based on these convictions , the Court finds this aggravating circumstance has been proven beyond a reasonable doubt.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

Finding: The unrefuted evidence establishes that ANTHONY FLOYD WAINWRIGHT had escaped from prison four days prior to the commission of the capital felony, and was engaged in an ongoing and continuing effort to effect an escape from custody, and prevent his return to custody. It was also established by proof beyond a reasonable doubt that ANTHONY FLOYD WAINWRIGHT committed the capital felony to prevent the victim, Carmen Gayheart, from identifying him, thus seeking to avoid or prevent his arrest for the robbery, kidnapping and sexual battery previously committed. The Court finds this aggravating circumstance has been proven beyond a reasonable doubt.

(f) The capital felony was committed for pecuniary gain.

Finding: Because the defendant was found guilty of robbery while armed with a firearm of Carmen Gayheart, and taking her motor vehicle and assorted personal effects, the state argued this aggravating circumstance to the jury. The jury was instructed on merger of aggravating circumstances, and the Court finds that this aggravating factor was merged with aggravating circumstance (d). Accordingly, the Court does not consider this aggravating circumstance.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

No evidence was presented on this aggravating circumstance, the jury was not instructed on it and no consideration was given by the Court to this aggravating circumstance.

(h) The capital felony was especially heinous, atrocious, or cruel.

Finding: The Court finds proof beyond a reasonable doubt that this murder was extremely wicked, evil and vile, in that the victim of this case was abducted at gunpoint while placing groceries in her vehicle, as she was en route to pick up her two small children at a day care center. The victim was made to ponder her fate for at least one and one quarter to one and one half hours before her death while enroute to the location where she was murdered. While enroute to this location, the victim was sexually assaulted by ANTHONY FLOYD WAINWRIGHT'S co-defendant, while ANTHONY FLOYD WAINWRIGHT drove the victim's stolen vehicle. Upon arrival at the murder site, ANTHONY FLOYD WAINWRIGHT sexually assaulted the victim, who endured approximately thirty minutes of terror before being strangled and shot by ANTHONY FLOYD WAINWRIGHT. The victim cried and asked if he she was going to be released, but instead, she was murdered. According to the testimony of the medical

examiner, death by strangulation would have taken approximately four minutes, and it would have been approximately thirty seconds before unconsciousness. ANTHONY FLOYD WAINWRIGHT described Carmen Gayheart's actions during strangulation as being like "a puppy when you hit it in the head." The Court finds beyond a reasonable doubt that the murder of Carmen Gayheart was conscienceless, pitiless, and unnecessarily torturous.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

Finding: The unrefuted evidence in this case establishes that at least one hour and fifteen minutes to one and one half hours passed from the time of Carmen Gayheart's abduction until her murder. During this time, a calm discussion took place between ANTHONY FLOYD WAINWRIGHT and his co-defendant about what had to be done with the victim. The victim was made to lay face down on the ground, and after a botched attempt at strangulation, she was shot twice in the back of the head with a .22 caliber single shot rifle, execution style. The victim's murder was preceded by a discussion about which weapon to use because of the noise factor. The Court finds beyond a reasonable doubt that there was heightened premeditation, and that there was absolutely no pretense of moral or legal justification for the murder of Carmen Gayheart.

(j) The victim of the capital felony was a law enforcement officer engaged in the performance of his official duties.

No evidence was presented on this aggravating circumstance, the jury was not instructed on it and no consideration was given to it by the Court.

(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.

No evidence was presented on this aggravating circumstance, the jury was not instructed on it and no consideration was given it by the Court.

MITIGATING CIRCUMSTANCES: Florida Statute 921.141 (6)

The Court has evaluated the possible application of each of the statutory mitigating circumstances set forth in Florida Statute 921.141 (6). In addition, the Court has considered all of the nonstatutory mitigating circumstances that were

presented by counsel or suggested by the evidence.

(a) The defendant has no significant history of prior criminal activity.

This mitigating circumstance is not applicable. The defense did not request instruction on this circumstance, no instruction was given, and the Court rejects this as a mitigating circumstance.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

This mitigating circumstance is not applicable. The defense did not request instruction on this circumstance, no instruction was given, and the Court rejects this as a mitigating circumstance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

This mitigating circumstance is not applicable. The defense did not request instruction on this circumstance, no instruction was given, and the Court rejects this as a mitigating circumstance.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

Finding: Although the Court instructed the jury on this mitigating circumstance, and counsel for ANTHONY FLOYD WAINWRIGHT argued this mitigating circumstance to the jury, the Court finds no support for this aggravating circumstance from the evidence in this case. It is clear from the evidence that ANTHONY FLOYD WAINWRIGHT and his co-defendant, Richard Eugene Hamilton, are equally guilty of the murder of Carmen Gayheart. In no way could the participation of ANTHONY FLOYD WAINWRIGHT be considered relatively minor. To the contrary, evidence established that ANTHONY FLOYD WAINWRIGHT bragged to two inmates that he shot Carmen Gayheart, and bragged to one of the inmates that he also strangled Carmen Gayheart. The Court gives little weight to this mitigating circumstance.

(e) The defendant acted under extreme mental duress or under the substantial domination of another person.

Finding: Although the Court instructed the jury on this mitigating circumstance, and counsel for ANTHONY FLOYD WAINWRIGHT argued this mitigating circumstance to the jury, the Court finds no support for this mitigating circumstance from the evidence in this case. There is no evidence

difficulties with the criminal justice system, and his repeated brushes with the law occasioned by his stealing automobiles.

Finding: The Court has considered every aspect of defendant's background and character as revealed through the testimony of his mother. The Court finds that defendant's difficulties in school and his social adjustment problems, due in part to his problems associated with bed-wetting do provide some measure of mitigation. However, the Court accords them little weight as mitigating circumstances, and finds that these mitigating circumstances are outweighed by any single aggravating circumstance.

6. The Court has heard the testimony of Carmen Gayheart's family regarding victim impact at the sentencing hearing, but has not considered this testimony an an aggravating circumstance in arriving at this sentence. The Court has considered no evidence or factors in imposing the penalty herein and has no information not disclosed to defendant or his counsel, which the defendant has not had an opportunity to deny or explain.

7. It is the opinion of the Court that there are sufficient aggravating circumstances to justify imposition of the death penalty. The aggravating circumstances were proven beyond and to the exclusion of every reasonable doubt, and are so clear and convincing that virtually no reasonable person could differ. The Court is mindful that the sentence must be a matter of reasoned judgement, rather that an exercise in discretion. It is the Court's reasoned judgement that insufficient mitigating circumstances exist to outweigh or offset the aggravating circumstances. The Court, therefore, agrees and concurs with the advisory sentence recommended by the unanimous vote of the jury.

THEREFORE, it is the sentence of this Court as to Count 1 of the Indictment, that you, ANTHONY FLOYD WAINWRIGHT, be adjudicated guilty of murder in the first degree and that you be sentenced to death for the murder of Carmen Gayheart.

IT IS FURTHER ORDERED, that you, ANTHONY FLOYD WAINWRIGHT, be taken by the proper authority to the Florida State Prison and there be kept and closely confined until the date of your execution is set. It is further ordered that on such scheduled date that you be put to death by a current of electricity sufficient to cause your immediate death and such current of electricity shall continue to pass through your body until you are dead, or that you be put to death by any other lawful means which shall be in effect at the time of your execution.

You, ANTHONY FLOYD WAINWRIGHT, are further notified that a conviction and a sentence of death are subject to automatic and full review by the Supreme Court of Florida pursuant to Chapter 921.141 (4), Florida Statutes.

You are further advised that you have the right to the assistance of counsel in the filing and preparation of your appeal. The Public Defender of the Third Judicial Circuit is hereby appointed to represent you.

DONE AND ORDERED in open court at Jasper, Hamilton County, Florida, this 12th day of June, 1995.

E. Vernon Douglas
Circuit Judge

STATE OF FLORIDA
HAMILTON COUNTY

I, GREG GODWIN, Clerk of Courts in and for Hamilton County, Fla. DO HEREBY CERTIFY the within and foregoing is a True and Correct copy of the original as it appears among the files and records in the office of the Clerk of Courts of Hamilton County, Fla.

WITNESS my hand and official seal this 19th Day of June A.D. 2019.

Greg Godwin – Clerk of Courts
Hamilton County, Florida

By _____ D.C.

Attachment B
5/14/25 Report of Dr. Victoria Cassano, MD

PERFORMANCE MEDICINE CONSULTING, LLC

19967 Telegraph Springs Road, Purcellville, VA 20132

14 May 2025

To: Katherine Blair, Esq
Assistant Chief Capital Habeas Group
Office of the Federal Public Defender
227 N. Bronough St., Ste 4200

Re: Anthony Wainwright

Introduction:
I have written this report to review the evidence that Anthony Wainwright's cognitive and neurobehavioral growth and development were severely affected by his father's exposure to Agent Orange, as well as his untreated PTSD. I developing this report, I reviewed Kenneth Wainwright's Service Records and Service Treatment Records, as well as Anthony's medical records and psychological evaluations from 1975 through 2019.

Qualifications:
I am a board-certified and residency trained occupational/environmental physician. I have over 30 years of experience in Military Medicine, Occupational Medicine and Environmental Health. More specifically, after 20 years as a Navy Occupational and Environmental Physician, Undersea Medical Officer and Radiation Health Officer, I served as the Acting Chief Consultant for Environmental Health and, subsequently, as the Senior Medical Advisor to the Office of Disability and Medical Assessment at the Department of Veterans Affairs. In that capacity, I developed policy and rulemaking regarding service-connection and disability evaluation of Veterans exposed to Agent Orange, Hexavalent Chromium, burn pits and contaminated drinking water at Camp Lejeune, as well as other occupational/environmental hazards to which active duty service members were exposed. Furthermore, I developed the scientifically sound process for medical evaluation of these claims for the Department of Veterans Affairs. I served as a member of the National Academy of Sciences Committee on Toxicology, as well as a Federal Advisory Committee regarding toxic substances. I am an adjunct Assistant Professor of Medicine at The University of Maryland School of Medicine. As my enclosed CV documents, I am nationally recognized as an expert on these matters.

In addition to the above training and experience, I earned two advanced degrees (M.A. and MPhil.) in Human Genetics and Development from Columbia University which affords me additional qualifications to opine regarding genetic, developmental, and congenital abnormalities in humans.

Family History:
Anthony Wainwright was born on 22 October 1970 to Mr. and Mrs. Kenneth Wainwright. Kenneth Wainwright had just recently returned from a combat tour in Vietnam. He joined the Army National Guard in 1964, at the age of 17 with parental consent. He was transferred to the Ready Reserves on 27 February 1966. He volunteered for service in Vietnam, and was subsequently activated on 19 February 1968. He served in Vietnam from 29 September 1968 until 14 July 1969 when he was honorably separated from the service. His initial Military Occupational Specialty was Field Wireman. These soldiers installed electrical cables and wires either on poles or underground in order to provide energy for field operations. In such a capacity, Mr. Wainwright would have been in areas heavily sprayed with the "rainbow herbicides" including Agent Orange and Agent Blue, an arsenic containing herbicide. He was later designated a personnel specialist. He was awarded the Bronze Star Medal for bravery during combat operations, while serving in the 9th Infantry Division, 9th Administrative Company. On deployment the division was assigned to the III Corps Tactical Zone of the Vietnamese Army. This area included the region Northeast of Saigon, where some of the heaviest fighting, and therefore the heaviest herbicide spraying occurred. He was also awarded the Army Commendation Medal, The Vietnam Service Medal, and The National Defense Service Medal.

A History and Physical Examination was conducted on 20 February 1968, just prior to his entry onto active duty (EAD). In the history, Mr., Wainwright endorsed mumps; whooping cough; eye trouble; ear, nose, or throat trouble; severe tooth or gum problems; hay fever; asthma; shortness or breath; high or low blood pressure; frequent indigestion; He also noted that he stuttered or stammered. He noted that he had been unable to hold a job due to chemicals, dusts, sunlight, etc.; The exam was documented as essentially normal.

A separation History and Physical was performed on 9 July 1969. In the history, Mr. Wainwright endorsed mumps; ear, nose, or throat trouble; hay fever; sinusitis; asthma; shortness of breath; and that he had stuttered or stammered. The examiner, contrary to military directives made no comments regarding Mr. Wainwright's complaints. The examination found no abnormalities.

According to several personal statements from family members and friends, Kenneth Wainwright was never the same when he returned from Vietnam. He was withdrawn and was suspected of being an alcoholic. He died in 2015 of esophageal cancer, a condition that can be attributed to exposure to herbicides in Vietnam.

Clinical History:

Anthony Wainwright was born on 22 October 1970, the product of a normal pregnancy and delivery. He therefore would have been conceived sometime in early January 1970, only six months after his father returned from Vietnam.

According to Anthony's mother, he was colicky, and in and out of the hospital with bronchitis and asthma during the first year of his life..

On 20 May 1975, at age four, Anthony was evaluated by Richard Gavigan, MD, a urologist, for enuresis mostly at night, but also occasionally during the daytime and recent pain on urination. He was found to have a urethral meatal stenosis that was almost pin-point. Meatal stenosis is common in young children, and may be due to both genetic and environmental factors.[1] Human studies indicate monogenic causes for some congenital deformities of the urinary tract. The implicated genes can encode smooth muscle, neural, or urothelial molecules, or transcription factors that regulate their expression.[2]

He was evaluated on 13 January 1977 at Edgecombe-Nash Mental Health Center (at age 6) for enuresis and apparently jealous behavior towards his younger sister. He was seen several times thereafter. Anthony was unable to sit quietly for long periods of time, appearing immature, and with poor impulse control. A 3 March 1977 note stated that Anthony's mother canceled all future appointments because she had started a new job and could not take time off to continue his treatment.

According to his parents, Anthony was initially tested for learning disabilities in the fourth grade. He was subsequently placed in a classroom for learning disabled students.

Again, in October 1981, Anthony was evaluated by Dr. Charles Moore of Greenville, North Carolina, and was seen for nine sessions. At that time, A Wechsler Intelligence Scale for Children (WISC) test was administered. Anthony's verbal Intelligence Quotient (IQ) was 82, performance IQ score 81, and Full scale IQ score 85. His parents were informed that Anthony was (what was then called) "borderline mental retarded." In today's lexicon, he would be considered to have an "intellectual disorder."[3]

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[1] "Meatal Stenosis in Children." Accessed May 13, 2025. https://doi.org/10.1016/S0022-5347(17)59782-7.

[2] Woolf, Adrian S., Filipa M. Lopes, Parisa Ranjzad, and Neil A. Roberts. "Congenital Disorders of the Human Urinary Tract: Recent Insights From Genetic and Molecular Studies." *Frontiers in Pediatrics* 7 (April 11, 2019): 136. https://doi.org/10.3389/fped.2019.00136.

[3] www.disabilitysecrets.com. "Social Security Disability Benefits & Low IQ." Accessed May 13, 2025. https://www.disabilitysecrets.com/disability-benefits-and-low-iq.html.

It was recommended that he be enrolled in a private reading clinic and a home-based contingency management program be continued, but these recommendations were not followed by the parents.

In June 1983 (age 12 years and eight months), Anthony was evaluated at the Rocky Mount Developmental Evaluation Center. A revised WISC (WISC-R) test was administered. His verbal IQ was 79, performance IQ,109, and full scale IQ 92. He was also administered a Bender-Gestalt test. The Bender-Gestalt test assesses visual-motor functioning, developmental disorders, and neurological impairments in children age three or older, and adults). He earned an age equivalent score of a seven and one half to eight year old child.

At the age of 14, Anthony was referred to the Child Outpatient Psychiatry Unit of North Carolina Memorial Hospital. He was evaluated by Gail Spiriglozzi, MA under the direction of Barbara Boat, Ph.D. on 12 March 1985 through 1 April 1985. He was noted to have learning difficulties and behavior problems. He had been expelled from a private school. He was attending Martin Middle School and had to repeat the seventh grade. He was in remedial classes for math and language arts. At this time, Anthony was exhibiting impulsivity, excessive talking in school, tendency to follow the lead of peers, negative attention seeking behaviors, enuresis, and defiance of rules imposed by his parents. His sister, who was four years younger, exhibited no significant behavioral or academic problems. On the WISC-R, Anthony had a verbal IQ score of 81 (low average), and a performance IQ score of 101 (average). His full scale IQ score was 89. Dr. Boat opined that the Full Scale IQ score was meaningless. Due to the wide discrepancy (30 points) between the verbal and performance scales, the Full Scale score did not describe the wide variability in Anthony's functioning at that time. Anthony's profile of skills, as assessed by Dr. Boat, was consistent with a diagnosis of a learning disability.

Additional testing with Sentence Completion Form, and Piers-Harris scale clearly indicated difficulty with academic subjects, and low self-esteem. It was noted that he felt detached from his family, was not considered a valuable family member. Anthony began getting into significant trouble early in his adolescence, though only one resulted in a court appearance

It was recommended that Anthony be placed in a Therapeutic Camping System and to continue learning disabled support services for all academic subjects.

Anthony was voluntarily admitted to Cumberland Hospital on 4 November 1986 (age 16). He stated he did not really know why he was admitted "probably because I broke the law." He had no previous diagnoses of chronic medical condition such as diabetes, hypertension, heart disease etc. He denied any suicide attempts. He smoked about ½

pack of cigarettes/day and drank caffeinated beverages in the form of Pepsi and Coke. He stated he drank beer “as much as they can buy,” and liquor “as much as I can get on weekends,” for two years. His last drank anything about a month before this admission. He smoked “pot” as much as a nickel or dime bag for the previous two to three years, and had stopped two months before this admission. He admitted that he experimented with other drugs such as acid, speed, and cocaine. He was diagnosed with a conduct disorder, substance abuse, and a verbal learning disability. Bipolar disorder was to be ruled out. His prognosis was “not very promising” for becoming an independent and functioning adult. It was recommended that he be admitted to as long term treatment facility, and that without this kind of care, he would end up in training school and possibly prison.

Anthony was subsequently seen by a counselor, Mr. David Coulthard, M.A., of the psychiatry service of Tarboro Clinic, on 6 July 1987, at age 16. According to the counselor, he was on a one year of intensive probation and two years of regular probation. In the session, Anthony was despondent, but not disrespectful. He was facing a prison sentence for stealing cars. It was noted that he had a long history of mental health support.

Anthony was seen in jail by Mr. Coulthard on 21 September 1987 at the request of his attorney who believed that he was very depressed and almost catatonic. Anthony presented with tremors, though they were not otherwise characterized.

A 23 October 1987 evaluation recommended a long term institutional treatment program for possible depression or manic-depressive disorder.

Mr. Wainwright, Anthony’s father was routinely absent from Anthony’s evaluation and therapy sessions, attending only occasionally.

A psychological evaluation provided by Sara Boyd, Ph.D. dated 17 June 2019, noted that she had seen Anthony on two occasions in The Union Correctional Center in Raiford, Florida. She also reviewed all of Anthony’s previous medical records. According to Dr. Boyd, Anthony’s family was minimally functional. According to records she reviewed, Anthony was not able to read at nearly 11 years of age. He had borderline IQ scores (substantially below average). She noted that he had cognitive and behavioral problems. She noted that Antony’s father, Kenneth was a Vietnam Veteran who had exhibited symptoms consistent with post traumatic stress disorder (PTSD), and abused alcohol. However, Anthony’s paternal uncles indicated that both parents abused alcohol, and that his mother drank six to seven drinks daily, and there was a significant history of alcoholism on the paternal side of the family. Her assessment included cognitive impairment with below average intellectual functioning and immaturity. He had lagged behind his peers in his ability to develop age appropriate social-emotional skills; mood symptoms such as depression, and “hyperkinetic activity,” possible trauma symptoms; social impairment, and substance abuse. Her conclusions

were that Anthony exhibited long standing cognitive impairment that related to his ability to formulate, crystalize, and express his thoughts and feelings. She noted that Anthony never received appropriate evidence-based medical treatment, and that the treatments he did receive in all probability worsened his symptoms and likely contributed to his later behavioral problems. She stated that at the time of the 1994 crime in question, Anthony Wainwright was a psychosocially immature adolescent/young adult who had impoverished community-living skills, had untreated (I will add through no fault of his own) mental illness and unaccommodated disabilities.

Discussion:
Kenneth Wainwright was a combat Veteran in Vietnam. His exposure to the tactical herbicides sprayed by Operation Ranch-Hand is presumptively conceded by the Department of Veterans Affairs (VA). However, what is not evident from the presumption of exposure is the degree of Mr. Wainwrights' exposure to multiple herbicides. In his initial MOS, he would have been exposed while applying cable to electrical poles or digging underground cable. The intensity of combat operations in the area would have previously sprayed earth and flora disrupted by bombs, mortars, grenades and other munitions, creating herbicide laden dust on everyone in the area. This dust would be inhaled and ingested during a firefight. Needless to say, clean clothes and daily personal hygiene are not paramount in a combat zone, so these chemicals would also have permeated clothing and skin.

The rainbow herbicides, including Agent Orange were a class of chlorinated phenoxy compounds that were used to defoliate large areas of dense forest during the Vietnam war. Agent Orange was a combination of 2,4 dichloro-p-phenoxyacetic acid (2,4 D), and 2,4,5 trichlorophenoxyacetic acid (2,4,5T). 2,4 5T was contaminated during its manufacture with 2,3,7,8 tetrachlorodibenzodioxin (TCDD) and is the most potent dioxin manufactured.

There are numerous medical conditions which the VA has determined are causally related to exposure to herbicides. I will not provide the complete list here, but it includes numerous cancers, metabolic diseases such as diabetes mellitus, autoimmune disorders including Hashimoto's thyroiditis, atherosclerotic vascular diseases, and most importantly to this discussion, neurocognitive disorders (e.g. Parkinson's disease).[4]

While only spina bifida is a presumptive condition in offspring of male Vietnam Veterans, there is an increasing body of literature indicating that children of Vietnam Veterans have a proportionally greater incidence of cognitive disorders and

[4] "38 CFR 3.309 -- Disease Subject to Presumptive Service Connection." Accessed May 13, 2025. https://www.ecfr.gov/current/title-38/part-3/section-3.309.

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. It did investigate congenital malformations detected at birth, and adverse pregnancy outcomes such as miscarriage and still births.[5] 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 biennial committee report, from 1994 through 2018, was produced under contract with the VA. At the initial committee meeting, a VA representative presents the "charge" to the committee, in which it directs the committee regarding 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.

According to the International Agency for Research on Cancer's 2012 monograph on TCDD[6], due to high lipophilicity and low solubility in aqueous media, TCDD and related chemicals (polychlorinated dibenzofurans) accumulate in the fat tissue of animals including humans. Most if not all of the effects of TCDD are related to its binding to, and activation of, the aryl hydrocarbon receptor (AhR), which is a transcription factor in mammalian cells. This receptor shows a high affinity for TCDD. It is generally proposed that the toxic and carcinogenic effects of dioxin and other halogenated hydrocarbons are effected by activation of the ArH receptor and to the sustained pleiotropic response from a battery of genes. This means that the binding of TCDD and similar compounds have numerous different effects on cell metabolism.

The AhR receptor resides in the cytoplasm of the cell. When dioxin enters the cell and binds to the AhR receptor, a complex is created that then moves to the nucleus of the cell. This activated complex binds to the regulatory region of dioxin responsive genes.

The primary targets following activation of AhR include genes encoding many metabolic enzymes. Through direct and indirect pathways, TCDD is able to alter the expression of a much larger number of genes. The half-life of TCDD is estimated at 7.2 years. The tumorigenic capability of TCDD is likely due to this fairly long half-life that results in

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[5] Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides (Ninth Biennial, Board on the Health of Select Populations, and Institute of Medicine. "Effects on Future Generations." In *Veterans and Agent Orange: Update 2012*. National Academies Press (US), 2014. https://www.ncbi.nlm.nih.gov/books/NBK195093/.

[6] IARC Working Group on the Evaluation of Carcinogenic Risk to Humans. "2,3,7,8-Tetrachlorobidenzo-Para-Dioxin, 2,3,4,7,8-Pentachlorodibenzofuran, and 3,3′,4,4′,5-Pentachlorobiphenyl." International Agency for Research on Cancer, 2012. https://www.ncbi.nlm.nih.gov/books/NBK304398/.

sustained activation of the AhR from entry into the cytoplasm until completely removed from the body.

Butler et al. [7]noted: "The aryl hydrocarbon receptor (AhR) is a sensor of environmental toxins such as TCDD and its activation by these ligands can lead to immune system impairment, endocrine disruption, and cancer."

In animals, the affinity of TCDD for the AhR is correlated with carcinogenic potential. Body burdens of TCDD among the more highly exposed workers in the industrial cohorts were similar in magnitude to body burdens that produced cancer in rodent studies.

TCDD is a multisite carcinogen in that it causes cancer to develop in many organs. As noted above carcinogenesis is thought to arise from AhR mediated alteration of gene expression, although other mechanisms are possible.

Steenland[8] notes:
“Our analyses suggest that high TCDD exposure results in an excess of all cancers combined, without any marked specificity. However, excess cancer was limited to the highest exposed workers, with exposures that were likely to have been 100-1000 times higher than those experienced by the general population and similar to the TCDD levels used in animal studies.”

It is clear from this discussion that Mr. Wainwright’s body burden of dioxin, and the dioxin-like chlorophenoxy herbicides was 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.

The fact that these compounds are known to cause genetic damage as well as endocrine disruption (vide supra) indicates that 2nd and 3rd generational effects, especially neurocognitive effects in a child, can be ascribed to a parents’ exposure to them. While there is a body of literature that supports this conclusion, the VA has done precious little to investigate this association. In November 2023, Senator John Tester,

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[7] Butler, Ryan, Margaret Warner, and Jan-Åke Gustafsson. “Chronic Myeloid Leukemia in the Aryl Hydrocarbon Receptor Knockout Mouse.” *Cancer Research* 73, no. 8 Supplement (April 15, 2013): 3858–3858. https://doi.org/10.1158/1538-7445.AM2013-3858.

[8] Steenland, Kyle, Laurie Piacitelli, James Deddens, Marilyn Fingerhut, and Lih Ing Chang. “Cancer, Heart Disease, and Diabetes in Workers Exposed to 2,3,7,8-Tetrachlorodibenzo- p -Dioxin.” *JNCI: Journal of the National Cancer Institute* 91, no. 9 (May 5, 1999): 779–86. https://doi.org/10.1093/jnci/91.9.779.

held a hearing on a Children's Toxic Exposure Research law, the VA testified that if a connection was found between a parent's toxic exposure and a child's illness, they would be responsible for health care and compensation, which would greatly increase their budget.[9] This appears to be a blatant admission by the VA that such an association could and probably does exist.

TCDD is considered the most toxic chemical produced by humans. It induces a state of genomic instability in which genetic damage is observed several cell generations later in the progeny of exposed cells.[10]

It was also demonstrated that TCDD promotes epigenetic transgenerational inheritance of disease and DNA methylation epimutations in sperm.[11] According to the National Cancer Institute, an epimutation is a change in the chemical structure of DNA that does not change the DNA coding sequence. Epimutations occur in the body when chemical groups called methyl groups are added to or removed from DNA or when changes are made to proteins called histones that bind to the DNA in chromosomes. They can affect a person's risk of disease and may be passed from parent to child. Also called epigenetic alteration and epigenetic variant.[12] The male germline propagates this epigenetic change after fertilization to all somatic cells resulting in genomic changes that can lead to adult onset disease in future generations. This is a plausible explanation for why Anthony's sister developed breast cancer, despite no history of breast cancer in the family.

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[9] "Agent Orange & Dioxin Committee Update May/June 2024 | Vietnam Veterans of America." Accessed May 12, 2025. https://vva.org/programs/agent-orange/agent-orange-dioxin-committee-update-may-june-2024/.

[10] Gaspari, Laura, Delphine Haouzi, Aurélie Gennetier, Gaby Granes, Alexandra Soler, Charles Sultan, Françoise Paris, and Samir Hamamah. "Transgenerational Transmission of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) Effects in Human Granulosa Cells: The Role of MicroRNAs." *International Journal of Molecular Sciences* 25, no. 2 (January 17, 2024): 1144. https://doi.org/10.3390/ijms25021144.

[11] Manikkam, Mohan, Rebecca Tracey, Carlos Guerrero-Bosagna, and Michael K. Skinner. "Dioxin (TCDD) Induces Epigenetic Transgenerational Inheritance of Adult Onset Disease and Sperm Epimutations." *PLoS ONE* 7, no. 9 (September 26, 2012): e46249. https://doi.org/10.1371/journal.pone.0046249.

[12] "Definition of Epimutation - NCI Dictionary of Cancer Terms - NCI." nciAppModulePage, February 2, 2011. Nciglobal,ncienterprise. https://www.cancer.gov/publications/dictionaries/cancer-terms/def/epimutation.

A study in the population of Seveso, Italy, exposed to dioxin in WWII, documented health effects in grandchildren of women that conceived more than 25 years after exposure.[13]

There are many more studies demonstrating transgenerational effects of TCDD and similar compounds. I cannot possibly discuss all of them in this report.
The studies regarding neurobehavioral effects show a complex interaction between exposure to agent orange and parental PTSD as contributing factors to cognitive and neurobehavioral effects in children of Vietnam Veterans.

The National Vietnam Veterans Birth Defects/Learning Disabilities project is a cooperative effort the Association of Birth Defects in Children (ABDC) and the New Jersey Agent Orange Commission (NJAOC).[14] It was part of ABDC's birth defects registry. According to a Government Accountability Office (GAO) the cause of 60% of reproductive and developmental disease is unknown, however, the vast majority of experts (74%) surveyed by the National Research Council predicted that up to 25% of these cases were environmentally induced.

ABDC and NJAOC undertook an early analysis of the date on disabilities in Vietnam Veterans' children compared to non-veterans' children. The organizations' initial data comparison revealed no increases in any major category of structural birth defects in children of Vietnam Veterans compared to children of non-veterans. However, they noted that a pattern of functional problems in Vietnam Veterans' children was emerging. The pattern included significant increases in all areas of learning and attention disorders and emotional / behavioral disorders. Other increases were seen in chronic skin conditions, allergic disorders, growth disorders, immune problems and numerous other miscellaneous conditions. The researchers noted that the pattern of disability was very similar to symptoms reported in children with Chronic Fatigue Immune Dysfunction Syndrome. Prenatal damage to the immune system, induced by TCDD and similar compounds were believed to be related to the development of these disorders.

[13] Baccarelli, Andrea, Sara M Giacomini, Carlo Corbetta, Maria Teresa Landi, Matteo Bonzini, Dario Consonni, Paolo Grillo, Donald G Patterson, Angela C Pesatori, and Pier Alberto Bertazzi. "Neonatal Thyroid Function in Seveso 25 Years after Maternal Exposure to Dioxin." *PLoS Medicine* 5, no. 7 (July 2008): e161. https://doi.org/10.1371/journal.pmed.0050161.

[14] Birth Defect Research for Children. "Learning Disabilities Project -Vietnam Veterans Research." Accessed May 12, 2025. https://birthdefects.org/veterans-research/learning-disabilities-project/.

In 2001, Johansson et al.[15] studied the reproductive health of Agent Orange exposed women, or the wives of soldiers exposed to dioxins. In total 30 women who had 148 pregnancies were studied. Less than 10% resulted in miscarriages and 14 % in still berths or premature births. Out of the rest of the successful births, 14 children passed at an early age, and 66% of the children had developed a physical or mental disability.

A review study was published in 2023 of Vietnamese children living near the previous Da Nang Airbase, 40 years after the end of the war.[16] By the age of eight years, girls with high levels of TCDD showed increased attention deficit hyperactivity disorder -like behaviors and autistic spectrum disorder; boys, with high levels of TCDD, on the other hand, showed reading learning difficulties, a neurodevelopmental disorder. These findings indicated suggested that perinatal exposure to TCDD impacts social, -emotional cognitive functions, leading to sex-specific neurodevelopmental disorders, learning difficulties in boys, and ADHD in girls.

The effect found in boys is the same dysfunction that was evident in Anthony, by the time he was in 4th grade (age 9).

While these studies were performed in the Vietnamese population living in a dioxin "hot spot, they can be extrapolated to children of American Vietnam Veterans. A study published in 1996, demonstrated that elevated TCDD levels, over 50 parts per trillion on a lipid basis, could still be detected in six of 50 Veterans sampled. TCDD and several congeners, were also detected in a pooled semen sample of 17 of these men. These levels extrapolated back to the end of the conflict indicated that the original levels were between 35 to 1,500 -fold greater than that of the general population, at the time of exposure. It is clear from this study that a child conceived only six months after his father returned from Vietnam would have been affected by TCDD in his father's semen, either due to epimutations, or to direct exposure of TCDD during fertilization of the maternal gamete.

Complicating Anthony's situation was that fact that his father was a combat Veteran, and most probably had undiagnosed, untreated PTSD. One of the hallmarks of PTSD is denial and avoidance of treatment. His alcoholism was a form of self-treatment for

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[15] "Impact of Chemical Warfare with Agent Orange on Women's Reproductive Lives in Vietnam: A Pilot Study: Reproductive Health Matters: Vol 9, No 18." Accessed May 13, 2025. https://www.tandfonline.com/doi/abs/10.1016/S0968-8080%2801%2990102-8.

[16] Tran, Nghi Ngoc, Tai Pham-The, Thao Ngoc Pham, Hoa Thi Vu, Khue Ngoc Luong, and Muneko Nishijo. "Neurodevelopmental Effects of Perinatal TCDD Exposure Differ from Those of Other PCDD/Fs in Vietnamese Children Living near the Former US Air Base in Da Nang, Vietnam." *Toxics* 11, no. 2 (January 21, 2023): 103. https://doi.org/10.3390/toxics11020103.

PTSD. According to a study published in 2019, epidemiological evidence estimate that 24% to 52% of those with PTSD also have a substance abuse disorder. Most commonly alcohol use disorder (AUD).[17] Khantzian, in 1997, pro-posed the self-medication hypothesis to explain the high co-occurrence between psychiatric disorders, such as PTSD and substance abuse.[18] He proposed that alcohol consumed in low to moderate doses could alleviate the emotional numbing and feelings of detachment associated with PTSD, and in higher doses could lessen the intensity when PTSD related emotions became overwhelming.

In a 1990 study,[19] Vietnam combat veterans with PTSD were compared to non-combat Vietnam era Veterans without PTSD on their perceptions of their children's social and emotional functioning. The results indicated that fathers with PTSD perceived their children as exhibiting a substantially greater degree of dysfunctional social and emotional behavior. They were generally rated as significantly more likely to exhibit an inadequate level of self-control, resulting in various externalizing problem behaviors such as aggression, hyperactivity, and delinquency.

In one study, children of fathers who were Veterans of the Vietnam war, and demonstrated PTSD symptomology,[20] showed more problems in activity, social and school conduct as well as symptoms of behavioral problems when compared to children whose fathers did not displace evidence of PTSD. They concluded that children and early adolescents of Veterans with PTSD showed significant differences in competencies, behavior, emotional difficulties, and neuroticism.

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[17] Lane, A.R., A.J. Waters, and A.C. Black. "Ecological Momentary Assessment Studies of Comorbid PTSD and Alcohol Use: A Narrative Review." *Addictive Behaviors Reports* 10 (July 17, 2019): 100205. https://doi.org/10.1016/j.abrep.2019.100205.

[18] "The Self-Medication Hypothesis of Substance Use Disorders: A Reconsideration and Recent Applications - PubMed." Accessed May 13, 2025. https://pubmed.ncbi.nlm.nih.gov/9385000/.

[19] Parsons, John, Thomas J. Kehle, and Steve V. Owen. "Incidence of Behavior Problems Among Children of Vietnam War Veterans." *School Psychology International* 11, no. 4 (November 1, 1990): 253–59. https://doi.org/10.1177/0143034390114002.

[20] Selimbasic, Zihnet, Osman Sinanovic, Esmina Avdibegovic, Maja Brkic, and Jasmin Hamidovic. "Behavioral Problems and Emotional Difficulties at Children and Early Adolescents of the Veterans of War with Post-Traumatic Stress Disorder." *Medical Archives* 71, no. 1 (February 2017): 56–61. https://doi.org/10.5455/medarh.2017.71.56-61.

A study in children of Australian Vietnam Veterans demonstrated that sons and daughters of these Veterans had higher prevalence of alcohol and other substance dependence, depression, and anxiety.[21]

It must be realized that much of this information is not readily accessible by the general medical community, let alone the general public. The first alarm regarding Agent Orange effects on Vietnam Veterans was written by Admiral Elmo Zumwalt in a classified document to the Secretary of Veterans Affairs in 1990.[22] The First IOM report was not published until 1994 and only reviewed information on a variety of cancers.[23] As noted above, none of the IOM reports through 2018 addressed neurobehavioral or cognitive effects in the children of Vietnam Veterans. Most clinicians do not look further than these reports for available information on the effects of Agent Orange, and I would suspect that most attorneys dealing with these issues would not either. However, the stringent requirements placed on the IOM for accepting research studies to review seriously limits the available information in these reports. The research regarding transgenerational effects is even newer and more obscure to the general medical community. Genetics is a highly complex field of medicine, and difficult to understand without substantial training in it. The human genome project was not completed until 2003. Epimutations and transgenerational transmission were not established as modes of transmission of disorders until the early 2020s, and, as can be determined by reviewing the citations above, were not published until 2023 to 2025. Therefore, the ability to integrate these various studies into a cogent medical treatise is only recently possible.

Conclusion:

From learning disabilities to impulse control, to poor social functioning noted in all of these studies were manifest in Anthony Wainwright at a young age. Anthony was exposed to the effects of agent orange through his father's service in Vietnam. He was also the "victim" of his father's behavior secondary to his untreated PTSD. These two

[21] O'Toole, Brian I, Mark Dadds, Sue Outram, and Stanley V Catts. "The Mental Health of Sons and Daughters of Australian Vietnam Veterans." *International Journal of Epidemiology* 47, no. 4 (August 1, 2018): 1051–59. https://doi.org/10.1093/ije/dyy010.

[22] Zumwalt, Elmo. "Report to Secretary of the Department of Veterans Affairs on the Association Between Adverse Health Effects and Exposure to Agent Orange." Department of Veterans Affairs, May 5, 1990.

[23] Institute of Medicine (US) Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides. *Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam*. Washington (DC): National Academies Press (US), 1994. http://www.ncbi.nlm.nih.gov/books/NBK236356/.

influences, either alone or in synergy had a deleterious effect on Anthony's development as a child and adolescent. Anthony's cognitive and behavioral disorders clearly stem from his father's combat experience in Vietnam.

From conception, Anthony had a minimal chance of developing into a fully functioning adult. The fact that he never had an appropriate medical workup for his condition, was never afforded any kind of medical treatment, and was subjected to harsh "behavioral modification" techniques, at wilderness camp, training schools, and detention centers, only magnified his emotional and behavioral instability. 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. This must be taken into consideration when assessing the appropriateness of the punishment to which he is sentenced.

Sincerely,

Victoria A. Cassano, MD, MPhil, MPH, FACPM, FACOEM

Attachment C
5/13/25 Report of David Ferrier

David Ferrier
Private Investigator

Rockledge, FL. 32955
Telephone (321) 349-0062

May 13, 2025

Holly Ayers
Investigator
Central Habeas Unit
Office of the Federal Public Defender
Northern District of Florida
227 N. Bronough Street, Suite 4200
Tallahassee, Florida 32301
C-850-296-5188

Re: Military History and Background of Kenneth Wainwright

Dear Ms. Ayers,

At your request, during the period of April 16, 2025 and May 12, 2025 I conducted an investigation into the military and post-military background of Kenneth Wainwright in order to determine the possible impact of Mr. Wainwright's service in Vietnam on family members.

This included a thorough examination of Mr. Wainwright's military records and interviews with family members including his daughter Krista, his younger brother, Michael, and his sister in law, Linda Alexander.

MILITARY HISTORY

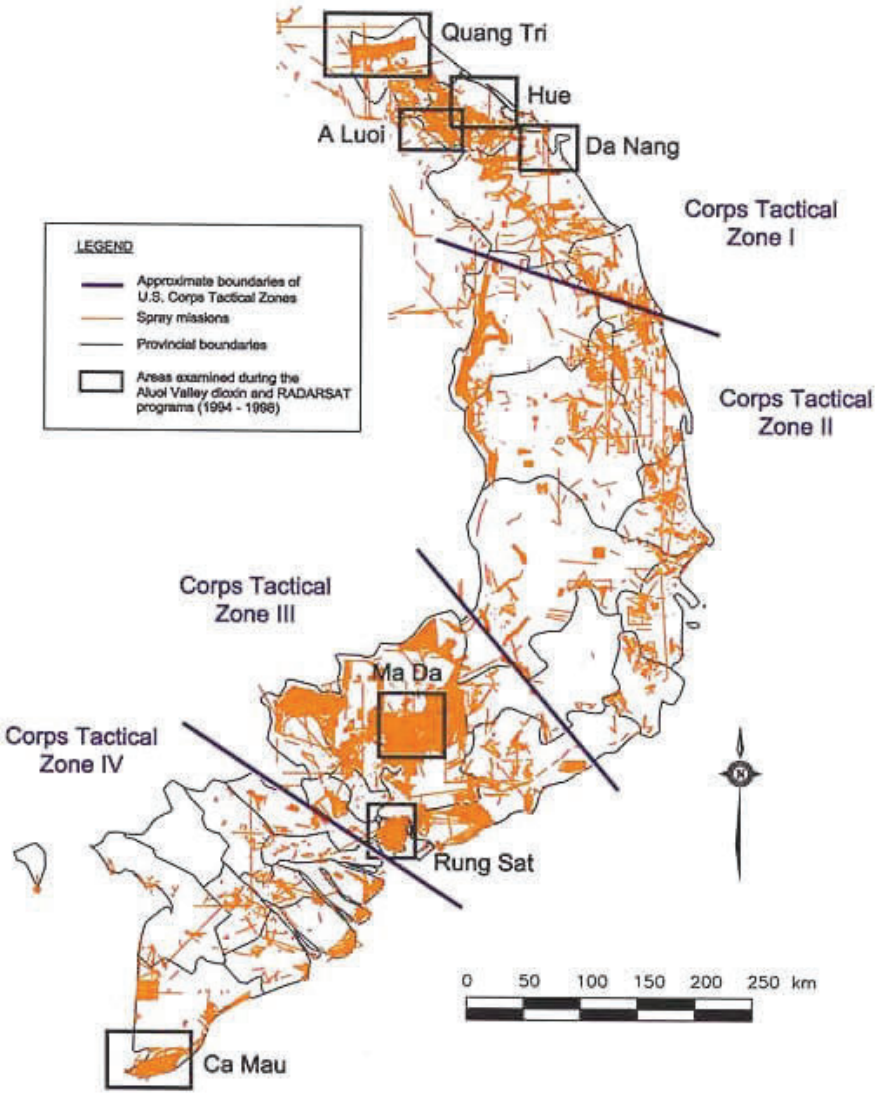
Mr. Wainwright's military records indicate that he voluntarily enlisted in the Army National Guard in 1966 and served a six month period of active duty training before being assigned to a Reserve unit in North Carolina.

Mr. Wainwright's unit was ordered to Active Duty in February of 1968 and deployed to Vietnam in November of that same year. Mr. Wainwright's initial MOS (Military Occupational Specialty) was that of a Communications Lineman and briefly a Mortar Man. In Vietnam he was assigned a clerical MOS, 71H20, (Personnel Records Specialist). His unit, the 9th Administrative Company, 9th Infantry Division, was assigned to Vietnam APO (Army Post Office) 96370, located in Long An Province, III Corps Tactical Zone, at Bear Cat Combat Base. Mr. Wainwright's duties would have consisted of clerical and administrative responsibilities along with base security and maintenance.

Mr. Wainwright's service records indicate that his tenure in Vietnam was exemplary. His receipt of both the Bronze Star Medal and Army Commendation Medal, along with his promotion to Specialist Fifth Class, are indicative of highly regarded military service.

It should be noted that Mr. Wainwright's deployment to Vietnam occurred during the heaviest fighting of the Vietnam Conflict and the period of the heaviest saturation of the Agent Orange defoliant in the ten year history of the war. American casualties Killed In Action during 1968 and 1969 exceeded 15,000 killed and 60,000 wounded. Fire bases such as the one at Bear Cat were heavily defoliated along their perimeters to deny the enemy cover and create open firing zones around the encampment. Below is a map showing the areas of heaviest defoliation in Vietnam. Mr. Wainright's base camp was centered in the III Corps combat zone, as indicated.

Aerial herbicide spray missions in southern Viet Nam, 1965 to 1971
(Source: U.S. Dept. of the Army).



Compensable, irrefutable evidence of Agent Orange exposure among Vietnam Veterans is evidenced by the classification of "Presumptive" for any resulting debilitating symptoms from Agent Orange exposure.

There is concern that Agent Orange exposure can be passed from father to child, potentially leading to both physical and mental health issues in the offspring. The indisputable research suggests that the toxic chemicals in Agent Orange, like TCDD (dioxin), can affect sperm cells and potentially alter genetic or epigenetic mechanisms, which can then influence the development and physical and mental health of the child. Thus, the relevant question in our consideration of Mr. Wainwright's exposure to Agent Orange in Vietnam is not solely on what the aftereffects of this exposure were to Mr. Wainwright, but what impact that exposure may have had on his children.

In an interview conducted for this report, Linda Alexander, Anthony Wainwright's maternal aunt and childhood caregiver commented…

> Even as a tiny baby there was something "off" about Anthony. As a baby he hardly ever stopped crying. We were never able to determine a physical reason for his crying but it was incessant. As he grew older he was a very quiet child. He hardly ever spoke. I would pick him up from elementary school and drive him home and he would often never speak a word the whole time. If I asked him questions he would not answer. He was often a behavior problem, of you told him not to touch something he would almost inevitably touch it. He broke things, he was contrary.

Anthony's sister Krista commented…

> When we were growing up Anthony was always in trouble. Little things mostly, tiny acts of vandalism, breaking into empty houses, stealing from stores. There was no reason for him to be doing this and he would never talk about why he did these things. He was troubled and I don't know the reasons for it.

Krista reported that after her cancer diagnosis at age 45 she lost all of her hair and eyebrows as a result of her chemo treatment. While that is not unusual, it is significant that her hair and eyebrows have never grown back despite medical assurances that it would. This ongoing condition, now labeled as alopecia, is an acknowledged physical birth defect resulting from a veteran's exposure to Agent Orange that has been transmitted to their offspring. Krista also reports a history of dermatological problems, flaking of skin, chapping, skin rashes which have also been reported among the offspring of Vietnam veterans exposed to Agent Orange. Krista also reports that her brother, Anthony, has also suffered from severe dermatological problems throughout his life as well as impaired behavioral functioning demonstrated and perhaps inherited from his father.

Family accounts of Kenneth Wainwright's post-Vietnam history indicate that, in the words of his brother, Michael, Ken had speech difficulties and "a trembling in his hands that became more and more noticeable." Linda Alexander reports observing these same symptoms in Ken upon his return and developing in Anthony through his adolescence. Again, by the VA's own standards, these symptoms are presumed to be resultant from Agent Orange exposure when present in the affected veteran.

The groundwork is here that would establish that Ken Wainwright, a highly decorated, honorably discharged Vietnam veteran suffered from both physical and behavioral problems upon his return from Vietnam and may have passed both his physical and behavioral debilitations on to his children. An examination by a mental health professional into the inherited physical and mental infirmities that may have impacted Ken's children would certainly seem warranted.

If there are any questions regarding the information in this report, please do not hesitate to contact me.

Respectfully,

DF

David O. Ferrier

Attachment D
5/13/25 Affidavit of Robert Allen Murphy

State of Florida)
)
) **SS**
County of Leon)

AFFIDAVIT/DECLARATION OF ROBERT MURPHY

PURSUANT TO 28 U.S.C. § 1746 AND § 92.525 OF TITLE VII, FLORIDA STATUTES

I, ROBERT ALLEN MURPHY, having been first duly sworn or affirmed, hereby state the following as true and correct:

1. My name is Robert Allen Murphy. I reside in Leon County, Florida. In 1994 and 1995 I was incarcerated at the Taylor County Jail.

2. At this time, I was housed with Anthony Wainwright. I was placed near him in confinement. He 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.

3. When I spoke with FDLE, I repeated what Anthony Wainwright had told me. However, I told them I didn't believe it all because it was so crazy. I remember asking them, "Would you even believe that?" They just told me to tell them what Anthony said.

4. By the time of Anthony Wainwright's trial, I was serving my prison sentence at Taylor Correctional Institution. I was transported without notice to the county jail to testify. I met Dennis Givens there, who was also a Department of Corrections inmate who had been transported for the purpose of testifying against Anthony Wainwright.

5. Dennis Givens and I kept discussing the case and our testimony before we gave it. Dennis Givens told me that he was receiving a benefit in exchange for his testimony against Anthony. I don't remember exactly what he said he was getting, but he told me and it made me realize I should also benefit from my testimony.

6. I called my dad and told him to call my defense attorney, because I wanted him to make sure I got a benefit in exchange for my testimony. My attorney assured me I would get one. He told me he talked to the State. Then, when I

met with the prosecutor prior to testifying, he said that he could not make me 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.

7. My hearing for modification of sentence was pushed back until after my testimony in Wainwright's case. At the 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.

I hereby certify that the facts set forth are true and correct to the best of my personal knowledge, information and belief, pursuant to 28 U.S.C. § 1746 and § 92.525 of Title VII, Florida Statutes.

FURTHER AFFIANT SAITH NAUGHT,

Robert Allen Murphy

Sworn to (or affirmed) and subscribed before me this 13 day of May, 2025 by Robert Allen Murphy who is personally known to me or who has provided the following identification: FL-ID M610 761 69 001 0.

Notary Public, State of Florida

SEAL:

HOLLY C. AYERS
Commission # HH 421154
Expires September 22, 2027

RM

A4

Petitioner's Memorandum of Law

in Support of § 1983 Complaint

June 2, 2025

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANTHONY FLOYD WAINWRIGHT
Plaintiff,

v.

RON DESANTIS, et al.,
Defendants.

CASE NO. 3:25-cv-607

EMERGENCY INJUNCTION SOUGHT

EXECUTION OF STATE DEATH SENTENCE SET: JUNE 10, 2025 @ 6:00 P.M.

MEMORANDUM IN SUPPORT OF 42 U.S.C. § 1983 COMPLAINT

I. Introduction

Plaintiff Anthony Floyd Wainwright, a death-sentenced Florida prisoner with a scheduled execution date of June 10, 2025, filed a 42 U.S.C. § 1983 complaint in this Court, seeking emergency declaratory and injunctive relief preventing his execution from proceeding. This is Mr. Wainwright's memorandum in support of the complaint.

For the reasons below and in Mr. Wainwright's complaint and accompanying motion for a stay of execution, this Court should (1) grant a preliminary injunction prohibiting Defendants from executing him until this Court has had the opportunity to meaningfully consider his federal constitutional arguments; (2) declare that Defendants violated Mr. Wainwright's federal rights to due process and equal protection during collateral state-court review of his death sentence; and (3) grant a

permanent injunction barring Defendants from executing Mr. Wainwright until Defendants provide him with a state-court proceeding that comports with the United States Constitution.

II. § 1983 is the appropriate vehicle to litigate this deprivation of Mr. Wainwright's constitutional rights

"[W]hen a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution-and, in particular, in accord with the Due Process Clause." *Evitts v. Lucey*, 469 U.S. 387, 389 (1985). This includes death-warrant proceedings in the Florida state courts. *Tanzi v. State*, -- So. 3d -- 2025 WL 971568 *2 (Fla. 2025).

The Eleventh Circuit has made clear that jurisdiction to consider the merits of a challenge to a State's guaranteed procedure was appropriate in a § 1983, where that challenge would not constitute an attack on the underlying validity of the conviction or sentence. *See, e.g.*, *Barwick v. DeSantis*, 66 F.4th 896, 901-02 (11th Cir. 2023).

III. Defendants violated Mr. Wainwright's constitutional rights in a state-created process

A. Mr. Wainwright's constitutional Due Process rights were violated when the Florida Supreme Court precluded him from raising state-court claims via his choice of pro bono counsel

The Fourteenth Amendment to the United States Constitution provides that a state shall not "deprive any person of life, liberty, or property, without due

process of law." U.S. Const. amend. XIV, § 1. Although there is no constitutional right to postconviction counsel, if a state opts to afford postconviction proceedings to indigent inmates, they "must comport with the Due Process and Equal Protection Clauses of the Fourteenth Amendment." *Tamalini v. Stewart*, 249 F.3d 895, 902 (9th Cir. 2001); *Smith v. Att'y Gen.*, No. 22-12950, 2023 WL 2592286 (11th Cir. Mar. 22, 2023) ("There is no federal constitutional right to a direct appeal or to postconviction review by the states, but once such a remedy is granted, its operation must conform to the due process requirements of the Fourteenth Amendment."). Further, because "minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate." *Vitek v. Jones*, 445 U.S. 480, 491 (1980).

"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." *Powell v. Alabama*, 287 U.S. 45, 69 (1932) (emphasis added).

Florida law expressly provides that "individuals sentenced to death are entitled to the appointment of capital postconviction counsel for the purpose of pursuing ***any*** collateral attacks on their convictions and sentences." *Barwick v.*

State, 361 So. 3d 785, 790 (Fla. 2023) (emphasis added); *see also* § 27.7001, Fla. Stat. ("it is the intent of the Legislature . . . to provide collateral representation of any person convicted and sentenced to death in this state."); § 27.702(2); Fla. R. Crim. P. 3.851(b)(1).

Chapter 27 thus not only codifies a statutory right to postconviction counsel, but defines the contours of Florida's capital collateral proceedings. *See generally* § 27.711 (outlining the terms and conditions of appointed counsel in capital collateral proceedings). Thus, by providing a statutory mechanism for death-sentenced inmates to proceed on their collateral attacks, including state habeas proceedings, Florida has bound itself to the mandate that its processes conform to the due process requirements of the Fourteenth Amendment. But Mr. Wainwright's Due Process rights were violated by Defendants' actions, which deprived him access to state habeas review without notice and less than two weeks before his scheduled execution—simply due to his choice of pro bono counsel.

1. Mr. Wainwright's right to proceed with counsel of his choice was violated

Due process recognizes and protects property interests "well beyond actual ownership of real estate, chattels, or money." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 571-72 (1972); *see also Redd v. Guerrero*, 84 F.4th 874, 893 (9th Cir. 2023). "The hallmark of property…is an individual entitlement grounded in state law." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-30 (1982) (overruled on

other grounds); *see also Roth*, 408 U.S. at 577. Such entitlements are "created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Roth*, 408 at 577. A state "may elect not to confer a property interest," but "it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards." *K.W. ex rel. D.W. Armstrong*, 789 F.3d 962, 973 (9th Cir. 2015) (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985)).

Where a right has been created through state action, due process protects, via property interest, "those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." *Roth*, 408 U.S. at 577. Among these rights, the United States Supreme Court has included such interests as in utility services, *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 9, 11-12 (1978); public education, *Goss v. Lopez*, 419 U.S. 565, 573 (1975); welfare benefits, *Goldberg v. Kelly*, 397 U.S. 254, 261-63 (1970); driver's licenses, *Bell v. Burson*, 402 U.S. 535, 539 (1971); and nursing care. *O'Bannon v. Town Ct. Nursing Ctr.*, 447 U.S. 773, 786 (1980). Likewise, where a state has made the appointment of collateral counsel available to indigent capital prisoners who opt for it, a property interest in such counsel is conferred. *Redd*, 84 F.4th at 892-93; see also *Town of Castle Rock*, 545 U.S. 748, 767 (2005) (recognizing entitlements with "some ascertainable monetary value" as triggering a property interest). And, where a deliberate decision of

government officials deprives such an interest, due process has been violated. *See Daniels v. Williams*, 474 U.S. 327 (1986) (collecting cases). Here, for the reasons laid out below, such a violation occurred.

a. An adverse party—the entity who seeks to have Mr. Wainwright executed—was unfairly allowed a role in dictating their opposing counsel

Mr. Wainwright's state habeas petition; the accompanying motion for a stay of execution; Ms. Backhus' notice of appearance; and Mr. Wainwright's notarized authorization were filed in the Florida Supreme Court on May 20, 2025. On that day, the court accepted the filings and ordered the State to file a substantive response by May 27, 2025. App. N (scheduling order). A full week passed—precisely one-third of the time until Mr. Wainwright's scheduled execution date—with no noted concerns by the State or the Florida Supreme Court regarding Ms. Backhus' representation in the original state habeas action. Then, within hours of the State's response, which argued that the petition should be stricken because it was filed by Ms. Backhus and not Mr. Harrison, the Florida Supreme Court issued its order stating that without Mr. Harrison's express adoption within the next day, the pleadings would be stricken. The timing of the order demonstrates that it was responsive to the State's arguments regarding the issue of Mr. Wainwright's counsel.

But the party-opponent seeking to enforce Mr. Wainwright's execution warrant must not be permitted input as to how decisions regarding his litigation are

made and by whom. Allowing the State input in this manner, when no prejudice would ensue from Ms. Backhus' representation of Mr. Wainwright, violated Mr. Wainwright's right to a fundamentally fair proceeding. *See Wilson v. Wainwright*, 474 So. 2d 1162, 1164 (Fla. 1985) (the basic requirement of due process in an adversarial system is that an accused be zealously represented at "every level"; in a capital case such representation is the "very foundation of justice"); *Ford v. Wainwright*, 477 U.S. 399, 424 (1986) (Powell, J., concurring in part and in the judgment) ("[F]undamental fairness is the hallmark of the procedural protections afforded by the Due Process Clause."). *See also Serra v. Mich. Dep't of Corrs.*, 4 F.3d 1348, 1358 (6th Cir. 1993) (Merrit, C.J., dissenting in part) (a judge "should not be allowed some broad discretion to choose the lawyer for the accused against his will….Neither should the prosecution be invited to use trial stratagems to defeat a defendant's choice of counsel.").

Furthermore, as *Melton v. State* instructs: "if a Florida court were to arbitrarily refuse to allow privately retained counsel to represent a postconviction petitioner voluntarily, such refusal would amount to a denial of due process …" 56 So. 3d 868, 871 (Fla. 1st DCA 2011). And, as *Caplin & Drysdale, Chartered v. U.S.*—the U.S. Supreme Court case upon which *Weaver v. State*, 894 So. 2d 178 (Fla. 2004) explicitly relies—makes plain, although an accused person may not insist on representation by his chosen counsel when he cannot afford to compensate that

counsel, "the Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, ***or who is willing to represent the defendant even though he is without funds***." 491 U.S. 617, 624-25 (1989) (emphasis added). *See also Randolph v. Secretary, Penn. Dep't of Corrs.*, 5 F 4th 362, 378 (3d Cir. 2021) (Absent significant prejudice to the prosecution or obstruction to the proceedings, courts must provide "every reasonable accommodation to facilitate that representation"). Mr. Wainwright was entitled to counsel of his choice, particularly when, had the Florida Supreme Court permitted Mr. Wainwright to proceed with Ms. Backhus representing him on the claim for relief that she filed and he affirmed, nothing about the scheduling order would have been modified, and there would have been no additional cost.

While the State would have suffered no prejudice from Ms. Backhus' representation of Mr. Wainwright in this matter, the prejudice to Mr. Wainwright is evident: at the request of an adverse party whose interest it is to have his claims denied, he was stripped of his chosen counsel and lost access to the Court on his state habeas matter. This denied him due process of law. *See Melton v. State*, 56 So. 3d 868, 871 (Fla. 1st DCA 2011) ("[I]f a Florida court were to arbitrarily refuse to allow privately retained counsel to represent a postconviction petitioner voluntarily, such refusal would amount to a denial of due process …").

Indeed, the failure to permit Mr. Wainwright to be represented by the pro bono counsel he authorized was indeed arbitrary, as the Florida Supreme Court has permitted such representation in indistinguishable under-warrant circumstances. *See Howell v. State*, 109 So. 3d 763, 773 (Fla. 2013) ("In reality, the trial court permitted Howell to exercise his choice of counsel by recognizing [retained counsel] as counsel of record…and since retained counsel filed their notice of appearance, they have filed motions, conducted discovery, and even filed the current appellate briefs with this Court."). Notably, although appointed counsel was not removed in *Howell*, retained counsel alone signed the appellate briefs, and subsequently served appointed counsel along with opposing counsel. In *Howell*, retained counsel had neither prior familiarity with Mr. Howell's case nor the extensive capital postconviction experience Ms. Backhus has. Inexplicably, Mr. Howell unlike Mr. Wainwright, was able to obtain counsel of his choice who advanced the claims of his choosing.

b. Mr. Wainwright was given no notice or opportunity to respond regarding the issue of his counsel

Despite Mr. Wainwright's state habeas petition and accompanying documents (including Ms. Backhus' notice of appearance) pending for a full week in the Florida Supreme Court, the State waited until its substantive response to argue that the petition should be stricken. This Court's subsequent order—issued prior to the pre-scheduled deadline for Mr. Wainwright's reply to the State's response—rewarded

the State's sandbagging and deprived Mr. Wainwright of notice or an opportunity to be heard on the issue of his counsel.

This created a fundamentally unfair situation and deprived Mr. Wainwright of his right to due process in his under-warrant proceedings. "[F]undamental fairness is the hallmark of the procedural protections afforded by the Due Process Clause." *Ford v. Wainwright*, 477 U.S. 399, 424 (1986) (Powell, J., concurring in part and in the judgment). The right to due process entails "notice and opportunity for hearing appropriate to the nature of the case." *Cleveland Bd. of Ed.*, 470 U.S. at 542 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). The opportunity to be heard must be "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *see also Fuentes v. Shevin*, 407 U.S. 67, 80 (1972); *Dep't of Law Enforcement v. Real Property*, 588 So. 2d 957, 960 (Fla. 1991) ("Procedural due process serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue. Procedural due process requires both fair notice and a real opportunity to be heard.")

No such opportunity was given here. With Mr. Wainwright's authorization, Ms. Backhus filed a state habeas petition that was pending for a full week—one-third of Mr. Wainwright's remaining life, based on the scheduled execution date. But, within hours of the State's interference, and without waiting for Mr. Wainwright's substantive reply as the prior scheduling order contemplated, the

Florida Supreme Court issued a directive without notice: that Mr. Wainwright was required to either secure the approval of counsel who had not made any effort to speak with him in a decade and has repeatedly waived his rights without any consultation; or his sole avenue for pursuing equitable relief from his death sentence would be forfeited.

Further, that the Florida Supreme Court based its ultimatum on a decision of the Hamilton County Circuit Court—which also provided Mr. Wainwright with no opportunity to be heard—the decisions of both courts rested on false statements and mischaracterizations that Mr. Wainwright had no ability to correct. For instance, Mr. Harrison falsely stated that Linda McDermott, Chief of the Capital Habeas Unit for the Office of the Federal Public Defender – Northern District of Florida, assured him she would communicate with Mr. Wainwright on his behalf and discuss the claims Mr. Harrison was pursuing with him. Ms. McDermott made no such representation. Likewise, Mr. Harrison falsely represented that he reviewed the claims developed by Mr. Wainwright's counsel prior to rejecting them. But no claims were sent to him for his review because they were not finalized until after he submitted a postconviction pleading without conferring with his client. Finally, Mr. Harrison distorted the communications between he and Ms. McDermott. App. E (Affidavit of Linda McDermott).

Mr. Wainwright had no opportunity to be heard—much less a meaningful

one—before the Florida Supreme Court deprived him of his choice of counsel and, accordingly, his ability to pursue state habeas relief.

2. Mr. Wainwright's right to raise his chosen legal claims was violated

From early in this Nation's history, the Supreme Court has recognized that "[w]herever one is assailed in his person or his property, there he may defend." *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876). This principle has been explicitly reinforced in terms of due process, finding that the right to due process "at a minimum [requires] that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971) (citing *Mullane*, 339 U.S. at 313). "[D]enial of due process is the failure to observe that fundamental fairness essential to the very concept of justice." *Lisenba v. People of State of California*, 314 U.S. 219, 236 (1941).

Where the State has created a procedural entitlement, even if significant discretion is involved in carrying it out, the process must comply "with the dictates of the Constitution-and, in particular, in accord with the Due Process Clause." *Evitts v. Lucey*, 469 U.S. 387, 389 (1985). A state creates a protected liberty interest by placing substantive limitations on official discretion." *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983). This occurs when a State: 1) establishes "substantive predicates" to guide official decision-making; and (2) mandates the

outcome to be reached through "explicitly mandatory language." *Kentucky Dep't of Corrs. v. Thompson*, 490 U.S. 454 (1989). This includes death-warrant proceedings in the Florida state courts. *Tanzi v. State*, -- So. 3d -- 2025 WL 971568 *2 (Fla. 2025), *cf. Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 288 (1998) (recognizing that even in wholly discretionary proceedings such as Executive clemency determinations, there remains a life interest protected by the Due Process Clause).

Under Florida law, "any person detained in custody, whether charged with a criminal offense or not," may petition the Florida Supreme Court for a writ of habeas corpus. § 79.01, Fla. Stat.; *see also* Art. I, § 13, Fla. Const. The writ "shall be grantable of right, freely and without cost." Art. I, § 13. The state-created right to petition for habeas corpus gives rise to a liberty interest protected by due process. *See Red v. Guerrero*, 84 F.4th 874, 898 (9th Cir. 2023); *Vitek*, 445 U.S. at 488-89 (quoting *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974) ("Once a State has granted prisoners a liberty interest, we held that due process protections are necessary 'to insure that the state-created right is not arbitrarily abrogated.'")).

Writs of habeas corpus are original proceedings, and the Florida Supreme Court has original jurisdiction to hear and issue these writs. See Art. V, § (b)(8); Fla. R. App. P. 9.030(A)(3). While the right to habeas relief "is subject to certain reasonable limitations consistent with the full and fair exercise of the right," it

"should be available to all through simple and direct means, without needless complication or impediment, and should be fairly administered in favor of justice and not bound by technicality." Allen v. Butterworth, 756 So. 2d 52, 61 (Fla. 2000) (quoting Haag v. State, 591 So. 2d 614, 616 (Fla. 1992)).

As laid out above, Due Process requires "notice and opportunity for hearing appropriate to the nature of the case[,]" *Cleveland Bd. of Ed.*, 470 U.S. at 542 (quoting *Mullane*, 339 U.S. at 313 (1950), and which takes place "at a meaningful time and in a meaningful manner." *Mathews*, 424 U.S. at 333. In the case of collateral death-warrant proceedings provided by a State, this means the ability to prepare and file the relevant pleadings.

But here, although the Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense[,]" *Crane v. Kentucky*, 476 U.S. 683, 690 (1986), Mr. Wainwright was wholly deprived of his ability to pursue a viable path to relief from his death sentence that had been explicitly contemplated in his case by the Florida Supreme Court's scheduling order. App. A (scheduling order entitling Mr. Wainwright to file a state habeas petition by May 20, 2025). Although Mr. Wainwright filed a legally sufficient, timely petition for habeas corpus relief in the Florida Supreme Court, the petition was stricken for no other reason than that his chosen counsel filed it.

Further, once the State requested that the petition be stricken—in a substantive response filed a week later with only two more weeks preceding Mr. Wainwright's execution—Mr. Wainwright was provided no opportunity to be heard on the matter. Despite the Florida Supreme Court previously having advised Mr. Wainwright that his substantive reply would be due on May 28, 2025 (a day after the State's substantive response), prior to that deadline the Florida Supreme Court ordered that if Mr. Harrison did not adopt the state habeas petition, the pleading would be stricken. Indeed, when Mr. Wainwright filed an emergency motion for rehearing of the May 27, 2025 order with a proffered substantive reply attached, the Florida Supreme Court denied the rehearing motion and struck the reply. There could be no clearer deprivation of notice and an opportunity to be meaningfully heard. As a result, despite the Florida Supreme Court allowing numerous other indigent state habeas petitioners to proceed with chosen pro bono or retained counsel, Mr. Wainwright was not just denied his choice of counsel but his under-warrant state habeas proceedings *in toto*.

3. Mr. Wainwright's right to access the courts was violated

A prisoner's right of access to the courts is well established. *See Lewis v. Casey*, 518 U.S. 343, 350 (1996); *Alvarez v. Fla. Att'y Gen.*, 679 F.3d 1257 (11th Cir. 2012). The right does not turn on whether a prisoner may be physically present in the courtroom, but also whether he is being obstructed in preparing or filing legal

documents. *See, e.g.*, *Johnson v. Avery*, 393 U.S. 483, 489-90 (1969); *Ex parte Hull*, 312 U.S. 546, 547-49 (1941). Here, the oppressive conditions of Mr. Wainwright's expedited death warrant, restrictive death watch, and inability to proceed with his chosen qualified and pro bono counsel—despite the fact that his appointed attorney has not called or visited him in a decade—have created such an obstruction. This violates Mr. Wainwright's due process rights.

Mr. Wainwright's rights to proceed on his viable legal claims and be represented by his chosen counsel were especially critical given Florida's oppressive warrant process, which restricts Mr. Wainwright's efforts to access the courts *pro se* or even to self-advocate outside of the courtroom. Mr. Wainwright's death warrant was signed with no advance notice to him that he would be the one selected out of dozens of warrant-eligible prisoners on Florida's death row. An execution date was set for a mere 32 days later. Upon the signing of the warrant, Mr. Wainwright was immediately moved—again with no notice—to a different facility and placed on restrictive "death watch" restrictions.

On death watch, Mr. Wainwright cannot affirmatively make phone calls. He is dependent on his attorneys to schedule legal calls and visits. He cannot send emails, nor does he have access to his tablet. His calls are restricted to individuals already approved on his visitation list. Any other communications must be snail-mailed. As of this year, items mailed to individuals on death watch presently take

approximately one to three weeks to reach them.

Due to the short warrant period, there is no feasible way for Mr. Wainwright to attempt to formally discharge his counsel via *Nelson* proceedings. He cannot raise his concerns directly to the court, as he is not present for any of the state-court proceedings (unless an evidentiary hearing is ordered). And he may not represent himself *pro se*. Fla. R. Crim. P. 3.851(b)(6). Put simply, Mr. Wainwright is more dependent on his counsel during under-warrant proceedings than at any other stage of his legal process. By depriving him of the ability to have any say in who represents him—and, consequently, by striking his only opportunity to seek state habeas relief from his imminent execution for no other reason than that his chosen counsel filed it—Defendants have denied Mr. Wainwright of meaningful access to the courts.

B. Mr. Wainwright's constitutional right to Equal Protection was violated when the Florida Supreme Court cut off his choice of counsel and access to the courts

The Fourteenth Amendment to the U.S. Constitution states: "No State shall … deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend XIV, § 1. Likewise, as noted above, "[i]f 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." *Powell v. Alabama*, 287 U.S. 45, 69 (1932) (emphasis added).

Mr. Wainwright, a capital postconviction defendant facing imminent execution sought to challenge his death sentence before the Florida Supreme Court in an original proceeding. *See* Fla. R. App. P. 9.100 (a) and (g). Mr. Wainwright employed his former federal counsel, Terri Backhus, as *pro bono* counsel to represent him in his under-warrant litigation, including filing a petition for writ of habeas corpus before the Florida Supreme Court. The petition was authorized by appellate rule and specifically identified in the Florida Supreme Court's scheduling order that was issued the same evening that Governor DeSantis signed the death warrant. App. A ("Any writ petition that is to be filed, is due by 4:00 p.m., Tuesday, May 20, 2025."). However, though Mr. Wainwright timely filed his petition through Ms. Backhus, the Florida Supreme Court struck the petition citing to Fla. R. Crim. P. 3.851(b)(4)-(6).

Fla. R. Crim. P. 3.851 applies only to death sentenced individuals in the State of Florida whose sentences have been affirmed on direct appeal. According to the provisions of the rule cited referenced by the Florida Supreme Court: (1) one lawyer is designated as lead counsel for state court litigation; (2) after counsel files a notice of appearance, *including private counsel*, representation continues unless and until a court permits withdrawal or "the sentence is reversed, reduced, or carried out"; (3)

a defendant may not represent himself or herself. However, these provisions were added to Rule 3.851 in order to ensure lead counsel for a death sentenced individual met minimum qualifications and the language in provision (b)(6) was specifically intended to preclude pro se litigation, not to strip a death sentenced individual's choice of counsel. *See In re Amendments to the Fla. Rules of Jud. Admin; The Fla. Rules of Crim. P.; and the Fla. Rules of App. P.—Capital Postconviction Rules*, 148 So. 3d 1171, 1173-74 (2014). Thus, the provisions cited by the Florida Supreme Court were inapplicable to the issue of Mr. Wainwright's choice of counsel and access to the Florida Supreme Court and violate Mr. Wainwright's right to equal protection.

Importantly: "Equal protection … emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable." *Ross v. Moffitt*, 417 U.S. 600 (1974). Here, Mr. Wainwright, a litigant seeking to bring an original action before the Florida Supreme Court is being denied counsel of his choice only because he is a death sentenced individual. Any other litigant could proceed with an attorney of his or her choosing or even *pro se*. However, as *Powell* recognized, denying a litigant counsel of choice in any case violates the constitution.

There is simply no rational reason to treat Mr. Wainwright differently or to limit his right to counsel of his choice. In the Sixth Amendment context, though the U.S. Supreme Court has noted that the right to choice of counsel is not absolute,

none of the concerns identified were present here. *See United States v. Gonzalez-Lopez*, 548 U.S. 140, 151 (2005) ("Nor may a defendant insist on representation by a person who is not a member of the bar, or demand that a court honor his waiver of conflict-free representation."); *See also Wheat v. United States*, 486 U.S. 153, 159-60 (1988).

Ms. Backhus is a member in good standing with the Florida Bar, met the rule-based qualifications to represent a death-sentenced individual in his postconviction appeals, was familiar with Mr. Wainwright's case having previously represented him for several years, and timely filed his petition for writ of habeas corpus. Thus, although there was no Sixth Amendment right for an indigent defendant to obtain specific counsel of his choice at the State's expense, the calculus was altered when—as here—the defendant sought to proceed in his death penalty litigation while represented by well-qualified pro bono counsel who is familiar with the specific client and case, and able to proceed on the Court's predetermined schedule. *See Caplin & Drysdale, Chartered v. U.S.*, 491 U.S. 617, 625-25 (1989) ("the Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, *or who is willing to represent the defendant even though he is without funds*.").[1]

[1] *See also Randolph v. Secretary, Penn. Dep't of Corrs.*, 5 F 4th 362, 378 (3d Cir. 2021) (for this right to be meaningful, courts must provide "every reasonable accommodation to facilitate that representation, provided that the selection and

Additionally, the Florida Supreme Court had previously recognized the choice of counsel for capital postconviction defendants demonstrating a further violation of Mr. Wainwright's right to equal protection. *See Merck v. State*, 216 So. 3d 1285 (Fla. 2017) ("Rule 2.505(f)(2) authorizes the termination of an attorney's appearance through substitution of counsel, which is the method that [counsel seeking substitution] sought in this case after we specifically directed her to do so …"); *Jones v. Jones*, Case No. SC15-968 (Fla. May 28, 2015) (permitting counsel who was not counsel of record in the circuit court to litigate a state habeas petition); *Bailey v. Jones*, Case No. SC15-969, 2015 WL 9257903 (Fla. Dec. 14, 2015) (same); *Ponticelli v. State*, Case No. SC03-17 (Fla. Sept. 10, 2003) (private counsel entered notice of appearance to represent Ponticelli as retained counsel; registry counsel did not withdraw and was not substituted); *Zack v. State*, Case No. SC03-1374, SC04-201 (Fla. Dec. 18, 2003) (private counsel entered a notice of appearance to represent Zack as retained counsel; registry counsel withdrew after private counsel's notice of appearance was filed); *Coleman v. State*, Case No. SC04-1520 (Fla. Feb. 16, 2005) (same); *Groover v. State*, Case No. SC04-86 (Fla. May 21, 2004) (allowing pro bono counsel to file motion for substitution). Restricting a right to choice of counsel to Mr. Wainwright when he was able to

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retention of that counsel will not substantially prejudice the prosecution" or impair a court's ability to proceed).

obtain the services of an extremely experienced attorney over an attorney who just two years before had been deemed inadequate in under-warrant litigation, when other death sentenced individuals were allowed choice of counsel without any rational basis violated the constitution.

Finally, as the U.S. Supreme Court recognized in *Ross*, the Equal Protection Clause requires "the state appellate system be 'free of unreasoned distinctions'". 417 U.S. at 611 citing *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966). Further, "[t]he State cannot adopt procedures which leave an indigent defendant entirely 'cut off from any appeal at all,' by virtue of his indigency, or extend to such indigent defendants merely a 'meaningless ritual' while others in better economic circumstances have a 'meaningful appeal.' *Id*. (citations omitted). Here, Mr. Wainwright was cut off from an appeal by virtue of his indigency despite the fact that he obtained pro bono counsel to represent him in his state habeas corpus proceedings.

IV. Defendants acted under color of state law

Defendants acted under color of state law when they violated Mr. Wainwright's federal rights. "In order to be entitled to relief under § 1983, the plaintiff must show (a) that the defendant deprived him of a right secured to him by the Constitution or federal law and (b) that *the deprivation occurred under color of state law.*" *Brown v. Miller*, 631 F.2d 408, 411 (5th Cir. 1980) (citations omitted) (emphasis added). "Color of law means 'pretense of law,' and it does not necessarily

mean under authority of law." *United States v. Picklo*, 190 F. App'x 887, 888 (11th Cir. 2006) (quoting *United States v. Jones*, 207 F.2d 785, 786-87 (5th Cir. 1953)). Actions that fall into "under color of state law" need not be specifically authorized by law. *See, e.g.*, *Brown*, 631 F.2d at 411 ("Action taken 'under color of' state law is not limited only to that action taken by state officials pursuant to state law."). Even when a defendant acts illegally, it can still be an action under color of state law. *Picklo*, 190 F. App'x at 888. "Determining whether a defendant acted under color of law involves an assessment of the totality of the circumstances." *Id.* (citing *Griffin v. City of Opa-Locka*, 261 F.3d 1295, 1303-04 (11th Cir. 2001)).

Each of the named defendants in this case participated in the denial of Mr. Wainwright's federal rights, actually or constructively, through their official positions. Governor Ron DeSantis is responsible for the selection, timing, and signing of death warrants, which has contributed to the oppressive death-warrant schedule that prevents Mr. Wainwright from adequately accessing the courts. Florida Attorney General James Uthmeier is the controlling authority seeking to facilitate Mr. Wainwright's execution absent any ability to be heard on his state habeas claims and represented by his chosen counsel. Indeed, it was Uthmeier's deputy who first objected to Ms. Backhus' representation and requested that Mr. Wainwright's state habeas petition be stricken. Warden David Allen and DOC Secretary Ricky Dixon maintain custody over Mr. Wainwright, and are responsible for the death watch

restrictions which prevent Mr. Wainwright from accessing the courts without his attorney. And, Florida Supreme Court Chief Justice Carlos Muniz is the leader of the entity which has unconstitutionally blocked Mr. Wainwright from accessing the court, from being represented by his chosen counsel as similarly situated non-indigent individuals would be, and from being heard in any capacity in state habeas proceedings.

Mr. Wainwright has appropriately sued Defendants in this action in their official capacities. "When the suit is brought only against state officials, a question arises as to whether that suit is a suit against the State itself." *Penhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984). The Eleventh Amendment bars suits against state officials where the suit is, in essence, a suit against the State and not the officials, and the officials are only sued nominally. *Id.* However, the Supreme Court has recognized time and again that there is "an important exception to this general rule: a suit challenging the constitutionality of a state official's action is not one against the State." *Id.* at 102. Likewise, a suit that challenges whether a state official's action violates an individual's constitutional rights is not one against the State. *See, e.g., Doe v. Round Valley Unified School Dist.*, 873 F. Supp. 2d 1124, 1130-31 (D. Ariz. 2012) ("Section 1983 provides no cause of action unless someone acting 'under color of law' violated a constitutional or federal statutory right.").

This is not a suit that names Defendants nominally while actually seeking to sue the State of Florida. This suit challenges the actions of the named officials in their application of Florida's statutes, rules, and procedures—including but not limited to Fla. R. Crim. P. 3.851, Fla. R. App. P. 9.100, Fla. Stat. § 922.051, and Fla. Admin. Code Ann. R. 33-601.830—against Mr. Wainwright in a manner that violated his constitutional rights. Defendants' actions were taken with and through the authority vested in them through Florida's statutory and rules-based scheme, and those actions violated Mr. Wainwright's rights. Thus, Defendants in this case are sued in their official capacities, and are appropriately named as defendants in this matter.

V. Mr. Wainwright is entitled to injunctive relief

Injunctive relief is permissible and appropriate in this case. Mr. Wainwright seeks prospective injunctive relief and declaratory relief against Defendants, state officials, for their violation of his federal rights in his under-warrant state-court proceedings challenging his death sentence—proceedings to which Mr. Wainwright is entitled under Florida law before his death sentence may be carried out. Mr. Wainwright asks that Defendants not be allowed to execute him based on a constitutionally violative preclusion of available processes for state-court review of his death sentence.

VI. This Court should enter a preliminary and, ultimately, permanent injunction prohibiting Mr. Wainwright's execution

A stay of execution of a death sentence is a form of injunctive relief, with identical elements. *See Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (announcing the elements for injunctive relief). A stay is warranted where four factors are satisfied: "(1) [the applicant] has a substantial likelihood of success on the merits; (2) he will suffer irreparable injury unless the injunction issues; (3) the stay would not substantially harm the other litigant; and (4) if issued, the injunction would not be adverse to the public interest." *Mann v. Palmer*, 713 F.3d 1306, 1310 (11th Cir. 2013) (quoting *Valle v. Singer*, 655 F.3d 1223, 1225 (11th Cir. 2011)); *see also Barwick v. Governor of Fla.*, 66 F.4th 896, 900 (11th Cir. 2023).

As detailed below, and in Mr. Wainwright's simultaneously filed motion for a stay of execution, Mr. Wainwright has proffered facts that satisfy each of these elements. This Court should stay Mr. Wainwright's scheduled June 10, 2025 execution pending the resolution of this action in the ordinary course, without the exigencies of a truncated death warrant.

A. This cause of action has a substantial likelihood of success

The first reason that an injunction should ensue is that Mr. Wainwright's underlying cause of action has a substantial likelihood of success. Federal precedent flowing from the United States Supreme Court has repeatedly held that due process—even in proceedings that are not constitutionally guaranteed but have been provided

by the State—requires notice and a meaningful opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *see also Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985). This similarly applies extends to Mr. Wainwright's state-created right to counsel in his death-warrant proceedings. *See Powell v. Alabama*, 287 U.S. at 69; *Caplin & Drysdale, Chartered*, 491 U.S. at 624-25. And, failure to allow Mr. Wainwright to proceed with his counsel of choice where a similarly situated non-indigent litigant would be permitted to do so violates his right to Equal Protection. *See Ross*, 417 U.S. at 600, 611.

Although the Florida Supreme Court has recognized that Mr. Wainwright retains his due process rights in under-warrant collateral proceedings, *Tanzi*, 2025 WL 971568 at *2, its refusal to allow Mr. Wainwright to access state habeas proceedings in any meaningful manner—solely because of the court's inexplicable refusal to hear from his qualified pro bono counsel—offends "the very concept of justice." *Lisenba*, 314 U.S. at 236.

The deprivation of due process and equal protection has resulted in Mr. Wainwright's complete inability to raise a viable claim for relief from his death sentence. His appointed counsel, Baya Harrison, refuses to raise a claim despite having conducted no investigation and not having contacted Mr. Wainwright about the claim upon which he wishes to be heard. His pro bono counsel, Terri Backhus, has been barred from any filings that are not expressly adopted by appointed

counsel. Under Florida's own rules, he cannot represent himself pro se. And, due to the restrictive conditions of his death-watch confinement, he cannot even independently access the courts in any meaningful way to apprise them of his concerns and desires. Such a preclusion of "a meaningful opportunity [for Mr. Wainwright] to present a complete defense[,]" *Crane*, 476 U.S. at 690, cannot be tolerated at this last juncture of whether he lives or dies.

B. Mr. Wainwright will suffer irreparable injury—death—if no injunction issues

The injury Mr. Wainwright faces is clear: he will be executed unless this Court issues an injunction, and that execution will occur without Mr. Wainwright ever having the state-court review of his death sentence to which he is entitled by Florida's death-warrant scheme—much less a review that complies with constitutional guarantees of due process and equal protection. Irreparable injury is presumptive under warrant. *See, e.g.*, *In re Holladay*, 331 F.3d 1169, 1177 (11th Cir. 2003) ("We consider the irreparability of the injury that petitioner will suffer in the absence of a stay to be self-evident."); *Ferguson v. Warden, Fla. State Prison*, 493 F. Appx 22, 26 (11th Cir. 2012) (Wilson, J., concurring) ("As a general rule, in the circumstance of an imminent execution, this court presumes the existence of irreparable injury."); *see also Tanzi v. Sec'y, Fla. Dep't of Corr.*, No. 4:25-cv-144, ECF No. 24 at 8 n.4 (N.D. Fla. April 3, 2025).

C. An injunction would not harm Defendants

An injunction would not substantially harm Defendants, who are all arms of the State. While the State has a legitimate interest in the timely enforcement of valid criminal judgments, it does not have a legitimate interest in executing Mr. Wainwright without first providing the collateral review to which Florida's own rules and statutes state he is entitled.

Where an individual's claim underlying his desire for a stay of execution means further proceedings—for Mr. Wainwright, access to the collateral review Florida law contemplates—that weighs heavily against a State's interest in the person's imminent execution. *See, e.g., In re Holladay*, 331 F.3d at 1177 ("Moreover, contrary to the State's contention that its interest in executing Holladay outweighs his interest in further proceedings, we perceive no substantial harm that will flow to the State of Alabama or its citizens from postponing petitioner's execution to determine whether that execution would violate the Eighth Amendment.").

D. An injunction would not be adverse to the public interest

Granting an injunction would not be adverse to the public interest. Like the State, the public has a legitimate interest in the timely enforcement of valid criminal judgments. However, the public and judiciary also have a heightened interest in

ensuring that individuals are not executed without access to the courts and counsel, and the ability to fairly obtain proceedings to which they are entitled under state law.

Further, Mr. Wainwright has been on Florida's death row for 30 years. In that time, he has greatly benefited from the structure of the prison environment—after all, structure is the best remedy for the cognitive and neurobehavioral impairments from which he suffers. As such, Mr. Wainwright has had an exemplary disciplinary record, is an amiable and peaceful presence on death row, and has continuously matured. There is no risk of harm in his continued life while this Court meaningfully considers the issues presented by this memorandum and the underlying complaint.

E. An injunction would not result in undue delay

Additionally, although the question of delay is not an independent stay factor, it is worth noting that there would be no undue delay associated with staying the proceedings. *See Woods v. Warden*, 952 F.3d 1251 (11th Cir. 2020) (in the context of stays of execution, courts "must be mindful of…unjustified delay" in seeking a stay of execution). Mr. Wainwright has been eligible for a death warrant since 2007, when the Eleventh Circuit affirmed the dismissal of his federal habeas corpus petition. In other words, Mr. Wainwright has been warrant-eligible for 60% of his time on death row. Yet a warrant was not signed until less than one month ago. Any brief delay that would result from an injunction would be minimal in comparison to the State waiting nearly two decades to sign Mr. Wainwright's death warrant.

Further, any delay would not be undue, and would indeed be justified. Mr. Wainwright filed this action mere days after the underlying violation of his federal rights. Had the State provided Mr. Wainwright with the processes to which he is entitled under its own laws, his death-warrant proceedings would be proceeding in compliance with the Florida Supreme Court's scheduling order. Any delay resulting from an injunction would be attributable to the State, not Mr. Wainwright.

VII. Conclusion

For the reasons above and in his accompanying complaint and motion for a stay of execution, Mr. Wainwright requests that this Court (1) grant a preliminary injunction prohibiting Defendants from executing him until this Court has had the opportunity to meaningfully consider his federal constitutional arguments; (2) declare that Defendants violated Mr. Wainwright's federal constitutional due process and equal protection rights during his state-court death warrant proceedings; and (3) grant a permanent injunction barring Defendants from executing Mr. Wainwright until Defendants provide him with a state-court review of his death sentence that comports with the United States Constitution.

Respectfully submitted,

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