No. 22-6819

In The
Supreme Court of the United States

DONALD DAVID DILLBECK,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION TO CERTIORARI

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

CAROLYN M. SNURKOWSKI
Associate Deputy Attorney General
Counsel of Record

Jason William Rodriguez
Assistant Attorney General

Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
Carolyn.Snurkowski@myfloridalegal.com
(850) 414-3300

COUNSEL FOR RESPONDENT

CAPITAL CASE
QUESTIONS PRESENTED

Dillbeck killed Deputy Hall with his own gun in 1979 while fleeing from an attempted murder investigation in Indiana. He negotiated a guilty plea to Deputy Hall's murder and received a life sentence. Eleven years later, he escaped from custody, bought a knife, and carjacked Faye Vann because she looked like an easy victim he could use to get to Orlando. When she fought back, he stabbed her over twenty times, severed her windpipe, and caused her to drown in her own blood. Dillbeck received a death sentence that finalized in 1995 when this Court denied certiorari.

Florida Governor Ron DeSantis recently signed a death warrant for Dillbeck and his execution is scheduled for February 23, 2023. Dillbeck asked Florida's courts to stay his execution and vacate his sentence. The Florida Supreme Court rejected relief and refused to stay his execution on both procedural state-law, and substantive grounds. This Court should decline to exercise certiorari jurisdiction over the following questions presented:

I. Do the Eighth and Fourteenth Amendments prohibit states from barring dilatorily pursued exemption-from-execution claims based on evolutions in the medical community's views?

II. Does the Eighth Amendment require unanimous jury sentencing when the Eighth Amendment claim is procedurally barred under state law, the Sixth (not Eighth) Amendment governs the right to a jury trial, and any Eighth Amendment holding would not retroactively affect Dillbeck?

TABLE OF CONTENTS

TABLE OF CITATIONS AND AUTHORITIES

Cases

Other Authorities

OPINION BELOW

The Florida Supreme Court's decision petitioned for review appears as *Dillbeck v. State*, No. SC23-190, 2023 WL 2027567, at *1 (Fla. Feb. 16, 2023).

JURISDICTION

This Court has jurisdiction over the question of whether the Eighth and Fourteenth Amendments bar the State from imposing a diligence requirement for exemption-from-execution claims related to the evolving standards of the medical community. *See* 28 U.S.C. § 1257(a); 28 U.S.C. § 2101(c). But (as explained below) it lacks jurisdiction over the question of whether the Eighth Amendment requires unanimous jury sentencing because the Florida Supreme Court rejected that claim on a state-law bar to relitigation that Dillbeck has failed to challenge.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Eighth Amendment to the United States Constitution:

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

The Fourteenth Amendment to the United States Constitution, section one:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

> wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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.

STATEMENT OF THE CASE

Dillbeck killed Faye Vann by brutally stabbing her until she drowned in her own blood because she refused to be the easy victim he thought would help him complete his escape from the life sentence imposed eleven years earlier. Dillbeck received the life sentence in 1979 for murdering Deputy Hall with his own gun while fleeing Indiana to avoid arrest for attempted murder. But for Faye Vann's 1990 murder, he was sentenced to die. The Florida Supreme Court refused to let him escape justice on the eve of his execution for both procedural and substantive reasons. This Court should refuse to grant certiorari on Dillbeck's case for the fifth[1] time.

1979 Murder of Deputy Hall

In 1979, Dillbeck stabbed Philip Reeder in the heart with a pocketknife after Mr. Reeder tried to stop him from stealing a car radio. (DA.15:2274-75, DA.16:2289-91.) Dillbeck stole a car and fled from Indiana to Florida after police began investigating him. (DA.15:2276, 2295.) Once he got to Fort Myers, he parked on a

[1] *Dillbeck v. Florida*, 514 U.S. 1022 (1995) (denying certiorari on Dillbeck's direct appeal); *Dillbeck v. Tucker*, 132 S. Ct. 203 (2011) (denying certiorari on the Eleventh Circuit's refusal to issue a certificate of appealability); *Dillbeck v. Florida*, 139 S. Ct. 162 (2018) (denying certiorari on Dillbeck's second successive postconviction motion raising a claim under *Hurst v. Florida*, 577 U.S. 92, 94 (2016)); *Dillbeck v. Florida*, 141 S. Ct. 2733 (2021) (denying certiorari on Dillbeck's third successive postconviction motion raising a claim of newly discovered evidence of Neurodevelopmental Disorder associated with Prenatal Alcohol Exposure ("ND-PAE").)

beach and Deputy Hall approached him to see what he was doing there. (Id. at 2277.) Dillbeck lied and said he was waiting on a hotel. (Id.) When Deputy Hall asked for identification, Dillbeck lied again and said his identification was in the trunk. (Id.)

Deputy Hall found drug-related contraband in the vehicle and asked Dillbeck if it belonged to him. (Id.) When Dillbeck confessed it did, Deputy Hall began to arrest Dillbeck and pat him down. (Id.) Dillbeck was afraid of being arrested because of the Indiana stabbing, so he "hit" Deputy Hall "in his nuts" and took off running. (Id. at 2277, 2295.) But Deputy Hall caught up with him, tackled him, and they began to wrestle on the beach. (Id. at 2277-78.) As they wrestled, Dillbeck pulled Deputy Hall's gun out of its holster and shot him twice—once in the face and once in the back. (Id. at 2278, 2298-99.) Deputy Hall died from the gunshot wound to his back. (DA.14. at 2235.) Dillbeck unsuccessfully tried to start the car and returned several times that night to get things out of it. (DA.15:2278.) He was captured the next morning. (Id.)

1979 Negotiated First-Degree Murder Plea

Dillbeck was charged with first-degree murder and represented by the Elected Public Defender for Lee County and a Chief Assistant Public Defender. (ROA at 977, 988.) The Elected Public Defender negotiated a deal with the State where Dillbeck would plead guilty to first-degree murder in exchange for imposition of a life sentence

(with parole eligibility after twenty-five years) rather than the death penalty.[2] (ROA:985-87, 994, 1006.) The court accepted Dillbeck's first-degree murder guilty plea after an extensive colloquy and finding Dillbeck was "intelligent," understood the "nature of the charges filed against" him, the "consequences of pleading guilty to those charges," that his "decision to plead guilty" was "freely, voluntarily, and intelligently made, and that" he "had the advice and counsel of a competent lawyer." (ROA:977-1014.) The court sentenced Dillbeck to life with parole eligibility after twenty-five years. (ROA:1017-1019.)

1990 Escape from Custody and Faye Vann Murder

Dillbeck refused to wait twenty-five years for parole eligibility and squandered the second chance at life his 1979 negotiated guilty plea gave him. In 1990, while catering an event as part of an inmate-work program, Dillbeck escaped from custody. (DA.12:1820-22.) Dillbeck walked to Tallahassee and bought a knife with the intention of carjacking someone and forcing them to give him a ride to Orlando, where he had a friend. (DA.13:1975-79, 1990-91.) He needed someone to drive him because he had forgotten how to drive. (Id. at 1979.)

Dillbeck saw Faye Vann alone in her car in a mall parking lot and decided to carjack and force her to drive him to Orlando because she looked like an easy victim.

---

[2] Even though he was fifteen (almost sixteen) when he murdered Deputy Hall, Dillbeck was eligible for a death sentence under Florida law in 1979 because this Court's decision in *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988) (holding the Eighth Amendment prohibited "the execution of a person who was under 16 years of age at the time of his or her offense") had not yet issued and Florida's statutory law did not preclude the death penalty for juvenile offenders of any age before *Thompson*. *See Thompson*, 487 U.S. at 827 n.26.

(DA.13:1980-81, 1995, 2001.) He was wrong. Faye Vann refused to be an easy victim, started honking her horn, grabbed his hair, and bit him in a desperate attempt to defend herself and get help. (DA.13:1981.)

But Dillbeck had the knife. (Id.) He stabbed her twenty to twenty-five times, severed her windpipe, and caused her to drown in her own blood. (DA.12:1913-18, 1926-28, 1931-1933, DA.13:1992.) He was chased by mall security and caught by police (with blood on his hands and face) a short distance from the mall. (DA.11:1724-33,1761, 1778-79, Vol. 12 at 1794-96.) And he left his fingerprint in blood on the inside of Faye Vann's car. (DA.12:1865, 1869.)

Capital Trial and Penalty Phase

The State of Florida charged Dillbeck with first-degree murder, armed robbery, and armed burglary. *Dillbeck v. State*, 643 So. 2d 1027, 1028 (Fla. 1994). Dillbeck gave an on-the-stand confession to the jury that he killed Faye Vann while trying to carjack her so he could escape to Orlando. (DA.13:1972-2007.) The jury found him guilty of first-degree murder based on both premeditation and felony murder theories, guilty of armed robbery, and guilty of armed burglary. (DA.13:2110-2111.)

The State sought to prove five aggravators at Dillbeck's penalty phase: (1) murder committed while under sentence of imprisonment; (2) prior violent felony for Deputy Hall's murder; (3) murder committed while committing a robbery/burglary; (4) murder committed to avoid lawful arrest/effect escape; (5) the murder was especially heinous, atrocious, or cruel (HAC). (DA.17:2742-44.) The State argued that the HAC aggravator was "the heaviest of them all." (DA.16 at 2700-05, 2707-08.)

Dillbeck relied on several witnesses to support mitigation related to his mental health, fetal alcohol effects, difficult upbringing, current loving family, and remorse. But even his own expert conceded that he had average intelligence with an IQ of 98 to 100. (DA.15:2406.)

The jury recommended a death sentence by an 8-4 vote. (DA.17:2750.) The court followed the jury's recommendation and sentenced Dillbeck to death after finding the State proved all five intended aggravators, while Dillbeck proved one statutory and numerous nonstatutory mitigating circumstances that the court gave little weight to. *Dillbeck*, 643 So. 2d at 1028 n.1 & n.2.

Direct Appeal

Dillbeck raised ten issues on appeal, including a claim that insufficient evidence supported the avoid arrest/effect escape aggravator and an attack on the HAC aggravator. *Dillbeck*, 643 So. 2d at 1028 n.3, 1031. The Florida Supreme Court rejected the avoid arrest/effect escape insufficiency claim by finding sufficient evidence to support that aggravator, summarily rejected his challenges to the HAC aggravator, rejected all Dillbeck's other claims, and affirmed his judgment and death sentence. *Id.* at 1028 n.3, 1031 & n.6. Dillbeck's judgment and death sentence became final in 1995 when this Court denied certiorari. *Dillbeck v. Florida*, 514 U.S. 1022 (1995).

Pre-Warrant State Postconviction Proceedings

Dillbeck filed his initial postconviction motion in 1997, operative amended motion in 2001, and an original Florida Supreme Court habeas petition when he

appealed. *Dillbeck v. State*, 882 So. 2d 969, 971 (Fla. 2004). The Florida Supreme Court ultimately rejected all his claims after remanding to the postconviction court for a more detailed order. *Dillbeck v. State*, 964 So. 2d 95, 96-106 (Fla. 2007). It does not appear that Dillbeck sought certiorari from this Court.

Dillbeck filed his first successive postconviction motion in 2014 and, in relevant part, alleged that the evidence was insufficient to support the avoid arrest/effect escape aggravator. *Dillbeck v. State*, 168 So. 3d 224 (Fla. 2015) (table). The Florida Supreme Court rejected this claim as procedurally barred because evidence insufficiency claims must be brought on direct appeal. *Id.* It does not appear Dillbeck sought certiorari from this Court.

Dillbeck filed his second successive postconviction motion in 2016 and alleged a violation of this Court's newly issued decision in *Hurst v. Florida*, 136 S. Ct. 616 (2016) while also arguing the Eighth Amendment required unanimous jury verdict of death. *See Dillbeck v. State*, 234 So. 3d 646, 558-59 (Fla. 2018); SC17-847 Response filed 10/13/2017. The Florida Supreme Court found *Hurst* was not retroactive to Dillbeck's conviction, which became final in 1995. *Id.* This Court denied certiorari in 2018. *Dillbeck v. Florida*, 139 S. Ct. 162 (2018).

Dillbeck filed his third successive postconviction motion in May 2019 and alleged newly discovered evidence of ND-PAE. *Dillbeck v. State*, 304 So. 3d 286, 287 (Fla. 2020). The Florida Supreme Court found he was not diligent, and his claim was therefore barred as untimely, because he did not file it within a year of when his ND-PAE diagnosis first became discoverable. *Id.* at 288. This Court denied certiorari in

2021. *Dillbeck v. Florida*, 141 S. Ct. 2733 (2021).

28 U.S.C. Section 2254 Proceedings

Dillbeck challenged his judgment in federal court by filing a petition for 28 U.S.C. § 2254 relief in 2007. *Dillbeck v. McNeil*, No. 4:07-CV-388/SPM, 2010 WL 419401, at *2 (N.D. Fla. Jan. 29, 2010). The district court denied relief in 2010. *Id.* at *33. The district court declined to issue a certificate of appealability, and the Eleventh Circuit did as well. *Dillbeck v. McNeil*, No. 4:07-CV-388/SPM, 2010 WL 610309, at *1 (N.D. Fla. Feb. 19, 2010); *Dillbeck v. McNeil*, No. 4:07-CV-388-SPM, 2010 WL 3958639, at *4 (N.D. Fla. Oct. 7, 2010); *Dillbeck v. McNeil*, 10-11042-P (11th Cir. 2011). This Court denied certiorari in 2011. *Dillbeck v. Tucker*, 565 U.S. 862 (2011).

Warrant Postconviction Court Litigation

Florida Governor Ron DeSantis signed a death warrant for Dillbeck in January 2023 with the execution scheduled for February 23, 2023. Dillbeck filed his fourth successive postconviction motion on January 30, 2023 and raised four claims: (1) his execution would violate *Atkins v. Virginia,* 536 U.S. 304 (2002) due to his ND-PAE diagnosis; (2) newly discovered evidence about his competency, diminished capacity, and insanity in 1979 that would attack/undermine his 1979 conviction for murdering Deputy Hall; (3) the denial of clemency without an update violated his due process rights; (4) his three decades on death row coupled with solitary confinement violated the Eighth Amendment and precluded his execution. (ROA:366-91.) Dillbeck also moved for a stay. The State responded that these claims were meritless on both procedural and substantive grounds and opposed the stay. (ROA:950-974.)

The postconviction court summarily rejected all of Dillbeck's claims and declined to stay the execution. (ROA:1082-95.)

Warrant Florida Supreme Court Litigation

Dillbeck appealed the postconviction court's summary denial of Claims 1, 2, and 4 to the Florida Supreme Court while abandoning Claim 3. He also filed a habeas petition in the Florida Supreme Court raising three additional claims:[3] (5) the Eighth Amendment requires jury sentencing and unanimity before a death sentence can be imposed; (6) the HAC aggravator is facially invalid because it fails to narrow the class of individuals eligible for a death sentence; and (7) there was insufficient evidence to support the avoid arrest/effect escape aggravator. Finally, he moved to stay his execution. The State opposed the stay, habeas petition, and urged affirmance.

The Florida Supreme Court rejected all claims raised in both Dillbeck's appeal and habeas petition on both procedural, state-law grounds and substantive, merits-based grounds. *Dillbeck v. State*, No. SC23-190, 2023 WL 2027567 (Fla. Feb. 16, 2023).

The State will discuss Claims 1 and 5 in more detail since they underlie Dillbeck's present certiorari request. The court rejected Dillbeck's Claim 1 (that his ND-PAE condition barred his execution because it was equivalent to an intellectual disability) on three distinct, alternative, state-law, procedural grounds: (1) it was

[3] For clarity, the State will refer to these new habeas claims sequentially as Claims 5-7 and the claims in Dillbeck's Fourth Successive Motion as Claims 1–4.

procedurally barred since he previously litigated a similar claim; (2) it was untimely as a newly discovered evidence claim; and (3) it was not cognizable under state law in a successive postconviction motion if it was not a newly discovered evidence claim. *Id.* at *2-4. Before discussing the merits, the Florida Supreme Court noted that the state-law "time and procedural bars discussed above are fatal to" Claim 1 before alternatively holding the claim was also substantively meritless under the Eighth Amendment. *Id.*

The court rejected Claim 5 (the Eighth Amendment requires a unanimous jury recommendation of death) on state-law procedural grounds and on the merits. *Id.* The court first found that it had previously rejected Dillbeck's juror unanimity claim and Dillbeck could not relitigate it under state law. Alternatively, the court found the Eighth Amendment claim was substantively meritless under *Spaziano v. Florida*, 468 U.S. 447, 465, (1984) (holding neither the Sixth nor Eighth Amendment required jury sentencing), *overruled on other grounds by Hurst v. Florida*, 577 U.S. 92 (2016) (holding the Sixth Amendment required a unanimous jury to find an aggravating circumstances)). *Dillbeck*, 2023 WL 2027567, at *7.

The Florida Supreme Court denied Dillbeck's motion to stay his execution and issued its mandate with the opinion. Dillbeck timely filed his certiorari petition in this Court less than four days before his execution is scheduled to take place. This is the State's Brief in Opposition.

REASONS FOR DENYING THE WRIT

Dillbeck seeks certiorari review in a penultimate attempt to deprive his victims

of justice on the eve of his execution for heinous crimes committed decades ago. Every question he presents now should have been (or was) asked and answered long ago. Dillbeck's long-belated certiorari questions are entitled to no answer from this Court on that basis alone. *Cf. Bucklew v. Precythe*, 139 S. Ct. 1112, 1133-34 (2019) ("Courts should police carefully against attempts to use such challenges as tools to interpose unjustified delay."). This Court should deny certiorari and bring true finality to the victims, the State of Florida, and Donald David Dillbeck.

Dillbeck raises two long-deferred questions for this Court to consider less than four days before his execution: (1) whether a state may bar dilatorily presented claims that ND-PAE diagnosis exempts a defendant from execution under an extension of *Atkins* and (2) whether the Eighth Amendment requires unanimous jury sentencing before a capital sentence may be carried out.

The State will deal with each of Dillbeck's dilatory questions presented in turn. But none warrant this Court's review. The bottom line is this case would be uncertworthy under normal circumstances, much less on the eve of an execution. The decision below properly stated and applied all governing federal principles, is based primarily on state law grounds, does not implicate an important or unsettled question of federal law, does not conflict with another state court of last resort or a United States Court of Appeals, and does not conflict with any decision of this Court. Petitioner does not argue otherwise, and review should be denied on that basis alone. *See* Sup. Ct. R. 10, 14(g)(i). This Court has refused to grant certiorari for Dillbeck four times before today. The fifth time is not the charm.

I.

Do the Eighth and Fourteenth Amendments Prohibit Barring Dilatorily Pursued Exemption-From-Execution Claims Based on Evolutions in the Medical Community's Views?

Dillbeck's first question presented argues that Florida may not constitutionally bar his dilatorily pursued extension-of-*Atkins*-to-ND-PAE claim. This question presents no unsettled, divisive issue of federal law worthy of this Court's review. It does not appear any court has ever held even an actual *Atkins*' claim (much less an extension-of-*Atkins* claim) cannot be procedurally barred, and numerous courts have held to the contrary. This Court should decline to exercise certiorari jurisdiction.

A. Dilatorily Pursued Extension-of-*Atkins* Claims May be Barred.

A few words about Florida's capital postconviction law and Dillbeck's case are in order first. Florida provides all death-sentenced defendants with postconviction counsel. Fla. R. Crim. P. 3.851(b). Dillbeck has been represented by the same highly experienced lead counsel since 2011. He has also been represented by the Federal Capital Habeas Unit for the Northern District of Florida since 2016. ND-PAE became a diagnosable condition in 2013 and other defendants have been raising claims like Dillbeck's long before now. *See Dillbeck v. State*, 304 So. 3d 286, 288 (Fla. 2020); *United States v. Fell*, No. 5:01-CR-12-01, 2016 WL 11550800, at *1-7 (D. Vt. Nov. 7, 2016) (performing an in depth review of ND-PAE and holding, in a federal death penalty case, that *Atkins* should not be extended to cover it).

Florida requires all motions for postconviction relief to be filed within a year

after the judgment and sentence become final. Fla. R. Crim. P. 3.851(d)(1). Any motion filed after that point must be dismissed unless the motion alleges:

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2)(A)-(C). Florida capital defendants generally have one year from the date either of the first two exceptions are triggered to bring successive claims or else the claims will be untimely. *See Pittman v. State*, 337 So. 3d 776, 777 (Fla. 2022); *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008). After the initial postconviction motion is filed, capital postconviction litigants must rely on an exception and timely file their claims or be barred by Fla. Crim. P. 3.851(d)(1). But Florida's courts are *never* closed to *diligently* pursued claims that present newly discovered evidence of innocence of guilt or the death penalty. *Cf. Fulks v. Watson*, 4 F.4th 586, 595 (7th Cir. 2021) (explaining the difficulty that could arise if a federal defendant had an *Atkins* claim rejected by a 28 U.S.C. section 2255 court, and there was a substantial change in clinical standards allowing a new diagnosis of intellectual disability, because the prisoner would have no vehicle to raise the claim

under section 2255) [4].

It appears every federal appellate court to address the issue has held even an actual *Atkins* claim is subject to procedural and/or time bars. *Prieto v. Zook*, 791 F.3d 465, 469-71 (4th Cir. 2015) (recognizing the Virginia Supreme Court's holding the defendant procedurally defaulted his *Atkins* claim by failing to raise it on direct appeal was an equal and adequate state-law ground and there was not sufficient cause, prejudice, or miscarriage of justice to excuse the default); *In re Sparks*, 939 F.3d 630, 633 (5th Cir. 2019); *In re Soliz*, 938 F.3d 200, 203 (5th Cir. 2019) (finding an *Atkins* claim procedurally barred). *In re Johnson*, 325 Fed. Appx. 337, 338, 341 (5th Cir. 2009) (denying a motion for stay of execution and to file a successive habeas

---

[4] Florida's limitations on successive postconviction motions are far more generous than the federal standard for successive motions:

> (2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—
>
> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
>
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C.A. § 2244(b)(2)(A)-(B)(ii). A habeas petitioner has one year from the date of this Court's decision to timely file a successive petition with a retroactive new constitutional rule claim under 28 U.S.C. section 2244(b)(2)(A). *In re Hearn,* 376 F.3d 447, 456 n. 11 (5th Cir. 2004); *In re Hill,* 437 F.3d 1080, 1083 (11th Cir. 2006).

petition raising an *Atkins* claim because the claim was "time-barred"); *Fulks v. Watson*, 4 F.4th 586, 587, 589-95 (7th Cir. 2021) (affirming a district court holding that a federal capital defendant could not raise an *Atkins* claim in a successive postconviction motion); *Davis v. Kelley*, 854 F.3d 967, 971 (8th Cir. 2017) (denying a stay of execution and leave to file a successive habeas petition raising an *Atkins* claim); *In re Hill*, 437 F.3d 1080, 1083 (11th Cir. 2006) (denying *Atkins*-based second or successive application because it was filed more than a year after this Court decided *Atkins*).

State courts have reached the same conclusion. *State ex rel. Johnson v. Blair*, 628 S.W.3d 375, 388 (Mo. 2021) (*Atkins* claim was barred because it was previously litigated and, to the extent it was not previously litigated, barred because it could have been); *State v. Lotter*, 976 N.W.2d 721, 740-47 (Neb. 2022) (holding an *Atkins* claim was both procedurally barred and untimely); *McMillan v. State*, 258 So. 3d 1154, 1198 (Ala. Crim. App. 2017) (holding postconviction *Atkins* claim was procedurally barred because it was not raised at trial or on direct appeal).

Dillbeck's position has no support from any court and this Court should not be the first to analyze it in detail without the benefit of conflicting court opinions. *See California v. Carney*, 471 U.S. 386, 400 & n.11 (1985) (Stevens, J., dissenting with JJs. Brennan and Marshall) (explaining it is best for the court to wait until lower court opinions have reached conflicting results before addressing the issue so the court will have the benefit of the strongest rationales supporting each side of the debate); *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 800 (2017)

(reminding litigants that this is a Court "of final review and not first view.").

But the answer to Dillbeck's question presented does not aid him anyway. His essential position is that exemption-from-execution claims cannot be procedurally barred and must be considered on the merits. Requiring state and federal courts to hear long-belated, exemption-from-execution claims on the merits on the eve of an execution incentivizes defendants to hold exemption-from-execution claims back until the last minute. *Cf. Shinn v. Ramirez*, 142 S. Ct. 1718, 1739 (2022) (explaining the problems that would arise of habeas petitions could hold back claims for federal court review in case those raised in their state proceedings fail). Capital claims raised "in a dilatory fashion," like Dillbeck's procedural bar claim, should be dismissed. *Cf. Bucklew*, 139 S. Ct. 1134. (Courts "can and should protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are pursued in a dilatory fashion or based on speculative theories."). In short, there is no reason to hold exemption-from-execution claims cannot be procedurally barred and many reason to hold they may be (at least with counseled postconviction litigants like Dillbeck).

Dillbeck also briefly argues that there is no reason to procedurally bar his claim because he was diligent. But the correct application of Florida's time-bar is a matter of Florida law on which the Florida Supreme Court rather than this Court has the final say. So this Court must assume Dillbeck's claim is time-barred under Florida law, and that holding was correct anyway. It is clear that extension-of-*Atkins* to ND-PAE claims and ND-PAE diagnoses were readily discoverable well before now. See

Fell, 2016 WL 11550800, at *2-4 (noting a doctor assessed the defendant and issued a written opinion in support of his extend-*Atkins* claim in 2014).

Dilatorily pursued exemption-from-execution claims can be barred. That is particularly true given Florida's courts only require diligence and impose no per se time-bar to any exemption-from-execution claim. Since Florida always has avenues open for diligently pursued exemption-from-execution claims, and other courts routinely bar even true *Atkins* claims, this Court should deny certiorari.

B. This Warrant Case with an Execution Scheduled Days from Now Is a Poor Vehicle hold Extension-of-*Atkins* claims cannot be Procedurally Barred.

This case is a poor vehicle to decide whether a state could violate the Constitution by barring dilatorily pursued extension-of-*Atkins* claims because it comes to this Court in warrant posture, without the benefit of factual development and any percolation in the lower courts. *See Hidalgo v. Arizona*, 138 S. Ct. 1054, 1054, 1057 (2018) (Breyer, J., statement respecting the denial of certiorari, joined by Ginsburg, Sotomayor, and Kagan, JJ.).

The fact that no court has ever extended *Atkins* to cover an ND-PAE claim is another reason this Court should forgo answering the question of whether states may procedurally bar such a claim until later. This Court generally waits until an issue has sufficiently developed with conflicting opinions before granting certiorari. *See California v. Carney*, 471 U.S. 386, 400 & n.11 (1985) (Stevens, J., dissenting with JJs. Brennan and Marshall). That way, this Court has the benefit of deep analysis on both sides of the issue and can bring its best, most-informed judgment to bear on the

constitutional question. *See id.* at 400 ("To identify rules that will endure, we must rely on the state and lower federal courts to debate and evaluate the different approaches to difficult and unresolved questions of constitutional law.").

But at present, there are only three court opinions discussing whether to extend *Atkins* to ND-PAE diagnoses and all of them refuse to do so. *Garcia v. State*, No. 2020-DR-01224-SCT, 2023 WL 2028992, at *8 (Miss. Feb. 16, 2023) (noting ND-PAE falls under Fetal Alcohol Spectrum Disorder umbrella, holding Fetal Alcohol Spectrum Disorder ("FASD") is not a "death-penalty disqualifier," and recognizing no court has ever treated Fetal Alcohol Syndrome the same as intellectual disability); *Dillbeck v. State*, No. SC23-190, 2023 WL 2027567, at *2 (Fla. Feb. 16, 2023); *United States v. Fell*, No. 5:01-CR-12-01, 2016 WL 11550800, at *1-7 (D. Vt. Nov. 7, 2016) (performing an in depth review of ND-PAE and holding, in a federal death penalty case, that *Atkins* should not be extended to cover it). More broadly, and seemingly without exception, courts have refused to extend *Atkins*' prohibition to Fetal Alcohol Spectrum Disorders, of which ND-PAE is a subcategory. *E.g.*, *Garcia*, 2023 WL 2028992, at *8 (Miss. Feb. 16, 2023) (recognizing "no court has ever held that FASD is 'no different functionally' than intellectual disability.").

The fact that Dillbeck cannot identify a single court opinion adopting his substantive view that ND-PAE is the equivalent of an intellectual disability shows (at worst) that his position is legally untenable and (at best) that the issue should be permitted to percolate further in the lower courts before this Court considers the ancillary question of whether such a claim can be procedurally barred. Certiorari

should be denied since Dillbeck has failed to demonstrate that either the question he presents, or the underlying, substantive extension-of-*Atkins* question, has divided lower courts, sparked conflicting, well-reasoned opinions, and thereby warrants final clarification from this Court.

The fact that Dillbeck has waited till the eve of his execution to bring the question of whether exemption-from-execution claims can be procedurally barred should weigh heavily against certiorari as well. *Cf. Bucklew*, 139 S. Ct. at 1133-34. His failure to litigate this precise issue sooner is all the more inexcusable since other defendants have been raising extension-of-*Atkins*-to-ND-PAE claims long before now. *Fell*, 2016 WL 11550800, at *1-7. And Dillbeck raised a highly similar issue (though not based on exemption-from-execution) claim before this Court in 2020. This Court denied certiorari on that question then and should do the same now. *See Dillbeck v. Florida*, 141 S. Ct. 2733 (2021) (denying certiorari on Dillbeck's question of what constitutes diligence in raising newly discovered medical and/or mental health evidence and diagnosis?).

Because Dillbeck has not diligently pursued this claim, this Court would either have to decide it in days or reward Dillbeck's belated question with a stay. This Court should not incentivize capital defendants to wait until the last hour to bring their claims to this Court in hopes of escaping justice, particularly in a case like this one where Dillbeck has known about his fetal alcohol exposure since 1991, ND-PAE has been diagnosable since 2013, Dillbeck was diagnosed with ND-PAE in 2018, and the medical consensus he now relies on has existed since 2021. *Dillbeck v. State*, 304 So.

3d 286, 288 (Fla. 2020); *Dillbeck v. State*, No. SC23-190, 2023 WL 2027567, at *3 (Fla. Feb. 16, 2023). Dillbeck's tactical decision to wait until a warrant was signed before asking this Court whether states can procedurally bar extension-of-*Atkins* claims, coupled with the lack of an evidentiary hearing, mean this Court should deny certiorari.

C. There Is no Reason to Extend *Atkins*' Categorical Rule to ND-PAE and Therefore this Court should Decline to Grant Certiorari on whether Such a Claim can be Procedurally Barred.

This Court should also decline to grant certiorari on whether an extension-of-*Atkins*-to-ND-PAE claim can be barred because there is no reason to extend *Atkins* in that manner. The Eighth Amendment logic protecting the mentally disabled from execution does not extend to defendants with average intelligence. In *Atkins*, this Court held the Eighth Amendment exempted the mentally disabled from execution for two reasons: (1) the clear and reliable national consensus evinced by state and federal legislatures against executing the mentally disabled; and (2) the Court's own judgment there was no reason to disagree with the national consensus. *Atkins v. Virginia*, 536 U.S. 304, 312-17 (2002).

The leading opinion on ND-PAE applied this analysis and concluded that individuals with Fetal Alcohol Spectrum Disorders (like ND-PAE) are not categorically exempt from execution. *United States v. Fell*, No. 5:01-CR-12-01, 2016 WL 11550800, at *1-7 (D. Vt. Nov. 7, 2016). The court explained that there was no national, legislative consensus against executing individuals with FASD. *Id.* at *4.

This fact, while not determinative, was entitled to great weight. *Id.* at *4.[5]

The district court then went on to analyze the second *Atkins* question and held there was no reason to disagree with the national consensus that individuals with FASD were eligible for execution. *Id.* at *4-7.

> Unlike intellectual disability, which is measured on a relatively objective scale, FASD takes many forms, including diminished psychological functioning. That is why the condition appears in the DSM-5. But many other very serious and disabling psychological conditions play a role in causing criminal behavior. Speaking very broadly, only psychosis and ID of sufficient severity have achieved recognition as frequently disqualifying defendants from conviction and punishment. Other conditions, including FASD, may provide grounds for death penalty mitigation, but they are not recognized as categorical disqualifiers by courts or legislatures. Unlike the differences between juvenile and adult offenders, for example, FASD is not so uniformly "marked" and "well understood" that capital punishment of individuals with FASD would in all cases be unacceptable.

Id. at *7. This holding is consistent with this Court's own jurisprudence in related Eighth Amendment context. *Cf. Jones v. Mississippi*, 141 S. Ct. 1307, 1315-18 (2021) (rejecting the argument that a permanent incorrigibility finding is required before a juvenile is eligible for life without parole because it is too difficult to determine incorrigibility, no State required such a finding, and individualized consideration of mitigation is sufficient).

---

[5] By contrast, when *Atkins* was decided, numerous states legislatures and Congress had already outlawed the execution of the intellectually disabled. *See Atkins*, 536 U.S. at 312 (discussing legislation enacted by Georgia, Congress, Maryland, Kentucky, Tennessee, New Mexico, Arkansas, Colorado, Washington, Indiana, Kansas, Nebraska, South Dakota, Arizona, Connecticut, Florida, Missouri, and North Carolina).

FASD and ND-PAE are not equivalent to intellectual disability due to differences in objectivity and reliability of the diagnosis. *Atkins* claims are based (in large part) on IQ tests showing (1) significantly subaverage intellectual functioning and (2) onset as a minor. IQ tests depend on objective, cold, hard numbers. Childhood IQ scores are particularly reliable because the defendant has any no incentive to malinger. A diagnosis of intellectual disability is therefore largely objective.

By contrast, diagnoses of FASD and NE-PDA are wildly subjective, which undermines the reason courts and legislatures prohibited the intellectually disabled. For example, both the Florida legislature and the Georgia legislature had enacted statutes prohibiting intellectually disabled defendants from being sentenced to death before *Atkins*. *See Hill v. Humphrey*, 662 F.3d 1335, 1337 (11th Cir. 2011) (en banc). The *Atkins*' court relied on these state legislatures in their decision as part of the evolving-standards-of-decency analysis because the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." *Atkins*, 536 U.S. at 312. The objectivity and reliability of a diagnosis mattered to these legislatures, which is why the Georgia legislature required defendants prove the diagnosis of intellectually disability "beyond reasonable doubt" and the Florida Legislature required that defendants do so by "clearly and convincing evidence." *Hill*, 662 F.3d at 1360-61 (rejecting an Eighth Amendment challenge to Georgia's BRD statutory standard for *Atkins* claims due to the lack of Supreme Court precedent regarding the standard of proof); *Haliburton v. State*, 331 So. 3d 640, 652 (Fla. 2021) (refusing to address an Eighth Amendment challenge to Florida's clear

and convincing statutory standard for *Atkins* claims), *cert. denied*, *Haliburton v. Florida*, 143 S. Ct. 231 (2022). FASD and ND-PAE are certainly not equivalent with intellectual disability in terms of objectivity and diagnostic reliability.

Dillbeck asserts that the medical community now views ND-PAE as the functional equivalent of intellectual disability. But courts determine Eighth Amendment law, not the medical community. This Court has explained that Eighth Amendment jurisprudence, while informed by the medical community's standards, does not adhere "to everything stated in the latest medical guide." *Moore v. Texas*, 581 U.S. 1 (2017); *see also Hall v. Florida*, 572 U.S. 701, 721 (2014) (stating that while the Court does not disregard the views of medical experts, experts "do not dictate" the Court's decision). Following medical trends instead of precedent causes instability in the law and undermines finality with each change in the professional manuals. As Justice Alito (joined by Chief Justice Roberts, Justice Scalia and Justice Thomas) noted, there are serious practical problems with relying on the views of professional associations in Eighth Amendment cases, including that often-changing medical views lead to "instability" in the Eighth Amendment law and "protracted litigation." *Hall v. Florida*, 572 U.S. 701, 731-32 (2014) (Alito, J., dissenting); *see also Fulks*, 4 F.4th at 589-91.

The views of "experts" do not reflect the views of the people or the views of the various legislatures. *Miller v. Alabama*, 567 U.S. 460, 510-11 (2012) (Alito, J., dissenting) (noting the philosophical basis for the evolving-standards-of-decency test was "problematic from the start" but, at least, it is an objective test when based on

the views of state legislatures and Congress). *Atkins* itself said the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." *Atkins*, 536 U.S. at 312.

Since Dillbeck's bottom-line extension-of-*Atkins* claim fails, this Court should not answer the ancillary question of whether such a claim can be procedurally barred.

II.

Should this Court recede from *Spaziano* and hold the Eighth Amendment requires unanimous jury sentencing when the Florida Supreme Court found Dillbeck's Eighth Amendment claim procedurally barred under state law, the Sixth (not Eighth) Amendment governs the right to a jury trial, and any holding would not retroactively affect Dillbeck?

Dillbeck's second question presented asks this Court to recede from *Spaziano* and hold the Eighth Amendment requires unanimous jury sentencing before a death sentence can be imposed or carried out. The Florida Supreme Court rejected this claim based on a state-law re-litigation bar and, alternatively, held the Eighth Amendment does not require jury sentencing under *Spaziano v. Florida*, 468 U.S. 447, 457-65 (1984) (holding the Eighth Amendment did not prohibit judges from overriding a jury's life recommendation and imposing a capital sentence).

This Court should decline to exercise certiorari jurisdiction and answer this question for at least three reasons. First, the Florida Supreme Court's alternative holding that Dillbeck was barred from relitigating this claim under state law deprives this Court of jurisdiction. Second, there is no reason to recede from *Spaziano* because the Sixth (not Eighth Amendment) is the provision that would confer the right to

unanimous jury sentencing in capital cases if such a right existed, and this Court has confirmed no such right exists in the Sixth Amendment. Third, Dillbeck has failed to address retroactivity and the answer to this question would not apply to him.

A. This Court Lacks Jurisdiction Over this Question Presented.

The Florida Supreme Court's clear disposal of this case on state-law procedural grounds before alternatively reaching the merits deprives this Court of jurisdiction. *Dillbeck*, 2023 WL 2027567, at *7; *Michigan v. Long*, 463 U.S. 1032, 1041 (1983). The Florida Supreme Court held Dillbeck could not relitigate his Eighth Amendment claim in 2023 when the court previously rejected it in 2018. *See Dillbeck*, 2023 WL 2027567, at *7 (citing *Dillbeck v. State*, 234 So. 3d 558 (Fla. 2018). Dillbeck specifically raised an Eighth Amendment juror unanimity claim in that appeal. SC17-847 Response filed 10/13/2017.

This Court has long held that Florida's re-litigation bar is an equal and adequate state-law ground depriving this Court of jurisdiction to review the underlying claim. *Durley v. Mayo*, 351 U.S. 277, 281, 283–285 (1956) (dismissing for lack of jurisdiction where the Florida Supreme Court's decision below "might have rested"[6] on res judicata). Since the Florida Supreme Court's decision rests clearly and explicitly on Florida's bar to relitigation of direct-appeal issues as an alternative holding independent of the merits, this Court lacks jurisdiction over this question

[6] The State recognizes that this Court's jurisdictional test has changed since *Durley*. *See Long*, 463 U.S. at 1042. But that makes no difference here since this Court need not guess whether the Florida Supreme Court relied on a re-litigation bar, the court below explicitly did so.

presented. *Durley*, 351 U.S. at 285; *Long*, 463 U.S. at 1042 ("If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.").

B. There Is no Reason to Recede from *Spaziano*.

Even if this Court had jurisdiction, there is simply no reason to recede from *Spaziano* because the right to a unanimous jury recommendation of death (if it existed) would arise under the Sixth Amendment, not the Eighth.

Spaziano rejected any claim that the Eighth Amendment conferred a right to jury sentencing by holding a judge may override a jury's life recommendation and impose a capital sentence. *Spaziano*, 468 U.S. at 457-65. This holding flows quite naturally from the plain text of the Eighth Amendment, which (in relevant part) only confers a right against "cruel and unusual *punishment*." Amend. VIII, U.S. Const. (emphasis added). Dillbeck's claim has nothing to do with his punishment being cruel or unusual; he argues the correct procedures were not followed before imposing his punishment because there was no unanimous jury recommendation of death.

That type of claim properly arises under the Sixth (not Eighth) Amendment and should be analyzed as such. *See United States v. Lanier*, 520 U.S. 259 n.7 (1997) ("[I]f a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision."). The Sixth Amendment specifically protects the right to a trial by jury and this Court has utilized that provision to protect the

right of capital defendants to have juries decide parts of their cases where appropriate. *See Hurst v. Florida*, 577 U.S. 92, 101-02 (2016) (overruling *Spaziano*'s Sixth Amendment holding and determining the Sixth Amendment requires the jury to find an aggravating circumstance before a judge may impose death).

Dillbeck's proposed certiorari question arises under the wrong constitutional amendment. There is no reason to recede from *Spaziano*'s Eighth Amendment holding when the right Dillbeck seeks to vindicate would actually arise under the Sixth Amendment if it existed at all. That is reason enough to deny certiorari since Dillbeck has not argued the Sixth Amendment protects his unanimous jury recommendation claim and the Eighth Amendment clearly does not.

But it is also worth pointing out the Sixth Amendment does not require a unanimous jury decision to impose a death sentence. *McKinney v. Arizona*, 140 S. Ct. 702, 707-08 (2020) (In "a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range . . . . States that leave the ultimate life-or-death decision to the judge may continue to do so."). This Court previously refused to grant certiorari on the Florida Supreme Court's refusal to grant Dillbeck retroactive relief under *Hurst*. *Dillbeck v. Florida*, 139 S. Ct. 162 (2018). Dillbeck's attempt to repackage an already-rejected Sixth Amendment claim in Eighth Amendment clothing is unavailing and not worth this Court's review.

C. Dillbeck Has Failed to Address the Retroactivity of any Decision

Holding the Eighth Amendment Requires Jury Sentencing and any such Decision would not be Retroactive.

Setting everything else aside, this question is uncertworthy because Dillbeck has failed to address retroactivity and this Court's retroactivity precedents clearly show the answer to the question Dillbeck presents would not apply to him. Any decision from this Court extending the Eighth Amendment beyond its textual confines and conferring a right to unanimous jury sentencing in capital cases would not be retroactive.

Whether a ruling from this Court answering the question presented applies to Dillbeck's case requires this Court to determine retroactivity by analyzing three questions: (1) when did Dillbeck's conviction become final? (2) is the rule this Court announces actually new when viewed from the legal landscape existing when the conviction became final? And (3) does the new rule fall within a nonretroactivity exception? *See Beard v. Banks*, 542 U.S. 406, 411 (2004).

Dillbeck has failed to discuss any of these questions, and that is reason enough to deny certiorari. *See N.C.P. Mktg. Grp., Inc. v. BG Star Prods., Inc.*, 556 U.S. 1145 (2009) (Kennedy, J., respecting denial of writ of cert.) (explaining that certiorari was properly denied because answering the question presented would have required the Court to answer "antecedent questions under state law and trademark-protection principles"); *McDonough v. Smith*, 139 S. Ct. 2149, 2161-62 (2019) (Thomas, J., dissenting) (arguing that the Court should have dismissed the writ of certiorari as improvidently granted because it assumed away key antecedent questions); *see also*

Caspari v. Bohlen, 510 U.S. 383, 389 (1994) ("[I]f the State does argue that the defendant seeks the benefit of a new rule of constitutional law, the court must" determine retroactivity "before considering the merits of the claim."); *Graham v. Collins*, 506 U.S. 461, 477 (1993) (refusing to reach the merits when the petitioner asked for a new rule to be applied to his case on habeas review because any decision would not have been retroactive).

But perhaps more importantly, this Court's retroactivity precedents clearly demonstrate Dillbeck would receive no relief on his Eighth Amendment Claim. His conviction became final in 1995 and this Court's 1984 precedent in *Spaziano* clearly foreclosed any argument that the Eighth Amendment required unanimous jury sentencing. Any rule that the Eighth Amendment requires unanimous jury sentencing is indeed new to Dillbeck's long-finalized conviction.

The final retroactivity question also indicates that any future holding that the Eighth Amendment requires unanimous jury sentencing before a death sentence can be imposed would not apply to Dillbeck. The only nonretroactivity exception[7] applicable to Dillbeck's question applies if this Court's new answer forbids punishment of certain conduct or prohibits a category of punishment on a class of defendants. *Edwards v. Vannoy*, 141 S. Ct. 1547, 1555–62 & n.3 (2021) (eliminating the watershed procedural rule exception to retroactivity and recognizing substantive

[7] This Court has recognized that this is not really an exception, but a substantive rule that does not need to go through a retroactivity analysis. *Beard*, 542 U.S. at 411 n.3.

rules are automatically retroactive). Holding that the Eighth Amendment requires unanimous jury sentencing does neither, and this Court has routinely refused to give retroactive effect to similar right-to-jury precedents. *See McKinney v. Arizona*, 206 L. Ed. 2d 69, 140 S. Ct. 702, 708 (2020) (holding neither *Hurst* nor *Ring v. Arizona*, 536 U.S. 584 (2002) were retroactive); *Edwards*, 141 S. Ct. at 1551 (holding the right to a unanimous jury verdict to convict for a serious offense was not retroactive).

Retroactivity bars are designed to protect the State's interest in finality. *See Beard*, 542 U.S. at 413. Such bars are designed to ensure the State is not continually forced to marshal its resources to keep in prison defendants whose proceedings were constitutionally acceptable under the standards existing at the time. *Id.* These interests are particularly acute in a case like this one, where the State has been marshaling resources for over decades. *Id.* Retrial may not be available due to "lost evidence, faulty memory, or missing witnesses." *Edwards*, 141 S. Ct. at 1554 (cleaned up). And most importantly, any delay interposed by granting certiorari to answer this question would delay justice for the victims and State of Florida. In short, respect for the State's resources, the victims, and decades of finality also counsel against taking this case in light of the retroactivity question here. This Court should deny certiorari.

CONCLUSION

This Court lacks jurisdiction over this petition over the second question Dillbeck presents and the first does not warrant this Court's review. This Court should therefore deny certiorari and bring finality to this case.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

CAROLYN M. SNURKOWSKI
Associate Deputy Attorney General
Florida Bar No. 158541
Counsel of Record

Jason William Rodriguez
Assistant Attorney General

Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
Carolyn.Snurkowski@myfloridalegal.com
capapp@myfloridalegal.com
(850) 414-3300

COUNSEL FOR RESPONDENT