No. 23-167

In The
Supreme Court of the United States

COMMISSIONER, ALABAMA
DEPARTMENT OF CORRECTIONS,

Petitioner,

v.

JOSEPH CLIFTON SMITH,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

BRIEF OF IDAHO AND 13 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTRODUCTION AND INTERESTS OF *AMICI CURIAE*

For 60 years, the Court's Eighth Amendment jurisprudence has progressively worsened. The Court used to treat the Amendment as a focused protection against cruel and unusual punishments. But it has become a potent tool to judicially impose policy preferences and revisit settled constitutional conclusions. The States of Idaho, Arkansas, Florida, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, South Carolina, South Dakota, Texas, and Utah ("*Amici* States")[1] champion the protection the Constitution provides against cruel and unusual punishments, and the Court should take the opportunity to refocus courts on that protection.

Once the Court overlayed the Eighth Amendment with "the evolving standards of decency" gloss, the Amendment has taken on a roving commission with a growing appetite. Courts have used that standard to strike down State laws against public encampments, imposing death for brutal rape of young children, and removing voting rights from felons, to name just a few examples. About the only thing clear with the Amendment these days is that *Amici* States' criminal laws are at the mercy of a constitutional test with no limiting principle.

Under the evolving standards approach, the text of the Eighth Amendment has little meaning. That

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[1] Pursuant to Rule 37.2, *Amici* States provided timely notice of their intent to file this brief to all parties in the case.

framework instead forces judges to act as sociologists and determine what they think runs afoul of the evolving standards decency. But the people have committed penological policy determinations to their State legislatures. And States retain sovereignty over the creation and enforcement of criminal codes.

The Eleventh Circuit's decision undermines *Amici* States' sovereignty over criminal law. It erroneously expands this Court's Eighth Amendment jurisprudence and, in doing so, improperly directs State intellectual-capacity determinations. The panel decision also deepens a circuit split, which ensures inconsistency across the States.

Those are reasons enough to grant certiorari. There is another, though. The Eleventh Circuit's decision is the fruit of this Court's errant Eighth Amendment jurisprudence. Until the Court corrects it, States will continue to be on the receiving end of federal overreach. And most unfortunately, their citizens and crime victims are the ones who must live with the consequences of States' eroded ability to address crime. Certiorari is warranted.

SUMMARY OF THE ARGUMENT

The Eleventh Circuit extended this Court's Eighth Amendment holdings to new ends. None of them support the Eleventh Circuit's conclusion that the cruel and unusual punishments clause requires States to give controlling weight to the lowest range of

a criminal defendant's lowest score on an IQ test. This Court in *Atkins v. Virginia*, 536 U.S. 304 (2002), instead left those type of evidentiary determinations to States.

The Eleventh Circuit's decision also propagates this Court's errant "evolving standards of decency" jurisprudence. That "evolving" approach has spawned many more Eighth Amendment anomalies. It is time for the Court to ground its Eighth Amendment jurisprudence in the Constitution's text, history, and structure.

REASONS FOR GRANTING CERTIORARI

I. The Eleventh Circuit's Decision Invades States' Sovereign Functions And Deepens A Circuit Split.

Neither the Eighth Amendment nor this Court's precedents straitjacket State determinations of intellectual disability. But the Eleventh Circuit's decision does. It went beyond applying the Eighth Amendment's prohibition against executing intellectually disabled criminals, *Atkins v. Virginia*, 536 U.S. 304, 321 (2002), or ensuring that States account for an IQ test's standard error of measurement, *Hall v. Florida*, 572 U.S. 701, 724 (2014). It instead short-circuited the intellectual disability inquiry and forced Alabama to give controlling weight to the bottom end of a single IQ test's standard error of measurement. Petitioner explains well why that holding is wrong.

The legal error alone warrants this Court's attention. But the decision also implicates important State interests that warrant granting certiorari. The States' sovereign power to administer a criminal code is foremost among them. *See Heath v. Alabama*, 474 U.S. 82, 93 (1985). "From the beginning of our country, criminal law enforcement has been primarily a responsibility of the States." *Shinn v. Shinn*, 142 S. Ct. 1718, 1730 (2022). Ratification did not change that. "The power to convict and punish criminals lies at the heart of the States' residuary and inviolable sovereignty." *Id.*

For these reasons, the Court in *Atkins* "le[ft] to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences." *Atkins*, 536 U.S. at 317. The Court noted that "mild" intellectual disability "is typically used to describe people with an IQ level of 50–55 to approximately 70," but it did not command States when and how it must deem someone intellectually disabled. *Id.* at 309 n.3. The Eleventh Circuit's decision ignores the space this Court reserved for States. And it assumes too much say over State criminal law.

The Court has consistently been careful not to intrude on State sovereignty in this area. For example, the Court declined to extend *Apprendi*'s holding in part because of "States' interest in the development of their penal systems, and their historic dominion in this area." *Oregon v. Ice*, 555 U.S. 160, 170-71 (2009). Likewise, the Court refused to find that a New York law placing the burden on criminal defendants to prove extreme emotional disturbance as an affirmative defense

violated the Due Process Clause. *Patterson v. New York*, 432 U.S. 197, 197 (1977). Both holdings follow the Court's admonition that federal courts "should not lightly construe the Constitution so as to intrude upon the administration of justice by the individual States." *Id.* at 200-01. That cautionary approach applies with equal force to the Eighth Amendment, and the Eleventh Circuit should have heeded it.

States' sovereignty over enforcement of their criminal codes is hard to overstate. After all, the principal reason people organize and form governments is to secure justice, liberty, and tranquility. *See*, *e.g.*, U.S. CONST. Preamble; ALA. CONST. art. I; *see also* THE FEDERALIST NO. 51 (James Madison). Pre-society, no man has sovereign authority over another since all men stand equal with each other. He may exercise vengeance when wronged, but he cannot claim to execute justice. That changes in a state of society, where punishment is "vested in the magistrate alone; who bears the sword of justice by the consent of the whole community." 4 William Blackstone, Commentaries 8 (Joseph Chitty ed. 1826); *see also* Jeffrey C. Tuomala, The Casebook Companion pt. 7, ch. 10, at 7 (September 12, 2023) (on file with author) (noting that, upon entry into society, citizens have "delegated to the state" certain natural rights, and the state "then has the power of enforcement"). And in our federal system, "the power to create and enforce a criminal code" is an "exclusive and very important portion[] of [States'] sovereign power." *Heath*, 474 U.S. at 93 (quoting THE FEDERALIST NO. 9); *see also Calderon v. Thompson*, 523 U.S. 538, 556

(1998) ("Our federal system recognizes the independent power of a State to articulate societal norms through criminal law; but the power of a State to pass laws means little if the State cannot enforce them.").

The Eleventh Circuit's decision interferes with States' obligation to provide for the security of their citizens. *See Bartkus v. Illinois*, 359 U.S. 121, 137 (1959) (rejecting interpretation of the Fifth Amendment because it "would be a shocking and untoward deprivation of the historic right and obligation of the States to maintain peace and order within their confines."). Society, and victims of crime particularly, rightly expect that "moral judgment will be carried out." *Shinn*, 142 S. Ct. at 1731. "To unsettle these expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty." *Id.* When the people of a State, through their representative government, have determined that a member of their community deserves punishment, federal courts should tread lightly. The Eleventh Circuit's expansive view claims too much authority over an area that is foundational to society. Nothing in the Eighth Amendment binds States to blinkered evidentiary determinations that frustrate State penological policy—not even in the capital context.

The decision below also creates greater uncertainty for States. States in the Eighth and Ninth Circuits follow the Eleventh Circuit's approach that a criminal defendant necessarily meets his burden if the bottom range of a single score's standard error of measurement is at or below 70, *see*, *e.g.*, *Sasser v. Payne*, 999

F.3d 609 (8th Cir. 2021); *Ochoa v. Davis*, 50 F.4th 865 (9th Cir. 2022); States in the Fifth and Sixth Circuits reject that approach and consider all IQ scores as evidence of intellectual capacity, *see*, *e.g.*, *Garcia v. Stephens*, 757 F.3d 220 (5th Cir. 2014); *Black v. Carpenter*, 866 F.3d 734 (6th Cir. 2017); and States outside of these Circuits are left guessing which interpretation their Circuit will adopt. The Court should resolve this split and provide States direction going forward.

II. The Eleventh Circuit's Decision Is An Outgrowth Of The Evolving Standards Of Decency Jurisprudence, Which Is Not Textual, Historical, Or Logical.

The Eleventh Circuit's decision is an expansion of this Court's precedents any way you cut it. But it is a symptom of a deeper issue—and one that should surprise no one. When this Court subjected the Eighth Amendment's meaning to "the evolving standards of decency that mark the progress of a maturing society," *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958) (plurality opinion), it engrafted increase, instability, and subjectivity to the text. Now, every case presents a fresh opportunity for State criminal law to fall short of the Eighth Amendment's "evolving" morality.

So while the Eleventh Circuit may have jumped the gun today, there is no telling what tomorrow holds. As this Court has instructed, courts *must* constantly revisit whether State penal judgments are cruel and unusual. *See Roper v. Simmons*, 543 U.S. 551, 561

(2005) (affirming "the necessity" of "the evolving standards of decency" test to determine which punishments violate the Eighth Amendment). Such an indeterminate standard is no standard at all.

The Court's Eighth Amendment jurisprudence is a problematic outlier, and its forward march "has no discernible end point." *Miller v. Alabama*, 567 U.S. 460, 501 (2012) (Roberts, C.J., dissenting). It has caused much mischief already and will continue to do so until corrected. *Glossip v. Gross*, 576 U.S. 863, 899 (2015) (Scalia, J., concurring). Courts should not be tasked with judging the changing winds of society's evolving morals. Their job is to declare what the law says—not what they think society would like it to say. This case presents the Court with the right opportunity to ground the Eighth Amendment's meaning in text, structure, and history. Doing so will protect the sovereign role States have over criminal sanctions. And it will bring harmony to the Court's constitutional interpretive framework. *See Bucklew v. Precythe*, 139 S. Ct. 1112, 1122 (2019).

A. The evolving standards of decency jurisprudence came out Warren Court dicta and has been promoted to the substantive test for Eighth Amendment meaning.

The story of the Court's Eighth Amendment jurisprudence begins like other novel constitutional announcements. A plurality of the Warren Court unnecessarily

"waxed historical" about the Eighth Amendment, *see United States v. Grant*, 9 F.4th 186, 202 (3d Cir. 2021) (Hardiman, J., concurring), and declared for the first time that "[t]he Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop*, 356 U.S. at 101 (plurality). That stray line of dicta was later repurposed as the Amendment's governing standard. *See Estelle v. Gamble*, 429 U.S. 97, 102 (1976). A closer look at *Trop* confirms the impropriety of propagating further the evolving standards of decency jurisprudence.

In 1958, this Court considered whether American Private Albert Trop lost his national citizenship because he was convicted by a military court of desertion "in time of war." *Trop*, 356 U.S. at 88 n.1. The Second Circuit rejected Trop's due process challenge to his expatriation. *Trop v. Dulles*, 239 F.2d 527, 529 (2d Cir. 1956). With Judge Learned Hand writing for the majority, the court explained that "[w]e have not considered, and do not consider, whether under the circumstances at bar 'expatriation' was, or was not, a 'cruel and unusual' punishment under the Eighth Amendment." *Id*. The reason was because Trop "did not suggest anything of the kind in his complaint, or upon the motion for summary judgment; Judge Inch did not mention it in disposing of the motion, nor did the plaintiff do so in argument." *Id.* at 529-30.

In a 4-1-4 decision, this Court reversed. Chief Justice Earl Warren explained that under the holding of *Perez v. Brownell*, "citizenship is not subject to the general powers of the National Government and therefore

cannot be divested in the exercise of those powers." *Trop*, 356 U.S. at 92. On that "ground alone," the Court reversed. *Id.* at 93.

But Chief Justice Warren did not stop there. He took up an unrelated and unpreserved Eighth Amendment question. And he did so even though "the words of the Amendment are not precise" and the Court had "had little occasion to give precise content to the Eighth Amendment." *Id.* at 100-01. What should have been a clear instance of constitutional avoidance, *see Steamship Co. v. Emigration Comm'rs*, 113 U.S. 33, 39 (1885), was instead embraced as an invitation to develop the Eighth Amendment.

In interpreting the Amendment, the plurality barely addressed the text. It questioned whether there was any difference between the words "cruel" and "unusual" but quickly noted that "precise distinctions between cruelty and unusualness do not seem to have been drawn" in prior decisions. *Trop*, 356 U.S. at 100 n.32. Without further textual hang-up, the plurality concluded that because the Amendment's "scope is not static," it "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Id.* at 101. On that understanding, the plurality found "that use of denationalization as a punishment is barred by the Eighth Amendment." *Id.* The Amendment's prohibition reaches beyond "physical mistreatment" and "primitive torture," the plurality explained—it also reaches forms of punishment that destroy an accused's "political existence." *Id.*

The "evolving standards of decency . . . phrase went unmentioned in [this] Court for ten years after *Trop*, until it surfaced in a footnote in a death-penalty case," after which "it was then quoted only in passing in seven death-penalty cases in the 1970s." *Grant*, 9 F.4th at 202-03 (Hardiman, J., concurring). In 1976, the Court looked to the "idealistic" phrase and held that "punishments which are incompatible with 'the evolving standards of decency that mark the progress of a maturing society'" violate the Eighth Amendment. *Estelle*, 429 U.S. at 102. Although the *Trop* plurality had merely said that the Eighth Amendment "must draw its meaning" from the evolving standards of decency, the Court in *Estelle* turned "*Trop*'s dicta [in]to a constitutional test." *Grant*, 9 F.4th at 203 (Hardiman, J., concurring).

In the following years, the test has been "a standard bearer for the view that the Constitution's meaning changes over time." *Id*. It is "bad wine of a recent vintage," *id.* at 201, and it "has caused more mischief . . . than any other that comes to mind." *Glossip*, 576 U.S. at 899 (Scalia, J., concurring).

B. The evolving standards of decency jurisprudence is a lawless standard that has no regard for any of this Court's Eighth Amendment precedents.

Chief Justice Warren may not have intended his homiletic words to become a barometer for constitutionally permissible punishments. But they have. And

they have been used to overturn precedent after precedent and to justify the ballooning reach of the Eighth Amendment. The test's track record shows that its ambitions know no bounds. It stands ready for its next call "to shap[e] the societal consensus of tomorrow." *Miller*, 567 U.S. at 509 (Thomas, J., dissenting).

A few cases suffice to show the test's character. Start with *Estelle*. Before that case, the Court understood the Eighth Amendment to prohibit the government from *acting* cruelly and unusually. But *Estelle* used the evolving standards test to extend the Eighth Amendment to prohibit the government from *failing* to act. 429 U.S. at 104. That extension lacked constitutional grounding, and the Court later had to "stabilize *Estelle*'s flimsy foundation." *Trozzi v. Lake Cnty., Ohio*, 29 F.4th 745, 751 (6th Cir. 2022) (citing *Farmer v. Brennan*, 511 U.S. 825, 829 (1994)).

The test picked up steam at the turn of the 21st century. In 2002, the Court considered whether the Eighth Amendment prohibited executing a man with mental disabilities and held that it did. *See Atkins*, 536 U.S. 304. That decision overturned the Court's holding from just thirteen years prior, when the Court addressed the very same question and held the opposite. *Penry v. Lynaugh*, 492 U.S. 302, 340 (1989). Perhaps *Penry*'s short-lived holding should not have come as a surprise, given that the Court noted in its closing sentences that "a national consensus against execution of the mentally retarded may someday emerge reflecting the 'evolving standards of decency that mark the progress of a maturing society." *Id.* In the 13 years

between the two decisions, the Court found that the American consensus shifted and consolidated around condemnation of executing such persons. *Atkins*, 536 U.S. at 315-17. The so-called "national consensus" the Court relied on to do a 180 on *Penry* was that 18 of the 38 States with capital punishment in some way excused mentally incompetent persons. *Id.* at 343 (Scalia, J., dissenting) ("How is it possible that agreement among 47% of the death penalty jurisdictions amounts to 'consensus'?"). As the Court saw it, determining consensus depended more on "the consistency of the direction of change" than on actual numbers. *Id.* at 315.

Soon after *Atkins*, the Court again used the evolving standards test to overturn another of its 1989 decisions. *See Roper*, 543 U.S. 551. In *Stanford v. Kentucky*, 492 U.S. 361 (1989), the Court held that the Eighth Amendment did not prohibit capital punishment for juvenile murderers. *Id.* at 380. In 2005, the Court held just the opposite in a 5-4 decision. The "national consensus" on which the Court relied was the same as in *Atkins*: 18 of 38 States with the death penalty excluded juveniles from its sanction. *Roper*, 543 U.S. at 552-53.

The pace quickened following *Roper*. In 2008, the Court found that a national consensus formed against executing child rapists. *Kennedy v. Louisiana*, 554 U.S. 407, 446 (2008). In 2010, the Court held that life-without-parole sentences for non-homicide juvenile offenders violated the Eighth Amendment. *Graham v. Florida*, 560 U.S. 48, 82 (2010). In 2012, the Court held that mandatory life-without-parole sentences for

juveniles—even those convicted of murder—violated the Eighth Amendment. *Miller*, 567 U.S. at 479. And in 2014, the Court held that the Eighth Amendment requires States to consider an IQ test's standard error of measurement for death-row inmates. *Hall*, 572 U.S. at 724. Each of these decisions were 5-vote majorities with sharp dissents.

Unsurprisingly, the evolving standards of decency jurisprudence has creeped beyond death-penalty and life-without-parole cases. For example, the Ninth Circuit has found it unconstitutional under the Eighth Amendment to criminalize "sleeping somewhere in public if one has nowhere else to do so." *Johnson v. City of Grants Pass*, 72 F.4th 868, 896 (9th Cir. 2023). The Ninth Circuit has also found that the Eighth Amendment guaranteed a prisoner the right to "gender confirmation surgery." *Edmo v. Corizon, Inc.*, 935 F.3d 757, 797 (9th Cir. 2019). And the Fifth Circuit found "a national consensus against punishing felons by permanently barring them from the ballot box." *Hopkins v. Sec'y of State Delbert Hosemann*, 76 F.4th 378, 407 (5th Cir. 2023).

Any expectation that the evolving standards of decency jurisprudence is just a modest method to address modern punishments is now naïve. The standard has lost any tie to "objective factors." *Coker v. Georgia*, 433 U.S. 584, 592 (1977) (plurality opinion). Eighth Amendment jurisprudence instead is laced with uncertainty, merely reflecting "the subjective views of individual Justices." *Id.* Our constitution made the law king, and the rule of law means that "bedrock principles"—not

"the proclivities of individuals"—govern. *Vasquez v. Hillery*, 474 U.S. 254, 265-66 (1986). The evolving standards of decency jurisprudence is contrary to basic legal norms: it lacks notice and predictability; it invites arbitrariness and cannot be applied consistently; and it undermines the integrity of the judicial process. It is time this Court do something about it.

C. The evolving standards of decency jurisprudence cannot be squared with the text, structure, and history of the Eighth Amendment.

The Court can, and should, normalize its Eighth Amendment jurisprudence. Instead of requiring judges to act as sociologists and tempting them to exercise their own will, the Court should return to declaring what the law *is*. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). The text and object of the Eighth Amendment stand against the evolving standards of decency approach.

All agree that the Eighth Amendment is not a "static" command. *See Gregg v. Georgia*, 428 U.S. 153, 173 (1976); *Roper*, 543 U.S. at 589 (O'Connor, J., dissenting); *Bucklew*, 139 S. Ct. at 1135. It of course prohibits more than the methods of torture rejected in 1791, like "embowelling alive, beheading, and quartering." 4 William Blackstone, Commentaries 376 (Joseph Chitty ed. 1826). But pinning an "evolving" standards approach to the Amendment is not the only way to protect it from becoming "little more than a dead letter

today." *Roper*, 543 U.S. at 589 (O'Connor, J., dissenting).

First, the Court has already signaled an interpretive course-correction. In *Bucklew*, the Court explained that the Eighth Amendment must be interpreted according to its "original and historical understanding." *Bucklew*, 139 S. Ct. at 1122. That is also the "standard" approach the Court applies when interpreting constitutional text. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2271 (2022). Under that approach, the Amendment forbids "tortures and other barbarous methods of punishment." *Estelle*, 429 U.S. at 102 (cleaned up). As one early commentator explained, the Amendment prohibits "the use of the rack or the stake, or any of those horrid modes of torture, devised by human ingenuity for the gratification of fiendish passion." James Bayard, A Brief Exposition of the Constitution of the United States 154 (2d ed. 1840).

The text itself came straight from the English Bill of Rights of 1689, which stated that "excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." 1 W. & M., Sess. 2, c. 2; 8 ENGLISH HISTORICAL DOCUMENTS, 1660-1714, p. 122 (Andrew Browning ed. 1953). The purpose was to protect "against punishments unauthorized by statute and beyond the jurisdiction of the sentencing court, as well as those disproportionate to the offense involved." *Gregg*, 428 U.S. at 169. Similar provisions were in Virginia's Constitution of 1776, the constitutions of seven other States, and the Northwest Ordinance. *Furman v. Georgia*, 408 U.S. 238, 243-44

(1972) (Douglas, J., concurring). The history of those enactments confirms that "the evil the Eighth Amendment targets is intentional infliction of gratuitous pain." *Baze v. Rees*, 553 U.S. 35, 102 (2008) (Thomas, J., concurring).

Second, the original and historical understanding does not proscribe only those punishments thought cruel and unusual at ratification. The evolving standards of decency approach attempts to address the fact that society's understanding may mature and develop about what constitutes a cruel and unusual punishment. But it errs by cutting the tie between law and judgment. In its most modest application, the approach suffers from majoritarianism, which is exactly what the Bill of Rights protects against. In its recent, broader applications, it substitutes "judicial preferences" about all aspects of penological policy for the will of the People. *Grant*, 9 F.4th at 205. That is not how the rule of law works.

Law "is a rule: not a transient sudden order from a superior, to, or concerning, a particular person; but something permanent, uniform, and universal." *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 58 n.5 (1961) (quoting Daniel Webster). The "permanent, uniform, and universal" nature of law reflects the "being" and "becoming" attributes built into the Constitution. *See* Tuomala, *infra*, pt. 1, ch. 5, at 10; *see also McCulloch v. Maryland*, 17 U.S. 316, 407 (1819) (explaining that the Constitution lacks "the prolixity of a legal code" and its "nature" instead "requires, that only its great outlines should be marked, its important objects designated,

and the minor ingredients which compose those objects, be deduced from the nature of the objects themselves"). In this way, the law allows for new applications, but it does so by remaining faithful to constitutional text and embedded principles.

With the Eighth Amendment, the text and object of the Amendment contemplate punishments existing and not yet imagined at the time of the founding. Some amount of deduction from "its great outlines" may be required. *See McCulloch*, 17 U.S. at 407. And society's present understanding of "decency" may be evidence of what is cruel and unusual—it also may not be. *See Miller*, 567 U.S. at 510 (2012) (Alito, J., dissenting) ("Is it true that our society is inexorably evolving in the direction of greater and greater decency? Who says so, and how did this particular philosophy of history find its way into our fundamental law?"). Redirecting judges from a targeted inquiry guided by fixed principles and commissioning them to make vague determinations about society's evolving sense of decency is contrary to the very premise of civil society: punishment for crimes has been removed from the hands of the few and committed to society—judges are no exception. Ultimately the text, structure, and history must control the analysis. Faithfully applied, that approach protects against both ancient and modern cruel and unusual punishments. *See Baze*, 553 U.S. at 102 (Thomas, J., concurring).

It is long overdue for the Court to remove the evolving standards of decency test from its Eighth

Amendment jurisprudence. The Court should grant certiorari here and do so.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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