

IN THE
Supreme Court of the United States

DARRYL SCOTT STINSKI,

Petitioner,

v.

SHAWN EMMONS, WARDEN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

**BRIEF OF *AMICI CURIAE*
ELEVENTH CIRCUIT FEDERAL
DEFENDER CAPITAL HABEAS UNITS
IN SUPPORT OF PETITIONER**

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INTERESTS OF THE *AMICI CURIAE*¹

Amici are the Federal Defender Capital Habeas Units for the Middle District of Alabama, Middle District of Florida, Northern District of Florida, and Northern District of Georgia (Eleventh Circuit CHUs). Together, the Eleventh Circuit CHUs cover States with death row populations totaling nearly 500. The Eleventh Circuit CHUs and their clients (present and future) have a significant interest in this Court resolving the longstanding circuit split.

SUMMARY OF ARGUMENT

This Court should grant certiorari to resolve the longstanding circuit split concerning the interaction between 28 U.S.C. §§ 2254(d)(2) and (e)(1) because allowing it to persist will result in an increasing number of certiorari petitions primarily from death sentenced prisoners in Alabama, Georgia, and Florida.

ARGUMENT

Statistics, likely exacerbated by Alabama and Florida's unique capital sentencing schemes, provide sufficient cause for this Court to resolve the longstanding

1. No counsel for either party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person, other than members of the organizational *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. On September 27, 2024, counsel for *amici* provided notice to counsel of record for all parties of their intention to file an amicus brief.

circuit split solidified by the Eleventh Circuit’s recent decisions in *Pye v. Warden, Ga. Diagnostic Prison*, 504th 1025 (11th Cir. 2022) (*en banc*) and *Stinski*. This Court has two choices: (1) “nip it in the bud,”² or (2) face dozens of certiorari petitions raising this issue over the next decade plus.³

While Alabama, Florida, and Georgia contain 11.6% of the nation’s population⁴ they account for 22.2% death row prisoners.⁵ It jumps to 35% when the 818 death row prisoners in the Ninth Circuit⁶ (the sole circuit on the other side of the split) are removed. Alabama has the highest per capita death row population in the United States,⁷ and Florida’s death row population is 288.⁸ As the volume

2. *The Andy Griffith Show: One Punch Opie* (CBS television broadcast, Dec. 31, 1962).

3. This Court granted certiorari on this issue in a case from Alabama more than a decade ago but did not resolve it. *See Wood v. Allen*, 558 U.S. 290, 299 & n.1 (2010).

4. U.S. Census Bureau, Population Div., Ann. Estimates of the Resident Population of the U.S., Regions, States, D.C., & P.R.: Apr. 1, 2020, to July 1, 2023 (Dec. 2023) (Census Estimates), <https://www2.census.gov/programs-surveys/popest/tables/2020-2023/national/totals/NA-EST-2023-POP.xlsx>.

5. Robert Dunham, *Death Row U.S.A. Summer 2024*, NAACP Legal Defense Fund, at 37-38, <https://www.naacpldf.org/wp-content/uploads/DRUSASummer2024.pdf>.

6. *Id.*

7. Alabama—with just over 5 million residents, Census Estimates—has the fourth highest number of people on death row, trailing only California (632), Florida (288), and Texas (180). Dunham, *supra*, at 37-38.

8. *Id.* at 38.

leader in capital habeas litigation, the Eleventh Circuit's decisions have an outsized effect on this Court's docket.

The volume of capital cases in the Eleventh Circuit is likely due to Alabama and Florida's unique capital sentencing schemes, which permit death sentences with non-unanimous jury verdicts. Ala. Code § 13A-5-46(f); Fla. Stat. § 921.141(2)(c). Of the 272 people awaiting execution following non-unanimous jury sentencing verdicts all but two (Missouri) are in Alabama and Florida.⁹ Moreover, until recently, Alabama and Florida permitted judicial override of jury sentencing verdicts.¹⁰

With apologies to Mark Twain (or Benjamin Disraeli),¹¹ these statistics don't lie. This Court should resolve this question now. Failure to do so will result in a flood of certiorari petitions on an issue this Court recognized needed to be resolved nearly fifteen years ago and is unlikely to go away anytime soon.

9. *Id.*

10. Thirty of Alabama's (and two of Florida's) death row prisoners are there following judicial override. *Id.* The majority of Alabama's 30 remain in, or eligible to pursue, federal habeas.

11. Mark Twain insisted his oft-quoted quip—"There are three kinds of lies: lies, damned lies, and statistics"—was first uttered by Benjamin Disraeli. Samuel Langhorne Clemens, *Mark Twain's Autobiography* 246 (1924).

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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