No. _____

IN THE

Supreme Court of the United States

EDWARD THOMAS JAMES,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE WITH AN EXECUTION SCHEDULED FOR THURSDAY, MARCH 20, 2025, AT 6:00 P.M.

Katherine A. Blair
Counsel of Record
Sean T. Gunn
Lauren E. Rolfe
Office of the Federal Public Defender
Northern District of Florida
Capital Habeas Unit
227 N. Bronough St., Suite 4200
Tallahassee, FL 32301
(850) 942-8818
katherine_blair@fd.org

Counsel for Petitioner

CAPITAL CASE

QUESTIONS PRESENTED

1. Whether a petitioner is prohibited in all circumstances from amending mid-appeal pleadings unless his judgment is first set aside?

2. Whether a motion to amend a federal habeas petition while an appeal from the dismissal of the petition is pending constitutes a second or successive petition under 28 U.S.C. § 2244(b)?

3. Whether the standard for equitable tolling on the basis of mental incapacitation turns on the extent of documentation of the severity of the impairment that hindered timely filing of a habeas petition?

4. Whether an evidentiary hearing is warranted to resolve an equitable tolling issue when the material facts necessary to determine whether tolling is appropriate are in dispute?

PARTIES TO THE PROCEEDINGS

Petitioner, Edward Thomas James, a death-sentenced Florida prisoner scheduled for execution on March 20, 2025, was the appellant in the United States Court of Appeals for the Eleventh Circuit.

Respondents, the Secretary of the Florida Department of Corrections and the Attorney General of Florida, were the appellees in the Eleventh Circuit.

NOTICE OF RELATED PROCEEDINGS

Per Supreme Court Rule 14.1(b)(iii), the following cases relate to this petition:

Trial:
Circuit Court of Seminole County, Florida
State of Florida v. Edward Thomas James, No. 1993-CF-3237
Judgment Entered: August 18, 1995

Direct Appeal:
Florida Supreme Court (No. SC60-86834)
Edward Thomas James v. State, 695 So. 2d 1229 (Fla. 1997)
Judgment Entered: April 24, 1997 (affirming death sentences)
Rehearing Denied: June 20, 1997

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 97-6104)
Edward Thomas James v. Florida, 522 U.S. 1022 (1995)
Judgment Entered: December 1, 1997

Initial Postconviction Proceedings:
Circuit Court of Seminole County, Florida
James v. State, No. 1993-CF-3237
Judgment Entered: April 22, 2003 (allowing withdrawal of postconviction motion)

Florida Supreme Court (No. SC06-426)
James v. State, 974 So. 2d 365 (Fla. 2008)
Judgment Entered: January 24, 2008 (affirming denial of reinstatement motion)
Rehearing Denied: October 21, 2008

First Successive Postconviction Proceedings:
Circuit Court of Seminole Country, Florida
James v. State, No. 1993-CF-3237
Judgment Entered: March 17, 2020 (summarily dismissing postconviction motion)
Rehearing Granted: April 13, 2020
Judgment Entered: June 8, 2020 (summarily dismissing postconviction motion)

Florida Supreme Court (No. SC20-1036)
James v. State, 323 So. 3d 158 (Fla. 2021)
Judgment Entered: July 8, 2021 (affirming summary dismissal)
Rehearing Denied: August 30, 2021

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 21-7015)

Edward Thomas James v. Florida, 142 S. Ct. 1678 (2022)
Judgment Entered: April 18, 2022

State-Court Proceedings Under Warrant:
Circuit Court of Seminole Country, Florida
James v. State, No. 1993-CF-3237
Judgment Entered: February 26, 2025 (summarily denying postconviction relief)

Florida Supreme Court (No. SC25-280)
James v. State, -- So. 3d -- (Fla. 2025) (affirming)
Judgment Entered: March 13, 2025

Florida Supreme Court (No. SC25-281)
James v. Dixon, -- So. 3d -- (Fla. 2025) (denying state habeas relief)
Judgment Entered: March 13, 2025

Federal Habeas Proceedings:
District Court for the Middle District of Florida
James v. Sec'y, Fla. Dep't of Corrs. (No. 6:18-cv-993-WWB)
Judgment Entered: September 9, 2024 (denying petition for writ of habeas corpus and certificate of appealability)
Reconsideration Denied: November 18, 2024

Eleventh Circuit Court of Appeals
James v. Sec'y, Fla. Dep't of Corrs. (No. 24-14162)
Judgment Entered: February 3, 2025 (denying certificate of appealability)
Reconsideration Denied: February 27, 2025

Rule 60(b) Proceedings:
District Court for the Northern District of Florida
James v. Sec'y, Fla. Dep't of Corrs. (No. 6:18-cv-993-WWB)
Judgment Entered: February 27, 2025 (denying motion to amend and Rule 60(b) motion

Eleventh Circuit Court of Appeals
James v. Sec'y, Fla. Dep't of Corrs. (No. 25-10683)
Judgment Entered: March 13, 2025 (denying certificate of appealability and stay motion)

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CASES

STATUTES AND RULES

Petitioner Edward James respectfully urges this Honorable Court to issue its writ of certiorari to review the decision of the Eleventh Circuit Court of Appeals.

DECISION BELOW

The Eleventh Circuit's Order denying Mr. James' emergency motion for stay of execution appears as *James v. Secretary, Florida Department of Corrections*, No. 25-10683 (11th Cir. 2025), and is reproduced in the Appendix at A1.

JURISDICTION

On March 13, 2025, the Eleventh Circuit entered its Order denying the emergency motion for stay of execution. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Fed. R. Civ. P. 15(d) provides in relevant part:

> On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.

Fed. R. Civ. P. 62.1 provides in relevant part:

> (a) RELIEF PENDING APPEAL. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:
>
> (1) defer considering the motion;
>
> (2) deny the motion; or
>
> (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

28 U.S.C. § 2242 provides in relevant part:

> Application for a writ of habeas corpus…may be amended or supplemented as provided in the rules of procedure applicable to civil actions.

Fed. R. Civ. P. 60(b)(2) provides in relevant part:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)[.]

28 U.S.C. § 2244(b)(2) provides in relevant part:

> (2) A claim presented in a second or successive habeas corpus application under section 2254 that was 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
> >
> > (B)(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.

STATEMENT OF THE CASE[1]

I. PROCEDURAL BACKGROUND

In 1995, Mr. James entered guilty and no contest pleas to two counts of murder and related charges. *James v. State*, 695 So. 2d 1229, 1230 (Fla. 1997). The pleas did not include an agreement as to Mr. James' sentence, and the State sought the death penalty for both murder counts. *Id*. The trial court imposed two death sentences after a jury non-unanimously recommended death in both cases. R. 453-54, 541. On direct appeal, the Florida Supreme Court affirmed. *James*, 695 So. 2d at 1238, *cert. denied*, 522 U.S. 1000 (1997).

In 1998, appointed counsel from Florida's Office of the Capital Collateral Regional Counsel–Middle ("CCRC-M") filed and later amended Mr. James' state postconviction motion in the circuit court. PCR. 28-53, 261-305, 359-411. The state court granted an evidentiary hearing on three ineffective assistance of counsel claims, each relating to Mr. James' mental health issues. PCR. 348-50.

However, in March 2003, Mr. James moved pro se to withdraw his postconviction claims and discharge counsel. PCR. 473-74. The circuit court held a hearing pursuant to *Durocher v. Singletary*, 623 So. 2d 482, 485 (Fla. 1993), and ruled that Mr. James understood the consequences of his request. PCR. 481-83, 493-95. The

[1] Citations are as follows: "R. __" for the direct appeal record; "S. __" for the supplemental record; and "TT. __" for the separately paginated trial transcript. "PCR. __" refers to the postconviction record following the 2003 waivers, and "SPCR. __" is the supplemental record. "2PCR. __" refers to the 2019 record on appeal. Docket items are cited as "MDFL-ECF __" from the Middle District of Florida; "CA11-ECF __" from the Eleventh Circuit appeal of the § 2254 dismissal; and "2CA11-ECF __" from the Eleventh Circuit warrant proceedings. Other references are self-explanatory.

evidentiary hearing was canceled, counsel was discharged, and Mr. James' postconviction proceedings were dismissed. PCR. 493-95. No appeal was taken.

In November 2005, Mr. James contacted his former CCRC-M counsel and informed them that he had reconsidered his decision to waive postconviction proceedings and wished to resume them. PCR. 505. As a result, CCRC-M moved to be reappointed. PCR. 501-04. The circuit court directed CCRC-M to file a memorandum providing a legal basis for reinstating Mr. James' collateral proceedings. PCR. 498-500, 508-16. On January 17, 2006, the circuit court denied Mr. James' motion to reappoint CCRC-M and reinstate his proceedings, finding it time-barred. PCR. 523-26.

In 2008, the Florida Supreme Court affirmed, relying on the fact that the state circuit court had, in 2003, "explicitly warned [Mr. James] that he would be precluded from any further relief in the state courts by his waiver." *James v. State*, 974 So. 2d 365, 366-67 (Fla. 2008). Mr. James remained without counsel for the next decade.

In June 2018, the Capital Habeas Unit of the Federal Public Defender ("CHU") was appointed by the federal district court to ascertain the status of Mr. James' federal habeas rights and pursue federal remedies that might be available, including under the then-recent decision in *Hurst v. Florida*, 577 U.S. 92 (2016). MDFL-ECF 1. CHU was directed to file a 28 U.S.C. § 2254 petition with a procedural memorandum of law explaining why the petition should not be summarily dismissed as time-barred and/or unexhausted. MDFL-ECF 13, 22. CHU complied and moved for a stay to exhaust claims in state court, some of which were based on newly uncovered evidence.

MDFL-ECF 23-25. The district court granted the stay motion, citing *Rhines v. Weber*, 544 U.S. 269 (2005). MDFL-ECF 29.

The state circuit court ultimately denied relief, and the Florida Supreme Court affirmed. *James v. State*, 323 So. 3d 158 (Fla. 2021), *cert. denied*, 142 S. Ct. 1678 (2022). The federal district court lifted the *Rhines* stay, and an amended § 2254 petition and subsequent substantive pleadings were filed. *See, e.g.*, MDFL-ECF 62-63, 66, 73, 79.

On September 6, 2024, the district court entered an order and judgment denying federal habeas relief on the basis that the § 2254 petition was untimely. MDFL-ECF 90. The district court rejected Mr. James' equitable tolling argument, stating that he had not proffered enough evidence to explain "how his mental health status or impairments affected his ability to timely file…during the period between when he moved to withdraw his post-conviction motion and when he sought to reinstate it more than two years later." *Id*. at 32. The district court also denied a COA, ruling there was no substantial showing of the denial of a constitutional right. *Id*. at 119. After Mr. James' motion to alter or amend the judgment was denied, MDFL-ECF 93, he appealed and filed a COA application with the Eleventh Circuit, CA11-ECF 6. It was denied in a single-judge order on February 3, 2025. CA11-ECF 9.

On February 18, 2025, during the 21-day period for Mr. James to seek reconsideration, the Governor signed a death warrant. On February 24, 2025, Mr. James timely moved for a three-judge panel's review of his COA request and moved

to stay his execution. CA11-ECF 24. Mr. James' motion was denied on February 27, 2025. CA11-ECF 17.

Meanwhile, on February 24, 2025, Mr. James filed in the district court an emergency motion to amend or alternatively, for Rule 60(b)(2) relief based on newly discovered evidence. MDFL-ECF 99.[2] The district court denied the motion on February 27, 2025. MDFL-ECF 101. Citing to the Eleventh Circuit's decision in *Boyd v. Secretary*, 114 F.4th 1232 (11th Cir. 2024), the district court found that it lacked jurisdiction to permit an amendment.

With regard to the request for Rule 60(b) relief, the district court determined that Mr. James' motion did not constitute a second or successive habeas petition as he did not raise a new claim or attack the district court's resolution of a claim on the merits. MDFL-ECF 101 at 7 n.1. However, while considering the motion as timely, the district court ultimately concluded that Mr. James was not entitled to relief. *Id.* at 7. The district court stated, "Petitioner does not demonstrate that consideration of the new evidence would probably produce a new result—i.e., would warrant the application of equitable tolling or the actual innocence gateway—in this case." *Id.* The district court proceeded to deny a COA. *Id.* at 12-13.

On March 4, 2025, Mr. James filed a Notice of Appeal. MDFL-ECF 102. On that same date, the Eleventh Circuit issued a letter informing Mr. James that "[t]he district court has denied a COA, and the applicant may request issuance of the

[2] Mr. James acknowledged that the district court did not have jurisdiction to rule on the motion to amend. He asked that the court provide an indicative ruling in accordance with Fed. R. Civ. P. 62.1.

certificate by a circuit judge." 2CA11-ECF 1-1. The court further informed Mr. James that "[i]f no express request for a certificate is filed within 14 days of the date of this notice, the notice of appeal will constitute a request for a COA by a circuit judge." *Id.*

On March 6, 2025, Mr. James moved in the Eleventh Circuit (1) to set a briefing schedule on his appeal of the district court's jurisdictional dismissal, and (2) for a COA as to the district court's alternative Rule 60(b) analysis. 2CA11-ECF 4, 5. Mr. James also filed an emergency motion for stay of execution. 2CA11-ECF 6.

On March 13, 2025, the Eleventh Circuit issued an Order denying the stay motion. 2CA11-ECF 15-1. While the Eleventh Circuit recognized this Court's grant of certiorari in *Rivers v. Lumpkin*, 99 F.4th 216 (5th Cir. 2024), *cert. granted*, 145 S. Ct. 611 (2024) (No. 23-1345), it observed that grants of certiorari do not themselves change the law. 2CA11-ECF 15-1 at 8. The Eleventh Circuit further determined that there was no likelihood of success on the merits, and a stay of execution would be inequitable and adverse to the public interest. *Id.* at 6, 9.

II. FACTUAL BACKGROUND

A. Equitable tolling

Mr. James' equitable tolling argument alleged evidence that he was incompetent at the time of his postconviction waiver and discharge of counsel. The § 2254 petition asserted that, despite significant red flags in Mr. James' life history and actions related to his litigation, Mr. James' postconviction counsel failed to explore the issue of how his impaired cognition and mental health bore on his ability to make competent decisions at the time of his waiver. Then, postconviction counsel

failed to appeal their discharge. These failures left Mr. James—who as a result of his cognitive and psychological deficits was unable to independently timely file a habeas petition—wholly without representation for approximately fifteen years, even after he sought reinstatement of his counsel and appellate process.

The petition proffered multiple mental health experts who opined on indicia that (1) Mr. James was incompetent at the time of his postconviction waiver, and (2) incompetency persisted after his waiver. For instance, Florida Department of Corrections ("FDOC") records indicate that Mr. James suffers from impaired thinking. Upon a rudimentary psychiatric "evaluation," even without any advanced testing, prison psychiatric staff determined that Mr. James' judgment was "impaired." MDFL-ECF 66-1 at 40-43.

Likewise, Dr. Julie Kessel, M.D., noted that Mr. James suffers from numerous cognitive and psychological impairments. He has longstanding brain damage, as well as short and long-term memory loss. He is impaired in his ability to organize his thoughts and frequently loses his train of thought. He has periods of cognitive lapses. He is impaired in his ability to think abstractly, recognize what information is relevant or irrelevant, use information in a meaningful way, consider consequences, and manage his behavior. Although intelligent, he is operating under extreme deficits. He has suffered from apathy and a nihilistic preoccupation that he should be executed. While his cognitive deficits are longstanding, the decline appears to be continuing to the present day. His impairments impeded his ability to fully

understand his legal circumstances, assist his legal team, and act in his own best legal interests. *Id*. at 4-6.

Dr. Eddy Regnier, Ph.D., noted that Mr. James has a restricted affect, signs of depression, labile moods, and decreased control over his emotions. He struggles to do basic calculations, has difficulty remembering and spelling simple words, and loses track of conversations. These deficits have a detrimental impact on his day-to-day functioning. *Id*. at 8-11. Dr. Hyman Eisenstein, Ph.D., diagnosed Mr. James with a neurodegenerative disorder, noting significant cognitive decline over time. *Id.* at 45-54. And, Dr. Yenys Castillo, Ph.D., noted Mr. James' suicidality:

> Mr. James consistently indicated that he does not remember the homicides or his behavior leading up to them. However, he desired to be punished and even executed throughout the years. This desire comes from his attachment and depressive disturbances…It is unclear whether Mr. James truly appreciated the seriousness and finality of being sentenced to die during his initial penalty phase and postconviction proceedings, and these competency concerns persist into the present day.
>
> * * * *
>
> At a minimum, given his insistence on foregoing his legal rights and admitting to facts he did not seem to remember, the issue of whether he possessed or possesses (1) sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and (2) a factual and rational understanding of the sentence he faces should have been explored. Based on the information reviewed, it is possible that a neurocognitive condition coupled with depression rendered him incompetent to proceed in his capital legal proceeding and subsequent appeals, as both conditions would compromise a person's capacity to concentrate, sustain attention, learn, reason through hypothetical legal scenarios, make sound decisions, and conform his behavior to the requirements of a courtroom. That is, his flawed thinking, based on psychological trauma, brain damage, depression, self-loathing, and low self-esteem, could have impacted his ability to rationally understand the charges against him, appreciate the penalties he faces, understand the legal system, and assist his attorneys.

Id. at 76-77.

B. Newly discovered evidence

On January 11, 2023, Mr. James was found unresponsive in his cell at Union Correctional Institution after suffering an unwitnessed cardiac arrest. MDFL-ECF 99-1 at 3. Upon discovery, he was blue in color and required multiple rounds of resuscitation over twenty minutes before his pulse returned. *Id.* at 6. He was intubated and additional lifesaving measures were taken upon his hospitalization at UF Health Gainesville, including therapeutic hypothermia and the placement of a cardiac stent. *Id.* at 7, 13. Noting a loss of oxygen to the brain and the presence of an acute head injury, medical staff obtained a CT scan of Mr. James' head and cervical spine to gauge the extent of his altered mental status and encephalopathy, and to determine whether they resulted from presumably striking the back of his head when he fell during cardiac arrest. *Id.* at 6, 18. Mr. James remained "profound[ly]" comatose "with no immediate signs of neurological recovery[,]" for two days before showing improvement. *Id.* at 7, 17.

Despite Mr. James' undersigned federal counsel immediately requesting all medical records related to his hospital admission and treatment, and although counsel received copies of Mr. James' written medical records and numerous test results on March 24, 2023, the imaging of Mr. James' January 11, 2023, CT scan was not disclosed until February 14, 2025, just days before the death warrant was signed.[3]

[3] Counsel made approximately 12 attempts to obtain the CT images, including contacting multiple medical departments; re-requesting records after learning Mr.

Counsel promptly retained expert review of the imaging and radiologist report.

The neuroimaging revealed longstanding brain deterioration. Dr. Erin Bigler, Ph.D., noted radiological evidence of "cerebral atrophy" in the frontoparietal realm. *Id.* at 18. In a significant space where Mr. James should have brain tissue, there is only cerebrospinal fluid. *Id.* at 20. The surface and interior of his brain are "bathed in circulating cerebrospinal fluid" due to structural shrinkage. *Id.* Additionally, whereas a healthy brain butts up against the skull, Mr. James' CT imaging shows his does not, and there are other structural abnormalities "consistent with atrophic changes involving the frontal lobe" and which can be expected to lead to falls, loss of consciousness, and cognitive sequelae pertaining to memory. *Id.* at 19, 20, 30.

Based on the timing of Mr. James' brain scans—the same day as his cardiac arrest—cerebral atrophy due to anoxic brain injury (*i.e.*, the deprivation of oxygen Mr. James suffered before resuscitation) would not yet have shown up on a CT scan at the time Mr. James' imaging was conducted. *Id.* at 18. Thus, although the scans were responsive to Mr. James' cardiac arrest and subsequent head injury, the brain atrophy reflected in Mr. James' CT scans "*predated [his] cardiac arrest, possibly by many years.*" *Id.* (emphasis added); *see also id*. at 10 (Dr. Abhi Kapuria, M.D., opining from neuroimaging results that "Mr. James likely had a substantiated baseline cognitive deficit" prior to his cardiac arrest).

Dr. Bigler also noted the CT imaging was done for "triage purposes, not an in-

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James was admitted under a pseudonym; receiving duplicate written records after a renewed request, but still no scans; and twice being *informed there were no scans*.

depth assessment of potential cerebrovascular issues, as all of that would have to come from other types of neuroimaging, including MRI." *Id*. at 19; *see also id*. at 20 ("CT imaging in the setting of Mr. James is a triage tool, as it only provides a gross appearance of the brain."). Thus, the true extent and duration of Mr. James' cognitive degeneration and impairment likely exceeds what is apparent from the CT imaging. *See id*. at 9-10 (Dr. Kapuria noting that CT scanning does not pick up the full extent of brain damage and recommending an MRI because "[g]iven the complexity of Mr. James' cognitive and neurological history, additional testing is medically necessary to further characterize the extent of his brain injury and to guide future clinical and legal assessments").

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD AFFIRM THAT MID-APPEAL HABEAS FILINGS ARE PERMISSIBLE UNDER THE FEDERAL RULES OF CIVIL PROCEDURE AND ARE NOT PROHIBITED BY 28 U.S.C. § 2244.

This Court has granted certiorari this term to consider the validity of mid-appeal habeas filings in the district courts. *See Rivers v. Lumpkin*, 99 F.4th 216 (5th Cir. 2024), *cert. granted*, 145 S. Ct. 611 (2024) (No. 23-1345). This Court did so to address a conflict in the circuits, one which includes the Eleventh. In light of the fact that this Court's resolution of the issue directly impacts Mr. James, certiorari is warranted.

A. The Eleventh Circuit's flawed precedent

The Eleventh Circuit in its Order denying Mr. James' motion to stay his execution relied on its prior decision in *Boyd v. Secretary*, 114 F.4th 1232 (11th Cir.

2024) to deny relief. *See* 2CA11-ECF 15-1 at 6-7 ("[A] final judgment ends the district court proceedings, cutting off the opportunity to amend pleadings and precluding relitigation of any claim resolved by the judgment unless that judgment is first set aside.") (citation omitted).[4] In *Boyd*, the court added that "once a district court has entered its final judgment on the merits in a habeas case, a new filing by the same prisoner seeking federal habeas corpus relief from the same state conviction is almost always properly considered a second or successive habeas petition, no matter what the prisoner calls it." 114 F.4th at 1236.

The Eleventh Circuit's rationale is erroneous for two reasons. First, it runs afoul of the federal rules of civil and appellate procedure. Pursuant to 28 U.S.C. § 2242, a habeas petition generally "may be amended or supplemented as provided in the rules of procedure applicable to civil actions." Consistent with this, Habeas Corpus Rule 12 permits application of the Federal Rules of Civil Procedure in habeas cases "to the extent that they are not inconsistent with any statutory provisions or [the habeas] rules[.]" *See also* Fed. R. Civ. P. 81(a)(4) (The civil rules "apply to proceedings for habeas corpus . . . to the extent that the practice in those proceedings: (A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing 2255 Cases; and (B) has previously conformed to the practice in civil actions.").

[4] As Mr. James addresses below, the Eleventh Circuit additionally found that "James's newly proffered medical evidence does not support his equitable tolling argument." *Id*. at 8.

Fed. R. Civ. P. 15 governs amendments and supplemental pleadings. Depending on when an amendment is sought, it can be filed as a matter of right, or it may require the court's permission. *See* Rule 15(a) and (b). Further, Rule 15(d), which covers supplemental pleadings, states in relevant part that "[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented."

Upon the filing of a notice of appeal, a district court does not have jurisdiction over a petitioner's case, so it is without authority to rule on his motion to amend. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) ("The filing of a notice of appeal is an event of jurisdictional significance" because "it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."). Yet, contrary to the Eleventh Circuit's determination, a petitioner is not without recourse, as Fed. R. Civ. P. 62.1(b) contemplates such a situation. According to the Rule, if a timely motion is made for relief that the court lacks the authority to grant because an appeal has been docketed and is pending, the court may still entertain the motion and do one of three things: (1) defer considering the motion, (2) deny the motion, or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue. If the district court states that it would grant the motion, then the movant "must promptly notify the circuit clerk under Federal Rule of Appellate Procedure 12.1." Fed. R. Civ. P. 62.1(b). The circuit court of appeals may,

in its discretion, remand the case for further proceedings, clearing the way for an amendment. *See* Fed. R. App. P. 12.1(b).

Despite the applicable rules, none of these considerations were applied by either the district court or the Eleventh Circuit. Certiorari is warranted on this basis.

Second, Eleventh Circuit precedent is contrary to this Court's instruction in *Panetti v. Quarterman*, 551 U.S. 930, 946 (2007) and *Banister v. Davis*, 590 U.S. 504 (2020). In *Panetti*, this Court observed that it "has declined to interpret 'second or successive' as referring to all § 2254 applications filed second or successively in time, even when the later filings address a state-court judgment already challenged in a prior § 2254 application." 551 U.S. at 944 (citation omitted). And in *Banister*, this Court emphasized that the phrase "second or successive" is a term of art which is not self-defining. 590 U.S. at 504 (citation omitted). Instead, the Court has looked to historical practice and statutory aims when determining whether § 2244(b)(2) applies. *Id.*

Despite this guidance, the Eleventh Circuit has failed to adhere to *Panetti* and *Banister*, instead declaring that virtually all subsequent habeas filings are second or successive within the meaning of § 2244(b)(2). *Boyd*, 114 F.4th at 1236. In doing so, the Eleventh Circuit has failed to recognize the broad range of civil rules already in existence that neither conflict with habeas rules nor cause any undue delay or abuse. Further ignored by the Eleventh Circuit is the fact that Congress has already decided what standard applies when a prisoner seeks to amend a habeas application mid-appeal—and it's not §2244(b)(2). Indeed, had Congress wanted all post-judgment

habeas filings to count as second or successive petitions, "it easily could have written" such a law. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 227 (2008). It did not.

B. Circuit split

The Eleventh Circuit is not alone in its flawed approach. *See Rivers*, 99 F.4th at 222 (finding that filings introduced after a final judgment that raise habeas claims are successive); *Moreland v. Robinson*, 813 F.3d 315, 325 (6th Cir. 2016) (finding that attempt to raise habeas claims is second or successive when filed "after the petitioner has appealed the district court's denial of his original habeas petition or after the time for the petitioner to do so has expired"); *Philips v. United States*, 668 F.3d 433, 435-36 (7th Cir. 2012) (holding that final judgment triggers § 2244(b)(2)); *Williams v. Norris*, 461 F.3d 999, 1003 (8th Cir. 2006) (rejecting claim that motions "were not successive because the denial of his initial petition had not yet been affirmed on appeal"); *Balbuena v. Sullivan*, 980 F.3d 619, 642 (9th Cir. 2020) (applying § 2244(b)(2) as soon as the district court has "adjudicated [a] habeas petition on the merits"); and *Ochoa v. Sirmons*, 485 F.3d 538, 541 (10th Cir. 2007) (finding that "§ 2244(b) authorization is required whenever substantively new claims are raised; procedural associations with prior habeas matters must not obscure the fact that the petitioner is really pursuing a second or successive petition.").

Conversely, the Second and Third Circuits hold that § 2242(b)(2) does not apply until petitioner exhausts appellate review of his first habeas petition. *See*, *e.g.*, *Whab v. United States*, 408 F.3d 116, 118 (2d Cir. 2005) ("[S]o long as appellate proceedings following the district court's dismissal of the initial petition remain pending when a

subsequent petition is filed, the subsequent petition does not come within AEDPA's gatekeeping provisions for 'second or successive' petitions."). *See also United States v. Santarelli*, 929 F.3d 95, 105 (3d Cir. 2019) (joining the Second Circuit in holding that a subsequent habeas petition filed during the pendency of an appeal of the initial petition should be construed as a motion to amend the initial petition).

C. *Rivers v. Lumpkin*

This Court will presumably resolve the circuit split when it decides *Rivers*. As in this case, Rivers sought to amend his petition mid-appeal with newly discovered evidence—an exculpatory report contained in his previously undisclosed trial attorney files. *Rivers*, 99 F.4th at 218. The Fifth Circuit, however, found that § 2242(b) applied once the district court entered its final judgment, making all post-judgment habeas filings second or successive. *Id.* at 222. Rivers subsequently sought, and was granted, certiorari on the following issue: "whether § 2242(b)(2) applies (i) only to habeas filings made after a petitioner has exhausted appellate review of his first petition, (ii) to all habeas filing submitted after a district court enters judgment, or (iii) only to some post-final-judgment habeas filings." *See Rivers v. Lumpkin*, 99 F.4th 216 (5th Cir. 2024), *cert. granted*, 145 S. Ct. 611 (2024) (No. 23-1345).

Given the likely impact of this Court's impending decision on Mr. James, it should do as it did in *Rivers* and grant certiorari.

II. THIS COURT SHOULD REVIEW THE FEDERAL COURTS' DETERMINATION THAT THE NEWLY DISOVERED EVIDENCE DID NOT MERIT FURTHER CONSIDERATION OF HIS EQUITABLE TOLLING CLAIM.

In rejecting Mr. James' equitable tolling argument in its September 6, 2024 Order dismissing the § 2254 petition, the district court: (1) attributed little value to Mr. James' multiple proffers of mental incapacity related to his legal proceedings, which were based on clinical psychological evaluations, anecdotal lay-witness statements, and Mr. James' self-reports; and (2) relied upon brain testing and scanning to conclude that Mr. James' brain structure was not abnormal. *See, e.g.*, MDFL-ECF 90 at 19, 36 (district court relying on testimony from 1995 "that results from EEG and SPECT scan testing were normal, indicating Petitioner did not suffer from abnormal parts of the brain"); *id.* (district court ruling that there was no indication "that anything occurred in the intervening time" between Mr. James' trial and postconviction waiver that would cause "a bona fide doubt about his competency."); *id*. at 36-37 ("Petitioner does not allege any particular development in his mental health impairments…that would give counsel reason to doubt his competency [at the time of his postconviction waiver]").

Despite the new evidence of Mr. James' mental impairment, both the Eleventh Circuit and the district court deemed it insufficient to merit further consideration. In its Order denying Mr. James' motion to stay his execution, the Eleventh Circuit stated that it "cannot say that James is likely to succeed" in light of the lack of causal connection between Mr. James' mental impairment and the relevant time to file his habeas petition. 2CA11-ECF 15-1 at 6-7. And, although the district court found that

Dr. Bigler's report, based on the newly disclosed brain scans, "provides support for the conclusions of the other experts that were considered in adjudicating the Amended Petition," it likewise found that Mr. James failed to show a causal connection between his mental impairments and his ability to file a timely petition. MDFL-ECF 101 at 11. The district court also denied Rule 60(b) relief on the basis that Mr. James failed to provide specific allegations or evidence of the effect of his mental impairments on his daily life during the relevant time. *Id*. at 11. Finally, the district court determined that the new evidence failed to shed light on Mr. James' lack of reasonable diligence, and his inability to rationally and factually understand the proceedings against him. *Id.* at 11-12.

Contrary to the federal courts' rulings, the new evidence sheds great light on how it was Mr. James' cognitive impairment—and not any lack of diligence—that impeded him from filing a first habeas petition. The new evidence significantly undermines the Eleventh Circuit's and district court's conclusions. The CT scans and Dr. Bigler's report provide objective and compelling corroboration of the doctors' findings. For one thing, Dr. Bigler explains that the raw visual data on the CT scans is in lockstep with Dr. Castillo's opinions. *See, e.g.*, MDFL-ECF 99-1 at 22-23. In other words, for what the district court viewed as vague and speculative, Dr. Bigler has provided visual evidence. Further, the "CT imaging does provide further insight into [the] chronicity" of Mr. James' depression, as well as its impact on Mr. James' cognitive function. Brain damage, now unquestioned in Mr. James' case due to the CT scans, is clinically understood to aggravate depression. *See id.* at 23. When the

medical conclusions are viewed in tandem, the CT scans and Dr. Bigler's subsequent report help explain how a relatively common condition (depression) had such an extraordinary and uncommon effect on Mr. James' behavior that it rose to a point of irrationality, suicidality, and ultimately legal incompetence. *Id.*

The imaging also suggests that Mr. James' "structural brain changes could have commenced as early as during his juvenile period." *Id.* at 24. This further corroborates expert opinions, including Dr. Regnier's 2018 suggestion of potential cerebral atrophy stemming from Mr. James' repetitive traumatic brain injuries and polysubstance abuse during his juvenile period. Both may have been major contributing factors to his cerebral atrophy, especially within a frontoparietal distribution. *Id*. This, in turn, provides concrete, nonspeculative support for Mr. James' proffer that his drug use and early childhood traumatic exposures had traceable relevance to his postconviction waivers and inability to file a habeas petition prior to being appointed federal counsel in 2018.

And, the new information counters the district court's September 6, 2024 conclusion that the profound impairments Mr. James experienced at the time of his trial would have improved over his sober years in prison. *See, e.g.*, MDFL-ECF 90 at 26-27 (district court speculating that "the controlled prison environment both provided structure and assisted Petitioner to enter remission from his polysubstance dependence, thereby minimizing [his multiple vulnerabilities] as they might relate to Petitioner's level of cognitive functioning while his AEDPA limitations period ran."). As Dr. Hyman Einstein, Ph.D., noted, Mr. James has a neurodegenerative disorder—

inherently a progressive, dementing condition. MDFL-ECF 99-1 at 21. With the new data indicating that this condition began to take root close to 50 years ago, the vastness of Mr. James' impairments at the time of his postconviction waiver (approximately 20 years ago) is especially stark, and the CT imaging confirms that they were not ameliorated by structure or sobriety.

Additionally, the raw imaging quite literally shows a "specific obvious impairment" in the form of visible brain atrophy. And when coupled with the interpretive reports, the connection to Mr. James' legal incompetency is profound:

> Chronic brain atrophy, as suggested by the CT reports, particularly in the frontal and parietal lobes, is associated with various forms of dementia and is expected to impact cognition, language, and potentially memory. The presence of these findings on imaging further supports the likelihood of underlying neurodegenerative disease contributing to this patient's cognitive decline.

Id. at 9.

Any one of the major conditions noted by prior expert reports "alone can increase the risk of developing dementia later in life, but their combined presence significantly strengthens the correlation, suggesting a more substantial contribution to his cognitive decline." *Id*. This helps explain why, as Mr. James proffered, his impairments became so pronounced amidst the stress of his legal proceedings: his brain was like "a rusted engine that is suddenly pushed to its limits. The underlying structural weaknesses, previously stable but compromised, are now far more susceptible to rapid deterioration, causing the engine to fail much sooner than it otherwise would have." *Id*.

The new evidence both corroborates and significantly adds to the expert opinions based on Mr. James' life history, self-reported cognitive symptoms, responses during neuropsychological evaluation, and anecdotal evidence from lay-witnesses who knew Mr. James prior to his incarceration. Now, the neuroimaging scans provide concrete evidence of Mr. James' abnormal brain structure, and both qualitatively and quantitatively strengthen Mr. James' proffer that his mental impairments had a causal nexus to his untimely habeas filing. As Dr. Bigler explained:

> It is one thing to state that ACE factors and TBI can cause structural harm to the brain, and to opine that this harm may have occurred based on anecdotal reports of Mr. James' life history. It is another thing, and potentially more conclusive, had all of the proper neuroimaging been done on Mr. James to better corroborate causation. The 2023 CT is one part of that imaging.

Id. at 23. In other words, all of this new information—which would not have been possible without review of the raw CT scans obtained on February 14, 2025, provides weight and specificity to Mr. James' proffer regarding equitable tolling. Most importantly, it explains how Mr. James, despite his baseline intelligence, could become so paralyzed by irrationality and self-loathing that he could not process relevant information, assist his attorneys, understand the gravity of his present situation or the consequences he faced, or act in his own self-interest.

The question of whether equitable tolling is warranted on the basis of a mental incapacity is a "highly case-specific inquiry." CA11-ECF 6 at 31 (citing *Bolarinwa v. Williams*, 593 F. 3d 226, 232 (2d Cir. 2010) (citations omitted)). Although a petitioner ultimately bears the evidentiary burden to show equitable tolling is warranted, *see,*

e.g., *Lugo v. Sec'y, Fla. Dep't of Corrs.*, 750 F. 3d 1198, 1209 (11th Cir. 2014), the burden at the initial pleading stage is much lower. He need only "proffer enough facts that, if true, would justify an evidentiary hearing on the issue." *Hutchinson v. Florida*, 677 F.3d 1097, 1099 (11th Cir. 2012). A hearing is necessary when "the material facts [necessary to determine whether tolling is appropriate] are in dispute," as opposed to when a petition provides "merely conclusory allegations unsupported by specifics." *San Martin v. McNeil*, 633 F.3d 1257, 1271 (11th Cir. 2011) (quoting *Pugh v. Smith*, 465 F.3d 1295, 1298, 1300 (11th Cir. 2006)). Although the allegations must be more than speculative, they need not be detailed. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). And an evidentiary hearing on equitable tolling is appropriate even if it would not resolve all dispositive timeliness issues. *See Miller v. Sec'y, Fla. Dep't of Corrs.*, Case No. 3:17-cv-932, MDFL-ECF 35 at 10-12 (M.D. Fla. Apr. 16, 2021) (ordering limited evidentiary hearing where petitioner presented "significant allegations" regarding a discrete aspect of an equitable tolling inquiry, even though resolution of the relevant factual disputes in the petitioner's favor would not necessarily result in his petition being deemed timely).

With the quantum of this evidence, Mr. James has proffered specific factual allegations which, taken as true and in the light most favorable to him, should have entitled him to an evidentiary hearing at which he would carry the burden of proof to establish that equitable tolling is appropriate in his case. The federal courts' failure to provide Mr. James with that opportunity warrants certiorari review.

CONCLUSION

Based on the foregoing, this Court should grant a writ of certiorari to review the decision of the Eleventh Circuit in this case.

/s/ Katherine A. Blair
Katherine A. Blair
Sean T. Gunn
Lauren E. Rolfe
Capital Habeas Unit
Office of the Federal Public Defender
Northern District of Florida
227 N. Bronough St., Suite 4200
Tallahassee, FL 32301-1300
(850) 942-8818
katherine_blair@fd.org

Counsel for Petitioner

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