No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL A. TANZI,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS

Respondent.

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

CAPITAL CASE

DEATH WARRANT SIGNED
EXECUTION SET APRIL 8, 2025 AT 6:00 P.M.

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April 4, 2025

CAPITAL CASE

QUESTIONS PRESENTED

In an attempt to avoid the clear implications of this Court's decision in *Erlinger v. United States*—that even unanimous jury recommendations for the death penalty are void under the Sixth Amendment because they cannot substantively limit executive and judicial power—the Florida Supreme Court relied on its own decision dependent on *Spaziano v. Florida* to deny Mr. Tanzi's claim. However, in *Hurst v. Florida* this Court overruled *Spaziano* in relevant part, making it clear that a jury's "mere recommendation is not enough" under the Sixth Amendment. Accordingly, the questions presented are:

1. Whether Florida may limit a penalty phase jury's role under the Sixth, Eighth, and Fourteenth Amendments based on *Spaziano v. Florida*, a case which this Court has explicitly overruled.

2. Whether Florida's continued reliance on unanimous advisory recommendations as a substitute for jury fact-finding violates the Sixth Amendment and the Due Process Clause under *Apprendi* and its progeny.

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PARTIES TO THE PROCEEDINGS BELOW

Petitioner Michael A. Tanzi, a death-sentenced Florida inmate facing imminent execution, was the Movant and Petitioner in the Florida Supreme Court.

Respondent Secretary, Florida Department of Corrections, was the Respondent in the Florida Supreme Court.

LIST OF DIRECTLY RELATED PROCEEDINGS

Per Supreme Court Rule 14.1(b)(iii), the following proceedings relate to the case at issue in this Petition:

Underlying Trial:

Sixteenth Judicial Circuit Court in and for Monroe County, Florida
State of Florida v. Michael A. Tanzi, Case No. 2000-CF-573-K
Judgment Entered: May 9, 2003
(Plea Date: January 31, 2003; Sentence Date: April 11, 2003)

Direct Appeal:

Florida Supreme Court, Case No. SC05-0457
Michael A. Tanzi v. State of Florida, 964 So. 2d 106 (Fla. 2007)
Judgment Entered: May 10, 2007
Rehearing Denied: August 27, 2007
Mandate Issued: September 12, 2007

Supreme Court of the United States, Case No. 07–8033
Michael Tanzi v. State of Florida, 552 U.S. 1195 (2008)
Judgment Entered: February 19, 2008

Initial Postconviction Proceedings and Appeal:

Sixteenth Judicial Circuit Court in and for Monroe County, Florida
State of Florida v. Michael A. Tanzi, Case No. 2000-CF-573-K
Judgment Entered: March 22, 2010

Florida Supreme Court, Case No. SC10-807
Michael A. Tanzi v. State of Florida, 94 So. 3d 482 (Fla. 2012)
Judgment Entered: April 19, 2012
Rehearing Denied: July 24, 2012
Mandate Issued: August 9, 2012

State Habeas Proceeding:

Florida Supreme Court, Case No. SC11–81
Michael A. Tanzi v. Sec'y, Fla. Dep't of Corr., 94 So. 3d 482 (Fla. 2012)
Judgment Entered: April 19, 2012

Federal Habeas Proceedings:

United States District Court for Southern District of Florida, Case No. 4:12-cv-1006
Michael Anthony Tanzi v. Sec'y, Fla. Dep't of Corr., No. 4:12-cv-10066 (S.D. Fla. Feb. 27, 2013) (unreported)
Judgment Entered: February 27, 2013
Motion to Alter or Amend Denied: April 24, 2013

United States Court of Appeals, Eleventh Circuit, Case No. 13-12421
Michael Tanzi v. Sec'y, Fla. Dep't of Corr., 772 F.3d 644 (11th Cir. 2014)
Judgment Entered: November 19, 2014
Petition for Rehearing En Banc Denied: January 22, 2015
Mandate Issued: February 2, 2015

Supreme Court of the United States, Case No. 14-10416
Michael A. Tanzi v. Sec'y, Fla. Dep't of Corr., 577 U.S. 865 (2015)
Judgment Entered: October 5, 2015

Successive Postconviction Proceedings:

Sixteenth Judicial Circuit Court in and for Monroe County, Florida
State of Florida v. Michael A. Tanzi, Case No. 2000-CF-573-K
Judgment Entered: April 24, 2017

Florida Supreme Court, Case No. SC2017-1640
Michael A. Tanzi v. State of Florida, 251 So. 3d 805 (Fla. 2018)
Judgment Entered: April 5, 2018
Mandate Issued: April 16, 2018

Supreme Court of the United States, Case No. 18-5160
Michael A. Tanzi v. State of Florida, 586 U.S. 1004 (2018)
Judgment Entered: November 13, 2018

Successive Postconviction Proceedings (Under Warrant):

Sixteenth Judicial Circuit Court in and for Monroe County, Florida
State of Florida v. Michael A. Tanzi, Case No. 2000-CF-573-K
Judgment Entered: March 19, 2025

Florida Supreme Court, Case No. SC2025-0371
Michael A. Tanzi v. State of Florida, SC2025-0371, 2025 WL 971568, at *1 (Fla. Apr. 1, 2025) (unreported)
Judgment Entered: April 1, 2025

State Habeas Proceeding (Under Warrant):

Florida Supreme Court, Case No. SC2025-0372
Michael A. Tanzi v. Sec'y, Fla. Dep't of Corr., SC2025-0372, 2025 WL 971568, at*1 (Fla. Apr. 1, 2025) (unreported)
Judgment Entered: April 1, 2025

All Writs Proceeding (Under Warrant):

Florida Supreme Court, Case No. SC2025-0424
Michael A. Tanzi v. Sec'y, Fla. Dep't of Corr., No. SC2025-0424, 2025 WL 971568, at*1 (Fla. Apr. 1, 2025) (unreported)
Judgment Entered: April 1, 2025

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Michael A. Tanzi, prays that a Writ of Certiorari issue to review the opinion of the Florida Supreme Court.

CITATIONS TO OPINION BELOW

The opinion of the Florida Supreme Court in this cause, is unreported but available as *Tanzi v. Sec'y, Fla. Dep't of Corr.*, SC2025-0372, 2025 WL 971568, *1 (Fla. Apr. 1, 2025), and is attached as to this Petition as "Appendix A, at A1."

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction to grant the Petition for a Writ of Certiorari to the Florida Supreme Court on the basis of 28 U.S.C. § 1257(a) and 2101(d). The Florida Supreme Court issued its decision on April 1, 2025.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.

The Eighth Amendment to the United States Constitution provides:

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

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in relevant part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE[1]

I. RELEVANT LEGAL BACKGROUND

Under Florida's capital sentencing statute, death eligibility is dependent upon the finding of certain statutorily defined facts in addition to the guilty jury verdict or plea. § 921.141, Fla. Stat. (1996) (Appendix B at A12). At the time of Mr. Tanzi's trial, Florida's capital sentencing scheme permitted a jury to return only a recommendation as to penalty and allowed the judge alone to find the statutorily defined facts necessary to impose a death sentence. § 921.141(3).

In *Hurst v. Florida*, this Court struck down Florida's capital sentencing scheme as violative of the Sixth Amendment right to a jury trial and the Fourteenth Amendment's Due Process Clause, relying on *Apprendi v. New Jersey*, 530 U.S. 466 (2000) (holding that any fact that "expose[s] the defendant to a greater punishment than that authorized by the jury's guilty verdict" is an element that must be submitted to a jury), and *Ring v. Arizona*, 536 U.S. 584 (2002) (applying *Apprendi* to capital cases). 577 U.S. 92 (2016).

Applying *Apprendi*'s fundamental, broad-ranging constitutional command, *Hurst v. Florida* held that a jury must find the additional statutorily defined facts

[1] Citations to the state court proceedings in this Petition shall be designated as follows: "(R. ___)" – record on direct appeal to the Florida Supreme Court; "(T. ___)" – trial transcripts on direct appeal to the Florida Supreme Court; "(PCR. Vol. ___, ___)" – postconviction record on appeal to the Florida Supreme Court, Case No. SC10-807; "(PCR-2. ___)" – successive postconviction record on appeal to the Florida Supreme Court, Case No. SC17-1640; and "(PCR-3. ___)" – successive postconviction record on appeal to the Florida Supreme Court under warrant, Case No. SC25-0371. All other citations shall be self-explanatory.

required to render the defendant death eligible. 577 U.S. at 97. These facts include both that "sufficient aggravating circumstances exist" and that "there are insufficient mitigating circumstances to outweigh the aggravating circumstances." *Id.* at 100. "[A] jury's mere recommendation is not enough." *Id*. at 94.

On remand, the Florida Supreme Court held in *Hurst v. State* that, in addition to the Sixth Amendment and due process requirements set forth in *Hurst v. Florida*, the Eighth Amendment requires a unanimous jury to find beyond a reasonable doubt that statutory aggravating circumstances exist, that the aggravating circumstances are sufficient to impose the death penalty, and that the aggravating circumstances outweigh the mitigating circumstances. *Hurst v. State*, 202 So. 3d 40, 53-59 (Fla. 2016). Thereafter, the court applied *Hurst v. Florida* error retroactively to cases that became final after this Court's decision in *Ring*. *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016).

Hurst v. Florida applied to Mr. Tanzi; however, because his jury returned an advisory recommendation of death by a unanimous vote of 12–0, the Florida Supreme Court deemed the error harmless. *Tanzi v. State*, 251 So. 3d 805, 806 (Fla. 2018) (citing *Davis v. State*, 207 So. 3d 142, 175 (Fla. 2016) (holding that "the State can sustain its burden of demonstrating that any *Hurst v. Florida* error was harmless beyond a reasonable doubt" where the jury rendered a unanimous recommendation of death because "unanimous recommendations . . . are precisely what we determined in *Hurst* to be constitutionally necessary to impose a sentence of death").

In 2020, a reconstituted Florida Supreme Court receded from *Hurst v. State*

and held in *State v. Poole* that a death sentence could be imposed whenever a jury found one or more aggravators beyond a reasonable doubt during either the guilt or penalty phase. 297 So. 3d 487, 502-03 (Fla. 2020). The court also receded from its prior decisions concerning the need for unanimity in death penalty proceedings, holding that neither the Sixth Amendment nor the Florida Constitution's prohibition against cruel and unusual punishment require unanimous jury recommendations—or jury recommendations at all. *Id.* at 505. To do so, the court notably relied heavily on this Court's decision in *Spaziano v. Florida*, 468 U.S. 447 (1984), *overruled in part by Hurst*, 577 U.S. 92.

On June 21, 2024, this Court issued its decision in *Erlinger v. United States*, 602 U.S. 821 (2024). *Erlinger* concerned a challenge to 18 U.S.C. § 924(e)(1) of the Armed Career Criminal Act (ACCA), which allowed a judge, rather than a jury, to make the findings necessary to increase a defendant's punishment. Finding the provision violative of the Sixth Amendment and Fourteenth Amendment's Due Process Clause, this Court reiterated the "firmly entrenched" principle that "[o]nly a jury may find 'facts that increase the prescribed range of penalties to which a criminal defendant is exposed.'" *Erlinger*, 602 U.S. at 833 (quoting *Apprendi*, 530 U.S. at 490).

Ring previously held that "if a State makes an increase in a defendant's punishment contingent on the finding of a fact, that fact—*no matter how the State labels it*—must be found by a jury beyond a reasonable doubt." 536 U.S. at 602 (emphasis added). *Erlinger* clarified that a jury determination is required for "even seemingly straightforward factual questions." 602 U.S. at 849. The Sixth Amendment

and the Fourteenth Amendment Due Process Clause require that "virtually 'any fact' that 'increase[s] the prescribed range of penalties to which a criminal defendant is exposed'" must be resolved by a unanimous jury beyond a reasonable doubt. *Erlinger*, 602 U.S. at 834 (quoting *Apprendi*, 530 U.S. at 490).

Despite the fact that Mr. Tanzi's advisory jury made no findings at all, much less determinations of defined facts necessary to impose death, Mr. Tanzi was denied *Hurst* relief. *Erlinger* establishes the Florida Supreme Court's decisions in *Davis v. State* and its progeny were based on a fundamentally flawed conception of "*Hurst* error" and wrongly decided. Mr. Tanzi's death sentence is—and always has been—unconstitutional at its core. This error demands a stay of Mr. Tanzi's execution.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

Mr. Tanzi was indicted by a grand jury in Monroe County, Florida, on May 16, 2000, for the first-degree murder of Janet Acosta. (R. 13-14). An amended information was filed on March 26, 2002, charging Mr. Tanzi with carjacking with a deadly weapon, kidnapping to facilitate a felony with a deadly weapon, armed robbery with a deadly weapon, and two counts of sexual battery with a deadly weapon. (R. 299-301).

Initially, Mr. Tanzi pleaded not guilty to all charges. (R. 22). However, both of Mr. Tanzi's trial counsel believed his best chance was to plead guilty and waive a jury for the penalty phase proceedings. (R. 2340-42, 2408). They told Mr. Tanzi that the judge had a reputation as a fair sentencer. (R. 2407). The two were so sure, they advised him of this course of action for at least two months. (R. 2264, 2420).

On January 31, 2003, Mr. Tanzi entered an *Alford*[2] plea to the first-degree murder, carjacking, kidnapping, and armed robbery charges. Although Mr. Tanzi was under the assumption that he could waive a penalty phase jury, the judge announced during the plea colloquy that Mr. Tanzi would indeed have a penalty phase jury. Following a lunch break, counsel asserted that Mr. Tanzi sought to waive his right to a penalty phase jury and presented the affidavit Mr. Tanzi signed, which included his intention to waive a jury. (R. 1921). However, because "[t]his [was] a momentous issue," the court "want[ed] . . the benefit of our fellow citizens and their recommendation" and refused to accept Mr. Tanzi's waiver.[3] (R. 1924). Mr. Tanzi's counsel thereafter stressed that "[i]f the Court is going to impanel an advisory jury . . . [i]n that regard, our position would be that the jury is not an advisory jury, but the jury is the fact finder with respect to the penalty, and also that the other requirements that we believe should be met, that they have to be unanimous and that they would have to find their findings beyond a reasonable doubt." (R. 1927). Counsel made clear that Mr. Tanzi was not waiving any *Ring*-based objection. (R. 1927).

Mr. Tanzi further maintained his plea of not guilty to the two sexual battery charges and elected to be tried in Miami-Dade County where the offenses were alleged to have occurred. After the two sexual battery charges were severed, the State

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[2] *North Carolina v. Alford*, 400 U.S. 25 (1970) (allowing criminal defendants to enter guilty pleas in which they agree to be convicted and sentenced to the charged offenses but not admit guilt).

[3] Acting *pro se*, Mr. Tanzi attempted to withdraw his guilty plea. (R. 2044). The trial court inquired into Mr. Tanzi's relationship with his trial attorneys but did not rule on the *pro se* motion. (R. 2044).

elected not to prosecute them. (R. 1803). Instead, the State moved to admit Mr. Tanzi's related confession during the penalty phase, even though it could not establish *corpus delecti* pursuant section 92.565, Florida Statutes. (R. 1034-35). The trial court granted the State's motion. (R. 2043-44).

On September 23, 2002, Mr. Tanzi filed a Motion to Bar Imposition of Death Sentence on Grounds that Florida's Capital Sentencing Procedure is Unconstitutional Under *Ring v. Arizona*, arguing *inter alia* that Florida's sentencing statute was unconstitutional because it required the trial judge, not the jury, to make the findings necessary to impose a death sentence. (R. 606-25). He also filed a Motion for Special Verdict Form Containing Findings of Fact by the Jury on January 23, 2003, (R. 1023), which the trial court denied. (T. 2097).

At the penalty phase, the State relied on forensic evidence and Mr. Tanzi's confession regarding the abduction and killing of Janet Acosta to establish several aggravating factors. Despite Mr. Tanzi's repeated denials, the State sought to prove that Mr. Tanzi committed vaginal sexual battery through evidence of a drop of blood on the inside of Ms. Acosta's pants pocket, which the State argued was Mr. Tanzi's. The State also relied on the medical examiner's finding of very small vaginal tears and bruising, (T. 817-18, 821-22, 879-81); however, these injuries could have resulted from consensual sex that occurred days before Ms. Acosta was abducted. (T. 909-11, 1234-35).

In its closing argument, the State repeatedly speculated to the jury that Mr. Tanzi raped Ms. Acosta during the period it claimed was "unaccounted for" in Mr.

Tanzi's statements:

> But what else do we know? He's already forced her to perform oral sex. Why would we believe that it would stop there? How long was he with her? How many hours?
>
> * * *
>
> And we know that he already raped her once in the Texaco Station, and now we have evidence, further evidence that he raped her again.
>
> * * *
>
> I ask you, ladies and gentlemen, what do you think happened in the hour and a half that's unaccounted for?

(T. 1706, 1711).

> [W]e have an hour and a half unaccounted for, and that his blood is on the inside of her pants, the only real question is not whether Michael Tanzi vaginally raped Janet Acosta, the real question is, how many times. How many times in that hour and a half did he rape Janet Acosta?

(T. 1712).

When the penalty phase began, the jury was told that it would "render an advisory sentence" because the "final decision as to what punishment shall be imposed rests solely with the judge of this court." (T. 30-31). The court reiterated in the charge conference that it is the jury's "duty to advise the Court as to what punishment should be imposed upon the defendant," emphasizing, "[a]s you have been told, the final decision as to what punishment shall be imposed is the responsibility of the judge." (T. 1802). After barely 2 hours of deliberation, the jury recommended by a 12–0 vote that Mr. Tanzi be sentenced to death. (R. 1805, 1820-24). The jury made no findings of fact. Its "advisory sentence" said only:

> A majority of the jury, by a vote of 12-0 advise and recommend to the court that it impose the death penalty upon Michael A. Tanzi.

(R. 1430) (Appendix C at A).

Following the penalty phase, the trial court conducted a *Spencer*[4] hearing. (R. 2213-34). The trial court subsequently entered its order sentencing Mr. Tanzi to death for the murder of Janet Acosta and to consecutive life sentences for each count of carjacking, kidnapping, and robbery.[5] (R. 1804-32).

In imposing Mr. Tanzi's death sentence, the *trial court* found seven aggravating factors: (1) the murder was committed by a person previously convicted of a felony and under sentence of life imprisonment or on felony probation (great weight); (2) the murder was committed during the commission of a kidnapping (great weight); (3) the murder was committed during the commission of two sexual batteries (great weight); (4) the crime was committed for the purpose of avoiding arrest (great weight); (5) the murder was committed for pecuniary gain (great weight); (6) the murder was especially heinous, atrocious, or cruel ("utmost" weight); and (7) the

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[4] *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

[5] The *trial court*, not a jury, found the following mitigating factors: (1) Mr. Tanzi suffered from Axis II personality disorders (some weight); (2) Mr. Tanzi was institutionalized as a youth (some weight); (3) Mr. Tanzi's behavior benefited from psychotropic medications (some weight); (4) Mr. Tanzi lost his father at a young age (some weight); (5) Mr. Tanzi was sexually abused as a child (some weight); (6) Mr. Tanzi twice attempted to join the military (some weight); (7) Mr. Tanzi cooperated with law enforcement (some weight); (8) Mr. Tanzi assists other inmates by writing letters and he enjoys reading (some weight); (9) Mr. Tanzi's family has a loving relationship with him (some weight); and (10) Mr. Tanzi has a history of substance abuse (found but given no weight). (R. at 1804-32).

murder was committed in a cold, calculated, and premeditated manner (great weight). (R. 1804-32). Regarding the "in the course of a felony" aggravators (2 and 3), the trial court specifically pronounced:

> The capital felony was committed while the Defendant was engaged or was an accomplice, in the commission of, or an attempt to commit, or right after committing or attempting to commit a sexual battery and a kidnapping.
>
> The Monroe County Medical Examiner testified that the victim had suffered a vaginal tear before her death. He testified that this tear was consistent with the victim having had a nonconsensual sexual assault testified that the DNA of blood found on the inside surface of the victim's pants before her death. He also pocket matched [sic] the Defendant's. The location of the blood stain leaves no other explanation other than the victim's jeans had been partially removed at some point and that the Defendant had bled inside of his victim's pants. The subject blood splatter was not found on the outer surface of the victim's jeans.
>
> The Defendant's DNA also matched semen found on a towel in the rear of the van. The State had established that over one and one-half hours were unaccounted for on the time line between the victim's abduction and her murder, enough time for the second sexual battery to have occurred. Thus, in addition to the admitted sexual battery of the forced oral sex in Florida City, a second sexual battery was committed when the Defendant united an object with the victim's vagina against her will.
>
> The court emphasizes that the facts set out above constitute two separate aggravators: kidnapping and sexual battery. The two are discussed together and treated as one aggravating circumstance simply because the two are so factually intertwined. The Defendant committed two separate sexual batteries on the victim during the course of her four-hour ordeal which the court is counting as one aggravator even though the two sexual batteries could have been separated in time and place. Neither the kidnapping nor the sexual batteries was a necessary feature of the other.

* * *

> The kidnapping and the two sexual batteries were proven beyond a reasonable doubt. Both aggravating circumstances will be given great weight as aggravating circumstances 2 and 3.

(T. 1807-08).

The trial court, not the jury, found that "the Defendant committed two separate sexual batteries," which were "proven beyond a reasonable doubt" and should be given "great weight." (R. 1809). Similarly, the trial court, but not the jury, found "proven beyond a reasonable doubt" that the "dominant motive for the Defendant's murder of Janet Acosta was to avoid arrest," (R. 1811), that the murder was heinous, atrocious, and cruel, (R. 1812), and that the murder was committed in a cold, calculated, and premeditated manner. (R. 1814).

On direct appeal, the Florida Supreme Court determined that the trial court had improperly doubled the murder in the course of a felony aggravator:

> Therefore, the trial court in this case should have found one murder in the course of a felony aggravator based upon the multiple felonies of kidnapping and sexual battery and weighed the aggravator accordingly.

Tanzi v. State, 964 So. 2d 106, 117 (2007). However, the court deemed the doubling error harmless. *Id.* The court also perfunctorily rejected Mr. Tanzi's claim that Florida's death sentencing scheme was unconstitutional under *Ring*, 536 U.S. 584. *Id.* at 112 n.2. Mr. Tanzi sought certiorari of the *Ring* issue by this Court but was denied.[6]

[6] The pertinent questions presented by Mr. Tanzi's petition for writ of certiorari on direct appeal were:

> (1) Whether the Florida capital sentencing scheme, which

Tanzi v. Florida, 552 U.S. 1195 (2008).

Mr. Tanzi sought postconviction relief pursuant to Florida Rule of Criminal Procedure 3.851. After an evidentiary hearing, (PCR-T. 1-433), the circuit court denied all relief. (PCR. 511-20). The Florida Supreme Court affirmed the denial of postconviction relief on appeal and further denied Mr. Tanzi's state habeas petition. *Tanzi v. State*, 94 So. 3d 482 (Fla. 2012).

Mr. Tanzi thereafter filed a petition for writ of habeas corpus in the United States District Court for the Southern District of Florida, alleging *inter alia* that his death sentence was unconstitutional under *Ring*. The district court denied the petition, and the Eleventh Circuit Court of Appeals affirmed. *Tanzi v. Sec'y, Fla. Dep't of Corr.*, 772 F.3d 644 (11th Cir. 2014), *cert. denied*, 577 U.S. 865 (2015).

On January 12, 2017, Mr. Tanzi filed a successive motion for postconviction relief premised on this Court's decision in *Hurst v. Florida*, 577 U.S. 92 (2016) and the Florida Supreme Court's decisions in *Perry v. State*, 210 So. 3d 630 (Fla. 2016); *Hurst v. State*, 202 So. 3d 40 (Fla. 2016); and *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016).

> expressly conditions death-eligibility on judicial fact-finding, violates the Sixth and Fourteenth Amendments as interpreted by this Court in *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428 (2002).
>
> (2) Whether the Sixth and Fourteenth Amendment requirements that any fact necessary to increase the maximum sentence applies to the determination of the sufficiency of aggravation, the finding of mitigation, and the weighing of aggravating and mitigating circumstances, a question on which Florida and other states conflict.

See Am. Pet. for Writ of Cert. i, Dec. 3, 2007.

(PCR-2. 1-68). Mr. Tanzi specifically contended that his death sentence was unconstitutional under the Sixth and Eighth Amendments and also alleged that developments in the law required the court to revisit his previous postconviction claims under *Strickland v. Washington*, 466 U.S. 668 (1984), and *Brady v. Maryland*, 373 U.S. 83 (1963), to determine if, in light of *Hurst v. State* and *Hurst v. Florida*, confidence in the outcome was undermined. (PCR-2. 19).

Despite Mr. Tanzi's jury having never made any findings of fact in aggravation, the circuit court denied the motion, finding that the unanimous advisory recommendation from the jury rendered any *Hurst* error harmless. (PCR-2. 92). On appeal, the Florida Supreme Court once again found constitutional error with Mr. Tanzi's death sentence but deemed the error harmless beyond a reasonable doubt. *Tanzi v. State*, 251 So. 3d 805, 806 (Fla. 2018) (citing *Davis*, 207 So. 3d at 175). Notably, Justice Quince dissented from the majority's finding that the *Hurst* error was harmless because "[t]he jury did not make the specific factual findings that *Hurst* requires a jury to find in order to impose some of the serious aggravators at issue in this case." *Id.* at 807 (Quince, J., dissenting).

Mr. Tanzi petitioned for certiorari concerning the constitutionality of his advisory jury and the Florida Supreme Court's harmless-error analysis citing *Caldwell v. Mississippi*, 472 U.S. 320, 328-29 (1985) (holding that "it is constitutionality impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere"). While this Court declined

to intervene, *Tanzi v. Florida*, 586 U.S. 1004 (2018), Justice Sotomayor "dissent[ed] [from the denial of certiorari] for the reasons set out in *Reynolds v. Florida*," wherein she emphasized that in cases like Mr. Tanzi's, "[t]he consequence of error . . . is too severe to leave petitioners' challenges unanswered." 586 U.S. at 1012 (2018) (Sotomayor, J., dissenting).

On March 10, 2025, Governor Ron DeSantis signed Mr. Tanzi's death warrant and set his execution for April 8, 2025, at 6:00 p.m. The Florida Supreme Court, in turn, issued an expedited scheduling order.

Mr. Tanzi timely filed a successive motion for postconviction relief, wherein he asserted three claims challenging the constitutionality of the expedited warrant process, Florida's lethal injection protocol as applied to him, and the unfettered power of the Governor to choose who shall live or die and set the warrant litigation timeframe. (PCR-3. 582-690). The circuit court summarily denied relief on all claims. (PCR-3. 957-70).

Mr. Tanzi thereafter appealed to the Florida Supreme Court and simultaneously petitioned the court for a writ of habeas corpus in which he argued that his death sentence is unconstitutional under the Sixth, Eighth, and Fourteenth Amendment's to the United States Constitution in light of this Court's decision in *Erlinger v. United States*, 602 U.S. 821 (2024). Mr. Tanzi asserted that *Erlinger* shows the Florida Supreme Court's definition of the Sixth Amendment and due process error underlying his death sentence was fundamentally wrong because *Erlinger* reinforced the bright-line principle that "virtually 'any fact' that 'increase[s] the prescribed range

of penalties to which a criminal defendant is exposed' must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)."*Id.* at 834 (quoting *Apprendi*, 530 U.S. at 490). In Mr. Tanzi's case, the trial court found *every* fact necessary to impose death, whereas his advisory jury found none. Thus, the trial court subsumed the jury's constitutional role as a "check[] on governmental power" in direct violation of his Sixth Amendment and due process rights. *Id.* at 832. Mr. Tanzi further argued *Erlinger* establishes that the clear Sixth Amendment error as established in *Apprendi* and applied in *Hurst*, was not harmless because his jury was merely advisory and made no findings of fact necessary to impose death. Pursuant to *Erlinger*, the court cannot infer from a unanimous recommendation that an advisory jury made any findings of fact.

On April 1, 2025, the Florida Supreme Court issued a consolidated opinion affirming the denial of postconviction relief and denying Mr. Tanzi's habeas petition. *Tanzi v. Sec'y, Fla. Dep't of Corr.*, SC2025-0372, 2025 WL 971568, at*1 (Fla. Apr. 1, 2025). In doing so, the court rejected Mr. Tanzi's challenge to the constitutionality of his death sentence based on *Erlinger* as a "repackaged version[] of his [prior] *Apprendi*, *Ring*, and *Hurst* arguments" and thus procedurally barred. *Id.* at *5. The court further deemed Mr. Tanzi's claim meritless because "*Erlinger* did not overrule" *Davis* or its decision finding the *Hurst* error in Mr. Tanzi's case harmless:

> *Davis* held that when a jury "unanimously f[inds] all of the necessary facts for the imposition of death sentences by virtue of its unanimous recommendation," that is "precisely what we determined in *Hurst* to be constitutionally necessary to impose a sentence of death." 207 So. 3d at 175. Tanzi claims this holding is irreconcilable with *Erlinger*. He

> argues that an advisory jury is incapable of checking governmental power and is thus unconstitutional. *Erlinger*, Tanzi says, means that even unanimous recommendations are void because they cannot substantively limit executive judicial power.
>
> **If Tanzi is correct, then a unanimous, non-advisory jury would be necessary to impose a death sentence.**

Id. at *5-6 (alternation in original) (emphasis added). The court, however, promptly dismissed this concession based on its holding in *State v. Poole*, that:

> [O]ur state constitution's prohibition on cruel and unusual punishment, article I, section 17, **does not require a unanimous jury recommendation—or any jury recommendation**—before a death sentence can be imposed. . . . Binding Supreme Court precedent in *Spaziano* [*v. Florida*, 468 U.S. 447, 464-65 (1984)], holds that the Eighth Amendment **does not require a jury's favorable recommendation before a death penalty can be imposed**.

Id. at *6 (quoting *Poole*, 297 So. 3d at 505 (emphasis in original)).

Finally, the court held that because "*Erlinger* was a direct-appeal case—not a postconviction case . . . and it involved required jury findings regarding an element," it is inapplicable to Mr. Tanzi "and "'provides no support for vacating' [his] death sentence." *Id.* (quoting *Ford v. State*, SC2025-0110, 2025 WL 428394, *5 (Fla. Feb. 7, 2025)).

The court thus denied Mr. Tanzi habeas relief, tersely advised that it would "entertain no petition for rehearing," *id.* at *7, and immediately issued its Mandate. This Petition now follows.

REASONS FOR GRANTING THE WRIT

Notwithstanding this Court's clear dictates, the Florida Supreme Court

continues to employ an unconstitutional capital sentencing scheme, nullifying the Sixth Amendment protections established in *Apprendi* and its progeny, and further clarified in *Erlinger*.

Granting certiorari review in this case is not engaging in error correction but is instead the Court's opportunity to avoid repeated meritorious demands for error correction. The most fundamental vice of the decision below is not that it is wrong—although it certainly is—but that it manipulates the rule to avoid federal oversight.

This case presents questions of great importance for this Court regarding the analysis of a state court's duty to give full effect to a federal constitutional holding. This area of the law remains complicated and unclear to many lower courts and practitioners. This Petition is an ideal vehicle for addressing the Florida Supreme Court's error, and it presents a question of life-or-death importance for Mr. Tanzi and for the other death-row inmates in Florida whose claims have been denied premised on the same incorrect application of the Sixth Amendment right to a jury's trial.

1. This Court Should Not Tolerate the Florida Supreme Court's Blatant Disregard of its Overruling of *Spaziano v. Florida*.

In the years between *Ring* and *Hurst*, Florida justified its refusal to find a Sixth Amendment right to jury fact finding by relying on the 1984 decision in *Spaziano v. Florida*. *See Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002)(declining to apply *Ring v. Arizona* to Florida's capital sentencing scheme because this Court did not expressly direct the court to do so in denying Bottoson's petition for certiorari). *Spaziano* determined that neither the Sixth nor Eighth Amendment required jury factfinding to impose death nor precluded a judge's imposition of death following an

override of a jury's recommendation for life. 468 U.S. 447 (1984).

The Florida Supreme Court was wrong and this Court clarified as much in *Hurst*: "We now **expressly overrule** *Spaziano* and *Hildwin* in relevant part." *Hurst*, 577 U.S. at 101 (emphasis added). *Hurst* conclusively established that neither *Spaziano* nor *Hildwin*[7] survived *Apprendi* and *Ring* to "the extent they allow a sentencing judge to find an aggravating circumstance, independent of a jury's factfinding, that is necessary for the imposition of the death penalty." *Id.* at 102. "Time and subsequent cases have washed away the logic of *Spaziano* and *Hildwin*." *Id*.

In the years after *Hurst*, however, the Florida Supreme Court has attempted to reconstitute *Spaziano* from its smoldering embers to justify its refusal to apply this Court's established Sixth Amendment precedent requiring a jury to make all of the factfinding necessary to enhance a Defendant's penalty, including this Court's recent *Erlinger* decision. In doing so, the court has manufactured limitations on this Court's *Hurst* rulings:

> As we have explained, the Supreme Court in *Spaziano* upheld the constitutionality under the Sixth Amendment of a Florida judge imposing a death sentence even in the face of a jury recommendation of life—a jury override. It necessarily follows that the Sixth Amendment, as interpreted in *Spaziano*, does not require any jury recommendation of death, much less a unanimous one. **And as we have also explained, the Court in *Hurst v. Florida* overruled *Spaziano* only to the extent it allows a judge, rather than a jury, to find a necessary aggravating circumstance.**

[7] *Hildwin v. Florida*, 490 U.S. 638 (1989).

Poole, 297 So. 3d at 504 (emphasis added) (internal citations omitted).

Poole's contortion of *Hurst*'s rulings is irreconcilable with *Hurst*'s analysis and Sixth Amendment jurisprudence. The Florida Supreme Court has taken this Court's overruling of *Spaziano* "in part" wildly out of context. A review of the *Spaziano* opinion puts the issue to bed.

Spaziano concerned whether the Sixth or Eighth Amendment precluded a judge from overriding a jury's recommendation for life and, instead, imposing a death sentence; however, the question necessitated first answering whether the Sixth or Eighth Amendment required jury-fact finding at sentencing at all. The *Spaziano* Court ruled:

> In light of the facts that the Sixth Amendment does not require jury sentencing, that the demands of fairness and reliability in capital cases do not require it, and that neither the nature of, nor the purpose behind, the death penalty requires jury sentencing, we cannot conclude that placing responsibility on the trial judge to impose the sentence in a capital case is unconstitutional.

468 U.S. at 464.

Spaziano reasoned that the "fundamental issue involved" in the Sixth Amendment analysis is the "determination of the appropriate punishment on the individual;" and because the "[t]he Sixth Amendment has never been thought to guarantee a right to a jury determination of that issue," the Court declined to find so. *Id*. at 459.

The *Hurst* Court expressly overruled *Spaziano* and held that a jury's fact finding *is* fundamental to the determination of the appropriate punishment. "The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose

a sentence of death. **A jury's mere recommendation is not enough**." *Hurst*, 577 U.S. at 94 (emphasis added). *Hurst*'s holding is girded on the principle that findings of fact statutorily required to render a Florida defendant death eligible are elements of the offense, separating first-degree murder from capital murder under Florida law, and thereby forming part of the definition of the crime of capital murder in Florida. *See Apprendi,* 530 U.S. at 476; *Jones v. United States*, 526 U.S. 227 (1999).

Hurst did not limit the jury role to finding only "a necessary aggravator." *Poole*, 297 So. 3d at 504. To the contrary, the *Hurst* Court reasoned that all of the specific, enumerated findings listed in Florida's capital sentencing scheme must be found by a jury, because each is prerequisite to a death sentence. *Hurst*, 577 U.S. at 99-100 ("[T]he Florida sentencing statute does not make a defendant eligible for death until 'findings *by the court* that such person shall be punished by death.'" (quoting Fla. Stat. § 775.082(1)). Thus, in order for Mr. Tanzi's jury to have imposed death, it was required to have found "that sufficient aggravating circumstances exist" and "that there are insufficient mitigating circumstances to outweigh the aggravating circumstances." *Id*. at 100.

This Court in *Spaziano* found that while a "capital sentencing is like a trial in the respects significant to the Double Jeopardy Clause, [that] . . . does not[, however,] mean that it is like a trial in respects significant to the Sixth Amendment's guarantee of a jury trial." *Spaziano*, 468 U.S. at 459. Once this Court in *Hurst* determined jury findings are indeed required to satisfy the Sixth Amendment, any analysis *Spaziano* offered about the jury's role in sentencing became irrelevant.

The Florida Supreme Court relied on *Spaziano*'s Eighth Amendment analysis to reject Mr. Tanzi's assertion that he is entitled to a non-advisory jury.

> Binding Supreme Court precedent in *Spaziano* holds that the Eighth Amendment does not require a jury's favorable recommendation before a death penalty can be imposed.

Tanzi, 2025 WL 971568, *6 (emphasis omitted) (quoting *Poole*, 297 So. 3d at 505). Again, a review of *Spaziano* establishes that *Poole* has misapprehended *Spaziano* and what remains of its holdings post-*Hurst*.

The Florida Supreme Court in *Poole* further declared that *Spaziano* rejected the argument that the Eighth Amendment requires a unanimous jury recommendation of death. *Poole*, 297 So. 3d at 504. This statement is flagrantly wrong and misleading. Nowhere in *Spaziano* did this Court even mention jury unanimity.

Spaziano declined to find any Eighth Amendment requirement for jury sentencing, reasoning that because any sentencer—jury or judge—is required to make an individualized determination as to sentencing, there are no concerns as to the fairness and reliability of the application of the death penalty. *Spaziano*, 468 U.S. at 459, 464. Further, the Court determined that "neither the nature of, nor the purpose behind, the death penalty requires jury sentencing." *Id*. at 464. Specifically, as to the jury-override procedure, the Court in *Spaziano* declined to find an Eighth Amendment violation because there is no risk of an "arbitrary or discriminatory application of the death penalty," where "the trial judge is required to conduct an independent review of the evidence and make his own findings regarding aggravating and mitigating circumstances," which the Florida Supreme Court will review. *Id*. at 466.

Poole ignores the fundamental premise of *Spaziano*—the "presumption that jury involvement is not required in the sentencing proceedings of capital cases." *Bottoson v. Moore*, 833 So. 2d 693, 727 (Fla. 2002) (Lewis, J., concurring in result only). This applies to the Court's Sixth Amendment and Eighth Amendments analyses, and illustrates how the two are not separate and distinct. *Spaziano*'s Eighth Amendment discussion is rooted in the Court's rejection of a Sixth Amendment right to a jury at all. This analysis is again irreconcilable with the very foundation of *Hurst*.

The Florida Supreme Court consistently erodes this Court's explicit and binding Sixth Amendment jurisprudence, thereby stripping capital defendants of fair and reliable sentencings, by continually moving the goalposts anytime a capital defendant is guaranteed process that meets constitutional scrutiny. This is evidenced by the court's treatment of *Spaziano* and attempts to foster some illusory competition amongst constitutional amendments. Once this Court determined an advisory jury is unconstitutional under the Sixth Amendment, the Florida Supreme Court ruled the Eighth Amendment does not require the same protections. A state court cannot simply disregard this Court's binding Sixth Amendment protections because it thereafter determines the Eighth Amendment does not require the same.[8]

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[8] Florida's reliance on outdated jurisprudence to justify its erosion of the Sixth Amendment right to a jury trial doesn't end in the capital context. See *Cunningham v. Florida*, 144 S. Ct. 1287 (Mem.) (2024) (Gosuch, J. dissenting in denial of certiorari). In 2024, Justice Gorsuch admonished Florida in a non-capital case for refusing "to honor" the promise of the right to a trial by jury, by relying on *Williams v. Florida*, 399 U.S. 103 (1970) and requiring a verdict from only six jurors in determining guilt for a serious criminal offense. *Id.* at 1287-88. *Williams*, Justice Gorusch wrote, "was an embarrassing mistake—'wrong the day it was decided.'" *Id.* at 1288 (quoting *Khorrami v. Arizona*, 598 U. S., at ——, 143 S. Ct. 22, 23 (Mem.

This Court should not tolerate this kind of blatant disregard of its overruling of *Spaziano* and should grant certiorari and overrule any remnants of *Spaziano*'s holdings because its reasoning cannot be reconciled with the right to a jury determination at sentencing in capital cases established in this Court's Sixth and Eighth Amendment jurisprudence. This Court has not shied away from "overrul[ing] prior decisions where the necessity and propriety of doing so has been established." *Hurst*, 577 U.S. at 102 (quoting *Ring*, 536 U.S. at 608). *Hurst* acknowledged unequivocally that "'stare decisis does not compel adherence to a decision whose 'underpinnings' have been 'eroded' by subsequent developments of constitutional law,'" particularly with respect to the Sixth Amendment and right to jury factfinding at sentencing. *Id*. at 102 (quoting *Alleyne v. United States*, 570 U.S. 99, 116 n.5 (2013)).

(2022) (Gosuch, j. dissenting in denial of certiorari). In doing so, "Florida does what the Constitution forbids of U.S." *Id*. at 1287.

2. The Florida Supreme Court's Ruling Demeans The Right To Trial By Jury And Flouts Clearly Established Federal Law.

This Court has decided case after case showing that Florida's habitual diminution of the jury right is plainly unconstitutional. *Apprendi*, 530 U.S. 466; *Ring*, 536 U.S. 584; *Blakely v. Washington*, 542 U.S. 296 (2004); *United States v. Booker*, 543 U.S. 220 (2005); *Cunningham v. California*, 549 U.S. 270 (2007); *Southern Union Co. v. United States*, 567 U.S. 343 (2012); *Alleyne v. United States*, 570 U.S. 99; *Hurst,* 577 U.S. 92; *United States v. Haymond*, 588 U.S. 634 (2019) (plurality); *Erlinger*, 602 U.S. 821; *see also Shepard v. United States*, 544 U.S. 13 (2005); *United States v. O'Brien*, 560 U.S. 218 (2010); *Mathis v. United States*, 579 U.S. 500 (2016).

But, time and again, Florida has flouted the Court's decisions by manufacturing ambiguities where, by design, none exist. *Apprendi* eliminated them with a bright-line rule. "Virtually 'any fact' that 'increases the prescribed range of penalties to which a criminal defendant is exposed' must be resolved by a unanimous jury beyond a reasonable doubt." *Erlinger*, 602 U.S. at 834 (quoting *Apprendi*, 530 U.S. at 490).

Nevertheless, Florida is poised to execute Mr. Tanzi, having never proved a single aggravating circumstance to anyone but a judge. The *only* indicium of jury factfinding in Mr. Tanzi's case is a form labeled "Advisory Sentence" that states: "A majority of the jury, by a vote of 12-0, advise and recommend to the court that it impose the death penalty upon Michael A. Tanzi." (Appendix C, at A16).

Below, Mr. Tanzi argued that this advisory sentence is a nullity. Beyond "safeguard[ing] for criminal defendants those procedural protections well established

at common law," the Due Process Clause and the Sixth Amendment act as "fundamental reservations of power to the American people" by substantively limiting executive and judicial power. *Erlinger*, 602 U.S. at 830-31. An advisory jury cannot "ensure that a judge's power to punish would 'derive wholly' from, and remain always 'controlled' by the jury and its verdict." *See Id.* at 831. Thus, incapable of checking governmental power as the Framers intended, an advisory jury is a constitutional nullity." *Id.* at 831-32; *see Hurst*, 577 U.S. at 100 (finding the advisory jury "immaterial").

Apparently grasping the import of *Erlinger* but refusing to apply it nonetheless, the Florida Supreme Court said:

> *Erlinger*, Tanzi says, means that even unanimous recommendations are void because they cannot substantively limit executive and judicial power.
>
> *If Tanzi is correct, then a unanimous, non-advisory jury would be necessary to impose a death sentence.*

Tanzi, 2025 WL 971568, *5.

Mr. Tanzi *is* correct. Unless this Court's repeated invocations of the Framers' intent are all mere dicta, the Florida Supreme Court's holding amounts to a refusal to apply this Court's holdings.

Respectfully, this Court should grant certiorari, stay Mr. Tanzi's execution, and rebuke the Florida Supreme Court's refusal to apply clearly established federal law. Florida's disregard for the right to trial by jury is habitual; the Florida Supreme Court will not self-correct. Without this Court's intervention, Florida will persist in treating the jury as a meaningless formalism.

a. A Non-Advisory Jury Must Find The Aggravating Circumstances Necessary To Impose a Sentence of Death.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury . . . and to be informed of the nature and cause of the accusation." U.S. Const. amend. VI. Correspondingly, no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Together, these provisions secure the right to trial by jury against legislative, executive, and judicial encroachment.

Apprendi checked state legislatures' ability to diminish the jury's historic role, holding "it is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed." 530 U.S. at 490 (quoting *Jones v. United States*, 526 U.S. 227, 252 (1999) (Stevens, J., concurring)); *Ring*, 536 U.S. at 586 (finding legislative label immaterial). *Apprendi* itself discussed judicial encroachments on the jury by way of legislative acts. But soon thereafter, *Blakely* clarified that *Apprendi* "ensure[s] that the judge's authority to sentence derives wholly from the jury's verdict" because "just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary." 542 U.S. at 306. And more recently, this Court held that "by requiring the Executive Branch to prove its charges to a unanimous jury beyond a reasonably doubt" those provisions "seek to mitigate the risk of prosecutorial overreach and misconduct." *Erlinger v. United States*, 602 U.S. 821, 832 (2024) (quoting The Federalist No. 83, p. 499 (C. Rossiter ed. 1961)).

In securing the jury right against every branch of government, *Apprendi* and its progeny embody centuries of common law tradition. *Id.* at 477. Naturally, this tradition—and the Framers' preoccupation with its preservation—inform the content of the jury right. *See e.g., Oregon v. Ice*, 555 U.S. 160, 170 (2009) (noting "the scope of the constitutional jury right must be informed by the historical role of the jury at common law"). The Framers, "if they agree[d] in nothing else, concur[red] at least in the value they set upon the trial by jury." The Federalist No. 83, p. 543 (E. Mead ed. 1941). "If there [was] any difference between them," it was that some viewed the jury "as a valuable safeguard to liberty" and others "as the very palladium of free government." *Id.* Put plainly, all agreed that the jury was more than a factfinder—"jury trial is meant to ensure [the People's] control in the judiciary." *Blakely*, 542 U.S. at 306 (surveying historical sources).

Ambiguous boundaries invite both banal and flagrant encroachments on the jury right. *See Blakely*, 542 U.S. at 308. Recognizing this risk, this Court has rejected "the claim that the Framers would have left definition of the scope of jury power up to judges' intuitive sense of how far is *too far*." *Id.* at 308. Any such ambiguity is untenable—"the very reason the Framers put a jury-trial guarantee in the Constitution is that they were unwilling to trust government to mark out the role of the jury." *Id.* at 308.

Accordingly, to "preserve[ ] the historic role of the jury as an intermediary between the State and criminal defendants," the Sixth Amendment and the Due Process Clause demand a bright-line rule: "Virtually 'any fact' that 'increases the

prescribed range of penalties to which a criminal defendant is exposed' must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)." *Erlinger*, 602 U.S. at 834 (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)); *Blakely*, 542 U.S. at 308 (rejecting "manipulable standard" in favor of "*Apprendi*'s bright-line rule").

Of course, a jury can only function as an intermediary, or bulwark, if it wields authority that the government must actually respect. *See Alleyne*, 570 U.S. at 114. It follows that a jury cannot function as intended—as a "fundamental reservation of power in our constitutional structure"—if its verdict is advisory. *See Blakely*, 542 U.S. at 306; *Erlinger*, 602 U.S. at 832 (describing jury as reserving power "to the American people"). On its face, an advisory jury is incapable of controlling "a judge's power to punish." *See Erlinger*, 602 U.S. at 831 (quoting *Blakely*, 542 U.S. at 306). Accordingly, this Court has twice found Florida's advisory juries "immaterial." *Hurst v. Florida*, 577 U.S. at 99 (citing *Walton v. Arizona*, 497 U.S. 639, 648 (1990)). But they are more than immaterial; advisory juries are perversions of the constitutional structure. *See Hurst*, 577 U.S. at 99 (noting "the State fails to appreciate the central and singular role the judge plays under Florida law). This defect exists regardless of unreliable factfinding—the jury's forced abdication and the judiciary's ascension was error in and of itself.

b. The Florida Supreme Court's Harmless Error Analysis Is Divorced From Logic and The Reasonable Doubt Standard.

Nevertheless, the Florida Supreme Court persists in treating advisory juries and their verdicts as dispositive. Below, it held "that when a jury 'unanimously finds all of the necessary facts for the imposition of death sentences *by virtue of its unanimous recommendation*,' that is 'precisely what we determined in *Hurst* [*v. State*, 202 So. 3d 40 (Fla. 2016)] to be constitutionally necessary to impose a sentence of death.'" *Tanzi*, 2025 WL 971568,*5. In other words, while recognizing that the jury must find every fact necessary to impose death, the Florida Supreme Court maintains that the jury need not *actually* find every fact. Instead, a judge can simply *infer* every fact from the advisory jury's sentencing recommendation. This approach is patently absurd.

At the outset, the Court has already found advisory juries "immaterial." *Hurst*, 577 U.S. at 99. It is difficult to see how an "immaterial" advisory verdict becomes material by virtue of a judge's abstraction therefrom. *Cf. Mississippi v. EPA*, 744 F.3d 1334, 1353 (D.C. Cir. 2013) ("Garbage in; garbage out."). What is more, the advisory jury was constantly reminded that its verdict was, in fact, advisory. *See Caldwell v. Mississippi*, 472 U.S. 320, 341 (1985) (finding sentencing decision unreliable where prosecution "sought to minimize the jury's sentence of responsibility for determining the appropriateness of death"). This Court has recognized the factual consequences of a procedure that diminishes the jurors' sense of responsibility for a death verdict:

> In evaluating the prejudicial effect of the prosecutor's argument, we must also recognize that the argument offers jurors a view of their role which might frequently be highly attractive. A capital sentencing jury is made up of

> individuals placed in a very unfamiliar situation and called on to make a very difficult and uncomfortable choice. They are confronted with evidence and argument on the issue of whether another should die, and they are asked to decide that issue on behalf of the community. Moreover, they are given only partial guidance as to how their judgment should be exercised, leaving them with substantial discretion. . . . Given such a situation, the uncorrected suggestion that the responsibility for any ultimate determination of death will rest with others presents an intolerable danger that the jury will in fact choose to minimize the importance of its role. Indeed, one can easily imagine that in a case in which the jury is divided on the proper sentence, the presence of appellate review could effectively be used as an argument for why those jurors who are reluctant to invoke the death sentence should nevertheless give in.

472 U.S. at 332-33 (plurality opinion).

More fundamentally, the Florida Supreme Court's inferential approach is divorced from logic and Mr. Tanzi's case exemplifies this. Mr. Tanzi pleaded guilty to first-degree murder, carjacking, kidnapping, and armed robbery. Without additional factfinding, Mr. Tanzi's plea exposed him to a maximum sentence of life imprisonment without the possibility of parole. Under Florida's capital sentencing statute, the trial court could only sentence Mr. Tanzi to death if, "notwithstanding the recommendation of a majority of the jury," it found "the facts (a) that sufficient aggravating circumstances exist . . . and (b) that there are insufficient mitigating circumstances to outweigh the aggravating circumstances." Fla. Stat. §§ 921.141(1), (3), (1996). Absent "specific written findings of fact based upon the circumstances in subsection (5) [aggravators] and (6) [mitigators] and upon the records of the trial and sentencing proceedings," the sentencing statute commanded, "the court shall impose sentence of life imprisonment." § 921.141(3).

Applying this scheme, the trial court found *every* fact necessary to impose death. The advisory jury found *none*, delivering only an advisory sentencing recommendation that read: "A majority of the jury, by a vote of 12-0, advise and recommend to the court that it impose the death penalty upon Michael A. Tanzi." (Appendix C, at A16). By the Florida Supreme Court's logic, this recommendation proves beyond a reasonable doubt that the jury *actually* found that at least one aggravating circumstance existed.

Reasonable doubt abounds. Twelve jurors were instructed on seven aggravators. They were not, however, required to unanimously find *the same* aggravator, each could find for herself that any one aggravator was proven beyond a reasonable doubt. The variations are infinite for all practical purposes.

This uncertainty is heightened by the variable complexity of the aggravators themselves. Compare Aggravator One with Aggravator Two. Aggravator One required a juror to find: "The crime for which Michael A. Tanzi is to be sentenced was committed while he had been previously convicted of a felony and was on felony probation." (R. 1420). Putting aside the question of whether this aggravator is independently sufficient, it is factually simple. In contrast, Aggravator Two required the jury to find: "The crime for which the defendant is to be sentenced was committed while he was engaged in the commission of or flight after committing or attempting to commit the crime of sexual battery or kidnapping." (R. 1420). Already the complexities are obvious. Which crime did any given juror find? When did they find it was committed? If two jurors found the same crime, did they also agree on the

timing? And it only gets *more* convoluted.

The jurors were instructed that, before the sexual battery could be considered as an aggravating circumstance, they needed to find every element of sexual battery. To do so, each juror would have needed to find four elements. One of these elements could be satisfied by four alternate but inconsistent findings. In other words, for this aggravator to apply, the jurors needed to, in effect, find Mr. Tanzi guilty of sexual battery. But they did not need to agree on which theory of the crime was actually proven. Each juror could have believed a different theory of the offense if they even found any offense at all.

Even if, in the face of these endless variations, a court could reliably infer all of this, there is another wrinkle. On direct appeal, the Florida Supreme Court found the trial court had impermissibly doubled the kidnapping and sexual battery aggravators. *Tanzi v. State*, 964 So. 2d 106, 117 (Fla. 2007). Did the jurors interpret their instructions, laden with alternate elements, such that they, too, doubled these aggravators?

The bottom line is that there is simply no way to tell what the advisory jury did or did not find. It made *no* factual findings. But by the Florida Supreme Court's reasoning, there was no error because—beyond a reasonable doubt—the aggravators can be inferred. As the foregoing illustrates, the Florida Supreme Court's inferential approach necessitates absurd logical leaps and relegates the jury "to making a determination that the defendant *at some point* did *something* wrong, a mere preliminary to a judicial inquisition into the facts of the crime the State *actually* seeks

to punish." *Blakely*, 542 U.S. at 307.

By relegating the jury to an advisory function only, the trial court committed an independent constitutional violation. The jury's advisory sentence, thus, cannot render the constitutional violation harmless—it is part and parcel of the constitutional violation. Properly considered under *Erlinger*, none of the aggravators underlying Mr. Tanzi's death sentence survive Sixth and Fourteenth Amendment scrutiny.

3. The Florida Supreme Court's Procedural Ruling Does Not Rest On Adequate And Independent State Law Grounds.

If "the State has made application of the procedural bar depend on an antecedent ruling on federal law," then it does not rest on "independent" grounds. *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985). In denying this claim on the merits, the Florida Supreme Court suggested that a procedural bar applied, because "while presented as an *Erlinger* claim, what Tanzi really raises are repackaged versions of his *Apprendi*, *Ring*, and *Hurst* arguments." *Tanzi*, 2025 WL 971568, *5. This procedural bar, thus, depended on the Florida Supreme Court's antecedent conflation of two distinct federal constitutional commands: *Hurst*'s command that a unanimous jury must find every fact necessary to impose death and *Erlinger*'s command that juries be preserved as "checks on governmental power." *See Erlinger*, 602 U.S. at 832. Although *Apprendi* implements both commands, they are distinct.

Here, the issue relates to the latter, the judge-checking command, which the Florida Supreme Court has not addressed. In contrast, Mr. Tanzi's state postconviction claim in the wake of *Hurst v. Florida* related exclusively to the former:

the jury factfinding command. Because the procedural bar rested on the antecedent—and incorrect—ruling that these commands are synonymous, the purported procedural bar is not an "independent" state law ground that would preclude this Court's review. *See Ake*, 470 U.S. at 75 (noting antecedent rulings may be explicit or implicit).

CONCLUSION

This Court should grant a stay of execution, grant this writ of certiorari, and review the decision of the Florida Supreme Court.

Respectfully submitted,

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