No. 24-872

In the Supreme Court of the United States

JOHN Q. HAMM, COMMISSIONER OF THE ALABAMA DEPARTMENT OF CORRECTIONS,
PETITIONER,

v.

JOSEPH CLIFTON SMITH

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

BRIEF OF *AMICUS CURIAE* PROFESSOR KATIE KRONICK SUPPORTING RESPONDENT

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INTERESTS OF *AMICUS CURIAE*[1]

Amicus curiae Katie Kronick is an Assistant Professor of Law and the founding Director of the Criminal Defense and Advocacy Clinic at the University of Baltimore School of Law. She is a nationally recognized scholar of criminal law and procedure whose work focuses on forensic science, sentencing, post-conviction litigation, and the experience of individuals with intellectual disabilities in the criminal legal system. Her scholarship has appeared in the *Boston College Law Review* and the *North Carolina Law Review*, where she has argued for categorical recognition of intellectual disability as a mitigating factor at sentencing and highlighted how resentencing reforms have overlooked this vulnerable population. She has also written widely for public audiences, including in the *Baltimore Sun* and *Newsweek*, about systemic failures in the treatment of defendants with intellectual disability.

Before joining the academy, Professor Kronick served as a public defender in New Jersey and as an E. Barrett Prettyman Fellow at Georgetown Law, where she represented indigent clients facing misdemeanor and felony charges, including homicide. Her teaching and clinical supervision continue to center on defending indigent individuals, with a particular emphasis on cases involving cognitive impairments and post-conviction relief.

Based on her scholarly expertise and practical experience with clients whose intellectual disability has been misunderstood or disregarded by the courts, Professor Kronick submits this brief to urge the Court to

[1] No counsel for any party authored this brief in whole or in part. No entity or person other than *amicus curiae* or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

adopt an approach in *Hamm v. Smith* that correctly accounts for the cumulative effect of multiple IQ scores when assessing an *Atkins* claim.

SUMMARY OF ARGUMENT

The Eighth Amendment prohibits the execution of people with intellectual disability because they are less culpable and uniquely vulnerable to wrongful conviction and wrongful punishment. That protection is meaningful only if courts interpret IQ scores in line with clinical science and then focus on what matters most for culpability and reliability: adaptive functioning. Reducing the inquiry to a numerical tally of IQ results—as Alabama urges—contradicts *Atkins*, defies *Hall* and *Moore*, and threatens the very defendants this Court meant to safeguard in those cases.

The need to focus on the central inquiry—adaptive deficits—is clear to anyone who has on the ground experience with individuals in the criminal legal system who have intellectual disability. I have seen this firsthand on a daily basis for much of my career—first as a former public defender and now as a scholar-practitioner who writes and studies the intersection of intellectual disability and the criminal legal system. I regularly represent individuals with cognitive impairments in the criminal legal system and the touchstone of their vulnerability to wrongful punishment and diminished culpability is not their IQ score—whether one or multiple. The defining feature of intellectual disability is severe adaptive deficits.

Putting aside the technical medical definition for a moment, the reason intellectual disability is treated differently is not because someone happens to win the low-IQ lottery. Individuals are given grace because of society's recognition that these individuals are less culpable and more vulnerable, which is something I have

observed firsthand over the course of my career. Failing to look at adaptive deficits because someone happens to have scored marginally higher on a series of tests than another person ignores everything that underpins this Eighth Amendment question.

Even *if* you could prove to moral certainty that a person's IQ is 75, and even *if* that means a person does not meet the clinical definition of intellectual disability, it would be cruel and unusual to put a person to death who suffers from such diminished capacity when it is clear they cannot understand the wrongfulness of their actions or the process by which they are being punished. That such a person *does in fact* meet the clinical definition only confirms that such an individual cannot be given the death penalty under the holdings and the logic of this Court's cases.

ARGUMENT

FIRSTHAND EXPERIENCE DEFENDING PEOPLE WITH INTELLECTUAL DISABILITY SHOWS THAT ADAPTIVE DEFICITS ARE ITS DEFINING FEATURE

The Court does not need to hear from me that fluctuating test results are common among people with intellectual disability. The Court's precedents, the expert clinicians who treat this disability, the experts in this case, and about a thousand other *amicus* briefs will emphasize this—that variability reflects the condition itself and the uncertainty and variability in the testing. Individuals with impaired reasoning, working memory, and anxiety can perform differently from day to day or across test instruments. The Court does not need me to highlight that for that reason both the *DSM-5* and the *AAIDD* emphasize that intellectual disability is defined by *adaptive deficits* in areas like communication, decision-making, and self-care, and that their diagnostic standards expressly contemplate that some individuals with scores

above 70 will still be diagnosed with intellectual disability when adaptive functioning confirms it.

But it is nonetheless worth repeating as many times as it takes: intellectual disability is not a matter of arithmetic. Whether you average multiple scores, or "composite" them (whatever that means), or pick the median, or use "sound" statistical methods, *see* U.S. Br. 19, or draw it out of a hat, Pet. Br. 13-15, IQ score itself is not solely determinative of intellectual disability for purposes of the Eighth Amendment. Intellectual disability is a lifelong neurodevelopmental condition defined by deficits in reasoning, judgment, and lack of impulse control. *Atkins v. Virgina*, 536 U.S. 304, 320 (2002). Clinical experts and diagnostic manuals uniformly stress that the defining feature of intellectual disability is not a number on a test but the day-to-day impairments that limit an individual's capacity to function independently.

I have witnessed this on the front line. I have defended individuals in criminal proceedings who did not understand the wrongfulness of their actions, the seriousness of the charges against them, or the gravity of the punishment they faced. The entire criminal legal system is premised on a zealous adversarial process. However, because of communication and other social deficits, persons with intellectual disability are uniquely vulnerable to harm from the machinations of this system. Intellectually disabled individuals are like lambs to the slaughter in that process. They are more susceptible to manipulation at the hands of law enforcement, struggle to aid in their own defense, and often mask a lack of understanding of the proceedings due to fear of negative stigma. Katie Kronick, *Intellectual Disability, Mitigation and Punishment*, 65 Boston College L. Rev. 1561, 1605-09 (2024). They often acquiesce to police officers in an effort to be agreeable or please the officers

even when doing so can result in a false confession. Even with respect to the conduct they have engaged in, they may have been manipulated, coerced, and/or induced to commit wrongful acts by others because they struggle to understand moral and social consequences. Along every quantum they are more vulnerable and less culpable than people without a lifelong history of impairment.

Nothing about what makes them more vulnerable or less culpable depends solely on the unreliable, and as this case shows, quite variable result of an IQ test that came back 69 rather than 76. What makes a person with intellectual disability unique is that they have struggled their entire lives to care for themselves, to communicate, to adjust their behavior to changing circumstances, to learn basic skills, and to make important decisions about the future. That they struggle with things that an IQ test measures—things like abstract reasoning—fails to capture the way that this personal history fundamentally shapes their identity. A person who has never had a friend and is then offered the opportunity to go on a joyride that is—unbeknownst to them—a robbery, is not equally or even comparably culpable in the eyes of society.

To be sure, IQ tells you something about a person. You could even say it tells you something important. But at the end of the day, whether it be one score or multiple scores, IQ remains a profoundly imperfect and incomplete measure of what we mean when we discuss intellectual disability. The score is a data point, but the adaptive deficits are the overwhelming driver of what we really care about when we say as a society that it is cruel and unusual to put a person with intellectual disability to death.

Much of the briefing in this case focuses on probability—what level of certainty must a court have that a person's IQ is or is not 67 or 69 or 72 or 76. That narrow framing obscures what truly matters. Even if we

were concerned primarily with probabilities, the probability that the score is one number or another is not the probability anyone should care about. The probability we should worry about is whether we are putting to death a person who genuinely *has* intellectual disability but scored a little too high on one of multiple tests. To go even further, we should *really* be worried about the probability that we are putting to death a person who genuinely did not understand the nature of his crimes, does not now understand the gravity of the punishment he faces, and cannot appreciate the connection between the crime and the punishment. We could be putting to death a person who—but for his intellectual disability—could have avoided the death penalty by being more capable of expressing remorse and explaining the mitigating circumstances of his actions in a way that a capital jury could recognize. We should unquestionably be worried about the probability that we are putting to death a person who is factually innocent of the offense but who falsely confessed because the officers made them believe that was the only way to get home.

The myopic focus of this case on mathematical hairsplitting over IQ scores is so far removed from the lived reality of anyone who regularly advocates for persons with intellectual disability in the criminal legal system. The Court in *Atkins*, *Hall*, and *Moore* wisely resisted the temptation to treat IQ scores as a bright-line rule for determining intellectual disability. That approach—though superficially easy to administer—bears little relation to the reality of intellectual disability. The cruelty and unusualness of putting a person with intellectual disability to death is not reducible to a bright line rule where 76 means you die by nitrogen hypoxia or 69 means you are spared. The Court wisely did not go down that road in its earlier cases addressing intellectual

disability and the death penalty and it should not now in this case.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted.

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