No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Kayle Barrington Bates,
Petitioner,

v.

State of Florida,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE

DEATH WARRANT SIGNED
Execution Scheduled: August 19, 2025, at 6:00 p.m.

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August 14, 2025

QUESTIONS PRESENTED

After a questionable conviction, Kayle Bates has twice been sentenced to death. His first death sentence was reversed on collateral review for ineffective assistance of counsel during the penalty phase. Nevertheless, on remand, constitutional violations remained pervasive and Florida failed to determine whether Mr. Bates's case was one of the most aggravated and least mitigated cases for which the death penalty is reserved.

Accordingly, Mr. Bates presents three questions:

1. Whether a state can carry out an execution despite the relevant sentencers never considering compelling and outcome determinative neuropsychological evidence that showed the defendant's case was not among the most aggravated and least mitigated.
2. Whether sentencing and appellate courts can rely upon death recommendations made by jurors that were misled about the defendant's possible release and danger to the community.
3. Whether state courts can apply discovery rules to preclude access to the facts necessary to allege and prove that an imminent execution by lethal injection will constitute cruel and unusual punishment.

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TABLE OF AUTHORITIES

CASES

PARTIES TO THE PROCEEDINGS BELOW

The petitioner, Kayle Barrington Bates, was the appellant/petitioner in the Florida Supreme Court.

The respondent, the State of Florida, was the appellee/respondent in the Florida Supreme Court.

No corporation has an interest in these proceedings that requires disclosure.

RELATED CASES

Trial and Sentencing

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida
Docket Number: 03-1982-CF-661
Case Caption: State of Florida v. Kayle Barrington Bates
Date of Entry of Judgment: Convicted, January 20, 1983; Jury Advisory Recommendation, January 21, 1983; Sentence of Death, March 11, 1983
Unreported

Direct Appeal

Florida Supreme Court
Docket Number: SC63594.
Case Caption: Kayle Barrington Bates v. State of Florida
Date of Entry of Judgment: Opinion January 31, 1985 remanded for resentencing; Rehearing Denied March 25, 1985; Mandate, April 29, 1985
Bates v. State, 465 So. 2d 490 (Fla. 1985)

Appeal after New Sentencing Hearing

Florida Supreme Court
Docket Number: SC67422.
Case Caption: Kayle Barrington Bates v. State of Florida
Date of Entry of Judgment: Opinion April 16, 1987; Rehearing Denied June 3, 1987; Mandate, July 6, 1987
Bates v. State, 506 So. 2d 1033 (Fla. 1987)

Petition for Writ of Certiorari

United States Supreme Court
Docket Number: No. 87-5215
Case Caption: Kayle Barrington Bates, petitioner, v. Florida
Date of Entry of Judgment: October 5, 1987
Bates v. Florida, 484 U.S. 873 (1987)

Postconviction Motion

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida
Docket Number: 03-1982-CF-661
Case Caption: State of Florida v. Kayle Barrington Bates
Date of Entry of Judgment: Postconviction relief granted in part (new penalty phase trial), denied in part. July 25, 1990; State's rehearing denied on September 24, 1992.
Unreported

Appeal From Grant of Postconviction Relief In Part and Consolidated State Habeas Petition

Florida Supreme Court
Docket Number: SC74972, SC76538.
Case Caption: Kayle Barrington Bates, Petitioner, v. Richard L. Dugger, etc., Respondent and Kayle Barrington Bates, Appellant, Cross–Appellee, v. State of Florida, Appellee, Cross–Appellant.

Date of Entry of Judgment: Opinion, July 23, 1992. Rehearing Denied September. 24, 1992; Mandate September 24, 1992.
Bates v. Dugger, 604 So. 2d 457 (Fla. 1992)

Petition for Writ of Prohibition

Florida Supreme Court
Docket Number: SC60-85056
Case Caption: Kayle Barrington Bates vs. Don T. Sirmons, Judge, Etc.
Date of Entry of Judgment: Petition Denied, February 16, 1995
Unreported

Petition for Writ of Prohibition and Mandamus

Florida Supreme Court
Docket Number: SC60-85681
Case Caption: Kayle Barrington Bates vs. Don T. Sirmons, Judge, Etc.
Date of Entry of Judgment: Petition Granted, May 12, 1995
Unreported

Retrial on Sentencing

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida
Docket Number: 03-1982-CF-661
Case Caption: State of Florida v. Kayle Barrington Bates
Date of Entry of Judgment: Jury Advisory Recommendation May 25, 1995; Sentence of Death, July 25, 1995
Unreported; *State v. Bates*, 1995 WL 17974217 (Fla. Cir. Ct.)

Appeal from Resentencing

Florida Supreme Court
Docket Number: 86,180
Case Caption: Kayle Barrington Bates v. State of Florida
Date of Entry of Judgment: Opinion October 7, 1999.Rehearing Denied Dec. 10, 1999; Mandate, January 12, 2000
Bates v. State, 750 So. 2d 6 (Fla. 1999)

Petition for Writ of Certiorari

United States Supreme Court
Docket Number: No. No. 99-9526.
Case Caption: Kayle Barrington Bates, petitioner, v. Florida.
Date of Entry of Judgment: October 2, 2000.Rehearing Denied Nov. 27, 2000.
See 531 U.S. 1030 (2000)
Bates v. Florida, 531 U.S. 835 (2000)

Motion for DNA Testing

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida
Docket Number: 03-1982-CF-661
Case Caption: State of Florida v. Kayle Barrington Bates
Date of Entry of Judgment: Denied, March 17, 2004
Unreported; *State v. Bates*, 2004 WL 6081032 (Fla. Cir. Ct.)

Postconviction Motion

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida

Docket Number: 03-1982-CF-661

Case Caption: State of Florida v. Kayle Barrington Bates

Date of Entry of Judgment: Order Denying Relief in Part and Order Granting Evidentiary Hearing, July 29, 2005; Order Denying Defendant's Motion for Post-Conviction Relief Following Evidentiary Hearing, February 28, 2007

Unreported; *State v. Bates*, 2005 WL 6798590 (Fla. Cir. Ct.); *State v. Bates*, 2007 WL 7758068 (Fla. Cir. Ct.)

Appeal from Denial of DNA Testing, Denial of Postconviction Relief, and Consolidated Habeas Petition

Florida Supreme Court

Docket Number: SC07–611, SC08–66

Case Caption: Kayle Barrington Bates, Appellant, v. State of Florida, Appellee, and Kayle Barrington Bates, Petitioner, v. Walter A. McNeil, etc., Respondent.

Date of Entry of Judgment: Opinion, January 30, 2009; Rehearing Denied: February 24, 2009; Mandate, March 12, 2009

Bates v. State, 3 So. 3d 1091 (Fla. 2009)

Federal Habeas Petition

United States District Court, Northern District of Florida, Panama City Division

Docket Number: 5:09-cv-00081MCR,

Case Caption: Kayle Barrington Bates, Petitioner v. Michael D. Crews, Secretary,

Florida Department of Corrections, Respondent

Date of Entry of Judgment: Petition Denied, September 28, 2012; Order Granting Motion To Alter Or Amend Judgment & Order Amending Ground I of Order Denying Habeas Relief, March 25, 2013.

Unreported

Appeal from the Denial of Petition of Federal Habeas Corpus

United States Court of Appeals, Eleventh Circuit.

Docket Number: No. 13–11882

Case Caption: Kayle Barrington Bates, Petitioner–Appellant, v. Secretary, Florida Department of Corrections, Respondent–Appellee.

Date of Entry of Judgment: September 5, 2014; Denial of Rehearing and Rehearing En Banc, December 16, 2014

Bates v. Sec'y, Florida Dept. of Corr., 768 F.3d 1278 (11th Cir. 2014)

Petition for Writ of Certiorari

United States Supreme Court

Docket Number: 14–9864.

Case Caption: Kayle Barrington Bates, petitioner, v. Julie L. Jones, Secretary, Florida Department of Corrections.

Date of Entry of Judgment: October 5, 2015.

Bates v. Jones, 577 U.S. 839 (2015)

DNA Motion

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida
Docket Number: 03-1982-CF-661
Case Caption: State of Florida v. Kayle Barrington Bates
Date of Entry of Judgment: Order denying, May 24, 2016.
Unreported

Appeal from Denial of DNA Testing

Florida Supreme Court
Docket Number: No. SC16–1178
Case Caption: Kayle Barrington Bates, Appellant, v. State of Florida, Appellee
Date of Entry of Judgment: Opinion, May 18, 2017; Mandate, June 8, 2017
Bates v. State, 218 So. 3d 426 (Fla. 2017)

Postconviction Motion

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida
Docket Number: 03-1982-CF-661
Case Caption: State of Florida v. Kayle Barrington Bates
Date of Entry of Judgment: Denied, April 10, 2017
Unreported

State Habeas Petition

Florida Supreme Court
Docket Number: SC16-1199
Case Caption: Kayle Barrington Bates vs. Julie L. Jones, Etc.
Date of Entry of Judgment: Petition Stricken, July 08, 2016; Reconsideration Denied, July 26, 2016
Unreported

Appeal from Denial of Postconviction and Consolidated State Habeas Petition

Florida Supreme Court
Docket Number: SC17–850; SC17–1224
Case Caption: Kayle Barrington Bates, Appellant, v. State of Florida, Appellee, and Kayle Barrington Bates, Petitioner, v. Walter A. McNeil, etc., Respondent.
Date of Entry of Judgment: Opinion, January 22, 2018; Rehearing Denied [struck] February 22, 2018; Mandate; February 22, 2018
Bates v. State, 238 So. 3d 98 (Fla. 2018); *Bates v. State*, 2018 WL 1004180 (Fla. Feb. 22, 2018).

Petition for Writ of Certiorari

United States Supreme Court
Docket Number: 17–9161
Case Caption: Kayle Barrington Bates, petitioner, v. Florida, et al.
Date of Entry of Judgment: October 1, 2018.
Bates v. Florida, 139 S. Ct. 124 (2018)

Motion to Interview Juror

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida

Docket Number: 03-1982-CF-661
Case Caption: State of Florida v. Kayle Barrington Bates
Date of Entry of Judgment: November 6, 2023

Appeal from Denial of Motion to Interview Juror

Florida Supreme Court
Docket Number: SC2023-1683
Case Caption: Kayle Barrington Bates, Appellant, v. State of Florida, Appellee
Date of Entry of Judgment: Opinion, October 24, 2024; Rehearing Denied: November 25, 2024; Mandate; December 12, 2024
Bates v. State, 398 So. 3d 406 (Fla. 2024); *Bates v. State*, 2024 WL 4879705 (Fla. Nov. 25, 2024).

Petition for Writ of Certiorari

United States Supreme Court
Docket Number: 24-6875
Case Caption: Kayle Barrington Bates, petitioner, v. Florida, et al.
Date of Entry of Judgment: Denied June 30, 2025
Bates v. Florida, S.Ct. 124 (2018)

Postconviction Motion

Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida
Docket Number: 03-1982-CF-661
Case Caption: State of Florida v. Kayle Barrington Bates
Date of Entry of Judgment: July 30, 2025. Postconviction relief denied.
Unreported

Appeal from Denial of Postconviction and Consolidated State Habeas Petition

Florida Supreme Court
Docket Number: SC25–1127; SC25-1128
Case Caption: Kayle Barrington Bates v. State of Florida; Kayle Barrington Bates, v. Secretary, Department Of Corrections.
Date of Entry of Judgment: Opinion, August 12, 2025. Denial of post conviction affirmed, habeas denied.

Motion For Relief From Judgement

United States District Court, Northern District of Florida, Panama City Division
Docket Number: 5:09-cv-00081MCR,
Case Caption: Kayle Barrington Bates, Petitioner v. Michael D. Crews, Secretary, Florida Department of Corrections, Respondent
Date of Entry of Judgment: Motion Denied July 24, 2025.
Unreported. Doc. 65

Appeal from the Denial of Motion For Relief From Judgement

United States Court of Appeals, Eleventh Circuit.
Docket Number: No. 25-12588

Case Caption: Kayle Barrington Bates, Petitioner–Appellant, v. Secretary, Florida Department of Corrections, Respondent–Appellee.

Date of Entry of Judgment: August 1, 2025, Order of the Court denying Certificate of Appealability and Denying Stay as moot.

Petition for Writ of Certiorari

United States Supreme Court

Docket Number: 25-5315

Case Caption: Kayle Barrington Bates, Petitioner Ricky D. Dixon, Secretary, Florida Department Of Corrections, Respondent

Date of Entry of Judgment: Pending

Civil Rights Action Pursuant to 42 U.S.C. § 1983

United States District Court Northern District Of Florida, Panama City Division

Docket Number: 5:25-cv-192

Case Caption: Kayle Barrington Bates v. Ron DeSantis, Governor

Date of Entry of Judgment: August 12, 2025. Dismissed; stay denied.

OPINIONS BELOW

The opinion of the Florida Supreme Court is unpublished and attached as Appendix A. The order of the Circuit Court for the Fourteenth Judicial Circuit of the State of Florida, Bay County, (warrant court) is unpublished and attached as Appendix B. The order the warrant court denying discovery is unpublished and attached as Appendix C.

STATEMENT OF JURISDICTION

This Court's jurisdiction to review the decision of the Florida Supreme Court is invoked pursuant to 28 U.S.C. § 1257(a). The Florida Supreme Court issued its decision on August 12, 2025. Thus, this Petition is timely.

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides in pertinent part:

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

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Procedural History

This case has a long procedural history and a short history of justice. Mr. Bates was convicted and sentenced to death in 1983. *Bates v. State*, 465 So. 2d 490 (Fla.

1985). On appeal, the Florida Supreme Court vacated his death sentence, finding the evidence insufficient to support two aggravating circumstances found by the trial court. *Id*. at 492. On remand, Mr. Bates presented additional mitigation to the trial court, which sentenced Mr. Bates to death again. The Florida Supreme Court affirmed over the dissent of three justices. *Bates v. State*, 506 So. 2d 1033 (Fla. 1987).

In November of 1989, Governor Bob Martinez signed a warrant for Mr. Bates's execution. Mr. Bates sought postconviction relief and a stay of execution, which were granted because Mr. Bates received ineffective assistance of penalty phase counsel. *Bates v. Dugger*, 604 So. 2d 457 (Fla. 1992). The Florida Supreme Court affirmed and remanded to the trial court for "resentencing before a judge and jury." *Id*. at 459. The trial court's first attempt to do so ended in mistrial on February 2, 1995. The final penalty phase began on May 15, 1995. The jury recommended by a vote of nine to three that the trial court sentence Mr. Bates to death. After the trial court did so, the Florida Supreme Court affirmed. *Bates v. State*, 750 So. 2d 6 (Fla. 1999). Although Mr. Bates collaterally attacked his convictions and sentences in the state and federal courts,[1] his 1983 conviction of guilt and 1995 sentence of death still stand.

Death Warrant Procedural History

The Governor of Florida, Ron DeSantis, signed a warrant for Mr. Bates's execution on Friday, July 18, 2025. That night, the Florida Supreme Court ordered that all warrant court proceedings be completed by July 30. The warrant court did not issue its own scheduling order until Monday, July 21. This order gave Mr. Bates

[1] Mr. Bates relies on his Statement of Related Cases *supra* at Page v to complete this history.

less than 24 hours to file the records demands that would determine his access to discovery. Nonetheless, Mr. Bates timely filed his demands, which the warrant court denied at a records hearing on July 23. The warrant court also required Mr. Bates to file his fully-pleaded motion for postconviction relief by July 25, which he did. The State responded on July 27, the warrant court heard argument on July 28, and evidentiary development was denied that afternoon. Two days later, the warrant court denied relief, on July 30, 2025.

Mr. Bates filed notice of appeal and petitioned the Florida Supreme Court for the writ of habeas corpus on July 30. In turn, the Florida Supreme Court required his initial brief by August 1. The State filed both its response and answer on August 4, at about 12:20 p.m., leaving roughly 26 hours for Mr. Bates to reply to both before the Florida Supreme Court's filing 2:00 p.m. filing deadline on August 5.

Disposition Of Federal Questions Below

Mr. Bates first raised the federal questions at issue in his Successive Motion to Vacate Judgement of Conviction and Death Sentence Under Florida Rule of Criminal Procedure 3.851, which he filed in the warrant court on July 25, 2025. *See* Appendix B. Mr. Bates then presented the federal questions on appeal to the Florida Supreme Court, which reached the following dispositions:

As to whether Mr. Bates's death sentence violates the Eighth and Fourteenth Amendments because the penalty phase jury and trial court were denied compelling neuropsychological mitigation showing that his case is not amongst the most aggravated and least mitigated, the Florida Supreme Court held:

> Bates argues the circuit court erred in denying his claim

> that evidence of his organic brain damage was inadequately considered during his second penalty phase. To support this claim, Bates points to multiple alleged shortcomings at the penalty phase, including that counsel failed to present testimony from Dr. Barry Crown and from lay witnesses who knew Bates and could have testified to his diminished mental state at the time of the murder. We reject this claim as untimely, procedurally barred, and meritless.

(Attachment A, pg. 9-10). The court went on to hold that Mr. Bates did not present a manifest injustice and "failed on the merits." (Attachment A, pg. 13).

As to whether "the State obtained Mr. Bates's death sentence in violation of the Eighth Amendment and Due Process Clause of the Fourteenth Amendment because the jury was misled to believe Mr. Bates could be released on parole in twelve years unless sentenced to death," the Florida Supreme Court held:

> Bates also argues that the second penalty-phase court erred when it refused to inform the jury that Bates would not receive parole if sentenced to life, or that his other sentences guaranteed he would remain incarcerated for the rest of his natural life. Bates has made this argument multiple times. And each time, we have rejected it. Accordingly, this claim is procedurally barred.
>
> Recognizing the bar that our rulings on this issue pose, Bates pivots and asks us to grant him due process relief to avoid a manifest injustice. But consistent with our conclusion above, we see no injustice (manifest or otherwise) in enforcing this bar.

Attachment A, pg. 14 (citations omitted).

Finally, as to whether "the time restraints and wholesale denial of access to public records imposed during these warrant proceedings violated Due Process," the Florida Supreme Court held:

> Bates also asserts that the length of the warrant period violates his right to due process and counsel. A thirty-day warrant period does not, in and of itself, deprive a capital defendant of the rights Bates invokes. In post-warrant litigation, due process requires a defendant be given notice and an opportunity to be heard. An the right to counsel only requires that the defendant have "meaningful access to counsel and the courts after his death warrant was signed." Accordingly, we have repeatedly rejected such challenges to the length of the warrant period. Our precedent precludes the relief Bates seeks.
>
> As part of this claim, Bates also argues that the circuit court's denial of his lethal injection discovery requests violates his constitutional rights. We have recently found comparable arguments to be meritless. Applying this precedent, we affirm the circuit court's denial of Bates' claim.

Attachment A, pg. 16-17. (citations omitted) (quoting *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *5 (Fla. July 22, 2025)).

REASONS FOR GRANTING THE WRIT

a. Introduction

Something is wrong in Florida. Governor DeSantis is signing death warrants at an unprecedented pace—eleven this year—with no sign of slowing down. In each warrant, he designates a week in which the Florida Department of Corrections will execute an inmate. With minor variations, this weeklong window begins 30 days after the warrant is signed. Florida State Prison's Warden has invariably scheduled executions on the first possible day, allowing the briefest period in which to litigate constitutional issues and save the condemned man's life. For its part, the Florida Supreme Court is hearing two or three death warrant challenges at a time and disposing of each, primarily, through rote application of procedural bars. Meanwhile,

both the Florida Supreme Court and Florida's lower courts are issuing extremely truncated litigation schedules *ad hoc* and foreclosing access to discovery.

b. No Independent and Adequate State Law Grounds Sustain The Florida Supreme Court's Decision.

As a preliminary matter, no independent and adequate state law grounds foreclose this Court's review. This Court has jurisdiction to hear a question of federal law where the state court decision does not "rest[ ] on a state law ground that is independent of the federal question and adequate to support the judgment." *Cruz v. Arizona*, 598 U.S. 17, 25 (2023). The presumption is that the state court relied on applicable federal law, i.e. that the state court ruling does not rely on independent and adequate state grounds. *Coleman v. Thompson*, 501 U.S. 722, 732-35 (1991). A state law ground is independent where it does not depend on a federal holding and "is not intertwined with questions of federal law." *Glossip v. Oklahoma*, 604 U.S. __, 145 S. Ct. 612, 624 (2025) (citing *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983) and *Foster v. Chatman*, 578 U.S. 488, 498 (2016)). Adequacy requires consistency. *See Walker v. Martin*, 562 U.S. 307, 320 (2011) (finding "[a] state ground 'applied infrequently, unexpectedly, or freakishly' may 'discriminat[e] against the federal rights asserted' and therefore rank as 'inadequate'") (quoting *Prihoda v. McCaughtry*, 910 F.2d 1379, 1383 (7th Cir. 1990)).

Mr. Bates raised his federal constitutional claims in the Florida Supreme Court and specifically invoked the court's long-established authority to overcome state law procedural bars in avoidance of "manifest injustice." Addressing Mr. Bates's claims through the lens of "manifest injustice," the Florida Supreme Court could not

avoid the merits of the underlying federal law issues. Its refusal to exercise its authority under the "manifest injustice" doctrine necessarily depended on its finding no merit in the federal constitutional claims that formed the asserted injustices. Indeed, the merits of these claims were entirely inseparable from the Florida Supreme Court's decision. Moreover, the court necessarily considered the federal questions presented and based on the court's prior decisions that were based on "an antecedent holding that turned on federal law." *Glossip*, 145 S. Ct. at 625.

Here, there is a presumption that the Florida Supreme Court relies on federal law when evaluating a case, especially where Mr. Bates asserted federal law to support his underlying argument. *See Coleman*, 501 U.S. at 732-33 (noting the presumption and the underlying rationale); *see also Glossip*, 145 S. Ct. at 624-25 (applying the presumption and finding applicable federal law where an antecedent ruling relied on federal jurisprudence).

I. The Florida Supreme Court Refused To Correct Pervasive Constitutional Error, Allowing Mr. Bates's Execution Without Full Consideration Of Mitigating Circumstances That Show His Case Is Not Among The Most Aggravated And Least Mitigated.

The Florida Supreme Court should be the primary protector of criminal defendants' state and federal rights in Florida. *See Harrington v. Richter*, 562 U.S. 86, 103 (2011) (noting "state courts are the principal forum for asserting constitutional challenges to state convictions"). It has abandoned that duty and permitted unchecked violations of the United States Constitution in Mr. Bates's case. The federal courts have a duty to intervene when a state court fails to remedy a profound constitutional violation that renders an individual's execution

unconstitutional.

On appeal, Mr. Bates laid out a clear path for the Florida Supreme Court to remedy his unstainable death sentence and execution. As pleaded in the state courts, the courts in Florida have the duty to grant writs of habeas corpus under Article V (3)(b) of the Florida Constitution. The writ of habeas corpus is likewise guaranteed by the Florida Constitution under Article I, Section 13. The Florida Supreme Court has long recognized its duty as the highest court to grant the writ and to correct manifest injustices. *Baker v. State*, 878 So. 2d 1236, 1246 (Fla. 2004) (Anstead, J. concurring). Moreover, the Florida Supreme Court has recently showed a pattern of departing from stare decisis when necessary to overcome a decision that was not sustainable as a matter of law, public policy, or fairness. *State v. Poole*, 297 So. 3d 487 (Fla. 2020); *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020); *Bush v. State*, 295 So. 3d 179 (Fla. 2020); *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020); *State v. Maisonet-Maldonado,* 308 So. 3d 63 (Fla. 2020); *Roughton v. State*, 185 So. 3d 1207 (Fla. 2016). Thus, if the Florida Supreme Court regularly overcomes stare decisis to reach a desired result, it remains a consideration in a case such as Mr. Bates's that involves unremedied constitutional violations.

With these established doctrines in mind, the Florida Supreme Court failed in its duty this Court highlighted in *Richter*. Mr. Bates will now present the errors the Florida Supreme Court failed to remedy so that this Court may exercise its authority to provide the remedy that the Constitution demands.

The jury and court were denied important mitigation at Mr. Bates's 1995

resentencing. "Because the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force." *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (citing *Thompson v. Oklahoma*, 487 U.S. 815, 856 (1988) (O'Connor, J., concurring)). Constitutional error prevented the sentencing court and jury from considering compelling neuropsychological mitigation that would have shown that Mr. Bates's case is not amongst the most aggravated and least mitigated. *See Beck v. Alabama*, 447 U.S. 625, 638 (1980) (noting invalidation of "procedural rules that tended to diminish the reliability of the sentencing determination"). Resultantly, Mr. Bates's death sentence is arbitrary, capricious, and excessive. *See Gregg v. Georgia*, 428 U.S. 153, 188 (1976) (citing *Furman v. Georgia*, 408 U.S. 238, 313 (1972)).

Furman held that the death penalty, as applied throughout the country, violated the prohibition on cruel and unusual punishment effected by the Eighth and Fourteenth Amendments. 408 U.S. at 314. Although *Furman* did not find capital punishment unconstitutional *per se*, "it did recognize that the penalty of death is different in kind from any other punishment" and "could not be imposed under sentencing procedures that created a substantial risk that it would be inflicted in an arbitrary and capricious manner." *Accord. Gregg,* 428 U.S. at 188.

In the half-century after *Furman*, this Court identified myriad substantive and procedural safeguards applicable to the death penalty. *Roper* concisely summarized these safeguards:

> Capital punishment must be limited to those offenders who commit "a narrow category of the most serious crimes" and whose extreme culpability makes them "the most deserving of execution." This principle is implemented throughout

> the capital sentencing process. States must give narrow and precise definition to the aggravating factors that can result in a capital sentence. In any capital case a defendant has wide latitude to raise as a mitigating factor "any aspect of [his or her] character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." There are a number of crimes that beyond question are severe in absolute terms, yet the death penalty may not be imposed for their commission. The death penalty may not be imposed on certain classes of offenders, such as juveniles under 16, the insane, and the mentally retarded, no matter how heinous the crime. These rules vindicate the underlying principle that the death penalty is reserved for a narrow category of crimes and offenders.

543 U.S. at 568–69 (citations omitted).

The penalty phase jury recommended death by a vote of only nine to three after hearing compelling mitigation evidence of Mr. Bates's life and some of his mental issues. The jury, however, was denied the mitigation that would have shown Mr. Bates's case was not the most aggravated and the least mitigated, and thus death was not an appropriated sentence.

Of course, under Florida's capital sentencing scheme, the jury made no specific findings as to aggravation or mitigation. *See Hurst v. Florida*, 577 U.S. 92 (2016). Rather, the sentencing court found:

> [T]wo statutory mitigating circumstances: no significant history of prior criminal history (significant weight); and appellant's age of twenty-four at the time he committed the murder (little weight). The court found eight nonstatutory mitigating circumstances: appellant was under some emotional distress at the time of the murder (significant weight); appellant's ability to conform his conduct to the requirements of the law was impaired to some degree (significant weight); appellant's family background (some weight); appellant's national guard service (little weight); appellant was a dedicated soldier and patriot (little

> weight); appellant's low-average IQ (little weight); appellant's love for his wife and children and being a supportive father (some weight); and appellant was a good employee (little weight).

Bates, 750 So. 2d at 9.

Although significant mitigation existed, the trial court did not find the two most important statutory mitigators. WR-61. The trial court denied as a statutory mitigating factor under § 921.141(7)(b), Fla. Stat., that "[t]he capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance." Additionally, the trial court denied the statutory mitigating factor under § 921.141(7)(f), Fla. Stat., that, "[t]he capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired."

Beyond the individual errors raised previously, the failure to meaningfully consider Mr. Bates's organic brain damage at resentencing constitutes a violation of the Eighth Amendment that must halt his imminent execution. The Florida courts have consistently and unreasonably discounted Mr. Bates's mitigation to irrelevance. *See Porter v. McCollum*, 558 U.S. 30, 44 (2009) (quoting *Porter v. State*, 788 So. 2d 917, 937 (Fla. 2001)) (Anstead, J., concurring in part and dissenting in part) (noting "there exists too much mitigating evidence that was not presented to now be ignored"). This did not change under his death warrant.

Five days before Mr. Bates's resentencing trial, the trial court granted funds to allow Mr. Tom Dunn, Mr. Bates's trial counsel, to retain Dr. Barry Crown, a forensic neuropsychologist. WR-557. The next day, Dr. Crown visited

Mr. Bates at Bay County Jail. WR-663. Dr. Crown evaluated Mr. Bates for organic brain damage using his own testing and testing performed previously by Dr. James Larson. WR-558.

In his opening statement, Mr. Dunn told the jury that Dr. Crown would testify as one of three mental health experts. RS2. V9, 48. But, Mr. Dunn forgot to list Dr. Crown as a witness. WR-559. After the State objected for lack of notice, Dr. Crown gave a deposition in which he described Mr. Bates's neuropsychological impairments and his basis for believing that they were present at the time of the offense:

> Q: All right, collectively, with all of Dr. Larson's tests and your tests, what conclusions did you draw regarding his [Mr. Bates's] mental ability on June 14, 1982?
>
> Crown: I believe that this man had a diminished capacity at that time.
>
> Q: And why do you believe that?
>
> Crown: Because this gentleman, apart from the stress of any situation, currently displays problems in the [sic] number of neuropsychological areas and has a number of neuropsychological deficits. These deficits are consistent with findings that go back to 1971 which were the earlier records that I had seen.

WR-708.

During the trial, the State ordered an MRI for Mr. Bates and delivered a report to Mr. Dunn that revealed no abnormalities. Although organic brain damage would not appear on an MRI, at the time, Mr. Dunn did not know how to rebut the State's report without a neurologist. Mr. Dunn spoke with Dr. Crown, but felt he was not an expert in imaging and radiology. WR-562. Ultimately, Mr. Dunn did not call Dr.

Crown and abandoned presenting organic brain damage as a mitigating factor altogether.

Mr. Dunn failed to consider that he had already told the jury about Mr. Bates's organic brain damage and Dr. Crown. WR-562. Mr. Dunn believed organic brain damage was a significant and compelling mitigator and testified that he had no strategic reason for not calling Dr. Crown:

> Q: Had you had information that showed organic brain damage that you were able to rebut the [court] neurologist would you have presented that?
>
> Dunn: Well, I think today I know I had it. I just didn't realize that I had it at the time and, yeah, I would have presented it.

WR-565.

Mr. Dunn understood that organic brain damage was extremely mitigating, but only later came to understand that Mr. Bates's MRI would not have detected organic brain damage or neuropsychological impairment. WR-563. It was a horrible mistake that resulted in Mr. Bates being sentenced to death without full consideration of mitigation compelling enough to remove his case from the most aggravated and least mitigated cases for which death is reserved.

Additionally, Mr. Dunn never developed testimony from the people whom Mr. Bates interacted throughout his life, people who were familiar with how he reacted to stress. WR-565. This would have corroborated the effect that Mr. Bates's organic brain damage had on his reactions to stress. In turn, glaring contradictions in Dr. McLaren's opinion would have been exposed.

At the postconviction evidentiary hearing, mitigation witnesses corroborated Dr. Crown's opinions. Mr. Gary Scott testified about his military training with Mr. Bates in the Florida National Guard and their unit's activation to quell race riots in Liberty City near Miami in 1980. WR-507. Mr. Tunnell testified that, when Mr. Bates first approached him at the crime scene, he was talking fast and sweating as if he had exerted himself. He described the wooded area around the crime scene as "jungle-like." *See* WR-473-478. Mr. Bates's responses to Mr. Tunnell's questions were quick and rapid. They were inconsistent and did not make sense.

Similarly, trial attorney Anthony Bajoczky testified that, when he saw Mr. Bates in the jail for the first time, his responses were "bizarre." WR-497. They made no sense and were internally inconsistent and contradictory. He would have moved for a mental health evaluation if he had continued on the case.

Mr. Bates's father, Jackie Bates, testified that he visited Mr. Bates in the Bay County Jail on the day of his arrest. WR-521. Mr. Bates was "going out of his mind." WR-521 He was babbling and talking so fast it was like a machine gun. WR-522. Jackie could barely understand him and thought there was something physically or mentally wrong with Mr. Bates because he was "out of it," shaking and trembling. WR-522. To Jackie, Mr. Bates's reaction did not seem like typical fear or excitement caused by the serious charges. He had never seen Mr. Bates this extreme before. WR-522. Mr. Bates seemed overwhelmed and it was "really bad." WR-522

Mr. Bates also presented the testimony of CCRC investigator, Staci Brown. WR-604. During the course of her investigation, Brown spoke with Ranita Bates, Mr. Bates's ex-wife. WR-604. Ranita failed to appear at the hearing, so counsel proffered her testimony through Brown. Brown had spoken with Ranita for three hours in June, 2005. WR-610. Ranita said that, after Mr. Bates served in the National Guard in Miami and Panama, his behavior changed. WR-610. Mr. Bates would wake Ranita with his nightmares, screaming very loudly. He would "act crazy" and did not recognize where he was. Mr. Bates would break out in cold sweats. WR-611. Ranita said Mr. Bates did not speak in detail about serving in Miami, but she knew he did not want to go down there in the first place. WR-611.

The relevant sentencers heard none of this. Mr. Dunn did not make the connection or provide the necessary background materials to experts who would have shown that death was not a constitutional punishment for Mr. Bates. The nightmares Ranita described corroborated Dr. Crown's findings, but Mr. Dunn failed to make her available for Dr. Crown to interview. WR-565. Ranita's description was also consistent with the Jackie's testimony about Mr. Bates's behavior post-arrest. Both accounts also corroborated Mr. Bates's self-reporting to Dr. Crown. As Jackie recounted, Mr. Bates was babbling and talking fast, like he was "going out of his mind." WR-522.

Dr. Crown's testimony was not cumulative because neither Dr. Larson nor Dr. McMahon testified to these incidents. At the resentencing, both testified that Mr. Bates would become "unwrapped" in stressful situations and under stress when his

emotional controls broke down. They both testified that he would react impulsively without evaluating alternatives or consequences. However, neither doctor supported their conclusions with Dr. Crown's neuropsychological evaluation. Nor had either spoken to Ranita or Jackie Bates or connected Mr. Bates's mental status to the time of the offense.

Dr. Crown testified at the postconviction evidentiary hearing that neuropsychological testing revealed Mr. Bates's organic brain damage. There are three levels of organic brain damage: anatomic, metabolic, and electrical. Dr. Crown explained that Mr. Bates's brain damage would not show up on an MRI. Mr. Bates has specific impairments in problem solving related to language-based critical thinking, understanding "if-then" relationships, memory, storage and retrieval of information, and auditory selective attention. The deficits in Mr. Bates's brain function relationally impact his behavior, meaning he has a low stress threshold and difficulties processing information.

Together, these deficits would severely impact Mr. Bates's reaction to being sprayed with mace. Dr. Crown opined that the effect of a chemical deterrent on a person with a low brain threshold would most likely cause disinhibition rather than inhibition. Dr. Crown summarized:

> He had impairments in problem solving, particularly related to language based critical thinking, understanding if-then relationships. He had difficulties with memory and retrieval of information, storage of information and the retrieval of that information. And he had some specific problems with auditory selective attention, meaning that when there were distractions in the background or in the environment he had difficulty focusing in and listening to

> what the important aspects of something were.

WR-589.

According to Dr. Crown, precursors of this behavior existed before the offense:

> There were micro situations that had occurred within his family, his relationships with family members, relationships with his wife, reactions to being in the National Guard and serving in Miami during or after those McDuffy riots. So there were indicators, I don't know that anyone would have necessarily picked up the thread, but he had nightmares that [he] acted out, [and he] had been described as not being the same.

WR-603.

The trial court was also implicated in what amounted to a denial of Mr. Bates's rights under the Eighth Amendment. Although raised as a claim under *Ake v. Oklahoma*, 470 U.S. 68 (1985), this had far greater impact because it caused the organic brain damage to not be considered by the relevant sentencers. If the State was going to attack Mr. Bates with a neurologist holding an irrelevant "normal" MRI, the Constitution guaranteed him a meaningful opportunity to respond, both as a matter of confrontation and due process under *Ake*. No competent neurologist would say that an MRI, which shows anatomical damage only, was sufficient to prove the absence of organic brain damage. If Mr. Dunn had access to a competent neurologist, they would have explained that the "normal" MRI was irrelevant to Dr. Crown's neuropsychological findings. This would have allowed the jury to hear the full extent of Mr. Bates's impairment because Mr. Dunn would have called him. The jury's nine to three vote for death would have been different.

Given Mr. Bates's precarious neuropsychological condition at the time of

offense, the trial court would have been unable to sentence Mr. Bates to death. First, the opinion of Dr. McLaren would have been discredited and no credibility would have been due to his findings. Looking to the sentencing order, all of Dr. McLaren's reasons for discounting mitigation were contradicted by Dr. Crown's neuropsychological findings. Moreover, if the testimony of Jackie Bates and Bajocsky were considered properly, the trial court would see that Mr. Bates was mentally ill at the time of the offense. His behavior post-arrest indicated distress well beyond that which would be expected of a healthy person under the same circumstances. Finally, Ranita would have provided the experts and the relevant sentencer with detailed accounts of Mr. Bates reacting to stress.

Mr. Bates was sentenced to death based on a false narrative and without consideration of his organic brain damage, rendering his execution unconstitutional. Through experts and individual observations, the relevant sentencers would have heard that Mr. Bates was specifically unable to react well to stress. It is not hard to see that, although Mr. Bates was proud of his young family, the stress of supporting them would have been magnified by his organic brain damage. Mr. Bates was doing the best that he could with his limited resources. The stress of maintaining a family would have been overwhelming to him. He was also struggling with the effects of his National Guard service. After his jungle training and service following the McDuffy incident, Mr. Bates was not the same. His wife reported acute symptoms, showing that his service affected him profoundly. Mr. Bates was trying his best, but, ultimately, it was not enough.

Then, when the offense for which he was convicted occurred, Mr. Bates's organic brain damage would have caused him to react horribly in a panic. He would have made one bad decision after another, each influenced by his organic brain damage. His ability to control his impulses and his panic-stricken reactions would inevitably lead to a tragic outcome. This evinces the lessened moral culpability that makes his death sentence unconstitutional.

The Florida Supreme Court affirmed the denial of this claim, finding it "untimely, procedurally barred, and meritless." Appendix A, pg. 10. The court never engaged with extensive arguments regarding its jurisdiction under the Florida Constitution. The court considered the merits based on what Mr. Bates had previously raised, not the Eighth Amendment claim before it. See Appendix A, pg. 11-12. The court did consider whether this amounts to a manifest injustice under Florida law, finding that Mr. Bates "ask[ed the Court] to excuse the procedural bars and grant him relief to avoid a manifest injustice. However, upon review of the record, and consistent with [the court's] recent precedent, [it found] no manifest injustice here to excuse the procedural bars and grant him relief to avoid a manifest injustice." Appendix A, pg. 13.

For extra measure, the Florida Supreme Court found that the argument also failed on the merits. In deciding the whether there was a manifest injustice, the court necessarily ruled on the federal constitutional questions. The court found:

> This claim also fails on the merits. As we explained in our prior opinions, Bates presented significant evidence regarding his mental state at the time he committed the murder. [] No additional evidence of brain damage would have overcome the significant aggravators presented

> against Bates. Nor does the Eighth Amendment grant "an absolute right to present mitigating evidence at any time, regardless of its availability, regardless of the defendant's diligence in locating and presenting it, and regardless of its strength or force."

Appendix A, pg. 13.

The Florida Supreme Court made a decisive error when it relied on its past mistakes to deny relief when the whole purpose of this claim was to allow the court to fix its past mistakes and avoid an execution, which involves a gross violation of the Eighth Amendment. *See Porter v. McCollum*, 558 U.S. at 44 (quoting *Porter v. State*, 788 So. 2d at 937) (Anstead, J., concurring in part and dissenting in part) (noting "there exists too much mitigating evidence that was not presented to now be ignored"). Mr. Bates's case is firmly not one of the most aggravated and least mitigated case for which death is reserved, contrary to the Florida Supreme Court's unreasonable dismissal of his neuropsychological impairment and refusal to recognize its profound weight in mitigation.

Mr. Bates presented this as a federal constitutional claim, which under Florida law, the courts necessarily considered on the merits. But, once again, the state courts denied Mr. Bates meaningful review or remedy.

This Court should grant certiorari and stay Mr. Bates's execution.

II. The State Obtained Mr. Bates's Death Sentence In Violation Of The Eighth Amendment And Due Process Clause Of The Fourteenth Amendment Because The Jury Was Misled To Believe Mr. Bates Could Be Released On Parole In Twelve Years Unless Sentenced To Death Further Denying Mr. Bates A Constitutional Narrowing.

Mr. Bates was denied a constitutional sentencing. The trial court refused to provide the jury with truthful information necessary to realistically understand Mr.

Bates's potential sentences. Serving two consecutive life sentences and a 15-year sentence already, Mr. Bates would never be released. The trial court understood that these consecutive sentences meant that Mr. Bates would spend the rest of his life in Florida prison. Nonetheless, it refused to correct the jury's mistaken belief that Mr. Bates could walk free in little more than a decade unless sentenced to death. This belief became evident when, after deliberating for about two hours, the jury sent the following question to the trial court:

> Are we limited to the two recommendations of life with minimum 25 years or death penalty? Yes. No.
>
> Or can we recommend life without a possibility of parole? Yes. No."

(RS2. V11, 67).

The jury's question reflected a concern that was well understood at the time—the possibility that Mr. Bates would be released and pose a danger to the community. *See Simmons v. South Carolina*, 512 U.S. 154, 164 (1994) ("[T]he actual duration of the defendant's prison sentence is indisputably relevant" to jury "assessing future dangerousness"). Under the applicable statute, Mr. Bates faced two potential sentences: life imprisonment with the opportunity for parole in 25 years or death. If he were eligible for parole after 25 years imprisonment, then, given his time served, he could have been free in about 12 years. *See id.* (noting "it is entirely reasonable for a sentencing jury to view a defendant who is eligible for parole as a greater threat to society than a defendant who is not"). Twelve years in prison would hardly befit first-degree murder or assuage fears of future dangerousness.

Regardless, the State told the jury that it could impose only death or "the

sentence of life imprisonment with a minimum mandatory of twenty-five years before the defendant is eligible for parole." (R2. V11, 16-17); *see Hitchcock v. State*, 673 So. 2d 859, 863 (Fla. 1996) (finding capital defendant who served almost 25 years imprisonment between initial conviction and resentencing was "prejudiced by the State's argument that if given a life sentence, he would be eligible for parole after twenty-five years"). In doing so, the State painted Mr. Bates as a future danger to the community at large. 673 So. 2d at 860.

Defense Counsel repeatedly sought permission "to inform Mr. Bates's jury that he had been sentenced to a life sentence on the kidnapping charge, a life sentence on the attempted sexual battery charge, and a fifteen-year sentence on the robbery charge, all three of those sentences to run consecutive to whatever sentence Mr. Bates" received at his resentencing. The goal was clear—refute the State's suggestion and show the jury that life imprisonment was a meaningful alternative to death. *Cf. Beck*, 447 U.S. at 637-38.

Going a step further, Mr. Bates tried to waive the possibility of parole. Between the vacatur of Mr. Bates's initial death sentence and his resentencing, Florida's Legislature amended the sentencing statute, "add[ing] the sentencing option of life imprisonment without the possibility of parole." (R2. 273). Although Mr. Bates would spend the rest of his days in prison either way, he asked the trial court to apply this harsher statute retroactively. (R2. 274). This would close the apparent gap between available sentences and accurately inform the jury that life meant life.

The State objected, arguing that Mr. Bates could not elect to be sentenced to

life imprisonment without the possibility of parole, because his sentence would then be illegal under the Ex Post Facto Clause, notwithstanding his offer to waive any such claim on the record. (R2. 274, 336). The trial court adopted the State's Ex Post Facto argument and refused Mr. Bates's request to be sentenced under the new statute. (R2. 335-38). Likewise, the trial court repeatedly refused Mr. Bates's requests to inform the jury of his consecutive sentences to assuage any fears of future dangerousness or inadequate punishment predictably caused by the theoretical possibility of parole—even after the jury's question indicated that this issue may be dispositive.

The trial court's "refusal to apprise the jury of information so crucial to its sentencing determination, *particularly when the prosecution alluded to the defendant's future dangerousness* . . . cannot be reconciled with . . . the Due Process Clause." *Simmons*, 512 U.S. at 164 (emphasis added). Likewise, the trial court violated the Due Process Clause by denying Mr. Bates any opportunity to clarify that he would not, in fact, be released from prison in 12 short years. *See id.* at 165 n.5 (noting prohibition on "placing a capital defendant in a straitjacket by barring him from rebutting the prosecution's arguments of future dangerousness with the fact that he is ineligible for parole under state law"). Because Mr. Bates was on trial for his life, these Due Process Clause requirements were at their zenith, requiring the trial court to accurately instruct the jury on the true nature of the sentencing alternatives. *See Mills v. Maryland*, 486 U.S. 367, 376-77 (1988) (holding "the risk that the death penalty will be imposed in spite of factors which may call for a less

severe penalty is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments") (quoting *Lockett v. Ohio*, 438 U.S. 586, 605 (1978)); *see also*, *Andres v. United States*, 333 U.S. 740, 752 (1948). In other words, the jury must be provided with alternative sentences that are meaningful. *Cf. Beck*, 447 U.S. at 637-38.

Because the jury was misled to believe that Mr. Bates could be granted parole in only 12 years, its verdict is wholly unreliable. *See Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (recognizing "qualitative difference" between life and death sentences and "corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case"). Additionally, no valid ex post facto argument necessitated this circumstance. Florida Supreme Court Justice Anstead addressed this point at length:

> What then is a possible reason that waiver would not be permitted where the waiver would be perfectly consistent with prevailing public policy and the only one affected by the more severe sentencing option is the defendant? One can only speculate that it would be to deprive the defendant of the benefit of the appeal to be made to sentencing juries and judges under the 1994 sentencing scheme that if they choose a life sentence over death they can be assured that life means life and the convicted murderer will not be eligible for parole. In other words, it is apparent that the defendant wishes to waive any speculative entitlement to parole under the old law in exchange for the calculation that the appeal of a defendant to a jury and judge for his life through the imposition of a life sentence might be slightly enhanced. The issue is especially important here where the defendant has been in prison since 1982 and his eligibility for parole would not be delayed for twenty-five years, but for less than half that. That is hardly an attractive sentencing option for a jury in a first-degree murder case. Surely that is why the jury in this case asked

> for the option of a life sentence without parole, an option the defendant is willing to accept but the majority rejects.
>
> When all is said and done, the truth is that no valid public policy reason has been advanced to deny the defendant the right to waive his ex post facto rights and give a sentencing jury the option of applying Florida's prevailing public policy in capital sentencing to this case. It is done every day in noncapital cases and should be permitted here.

Bates, 750 So.2d at 21-22 (Fla. 1999) (Anstead, J. dissenting).

The warrant court found this claim was untimely, procedurally barred, and not a manifest injustice. WR-901-902. The Florida Supreme Court affirmed on appeal, holding that this claim was barred and untimely. Appendix A, pg. 14. The court noted: "Recognizing the bar that our rulings on this issue pose, Bates pivots and asks us to grant him due process relief to avoid a manifest injustice. But consistent with our conclusion above, we see no injustice (manifest or otherwise) in enforcing this bar." Appendix A, pg. 14. However, the Florida Supreme Court mischaracterized this claim. Mr. Bates did not argue that the procedural bar was a manifest injustice. He argued that review of his death sentence was not subject to any such bar. His claim was that his death sentence was unconstitutional under the Eighth Amendment because the jury was misinformed about the possibility of parole. The jury did not want to sentence Mr. Bates to death, but its only alternative appeared unreasonably lax.

Mr. Bates cannot be executed based on the gross untruth that, in his case, life meant anything but life. It is conceded that Mr. Bates has raised this claim in both state and federal court. However, his pending execution has created an injustice that is no mere abstraction. Unless this Court intervenes, the State of Florida will execute

Mr. Bates pursuant to an unconstitutional sentence.

The denial of Mr. Bates's waiver and the refusal to provide the jury with accurate sentencing information rendered his death sentence wholly unreliable. Much like the omission of neuropsychological evidence discussed *supra*, here, the jury was unable to determine whether death was appropriate because it lacked even the basic information required. The Ex Post Facto Clause protects important interests, but it must yield when its beneficiary so chooses. This is particularly true where, as here, enforcement of the Ex Post Facto Clause advanced only the State's gamesmanship.

The Due Process Clause and the Eighth Amendment prohibit arbitrary, capricious, and excessive punishment. There can be nothing more arbitrary or capricious than receiving a death sentence because the jury mistakenly thought itself required to choose between 12 years more imprisonment and death. Ample evidence shows that Mr. Bates posed no future danger—certainly not to the community at large. But further, he has not been convicted of any further crimes since his arrest. He has lived a peaceful life, practicing his religion, and contributing to his community in prison for over 40 years. Mr. Bates has shown that life in prison was adequate to protect the community and allow his positive contribution to others. It should also be considered that Mr. Bates received only two disciplinary reports during his nearly 40 years in prison. Life imprisonment has indeed, been adequate punishment for Mr. Bates. He has spent the bulk of his years in solitary confinement, sweltering in the extreme heat of Florida summers. He has had time to reflect on his life, complete with

deep regrets and missed opportunities. Adequate punishment has been, and will continue to be, served until the end of Mr. Bates's days. Although unnecessary to the merits of this claim, Mr. Bates's clear lack of future dangerousness highlights the injustice wrought by the denial of any meaningful opportunity to accurately rebut the State's suggestions to contrary. The Florida Supreme Court could have reached this federal issue through its authority to grant the writ of habeas corpus and to revisit its prior decisions in avoidance of manifest injustice. *See supra* Introduction and Argument I.

This Court should grant certiorari and stay Mr. Bates's execution.

III. The Rote Denial Of Discovery Violates The Due Process Clause Of The Fourteenth Amendment.

Below, Mr. Bates asserted his right to access public records in the warrant court, both as a substantive claim and through his requests for public records from state agencies, including the Florida Department of Corrections, the Florida Department of Law Enforcement, the and the Office of the Medical Examiner, District 8.[2] Mr. Bates's substantive claim asserted that the truncated warrant period and rote denial of discovery precluded any meaningful hearing at which to substantiate federal constitutional claims.

Without access to discovery, Mr. Bates cannot enforce his federal right to be free from the infliction of cruel and unusual punishment. This Court's precedent

[2] The Florida Department of Corrections is responsible for performing executions in the State of Florida. The Florida Department of Law Enforcement performs a (nominal) oversight function during executions. The Office of the Medical Examiner, District 8, is responsible for performing autopsies on individuals the State of Florida executes.

clearly shows that lethal injection claims are difficult to sustain—but not impossible. Two fact-intensive showings are required: (1) the method of execution must present "a risk that is sure or very likely to cause serious illness and needless suffering," *Glossip v. Gross*, 576 U.S. 863, 877 (2015); and, (2) there must exist "a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain . . . that the State has refused to adopt without a legitimate penological reason." *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019). Mr. Bates cannot make these showings without access to discovery. But, under Florida law, he cannot access discovery without first making these showings. The obvious result is the complete unavailability of discovery, effectively precluding the factual development necessary to plead meritorious lethal injection claims, let alone prove them.

When a claim sufficiently alleges a federal constitutional violation and a factual dispute exists, state courts must allow factual development—they cannot simply deny relief. *See Cash v. Culver*, 358 U.S. 633 (1959); *McNeal v. Culver*, 365 U.S. 109 (1961); *Carnley v. Cochran*, 369 U.S. 506 (1962). In *Cash*, this Court reversed the Florida Supreme Court's summary denial of a habeas petition and remanded for sufficient factfinding on a facially meritorious federal claim. 358 U.S. at 638. The petitioner had alleged that his non-capital trial without the assistance of counsel violated the Due Process Clause of the Fourteenth Amendment. *Id.* at 635. Specifically, after the petitioner's first trial with experienced counsel ended in mistrial, Florida placed him in solitary confinement for two months, allowed his

counsel to withdraw, and tried him again, without counsel, with one day's notice. This Court reversed because "the allegations themselves made it *incumbent upon the Florida courts to determine what the true facts were*." *Id*. at 638 (emphasis added) (finding violation of Due Process Clause occurred "if the circumstances alleged . . . are true" but "[o]n the present record there is no way to test their truth").

In *McNeal*, this Court again reversed the Florida Supreme Court's denial of a habeas petition without any hearing at which to resolve disputed facts. 365 U.S. at 117. As in *Cash*, the petitioner sufficiently alleged that his trial without counsel violated the Due Process Clause. *Id.* at 111. This Court found that, if true, the facts alleged "made the trial fundamentally unfair." *Id*. at 114. However, because they were unverifiable on the face of the record and the State's return created a factual dispute, it was "incumbent on the Florida court to grant petitioner a hearing and to determine what the true facts [were]." *Id.* at 117.

Finally, in *Carnley*, this Court reversed the Florida Supreme Court's denial of a habeas petition alleging the unconstitutional deprivation of counsel. 369 U.S. at 517. However, unlike in *Cash* and *McNeal*, this Court found the constitutional violation evident on the face of the record. *Id.* at 512-13 (holding "petitioner's case was one in which the assistance of counsel, unless intelligently and understandingly waived by him, was a right guaranteed him by the Fourteenth Amendment"); *id.* at 516-17 (finding no waiver of right to counsel). Accordingly, "there [was] no disputed question requiring a hearing," *Id.* at 516, and "the accused [was] entitled to relief from his unconstitutional conviction." *Id*. at 517.

As it did in *Cash*, *McNeal*, and *Carnley*, the Florida Supreme Court is hobbling federal constitutional claims by preventing discovery and ignoring *bona fide* factual disputes when they arise. The Florida Supreme Court's decision below is representative:

> Bates also argues that the circuit court's denial of his lethal injection discovery requests violates his constitutional rights. We have recently found comparable arguments to be meritless. *See Tanzi*, 407 So. 3d at 392 (rejecting argument that death-sentenced defendant had a constitutional right to public records regarding lethal injection procedures during the warrant period); *Cole v. State*, 392 So. 3d 1054, 1066 (Fla.), *cert. denied*, 145 S. Ct. 109 (2024) (same). Applying this precedent, we affirm the circuit court's denial of Bates' claim.

Appendix A at 16-17.

Operating in tandem with state procedural bars, the lack of post-warrant discovery closes the door to relief from unconstitutional execution methods. The Florida Supreme Court has also "held that method-of-execution claims are procedurally barred unless the method itself changes or *new facts about the current method arise during a prior execution*." *Rogers v. State*, 409 So. 3d 1257, 1267 (Fla. 2025). Thus, so long as Florida employs lethal injection, method-of-execution challenges cannot be raised without information about the prior execution. This information is undiscoverable. In effect, Florida has immunized itself from method-of-execution claims.

The banality of the approach should not distract from result—the inability to predict and prevent a torturous death by the state.

This Court should grant the writ and stay Mr. Bates's execution.

CONCLUSION

For the above reasons, Mr. Bates respectfully requests that this Court grant the writ of certiorari and stay his execution.

Respectfully submitted,

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