No. 25-5605

IN THE SUPREME COURT OF THE UNITED STATES

DAVID JOSPEH PITTMAN,

***Petitioner*,**

vs.

STATE OF FLORIDA,

Respondent.

PETITIONER'S REPLY BRIEF IN SUPPORT FOR PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
WEDNESDAY SEPTEMBER 17, 2025, AT 6:00 P.M.

JULISSA R. FONTÁN*
FLORIDA BAR NUMBER 0032744
LAW OFFICE OF THE CAPITAL
COLLATERAL REGIONAL COUNSEL -
MIDDLE REGION
12973 N. TELECOM PARKWAY
TEMPLE TERRACE, FL 33637
TELEPHONE: (813) 558-1600
COUNSEL FOR THE PETITIONER
****COUNSEL OF RECORD***

MEGAN M. MONTAGNO
FLORIDA BAR NUMBER 118819
LAW OFFICE OF THE CAPITAL
COLLATERAL REGIONAL COUNSEL -
MIDDLE REGION
12973 N. TELECOM PARKWAY
TEMPLE TERRACE, FL 33637
TELEPHONE: (813) 558-1600
COUNSEL FOR THE PETITIONER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases ..... **PAGE(S)**

Constitutional Provisions

Other

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORI

The State of Florida wants to persuade this Court to accept the Florida Supreme Court's erroneous denial of David Pittman's claims and allow the State of Florida to execute a man clearly exempt from the death penalty by attempting to erect procedural roadblocks that should bae not place in the Court's decision-making process. Florida's arguments that this Court cannot review this case because (1) the underlying decision presents no question of unsettled federal law, and (2) the Florida Supreme Court's findings that *Hall* is not retroactive is not in conflict with the Court's jurisprudence. None of this is correct.

I. This Court may exercise jurisdiction.

This Court does have jurisdiction to hear this case. This Court may exercise jurisdiction when "a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, the Court may exercise jurisdiction. See *Michigan v. Long,* 463 U.S. 1032, 1040-41 (1983).

Mr. Pittman's sentence violates his Eighth Amendment rights and conflicts with this Court's precedent in *Atkins, Hall*, and their progeny. There is a conflict with this Court's precedent. Further, the Court may grant a petition for a writ of certiorari for any "compelling reason." See Rule 10, Rules of the Supreme Court of the United States. Finally, the Florida Supreme Court's approach is contrary to the lessons delivered by this Court's decision in *Hall v. Florida*, stating that "where a scientific

consensus supports a defendant's lesser culpability, a person facing the death penalty must have a fair opportunity to show that the Constitution prohibits his execution." *Hall v. Florida*, 572 U.S. 701, 724 (2014). Mr. Pittman is such defendant. His established and long standing intellectual disability categorically exempts him from being executed and this Court not only may, but must, exercise its jurisdiction to prevent Florida from carrying out an execution that violates the Constitution.

II. The Florida Supreme Court's finding that *Hall* is not retroactive as a matter of state law is in conflict with this Court's jurisprudence.

Respondent claims that the Florida Supreme Court's findings that *Hall* is not retroactive as a matter of state law does not conflict with this Court's caselaw is erroneous.

Florida's reversal of *Walls*[1] will lead to the execution of persons with intellectual disability, whom this Court has repeatedly held are categorically exempt from execution. This reversal is in conflict with this Court's decision in *Hall v. Florida*, 572 U.S. 701 (2014). In the *Hall* opinion, the majority ruled that Florida's bright line IQ cut off of 70 or greater was a "rigid rule" and "creates an unacceptable risk that persons with intellectual disability will be executed, and thus is unconstitutional." *Hall* at 704. Despite this Court never suggesting that Eighth Amendment prohibitions be subject to any type of waiver, procedural bar, or default, Florida has chosen to ignore this Court's precedent and insert unconstitutional

[1] *Walls v. State*, 213 So. 3d 340 (Fla. 2016).

barriers to prohibitions in cases, such as Mr. Pittman's. This is resulting in the imminent execution of a man with an intellectual disability, in contravention to this Court's caselaw.

"The Eighth Amendment prohibits certain punishments as a categorical matter." *Hall v. Florida,* 572 U.S. 701, 708 (2014). Categorical bans exist to protect both the individual as well as the interests of society. *See e.g. Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986) (finding Eighth Amendment based categorical exemption not only protects the death-exempt individual but also protects "the dignity of society itself from the barbarity of exacting mindless vengeance[.]". This Court has *never* suggested that the Eighth Amendment prohibition on executing an intellectually disabled person is subject to any sort of waiver or procedural bar or default. Just as it would be illegal to execute a person who was convicted of committing a murder as a fifteen-year-old and who failed to raise an Eighth Amendment challenge at the appropriate time, *see Roper v. Simmons*, 543 U.S. 551 (2005), or to execute a person who was convicted of rape but not murder and failed to raise a challenge at the appropriate time, *see Kennedy v. Louisiana*, 554 U.S. 407 (2008), so too it would be illegal to execute an intellectually disabled person who failed to raise his claim at the appropriate procedural time. *See, e.g., State ex re. Clayton v. Griffith*, 457 S.W.3d 735, 757 (Mo. 2015) (Stith, J., dissenting) ("[I]f [petitioner] is intellectually disabled, then the Eighth Amendment makes him ineligible for execution … [I]f a 14-year-old had failed to raise his age at trial or in post-trial proceedings then [] would [it] be permissible to execute him for a crime he committed while he was a minor? Of course

not. His age would make him ineligible for execution. So too, here, if [petitioner] is intellectually disabled, then he is ineligible for execution."). Notwithstanding any waiver or provision of Florida law, the Eighth Amendment requires that persons "facing that most severe sanction … have a fair opportunity to show that the Constitution prohibits their execution." *Hall*, 572 U.S. 701, 724 (2014); see also *Walls v. State*, 213 So. 3d 340, 348 (Fla. 2016) (Pariente, J., concurring) ("More than fundamental fairness and a clear manifest injustice, the risk of executing a person who is not constitutionally able to be executed trumps any other considerations that this Court looks to when determining if a subsequent decision of the United States Supreme Court should be applied.").

The Respondent further wishes to draw some distinction between Mr. Pittman's reliance on *Miller*[2] and *Hall* relying on the amount of time that it takes to prove a defendant is a minor in contrast to the time it takes to prove that a defendant is intellectually disabled. This is illogical. Due Process has no time constraints. U.S. Const. Amend. XIV.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

/s/ Julissa R. Fontán
Julissa R. Fontán
Florida Bar. No. 0032744
Assistant Capital Collateral Counsel
Capital Collateral Counsel - Middle Region

[2] *Miller v. Alabama*, 567 U.S. 460 (2012)

12973 N. Telecom Parkway
Temple Terrace, FL 33637
813-558-1600
Fontan@ccmr.state.fl.us
support@ccmr.state.fl.us
Counsel of Record

/s/ Megan M. Montagno
Megan M. Montagno
Florida Bar. No. 018819
Assistant Capital Collateral Counsel
Capital Collateral Counsel - Middle Region
12973 N. Telecom Parkway
Temple Terrace, FL 33637
813-558-1600
Montagno@ccmr.state.fl.us
Counsel for Petitioner, David Pittman

Dated September 16, 2025