No. 25-5745

IN THE SUPREME COURT OF THE UNITED STATES

VICTOR TONY JONES,

Petitioner,

v.

STATE OF FLORIDA and
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE FLORIDA SUPREME COURT

REPLY TO BRIEF IN OPPOSITION

CAPITAL CASE

DEATH WARRANT SIGNED
EXECUTION SET SEPTEMBER 30, 2025 AT 6:00PM

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September 30, 2025

REPLY TO STATEMENT OF FACTS

On page four of Respondents' Brief in Opposition (BIO) Respondents numerically list four aggravators found by the sentencing court and admit state that the fourth aggravator was "merged" with the third aggravator. (BIO at 3). While not technically inaccurate, under Florida law, Jones was found to have only three aggravators, but the circuit court adopted this clearly erroneous finding that Jones had four aggravating factors in denying Jones' claim. (WR. 1464).

Respondents also assert that Jones voluntarily dismissed the appeal of his claim that the Florida courts diminishment of his mitigation violated this Court's decision in *Porter v. Florida*, 558 U.S. 30 (2009). (BIO at 6). This is inaccurate. The circuit court summarily denied his claim and the Florida Supreme Court affirmed. *Jones v State*, 93 So. 3d 178 (2012).

Respondents present an incomplete and inaccurate picture of Jones's school records to boost his academic abilities. In so doing, they fail to note that as early as first or second grade he was in a special education program. (PCR-*Atkins* at 202). They simply state that in eighth grade Jones began skipping school and using drugs. (BIO at 5). They omit that this behavior began when he was about 14, after he was first sent to Okeechobee. He was sent back to the school for two and a half months when he was 15, and then ten months when he was 16, turning 17. Respondents fail to note that as early as first or second grade he was placed in the PLATS Program. (PCR-*Atkins* at 202).

REPLY TO ARGUMENT

1. Jones's Attack on Florida's Postconviction Review System Was Raised at the Appropriate Time.

a. Jones's Attacks on Florida's Postconviction Review Framework Are Properly Before this Court.

Respondents say that "Jones incorrectly asserts that under Florida law a writ of habeas corpus should be used to petition the Florida Supreme Court to reconsider an earlier decision, particularly when an intervening decision by a higher court has modified the law on an issue in the prior decision." (BIO at 9).

Respondents also said that below and Jones explained that they were wrong. *See* (Habeas Reply Brief, App. G at A301, n.1) (*citing Downs v. Dugger*, 514 So. 2d 1069 (Fla. 1987); *Martin v. Dugger*, 515 So. 2d 185 (Fla. 1987); *Riley v. Wainwright*, 517 So. 2d 656 (Fla. 1987); *Darden v. Dugger*, 521 So. 2d 1103 (Fla. 1988); *Eutzy v. State*, 541 So. 2d 1143 (Fla. 1989); *O'Callaghan v. State*, 542 So. 2d 1324 (Fla. 1989); *Martin v. Singletary*, 599 So. 2d 121 (Fla. 1992); *Kennedy v. Singletary*, 602 So. 2d 1285 (Fla. 1992); *Mills v. Singletary*, 606 So. 2d 623 (Fla. 1992); *Johnson v. Singletary*, 612 So. 2d 575 (Fla. 1993); *Henderson v. Singletary*, 617 So. 2d 313 (Fla. 1993); *Mills v. Singletary*, 622 So. 2d 943 (Fla. 1993); *Atkins v. Singletary*, 622 So. 2d 951 (Fla. 1993); *Marek v. Singletary*, 626 So. 2d 160 (Fla. 1993); *Roberts v. Singletary*, 626 So. 2d 168 (Fla. 1993); *Lambrix v. Singletary*, 641 So. 2d 847 (Fla. 1994); *Porter v. State*, 653 So. 2d 374 (Fla. 1995); *Doyle v. Singletary*, 655 So. 2d 1120 (Fla. 1995); *White v. Singletary*, 663 So. 2d 1324 (Fla. 1995); *Jones v. Butterworth*, 691 So. 2d 481 (Fla. 1997); *McCray v. State*, 699 So. 2d 1366 (Fla. 1997); *Provenzano v. Moore*, 744 So. 2d 413 (Fla. 1999); *Glock v. Moore*, 776 So. 2d

243 (Fla. 2001); *Mills v. Moore*, 786 So. 2d 532 (Fla. 2001); *Johnston v. Moore*, 789 So. 2d 262 (Fla. 2001); *Downs v. Moore*, 801 So. 2d 906 (Fla. 2001); *King v. State*, 808 So. 2d 1237 (Fla. 2002); *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002); *King v. Moore*, 831 So.2d 143 (Fla. 2002); *Diaz v. Crosby*, 869 So. 2d 538 (Fla. 2003); *Haliburton v. Crosby*, 865 So. 2d 480 (Fla. 2003); *Valle v. Crosby*, 859 So. 2d 516 (Fla. 2003); *Hertz v. Jones*, 218 So. 3d 428 (Fla. 2017); *Card v. Jones*, 219 2 So. 3d 47 (Fla. 2017); *Bailey v. Jones*, 225 So. 3d 776 (Fla. 2017); *Nelson v. Jones*, No. SC17-2034, 2018 WL 798255 (Fla. Feb. 9, 2018) (unreported)). [1]

The Florida Supreme Court simply ignored Jones. It merely "announced that the procedural vehicle routinely used by litigants to question the viability of its prior judgments was not available." (Pet. at 20).

As the petition demonstrates, (1) that newly-invented barrier to the merits review of a federal constitutional claim is inefficacious here, or (2) renders Florida's postconviction review system invalid under the Supremacy Clause. (Pet. at 20-21).

Both issues arose only when the Florida Supreme Court issued its habeas opinion. Jones has thus raised his federal constitutional claim at the earliest opportunity. *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 85-86, n.9 (1980) (internal parallel citations omitted) ("[T]his Court has held federal claims to have been adequately presented even though not raised in lower state courts when the

[1] The Respondent actually adds another case to the same effect: *Kennedy v. Wainwright*, 483 So. 2d 424, 425-26 (Fla. 1986), which supports Jones's position: "[I]n the case of error that prejudicially denies fundamental constitutional rights that this Court will revisit a matter previously settled by the affirmance of a conviction or sentence." (BIO at p. 10)

highest state court renders an unexpected interpretation of state law or reverses its prior interpretation. *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 677–678, (1930); *Missouri ex rel. Missouri Ins. Co. v. Gehner*, 281 U.S. 313, 320, (1930); *Saunders v. Shaw*, 244 U.S. 317, 320 (1917)").

b. Florida's ID Jurisprudence is at Odds With the Teachings of This Court.

Respondents say that "Jones was merely asking the court to revisit and change its 2017 decision in light of *Hall v. Florida*." (BIO at 11). This is misleading. In 2017 the Florida Supreme Court, wrote "Jones is correct that in light of *Hall*, he would likely now meet the first prong of the intellectual disability standard—significantly subaverage general intellectual functioning,"[2] however, "*Hall* does not change the fact that Jones failed to establish that he meets the second or third prong." *Jones v. State*, 231 So. 3d 374, 376 (Fla. 2017). It was the latter proposition—specifically the assessment of adaptive behavior (Prong 2)—that was further undermined by subsequent decisions of this Court, and whose reconsideration Jones sought below.

Even if (contrary to the fact), the Florida Supreme Court had been right in its decision about adaptive behavior in 2017, Jones should have received the requested

[2] Respondents, however, now assert that Jones's actual IQ is in dispute, and propose a methodology for resolving the asserted dispute. *See* (BIO, at 25 n. 1). To the extent that such a dispute exists, it is a further reason for the grant of a stay. In *Hamm v. Smith*, No. 21-14519, which has been fully briefed and is to be argued later this year, the question to be determined is "Whether and how courts may consider the cumulative effect of multiple IQ scores in assessing an *Atkins* claim." At minimum, therefore, Mr. Jones's execution should be stayed pending the Court's disposition of *Hamm*.

reconsideration in light of the subsequent *Moore* decisions of this Court—just as he received reconsideration of Prong 1 in 2017 on the basis of the intervening decision in *Hall.*[3]

Respondents' lengthy recitation of facts from Jones's *Atkins* hearing conducted in 2006, (BIO at 15-24), supports the point. Respondents rely on non-clinical stereotypes of what intellectually disabled persons can and cannot do, (e.g. "Jones communicates in writing using more than one and two syllable words and that Jones has an entire routine for cleaning his cell," (BIO at 16), and that "Jones attended his personal hygiene," (BIO at 17) and could take pills that were prescribed to him. (BIO at 19). Dr. Suarez also said that intellectually disabled individuals cannot travel or live on their own or be employed in more than menial jobs. (BIO at 21-22).

As Jones explained below to the Florida Supreme Court:

> Respondent's assertion merely further demonstrates the circuit court's, and ultimately [the Florida Supreme Court's], reliance on stereotypes of how intellectually disabled people function. "An accurate and fair evaluation of an Atkins claim may be impeded by persistent stereotyped views about what constitutes intellectual disability." Ellis, James W. et al., [*Evaluating Intellectual Disability: Clinical Assessments in Atkins Cases*, 46 Hofstra L. Rev.] 1399 [2018].
>
> "The impulse to measure actual individuals against our own, conjured

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[3] Respondents correctly state that "*Hall, Moore I* and *Moore II* did not state new rules but applied a general rule in Atkins." (BIO at 29). From this, it follows that those cases are entitled to retroactive effect. *Chaidez v. United States*, 568 U.S. 342, 347-48 (2013). Although the point may be somewhat obscured by the rag-tag collection of citations at BIO p. 30, the parties are in accord on this point. Respondents say that the rulings below were consistent with those cases; Mr. Jones disagrees. But both parties are in accord that the Florida Supreme Court was bound by them.

> vision of what people with intellectual disability are like remains incredibly strong. These images are often accompanied by an 'invented list' of things that people with intellectual disability cannot do. But there is no such list in the scholarly literature." *Id*. at 1403.

(App. G at A308-9). People with intellectual disability do not look "retarded," they can marry and have families, they can hold down jobs, and they can drive a car and obtain a driver's license. Ellis, 46 Hofstra L. Rev. at 1404-05, n.382; *see also* (Pet. At 23-24).

Respondents also place great weight on Dr. Suarez's reliance on prison staff assessments on Jones's abilities and Dr. Suarez's improper use of other instruments in support of his assessment that Jones failed to put forth best efforts or was "malingering." (BIO at 19-21) (Suarez used the MMPI and the TOMM to assess malingering and prison staff found him to be able to respond to questions). But this is not an accepted practice within the relevant clinical community.

> There have also been some suggestions that an individual's level of effort in intelligence testing could be evaluated, and potentially impeached, by employing psychometric instruments which were designed for other psychological purposes, which include an element for the detection of malingering. ... Current research does not support the suggestion that these instruments can reliably detect malingering intellectual disability.

(App. G at A309) (citing Ellis, 46 Hofstra L. Rev. at 1370).

The fact of the matter is that the Florida courts' resolution of Jones's claim defied this court's precedent in *Hall v. Florida,* 572 U.S. 701 (2014), *Moore v. Texas*, 581 U.S. 1 (2017) (*Moore I*) and *Moore v. Texas*, 586 U.S. 133 (2019) (*Moore II*), and that the Florida Supreme Court has done so time and time again. (Pet. at 24-25); s*ee* *Haliburton v. State*, 331 So. 3d 640, 649-50 (Fla. 2021) (upholding a lower court's

finding of a lack of adaptive functioning deficits premised on the State expert's reliance on prison records describing defendant having "average ability," and defendant's "multiple clear and grammatically correct written requests" made "to prison authorities."); *Wright v. State*, 256 So. 3d 766 (Fla. 2018) (upholding adaptive assessment after remand from this Court post-*Moore I*, where in prior hearing state expert had improperly administered a Validity Indicator Profile for malingering and relying on the facts of the crime and the defendant's testimony at trial in finding, "all of these types of evidence refute that Wright has concurrent deficits in adaptive functioning." *Wright v. State*, 213 So. 3d 881, 898-99 (Fla. 2017)); *Glover v. State*, 226 So. 3d 795, 811 (Fla. 2017) ("evidence regarding Glover's adaptive functioning after the age of eighteen shows that Glover successfully obtained his GED, performed various types of work (including restoring buildings, landscaping, and plumbing and electrical work), took care of his daily needs, made meals, helped his sister take care of herself" and "her home following her husband's death, and gave good life advice to his daughter.").

c. In Brushing Aside Jones Proffered Mitigation Evidence, Florida Has Violated Both His Due Process and Eighth Amendment Rights

Jones was abused at the Okeechobee School for Boys. Earlier this year, the State acknowledged that it was at fault for the abuse and, on the basis of his sworn statement describing it, paid him compensation. Asserting that this newly-arising evidence would have changed the mitigation balance in the mind of at least one sentencing juror, he availed himself of the relevant rule, Florida Rule off Criminal Procedure 3.852(e)(2), to file a successive postconviction motion, as is routinely done

in Florida. *E.g. Duckett v. State*, 148 So. 3d 1163, 1167 (Fla. 2014) (allowing a claim to proceed to hearing of newly discovered evidence based on an 1997 FBI report and study, which resulted in a 2011 report/letter directly about Duckett's case, although ultimately denying on the merits); *Aguirre-Jarquin v. State*, 202 So. 3d 785, 789–90 (Fla. 2016) (While defendant's "appeal of the denial of his initial postconviction motion was pending in this Court, . . . Aguirre filed a successive postconviction motion in the circuit court alleging that he is entitled to a new trial based upon newly discovered evidence . . .that first came to light during the initial postconviction evidentiary hearing and that was developed after the close of evidence in that proceeding,) Indeed, the principle forms the basis of his claim in two cases recognized as establishing the very principle of newly discovered evidence under Flroida law. *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) and *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991). [4]

This time, though, the proceedings jumped the rails when the State falsely denied that any such compensation had been paid. (Pet. at 16-17); *Cf. Mooney v. Holohan*, 294 U.S. 103, 110 (1935) (due process violated by State's use of perjury to obtain conviction); *Berger v. United States*, 295 U.S. 78, 88 (1935) (A prosecutor is in a "very definite sense the servant of the law[.]" "He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones." *Id*.

[4] The BIO's discussion, (pp.34-36), relies entirely on federal habeas corpus cases under AEDPA. This is not such a case.

Recognizing that under long-standing precedent, (*see* Pet. at 28-30), Mr. Jones would be entitled to a hearing to resolve any factual dispute, the Florida Supreme Court re-wrote Mr. Jones's claim. It said that Mr. Jones was proffering as new mitigation the fact of his abuse—which took place decades ago – rather than the State's admission of responsibility for it. Cf. (Pet. at 35) (argument by trial prosecutor that State had offered Jones educational opportunities that he failed to take advantage of). It then dismissed the re-written claim as untimely and lacking in force because of the serious nature of the crime. (App. A, at A12). The BIO (pp. 31-35) repeats all this but fails to justify it.

As set forth in the petition, the Florida Supreme Court's dismissive treatment of the proffered mitigation in this case is at odds with the very concept of mitigation as enunciated by this Court, (Pet. at 30-31), but entirely consistent with that court's repeated refusal to implement the teachings of this Court. (Pet. at 32-34).

Mr. Jones has never had a full and fair evaluation of his entire life history by a sentencing jury. He is entitled to one.

CONCLUSION

For the above reasons, the petition for certiorari should be granted.

Respectfully submitted,

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