

No. _____

In the Supreme Court of the United States

SAMUEL LEE SMITHERS, JR.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

CAPITAL CASE

DEATH WARRANT SIGNED

Execution Scheduled: October 14, 2025, at 6:00 p.m. ET

MELODY JACQUAY-ACOSTA
*ANN MARIE MIRIALAKIS
CAPITAL COLLATERAL REGIONAL
COUNSEL - MIDDLE REGION
12973 N. Telecom Parkway
Temple Terrace, Florida 33637
813-558-1600
Support@ccmr.state.fl.us
jacquay@ccmr.state.fl.us
Mirialakis@ccmr.state.fl.us

Counsels of Record for Petitioner
**Member of the Bar of the Supreme Court*

CAPITAL CASE

QUESTION PRESENTED

1. Does the execution of the elderly violate the Eighth Amendment of the United States Constitution's prohibition against cruel and unusual punishment based on the evolved standards of decency?

LIST OF PARTIES

All parties appear in the caption on the cover page.

RELATED CASES

Trial and Sentencing

Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County Florida

Docket Number: 96-CF-008093-A

Case Caption: State of Florida v. Samuel L. Smithers

Date of Entry of Judgement: Indicted, June 12, 1996; Convicted, December 18, 1998;

Jury Recommendation, January 24, 1999; Sentence of Death, June 25, 1999.

Unreported

Direct Appeal

Florida Supreme Court

Docket Number: 96-8093

Case Caption: Samuel L. Smithers v. State of Florida

Date of Entry of Judgement: Order Entered, May 16, 2002; Rehearing Denied, September 13, 2002; Mandate Issued, September 13, 2002.

Smithers v. State, 826 So. 2d 916 (Fla. 2002).

Petition for Writ of Certiorari

United States Supreme Court

Docket Number: SC96690

Case Caption: Samuel L. Smithers v. State of Florida

Date of Entry of Judgement: Petition for writ of certiorari denied, February 24, 2003.

Smithers v. Fla., 537 U.S. 1203, 123 S. Ct. 1275, 154 L. Ed. 2d 1045 (2003).

Postconviction Motion to Vacate Judgment and Sentence

Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County Florida Docket Number: 96-8093

Case Caption: State of Florida v. Samuel L. Smithers

Date of Entry of Judgement: Order Denying Postconviction Relief, October 24, 2007.

Unreported

Appeal from Denial of Postconviction Motion to Vacate Judgement and Sentence and Consolidated State Habeas Petition

Florida Supreme Court

Docket Number: SC07-2258, SC08-868

Case Caption: Samuel L. Smithers v. State of Florida v. Walter A. McNeil

Date of Entry of Judgement: Order Entered, July 9, 2009; Rehearing Denied September 24, 2009.

Smithers v. State, 18 So. 3d 460 (Fla. 2009).

Federal Habeas Corpus Petition

United States District Court of Appeals, Middle District of Florida, Tampa Division

Docket Number: 8:09-cv-2200-T-17EAJ

Case Caption: Samuel L. Smithers v. Secretary, Dept. of Corrections
Date of Entry of Judgement: Order Entered, June 15, 2011; Certificate of Appealability Denied, June 15, 2011, Motion to Alter or Amend Judgement Denied, November 23, 2011.

Smithers v. Sec'y, Dep't of Corr., 2011 WL 2446576 (M.D. Fla. June 15, 2011).

Unreported

Appeal from Denial of Petition of Federal Habeas Corpus

United State Court of Appeals, Eleventh Circuit

Docket Number: 11-15936

Case Caption: Samuel Smithers v. Secretary, Florida Department of Corrections, Attorney General, State of Florida

Date of Entry of Judgement: Order Entered, December 17, 2012, Mandate Issued January 16, 2013.

Smithers v. Sec'y, Fla. Dep't of Corr., 501 F. App'x 906 (11th Cir. 2012).

Unreported

Petition for Writ of Certiorari

United States Supreme Court

Docket Number: 12-9011

Case Caption: Samuel Smithers v. Michael D. Crews, Secretary, Florida Department of Corrections

Date of Entry of Judgement: Petition for writ of certiorari denied, April 15, 2013.

Smithers v. Crews, 569 U.S. 935, 133 S. Ct. 1833, 185 L. Ed. 2d 842 (2013).

Successive Motion to Vacate Death Sentence

Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County Florida

Docket Number: 96-CF-008093

Case Caption: State of Florida v. Samuel L. Smithers

Date of Entry of Judgement: Order denying entered, June 14, 2017.

Unreported

Appeal From Final Order Denying Defendant's Successive Motion to Vacate Death Sentence

Florida Supreme Court

Docket Number: SC17-1283

Case Caption: Samuel L. Smithers v. State of Florida

Date of Entry of Judgement: Order Entered, March 29, 2018; Rehearing Denied, May 21, 2018.

Smithers v. State, 244 So. 3d 152 (Fla. 2018).

Defendant's Successive Motion to Vacate Defendant's Sentence of Death

Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County Florida

Docket Number: 1996-CF-008093A

Case Caption: State of Florida v. Samuel Lee Smithers, Jr.
Date of Entry of Judgement: Summarily Denied, September 26, 2025.
Unreported

Appeal from Denial of Successive Motion to Vacate Defendant's Sentence of Death

Florida Supreme Court

Docket Number: SC2025-1507

Case Caption: Samuel Lee Smithers, Jr. v. State of Florida

Date of Entry of Judgement: Affirming the denial of Smithers' Successive Motion to Vacate his Sentences of Death, October 7, 2025.

Smithers v. State, SC2025-1507, 2025 WL ____ (Fla. October 7, 2025).

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PETITION FOR WRIT OF CERTIORARI

Samuel Lee Smithers, Jr., respectfully petitions for a writ of certiorari to review a judgment of the Supreme Court of Florida.

DECISIONS AND ORDERS BELOW

The opinion of the Florida Supreme Court is attached as Appendix A. The order of the Thirteenth Judicial Circuit of the State of Florida, Hillsborough County, (warrant court) is unpublished and attached as Appendix B.

JURISDICTION

The judgment of the Florida Supreme Court was entered on October 7, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment provides:

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

The Fourteenth Amendment provides, in relevant 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

Mr. Smithers was convicted and sentenced to death in 1999 for the murders of Christie Cowan and Denise Roach. *Smithers v. State*, 826 So. 2d 916 (Fla. 2002) *cert. denied*, 537 U.S. 1203 (2003). On direct appeal, the Florida Supreme Court affirmed the convictions and sentences of death. *Smithers*, 826 So. 2d at 931.

Subsequently, Mr. Smithers sought and was denied postconviction relief, raising four claims of ineffective assistance of counsel for failing to: strike a juror for cause; seek exclusion of a portion of Smithers' statement to police; adequately investigate mental health mitigation; and to call an independent medical examiner. *Smithers v. State*, 18 So. 3d 460 (Fla. 2009). Mr. Smithers concurrently filed a petition for writ of habeas corpus in the Florida Supreme Court raising the following five issues: the rules prohibiting counsel from interviewing jurors is unconstitutional; ineffective assistance of counsel for failing to litigate the sufficiency of the jury instructions and that the jury was inadequately instructed; Florida's capital scheme was unconstitutional; cumulative errors deprived Smithers of a fundamentally fair trial; and that Smithers may be incompetent at the time of the execution. *Smithers v. State*, 18 So. 3d 460 (Fla. 2009), *cer't denied*, *Smithers v. Crews*, 569 U.S. 935 (2013).

Subsequently, Mr. Smithers concluded his postconviction review in 2017 when he filed his first successive motion for postconviction review pursuant to *Hurst v. Florida*. *Smithers v. State*, 244 So. 3d 152 (Fla. 2018), *aff'd*, Order Denying Def.'s First Successive Mot. for Postconviction Relief, denied, June 14, 2017.

Most recently, Mr. Smithers sought and denied postconviction relief after Governor De Santis signed Mr. Smithers death warrant. Smithers raised a single constitutional issue in *Smithers v. State*, SC2025-1507, 2025 WL ____ (Fla. October 7, 2025). [App.A] The Florida Supreme Court denied relief affirming the circuit court’s ruling finding the claim was untimely and failed to meet any exception provided in the Florida Rules of Criminal Procedure, Rule 3.851(d)(2) and declined to accept the invitation to expand an age based categorical bar to execution. [App.A] Mr. Smithers now seeks relief from this Court and presents a single issue of constitutional significance for this Court to review.

REASONS FOR GRANTING THE PETITION

I. The Court Should Grant Certiorari to Resolve the Issue of Whether Executing the Elderly is Cruel and Unusual Punishment.

The post-warrant litigation serves no legitimate purpose when judicial review is denied while fundamental protections of the Eighth Amendment are lost to blind arguments made by the government asserting post-warrant litigation claims are either procedurally barred or “meritless,” missing the larger picture. Fundamental protections and principles that form the very fabric of the Eighth Amendment are being frayed, thread by thread, leaving very little of the Eighth Amendment.

Denial of claims based largely on the arguments that those waiting for execution committed heinous and cruel crimes ignores the protections that make up the fabric of the Eighth Amendment. The Eighth Amendment was designed to cover these very people, people sentenced to death. Jurisprudence interpreting the Eighth

Amendment has long been analyzed and even applied to people that committed the highest crime, murder. The continued fraying of the Eighth Amendment demands judicial review, otherwise, there will be very little fabric of the Eighth Amendment left.

A. For over 100 years this Court has looked to the evolving standards of decency in its review of Eighth Amendment.

The evolved standards of decency have long guided this Court in its interpretation of the Eighth Amendment of the United States Constitution. Over 100 years ago, this Court recognized that review of the Eighth Amendment's application must reflect the evolving standards of our maturing society. The Eighth Amendment "is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." *Weems v. United States*, 217 U.S. 349, 378 (1910). In *Trop v. Dulles*, citing *Weems*, the Court recognized, "...the words of the [Eighth] Amendment are not precise, and their scope is not static." *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958).

The evolved standards of decency continue to shape the Eighth Amendment's interpretations and confines essential to our maturing society. This Court has stated:

To enforce the Constitution's protection of human dignity, this Court looks to the "evolving standards of decency that mark the progress of a maturing society." *Trop, supra*, at 101, 78 S.Ct. 590. The Eighth Amendment's protection of dignity reflects the Nation we have been, the Nation we are, and the Nation we aspire to be. This is to affirm that the Nation's constant, unyielding purpose must be to transmit the Constitution so that its precepts and guarantees retain their meaning and force.

Hall v. Fla., 572 U.S. 701, 708 (2014). The execution of Samuel Smithers, Jr., a 72 year-old man, on October 14, 2025, does not mark the progress of a maturing society and defies the evolving standards of our maturing society.

B. The evolved standards of decency analysis has long been used by this Court in its precedent establishing categorical exemption from execution and this Court’s precedent is equally applicable to the analysis of executing the elderly.

Legislative enactments and state practices reflect the standards of decency of our maturing society. This Court has long recognized the evolved standards of decency and the analysis’ application to the Eighth Amendment of the United States Constitution.¹ “[W]hile the underlying social values encompassed by the Eighth Amendment are rooted in historical traditions, the manner in which our judicial system protects those values is purely a matter of contemporary law.” *Ford*, 477 U.S. at 410. The “evolving standards of decency” analysis is informed and fashioned by objective indicia of society’s standards as they are expressed in legislative enactments and state practices. *Roper*, 543 U.S. at 563. See also, *Atkins*, 536 U.S. at 312 (quoting, *Penry*, 492 U.S. at 331).

1. States across the United States have enacted legislation which recognize special considerations and protections are necessary for the elderly.

As a society, it is well accepted that the disabled, children, and the elderly are considered the most vulnerable among us. This societal consideration is reflected in

¹ See Generally, *Roper v. Simmons*, 543 U.S. 551 (2005); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Penry v. Lynaugh*, 492 U.S. 302 (1989); *Thompson v. Oklahoma*, 487 U.S. 815 (1988); *Ford v. Wainwright*, 477 U.S. 399 (1986); *Coker v. Georgia*, 433 U.S. 584 (1977); *Gregg v. Georgia*, 428 U.S. 153 (1976); *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Witherspoon v. Illinois*, 391 U.S. 510, 519 FN 15 (1968); *Trop v. Dulles*, 356 U.S. 86 (1958)

legislation across the Country. Legislative enactments provide objective determinations of society's values. Legislative enactments provide "the 'clearest and most reliable objective evidence of contemporary values..." *Atkins*, 536 U.S. at 312 (quoting, *Penry*, 492 U.S. at 331).

In Florida, standards and contemporary values are reflected in many statutes that reclassify criminal offenses and provide for enhanced punishment when the victim is 65 years of age and older. The Florida Legislature's recognition of the need for extra protections and special considerations for those over 65 years of age is evidenced by the legislature's enactment of criminal statutes which enhance criminal sanctions and reclassify criminal offenses based on the victim's age. Fla. Stat. § 784.08 (2025); Fla. Stat. § 812.0145 (2025); Fla. Stat. § 817.5695(2) (2025). These considerations in Florida are even extended to the aging population of those that are incarcerated. The Florida Legislature has stated that even incarcerated elderly individuals are in need of special considerations. *See*, Fla. Stat. § 944.804 (2025). *See also*, Fla. Stat. § 944.8041 (2025).

Florida is not alone in this. States across this country recognize elderly persons' vulnerability through the enactment of statutes which classify elderly persons as a particular category of victim and statutes which give special considerations to the elderly.

The categorical distinction between adults and elderly adults is also reflected in federal and state statutes that allow a person 70 years or older to request excusal from jury service, even permanently. 28 U.S.C. § 1863(b)(5)(A). Florida Statute §

40.013(2)(8) states that a “person 70 years of age or older shall be excused from jury service upon request.” (2025). The Statute goes further even making it permissible for a person 70 years or older to request permanent excusal from jury service. Fla. Stat. § 40.013(2)(8) (2025). This is evidence that Florida also recognizes a distinction between adults and adults 70 years or older, even in areas of civil obligations. Florida allowing the request for permanent excusal is even more significant upon consideration that Florida Statute allows the same excusal request, both temporary and permanent, for those with mental illness and intellectual disability. Fla. Stat. § 40.013(2)(9) (2025).

Special considerations and protections are entirely predicated upon the person’s age, 65 years or older in most circumstances. The special considerations for those 65 years of age or older are based entirely on chronological age and notwithstanding of the person’s cognitive and physical well-being or functioning.

The evolving standards of decency as clearly expressed in Florida enactments provide the most reliable and objective evidence that society recognizes the fragility and vulnerability of the elderly which naturally comes with age. These protections, special considerations, and enhanced criminal sanctions for crimes against the elderly, are irrespective of physical ability or cognitive function. This stance on elderly people establishes that evolving standards support the finding that the elderly are a distinct and distinguishable class of adults in need of protections due to their fragility and vulnerability.

Samuel Smithers, who is 72 years old, falls squarely within this class of people our contemporary societal values classify as elderly.

2. In the modern death penalty era, 41 of the 50 states have never executed a person 70 years or older.

In both *Atkins* and *Roper*, this Court looked to states' practice of executing the intellectually disabled and juvenile offenders. In *Roper* this Court recalled the analysis applied in *Atkins* and wrote, "the indicia the Court determined that executing mentally retarded offenders 'has become truly unusual, and it is fair to say that a national consensus has developed against it.'" 543 U.S. at 563.

Since executions resumed post-*Furman*, only 42 people of the total 1,638 people have been 65 years of age and older.^{2,3} Furthermore, of the 42 people 65 years of age and older, only 16 people have been over the age of 70 years of age at the time of their execution.⁴ This amounts to only 1% of people executed are over the age of 70.

The rarity of executing the elderly is further seen when broken down by State. Of the 50 states, only 13 states have executed people 65 years and older.⁵ The 13

² The data referenced in this Petition, reflects executions occurring on or before September 17, 2025, unless otherwise noted. "Death Penalty Information Center," *Execution Database*, <https://deathpenaltyinfo.org/facts-and-research/data/executions> (Last accessed Oct. 6, 2025). However, it should be noted that as of the time of this writing, October 5, 2025, the total number of executions amounts to 1,641.

³ Data collected from "Death Penalty Information Center," *Execution Database*, filtered for "age," 65 years and older, filtered "before Sept. 17, 2025," <https://deathpenaltyinfo.org/facts-and-research/data/executions> (Last accessed Oct. 6, 2025).

⁴ Data collected from "Death Penalty Information Center," *Execution Database*, filtered for "age," 70 years and older, "before Sept. 17, 2025," <https://deathpenaltyinfo.org/facts-and-research/data/executions> (Last accessed Oct. 6, 2025).

⁵ The information and data was gather from "Death Penalty Information Center," *Execution Database*, <https://deathpenaltyinfo.org/facts-and-research/data/executions> (last accessed Sept. 25, 2025) The data and totals do not reflect executions that occurred after Sept. 24, 2025.

states include: Alabama, Arizona, California, Florida, Georgia, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, and Texas. The rarity becomes even more startling when looking at those 13 states, how many had executed someone 70 years of age and older. Florida has never executed a person over the age of 70. Samuel Smithers will be the first if his execution is carried out on October 14, 2025. Additionally, Florida is not alone in that it has historically never executed a person over the age of 70. Neither Ohio, North Carolina, nor South Carolina have ever executed a person over the age of 70. Additionally, Ohio, North Carolina, and South Carolina have only executed one person 65 years or older each.

Twenty-three states have abolished the death penalty all together.⁶ Four states have a gubernatorial hold on executions.⁷ Therefore, there are 27 states that prohibit the execution of the elderly by virtue of abolishing or having a gubernatorial hold on executions. With the addition of the four states (excluding Ohio) which have never executed someone 70 years of age and older, 30 states in total do not execute the elderly. Even of the states that do execute the elderly, it is a rare occurrence. Only nine states have ever executed someone over 70 years of age, meaning 41 of the 50 states, have never executed someone over the age of 70.

This analysis is consistent with precedent of this Court in *Roper* and *Atkins*. In *Atkins*, the Supreme Court looked to legislation of states and state practice in its evolving standards of decency analysis when it determined that the execution of the

⁶ “The Death Penalty Information Center,” *State by State*, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state> (Last accessed Sept. 29, 2025).

⁷ Id. Includes: California, Pennsylvania, Oregon, and Ohio.

intellectually disabled violates the Eighth Amendment. 536 U.S. at 313-316.

Significantly, the Supreme Court looked to:

[...] those States that regularly execute offenders and that have no prohibition with regard to the mentally retarded, only five have executed offenders possessing a known IQ less than 70 since we decided *Penry*. The practice, therefore, has become truly unusual, and it is fair to say that a national consensus has developed against it.

536 U.S. at 316. (footnotes omitted). Similarly, in *Roper*, the Supreme Court, relying on their precedent in *Atkins*, found:

[...] objective indicia of consensus in this case—the rejection of the juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice—provide sufficient evidence that today our society views juveniles, [...] as “categorically less culpable than the average criminal.”

Roper, 543 U.S. at 568 (citing, *Atkins*, 536 U.S. at 316). In both *Roper* and *Atkins*, the Supreme Court reviewed the practices of each state and found:

When *Atkins* was decided, 30 States prohibited the death penalty for the mentally retarded. This number comprised 12 that had abandoned the death penalty altogether, and 18 that maintained it but excluded the mentally retarded from its reach. 536 U.S., at 313–315, 122 S.Ct. 2242. By a similar calculation in this case, 30 States prohibit the juvenile death penalty, comprising 12 that have rejected the death penalty altogether and 18 that maintain it but, by express provision or judicial interpretation, exclude juveniles from its reach. [...] *Atkins* emphasized that even in the 20 States without formal prohibition, the practice of executing the mentally retarded was infrequent. In the present case, too, even in the 20 States without a formal prohibition on executing juveniles, the practice is infrequent.

Roper, 543 U.S., at 564.

3. The execution Samuel Smithers runs contrary to our maturing society's values and principles.

“By protecting *even those convicted of heinous crimes*, the Eighth Amendment reaffirms *the duty of the government to respect the dignity of all persons*.” *Roper*, 543 U.S. at 560 (emphasis added).

Review of the evolving standards of decency has given functional meaning to the Eighth Amendment as our society evolves and our nation is faced with novel circumstances. “[A] constitution ‘must be capable of wider application than the mischief which gave it birth.’” *Weems v. United States*, 217 U.S. 349 (1910). This analysis has been applied by this Court for over 100 years. Review of legislative enactments and state practices act as pillars to ensure that the Eighth Amendment is held up to the meaning in which the framers intended. Review of evolved standards as they currently appear, dictate that executing the elderly offends our national ideals and is prohibited by the Eighth Amendment.

C. The Eighth Amendment prohibits punishment as cruel and unusual punishment, when the punishment imposed does not serve the penological purposes of capital punishment.

Capital Punishment must serve two penological purposes: retribution and deterrence. The imposition of capital punishment is forbidden by the Eighth Amendment of the Constitution when its imposition makes no contribution to the acceptable goals of the punishment, that being retribution and deterrence. See, *Coker v. Georgia*, 433 U.S. 584, 592 (1977); See also, *Roper*, 543 U.S. at 559.

The execution of Mr. Smithers serves neither penological purpose of deterrence nor retribution. Thus, the imposition of Smithers capital punishment amounts to

nothing more than mindless vengeance, offending the dignity of society. See, *Ford*, 477 U.S. at 410. (“this Court is compelled to conclude that the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane. Whether its aim be to protect the condemned from fear ... or to protect the dignity of society itself from the barbarity of exacting mindless vengeance, the restriction finds enforcement in the Eighth Amendment”); See also, *Atkins*, 536 U.S. 304 (2002) (“Unless the imposition of the death penalty on a mentally retarded person ‘measurably contributes to one or both of these goals, it ‘is nothing more than the purposeless and needless imposition of pain and suffering,’ and hence an unconstitutional punishment”).

Examination of whether the imposition of capital punishment serves either of the penological purposes, limitedly considers culpability. The prohibition against the execution of people who are insane at the time of execution, does not consider culpability at the time of the offense. The prohibition only focuses on the person’s state at the time of the execution. This should be applied analogously to those that have reached the age for consideration as being elderly. The execution of the elderly should similarly be void of consideration of culpability at the time of the offense, with the focus of the analysis on the person’s age *at the time of the execution*. Just as it has been recognized as cruel and unusual punishment to execute the insane, the same principals and protections of the Eighth Amendment must be applied to prohibit the execution of the elderly. Executing the elderly serves neither the purpose of deterrence nor retribution.

The question presented in this Petition is most similar to the prohibition of executing those that are insane or incompetent at the time of their execution. Smithers specifically has pled that he is not arguing that his sentence of death is constitution but rather the implementation of his death sentence is unconstitutional. Human dignity is offended by the execution of the elderly and incompetent. It is logical to conclude that if juries were aware that the sentence of death would not be carried out until the defendant is elderly, juries would take this into consideration and not recommend a sentence of death.

It is illogical to conclude that the execution of a prisoner who is elderly and has been incarcerated for more than 26 years serves either a deterrent or retributive purpose.

The State's interest in punishment has been and will continue to be satisfied by the continued incarceration of Mr. Smithers, absent his execution being carried out in violation of the United States Constitution. See generally, *Lackey*, 514 U.S. at 1421. (Memorandum Justice Stevens, respecting the denial of certiorari), (“...prisoners who have spent some 17 years under a sentence of death... [before his death warrant had been signed] ... after such an extended time, the acceptable state interest in retribution has arguably been satisfied by the severe punishment already inflicted.”). Thus, the execution amounts to a violation of the Eighth Amendment. “A sanction is... beyond the State's authority to inflict if it makes ‘no measurable contribution’ to acceptable penal goals.” *Roper*, 543 U.S. at 589.

The rarity in which a punishment is inflicted is of important consideration in this Court's analysis. Capital punishment amounts to unusual punishment when it is rarely inflicted. 1,541 executions have occurred post-*Furman*.⁸ It is clear that the rarity in which the government implements the sentence of death establishes that it is unusual. It is not difficult to conclude that if juries knew that the person they were sentencing to death would ultimately be executed when the person is at their most vulnerable, juries would reconsider their finding of death.

The execution of Mr. Smithers would amount to cruel and unusual punishment. The penal goals of capital punishment are not served by the execution of the elderly. Just as the execution of the insane serves no deterrent effect, the execution of the elderly no longer serves as a deterrent or retributive effect that has not already been satisfied by his 26 years of incarceration. The execution of Mr. Smithers would not further the State's interest in deterrence or retribution.

II. This Court should grant this writ because the question presented is of national significance.

While the Florida Supreme Court declined the invitation to expand the prohibition against cruel and unusual punishment to include individuals 65 years of age and older, nevertheless this Court is not foreclosed from granting such relief.

The question presented by Smithers is of national and constitutional significance. Executions in the United States have increased substantially with only a few states singlehandedly inflating the national numbers of executions. This has

⁸ Data as of October 6, 2025. "Death Penalty Information Center," *Execution Database*, <https://deathpenaltyinfo.org/facts-and-research/data/executions> (Last accessed Oct. 6, 2025).

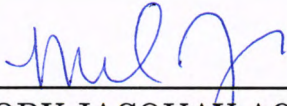
resulted in an increase in the elderly and intellectually disabled being subject to execution. The increase in executing the elderly calls out to this Court to determine whether executing elderly people stands in compliance with evolved standards of decency; in which, the evolved standards of decency establish that executing the elderly does not.

CONCLUSION

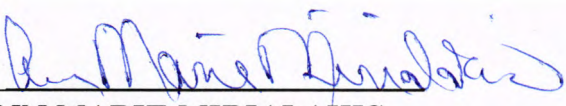
We diminish our human dignity and the meaning of civilized society, when we resort to the execution of the most vulnerable of our nation. Executing Samuel Smithers, who is elderly, defies human dignity and the evolving standards and serves neither a deterrent nor retributive purpose.

Respectfully submitted,

/s/


MELODY JACQUAY-ACOSTA
Florida Bar No. 1019248
Assistant CCRC-M

/s/


*ANN MARIE MIRIALAKIS
Florida Bar No. 658308
Assistant CCRC-M
Counsels of Record for Petitioner
**Member of the Bar of the Supreme Court*