

No. ____

IN THE SUPREME COURT OF THE UNITED STATES

BRYAN F. JENNINGS,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

PETITION FOR WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
EXECUTION SCHEDULED FOR
THURSDAY, NOVEMBER 13, 2025, at 6:00P.M.**

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QUESTIONS PRESENTED – CAPITAL CASE – DEATH WARRANT

Mr. Jennings was deprived of counsel for three years before his death warrant was signed. On the day his death warrant was signed, the State requested that he be appointed counsel completely unfamiliar with him or his case. Newly appointed counsel had but seven days to investigate and prepare a final appeal for Mr. Jennings. The first and second questions presented are:

1. When the plain meaning of a statute or rule guarantees continuous state postconviction counsel to a capital sentenced defendant, but fails to provide a remedy when a defendant is deprived of such counsel, does the State violate the Fourteenth Amendment in depriving the defendant due process and meaningful access to the courts because newly appointed counsel cannot meaningfully represent the defendant in his truncated under-warrant litigation?
2. Does Florida's mandatory statutory language requiring a capital defendant to be continuously represented in all state postconviction proceedings create a protected property interest?

In *Furman v. Georgia*, 408 U.S. 238 (1972), this Court invalidated the death penalty because it was imposed arbitrarily and without meaningful guidance; in *Gregg v. Georgia*, 428 U.S. 153 (1976), this Court upheld new death penalty statutes that introduced reliability, proportionality review, and guided discretion. Florida's system has since dismantled those very safeguards, eliminating proportionality review, restoring non-unanimous jury recommendations, adding aggravators and death-eligible crimes, and conducting clemency and the choice of who receives a death warrant in secrecy. The third question presented is:

3. Whether this systemic regression violates the Eighth and Fourteenth Amendments by abandoning the evolving standards of decency and reliability that *Furman* and *Gregg* established as prerequisites for the fair and consistent imposition of capital punishment?

LIST OF PARTIES

All parties appear in the caption on the cover page.

LIST OF RELATED CASES

Per Supreme Court Rule 14.1(b)(iii), the following cases relate to this petition:

Direct Appeal

Jennings v. State, 413 So. 2d 24 (Fla. 1982)
Supreme Court of Florida, No. 59299
April 8, 1982; Remanded for new trial

Second Direct Appeal

Jennings v. State, 453 So. 2d 1110 (Fla. 1984)
Supreme Court of Florida, No. 62600
July 12, 1984; Affirmed denial

Jennings v. Florida, 470 U.S. 1002 (1985)
Supreme Court of the United States, No. 84-5396
February 25, 1985; Remanded for reconsideration

Jennings v. State, 473 So. 2d 204 (Fla. 1985)
Supreme Court of Florida, No. 62600
May 23, 1985; Remanded for new trial

Third Direct Appeal

Jennings v. State, 512 So. 2d 169 (Fla. 1987)
Supreme Court of Florida, No. 68835
August 27, 1987; Affirmed guilt and death sentence, reversed other convictions

State Collateral Proceedings

Jennings v. State, 583 So. 2d 316 (Fla. 1991)
Supreme Court of Florida, Nos. 75689, 74926
June 13, 1991; Affirmed conviction but remanded to trial court for additional discovery

Jennings v. State, 782 So. 2d 853 (Fla. 2001)
Supreme Court of Florida, No. SC93056
March 22, 2001; Affirmed denial

Jennings v. State, 36 So. 3d 84 (Fla. 2010) (successive postconviction motion)
Supreme Court of Florida, No. SC08-1812
February 3, 2010; Affirmed denial

Jennings v. State, 91 So. 3d 132 (Fla. 2012) (successive postconviction motion)
Supreme Court of Florida, No. SC11-817
May 25, 2012; Affirmed denial

Jennings v. State, 192 So. 3d 38 (Fla. 2015) (successive postconviction motion)
Supreme Court of Florida, No. SC13-2248
August 28, 2015; Affirmed denial

Jennings v. State, 265 So. 3d 460 (Fla. 2018) (successive postconviction motion)
Supreme Court of Florida, No. SC17-500
October 4, 2018; Affirmed denial

Jennings v. State, (Fla. 2025) (successive postconviction motion)
Supreme Court of Florida, No. SC25-1686

State Interlocutory Review of Non-Final Order

Jennings v. State, (2025)
Supreme Court of Florida, No. SC2025-1642

State Habeas Review

Jennings v. Secretary, Department of Corrections, (2025) (state habeas petition)
Supreme Court of Florida, No. SC25-1687

Federal Habeas Review

Jennings v. Crosby, 392 F. Supp. 2d 1312 (N.D. Fla. 2005)
United States District Court for the Northern District of Florida
No. 5:02CV174-RH
September 29, 2005; Petition denied

Jennings v. McDonough, 490 F.3d 1230 (11th Cir. 2007)
United States Court of Appeals for the Eleventh Circuit
No. 05-16363
July 3, 2007; Affirmed denial

Certiorari Review

Jennings v. Florida, 470 U.S. 1002 (1985)
Supreme Court of the United States, No. 84-5396
February 15, 1985; Remanded to the Florida Supreme Court for reconsideration

Jennings v. McNeil, 552 U.S. 1298 (2008)
Supreme Court of the United States, No. 07-9002
March 31, 2008; *cert denied*

Jennings v. Florida, 139 S.Ct. 2019 (2019)
Supreme Court of the United States, No. 18-8323
May 13, 2019; *cert denied*

Federal Civil Rights Action

Jennings v. DeSantis, et al., Case No. 4:25-cv-449
United States District Court for the Northern District of Florida
Filed October 22, 2025

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Appendix B: Appeal opinion of the Florida Supreme Court, affirming the denial of the Fifth Successive Motion to Vacate Judgment and Sentence and denying State Habeas Petition; *Jennings v. State*, and *Jennings v. Dixon*, Case Numbers SC2025-1642, SC2025-1686, SC2025-1687

Appendix C: State's Motions to Appoint Substitute Postconviction Counsel; *State of Florida v. Grover B. Reed*, Circuit Court of Duval County, Fourth Judicial Circuit, Florida, Case No. 16-1986-CF-6123 (filed March 31, 2022); *State of Florida v. Edward J. Zakrzewski*, Circuit Court of Okaloosa County, First Judicial Circuit, Florida, Case No. 1994-1283-CFA (filed March 31, 2022); *State of Florida v. Thomas James Moore*, Circuit Court of Duval County, Fourth Judicial Circuit, Florida, Case No. 1993-1659-CFA (filed April 1, 2022).

Appendix D: Order Appointing Capital Collateral Regional Counsel, Pinellas County Circuit Court, Sixth Judicial Circuit, Florida, *State of Florida v. Milo Andrew Rose*, Case No. CRC82-8683 (filed May 19, 2022).

Appendix E: Emergency Motion to Appoint CCRC-M as Postconviction Counsel, Circuit Court of Brevard County, Eighteenth Judicial Circuit, Florida; *State of Florida v. Bryan Frederick Jennings*, Case No. 05-1979-CF-773 (filed October 10, 2025).

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The Order denying the Fifth Successive Motion for Postconviction Relief appears at Appendix A to this Petition. The opinion of the Florida Supreme Court appears at Appendix B to this Petition and is currently unreported.

JURISDICTION

The Florida Supreme Court decided the case on... The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. Mr. Jennings fully exhausted the federal claims at issue in the Florida courts by filing his Fifth Successive Motion for Postconviction Relief, appealing the same to the Florida Supreme Court, and by filing a Petition for Writ of Habeas Corpus in the Florida Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Florida Statutes, Chapter 27

Florida Rule of Criminal Procedure 3.851

The Eighth Amendment to the United States Constitution provides:

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

Section One of the Fourteenth Amendment to the United States Constitution 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. Jennings was tried, convicted, and sentenced to death for murder of Rebecca Kunash three times: in 1980, 1982, and 1986. Mr. Jennings' first conviction and death sentence were reversed because his counsel was unable to cross-examine a witness due to a conflict of interest. *Jennings v. State*, 413 So. 2d 24 (Fla. 1982). Mr. Jennings' second conviction and death sentence were upheld¹, but this Court ("USSC") vacated the judgment and remanded for reconsideration in light of *Shea v. Louisiana*² and *Smith v. Illinois*.³ *Jennings v. Florida*, 470 U.S. 1002 (1985). On remand, the Florida Supreme Court ("FSC") ordered a new trial. *Jennings v. State*, 473 So. 2d 204 (1985).

After the third trial, Mr. Jennings was convicted of first-degree murder⁴ and the jury recommended death by an eleven to one vote. The trial judge sentenced Mr. Jennings to death on April 25, 1986.

Mr. Jennings appealed his judgment and sentence, raising the following claims:

I. The trial court erred in admitting, over defense counsel's objections, evidence which was obtained as a direct result of the Defendant's

¹ *Jennings v. State*, 453 So. 2d 1109 (Fla. 1984).

² 470 U.S. 51 (1985) (holding that a recent opinion finding that criminal defendant's rights are violated by use of a confession obtained by police-instigated interrogation, without counsel present, after an attorney has been requested applied to cases pending on appeal at the time that ruling was decided).

³ 469 U.S. 91 (1984) (once an accused in custody expresses his desire for counsel, the accused is not subject to further interrogation by authorities until counsel has been made available to him or unless he validly waives his earlier request for assistance of counsel).

⁴ Mr. Jennings was also convicted of kidnapping with intent to commit sexual battery, sexual battery, and burglary.

involuntary confession, in violation of the Fifth, and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Florida Constitution.

II. The trial court committed reversible error in improperly restricting Appellant's presentation of evidence where such evidence was crucial to his defense thereby resulting in a violation of Appellant's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments.

III. In contravention of Appellant's constitutional rights to due process of law and to a fair trial, the trial court erred in overruling two timely and specific objections and allowing prejudicial and irrelevant testimony concerning the victim.

IV. In contravention of Appellant's constitutional rights under the Fourth, Fifth, and Fourteenth amendments, the trial court erred in denying the motion to suppress and allowing into evidence items that were seized as a result of a warrantless arrest.

V. The trial court erred in admitting into evidence three photographs of the six year old victim which had the effect of inflaming the jury thereby denying appellant his constitutional right to a fair trial.

VI. In contravention of Appellant's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments, the trial court erred in denying the motion for mistrial following a comment by the prosecutor during voir dire that referred to the failure of the Appellant to testify.

VII. In contravention of Appellant's constitutional rights under the Fifth and Fourteenth amendments, the trial court erred in overruling Appellant's objections and allowing into evidence a letter purportedly written by the Appellant.

VIII. In contravention of Appellant's constitutional rights to due process and to a fair trial, the trial court erred in failing to modify a standard jury instruction which was skewed in favor of the State.

IX. In contravention of Appellant's constitutional rights to due process of law and to a fair trial, the trial court erred in denying Appellant's motion for mistrial at the penalty phase, excusing a juror at the State's request, and seating an alternate juror over objection.

X. Appellant was denied due process of law by the trial court's action in overruling a timely and specific objection and permitting the prosecutor to engage in improper argument at the penalty phase thereby prejudicing Appellant's constitutional right to a fair trial.

XI. In contravention of Appellant's constitutional rights guaranteed by the Fifth and Fourteenth amendments to the United States Constitution, the trial court erred in denying the motion for mistrial when it became clear that the jury was considering improper matters during deliberations at the penalty phase.

XII. In contravention of Appellant's constitutional rights to due process of law and to a fair trial, the trial court committed fundamental error in

failing to timely discharge an alternate juror and in allowing that juror to retire with the rest of the jury at the penalty phase.

XIII. In contravention of Appellant's constitutional rights under the Fifth, Eighth, and Fourteenth Amendments, the trial court erred in denying Appellant's requested jury instructions at the penalty phase.

XIV. The trial court erred in failing to certify the Defendant as a mentally disordered sex offender.

XV. In contravention of Appellant's rights under the Eighth and Fourteenth Amendments to the United States Constitution, the sentence of death imposed upon Appellant is not justified in that it is based upon inappropriate aggravating circumstances, additional mitigating circumstances should have been found, and the mitigating circumstances out-weigh the aggravating circumstances.

XVI. The Florida capital sentencing statute is unconstitutional on its face and as applied.

The FSC affirmed the judgment and sentence. *Jennings v. State*, 512 So. 2d 169 (Fla. 1987). The conviction and death sentence became final when this Court denied Mr. Jennings' petition for writ of certiorari. *Jennings v. Florida*, 484 U.S. 1079 (1988).

Mr. Jennings filed his first motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850⁵ on October 23, 1989. Counsel raised the following claims:

I: The withholding of material exculpatory evidence violated Mr. Jennings' rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments.

II: The State's intentional withholding of material and exculpatory evidence violated the constitutional rights of Bryan Jennings under the Fifth, Sixth, Eighth, and Fourteenth Amendments, as well as his rights under Chapter 119 of the Florida Statutes.

III: Bryan Jennings was denied the effective assistance of counsel at the guilt-innocence phase of his trial, in violation of the Sixth, Eighth, and Fourteenth Amendments.

IV: Mr. Jennings was deprived of his rights to due process and equal

⁵ All litigation in state and federal court in this matter was conducted through counsel. State court postconviction litigation was largely conducted by the late Martin McClain, as a member of the Capital Collateral Representative's office (CCR) and later in his private capacity.

protection under the Fourteenth Amendment to the United States Constitution, as well as his rights under the Fifth, Sixth, and Eighth Amendments, because the mental health experts who saw him could not conduct a constitutionally adequate evaluation, because they were not provided with the necessary background information. Mr. Jennings was thus deprived of a constitutionally adequate mental health evaluation and was prejudiced at both the guilt and penalty phases of the trial.

V: Bryan Jennings was denied the effective assistance of counsel at the sentencing phase of his trial, in violation of the Sixth, Eighth, and Fourteenth Amendments.

VI: Mr. Jennings' rights to present a defense and to confront the witnesses against him were denied when the court limited the cross-examination of the State's key witness, Clarence Muszynski, and when the Defendant was foreclosed from introducing evidence establishing that either Mr. Muszynski was insane, a perjurer, or both.

VII: Mr. Jennings was deprived of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments when jurors were advised of Mr. Jennings' prior convictions for the very crimes at issue.

VIII: In contravention of Mr. Jennings' constitutional rights under the Fourth, Fifth, and Fourteenth Amendments, the trial court erred in denying the motion to suppress and allowing into evidence items that were seized as a result of a warrantless arrest.

IX: Mr. Jennings' judge and jury considered and relied on the victim's personal characteristics, the impact of the offense on the victim's parents, and the prosecutor's and family members' characterizations of the offense over defense counsel's timely and repeated objection in violation of Mr. Jennings' Eighth and Fourteenth Amendment rights, *Booth v. Maryland*, *South Carolina v. Gathers*, *Jackson v. Dugger*, and *Scull v. State*.

X: Mr. Jennings' sentencing jury was improperly instructed on the "especially heinous, atrocious, or cruel" aggravating circumstance, and the aggravator was improperly argued and imposed, in violation of *Maynard v. Cartwright*, *Hitchcock v. Dugger*, and the Eighth and Fourteenth Amendments.

XI: The aggravating circumstance that the offense was cold, calculated, and premeditated was improperly applied retroactively in violation of Article I, Section 10 of the United States Constitution, the Fifth, Sixth, Eighth, and Fourteenth Amendments, and the corresponding provisions of the Florida Constitution.

XII: The cold, calculated, and premeditated aggravating circumstance was applied to Mr. Jennings' case in violation of the Eighth and Fourteenth Amendments.

XIII: Mr. Jennings' death sentence rests upon an unconstitutional automatic aggravating circumstance in violation of *Maynard v.*

Cartwright, Lowenfield v. Phelps, Hitchcock v. Dugger, and the Eighth Amendment.

XIV: The introduction of nonstatutory aggravating factors so perverted the sentencing phase of Mr. Jennings' trial that it resulted in the totally arbitrary and capricious imposition of the death penalty in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

XV: Mr. Jennings' death sentence was imposed in violation of the Eighth and Fourteenth Amendments because his jury was prevented from giving appropriate consideration to all evidence proffered in mitigation of punishment contrary to *Eddings v. Oklahoma*, *Mills v. Maryland*, and *Hitchcock v. Florida*.

XVI: Mr. Jennings' sentence of death violates the Fifth, Sixth, Eighth, and Fourteenth Amendments because the penalty phase jury instructions shifted the burden to Mr. Jennings to prove that death was inappropriate and because the sentencing judge himself employed this improper standard in sentencing Mr. Jennings to death.

XVII: During the course of Mr. Jennings' trial the court improperly asserted that sympathy and mercy towards Mr. Jennings were improper considerations, in violation of the Eighth and Fourteenth Amendments.

XVIII: Mr. Jennings' sentencing jury was repeatedly misled by instructions and arguments which unconstitutionally and inaccurately diluted their sense of responsibility for sentencing, contrary to *Hitchcock v. Dugger*, *Caldwell v. Mississippi*, and *Mann v. Dugger*, and in violation of the Eighth and Fourteenth Amendments. Mr. Jennings received ineffective assistance of counsel when counsel failed to zealously advocate and litigate this issue.

XIX: The sentencing court erred by failing to independently weigh aggravating and mitigating circumstances, contrary to Mr. Jennings' Fifth, Sixth, Eighth, and Fourteenth Amendment rights.

XX: The prosecution of Mr. Jennings by the Office of the State Attorney for the Eighteenth Judicial Circuit violated the Fifth, Sixth, Eighth, and Fourteenth Amendments because the state attorney participated in the prosecution of Mr. Jennings despite the fact that he had been a senior public defender with the office that represented Mr. Jennings.

XXI: The present death warrant has violated Mr. Jennings' rights to due process and equal protection of law and denied him his rights to reasonable access to the courts.

XXII: The State's mental health experts relied on a statement made by Mr. Jennings which was unconstitutionally obtained by the State in violation of *Edwards v. Arizona*, *Estelle v. Smith*, *Powell v. Texas*, and the Fifth, Sixth, Eighth, and Fourteenth Amendments.

XXIII: Mr. Jennings' jury was improperly instructed resulting in fundamentally unfair convictions and sentences in violation of the Fifth,

Eighth, and Fourteenth Amendments.

The postconviction court denied the motion without holding an evidentiary hearing; Mr. Jennings appealed to the Florida Supreme Court and raised the following issues:

I: Mr. Jennings' judge and jury considered and relied on the victim's personal characteristics, the impact of the offense on the victim's parents, and the prosecutor's and family members' characterizations of the offense over defense counsel's timely and repeated objection in violation of Mr. Jennings' Eighth and Fourteenth Amendment rights, *Booth v. Maryland*, *South Carolina v. Gathers*, *Jackson v. Dugger*, and *Jones v. State*.

II: The trial court's summary denial of Mr. Jennings' Motion to Vacate was erroneous as a matter of law and fact.

III: The State's withholding of material and exculpatory evidence violated Mr. Jennings' rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments.

IV: The State's continued withholding of evidence violated the constitutional rights of Bryan Jennings under the Fifth, Sixth, Eighth, and Fourteenth Amendments, as well as his rights under Chapter 119 of the Florida Statutes.

V: Bryan Jennings was denied the effective assistance of counsel at the guilt-innocence phase of his trial in violation of the Sixth, Eighth, and Fourteenth Amendments.

VI: Mr. Jennings was deprived of his rights to due process and equal protection under the Fourteenth Amendment, as well as his rights under the Fifth, Sixth, and Eighth Amendments, because the mental health experts were not provided with the necessary background information necessary for an adequate evaluation.

VII: Bryan Jennings was denied the effective assistance of counsel at the sentencing phase of his trial, in violation of the Sixth, Eighth, and Fourteenth Amendments.

VIII: The State's mental health expert relied on a statement made by Mr. Jennings which was unconstitutionally obtained by the State in violation of *Edwards v. Arizona*, *Estelle v. Smith*, *Powell v. Texas*, and the Fifth, Sixth, Eighth, and Fourteenth Amendments.

IX: Mr. Jennings' jury was improperly instructed resulting in fundamentally unfair convictions and sentences in violation of the Fifth, Eighth, and Fourteenth Amendments.

X: Mr. Jennings' rights to present a defense and to confront the witnesses against him were denied when the court limited the cross-examination of the State's key witness, Clarence Muszynski, and when

Mr. Jennings was foreclosed from introducing evidence establishing that either Mr. Muszynski was insane, a perjurer, or both.

XI: Mr. Jennings was deprived of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments when jurors were advised of Mr. Jennings' previous convictions for the very crimes at issue.

XII: In contravention of Mr. Jennings' constitutional rights under the Fourth, Fifth, and Fourteenth Amendments, the trial court erred in denying the motion to suppress and allowing into evidence items that were seized as a result of a warrantless arrest. Counsel was ineffective in failing to adequately litigate this issue.

XIII: The sentencing court erred by failing to independently weight aggravating and mitigating circumstances, contrary to Mr. Jennings' Fifth, Sixth, Eighth, and Fourteenth Amendment rights. Counsel was ineffective in not objecting to the sentencing court's action.

XIV: The jury instructions regarding the statutory aggravating circumstance heinous, atrocious, or cruel violated the Eighth and Fourteenth Amendments.

XV: The jury instructions the cold, calculated, and premeditated aggravating circumstance was violated of the Eighth and Fourteenth Amendments. [sic]

XVI: Mr. Jennings' death sentence rests upon an unconstitutional automatic aggravating circumstance in violation of *Maynard v. Cartwright*, *Lowenfield v. Phelps*, *Hitchcock v. Dugger*, and the Eighth Amendment.

XVII: The introduction of nonstatutory aggravating factors so perverted the sentencing phase of Mr. Jennings' trial that it resulted in the totally arbitrary and capricious imposition of the death penalty in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

XVIII: The sentencing court's refusal to find the mitigating circumstances clearly set out in the record violated the Eighth Amendment and demonstrates that the jury's consideration was similarly constrained.

XIX: The shifting of the burden of proof in the jury instructions at sentencing deprived Mr. Jennings of his rights to due process and equal protection of law, as well as his rights under the Eighth and Fourteenth Amendments.

XX: Mr. Jennings' sentencing jury was repeatedly misled by instructions and arguments which unconstitutionally and inaccurately diluted their sense of responsibility for sentencing in violation of the Eighth and Fourteenth Amendments. Counsel was ineffective in failing to litigate this issue.

XXI: During the course of Mr. Jennings' trial the court improperly asserted that sympathy and mercy towards Mr. Jennings were improper

considerations, in violation of the Eighth and Fourteenth Amendments. **XXII:** The aggravating circumstance that the offense was cold, calculated, and premeditated was improperly applied retroactively in violation of Article I, Section 10 of the United States Constitution, the Fifth, Sixth, Eighth, and Fourteenth Amendments, and the corresponding provisions of the Florida Constitution.

XXIII: The prosecution of Mr. Jennings by the Office of the State Attorney for the Eighteenth Judicial Circuit violated the Fifth, Sixth, Eighth, and Fourteenth Amendments because the state attorney participated in the prosecution of Mr. Jennings despite the fact that he had been a senior public defender with the office that represented Mr. Jennings.

The FSC affirmed the denial but ruled that Mr. Jennings was entitled to certain public records and remanded to the postconviction court. Mr. Jennings also filed a petition for writ of habeas corpus in the FSC, which was denied. *Jennings v. State*, 583 So. 2d 316 (Fla. 1991).

On remand, Mr. Jennings filed an amended motion to vacate judgment and sentence, raising the following claims:

I: The continuing failure of the state to disclose public records violates the mandate of the Florida Supreme Court; Chapter 119, Fla. Stat.; the due process and equal protection clauses of the Fourteenth Amendment; the Eighth Amendment of the U.S. Constitution; and, the corresponding provisions of the Florida Constitution.

II: The State's withholding of material and exculpatory evidence violated the constitutional rights of Bryan Jennings under the Fifth, Sixth, Eighth, and Fourteenth Amendments, and the discovery provisions of the Florida Rules of Criminal Procedure. Moreover because the jury did not know of this important evidence contained in the State's possession an adversarial testing did not occur. Either the prosecutor violated Brady, or defense counsel was ineffective. As a result, confidence is undermined in the outcome and 3.850 relief must be granted.

III: Mr. Jennings' right to a fair trial and his due process rights were violated because the state attorney allowed material false or misleading testimony to be introduced at trial, failed to correct the testimony at trial or resentencing and knowingly exploited the testimony. The State's withholding of material and exculpatory evidence violated the Fifth,

Sixth, Eighth, and Fourteenth Amendments, and the discovery provisions of the Florida Rules of Criminal Procedure. An adversarial testing did not occur. Either the prosecutor violated Giglio/Brady, or defense counsel was ineffective, or this evidence constitutes new evidence. As a result confidence is undermined in the outcome and 3.850 relief must be granted.

The postconviction court ordered the disclosure of some, but not all, of the public records Mr. Jennings requested. Mr. Jennings appealed this order on August 27, 1992, raising a single issue, that the circuit court improperly denied Mr. Jennings' public records request to the Florida Parole Commission. The Commission's files are not exempt from Chapter 119, Fla. Stat. The FSC upheld the denial of relief on September 9, 1993. *Jennings v. State*, 626 So. 2d 1324 (Fla. 1993).

On September 24, 1993, CCR filed a Complaint for Disclosure of Materials on behalf of James Rose demanding the release of records from the Florida Board of Executive Clemency. The circuit court dismissed the complaint with prejudice on December 14, 1993. Mr. Jennings was one of the named Appellants in a collective Notice of Appeal of the denial filed on January 11, 1994. The Appellants raised a single issue: "*Brady v. Maryland*⁶ and the Due Process Clause of the Fourteenth Amendment require the Florida Board of Executive Clemency and Florida Parole Commission to release to Appellants all records of an exculpatory nature." The FSC upheld the denial of relief on November 10, 1994.

Mr. Jennings filed a Second Amended Motion to Vacate Judgment and Sentence on April 4, 1997, raising the following issues:

I. Access to the files and records pertaining to Mr. Jennings' case in the possession of certain state agencies has been withheld in violation of

⁶ 373 U.S. 83 (1963).

Chapter 119, Florida Statutes, the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

II. The State's withholding of material and exculpatory evidence violated the constitutional rights of Bryan Jennings under the Fifth, Sixth, Eighth, and Fourteenth Amendments, and the discovery provisions of the Florida Rules of Criminal Procedure. Moreover because the jury did not know of this important evidence contained in the State's possession and adversarial testing did not occur. Either the prosecutor violated Brady, or defense counsel was ineffective. As a result, confidence is undermined in the outcome and 3.850 relief must be granted.

III. Mr. Jennings' right to a fair trial and his due process rights were violated because the state attorney allowed material false or misleading testimony to be introduced at trial, failed to correct the testimony at trial or resentencing and knowingly exploited the testimony. The State's withholding of material and exculpatory evidence violated the Fifth, Sixth, Eighth, and Fourteenth Amendments, and the discovery provisions of the Florida Rules of Criminal Procedure. An adversarial testing did not occur. Either the prosecutor violated *Giglio/Brady*, or defense counsel was ineffective, or this evidence constitutes new evidence. As a result confidence is undermined in the outcome and 3.850 relief must be granted.

IV. The jury was improperly instructed on the heinous, atrocious, and cruel and the cold, calculated and premeditated aggravating factor, in violation of *Espinosa v. Florida*, *Stringer v. Black*, *Maynard v. Cartwright*, *Hitchcock v. Dugger*, and the Eighth and Fourteenth Amendments.

V. The rules prohibiting Mr. Jennings' collateral counsel from interviewing jurors to determine if constitutional error was present violates the First, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution and denies Mr. Jennings adequate assistance of counsel in pursuing his postconviction remedies.

VI. Execution by electrocution is cruel and/or unusual punishment and violates Mr. Jennings' rights under the Eighth and Fourteenth Amendments of the United States Constitution and under of the Florida Constitution. [sic]

VII. Mr. Jennings' trial court proceedings were fraught with procedural and substantive errors which cannot be harmless when viewed as a whole since the combination of errors deprived him of the fundamentally fair trial guaranteed under the Sixth, Eighth, and Fourteenth Amendments.

The postconviction court held an evidentiary hearing on October 30 and 31, 1997. The circuit court denied relief, and Mr. Jennings appealed to the FSC, raising the following claims:

I: Mr. Jennings was deprived of a constitutionally adequate adversarial testing at his capital trial when the prosecution failed to disclose and defense counsel failed to discover and present favorable and exculpatory evidence. As a result, confidence is undermined in the reliability of the outcome.

II: Mr. Jennings' penalty phase jury received instructions regarding two aggravating circumstances which this court has since determined were defective due to their failure to advise the jury of the necessary elements of the aggravating circumstances. Mr. Jennings objected to the instructions, proposed curative instructions, and raised his challenges on direct appeal. Thus under this court's prior decisions, Mr. Jennings has correctly reraised his challenges in postconviction proceedings. The error is not harmless beyond a reasonable doubt and Mr. Jennings is entitled to a resentencing.

III: The rules prohibiting Mr. Jennings' collateral counsel from interviewing jurors to determine if constitutional error was present violates the First, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution and deprives Mr. Jennings of adequate counsel in the post-conviction process.

IV: Access to public records and/or Brady material was erroneously denied by the circuit court.

V: Florida's electric chair constitutes cruel and/or unusual punishment and therefore violates both the United States and Florida Constitutions.

The FSC affirmed the postconviction court's order. *Jennings v. State*, 782 So. 2d 853 (Fla. 2001). Mr. Jennings filed a petition for certiorari with this Court, which was denied. *Jennings v. Florida*, 534 U.S. 1096 (2002).

Mr. Jennings filed his first petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in 2002; the Northern District Court of Florida denied the petition on September 29, 2005. *Jennings v. Crosby*, 392 F. Supp. 2d 1313 (N.D. Fla. 2005). The

Eleventh Circuit affirmed the denial of habeas relief⁷ and this Court denied certiorari on March 31, 2008. *Jennings v. McNeil*, 552 U.S. 1298 (2008).

On April 8, 2008, Mr. Jennings filed his first successive postconviction motion pursuant to Florida Rule of Criminal Procedure 3.851, raising the following claims:

I: Mr. Jennings' conviction and sentence are unconstitutional under *Crawford v. Washington*.

II: The application of the cold, calculated, and premeditated aggravating circumstance in Mr. Jennings' case violated the Eighth Amendment and renders his sentence of death in violation of both the state and federal constitutions.

III: Because of the inordinate length of time that Mr. Jennings has spent on death row, adding his execution to that punishment would constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and binding norms of international law.

IV: The existing procedures that the State of Florida utilizes for lethal injection violates the Eighth Amendment to the United States Constitution as it constitutes cruel and unusual punishment.

V: Newly available information demonstrates that Mr. Jennings' convictions and sentence of death constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

The motion was summarily denied, and Mr. Jennings appealed to the FSC, raising the following claims:

I: The application of the cold, calculated, and premeditated aggravating circumstance in Mr. Jennings' case violated the Eighth Amendment and renders his sentence of death in violation of both the state and federal constitutions.

II: Because of the inordinate length of time that Mr. Jennings has spent on death row, adding his execution to that punishment would constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and binding norms of international law.

III: The lower court erred in denying Jennings' claim that newly discovered empirical evidence demonstrates that his conviction and sentence of death constitutes cruel and unusual punishment in violation

⁷ *Jennings v. McDonough*, 490 F.3d 1230 (11th Cir. 2007).

of the Eighth and Fourteenth Amendments.

IV: It was error to summarily deny Appellant's challenge to Florida's procedures for carrying out a lethal injection execution as violative of the Eighth Amendment.

The FSC upheld the denial. *Jennings v. State*, 36 So. 3d 84 (Fla. 2010).

Mr. Jennings filed a second successive postconviction motion on November 29, 2010, raising the claim that Mr. Jennings' sentence violates the Sixth and Eighth Amendments under *Porter v. McCollum*.⁸ The circuit court summarily denied the motion. Mr. Jennings appealed to the FSC, raising the following claims:

I: The circuit court erred when ruling that a final order had been rendered and as a result Jennings could not amend his Rule 3.851 when the Motion to Amend was simultaneously filed with a timely motion for rehearing of the non-final order denying the pending Rule 3.851 motion.

II: An evidentiary hearing is required on Jennings' constitutional claims arising from Muszynski's February 21, 2011, affidavit revealing that his trial testimony was false when he denied being a State agent, when he denied receiving consideration for his testimony, and when he revealed that the State knew his testimony was false in this regard and failed to correct it.

III: Jennings' conviction and sentence of death violate the Sixth and Eighth Amendments under the proper *Strickland/Bagley* analysis for the reasons explained in *Porter v. McCollum*.

The FSC affirmed the decision on appeal and granted Mr. Jennings the opportunity to file another successive postconviction motion raising claims based on an affidavit signed by trial witness Clarence Muszynski, which Mr. Jennings had previously raised in a motion to amend his second successive motion. *Jennings v. State*, 91 So. 3d 132 (Fla. 2012). Mr. Jennings pursued a petition for writ of certiorari with the USSC, which was denied. *Jennings v. Florida*, 568 U.S. 1100 (2013).

Mr. Jennings filed a third successive postconviction motion on June 25, 2012,

⁸ 558 U.S. 30 (2009).

raising the following claim:

New evidence not previously available establishes that the State withheld favorable information from Mr. Jennings that shows that Muszynski was a State agent when he spoke to Mr. Jennings in violation of the Fifth and Sixth Amendments, that the State violated its obligation under *Brady v. Maryland* to disclose favorable information to the defense, and the State violated its obligation under *Giglio v. United States* to refrain from presenting and relying upon false evidence in a criminal prosecution.

The postconviction court denied the motion after an evidentiary hearing, and Mr. Jennings appealed to the FSC, raising the following claims:

I: The circuit court erred in ruling that there was an inadequate showing of diligence as to the documentary evidence that Jennings presented at the evidentiary hearing when the State had stipulated to diligence and Jennings accepted the stipulation and did not present the readily available evidence of diligence as a result. Further the ruling was contrary to *Johnson v. State* and *Waterhouse v. State*.

II: Jennings was deprived of due process under the Fourteenth Amendment when the prosecution permitted false and/or misleading evidence to be presented and go uncorrected to his jury.

III: Jennings was deprived of his rights to due process under the Fourteenth Amendment as well as his rights under the Fifth, Sixth, and Eighth Amendments, because the State failed to disclose evidence which was material and exculpatory in nature and/or defense counsel unreasonably failed to discover and present exculpatory evidence.

The FSC affirmed the decision. *Jennings v. State*, 192 So. 3d 38 (Fla. 2015).

This Court denied a subsequent petition for writ of certiorari. *Jennings v. Florida*, 580 U.S. 857 (2016).

Mr. Jennings filed a fourth successive postconviction motion on October 20, 2016, based on the USSC decision in *Hurst v. Florida*.⁹ The postconviction court denied relief without an evidentiary hearing, the FSC affirmed. *Jennings. v. State*,

⁹ 577 U.S. 92 (2016).

265 So. 3d 460 (Fla. 2018). The USSC denied review. *Jennings v. Florida*, 587 U.S. 990 (2019).

Mr. Jennings filed a second petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on December 28, 2018. This petition was based on the same witness recantation that the third postconviction motion was based on; the district court dismissed the petition for lack of subject-matter jurisdiction. *Jennings v. Inch*, No. 5:18-cv-281 (N.D. Fla. Mar. 6, 2020). The dismissal was affirmed on appeal. *Jennings v. Sec’y, Fla. Dep’t of Corr.*, 108 F.4th 1299 (11th Cir. 2024). The USSC denied the subsequent petition for certiorari on March 31, 2025. *Jennings v. Dixon*, 145 S. Ct. 1472 (2025).

Governor Ron DeSantis signed a death warrant for Mr. Jennings on Friday, October 10, 2025; according to the docket stamp on the document, it was filed with the circuit court at 4:33 p.m. Also on Friday, October 10, 2025, this Court entered an Order directing “that all further proceedings in this case be expedited,” and ordering that all proceedings in the circuit court be completed no later than 11:00 a.m. on Wednesday, October 29, 2025.

On Friday, October 10, 2025, the Office of the Attorney General (“OAG”) filed its Notice of Appearance in the circuit court at 5:26 p.m., and its Notice of Appearance in this Court at 5:36 p.m. On that day, the OAG also filed an “Emergency Motion to Appoint CCRC-M as Postconviction Counsel,” at 5:42 p.m. This was necessary because Mr. Jennings was unrepresented by counsel at the time of the warrant signing; he had been unrepresented by state court counsel since the passing of his

attorney, Martin McClain (“Mr. McClain”).

The Office of the Capital Collateral Regional Counsel for the Middle Region of Florida (“CCRC-M”) filed a limited Notice of Appearance and a Motion to Vacate the Warrant or Stay the Execution on Sunday, October 12, 2025, in the circuit court. At the time, CCRC-M had not yet been officially appointed.

The OAG filed a Motion for Scheduling Order at 10:54 a.m. on Monday, October 13, 2025. The Motion was based on this Court’s Scheduling Order, and at that point, CCRC-M had not yet been officially appointed as counsel for Mr. Jennings. The circuit court’s Order Appointing CCRC-M as Postconviction Counsel was entered at 12:12 p.m. on Monday, October 13, 2025. CCRC-M filed a Motion to Strike the State’s Motion for Scheduling Order at 3:40 p.m. on Monday, October 13, 2025.

The circuit court entered an Order Setting Case Management Conference (“CMC”) on Monday, October 13, 2025, at 2:15 p.m. The CMC took place at 10:00 a.m. on Tuesday, October 14, 2025. At the CMC, the circuit court set deadlines for all proceedings and pleadings subject to CCRC-M’s standing objection to all deadlines based on the post hoc appointment of counsel. The Court also set a hearing on CCRC-M’s Motion to Vacate Death Warrant or Alternatively to Stay Warrant Proceedings, which was held at 10:00 a.m. on Wednesday, October 15, 2025. The circuit court filed its Scheduling Order at 6:25 p.m. on Tuesday, October 14, 2025, setting the deadline for the Motion to Vacate on Tuesday, October 21, 2025, at 12:00 p.m.

CCRC-M filed a Motion to Reconsider the Scheduling Order in the circuit court on October 16, 2025, which was denied the same day. CCRC-M also filed a Motion to

Reconsider the Scheduling Order in this Court on October 17, 2025, which was also denied the same day.

The circuit court denied the Motion to Vacate Death Warrant or Alternatively to Stay Warrant Proceedings on October 16, 2025.

Mr. Jennings filed a Petition Seeking Review of Nonfinal Order in a Capital Case in the FSC on October 18, 2025.

Mr. Jennings filed his Fifth Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death Warrant Signed on October 21, 2025, and the State filed its Response to Defendant's Fifth Successive Motion for Postconviction Relief on October 22, 2025. In the motion, Mr. Jennings raised the following claims:

Claim 1: The determination that executive clemency is not appropriate based on Mr. Jennings' 1988 clemency application, and the subsequent denial in 1989, without consideration of any mitigation developed in the nearly four (4) decades since, violates Mr. Jennings' rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments.

Claim 2: The post-warrant appointment of counsel and failure to enter a stay of the proceedings renders the warrant proceedings invalid and in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments, and the corresponding provisions of the Florida Constitution.

Claim 3: Florida's current capital sentencing scheme violates the Eighth and Fourteenth Amendments because it lacks essential safeguards against arbitrary and capricious imposition of the death penalty.

Mr. Jennings' federally appointed counsel from the Capital Habeas Unit filed a civil rights action pursuant to 42 U.S.C. § 1983 as well as a Motion for Stay in the United States District Court for the Northern District of Florida, Tallahassee

Division on October 22, 2025. The Motion for Stay was denied; the civil rights action remains pending.

On October 23, 2025, the circuit court held a *Huff*¹⁰ hearing and subsequently entered an Order Denying Postconviction Evidentiary Hearing After Hearing Held Pursuant to *Huff v. State* on October 24, 2025. In the order, the circuit court found that an evidentiary hearing was not necessary, because the claims presented in Mr. Jennings' postconviction motion could be decided as a matter of law.

Subsequently, on October 28, 2025, the circuit court filed a more detailed Order Denying Defendant's "Fifth Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death Warrant Signed." At the time the circuit court entered its final order denying relief, the petition seeking review of the nonfinal order denying a stay of the proceedings was still pending in the FSC; this was in violation of Florida Rule of Appellate Procedure 9.142(c)(9)(B), which provides:

During the pendency of a review of a nonfinal order, unless a stay is granted by the supreme court, the lower tribunal may proceed with all matters, **except that the lower tribunal may not render a final order disposing of the cause pending review of the nonfinal order.**

(emphasis added). Because the circuit court was in violation of Fla. R. App. P. 9.142(c)(9)(B), the Order Denying the Fifth Motion to Vacate should not have been entered.

The Florida Supreme Court entered its Opinion upholding the summary denial of the Fifth Successive Motion, and denying the state habeas petition, and tacitly

¹⁰ *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

denying the appeal of the non-final order on November 6, 2025.

REASONS FOR GRANTING THE PETITION

I. Florida's failure to ensure that a capital-sentenced inmate had continuous state postconviction counsel and its post-warrant appointment of counsel completely unfamiliar with Mr. Jennings or his case violates the Fourteenth Amendment by depriving him of due process and meaningful access to the courts because newly appointed counsel cannot meaningfully represent him in this truncated under-warrant litigation.

Florida has reached a crisis point in its capital postconviction and death warrant litigation. Florida Statutes, section 27.7001, makes it clear that all individuals who are subject to a sentence of death must be represented by state postconviction counsel.¹¹

The rule governing capital postconviction litigation, Florida Rule of Criminal Procedure 3.851, is replete with mandatory language. For instance, the Rule:

applies to **all postconviction proceedings** that commence on the issuance of the appellate mandate affirming the death sentence to include all motions and petitions for any type of postconviction or collateral relief brought by a defendant in state custody who has been sentenced to death and whose conviction and death sentence have been affirmed on appeal.

Fla. R. Crim. P. 3.851(a) (emphasis added). Further, the Rule requires:

On the issuance of the mandate affirming a judgment and sentence of death on direct appeal, the Supreme Court of Florida **must** at the same time issue an order appointing the appropriate office of the Capital Collateral Regional Counsel or directing the trial court to immediately appoint counsel from the Registry of Attorneys maintained by the Justice Administrative Commission.

¹¹ It is the intent of the Legislature . . . to provide for the collateral representation of any person convicted and sentenced to death in this state, so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice.

Fla. R. Crim. P. 3.851(b)(1) (emphasis added). See also Fla. R. Crim. P. 3.851(b)(2), (3), and (4).¹²

“After the filing of a notice of appearance, Capital Collateral Regional Counsel, Registry Counsel, or a private attorney **must represent the defendant in the state courts until a judge allows withdrawal or until the sentence is reversed, reduced, or carried out, regardless of whether another attorney represents the defendant in federal court.**” Fla. R. Crim. P. 3.851(b)(5) (emphasis added). Further, a defendant who has been sentenced to death **may not represent himself** or herself in a capital postconviction proceeding in state court, and if there is a conflict with the CCRC, conflict-free counsel **must** be appointed pursuant to statute. Fla. R. Crim. P. 3.851(b)(6) (emphasis added).

Florida also included language in the statutes to ensure that the counsel the State undertook to provide is competent to handle the complexities of capital postconviction litigation, requiring counsel to have participated in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings, or any combination of at least five such proceedings. Florida Statutes, § 27.703 (3). Each capital collateral regional counsel may employ assistant capital collateral counsel,

¹² Within 30 days of the issuance of the mandate, the Capital Collateral Regional Counsel or Registry Counsel **must** file either a notice of appearance or a motion to withdraw in the trial court.” Fla. R. Crim. P. 3.851(b)(2) (emphasis added). “Within 15 days after Capital Collateral Counsel or Registry Counsel files a motion to withdraw, the chief judge or assigned just **must** rule on the motion and appoint new postconviction counsel if necessary.” Fla. R. Crim. P. 3.851(b)(3) (emphasis added). “In every capital postconviction case, one lawyer **must** be designated as lead counsel for the defendant. The lead counsel **must** be the defendant’s primary lawyer in all state court litigation.” Fla. R. Crim. P. 3.851(b)(4) (emphasis added).

who must meet the same requirements. Florida Statutes, § 27.704 (1). It is clear from the statute that Florida accepted its duty not only to provide counsel, but to provide competent, experienced counsel to those convicted of capital offenses. Even when capital defendants elect to waive postconviction appeals, state postconviction counsel is appointed.

And yet, in the face of all of the “musts” and requirements; with all that Florida has given capital defendants in postconviction with one hand, the State is taking it away with the other. For instance, the FSC has repeatedly ruled that while Florida Statutes guarantee “quality representation,”¹³ the same statute plainly states that capital defendants may not “challenge in any form or manner the adequacy of the collateral representation provided.”¹⁴ *See Barwick v. State*, 361 So. 3d 785, 790-91 (Fla. 2023); *see also Asay v. State*, 210 So. 3d 1, 28 (Fla. 2016) (“this Court has repeatedly held that defendants are not entitled to effective assistance of collateral counsel”). This contradiction is indicative of the cognitive dissonance that has become the hallmark of Florida’s capital postconviction process.

With this death warrant, Florida has taken yet another giant step away from the protections it has undertaken to provide to capital sentenced inmates – it has violated its own laws and rules by signing a death warrant on Bryan Jennings, a man who went three years without the continuous state postconviction representation guaranteed to him by Florida Statutes. The language in the statutes and the rule is plain: either the CCRC, Registry Counsel, or a private attorney **must represent the**

¹³ Fla. Stat., § 27.711(12).

¹⁴ Fla. Stat. § 27.7002(1).

defendant in the state courts until a judge allows withdrawal or until the sentence is reversed, reduced, or carried out, regardless of whether another attorney represents the defendant in federal court.” Fla. R. Crim. P. 3.851(b)(5) (emphasis added). See also *Asay*, *supra* at 28 (“*Spalding* [*v. Dugger*, 526 So. 2d 71 (Fla. 1988)] only requires that a defendant be represented by an attorney during postconviction proceedings.”).

Florida knew of Mr. McClain’s passing, which is evidenced by the fact that the OAG filed a number of motions to appoint substitute postconviction counsel. See Composite Appendix C. Each of those motions state that “[u]nder Florida Statutes, a capital inmate is required to be represented by state postconviction counsel ***at all times.***” (emphasis added). The motions further note that:

If registry counsel retires, or as in the case, dies, this Court must monitor the representation and appoint new counsel. But if CCRC is counsel of record, and one of two attorneys assigned to the case can no longer represent the capital defendant for any reason, the office itself simply and automatically assign new counsel without any involvement from the State or this Court being required. **Capital defendants can fall through the cracks and become unrepresented** if registry counsel is appointed.

Mr. Jennings is a capital defendant who fell through the cracks. The motions also state that the FSC had recently increased the minimum standards for lead state postconviction counsel in capital cases, noting that some registry counsel lacked the required higher qualifications, but that the CCRC lead attorneys were all death qualified. The motions filed by Florida to have replacement counsel appointed to others of Mr. McClain’s clients also aver that “the CCRC offices have an institutional

knowledge, expertise, and resources” that other attorneys lack.¹⁵

There can be no mistaking that Florida recognized its error when the OAG filed the Emergency Motion to Appoint CCRC-M as Postconviction Counsel. In the emergency motion, the State noted that Mr. Jennings had been represented by counsel while pursuing his collateral remedies, but because Mr. McClain had passed, Mr. Jennings **required state** collateral counsel. The State further noted that the appointment of state collateral counsel was time sensitive, due to the death warrant. See Appendix E. Florida clearly recognized its duty to provide Mr. Jennings with continuous postconviction representation in state court; Florida apparently also recognized that it failed in that duty and rushed to “remedy” the failure by appointing counsel who, until the death warrant was signed, had never heard of Mr. Jennings.

When confronted during the circuit court warrant litigation, the OAG had no explanation for why Mr. Jennings had “slipped through the cracks” and was being treated differently than other similarly situated clients of the late Mr. McClain. Disparate treatment of similarly situated defendants is a violation of equal protection. *Asay, supra*, citing *Duncan v. Moore*, 754 So. 2d 708, 712 (Fla. 2000).

Then, in an abrupt about-face, Florida argued in the state court that Mr. Jennings (1) was not entitled to continuous, quality state court counsel; and (2) that federal counsel was sufficient to satisfy this requirement. Each of these arguments

¹⁵ In another case, the Circuit Court of Pinellas County *sua sponte* appointed CCRC-M to a capital-sentenced inmate based on the amendment to Fla. R. Crim. P. 3.851(i), because the rule “require[d] that the Court appoint counsel for all cases where counsel was previously discharged pursuant to the rule.” See Appendix D.

directly contradicts Florida’s statutes and rules, as well as the OAG’s own pleadings.

The OAG, circuit court, and the FSC all declare that Florida’s rules and statutes only entitle representation “during postconviction proceedings,” and therefore Mr. Jennings does not have a life, liberty, or property right to continuous state capital postconviction representation. This is incorrect. First, the State itself has acknowledged that “[u]nder Florida Statutes, a capital inmate is required to be represented by state postconviction counsel ***at all times.***” See Appendix C. In addition, Fla. R. Crim. P. specifically and plainly states that Capital Collateral Regional Counsel, Registry Counsel, or a private attorney **must represent the defendant in the state courts until a judge allows withdrawal or until the sentence is reversed, reduced, or carried out, regardless of whether another attorney represents the defendant in federal court.**” (emphasis added). The rule does not say that state postconviction counsel must represent the defendant only when litigation is pending.¹⁶

The FSC appears to believe that there is no right to counsel “between postconviction motions” or “proceedings,” but this is in direct contradiction to Florida’s rules and statutes. State postconviction counsel does not come and go between bouts of litigation. Pursuant to Florida’s rules and statutes, state postconviction counsel remains the defendant’s counsel until the sentence is reversed, reduced, or carried out. This means that state postconviction counsel continues to monitor developments in the law that may affect the client’s case, and continues to

¹⁶ At the hearing on the Motion to Vacate Death Warrant or Stay the Proceedings, the OAG stated that “the death warrant is not the initiation of a new proceeding.”

investigate to find newly discovered evidence that could affect the client's outcome, which could then lead to further in-court "proceedings." Attorneys and investigators employed by the Capital Collateral Regional Counsel offices *never* stop working on their clients' cases until the sentence is reversed, reduced, or carried out.

Because Mr. Jennings was denied due process and meaningful access to the courts, this Court should grant the writ.

II. Florida's capital postconviction scheme created a property interest in mandating the continuing appointment of quality counsel.

The Fourteenth Amendment to the United States Constitution provides that a state shall not "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The core purpose of procedural due process is to ensure that a "citizen's reasonable reliance is not frustrated by arbitrary government action." *Town of Castle Rock, Colorado v. Gonzales*, 545 U.S. 748, 791 n.20 (2005) (Stevens, J., dissenting). In the instant case, Florida unconstitutionally deprived Mr. Jennings of his protected property interest in the right to continuing quality postconviction counsel.

This Court has "made clear that the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money." *The Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 571–72 (1972). Property interests are not created by the Constitution but rather "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law - rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Id.* at 577. The

“hallmark of property” is “an individual entitlement grounded in state law, which cannot be removed except ‘for cause.’” *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982) (citation omitted).

The entitlement to the benefit must be more than an abstract need and more than a unilateral expectation - it must be a legitimate claim of entitlement. *Roth*, 408 U.S. at 577. It is a “purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined.” *Id.* As such, this Court further recognizes that a benefit is not a protected entitlement if government officials are at liberty to grant or deny it in their discretion. *Castle Rock*, 545 U.S. at 756.

This Court does not rely strictly on statutes and rules to determine whether there is a legitimate claim of entitlement: “A person’s interest in a benefit is a ‘property’ interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing.” *Perry v. Sindermann*, 408 U.S. 593, 601 (1972) (citing *Roth*, 408 U.S. at 577). Accordingly, proof of property interest can be justified by the existence of a common law of a particular industry or the policies and practices of an institution. *Id.* at 601-03.

Contrary to the FSC’s determination that the Florida statutes do not create a property right to continuous representation, *see Jennings v. Florida*, No. SC2025-1642, 2025 WL 3096812, at *32 (Fla. Nov. 6, 2025), it is clear that the opposite is true: Florida’s capital postconviction system, through its statutes and rules’ mandatory

language, has created a protected entitlement to continuing and quality postconviction representation for indigent capital defendants in Florida.

Chapter 27 of the Florida Statutes codifies indigent capital defendants' right to postconviction counsel and defines the contours of Florida's capital collateral proceedings. *See generally* Fla. Stat. § 27.711 (outlining the terms and conditions of appointed counsel in capital collateral proceedings). The rights set out in Chapter 27 of the Florida Statutes "are the rights of indigent death row inmates to representation, not the right of CCR to represent those inmates." *Durocher v. Singletary*, 623 So. 2d 482, 483 (Fla. 1993), *citing Spalding v. Dugger*, 526 So. 2d 71, 72 (Fla. 1988).

The statutory scheme controls beyond initial proceedings and obligates a continuing right to counsel. Appointed counsel "***must*** represent the defendant in the state courts until a judge allows withdrawal or ***until the sentence is reversed, reduced, or carried out, regardless of whether another attorney represents the defendant in a federal court.***" Fla. R. Crim. P. 3.851(b)(5) (emphasis added). Crucially, capital defendants are specifically entitled to this right during their warrant proceedings. As of May 2022, the Florida Supreme Court amended the rules of procedure controlling capital collateral relief to reflect that "a capital defendant may waive pending postconviction proceedings but not postconviction counsel, and that a subsequent postconviction motion is allowable to raise certain specified claims after a waiver of pending postconviction proceedings." *In re Amends. to Fla. Rule of Crim. Proc. 3.851*, 351 So. 3d 574, 574 (Fla. 2022). Under Florida's death penalty

scheme, from the initiation of an indigent defendant’s postconviction proceedings, it is the state court’s responsibility to appoint counsel. *See* Fla. R. Crim. P. 3.851(b)(1) (“[T]he Supreme Court of Florida **must** at the same time issue an order appointing the appropriate office of the Capital Collateral Regional Counsel . . .”) (emphasis added).

The mandatory language of these statutes and rules shows that the appointment of counsel is not one that the State grants by its discretion, going so far as to prohibit indigent defendants from appearing unrepresented. An indigent capital defendant “may not represent himself or herself in a capital postconviction proceeding in state court,” and is therefore reliant on the State to appoint postconviction counsel as required by Florida law. The only basis for a defendant who has been sentenced to death to seek to discharge postconviction counsel in state court must be pursuant to statute due to an actual conflict of interest.” Fla. R. Crim. P. 3.851(b)(6).¹⁷

In addition to the rules mandating appointment of postconviction counsel, Florida’s statutory language inoculates the continuing right to postconviction counsel with the right to quality representation. Under Rule 3.112(a), counsel in death penalty cases should, at minimum, “be required to perform at the level of an attorney reasonably skilled in the specialized practice of capital representation, zealously committed to the capital case, who has had adequate time and resources for

¹⁷ *See also In re Amends. to Fla. Rule of Crim. Proc. 3.851*, 351 So. 3d 574, 574 (Fla. 2022) (permitting the waiver of postconviction proceedings but prohibiting the waiver of postconviction counsel); Fla. R. Crim. P. 3.851(i)(11) (affirmatively appointing postconviction counsel to defendants who had previously waived counsel).

preparation.” Fla. R. Crim. P. Rule 3.112(a). These minimum standards exist as a mandatory complement to the right to continuing postconviction representation. As part of the state mechanism to ensure capital defendants have counsel, “the court shall monitor the performance of assigned counsel to ensure that the capital defendant is receiving quality representation.” Fla. Stat. § 27.711(12). Ultimately, the State bears the obligation of ensuring the existence and quality of capital postconviction representation. *See id.*

Here, this Court should grant certiorari to consider whether Mr. Jennings was entitled to a process with counsel who could adequately represent him at the most critical proceeding of his life. At the very least, Mr. Jennings was entitled to a stay for counsel to have a meaningful opportunity to investigate and prepare claims for his under-warrant litigation. Without certiorari review Florida’s death penalty scheme provides nothing more than the veneer of counsel and violated the Fourteenth Amendment.

III. Florida’s regression from the constitutional safeguards enumerated in *Gregg v. Georgia* violates the Eighth and Fourteenth Amendments by abandoning the evolving standards of decency and reliability necessary for the fair and consistent imposition of capital punishment.

For decades after *Furman*,¹⁸ Florida justified its death penalty on the ground that its statutory safeguards prevented the very arbitrariness this Court condemned. That is no longer true. Through recent decision, Florida’s system has devolved; it combines non-unanimous jury recommendations, the elimination of proportionality

¹⁸ *Furman v. Georgia*, 408 U.S. 238 (1972).

review, and an opaque warrant process, while adding new crimes and aggravators,¹⁹ making it easier than ever for a criminal defendant to be sentenced to death. Florida's administration of the death penalty has now departed from the constitutional framework approved in *Gregg v. Georgia*, 428 U.S. 153 (1976), and reaffirmed through *Furman*, 408 U.S. 238 (1972).

The Eighth and Fourteenth Amendments demand that the ultimate punishment be imposed only through procedures that ensure fairness, reliability, transparency, and provide meaningful safeguards against arbitrary sentencing. *Furman*, 408 U.S. 238 (1972). Reliability presupposes structural integrity; when the basic features of a state's capital process permit error, indifference, or political manipulation, the Eighth Amendment is violated. *Gregg*, 428 U.S. 153, 189 (1976). Florida's current statutory regime strips away these core protections and renders every resulting death sentence constitutionally infirm.

This Court has long recognized that the death penalty is unique in its finality and therefore must be administered under heightened standards of reliability. *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). Florida's capital system no

¹⁹ In 1972, when Florida's post-Furman death penalty law was enacted, there were eight statutory aggravating factors. *State v. Dixon*, 283 So.2d 1, 5-6 (Fla. 1973). That number has since more than doubled to eighteen. §921.141 (6)(a through r). It is not only the sheer number of aggravators, but also their overbreadth which undermines the safeguards required by *Furman* against arbitrary imposition of the death penalty. One aggravator does not limit the death penalty to a small sub-class; on the contrary, nearly everyone charged with first-degree murder, or any of the other offenses eligible for the death penalty in Florida, has at least one. As many of the statutory aggravators will be indisputable, a capital defendant's death-eligibility has become a foregone conclusion.

longer meets that standard. The current capital system in Florida operates without unanimous jury recommendations and declines to conduct proportionality review. Florida permits the Governor sole discretion to issue an execution warrant and deny clemency in an otherwise obsolete, secretive clemency system. This unchecked executive control has permitted arbitrary warrant selection, most recently targeting capital defendants that have been denied continuous counsel. Together, these defects have produced a system that is arbitrary in practice and unconstitutional in design.

Florida's capital system has devolved into precisely the kind of "freakish" and "wanton" system condemned in *Furman*, 408 U.S. at 295. When viewed through the lens of evolving standards of decency, Florida's process no longer comports with contemporary notions of justice or the Constitution's promise that death sentences be imposed "fairly and with reasonable consistency." *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982).

Following *Hurst v. Florida*, 577 U.S. 92 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016),²⁰ Florida briefly required jury unanimity for the recommendation of death. In 2023, however, the Florida Legislature repealed that safeguard, now allowing death sentences to be imposed with jury votes of eight to four. § 921.141(2)(c), Fla. Stat. (2023).²¹ By authorizing death despite the dissent of up to

²⁰*Hurst* required that each fact necessary to impose a sentence of death be found by a jury and be found unanimously. *Id.*

²¹ It must be noted that the only other state jurisdiction that allows a death sentence to be imposed based on a non-unanimous jury vote is Alabama, which allows death sentences to be imposed with jury votes of ten to two. *See*, Ala. Code § 13A-5-46. Even still, Alabama requires a significantly higher percentage of the jury to agree on a death verdict than what is deemed sufficient under Florida's new scheme.

four jurors, Florida reverted to the very randomness that *Furman*²² held unconstitutional. When a divided jury recommends death, the community’s moral judgment is fractured, not unified, and the resulting sentence lacks the reliability the Eighth Amendment demands. The predictable consequence of this regression is greater error. Florida already leads the nation in death row exonerations, and nearly all those wrongful convictions arose from non-unanimous jury recommendations.²³ Reinstating the same procedure responsible for those miscarriages of justice cannot satisfy the Eighth Amendment’s requirement that the death penalty be imposed with heightened reliability. *Woodson*, 428 U.S. at 305.

Equally destabilizing is the FSC’s 2020 decision in *Lawrence v. State*,²⁴ which abolished proportionality review. For nearly half a century, proportionality analysis served as a critical appellate safeguard ensuring that Florida’s death sentences were reserved for the most aggravated and least mitigated murders. *Id.* at 554 (Labarga, J., dissenting). As Justice Labarga cautioned, abolishing proportionality review was the “most consequential step yet in dismantling the reasonable safeguards contained within Florida’s death penalty jurisprudence,” “eliminate[d] a fundamental component of this Court’s mandatory review,” and “threatens to render this Court’s initial review of death sentences an exercise in discretion.” *Lawrence*, 308 So. 3d at 552-53 (Labarga, J., dissenting). By eliminating proportionality review, the FSC

²² 408 U.S. 238 (1972).

²³ Since 1989, there have been 30 death row exonerations. See, Bedard, Hayley, *Florida’s Executions: Troubling Patterns of Secrecy and Inadequate Legal Representation*, Death Penalty Information Center, Aug. 7 2025, <https://deathpenaltyinfo.org/news/floridas-executions-troubling-patterns-of-secrecy-and-inadequate-legal-representation>.

²⁴ 308 So. 3d 544 (Fla. 2020).

removed the only statewide mechanism for ensuring consistency across cases and counties.

No other jurisdiction in the nation presently combines these deficiencies. Even Alabama, the only other state jurisdiction that allows a death sentence to be imposed based on a non-unanimous jury vote, has retained the safeguard of proportionality review on appeal. *See* Ala. Code §13A-5-53(b)(3); *Petric v. State*, 157 So.3d 176, 250 (Ala.Crim.App. 2013). Florida now stands alone in imposing death without either unanimous jury findings or mandatory proportionality review. Such isolation demonstrates that Florida’s capital scheme no longer reflects the “evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 101 (1958). This Court has repeatedly looked to state consensus in determining whether a punishment or procedure is cruel and unusual. *Atkins v. Virginia*, 536 U.S. 304 (2002); *Roper v. Simmons*, 543 U.S. 551 (2005). Florida’s regression to practices most other jurisdictions have rejected underscores the constitutional infirmity of its current law.

Furthermore, *Lawrence* eradicated proportionality review based on the misinterpretation of *Pulley v. Harris*.²⁵ In 2002, the Florida Constitution was amended to provide that Florida’s prohibition against cruel and unusual punishment shall be construed in conformity with decisions of this Court’s interpretations of the Eighth Amendment’s prohibition against cruel and unusual punishment. Art. 1, §17, Fla. Const.; *see Lightbourne v. McCollum*, 969 So.2d 326, 334-35 (2007). Under

²⁵ *Id.* at 550; *Pulley v. Harris*, 465 U.S. 37 (1984).

similar logic, the FSC concluded in *Lawrence* that they could not “ignore [their] constitutional obligation to conform [their] precedent respecting the Florida Constitution’s prohibition against cruel and unusual punishment to [this] Court’s Eighth Amendment precedent by requiring a comparative proportionality review that [this Court] has held the Eighth Amendment does not.” *Lawrence*, 308 So. 3d at 550. As this Court is aware, *Pulley* did not categorically hold that proportionality review is *never* constitutionally required. *Pulley*, 465 U.S. at 51-54. Rather, *Pulley* evaluated California’s capital punishment statute and acknowledged that the Eighth Amendment does not *require* proportionality review. *Id.*; See also, *State v. Welcome*, 458 So.2d 1235, 1249 (La. 1984)(emphasis added); *Walker v. Georgia*, 555 U.S. 979 (2008). The *Pulley* court recognized that, although never constitutionally required, proportionality review should depend on the other procedural safeguards utilized to check for arbitrariness. *Id.*

Florida’s capital sentencing system no longer narrows death eligibility, no longer requires jury consensus, and no longer provides appellate proportionality review. Florida’s scheme therefore fails the constitutional requirement that the death penalty be reserved for the “worst of the worst” through a process that is measured, consistent, and reliable. This extreme outlier status demonstrates the degree to which Florida has abandoned the constitutional safeguards that justified approval of modern capital punishment in *Gregg* and the same safeguards that *Pulley* encouraged upon the removal of proportionality review.

In addition, “the heart of executive clemency” is to allow the executive “to

consider a wide range of factors not comprehended by earlier judicial proceedings and sentencing determinations.” *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 280–81 (1998). Clemency is intended as a “fail-safe in our criminal justice system” that carries minimal procedural safeguards under the Fourteenth Amendment. *Id.*; *Harbison v. Bell*, 556 U.S. 180, 192 (2009). In Florida, however, clemency has become illusory and defendants have been left without the opportunity to be heard.

Before any state or federal postconviction review commenced in Mr. Jennings’ case, Mr. Jennings’ clemency application had already been denied. In the four decades between his conviction and the pending death warrant, no supplemental investigation or updated presentation has ever been conducted. Because Article IV, § 8(a) of the Florida Constitution and § 14.28, Fla. Stat., render all clemency records confidential and exempt from disclosure, neither Mr. Jennings nor the courts can determine whether the Governor and Cabinet have reviewed his case since 1989.

This lack of transparency eliminates any assurance that clemency decisions are informed or consistent. No Florida governor has granted clemency to a death-sentenced prisoner since 1983; Governor DeSantis “has never held a clemency hearing for a death-sentenced prisoner.”²⁶ Florida’s practice transforms clemency from a constitutional safeguard into a secret administrative ritual. Florida’s refusal to revisit or disclose clemency proceedings for nearly four decades violates that principle. Denying Mr. Jennings any opportunity to supplement or renew his clemency petition for thirty-six years is tantamount to denying access altogether.

²⁶ Bedard, *Florida’s Executions*, *supra* note 6.

This faulty practice cannot coexist with the Eighth Amendment's demand for fairness and evolving standards of decency. *Trop*, 356 U.S. at 101.

The clandestine and haphazard administration of Florida's clemency review also magnifies the unreliability of its warrant system. While other warrant-eligible prisoners have had recent clemency reviews, Mr. Jennings now faces execution based on information last considered when many current diagnostic tools, mitigation standards, and procedural protections did not exist. Further, counsel has no way of determining whether any of the information elicited decades ago was detrimental, favorable, or even accurate. Executing Mr. Jennings under these conditions constitutes cruel and unusual punishment under the Eighth Amendment and violates the Fourteenth Amendment's guarantee of due process.

The Eighth and Fourteenth Amendments forbid a state from administering capital punishment in a manner that is arbitrary and capricious. *Furman*, 408 U.S. 238 (1972). Yet Florida's warrant process operates entirely in the shadows. The wall behind which the warrant decision takes place makes it impossible for counsel to protect the client's constitutional rights. The executive branch in Florida has been bestowed greater power than any other in this Nation. The Governor of Florida is one of only two governors permitted sole discretion to issue an execution warrant, the other being the Pennsylvania Governor, who does not utilize this discretion.²⁷ In Florida, the Governor alone determines who among more than two hundred warrant-eligible prisoners will be executed and when. This is done without statutory criteria,

²⁷ Pam Quanrud, *DPI Analysis: Death Warrants Under a Spotlight*, Death Penalty Information Center, September 08, 2025, <https://deathpenaltyinfo.org/dpi-analysis-death-warrants-under-a-spotlight>.

without notice to the prisoner or counsel, and without opportunity for judicial review. On top of this unfettered discretion to issue an execution warrant, the Florida Governor has the sole discretion to deny clemency.²⁸

The selection of Mr. Jennings, an unrepresented individual whose clemency review occurred thirty-six years ago, illustrates how unchecked discretion produces outcomes indistinguishable from chance. The Constitution does not permit the most extreme punishment to hinge on unreviewable executive preference. *Godfrey v. Georgia*, 446 U.S. 420, 428 (1980). Full and unencumbered discretion to issue a death warrant, coupled with the opacity of the clemency and warrant processes violates the separation of powers and begs for this Court's intervention.

This opacity interacts with the other defects in Florida's capital system to magnify arbitrariness. A fragmented jury vote, the absence of appellate proportionality review, the denial of continuous counsel, and a defunct clemency mechanism all converge at the warrant stage. The result is a process that bears no resemblance to the consistent and reliable framework approved in *Gregg*. 428 U.S. 153 (1976). The unchecked nature of Florida's warrant process, combined with a thirty-six-year silence in clemency, and intermittent representation, results in precisely the wanton and freakish imposition of death condemned in *Furman*. 408 U.S. at 310 (Stewart, J., concurring).

The cumulative effect of Florida's constitutionally deficient statutory framework and procedural failures demands relief. Each defect described above

²⁸ Per the Rules of Executive Clemency, the Governor has unfettered discretion to deny clemency.

independently undermines the reliability of Florida's capital punishment system. Together, the non-unanimous jury statute, the abolition of proportionality review, the failure to provide continuous and competent counsel, the stagnation of clemency, and the secrecy of the warrant process create a structure incapable of ensuring that death is reserved for the most aggravated and least mitigated offenders. The Eighth Amendment's demand for heightened reliability and the Fourteenth Amendment's guarantee of due process are not satisfied by a patchwork of discretionary practices that vary from case to case. *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982).

Florida's capital framework now mirrors the unconstitutional conditions that led this Court to strike down the death penalty in *Furman*: excessive discretion, inconsistent application, and a lack of meaningful procedural safeguards.²⁹ By combining non-unanimous jury verdicts, unreviewable warrant selection, and outdated clemency practices, Florida has restored the very arbitrariness that *Furman* and *Gregg***Error! Bookmark not defined.** sought to eliminate. Such a system cannot lawfully sustain the execution of Mr. Jennings or anyone else sentenced under its provisions. The Eighth and Fourteenth Amendments demand more than procedural formality; they require a process that reliably distinguishes those most deserving of death from those for whom mercy or mitigation is warranted. The State cannot carry out a death sentence under a system that is facially arbitrary and out of step with every other jurisdiction in the country. It has become a system so untethered from the rules of law that it cannot stand; this Court should grant the writ.

²⁹ 408 U.S. 238 (1972)

CONCLUSION

The petition for writ of certiorari should be granted.

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