No. 25-6357

IN THE SUPREME COURT OF THE UNITED STATES

FRANK ATHEN WALLS,

***Petitioner*,**

vs.

STATE OF FLORIDA,

Respondent.

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

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REPLY TO BRIEF IN OPPOSITION

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, DECEMBER 18, 2025, AT 6:00 P.M.

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REPLY TO BRIEF IN OPPOSITION

1. THIS COURT SHOULD REACH A MERITS DETERMINATION ON MR. WALLS' INTELLECTUAL DISABILITY.

Atkins v. Virginia, 536 U.S. 304 (2002), established an absolute prohibition against the execution of those with "mental retardation"[1] due to the Court's view that the execution of those with such intellectual disabilities violated the Eighth Amendment's ban on "cruel and unusual punishment." While the *Atkins* Court left it to the States to find their own way to implement this categorical ban, this Court was silent as to any bars, procedural or otherwise when establishing this absolute bar to the death penalty. *Id.* The Florida Supreme Court has never reached a merits determination on Mr. Walls' intellectual disability and has, instead, used illegal barriers to keep them from reaching such a determination. Furthermore, based on the State of Florida's arguments in their Brief in Opposition[2], Mr. Walls requests that this Court stay the execution of Mr. Walls until *Hamm v. Smith*, SC 24-872 is decided.

A. *Hall* applied the *Atkins* definition of Intellectual Disability and has never suggested that the prohibition on executing an intellectually disabled person be subject to any sort of waiver or procedural bar.

Following *Atkins*, this Court rendered the *Hall*[3] decision. The *Hall* Court restated "[t]he Eighth Amendment prohibits certain punishment as a categorical matter…[a]nd, as relevant for this case, persons with intellectual disability may not

[1] The term "mental retardation" is outdated and is not referred to as "intellectual disability."
[2] Those arguments are addressed below.
[3] *Hall v. Florida*, 572 U.S. 701 (2014).

be executed." *Hall,* 572 U.S. at 708. This Court has never suggested that the Eighth Amendment prohibition on executing an intellectually disabled person is subject to any sort of waiver or procedural bar or default.

The question in *Hall* was unambiguously stated in the opinion: "[t]he questions this case presents is how intellectual disability must be defined in order to implement…this holding of *Atkins*." *Hall,* 572 U.S. at 709." If the States were to have complete autonomy to define intellectual disability as they wished, *The Court's decision in Atkins could become a nullity, and the Eighth Amendment's protection of human dignity would not become a reality*. *Id.* at 720-21 (emphasis added). It has been acknowledged repeatedly that *Atkins* "did not give States unfettered discretion to *define the full scope of constitutional protection.*" *Id.* at 719 (emphasis added). In Mr. Walls' case, the fears expressed by the *Atkins* and *Hall* courts will become certain reality in mere days. The State of Florida is set to execute Mr. Walls, who is intellectually disabled.

Despite unequivocal language from this Court that the executions of intellectually disabled persons are categorically exempt via the Eighth Amendment, the State of Florida is set to execute Mr. Walls, who has an intellectual disability. There is no indication in the United States Supreme Court jurisprudence that Mr. Walls should be subject to any type of procedural bar or waiver. No state-law waiver can stand in the way of this important constitutional function.

B. Mr. Walls has an Intellectual Disability.

Mr. Walls has demonstrated by clear and convincing evidence that he has significantly subaverage general intellectual function. Mr. Walls has two scores on individualized, standardized intelligence testing instruments – the Weschler Adult Test Revised ("WAIS-R") and the Weschler Adult Intelligence Test – Third Edition ("WAIS-III") – that fall in the accepted range of intellectual disability. T350-351. The Full Scale IQ ("FSIQ") scores that Mr. Walls obtained on these tests – 72 and 74, respectively – meet the legal definition of significantly subaverage general intellectual functioning. *Id.*

There is evidence that these impairments were present from birth, but after Mr. Walls contracted meningitis in his youth, his conceptual skills diminished even further. T639[4]. Mr. Walls was referred for "possible mental deficient or possible minimal brain damage" at age 5. T641-42. R4617. Mr. Walls was "delayed in learning to walk at one and a half years, that he only began to say words at two and a half years, and that he was late to speak in complete sentences." T641-642. These are some of Mr. Walls' earliest deficits noted.

When Mr. Walls demonstrated significant delays in school. He was sent for an evaluation as part of an Individualized Education Plan ("IEP"). T644. At this time, Mr. Walls was functioning at a full grade level lower in reading, spelling, and math. After Mr. Walls suffered from his first bout of meningitis in 1979, he was tested at

4 References to the record on appeal for Mr. Walls' ID successive are designated as "R.#" for court filings and "T.# for transcripts of proceedings. References to the record on appeal for the death warrant litigation will be designated as "W.#."

age 12. At this time, Mr. Walls' "spelling was at the third-grade level, his arithmetic was at the fourth-grade level, and his reading was at the fifth-grade level, so was *still* at least a full school year behind in each area." T645 (emphasis added).

Hall recognizes that intellectual disability "is a condition, not a number." *Hall*, 572 U.S. at 723 (2014). This Court's ruling in *Hall* requires courts to consider all three prongs on intellectual disability in tandem and that no single factor should be dispositive of the outcome. *See Oats v. State*, 181 So. 3d 457, 459 (Fla. 2015). Thus, an intellectual disability claim may not by legally insufficient or refuted by the record if the defendant's IQ scores are higher than 70. The State's argument that Mr. Walls' claim of intellectual disability being refuted by the record must fail.

Further, it must be emphasized that that any colorable *Atkins* claim must be considered before an execution is carried out because the execution of an intellectually disabled is constitutionally prohibited. *See Lard v. State*, 595 S.W.3d 355, 357 (Ark. 2020) (explaining that the issue of "whether Lard can be executed due to an intellectual disability" ripens only once an execution date has been set). The State in this matter asserts that Mr. Walls is barred from presenting his claim, however, that flies in the face of this Court's treatment of *Atkins* claims. BIO at 6-10. This Court just recently heard arguments for *Hamm v. Smith*, SC 24-872, a case out of the state of Alabama assessing an *Atkins* claim. It is clear that the State and the Florida Supreme Court are being overly rigid in refusing the retroactive application

of *Atkins* and *Hall*, at a time when this Court is entertaining and addressing an *Atkins* claim of similar vintage.

While there is ample evidence of Mr. Walls' intellectual disability, the Florida Supreme Court has never reviewed the evidence to Mr. Walls' intellectual disability to make a merits determination on his diagnosis. As a result of that Court ignoring this evidence and shirking their responsibility in favor of imaginary procedural bars, Mr. Walls will be executed.

C. Averaging IQ Scores is Unsupported By the Scientific Community

The State in its Brief in Opposition puts forward the contention that IQ scores should be averaged. See BIO at 16. However, this files against the scientific community's treatment of IQ scores and the State below in the proceedings admitted that "it is not standard practice among intellectual disability experts to average IQ scores." T265. IQ test scores are approximations of conceptual functioning, but may be insufficient to assess reasoning in real life situations. DSM-5, 5th ed. (APA, 2020), p.37. IQ tests measure different aspects of intelligence and thus "represent fundamentally different latent intelligence factors." Katarzyna Uzieblo, Jan Winter, Johan Vanderfaeillie, Gina Rossi & Walter Magez, *Intelligence Diagnosing of Intellectual Disabilities in Offenders: Food for Thought*, 30 Behav. Sci. Law. 28, 34 (2012). It is both common and expected for IQ test scores to vary across different test administrations. In various studies, researchers found variations in IQ test scores

between different tests.[5] IQ test scores also do not statistically behave like other measurements. Unlike height or weight, IQ test scores are not susceptible to easy manipulation with simple arithmetic. As complex psychometric calculations, clinicians must apply scientifically accepted methods to aggregate scores. Brief for American Psychological Association, et al. as Amici Curiae Supporting Respondents at 5, Hamm v. Smith (No. 24-872).

Clinicians consider multiple IQ test scores when diagnosing intellectual disability because multiple test scores offer nuance and allow for greater accuracy in the assessment of the intellectual functioning diagnostic criterion. "The obtained number on any IQ test is considered an estimate of IQ, but utilizing the standard error of measurement we construct that confidence interval around that obtained number and then we're able to say we're 95 percent confident that his true IQ falls somewhere in that range." T1212. The AAIDD acknowledges that "Not all scores obtained on intelligence tests given to the same person will be identical." The AAIDD Ad Hoc Committee on Terminology and Classification, *Intellectual disability: Definition, classification, and systems of supports* (11th ed. of AAIDD definition manual), p. 38. The analysis of multiple test scores is a complicated endeavor that must be consistent with accepted scientific practice and grounded in the exercise of clinical judgment.

5 See Randy G. Floyd, M.H. Clark & William R. Shadish, *The Exchangeability of IQs: Implications for Professional Psychology, in 39 Professional Psychology: Research and Practice* 414, 414-23 (2008).

Different IQ tests measure different domains of intelligence in different ways, these additional data provide nuance and depth that one score lacks, providing a more complete and holistic picture of an individual's intellectual capacity. Multiple IQ test scores therefore permit professionals to make diagnostic determinations with more accuracy and confidence, leading to more accurate diagnoses. There are scientifically accepted methods to aggregate multiple IQ test scores. There are also methods that scientists agree are unsound. There is likewise consensus that the aggregation of multiple scores is not rote or formulaic; it requires professional and clinical judgment. And critically, all agree IQ test scores only have value as part of a holistic analysis that considers adaptive functioning and other factors. Averaging scores is an invalid approach. Averaging IQ test scores produces statistical error that renders the average "incorrect and biased." Floyd et al., *Theories and Measurement of Intelligence*, supra, at 414-15.

As explained by Dr. Cunningham at Mr. Walls hearing regarding his intellectual disability, "an IQ score on a full-scale, individually administered IQ test that's approximately two standard deviations below the mean and approximately is defined as considering the standard error of measurement in an associated 95 percent confidence interval for the specific instrument that's used – that confidence interval may vary somewhat depending on the IQ test -- and also that, that involves correction for norm obsolescence. So it's an identification of an IQ score in light of relevant psychometric factors that influence the interpretation and understanding of that IQ

score." T334. In other words, the score is produced by comparing and ranking an individual's performance against a normative sample that represents the entire population's performance on the same test. Averaging such comparative rankings always yields statistical error, both in the psychometric context and elsewhere.

What the State of Florida is advocating in this matter is both nonsensical and completely contrary to science. Both the AAIDD and the DSM5 "is deemphasizing the role of an IQ score to more broadly contemplate assessing intellectual functioning clinically and through other individualized, standardized testing in addition to IQ scores." T336. It is acknowledged and the "DSM-5 also identifies that there may be instances where the person's adaptive deficits are consistent with the presentation of somebody with intellectual disability even though the IQ score is higher than might otherwise be considered as diagnostic." T339. Further, the State's position ignores that for the purpose of an intellectual disability assessment, an IQ test score is "a score that reflects your position relative to the rest of the population." T345. "Where are you relative to the intellectual ability of the rest of the population, and that's what an IQ score is." Id. An IQ score is just one piece of the assessment.

Finally, the State is continuing to advocate for a position that intellectual disability is nothing more than an easily manipulated number, completely in contradiction to what this Court has stated in its case law regarding intellectual disability: that intellectual disability is more than just an IQ score. *See e.g., Moore v. Texas,* 137 S.Ct. 1039, 1051 (2017).

D. *Hall* Applies to All *Atkins* Claims, Including *Walls*.

Hall qualified and expanded the class of individuals who may not be executed. This ruling was sufficient for *Hall* retroactivity under state law, id. (*citing Witt v. State*, 387 So.2d 922 (Fla. 1980)) and is required by the federal retroactivity floor set by *Teague v. Lane*, 489 U.S. 288 (1989). Hall is retroactive because it qualified and expanded the class of persons exempt from execution. *Atkins*, as previously understood in this Court, only covered a sub-group among the intellectually disabled. To qualify for protection, a person must be "so impaired as to fall within the range of mentally retarded offenders about whom there is a national consensus." *Atkins*, 536 U.S. at 317 (emphasis added). This key sentence meant that less-impaired persons might not be protected if their impairment falls short of the "national consensus," even if they are also in the "range of mentally retarded offenders." *Id*. The Courts in Florida, by denying Mr. Walls claims on ever shifting retroactivity grounds, have denied him a full merits review of his ID claims and risks the irreparable harm of an illegal execution.

In *Hall*, the Supreme Court revisited the consensus and refined its definition of who is "so impaired … within the range of mentally retarded offenders," 572 U.S. at 719, to include a broader set of IQ scores. As required by Eighth Amendment precedent, the Court surveyed "the legislative policies of various States, and the holdings of state courts" for the existence of "consensus" as to IQ score minimums. *Id*. at 709. The Court explained that national surveying was doctrinally necessary

because "[t]his calculation provides 'objective indicia of society's standards in the context of the Eighth Amendment." *Id*. at 714 (quoting *Roper v. Simmons*, 543 U.S. 551, 563 (2005)). This Court concluded that both the "aggregate number" of state laws, and the "[c]onsistency of the direction of change" informed its "determination of consensus" that imposing a cutoff at 70 was cruel and unusual. *Id*. at 717. This Court thus concluded that "our society does not regard this strict cutoff as proper or humane." *Id*. at 718. Applying its "independent judgment," *id*. at 721-23, this Court affirmed the consensus and held Florida's cutoff unconstitutional.

The above proves that *Hall* was a substantive decision, i.e., a decision as to the scope of the class of defendants who are not death-eligible due to "society's standards" of decency. *See id*. at 714*; Jones v. Mississippi*, 141 S. Ct. 1307, 1315 (2021) (noting this method as being reserved for establishing substantive Eighth Amendment eligibility criteria) (*citing Graham*, 560 U.S. at 61, and *Roper*, 543 U.S. at 563). This method is not employed when deciding procedural rules, even under the Eighth Amendment. The *Hall* rule was necessarily substantive because it was derived from the doctrinal method used only for deciding what punishments offend "'objective indicia of society's standards.'" *Id*. at 714 (quoting *Roper*, 543 U.S. at 563).

If there is any doubt about the substantive nature of the *Hall* rule, this Court has itself, implicitly, suggested that it warrants retroactive application. Mr. Hall's sentence was already long final when the Supreme Court reviewed it following a

successive postconviction proceeding[6]. This means that before the Court could grant him relief it had to be sure, "as a threshold matter," that doing so would not create a new non-retroactive rule. *See Penry v. Lynaugh*, 492 U.S. 302, 313 (1989).

But there is more than just granting relief in *Hall*. *Moore v. Texas*, 137 S. Ct. 1039 (2017), confirmed that the *Hall* is retroactive. The defendant in *Moore* – like Mr. Walls and Mr. Hall – was on collateral review with a sentence final long before *Hall*. The Supreme Court reversed Moore's case on collateral review as contrary to *Hall*. *Id*. at 1049 (concluding that the Texas court's "conclusion that Moore's IQ scores established that he is not intellectually disabled is irreconcilable with *Hall*"). Additionally, *Moore* cited yet another case where the Supreme Court applied *Hall* to an *Atkins* claim on collateral review. *Id*. at 1049 (noting that in *Brumfield v. Cain*, 576 U.S. 305, 316 (2015), the Court "rel[ied] on *Hall* to find unreasonable a state court's conclusion that a score of 75 precluded an intellectual-disability finding."). For retroactivity purposes, there is no difference between this case and *Hall, Moore*, and *Brumfield* – they are all cases with convictions that were final well before *Hall*. The *Hall* rule must apply to Mr. Walls too. *See Collins v. Youngblood*, 497 U.S. 37, 40–41 (1990) ("[O]nce a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situated.").

6 It is of note that the State, while arguing Mr. Walls should not receive the benefit of *Hall* because his "death sentence was final nearly two decades before *Hall* was decided," is concurrently advocating a pending case before this Court apply. BIO at 20.

2. THE STATE MISUNDERSTANDS MR. WALLS'S CHALLENGE TO FLORIDA'S CONFORMITY CLAUSE.

The State misapprehends Mr. Walls's basis for arguing that the conformity clause is unconstitutional, arguing that because the conformity clause mandates adherence to this Court's Eighth Amendment caselaw, the conformity clause therefore cannot be unconstitutional. Brief in Opposition ("BIO") at 28. But this argument relies on a surface-level reading of the conformity clause's text and ignores how the conformity clause actually functions, preventing Florida courts from adhering to this Court's Eighth Amendment caselaw in practice. This Court has made clear, time and time again, that the Eighth Amendment, unique from any other constitutional amendment, "is not static…[and] draw[s] its meaning" through societal reflections—particularly state practice—of a maturing society. *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Active state participation in regularly examining evolving standards of decency thus ensures that the Eighth Amendment is not "fastened to the obsolete" but instead reflects current moral and legal standards. *Weems v. United States*, 217 U.S. 349, 378 (1910).

Although this Court's Eighth Amendment jurisprudence does not require that state courts expand the scope of Eighth Amendment protections, it does require that state courts engage with Eighth Amendment challenges and consider the evolving standards of decency in ways that this Court, by design, cannot do. Florida courts, citing the conformity clause, refuse to even consider the merits of Eighth Amendment challenges that, under this Court's precedent, need state courts to analyze society's

evolving standards of decency. Thus, Florida's conformity clause, which prevents its courts from conducting exactly that kind of analysis, contradicts this Court's Eighth Amendment jurisprudence because it requires Florida courts to abdicate their duty to measure evolving standards of decency. Whether Florida courts ultimately agree with Mr. Walls that *Roper* forbids his execution is, for the purposes of this petition, irrelevant; the issue is that the conformity clause prevents them from even considering the issue, as this Court's caselaw requires them to do.

As the State acknowledges, the conformity clause ensures that Florida courts will never consider evolving standards of decency, despite this Court's command otherwise, and this Court will instead become the court of first impression for any Florida petitioner raising an Eighth Amendment challenge to their sentence. BIO at 28. This is both unsustainable as a practical matter and contradictory to this Court's Eighth Amendment jurisprudence; state courts have jurisdiction over and proximity to the legal conflicts arising from everyday life and, as this Court's jurisprudence contemplates, are the on-the-ground arbiters of what constitutes society's evolving standards. Despite purporting to bring Florida in line with this Court's Eighth Amendment jurisprudence, the conformity clause prohibits Florida courts from conducting the necessary review underlying that jurisprudence.[7]

7 The State cites *James v. Valtierra*, 402 U.S. 137, 140 (1971), for the proposition that Florida's conformity clause does not conflict with this Court's Supremacy Clause jurisprudence. In *James*, this Court considered whether a California constitution provision imposing a "referendum requirement" on public housing decisions made by California local governments violated the Supremacy Clause because, as the petitioners argued, the federal government's Housing Act of 1937 forbid imposing

The State argues that because there is no conflict between the Florida Supreme Court's opinion below and other appellate courts, review is inappropriate in this case. *See* BIO at 29-30. But the State fails to recognize that this actually weighs in favor of granting review. Florida's conformity clause is the only wholesale Eighth Amendment conformity clause in the nation. For this reason, the State is also wrong in asserting that "[t]he fundamental premise of this question, which is that conformity clauses prevent the development of the law, is flawed." BIO at 28. Indeed, if every state had a conformity clause, this Court would be the court of first impression in every single Eighth Amendment or individualized sentencing claim. Florida's outlier status as the only jurisdiction that does not follow this Court's Eighth Amendment jurisprudence demonstrates a need for this Court's intervention, not a reason to uphold its unconstitutional practices. And, tellingly, the State fails entirely to address the fact that Florida's legislative and executive branches have routinely repudiated the conformity clause throughout this calendar year.

Finally, that this Court's denied certiorari in *Barwick v. Florida*, 143 S. Ct. 2452 (2023), is irrelevant. This Court has "rigorously insisted that such a denial carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review." *Maryland v. Baltimore Radio Show, Inc.*, 338 U.S. 912, 919 (1950). That the conformity clause concerns first raised in *Barwick* have

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referendum requirements in exchange for giving states federal aid money. *See* 402 U.S. 139-30. *James* is irrelevant to Mr. Walls's challenge to Florida's conformity clause.

persisted—and that two branches of Florida's government have since abandoned the conformity clause—supports this Court's review at the present time.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari. Further, based on the State of Florida's arguments in their Brief in Opposition, Mr. Walls requests that this Court stay the execution of Mr. Walls until *Hamm v. Smith*, SC 24-872 is decided.

Respectfully submitted,

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