***** CAPITAL CASE *****

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BILLY LEON KEARSE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

DEATH WARRANT SIGNED
EXECUTION SET MARCH 3, 2026, AT 6:00 P.M.

SUZANNE KEFFER*
Acting CCRC-South
Florida Bar No. 150177
keffers@ccsr.state.fl.us
**Counsel of Record*

COURTNEY M. HAMMER
Staff Attorney
Florida Bar No. 1011328
hammerc@ccsr.state.fl.us

PAUL E. KALIL
Assistant CCRC-South
Florida Bar No. 174114
kalilp@ccsr.state.fl.us

Capital Collateral Regional
Counsel - South
110 SE 6th Street, Suite 701
Fort Lauderdale, Florida 33301
Tel. (954) 713-1284
Fax (954) 713-1299

February 28, 2026

CAPITAL CASE

QUESTIONS PRESENTED

Over decades, this Court has had occasion to issue sharp rebukes to the Florida Supreme Court in a number of areas, in particular regarding the manner in which that court has conducted appellate review of constitutional issues in capital cases. For example, in *Parker v. Dugger*, 498 U.S. 308 (1991), this Court found that the Florida Supreme Court acted arbitrarily and capriciously in reviewing a capital sentence on direct appeal by "ignor[ing]" evidence in the record and affirming the sentence "based on a mischaracterization of the trial judge's findings." *Id*. at 320. In reversing the death sentence in *Parker*, this Court made the extraordinary observation that the Florida Supreme Court "did not conduct an independent review" and "[i]n fact, *there is a sense in which the court did not review Parker's sentence at all*." *Id*. at 321 (emphasis added).

The following year, in *Sochor v. Florida*, 504 U.S. 527 (1992), this Court again reproached the Florida Supreme Court for its "ambiguity" in addressing the harmlessness of Eighth Amendment error, observing that its analysis fell "far short of clarity," was strewn with mere "allusions by citation," and "cannot even arguably substitute for explicit language" that the court conducted an actual harmless error review. *Id*. at 539-40.

And more recently, this Court addressed the Florida Supreme Court's law imposing an absolute bar on intellectual disability claims for defendants whose IQ scores were below 70, finding it "unconstitutional" because, in part, "our society does not regard this strict cutoff as proper or humane." *Hall v. Florida*, 572 U.S. 701, 718-

23 (2014). The *Hall* Court further chastised the Florida Supreme Court's embrace of an unconstitutional law as "contravene[ing] our Nation's commitment to dignity and its duty to teach human decency as the mark of a civilized world." *Id*. at 724.

Undeterred by this Court's prior admonitions, the Florida Supreme Court's woeful attempts at appellate review have continued, evidenced by the decision in Mr. Kearse's case that is devoid of any attempt at engagement with Mr. Kearse's actual arguments much less any attempt at meaningful review of the serious constitutional issues he presented to it. Further, its imposition of judicially created procedural bars and timeliness concerns to preclude review of a potentially meritorious claim of intellectual disability must yield to the Eight Amendment's categorical bar on the execution of the intellectually disabled.

He thus presents the following questions for this Court's review:

1. Given that the Florida Supreme Court affords a right to appeal to a capital defendant, even in the posture of a successive attempt to seek postconviction relief, does the Due Process Clause of the Fourteenth Amendment require that appeal to be "'more than a 'meaningless ritual,'" *Evitts v. Lucey*, 469 U.S. 387, 394 (1985) (quoting *Douglas v. California*, 372 U.S. 353, 358 (1963)), or must it require the Florida Supreme Court to actually engage in meaningful appellate review of Mr. Kearse's constitutional claims and, if so, did the Florida Supreme Court's "review" of Mr. Kearse's claims violate Due Process?

2. Does the Florida Supreme Court's understanding of due diligence—unsupported by any case-specific context and steeped in hindsight—comport with this

Court's definition of diligence as explained in *Williams v. Taylor*, 529 U.S. 420 (2000), and *Holland v. Florida*, 560 U.S. 631 (2010)?

3. Can a state procedural bar, or a finding of a lack of diligence in bringing a claim of intellectual disability, override the Eighth Amendment prohibition against executing the intellectually disabled?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Billy Leon Kearse, a death-sentenced Florida inmate, was the Petitioner/Appellant in the Florida Supreme Court.

Respondent State of Florida was the Respondent/Appellee in the Florida Supreme Court.

LIST OF DIRECTLY RELATED PROCEEDINGS

In accordance with Supreme Court Rule 14.1(b)(iii), the following proceedings relate to the case at issue in this Petition:

Underlying Trial:

Nineteenth Judicial Circuit Court in and for St. Lucie County, Florida
State of Florida v. Billy Leon Kearse, Case No. 5611991CF000136A
Judgment Entered: November 8, 1991

Direct Appeal I:

Florida Supreme Court, Case No. SC1960-79037
Billy Leon Kearse v. State of Florida, 662 So. 2d 677 (Fla. 1995)
Judgment Entered: June 22, 1995
Rehearing Denied: November 9, 1995
Mandate Issued: December 11, 1995

Resentencing Proceeding:

Nineteenth Judicial Circuit Court in and for St. Lucie County, Florida
State of Florida v. Billy Leon Kearse, Case No. 5611991CF000136A
Judgment Entered: March 24, 1997

Direct Appeal II:

Florida Supreme Court, Case No. SC1960-90310
Billy Leon Kearse v. State of Florida, 770 So. 2d 1119 (Fla. 2000)
Judgment Entered: June 29, 2000
Rehearing Denied: August 24, 2000
Mandate Issued: September 25, 2000

Supreme Court of the United States, Case No. 00-8104
Billy Leon Kearse v. State of Florida, 532 U.S. 945 (2001)
Judgment Entered: March 26, 2001

Initial Postconviction Proceedings:

Nineteenth Judicial Circuit Court in and for St. Lucie County, Florida
State of Florida v. Billy Leon Kearse, Case No. 5611991CF000136A
Judgment Entered: November 26, 2001
Rehearing Denied: March 22, 2002

Florida Supreme Court, Case No. SC2002-0716
Billy Leon Kearse v. State of Florida, SC2002-0716 (Fla. June 13, 2002) (unreported)
Voluntarily Dismissed: June 13, 2002

Nineteenth Judicial Circuit Court in and for St. Lucie County, Florida
State of Florida v. Billy Leon Kearse, Case No. 5611991CF000136A
Judgment Entered: August 30, 2005

Florida Supreme Court, Case No. SC2005-1816
Billy Leon Kearse v. State of Florida, 969 So. 2d 976 (Fla. 2007)
Judgment Entered: August 30, 2007
Rehearing Denied: November 30, 2007
Mandate Issued: December 17, 2007

State Habeas Proceedings:

Florida Supreme Court, Case No. SC2006-0942
Billy Leon Kearse v. Sec'y, Fla. Dep't of Corr., 969 So. 2d 976 (Fla. 2007)
Judgment Entered: August 30, 2007
Rehearing Denied: November 30, 2007
Mandate Issued: December 17, 2007

First Successive Postconviction Proceedings:

Nineteenth Judicial Circuit Court in and for St. Lucie County, Florida
State of Florida v. Billy Leon Kearse, Case No. 5611991CF000136A
Judgment Entered: September 17, 2008

Florida Supreme Court, Case No. SC08-1986
Billy Leon Kearse v. State of Florida, 11 So. 3d 355 (Fla. 2009) (unpublished table decision)
Judgment Entered: May 22, 2009

Second Successive Postconviction Proceedings:

Nineteenth Judicial Circuit Court in and for St. Lucie County, Florida
State of Florida v. Billy Leon Kearse, Case No. 5611991CF000136A
Judgment Entered: January 7, 2011

Florida Supreme Court, Case No. SC11-244
Billy Leon Kearse v. State of Florida, 75 So. 3d 1244 (Fla. 2011)
Judgment Entered: October 21, 2011

Second State Habeas Proceedings:

Florida Supreme Court, Case No. SC12-1349
Billy Leon Kearse v. Sec'y, Fla. Dep't of Corr., 100 So. 3d 1148 (Fla. 2012)
Judgment Entered: August 30, 2012

Third Successive Postconviction Proceedings:

Nineteenth Judicial Circuit Court in and for St. Lucie County, Florida
State of Florida v. Billy Leon Kearse, Case No. 5611991CF000136A
Judgment Entered: July 16, 2016
Rehearing Denied: January 30, 2017

Florida Supreme Court, Case No. SC17-0346
Billy Leon Kearse v. State of Florida, SC17-0346 (Fla. May 9, 2017) (unreported)
Dismissed (Lack of Jurisdiction): May 9, 2017
Rehearing Denied: September 13, 2017

Fourth Successive Postconviction Proceedings:

Nineteenth Judicial Circuit Court in and for St. Lucie County, Florida
State of Florida v. Billy Leon Kearse, Case No. 5611991CF000136A
Judgment Entered: February 6, 2018
Rehearing Denied: February 22, 2018

Florida Supreme Court, Case No. SC18-458
Billy Leon Kearse v. State of Florida, 252 So. 3d 693 (Fla. 2018)
Judgment Entered: August 30, 2018
Mandate Issued: September 17, 2018

Supreme Court of the United States, Case No. 18-7643
Billy Leon Kearse v. State of Florida, 139 S. Ct. 1452 (2019)
Judgment Entered: April 1, 2019

Federal Habeas Proceedings:

United States District Court, Southern District of Florida,
Case No. 2:09-cv-14240-WJZ
Billy Leon Kearse v. Sec'y, Fla. Dep't of Corr., No. 2:09-cv-14240-WJZ (S.D. Fla. Nov. 23, 2010) (unreported)
Judgment Entered: November 23, 2010

Motion to Alter or Amend Denied: April 12, 2011

United States Court of Appeals, Eleventh Circuit, Case No. 11-12267
Billy Leon Kearse v. Sec'y, Fla. Dep't of Corr., 669 F.3d 1197 (11th Cir. 2011)
Judgment Vacated and Remanded: November 3, 2011

United States District Court, Southern District of Florida,
Case No. 2:09-cv-14240-WJZ
Billy Leon Kearse v. Sec'y, Fla. Dep't of Corr., No. 2:09-cv-14240-WJZ (S.D. Fla. Aug. 30, 2012) (unreported)
Judgment Entered: August 30, 2012
Motion to Alter or Amend Denied: November 26, 2012

United States Court of Appeals, Eleventh Circuit, Case No. 12-16610
Billy Leon Kearse v. Sec'y, Fla. Dep't of Corr., 736 F.3d 1359 (11th Cir. 2013)
Judgment Vacated and Remanded: December 2, 2013

United States District Court, Southern District of Florida,
Case No. 2:09-cv-14240-WJZ
Billy Leon Kearse v. Sec'y, Fla. Dep't of Corr., No. 2:09-cv-14240-WJZ (S.D. Fla. Sept. 1, 2015) (unreported)
Judgment Entered: September 1, 2015
Motion to Alter or Amend Denied: October 21, 2015

United States Court of Appeals, Eleventh Circuit, Case No. 15-15228
Billy Leon Kearse v. Sec'y, Fla. Dep't of Corr., No. 15-15228, 2022 WL 3661526 (11th Cir. Aug. 25, 2022) (unreported)
Judgment Entered: August 25, 2022
Petition for Rehearing En Banc Denied: October 26, 2022

Supreme Court of the United States, Case No. 22-6868
Billy Leon Kearse v. Sec'y, Fla. Dep't of Corr., 143 S. Ct. 2439 (2023)
Judgment Entered: May 1, 2023

Fifth Successive Postconviction Proceedings (Under Warrant):

Nineteenth Judicial Circuit Court in and for St. Lucie County, Florida
State of Florida v. Billy Leon Kearse, Case No. 5611991CF000136A
Judgment Entered: February 14, 2026

Florida Supreme Court, Case No. SC2026-2051
Billy Leon Kearse v. State of Florida, No. SC2026-2051, 2026 WL 523132 (Fla. Feb. 25, 2026) (unreported)
Judgment Entered: February 25, 2026
Mandate Issued: February 25, 2026

Third State Habeas Proceedings (Under Warrant):

Florida Supreme Court, Case No. SC2026-2050
Billy Leon Kearse v. Sec'y, Fla. Dep't of Corr., No. SC2026-2050, 2026 WL 523132 (Fla. Feb. 25, 2026) (unreported)
Judgment Entered: February 25, 2026

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Billy Leon Kearse respectfully petitions this Court for a Writ of Certiorari to review the judgment of the Florida Supreme Court in this case.

CITATIONS TO OPINIONS AND ORDERS BELOW

The Florida Supreme Court's consolidated opinion affirming the denial of state postconviction relief and denying Mr. Kearse's petition for writ of habeas corpus is unreported. *Kearse v. State*, Nos. SC2026-0250 & SC2026-0251, 2026 WL 523132 (Fla. Feb. 25, 2026) (Pet. App. Vol I at 2a-8a). The state circuit court's order denying Mr. Kearse's motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.851 is unreported. (Pet. App. Vol. I at 10a-31a).

STATEMENT OF JURISDICTION

The Florida Supreme Court issued its consolidated order affirming the denial of postconviction relief and denying Mr. Kearse's petition for writ of habeas corpus on February 25, 2026. The mandate issued immediately thereafter. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to have the Assistance of Counsel for his defence.

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 1 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.

INTRODUCTION

The State of Florida seeks to execute Billy Leon Kearse, an intellectually disabled, indigent defendant, who was just 18 years and 84 days old at the time of the tragic murder of a law enforcement officer in this case. "What . . . [Mr.] Kearse did was horrible," *Kearse v. State*, 770 So. 2d 1119, 1138 (Fla. 2000) (Anstead, J., dissenting), however, three justices of the Florida Supreme Court 26 years ago recognized the foundational impropriety of Mr. Kearse's sentence and determined that "[i]t is not one of the most aggravated and least mitigated or among the worst of the worst for which we have reserved death as the only appropriate response." *Id.* "The bottom line is that this is clearly not a death case," *id.*, and that "bottom line is the same under federal law." *Kearse v. Sec'y, Fla. Dep't of Corr.*, 2022 WL 3661526, at *29 (11th Cir. 2022) (Wilson, J., concurring in part & dissenting in part). This conclusion has only grown stronger in light of new evidence that arose for the first time in the face of imminent execution.

On February 2, 2026, an assessment of Mr. Kearse's intellectual and cognitive functioning using the newest edition of the Weschler Adult Intelligence Scale (WAIS) and most accurate normative sample available revealed that Mr. Kearse has a full-scale IQ score of 75. (Pet. App. Vol. II at 170a-178a). This newly discovered fact,

coupled with a litany of uncontroverted deficits in conceptual and social adaptive behaviors that manifested during the developmental period, now establishes that Mr. Kearse is intellectually disabled and categorically exempt from execution under this Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002), and its progeny.

In conjunction with this categorical bar, new evidence additionally demonstrates that the jury at Mr. Kearse's resentencing proceeding was impermissibly influenced by an overwhelming presence of uniformed law enforcement officers in the courtroom. This evidence came to light when a juror, Claire Hamblin Matthews, *voluntarily* disclosed her recollection of the case during the social media maelstrom that ensued after the signing of Mr. Kearse's death warrant.[1] The juror's commentary unequivocally revealed the forceful impact that a "courtroom . . . filled with Leo's from every city and county in the state" who "would stand there for several hours, never wavering" had on her, how she "remember[ed] silently hoping that [the victim's] family and friends would know how much he was loved," leading Mr. Kearse to allege in his successive state postconviction motion that he was deprived of his right to a fair and impartial jury under the Sixth and Fourteenth Amendments at his resentencing as a result. (Pet. App. Vol. II at 42a-51a).

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[1] In Florida, attorney ethical rules and decisional law generally prohibit an attorney or her representatives from attempting to speak with jurors after the trial has concluded. *See Marshall v. State*, 854 So. 2d 1235 (Fla. 2003). If information surfaces that might require a juror interview, the Florida Supreme Court has provided strict rules for seeking leave of court to interview a juror or jurors. *Id.* In Mr. Kearse's case, he did seek leave of the Florida circuit court and the Florida Supreme Court to interview Juror Matthews after Matthews's voluntary social media post came to light, but his efforts were turned down by both courts.

Notwithstanding the foregoing, the state circuit court summarily denied relief on both the impartial jury and the intellectual disability issues, and the Florida Supreme Court affirmed, finding both claims untimely, procedurally barred, and/or legally insufficient. (Pet. App. Vol. I. at 3a-6a). The court further denied habeas relief. (Pet. App. Vol. I at 7a-8a). Even the most cursory review of Mr. Kearse's claims and arguments on appeal shows that "[t]he Florida Supreme Court affirmed [Mr. Kearse's] death sentence neither based on a review of the individual record in this case nor in reliance on the [circuit court] judge's findings based on that record, but in reliance on some other nonexistent findings." *Parker v. Dugger*, 498 U.S. 308, 321 (1991). Indeed, "there is a sense in which the court did not review [Mr. Kearse's] sentence [or claims] at all." *Id.*

This Court has "emphasized repeatedly the crucial role of meaningful appellate review in ensuring that the death penalty is not imposed arbitrarily or irrationally," *id.* at 321, and the Florida Supreme Court's flagrant dismissal of a categorical bar to execution and objective, firsthand evidence from a juror who voted to impose "the most irremediable and unfathomable of penalties," *Ford v. Wainwright*, 477 U.S. 399, 411 (1986), is antithetical to that process. "Persons facing the most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution," *Hall v. Florida*, 572 U.S. 701, 724 (2014), and the court's opinion in Mr. Kearse's case is part of a troubling trend that signifies appellate review under warrant in Florida is nothing more than a hollow exercise on an execution check-list.

In addition, Mr. Kearse submits that the Eighth Amendment's categorical

prohibition on executing those with intellectual disabilities must yield to any state-imposed judicial barriers to review such as the procedural bars or timeliness issues which were utilized by the Florida Supreme Court to avoid addressing Mr. Kearse's intellectual disability claim.

STATEMENT OF THE CASE[2]

Petitioner Billy Leon Kearse was convicted and sentenced to death in St. Lucie County, Florida for the murder of Fort Pierce Police Officer Danny Parrish[3] on January 18, 1991, when Mr. Kearse was just 18 years and 84 days old. Earlier that evening, Mr. Kearse had confronted his stepfather who was being verbally abusive to his mother, and they had a fight. (R1. 1457, 2725-26); (SR. 28). Upset, Mr. Kearse went to friends Derrick Dickerson and Rhonda Pendleton's house. (R1. 1457). They decided to order a pizza for dinner. Mr. Kearse and Ms. Pendleton took her brother's car to go pick it up. (R1. 1458-59). While on their way back to the house, the car started leaking oil and smoking. (R1. 1461). To avoid traffic, Mr. Kearse turned and drove the wrong way down a one-way street. (R1. 1460-61).

Officer Parrish witnessed this violation and conducted a traffic stop. Mr. Kearse did not have a valid driver's license. Initially, he gave Officer Parrish false names, which he knew was wrong. (SR. 10). Officer Parrish told Mr. Kearse that if he provided

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[2] Citations to the record refer to the Appendix or the records on appeal in this case. All other citations shall be self-explanatory.

[3] Officer Danny Parrish was posthumously promoted to the rank of sergeant by the Fort Pierce Police Department. In accord with the trial and resentencing record, Mr. Kearse refers to Sgt. Parrish using his rank of officer at the time of the crime in 1991 in this Petition.

his real name, he would write three tickets and let him go. (SR. 8). Mr. Kearse then gave Officer Parrish his real name, date of birth, and age. (SR. 8-19). Officer Parrish nonetheless initiated an arrest.

Officer Parrish told Mr. Kearse to exit the car and put his hands on top of it. (R1. 1465); (SR. 5, 19). While maneuvering with the handcuffs, Officer Parrish hit Mr. Kearse under his left eye with them. (SR. 5, 19). A scuffle ensued during which Mr. Kearse believed Officer Parrish was reaching for his gun. (SR. 5, 11, 19). Panicked, Mr. Kearse grabbed Officer Parrish's weapon and fired over a dozen shots, killing him.

A. Trial, Resentencing, and Direct Appeal Proceedings

Mr. Kearse was indicted for one count of first-degree murder and one count of possession of a firearm (Officer Parrish's weapon) by a convicted felon.[4] (R1. 2428-30). The State later filed an Amended Indictment adding the charge of robbery with a firearm (the taking of Officer Parrish's weapon during the struggle). (R1. 2431-33).

Mr. Kearse pleaded not guilty and was tried by a jury in October 1991 in Indian River County, Florida.[5] The jury rendered guilty verdicts on both the first-degree murder and robbery counts. (R1. 1864-65). After the penalty phase, the jury recommended death by a vote of 11–1. (R1. 2361, 2367). The trial court imposed a sentence of death for the murder and life imprisonment for the robbery conviction.

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[4] Mr. Kearse's previous felony conviction was for burglary and "possession of burglary tools" after he and some friends broke into a school two years prior.

[5] Due to pervasive pretrial publicity, the State and Defense executed a Stipulated Agreement to transfer venue for the trial from St. Lucie County to Indian River County. (R1. 2519-20)

(R1. 2395, 2403, 2423).

On direct appeal, the Florida Supreme Court affirmed Mr. Kearse's convictions but held that aggravating factors were impermissibly doubled and that the heinous, atrocious, and cruel (HAC) aggravating factor was improperly found. *Kearse v. State*, 662 So. 2d 677 (Fla. 1995). Mr. Kearse's death sentence was vacated, and the case was remanded for a new penalty phase, which took place in 1996.

Prior to jury selection for the resentencing, counsel for Mr. Kearse[6] filed a Motion for Order Regulating Courtroom Spectators, arguing that Mr. Kearse would be deprived of a fair proceeding due to the presence of uniformed officers in the courtroom during the 1991 trial. (R2T. 216-17; R2. 532-33). The court deferred ruling "until counsel believes that the situation exists that requires their ruling and we can discuss that outside the presence of everybody." (R2T. 225). Trial counsel never revisited the issue.

The resentencing jury returned a unanimous recommendation for death. (R2T. 2695). In imposing Mr. Kearse's sentence, the trial court found two aggravators: (1) in the course of a robbery, and (2) avoid arrest, hinder law enforcement, and the victim was a law enforcement officer (merged). (R2. 706-09). The court found age to be a statutory mitigator and gave it "some but not much weight." (R2. 708). The court also found that Mr. Kearse exhibited acceptable behavior at trial and that he had a

[6] Mr. Kearse was represented by Robert Udell at both his original 1991 trial and the 1996 resentencing proceeding. Mr. Udell was later disbarred. *See infra* note 8.

difficult childhood that resulted in psychological and emotional problems.[7] (R2. 709). The non-statutory mitigating factors directly related to, or a byproduct of, Mr. Kearse's intellectual deficits and low IQ that were found by the trial court included: "Low IQ, impulsive, and unable to reason abstractly"; "Impulsive person with memory problems and impaired social judgment"; "Difficulty attending to and concentrating on visual and auditory stimuli"; "Difficulty with perceptual organizational ability and poor verbal comprehension"; "Impaired problem solving"; "Impaired cognitive flexibility"; "Deficits in visual and motor performance"; "Lower verbal intelligence"; Poor auditory short-term memory"; Mildly retarded and functioned at a third or fourth grade level"; "Developmentally learning disabled"; Slow learner and needed special assistance school"; "The Defendant was severely emotionally handicapped"; "Impaired memory"; "Impoverished academic skills"; Mental, emotional, and learning disabilities"; "Delayed developmental milestones"; and "Severely emotionally disturbed child." (R2. 591-92; 709).

The Florida Supreme Court affirmed Mr. Kearse's death sentence by a 4–3 margin. *Kearse v. State*, 770 So. 2d 1119 (Fla. 2000). The dissent expressed "several concerns with the majority's treatment of the issues, and especially the conclusion

[7] The non-statutory mitigating factors found by the trial court that pertained to Mr. Kearse's difficult upbringing included: "Socially and economically disadvantaged"; Impoverished background"; "Improper upbringing"; "Defendant was malnourished"; "No opportunity to bond with his natural father"; Father died when Defendant was young and he grew up without a male role model"; "Defendant came from a broken home and raised in poverty"; "Raised in a dysfunctional family"; "Alcoholic mother"; "Neglect by mother"; "Childhood trauma"; "Defendant subjected to sexual abuse"; and Mother gave up on Defendant at an early age and raised himself in the streets." (R2. 591-92; 709).

that this is one of the most aggravated and least mitigated murders requiring that that eighteen-year-old defendant be executed." *Id.* at 1135 (Anstead, J., dissenting). It also pointed out that "there is no evidence that [Mr.] Kearse set out that night intending to commit any crime, let alone murder." *Id.* at 1136. Certiorari was denied by this Court. *Kearse v. Florida*, 532 U.S. 945 (2001).

B. State Postconviction Proceedings

Mr. Kearse timely filed a motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850/3.851. (PCR2. 14-68; 1458-1572). Following a limited evidentiary hearing, (PCR2. 1458-1572, 1660-63), relief was denied. (PCR2. 5703). The Florida Supreme Court affirmed and also denied Mr. Kearse's petition for habeas relief.[8] *Kearse v. State*, 969 So. 2d 976 (Fla. 2007).

C. Federal Habeas Proceedings

Mr. Kearse thereafter petitioned for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Southern District of Florida. The next half decade of federal litigation was devoted to the State's unfounded contention that Mr. Kearse's petition was untimely because the sworn verification to his initial Rule 3.851 motion was not stapled to the motion itself. This litigation included two separate dismissal orders from the federal district court and two

[8] On October 29, 2009, Mr. Kearse's trial and resentencing counsel was disbarred. *The Florida Bar v. Udell*, 22 So. 3d 60 (Fla. 2009). After Udell's disbarment, Mr. Kearse filed a successive Rule 3.851 motion. (PCR3. 4-21). The circuit court summarily denied relief, and the Florida Supreme Court affirmed. (PCR3. 94-96); *Kearse v. State*, 75 So. 3d 1244 (Fla. 2011) (unpublished table disposition).

separate opinions from the Eleventh Circuit Court of Appeals reversing those orders. The district court issued a final order denying habeas relief in 2015, which a divided Eleventh Circuit panel ultimately affirmed.[9] *Kearse v. Sec'y, Fla. Dep't of Corr.*, 2022 WL 3661526 (11th Cir. 2022), *cert. denied*, 143 S. Ct. 2439 (2023).

D. State Postconviction Proceedings Under Warrant

On January 29, 2026, Florida Governor Ron DeSantis signed a death warrant for Mr. Kearse, scheduling his execution for Tuesday, March 3, 2026, at 6:00 p.m. (WR. 46-60). The Florida Supreme Court, in turn, issued an expedited scheduling order, which was later modified at the request of Mr. Kearse's lead counsel.[10] In accordance

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[9] One of the issues before the Eleventh Circuit was whether Mr. Kearse's sentence of death constitutes cruel and unusual punishment due to his deficits in intellectual functioning and mental and emotional impairments, in combination with his youth at the time of offense. Circuit Judge Wilson dissented, finding that the Florida Supreme Court unreasonably applied clearly established federal law when it engaged in "a patently unreasonably narrow characterization of [Mr.] Kearse's Eighth Amendment argument" and "failed to analyze whether [his] death sentence was proportional or constitutionally excessive given the facts of his case." *Kearse v. Sec'y, Fla. Dep't of Corr.*, 2022 WL 3661526, at *29 (11th Cir. 2022). Judge Wilson asserted that "[t]hree justices of the Florida Supreme Court said it best: 'The bottom line is that this is clearly not a death case'" and "[t]he bottom line is the same under federal law. You need not be an Eighth Amendment scholar to see why." *Id.* at *29-30 (internal citation omitted).

[10] Since the signing of his death warrant, Mr. Kearse's lead counsel of 22 years, Paul Kalil, had been working around the clock in order to adequately represent him and meet the courts' scheduling deadlines. However, in the afternoon hours of February 5, Mr. Kalil's father was admitted to hospice for end-of-life care. Due to the warrant, Mr. Kalil had been unable to be with his father the entire week leading up to his hospice admission. Placed in an impossible situation, Mr. Kalil stepped away from Mr. Kearse's case to be with his father and family in those final days. Mr. Kalil's father passed away on February 9, and he has remained unavailable for the duration of these warrant proceedings. Mr. Kearse's subsequent request to modify the scheduling order after his father's death was denied. (WR. 914).

with the modified schedule, Mr. Kearse timely filed a successive motion for postconviction relief, raising 3 claims, two of which are relevant to this Petition.

The first claim asserted that new evidence established Mr. Kearse was denied a fair resentencing proceeding because his jury was subjected to impermissible influences outside of the evidence in the courtroom that tended to subvert its purpose in contravention of his Sixth and Fourteenth Amendment rights. (Pet. App. Vol. II at 42a-51a). This claim was based on new evidence that came to light on social media after Mr. Kearse's warrant was signed.

As set forth in the motion, the Facebook page "Slcscanner"[11] made a post, titled "*Widow of Sgt. Danny Parrish Wants Shared Credit Recognized in Long Fight for Justice*." The post outlined efforts made by law enforcement agencies, the State Attorney, prosecutors, and Sgt. Parrish's widow to secure the signing of Mr. Kearse's death warrant. A comment to that post read as follows:

Claire Hamblin Matthews

> ***I was a Juror at the second trial, for a possible resentencing of the young man that killed Danny.*** At the end of that 2nd trial, his death sentence remained. It was one of the hardest things I've ever done, but there was no doubt it was the right sentence. ***I'll never forget the respect and support shown to Danny in that courtroom. Every day, no matter how long the trial went, the back of the courtroom was filled with Leo's from every city and county in the state, so much support and respect from his fellow Leo's. They would stand there for several hours, never wavering. I remember silently hoping that his family and friends would know how***

[11] "Slcscanner" is a media/news company whose Facebook page, which posts news and other information about "what's going on in St. Lucie County," has some 142,000 followers. (Pet. Vol. II at 45a).

much he was loved.

(Pet. App. Vol. II at 86a) (emphasis added). The post was made on February 3, 2026.[12] (Pet. App. Vol. II at 45a).

The record confirms that Claire Hamblin Matthews was indeed a juror at Mr. Kearse's resentencing.[13] (R2. 1112). Her voluntary post makes clear that "every day," no matter "how long the trial went," the "back of the courtroom was filled with Leo's

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[12] A screenshot of Matthews's post was taken by Mr. Kearse's legal team at 10:42 p.m. on February 3, 2026, and Matthews's comment was posted about an hour before the screenshot was taken. Curiously, the post was subsequently deleted from the platform less than 24 hours after it was made. (Pet. App. Vol. II at 45a).

[13] The record adds intriguing context to Juror Matthews and her social media post. During voir dire, Matthews acknowledged handing "some insurance matters" for one of the prosecutors on the case and that she had spoken with him and his family over the phone and in person. (R2T. 860). Matthews also acknowledged "vaguely remembering something" about Mr. Kearse's case from the media and shared that "in conversations with a family member last night, [she] learned of another family member who was coming into town for the holidays only because he has to testify in a trial where a cop was killed and [that she had] a feeling, and . . . [was] assuming that it's possibly this trial . . . ." (R2T. 867-68). Matthews advised that this family member was Leo Raulerson who was retired from the Fort Pierce Police Department. (R2T. 867-68). The prosecutor thereafter explained that there was a law enforcement witness named "Les Raulerson." (R2T. 868). When Matthews was again questioned about what she had learned about Mr. Kearse's case from sources outside of the courtroom when Mr. Kearse was initially tried, she "recalled reading about it in the paper and hearing about it in the media several years ago." (R2T. 1007-08). She "just remember[ed] it was a cop in Fort Pierce and . . . that he was shot about 14 times . . . ." (R2T. 1007-08). Notwithstanding whatever prior knowledge she recalled from reading media accounts, Matthews said she could be fair. (R2T. 1015-16).

Trial counsel moved to strike Juror Matthews for cause "based upon her knowledge of the facts of the case and other statements which would indicate that she could not be fair and impartial." (R2T. 1097). The court denied the cause challenge. (R2T. 1098). The defense later noted that it had used its allotted peremptory challenges and requested additional ones in order to assert a peremptory against Matthews, among others. (R2T. 1105, 1107-08). That request was denied, and Matthews sat as a juror. (R2T. 1112).

from every city and county in the state, so much support and respect from his fellow Leo's." Juror Matthews's voluntary post also specifically indicates that the law enforcement presence was "never wavering," with officers standing there "for several hours." The influence Juror Matthews felt from the fact that the courtroom was "filled" with law enforcement officers "from every city and county in the state" is unequivocally expressed in her statement that she would "never forget the respect and support shown to Danny in that courtroom" and that she "remember[ed] silently hoping that his family and friends would know how much he was loved."

Mr. Kearse asserted that Juror Matthews's social media comments establish not just the presence of uniformed law enforcement officers "filling" the courtroom and showing their unwavering support for the victim during the resentencing, but also that their presence created an atmosphere that prejudiced Mr. Kearse in contravention of his "Sixth Amendment right to be tried 'by a panel of impartial, "indifferent" jurors [whose] verdict must be based solely upon the evidence developed at trial.'" *Woods v. Dugger*, 923 F.2d 1454, 1456-57 (11th Cir. 1991) (quoting *Irvin v. Dowd*, 366 U.S. 717, 722 (1961) (alternation in original); *Holbrook v. Flynn*, 475 U.S. 560, 570 (1986) (emphasizing "the threat that a roomful of uniformed and armed policeman might pose to a defendant's chance of receiving a fair trial").

Mr. Kearse maintained that Juror Matthews's social media revelations could not have been previously discovered until her voluntary post was made on February 3, as there is no information in the extant record nor anything in the record of the resentencing proceeding that could have led reasonably diligent counsel to investigate

further. As such, the claim was timely filed outside the one-year limitation set forth in Florida Rule of Criminal Procedure 3.851(d)(2)(A).

Mr. Kearse likewise alleged that Juror Matthews's post satisfied the requisite tests for both actual and inherent prejudice under the applicable law. *Compare Shootes v. State*, 20 So. 3d 434, 438 (Fla. 1st DCA 2009) (noting that the test for actual prejudice requires a defendant to establish "some indication or articulation by a juror or jurors that they were conscious of some prejudicial effect"), *with Pozo v. State*, 963 So. 2d 831, 837 (Fla. 4th DCA 2007) (explaining the test for inherent prejudice does not require a showing that "jurors actually articulated a consciousness of some prejudicial effect," but rather "whether 'an unacceptable risk is presented of impermissible factors coming into play'" (quoting *Holbrook*, 475 U.S. at 570)).

Mr. Kearse sought an evidentiary on this claim and filed a Motion to Interview Juror Matthews wherein he alleged good cause to investigate this evidence.[14] (WR.

[14] Mr. Kearse also filed demands for additional public records pursuant to Florida Rule of Criminal Procedure 3.852(i) to the Office of the Attorney General, Office of the State Attorney, Nineteenth Judicial Circuit; and St. Lucie County Sheriff's Office. (WR. 569-98). These demands sought all communications between any current or former employees of each agency and Juror Matthews given the curious deletion of her post amidst commentary on the same thread from the victim's widow (who is a current employee of the St. Lucie County Sheriff's Office) and the existence of other comments on the same social media platform about the signing of Mr. Kearse's warrant from one of the Assistant Attorney Generals prosecuting this case. The circuit court denied Mr. Kearse's demands as untimely, overly broad, and not reasonably calculated to lead to a colorable claim. (Pet. App. Vol. I at 34a-35a). On appeal, the Florida Supreme Court found that the circuit court did not abuse its discretion in denying Mr. Kearse's demands because they "were untimely filed six days after the deadline imposed by the circuit court's scheduling order" and "[e]ven accepting [Mr.] Kearse's timeline and factual allegations as true, his theory that a state or county agency engaged in misconduct by contacting Juror M about her post is purely speculative and does not provide a basis for a colorable claim of relief."(Pet. App. Vol. I at 4a-5a). As such, the Florida Supreme Court found that Mr. Kearse's

743-50).

The second claim in Mr. Kearse's motion for postconviction relief asserted that newly discovered evidence of a full-scale IQ score of 75 on the newly released WAIS-5 establishes that he is intellectually disabled.[15] (Pet. App. Vol. II at 52a-62a). Mr. Kearse asserted that this newly discovered fact, coupled with his lifelong deficits in adaptive functioning, established that he is intellectually disabled, which is an absolute bar to execution under *Atkins v. Virginia*, 536 U.S. 304 (2002), and its progeny. Mr. Kearse sought an evidentiary hearing to demonstrate that this evidence was timely discovered and that he meets all three prongs of Florida's test for evaluating intellectual disability set forth in Section 921.137(1), Florida Statutes (2013).[16]

Mr. Kearse further asserted that he meets prong 2 of Florida's intellectual

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"records requests amount[ed] to a fishing expedition rather than a proper basis for obtaining post-warrant public records under rule 3.852." (Pet. App. Vol. I at 5a). The Florida courts' denial of Mr. Kearse's demands for additional public records here is yet another example of the "Catch-22" recognized by Justice Sotomayor in her February 24, 2026 statement respecting the denial of Melvin Trotter's application for a stay of execution and denial of certiorari. *See Trotter v. Florida*, 607 U.S. ___, Case No. 25-6853 (25A926) (Feb. 24, 2026) (Sotomayor, J., respecting the denial of application for stay of execution and denial of certiorari).

[15] Mr. Kearse was administered the WAIS-5 on February 2, 2026, by Robert H. Ouaou, Ph.D., whose report was attached to his Rule 3.851 motion. (Pet. App. Vol. II at 170a-178a). Mr. Kearse indicated that Dr. Ouaou would be available to testify to the facts alleged in his motion at an evidentiary hearing.

[16] Mr. Kearse filed a separate motion asking the state circuit court to declare § 921.137(4) regarding the "clear and convincing evidence" burden of proof for establishing an intellectual disability claim unconstitutional. (WR. 792-800). The circuit court denied Mr. Kearse's motion, and the Florida Supreme Court affirmed. (Pet. App. Vol. I at 7a, 27a-28a).

disability standard because he exhibits chronic and significant deficits in both the conceptual and social domains. Mr. Kearse pointed to uncontroverted record evidence establishing that he has struggled with language and literary since birth. In doing so, he noted how he developed physically and emotionally later than his peers and had both slurred speech and trouble pronouncing words "like a child his age should have been able to do." (R2T. 1983). Mr. Kearse likewise noted how his school records are rife with evidence that he functioned below grade level starting in kindergarten, (PCR2. 4409-4994), and how standardized testing shows that he had difficulties with comprehension, reading, mathematics, handwriting, attention, and communication. In this vein, Mr. Kearse highlighted how he was administered the Weschler Intelligence Scale for Children – Revised (WISC-R) in 1981 and attained a full-scale IQ score of 78. His verbal IQ score of 74 on the instrument placed him in the 5th percentile.

Mr. Kearse additionally emphasized how administration of the Wide Range Achievement Test – Revised (WRAT-R) when he was in eighth grade indicated that he was functioning below a third-grade level. He scored in the 2nd percentile for reading and was below the 1st percentile relative to his age and grade-matched peers. Mr. Kearse's scores on the Peabody Individual Achievement Test (PIAT) that same year also showed significant deficits in these areas.

Mr. Kearse asserted that his records were replete with additional notations of learning and emotional problems and show he was placed into special education classes as part of an emotionally handicapped program at the Anglewood Center in

St. Lucie County. He also noted how several of his former teachers and counselors throughout his life have attested to his academic and developmental difficulties in this case.

Mr. Kearse finally argued that the above established his deficits "manifested during the period from conception to 18." § 921.137(1), Fla. Stat. In doing so, Mr. Kearse stressed how he was barely 18 years old when the crime in this case occurred and that deficits in his intellectual functioning and adaptive behavior were both observed and well documented before then, as demonstrated by the lengthy list of mitigating evidence pertaining to his IQ and cognitive abilities that the trial court found established by the greater weight of the evidence. (R1. 2726-30); (R2. 708-09). Mr. Kearse additionally noted that the State's own expert at the 1996 resentencing admitted Mr. Kearse's "test results suggest that [he] has intellectual deficits and subnormal IQ." *Kearse*, 770 So. 2d at 1139 (Anstead, J., dissenting); (R2T. 2384-85).

Mr. Kearse simultaneously filed a motion to stay his execution asserting, *inter alia*, that this Court's decision in *Hamm v. Smith*, No. 24-872, would directly impact the Florida courts' assessment of evidence pertaining to his intellectual functioning and eligibility for execution. (WR. 751-58).

Notwithstanding clear factual disputes with Mr. Kearse's claims, the circuit court denied an evidentiary hearing on February 12, 2026. (Pet. App. Vol. I at 33a-37a). A final order summarily denying relief on all claims and a stay of execution was entered on February 14, 2026. (Pet. App. Vol. I at 10a-31a).

Mr. Kearse thereafter appealed to the Florida Supreme Court, (WR. 937-39),

and simultaneously filed a petition for writ of habeas corpus. In his petition, Mr. Kearse's asserted that new evidence and scientific consensus establish that his age at the time of the crime and lower intellectual functioning place him in the very categories of capital defendants that this Court sought to protect through its decisions in *Atkins*, 536 U.S. 304, and *Roper v. Simmons*, 534 U.S. 551 (2005), and that the arbitrary and capricious nature of Mr. Kearse's trial and postconviction proceedings has contravened constitutional protections designed to ensure that the gravest sentence our society can impose be applied only to the most aggravated and least mitigation of capital cases.

The Florida Supreme Court issued a consolidated opinion affirming the circuit court's order summarily denying postconviction relief and denying Mr. Kearse's habeas petition on February 25, 2026.[17] (Pet. App. Vol. I at 2a-8a).

In rejecting Mr. Kearse's claim regarding Juror Matthews's post-warrant social media post and the denial of his right to a fair and impartial jury, the court supplied the following barebones analysis:

> Kearse's claim is untimely because it is premised on facts that could have been discovered decades ago with due diligence. His second penalty phase occurred in 1996, and our affirmance of his death sentence became final in 2001. The presence of uniformed officers in the courtroom during

[17] Prior to the issuance of the opinion, Mr. Kearse filed an Emergency Motion To Relinquish Jurisdiction To Allow The Filing Of Demands For Public Records Pursuant To Fla. R. Crim. P. 3.852(i) or, In The Alternative, Motion For An Order Directing The Florida Department Of Corrections To Immediately Provide Unredacted Records To Mr. Kearse Concerning The Executions Of Ronald Heath And Melvin Trotter. This request was prompted by the concerns expressed by Justice Sotomayor in her statement regarding the denial of certiorari in another capital case. Twenty-six minutes after the State's filed its objection, the Florida Supreme Court issued an order denying Mr. Kearse's request. The court's order supplied no reasoning for its decision.

> the second penalty phase would have been readily observable. To the extent that the officers' presence raised constitutional concerns, Kearse had ample opportunity to investigate any potential undue influence on the jury. Whatever the relevance of Juror M's Facebook post, it merely discloses information that due diligence could have uncovered long ago. In addition, this Court has held that "in an active [death] warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred." *Rogers v. State*, 409 So. 3d 1257, 1263 (Fla.), *cert. denied*, 145 S. Ct. 2695 (2025).
>
> This rule applies to Kearse's claim here, which he could have raised long ago on appeal or in an earlier postconviction proceeding. The circuit court was right to deny Kearse's claim as procedurally barred.

(Pet. App. Vol. I at 4a) (alteration in original).

In thereafter rejecting Mr. Kearse's claim that his death sentence is unconstitutional based on newly discovered evidence that he is intellectually disabled, the court held that "Kearse's last-minute, post-warrant IQ score does not qualify as newly discovered evidence, and the circuit court did not err in denying this untimely, procedurally barred, and legally insufficient claim." (Pet. App. Vol. I at 6a.). As for timeliness, the court specifically found that "Kearse has failed to establish that he exercised due diligence in discovering his alleged intellectual disability" because "[e]ven accepting Kearse's argument that that he could not have discovered his IQ score of 75 before the WAIS-5 was released, . . . [i]t was not filed within one year of when his IQ score could have been discovered through the exercise of due diligence." (Pet. App. Vol. I at 6a). In reaching this conclusion, the court reasoned that:

> According to Kearse, the WAIS-5 was released in October 2024. Assuming that is true, October 2024 would be the earliest date upon which Kearse's IQ score would have become discoverable through the exercise of due diligence. Thus, to satisfy rule 3.851(d)(2)(A), Kearse's claim would need to have been filed by October 2025 at the very latest.

(Pet. App. Vol. I at 6a). This finding concerning the timing of the WAIS-5

administration is wholly absent from the circuit court's order and was not advanced by the State in its response to Mr. Kearse's motion for postconviction relief or brief on appeal.

In determining that the circuit court also properly denied Mr. Kearse's intellectual disability claim as procedurally barred, the Florida Supreme Court noted that "Kearse has engaged in numerous postconviction proceedings over the last two and a half decades. Yet not at trial, on appeal, or in any of his state or federal postconviction proceedings has he raised a claim that he is intellectually disabled under *Atkins*." (Pet. App. Vol. I at 6a.).

The Florida Supreme Court finally found that summary denial of his intellectual disability claim was proper because:

> Kearse failed to sufficiently plead the second prong—concurrent adaptive deficits—of the intellectual disability standard under section 921.137(1). . . . Thus, even if Kearse's last minute, post-warrant IQ test results were sufficient to raise a factual issue as to prong one of section 921.137(1) (they are not), Kearse is not entitled to relief because he has not alleged any current deficits in adaptive behavior.

(Pet. App. Vol. I at 6a). In doing so, the court noted that "Kearse has alleged only adaptive deficits that were present during his childhood, relating to his trouble with reading and mathematics, as well as being less emotionally developed than his peers at school. Kearse has not alleged any adaptive deficits that are present now, as would be required to satisfy prong two of section 921.137(1)." (Pet. App. Vol. I at 6a). According to the court, "Kearse did not allege that any of his domains are impaired such that ongoing support is needed, nor did he allege that he is currently receiving support." (*Id.*). Therefore, "he failed to make out a sufficient claim that he is

intellectually disabled under Florida law." (*Id.*). Any purported pleading deficiency with this claim was not part of the circuit court's analysis and never asserted by the State at any point.

As to Mr. Kearse's habeas petition, the Florida Supreme Court found Mr. Kearse's claim procedurally barred the court has already rejected his argument "that he should be exempt from execution based on an interplay of *Roper* and *Atkins*" during initial postconviction proceedings." (Pet. App. Vol. I at 7a). Thus, "Kearse cannot relitigate the issue now." (Pet. App. Vol. I at 7a). Moreover, the court found Mr. Kearse's claim meritless "as [it] determined in his initial postconviction appeal." The court then pointed to its decision in *Barwick v. State*, 361 So. 3d 785 (Fla. 2023), to assert that the conformity clause of article I, section 17 of the Florida Constitution, likewise precluded relief. (Pet. App. Vol. I at 8a).

No motion for rehearing was permitted, and the Mandate issued immediately. This Petition now follows.

REASONS FOR GRANTING THE WRIT

I. Florida Supreme Court Continually Fails to Perform Meaningful Appellate Review

This Court's "'duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case.'" *Kyles v. Whitley*, 514 U.S. 419, 422 (1995) (quoting *Burger v. Kemp*, 483 U.S. 776, 785 (1987)). This principle extends to all lower courts—both state and federal—given the fact that "death is different." *See also Lockett v. Ohio*, 438 U.S. 586, 605 (1978) ("Given that the imposition of death by public authority it so profoundly different from all other penalties, we cannot avoid

the conclusion that an individualized decision is essential in capital cases"); *Asay v. State*, 210 So. 3d 1, 18 (Fla. 2016) ("Both this Court and the Supreme Court have recognized that 'death is different.'") (citations omitted).

"[I]n death cases," the Florida Supreme Court has, in the past, prided itself on the fact that it "has taken care to ensure all necessary protections are in place before one forfeits his or her life . . . " *Asay*, 210 So. 3d at 18. Regrettably, as the decision from the Florida Supreme Court in Mr. Kearse's case establishes, the Florida Supreme Court has abdicated its responsibility to conduct meaningful appellate review in capital postconviction cases, particularly those in a successor posture, and instead, "in its regular practice . . . has become a rubber stamp for lower court death-penalty determinations." *Barclay v. Florida*, 463 U.S. 939, 973 (1983) (Stevens, J., concurring in the judgment).[18] This Court's intervention is warranted at this time "even though [its] labors may not provide posterity with a newly minted rule of law," and its review of Mr. Kearse's case is "especially important" given the "current popularity of capital punishment" in Florida. *Kyles*, 514 U.S. at 455-56 (Stevens, J., concurring). The bottom line is that "the law requires that [Mr. Kearse] have the opportunity to present evidence" to support his claims, in particular the evidence "of his intellectual disability, including deficits in adaptive functioning over his lifetime."

[18] Justice Stevens expressed confidence in the Florida Supreme Court's appellate review in capital cases at that time because it had reversed a substantial percentage of death sentences in direct appeal decisions. *Barclay*, 463 U.S. at 973 (Stevens, J., concurring). Mr. Kearse notes that, as of the date of this petition, there have been 22 executions in Florida since January 1, 2025, with three active death warrants (including Mr. Kearse's); the Florida Supreme Court never once has issued a stay of execution since that date, nor has it remanded for an evidentiary hearing, much less granted any capital defendant relief under an active death warrant.

Hall v. Florida, 572 U.S. 701, 724 (2014).

The principal way in which the Florida Supreme Court's decision in Mr. Kearse's case demonstrates that court's abdication of its obligation to afford him meaningful appellate review is its blind adherence to the state's bald accusation that Mr. Kearse's claims should not be heard because of a lack of "diligence." Two of the most troubling and fact-laden constitutional issues he brought to the Florida Supreme Court—one alleging newly discovered evidence that his resentencing jury in 1996 was subjected to improper undue influence due to the presence of uniformed state-wide law enforcement officers "filling" the courtroom,[19] the other alleging that he has an IQ score of 75 on the newest test for assessing intellectual disability (the WAIS-5) which, along with unrefuted deficits in adaptive functioning that also existed prior to the age of 18 (when he was arrested for the instant offense), establishes that he is intellectually disabled, a categorical bar on the state's ability to execute him[20]—were rejected based on the Florida Supreme Court's finding that Mr. Kearse lacked "diligence" in failing to bring the claims earlier notwithstanding the fact that the record is replete with Mr. Kearse's allegations establishing that he was in fact diligent in bringing both his improper jury influence claim and his intellectual disability claim. The Florida Supreme Court did not engage with Mr. Kearse's allegations at all. It did not address them. It did not analyze them, or disagree with

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[19] *See Irvin v. Dowd*, 366 U.S. 717 (1961); *Holbrook v. Flynn*, 475 U.S. 560 (1986); *Woods v. Dugger*, 923 F. 2d 1454 (11th Cir. 1991).

[20] *See Atkins v. Virginia*, 536 U.S. 304 (2002).

them, or find them legally insufficient or contrary to the record or otherwise reject them. It just ignored them as if the allegations were never made. That is not meaningful appellate review.

A. The Florida Supreme Court's "I Know It When I See It"[21] Test for Diligence

1. The Improper Impermissible Influence Claim

Rather than squarely addressing Mr. Kearse's claim arising from the post-warrant voluntary social media post from Juror Matthews, the Florida Supreme Court searched for any conceivable way to bypass the actual constitutional issues the post raised. (Pet. App. Vol I at 4a) ("*Whatever* the relevance of Juror M's Facebook post . . . ") (emphasis added). It did so in 2 ways:

First, the Florida Supreme Court stripped Matthews's Facebook post of vital details necessary to make out a colorable claim that Mr. Kearse's resentencing jury was subjected to impermissible influences outside of the evidence that tended to subvert its purpose. The court only addressed that part of Matthews's post where she revealed that the courtroom at Mr. Kearse's resentencing was filled with uniformed officers. (Pet. App. Vol. I at 4a (referring only to Matthews's statement about "[t]he *presence of uniformed officers* in the courtroom during the second penalty phase") (emphasis added); *id.* ("[t]o the extent that *the officers' presence* would have raised constitutional concerns …") (emphasis added). The court never addressed the *other* equally relevant and equally new parts of Matthews's post that Mr. Kearse cited to

[21] *See Jacobellis v. State of Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

as relevant to his claim, particularly as to the actual/inherent prejudice standard he must meet.[22] Matthews's social media post comment was relevant not just for its new revelation about the overwhelming presence of uniformed law enforcement officers from around the state in the courtroom at the 1996 resentencing but, as Mr. Kearse alleged, Matthews acknowledged **a concrete awareness of the prejudicial effect**: she would "never forget the respect and support shown to Danny in that courtroom," there was "so much support and respect" from his fellow law enforcement officers, who would "stand there for several hours, never wavering," and "remember[s] silently hoping that his family and friends would know how much she was loved" (WR 643). These statements demonstrate not only inherent prejudice but actual prejudice; they certainly establish more than a mere "indication" or "articulation" of "some prejudicial effect."

Second, the Florida Supreme Court's surgical excision of extremely relevant portions from the entirety of Matthews's post—and thus allowing it to arbitrarily reframe the issue as merely one about the presence of uniformed law enforcement officers in the courtroom—led it to baldly declare, notwithstanding Mr. Kearse's allegations to the contrary, that Mr. Kearse was not diligent in investigating and

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[22] *See Woods*, 923 F. 2d at 1457 ("In order for Woods to prevail on his claim of being denied a fair trial he must show either actual or inherent prejudice") (citing *Holbrook v. Flynn*, 475 U.S. 560 (1986); *Irvin v. Dowd*, 366 U.S. 717 (1961)). The test for actual prejudice defendant to establish "some indication or articulation by a juror or jurors that they were conscious of some prejudicial effect." *Shootes v. State,* 20 So. 3d 434, 438 (Fla. 1st DCA 2009). Inherent prejudice, on the other hand, does not require a showing that jurors actually articulated a consciousness of some prejudicial effect but rather whether "'an *unacceptable risk is presented* of impermissible factors coming into play." *Holbrook*, 475 U.S. at 570 (emphasis added).

raising this claim before his initial state court postconviction motion because "[t]he presence of uniformed officers in the courtroom during the second penalty phase *would have been readily observable*" and that Mr. Kearse thus "had ample opportunity to investigate any potential undue influence on the jury." (Pet. App. Vol. I at 4a) (emphasis added).

Meaningful appellate review does not entail a court contorting a constitutional claim in order to then deny it based on a nebulous unarticulated finding of a "lack of diligence." As noted above, there were 2 components to Mr. Kearse's allegations concerning Matthews's post: (1) her disclosure that the courtroom at the resentencing was "filled" with uniformed officers from around the state showing their "support" and respect" for the victim, and (2) her revelation about how the presence of these uniformed law enforcement officers affected her to such an extent that she vividly recalled this decades later.

As to the first component, the Florida Supreme Court's bare and nebulous conclusion that the officers' presence in the courtroom "would have been readily observable" simply begs the question. The Florida Supreme Court pointed to nothing to support its speculative assertion ("I know it when I see it") that the officers' presence "would have been readily observable." To whom would it supposedly have been "readily observable"? To defense counsel? To the trial court judge? To the bailiffs? To the prosecutor?[23] To other courtroom spectators? To people in the hallway

[23]Curiously, at a hearing in the Florida circuit court to determine whether Mr. Kearse would be entitled to an evidentiary hearing on this claim, one of the state prosecutors directly challenged the truth of Matthews's comments that there was any law enforcement presence in the courtroom at Mr. Kearse's resentencing. *See* (WR.

who might have been able to observe people entering and exit the courtroom? The person selling coffee and snacks at the kiosk in the courthouse hallway? There was no evidentiary hearing on this claim, and thus the record is absolutely silent on this point. There is simply no evidence in this record, much less any that the Florida Supreme Court pointed to, that would have put reasonably diligent collateral counsel on notice that there may be an undue jury influence issue to investigate.[24]

As to the second component regarding the prejudicial effect that the law enforcement presence in the courtroom had on Matthews, the Florida Supreme Court simply ignored Matthews's comments. By doing so it avoiding having to acknowledge the obvious: that Matthews's comments concerning the prejudicial effect could never have been discovered by Mr. Kearse because Florida jurors are not allowed to be interviewed on any matter concerning their jury service absent the most compelling of reasons and only with leave of court. *See* Fla. R. Crim. P. 3.575; *Foster v. State*, 132

903-04) (prosecutor's argument that "the inescapable conclusion" was that this issue was not previously raised "because it's not the case" that the courtroom was filled with uniformed law enforcement officers"; hypothesizing that Matthews's "perception . . . could have been bailiffs standing in the back of the room," concluding that "I find it hard to believe that the courtroom was packed with people standing in the back of the room").

[24] As noted earlier, prior to jury selection for the resentencing, counsel for Mr. Kearse filed a Motion for Order Regulating Courtroom Spectators, arguing that Mr. Kearse could be deprived of a fair resentencing proceeding due to the presence of uniformed officers in the courtroom during his *original 1991 trial*. (R2T. 216-17; R2. 532-33). The court deferred ruling "until counsel believes that the situation exists that requires their ruling and we can discuss that outside the presence of everybody." (R2T. 225). Trial counsel never revisited the issue and thus the record has been silent about the presence of uniformed law enforcement officers at the resentencing until Juror Matthews's recent Facebook post after Mr. Kearse's death warrant was signed.

So. 3d 40, 65 (Fla. 2013). And when Mr. Kearse did seek judicial leave to interview Matthews after her Facebook post was discovered, his attempts were rebuffed by the state circuit court and by the Florida Supreme Court. (Pet. App. Vol I at 4a) ("Kearse has not demonstrated good cause under Rule 3.575 to excuse his decades-long delay in seeking a juror interview").

The Florida Supreme Court's invocation of "lack of diligence" epitomizes the lack of meaningful appellate review it afforded to Mr. Kearse's claim because it "empties" the concept of diligence "of its meaning." *Williams v. Taylor*, 529 U.S. 420, 435 (2000). This Court has, on several occasions, defined the parameters of "due diligence." Due diligence is defined as "`reasonable diligence,'" not "`maximum feasible diligence.'" *Holland v. Florida*, 560 U.S. 631, 652 (2010) (citations omitted). It "depends upon whether the prisoner made a reasonable attempt, *in light of the information available at the time*, to investigate and pursue claims in state court." *Williams*, 529 U.S. at 435 (emphasis added). "It does *not* depend . . . upon whether those efforts could have been successful." *Id*. (emphasis added). If there is simply "no basis" in the record to put reasonably diligent counsel on notice of a potential area for investigation, then the belated discovery of that information cannot be attributable to indiligent counsel. *Id*. at 443. To be found diligent, counsel is not required to chase every single rabbit down every single imaginable hole. *Id*. ("We should be surprised, to say the least, if a district court familiar with the standards of trial practice were to hold that in all cases diligent counsel must check public records containing personal information pertaining to each and every juror").

While it is clear that, under the law, "[d]ue diligence does not require a prisoner to undertake repeated exercises in futility or to exhaust every imaginable option, but rather to make reasonable efforts," *Aron v. United States*, 291 F. 3d 708, 712 (11th Cir. 2002), the Florida Supreme Court has, in the past, disagreed with the premise that, to be diligent, counsel in collateral cases are not required to engage in exercises of futility. For example, the Florida Supreme Court's understanding of the concept of due diligence absolutely requires collateral counsel to undertake exercises in futility in, for example, raising a claim of intellectual disability when the claim is foreclosed as a matter of state law. *See Bowles v. State*, 276 So. 3d 791, 794-95 (Fla. 2019) ("Bowles' inaction [in failing to previous raise an intellectual disability claim] should not be ignored *on the basis of the perceived futility of his claim*") (emphasis added). In other words, the Florida Supreme Court understands that diligence entails an essential requirement to raise a legally unavailable, or legally insufficient, or a legally or factually unavailable claim **no matter what**, at the risk of later being faulted for a lack of diligence should that previously unavailable claim become, for one reason or another, newly available. That is not this Court's understanding of diligence, however, nor are exercises in futility required under any court's definition of diligence save the Florida Supreme Court's.

An additional problem inheres in the Florida Supreme Court's understanding of diligence: it is steeped in hindsight. But conjuring up all the things counsel could have done but did not (even if those efforts would have been futile or fruitless) is not the test as it has been articulated by this Court. Just as with a claim of ineffective

assistance of counsel under the standard enunciated by this Court in *Strickland v. Washington,* 466 U.S. 668 (1984), "every effort [must] be made to eliminate the distorting effects of hindsight" because "it is all too easy for a court, examining [counsel's actions] after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Id.* at 689. Indeed, this Court has expressed a specific concern about "the potential for distortions and imbalance that can inhere in a hindsight perspective . . . " *Premo v. Moore*, 562 U.S. 115, 125 (2011). These principles apply equally to the diligence inquiry of collateral counsel, but it is the antithesis of the speculation and hindsight-laden "analysis" performed by the Florida Supreme Court in Mr. Kearse's case.

2. The Intellectual Disability Claim.

The Florida Supreme Court also avoided confronting Mr. Kearse's intellectual disability claim by relying on a hindsight-driven diligence finding.[25] Mr. Kearse alleged that he was intellectually disabled, and thus categorically exempt from execution under the Eighth Amendment, due to score of 75 on the WAIS-5 testing instrument which was released in October 2024. (Pet. App. Vol. I at 6a; Pet. App. Vol. II at 52a-62a). The results of that test, administered to Mr. Kearse on February 2, 2026, were alleged in his successive postconviction motion, attached to which were the report of the mental health expert who conducted the evaluation, Dr. Robert H. Ouaou, (Pet. App. Vol. II 170a-178a), at as well as a report from another mental health expert, Dr. Cecil R. Reynolds, who explained that "a full-scale IQ resulting

[25] The Florida Supreme Court also imposed procedural bars to the claim; that analysis is addressed in the following section of this petition.

from proper and accurate administration of the WAIS-5 is the best representation of an individual's current intellectual functioning one can attain due to the currentness of its normative data" (Pet. Vol. II at 92a). Dr. Reynolds also explained that while the WAIS-5 was released in late October 2024, practitioners

> *did not immediately start using it in clinical or forensic evaluations as soon as the test was released—particularly in cases involving high-stakes decision-making in cognitive assessments like death penalty proceedings.* This is because under the APA's professional and ethical standards, examiners are required to be competent in the administration of any test they use, which requires studying the applicable manual, as well as practicing both administering and scoring the test itself. While there is no set rule on how to acquire competency in IQ testing administration, it is imperative that any examiner practice multiple times in situations that lack any sort of legal, clinical, or other practical consequences. *For these reasons, it took time for the WAIS-5 to be regularly administered.*

(Pet. App. Vol. II at 91a-92a) (emphasis added).

When the Florida state circuit court rejected Mr. Kearse's intellectual disability, it did not determine—nor did the state argue—that a time bar precluded it from reaching the merits of the claim because the WAIS-5 came out in October 2024 and Mr. Kearse was not tested with the WAIS-5 until February 2, 2026 (in other words, a few months more than 1 year after the WAIS-5 was released). However, undeterred by the fact that the lower court did not find a time bar for this reason—nor did the state argue a time bar for this reason in either the lower state court or in its brief to the Florida Supreme Court—and giving no acknowledgement whatsoever of Dr. Reynold's proffered report, the Florida Supreme Court concluded that Mr. Kearse's counsel were not diligent because his full-scale IQ score on the WAIS-5 was the result of a test taken more than a year after the WAIS-5 was "released." (Pet.

App. Vol. I at 6a) (to be timely, "Kearse's claim would need to have been filed by October 2025 at the very latest. Therefore, Kearse's intellectual disability claim based on his February 2, 2026, IQ score is untimely"). (Pet. App. Vol. I at 6a).

Again, this finding of a lack of diligence, the consequence of a limited hindsight lens, is anathema to the notion of meaningful appellate review as this Court has defined that principle in *Evitts* and *Douglas*. Mr. Kearse, in unmistakably clear language, and accompanied by a report from a qualified mental health expert, explained in his postconviction motion why rushing to administer a newly released intellectual functioning testing instrument is contrary to accepted professional standards. (Pet. App. Vol. II at 61a-62a); Pet. App. Vol. III at 281a-282a). But, like Mr. Kearse's allegations concerning the Juror Matthews post, *see supra*, the allegations concerning the timeliness of his intellectual disability claim were not addressed by the Florida Supreme Court. The court did not even acknowledge they were made. The allegations were never disputed by the lower court because the lower court did not find that the claim was untimely for the reason the Florida Supreme Court did. It could not be clearer that the Florida Supreme Court "did not conduct an independent review" of Mr. Kearse's intellectual disability claim and "[i]n fact, there is a sense in which the court did not review [the claim] . . . at all." *Parker,* 498 U.S. at 321.

B. The Florida Supreme Court's Procedural Bar to *Atkins* claim

In addition to its erroneous timeliness determination, the Florida Supreme Court also applied a procedural bar to his intellectual disability claim because he had never previously raised an *Atkins* claim in his state or federal postconviction

proceedings. (Pet. App. Vol. I at 6a). While the statement that Mr. Kearse had never previously raised an *Atkins* claim is factually correct, it does not follow that Mr. Kearse's current claim is somehow procedurally barred for failing to raise it sooner. In an unwitting acknowledgement that Mr. Kearse could not, as a matter of Florida law at the time, previously raise a good faith intellectual disability claim, the Florida Supreme noted that IQ testing from Mr. Kearse's earlier proceedings established IQ scores of 78 and 79, which, in the court's view, "placed Kearse *outside the intellectual disability range*." (Pet. App. Vol. I at 5a.) (emphasis added). Aside from the fact that statement is no longer in fact accurate, *see Hall v. Florida*, 572 U.S. 701 (2014), this statement establishes exactly why Mr. Kearse could not previously raise an *Atkins* claim in good faith: under Florida's prior law providing a strict cutoff for intellectual disability claims for those defendants scoring above a full scale IQ of 70, *see Cherry v. State*, 959 So. 2d 702 (Fla. 2007), Mr. Kearse's scores did not qualify him for relief under *Atkins*, as the court acknowledged. (Pet. App. Vol. I at 5a) (Mr. Kearse's prior scores of 78 and 79 "placed Kearse *outside the intellectual disability range*." (emphasis added).

Only a failure to meaningfully review Mr. Kearse's claim and a concomitant insistence that Florida capital defendants must raise frivolous claims they cannot prove just to preserve them in the event the law or the facts change can explain the Florida Supreme Court's imposition of a procedural bar for the reasons it explained in its opinion. Talk about a "Catch-22." *See Trotter v. Florida*, 607 U.S. ___, Case No. 25-6853 (25A926) (Feb. 24, 2026) (Sotomayor, J., respecting the denial of application

for stay of execution and denial of certiorari). The court acknowledged that prior to the 75 score on the WAIS-5, Mr. Kearse's IQ scores placed him "outside the intellectual disability range" yet the court faulted him for not raising an *Atkins* claim previously with scores that the court acknowledged place him outside of the protections of the Eighth Amendment and *Atkins*. While the Florida Supreme Court is of the view that capital defendants must in fact undertake exercises in futility to preserve an otherwise legally or factually unsupported claim, *see Bowles*, 276 So. 3d at 794-95 ("Bowles' inaction [in failing to previous raise an intellectual disability claim] should not be ignored *on the basis of the perceived futility of his claim*"), that is not the law of this Court. *Williams; Holland*. The Florida Supreme Court's imposition of a procedural bar here is yet a further example of its failure to afford Mr. Kearse meaningful appellate review.

C. Putative "Pleading Deficiency" of *Atkins* Claim

The last reason the Florida Supreme Court offered for rejecting Mr. Kearse's intellectual disability claim was that he purportedly "failed to sufficiently plead the second prong—concurrent adaptive deficits . . ." (Pet. App. Vol. I at 6a). Nothing could be further from the truth, and it is simply mystifying why the Florida Supreme Court would make such a finding on this record—a finding the lower court did not make and an argument that the state never advanced.

Even a cursory review of Mr. Kearse's state court postconviction motion, which should be a prerequisite to meaningful appellate review, reveals his extensive allegations concerning the adaptive deficit prong; in fact, there is a separately

delineated 3-page section of the motion devoted to the issue under the heading "**Mr. Kearse has deficits in adaptive functioning**." (Pet. App. Vol. II at 57a-59a) (emphasis added). Dr. Ouaou's report also extensively addressed Mr. Kearse's adaptive deficits. (Pet. App. Vol. II at 174a-175a; 177a-178a). Mr. Kearse's Initial Brief to the Florida Supreme Court likewise addressed the adaptive deficit prong (Pet. App. Vol. II at 205a-206a; 289a). The Florida Supreme Court's determination that this prong had been insufficiently pled has no basis in fact whatsoever, another consequence of the court's lack of meaningful appellate review in this case.

II. The Florida Supreme Court's Rote Application of Procedural Bars to *Atkins* Claims Creates an Unacceptable Risk of Executing the Intellectually Disabled in Contravention of the Eighth and Fourteenth Amendments.

The Eighth Amendment's prohibition against the infliction of cruel and unusual punishment "flows from the basic 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense.'" *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)). In this vein, this Court has long recognized that the death penalty is "unique in its severity and irrevocability," *Gregg v. Georgia*, 428 U.S. 153, 187 (1976), and that "the Eighth Amendment applies to it with special force." *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (citing *Thompson v. Oklahoma*, 487 U.S. 815, 856 (1988) (O'Connor, J., concurring in the judgment)). The foundational principle that "death is different" in tandem with evolving standards of decency has therefore resulted in the recognition of that certain "particularized characteristics," *Gregg*, 428 U.S. at 190, of an individual offender necessitate a categorical bar to ensure that "only the most

deserving of execution [be] put to death." *Atkins v. Virginia*, 536 U.S. 304, 319 (2002).

This Court's decision in *Atkins* established that execution of the intellectually disabled is unconstitutionally excessive punishment and "that the Constitution 'places a substantive restriction on the State's power to take the life' of [an intellectually disabled] offender." 536 U.S. at 307-07 (quoting *Ford v. Wainwright*, 477 U.S. 399, 405 (1986)). There is no question that this categorical bar exists, and this Court has held that "[p]ersons facing the most severe sanction **must have a fair opportunity to show that the Constitution prohibits their execution**" to uphold "our Nation's commitment to dignity and its duty to teach human decency as the mark of a civilized world." *Hall v. Florida*, 572 U.S. 701, 724 (2014) (emphasis added). *Accord Walls v. State*, 213 So. 3d 340, 348 (Fla. 2016) (Pariente, J., concurring) ("More than fundamental fairness and a clear manifest injustice, the risk of executing a person who is not constitutionally able to be executed trumps any other considerations that this Court looks to when determining if a subsequent decision of the United States Supreme Court should be applied").

Categorical bans exist to protect both the individual as well as the interests of society. *Ford*, 477 U.S. at 409-10. This Court has never suggested that the Eighth Amendment's prohibition on executing an intellectually disabled person is subject to any sort of waiver or procedural bar or lack of diligence in bringing the claim sooner. Just as it would be illegal to execute a person who was convicted of murder as a 15-year-old and who failed to raise an Eighth Amendment challenge at the appropriate time, *see Roper*, 543 U.S. at 568-69, or to execute a person who was convicted of rape

but not murder and failed to raise a challenge at the appropriate time, *see Kennedy*, 554 U.S. at 419, so too would it be illegal to execute an intellectually disabled person who failed to raise his claim at the appropriate procedural time. *See, e.g.*, *State ex rel. Clayton v. Griffith*, 457 S.W. 3d 735, 757 (Mo. 2015) (Stith, J., dissenting) ("[I]f [petitioner] is intellectually disabled, then the Eighth Amendment makes him ineligible for execution . . . [I]f a 14-year-old had failed to raise his age at trial or in post-trial proceedings then [] would [it] be permissible to execute him for a crime he committed while he was a minor? Of course not. His age would make him ineligible for execution. So too, here, if [petitioner] is intellectually disabled, then he is ineligible for execution").

A. Notwithstanding this Court's clear command, the Florida Supreme Court has rigidly applied procedural bars to *Atkins* claims in Florida, including in Mr. Kearse's case.

Neither the Florida Supreme Court nor the circuit court below disputed that Mr. Kearse has a 75 full-scale IQ score placing him in the intellectual disabled range; yet each refused to apply the clearly established constitutional bar to his execution based on procedural grounds. *See* (Pet. App. A, at 5a-6a); (Pet. App. B, at 22a). And although the Florida Supreme Court incorrectly (and inexplicably) determined that Mr. Kearse had not made sufficient allegations as to the adaptive deficit prong of the intellectual disability test, the fact remains that he did. *See supra*. A state court may not "under the color of local practice," *Rogers v. Alabama*, 192 U.S. 226, 230 (1904) (Holmes, J.), use a cloudy and manipulable state-law standard to evade review of a federal constitutional right it disfavors.

Since *Atkins*, this Court has twice rejected state- or court-created standards

for the determination of intellectual disability that were contrary to or in conflict with clinical definitions guided by medical authorities. *See Hall*, 572 U.S. at 719 ("*Atkins* did not give the States unfettered discretion to define the full scope of the constitutional protection"); *Moore v. Texas*, 581 U.S. 1, 5-6 (2017) ("As we instructed in *Hall*, adjudications of intellectual disability should be 'informed by the views of medical experts.' That instruction cannot sensibly be read to give courts leave to diminish the force of the medical community's consensus") (internal citation omitted). Although *Hall* and *Moore* both concerned how states and courts were operating to define *who* is intellectually disabled—requiring the guidance of the medical community—the critical principle from both cases applies equally here. This guiding principle is that although states are tasked with implementing the constitutional restriction, they may not fashion legislative (as in *Hall*) or judicial (as in *Moore*) rules that "create[] an unacceptable risk that persons with intellectual disability will be executed." *Hall*, 572 U.S. at 704. This restricting principle should not be limited to defining who is in the category of those intellectually disabled offenders ineligible for execution under medical community guidelines; here, Florida's state-created rule of timeliness precludes even the presentation of evidence of Mr. Kearse's intellectual disability based on a theory of timeliness that is not only absurd under the facts of this case, *see supra*, but is fundamentally unfair.

The Florida Supreme Court's procedural and timeliness bars which are preventing Mr. Kearse from obtaining even review of his intellectual disability claim violate this Court's proscription that in *Atkins* cases a condemned inmate must at least have an "opportunity to present evidence of [his] intellectual disability." *Hall*, 572 U.S. at 724 ("Freddie Lee Hall may or may not be intellectually disabled, *but the law requires that he have the opportunity to present evidence of his intellectual disability*") (emphasis added). Individuals who are categorically ineligible for execution like Mr. Kearse cannot be left by states without a form to at least receive a single merits review of his claim. This contravenes *Atkins*, *Hall*, and their progeny because of the "unacceptable risk that persons with intellectual disability will be executed." *Id*. at 704.

CONCLUSION

For the reasons set forth above, this Petition for Writ of Certiorari to review the judgment of the Florida Supreme Court should be granted.

Respectfully submitted,

/s/Suzanne Keffer
SUZANNE KEFFER
Acting CCRC-South
Florida Bar No.
keffers@ccsr.state.fl.us
**Counsel of Record*

PAUL E. KALIL
Assistant CCRC-South
Florida Bar No. 174114
kalilp@ccsr.state.fl.us

COURTNEY M. HAMMER
Staff Attorney
Florida Bar No. 1011328
hammerc@ccsr.state.fl.us

Capital Collateral Regional Counsel – South
110 SE 6th Street, Suite 701
Fort Lauderdale, FL 33301
Tel. (954) 713-1284
Fax (954) 713-1299

COUNSEL FOR PETITIONER