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

No. 25-6926

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

REPLY IN SUPPORT OF 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

March 2, 2026

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I. Mr. Kearse Presents the Questions, not the Respondent

Mr. Kearse's petition set out three separate yet interrelated questions for this Court's review. The Respondent's Brief in Opposition [hereinafter BIO], however, has re-written the questions to suit its particular view of the issues. Mr. Kearse maintains that his questions are appropriate for the issues he raises, the Respondent's contortions of them notwithstanding.

II. Florida Supreme Court's Lack of Meaningful Appellate Review

While the Respondent seemingly acknowledges that a constitutional issue may arise if the Florida Supreme Court failed to provide a meaningful appellate review to Mr. Kearse's constitutional claims, it argues that there no constitutional issue worthy of this Court's intervention in Mr. Kearse's particular case. (BIO at 12) ("This attempt to create a constitutional issue where there is none should be rejected"). The Respondent misunderstands Mr. Kearse's actual arguments: his certiorari-worthy questions are not grounded in any "disappointment" (BIO at 12) with the fact that the Florida Supreme Court rejected his claims using an impossible-to-meet standard of diligence imbued with hindsight, or that it imposed "procedural bars" resulting from a misunderstanding of the basic facts of Mr. Kearse's case and of the principles of appellate review. Nor is his argument based on the statistical fact the Florida Supreme Court "did not reverse any post-warrant cases in 2025 or 2026" as evidence that the Florida Supreme Court did not provide meaningful appellate review to Mr. Kearse. (BIO at 15). Rather, his arguments are based on specific examples of how the Florida Supreme Court failed in its duty to conduct meaningful appellate review to

Mr. Kearse. That Respondent has made the choice not to address Mr. Kearse's arguments hardly provides any reassurance to negate the Florida Supreme Court's troubling trendline toward becoming "a rubber stamp for lower court death-penalty determinations." *Barclay v. Florida*, 463 U.S. 939, 973 (1983) (Stevens, J., concurring in the judgment).[1]

Rather than addressing the actual due process argument made by Mr. Kearse as to the Florida Supreme Court's treatment of his constitutional claims the Respondent, much like the Florida Supreme Court, resorts to misdirection:

As to Mr. Kearse's Sixth Amendment issue relating to the fact that his resentencing jury was subjected to improper influences arising from the post-warrant voluntary Facebook posting made by one of the jurors, the Respondent talks more about what the claim is *not* than what it *is*. His claim is *not* premised on the fact that Juror Matthews wrote that there were "too many" uniformed officers in the courtroom at his 1996 resentencing. (BIO at 14). Rather, Mr. Kearse's Petition makes quite clear that his claim alleged a violation 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"). The

[1] The Respondent does do an admirable job of explaining that there is no federal forum for Mr. Kearse's claims at this time (BIO at 15). All the more reason why this Court's review is more acutely needed at this time; there is nowhere else for Mr. Kearse to turn to have a few of his constitutional claims.

actual claim that Mr. Kearse made has several components, all established through Juror Matthews's voluntary Facebook post: (1) that "every day," no matter "how long the trial went," the "back of the courtroom was filled with [law enforcement officers] from every city and county in the state, so much support and respect from his fellow [law enforcement officers"; (2) that the law enforcement presence was "never wavering," with officers standing there "for several hours"; and (3) that 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."

On the issue of diligence, the Respondent does not challenge Mr. Kearse's depiction of the proper standards for analyzing the issue of diligence. Rather, like the Florida Supreme Court, it argues for a transformation of the diligence test into something that it is not and by doing so "empties" the concept of diligence "of its meaning." *Williams v. Taylor*, 529 U.S. 420, 435 (2000). *Accord Holland v. Florida*, 560 U.S. 631, 652 (2010) (explaining that due diligence is defined as "'reasonable diligence,'" not "'maximum feasible diligence'"). For example, it lectures Mr. Kearse's collateral counsel as to how to implement their obligations to their client and how, in Respondent's view, they should allocate their scare resources. *See* (BIO at 20) ("Collateral counsel is provided access to public records, trial counsel's file, and to investigate the case through discussion with his client and investigation/contact with

defense counsel, and other potential witnesses, including experts, witnesses, and the friends and family members of the defendant to name a few. Those investigations could include discussions about the case, what transpired in the courtroom, and the atmosphere of the trial to discern what collateral issues should be raised on postconviction review."). Notably absent from the Respondent's perception of what collateral counsel's obligations entail is any mention of interviewing jurors, one of which in Mr. Kearse's case made a wholly unanticipated and voluntary social media post giving rise to a colorable claim of a Sixth Amendment violation. Of course, collateral counsel in Florida are prohibited by law and ethics from interviewing jurors as a routine part of investigating potential issues to raise, a fact that Respondent chooses to ignore. *See Marshall v. State*, 854 So. 2d 1235 (Fla. 2003).

The bottom line as to the issue of diligence is that the Respondent simply engages in a hindsight-laden analysis by throwing out names of every possible class of participant in any criminal case, arguing that collateral counsel should have spoken with all of the people in all of these groups (public records,[2] trial witnesses, expert witnesses, family members, etc.). This is decidedly not the test for diligence. *See Williams*, 529 U.S. at 433 ("We should be surprised, to say the least, if a district

[2] Respondent disingenuously suggests that public records from state agencies involved in the investigation and prosecution of Mr. Kearse would somehow have provided Mr. Kearse's collateral counsel with a hint, warranting investigation, that uniformed law enforcement officers had filled the courtroom at his 1996 resentencing. However, the Respondent told the Florida Supreme Court that "[n]othing in such [public records] would provide information on or assistance with Kearse asserting a claim on the presence of officers." *See* Answer Brief of Appellee, *Kearse v. State,* Florida Supreme Court Case No. SC2026-0251, Feb. 18, 2026, at 54.

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.").

With regard to Mr. Kearse's intellectual disability claim, the Respondent simply details all the steps it believes collateral counsel should have taken to raise an *Atkins*[3] claim previously. *See* (BIO at 20). Again, as Mr. Kearse's Petition makes clear, he alleged in his state postconviction motion and in his briefing to the Florida Supreme Court the reasons—supported by a factual proffer from a qualified mental health expert—why the intellectual disability claim was not and could not, in good faith, have been previously made. Just because the Respondent does not engage with those arguments does not mean they were not made, nor does it mean that Mr. Kearse is "refus[ing] to accept" anything. (BIO at 20). In a similar vein, the Respondent makes the factually false argument that Mr. Kearse's state court pleadings did not allege deficits in adaptive functioning when Mr. Kearse's petition explained that he did so; he even pointed out the claim heading in his state postconviction motion where he addressed the adaptive deficit prong. Continuing to peddle the fiction that Mr. Kearse's intellectual disability claim was somehow insufficiently pled (an argument that unfortunately found an audience with the Florida Supreme Court) is simply more evidence to support the lack of any meaningful due process any meaningful appellate review in these proceedings.

Respondent suggests that Mr. Kearse's allegations concerning his adaptive

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

deficits were insufficiently pled because he failed to allege "current" or "concurrent" adaptive deficits, meaning that he failed to allege deficits as an adult. (BIO at 18); (Pet. App. Vol. I at 6a). First, Mr. Kearse was arrested months after his 18th birthday, so his entire adult life has been spent in prison or on death row. This Court has already spoken to how behavior in a prison setting is of marginal utility in assessing the adaptive deficit prong in an intellectual disability claim. *See generally Moore v. Texas*, 581 U.S. 1, 16 (2017).

In any event, Mr. Kearse did allege deficits in adaptive behavior as the law defines it. The legal premise of the Respondent's criticism of Mr. Kearse's allegations holds no water under current legal standards. To be sure, the definition of intellectual disability in Florida's statute does contain the word "concurrent." *See* § 921.137 (1), Fla. Stat. But the legal landscape shifted in Florida following this Court's 2014 decision in *Hall v. Florida*, 572 U.S. 701 (2014), affecting how that provision is to be interpreted and applied by courts.

Prior to *Hall v. Florida* and grappling with the consequences of *Atkins*, the Florida Supreme Court issued a series of decisions which interpreted (improperly as it turned out) the "concurrent" language to mean that a retrospective determination of a defendant's adaptive functioning prior to age 18 "was insufficient to satisfy the second prong of the intellectual disability prong." *Hall v. State*, 201 So. 3d 628, 635 (Fla. 2016) (citing, *inter alia*, *Phillips v. State*, 984 So. 2d 503 (Fla. 2008); *Jones v. State*, 966 So. 2d 319 (Fla. 2007)). Rather, a defendant's adaptive functioning deficits must, the Florida Supreme Court held at the time, focus on a defendant's current

behavior, that is, as an adult. *Hall*, 201 So. 3d at 635-36. The Florida Supreme Court's decision in *Phillips*, along with its predecessor case holding the same thing, *Jones*, provided the backdrop for subsequent decisions condoning the limitation on evidence tending to support the adaptive deficit prong to that of "adult" deficits only. However, following the remand from this Court, the Florida Supreme Court's issued a follow-up opinion recognizing that courts had been reading its earlier *Phillips* decision too narrowly. *Hall v. State*, 201 So. 3d at 636 ("we reject the trial court's narrow reading of *Phillips* and the State's argument that mental health experts may only evaluate a prisoner's adaptive functioning during his or her incarceration").

Hall v. Florida changed the analysis. In *Hall*, this Court held that courts must examine and rely on what "experts in the field would consider" when diagnosing intellectual disability. *Hall,* 572 U.S. at 712. The Respondent's argument here, that Mr. Kearse did not and could not establish deficits in adaptive functioning because he did not allege "current" deficits as an adult, even assuming the factual premise of that argument were true, flies in the face of *Hall*'s explicit language:

> For professionals to diagnose—and for the law then to determine—whether an intellectual disability exists once the SEM applies and the individual's IQ score is 75 or below **the inquiry would consider factors indicating whether the person has deficits in adaptive functioning. These include evidence of past performance, environment, and upbringing**.

Id. at 714 (emphasis added).

The *Hall* Court went on to observe that, because of the refusal by the Florida Supreme Court to allow a defendant to claim intellectual disability if he had a full-scale IQ score of anything higher than 70, courts had found themselves precluded

from considering "even substantial and weighty" evidence of a defendant's "failure or inability to adapt to his social and cultural environment, *including medical histories, behavioral records, school tests and reports, and testimony regarding past behavior and family circumstances*." *Id.* at 712 (emphasis added). This is so "even though the medical community accepts that *all of this evidence* can be probative of intellectual disability including for individuals who have an IQ test score above 70." *Id.* at 714 (emphasis added). The *Hall* Court ultimately struck as unconstitutional the 70 IQ cut-off imposed by the Florida Supreme Court and held that "the law requires that [a capital defendant] have the opportunity to present evidence of his intellectual disability, *including deficits in adaptive functioning over his lifetime*." *Id.* at 724 (emphasis added).

In sum, Mr. Kearse sufficiently alleged the adaptive deficits prong of the test for intellectual disability as required by the medical community's standards and as this Court required him to do in *Hall*. The Respondent's refusal to accept this Court's holding in *Hall* provides no basis for the Court to deny Mr. Kearse's petition.

III. Eighth Amendment Categorical Bar

Mr. Kearse's petition also raises a question that is ripe for this Court's review, that is, whether a state procedural bar and/or a state finding of a lack of diligence in bringing an intellectual disability claim override the Eighth Amendment categorical bar on executing the intellectually disabled. The Respondent's position—that the Florida Supreme Court found Mr. Kearse's claim procedurally barred, untimely, and insufficiently pled—is the entire point of this claim and merely supports Mr. Kearse's argument that the time has come for this Court to address whether state court

procedural obstacles to an otherwise colorable claim of intellectual disability must yield to the Eighth Amendment.

CONCLUSION

For the reasons set forth above and in his Petition, this Court should grant certiorari to review the judgment of the Florida Supreme Court.

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