No. _____

IN THE

Supreme Court of the United States

RICARDO GONZALEZ,
Petitioner,

v.

STATE OF FLORIDA and SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, DECEMBER 1, 2026, AT 6:00 P.M.

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QUESTIONS PRESENTED

1. Does execution of the petitioner based on a jury's 8 to 4 death penalty recommendation violate the Sixth and Eighth Amendments in a felony murder prosecution where no juror was required to find petitioner either intended to kill or acted with reckless indifference to human life?

2. Does denial of petitioner's intellectual disability claim solely on procedural and untimeliness grounds violate due process, the Supremacy Clause, and the Eighth Amendment where:

(a) presenting evidence of intellectual impairment as mitigation at the penalty phase of petitioner's trial, before this Court, in *Atkins v. Virginia*, 536 U.S. 304 (2002), recognized a categorical bar, did not adjudicate the *Atkins* bar to his execution; and

(b) applying a filing deadline that required petitioner, in his initial post-conviction motion, to raise a claim then barred by the State's later-invalidated IQ cutoff of 70 unduly restricts a substantive Eighth Amendment right and permits petitioner's execution despite actual innocence of the penalty?

3. Petitioner unsuccessfully sought access to records of Florida's past executions by lethal injections, including logs of executions and rescue drug scenarios, to establish that his multiple extreme allergic reactions to drugs and other substances make his scheduled execution by lethal injection violative of the Eighth Amendment. The question presented is:

Do the Eighth and Fourteenth Amendments and the First Amendment and common-law rights of public access to records permit the State to withhold the records of its execution practices and experience needed to establish a substantial risk of unconstitutional harm?

PARTIES TO THE PROCEEDING

Petitioner is Ricardo Gonzalez, the appellant in the Florida Supreme Court in No. SC2026-1769 and the petitioner in No. SC2026-1770.

Respondent State of Florida was the appellee in Fla. No. SC2026-1769. Respondent in Fla. No. SC2026-1770 was the Secretary of the Florida Department of Corrections (Richard Comerford), captioned below as "Secretary, Department of Corrections."

RELATED PROCEEDINGS

State v. Gonzalez, No. F92-2141D (Fla. 11th Cir. Ct.) (judgment June 2, 1994; resentencing Sept. 18, 1998; order denying successive motion for postconviction relief Nov. 13, 2026)

Gonzalez v. State, 700 So. 2d 1217 (Fla. 1997) (direct appeal; death sentence vacated)

Gonzalez v. State, 786 So. 2d 559 (Fla. 2001) (direct appeal from resentencing; affirmed)

Gonzalez v. State, 990 So. 2d 1017 (Fla. 2008) (No. SC04-225) (postconviction; affirmed)

Gonzalez v. Secretary, Florida Department of Corrections, 629 F.3d 1219 (11th Cir. 2011), cert. denied, No. 11-5999 (U.S. Nov. 7, 2011) (federal habeas; denied)

Gonzalez v. State, 240 So. 3d 629 (Fla. 2018) (successive postconviction; affirmed)

Gonzalez v. Secretary, Department of Corrections, No. SC2026-1770 (Fla. Nov. 24, 2026) (state habeas corpus; denied in the same opinion)

Gonzalez v. Secretary, Florida Department of Corrections, No. 08-cv-22909 (S.D. Fla.) (Rule 60(b) motion pending)

Gonzalez v. Secretary, Florida Department of Corrections, No. 26-cv-3356 (M.D. Fla. filed Nov. 27, 2026) (42 U.S.C. § 1983 action; emergency motion for stay and preliminary injunction pending)

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The opinion of Florida's Supreme Court, Nos. SC2026-1769, 1770, affirms the summary denial of petitioner's successive motion for postconviction relief, denies his habeas corpus petition, and denies a stay of execution. It is reported at *Gonzalez v. State*, No. SC2026-1769, __ So. 3d ___, 2026 WL 3630498 (Fla. Nov. 24, 2026).

JURISDICTION

The Florida Supreme Court entered its judgment on November 24, 2026. Pet. App. A at 1. It stated that no motion for rehearing would be considered. *Id*. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Supremacy Clause, U.S. Const. art. VI, cl. 2, provides, in relevant part:

> This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The First Amendment provides, in relevant part:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Section 1 of the Fourteenth Amendment provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law ... ."

INTRODUCTION

Petitioner Ricardo Gonzalez is scheduled to be executed December 1, 2026—the 21st person Florida will execute this year, as it has been carrying out executions at a rate that far surpasses that of any other State.

Petitioner was 21 years old when he participated in the armed bank robbery that led to his death sentence. An off-duty police officer, working a second job as bank security, sought to stop the robbery of two bank tellers; he drew his service weapon. Petitioner confessed that he followed his co-defendant's lead in firing low. The prosecution contended that a shot bullet fired by petitioner's co-defendant ricocheted off the ground and struck the off-duty officer in the thigh, causing him to fall forward where another low shot fatally wounded him. The prosecution established that a gun the co-defendant had handed petitioner fired the fatal shot.

No jury has ever unanimously recommended death. Petitioner's first penalty-phase jury recommended death by a vote of 7 to 5, which would make him ineligible for the death penalty today in Florida. After his first direct appeal, the case was remanded for resentencing—and the second penalty-phase jury recommended death by only 8 to 4, which divided vote would make him ineligible for the death penalty anywhere but Florida. Instructional errors in the penalty-phase process further undermined the death sentence and are discussed below.

Only Alabama, among the other States, does not require unanimity, instead requiring at least a 10 to 2 majority. The state courts of last resort are thus divided on whether the Sixth Amendment requires a unanimous jury before death may be

imposed. *Compare Rauf v. State*, 145 A.3d 430 (Del. 2016), *with State v. Poole*, 297 So.3d 487 (Fla. 2020). Three cases pending in this Court bear on whether such a jury recommendation is constitutional: *Kian v. Florida*, No. 25-6623, which is set for argument on January 13, 2027, and the petitions in *Jackson v. Florida*, No. 26-76, and *Hunt v. Florida*, No. 26-78, which have both been distributed for conference on December 11, 2026. Particularly here, where the State would execute petitioner for felony murder without any jury determination that he acted with reckless indifference to human life, the minimum culpability *Enmund v. Florida*, 458 U.S. 782 (1982) and *Tison v. Arizona*, 481 U.S. 137 (1987), require, a stay pending the resolution of those cases is warranted.

Petitioner's IQ was measured at 75 when he was 12 years old. He has brain damage from years of boxing and repeated head traumas from ages 10 to 19. He was diagnosed at the time of sentencing with pugilistic encephalopathy, which is now known as CTE. No court has ever decided whether he is intellectually disabled; Florida employs a procedural and timeliness bars that prevent any post-conviction intellectual disability claim.

Florida also denied petitioner, and the public, access to records of its past executions. Under this secret-records regime, Floridians, and the people scheduled to be executed, do not know what has gone wrong in past executions or when and how Florida deviates from written protocols. The protocols keep secret the executioners' identities, training, qualifications for such a significant public task; witnesses to the execution do not see venous cannulation (the procedure where problems have

frequently occurred in lethal injection states); and if there are signs of a consciousness following a consciousness check, the curtain is closed.

In addition to brain damage which could have unforeseen implications for a consciousness check, petitioner suffers from critical allergies to a wide range of drugs. He sought access to records from past executions: the checklists, drug logs, and monitoring reports that are the only full record of what happens in the execution chamber—and records that could help petitioner establish that the lethal injection protocol as applied poses a substantial risk of severe pain or needless suffering in violation of the Eighth Amendment. The Florida courts denied such access, on the theory that petitioner had not shown a "colorable claim," and then rejected his method-of-execution claim as speculative—a process that puts prisoners in a "Catch-22." *Trotter v. Florida*, No. 25-6853 (U.S. Feb. 24, 2026) (statement of Sotomayor, J., respecting denial of certiorari).

Florida's secret-records regime produces arbitrary results among prisoners, because it denies prisoners essential information to litigate their Eighth Amendment claims. This case best presents the issue. Petitioner's documented brain damage and his history of severe allergic reactions, including angioedema and reactions requiring emergency treatment, make the risk of a conscious, paralyzed, and unrecognized reaction concrete rather than hypothetical. He identified that risk, sought the records needed to prove it, and was denied the records because he had not already proved the violation. No case will present this problem more clearly.

For all of these reasons, this Court should grant the petition and stay the

December 1 scheduled execution.

STATEMENT

On January 3, 1992, four men robbed the Kislak National Bank in North Miami, taking a cash box from a drive-in teller. Off-duty police officer, Steven Bauer, who was working as bank security, was shot and died after receiving emergency medical treatment. Petitioner, upon arrest, told police co-defendant Leonardo Franqui planned the robbery, recruited the others, chose the date and place, procured getaway cars, and provided him a firearm he carried. *Id.* Petitioner indicated to police that he shot low.

The State's forensic evidence was consistent with that account. The firearms examiner attributed a wound in the victim's thigh to a firearm Franqui carried, and the medical examiner agreed that the wound was painful enough to cause him to fall forward. 1994 Tr. 1889, 1910. The State's evidence indicated the fatal bullet entered the back of the officer's neck after he had fallen forward. *Id.* at 1905–10.

Petitioner, Franqui, and a third co-defendant were tried together in 1994. On the murder count, the jury was instructed on premeditated and felony murder. For felony murder, it was told that the State had to prove that the defendants were "the person who actually killed Stephen Bauer, or Stephen Bauer was killed by a person other than" them but they "and the person who killed Stephen Bauer were principals in the commission of a Robbery," and that "it is not necessary for the State to prove that the defendants had a premeditated design or intent to kill." 1994 Tr. 2259. The jury returned a general verdict of guilty, 1994 R.480, without indicating which theory it accepted.

The Florida Supreme Court affirmed the convictions but vacated the death sentence because the codefendants' confessions were improperly admitted against petitioner. *Gonzalez v. State*, 700 So.2d 1217, 1219 (Fla. 1997). At the 1998 resentencing, the jury was instructed that to recommend death, it must find that the defendant "killed; or attempted to kill; or intended that a killing take place; or intended that lethal force be employed; or that the defendant was a major participant in a felony that resulted in the victim's death, and his state of mind was one of reckless indifference." 1998 Tr. 1830. The instruction did not address "reckless indifference to human life," *cf. Tison v. Arizona*, 481 U.S. 137 (1987), and the jury was not asked to make specific findings. The jury was told its role was only advisory, and recommended death by a vote of eight to four.

The trial court sentenced petitioner to death, and found as mitigation that petitioner had "brain damage, learning disability and below-average intelligence." Sentencing Order at 12. Petitioner was diagnosed with pugilistic encephalopathy, and he had an IQ of 75 at age 12. *Gonzalez v. State*, 786 So. 2d 559, 563–66 (Fla. 2001). In rejecting the minor-participation mitigator, the court found that he was "a major participant in the bank robbery and in the murder" and "actually fired the fatal shot." Sentencing Order at 9. The sentencing court made no finding that petitioner acted with reckless indifference to human life. The Florida Supreme Court affirmed, 786 So.2d at 563, and the sentence became final on August 8, 2001.

This Court decided *Atkins v. Virginia*, 536 U.S. 304 (2002), while petitioner's initial post-conviction proceedings were pending. Florida adopted a rule, effective

October 1, 2004, that gave prisoners whose cases were already final 60 days to raise an *Atkins* claim. Fla. R. Crim. P. 3.203(d)(4)(E) (2004). At the time, however, Florida held that a person with an IQ score of above 70 could not be found intellectually disabled; petitioner's school-age IQ was measured at 75, and no claim was filed for him.

In 2014, this Court held unconstitutional Florida's strict IQ cutoff. *Hall v. Florida*, 572 U.S. 701 (2014). Since then, Florida has continued to apply its rule that prisoners whose sentences became final prior to October 1, 2004, must have raised their claims within sixty days of October 1, 2004. *See Bowles v. Florida*, 140 S. Ct. 25 (2019) (statement of Sotomayor, J., respecting the denial of certiorari) (characterizing this rule as "Kafkaesque" because it requires prisoners to raise claims a decade before *Hall* was decided).

The governor signed a death warrant on October 30, 2026. Petitioner filed a successive motion for postconviction relief raising an as-applied challenge to Florida's lethal injection protocol; a due process, Eighth Amendment, and First Amendment challenge to Florida's withholding of execution records; an intellectual disability claim; a challenge to the 8-4 death recommendation; and an Eighth Amendment challenge related to his culpability. He moved for a psychological evaluation and expert access; the circuit court denied the motion. *Id*. at 8. He moved for an evidentiary hearing on intellectual disability, which was denied. Relief was denied on November 13, 2026. A commission of three psychiatrists selected by the governor was appointed to evaluate petitioner; the commission found him competent but did not perform any objective testing, nor did it perform any intellectual disability evaluation or testing.

Six days after the warrant was signed, petitioner filed four demands for public records seeking, among other things, records of how Florida has carried out its recent executions. The circuit court denied every demand for execution records, principally because the records did not relate to a colorable claim. R.295–321. The Florida Supreme Court affirmed. The execution records were significant, particularly in light of recent litigation that has revealed Florida has not been following its execution protocol. *See, e.g., Guardado v. Sec'y, Dep't of Corr.*, 2026 WL 3327719 (11th Cir. Nov. 2026) (Pryor, J., concurring) (expressing concerns about use of Wite-Out correction fluid to change expiration date after use of expired drugs had come to light). The circuit court nonetheless presumed that the Florida Department of Corrections "will comply with the lethal injection protocol absent clear evidence to the contrary," and denied the request for records.

The records also were important here because of petitioner's own medical conditions. In addition to brain damage, petitioner has critical allergies to medication across several classes, including two antihistamines and prednisone. R.1037–38. In January 2025, he suffered an allergic reaction that included hives and angioedema of the lips, eyelids, and cheeks, with fever and throat tightness. R.1037–38, 1121–22. Florida's three-drug lethal injection procedure offers as premedication an antihistamine of the same class, R.1358, would treat a severe reaction with a steroid he cannot take, and uses a paralytic that would conceal any reaction. R.1120–23. The paralytic is administered after a sedative that is known to be short-acting, so if prisoners regain consciousness after the paralytic has been injected, they are unable

to move, breathe, speak, or signal distress. Florida's only safeguard against a conscious, paralyzed prisoner is a consciousness check performed by a team member who need have no medical training. R.1364. Petitioner proffered alternatives: a single oral barbiturate following an allergen test or, failing that, the firing squad. S.R. 31–32, 37–38. The circuit court found the claim "purely speculative" because he had not shown what the withheld records would show, and called the alternatives "moot." R.1832–33. The Florida Supreme Court affirmed, finding his claims "speculative," and the records sought "not relevant to any colorable claim that is cognizable in this postconviction proceeding." *Id*. at 17–18.

On intellectual disability, the Florida Supreme Court held the claim untimely, on the theory that he had not shown good cause for not seeking a determination within 60 days of October 1, 2004, when the strict IQ cutoff was still in place. The Florida Supreme Court also held the claim procedurally barred because petitioner had presented evidence of brain damage, learning disability, and below-average intelligence as mitigation at sentencing.

On petitioner's Eighth Amendment culpability claims, the Florida Supreme Court held the claim untimely and, assuming petitioner did not intend to kill Officer Bauer, "he possessed the gun from which the fatal gunshot was fired, and the sentencing court found that Gonzalez was a major participant in the crime." Pet. App. A at 22.

On jury unanimity, the court characterized the claim as a "repackaged effort to argue previously decided claims" and held on the merits that "*Ramos* does not apply

to jury recommendations of death in capital sentencing proceedings." Pet. App. A at 22–23. It found that neither the Sixth nor the Eighth Amendment "require that a jury's recommendation of death be unanimous." *Id.* The court denied a stay, stated that no motion for rehearing would be considered, and issued its mandate immediately.

REASONS FOR GRANTING THE WRIT

I. An Eight-to-Four Recommendation Cannot Support the Execution of a Defendant Whom the State High Court Assumes Did Not Intend to Kill and for Whom No Jury Made a Finding of Constitutionally Required Mental Culpability.

No jury has unanimously recommended death for petitioner. The first jury voted seven to five; the second, eight to four. *Gonzalez v. State*, 990 So. 2d 1017, 1022 (Fla. 2008). No jury has returned a verdict determining any aggravating circumstance. The jurors were not instructed to engage in deliberations; they were instructed that the decision could be "reached by a single ballot." 1998 Tr. 1833. In other words, the sentence was imposed via majority-vote election rather than jury deliberation. The jury was repeatedly told the sentencing recommendation was merely advisory. 1998 Tr. 1828,1833.

A. Florida is the only high court to impose death on such a divided jury vote.

Of the states that authorize capital punishment, only Florida and Alabama permit a death sentence without a unanimous jury, and Alabama requires at least ten votes. No other State permits a death sentence on a vote of eight to four. A justice of the Florida Supreme Court has recognized that this threshold "renders Florida the absolute outlier among states that impose the death penalty," and that "Florida now has the lowest standard in the nation, requiring the fewest number of jurors to recommend the death penalty." *Jackson v. State*, 430 So. 3d 64, 93 (Fla. 2025) (Labarga, J., concurring in result). Justice Labarga also concurred only in the result in the decision below. The Eighth Amendment requires looking to state practices, *Roper v. Simmons*, 543 U.S. 551, 564 (2005), and on the other end of the spectrum is California, where on November 5, 2026, the governor announced the commutation of the sentences of all 548 people on that State's death row. Also, federal law requires a unanimous jury recommendation for a sentence of death. 18 U.S.C. § 3593(e). Puerto Rico, a United States territory where petitioner was raised (splitting time between there and Miami), abolished capital punishment nearly 100 years ago, 34 L.P.R.A. § 995, and imposed an explicit constitutional ban in 1952. P.R. Const. art. II, § 7.

This Court has treated a lopsided count of state practice as the clearest objective evidence of contemporary standards of decency. *Atkins*, 536 U.S. at 313–16; *Roper v. Simmons*, 543 U.S. 551, 564–67 (2005); *Kennedy v. Louisiana*, 554 U.S. 407, 423–26 (2008). It has applied that method to strike down a Florida capital procedure that few

other States shared. *Hall*, 572 U.S. at 714–18. This Court measures that state-practices consensus when it decides the question, not when the prisoner is sentenced. *Atkins*, 536 U.S. at 311–12 (the Eighth Amendment is judged by the standards that "currently prevail"); *Roper*, 543 U.S. at 563–67. Under that standard, a death sentence resting on a recommendation one-third of a *death-qualified jury* rejected, *see Witherspoon v. Illinois*, 391 U.S. 510, 513–18 (1968), is one no other jurisdiction in the country would impose.

B. The Sixth Amendment's historical understanding required unanimity for a sentence of death.

The Sixth Amendment guarantees the jury right as it was understood at the Founding, including the requirement of unanimity. *Ramos v. Louisiana*, 590 U.S. 83, 89–93 (2020). At the Founding, many felonies carried a mandatory sentence of death, 4 William Blackstone, Commentaries 18; *Woodson v. North Carolina*, 428 U.S. 280, 289 (1976) (plurality opinion), and jurors who knew that conviction meant death often refused to convict those they believed should not die. *Id.* at 290; *Apprendi v. New Jersey*, 530 U.S. 466, 479 n.5 (2000). The unanimous verdict was thus, in substance, the community's unanimous judgment that death should follow. *See Rauf v. State*, 145 A.3d 430, 436 (Del. 2016) (Strine, C.J., concurring). When legislatures later gave capital juries sentencing discretion, the federal rule remained unanimity: "unanimity extends to all issues—character or degree of the crime, guilt and punishment—which are left to the jury," so that "one juror can prevent a verdict which requires the death penalty." *Andres v. United States*, 333 U.S. 740, 746, 748 (1948); *see Winston v. United*

States, 172 U.S. 303, 312 (1899). *Ramos* held that the Sixth Amendment's unanimity requirement applies to the States, overruling *Apodaca v. Oregon*, 406 U.S. 404 (1972). 590 U.S. at 93, 111.

A nonunanimous recommendation also separates the community's moral judgment from the jury findings that *Ring v. Arizona*, 536 U.S. 584, 609 (2002), and *Hurst v. Florida*, 577 U.S. 92, 94 (2016), require, and subjects the decision that actually produces a death sentence to a bare majority. The Florida Supreme Court itself treats a unanimous recommendation as a powerful judgment: it has relied on unanimity to hold *Hurst* error harmless. *Davis v. State*, 207 So. 3d 142, 174–75 (Fla. 2016); *Guardado v. Jones*, 226 So. 3d 213, 215 (Fla. 2017).

A unanimous recommendation cannot be weighty enough to cure a constitutional violation while its absence counts for nothing in deciding whether a man may be executed. The question whether the Sixth Amendment requires a unanimous jury of twelve is before the Court in *Kian v. Florida*, No. 25-6623 (*cert. granted* June 15, 2026) (argument set for Jan. 13, 2027), and the specific question whether it requires unanimity for a death sentence is presented in *Jackson* and *Hunt*, both distributed for conference ten days after petitioner's scheduled execution. *See Jackson v. Florida, No.* 26-76 and *Hunt v. Florida, No.* 26-78 (both distributed for conference of December 11, 2026).

C. This case presents an important vehicle to address the non-unanimity question due to the substantive rights at stake and the

inconclusive factors on which jurors relied in relation to the felony murder conviction.

The Eighth Amendment forbids a death sentence for felony murder unless the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be used, *Enmund*, 458 U.S. at 797 (focusing on intentionality), or was a major participant in a felony who acted with reckless indifference to human life. *Tison*, 481 U.S. at 158. The focus "must be on his culpability," and "American criminal law has long considered a defendant's intention—and therefore his moral guilt—to be critical." *Enmund*, 458 U.S. at 798, 800. This case involves a scenario in which no one who fired aimed to kill; upon departing, the participants believed the victim would survive from a leg wound; and the State introduced evidence that petitioner specifically *intended not to kill*. *Gonzalez v. State*, 700 So. 2d 1217, 1218 (Fla. 1997) (petitioner "shot low and believed he had only wounded the victim in the leg"; Franqui "was the first shooter and shot at the victim three or four times, while [petitioner] had shot only once").

Tison set the intent bar for imposition of a death sentence for felony murder at "reckless indifference to human life," maintaining a requirement of a culpable mental state at a murderous equivalent. *Tison* listed examples of non-intentional killers who are defined by their mental state: "the person who tortures another *not caring whether the victim lives or dies*, or the robber who shoots someone in the course of a robbery, *utterly indifferent* to the fact that the desire to rob may have the unintended consequence of killing the victim." 481 U.S. at 157 (emphasis added).

The court below assumed that petitioner "did not intend to kill," Pet. App. A at 22, a fact distinct at least in part from the underlying offense in *Tison* in which the killing (committed by Tison's cohorts) was intentionally and mercilessly committed. *See Tison*, 481 U.S. at 139–41. The decision below rested on the fact that petitioner "possessed the gun from which the fatal gunshot was fired" and that the "sentencing court found that [petitioner] was a major participant" in the felony offense. Pet. App. A at 22. Notably, the record established that petitioner did not bring a gun with him, but instead was given one by another participant, who had hatched and directed the offense and was considerably older than petitioner; unlike the others in the offense, petition had no prior criminal history. *Neither of these findings establish anything about petitioner's state of mind.* The decision below made no finding that petitioner acted with reckless indifference to human life, and nor did the sentencing court make such a finding. Nor did the jury. The import of the holding below is that a defendant in Florida who did not intend to kill may be executed on a nonunanimous recommendation if he was a major participant in robbery and a weapon he briefly possessed was used for the fatal shot, regardless of his mental state. That is inconsistent with the holding in *Tison*, and stretches the decision beyond the bounds of the Eighth Amendment.

The *Enmund/Tison* determination is the finding that makes a felony murder defendant eligible for death. It increases the maximum punishment the verdict authorizes, and under the reasoning of *Apprendi*, *Ring*, and *Hurst*, such a finding should be made by a jury, unanimously and beyond a reasonable doubt. *See Erlinger*

v. United States, 602 U.S. 821, 833–34 (2024); *Ramos*, 590 U.S. at 93. *Cabana v. Bullock*, 474 U.S. 376, 385–88 (1986), held otherwise, allowing a judge or appellate court to make the finding. But *Cabana* rested on the premise of *Spaziano v. Florida*, 468 U.S. 447, 459–65 (1984), and *Hildwin v. Florida*, 490 U.S. 638, 640–41 (1989) (per curiam), that the Sixth Amendment does not govern who finds the facts that make a defendant eligible for death. *Hurst* overruled *Spaziano* and *Hildwin* on exactly that point. 577 U.S. at 101–02. *Cabana* thus should be revisited. It cannot be reconciled with *Apprendi*'s rule that the label a State attaches to a fact does not matter. *See Alleyne v. United States*, 570 U.S. 99, 114–16 (2013). This case presents a clean vehicle for this Court to revisit *Cabana*: the question is outcome determinative.

No jury was ever required to find that petitioner acted with reckless indifference to human life. The guilt phase jury was told that it could convict without any intent to kill, and even if someone else fired the fatal shot. 1994 Tr. 2259. Its general verdict does not indicate which theory it accepted. The 1998 penalty phase jury was guided by an incomplete reckless indifference instruction that omitted indifference "to human life," and made no specific findings on reckless indifference. 1998 Tr. 1830. It divided eight to four.

The sentencing judge found that petitioner was a major participant and diverted from the limitations of the jury findings to reach his own conclusions on intent and conduct. 1998 Sentencing Order:9. The Florida Supreme Court did not rely on this interpretation of the facts; to the contrary, it assumed petitioner affirmatively did not

intend to kill. The mental state that *Tison* requires was found by neither the jury nor the state's high court.

"Capital punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'" *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (quoting *Atkins v. Virginia*, 536 U.S. 304, 319 (2002)). *Cf. Atkins*, 536 U.S. at 319 ("If ***the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State***, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution") (emphasis added); *Zant v. Stephens*, 462 U.S. 862, 877 (1983) (an aggravating circumstance "must genuinely narrow the class of persons eligible for the death penalty"). The line *Enmund* and *Tison* drew cannot balloon so far that every discharge of a firearm resulting in death is eligible for the death penalty. If possession of a weapon that fired a fatal shot and major participation in a robbery are enough, without any meaningful limiting principle as to mental state, the line separating "the average murderer" from the death penalty-eligible murderer and cabining the "narrow category of the most serious crimes" disappears.

This Court should not allow a State to execute when the categorical determinations of *Tison* and *Enmund* and recommended death only by a vote of 8 to 4, and where the Florida Supreme Court assumed no intent to kill.

D. This case presents a good vehicle to resolve this question because the sentencing recommendation rested on defective instructions and an inadequate poll of jurors.

The majority recommendation for a death sentence was also the product of instructions that lowered the State's burden on the matters that made petitioner eligible for the death penalty. The jury was told that it could weigh as an aggravating circumstance that the victim was a law enforcement officer "engaged in the performance of his official duties," Fla. Stat. § 921.141(5)(j) (1996). But the prosecutor told the jury post-shooting conduct met that test. And petitioner's conviction for the enhanced offense of a law enforcement victim was premised on a verdict that effectively removed the element of acting as a police officer *at the time* of the offense, a critical element here as to an off-duty police officer working bank security. The guilt phase jury verdict asked only whether the victim "was a law enforcement officer," and the prosecutor told the jury that "[o]ne of [the aggravating factors] is just the fact that a person is a police officer" and that "all of these have been proven" by the earlier verdict. 1998 Tr. 1757–59.

The jury was further instructed that it could treat the robbery and assault convictions returned in that same verdict, arising from the exact same criminal conduct, as "prior" violent felony convictions, while treating the robbery conduct also served as an aggravating aspect of the felony murder itself. 1998 Tr. 1829–30. The same contemporaneous counts thus counted twice, in a manner at odds with this Court's decision in *Wooden v. United States*, 595 U.S. 360 (2022) (unanimous decision

holding that multiple criminal offenses during a single criminal episode count as one prior conviction—not separate "occasions" sufficient to subject someone to a sentencing enhancement under the Armed Career Criminal Act). This further illustrates the extent to which certiorari review is warranted here, to bring the decision in *Cabana*, 474 U.S. 376, in line with current Supreme Court precedent.

Such precedents preclude execution where the jury was told that its recommendation was merely advisory; that it need not be unanimous; and that its decision could be "reached by a single ballot." 1998 Tr. 1828–29. The jury was never told that it must deliberate together as a jury in considering their individual verdicts. A fractured recommendation reached on those terms cannot carry the weight of a community judgment of death by the State. *See Caldwell v. Mississippi*, 472 U.S. 320, 328–29 (1985).

This case is an appropriate vehicle to consider this question because the jurors were, in substance, never polled. Before they retired, the court told the jurors they would "not be asked what your individual vote was," but rather whether the form "accurately depicts the majority vote." 1998 Tr. 1838. When the clerk asked *that* question, four jurors, including the foreperson, answered that the recommendation verdict was incorrect. *Id*. at 1852–53. Rather than return the jury to deliberate, *see* Fla. R. Crim. P. 3.450, the court re-polled the jurors on the same question. The polling in a non-unanimous verdict procedure thus produced a further distancing of individual responsibility of each juror to stand behind his or her life-or-death decision.

A poll that cannot identify a single juror who voted for death does not "ascertain for a certainty that each of the jurors approves of the verdict as returned." *Humphries v. District of Columbia*, 174 U.S. 190, 194 (1899). A divided recommendation produced in this manner does not supply the heightened reliability the Eighth Amendment demands "in the determination that death is the appropriate punishment in a specific case." *Woodson*, 428 U.S. at 305. And when a jury divides eight to four after instructions that omit the constitutional-baseline mental state, the constitutionality of the resulting penalty is undermined.

E. The state court rulings do not bar review of these important federal law questions.

The decision below characterized the claim as procedurally barred, based on claims petitioner raised in 2003 and 2017. Neither bars review here. The 2003 claim challenged judicial factfinding under *Ring* and was rejected because *Ring* is not retroactive. 990 So. 2d at 1034–35. The 2017 claim sought the benefit of *Hurst* and was rejected because the sentence became final before *Ring*. Neither of those claims, however, presented those raised now: First, that the Sixth Amendment, as construed in *Ramos* (decided in 2020), requires unanimity for a death sentence; and, second, that the *current* state consensus under the Eighth Amendment forbids execution on such a single-ballot vote. Even in Florida, under a 2023 rule, the jury must unanimously find at least one aggravating factor beyond a reasonable doubt for the defendant to be death eligible. *See* Fla. Stat. § 921.141(2)(c). The state procedural bars are not

applicable here, because the state decision is not independent of federal law. *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985); *Foster v. Chatman*, 578 U.S. 488, 497–98 (2016).

Second, a bar that rests on a prior merits decision is not a procedural default. "A claim is procedurally barred when it has not been fairly presented to the state courts for their initial consideration—not when the claim has been presented more than once." *Cone v. Bell*, 556 U.S. 449, 467 (2009). The decision below did not rest on the bar alone. It decided the federal question, reaffirming its holdings that *Ramos* does not apply to capital sentencing and that neither the Sixth nor the Eighth Amendment requires a unanimous recommendation. These are federal law holdings that warrant review by this Court.

Third, *State v. Poole*, 297 So.3d 487 (Fla. 2020), on which the decision below relied, decided a different question. It was decided in 2020, when Florida's statute required a unanimous recommendation. Fla. Stat. § 921.141(2)(c) (2017). Florida did not authorize death on an eight-to-four vote until 2023. Ch. 2023-23 § 1, Laws of Fla. *Poole* rested on *Spaziano v. Florida*, 468 U.S. 447 (1984), which upheld judicial override of a jury, a practice every State that once allowed it has since abandoned, and which did not consider a sentence resting on a divided jury. No court has decided whether executing a prisoner on an eight-to-four recommendation is consistent with a national consensus that, outside Florida, does not exist.

The court below also described the claim as untimely and as "an attempt to revisit mitigation." Pet. App. A at 21–22. But *Enmund* and *Tison* define who may be executed, not mere mitigation to be weighed. *Enmund*, 458 U.S. at 797–801. The

characterization of an eligibility claim as previously considered "mitigation" depends on the federal question of what *Enmund* and *Tison* require, and a procedural ruling that turns on a federal question is not independent of it. *Ake*, 470 U.S. at 75; *Foster*, 578 U.S. at 497–98; *see Michigan v. Long*, 463 U.S. 1032, 1040–41 (1983). The Florida Supreme Court thus decided the federal question on the merits.

F. Retroactivity does not prevent relief in light of the substantive Eighth Amendment question presented here.

An evolving-standards claim as raised here asks whether the punishment the State proposes to carry out is consistent with the standards of decency that prevail at the time of execution. *Atkins*, 536 U.S. at 311–12. A rule that the Eighth Amendment forbids a punishment for a class of contra-culpable-intent defendants applies on collateral review, because "[t]here is no grandfather clause that permits the States to enforce punishments the Constitution forbids." *Montgomery v. Louisiana*, 577 U.S. 190, 204 (2016). Many facts on which the claim rests are recent: Justice Labarga's recognition that Florida is "the absolute outlier" (December 2025); the certiorari grant in *Kian* (June 2026); the *Jackson* and *Hunt* petitions (July 2026); and the California commutations (November 2026). No prior decision of this Court has considered whether the Eighth Amendment, measured by present standards, permits an execution on a divided jury recommendation that no other jurisdiction would accept where the state high court assumed the defendant did not have the intent to kill.

G. At a minimum, this Court should hold this petition and stay the execution pending *Kian*, *Jackson*, and *Hunt*.

The Court has granted review in *Kian* to decide whether the Sixth Amendment guarantees a jury of twelve in state felony prosecutions, a question that turns on whether the Sixth Amendment carries forward the defining features of the common-law jury. If the petitioner prevails in *Kian*, it is hard to fathom how twelve jurors could be required to convict a person of a felony while eight may sentence a person to death without finding requisite mental culpability or aggravating factors. *Jackson* and *Hunt*, meanwhile, distributed for conference December 11, 2026, present the question whether the Constitution permits a death sentence on a nonunanimous jury vote.

This Court should grant the petition on the question presented here, or at a minimum hold it and stay the execution pending its decisions in *Kian*, *Jackson*, and *Hunt*.

II. This Court Should Grant Certiorari to Guarantee Review of the *Atkins* Categorical Bar Is Not Precluded by an Artificial Deadline That Expired Before Florida Abandoned its Unconstitutional Restriction on Establishing the Claim or by Florida's Treatment of Pre-*Atkins* Mitigation Arguments Made Unsuccessfully at Sentencing as Adjudication of the Categorical Bar.

The Eighth Amendment "places a substantive restriction on the State's power to take the life" of a person with intellectual disability. *Atkins*, 536 U.S. at 321 (quoting *Ford v. Wainwright*, 477 U.S. 399, 405 (1986)). The States may develop

procedures to enforce that restriction, but they do not have "unfettered discretion to define the full scope of the constitutional protection." *Hall*, 572 U.S. at 719. A procedure that "creates an unacceptable risk that persons with intellectual disability will be executed" violates the Eighth Amendment. *Id.* at 704. Florida's procedure, as applied here, guarantees that the question will never be decided.

A. Petitioner's claim is substantial, and no court has ever decided it.

Petitioner's IQ was 75 when he was twelve, during the developmental period. 786 So. 2d at 565. A score of 75 is "squarely in the range of potential intellectual disability." *Brumfield v. Cain*, 576 U.S. 305, 315 (2015). Under *Hall*, such a score requires consideration of adaptive functioning. 572 U.S. at 723–24; *see Moore v. Texas*, 581 U.S. 1 (2017). Petitioner also has diagnosed brain damage and a learning disability, which the sentencing court found as mitigation. No court has ever considered petitioner's adaptive functioning. The trial court denied his request for an evaluation and held no hearing. It also held the claim legally insufficient under the IQ-70 cutoff that *Hall v. Florida*, 572 U.S. 701 (2014), invalidated.

A forensic psychologist testified at the 1998 sentencing that petitioner was not intellectually disabled, but that testimony was offered on mitigation, before *Atkins*, under the premises of the IQ-70 cutoff framework, and without the assessment of adaptive functioning that *Hall* and *Moore* require. A state commission appointed this month to evaluate competency administered no intelligence test, nor any form of objective testing, and relied in part on interviews with prison staff; even the State concedes the commission did not perform an intellectual disability evaluation. Resp.

to Emergency Mot. to Stay at 16, *Gonzalez v. Sec'y, Fla. Dep't of Corr.*, No. 08-cv-22909 (S.D. Fla. Nov. 28, 2026), ECF No. 54 (conceding that the commission "did not perform a formal intellectual disability evaluation"). This Court has cautioned against resting the determination on a prisoner's functioning in a structured incarcerative setting. *Moore*, 581 U.S. at 15–16. The defense was prevented from completing its own testing. The intellectual disability claim has thus never been factually developed, nor heard, nor adjudicated on the merits by any court.

B. This Court should grant certiorari because due process and the Supremacy Clause require Florida to give effect to *Atkins*.

Atkins announced a substantive rule in placing a category of persons outside the reach of the State's power to execute. When a substantive rule of constitutional law controls the outcome of a case, "the Constitution requires state collateral review courts to give retroactive effect to that rule." *Montgomery*, 577 U.S. at 200. "There is no grandfather clause that permits States to enforce punishments the Constitution forbids." *Id.* at 204. A court has "no authority to leave in place" a sentence that violates a substantive rule. *Id.* at 203.

Florida purports to honor *Atkins*, but does so in a manner that subjects to execution a wide class of people with viable *Atkins* claims. Its rule conditions any merits adjudication of an intellectual disability claim on a filing of such a claim within sixty days of October 1, 2004. For the entirety of that two-month period, Florida's definition of intellectual disability excluded anyone with an IQ score above 70. This

Court later held that strict IQ cutoff unconstitutional in *Hall*, 572 U.S. at 711–12. *See also Cherry v. State*, 959 So. 2d 702, 712–14 (Fla. 2007). Simultaneously, Florida's rules also required a good-faith basis to believe that the prisoner was intellectually disabled before a claim could be filed. A developmental-age IQ score of 75 exceeded the strict IQ cutoff, so counsel in 2004 could not in good faith have asserted that petitioner met Florida's definition. The deadline therefore operated, as applied to petitioner, to bar the claim before it could be won. Florida thus refuses to give effect to the substantive rule on the theory that the prisoner did not raise it at a time when the State's *own unconstitutional standard foreclosed it*. This does not comport with *Atkins* and *Montgomery*.

Justice Sotomayor previously has identified this problem and characterized Florida's requirement as a "Kafkaesque procedural rule" that it is at odds with Florida's own good-faith requirement and "creates grave tension" with this Court's decision in *Montgomery*. *Bowles v. Florida*, 588 U.S. 937, 938 (2019) (statement of Sotomayor, J., respecting the denial of certiorari). In *Bowles*, however, the petitioner challenged the rule "solely under the Eighth Amendment" and did "not squarely present the concerns addressed in *Montgomery*." *Id.* Petitioner's is the appropriate case to revisit a challenge to Florida's illogical procedural rule. This petition presents the *Montgomery* question squarely; the question was presented in state court (Pet. Br. 57–61, No. SC 2026-1769); and on the record, the claim is substantial. The supposed procedural default occurred a decade before *Hall*, and no court has reached the merits or allowed for factual development of the intellectual disability claim.

C. Florida's unjustified deadline is not an adequate state ground to bar the claim.

Florida's untimeliness ruling is neither independent of federal law nor adequate to bar review. Indeed, the ruling below cannot be reconciled with Florida's own approach. The court held that an *Atkins* claim "has been available to Gonzalez since 2002, and any claim under *Hall* has been available since 2014." Pet. App. A at 14 (quoting circuit court order). But a *Hall* claim has never been available to petitioner in Florida; the decision below thus rests on a mistaken premise. When the Florida Supreme Court held *Hall* retroactive for a limited period of time, it did so only for "timely filed intellectual disability claims" as defined under the 2004 rule. *Bowles v. State*, 276 So. 3d 791, 794 n.4 (Fla. 2019) (citing *Walls v. State*, 213 So. 3d 340 (Fla. 2016)). Since *Hall* was decided, Florida has barred first-time claims by prisoners who had not filed within sixty days of October 1, 2004. *Rodriguez v. State*, 250 So.3d 616 (Fla. 2016); *Blanco v. State*, 249 So.3d 536, 537 (Fla. 2018); *Harvey v. State*, 260 So. 3d 906, 907 (Fla. 2018); *Bowles*, 276 So.3d 791. Florida has since held *Hall* inapplicable to final sentences altogether. *Phillips v. State*, 299 So.3d 1013 (Fla. 2020). At no point since *Atkins* was decided could a prisoner in petitioner's position have obtained an adjudication on an intellectual disability claim; he could not raise it in 2004, due to the strict cutoff; and he could not raise it after 2014, because he had not raised it in 2004.

A State may not demand, as the price of ever being heard, that a prisoner have raised within 60 days a challenge its highest court would reject, and then bar him for not having done so. That is the rule Justice Sotomayor described as "Kafkaesque,"

Bowles, 588 U.S. at 938, and it reimposes via procedure the cutoff that *Hall* invalidated.

Montgomery holds that "a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced." 577 U.S. at 203. Where a State's collateral courts "permit prisoners to challenge the lawfulness of their confinement," they "cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge." *Id.* at 205. A State may adopt procedures for implementing such a right, but those procedures must give effect to the right—not extinguish it, as Florida has done here. *See id.* at 211. Florida hears *Atkins* claims on collateral review, but imposes a deadline that forecloses first-time claims by a prisoner whose sentence was final in 2004 and whose scores exceeded the cutoff. This procedure operates in a way that does not regulate the substantive right but rather refuses to give it effect for an entire class. The default found here is the product of a state rule that contradicts *Atkins*, 536 U.S. 304, as applied in *Hall*, 572 U.S. 701, and it cannot bar the claim.

The Due Process clause independently warrants certiorari to consider the constitutionality of Florida's procedural bar. A State cannot foreclose a federal right through a procedural rule unless it afforded "a reasonable opportunity to have the issue as to the claimed right heard and determined." *Michel v. Louisiana*, 350 U.S. 91, 93–94 (1955). When the Eighth Amendment forbids an execution and the prisoner makes a substantial threshold showing, due process requires a fair hearing before the

State proceeds. *Panetti v. Quarterman*, 551 U.S. 930, 949–50 (2007); *Ford*, 477 U.S. at 424–27 (Powell, J., concurring). A procedure that precludes a defendant from reaching the merits of a substantial claim of categorical ineligibility is "fundamentally inadequate to vindicate the substantive rights provided." *District Attorney's Office v. Osborne*, 557 U.S. 52, 69 (2009).

D. Certiorari is warranted because a State may not treat pre-*Atkins* mitigation as an adjudication of the categorical *Atkins* bar.

The decision below relied on consideration of intellectual functioning as mitigation during the 1998 penalty phase to bar the claim. This cannot be reconciled with *Atkins*, which removed intellectual disability from the sentencing consideration because mitigating evidence of impairment "can be a two-edged sword that may enhance the likelihood that the aggravating factor of future dangerousness will be found by the jury." 536 U.S. at 321. A finding that impairment is mitigating, followed by a sentence of death, is not a determination that the defendant is not intellectually disabled under *Atkins*.

The rule applied by the Florida courts penalizes defendants whose counsel did what the Constitution required prior to *Atkins*: present intellectual functioning evidence as mitigation. Under the reasoning of the Florida courts, only defendants with attorneys who *failed* to present such mitigation would be spared. The Eighth Amendment does not permit a State to convert compliance with *Penry v. Lynaugh*, 492 U.S. 302, 319–28 (1989) (requiring that sentencer be able to give mitigating effect to evidence of intellectual disability), into a forfeiture of an *Atkins* claim.

Such a rule offends due process and the Supremacy Clause, by forcing a capital defendant to surrender one then-unrecognized federal right as the price of exercising another that existed at the time. *See* U.S. Const. art. VI, cl. 2. Presenting evidence of impairment as the Eighth Amendment required courts to consider in 1998 was found by the Florida Supreme Court to forfeit the categorical protection the Eighth Amendment later recognized. *Cf. Simmons v. United States*, 390 U.S. 377, 394 (1968). A state may not defeat a federal right by a procedural consequence that the defendant had no fair notice of at the time he pursued mitigation. *See NAACP v. Alabama*, 357 U.S. 449, 457–58 (1958) (a novel state procedural requirement cannot bar review of a federal claim when the litigant could not have been "deemed to have been apprised of its existence"); *Davis v. Wechsler*, 263 U.S. 22, 24 (1923) (federal rights "plainly and reasonably made" are "not to be defeated under the name of local practice").

Nor is this ground independent of federal law. Whether weighing impairment as mitigation in 1998 resolved the question *Atkins* later made dispositive of a state's power to execute is itself a federal question about the nature of the *Atkins* right. A state procedural ruling that depends on the answer to a federal question is not independent of it and cannot bar federal review. *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985); *Foster v. Chatman*, 578 U.S. 488, 497–98 (2016).

E. Certiorari is warranted because this question is important and recurring.

Every Florida prisoner sentenced before *Atkins* and *Hall* faces the same 60-day window that closed in 2004, while Florida's strict IQ cutoff was still in effect. The

question whether a state may enforce that window to avoid ever adjudicating a substantive *Atkins* claim will recur until this Court answers it. This case is the appropriate case to resolve the question: the claim is substantial, the purported default found by the Florida Supreme Court occurred a decade before *Hall*, and no court has ever reached the merits.

III. Certiorari Is Warranted Because a State May Not Conceal Records of How it Carries out Executions from the Prisoner and the Public.

A. The First Amendment and common law rights of public access extend to the records of how executions are carried out, and certiorari is warranted because this Court has not decided a public access case since 1986.

An execution is the exercise of the most significant power the government wields. It is the infliction of a permanent and irreversible deprivation of life through a forceful and final process. For most of the Nation's history, executions were carried out in public.

The First Amendment guarantees public access to a criminal proceeding that has "historically been open to the press and general public," and in which "public access plays a significant positive role in the functioning of the particular process in question." *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8 (1986) (*Press-Enterprise II*); *see Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980) (plurality opinion); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603–06

(1982). *See also Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978) (recognizing a "general right" under the common law "to inspect and copy public records and documents, including judicial records and documents"). The federal Circuits have generally extended these rights to the records that are part of live proceedings.[1] This Court has extended that right to preliminary hearings because they are "often the final and most important step in the criminal proceeding." *Press-Enterprise II*, 478 U.S. at 12. The execution is the final and only irreversible step in a capital criminal proceeding. The Ninth Circuit has held that the right to witness an execution extends to the insertion of the intravenous lines, *Cal. First Amendment Coal. v. Woodford*, 299 F.3d 868, 875–77 (9th Cir. 2002). In Florida, witnesses are barred from this part of the procedure, and records indicating how long it took or whether any problems occurred are not available to the public—nor to petitioner, when he sought them in connection with his Eighth Amendment as-applied method challenge.

The right is essential here where the State conducts critical steps of a public proceeding out of the witnesses' sight, and closes the curtain whenever venous access fails or the prisoner is not unconscious. Pet. Fla. S. Ct. Br.91. The checklists, drug logs, and monitoring reports are the only way for the public and petitioner to know what happened. Access to such records (1) enables the public to judge whether

[1] *See, e.g. In re Globe Newspaper Co.*, 729 F.2d 47, 52 (1st Cir. 1984); *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 91–96 (2d Cir. 2004); *United States v. Smith*, 776 F.2d 1104, 1111–12 (3d Cir. 1985); *In re Washington Post Co.,* 807 F.2d 383, 389–90 (4th Cir. 1986); *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.,* 24 F.3d 893, 897 (7th Cir. 1994); *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 573 (8th Cir. 1988); *Oregonian Publ'g Co. v. U.S. Dist. Ct.*, 920 F.2d 1462, 1465–66 (9th Cir. 1990); *Washington Post v. Robinson*, 935 F.2d 282, 287–88 (D.C. Cir. 1991).

executions are carried out lawfully; (2) allows for reliable review of "objective indicia of society's standards" under the Eighth Amendment; and (3) allows courts to apply *Glossip v. Gross*, 576 U.S. 863, 877 (2015), and *Bucklew* on evidence rather than on a presumption of regularity as occurred here. Logs previously produced in discovery in a 1983 lawsuit over a prior Florida execution had been altered after use of an expired drug came to light. *Guardado v. Sec'y, Dep't of Corr.*, No. 26-14027, 2026 WL 3327719, at *7–8 (11th Cir. Nov. 2, 2026) (Jill Pryor, J., concurring). This is precisely the kind of fact that public access exists to reveal, and it undermines any presumption that Florida is following its execution protocol. "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers*, 448 U.S. at 572 (plurality opinion).

The Courts of Appeals have taken varying approaches as to whether and to what extent the right reaches information about how executions are carried out. *Cf. Woodford*, 299 F.3d at 876–77 (holding that the public has a First Amendment right to view executions "from the moment the condemned is escorted into the execution chamber"); *First Amendment Coal. of Ariz., Inc. v. Ryan*, 938 F.3d 1069, 1075–80 (9th Cir. 2019); *Wellons v. Comm'r Ga., Dep't. of Corr.*, 754 F.3d 1260, 1266–67 (11th Cir. 2014); *Zink v. Lombardi*, 783 F.3d 1089, 1111–13 (8th Cir. 2015) (en banc); *Phillips v. DeWine*, 841 F.3d 405, 417–20 (6th Cir. 2016). The need for public scrutiny is not theoretical. In a recent 1983 case, where limited records were produced in discovery, the drug log for an earlier execution showed an expired etomidate date; after the error surfaced, the Florida Department of Corrections altered the log with correction fluid.

"[T]he State's lack of transparency and failure to maintain accurate records is deeply concerning," and "[e]ven more concerning is Florida's response once it learned during litigation about the errors in its drug log." *Guardado v. Sec'y, Dep't of Corr.,* No. 26-14027, 2026 WL 3327719, at *7-8 (11th Cir. Nov. 2, 2026) (Jill Pryor, J., concurring).

Certiorari review is warranted to establish a uniform rule, which is important for more reasons than those that underpin public access doctrine. The Eighth Amendment measures punishment against "objective indicia of society's standards," *Roper v. Simmons*, 543 U.S. 551, 563 (2005), and those indicia include how the States carry out executions. That evidence can be assessed only if it is available on comparable terms from State to State. Uniformity is equally essential to ensure that every condemned prisoner has an equally protected opportunity to establish an Eighth Amendment claim under *Glossip*. This case is the appropriate vehicle to resolve the question; the records were specifically requested, and the decision below rejected the First Amendment claim on the merits.

B. The Eighth Amendment burden can be satisfied only with records Florida withholds.

A prisoner who challenges a method of execution bears a heavy burden to show that the method, as the State will carry it out, presents a risk that is sure or very likely to cause serious illness and needless suffering. *Glossip*, 576 U.S. at 877–78; *Bucklew v. Precythe*, 587 U.S. 119, 134–41 (2019); *Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion). Where the claim is that the State will not carry out its written protocol correctly, the evidence that could meet that burden can be found in the State's records

of how it has carried out past executions. Where the claim is that a defendant's unique conditions make the process unconstitutional as applied to him, the evidence that could meet this burden likewise can be found in the State's records of how it carries out past executions.

Florida purports to give a prisoner under a death warrant a right to request public records, Fla. R. Crim. P. 3.852(h)-(i). Florida's high court in interpreting this rule has conditioned the production of records on a showing that they "relate to a colorable claim for postconviction relief." Pet. App. A at 17 (quoting *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013)); *Zakrzewski v. State*, 415 So.3d 203, 212 (Fla. 2025).

Petitioner suffers from brain damage and critical allergies to several classes of drugs; his allergic reactions have included hives, angioedema of the lips, eyelids, and cheeks, along with fever and throat tightness. Florida's procedure offers as premedication an antihistamine of the same class of medication for which petitioner has suffered a severe reaction. The protocol thus would treat a severe reaction with a steroid he cannot take, and Florida's three-drug lethal injection protocol uses a paralytic that could conceal any reaction or suffering should he become conscious after the first drug (a sedative known to be short-acting) is administered. Petitioner thus sought past execution records related to checklists, drug logs, and monitoring reports of recent executions; such claims were denied as "speculative." The showing required under *Glossip v. Gross*, 576 U.S. 863, 877 (2015), and *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019), cannot be made without the information that Florida withholds.

In *Trotter v. Florida*, Justice Sotomayor observed that "the Florida Supreme Court appears to be placing prisoners in a Catch-22": it upholds the denial of records because prisoners lack enough information to raise a colorable Eighth Amendment claim, when the very reason the prisoners are seeking the records is to gather enough information to raise a colorable claim. 146 S. Ct. 755, 756 (2026) (statement of Sotomayor, J., respecting the denial of application for stay and denial of certiorari). "By continuing to shroud its executions in secrecy, Florida undermines both the integrity of its own execution process and, potentially, this Court's ability to ensure the State's compliance with its constitutional obligations." *Id.*

State post-conviction review procedures must satisfy due process; a procedure violates the Due Process Clause if it is "fundamentally inadequate to vindicate the substantive rights provided." *Osborne*, 557 U.S. at 69 (citations omitted). *See also Reed v. Goertz*, 598 U.S. 230, 234–36 (2023); *Skinner v. Switzer*, 562 U.S. 521, 525 (2011). Florida provides capital prisoners a right to seek relief on claims that arise or ripen after a warrant is signed, including method-of-execution claims, and a right to request the records relevant to them. A rule that denies records unless petitioner first proves what only the records can show nullifies the Eighth Amendment protection identified in *Glossip* and violates due process.

The Eighth Amendment requires procedures adequate to ensure that a forbidden punishment is not carried out. *Ford v. Wainwright*, 477 U.S. 399, 410–17 (1986) (plurality opinion); *Panetti v. Quarterman*, 551 U.S. 930, 948–50 (2007). A State that places on the prisoner the burden of proving a substantial risk that its procedure will

be misapplied, and then withholds every record of how the procedure has been applied, has not imposed a procedure adequate to ensure forbidden punishment is not caried out. The *Baze*, 553 U.S. 35, standard cannot be converted from a burden of proof into a bar to proof.

This question is repeatedly recurring, particularly at the rate Florida has been carrying out executions—all while blocking from the public and the prisoners its records of past executions. This Court has repeatedly denied review. *See Randolph v. State*, 422 So.3d 166, 172 (Fla.), *cert denied*, 146 S. Ct. 819 (2025); *Hutchinson v. State*, 416 So.3d 273, 279 (Fla.), *cert denied*, 145 S.Ct. 1980 (2025); *Gudinas v. State,* 412 So. 3d 701, 715–17 (Fla.), *cert denied*, 145 S. Ct. 2833 (2025). This Court's intervention is needed, for the reasons identified by Justice Sotomayor in *Trotter* and because of the First Amendment and due process rights at stake.

CONCLUSION

The petition for a writ of certiorari should be granted, and the execution should be stayed pending its disposition. In the alternative, the petition should be held and petitioner's execution should be stayed pending the Court's decisions in *Kian v. Florida*, No. 25-6623, *Hunt v. Florida*, No. 26-78, and *Jackson v. Florida*, No. 26-76.

Respectfully submitted,

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November 2026

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APPENDIX A

Opinion of the Supreme Court of Florida, Gonzalez v. State, No. SC2026-1769, and Gonzalez v. Secretary, Department of Corrections, No. SC2026-1770 (Nov. 24, 2026)

Supreme Court of Florida

No. SC2026-1769

RICARDO GONZALEZ,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

No. SC2026-1770

RICARDO GONZALEZ,
Petitioner,

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS,
Respondent.

November 24, 2026

PER CURIAM.

Ricardo Gonzalez is a prisoner under sentence of death. His death warrant has been signed and his execution date scheduled for December 1, 2026. He appeals the circuit court's order dated

November 13, 2026, which summarily denied his successive motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.851. He also petitions this Court for a writ of habeas corpus and requests a stay of execution.[1] As we explain below, we affirm the summary denial of postconviction relief, and we deny Gonzalez's habeas petition and request for a stay of execution.

I. FACTS AND PROCEDURAL BACKGROUND

Gonzalez was sentenced to death for the first-degree murder of Officer Steven Bauer, a uniformed police officer who at the time of the murder was providing security at a bank in North Miami. *Gonzalez v. State*, 700 So. 2d 1217 (Fla. 1997). In Gonzalez's initial direct appeal, we explained the following:

> The defendant, Ricardo Gonzalez, along with codefendants Pablo San Martin, Leonardo Franqui, Fernando Fernandez, and Pablo Abreu were charged with first-degree murder of a law enforcement officer, armed robbery with a firearm, aggravated assault, unlawful possession of a firearm while engaged in a criminal offense, grand theft in the third degree, and burglary.

1. We have jurisdiction. *See* art. V, § 3(b)(1), (9), Fla. Const.; *see also State v. Fourth Dist. Ct. of Appeal*, 697 So. 2d 70, 71 (Fla. 1997) (holding "that in addition to our appellate jurisdiction over sentences of death, we have exclusive jurisdiction to review all types of collateral proceedings in death penalty cases").

Gonzalez, Franqui, and San Martin were tried together before a jury in May, 1994.

The record reflects that the Kislak National Bank in North Miami, Florida, was robbed by four gunmen on January 3, 1992. The perpetrators made their getaway in two stolen grey Chevrolet Caprice cars after taking a cash box from one of the drive-in tellers. During the robbery, police officer Steven Bauer was shot and killed. Shortly after the robbery, the vehicles were found abandoned two blocks west of the bank.

Approximately two weeks later, Gonzalez was stopped by police after leaving his residence on January 18, 1992. He subsequently made unrecorded and recorded confessions in which he told police that Franqui had planned the robbery, involved the other participants and himself in the scheme, and chosen the location and date for the crime. He said that Franqui had procured the two stolen Chevrolets, driven one of the cars, and supplied him with the gun he used during the robbery. He further stated that Franqui was the first shooter and shot at the victim three or four times, while he had shot only once. Gonzalez indicated that he shot low and believed he had only wounded the victim in the leg. He was subsequently reinterviewed by police and, among other things, described how Franqui had shouted at the victim not to move before shooting him.

Franqui was also questioned by police on January 18, 1992, in a series of unrecorded and recorded sessions. During his preinterview, Franqui initially denied any involvement in the Kislak Bank robbery, but when confronted with the fact that his accomplices were in custody and had implicated him, he ultimately confessed. Franqui stated that Fernandez had hatched the idea for the robbery after talking to a black male, and he had accompanied the two men to the bank a week before the robbery actually took place. He maintained that the black male friend of Fernandez had suggested the use of the two stolen cars, but denied any involvement in the thefts of the vehicles. According to

> Franqui, San Martin, Fernandez, and Abreu had stolen the vehicles. Franqui did admit to police that he and Gonzalez were armed during the episode, but stated that it was Gonzalez—and not himself—who yelled at the victim to "freeze" when they saw him pulling out his gun. Franqui denied firing the first shot and maintained that he fired only one shot later.
>
> At trial, over the objection of Gonzalez, the confessions of codefendants San Martin and Franqui were introduced without deletion of their references to Gonzalez, upon the trial court's finding that their confessions "interlocked" with Gonzalez's own confession.

Id. at 1217-18 (footnotes omitted).

Gonzalez was convicted on all counts. The trial court followed the jury's recommendation that Gonzalez be sentenced to death for the murder and sentenced him accordingly, following which Gonzalez appealed to this Court. *Id.* at 1218. This Court affirmed Gonzalez's convictions but concluded that Gonzalez was entitled to a new penalty phase because the trial court erred when it admitted the confessions of codefendants Franqui and San Martin. *Id.* at 1219. Both Gonzalez and the State sought and were denied certiorari review in the United States Supreme Court. *See Gonzalez v. Florida*, 523 U.S. 1062 (1998); *Florida v. Gonzalez*, 523 U.S. 1145 (1998).

During Gonzalez's new penalty phase, the jury recommended the death penalty by a vote of eight to four, and the trial court sentenced Gonzalez to death.[2] *See Gonzalez v. State*, 786 So. 2d 559, 563 (Fla. 2001); *Gonzalez v. State*, 990 So. 2d 1017, 1022 (Fla. 2008) (postconviction opinion stating jury vote).

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2. The findings of aggravating factors and mitigating circumstances were as follows:

> The trial court sentenced Gonzalez to death, finding six aggravating factors, which were merged into three factors: prior violent felonies based on the contemporaneous convictions for armed robbery and aggravated assault; murder committed during a robbery/murder committed for pecuniary gain; and murder committed to avoid a lawful arrest/victim a law enforcement officer performing his duties/murder committed to hinder enforcement of laws. These aggravating circumstances were found to outweigh the following mitigating circumstances: no significant prior criminal history; brain damage, learning disability and below-average intelligence; remorse; cooperation with authorities; life sentences given to two codefendants; and good conduct while incarcerated and potential for rehabilitation. The trial court considered but rejected the statutory mental health mitigators, as well as the minor participation mitigator. The nonstatutory mitigator of family background was likewise rejected.

Gonzalez v. State, 786 So. 2d 559, 563 (Fla. 2001).

Gonzalez raised multiple issues on direct appeal of his death sentence, each of which was rejected by this Court.[3] *See Gonzalez*, 786 So. 2d at 563 (affirming sentence of death following new penalty phase). Gonzalez did not seek certiorari review in the United States Supreme Court, and his death sentence became final on August 8, 2001.

Gonzalez unsuccessfully pursued multiple postconviction claims. *See Gonzalez v. State*, 990 So. 2d 1017 (Fla. 2008) (affirming denial of initial postconviction motion); *Gonzalez v. State*, 240 So. 3d 629 (Fla.) (affirming the denial of *Hurst*[4] relief), *cert. denied*, 586 U.S. 868 (2018). He also unsuccessfully sought relief in federal court. *See Gonzalez v. Sec'y, Dep't of Corr.*, No. 1:08-cv-

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3. Gonzalez argued the following: (1) improper use of harmless error analysis based on the hearsay rule instead of the Confrontation Clause to determine whether codefendant statements were properly admitted; (2) improper use of the victim's status as a police officer as an aggravator as well as increasing the penalty for homicide from twenty-five years without eligibility for release to life without parole; (3) the trial court erroneously rejected certain evidence when considering mental distress as a mitigating circumstance; (4) improper prosecutorial closing argument; and (5) proportionality.

4. *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), *receded from in part by State v. Poole*, 297 So. 3d 487 (Fla. 2020).

22909 (S.D. Fla. Sep. 28, 2009) (denying habeas petition); *Gonzalez v. Sec'y, Fla. Dep't of Corr.*, 629 F.3d 1219 (11th Cir.) (affirming denial of habeas petition), *cert. denied*, 565 U.S. 982 (2011).

Governor Ron DeSantis signed Gonzalez's death warrant on October 30, 2026. On November 4, 2026, Gonzalez filed four demands for public records, seeking additional records from the Office of the Medical Examiner, District 8; the Florida Department of Corrections; the Florida Department of Law Enforcement; and the Office of the State Attorney, Eleventh Judicial Circuit. The circuit court denied each of Gonzalez's requests in separate orders dated November 5, 2026.

On November 8, 2026, Gonzalez filed in the circuit court a motion for stay of execution and a successive motion for postconviction relief under rule 3.851 raising five claims: (1) Florida's lethal injection procedures are unconstitutional both facially and as applied to Gonzalez; (2) Florida's post-warrant public records procedures are unconstitutional both facially and as applied to Gonzalez; (3) executing Gonzalez would violate the United States and the Florida Constitutions because he lacks the extreme culpability required of the death penalty; (4) executing Gonzalez

based on a jury's eight-to-four recommendation is unconstitutional; and (5) executing Gonzalez is unconstitutional because he is intellectually disabled.

On November 8, 2026, Gonzalez also filed a motion for a limited psychological evaluation, expert access, and expedited order, which the circuit court denied in an order dated November 9, 2026. On November 10, 2026, Gonzalez filed a motion seeking an evidentiary hearing to determine Gonzalez's intellectual disability as a bar to the death penalty. On November 10, 2026, the circuit court conducted a *Huff*[5] hearing and concluded that no evidentiary hearing was warranted on Gonzalez's claims. On November 13, 2026, the circuit court summarily denied Gonzalez's successive 3.851 motion and denied his motion to stay the execution. The same day, Gonzalez appealed to this Court the denial of postconviction relief and filed a petition for writ of habeas corpus.

On November 15, 2026, counsel for Gonzalez submitted a letter to Governor DeSantis suggesting that Gonzalez "may lack the mental capacity to understand the nature and effect of the death

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

penalty and the reason it is to be imposed upon him." On November 17, 2026, Governor DeSantis issued an executive order pursuant to section 922.07, Florida Statutes (2026), in which he appointed a commission of three psychiatrists to examine Gonzalez "to determine only whether he understands the nature and effect of the death penalty and why it is to be imposed upon him." Fla. Exec. Order No. 26-231 § B (Nov. 17, 2026). Governor DeSantis ordered the examination to be conducted on November 18, 2026, and directed the commission to report its findings to the Governor's office no later than the close of business on November 19, 2026. To that end, the Governor temporarily stayed the scheduled execution of Gonzalez pending receipt of the commission's findings. *Id.* § E.

On November 19, 2026, the commission issued a report finding "with a reasonable degree of medical certainty that" Gonzalez "understands the nature and effect of the death penalty and why it is to be imposed on him."

In light of the commission's findings, on November 19, 2026, Governor DeSantis issued an executive order lifting the temporary stay of execution. *See* Fla. Exec. Order No. 26-235 (Nov. 19, 2026).

We now turn to the matters pending in this Court: Gonzalez's appeal of the summary denial of his post-warrant motion for postconviction relief, his habeas petition, and his request for a stay of execution.

II. ANALYSIS

A. Successive Motion for Postconviction Relief

Under rule 3.851(d)(1), "[a]ny motion to vacate judgment of conviction and sentence of death must be filed by the defendant within 1 year after the judgment and sentence become final." Fla. R. Crim. P. 3.851(d)(1). There are three exceptions to this timeframe:

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2)(A)-(C).

Gonzalez argues nine claims in this appeal: (1) the circuit court erred in summarily denying Gonzalez's claim that executing

him would be unconstitutional, because he is intellectually disabled and brain-damaged to the point of incompetency; (2) the circuit court erroneously concluded that Gonzalez did not raise competency as an issue and failed to address Gonzalez's competency; (3) the circuit court erred in denying an evidentiary hearing as to Gonzalez's intellectual disability and brain damage claims; (4) the circuit court erred in summarily denying Gonzalez's as-applied lethal injection claim; (5) the circuit court erred in summarily denying Gonzalez's facial and as-applied challenges to Florida's post-warrant records procedure; (6) the compressed warrant schedule denied Gonzalez a meaningful opportunity to be heard; (7) Gonzalez does not have sufficient culpability to be eligible for the death penalty; (8) the circuit court erred in summarily denying Gonzalez's claim that executing him based on a nonunanimous jury recommendation is unconstitutional; and (9) this Court should stay Gonzalez's execution.

We address each of these issues below and explain why Gonzalez is not entitled to relief.

Issues 1 and 3: Intellectual disability and brain damage as a bar to execution; denial of evidentiary hearing

Gonzalez argues that he is not eligible to be executed because he is intellectually disabled and has brain damage, and he challenges the circuit court's summary denial of this claim. The "[s]ummary denial of a successive postconviction motion is appropriate '[i]f the motion, files, and records in the case conclusively show that the movant is entitled to no relief.' " *Owen v. State*, 364 So. 3d 1017, 1022 (Fla. 2023) (second alteration in original) (quoting *Bogle v. State*, 322 So. 3d 44, 46 (Fla. 2021)). We review the circuit court's decision de novo, "accepting the movant's factual allegations as true to the extent they are not refuted by the record, and affirming the ruling if the record conclusively shows that the movant is entitled to no relief." *Id.* at 1022-23 (quoting *Walton v. State*, 3 So. 3d 1000, 1005 (Fla. 2009)).

The circuit court did not err in summarily denying this claim. First, to the extent that Gonzalez argues that he is incompetent to be executed, that matter was not properly before the circuit court as it considered Gonzalez's post-warrant postconviction motion, nor is it properly before this Court in this postconviction appeal.

Second, the circuit court did not err in summarily denying Gonzalez's intellectual disability claim as untimely and procedurally barred. As to the untimeliness of Gonzalez's intellectual disability claim, the circuit court concluded the following:

> A first-time intellectual-disability claim by a defendant whose case was final before the rule's effective date must also establish good cause for not seeking a determination within sixty days of October 1, 2004. *Bowles v. State*, 276 So. 3d 791 (Fla. 2019). Gonzalez's claim, filed decades after finality and after the signing of his death warrant, satisfies neither requirement. The facts underlying the claim, Gonzalez's IQ scores and documented brain damage, have been long-known and do not constitute newly discovered evidence. *Kearse v. State*, 428 So. 3d 75, 83 (Fla. 2026).

Gonzalez argues that rule 3.851(d)(2)(C) provides an exception for his untimely filed claim because it permits the filing of a postconviction motion beyond the one-year time limit where "postconviction counsel, through neglect, failed to file the motion." However, for reasons we explained in *Sweet v. State*, 293 So. 3d 448, 453 (Fla. 2020), the rule 3.851(d)(2)(C) exception does not salvage Gonzalez's untimely claim:

> Sweet admits that his ineffective assistance of trial counsel claim was filed many years after his judgment and sentence became final, but he argues that postconviction counsel's failure to file the claim renders it timely. Sweet reads subsection (d)(2)(C) too broadly.

> Subsection (d)(2)(C) creates an exception to the one-year deadline for circumstances where counsel's neglect results in a postconviction *motion* not being filed within a year of final judgment; the rule does not contemplate failure to raise specific *claims* within a year. *See Howell v. State*, 145 So. 3d 774, 775 (Fla. 2013) ("[U]nder Howell's interpretation, a condemned inmate would never face any time limitation in which to file a motion for postconviction relief, because the inmate could always assert that postconviction counsel neglected to raise a claim.").
>
> Sweet's postconviction counsel did file a motion to vacate Sweet's judgment of conviction and sentence within a year of the date his judgment became final. Counsel's failure to include this ineffective assistance of trial counsel claim in the original postconviction motion does not make the new claim forever timely. Because Sweet failed to allege a valid exception to the one-year deadline for his otherwise untimely claim, we hold that Sweet was not entitled to an evidentiary hearing on his claim of ineffective assistance of trial counsel (to the extent his motion includes such a claim).

Further, this claim is procedurally barred. The circuit court properly observed that "[a]n intellectual disability claim under *Atkins* [*v. Virginia*, 536 U.S. 304 (2002)] has been available to Gonzalez since 2002, and any claim under *Hall* [*v. Florida*, 572 U.S. 701 (2014)] has been available since 2014," and concluded that "[t]o the extent Gonzalez previously presented evidence of brain damage, learning disability, and below-average intelligence as mitigation at resentencing, his present attempt to recast that evidence as a

categorical bar is an impermissible effort to relitigate the issue through a different argument." (Citation omitted.)

Issue 2: Competency

To the extent that Gonzalez's competency argument here is based on whether he is insane or incompetent to be executed, this issue is not properly before this Court in deciding this appeal and will not be addressed. *See* Fla. R. Crim. P. 3.811(c) (prohibiting any state court from considering a motion for stay of execution pending hearing "*until such time as the Governor of Florida shall have held appropriate proceedings for determining the issue pursuant to the appropriate Florida Statutes*." (emphasis added)); § 922.07, Fla. Stat. (2026) (providing procedures for "[w]hen the Governor is informed that a person under sentence of death may be insane").

Regarding Gonzalez's suggestion to this Court that "[r]elatedly, counsel has concerns regarding [Gonzalez's] competency to proceed in these collateral proceedings," this issue is unpreserved and we will not address it further.

Issue 4: As-applied lethal injection challenge

Although Gonzalez's post-warrant successive postconviction motion raised facial and as-applied challenges to Florida's lethal

injection procedures, in this appeal, he challenges only the circuit court's denial of his as-applied claim. Citing various factors including a history of allergic reactions to drugs, and related symptoms of hives and angioedema, Gonzalez asserts that Florida's lethal injection protocols could pose a risk of serious illness and needless suffering in violation of the Eighth Amendment. Gonzalez's allegations are speculative, and the court did not err in denying this claim.

The court correctly concluded that Gonzalez's claim is untimely and procedurally barred, observing that "[t]o the extent the claim rests on Gonzalez's brain damage, medical conditions, allergies, symptoms, as well as his reactions to such, those conditions were known before the warrant issued, and a claim does not become timely simply because it is repackaged after a warrant is signed."

Moreover, Gonzalez has failed to establish a legally sufficient claim that executing him by lethal injection "presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering." *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip v. Gross*, 576 U.S. 863, 877 (2015)).

Issue 5: Florida's post-warrant records procedure

Gonzalez also challenges the circuit court's denial of his public records requests and argues that the capital postconviction procedure for obtaining public records is unconstitutional both facially and as applied to him. "[A] defendant must show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records request was not made until after the death warrant was signed." *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013) (quoting *Tompkins v. State*, 872 So. 2d 230, 244 (Fla. 2003)). Having reviewed the denial of Gonzalez's public records requests for an abuse of discretion, we affirm the summary denial of this claim. *See Jones v. State*, 419 So. 3d 619, 627 (Fla.), *cert. denied*, 146 S. Ct. 79 (2025).

"[R]ule 3.852 is 'not intended to be a procedure authorizing a fishing expedition for records' " and "records requests made under rule 3.852(i) 'must show how the requested records relate to *a colorable claim for postconviction relief* and good cause as to why the public records request was not made until after the death warrant was signed.' " *Zakrzewski v. State*, 415 So. 3d 203, 212 (Fla.)

(emphasis added) (quoting *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019)), *cert. denied*, 146 S. Ct. 57 (2025).

Gonzalez sought a wide range of records from four agencies, including records related to Florida's lethal injection procedures and prior executions, and his medical records dating back to 2016. The circuit court received objections from each agency and held a hearing on Gonzalez's demands prior to denying each in a separate order.

With particular respect to Gonzalez's request for medical records, the circuit court noted that the Florida Department of Corrections "produced the last five (5) years of the Defendant's medical and classification records on November 3, 2026," and observed that the demand "does not allege how these records could support a colorable claim for relief." Denying the request, the circuit court underscored that Gonzalez's medical "records have been available throughout his incarceration" and that the records "as requested could have been discovered through due diligence."

We affirm the denial of Gonzalez's public records requests because the records he seeks are not relevant to any colorable claim that is cognizable in this postconviction proceeding.

As to Gonzalez's facial constitutional challenges to the procedure for obtaining public records in the capital postconviction context, we have observed that such "challenges to this rule are not new to us. Capital defendants . . . have asserted violations of numerous constitutional provisions . . . . But we have rejected all such challenges, finding them meritless under both state and federal law." *Randolph v. State*, 422 So. 3d 166, 172 (Fla.), *cert. denied*, 146 S. Ct. 819 (2025); *see also Hutchinson v. State*, 416 So. 3d 273, 279 (Fla.) (rejecting argument that public records procedure violates due process and equal protection), *cert. denied*, 145 S. Ct. 1980 (2025); *Gudinas v. State*, 412 So. 3d 701, 715 (Fla.) (rejecting due process and access to courts arguments), *cert. denied*, 145 S. Ct. 2833 (2025); *Lambrix v. State*, 124 So. 3d 890, 895 n.2 (Fla. 2013) (rejecting access to public records argument).

We also reject Gonzalez's argument that common law or the First Amendment entitles him to the requested records. Nor is there merit in his argument that the denial of the requested records infringes upon his rights under the Sixth or the Eighth Amendments. Moreover, because a Sixth Amendment right to effective assistance of counsel does not apply to this postconviction

proceeding, his assertion that the denial of records combined with the deadline for submitting his postconviction motion deprived him of that right is without merit. *See Zack v. State*, 911 So. 2d 1190, 1203 (Fla. 2005) ("Under Florida and federal law, a defendant has no constitutional right to effective collateral counsel.").

Issue 6: Compressed warrant schedule

Gonzalez's argument that an expedited warrant period has deprived him of an opportunity to be heard was not independently raised in his postconviction motion and is thus unpreserved. The reference to the length of his warrant period in another claim does not sufficiently preserve it for consideration here.

The record soundly refutes Gonzalez's argument that he was deprived of an opportunity to be heard. The circuit court timely held case management hearings, appointed counsel, scheduled filing deadlines, conducted a *Huff* hearing to evaluate whether an evidentiary hearing was required, considered Gonzalez's multiple demands for additional public records, and timely ruled upon Gonzalez's successive postconviction motion and other motions.

Issue 7: Gonzalez's culpability

According to Gonzalez, due to his brain damage, intellectual disability, lack of intent to kill Officer Bauer, and age of 21 years old at the time of the murder, he lacks the culpability to be subject to the death penalty. This argument is untimely and procedurally barred.[6]

As to untimeliness, the circuit court observed that the circumstances on which Gonzalez's argument relies—his "age at the time of the offense, his brain damage, his learning disability, his below-average intelligence, and his felony-murder conviction"—were known and were considered at the time of his new penalty phase. Second, this claim is chiefly an attempt to revisit mitigation that

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6. Moreover, while we have since held that the Eighth Amendment conformity clause in article I, section 17 of the Florida Constitution prohibits comparative proportionality review and relative culpability review, this Court conducted comparative proportionality review on direct appeal, and relative culpability has also been addressed. *See Gonzalez*, 786 So. 2d at 569-70 (conducting comparative proportionality review and concluding that Gonzalez's death sentence was proportionate); *Gonzalez*, 990 So. 2d at 1032-33 (conducting culpability analysis in evaluating newly discovered evidence claim that Gonzalez would probably have received a life sentence had the jury been aware of codefendant Fernandez's life sentence).

was thoroughly considered at the time of Gonzalez's sentencing and is, as such, procedurally barred.

Further, we reject Gonzalez's attempts to revisit his culpability and the appropriateness of his death sentence under the United States Supreme Court's decisions in *Enmund v. Florida*, 458 U.S. 782, 797 (1982) (holding that the Eighth Amendment prohibits the imposition of the death penalty in a felony murder case upon a defendant "who aids and abets a felony in the course of which a murder is committed by others but who does not himself kill, attempt to kill, or intend that a killing take place or that lethal force will be employed"), and *Tison v. Arizona*, 481 U.S. 137, 158 (1987) (holding that "major participation in the felony committed, combined with reckless indifference to human life, is sufficient to satisfy the *Enmund* culpability requirement").

Notwithstanding Gonzalez's attempts to reframe his role in the murder, *Enmund* and *Tison* are inapposite here. Even if, as Gonzalez urges, he did not intend to kill Officer Bauer, Gonzalez admitted that during the crime, he possessed the gun from which the fatal gunshot was fired, and the sentencing court found that Gonzalez was a major participant in the crime.

Issue 8: Nonunanimous jury recommendation

Gonzalez has twice before challenged his death sentence based on the jury's nonunanimous, eight-to-four recommendation of death. Attempting to avoid a procedural bar, he maintains that his current argument is distinguishable because his Sixth Amendment argument relies on the United States Supreme Court's decision in *Ramos v. Louisiana*, 590 U.S. 83 (2020), and his Eighth Amendment argument relies on current standards of decency. Gonzalez's argument is unavailing, as his argument remains, fundamentally, a challenge to a nonunanimous jury recommendation. Thus, his present argument is simply a repackaged effort to argue previously decided claims.

We have held that *Ramos* does not apply to jury recommendations of death in capital sentencing proceedings. *See Hunt v. State*, 428 So. 3d 43, 54 (Fla. 2025), *petition for cert. filed*, No. 26-78 (U.S. July 16, 2026). Moreover, we decline to revisit our holding in *Poole*, where we concluded that neither the Sixth nor the Eighth Amendment, nor corresponding provisions of the Florida Constitution, require that a jury's recommendation of death be unanimous. *Poole*, 297 So. 3d at 503-05.

Issue 9: Stay of execution

"[A] stay of execution on a successive motion for postconviction relief is warranted only where there are substantial grounds upon which relief might be granted." *Dillbeck v. State*, 357 So. 3d 94, 103 (Fla. 2023) (quoting *Davis v. State*, 142 So. 3d 867, 873-74 (Fla. 2014)).

Because Gonzalez has failed to establish substantial grounds upon which relief might be granted, he is not entitled to relief. We affirm the circuit court's ruling, and we deny his request for a stay of execution.

B. Habeas Petition

"Habeas corpus is not to be used to litigate or relitigate issues which could have been, should have been, or were previously raised." *Gaskin v. State*, 361 So. 3d 300, 309 (Fla. 2023). Gonzalez's petition for writ of habeas corpus raises ten issues, none of which entitle him to relief, and almost all of which are procedurally barred because they "could have been, should have been, or were previously raised." *Id.*

Gonzalez argues the following: (1) ineffective assistance of appellate counsel during Gonzalez's direct appeal from

resentencing; (2) the trial court's refusal to instruct the jury that it could consider lack of intent to kill as mitigation; (3) executing Gonzalez after more than three decades on death row violates the United States and Florida Constitutions; (4) executing Gonzalez based on an eight-to-four jury recommendation violates the Sixth and Eighth Amendments; (5) the thirty-day warrant schedule, combined with the denial of every record and every expert evaluation bearing on his claims, deprived Gonzalez of a meaningful opportunity to be heard and of effective representation; (6) executing Gonzalez would violate the Eighth Amendment because he is intellectually disabled and likely incompetent; (7) Gonzalez may not be executed without a determination, based on a current evaluation, that a progressive brain disease has not deprived him of a rational understanding of the reason for his execution; (8) Florida's post-warrant public records procedure denies Gonzalez due process, access to the courts, and the protections under the United States and Florida Constitutions; (9) facial and as-applied challenges to Florida's lethal injection procedure; and (10) executing Gonzalez is unconstitutional based

on a variety of factors including his age of 21 years when he committed the murder and his mental status.

Issues one (ineffective assistance of appellate counsel) and two (trial court error) are procedurally barred because they could or should have been raised in an earlier proceeding.

Issues four (nonunanimous jury recommendation of death), six (intellectual disability), eight (post-warrant public records procedure), nine (lethal injection constitutional challenges), and ten (factors that render Gonzalez ineligible to be executed) are procedurally barred and constitute improper attempts to relitigate postconviction claims. "[C]laims [that] were raised in [a] postconviction motion . . . cannot be relitigated in a habeas petition." *Knight v. State*, 923 So. 2d 387, 395 (Fla. 2005).

Issue seven (competency to be executed) is not properly before this Court in this proceeding. *See* Fla. R. Crim. P. 3.811.

As to issue three, we have repeatedly rejected constitutional challenges to executing an individual after a decades-long stay on death row. *See, e.g.*, *Gaskin*, 361 So. 3d at 308; *Dillbeck*, 357 So. 3d at 103-04; *Ferguson v. State*, 101 So. 3d 362, 366-67 (Fla. 2012).

As to issue five, which Gonzalez argued in his post-warrant postconviction appeal but was not preserved below, he has not established that the circumstances of his warrant timeline deprived him of due process. As with similar arguments, we reject Gonzalez's claim. *See, e.g.*, *Zakrzewski*, 415 So. 3d at 211 (rejecting Zakrzewski's argument "that an expedited process of warrant litigation deprived him of his due process rights"); *Bates v. State*, 416 So. 3d 312, 321 (Fla.) (rejecting argument that "the length of the warrant period violates [Bates's] right to due process and counsel"), *cert. denied*, 146 S. Ct. 66 (2025).

As such, we deny Gonzalez's habeas petition.

III. CONCLUSION

For these reasons, we affirm the denial of Gonzalez's successive motion for postconviction relief and deny his habeas petition. We also decline to order a stay of execution.

No oral argument is required, no motion for rehearing will be considered, and the mandate shall issue immediately.

It is so ordered.

COURIEL, C.J., and MUÑIZ, GROSSHANS, FRANCIS, BARRIOS, and TANENBAUM, JJ., concur.
LABARGA, J., concurs in result.

An Appeal from the Circuit Court in and for Miami-Dade County,
Christine Hernandez, Judge
Case No. 131992CF002141D000XX
And an Original Proceeding – Habeas Corpus

Jeffrey E. Feiler of Jeffrey E. Feiler, P.A., Miami, Florida, and Richard C. Klugh of Klugh Wilson LLC, Miami, Florida,

for Appellant/Petitioner

James Uthmeier, Attorney General, Tallahassee, Florida, and Jennifer A. Davis, Senior Assistant Attorney General, and Nicole Rochelle Smith, Senior Assistant Attorney General, Miami, Florida,

for Appellee/Respondent

APPENDIX B

Order of the Circuit Court, Eleventh Judicial Circuit, denying successive motion for postconviction relief, No. F92-2141D (Nov. 13, 2026)

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,
Plaintiff,

CASE NO.: F92-2141D
FSC NO.: SC1960-94154

vs.

ACTIVE DEATH WARRANT
Execution scheduled for
December 1, 2026, at 6:00 pm

RICARDO GONZALEZ,
Defendant.
_____/

ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCE WITH REQUEST FOR LEAVE TO AMEND

THIS CAUSE came before the Court on Defendant, Ricardo Gonzalez's Successive Motion to Vacate Judgment of Conviction and Sentence With Request for Leave to Amend ("***Motion***"), filed November 8, 2026. The State of Florida ("***State***") filed a Response ("***Response***") on November 10, 2026. The Court conducted an initial hearing on the Motion and Response on November 10, 2026, at which time the parties made arguments on purely legal issues and on the need for an evidentiary hearing in accordance with *Huff v. State*, 622 So. 2d 982 (Fla. 1993). The Court, having reviewed the Motion, Response, the record and court files in this case, having heard the argument of counsel, and being otherwise fully advised in the premises, hereby **ORDERS AND ADJUDGES** that Gonzalez's Motion is **DENIED** for the reasons stated herein.

FACTUAL AND PROCEDURAL HISTORY

A. Earliest Proceedings.

The facts of the crime for which Gonzalez was tried and convicted were summarized by the Florida Supreme Court as follows:

> The defendant, Ricardo Gonzalez, along with codefendants Pablo San Martin, Leonardo Franqui, Fernando Fernandez, and Pablo Abreu were charged with first-

degree murder of a law enforcement officer, armed robbery with a firearm, aggravated assault, unlawful possession of a firearm while engaged in a criminal offense, grand theft in the third degree, and burglary. Gonzalez, Franqui, and San Martin were tried together before a jury in May, 1994.[1]

The record reflects that the Kislak National Bank in North Miami, Florida, was robbed by four gunmen on January 3, 1992. The perpetrators made their getaway in two stolen grey Chevrolet Caprice cars after taking a cash box from one of the drive-in tellers. During the robbery, police officer Steven Bauer was shot and killed. Shortly after the robbery, the vehicles were found abandoned two blocks west of the bank.

Approximately two weeks later, Gonzalez was stopped by police after leaving his residence on January 18, 1992. He subsequently made unrecorded and recorded confessions in which he told police that Franqui had planned the robbery, involved the other participants and himself in the scheme, and chosen the location and date for the crime. He said that Franqui had procured the two stolen Chevrolets, driven one of the cars, and supplied him with the gun he used during the robbery. He further stated that Franqui was the first shooter and shot at the victim three or four times, while he had shot only once. Gonzalez indicated that he shot low and believed he had only wounded the victim in the leg.[2] He was subsequently reinterviewed by police and, among other things, described how Franqui had shouted at the victim not to move before shooting him.

Franqui was also questioned by police on January 18, 1992, in a series of unrecorded and recorded sessions. During his preinterview, Franqui initially denied any involvement in the Kislak Bank robbery, but when confronted with the fact that his accomplices were in custody and had implicated him, he ultimately confessed. Franqui stated that Fernandez had hatched the idea for the robbery after talking to a black male, and he had accompanied the two men to the bank a week before the robbery actually took place. He maintained that the black male friend of Fernandez had suggested the use of the two stolen cars, but denied any involvement in the thefts of the vehicles. According to Franqui, San Martin, Fernandez, and Abreu had stolen the vehicles. Franqui did admit to police that he and Gonzalez were armed during the episode, but stated that it was Gonzalez—and not himself—who yelled at the victim to "freeze" when they saw him pulling out his gun. Franqui denied firing the first shot and maintained that he fired only one shot later.

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[1] Pablo Abreu pled guilty and was sentenced to life in prison. Pablo San Martin was originally sentenced to death but was resentenced to life in prison for this murder. However, he remains on death row for an unrelated killing. Fernando Fernandez was originally sentenced to death but was resentenced to life in prison. He died in prison in 2018. Leonardo Franqui was sentenced to death and remains on death row.

[2] It was eventually determined that the fatal bullet came from the gun that Gonzalez was carrying. *Gonzalez v. State*, 700 So. 2d 1217, 1219 (Fla. 1997).

> At trial, over the objection of Gonzalez, the confessions of codefendants San Martin and Franqui were introduced without deletion of their references to Gonzalez, upon the trial court's finding that their confessions "interlocked" with Gonzalez's own confession.
>
> Gonzalez was convicted on all counts, and after a penalty phase trial, the jury recommended death by a vote of seven to five. The trial court followed the jury's recommendation and sentenced Gonzalez to death.

Gonzalez v. State, 700 So. 2d 1217, 1217-1218 (Fla. 1997) (footnotes omitted).

The Florida Supreme Court affirmed the conviction but reversed for a new sentencing phase, reasoning that the erroneous admission of co-defendant Franqui's confession was not harmless beyond a reasonable doubt. *Id.* at 1219.

The State and Gonzalez filed for certiorari with the United States Supreme Court; both petitions were denied. *See Florida v. Gonzalez*, 523 U.S. 1145 (1998); *Gonzalez v. Florida*, 523 U.S. 1062 (1998).

A new penalty phase was held on August 10, 1998. *Gonzalez v. State*, 786 So. 2d 559 (Fla. 2001). The trial court again imposed death upon the jury's 8-4 recommendation, finding that the aggravators outweighed the mitigating circumstances, and the Florida Supreme Court affirmed. *Id.* Gonzalez's death sentence became final in 2001.

B. Later Postconviction Proceedings.

In March 2003, Gonzalez filed a consolidated amended motion for postconviction relief raising seven claims. The trial court found that only one claim required an evidentiary hearing and the other claims could be decided based upon the existing record. After an evidentiary hearing on one of the claims, the trial court issued an order denying all of Gonzalez's claims. Gonzalez appealed to the Florida Supreme Court. *Gonzalez v. State*, 990 So. 2d 1017 (Fla. 2008).

Gonzalez raised eight issues during this appeal, including that he was entitled to have a unanimous jury return a verdict of guilt addressing all the elements for the crime of first-degree

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murder under *Ring v. Arizona*, 536 U.S. 584 (2002), and that his constitutional right against cruel and unusual punishment would be violated as he may be incompetent at the time of execution. *Id.* at 1023. The Florida Supreme Court affirmed the trial court's denial of all the postconviction claims, specifically holding that Gonzalez's *Ring* claim was foreclosed because his death sentence became final in 2001 and *Ring* could not be applied retroactively, and because his incompetence to be executed claim was not ripe for review. *Id.* at 1034-1035.

Gonzalez sought habeas relief in the federal courts, which was denied. *Gonzalez v. Sec'y, Fla. Dept. of Corrections*, 629 F. 3d 1219 (11th Cir. 2011), *cert. denied.*, *Gonzalez v. Tucker*, 565 U.S. 982 (2011). Gonzalez filed a further successive motion for postconviction relief raising a claim under *Hurst v. Florida*, 577 U.S. 92 (2016). *Gonzalez v. State*, 240 So. 3d 629 (Fla. 2018), *cert. den.*, *Gonzalez v. Florida*, 586 U.S. 868 (2018). The Florida Supreme Court affirmed the trial court's denial of Gonzalez's motion, concluding that *Hurst* did not apply retroactively because his sentence became final in 2001. *Id.*

In October 2025, Gonzalez filed a *pro se* motion for production of public records and successive motion for postconviction relief based on a claim of "actual innocence." These motions contained the name of attorney Phillip Robert Horowitz. However, Mr. Horowitz advised the Court that he did not represent Gonzalez. Further, Jeffrey Feiler, who is Gonzalez's current counsel, advised the Court that he still represented Gonzalez and did not adopt the motions. Thus, on January 9, 2026, the Court entered an order striking both motions as nullities.

C. Death Warrant Proceedings.

On Friday, October 30, 2026, Governor Ron DeSantis signed a death warrant for Gonzalez, with the execution scheduled to take place on Tuesday, December 1, 2026. Also on Friday, October

30, 2026, the Florida Supreme Court entered an order requiring proceedings in the trial court to be completed as expeditiously as possible, but not later than 11:00 a.m., Friday, November 13, 2026.

On Monday November 2, 2026, the Chief Judge of the Eleventh Judicial Circuit appointed the undersigned judge to preside over this case. On Tuesday, November 3, 2026, the court conducted an initial case management conference and thereafter entered a Case Management Scheduling Order.

On Thursday, November 5, 2026, the Court conducted a hearing on Gonzalez's public records requests, and orders sustaining the objections of the responding agencies were entered later that same day.

On Sunday, November 8, 2026, Gonzalez filed the instant Motion to which the State responded on Tuesday November 10, 2026. The *Huff* hearing also occurred on November 10, 2026, with the court concluding that an evidentiary hearing would not be required to determine Gonzalez's claims. Gonzalez's Motion is now fully briefed and ripe for adjudication.

ANALYSIS

Gonzalez's Motion raises five principal claims: (1) Florida's lethal injection protocol is unconstitutional; (2) Florida's post-warrant records request procedure is unconstitutional; (3) Gonzalez's execution would be unconstitutional because he lacks extreme culpability; (4) executing Gonzalez on a jury vote of 8-4 is unconstitutional; and (5) Gonzalez's execution would be unconstitutional due to intellectual disability. Each of these claims will be discussed *seriatim*.

Florida Rule of Criminal Procedure 3.851 "applies to all postconviction motions filed on or after January 1, 2015, by defendants who are under sentence of death." Fla. R. Crim. P. 3.851(a). "Any motion to vacate judgment of conviction and sentence of death must be filed by the defendant within 1 year after the judgment and sentence become final." Fla. R. Crim. P. 3.851(d)(1).

Subsection (d)(2) of the Rule provides that no motion will be considered beyond one year from the date the judgment and sentence become final unless the motion alleges (1) newly discovered evidence that could not have been discovered through the exercise of due diligence, (2) a newly established and retroactive constitutional right or (3) postconviction counsel, through neglect, failed to file the motion. *James v. State*, 404 So. 3d 317, 324 (Fla. 2025) (outlining these exceptions in a post-warrant context).

A postconviction motion filed after a death warrant has been signed is an expedited proceeding. Fla. R. Crim P. 3.851(h)(3). Summary denial of purely legal claims is appropriate where such claims are without merit under controlling precedent. *See Mann v. State*, 112 So. 3d 1158,1162-3 (Fla. 2013). A trial court should summarily deny "successive claims where those claims are untimely, procedurally barred, legally insufficient, or refuted by the record." *Hutchinson v. State*, 416 So. 3d 273, 279 (Fla. 2025); *see also Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020) (affirming order denying postconviction relief where claims were discoverable through due diligence more than a year before the motion and therefore procedurally barred as untimely).

CLAIMS FOR POSTCONVICTION RELIEF

Gonzalez raises the following claims for postconviction relief. For the reasons stated below, the Court denies his Motion.

CLAIM I – FLORIDA'S LETHAL INJECTION PROTOCOL IS UNCONSTITUTIONAL, FACIALLY AND AS IT IS ACTUALLY CARRIED OUT, AND AS APPLIED TO MR. GONZALEZ; EXECUTION WOULD VIOLATE THE EIGHTH AND FOURTEENTH AMENDMENTS, AND ARTICLE I, SECTION 17, OF THE FLORIDA CONSTITUTION

Florida's current lethal injection protocol has remained essentially unchanged since 2017, so a challenge premised on that protocol ripened long before this warrant issued. *Randolph v. State*, 422 So. 3d 166, 172 (Fla. 2025); *Tanzi v. State*, 407 So.3d 385, 392 (Fla. 2025). To the

extent the claim rests on Gonzalez's brain damage, medical conditions, allergies, symptoms, as well as his reactions to such, those conditions were known before the warrant issued, and a claim does not become timely simply because it is repackaged after a warrant is signed. *Knight v. State*, 432 So. 3d 509, 518 (Fla. 2026). Therefore, as a threshold matter, Gonzalez's lethal injection claim is untimely and procedurally barred, and the Court denies it on that independent basis in addition to the merits addressed below.

Gonzalez asserts that his execution by lethal injection will constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments as well as Article I, Section 17 of the Florida Constitution for the following reasons: (a) the Florida Department of Corrections ("FDOC") lethal injection protocol presents the risk which is "sure or very likely to cause serious illness and needless suffering" upon Gonzalez by executing him under the lethal injection protocol; and (b) in administering the lethal injection protocol, FDOC will knowingly cause Gonzalez to consciously experience needless pain and suffering. The Eighth Amendment prohibits "cruel and unusual punishment." U.S. Const. Amend. VIII. But it "does not guarantee a prisoner a painless death..." *Bucklew v. Precythe*, 587 U.S. 119, 132 (2019). "Simply because an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish" cruel and unusual punishment. *Baze v. Rees*, 553 U.S. 35, 50 (2008). An Eighth Amendment method-of-execution claim requires the condemned to: "(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain" (the "*Baze-Glossip* test"). *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017); *Baze*, 553 U.S. at 50; *Glossip v. Gross*, 576 U.S. 863, 877 (2015).

The first prong of the *Baze-Glossip* test requires an objectively intolerable risk of harm. *Baze*, 553 U.S. at 50. Speculation will not suffice. Instead, the condemned must show "a virtual certainty" he will experience an unconstitutional level of pain. *Heath v. State*, 426 So. 3d 1253, 1262 (Fla. 2026).

Gonzalez correctly asserts that a successful challenge to a method of execution must include a feasible and ready to implement alternative method of execution that significantly reduces a substantial risk of severe pain. *Bucklew v. Precythe*, 587 U.S. at 134-40. Furthermore, a defendant cannot meet the second prong of the *Baze-Glossip* test if the proposed alternative would not result in a significantly less severe risk of pain. *Tanzi v. State*, 407 So. 3d 385, 393 (Fla. 2025). In view of this Court's finding that Florida's lethal injection protocol method of execution does not violate the Eighth Amendment generally and as it applies to Gonzalez, as well as the Court's conclusion that Gonzalez's challenge to Florida's method of execution is meritless, the Court need not reach prong two of the *Baze-Glossip* test.

The Motion also mentions irregularities that were discovered in the death warrant litigation of *Walls v. Dixon*, No. 4:25-cv-00488 (N.D. Fla.)[3] which were relied upon in two other death warrant litigation cases. The motion also mentions a failed execution in another state[4] without connecting it to any similar occurrence in Florida. However, courts must presume that FDOC will comply with the lethal injection protocol absent clear evidence to the contrary. *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024). Therefore, any suggestion that such irregularities are relevant to Gonzalez's case is purely speculative.

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[3] *Walls v. Sec'y, Dept. of Corrections*, 161 F. 4th 1281 (11th Cir. 2025) (motion for stay of execution denied); *Walls v. Florida*, --- U.S. ----, 146 S. Ct. 1436, 223 L. Ed. 2d 437 (Dec. 18, 2025) (application for stay of execution and petition for writ of certiorari denied).

[4] The State of Tennessee attempted to execute Christa Pike on September 30, 2026, but failed to do so largely because of technicians' failures to establish working IV lines.

Gonzalez further alleges that FDOC administered an expired dosage of etomidate accompanied by an insufficient one of potassium while discontinuing lidocaine may have an unspecified effect on the lethal injection protocol. However, engaging in this type of scientific analysis by the courts has been disapproved by the U.S. Supreme Court. In *Glossip* the Supreme Court explained:

> Although we must invalidate a lethal injection protocol if it violates the Eighth Amendment, federal **courts should not embroil [themselves] in ongoing scientific controversies beyond their expertise**.... Accordingly, an inmate challenging a protocol bears the burden to show, based on evidence presented to the court, that there is a substantial risk of severe pain. *Id.* (citation omitted)

576 U.S. at 882 (emphasis added). The *Glossip* court further held:

> [A]nd because some risk of pain is inherent in any method of execution, we have held that the **Constitution does not require the avoidance of all risk of pain.** After all, while most humans wish to die a painless death, many do not have that good fortune. Holding that the Eighth Amendment demands the elimination of essentially all risk of pain would effectively outlaw the death penalty altogether.

Id. at 869 (emphasis added).

For all the foregoing reasons, the Court finds that Florida's lethal injection protocol is constitutional, facially and as applied to Gonzalez. Accordingly, Gonzalez's execution by this protocol does not violate the Eighth or Fourteenth Amendments, or Article I, Section 17 of the Florida Constitution. Furthermore, in view of this Court's rejection of Gonzalez's arguments concerning Florida's lethal injection protocol, Gonzalez's proffer of an alternative method of execution is moot.

CLAIM II – FLORIDA'S POST-WARRANT PUBLIC RECORDS PROCEDURE DENIES MR. GONZALEZ SEVERAL FUNDAMENTAL RIGHTS UNDER THE STATE AND FEDERAL CONSTITUTIONS, AND IS UNCONSTITUTIONAL BOTH FACIALLY AND AS APPLIED

Gonzalez contends that Florida's post-warrant public records procedure, Fla. R. Crim. P. 3.852, is unconstitutional both facially and as applied, and that the denial of his demands for

additional execution-related records deprives him of fundamental rights. Following the issuance of his death warrant, Gonzalez served demands for additional public records under Rule 3.852(i) on the FDOC, the Florida Department of Law Enforcement (FDLE), the Medical Examiner for District Eight, and the State Attorney's Office, Eleventh Judicial Circuit. The agencies objected, the Court heard argument, and the Court sustained the objections to each category of lethal-injection records. Gonzalez renews the challenge on five constitutional grounds, addressed in turn below. For the reasons that follow, this claim must be denied.

A. Procedural Due Process.

The Fifth Amendment provides that no one will be deprived of life, liberty or property "without due process of law." Article I, Section 9 of The Florida Constitution guarantees the same. When one of these interests are at risk, there must be notice and an opportunity to be heard that is meaningful. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *see also Keys Citizens for Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001). When an interest is identified to be at risk of deprivation, the type of procedure is determined by three factors: "(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest." *See Keys Citizens for Responsible Gov't, Inc.*, 795 So. 2d at 948–49.

Gonzalez asserts that denying access to public records after the issuance of a warrant for execution violates his procedural due process rights by requiring him to establish a valid claim in postconviction proceedings before he can obtain those records. He further argues that his private interest is substantial, the risk of erroneous deprivation is high, and that the State's interest is minimal because producing the records is a small burden for the State.

However, the claim fails because Gonzalez has no protected interest in the records to which due process could be attached. A records-based claim untethered to a cognizable Rule 3.851 claim is "essentially a freestanding due process claim," and "no constitutional right exists to discover grievances or to litigate effectively once in court." *See Hitchcock v. State*, 431 So. 3d 514, 523–524 (Fla. 2026). The Florida Supreme Court has squarely held that denial of a Rule 3.852 records demand "does not violate a defendant's rights to due process or access to the courts." *See Heath v. State*, 426 So. 3d 1253, 1265 (Fla. 2026). Constitutional challenges to Rule 3.852 are not new, and all "have been rejected by this Court under state and federal law, including claims that the denial of public records violated due process and access to courts." *See id.* at 1265.

Additionally, the procedure itself is not unconstitutional. Procedural due process requires notice and an opportunity to be heard, and Rule 3.852 supplies both. Gonzalez received that process; he served his demands, the agencies objected, and the Court heard argument before ruling. His objection is to the outcome of the records dispute, not to any absence of process, and a disagreement with the result does not state a procedural due process violation. The as-applied and facial challenges fail because the rule, as ordinarily administered, provides constitutionally sufficient due process protections.

B. First Amendment and Common Law.

Gonzalez argues that under the First Amendment he has the right of access to government proceedings. The First Amendment right of access attaches to governmental proceedings historically open to the public, not to an executive agency's internal records concerning the procurement, storage, monitoring, and administration of lethal-injection drugs. *See Wellons v. Comm'r, Ga. Dept. of Corr.*, 754 F.3d 1260, 1266 (11th Cir. 2014). The Eleventh Circuit has held that neither the Fifth, Fourteenth, nor First Amendments afford a condemned inmate the broad

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right to know where, how, and by whom the lethal injection drugs will be manufactured, or who will administer them. *See id.* at 1267. Courts have uniformly rejected First Amendment claims asserting a right of access to execution information for the purpose of discovering a potential claim. *See Hitchcock*, 431 So. 3d at 523.

Gonzalez further asserts a common-law right of access to the requested records. That right does not attach to the records he seeks. The common-law right of access runs to judicial records that "provide grounds upon which a court relies in deciding cases," such that "the public has a valid interest in accessing these records to ensure the continued integrity and transparency of our governmental and judicial offices." *See Comm'r, Alabama Dep't of Corr. v. Advance Local Media, LLC*, 918 F.3d 1161, 1173 (11th Cir. 2019). Gonzalez's demand does not reach judicial records. He seeks the internal agency records of the FDOC, FDLE, and the Medical Examiner concerning the preparation, monitoring, and administration of lethal injections. These records have not been filed in, submitted to, or relied upon by any court in deciding any case. They are therefore not records "upon which a court relies in deciding cases," and the common-law presumption of access never attaches to them. *See id.* The subsection is denied facially and as applied.

C. Eighth Amendment.

Gonzalez contends that the denial of records violates the Eighth Amendment because it prevents him from gathering the evidence needed to show that his execution would be unconstitutional. The Eighth Amendment regulates the method and conditions of a sentence by preventing "cruel and unusual punishment," not the discovery procedures by which a defendant investigates it. A rule governing the production of public records inflicts no punishment and has no Eighth Amendment dimension, whether challenged facially or as applied.

Gonzalez's reliance on *Ford v. Wainwright* is misplaced. *Ford* held that the Eighth Amendment bars executing a prisoner who is insane and that Florida's *ex parte* executive sanity-determination procedure was inadequate because it "d[id] not permit any material relevant to the ultimate decision to be submitted on behalf of the prisoner facing execution." *See Ford v. Wainwright*, 477 U.S. 399, 413–414 (1986) (plurality opinion). *Ford* guarantees a fair hearing on a constitutionally dispositive fact; it does not create a right to discover agency records, and it does not displace the requirement that a records demand relates to a colorable claim.

Gonzalez's cognizable Eighth Amendment interest, if any, lies in a method-of-execution challenge; the denial of records does not impair it. To state such a claim, a defendant must establish both "a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering" and a known and available alternative method of execution that entails a significantly less severe risk of pain. *See Heath*, 426 So. 3d at 1263–64. A method-of-execution claim that fails to plead that the "(1) established... method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain" is legally insufficient regardless of what records are produced. *See Hitchcock*, 431 So. 3d at 524–27 (citing *Glossip v. Gross*, 576 U.S. 863, 877 (2015)); *see also Lukehart v. State*, --- So. 3d ----, 51 Fla. L. Weekly S139, 2026 WL 1480328 (Fla. May 27, 2026). Because Gonzalez fails to satisfy the *Baze-Glossip* standard, there is no colorable claim that the method of execution is unconstitutional. This subsection is denied.

D. Sixth Amendment.

The Sixth Amendment of the Federal Constitution guarantees the right to the assistance of counsel in criminal prosecutions. Gonzalez contends that, because Florida affords death-sentenced

inmates effective representation through collateral counsel, the State's withholding of records infringes upon that right in violation of the Sixth Amendment. He further asserts that effective representation is contingent upon counsel's access to relevant records and adequate time to investigate, review, and present potential claims.

However, the Sixth Amendment does not provide a constitutional right to counsel in collateral or postconviction proceedings, and consequently no corresponding guarantee of effective assistance. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (holding that the constitution does not provide the right to appointed counsel in postconviction proceedings). Florida's provision of collateral counsel is a matter of state statute, not a federal constitutional command, and it does not import the Sixth Amendment effective-assistance-of-counsel guarantee. *See Zack v. State*, 911 So. 2d 1190, 1203 (Fla. 2005) ("Under Florida and federal law, a defendant has no constitutional right to effective collateral counsel."). In any event, the denial of records untethered to a colorable claim does not render counsel ineffective, because there is "no constitutional right …to discover grievances or to litigate effectively once in court." *See Hitchcock*, 431 So. 3d at 523–24.

Nor does the expedited warrant litigation schedule supply a Sixth Amendment violation. The Florida Supreme Court has held that an expedited post-warrant schedule does not deprive a capital defendant of the effective assistance of counsel, and that the warrant litigation period does not, standing alone, violate a defendant's constitutional rights. *See Bates v. State*, 416 So. 3d 312, 321 (Fla. 2025). This subsection is denied facially and as applied.

E. Florida Constitution.

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Finally, Gonzalez invokes Article I, section 24 of the Florida Constitution, which he contends guarantees a right to inspect public records subject only to narrow exemptions, and Article I, sections 9 and 21, guaranteeing due process and access to the courts. This argument fails.

Article I, section 24(a) guarantees the right to inspect public records, except for records that are exempt under that section or made confidential by the Florida Constitution. Subsection (c) further authorizes the Legislature to create additional exemptions by general law, provided it specifically states the public necessity justifying the exemption. *See* Art. I, § 24, Fla. Const. The Florida Supreme Court has recognized that public necessity justifies the public-records exemptions applicable to lethal injection and has upheld the statutory protection of the identities of execution participants. *See Bryan v. State*, 753 So. 2d 1244, 1250–51 (Fla. 2000); *see also Correll v. State*, 184 So. 3d 478, 486 (Fla. 2015).

A denial under Rule 3.852 is not a denial of the right to inspect non-exempt public records. Chapter 119, Florida Statutes is the general mechanism that implements section 24 right of access. However, for capital postconviction inmates, the Legislature has established a specialized procedure. Fla. Stat. § 27.7081 and Rule 3.852 govern requests for records related to Rule 3.851 proceedings, and inmates may seek records outside the repository only through those mechanisms. *See Hitchcock*, 431 So. 3d at 525.

Gonzalez's theories of access to courts and due process fail for the reasons already stated: the Florida Supreme Court has repeatedly held that denial of a Rule 3.852 demand for lethal-injection records does not violate the right of access to courts under Article I, section 21, due process, or equal protection where the records do not relate to a colorable claim. *See Willacy v. State*, 431 So. 3d 254, 262–63 (Fla. 2026). Because section 24 contemplates exemptions and

because Rule 3.852's limitations are reasonable in capital postconviction practice, the rule is neither unconstitutional as applied nor facially invalid under the Florida Constitution.

Gonzalez has not demonstrated that Fla. R. Crim. P. 3.852, or the denial of his post-warrant public records demands, violates procedural due process, the First Amendment or the common law, the Eighth Amendment, the Sixth Amendment, or the Florida Constitution, either facially or as applied. The records sought do not relate to a colorable claim for postconviction relief. Therefore, Claim II is denied.

CLAIM III – MR. GONZALEZ'S EXECUTION WOULD VIOLATE THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS AND ARTICLE I, SECTIONS 16 AND 17 OF THE FLORIDA CONSTITUTION, BECAUSE A 21-YEAR-OLD WITH BRAIN DAMAGE AND BORDERLINE INTELLIGENCE, WHO NEVER INTENDED TO KILL AND WHOM NO JURY EVER FOUND CULPABLE ENOUGH TO DIE, LACKS THE EXTREME CULPABILITY THE DEATH PENALTY REQUIRES

Gonzalez contends that his execution would violate the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 16 and 17 of the Florida Constitution. He asserts that his age of twenty-one at the time of the offense, brain damage, below-average intelligence, and asserted lack of intent to kill render him insufficiently culpable to be subject to the death penalty, and that no jury ever made a finding of the culpability required for imposition of the death penalty. The State responds that the claim is untimely, procedurally barred, and meritless.

A. Claim III Is Untimely and Procedurally Barred.

Under Fla. R. Crim. P. 3.851(d)(1), a motion to vacate a death sentence must be filed within one year after the judgment and sentence become final. Gonzalez's judgment and sentence became final in 2001. *Gonzalez v. State*, 786 So. 2d 559 (Fla. 2001). The one-year bar is excused only if (a) the facts on which the claim is predicated were unknown and could not have been ascertained through due diligence; (b) a fundamental constitutional right was newly established and held to

apply retroactively; or (c) postconviction counsel, through neglect, failed to file. Fla. R. Crim. P. 3.851(d)(2); *Spencer v. State*, 434 So. 3d 709, 716 (Fla. 2026). In the post-warrant context, a claim is procedurally barred if it was raised, or could have been raised, before the death warrant was signed. *Gudinas v. State*, 412 So. 3d 701, 711 (Fla. 2025). This procedural bar applies equally to variations of claims previously litigated. *Id.*; *Barwick*, 361 So. 3d 785, 795 (Fla. 2023).

The facts underlying Claim III—Gonzalez's age at the time of the offense, his brain damage, his learning disability, his below-average intelligence, and his felony-murder conviction—have been known to Gonzalez for more than 25 years. This claim impermissibly repackages mitigating circumstances previously considered during his resentencing proceedings in 1998. *Gonzalez v. State*, 786 So. 2d 559, 563–66 (Fla. 2001).

Because the factual basis for Claim III was available to Gonzalez long before the signing of his death warrant, and because the claim recasts mitigating circumstances already evaluated during resentencing, the claim is untimely and procedurally barred. *Gudinas*, 412 So. 3d at 711. Nor does Gonzalez's reliance on evolving scientific research concerning brain development constitute newly discovered evidence sufficient to overcome the procedural bar. *Barwick*, 361 So. 3d at 793-94; *Sliney v. State*, 362 So. 3d 186, 189 (Fla. 2023).

B. Claim III Lacks Merit.

1. Age and Cognitive Impairment.

The U.S. Supreme Court has recognized a categorical Eighth Amendment exemption from capital punishment for offenders who were under eighteen years of age when they committed their crimes and individuals with intellectual disability. *Roper v. Simmons*, 543 U.S. 551, 578 (2005); *Atkins v. Virginia*, 536 U.S. 304, 321 (2002). Gonzalez, however, was 21 years old at the time of the offense, and the Eighth Amendment does not categorically exempt adult offenders based on

their youth or developmental immaturity. Indeed, the Florida Supreme Court has declined to extend *Roper* to offenders who were eighteen years of age or older at the time of their offenses. *Barwick*, 361 So. 3d at 794.

Nor does the Eighth Amendment categorically prohibit the execution of an offender because of traumatic brain injury, mental illness, or neurological impairment. *Gordon v. State*, 350 So. 3d 25, 37 (Fla. 2022); *Dillbeck v. State*, 357 So. 3d 94, 100 (Fla. 2023). The Florida Supreme Court has rejected efforts to create a new categorical exemption by combining the effects of neurological impairment, cognitive limitation, and reduced moral culpability. *Barwick*, 361 So. 3d 794-95. Accordingly, Gonzalez's attempt to extend *Roper* and *Atkins* to his circumstances is foreclosed by this controlling Florida Supreme Court precedent.

2. *Enmund/Tison* Culpability and the Absence of a Jury Finding.

Gonzalez contends that he lacked the intent to kill and that no jury specifically determined his culpability. Even if true, this contention does not establish a constitutional bar to execution. *Enmund v. Florida*, 458 U.S. 782, 797-98 (1982) does not forbid the execution of an actual killer merely because he lacked a specific intent to kill. Moreover, *Tison v. Arizona*, 481 U.S. 137, 158 (1987), permits death eligibility for a defendant who was a major participant in the underlying felony and acted with reckless indifference to human life. Here, forensic evidence linked Officer Bauer's fatal injury to Gonzalez's .38-caliber revolver. *Gonzalez*, 786 So. 2d at 563. The sentencing court found that Gonzalez fired the fatal shot and was a major participant in the robbery, and the Florida Supreme Court recognized those findings. *Gonzalez v. State*, 990 So. 2d 1017, 1033 (Fla. 2008). Based on these circumstances, Gonzalez's asserted lack of specific intent to kill does not render him constitutionally ineligible for capital punishment.

Gonzalez's argument that no jury made the culpability determination required by *Enmund* and *Tison* is unavailing. The Eighth Amendment does not independently require a jury to make the *Enmund* culpability determination, provided the requisite finding is made in an adequate state proceeding. *Cabana v. Bullock*, 474 U.S. 376, 392 (1986). The sentencing court's findings—that Gonzalez fired the fatal shot and was a major participant — were made in such a proceeding and were recognized by the Florida Supreme Court. *Gonzalez*, 990 So. 2d at 1033. This culpability determination therefore satisfies constitutional requirements.

Gonzalez's further contention that the *Tison* standard is unconstitutionally vague, facially and as applied, under *Johnson v. United States*, 576 U.S. 591 (2015), and *United States v. Davis*, 588 U.S. 445 (2019), is without merit. Those decisions invalidated vague statutory residual clauses that required courts to use a "categorical approach" to assess the risk associated with an abstract, "ordinary case" of a crime, thereby creating unconstitutional uncertainty and inviting arbitrary enforcement. *Johnson*, 576 U.S. at 597-98; *Davis*, 588 U.S. at 451-52. In contrast, *Tison* establishes a substantive constitutional limitation on capital punishment based on a defendant's actual participation in the felony and culpable mental state. It narrows the class of felony murder defendants eligible for the death penalty by requiring major participation in the felony, accompanied by reckless indifference to human life, when the defendant "does not himself kill, attempt to kill, or intend that a killing take place or that lethal force will be employed." *Tison*, 481 U.S. at 158; *Enmund*, 458 U.S. at 797–98. This carefully circumscribed constitutional culpability threshold is not the type of indeterminate or amorphous standard the vagueness doctrine prohibits. Gonzalez's facial constitutional challenge is therefore without merit.

Gonzalez's as-applied challenge likewise fails, because the sentencing court found that he fired the fatal shot and was a major participant—findings recognized by the Florida Supreme

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Court. *Gonzalez*, 990 So. 2d at 1033. Accordingly, Gonzalez's asserted lack of specific intent to kill does not render him constitutionally ineligible for capital punishment. *Tison*, 481 U.S. at 158; *Enmund*, 458 U.S. at 797-98.

In summary, Claim III is untimely and procedurally barred, and it is independently without merit under controlling federal and Florida precedent. Considered individually and in their totality, the characteristics on which Gonzalez relies—his age of twenty-one at the time of the offense, brain damage, learning disability, below-average intelligence, and asserted lack of intent to kill—do not place him outside the class of offenders eligible for capital punishment under the Eighth and Fourteenth Amendments or the Florida Constitution. Accordingly, Claim III is denied.

CLAIM IV – EXECUTING MR. GONZALEZ ON A JURY VOTE OF 8-4 VIOLATES THE SIXTH AND EIGHTH AMENDMENTS

Gonzalez asserts the Sixth and Eighth Amendments to the U.S. Constitution prohibit a death sentence based upon a non-unanimous jury recommendation. The State counters this claim is untimely, procedurally barred, and meritless. The undisputed record shows Gonzalez is not entitled to any relief on this claim.

A. The Claim Is Untimely.

A motion to vacate a judgment and sentence of death must be filed within one year after the judgment and sentence become final. Fla. R. Crim. P. 3.851(d)(1). A motion filed beyond that period may not be considered unless it alleges one of the three exceptions in Rule 3.851(d)(2): that the facts on which the claim is predicated were unknown and could not have been ascertained through due diligence; that a newly established fundamental constitutional right applies retroactively; or that postconviction counsel neglected to file the motion.

The order imposing the instant death sentence upon Gonzalez became final in 2001. He filed motions for postconviction relief in 2003 and 2017, and now again raises a claim objecting

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to the 1998 non-unanimous jury recommendation. The claim is therefore facially untimely under Rule 3.851(d)(1), and Gonzalez does not satisfy any Rule 3.851(d)(2) exceptions. *See Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020) (claims filed nearly twenty years after judgment and sentence became final and discoverable through due diligence more than a year before the motion was filed procedurally barred as untimely). The argument that this claim became ripe when execution was imminent is without support. *Zakrzewski v. State*, 415 So. 3d 203, 209 (Fla. 2025) (claims not contingent on the signing of death warrant had been available and extensively litigated in prior three decades).

B. The Claim Is Procedurally Barred.

The instant claim - a variation of claims previously raised - is procedurally barred. Gonzalez filed a consolidated amended motion for postconviction relief in March 2003 raising seven claims, including a claim Florida's then-existing capital sentencing procedures allowing a non-unanimous jury recommendation violated his Sixth Amendment rights pursuant to *Ring v. Arizona*, 536 U.S. 584 (2002). *Gonzalez*, 990 So. 2d at 1017. The trial court denied Gonzalez's motion, and the Florida Supreme Court affirmed because *Ring* is not applied retroactively. *Id.*

Thereafter, Gonzalez filed a *pro se* Successive Motion to Vacate Sentence of Death dated January 11, 2017, filed January 24, 2017. Counsel filed a successive motion adopting the *pro se* argument and adding additional claims. Gonzalez's motion argued the non-unanimous jury recommendation of death violated his Sixth Amendment and Eighth Amendment rights under *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). The trial court conducted a *Huff* hearing and denied relief. The Florida Supreme Court affirmed the trial court's order. *Gonzalez*, 240 So. 3d at 629.

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In an active 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. 2025); *see also Doty v. State*, 403 So. 3d 209, 214 (Fla. 2025).

C. The Claim Lacks Merit.

Lastly, even if Gonzalez's claim was timely and not procedurally barred, it would fail on the merits. The Sixth Amendment does not require a jury unanimously recommend a death sentence. In *State v. Poole*, 297 So. 3d 487 (Fla. 2020), the Florida Supreme Court receded from *Hurst v. State* except to the extent it requires a jury unanimously find the existence of a statutory aggravating circumstance and held a unanimous jury death recommendation is not required. Accordingly, a unanimous jury recommendation is not required for the death sentence imposed upon Gonzalez as *Poole* remains the law in Florida. *Hunt v. State*, 428 So. 3d 43 (Fla. 2025); *see also Beasley v. State*, --- So. 3d ----, 51 Fla. L. Weekly S289, 2026 WL 2854502 (Fla. Sept. 22, 2026) (affirming circuit court denial of constitutional challenge to death sentence based upon nonunanimous 10-2 recommendation).

Nor does a nonunanimous jury death recommendation violate the Eighth Amendment. The Florida Supreme Court has repeatedly held the Eighth Amendment does not require a unanimous death recommendation. *Beasley*, 2026 WL 2854502, at *8. Gonzalez argues that a death sentence on an 8-4 jury vote does not meet evolving standards of decency nor reflect current community values as only two states – Alabama and Florida – allow non-unanimous death sentences. However, the fact that a majority of jurisdictions have adopted a practice does not establish contemporary standards of decency. *Spaziano v. Florida*, 468 U.S. 447, 464 (1984) ("The Eighth Amendment is not violated every time a State reaches a conclusion different from a majority of its

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sisters over how best to administer its criminal laws."), *overruled on other grounds, Hurst v. Florida*, 577 U.S. 92 (2016).

The Motion and record conclusively establish Gonzalez is not entitled to relief on Claim IV as it is procedurally barred and foreclosed by controlling law. Accordingly, the Court finds that Gonzalez is not entitled to relief on Claim IV and it is denied.

CLAIM V[5] – EXECUTING MR. GONZALEZ VIOLATES THE EIGHTH AND FOURTEENTH AMENDMENTS DUE TO HIS INTELLECTUAL DISABILITY

Gonzalez argues that his execution will violate the Eighth and Fourteenth Amendments because he is intellectually disabled. This claim is untimely, procedurally barred, and legally insufficient.

A. The Claim Is Untimely.

A motion to vacate a death sentence must be filed within one year of finality unless it satisfies an exception under Rule 3.851(d)(2). *See Harvey v. State*, No. SC2024-0648, 2026 WL 1753226 (Fla. June 18, 2026). A first-time intellectual-disability claim by a defendant whose case was final before the rule's effective date must also establish good cause for not seeking a determination within sixty days of October 1, 2004. *Bowles v. State*, 276 So. 3d 791 (Fla. 2019). Gonzalez's claim, filed decades after finality and after the signing of his death warrant, satisfies neither requirement. The facts underlying the claim, Gonzalez's IQ scores and documented brain damage, have been long-known and do not constitute newly discovered evidence. *Kearse v. State*, 428 So. 3d 75, 83 (Fla. 2026). Nor does a death warrant make an intellectual disability claim newly ripe; the claim that ripens upon a warrant is incompetency to be executed, which Gonzalez does not assert. *Gudinas v. State*, 412 So. 3d 701, 715 (Fla. 2025).

[5] Gonzalez's Motion refers to this as a duplicative Claim IV, but it is the fifth claim raised.

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B. The Claim Is Procedurally Barred.

An intellectual disability claim under *Atkins* has been available to Gonzalez since 2002, and any claim under *Hall* has been available since 2014. *See Atkins v. Virginia*, 536 U.S. 304 (2002). A claim that could have been raised in a prior proceeding is procedurally barred, and the Florida Supreme Court has repeatedly rejected first-time intellectual-disability and related categorical-exemption claims on that ground. *See Barwick v. State*, 361 So. 3d 785, 795 (Fla. 2023); *Carroll v. State*, 114 So. 3d 883, 886–887 (Fla. 2013); *Gudinas*, 412 So. 3d at 715; *Rodriguez v. State*, 250 So. 3d 616 (Fla. 2016). The signing of a death warrant does not excuse delay or revive a claim that could have been raised earlier. *See Gudinas*, 412 So. 3d at 715. To the extent Gonzalez previously presented evidence of brain damage, learning disability, and below-average intelligence as mitigation at resentencing, his present attempt to recast that evidence as a categorical bar is an impermissible effort to relitigate the issue through a different argument. *Barwick*, 361 So. 3d at 795.

C. The Claim Is Legally Insufficient.

The Eighth Amendment prohibits the infliction of cruel and unusual punishment and categorically bars the infliction of the death penalty on intellectually disabled persons. *Atkins*, 536 U.S. at 321. The Fourteenth Amendment Due Process Clause applies the Eighth Amendment's prohibitions to the states. *Hall v. Florida*, 572 U.S. 701, 708 (2014).

To establish intellectual disability as a bar to execution, a defendant must demonstrate (1) significantly subaverage general intellectual functioning; (2) concurrent deficits in adaptive behavior; and (3) manifestation of the condition before age eighteen. *Phillips v. State*, 299 So. 3d 1013, 1018 (Fla. 2020). This three-pronged test is conjunctive; failure to meet any one element results in legal insufficiency of this claim.

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Because Gonzalez's death sentence became final in 2001, prior to the U.S. Supreme Court 2014 decision in *Hall*, the pre-*Hall* standard governs the first prong of this test. The Florida Supreme Court has held that *Hall* does not apply retroactively, reasoning that *Hall* is an "evolutionary refinement" of the procedure for implementing *Atkins* and announced a procedural, not a new substantive rule. *See Phillips*, 299 So. 3d at 1021. That holding has been applied consistently. *See Foster v. State*, 395 So. 3d 127 (Fla. 2024); *Pittman v. State*, 417 So. 3d 287 (Fla. 2025); *Thompson v. State*, 341 So. 3d 303 (Fla. 2022).

Under the pre-*Hall* standard, a defendant must establish an IQ of 70 or below to satisfy the first prong, and the failure to present such a score precludes a finding of intellectual disability. *Phillips*, 299 So. 3d at 1018. Gonzalez's scores of 75 and 80 do not meet that threshold. The first prong is therefore not satisfied, and the claim is legally insufficient. *See id.*

Because Claim V is legally insufficient, procedurally barred, and untimely, and because the motion, files, and records in the case conclusively show that Gonzalez is entitled to no relief, no evidentiary hearing is required. *Harvey v. State*, No. SC2024-0648, 2026 WL 1753226 (Fla. June 18, 2026). Accordingly, Gonzalez's Claim V is denied.

CONCLUSION

For the foregoing reasons, the Court finds and concludes that Defendant Ricardo Gonzalez's Successive Motion to Vacate Judgment of Conviction and Sentence With Request for Leave to Amend is due to be denied. **WHEREFORE**, it is hereby **ORDERED AND ADJUDGED** that the same is hereby **DENIED**.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 13th day of November 2026.

Christine Hernandez
CHRISTINE HERNANDEZ
CIRCUIT COURT JUDGE

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APPENDIX C

Orders of the Circuit Court on public-records demands (Nov. 5, 2026)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

Case No. F92-2141D
FSC No. SC1960-94154

v.

ACTIVE DEATH WARRANT
Execution scheduled for
December 1, 2026, at 6:00 pm

RICARDO GONZALEZ,
Defendant.
_____/

ORDER ON DEFENDANT'S PUBLIC RECORDS REQUEST TO OFFICE OF THE MEDICAL EXAMINER, DISTRICT 8

THIS CAUSE came before the court on the Defendant's Demand for Additional Public Records ("Demand") directed to Office of the Medical Examiner, District 8 ("Eighth ME").

After considering the Demand, the response and objections, and after hearing the argument of counsel, the Court determines that the Defendant is not entitled to the records he requests, and the Court **SUSTAINS** the Eighth ME objections as discussed herein.

The Defendant's Demand seeks the following categories of purported public records:

1. Records from January 1, 2025, through present of the following:
    a. Autopsy reports, including external and internal examination findings, organ weights, and the cause of manner of death.
    b. Toxicology reports, laboratory requests, chain-of-custody forms, and the underlying analytical data for each specimen, including results for etomidate, rocuronium, potassium, lidocaine, and any other substance detected.

c. Histology and microscopic findings, especially of the lungs, including any findings of pulmonary edema or congestion.

d. Investigator reports and records of injection sites, IV sites, and any marks, bruising, or extravasation.

e. Correspondence with the Department of Corrections, FDLE, or the Governor's office about any execution autopsy or toxicology result.

f. Any medical history, diagnosis, or medication information received from the Department of Corrections or any other source concerning each person executed, including neurological conditions and prescription medications.

g. Any examination of the brain or neuropathology findings, and any toxicology results for prescription medications, including anticonvulsant and psychotropic drugs, reported together with the results for the execution drugs.

LEGAL ANALYSIS

Eighth ME's objects on the grounds that that the Defendant's Demand does not relate to a colorable claim for postconviction relief, it is untimely, and it is overly broad and unduly burdensome.

As to Eighth ME's first objection that the records sought are not relevant to a colorable claim, the Court will sustain this objection. The Florida Supreme Court has upheld the constitutionality of the current lethal injection protocol, finding that requests for such records "'[a]re unlikely to lead to a colorable claim for relief.'" *Lukehart v. State*, --- So. 3d ----, 2026 WL 1480328, 51 Fla. L. Weekly S. 139 (May 27, 2026) (citing *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019)). Further, autopsy and toxicology records that are being sought, would not lead to a colorable claim. *E.g., Branch v. State*, 236 So. 3d 981, 985 (Fla. 2018) ("[W]e have explained that

autopsy records are not likely to lead to a colorable claim because they 'would not establish when the inmates became unconscious or whether they experience pain during their executions.'" (quoting *Chavez v. State*, 132 So. 3d 826, 830 (Fla. 2014)).

Eighth ME's second objection is that the Demand is untimely and fails to demonstrate good cause to justify the delay in seeking these records. The Court sustains this objection. Rule 3.852(i) requires that requests made under this rule must show "good cause as to why the public records request was not made until after the death warrant was signed." *Dailey*, 283 So. 3d at 792 (quoting *Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017). The Demand fails to provide good cause as to why the Defendant waited to request the instant records.

Eighth ME's final objection is that the Demand is overly broad and unduly burdensome. The Court will sustain this objection. The Demand fails to show how the requested records relate to a colorable claim for post-conviction relief. The Demand's request for records from thirty-seven prior autopsies is overly broad and unduly burdensome. *E.g., Heath v. State*, 426 So. 3d 1253, 1263-64 (Fla. 2026) (affirming denial of demand for records related to more than ten executions as "overly broad or unduly burdensome"); *Correll v. State*, 184 So. 3d 478, 492 (Fla. 2015).

CONCLUSION

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that the Respondent Eighth ME's objections to the Defendant's Demand for Additional Public Records directed to the Office of the Medical Examiner, District Eight, are hereby **SUSTAINED** as stated above.

DONE AND ORDERED in Miami-Dade County, Florida this 5th day of November 2026.

Christine Hernandez

CHRISTINE HERNANDEZ
CIRCUIT JUDGE

cc: Service List

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

RICARDO GONZALEZ,
Defendant.
_____/

Case No. F92-2141D
FSC No. SC1960-94154

ACTIVE DEATH WARRANT
Execution scheduled for
December 1, 2026, at 6:00 pm

ORDER ON DEFENDANT'S PUBLIC RECORDS REQUEST TO THE FLORIDA DEPARTMENT OF CORRECTIONS

THIS CAUSE came before the court on the Defendant's Demand for Additional Public Records ("Demand") directed to Florida Department of Corrections ("FDC").

After considering the Demand, the response and objections, and after hearing the argument of counsel, the court determines that the Defendant is not entitled to the records he requests, and the Court sustains FDC's objections as discussed herein.

The Defendant's Demand seeks the following categories of purported public records:

A. The expired etomidate lot

1. For each lot of etomidate with an expiration date of January 31, 2025: the receipt record, every inventory entry, and every record showing when, why, and how

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each unit left inventory, including any disposal, destruction, or return record.

2. For the executions carried out on August 19, August 28, September 17, and September 30, 2025: the lot number and expiration date of the etomidate actually administered.
3. Any record of a decision to use a drug after its labeled expiration date, and any testing, potency analysis, or beyond-use dating of such a drug.

B. Purchase, storage, and disposal (procedure section [6], Purchase and Maintenance of Lethal Chemicals)

4. For etomidate, rocuronium bromide, potassium acetate, lidocaine, and any other drug kept for executions: receiving records showing the drug, quantity, concentration, lot number, expiration date, and date received. Supplier identities may be redacted.

5. Records tracking whether each drug is within its date range or has reached or passed its expiration date.

6. Storage requirements for each drug, including refrigeration and temperature range, and the temperature monitoring logs.

7. Policies for protecting the drugs during a power loss or other condition that could compromise them, such as water, temperature, or humidity, and records of any such event.

8. Policies and logs for identifying, separating, and disposing of expired or compromised drugs.

9. The complete inventory and removal logs for each drug, unredacted except for exempt identifying information.

C. Each execution carried out since January 1, 2025

10. The checklists documenting completion of each step in the process (procedure section [5], Use of Checklists).

11. The signed forms in which the team warden attests that all steps were performed properly before the drugs were administered and that the remaining steps were

performed properly (section [5]).

12. The records of the execution team member and the FDLE observer documenting the preparation of each drug on the day of the execution.

13. Drug preparation and syringe records showing each drug, dose, lot number, and expiration date.

14. The execution timeline, including the time of each injection and each consciousness check.

15. Records of any substance administered that is not listed in the procedure, including lidocaine, with the dose, the reason, and the position of the person who authorized it.

16. Records of IV access attempts, the sites used, any use of a central line or cut down, and any difficulty establishing or keeping access.

17. Records of the team warden's debriefing interviews with execution team members and executioners documenting any exceptional circumstances.

18. The logs of the FDLE monitors provided to the team warden and available at post- execution debriefings.

19. The detailed log kept by the first FDLE monitor of the preparation of the drugs and what occurred in the executioner's room, recorded at intervals of no more than two minutes, as provided to the team warden and available at the post-execution debriefing.

20. The detailed log kept by the second FDLE monitor of what occurred in the execution chamber, recorded at intervals of no more than two minutes, as provided to the team warden and available at the post-execution debriefing

21. Incident reports, deviation reports, and any after-action or post-execution review.

22. Any procedure, guidance, training, or communication concerning how the execution team
assesses consciousness, or modifies any step of the

execution, for a prisoner with brain damage, a neurological or cognitive impairment, a seizure disorder, a communication impairment, or medications that may affect anesthetic or neuromuscular-blocking drugs.

23. For each execution since January 1, 2025, records of each consciousness assessment performed, the method used, the prisoner's response, the time of the assessment, and the time the rocuronium bromide was administered, and any record of involuntary movement, myoclonus, seizure-like activity, or unexpected movement.

D. **Procedures and Training**

24. Training records, including simulations, rehearsals, and instruction on the effects of each drug (Training of the Execution Team and Executioners).

25. Procedures and records on aseptic technique and placement of the IV extension set used to infuse the drugs.

26. Procedures for venous access by central line or cut down.

27. The methods, instruments, and training used to assess consciousness and to confirm death.

28. Forms, records, and documentation of the methods and medical instruments the execution team uses to assess and monitor the prisoner's level of consciousness and to confirm death, including records of each team member's training, competency, and proficiency in those methods

29. Procedures and checklists for mixing each drug with its diluent, flushing syringes, staging and labelling syringes, and inserting and securing the needle.

30. Records showing the training, licensure category, and qualifications of the team members who establish IV

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access, prepare drugs, and assess consciousness, with identities redacted.

E. Mr. Gonzalez's own records

31. His medical records since 1/1/2016, including vein assessments, diagnoses, and medications, and any medical assessment made in connection with the execution.

32. Any execution plan, assessment, or other record prepared specifically for his execution. 28. Mr. Gonzalez's complete medical and mental health records since 1/1/2016, including neurological diagnoses, imaging, EEGs, seizure history, current and past medications with dosages; records of head injury, seizures, falls, memory loss, dementia or cognitive screening; psychotropic and neurological medications; sick call and nursing notes reflecting confusion or decline.

33. Any assessment of whether his condition or medications affect the administration or effect of the lethal injection drugs, the establishment of IV access, or the assessment of his consciousness.

F. **Miscellaneous**

34. All records previously requested by any inmate subject to an active death warrant related to the lethal injection protocol, execution method, efficacy of execution, what occurred during the execution, use of drugs, drug supply, drug expiration date.

35. Any internal communications regarding the botched execution of Christina Pike.

LEGAL ANALYSIS

FDC's first objection is that records relating to the lethal injection protocol, procedures, and personnel are confidential and exempt under Florida law, the

objection is sustained. Those records are protected from disclosure, and production is denied. *See Willacy v. State*, 431 So.3d 254, 262 (Fla. 2026); *see also Heath v. State*, 426 So.3d 1253, 1262 (Fla. 2026).

On FDC's second objection that the Demand is not tied to a colorable claim for postconviction relief as required by Rule 3.852, that the Defendant has not shown good cause for waiting until after the warrant was signed, and that the request is overly broad and unduly burdensome, the objection is sustained. The constitutionality of the current protocol has been settled, FDC is presumed to perform its duties properly, and the Demand seeks records unrelated to any colorable claim.

FDC's third objection to records of lethal injection drugs, protocol, procedures, processes and execution logs and notes thereto are hereby sustained. *Chavez v. State*, 132 So.3d 826, 831 (Fla. 2014); *see also Muhammad v. State*, 132 So.3d 176, 202 (Fla. 2013).

FDC'S fourth objection to the Demand is that the Demand identifies no colorable Eighth Amendment Claim only that the Defendant "intends to raise" an as-applied claim. A method of execution claim under the Eighth Amendment requires the defendant to (1) establish that the method presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering, and (2) identify a known and available alternative that entails a

significantly less severe risk of pain. *Asay v. State,* 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip v. Gross*, 576 U.S. 863, 877 (2015)); *see also Baze v. Rees*, 553 U.S. 35 (2008). The Demand does not identify any argument or evidence that requires the Florida Supreme Court to revisit its precedent as found in *Asay* and *Jimenez v. State*, 265 So. 3d 462 (Fla. 2018). The Florida Supreme Court has recently affirmed the denial of materially similar demands. See *Heath v. State*, 426 So.2d 1253, 1263 (Fla. 2026); *Trotter v. State*, 428 So.3d 68 (Fla. 2026).

Further, the Demand's only case in support of the request, *Walls*, has been repeatedly rejected by the Florida Supreme Court. *See Spencer v. State,* No. SC2026-0880, 2026 WL 1757938 (Fla. June 18, 2026) (rejecting Spencer's argument that his Eighth and Fourteenth Amendment rights were violated by DOC's alleged failure to adhere to its lethal injection protocol as allegedly shown by the *Walls* records); *Lukehart v. State,* No. SC2026-0736, 2026 WL 1480328 (Fla. May 27, 2026).

FDC's fifth objection is that the Demand fails to raise a colorable 14th Amendment claim. The Court sustains this objection. The Demand fails to allege any facts in support of this claim. The Defendant's Fourteenth Amendment argument does not warrant the production of lethal injection records. *See Bates v. State,* 416 So. 3d 312, 321 (Fla. 2025) (rejecting argument that a thirty-day warrant period-coupled with the denial of all demanded public records-deprived the defendant of due process and right to counsel); *Tanzi v. State*, 407 So. 3d 385, 390 (Fla. 2025)

(rejecting due-process challenge despite "the truncated warrant period and the denial of his public records requests"). The Demand fails to meet the Defendant's burden of "demonstrating that the records sought relate to a colorable claim for postconviction relief." *Branch v. State,* 236 So. 3d 981, 984 (Fla. 2018) (citations omitted).

FDC's sixth objection is the Demand's request for records as they relate to execution and lethal injection records. The Court will sustain that objection. The Florida Supreme Court has addressed this very issue in concluding that the request for those records were unlikely to lead to a colorable claim of relief. *Dailey v. State,* 283 So. 3d 782 (Fla. 2019).

FDC's seventh objection as it relates to the protocol drugs, this Court will sustain FDC's objections. Demands for these types of records have been found to be unrelated to a colorable claim of relief. *See Asay v. State,* 224 So. 3d 695 (Fla. 2017); *Hannon v. State*, 228 So. 3d 505 (Fla. 2017); *Branch v. State*, 236 So. 3d 981 (Fla. 2018); *Jimenez v. State*, 265 So. 3d 462 (Fla. 2018).

FDC's eighth objection as it relates to records of those involved in the execution, the Court will sustain those objections. The requested information which identifies an executioner is confidential pursuant to Fla. Stat. §945.10(1)(g). *See Correll v. State,* 184 So. 3d 478, 486 (Fla. 2015).

FDC's ninth objection to the Demand relates to the request in paragraphs 6E and 6F. The Court will sustain this objection. FDC has produced the last five (5) years of the Defendant's medical and classification records on November 3, 2026. The Demand does not allege how these records could support a colorable claim for relief. The Defendant's records have been available throughout his incarceration. The records as requested could have been discovered through due diligence and cannot now support a timely, and therefore colorable claim under Rule 3.851.

As the objection relates to the records requested in paragraph 6F, current Florida Supreme Court precedent holds that the Defendant is not entitled to these records. Additionally, the Court will find that the request for records pursuant to Rule 3.852(i) are denied as they are "overly broad and unsupported by any indication of their relevance to a colorable claim." *Muhammad v. State*, 132 So. 3d 176 at 201 (Fla. 2013).

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CONCLUSION

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that the Respondent FDC's objections to the Defendant's Demand for Additional Public Records directed to the Florida Department of Corrections are hereby sustained as stated above.

DONE AND ORDERED in Miami-Dade County, Florida this 5th day of November, 2026.

Christina Hernandez

CHRISTINE HERNANDEZ

CIRCUIT JUDGE

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

Case No. F92-2141D
FSC No. SC1960-94154

v.

ACTIVE DEATH WARRANT
Execution scheduled for
December 1, 2026, at 6:00 pm

RICARDO GONZALEZ,
Defendant.
_____/

ORDER ON DEFENDANT'S PUBLIC RECORDS REQUEST TO THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT

THIS CAUSE came before the court on the Defendant's Demand for Additional Public Records ("Demand") directed to the Florida Department of Law Enforcement ("Respondent"). Pursuant to the Florida Supreme Court's order of October 30, 2026, to expedite all further proceedings in this case following the issuance of the death warrant by the Governor, and in accordance with this court's Case Management Scheduling Order filed on November 3, 2026, this court held a hearing on November 5, 2026, at 3:00 p.m., on the Demand as well as the response and objections.

After considering the Demand, the response and objections, and after hearing the argument of counsel, the court determines that the Defendant is not entitled to

the records he requests, and the court **SUSTAINS** the Respondent's objections as discussed herein.

The Defendant's Demand contains the following categories:

1. The log kept by the FDLE monitor assigned to observe the preparation of the drugs and the executioner's room, at two-minute intervals or as otherwise kept (procedure section 7).
2. The log kept by the FDLE monitor assigned to the execution chamber (procedure section 7).
3. Records of the FDLE observer documenting the preparation of each drug on the day of the execution, including any confirmation that the drugs were correct and current (procedure section 9).
4. Any notes, checklists, or reports by FDLE personnel recording a drug name, lot number, expiration date, dose, or the time of any injection or consciousness check.
5. Records of any irregularity, delay, deviation, or unusual movement or sound observed during an execution.
6. Communications with the Department of Corrections, the Executive Office of the Governor, or any medical examiner about the conduct of any execution or about the drugs used.
7. Any FDLE review, audit, inspection, or investigation of the Department's execution drugs, drug storage, or execution procedures.
8. Any laboratory analysis by FDLE of execution drugs or of specimens from executed prisoners.
9. Any records previously requested of FDLE by any death row inmate since January 1, 2025, related to the lethal injection protocol, how executions were previously carried out, the drugs used, any following investigation, review, or reports, or any other related materials.

The Respondent has raised the following basic objections:

1. The Defendant failed to comply with Rule 3.852(i) and Florida Supreme Court precedent by providing a colorable claim for post-conviction relief and good cause as to why the public records request was not made until after the death warrant was signed.

2. The Defendant has failed to meet his burden under Rule 3.852(i)(1)(C) and has failed to prevail on a constitutional challenge to the method under the cited case of *Glossip*[1] in that the Defendant did not show the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering nor does the Demand challenge the protocol's constitutionality and cites no Florida example of adverse reactions. In addition, the Defendant did not identify a known and available alternative method of execution, offering only boilerplate.
3. The Florida Supreme Court has repeatedly upheld the protocol and held that lethal injection records are unlikely to lead to a colorable claim. *See Hitchcock v. State*, 431 So. 3d 514, 523-524 (Fla. 2026); *see also King v. State*, 434 So. 3d 969, 975 (Fla. 2026).
4. The Demand goes against Rule 3.852 which is a "carefully tailored discovery rule," not a vehicle for overly broad records unrelated to a colorable claim.

The Respondent's request that the objections be sustained and that the Defendant's Demand for additional public records be denied.

LEGAL ANALYSIS

The Court incorporates by reference the Defendant's Demand and the Respondent's response and objections. Further, the court conducted a hearing with counsel on November 5, 2026, at which comprehensive arguments were heard; the Court incorporates by reference its oral pronouncements at the hearing.

[1] *Glossip v. Gross*, 576 U.S. 863 (2015)

Rule 3.852(i), Fla. R. Crim. P., governs the determination of this Demand. The Rule states:

> (1) In order to obtain public records in addition to those provided under subdivisions (e), (f), (g), and (h) of this rule, collateral counsel shall file an affidavit in the trial court which: (A) attests that collateral counsel has made a timely and diligent search of the records repository; and July 13, 2026 383 Florida Rules of Criminal Procedure (B) identifies with specificity those public records not at the records repository; and (C) establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and (D) shall be served in accord with subdivision (c)(1) of this rule.
>
> (2) Within 30 days after the affidavit of collateral counsel is filed, the trial court may order a person or agency to produce additional public records only upon finding each of the following: (A) collateral counsel has made a timely and diligent search of the records repository; (B) collateral counsel's affidavit identifies with specificity those additional public records that are not at the records repository; (C) the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and (D) the additional records request is not overly broad or unduly burdensome.

The Respondent objected to the Demand on the grounds that the Defendant failed to comply with the Rule 3.852(i) and established Supreme Court precedent. Under Rule 3.852(i) the Defendant "[m]ust show how the requested records relate to a colorable claim for post-conviction relief and good cause as to why the public records request was not made until after the death warrant was signed." *See Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019) (citations omitted). Here, the Defendant argued that such request was compliant with Rule 3.852(i) because it sought

information on the FDOC's policies and procedures. The Respondent argued, and the Court agrees, that such a request did not present a colorable claim for post-conviction relief. The Florida Supreme Court has uniformly denied requests finding that such records do not relate to a colorable claim for post-conviction relief. *See Tanzi v. State*, 407 So. 3d 385, 391 (Fla. 2025); *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017); *Occhicone v. State*, 436 So. 3d 465, 471–72 (Fla. 2026); *Jimenez v. State*, 265 So. 3d 462, 472–73 (Fla. 2018).

The challenge to Florida's lethal injection protocol has been fully considered and rejected, and records of prior executions do not bear on a colorable claim. *See Muhammad v. State*, 132 So. 3d 176, 203 (Fla. 2013) ("[R]equests related to actions of lethal injection personnel in past executions do not relate to a colorable claim concerning future executions because there is a presumption that members of the executive branch will perform their duties properly.").

The Respondent also objected to the Demand on the grounds that a method of execution claim under the Eighth Amendment requires the defendant to (1) establish that the method presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering, and (2) identify a known and available alternative that entails a significantly less severe risk of pain. *Asay v. State,* 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip v. Gross*, 576 U.S. 863, 877 (2015)); see also *Baze v. Rees*, 553 U.S. 35 (2008).

The Court finds that the Demand does not identify any argument or evidence that requires the Florida Supreme Court to revisit its precedent as found in *Asay VI*, and *Jimenez*. The Florida Supreme Court has recently affirmed the denial of materially similar demands. *See Heath v. State*, 426 So.2d 1253, 1263 (Fla. 2026); *Trotter v. State*, 428 So.3d 68 (Fla. 2026). The Court therefore sustains FDLE's objection.

The Respondent also objected to the Demand on the grounds that such requests were overly broad, a fishing expedition and would not reasonably lead to the discovery of admissible evidence. The Defendant argued that under the Eighth Amendment of the U.S. Constitution that such a request was made under a colorable claim for post-conviction relief because the request was targeted towards the specific practices and policies of the FDOC and FDLE. The Respondent argued that such a request was merely a fishing expedition to uncover some cruel and unusual punishment through further investigation. This Court agrees. The Florida Supreme Court has acknowledged that "[t]he public records procedure under [Rule 3.852] 'is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for post-conviction relief.'" *See Long v. State*, 271 So. 3d 938, 948 (Fla. 2019); *see also Muhammad*, 132 So. 3d at 200. The Court sustains FDLE's objections.

CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** AND **ADJUDGED** that the Respondent's objections to the Defendant's Demand for Additional Public Records directed to the Florida Department of Law Enforcement are **SUSTAINED** as stated above.

DONE AND ORDERED in Miami-Dade County, Florida this 5th day of November 2026.

Christine Hernandez

CHRISTINE HERNANDEZ
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

Case No. F92-2141D
FSC No. SC1960-94154

v.

ACTIVE DEATH WARRANT
Execution scheduled for December 1, 2026, at 6:00 pm

RICARDO GONZALEZ,
Defendant.
_____/

ORDER ON DEFENDANT'S PUBLIC RECORDS REQUEST TO THE OFFICE OF THE STATE ATTORNEY, 11TH JUDICIAL CIRCUIT OF FLORIDA

THIS CAUSE came before the Court on the Defendant's Demand for Additional Public Records ("Demand") directed to the Office of the State Attorney, 11th Judicial Circuit of Florida ("SAO"). Pursuant to the Florida Supreme Court's order to expedite the proceedings following the issuance of the death warrant by the Governor on October 30, 2026, and in accordance with this Court's November 3, 2026, Case Management Scheduling Order, this Court held a hearing on November 5, 2026, at 3:00 p.m., on the Demand as well as the response and objections.

After considering the Demand, the response and objections, and after hearing the argument of counsel, the court determines that the Defendant is not entitled to the records he requests, and the court sustains the SAO's objections as discussed herein.

The Defendant's Demand requests the following:

a. All records in the possession or control of SAO-11 relating to the investigation or prosecution of Ricardo Gonzalez (DC# 123763) and/or the January 3, 1992, homicide of Officer Steven Bauer at the Kislak National Bank, 13490 N.W. Seventh Avenue, that were received or produced since collateral counsel's prior request, or that were, for any reason, not produced previously. This request excludes the five files this Court reviewed in camera and found exempt. *See Gonzalez*, 990 So. 2d at 1033.
b. All records relating to co-defendants Leonardo Franqui, Pablo San Martin, Fernando Fernandez, and Pablo Abreu that concern Mr. Gonzalez's knowledge of, role in, or presence at the robbery, including: plea, cooperation, immunity, or sentencing agreements; proffers and statements; correspondence with any co-defendant or co-defendant's counsel; and records relating to the resentencing of Fernando Fernandez to life imprisonment, to the extent not previously produced, and any statement by a co-defendant describing Mr. Gonzalez's mental state, intelligence, drug or alcohol use, or susceptibility to direction by others.
c. All records relating to the custodial interrogation of Mr. Gonzalez, including audio or video recordings, transcripts, notes, Miranda waiver forms, and records reflecting the times and duration of questioning, to the extent not previously produced.
d. All records received or produced by SAO-11 since January 1, 2025, relating to any statement, letter, affidavit, or communication by or on behalf of any co-defendant concerning Mr. Gonzalez, including any communication relating to Mr. Gonzalez's October 2025 pro se motions.
e. All communications between SAO-11 and the Office of the Governor, the Office of the Attorney General, or the Florida Commission on Offender Review, from January 1, 2025, to the present, relating to Mr. Gonzalez, the scheduling of his execution, or his election for a death warrant.
f. All records to any mental health, neurological, neuropsychological, or medical evaluation of Mr. Gonzalez obtained, commissioned, received, or reviewed by SAO-11 at any stage of the case, including reports,

notes, raw test data, test protocols and score sheets, correspondence with any expert retained or consulted by the State, and records of payment to any such expert, to the extent not previously produced.

g. All records in the possession or control of SAO-11 reflecting any head injury, loss of consciousness, hospitalization, or medical treatment of Mr. Gonzalez, including Miami-Dade County jail intake and medical records, hospital records, and records of any injury sustained during or after his arrest, to the extent not previously produced.
h. All records describing Mr. Gonzalez's mental, cognitive, or physical condition at or near the time of his arrest and custodial interrogation, including notes or reports describing his demeanor, comprehension, intoxication, injuries, or need for medical attention, to the extent not previously produced.
i. All school, juvenile, prior-prosecution, presentence investigation, or other records in the possession or control of SAO-11 concerning Mr. Gonzalez's intellectual, developmental, or neurological functioning, to the extent not previously produced.
j. Any mental health or neurological evaluation of Ricky in the State's files not previously produced; the State's expert materials from the 1994 trial and 1998 resentencing, and anything on Drs. Wagschul, Eisenstein, Haber, and Fisher.
k. Any internal communications regarding the botched execution of Christina Pike.

The SAO has raised the following basic objections: (1) The Demand does not contain an affidavit which the Rule requires "in order to obtain public records in addition to those provided...collateral counsel shall file an affidavit in the trial court [which attests that counsel has made a timely and diligent search of the records repository, identifies with specificity those public records not at the repository, establishes that the additional records are relevant to the subject matter of the proceeding or are reasonable calculated to lead to the discovery of admissible

evidence, and shall be served upon the proper parties."; (2) the request does not relate to a colorable claim; (3) the Defendant has not established good cause as to why the public records request was not made until after the death warrant was signed; and (4) the request is vague, overly-broad, and unduly burdensome. The Court concludes that the objections are well-taken and will sustain them.

LEGAL ANALYSIS

The court incorporates by reference the Defendant's Demand and the SAO's response and objections. Further, the Court conducted a hearing with counsel on November 5, 2026, at 3:00 pm, during which comprehensive arguments were heard.

As to the SAO's first general objection, the Court will sustain the objection. Rule 3.852(i) governs public record demands in the warrant proceeding. The Court may order production only if it finds that each of the requirements under the rule are met and that the request is not overly broad or unduly burdensome. Fla. R. Crim. P. 3.852(i)(2)(A)-(D). In reviewing the Demand, the Court concludes that the Demand is unsupported by the required affidavit and the deadline has passed. Even if the Court were to treat one of the affidavits as intended for the SAO, it would still not satisfy the rule. An unanswered same-day inquiry is not a timely and diligent search of the Repository. Fla. R. Crim. 3.852(i)(1)(A). The Court will however address the Demand on the merits.

As to the SAO's second general objection, that the Defendant has failed to establish cause, let alone good cause, for waiting until after the death warrant was signed to request these records, the Court will sustain this objection. The Demand does not address good cause. The Demand itself states that collateral counsel previously requested records from the SAO in the initial postconviction proceeding. (Demand at p. 5). The Defendant since then has litigated an initial post-conviction motion, a federal habeas claim, and successive *Hurst* proceedings without seeking these records. Rule 3.852(i) did not require him to wait for a warrant. *Tompkins v. State,* 872 So. 2d 230, 244 (Fla. 2003). As recently as this year, a *pro se* motion was addressed in court. Nothing prevented collateral counsel from seeking the related records in the ten months between that ruling and the signing of the warrant.

Lastly, the SAO argues that the Demand is overbroad, and the Defendant has not demonstrated how the public records requested relate to a colorable claim for relief. Item 6(a) of the Demand seeks all records related to the investigation or prosecution of the Defendant and/or homicide of the victim received or produced since counsel's prior request or not previously produced. This type of request has been found to be "overbroad and burdensome." *Muhammad v. State,* 132 So. 3d 176, 203 (Fla. 2013). The Court sustains the objection as to these items.

Items 6(b) through 6(d) of the Demand do not identify any specific record but rather asks the SAO to see if anything exists. Seeking records to discover whether a

claim exists, rather than to support an identified claim, is not a proper use of Rule 3.852. *Tanzi v. State*, 407 So.3d 385, 391 (Fla. 2025); *Dailey v. State*, 283 So.3d 782, 792 (Fla. 2019). Further, this part of the requests is overbroad and could have been requested at any point in the prior proceedings. The Court sustains objections as to these items.

As to the Demand's Item 6(e) request, the SAO has produced its correspondence with the Florida Commission on Offender Review.

As to the Demand's items 6(f) through 6(j) requests, those are overly broad and do not identify nor relate to a colorable claim of relief. The Defendant has failed to satisfy Florida Rule of Criminal Procedure 3.852(i) which governs these proceedings. Florida Rule of Criminal Procedure 3.852 is not an open-ended vehicle to conduct "fishing expedition for records unrelated to a colorable claim for postconviction relief." Muhammad v. State, 132 So. 3d at 200 (quoting *Valle v. State*, 70 So. 3d 530, 549 (Fla. 2011)); see also *Willacy v. State*, 431 So. 3d 254, 262 (Fla. 2026) ("[T]he relevancy of the requested records, or their ability to be reasonably calculated to lead to admissible evidence, is directly measured by their connection to a colorable claim for relief."). The Court therefore sustains the SAO's objections.

As to item (k)'s request, the SAO has produced the single internal email responsive to the request.

Moreover, limiting demands under Rule 3.852 to only colorable claims in post-warrant cases is particularly important to ensure that records requests "are not used as a delay tactic but reflect a focused investigation into a legitimate area of inquiry." *Willacy v. State*, 431 So. 3d 254, 262 (Fla. 2026). No focused investigation into a legitimate area of inquiry has been identified in connection with this Demand.

CONCLUSION

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that the Respondent's objections to the Defendant's Demand for Additional Public Records directed to the Office of the State Attorney, 11th Judicial Circuit of Florida, are sustained as stated above.

DONE AND ORDERED in Miami-Dade County, Florida this 5th day of November 2026.

CHRISTINE HERNANDEZ
CIRCUIT JUDGE

APPENDIX D

Death warrant (Oct. 30, 2026); Executive Order 26-231; Executive Order 26-235

DEATH WARRANT
STATE OF FLORIDA

WHEREAS, RICARDO GONZALEZ, on or about the 3rd day of January, 1992, murdered STEVEN BAUER; and

WHEREAS, RICARDO GONZALEZ, on the 2nd day of June, 1994, was convicted of first degree murder and, on the 18th day of September, 1998, was sentenced to death for the murder of STEVEN BAUER; and

WHEREAS, on the 18th day of September, 1997, the Supreme Court of Florida affirmed the conviction of RICARDO GONZALEZ and, on the 10th day of May, 2001, affirmed the death sentence of RICARDO GONZALEZ; and

WHEREAS, on the 3rd day of July, 2008, the Supreme Court of Florida affirmed the trial court order denying RICARDO GONZALEZ's initial Motion for Postconviction Relief; and

WHEREAS, on the 28th day of September, 2009, the United States District Court for the Southern District of Florida denied RICARDO GONZALEZ's federal Petition for Writ of Habeas Corpus; and

WHEREAS, on the 3rd day of January, 2011, the United States Court of Appeals for the Eleventh Circuit affirmed the denial of RICARDO GONZALEZ's federal Petition for Writ of Habeas Corpus; and

WHEREAS, further postconviction motions and petitions filed by RICARDO GONZALEZ have been denied and the denials affirmed on appeal; and

WHEREAS, executive clemency for RICARDO GONZALEZ, as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate; and

WHEREAS, attached hereto is a certified copy of the record of the conviction and sentence pursuant to section 922.052, Florida Statutes.

NOW, THEREFORE, I, RON DESANTIS, as Governor of the State of Florida and pursuant to the authority and responsibility vested in me by the Constitution and Laws of Florida, do hereby issue this warrant, directing the Warden of the Florida State Prison to cause the sentence of death to be executed upon RICARDO GONZALEZ, in accordance with the provisions of the Laws of the State of Florida.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, this 30th day of October, 2026.

GOVERNOR

ATTEST:

SECRETARY OF STATE

FILED
2026 OCT 30 PM 3:15
DEPARTMENT OF STATE
TALLAHASSEE, FL

STATE OF FLORIDA

OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NUMBER 26-231

(Commission to Determine Mental Competency of Inmate)

WHEREAS, counsel for RICARDO GONZALEZ, an inmate under an active death warrant, has written a letter to me in which he claims that Mr. Gonzalez may be insane; and

WHEREAS, counsel for Mr. Gonzalez asserts that Mr. Gonzalez had difficulty understanding information during a recent telephone conversation and cites Mr. Gonzalez's "lower-average range" IQ and chronic traumatic encephalopathy, none of which demonstrates that Mr. Gonzalez currently lacks the mental capacity to understand the nature of the death penalty and the reasons why it was imposed; and

WHEREAS, section 922.07, Florida Statutes, requires that "[w]hen the Governor is informed that a person under sentence of death may be insane, the Governor shall stay execution of the sentence and appoint a commission of three psychiatrists to examine the convicted person"; and

WHEREAS, notwithstanding the dubious nature of the allegations supporting counsel's conclusion that Mr. Gonzalez "may well" be insane, I will implement the requirements of section 922.07, Florida Statutes, because my solemn duty to execute a duly imposed sentence of death requires the exercise of caution.

NOW, THEREFORE, I, RON DESANTIS, Governor of Florida, by virtue of the authority vested in me by the Florida Constitution and laws of the State of Florida, direct as follows:

A. The following psychiatrists are hereby appointed as a Commission to examine the mental condition of RICARDO GONZALEZ, pursuant to section 922.07, Florida Statutes:

1. Dr. Wade Myers
2. Dr. Tonia Werner
3. Dr. Emily Lazarou

B. The above-named psychiatrists constitute the "Commission to Determine the Mental Competency of Ricardo Gonzalez." The Commission shall examine Mr. Gonzalez to determine only whether he understands the nature and effect of the death penalty and why it is to be imposed upon him. The examination shall take place with all three psychiatrists present at the same time. Counsel for Mr. Gonzalez and counsel for the State, and any necessary correctional personnel, may be present at the examination. Counsel may not participate in the examination.

C. The examination shall be conducted on November 18, 2026. Upon completion of the examination, the Commission shall promptly, and by no later than the close of business on November 19, 2026, report its findings to my office.

D. The expenses incurred by the Commission for this examination and report shall be paid by the Department of Corrections.

E. The execution of sentence imposed upon Mr. Gonzalez, scheduled for December 1, 2026 at 6:00 p.m., is hereby temporarily stayed pending receipt of the Commission's report. In the event that, after receiving the report, I decide that Mr. Gonzalez has the mental capacity to understand the nature of the death penalty and the reasons why it is to be imposed upon him, the

execution of the sentence imposed upon Mr. Gonzalez will occur on December 1, 2026 at 6:00 p.m.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 17th day of November, 2026.

RON DESANTIS, GOVERNOR

ATTEST:

SECRETARY OF STATE

FILED
2026 NOV 17 PM 12:51
DEPT. OF STATE
TALLAHASSEE, FL

STATE OF FLORIDA

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 26-235

(Dissolution of Temporary Stay of Execution Imposed by Executive Order 26-231)

WHEREAS, on November 17, 2026, I issued Executive Order 26-231 and invoked the provisions of section 922.07, Florida Statutes, for RICARDO GONZALEZ, an inmate at Florida State Prison under a sentence of death; and

WHEREAS, in accordance with section 922.07(1), Florida Statutes, I appointed three psychiatrists (the Commission) to examine Mr. Gonzalez and issued a temporary stay of execution pending the examination; and

WHEREAS, the Commission examined Mr. Gonzalez on November 18, 2026, and concluded in a report sent to me today that he has the mental capacity to understand the nature of the death penalty and the reasons why it is to be imposed upon him, which conclusion I hereby adopt; and

WHEREAS, having adopted the Commission's conclusion, section 922.07(2), Florida Statutes, requires me to "immediately lift the stay and notify the Attorney General of such action".

NOW, THEREFORE, I, RON DESANTIS, Governor of Florida, by virtue of the authority vested in me by the Florida Constitution and Laws of the State of Florida, do hereby promulgate the following Executive Order:

Section 1. The temporary stay of execution of the death sentence imposed upon RICARDO GONZALEZ, established by Executive Order 26-231, is hereby dissolved and terminated.

Section 2. The death warrant for RICARDO GONZALEZ, signed on October 30, 2026, under which his execution was scheduled for December 1, 2026, at 6 p.m., remains in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 19th day of November, 2026.

RON DESANTIS, GOVERNOR

ATTEST:

SECRETARY OF STATE

FILED
2026 NOV 19 PM 5:15
DEPARTMENT OF STATE
TALLAHASSEE, FL

APPENDIX E

Written penalty-phase jury instructions and advisory sentence form (Aug. 20, 1998); excerpt of resentencing transcript (Aug. 20, 1998) (Tr. 1838); sentencing order on resentencing (Sept. 18, 1998)

State of Florida
VS F92-2141-D
Ricardo Gonzalez

1. Murder 1° of Law Enforcement Officer
2. Armed Robbery
4. Agg. Assault
6&8 G.T. 3°
7&9. Burglary.

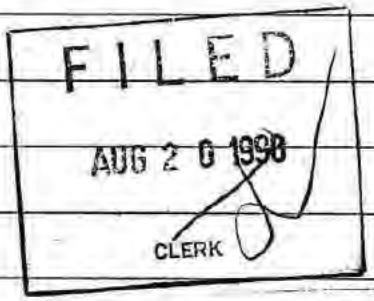
Judge: Robert N. Scola

State: Abraham Laeser
Penny H. Brill
Gail Levine

Defense: Reemberto Diaz
Bruce Fleisher

Reporter: Martha Balch

Clerk: Jacinth K Vigo



FILED
AUG 20 1998
CLERK

Pursuant to FS921.141 for 1st Degree Murder the following proceedings were held to determine the Sentence upon the Verdict of guilty of Capital Crime of first Degree murder

The Court Reconvened with all Officer's and the Deft present, the Jurors Returned to the Jury box Respective Counsel Conceding their present without a call and the advisory Sentence Continued from August 18, 1998.

Defense Witnesses Cont.

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9. Sonia Gomez Sworn + Testified (Norma Cruz) (Interpreter)

Scola
pg2

AUG 20 1998

92-2141-D.
Ricardo Gonzalez.

10. Cruz Gonzalez Sworn + Testified
Norma Cruz {Interpreter}

11. Carlos Gonzalez-Camiwmo Transcript was
Read into the Record.

The Defense Rests.

The Court Recessed the trial of this Cause
for the noon hour.

The Court Reconvened with all officer's
and the Defendant present, the Jurors
Returned to the Jury box, Respective
Counsel Conceding their present without
a call and the advisory Sentence
Continued from the noon hour

Abraham Laeser, ASA, presented an
argument to the Jury.

Reemberto Diaz, Counsel for the Defendant,
presented an argument to the Jury.

The Court charged the Jury.

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4:05 P.m The Jurors retired to Consider their Verdict

Scala
pg 3

AUG 20 1998

F92-2141-D
Ricardo Gonzalez

The Court discharge the Alternate Jurors John Simon, Luisa Bringas & Christy Bunfield from further Consideration in the above Cause.

Bruce Fleisher, Counsel for the Defendant renewed all Previous mtn for Mistrial Denied.

After the Jurors retired to deliberate 2 magazine was found in the Gun belt "1" W/ 11 Live Rounds "1" W/ 15 Live Rounds. and 1 Black Beeper as part of Exhibit 50 (comp).

6:25 P.m The Jurors Sent a note to the Court See Court Exhibit #1

6:35 P.m The Jurors Sent a note to the Court See Court Exhibit #2

~~The Court instructed the Jury~~

6:45 P.m The Jurors Sent a note to the Court. See Court Exhibit #3

6:50 P.m The Jurors returned to the Jury box and rendered and Advisory Sentence of Death.

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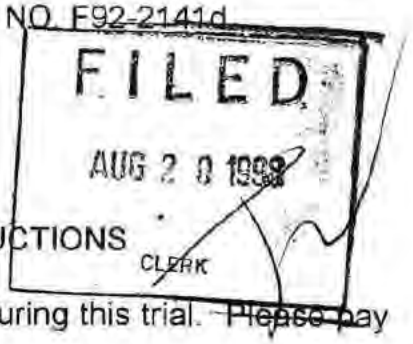
STATE V. RICARDO GONZALEZ CASE NO. F92-2141d



2.01 INTRODUCTION TO FINAL INSTRUCTIONS

Members of the jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

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PENALTY PROCEEDINGS – CAPITAL CASES

F.S. 921.141

Ladies and gentlemen of the jury, it is now your duty to advise the court as to what punishment should be imposed upon the defendant for his crime of Murder in the First Degree. As you have been told, the final decision as to what punishment shall be imposed is the responsibility of the judge; however, it is your duty to follow the law that will now be given you by the court and render to the court an advisory sentence based upon your determination as to whether sufficient aggravating circumstances exist to justify the imposition of the death penalty and whether sufficient mitigating circumstances exist to outweigh any aggravating circumstances found to exist.

Your advisory sentence should be based upon the evidence that has been presented to you in these proceedings.

The aggravating circumstances that you may consider are limited to any of the following that are established by the evidence:

The defendant has been previously convicted of another ~~of a~~ felony involving the use or threat of violence to some person.

The crimes of armed robbery and aggravated assault are felonies involving the use or threat of violence to another person.

In determining the applicability of this aggravating circumstance to the penalty for the first degree murder of STEVEN BAUER, you may consider the defendant's convictions for the armed robbery of Kislak Bank and/or Michelle Chin, and the aggravated assault of LaSonya Hadley.

The crime for which the defendant is to be sentenced was committed while he was engaged, or an accomplice in the commission of, an attempt to commit, or flight after committing or attempting to commit the crime of robbery.

The crime for which the defendant is to be sentenced was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;

The crime for which the defendant is to be sentenced was committed for financial gain.

The crime for which the defendant is to be sentenced was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

The victim of the crime for which defendant is to be sentenced was a law enforcement officer engaged in the performance of the officer's official duties.

DOUBLING INSTRUCTION

The State may not rely upon a single aspect of the offense to establish more than one aggravating circumstance. Therefore, if you find that two or more of the aggravating circumstances are proven beyond a reasonable doubt by a single aspect of the offense, you are to consider that as supporting only one aggravating circumstance.

Before you can recommend a sentence of death, you must find that:

1. The defendant killed; or

2. attempted to kill, or

3. intended that a killing take place; or

4. intended that lethal force be employed; or

5. the defendant was a major participant in a felony that resulted in the victim's death and his state of mind was one of reckless indifference.

If you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment without possibility of parole.

Should you find sufficient aggravating circumstances do exist, it will then be your duty to determine whether mitigating circumstances exist that outweigh the aggravating circumstances. Among the mitigating circumstances you may consider, if established by the evidence, are:

Ricardo Gonzalez has no significant history of prior criminal activity.

The crime for which the defendant is to be sentenced was committed while he was under the influence of extreme mental or emotional disturbance.

The defendant was an accomplice in the offense for which he is to be sentenced but the offense was committed by another person and the defendant's participation was relatively minor.

The defendant acted under extreme duress or under the substantial domination of another person.

Extreme duress as used in this mitigating circumstance refers not to internal pressure but to external provocation, such as imprisonment, or the use of coercion or threats.

The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

The age of the defendant at the time of the crime.

Any of the following circumstances that would mitigate against the imposition of the death penalty:

Any other aspect of the defendant's character, record, or background and any other circumstance of the offense.

If you find that one or more of these additional mitigating circumstances have been established you may give them whatever weight you feel they should receive.

Each aggravating circumstance must be established beyond a reasonable doubt before it may be considered by you in arriving at your decision.

If one or more aggravating circumstances are established, you should consider all the evidence tending to establish one or more mitigating circumstances and give that evidence such weight as you feel it should receive in reaching your conclusion as to the sentence that should be imposed.

A reasonable doubt is not a possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to disregard an aggravating circumstance if you have an abiding conviction that it exists. On the other hand, if, after carefully considering, comparing and weighing all the evidence, you do not have an abiding conviction ~~of abiding conviction~~ that the aggravating circumstance exists, or if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the aggravating circumstance has not been proved beyond a reasonable doubt and you should disregard it, the doubt is reasonable.

It is to the evidence introduced upon this proceeding, and to it alone, that you are to look for that proof.

A reasonable doubt as to the existence of an aggravating circumstance may arise from the evidence, conflicts in the evidence or the lack of evidence.

If you have a reasonable doubt as to the existence of an aggravating circumstance, you should find that it does not exist. However, if you have no reasonable doubt, you should find that the aggravating circumstance does exist and give it whatever weight you feel it should receive.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. If you are reasonably convinced that a mitigating circumstance exists, you may consider it as established.

The sentence that you recommend to the court must be based upon the facts as you find them from the evidence and the law. You should weigh the aggravating circumstances against the mitigating circumstances, and your advisory sentence must be based on these considerations.

In these proceedings it is not necessary that the advisory sentence of the jury be unanimous.

The fact that the determination of whether you recommend a sentence of death or sentence of life imprisonment in this case can be reached by a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings. Before you ballot you should carefully weigh, sift and consider the evidence, and all of it, realizing that human life is at stake, and bring to bear your best judgment in reaching your advisory sentence.

2.04 WEIGHING THE EVIDENCE

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence, and which evidence should not be relied upon in considering your advisory sentence. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witnesses acted, as well as what they said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?

2. Did the witness seem to have an accurate memory?

3. Was the witness honest and straightforward in answering the attorneys' questions?

4. Did the witness have some interest in how the case should be decided?

5. Does the witness' testimony agree with the other testimony and other evidence in the case?

7. Did the witness at some other time make a statement that is inconsistent with the testimony he gave in court?

You may rely upon your own conclusion about the witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

2.04(a) EXPERT WITNESSES

Expert witnesses are like other witnesses, with one exception - the law permits an expert witness to give his or her opinion.

However, an expert's opinion is only reliable when given on a subject about which you believe him or her to be an expert.

Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

An expert witness is one who, by education, training or experience, has become expert in any art, science, profession, business or calling. An expert witness is permitted to give his or her opinion as to matters in which he or she is an expert, and may also state the reasons for his or her opinion.

You should consider each expert opinion received in evidence and give it the weight you think it deserves. You may accept the opinion in its entirety, or you may accept parts of the opinion. On the other hand, you may reject it entirely if you find that the alleged facts upon which it is based have not been proved or that the reasons given in support of the opinion are not sound.

2.04(d) DEFENDANT NOT TESTIFYING

The constitution requires the State to prove its accusations against the defendant. It is not necessary for the defendant to disprove anything. It is up to the State to prove the ~~defendant's~~ existence of an aggravating circumstance by evidence.

The defendant exercised a fundamental right by choosing not to be a witness in this case. You must not view this as an admission of an aggravating circumstance or be influenced in any way by his decision. No juror should ever be concerned that the defendant did or did not take the witness stand to give testimony in the case.

2.05 RULES FOR DELIBERATION

These are some general rules that apply to your discussion. You must follow these rules in order to return a lawful advisory sentence:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your advisory sentence will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.

2. This case must be decided only upon the evidence that you have heard from the answers of the witness and have seen in the form of the exhibits in evidence and these instructions.

3. This case must not be decided for or against anyone because you feel sorry for anyone, or are angry at anyone.

4. Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.

5. It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited by talking to a lawyer about his testimony.

6. Your advisory sentence should not be influenced by feelings of prejudice, bias or sympathy. Your advisory sentence must be based on the evidence, and on the law contained in these instructions.

2.07 CAUTIONARY INSTRUCTION

Deciding an advisory sentence is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one advisory sentence over another.

2.09 SUBMITTING CASE TO JURY

In just a few moments you will be taken to the jury room by the bailiff. The first thing you should do is elect a foreperson. The foreperson presides over your deliberations, like a chairperson of a meeting. It is the foreperson's job to sign and date the advisory sentence form when all of you have agreed on an advisory sentence in this case. The foreperson will bring the advisory sentence back to the courtroom when you return.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your advisory sentence. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have agreed to a constitution and to live by the law. No one of us has the right to violate rules we all share.

Remember Alternate

☐ doors are upstairs

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

Case No. 92-2141
Judge Scola

STATE OF FLORIDA v.

RICARDO GONZALEZ, Defendant.

FILED
AUG 20 1998
CLERK

STATE'S SECOND REQUEST FOR SPECIAL JURY INSTRUCTION

The State of Florida, by and through the undersigned counsel, requests that this Court instruct the jury with the following special jury instruction for the penalty phase:

1. An expanded instruction on the statutory mitigating circumstance that the defendant acted under extreme duress or under the substantial domination of another person. Toole v. State, 479 So.2d 731 (Fla. 1988).

WHEREFORE, the State requests that this Court grant its request to instruct the jury on the special jury instructions.

Respectfully submitted,

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

By: _____
ABRAHAM LAESER
Assistant State Attorney
Florida Bar No. 156754
1350 N.W. 12th Avenue
Miami, Florida 33136
(305) 547-0100

By: _____
PENNY H. BRILL
Assistant State Attorney
Florida Bar No. 305073

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed/faxed to Bruce Fleisher, Esquire, 1870 Bayshore Drive, Miami, Fl 33133, and Reemberto Diaz, Esquire, 255 Alhambra Circle, Suite 420, Coral Gables, Fl 33134, on this, the 20th day of August, 1998.

By: _____
ABRAHAM LAESER
Assistant State Attorney

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JURY INSTRUCTION NO. 1

Extreme duress as used in this mitigating circumstance refers to external ~~rather than~~ internal ~~provocation~~ pressure, such as ~~by the use of~~ imprisonment, or use of force or threats, ~~to the~~ person.

GIVEN _____

DENIED _____

FILED
AUG 20 1998
CLERK

You may consider as a mitigating circumstance the defendant's deprived background and early life

Holsworth v. State, *522 So.2d.348 (Fla. 1988)*

A critical factor in the individualized determination of punishment required in a capital case is the mental state of the defendant who commits the crime. Defendants who commit criminal acts with a reduced comprehension of the consequences of those acts due to mental defects may warrant less severe punishment than those who have no such excuse.

You may consider the evidence concerning mental defects which you find that the defendant may have had at the time of the capital crime. The weight to be given such evidence must be decided by you.

Penry v. Lynaugh, 109 S.Ct. 2934 (1989)

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The mere fact Of a killing of a law enforcement officer is not sufficient to establish the aggravating factor of avoiding arrest unless there is proof of the requisite intent to avoid arrest and detection.

Riley v. State, *366 So.2d 19 (Fla. 1978)*

If you are reasonably certain that the Defendant did not intend to kill the victim, you may consider that fact as a mitigating circumstance

The Defendant has displayed good conduct while in custody.

***Skipper v. South Carolina**, 90 L.Ed.2d 1 (1986)*

A co-defendant in the homicide received consequences less severe than death. Defendants should not receive different sentencing treatment if the facts as to each of them are the same or similar.

Slater v. State, *316 So.2d 539 (Fla. 1975)*
Messer v. State, *330 So.2d 137 (Fla. 1976)*

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The Defendant is a good candidate for rehabilitation.

***McCampbell v. State**, 421 So.2d 1072 (Fla. 1982)*

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

THE STATE OF FLORIDA

Plaintiff,

v.

RICARDO GONZALEZ,

Defendant.

CASE NO. F92-2141d

JUDGE: SCOLA

FILED
AUG 2 0 1998
CLERK

ADVISORY SENTENCE

We the jury this 20 day of August, 1998 recommend as follows:

[✓] A majority of the jury, by a vote of 8 to 4, advise and recommend to the court, that it impose the death penalty upon RICARDO GONZALEZ.

[ ] By six or more votes the jury advises and recommends to the court that it impose a sentence of life imprisonment upon RICARDO GONZALEZ, without possibility of parole.

FOREPERSON

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vote, whether it was seven to five, twelve to zero or somewhere in between. If it's the second box, just check that box, you don't give us the numerical calculation.

Now, when you come back into the courtroom, you will be asked by the, whether the verdict as read accurately depicts the majority vote. You will not be asked what your individual vote was. Only whether -- for instance, if you recommended by seven to five or twelve to nothing or if it was a recommendation for life, all you're going to be asked is, is that what the majority actually recommended? Not going to be asked what you voted for.

In just a few moments, you'll be taken to the jury room by the bailiff. The first thing you should do is elect a foreperson. The foreperson presides over your deliberations like a chair person of a meeting. It is the foreperson's job to sign and date the advisory sentence form when all of you have agreed on an advisory sentence in this case. The foreperson will bring the advisory sentence back to the courtroom when you return.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your advisory sentence. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have agreed to a constitution and to live by the law. No one of us

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. 92-2141D

FILED
DEBBIE CAUSSEAUX
MAR 27 2000
CLERK, SUPREME COURT
BY

STATE OF FLORIDA,

Plaintiff,

vs.

RICARDO GONZALEZ,

Defendant.

FILED
SEP 18 1998
CLERK

SENTENCING ORDER

The Florida Supreme Court remanded this case to this court with instructions that a new sentencing hearing be held as to the crime of first degree murder. On August 10, 1998 through August 13, 1998 a jury was empaneled and a sentencing hearing was then held. On August 20, 1998 the jury recommended, by a vote of 8 to 4, that the court impose the death penalty upon the Defendant.

On September 4, 1998 the court held a *Spencer* hearing and allowed each side to present additional evidence and arguments to the court.

This court is now required to consider and give individual consideration to each and every aggravating and mitigating circumstance set forth by Section 921.141 of the Florida Statutes, including any and all non-statutory mitigating circumstances. Having heard all of the evidence introduced during the course of the sentencing proceeding, as well as the presentations made by the State and the defendant on September 4, 1998 this court now addresses each of the aggravating and mitigating circumstances at issue in this proceeding:

[illegible]
18319PG0003

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AGGRAVATING CIRCUMSTANCES

1. **The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.**

The state has proven beyond and to the exclusion of every reasonable doubt that the defendant was contemporaneously convicted of the armed robbery of the Kislak National Bank and/or Michelle Chin-Watson and of the aggravated assault of Lasonya Hadley. The court can and does consider these contemporaneous convictions as prior felonies involving the use or threat of violence to the person. *See LeCroy v. State*, 533 So.2d 750 (Fla. 1988). The court also finds that this aggravating circumstance is entitled to some weight.

2. **The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit or in flight after committing or attempting to commit a robbery.**

The State has proven beyond and to the exclusion of every reasonable doubt that the defendant was committing an Armed Robbery of the Kislak National Bank at the time he fired shots at Officer Stephen Bauer and killed him. The court finds the existence of this aggravating circumstance and gives it great weight.

3. **The capital felony was committed for pecuniary gain.**

The State has proven beyond and to the exclusion of every reasonable doubt that the defendant went to the Kislak National Bank with the intent to steal money. Immediately after he shot and killed Officer Bauer, the defendant went to pick up the money tray from the ground. Later, he received $1,500.00 as his share of the proceeds from the robbery/murder.

The court recognizes, however, that this aggravating circumstance merges with the aggravating circumstance that the capital felony was committed during the course of an armed robbery. Accordingly these two aggravating circumstances will be considered as one.

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4. <u>The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from justice.</u>

The State has proven beyond and to the exclusion of every reasonable doubt that Officer Stephen Bauer was a law enforcement officer with the North Miami Police Department; that he was in full uniform on the day he was killed; and that his identity as a police officer was apparent. The uniform patches clearly identified him as a member of the "North Miami Police". He was wearing a gunbelt with a gun clearly visible in its holster. His police radio was also clearly visible. The defendant's accomplices had "cased out" the bank on two occasions -- including the day before -- and observed that a uniformed officer escorted the tellers to the drive-through windows in the morning. When approached by these armed men, Officer Bauer took action to protect the tellers and apprehend the defendants. The defendant and his accomplice, Leonardo Franqui, saw Officer Bauer reach for his service pistol. The defendant and Franqui did not give the officer a chance to do anything further. In order to avoid their own arrest, they immediately moved to outflank the officer and fired their weapons at him, killing him. The court finds that this defendant's primary purpose or motivation for killing Officer Bauer was to avoid his own arrest. The court finds the existence of this aggravating circumstance and gives it great weight.

5. <u>The crime for which the defendant is to be sentenced was committed to disrupt or hinder the lawful exercise of governmental function or the enforcement of laws.</u>

This aggravating circumstance has been established beyond a reasonable doubt. The killing of Officer Bauer was done to hinder the enforcement of laws, that is: the arrest of the defendant for the armed robbery of the bank. This circumstance merges with the previous circumstance that the crime was committed to avoid lawful arrest. They will be considered as one aggravating circumstance and no additional weight is added due to this additional aggravating circumstance.

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6. **The victim of the capital felony was a law enforcement officer engaged in the performance of his official duties.**

The State has established beyond and to the exclusion of every reasonable doubt that Stephen Bauer was a law enforcement officer and that at the time of his death he was engaged in the performance of his official duties, to-wit: the protection of Lasonya Hadley, Michelle Chin-Watson, and the Kislak National Bank and effectuating the arrest of the defendant and his accomplices. The court further finds beyond a reasonable doubt that the defendant knew Steven Bauer was a law enforcement officer. The court finds the existence of this aggravating circumstance and gives it great weight.

The State has argued that this aggravating circumstance does not merge with the two previously discussed aggravating circumstances. The court finds, however, that this aggravating circumstance does merge with the aggravating circumstances that the capital felony was committed for the purpose of preventing a lawful arrest and that it was committed to hinder the enforcement of laws. Thus, these three aggravating circumstances will be considered as one.

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STATUTORY MITIGATING CIRCUMSTANCES

The court will address each and every statutory mitigating circumstance provided by the Florida Statute 921.141 and every non-statutory mitigating circumstance argued by the defendant.

1. The defendant has no significant history of criminal activity.

The defendant established that he had no arrests or convictions for any crimes either as an adult or as a juvenile. The State did not dispute this. The court finds that this mitigating circumstance has been established and is entitled to some weight.

2. The crime for which the defendant is to be sentenced was committed while he was under the influence of extreme mental or emotional disturbance.

Dr. Hyman Eisenstein, a board certified clinical neuro-psychologist testified on behalf of the defendant at the hearing. Dr. Eisenstein opined that the defendant acted under a state of extreme mental and/or emotional disturbance due to his marital demands, developmental history of shuffling back and forth between family members, educational and language deficiencies, emotional state, history of boxing and brain damage, inability to control impulses, and lack of judgment.

In order to properly evaluate Dr. Eisenstein's ultimate opinion, a thorough discussion of his testimony, and a comparison of it to the other evidence in the case, is appropriate. As the Florida Supreme Court stated in *Walls v. State*, 641 So.2d 381 (Fla. 1994):

> "[A] distinction exists between factual evidence or testimony, and opinion testimony. As a general rule, uncontroverted factual evidence cannot simply be rejected unless it is contrary to law, improbable, untrustworthy, unreasonable or contradictory.... Opinion testimony, on the other hand, is not subject to the same rule... Certain kinds of opinion testimony clearly are admissible -- and especially qualified expert opinion testimony -- but they are not necessarily binding even if uncontroverted. Opinion testimony gains its greatest force to the degree it is supported by the facts at hand, and its weight diminishes to the degree such support is lacking."

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Id. at 390-91.

Dr. Eisenstein had the defendant perform a number of tests. These tests allowed the doctor to evaluate the defendant's intelligence, motor skills, cognitive skills and language skills. The court will discuss the results of many of these tests.

The doctor first asked the defendant to perform a grip strength test. The results of the test showed that the right hand was in the normal range but the left hand was slightly impaired. Dr. Eisenstein opined that the damage to the right hemisphere of the defendant's brain could account for the lesser strength in his left hand. On cross-examination, however, the doctor admitted that the defendant's left index finger had been severed years earlier when a car battery exploded and this hand injury could account for the difference in grip strength between one hand and the other.

The next test was a finger tapping test. In this test, the defendant is asked to perform a number of taps with his index finger. With his right hand, he performed in the high normal range. With his left hand, the defendant used his middle finger since he has no index finger. Even using that finger, the defendant scored in the normal range.

On the pegboard test, the defendant was required to place a number of pegs into the board. With his right hand, he scored in the normal range. With his left hand, he was slightly impaired.

In a complex figure sensory perception test, the defendant performed in the high normal range.

On a trailmaking test he scored in the normal range on one part of the test and mildly impaired on another part of the test.

Thus, on most of the performance tests the defendant scored in the normal or high normal range.

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On one language test - a naming test - the defendant scored in the profoundly impaired range placing him in the bottom 1 to 2 per cent of the population. However, he scored in the normal range on fluency test and in the upper end of mild mentally retarded on the reading articulation test. While the defendant's language scores were not as high as his performance scores, Dr. Eisenstein admitted that the fact that Spanish was the defendant's primary language could account for lower scores in the language tests given in English.

In an IQ test given by Dr. Eisenstein, the defendant's full scale IQ was 80, or at the lower end of average. In a test given to the defendant four months later, he scored a 93.

On personality tests, the defendant demonstrated that he was suffering from severe anxiety, nervousness, impulsivity, that he was shy, inhibited, was socially withdrawn and had difficulty with socialization skills. The personality test depends on honest responses from the defendant. The defendant, however, lied to Dr. Eisenstein about his grades in school and lied about his proclaimed innocence of this murder so the court has concerns about the validity of these test results. Also, these tests were given to the defendant while he was in jail and after he had already been convicted of first degree murder of a policer officer and was facing the death penalty or -- at best -- spending the rest of his life in prison. Common sense dictates that anyone in that situation would be under stress and suffer from anxiety and nervousness.

On the memory tests the defendant scored in the mild mentally retarded range.

His school records showed an IQ of 79 and a clear learning disability.

Dr. Eisenstein summarized his findings by opining that all these factors caused the defendant to act impulsively on January 3, 1992. However, there are no facts at hand which support this opinion. As the Supreme Court held in discussing the value of opinion testimony in *Walls*, "its

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weight diminishes to the degree such support is lacking." *Walls* at 385. The defendant's own confession established that he was aware of the planned robbery for 10 days before the crimes. The day before the crimes the defendant again met with his co-defendants and discussed the plan. The day of the crime the defendant and co-defendants drove the getaway car and the two stolen cars to the area of the bank early enough to make sure their cars were first in line. They then went to a bakery and waited for the bank to open. The defendant exited the vehicle with his gun drawn, pointed, and ready for action. These are not facts which support an act of impulsivity.

Further, in spite of his brain damage, learning disabilities and stresses, the defendant was able to conform his conduct to the law for every day of his life prior to January 3, 1992 and for all the days since.

Even the testimony of the defendant's other expert, Dr. Alan Wagshul, a board certified neurologist, fails to lend support to Dr. Eisenstein's opinion. Dr. Wagshul testified in the original sentencing hearing in 1994 and his testimony was re-read to the jury during this hearing. Dr. Wagshul ordered that an MRI be performed by Dr. Thomas Naidich on the defendant's brain. That MRI revealed that the defendant has two cavities in the middle of his brain which are filled with spinal fluid. This condition is generally abnormal but is commonly found in boxers. Dr. Wagshul opined that the defendant's boxing injuries caused this organic brain damage which he classified as pugilistic encephalopathy. Dr. Wagshul opined that this injury can lead to impulsiveness. However, he stated that it would not cause someone to rob a bank and kill a police officer.

More significantly, Dr. Wagshul testified that the defendant's brain wave activity was normal and that he suffered no neurological difficulty as a result of this brain injury. His gait was normal and his neurological examination was completely normal. This diagnosis was confirmed by the

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detectives who spoke to the defendant in 1992 as well as another defense expert, Dr. Brad Fisher, who examined the defendant in 1998. Each of those witnesses noticed no abnormalities in the defendant's speech, movement, or mannerisms.

Furthermore, the defendant was able to hold different jobs for long periods of times, even working as a technician in an optical laboratory. His responses to all the doctors and all the police he spoke to were logical. Even though the defendant lost some boxing matches, he was never knocked out. Although the defendant scored poorly on some tests, he scored extremely highly on other tests and overall his scores were about average.

The testimony and evidence did not reasonably establish the existence of this mitigating circumstance. At best, the evidence established that the defendant had a physical abnormality in his brain. But, this physical condition did not cause any diminished mental capacity or physical impairment.

3. <u>The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.</u>

The state has established beyond and to the exclusion of every reasonable doubt that the defendant was a major participant in the bank robbery and in the murder of Officer Bauer. The defendant was aware of the planned robbery for approximately 10 days. He unhesitatingly agreed to participate in the robbery and agreed to be one of two gunmen during the robbery. It was this defendant who actually fired the fatal shot that killed Officer Bauer. There is simply no evidence which reasonably establishes that this mitigating circumstance applies to this case.

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4. **The defendant acted under extreme duress or under the substantial domination of another person.**

The defendant presented witnesses who testified that the defendant's wife, Marisol, put pressure on him by complaining that he was not making enough money, that she wanted a new car and jewelry, and that she wanted to party and have a good time. The court accepts this testimony as being credible.

Dr. Eisenstein, testified that this pressure from his wife was one of the stressors that contributed to the defendant's involvement in this offense.

While the court accepts the testimony of these witnesses, it has not been reasonably established that his marriage placed the defendant in a state of extreme duress or under the substantial domination of another person. Dr. Eisenstein admitted that this type of financial strain in a relationship is commonplace. There is nothing to suggest that this defendant's wife's complaints were any more extreme than those of any other young woman who wants a better financial status for her family and wants to have a good time.

More particularly, the defendant gave a detailed statement to the police. Not once did the defendant state that his wife's pressures in any way contributed to his involvement in this homicide. In fact, the defendant said he used the money from the robbery to fix his own car and still had some money left. He did not buy anything for his wife and did not give her any money. After his apartment was searched and $1,200.00 was found hidden in a gym bag in his closet, the defendant gave another statement. Again, the defendant did not say that he spent any money on his wife. To the contrary, he hid the money from her.

The court concludes that this mitigating circumstance has not been reasonably established.

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5. **The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired.**

Dr. Hyman Eisenstein opined that the defendant was under a state of extreme mental and emotional disturbance. He did not testify, nor is there any credible evidence in the record to suggest, that the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired. Dr. Eisenstein testified that the defendant acted impulsively due to his brain injury. But, this crime was planned over a ten day period. The defendant readily agreed to participate in a bank robbery the first time it was suggested to him. The defendant's brain injury did not cause him to act impulsively and violate the law any time before or since this incident. There is simply no evidence which can be reasonably relied upon to establish this mitigating circumstance.

6. **The age of the defendant at the time of the crime.**

The defendant was born on January 19, 1970. Therefore, he was twenty one years old on the day he shot and killed Officer Bauer and was, in fact, almost twenty two years old. The court is not reasonably convinced that this mitigating circumstance exists in this case.[1] The defendant was married at the time of this incident, had worked steadily for different periods of time, and was a mature adult.

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[1] *Skull v. State*, 533 So.2d 1137 (Fla. 1988); *Kokal v. State* 492 So.2d 1317 (Fla. 1986); *Cooper v. State*, 492 So.2d 1059 (Fla. 1986); *Garcia v. State* 492 So.2d 360 (Fla. 1986); *Mills v. State*, 462 So.2d 1075 (Fla. 1985); *Mason v. State*, 438 So.2d 374 (Fla. 1983); *Fitzpatrick v. State*, 437 So.2d 1072 (Fla. 1983); *Simmons v. State*, 419 So.2d 316 (Fla.1982).

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NON-STATUTORY MITIGATING CIRCUMSTANCES

The defendant suggests that this court should consider the existence of several non-statutory mitigating circumstances. The court will address each one.

1. The defendant's deprived upbringing and family history.

The defendant argues that the evidence established that he suffered a deprived family background which should be considered in mitigation. The evidence established that the defendant was born out of wedlock and that his father was married and had a family and did not live with his mother or with the defendant. To that extent, the defendant's upbringing was not ordinary. The court hesitates to use the term normal since there really is no set, normal pattern for upbringing in today's world. While his upbringing was out of the ordinary, it was far from deprived.

The defendant grew up in two loving, caring households. He spent parts of his youth with his mother in Miami and other parts with his grandparents in Puerto Rico. Both families wanted the defendant to live permanently with them. The defendant had his own room in each house and was given everything he needed - including spending money. When he was in Puerto Rico, his father visited with him every day. Both families taught him to respect the law and to lead a good life. No family members were involved in any crimes. The defendant was never abused physically, verbally, or emotionally. If anything, the defendant's upbringing was exemplary. In no way was he ever deprived. Therefore, this mitigating circumstance has not been reasonably established.

2. The defendant's brain damage and psychological problems.

Although the testimony of the defense witnesses did not establish the statutory mitigating circumstances, the court finds that the defendant's brain damage, learning disability and below average intelligence have been reasonably established and constitute a non-statutory mitigating

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circumstance. In addition, witnesses testified that the defendant has suffered migraine headaches since boyhood. Regardless of these physical problems, the defendant was able to work, marry, comply with the law, and contribute to society in spite of these deficiencies. Accordingly, the court gives this mitigating circumstance little weight.

3. Remorse.

During the *Spencer* hearing the defendant addressed the court and the Bauer family and apologized for what happened to Officer Bauer. The court believes he was sincere in his apology. The court is reasonably convinced that this mitigating circumstance has been established. However, the defendant did not accept personal responsibility for Officer Bauer's death and, years earlier, he was not completely candid to the police in his statements and he also falsely claimed his innocence to Dr. Eisenstein. The court gives little weight to this mitigating circumstance.

4. The defendant's cooperation with the authorities.

The defendant's statements to the police were instrumental in securing his own conviction. However, the defendant attempted to minimize his actual level of participation and falsely claimed that he did not know Officer Bauer was a police officer. The court is reasonably convinced of the existence of this mitigating circumstance but in the light of all the facts in this case gives it little weight.

5. The life sentences imposed on Pablo Abreu and Pablo San Martin.

The defendant's position is that the life sentences imposed on co-defendants Pablo Abreu and Pablo San Martin dictate that a life sentence is appropriate for him. The court finds that these sentences are a mitigating circumstance but that they are entitled to little weight. Pablo Abreu was a getaway driver parked blocks from the bank. Abreu cooperated with the State and agreed to testify

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against his co-defendants. Pablo San Martin went to the bank but he was unarmed. He did not personally commit an act of violence towards Officer Bauer or the tellers. The jury in Pablo San Martin's trial recommended a life sentence and the Florida Supreme Court ruled that the trial court improperly overrode that recommendation. This defendant fired the fatal shot while Officer Bauer was helpless to resist. The great variance in the degree of participation of these co-defendants justifies the variance in sentences.

6. **The defendant's good conduct in custody and potential for rehabilitation.**

The defendant established that he has had good conduct during six years of incarceration. However, the defendant has been in extremely secure detention while at the Dade County Jail or on Death Row. His opportunities to create mischief have been minimal. Dr. Fisher also testified that the defendant is a good candidate for rehabilitation. The court finds that this mitigating circumstance has been established but is entitled to little weight.

PROPORTIONALITY REVIEW

This court recognizes that the Supreme Court of Florida will conduct a proportionality review of the sentence in this case. *See Dixon v. State*, 283 So.2d 1 (Fla. 1973). The most logical interpretation of the evidence in this case established that this defendant intentionally and ruthlessly fired upon a uniformed law enforcement officer who was trying to prevent a robbery in progress. The defendant kept shooting until, while the victim was helpless to resist, he delivered the fatal blow. Nothing about his age, physical condition, background or mental status, suggests that the ultimate sentence for such conduct is disproportionate. This court's review of other reported capital cases has led the court to conclude that the death penalty is not disproportionate.

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CONCLUSION

The court finds that the state has established, beyond and to the exclusion of every reasonable doubt, the existence of six statutory aggravating circumstances. However, two of the aggravating circumstances (during robbery and financial gain) merge into one and three others (victim was a law enforcement officer, murder committed to hinder or disrupt enforcement of laws, murder committed to evade arrest) merge into one other. Thus, a total of three aggravating circumstances exist.

The court is reasonably convinced of the existence of one statutory mitigating circumstance.

The court is reasonably convinced of the existence of five non-statutory mitigating circumstances.

In weighing the aggravating factors against the mitigating factors the court understands that the process is not simply a quantitative analysis but a qualitative one. It is the court's duty to look to the nature and quality of the aggravating and mitigating circumstances which have been established.

Under such an analysis, the aggravating circumstances in this case far outweigh the mitigating circumstances.

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SENTENCE

As to Count I of the Indictment, the first degree murder of Officer Stephen Bauer, I sentence you, Ricardo Gonzalez, to death.

This sentence shall run consecutive to all other sentences in this case. To the extent that the consecutive nature of this sentence represents a departure from the sentencing guidelines recommended range, the reason for departure is the unscorable nature of the capital offense.

It is ordered that you, Ricardo Gonzalez, be taken by the proper authority to the Florida State Prison, and there be kept in close confinement until the date of your execution is set.

It is further ordered that on such scheduled date, you, Ricardo Gonzalez, be put to death.

You are hereby notified that this sentence is subject to automatic review by the Florida Supreme Court.

DONE AND ORDERED this 18th day of September, 1998.

ROBERT N. SCOLA, JR.
CIRCUIT COURT JUDGE

cc: Abraham Laeser, ASA
Gail Levine, ASA
Reemberto Diaz, Esq.
Bruce Fleischer, Esq.

OFFICIAL RECORD
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