No. _____

IN THE

Supreme Court of the United States

RICARDO GONZALEZ,
Applicant,

v.

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

APPLICATION FOR A STAY OF EXECUTION PENDING THE DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

CAPITAL CASE -- EXECUTION SCHEDULED FOR DECEMBER 1, 2026, AT 6:00 P.M

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APPLICATION FOR A STAY OF EXECUTION PENDING THE DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Ricardo Gonzalez is scheduled to be executed by the State of Florida on December 1, 2026, at 6:00 p.m. Under 28 U.S.C. § 2101(f) and Rules 22 and 23 of this Court, he respectfully applies for a stay of execution pending the disposition of his petition for a writ of certiorari to the Supreme Court of Florida, filed with this application. The Supreme Court of Florida denied a stay. Pet. App. A at 24. The United States District Court for the Southern District of Florida denied a limited stay under 28 U.S.C. § 2251 on November 24, 2026. *Gonzalez v. Sec'y, Fla. Dep't of Corr.*, No. 1:08-cv-22909, ECF No. 48 (S.D. Fla.). A motion for stay and a Fed. R. Civ. P. 60(b)(6) motion is pending in that court.

The petition for certiorari presents three questions, each arising from a ruling that permits Mr. Gonzalez to be executed without a determination the Constitution requires. *First*, his death sentence rests on a jury recommendation of eight votes to four, a vote on which no other State permits a death sentence, returned by a jury that was never required to find that he as a felony-murder accomplice acted with reckless indifference to human life. Nor was the jury required to find any aggravating factor. The Florida Supreme Court assumed that Mr. Gonzalez did not intend to kill and upheld the sentence without the requisite reckless-indifference-to-human-life finding.

Three cases before this Court bear on the question presented here, related both to the lack of unanimity, the culpability required under the Eighth Amendment, and what facts must be found by a jury before a death sentence may be imposed. *Kian v. Florida*, No. 25-6623, is set for argument on January 13, 2027, on the question whether there is a right to trial by a 12-person jury where a defendant is charged with a serious felony. Meanwhile, the petitions in *Jackson v. Florida*, No. 26-76, and *Hunt v. Florida*, No. 26-78, both relate to whether a jury must be unanimous in imposing the death penalty. Those two cases have been distributed for the conference of December 11, 2026, ten days after the scheduled execution. Mr. Gonzalez requests a stay pending resolution of *Kian*, *Jackson*, and *Hunt*.

Second, the Florida Supreme Court refused to adjudicate and denied a hearing on Mr. Gonzalez's claim of intellectual disability, which is a categorical bar to execution under *Atkins v. Virginia*, 536 U.S. 304, 319 (2002). Mr. Gonzalez's IQ was measured at 75 at age twelve. But because he did not file an intellectual disability claim within a 2004 deadline, the Florida courts consider his claim procedurally barred. The problem with this approach is that for the entirety of the sixty-day period in which Mr. Gonzalez could have raised a claim under Florida's rule, Florida imposed a strict IQ cutoff that was later invalidated in *Hall v. Florida*, 572 U.S. 701 (2014). Since *Hall*, Florida courts have continued to apply this 2004 deadline to cases in which the judgment became final prior to October 1, 2004. Mr. Gonzalez requests a stay pending certiorari on the question whether Florida has unconstitutionally

barred him from litigating his intellectual disability claim via application of this artificial deadline.

Third, Florida withheld the records of its past executions because Mr. Gonzalez's method-of-execution claim was not "colorable," and then rejected that claim as "speculative" for want of those records. Florida's secret-records regime has violated Mr. Gonzalez's First Amendment and common-law rights of access to records as a member of the public; as well as his due process and Eighth Amendment rights. A stay is warranted to allow Mr. Gonzalez to obtain access to records to which he is entitled, and records that could demonstrate that Florida's lethal injection protocol is unconstitutional as applied to him.

Unless the execution is stayed, the petition will become moot before the Court can act on it.

STATEMENT

The statement is set forth in the petition for certiorari. The Petitioner was convicted in 1994 on a general verdict; the jury was told wit could convict without finding any intent to kill and even if another principal fired the fatal shot. 1994 Tr. 2259. The majority-vote penalty phase jury returned no findings. At the 1998 resentencing, the jury was instructed on "reckless indifference" without the words "to human life"; was told its recommendation was advisory and could be reached "by a single ballot"; and recommended death by a vote of eight to four without making any findings. 1998 Tr.1828-33. Mr. Gonzalez's IQ was measured at 75 at age twelve. No court has decided whether he is intellectually disabled. After the warrant was signed

on October 30, 2026, the state courts denied him the records of Florida's past executions and rejected his method-of-execution claim as speculative. On November 24, the Florida Supreme Court affirmed, assumed he did not intend to kill, and denied a stay. Pet. App. A. at 22.

REASONS FOR GRANTING THE STAY

A stay pending the disposition of a petition for certiorari is appropriate where there is "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *see Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). In a capital case the Court also considers whether the applicant has unnecessarily delayed. *Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019). Each factor here favors a stay.

I. There is a reasonable probability that the Court will grant review, or hold the petition, and a fair prospect that it will reverse.

A. The death sentence rests on an eight-to-four recommendation by a jury never required to find the culpability *Tison* requires.

Florida is the only State that permits a death sentence on a vote of eight to four. Alabama, the only other State that permits a nonunanimous recommendation, requires ten votes, and federal law requires unanimity. 18 U.S.C. § 3593(e). A Justice of the Florida Supreme Court has recognized that the eight-to-four threshold "renders Florida the absolute outlier among states that impose the death penalty." *Jackson v.*

State, 430 So. 3d 64, 93 (Fla. 2025) (Labarga, J., concurring in result). Mr. Gonzalez's recommendation is weaker still than those at issue in *Jackson* and *Hunt*, which arise under Florida's 2023 statute requiring the jury to find at least one aggravating circumstance unanimously before it votes on sentence. His 1998 jury found *no aggravating factor*. If an eight-to-four vote cannot support a death sentence even after unanimous eligibility findings, it certainly cannot support one here. Moreover, the Eighth Amendment is measured by "objective indicia of society's standards, as expressed in legislative enactments and state practice." *Roper v. Simmons*, 543 U.S. 551, 563 (2005). Florida's sharp deviation from the practice of all of the other States and the federal government poses substantial Eighth Amendment concerns warranting a stay here.

The *Tison* question makes the case more compelling, because it implicates a substantive rights question that relates to the problems with the lack of jury unanimity in this case. The Eighth Amendment permits a death sentence for felony murder only if the defendant killed, attempted to kill, or intended to kill, *Enmund v. Florida*, 458 U.S. 782, 797 (1982), or was a major participant who acted with "reckless indifference to human life," *Tison v. Arizona*, 481 U.S. 137, 158 (1987). The Florida Supreme Court assumed that Mr. Gonzalez "did not intend to kill," and upheld his sentence because it found he "possessed the gun from which the fatal gunshot was fired" and was "a major participant." Pet. App. A at 22. Neither says anything about his state of mind, and no jury or court has ever found that he acted with reckless indifference to human life. *Cabana v. Bullock*, 474 U.S. 376 (1986), permitted a court

rather than a jury to make the *Enmund* determination, but it rested on the premise of *Spaziano v. Florida*, 468 U.S. 447 (1984), and *Hildwin v. Florida*, 490 U.S. 638 (1989), that the Sixth Amendment does not govern death-eligibility findings—a premise *Hurst v. Florida*, 577 U.S. 92, 101–02 (2016), rejected, and one that is inconsistent with *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny. And even under *Cabana*, the determination of "reckless indifference to human life" was never made by the sentencing court, nor by the Florida Supreme Court. The misapplication of *Tison*, decided eleven years before the resentencing, raises no question of retroactivity.

At a minimum, the petition should be held for *Kian*, *Jackson*, and *Hunt*. This Court has held capital petitions for related cases and then granted, vacated, and remanded, *see, e.g.*, *Johnson v. Alabama*, 578 U.S. 958 (2016) (after *Hurst*); and it has stayed an execution pending the disposition of related petitions, *Glossip v. Oklahoma*, No. 22A941 (U.S. May 5, 2023). A petition cannot be held for a petitioner who has been executed. *Jackson* and *Hunt* are set for conference ten days after Mr. Gonzalez's scheduled execution, and *Kian* is set to be argued in January of 2027.

B. No court has ever decided whether Mr. Gonzalez is intellectually disabled.

The Eighth Amendment "places a substantive restriction on the State's power to take the life" of a person with intellectual disability. *Atkins v. Virginia*, 536 U.S. 304, 321 (2002). A score of 75 is "squarely in the range of potential intellectual disability," *Brumfield v. Cain*, 576 U.S. 305, 315 (2015), and requires consideration of adaptive functioning, *Hall*, 572 U.S. at 723. No court has ever considered Mr.

Gonzalez's adaptive functioning. The Florida Supreme Court held the claim untimely because it was not raised within sixty days of October 1, 2004, and barred because impairment had been presented as mitigation at the 1998 resentencing, before *Atkins*.

Florida's rules leave no moment at which a prisoner in Mr. Gonzalez's position could be heard. In 2004, Florida's IQ cutoff of 70 excluded him. After *Hall*, the Florida Supreme Court barred first-time claims by a prisoner who had not filed in 2004, even while it treated *Hall* as retroactive for claims timely filed. *Bowles v. State*, 276 So. 3d 791 & n.4 (Fla. 2019); *Rodriguez v. State*, 250 So. 3d 616 (Fla. 2016); *Harvey v. State*, 260 So. 3d 906, 907 (Fla. 2018). It has since held *Hall* inapplicable to final sentences altogether. *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020). Justice Sotomayor has called Florida's rule with respect to the 2004 deadline "Kafkaesque"; she has observed that it stands in "grave tension" with *Montgomery v. Louisiana*, 577 U.S. 190 (2016), and stated that "[i]n an appropriate case," she would be prepared to revisit it. *Bowles v. Florida*, 140 S. Ct. 25 (2019) (statement of Sotomayor, J., respecting the denial of certiorari). She agreed to deny review in *Bowles* because that petition rested "solely" on the Eighth Amendment. This petition squarely presents the *Montgomery*, Supremacy Clause, and due process questions *Bowles* did not, on a record showing a developmental-period score of 75, judicially found brain damage, and the State's concession that no intellectual disability evaluation has been performed. As to the Florida Supreme Court's alternative holding similarly finding the intellectual disability claim barred because related evidence was presented as mitigation, a rule

that treats the pre-*Atkins* presentation of impairment as mitigation (as *Penry v. Lynaugh*, 492 U.S. 302, 319–28 (1989), required) as a forfeiture of the categorical bar *Atkins* later recognized cannot be squared with the substantive right recognized in *Atkins*. 536 U.S. at 321.

C. Florida withheld the records of its past executions and then faulted Mr. Gonzalez for lacking them.

"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, Inc. v. Virginia*, 448 U.S. 555, 572 (1980) (plurality opinion). Florida has blocked from the public and prisoners access to records of past executions, making it impossible to ascertain where things have gone wrong in the past and where Florida has deviated from its written protocol. Mr. Gonzalez has documented critical allergies to two antihistamines and prednisone, and in January 2025 suffered hives and angioedema of the lips, eyelids, and cheeks, with a fever and throat tightness. R. 1037–38, 1121–22. Florida's procedure offers as premedication hydroxyzine, an antihistamine of the same class, R. 1358; S.R. 34, would treat a severe reaction with a steroid he cannot take, S.R. 36, and uses a paralytic that would conceal any reaction from view. R. 1120–23. To meet the burden *Glossip v. Gross*, 576 U.S. 863, 877–78 (2015), and *Bucklew v. Precythe*, 587 U.S. 119 (2019), impose, he sought the records of how Florida has carried out past executions. R. 158–217. The courts below denied him access to such records because they were "not relevant to any colorable claim," Pet. App. A at 18, and then rejected his claim as "speculative," *id.* at 15. Justice Sotomayor has described this approach as a "Catch-22." *Trotter v.*

Florida, Nos. 25-6853 & 25A926, slip op. at 3 (U.S. Feb. 24, 2026) (statement of Sotomayor, J.). The records matter: in recent litigation, an execution drug log was altered with correction fluid after an expired drug came to light. *Guardado v. Sec'y, Dep't of Corr.*, 2026 WL 3327719 (11th Cir. Nov. 2026) (Pryor, J., concurring).

The petition also asks whether the First Amendment right of public access reaches records of an execution, the most final and only irreversible step in a criminal proceeding. In Florida, the records are the only way to determine what actually happens: Florida inserts the intravenous lines before witnesses are admitted and closes the observation window whenever venous access fails or the prisoner is not unconscious. Initial Br. 91. This Court has not decided a right-of-access case since 1986, and this case presents a good vehicle to do so, because the denial of access here implicates not only the public's rights but Mr. Gonzalez's substantive rights under due process and the Eighth Amendment.

After the Florida Supreme Court ruled, the Department of Corrections produced older medical records it had previously refused to produce (and did so only after a defense attorney pointed out that such records were provided to the state commission appointed to evaluate Mr. Gonzalez for competency; that commission performed *no objective testing*). The recently-produced report a January 2015 episode of severe urticaria treated with epinephrine and transfer to an outside hospital, and an April 2020 emergency visit for hives after prednisone. These records were not before the courts below. They confirm that the risk Mr. Gonzalez described was not

speculative, and that it was the denial of access, not a lack of diligence, that kept the evidence from the state courts.

II. Mr. Gonzalez will suffer irreparable harm without a stay.

The harm is irreparable; an unconstitutionally imposed death penalty cannot be corrected. If the execution proceeds, the petition will become moot, and no relief this Court later grants, on these questions or in *Kian*, *Jackson*, and *Hunt*, can be given to him. The irreversible nature of the death penalty is itself a weighty consideration in deciding whether to stay an execution. *See Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985) (Powell, J., concurring in denial of stay); *Evans v. Bennett*, 440 U.S. 1301, 1303 (1979) (Rehnquist, J., in chambers).

III. Mr. Gonzalez has not delayed, and the equities favor a stay.

The Eighth Amendment is judged by objective indicia of societal standards that currently prevail. *See Roper v. Simmons*, 543 U.S. 551, 564 (2005); *Atkins v. Virginia*, 536 U.S. 304, 311 (2002); *Montgomery v. Louisiana*, 577 U.S. 190, 204 (2016) ("There is no grandfather clause that permits States to enforce punishments the Constitution forbids"). Mr. Gonzalez has pursued these claims as fast as the State's schedule allowed. The warrant left thirty-two days until the execution and nine days to file a successive motion, and a request for more time was denied. He demanded records within six days, filed his motion on time, and filed his petition and this application within days of the Florida Supreme Court's decision. Nor could the claims have been brought earlier. These are not claims held in reserve for "last-minute" use. *Bucklew*, 587 U.S. at 150.

The equities also extend beyond this case. The measure of society's standards required by *Roper* must necessarily look as well to how the States actually carry out executions. That inquiry means little if the public, its legislators, and the courts cannot know what happens in the steps of an execution conducted out of view. And whether a condemned prisoner can obtain the evidence needed to prove an Eighth Amendment claim should not turn on the State or court that holds it.

The State's interest in the timely enforcement of its judgment does not override the constitutional rights of the prisoner. A stay pending the disposition of the petition would be brief. The crime occurred in 1992 and the sentence was imposed in 1998. A delay measured in weeks or months, until the Court acts on the petition and on those pending in *Kian*, *Jackson*, and *Hunt*, will not meaningfully impair that interest. The public interest, by contrast, is served by ensuring that the State does not execute a person who may be categorically exempt from execution, or who was sentenced without the determination *Tison* requires, before any court has decided those questions. Nor is the public interest served by continual withholding of records that relate to how a State is performing the gravest and most significant of its taxpayer-funded roles.

CONCLUSION

The Court should stay Mr. Gonzalez's execution pending the disposition of his petition for a writ of certiorari and, if the petition is granted or held, pending this Court's further order. Alternatively, this Court should stay Mr. Gonzalez's execution pending resolution of the petitions in *Kian*, *Jackson*, and *Hunt*.

Respectfully submitted,

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Miami, Florida
November 2026

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

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