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IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC13-2092

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

BRIEF OF *AMICI CURIAE* FORMER PROSECUTORS AND GOVERNMENT LAWYERS WHO SOUGHT THE DEATH PENALTY AT TRIAL OR DEFENDED CAPITAL CONVICTIONS ON APPEAL IN SUPPORT OF APPELLANT

ON APPEAL FROM THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR SEMINOLE COUNTY

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici are former prosecutors who have sought the death penalty at trial or who have defended the imposition of a death sentence in the state and federal courts on appeal. Some support the death penalty, some do not. All, however, possess unique expertise and experience which can provide clarity to the court on the fundamental issue presented in this case.

W. J. Michael Cody served as the Attorney General of the State of Tennessee from 1984 to 1988. During this time, his office defended multiple capital convictions on appeal in the state and federal courts. Cody also served as the United States Attorney for the Western District of Tennessee from 1977 to 1981, and served on the Memphis City Council from 1975 to 1977. Now in private practice, in 2005, he was appointed to serve as Co-Chair of the Tennessee Commission on Ethics, charged by the Governor of Tennessee with revising state ethics laws. He was also elected as the co-chair of the Society of Attorneys General Emeritus in 2010, of which he is one of the founding members. Cody was a member of the Tennessee Sentencing Commission and the Tennessee Death Penalty Assessment Team, which examined the fairness and accuracy of the Tennessee death penalty for three years under the auspices of the American Bar Association. Cody also served as the president of the Southern Association of Attorneys General in addition to serving as the chair of the Memphis and Shelby County Crime Commissions from 1997-1998. He is the distinguished recipient of

the 2007 Francis X. Bellotti Award from the National Association of Attorneys General.

Richard Cullen served as Attorney General of the Commonwealth of Virginia from 1997-1998, during which time the Commonwealth carried out seven executions. Cullen was also appointed by then-Governor George Allen to co-chair the Governor's task force on abolishing parole. Cullen had previously been appointed by President George H. W. Bush as United States Attorney for the Eastern District of Virginia. As U.S. Attorney, Cullen successfully sought the death penalty against members of the Newtowne Gang of Richmond, Virginia. Cullen also served on the staff of Representative M. Caldwell Butler (R-VA) during the Watergate investigation, served as special counsel to United States Senator Paul Trible (R-VA) during the Iran-Contra investigation, and worked under President George W. Bush during the 2000 recount in Florida. Cullen currently serves as the chairman of the McGuire Woods LLP and is a senior litigation partner, and frequently counsels corporations in assessing risks related to criminal prosecution.

Mark Earley served as the Attorney General of the Commonwealth of Virginia from 1998 to 2001. During his time as Attorney General, Virginia executed 36 inmates. Earley's office also defended many of these capital convictions in the Virginia Supreme Court, the federal district and courts of appeal, as well as the U.S. Supreme Court. Prior to his election as Attorney General, Earley served in the Virginia State Senate from 1988 to 1998, and casted votes to

expand the application of the Virginia's death penalty, as well as amend the state appellate process relating to capital cases. After leaving office, Earley became President and CEO of Prison Fellowship, overseeing the national prison ministry founded by Charles Colson in 1976. He submitted a letter to then-Virginia Governor Mark Warner in support of clemency for Virginia death row inmate Robin Lovitt in 2005, after Virginia officials destroyed forensic evidence in Lovitt's case in violation of state law, precluding any additional forensic testing to determine Lovitt's guilt or innocence.

Bennett Gershman was an Assistant District Attorney in New York County and then served as a Special Assistant Attorney General in the New York State Attorney General's Office when New York State retained the death penalty. Gershman defended on appeal the capital convictions of two defendants accused of murdering police officers. He also served for four years with the Special State Prosecutor investigating corruption in the judicial system. Now a Professor of Law at Pace Law School, Gershman has supervised students in the defense of individuals facing the death penalty in Alabama. He is also one of the nation's leading experts on prosecutorial misconduct and teaches courses on Constitutional Law, Criminal Procedure, and Evidence.

Bruce Jacob began his career as Assistant Attorney General of the State of Florida, where he represented Florida before the U.S. Supreme Court in the seminal right to counsel case of *Gideon v. Wainwright* (1963), in addition to defending capital convictions and death sentences before this Court. Jacob then

joined the firm of Holland, Bevis & Smith, now Holland & Knight, in Bartow and Lakeland, Florida, and later joined the faculty at the Emory University School of Law. At Emory, Jacob established the Legal Assistance for Inmates Program, which provided legal assistance to inmates of the penitentiary in Atlanta, Georgia. He also co-founded the Harvard Prison Legal Assistance Project. Later, Jacob served as Dean and Professor of the Mercer University School of Law from 1978-1981, and has held several other positions of leadership at other law schools, in addition to serving on The Constitution Project's National Right to Counsel Committee. Jacob is Dean Emeritus and Professor of Law at Stetson University College of Law in Gulfport, Florida.

The Honorable Gerald Kogan has participated in approximately 1,200 capital cases as a prosecutor, defense attorney, trial judge, and Supreme Court Justice for almost 50 years. Kogan was appointed an assistant state attorney in the Dade Country State Attorney's Office in 1960, and eventually became the Chief Prosecutor of the Homicide and Capital Crimes Division. In 1980, Kogan joined Florida's Eleventh Judicial Circuit, and in 1984 he was appointed Administrative Judge of the Criminal Division, where he served until he became a Justice of the Florida Supreme Court in 1987. He served as a justice on the Florida Supreme Court from 1987-1998, serving as Chief Judge from 1996-1998. Kogan has spoken before the United States Senate, the United States House of Representatives, and in several states including California, New Mexico, New York, and New Hampshire. The former Chief Justice has taught Trial Advocacy at

the Florida State University College of Law, the University of Florida College of Law, and was a member of the adjunct faculties of the University of Miami School of Law and the Shepard Broad Law Center at Nova University. He was also a faculty member for the appellate judges seminar at New York University Law School. Kogan, the recipient of the Selig I. Golden Award from the Florida State Bar, is distinguished in the field.

Sam Millsap served as the elected District Attorney for Bexar County, Texas, from 1982 to 1987. In 1982, he was the youngest DA to serve in the United States. Millsap prosecuted and sought the death penalty against several defendants, including Ruben Cantu, who was convicted and later executed by the State of Texas in 1993. In 2000, after reviewing new evidence suggesting that Cantu may have been innocent of the crime for which Millsap had prosecuted him, Millsap issued a statement revealing that he had grave doubts about Cantu's guilt. He has since come to hold the view that the death penalty carries an undue risk of executing the innocent, and has worked to repeal the death penalty and reform the criminal justice system to prevent wrongful convictions.

David Ogden served as Deputy Attorney General of the United States from 2009 through 2010. Ogden's responsibilities included supervision of all United States Attorneys and the Criminal Division of the Justice Department. In that capacity, it was his responsibility to consider and recommend to the Attorney General whether to approve any request by federal prosecutors to seek the death penalty, and a significant number of such requests went to Ogden for approval

during that time. Ogden has also served as Assistant Attorney General for the Civil Division of the United States Department of Justice (1999-2001), Chief of Staff to Attorney General Janet Reno (1998-1999), Counselor to the Attorney General (1997-1998), Associate Deputy Attorney General (1995-1997), and Deputy General Counsel and Legal Counsel to the United States Department of Defense (1994-1995). He is presently Chair of the Government and Regulatory Litigation Practice Group at Wilmer Hale.

Jim Petro was the Attorney General of the State of Ohio from 2003-2007. As an Ohio legislator, Petro served on the legislative committee that crafted Ohio's current death penalty statute. As Attorney General, he supervised the enforcement of that statute and served as statutory lead counsel in dozens of death penalty cases in post-conviction proceedings in the federal trial and appellate courts. During Mr. Petro's tenure as Attorney General, nineteen death-sentenced defendants were executed by the State of Ohio.

Petro's legal career has included litigating cases from Mayor's Court to the United States Supreme Court. He also served in public office as city council member and law director, prosecutor, state legislator, county commissioner, and Ohio Auditor of State and Attorney General. After leaving public office, Petro and his wife co-authored *False Justice*, which explores the causes of wrongful convictions. He remains actively involved as a pro bono lawyer in cases seeking exoneration for wrongfully convicted and innocent defendants. Among his many accolades, Petro is the recipient of the 2010 Innocence Network Champion of

Justice Award for his efforts to free the wrongfully convicted and reform the criminal justice system.

Stephen D. Rosenthal served as Attorney General of the Commonwealth of Virginia from 1993-1994, as Chief Deputy Attorney General from 1992-1993, and as Deputy Attorney General of the Public Safety and Economic Development Division from 1986-1992. During his eight years in the Office of the Attorney General, Virginia executed 18 prisoners. Rosenthal has been involved in several notable cases, including *Murray v. Giarratano* (1989), for which he served as appellate prosecution counsel before the United States Supreme Court when the Court held that the Constitution does not require appointment of counsel for death row inmates during post-conviction proceedings. Rosenthal was later involved in ordering DNA testing that ultimately exonerated Earl Washington, Jr. in 2000, who had been awaiting execution. From 1986-1994, Rosenthal was a member of the Virginia Department of Criminal Justice Services Board, which is Virginia's premier criminal justice agency. He is now a partner at Troutman Sanders in Richmond, Virginia.

Harry Shorstein served as an elected State Attorney from 1991-2008 in the Fourth Judicial Circuit for Duval County, Florida. In Jacksonville, Shorstein obtained convictions in over 30 murder cases and sought the death penalty at trial in more than ten capital cases, although the office under his tenure prosecuted many more. Shorstein prosecuted Ernest John Dobbert, Jr., who had tortured two of his own young children to death, resulting in the conviction, death sentencing,

and ultimate execution of Dobbert by the State of Florida. After leaving office, Shorstein went in to private practice. He also has served as a member of the American Bar Association's Florida Death Penalty Assessment Team. Shorstein has testified before the Florida Legislature in support of a bill to require unanimous jury decisions in capital sentencing.

Anthony "Tony" Troy was the Virginia Attorney General from 1977-1978 and argued on behalf of the Commonwealth of Virginia in defending capital convictions in the Virginia Supreme Court. Troy is a member of the National Association of Attorneys General and previously served on a special panel on ethical issues in complex litigation, reporting to the National Commission for Review of Antitrust Laws and Procedure. His other pursuits serving the legal profession include acting as a Fellow and former board member of the Virginia Law Foundation; a Fellow of the American Bar Foundation; a past member of the Council for the Future of the National Judicial College; and as a past faculty member of the Virginia State Bar. He also serves on the Board of the Virginia Capital Representation Resource Center. Troy's current practice as a member of Eckert Seamans law firm includes First Amendment claims, civil litigation, and white collar criminal defense.

John Van De Kamp served as the District Attorney of Los Angeles County from 1975-1983. In that capacity, he established a working group to make decisions as to whether to approve seeking the death penalty in individual cases. As Attorney General of California from 1983-1991, Van De Kamp's office was

responsible for defending capital convictions in the state and federal courts, including the first execution date set in California after *Gregg v. Georgia* (Robert Allen Harris). Van de Kamp later chaired the California Commission on the Fair Administration of Justice which studied the administration of the death penalty in California—and recommended various process changes in 2008. He has also served on the American Bar Association's Special Committee on Criminal Justice in a Free Society, its Task Force on the Federalization of Criminal Law, and its Commission on Effective Criminal Sanctions. He was also president of the State Bar of California from 2004-2005.

Mark White is the former Governor of Texas from 1983 to 1987. While in office, he oversaw 19 executions. Prior to his gubernatorial election, White served as the Attorney General of Texas from 1979 to 1983. While Attorney General, White's office defended death sentences in federal court and, in selected cases, was called on to assist local District Attorneys during state post-conviction proceedings. After his departure from public office, White became Chairman of GeoVox Security. He now speaks out concerning the fairness of the death penalty process and advocates for reform.

SUMMARY OF ARGUMENT

Amici, all either former prosecutors or appellate government attorneys who sought or defended the death penalty in a multitude of cases, believe in the integrity of our criminal justice system, and in the adversary system that is its

keystone. But we know that there are times that the adversary system does not work, and the end result of a jury trial is not a just result. We believe that this is such a case.

To be sure, the adversary system depends on effective advocates representing both the prosecution and the defense. With respect to defense counsel, the duty to conduct a prompt investigation and explore all avenues of the case is beyond question. Particularly where, as here, the defendant maintains his innocence, this investigation must include a search for impeaching or exculpatory evidence, and often will necessitate consultation with expert witnesses and independent testing of crime-scene evidence. Yet Mr. Aguirre's counsel failed to view the evidence collected from the crime scene, to investigate possible suspects, to consult forensic witnesses, or to have the crime-scene evidence independently tested.

New evidence that has been discovered, including DNA and blood-stain analysis of Mr. Aguirre's clothing, corroborate Mr. Aguirre's insistence on his innocence, and point to another suspect as the likely perpetrator. Taken together, this new evidence, when juxtaposed against the evidence that the jury did hear and this Court previously reviewed, seriously undermines confidence in the conviction and the sentence to death. A new trial is warranted because the state's circumstantial evidence no longer can exclude the very reasonable and credible hypothesis of innocence.

Review by this Court stands as the bulwark against the execution of an innocent man, as the assurance to society of the fairness of the proceedings leading up to the carrying out of a death sentence. The only thing worse than a belated exoneration, is an exoneration that is warranted but never comes. *Amici* believe that there are such fundamental questions about the integrity and fairness of the proceedings in this case, that we join Mr. Aguirre in urging the Court to order a new trial.

ARGUMENT

BECAUSE MR. AGUIRRE'S JURY DID NOT HEAR SUBSTANTIAL EXCULPATORY EVIDENCE THAT HAS NOW BEEN UNCOVERED, A NEW TRIAL IS WARRANTED TO AVOID THE UNACCEPTABLE RISK OF EXECUTING AN INNOCENT MAN.

A. The Integrity of the Adversary System Depends on Effective Advocates for Both the Prosecution and the Defense and a Full Presentation of the Evidence to the Jury.

The *Amici* are comprised of former prosecutors and other government attorneys who have sought or defended death sentences. Some of the *Amici* believe in the continued enforcement of the death penalty and some do not. But all concur that there can be no fair administration of the ultimate penalty unless both sides are represented by effective advocates, with a verdict premised on a comprehensive presentation of the evidence.

It is quite simply a hallmark of our adversary system that a criminal judgment be founded on a full presentation of the facts:

> We have elected to employ an adversary system of criminal justice in which the parties contest all issues before a court of law. The need to

> develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence.

United States v. Nixon, 418 U.S. 683, 709 (1974).

Amici understand that it is a prosecutor's obligation to "prosecute with earnestness and vigor," but know, too, that such must be done with a "twofold aim . . . that guilt shall not escape nor innocence suffer." *Berger v. United States*, 295 U.S. 78, 88 (1935). Above all, the prosecutor's duty is "to use every legitimate means to bring about a just [result]" and ensure "that justice shall be done." *Id.* But it is a reality that, as an essential counterbalance to the prosecution, prosecutors necessarily rely on effective assistance by defense counsel in the investigation and presentation of a defendant's case. *See* Fred C. Zacharias, *Structuring the Ethics of Prosecutorial Practice: Can Prosecutors Do Justice?*, 44 Vand. L. Rev. 45, 50-66 (1991).

The Supreme Court has underscored that "[t]he very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." *Herring v. New York*, 422 U.S. 853, 862 (1975). And as the Court added a decade later, "[t]he Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to

the ability of the adversarial system to reach just results." *Strickland v. Washington*, 466 U.S. 668, 685 (1984).

This Court similarly has acknowledged that "[o]ur adversary system is designed to serve the ends of justice; it cannot do that unless [defense] counsel presents an intelligent and knowledgeable defense. Such a defense requires investigation and preparation." *State v. Fitzpatrick*, 118 So. 3d 737, 753 (Fla. 2013) (quoting *Caraway v. Beto*, 421 F. 2d 636, 637-38 (5th Cir. 1970)). Indeed, the ABA Standards for Criminal Justice, which serve as a guide on what it is reasonable to expect from competent counsel, have long noted the "duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case." *Rompilla v. Beard*, 545 U.S. 374, 387 (2005) (quoting 1 ABA Standards for Criminal Justice 4-4.1 (2d ed. 1982 Supp.)).

"In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v. Washington*, 466 U.S. at 691; *see Wiggins v. Smith*, 539 U.S. 510, 522-23 (2003); *Williams v. Taylor*, 529 U.S. 362, 395-96 (2000). It is past question that defense counsel has a quintessential obligation to investigate any potential impeaching or exculpatory evidence that may assist in the defendant's defense. *State v. Fitzpatrick*, 118 So. 3d at 753; *Bell v. State*, 965 So. 2d 48, 62 (Fla. 2007).

Amici believe that Mr. Aguirre's defense counsel failed in this rudimentary responsibility. What stands out as perhaps the most serious derelictions were counsel's failure to view the evidence collected from the crime scene, to investigate potential suspects, to consult expert witnesses, or to have the crime-scene evidence independently tested, despite the fact that Mr. Aguirre has steadfastly maintained his innocence. These omissions are staggering where DNA and other evidence – that refutes the state's case and points instead to another suspect – could have been obtained.

Defense counsel's duty to investigate in a case such as this surely encompasses forensic evidence and expert forensic witnesses that might exonerate the defendant. *See State v. Fitzpatrick*, 118 So. 3d at 748-59. True, it is not always unreasonable for an attorney to fail to test or retest forensic evidence or retain a forensic expert. *Id.* at 756 n.14. But "[c]riminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence." *Harrington v. Richter*, 131 S. Ct. 770, 788 (2011).

As the Supreme Court recently reminded, in rejecting the notion that the inculpatory testimony from the state's experienced expert witnesses meant that the defendant was guilty:

> Prosecution experts, of course, can sometimes make mistakes. Indeed, we have recognized the threat to fair criminal trials posed by the potential for incompetent or fraudulent prosecution forensics experts, noting that "[s]erious deficiencies have been found in the forensic evidence used in criminal trials. . . One study of cases in

> which exonerating evidence resulted in the overturning of criminal convictions concluded that invalid forensic testimony contributed to the convictions in 60% of the cases." This threat is minimized when the defense retains a competent expert to counter the testimony of the prosecution's expert witnesses[.]

Hinton v. Alabama, 134 S. Ct. 1081, 1090 (2014) (ellipses in original) (citation omitted).

The Supreme Court thus has made clear, as this Court did in *Fitzpatrick*, 118 So. 3d at 748-759, that the failure to consult experts who might uncover deficiencies in the state's forensic evidence may well constitute a significant omission that threatens the integrity of the criminal proceeding. In cases such as this, where a defendant admits being at the crime scene, gives counsel (and police) a highly specific account of his contact with the victims, and the state itself does only limited DNA testing despite the wealth of evidence that was collected, counsel's obligation to at least investigate the possibility that forensic experts can aid his defense is particularly strong. Indeed, defense counsel's failure to consult a forensic witness skilled in bloodstain analysis resulted in the jurors never learning that Mr. Aguirre's blood-stained clothing could not have been worn by the murderer, contrary to the testimony that they did hear from the state's expert at trial.

And counsel's failure to take steps to obtain independent DNA testing that might undermine the state's case and point to another suspect is equally incomprehensible. "DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty." *Dist. Attorney's Office for Third*

Judicial Dist. v. Osborne, 557 U.S. 52, 55 (2009); *see Hildwin v. State*, No. SC12-2101, 2014 WL 2882689 (Fla. June 26, 2014). It is basic that where, as here, defense counsel's client insists that he is innocent and requests that testing be done, and where DNA evidence might be obtainable, counsel should take reasonable steps to uncover the likely culprit and refute the state's case.

The testing that now has been undertaken, the forensic witnesses who now have testified, and the newly discovered evidence that now has been uncovered, all support Mr. Aguirre's explanation of his innocence. Moreover, such steps suggest a different suspect as the likely perpetrator. The state's circumstantial-evidence case must now be viewed in a whole new light.

B. The Grant of a New Trial is Warranted Where New Evidence Undermines the Court's Confidence in the State's Circumstantial-Evidence Case.

This Court has taken seriously its obligation to review the entire record in a capital case to ensure that the evidence is sufficient to sustain the conviction and death sentence. *See Ballard v. State*, 923 So. 2d 475, 482 (Fla. 2006). While some cases before the Court have been predicated on direct evidence of guilt, others – like Mr. Aguirre's case – rest on purely circumstantial evidence. Where the state's evidence is circumstantial and fails to exclude reasonable hypotheses of innocence, the Court has refused to permit the jury verdict to stand. *See, e.g., Cox v. State*, 555 So. 2d 352, 353 (Fla. 1989); *Jaramillo v. State*, 417 So. 2d 257, 257 (Fla. 1982).

The Court has recently reiterated the governing standard for circumstantial-evidence review, in declaring the state's evidence insufficient as a matter of law:

> Evidence which furnishes nothing stronger than a suspicion, even though it would tend to justify the suspicion that the defendant committed the crime, [ ] is not sufficient to sustain [a] conviction. It is the actual exclusion of the hypothesis of innocence which clothes circumstantial evidence with the force of proof sufficient to convict. Circumstantial evidence which leaves uncertain several hypotheses, any one of which may be sound and some of which may be entirely consistent with innocence, is not adequate to sustain a verdict of guilt. Even though the circumstantial evidence is sufficient to suggest a probability of guilt, it is not thereby adequate to support a conviction if it is likewise consistent with a reasonable hypothesis of innocence.

Dausch v. State, No. 12-1161, 2014 WL 2609192, at *4 (Fla. June 12, 2014) (brackets in original) (citations omitted).

Amici recognize that the Court's analysis in *Dausch* was in the direct-appeal context, and that Mr. Aguirre is before the Court on appeal from the denial of collateral post-conviction motions. *Amici* further understand that this Court has upheld the judgment and death sentence when conducting its appellate review of this case. But unlike those direct-review cases, the remedy sought is not an acquittal.

Mr. Aguirre seeks only to have the opportunity to have his case competently and fully presented to a new jury. For, exactly as was the case in *Swafford v. State*, 125 So. 3d 760 (Fla. 2013), the recent post-conviction proceedings have demonstrated that there is newly discovered exculpatory evidence that was never heard by Mr. Aguirre's jury and never considered by this Court. And, as in *State v.*

Fitzpatrick, 118 So. 3d 737 (Fla. 2013), the fact that this crucial evidence was never heretofore presented is attributable in substantial part to his appointed ineffective counsel. When the new evidence is juxtaposed against that which the jury heard, confidence in the conviction and sentence of death is seriously undermined, and warrants the submission of the case to a new jury.

C. Review by the Court is the Ultimate Safeguard in Preventing the Execution of an Innocent Man.

Florida leads the nation in the number of death-row individuals who have been exonerated. Death Penalty Info. Ctr., *Innocence and the Death Penalty*, http://www.deathpenaltyinfo.org/innocence-and-death-penalty#inn-st (last visited July 16, 2014). The only thing worse than an exoneration of an innocent man or woman that comes years after the conviction, is a deserved exoneration that never comes. As Judge Learned Hand observed, "Our procedure has been always haunted by the ghost of the innocent man convicted." *United States v. Garsson,* 291 F. 646, 649 (S.D.N.Y. 1923).

It ineluctably follows as a "fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." *In re Winship*, 397 U.S. 358, 372 (1970) (Harlan, J., concurring). Indeed, "concern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system." *Schlup v. Delo*, 513 U.S. 298, 325 (1995). This Court stands as a bulwark against that injustice in a capital case.

"The thoroughness and quality of this Court's review is relied upon by our society as an important safeguard for preventing executions where a serious question remains as to the fairness of the proceedings leading up to the imposition of the death penalty." *White v. State*, 664 So. 2d 242, 245 (Fla. 1995) (Anstead, J., dissenting). *Amici* believe that there is such a question about the fundamental fairness and integrity of the proceedings in this case. Accordingly, *Amici* urge the Court to reverse Mr. Aguirre's conviction and sentence for a new trial, so that a jury can consider all of the evidence now uncovered and return a verdict that speaks the truth, and so that this Court can avert the substantial risk of executing an innocent man.

CONCLUSION

Based upon the foregoing, *Amici* join Mr. Aguirre in requesting that the Court reverse the judgment of the lower court and remand this cause for a new trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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