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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC 2025-1320

DAVID JOSEPH PITTMAN

Appellant

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT, IN AND FOR POLK COUNTY, STATE OF FLORIDA

INITIAL BRIEF OF APPELLANT

EXECUTION SCHEDULED FOR SEPTEMBER 17, 2025 AT 6:00 PM

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REQUEST FOR ORAL ARGUMENT

Undersigned counsel for the Appellant respectfully requests the opportunity to present oral argument pursuant to Fla. R. App. P. 9.320. This is a capital case, the resolution of the issues presented will determine whether David Pittman will live or die, and a complete understanding of the complex factual, legal, and procedural history of this case is critical to the proper disposition of this appeal.

JURISDICTIONAL STATEMENT

This is a timely appeal from the trial court's final order denying a successive motion for postconviction relief from a judgment and sentence of death. This court has plenary jurisdiction over death penalty cases. Fla. Const. Art. V., § 3(b)(1); *Orange County v. Williams*, 702 So. 2d 1245 (Fla. 1997).

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STATEMENT OF THE CASE

On May 15, 1990, an information was filed charging David Pittman with one count of grand theft and one count of arson. On July 12, 1990, Mr. Pittman was indicted on three counts of first-degree murder, two counts of arson, and one count each of burglary and grand theft. Trial commenced on March 18, 1991. Subsequently, on April 19, 1991, the jury returned a guilty verdict, finding Mr. Pittman guilty of three counts of first-degree murder, two counts of arson, and one count of grand theft. The jury also found Mr. Pittman not guilty of the burglary charged in Count 5 of the Indictment. At the conclusion of a penalty phase proceeding, the jury returned a death recommendation by a nine to three vote. On April 25, 1991, Mr. Pittman was sentenced to death. He also received fifteen-year sentences on each arson count, and a five-year sentence on the grand theft count. The sentences were ordered to be served concurrently.

On direct appeal, Mr. Pittman raised various issues. The Florida Supreme Court rejected Mr. Pittman's arguments and affirmed his death sentence. *Pittman v. State*, 646 So.2d 167 (Fla. 1994). Thereafter, Mr. Pittman sought Rule 3.851 relief. Following an evidentiary hearing, Rule 3.851 relief was denied. The Florida Supreme Court affirmed the denial of

Rule 3.851 relief on these initial claims. *Pittman v. State*, 90 So.3d 794 (Fla. 2011).

On May 27, 2015, Mr. Pittman's counsel filed a successive Rule 3.851 motion, setting forth the results of a WAIS-IV[1] administered by Dr. Gordon Taub on May 18, 2015 that showed Mr. Pittman had an IQ score of 70. R154-63[2]. Counsel for Mr. Pittman at the time, Martin McClain, stated he was first alerted to Mr. Pittman's intellectual disability claim under *Hall v. Florida*[3]. The trial court struck Mr. Pittman's motion due to facial insufficiencies in an order dated July 9, 2015 (R164-166), which counsel did not learn about until November 2015. The trial court, after granting the defendant's motion requiring service of the order, gave Mr. Pittman sixty days from December 14, 2015 to file a facially sufficient amended successive motion. R174-78. Mr. Pittman filed his amended successive motion on February 9, 2016, as well as a Rule 3.800(a) motion. R179-245. Mr. Pittman later filed a second

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[1] The Wechsler Adult Intelligence Scale, 4th Edition.

[2] Citations to the specific record on appeal for these proceedings are designated by "DS" and followed only by a page number (DS page). The previous successive proceedings are designated a "R" and followed only by a page number (R page). Any references to the trial record on appeal are designated by "TR" and followed by a page number (TR page). Any citation to the initial postconviction record on appeal is designated by "PC" and followed by a page number (PC page).

[3] *Hall v. Florida*, 572 U.S. 701 (2014).

amended successive motion and Rule 3.800(a) motion, October 14, 2016. R341-429. This motion was amended again on April 17, 2017[4]. R753-56.

The trial court held a case management conference on November 9, 2017. Based upon the then applicable law, the trial court ruled that an evidentiary was appropriate for Claims 1 and 1A of Mr. Pittman's third successive motion. R805. The trial court summarily denied the rest of the claims. *Id*.

On October 4, 2019, the state filed a Motion to Dismiss Claims 1 and 1A of Third Amended Successive Motion for Post-Conviction Relief on October 4, 2019. R1199-1201. Shortly afterwards, on October 22, 2019, Mr. Pittman filed a separate Rule 3.800(a) motion, along with a response to the state's motion to dismiss. R1215-21.

On March 19, 2021, the trial court held a hearing on the State's Motion to Dismiss Claim 1 and 1(A) and Mr. Pittman's Rule 3.800(a) motion. During the hearing, the trial court chose to address its prior granting of an evidentiary hearing without first providing defense counsel with notice that Mr. Pittman's

[4] Although this motion is entitled Second Amended Successive Motion to Vacate Judgments of Conviction and Sentences, and Alternatively Motion to Correct Illegal Sentences, this is the third amended successive motion and will be referred to as such throughout the brief.

Third Amended Successive Motion was to be heard at that time. See R2323-25.

On May 28, 2021, the trial court issued its Final Order Denying Defendant's Third Amended Successive Motion for Postconviction Relief and Defendant's Motion Under Rule 3.800(a) Challenging His Death Sentence as Illegal. R1866-1903. In this order, the trial court recognized that the State was requesting more than a dismissal of the claims, but a "reconsideration of this Court's prior determination at the case management conference that an evidentiary hearing is appropriate for the resolution of these claims." R1876. The trial court reversed its earlier order granting Mr. Pittman an evidentiary hearing on Claims 1 and 1A. Mr. Pittman filed a motion for rehearing on June 14, 2021. R1944-50. This motion was denied on July 13, 2021. R1951-52. This Court affirmed the denial of an evidentiary hearing on April 28, 2022. This was appealed and denied by this court on April 28, 2022. *Pittman v. State*, 337 So.3d 776 (Fla. 2022).

Governor DeSantis signed a death warrant for the execution of Mr. Pittman on August 15, 2025, setting the execution of Mr. Pittman for September 17, 2025, at 6:00 P.M. Mr. Pittman's Successive 3.851 under warrant was timely filed on August 24, 2025. In his Successive 3.851, Mr.

Pittman raised that his sentence of death is unconstitutional due to his intellectual disability. The trial court held a *Huff*[5] hearing on August 26, 2025. The trial court expressed concern that indeed an intellectually disabled individual would be executed, nonetheless, based on existing precedent, denied the successive motion on August 27, 2025. Mr. Pittman, an intellectually disabled person, was once again denied the opportunity to present evidence of his intellectual disability. This appeal follows.

Arguments:

CLAIM ONE

This Court erred in determining *Hall v. Florida* was not retroactive and *Phillips v. State* was wrongly decided. Due to this Court's error, Mr. Pittman will be executed in contravention to the United States Constitution.

Mr. Pittman is an intellectually disabled individual and this Court correctly ruled in *Walls v. State*, 213 So. 3d 340 (Fla. 2016), that *Hall* must be retroactively applied to all *Atkins*[6] cases. It was error on the part of this Court to reverse that decision. "The Eighth Amendment prohibits certain punishments as a categorical[7] matter…persons with intellectual disability

[5] *Huff v. State*, 622 So.2d 982 (Fla. 1993).
[6] *Atkins v. Virginia*, 536 U.S. 304 (2002).
[7] "*Categorical*": Absolute, Unqualified. *Merriam Webster Online (https://www.merriam-webster.com/dictionary/categorical) (accessed*

may not be executed." *Hall v. Florida*, 572 U.S. 701, 705 (2014). Yet, due to errors made by this Court, the State of Florida is at the precipice of executing a man who has an intellectual disability. The United States Supreme Court in *Hall* ruled that Florida's strict cut-off of a 70 or below IQ in determining whether an individual is intellectually disabled "creates an unacceptable risk that persons with intellectual disability will be executed and thus is unconstitutional." *Id* at 704. Despite the United States Supreme Court's warnings over 10 years ago, this Court made this "unacceptable risk" more likely when ruling that *Hall* does not apply retroactively. As the circuit court in this case acknowledged during the *Huff* hearing, "in terms of your general statement that the State may execute an intellectually disabled person, there's nothing for me to say that might not very well be true." DS 394.

This was error and should be overturned.

***a. Hall* Applied the *Atkins* Definition of Intellectual Disability.**

The question before the United States Supreme Court in *Hall* was unambiguously stated in the opinion: 'The question this case presents is how intellectual disability must defined in order to implement…the holding of

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August 20, 2025). While categorical, as written by the United States Supreme Court, is defined as absolute, that meaning has appeared to lose value within the context of rulings made by this court.

Atkins." Hall, 572 U.S. at 709. "If the States were to have complete autonomy to define intellectual disability as they wished, *the Court's decisions in Atkins could become a nullity, and the Eighth Amendment's protection of human dignity would not become a reality*." *Id.* at 720-21 (emphasis added). It has been acknowledged repeatedly that *Atkins* "did not give States unfettered discretion *to define the full scope of the constitutional protection*." *Id*. at 719 (emphasis added). In Mr. Pittman's case, the fears expressed by the *Atkins* and *Hall* courts will become a certain reality in Florida.

Hall expanded and amplified the rule that was decided in *Atkins.* A decision that explains how a rule of general application (e.g., no execution of intellectually disabled people) does or does not apply to some specific factual circumstance (e.g., presence of IQ tests above 70) is not a new rule. *See, e.g., Yates v. Aiken*, 484 U.S. 211, 216-17 (1988) (unanimously concluding that *Francis v. Franklin,* 471 U.S. 307 (1985), did not announce a new rule but was "merely an application of the principle that governed our decision in *Sandstrom v. Montana*, [442 U.S. 510(1979)] which had been decided before petitioner's trial took place."). It is a reiteration of the old rule, which was binding on the states under the Supremacy Clause. *See Stringer v. Black*, 503 U.S. 222, 227-28 (1991). This basic principle has been at the

core of modern retroactivity doctrine. This Court in *Phillips* correctly recognized this principle. "*Hall* is merely an application of *Atkins. Phillips v. State*, 299 So. 3d 1013, 1020 (Fla. 2020). That opinion nonetheless concluded that *Hall* was not retroactive under *Teague,* a conclusion at odds with clearly established federal law and the precedent from the United States Supreme Court itself regarding intellectual disability.

"The Eighth Amendment prohibits certain punishments as a categorical matter." *Hall v. Florida*, 572 U.S. 701, 708 (2014). Amongst these categorical matters is that juveniles cannot be executed and nor can persons with intellectual disability. *Id*. Part of the reason intellectual disability is a categorical bar to the death penalty, as the United States Supreme Court recognized was because persons with intellectual disability face a special risk of wrongful execution, due to their intellectual limitations and their inability to give meaningful assistance to their counsel. *Id*. at 709. Categorical bars are substantive rules and treated differently than procedural rules. A substantive rule forbids "a certain category of punishment for a class of defendants because of their status or offense." *Montgomery v. Louisiana*, 577 U.S. 190, 206 (2016); citing *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989). The "Constitution requires substantive rules to have retroactive effect

regardless of when a conviction became final." *Montgomery* at 200. (emphasis added). "Substantive rules, then, set forth categorical constitutional guarantees", like not executing intellectually disabled persons, "that place certain... punishments altogether beyond the State's power to impose. It follows that when a State enforces a proscription or penalty barred by the Constitution, the resulting... sentence is, by definition, unlawful." *Id*. at 201. "[I]t must be noted that the retroactive application of substantive rules does not implicate a State's weighty interests in ensuring the finality of convictions and sentences." *Id*. at 205.

Hall is retroactive because it qualified and expanded the class of persons exempt from execution. *Atkins*, as previously understood by the Court, only covered a sub-group among the intellectually disabled. To qualify for protection, a person must be "so impaired as to fall within the range of mentally retarded offenders *about whom there is a national consensus*." *Atkins,* 536 U.S. at 317 (emphasis added). This sentence meant that less impaired persons might not be protected if their impairment falls short of the "national consensus," even if they are also in the "range of mentally retarded offenders." *Id.* In *Hall*, the Supreme Court revisited the consensus and refined its definition of who is "so impaired…within the range of mentally

retarded offenders," *Hall*, 572 U.S. at 719, to include a broader set of IQ scores, i.e. those scores within the +/- 5 standard error of measurement (SEM). The *Hall* court went further and explained that States, including Florida, needed to take a more holistic approach to the determination of intellectual disability in a defendant. "Intellectual disability is a condition, not a number." *Hall* at 723, citing American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013) or DSM-5, at 37. "It is not sound to view a single factor as dispositive of a conjunctive and interrelated assessment." *Id*. The State in this case has chosen to argue that one IQ score in Mr. Pittman's case is the definitive be all and end all in the inquiry and plainly erroneous and contrary to the body of law regarding intellectual disability.

Everything said in the *Hall* opinion unmistakably confirms that what the Court understood itself to be doing was nothing more than requiring the Florida Supreme Court to correct a plainly erroneous interpretation of the subaverage intellectual functioning prong of the test for intellectual disability established by *Atkins*. Reversing a state court decision for failing to properly implement a preexisting federal constitutional rule does not make a "new" rule.

The doctrinal method the Court used to arrive at the *Hall* rule proves that *Hall* was substantive decision, a decision as to the score of the class of defendants who are not death-eligible due to "society's standards" of decency. *Id.* at 714. Further, the court in both *Atkins* and *Hall* consider intellectual disability to be a categorical bar to the death penalty, no different than the Eighth Amendment treatment of juveniles. *See Hall* at 708.

The conclusion of *Phillips* that *Hall* accounted a new non-watershed rule of federal Eighth Amendment law for purposes of *Teague v. Lane*, 489 U.S. 288 (1989) was in error. In *Walls,* the court clearly articulated that its rationale stemmed from the analysis conducted in *Falcon v. State*, 162 So. 3d 954 (Fla. 2015) (rejecting the State's argument that *Miller v. Alabama*, 567 U.S. 460 (2012)) only invalidated the statute as applied to a subgroup of people and this constituted a procedural refinement that did not warrant retroactive application). Guided by *Miller,* the *Walls* court concluded that *Hall* similarly identified and prohibited a penalty (a death sentence) for an exempt class of offenders (individuals with IQ scores ranging above 70). The court recognized that while *Atkins* gives States the discretion to craft the procedures to determine intellectual disability, courts cannot ignore the medical community's diagnostic framework. Thus, at bare minimum, a court

must not "view a single factor as dispositive of the conjunctive and interrelated assessment." *Hall* , 572 U.S. 701 at 2014.

In *Miller v. Alabama*, 567 U.S. 460 (2012), this Court explained that its opinion did not categorically bar a particular penalty for a class of offenders or type of crime, rather it only mandated that the sentencer follow a certain process before imposing a particular penalty. Following this ruling, a Louisiana petitioner filed a motion for postconviction relief asserting *Miller* was substantive law. The Louisiana court disagreed and held *Miller* was not retroactive. In addressing the retroactive implications of *Miller* in *Montgomery v. Louisiana*[8]*,* the Unites States Supreme Court acknowledged the procedural component of *Miller* but found that Louisiana's argument labeling *Miller* as a procedural rule "conflates a procedural requirement necessary to implement a substantive guarantee with a rule that 'regulate[s] only the manner of determining the defendant's culpability.'" 136 S. Ct. at 734-35. The Supreme Court concluded that *Miller* was inherently substantive as it implicated a line of precedent concerned with the proportionality of certain punishments. In light of *Miller* recognizing the grave risks of exposing a defendant to a "punishment that the law cannot impose," the Supreme Court

[8] 136 S. Ct. 718 (2016).

held retroactive application was warranted. *See Id.* at 735. ("There are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show he falls within the category of persons whom the law may no longer punish… *See e.g. Atkins…* Those procedural requirements do not, of course, transform substantive rules into procedural ones.")(internal citation omitted).

As illustrated by *Miller* and *Montgomery*, the "[p]rotection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and *goes far beyond the manner of determining a defendant's sentence*." *Id* at 733. (emphasis added). *Contra Phillips v. State*, 299 So. 3d at 1021 ("[*Hall] merely clarified* the manner in which courts are to determine whether a capital defendant is intellectually disabled…")(emphasis added). The United States Supreme Court's jurisprudence logically follows intellectual disability claims. Given that *Hall*, like *Miller,* contains a procedural component, and is ultimately rooted in the Eighth Amendment's prohibition against imposing a particular sentence on a class of offenders, the procedures imposed by Florida courts cannot impede the enforcement of the substantive constitutional rule announced in *Atkins.*

Atkins is clear. Member of the class of individuals who are intellectually disabled *are categorically exempt from the death penalty*.

Hall v. Florida undeniable mandated the expansion of *Atkins* claims under Florida law to *reduce* the risk of executing an intellectually disabled defendant. While *Atkins* announced a categorical rule forcing the sentencer to consider intellectual disability before determining the permissibility of a death sentence, *Hall* built upon *Atkins* framework and forced Florida to broaden the class of qualifying intellectually disabled individuals. Consequently, retroactivity is necessarily invoked as the Constitution deprives States of the power to impose a death sentence when a rule has altered the class of persons that the law may punish.

This Court has misinterpreted federal law. Now the concerns of the *Atkins* and *Hall* Courts will come true. “Yet again, this Court has removed an important safeguard in maintaining the integrity of Florida’s death penalty jurisprudence. The result is an increased risk that certain individuals may be executed, even if they are intellectually disabled.” *Phillips v. State*, 299 So. 3d 1013,1024 (Fla. 2020) (Labarga, J. *dissenting).* As the circuit court indicated, “in terms of your general statement that the State may execute an intellectually disabled person, there's nothing for me to say that might not

very well be true." DS 394. The majority in *Phillips* weighed "Phillips's interest…against all the interests that support maintaining the finality of Phillips's judgment. The surviving victim, society-at-large, and the State all have a weighty interest in not having Phillips's death sentence set aside." *Id.* In dissent, Justice Labarga correctly points to the issue with this reasoning. "[W]e cannot simply be blinded by an interest in finality when that interest leaves open the genuine possibility that an individual will be executed because he is not permitted consideration of his intellectual disability claim." *Id.* at 1026. This Court should recognize that society at large has not benefited from the execution of ineligible persons by this State.

Just as it would be illegal to execute a person who was convicted of committing a murder as a fifteen-year-old and ***who failed to raise an Eighth Amendment challenge at the appropriate time***, *see Roper*, 543 U.S. at 568-69, or to execute a person who was convicted of rape but not murder and failed to raise a challenge at the appropriate time, *see Kennedy v. Louisiana*, 554 U.S. 407 (2008), so too it would be illegal to execute an intellectually disabled person who failed to raise his claim at the appropriate procedural time. *See, e.g., State ex re. Clayton v. Griffith*, 457 S.W.3d 735, 757 (Mo. 2015) (Stith, J., dissenting) ("[I]f [petitioner] is intellectually

disabled, then the Eighth Amendment makes him ineligible for execution … [I]f a 14-year-old had failed to raise his age at trial or in post-trial proceedings then [] would [it] be permissible to execute him for a crime he committed while he was a minor? Of course not; his age would make him ineligible for execution. So too, here, if [petitioner] is intellectually disabled, then he is ineligible for execution.").

Without Court intervention, Mr. Pittman **will** be executed. Mr. Pittman has an intellectual disability. This case is a proper vehicle to right this Court's past wrongs to save Mr. Pittman's life.

b. Mr. Pittman Has an Intellectual Disability. This Court Should Either Find Mr. Pittman Intellectually Disabled or Grant A Hearing to Determine Mr. Pittman's Intellectual Disability.

Mr. Pittman has a long history of mental difficulties and cognitive deficits. Family members reported that Mr. Pittman was a slow learner with a short attention span. In school, as early as age six, Mr. Pittman was placed in special education classes. Further, there was evidence that Mr. Pittman, during the sixth, seventh and eighth grades was in special education classes and classified as "educable mentally handicapped" and that he functioned on a low elementary level. PC3573-74. The record in Mr. Pittman's case already included evidence that Mr. Pittman's mental difficulties, previously

described as brain damage, appear to be "some congenital problem."[9] (R. 4438).

In 1967, a Stanford-Binet was administered to Mr. Pittman and obtained an IQ score of 70. In 1975, a Weschler Intelligence Scale for Children – Revised (WISC-R) was administered and Mr. Pittman obtained a score of 71. Both of these tests were administered while Mr. Pittman was at school, prior to the age of 18. A subsequent test resulted in a score of 95. The 95 was obtained by Dr. Dee at trial and is an outlier score, especially

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[9] The DSM-5 recognizes that intellectual disability can have different etiologies and can arise either from a genetic syndrome or arise in an acquired form, such as following an abrupt illness like meningitis or head trauma occurring in the developmental period. See American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, Intellectual Disability (Intellectual Developmental Disorder), p. 38 (5th ed. 2013). The DSM further provides, "When intellectual disability results from a loss of previously acquired cognitive skills, as in severe traumatic brain injury, the diagnoses of intellectual disability and neurocognitive disorder *may both be assigned*." Id.(emphasis added).

The courts in this case have relied heavily on Mr. Pittman's trial experts assigning a diagnosis of brain damage to Mr. Pittman's historic issues, but when taken under modern criteria and as a whole, it is clear that Mr. Pittman's "brain damage" rendered him intellectually disabled and that this was evident during the developmental period (prior to the age of 18). Further it must be noted that these diagnosis and presentations in court were presented prior to the advent of *Atkins*. At the time Mr. Pittman was sentenced to death, intellectual disability was not recognized as a bar to the imposition of the death penalty or acknowledged for the weighty mitigator that we recognize it to be today.

when compared to Mr. Pittman's scores prior to the age of 18.[10] The circuit court in this case expressed their skepticism regarding this score as follows: "I think it's a stretch to say there is enough evidence in this record to be confident to the extent required by law that his IQ was a 95." DS 394. Contrary to the State's argument that this 95 is an accurate picture of Mr. Pittman's ability, it should be discounted and held with extreme skepticism. "Courts must recognize, as does the medical community, that the IQ test is imprecise." *Hall* at 723.

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[10] Dr. Taub, when reviewing the raw data from Dr. Dee's testing, realized that an outdated WAIS was used. He also realized that the 95 IQ score was an abbreviated IQ score – not all the tests were administered for a full-scale score, which would be the normal practice. R2245. Based on his review, Dr. Taub opined that Dr. Dee's score was not a valid score. R2247. Importantly, from Dr. Taub's report:

> For test results to be considered valid, the Standards require all practitioners to adopt the latest iteration (revision) of a test within one-year of its publication. The WAIS was revised and replaced in 1981 by the Wechsler Adult Intelligence Scale- Revised (WAIS-R). J.S. administered the WAIS to Mr. Pittman in 1990, which was *nine years after* the release of the WAIS-R. Thus the administration of the WAIS in 1990 was a violation of ethical and professional guidelines for test administration and interpretation as set forth within the Standards and cannot be considered valid.

Dr. Taub's report. R249.

During postconviction proceedings, Mr. Martin McClain, Mr. Pittman's counsel at the time, sent Dr. Gordon Taub to evaluate Mr. Pittman. Dr. Taub's evaluation was supposed to "established a base line, a progression of how he looked to a mental health expert." R2278. As part of this baseline evaluation, Dr. Taub administered an IQ test to Mr. Pittman. That test yielded a score of 70, lower than Mr. Pittman's score of 95, which Mr. McClain had previously relied upon. Dr. Taub opined that this score of 95 was invalid due to the examiner, Dr. Henry Dee, using the wrong testing instrument. R245-257.

Further testing conducted by Dr. Taub matches a prior IQ testing conducted at school, before Mr. Pittman's 18th birthday. Dr. Taub reviewed various records from Mr. Pittman's childhood that clearly demonstrate Mr. Pittman's deficits and intellectual disabilities.

More recently, Dr. Barry Crown evaluated Mr. Pittman. Dr. Crown administered the Test of General Reasoning Ability (TOGRA). The TOGRA test assesses a major area of IQ measurement – reasoning and judgement. Mr. Pittman scored a 62 (with a 95% confidence interval between 58 and 72). Dr. Crown found that this score was consistent with Mr. Pittman's prior IQ scores of 70 and 71. Dr. Crown also opined that Mr. Pittman has significant

neurological impairment (brain damage) and significant problems dealing with language-based critical thinking.

Dr. Crown's recent assessment of Mr. Pittman corroborates the earlier IQ scores yielding 70 and 71. The false test administered by Dr. Dee should not be considered when evaluating Mr. Pittman.

The record is rich with evidence of Mr. Pittman's intellectual disability. Not just qualifying IQ scores, but also evidence of his subaverage functioning and issues with adaptive functioning. This Court should not ignore the evidence of Mr. Pittman's intellectual disability and allow him to present evidence of his intellectual disability.

c. Intellectual Disability Should Not Be Subject to Procedural Bars

"The Eighth Amendment prohibits certain punishments as a categorical matter." *Hall v. Florida,*572 U.S. 701, 708 (2014). Categorical bans exist to protect both the individual as well as the interests of society. *See e.g. Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986) (finding Eighth Amendment based categorical exemption not only protects the death-exempt individual but also protects "the dignity of society itself from the barbarity of exacting mindless vengeance[.]". The United States Supreme Court has *never* suggested that the Eighth Amendment prohibition on executing an

intellectually disabled person is subject to any sort of waiver or procedural bar or default. Just as it would be illegal to execute a person who was convicted of committing a murder as a fifteen-year-old and who failed to raise an Eighth Amendment challenge at the appropriate time, *see Roper*, 543 U.S. at 568-69, or to execute a person who was convicted of rape but not murder and failed to raise a challenge at the appropriate time, *see Kennedy v. Louisiana*, 554 U.S. 407 (2008), so too it would be illegal to execute an intellectually disabled person who failed to raise his claim at the appropriate procedural time. *See, e.g., State ex re. Clayton v. Griffith*, 457 S.W.3d 735, 757 (Mo. 2015) (Stith, J., dissenting) ("[I]f [petitioner] is intellectually disabled, then the Eighth Amendment makes him ineligible for execution … [I]f a 14-year-old had failed to raise his age at trial or in post-trial proceedings then [] would [it] be permissible to execute him for a crime he committed while he was a minor? Of course not. His age would make him ineligible for execution. So too, here, if [petitioner] is intellectually disabled, then he is ineligible for execution."). Notwithstanding any waiver or provision of Florida law, the Eighth Amendment requires that persons "facing that most severe sanction … have a fair opportunity to show that the Constitution prohibits their execution." *Hall*, 134 S. Ct. at 2001; see also *Walls v. State*, 213 So. 3d

340, 348 (Fla. 2016) (Pariente, J., concurring) ("More than fundamental fairness and a clear manifest injustice, the risk of executing a person who is not constitutionally able to be executed trumps any other considerations that this Court looks to when determining if a subsequent decision of the United States Supreme Court should be applied.").

The categorical bans that are recognized under the Eighth Amendment recognize the Amendment's "protection of dignity" that reflects "the Nation we have been, the Nation we are, and the Nation we aspire to." *Hall v. Florida*, 572 U.S. 701, 708 (2014). "A claim that a punishment is excessive", such as the execution of an intellectually disabled individual, "is judged not by the standards that prevailed in 1685 when Lord Jeffreys presided over the 'Bloody Assizes' or when the Bill of Rights was adopted, but by those that currently prevail." *Atkins v. Virginia*, 536 U.S. 304, 311 (2002). A State rule that "will frequently and predictably cause a factfinder to determine that an individual who in fact is intellectually disabled is not" manifestly does not meet the command of the Eighth Amendment.

No state-law waiver provision can stand in the way of this important constitutional function. Death-sentenced individuals "must have a fair opportunity to show that the Constitution prohibits their execution." *Hall*, 572

U.S. at 724. Just as it would unquestionably be unconstitutional for the State to invoke timeliness or res judicate as justification to execute individuals subject to other categorical exemptions or exclusions, *see e.g., Roper v. Simmons,*543 U.S. 551 (2005) (juveniles); *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (individuals without murder conviction), so too would it be unconstitutional to execute Mr. Pittman on the grounds that he failed to raise his claim at the "appropriate" procedural time or was "right too soon" by attempting to litigate before the consensus was reached. *See Sawyer v. Whitley*, 505 U.S. 333 (1992) (courts may hear otherwise defaulted claims where petitioner can show "by clear and convincing evidence that, but for a constitutional error," he would not be eligible for the death penalty).

"Once a State has granted prisoners a liberty interest, this Court [has] held that due process protections are necessary 'to insure that the state-created right is not arbitrarily abrogated.'" *Vitek v. Jones*, 445 U.S. 480, 488-89 (1980). Determining who benefits from a substantive right must not offend the Due Process Clause. In this matter, this court had originally granted Mr. Pittman a hearing on his intellectual disability claim.

Due to this State's erroneous interpretation of federal law, and its insistence on placing a time bar on intellectual disability claims, the State of

Florida **will** execute an intellectually disabled defendant, in violation of the United States Constitution. This Court should reconsider any previous precedent that would violate Mr. Pittman's rights to due process and would create an unacceptable risk under the Eighth Amendment of executing an individual that falls within one of the acknowledged categorical bars to the death penalty.

The record in Mr. Pittman's case already includes evidence that Mr. Pittman's mental difficulties, previously described as brain damage, appear to be "some congenital problem" (R. 4438). In 1967, a Stanford-Binet was administered to Mr. Pittman and obtained an IQ score of 70. In 1975, a Weschler Intelligence Scale for Children- Revised (WISC-R) was administered and Mr. Pittman obtained a score of 71. Furthermore, there is evidence in the record of this case that Mr. Pittman suffered from mental difficulties, previously described as brain damage, which appeared to be "some congenital problem." PC4438. This shows that the onset was before the age of 18. There is also evidence in the record of this case of Mr. Pittman's documented issues with adaptive functioning. Mr. Pittman's IQ score of 70 obtained on or about May 18, 2015, and Dr. Gordon Taub's

subsequent medical report interpreting the score according to current medical standards.

Hall recognizes that intellectual disability "is a condition, not a number." *Hall*, 572 U.S. at 723 (2014). The Florida Supreme Court found that *Hall* requires courts to consider all three prongs of intellectual disability in tandem and that no single factor should be dispositive of the outcome. *See Oats v. State*, 181 So. 3d 457, 459 (Fla. 2015). Thus, an intellectual disability claim may not be legally insufficient or positively refuted by the record even if the defendant's IQ scores are higher than 70. Mr. Pittman was denied his opportunity to demonstrate his intellectual disability and now the State of Florida will perform an unlawful execution.

Mr. Pittman is in a class of persons that are ineligible to be executed. At the time of Mr. Pittman's initial conviction, no such categorical exemption existed. Later, when there was such an exemption, the State of Florida misapplied the law and was so focused on a singular number to exclude an entire sect of the population of intellectually disabled persons, including Mr. Pittman. Thereafter, *Hall* was decided, giving Mr. Pittman hope that he would be able to show the court proof of his intellectual disability. Due to the cruelty of time and this Court reversing its decision in *Walls,* Mr. Pittman was once

again locked out of the courtroom and unable to put on evidence of his intellectual disability. It is an injustice to once again deny Mr. Pittman access to the courts, when his unlawful execution is looming.

d. Florida's Recent and Inconsistent Changes to the Law Regarding Intellectual Disability Result in Manifest Injustice and Applies the Law in an Arbitrary and Capricious Manner, in Contravention of the Eighth Amendment of the United States Constitution.

The bedrock Eighth Amendment principle by which all state rules of law governing capital punishment are judged is that they must distinguish among cases in such a way as to serve the purpose of ensuring that the death penalty is predicably inflicted only on the more morally culpable criminals. *See Godfrey v. Georgia*, 446 U.S. 420, 428 (1980) ("[I]f a State wishes to authorize capital punishment it has a constitutional responsibility to tailor and apply its law in a manner that avoids the arbitrary and capricious infliction of the death penalty."). A State rule that "will frequently and predictably cause a factfinder to determine that an individual who in fact is intellectually disabled is not" manifestly does not meet the command of the Eighth Amendment.

In *Hall v. Florida*, 572 U.S. 701 (2014), this Court found the Florida Supreme Court's application of its Intellectual Disability statute

unconstitutional under *Atkins v. Virginia*, 536 U.S. 304 (2002). In *Walls v. State*, 213 So. 3d 340 (Fla. 2016) (*per curiam).* This Court agreed that its prior statutory interpretation had unconstitutionally restricted *Atkins* claims to a smaller subgroup of individuals than recognized by the medical community and determined *Hall* to be retroactive. As a result, capital defendants who were denied under the unconstitutional pre-*Hall* framework were entitled to new, "holistic" review of their *Atkins* claims. However, a mere four years later, this Court retreated from the *Walls decision* and determined that *Hall* announced a new non-watershed rule for Eighth Amendment purposes and thus was not retroactive. *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020).

Mr. Pittman has been placed in the crosshairs of this Court's inconsistent interpretation of the law. Mr. Pittman was sentenced to death before the United States Supreme Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002). While testing prior to the *Atkins* decision showed that Mr. Pittman had an intellectual disability, the Courts had not yet recognized the categorical exemption from the sentence of death. When Mr. Pittman was able to raise his intellectual disability, the trial court summarily denied Mr. Pittman's claims, even though there is evidence of intellectual disability, due, in part, to the reversal of *Walls*.

On May 27, 2015, Mr. Pittman's counsel filed a successive Rule 3.851 motion, setting forth the results of the WAIS-IV; administered by Dr. Gordon Taub on May 18, 2015. The WAIS-IV administered by Dr. Taub showed Mr. Pittman had an IQ Score of 70. R154-63. According to Mr. Martin McClain, Mr. Pittman's counsel at the time, he was not alerted to Mr. Pittman's intellectual disability until the decision in *Hall.* Subsequently, Mr. Pittman filed an amended successive motion on February 9, 2016, as well as a Rule 3.800(a) motion. R179-245.

Following additional amendments to Mr. Pittman's successive motion, the trial court held a case management conference on November 9, 2017. Based upon the applicable law at the time, *Walls,* the trial court determined that an evidentiary hearing was appropriate for Mr. Pittman's intellectual disability claims.

While Mr. Pittman's case was pending in the trial court, this Court *sua sponte* revered its decision in *Walls* and determined that *Hall* announced a new non-watershed rule for Eighth Amendment purposed as thus was not retroactive. *See Phillips v. State*¸299 So. 3d 1013 (Fla. 2020). As a result, the trial court reversed its earlier order granting an evidentiary hearing on Mr. Pittman's claims and issued a Final Order Denying Defendant's Third

Amended Successive Motion for Postconviction Relief and Defendant's Motion Under Rule 3.800(a) Challenging His Death Sentence as Illegal.

The conclusion of *Phillips* that *Hall* announced a new non-watershed rule of federal Eighth Amendment law for purposes of *Teague v. Lane*, 489 U.S. 288 (1989) was error. In *Walls*, the court clearly articulated that its rationale stemmed from the analysis conducted in *Falcon v. State*, 162 So. 3d 954 (Fla. 2015) (rejecting the State's argument that *Miller v. Alabama*, 567 U.S. 460 (2012) only invalidated the statute as applied to a subgroup of people and thus constituted a procedural refinement that did not warrant retroactive application). Guided by *Miller,* the *Walls* court concluded that *Hall* similarly identified and prohibited a penalty (a death sentence) for an exempt class of offenders (individuals with IQ scores ranging above 70). The court recognized that while *Atkins* gives States the discretion to craft the procedures to determine intellectual disability, courts cannot ignore the medical community's diagnostic framework. Thus, at bare minimum, a court must not "view a single factor as dispositive of the conjunctive and interrelated assessment." *Hall*, 572 U.S. 701 at 2001.

In *Miller v. Alabama*, 567 U.S. 460 (2012), the United States Supreme Court explained that its opinion did not categorically bar a particular penalty

for a class of offenders or type of crime, rather it only mandated that the sentencer follow a certain process before imposing a particular penalty. Following this ruling, a Louisiana petitioner filed a motion for postconviction relief asserting *Miller* was substantive law. The Louisiana court disagreed and held *Miller* was not retroactive. In addressing the retroactive implications of *Miller* in *Montgomery v. Louisiana*[11], the United States Supreme Court acknowledged the procedural component of *Miller* but found that Louisiana's argument labeling *Miller* as a procedural rule "conflates a procedural requirement necessary to implement a substantive guarantee with a rule that 'regulate[s] only the manner of determining the defendant's culpability.'" 136 S. Ct. at 734-35. This Court concluded *Miller* was inherently substantive as it implicated a line of precedent concerned with the proportionality of certain punishments. In light of *Miller* recognizing the grave risks of exposing a defendant to a "punishment that the law cannot impose," this Court held retroactive application was warranted. *See id*. at 735 ("There are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show he falls within the category of persons whom the law may no longer punish... [] *See, e.g., Atkins*… Those procedural

[11] 577 U.S. 190 (2016).

requirements do not, of course, transform substantive rules into procedural ones.") (internal citation omitted).

As illustrated by *Miller* and *Montgomery*, the "[p]rotection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and *goes far beyond the manner of determining a defendant's sentence*." *Id*. at 733. (emphasis added); *Contra Phillips v. State*, 299 So 3d at 1021 ("[*Hall*] *merely clarified* the manner in which courts are to determine whether a capital defendant is intellectually disabled…") (emphasis added). Under this Court's jurisprudence, it follows that the same logic applies to intellectual disability claims. Given that *Hall*, like *Miller*, contains a procedural component, and is ultimately rooted in the Eighth Amendment's prohibition against imposing a particular sentence on a class of offenders, the procedures imposed by Florida courts cannot impede the enforcement of the substantive constitutional rule announced in *Atkins*. Thus, the procedures used to determine intellectual disability must allow for the consideration of other evidence, beyond IQ scores, to enable a court to resolve the question of whether an offender is, or is not, a member of the eligible class. *See e.g., Moore v. Texas,* 137 S.Ct. 1039, 1051 (2017). ("Mild

levels of intellectual disability…nevertheless remain intellectual disabilities").

Hall v. Florida undeniably mandated the expansion of *Atkins* claims under Florida law to reduce the risk of executing an intellectually disabled defendant. While *Atkins* announced a categorical rule forcing the sentencer to consider intellectual disability before determining the permissibility of a death sentence, *Hall* built upon *Atkins* framework and forced Florida to broaden the class of qualifying intellectually disabled individuals. Consequently, retroactivity is necessarily invoked as the Constitution deprives States of the power to impose a death sentence when a rule has altered the class of persons that the law may punish. Despite the *Walls* court identifying and understanding this principle, because of the decision in *Phillips*, it was determined that Mr. Pittman would not receive the same "benefits" from *Hall v. Florida* as other similarly situated capital defendants on collateral review received.

"Once a State has granted prisoners a liberty interest, this Court [has] held that due process protections are necessary 'to insure that the state-created right is not arbitrarily abrogated.'" *Vitek v. Jones*, 445 U.S. 480, 488-89 (1980). Determining who benefits from a substantive right must not offend

the Due Process Clause. In this matter, this court had originally granted Mr. Pittman a hearing on his intellectual disability claim. However, due to the Florida Supreme Court's ruling in *Phillips*, this was reversed because "*Hall* does not apply retroactively." *Pittman v. State*, 337 So. 3d 776 (Fla. 2022).

"Death is different." *Woodson v. North Carolina,* 428 U.S. 208, 305 (1976). The United States Supreme Court has made clear:

> Under the Eighth Amendment, the death penalty has been treated differently from all other punishments. [ ] Among the most important and consistent themes in the Court's death penalty jurisprudent is the need for special care and deliberation in decisions that may lead to the imposition of that sanction. The Court has accordingly imposed a series of unique substantive and procedural restrictions designed to ensure that capital punishment is not imposed without serious and calm reflection that ought to precede any decision of such gravity and finality.

Thompson v. Oklahoma, 487 U.S. 815, 856 (1988) (internal citations omitted). In *Furman*[12], the United States Supreme Court found that the death penalty, as applied throughout the United States, violated the Eighth and Fourteenth Amendment's prohibition of cruel and unusual punishment. *Id.* at 239-40. The Court did not find the death penalty itself was unconstitutional and later allowed the death penalty under narrow circumstances. *See Gregg v. Georgia*, 428 U.S. 153 (1976); *Proffit v. Florida*, 428 U.S. 242 (1976), *et*

[12] *Furman v. Georgia*, 408 U.S. 238 (1972).

al. Furman "recognize[d] that the penalty of death is different in kind from any other punishment imposed under our system of criminal justice. Because of the uniqueness of the death penalty, *Furman* held that it could not be imposed under sentencing procedures that created a substantial risk that it would be inflicted in an arbitrary and capricious manner." *Gregg*, 428 U.S. at 188.

The record in this case contains compelling evidence indicating that Mr. Pittman is actually intellectually disabled. Early on in school, it was evidence that Mr. Pittman had intellectual difficulties. Mr. Pittman was in a class for emotionally handicapped students and functioned at a lower level than his age in elementary school. PC3687-88. Further, during the sixth, seventh and eighth grades, Mr. Pittman was in special education classes and classified as "educable mentally handicapped" and that he functioned on a low elementary level. PC3573-74. In 1967, a Stanford-Binet test was administered to Mr. Pittman and obtained an IQ score of 70. R248. In 1975, a Weschler Intelligence Scale for Children- Revised (WISC-R) was administered and Mr. Pittman obtained a score of 71. Id. Both scores were obtained prior to the age of 18. Finally, on May 18, 2015, Dr. Gordon Taub conducted a neuropsychological examination of Mr. Pittman and obtained an

IQ score of 70. R254. Further, "[r]esults from the evaluation of adaptive functioning on the ABAS-3 found that Mr. Pittman has deficits in adaptive functioning". Dr. Taub opined that "Mr. Pittman meets the diagnostic criteria for an Intellectual Disability". R257.

Most recently, Mr. Pittman was evaluated again by Dr. Barry Crown. Dr. Crown administered a Test of General Reasoning Ability (TOGRA). The TOGRA is a speeded measure of reasoning ability and problem-solving skills. It assesses verbal, nonverbal, and quantitative reasoning and problem-solving skills, through tasks that are both inductive and deductive. Mr. Pittman scored a 62 and this correlated with his childhood IQ measures. Further, the score is consistent with and corroborates those earlier IQ assessments. Further, Dr. Crown administered the Repeatable Battery for the Assessment of Neuropsychological Status (RBANS). The RBANS is a brief, standardized test used to assess cognitive functioning. Again, this testing corroborates Mr. Pittman's longstanding history of significant neuropsychological impairment. It also shows that he has significant problems dealing with language-based critical thinking. The problems Mr. Pittman presents today are the same problems that were noted when he was a child. The presentation is consistent over the decades, however, courts

over time have fixated on a score that is demonstrably erroneous and an outlier to all the other historical information in this case[13].

[13] Mr. Pittman was originally tested by Dr. Henry Dee in 1991. Until Dr. Taub evaluated Mr. Pittman and the prior testing that was done, it was unknown that Dr. Dee's testing of Mr. Pittman was flawed. In Dr. Taub's report, which was filed with the trial court (R246-257), he sets forth his discovery that Dr. Dee's testing of Mr. Pittman's IQ in 1991 was invalid because Dr. Dee used the wrong test instrument. In the report, Dr. Taub sets forth this conclusion regarding Mr. Pittman as follows:

> Based on the materials reviewed, and my evaluation of Mr. Pittman, it is my opinion that Mr. Pittman meets the diagnostic criteria for an Intellectual Disability as set forth in the Florida Statutes in *Atkins*. Fla. Stat. § 921.13 7 (1) (2013), The Florida Supreme Court opinion in *Jones v. State*, 966 So. 2d 319, 326-27 (Fla. 2007), and the American Psychiatric Association.

Dr. Taub's report, R256.

Dr. Taub also found the following:

> For test results to be considered valid, the Standards require all practitioners to adopt the latest iteration (revision) of a test within one-year of its publication. The WAIS was revised and replaced in 1981 by the Weschler Adult Intelligence Scale - Revised (WAIS-R). J.S. administered the WAIS to Mr. Pittman in 1990, which was *nine years after* the release of the WAIS-R. Thus the administration of the WAIS in 1990 was a violation of ethical and professional guidelines for test administration and interpretation as set forth within the standards and cannot be considered valid.

Dr. Taub's Report R. 249.

Mr. Pittman should have had the opportunity to present a full and complete picture of his intellectual disability, just as others in the state of Florida have been allowed to do.[14] Further, Florida's treatment of intellectual disability and raising procedural bars and time bars to claims of intellectual disability "carries with it the risk that an intellectually disabled individual will be executed, which the Eighth Amendment prohibits." *See Clark v. State*, 2025WL1711003, 1 (Miss 2025). The United States Supreme Court has explicitly found that executing intellectually disabled individuals serves no penological purpose. *Atkins v. Virginia*, 536 U.S. 304, 318 (2022); *see also Moore v. Texas*, 581 U.S. 1, 13 (2017). Functionally, by changing Florida's interpretation of retroactivity, the state of Florida has set a bar that not only hinders claims of intellectual disability being heard but violates the Constitution's restriction on executing intellectually disabled individuals. It is a substantive right to not be executed if intellectually disabled, but the system as developed here in Florida, throws up roadblocks to adequate legal adjudication of claims. Mr. Pittman was denied a fair opportunity to show that

[14] Even though the Florida Supreme Court reversed and receded their decision in *Walls v. State*, 213 So. 3d 340 (Fla. 2016), Mr. Walls himself was still allowed by a circuit court in Florida to present and develop his evidence of intellectual disability after the advent of *Phillips.*

the Constitution prohibits his execution under the Eighth Amendment. In doing so, this Court is ignoring that "Death is different" and that Mr. Pittman part of the class of individuals that is categorically exempt from the death penalty, or at least the opportunity to present evidence of such. This arbitrary change in the law will result in Mr. Pittman, and other similarly situated defendants with intellectual disability to be executed in the State of Florida.

CONCLUSION

The circuit court erred as a matter of fact and law in summarily denying Mr. Pittman's claim that his execution would violate the Eighth and Fourteenth Amendments based on his intellectual disability. Further, this Court's reversal of the *Walls* decision and ruling that *Hall* is not retroactive results in manifest injustice and allows for the execution of intellectual disabled persons, including Mr. Pittman. Mr. Pittman has been denied his full ability to present evidence of an intellectual disability to the court. As a result, he will be unlawfully executed. This Court should remand to the circuit court for further proceedings in accordance with federal constitutional protections, including an evidentiary hearing on the merits and timeliness of this claim.

In light of the foregoing arguments, Mr. Pittman requests this Court stay his execution scheduled for September 17, 2025, reverse the circuit

court's decision, and grant sentencing relief, or, alternatively, remand the case for an evidentiary hearing on the merits.

CERTIFICATE OF COMPLIANCE AND FONT

WE HEREBY CERTIFY that the foregoing was generated in Arial 14-point font and otherwise formatted in compliance with Florida Rules of Appellate Procedure 9.045 and 9.210, and the Florida Supreme Court's Scheduling Order. Counsel further certifies that this entire Brief contains 9516 words.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Brief has been electronically filed with the Clerk of the Florida Supreme Court and electronically served upon the Clerk of the Circuit Court, the **Honorable J. Kevin Abdoney**, Judge of the Circuit Court, Administrative Judge of the Polk Felony Division, Tenth Judicial Circuit of Florida, P.O. Box 9000, Drawer J-165, Bartow, Florida 33831, (kabdoney@jud10.flcourts.org, cstevens@jud10flcourts.org, jreublin@jud10.flcourts.org, nsudzina@jud10.flcourts.org); **Assistant Attorney General, Timothy A. Freeland,** (timothy.freeland@myfloridalegal.com), **Assistant Attorney**

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32399 (warrant@flcourts.org, canovaK@flcourts.org); **Theresa Medler**, **Senior Appeals Specialist**, Tenth Judicial Circuit Court, (theresamedler@polk-county.net); **Lewis & Long Court Reporting**, (office@lewisandlong.com); and **Robert Meek, Emergency Applications Attorney**, Office of Clerk of Court, Supreme Court of the United States, (rmeek@supremecourt.gov, kratliff@supremecourt.gov) on this 31st day of August, 2025.

WE HEREBY FURTHER CERTIFY that a copy has also been furnished via U.S mail to **David J. Pittman**, DC#355971, Florida State Prison, P.O. Box 800, Raiford, Florida 32083, on this 31st day of August 2025.

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