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IN THE SUPREME COURT OF FLORIDA
CASE NUMBER: SC2025-1686
Lower Tribunal No. 1979-CF-773

BRYAN F. JENNINGS,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, STATE OF FLORIDA

INITIAL BRIEF OF THE APPELLANT

EXECUTION SCHEDULED FOR November 13, 2025, at 6:00P.M.

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REQUEST FOR ORAL ARGUMENT

Mr. Jennings respectfully requests oral argument pursuant to Florida Rule of Appellate Procedure 9.320. The resolution of the issues involved in this action will determine whether Mr. Jennings lives or dies. This Court has not hesitated to allow argument in other capital cases in a similar procedural posture. A full opportunity to air the issues through oral argument is appropriate in this case because of the seriousness of the claims at issue and the penalty that the State seeks to impose on Mr. Jennings.

JURISDICTIONAL STATEMENT

This is a timely appeal from the trial court's final order denying a successive motion for postconviction relief from a 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).

PRELIMINARY STATEMENT REGARDING REFERENCES

References to the current, post-warrant record on appeal are in the form R/[page number]. Generally, Bryan F. Jennings is referred to as Mr. Jennings throughout this brief.

STATEMENT OF THE CASE AND FACTS

Mr. Jennings was tried, convicted, and sentenced to death for murder of Rebecca Kunash three times: in 1980, 1982, and 1986. Mr. Jennings' first conviction and death sentence were reversed because his counsel was unable to cross-examine a witness due to a conflict of interest. *Jennings v. State*, 413 So. 2d 24 (Fla. 1982). Mr. Jennings' second conviction and death sentence were upheld[1], but the United States Supreme Court ("USSC") vacated the judgment and remanded for reconsideration in light of *Shea v. Louisiana*[2] and *Smith v. Illinois.*[3] *Jennings v. Florida*, 470 U.S. 1002 (1985). On remand, this Court ordered a new trial. *Jennings v. State*, 473 So. 2d 204 (1985).

After the third trial, Mr. Jennings was convicted of first-degree

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[1] *Jennings v. State*, 453 So. 2d 1109 (Fla. 1984).

[2] 470 U.S. 51 (1985) (holding that a recent opinion finding that criminal defendant's rights are violated by use of a confession obtained by police-instigated interrogation, without counsel present, after an attorney has been requested applied to cases pending on appeal at the time that ruling was decided).

[3] 469 U.S. 91 (1984) (once an accused in custody expresses his desire for counsel, the accused is not subject to further interrogation by authorities until counsel has been made available to him or unless he validly waives his earlier request for assistance of counsel).

murder[4] and the jury recommended death by an eleven to one vote. The trial judge sentenced Mr. Jennings to death on April 25, 1986.

Mr. Jennings appealed, and this Court affirmed the judgment and sentence. *Jennings v. State*, 512 So. 2d 169 (Fla. 1987). The conviction and death sentence became final when the USSC denied Mr. Jennings' petition for writ of certiorari. *Jennings v. Florida*, 484 U.S. 1079 (1988).

Mr. Jennings filed his first motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850[5] on October 23, 1989. The postconviction court denied the motion without holding an evidentiary hearing; Mr. Jennings appealed to this Court, which affirmed the denial but ruled that Mr. Jennings was entitled to certain public records and remanded to the postconviction court. Mr. Jennings also filed a state petition for writ of habeas corpus, which was denied. *Jennings v. State*, 583 So. 2d 316 (Fla. 1991).

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[4] Mr. Jennings was also convicted of kidnapping with intent to commit sexual battery, sexual battery, and burglary.

[5] All litigation in state and federal court in this matter was conducted through counsel. State court postconviction litigation was largely conducted by the late Martin McClain, as a member of the Capital Collateral Representative's office (CCR) and later in his private capacity.

On remand, Mr. Jennings filed an amended motion to vacate judgment and sentence, which was granted in part and denied in part. Mr. Jennings appealed this order on August 27, 1992, raising a single issue, that the circuit court improperly denied Mr. Jennings' public records request to the Florida Parole Commission. The Commission's files are not exempt from Chapter 119, Fla. Stat. This Court upheld the denial of relief on September 9, 1993. *Jennings v. State*, 626 So. 2d 1324 (Fla. 1993).

On September 24, 1993, CCR filed a Complaint for Disclosure of Materials on behalf of James Rose demanding the release of records from the Florida Board of Executive Clemency. The circuit court dismissed the complaint with prejudice on December 14, 1993. Mr. Jennings was one of the named Appellants in a collective Notice of Appeal of the denial filed on January 11, 1994. The Appellants raised a single issue: *Brady v. Maryland*[6] and the Due Process Clause of the Fourteenth Amendment require the Florida Board of Executive Clemency and Florida Parole Commission to release to Appellants all records of an exculpatory nature. This Court upheld the denial of

[6] 373 U.S. 83 (1963).

relief on November 10, 1994.

Mr. Jennings filed a Second Amended Motion to Vacate Judgment and Sentence on April 4, 1997. The postconviction court held an evidentiary hearing on October 30 and 31, 1997. The circuit court denied relief, and Mr. Jennings appealed to this Court, which affirmed the postconviction court's order. *Jennings v. State*, 782 So. 2d 853 (Fla. 2001). Mr. Jennings filed a petition for certiorari with the USSC, which was denied. *Jennings v. Florida*, 534 U.S. 1096 (2002).

Mr. Jennings filed his first petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in 2002; the Northern District Court of Florida denied the petition on September 29, 2005. *Jennings v. Crosby*, 392 F. Supp. 2d 1313 (N.D. Fla. 2005). The Eleventh Circuit affirmed the denial of habeas relief[7] and the USSC denied certiorari on March 31, 2008. *Jennings v. McNeil*, 552 U.S. 1298 (2008).

On April 8, 2008, Mr. Jennings filed his first successive postconviction motion pursuant to Florida Rule of Criminal Procedure 3.851. The motion was summarily denied, and Mr.

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[7] *Jennings v. McDonough*, 490 F.3d 1230 (11th Cir. 2007).

Jennings appealed to this Court, which upheld the denial. *Jennings v. State*, 36 So. 3d 84 (Fla. 2010).

Mr. Jennings filed a second successive postconviction motion on November 29, 2010, raising the claim that Mr. Jennings' sentence violates the Sixth and Eighth Amendments under *Porter v. McCollum*.[8] The circuit court summarily denied the motion. Mr. Jennings appealed to this Court, which affirmed the decision on appeal and granted Mr. Jennings the opportunity to file another successive postconviction motion raising claims based on an affidavit signed by trial witness Clarence Muszynski, which Mr. Jennings had previously raised in a motion to amend his second successive motion. *Jennings v. State*, 91 So. 3d 132 (Fla. 2012). Mr. Jennings pursued a petition for writ of certiorari with the USSC, which was denied. *Jennings v. Florida*, 568 U.S. 1100 (2013).

Mr. Jennings filed a third successive postconviction motion on June 25, 2012, raising the following claim: New evidence not previously available establishes that the State withheld favorable information from Mr. Jennings that shows that Muszynski was a

[8] 558 U.S. 30 (2009).

State agent when he spoke to Mr. Jennings in violation of the Fifth and Sixth Amendments, that the State violated its obligation under *Brady v. Maryland* to disclose favorable information to the defense, and the State violated its obligation under *Giglio v. United States*[9] to refrain from presenting and relying upon false evidence in a criminal prosecution.

The postconviction court denied the motion after an evidentiary hearing, and Mr. Jennings appealed to this Court, which affirmed the decision. *Jennings v. State*, 192 So. 3d 38 (Fla. 2015). The USSC denied a subsequent petition for writ of certiorari. *Jennings v. Florida*, 580 U.S. 857 (2016).

Mr. Jennings filed a fourth successive postconviction motion on October 20, 2016, based on the USSC decision in *Hurst v. Florida.*[10] The postconviction court denied relief without an evidentiary hearing, this Court affirmed. *Jennings. v. State*, 265 So. 3d 460 (Fla. 2018). The USSC denied review. *Jennings v. Florida*, 587 U.S. 990 (2019).

Mr. Jennings filed a second petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on December 28, 2018. This petition

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[9] 405 U.S. 150 (1972).
[10] 577 U.S. 92 (2016).

was based on the same witness recantation that the third postconviction motion was based on; the district court dismissed the petition for lack of subject-matter jurisdiction. *Jennings v. Inch*, No. 5:18-cv-281 (N.D. Fla. Mar. 6, 2020). The dismissal was affirmed on appeal. *Jennings v. Sec'y, Fla. Dep't of Corr.*, 108 F.4th 1299 (11th Cir. 2024). The USSC denied the subsequent petition for certiorari on March 31, 2025. *Jennings v. Dixon*, 145 S. Ct. 1472 (2025).

Governor Ron DeSantis signed a death warrant for Mr. Jennings on Friday, October 10, 2025; according to the docket stamp on the document, it was filed with the circuit court at 4:33 p.m. Also on Friday, October 10, 2025, this Court entered an Order directing "that all further proceedings in this case be expedited," and ordering that all proceedings in the circuit court be completed no later than 11:00 a.m. on Wednesday, October 29, 2025.

On Friday, October 10, 2025, the Office of the Attorney General ("OAG") filed its Notice of Appearance in the circuit court at 5:26 p.m., and its Notice of Appearance in this Court at 5:36 p.m. On that day, the OAG also filed an "Emergency Motion to Appoint CCRC-M as Postconviction Counsel," at 5:42 p.m. This was necessary because Mr. Jennings was unrepresented by counsel at the time of the

warrant signing; he had been unrepresented by state court counsel since the passing of his attorney, Martin McClain ("Mr. McClain").

The Office of the Capital Collateral Regional Counsel for the Middle Region of Florida ("CCRC-M") filed a limited Notice of Appearance and a Motion to Vacate the Warrant or Stay the Execution on Sunday, October 12, 2025, in the circuit court. At the time, CCRC-M had not yet been officially appointed.

The OAG filed a Motion for Scheduling Order at 10:54 a.m. on Monday, October 13, 2025. The Motion was based on this Court's Scheduling Order, and at that point, CCRC-M had not yet been officially appointed as counsel for Mr. Jennings. The circuit court's Order Appointing CCRC-M as Postconviction Counsel was entered at 12:12 p.m. on Monday, October 13, 2025. CCRC-M filed a Motion to Strike the State's Motion for Scheduling Order at 3:40 p.m. on Monday, October 13, 2025.

The circuit court entered an Order Setting Case Management Conference ("CMC") on Monday, October 13, 2025, at 2:15 p.m. The CMC took place at 10:00 a.m. on Tuesday, October 14, 2025. At the CMC, the circuit court set deadlines for all proceedings and pleadings subject to CCRC-M's standing objection to all deadlines based on the

post hoc appointment of counsel. The Court also set a hearing on CCRC-M's Motion to Vacate Death Warrant or Alternatively to Stay Warrant Proceedings, which was held at 10:00 a.m. on Wednesday, October 15, 2025. The circuit court filed its Scheduling Order at 6:25 p.m. on Tuesday, October 14, 2025, setting the deadline for the Motion to Vacate on Tuesday, October 21, 2025, at 12:00 p.m.

CCRC-M filed a Motion to Reconsider the Scheduling Order in the circuit court on October 16, 2025, which was denied the same day. CCRC-M also filed a Motion to Reconsider the Scheduling Order in this Court on October 17, 2025, which was also denied the same day.

The circuit court denied the Motion to Vacate Death Warrant or Alternatively to Stay Warrant Proceedings on October 16, 2025. holding that:

> [A]lthough the records involved in this case are substantial, Capital Collateral Counsel is not directed, nor is it permitted, to begin postconviction proceedings anew. Fla. R. Crim. P. 3.851 (h)(5). The Defendant has been continually represented by counsel in the subject case, either in state or federal court given the posture of the case at any time. Thus, any gap in state representation does not provide a basis on which to vacate the death warrant or stay the warrant proceedings. Further, the Defendant has already been provided the opportunity to subject the State's case to meaningful adversarial testing during trial

> and other appellate proceedings. Ultimately, the Defendant's due process rights to notice and an opportunity to be heard have been satisfied.

R/204. (internal citations omitted). Mr. Jennings filed a Petition Seeking Review of Nonfinal Order in a Capital Case on October 18, 2025. That Petition remains pending with this Court as of the date of this Initial Brief.

Mr. Jennings filed his Fifth Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death Warrant Signed on October 21, 2025 ("Fifth Successive Motion to Vacate"), and the State filed its Response to Defendant's Fifth Successive Motion for Postconviction Relief on October 22, 2025. In the motion, Mr. Jennings raised the following claims:

> **Claim 1:** The determination that executive clemency is not appropriate based on Mr. Jennings' 1988 clemency application, and the subsequent denial in 1989, without consideration of any mitigation developed in the nearly four (4) decades since, violates Mr. Jennings' rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments.
>
> **Claim 2:** The post-warrant appointment of counsel and failure to enter a stay of the proceedings renders the warrant proceedings invalid and in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments, and the corresponding provisions of the Florida Constitution.
>
> **Claim 3:** Florida's current capital sentencing scheme violates the Eighth and Fourteenth Amendments because

it lacks essential safeguards against arbitrary and capricious imposition of the death penalty.

On October 23, 2025, the circuit court held a *Huff*[11] hearing and subsequently entered an Order Denying Postconviction Evidentiary Hearing After Hearing Held Pursuant to Huff v. State on October 24, 2025. In the order, the circuit court found that an evidentiary hearing was not necessary, because the claims presented in Mr. Jennings' postconviction motion could be decided as a matter of law.

Subsequently, on October 28, 2025, the circuit court filed a more detailed Order Denying Defendant's "Fifth Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death Warrant Signed" ("Order Denying the Fifth Motion to Vacate").

It is Mr. Jennings' position that the circuit court should not have entered the final order, based on the prohibition contained in Fla. R. App. P. 9.142(c)(9)(B).

PRELIMINARY STATEMENT REGARDING THE CIRCUIT COURT'S ORDER DENYING THE FIFTH SUCCESSIVE MOTION TO VACATE

As noted above, CCRC-M filed a limited Notice of Appearance

[11] *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

and a Motion to Vacate the Warrant or Stay the Execution on Sunday, October 12, 2025. At the time, CCRC-M had not yet been officially appointed.

The circuit court held a hearing on the motion on Wednesday, October 15, 2025, and denied the Motion to Vacate Death Warrant or Alternatively to Stay Warrant Proceedings on October 16, 2025. CCRC-M filed a Petition with this Court seeking review of the circuit court's nonfinal order on October 18, 2025. The State filed its response on October 21, 2025; CCRC-M filed the reply on October 27, 2025.

The petition seeking review of a nonfinal order in a capital case remained pending on the day the circuit court entered its order denying an evidentiary hearing in this matter; it also remained pending when the circuit court entered its final order denying relief on the Fifth Successive Motion to Vacate.

Florida Rule of Appellate Procedure 9.142(c)(9)(B) provides:

> During the pendency of a review of a nonfinal order, unless a stay is granted by the supreme court, the lower tribunal may proceed with all matters, **except that the lower tribunal may not render a final order disposing of the cause pending review of the nonfinal order**.

(emphasis added). Because the circuit court is in violation of Fla. R. App. P. 9.142(c)(9)(B), the Order Denying the Fifth Motion to Vacate should be stricken or at the very least held in abeyance until this Court rules on its review of the nonfinal order; in which case these appellate proceedings should also be held in abeyance.

Given the deadlines set by this Court, and in an abundance of caution, Mr. Jennings files this Initial Brief.

SUMMARY OF ARGUMENT

I. The Governor's decision to deny Mr. Jennings clemency was based on wholly incomplete information that only covered the first third of his life. Permitting this incomplete and elementary clemency review to stand would be a miscarriage of justice that violates Mr. Jennings' rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions in the Florida Constitution.

II. The State violated Florida Statutes and the United States and Florida Constitutions when it failed to ensure Mr. Jennings had continuous state postconviction counsel; this violation denied Mr. Jennings due process of law and prevented him from having meaningful access to state courts. Appointing brand-new counsel

post-warrant and forcing expedited litigation furthered the violations, making the warrant procedure in this case constitutionally invalid.

III. Florida's capital-punishment regime, as amended and applied, violates the Eighth and Fourteenth Amendments because it no longer meaningfully narrows death eligibility, ensures reliable sentencing, or provides transparency in sentencing, clemency proceedings, the death warrant selection process, or lethal injection protocols.

STANDARD OF REVIEW

Because the circuit court denied postconviction relief without an evidentiary hearing, this Court must accept the factual allegations presented in Mr. Jennings' motion and in this appeal as true to the extent that they are not conclusively refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). Further, this Court "review[s] the trial court's application of the law to the facts *de novo*." *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008). A postconviction court's decision whether to grant an evidentiary hearing is likewise subject to de novo review. *Rose v. State*, 985 So. 2d 500, 505 (Fla. 2008).

ARGUMENT

ISSUE I: THE CIRCUIT COURT ERRED IN DENYING THE CLAIM THAT THE DETERMINATION THAT EXECUTIVE CLEMENCY IS NOT APPROPRIATE BASED ON MR. JENNINGS' 1988 CLEMENCY APPLICATION, AND THE SUBSEQUENT DENIAL IN 1989, WITHOUT CONSIDERATION OF ANY MITIGATION DEVELOPED IN THE NEARLY FOUR (4) DECADES SINCE, VIOLATES MR. JENNINGS' RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS.

Before **any** state or federal postconviction review commenced in Mr. Jennings' case, Mr. Jennings' clemency application had already been denied. In the **four** decades between his conviction and the pending death warrant, Mr. Jennings' clemency presentation remained unchanged, without any reconsideration. Despite all of this, the Governor determined executive clemency was not appropriate in Mr. Jennings' case. Additionally, and even more troubling, it seems Mr. Jennings was either not permitted to update his clemency application because his clemency attorney passed away or because his clemency attorney passed away, he fell through the cracks *again*. See Composite Exhibit 1; *See also*, Issue II. Other, similarly situated individuals, were permitted the opportunity to update an otherwise stale clemency application, but Mr. Jennings was precluded. *Id.* This is a violation of Mr. Jennings' rights under

the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions in the Florida Constitution.

Mr. Jennings has the right to due process in his clemency proceeding under the Fourteenth Amendment. *See Ohio Adult Parole Authority, et al. v. Woodard*, 523 U.S. 272 (1998). Although subsequent cases have emphasized "minimal" procedural safeguards in state clemency proceedings, Mr. Jennings' case is amongst the "extreme situations" in which the clemency process has been rendered meaningless, necessitating judicial intervention. *Gissendaner v. Comm'r, Georgia Dept. of Corr.*, 794 F.3d 1327, 1331 (11th Cir. 2015). Because Mr. Jennings' clemency application was denied nearly four ***decades*** ago**,** well before this death warrant was contemplated, he was arbitrarily denied access to the clemency process. In the subsequent years, he has been left with no opportunity to be heard, despite this being one of the "minimal" procedural safeguards guaranteed in *Woodard*. 523 U.S. at 290.

"The heart of executive clemency" is to allow the executive "to consider a wide range of factors ***not comprehended by earlier judicial proceedings*** and sentencing determinations." *Id.*, at 280-

81. (emphasis added). Clemency is intended as a "fail-safe in our criminal justice system." *Harbison v. Bell*, 556 U.S. 180, 192 (2009). Mr. Jennings' clemency was denied before any postconviction proceedings. Deeming that executive clemency was not appropriate based on stale information is, in and of itself, inappropriate. To execute Mr. Jennings after excluding him from the process for decades renders his sentence, and his imminent execution, cruel and unusual under the Eighth Amendment.

In the 36 years since Mr. Jennings' clemency was denied, the world has changed. The Diagnostic and Statistical Manual of Mental Disorder has been revised four times (1994, 2010, 2013, and 2022).[12] The decade after his clemency was denied was coined "The Decade of the Brain" because of the numerous scientific accomplishments in the area of neuroscience.[13] When the State denied Mr. Jennings' clemency, the internet was nonexistent, GPS was not operational, the International Space Station had not been constructed, DVDs were not publicly available, Automated teller machines (ATMs) were not

[12] https://psychiatryonline.org/dsm/dsmPreviousEditions
[13] https://en.wikipedia.org/wiki/Decade_of_the_Brain

universal, and DNA was not widely used in criminal law.[14] Since his clemency was denied, *Atkins v. Virginia*[15] and *Roper v. Simmons*[16] barred execution for certain categories of individuals and Florida's Rules of Executive Clemency have been revised countless times.[17] In the 36 years since Mr. Jennings was denied clemency, six different governors have held office in Florida. Thus, any information in Mr. Jennings' clemency application is based on outdated diagnoses, outdated neuroscientific evidence, outdated recitations of the law and Rules of Executive Clemency, without the benefit of the wealth of

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[14]https://en.wikipedia.org/wiki/1990s_in_science_and_technology.

[15] 536 U.S. 304 (2002) (Finding the execution of "mentally retarded" defendants violates the Eighth Amendment). Even in the twenty-three (23) years since *Atkins* was decided, the world has changed, as evidenced by its use of "mentally retarded."

[16] 543 U.S. 551 (2005) (Finding the execution of those who committed their crimes as juveniles violates the Eighth Amendment). In the twenty years since *Roper* was decided, great advances have been made in the areas of neurodevelopment, leading to great advocacy for an extension.

[17] Rule 15 was specifically revised in June 22, 1992 and the entirety of the Rules were revised in December 29, 1994, January 7, 1997, June 14, 2001, March 27, 2003, June 20, 2003, December 9, 2004, April 5, 2007, March 9, 2011, January 21, 2020, and March 10, 2021.

information found on the internet, and without review from at least five different governors.[18]

The circuit court denied Mr. Jennings relief on this claim and an evidentiary hearing to further present fact-based mitigation. The circuit court separated its denial into three areas: that this claim is time-barred, that there is no constitutional right to claim ineffective assistance of clemency counsel, and that the concerns over the failure to update Mr. Jennings' clemency application in the last 36 years are meritless. R/434-37.

Firstly, the court misconstrued any arguments suggesting that Mr. Jennings raised ineffective assistance of clemency counsel. Although Mr. Jennings did notate mitigation that clemency counsel forewent in their clemency application, it was merely an examination of all the outstanding mitigation that was not known nor considered

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[18] As CCRC-M's request for public records related to clemency were denied, it is unknown whether Governor DeSantis reviewed the clemency information or based his decision on the prior denial by Governor Robert Martinez. All the denial stated was that "the Governor has denied your clemency," but the question remains – which Governor. *See* Composite Exhibit 1.

by the Clemency Board.[19] Some of the unused mitigating circumstances that were available at the time of the 1989 denial of clemency, and thus could have been included in an update, include: his unstable childhood fraught with verbal and physical abuse, early exposure to drugs and alcohol, emotional negligence,[20] complications during his birth,[21] developmental concerns,[22] and neurological

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[19] Per the Rules of Executive Clemency, the Clemency Board consists of the Governor and members of the Cabinet, two of whom are necessary to grant clemency.

[20] After experiencing years of abuse by various men in his mother's life, Mr. Jennings' mother moved out of state, leaving him with his aunt. After his mother left, Mr. Jennings' aunt reported behavioral issues. With the various advancements that have occurred over the years, a deeper exploration of these circumstances may have translated into a trauma diagnosis or associating these reported behavioral issues as a response to trauma and perceived abandonment.

[21] While pregnant, Mr. Jennings' mother reported an amniotic sac rupture. Despite this rupture occurring early in the morning, his mother continued working. Whether based on advanced medical knowledge or knowing more about the complications experienced during labor, his legal team, utilizing a medical expert, would have inquired further into the consequences of this rupture and incorporated that information into an updated clemency application.

[22] Although Mr. Jennings learned to walk early, he learned to talk late. He did not exhibit typical physical reflexes for infants, often straightening his legs and falling forward onto his face without any instinct to lift his arms to catch himself. Mr. Jennings' continued to exhibit poor motor skills, including struggling with depth perception and difficulty with grip and dexterity when writing. Whether based on advanced medical knowledge, or just knowing more about these developmental delays, his legal team, utilizing a medical expert,

deficits triggered by repeated head trauma during his infancy.[23]

Furthermore, the past clemency application mischaracterized Mr. Jennings's life. Rather than emphasize the absence of any father figure, an updated clemency application would have acknowledged Mr. Jennings' "father figures," such as the men who came into his life like a revolving door, who drank heavily, who caused emotional and financial distress to his family, who verbally berated him, who degraded his mother in his presence, and who physically abused. An updated clemency application would have noted that, while Mr. Jennings was described as a rambunctious, energetic, and attention-seeking child, he did not exhibit problematic behavior until he lived with these "father figures."

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would have inquired further into the causes and consequences of these delays and incorporated that information into an updated clemency application.

[23] Whether based in his developmental delays or resulting from other trauma in his life, Mr. Jennings was described as having a permanent knot on his forehead from hitting it so many times. In the 36 years since his clemency was denied, with the advances in science and medicine, Mr. Jennings' could have or should have been evaluated for potential neurological deficits. Despite evidence of this trauma, no brain scans have been discovered in the documents provided to CCRC-M. Neurological deficits are highly mitigating information.

Had any of these avenues been explored further, this mitigation would have undoubtedly yielded beneficial and updated diagnoses. Instead, the Clemency Board relied on outdated diagnoses, such as passive aggressive personality disorder, and outdated qualifications like mentally disordered sex offender ("MDSO"). Notably, passive aggressive personality disorder has not existed since the DSM-3, having been removed because the diagnosis lacked scientific validity and insufficient research.[24] Thus, through the years, and the various recitations of the DSM, Mr. Jennings' diagnoses from 1989 have been rendered useless. Additionally, with the advances in our understanding of psychology, the brain, mental health, and the impacts of abuse, neglect, and abandonment on one's development, amongst other areas of advancements in the past 36 years, a psychological expert would likely identify more beneficial diagnoses, such as post-traumatic stress disorder, a neurocognitive dysfunction, or link Mr. Jennings' behaviors to the chaotic and

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[24] American Psychiatric Association, Diagnostic and statistical manual of mental disorders (5th ed.)(2013); C.J. Hopwood, L.C. Morey, J.C. Markowitz, A. Pinto, A.E. Skodol, J.G. Gunderson, M.C. Zanarini, M.T. Shea, S. Yen, T.H. McGlashan, E.B. Ansell, C.M. Grilo, C.A. Sanislow, *The construct validity of passive-aggressive personality disorder*, Psychiatry, Fall 2009.

abusive environment to which he was exposed, any of which would have yielded more sympathy from the Clemency Board than those presented.[25] Due process promises Mr. Jennings the opportunity to be heard. Mr. Jennings deserves the opportunity to disclose any current mental health diagnoses and events from the past 36 years.

Additionally, in the past 36 years, Mr. Jennings has established numerous new character references, has met countless supporters willing to write letters on his behalf, and has had thousands of experiences that could be incorporated into an updated statement.[26] For example, in the nearly 45 years that Mr. Jennings has been on death row, he has only had a single disciplinary infraction resulting in any punishment, and nominal punishment at that. Any updated clemency application would include various statements by the prison guards and inmates to exemplify that he has been, by all accounts, a model prisoner.

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[25] With a better grasp of the records, than the emergency appointment of CCRC-M and the truncated warrant schedule permitted, a psychologist would have produced a report detailing their opinion on a more appropriate, and current, diagnosis.

[26] The Rules of Executive Clemency permits the inclusion of these supporting documents.

Since 1989, Mr. Jennings could have feasibly reapplied for clemency seven (7) times. In those reapplications, all this life history could have been revealed, yet no such reapplications were ever submitted nor considered. The Governor deemed the 1989 information sufficiently appropriate to deny his clemency. People change. Clearly, Mr. Jennings has changed, having continuously matured, but the Clemency Board is none the wiser.

Having all this information, the circuit court incorrectly deemed Mr. Jennings' concerns over the failure to update his clemency application in the last 36 years meritless. R/436-37. The circuit court cited *Zakrzewski v. State*, 415 So.3d 203, 211 (Fla. 2025) to highlight the importance of separation of powers and not second-guessing the executive branch. *Id*. Zakrzewski's clemency was denied in 2007, less than 20 years before his execution. *Zakrzewski,* 415 So.3d at 211. The years since Mr. Jennings' clemency denial nearly doubled that. Considering the facts in *Zakrzewski*, namely that his clemency application had been completed in this century, it may not have been the appropriate time to second-guess the executive branch. Mr. Jennings case differs from *Zakrzewski*. The amount of time since Mr. Jenning's denial is appalling.

Furthermore, the executive branch in Florida has been bestowed greater power than any other in this Nation. The Florida Governor is one of only two governors permitted sole discretion to issue an execution warrant, the other being the Pennsylvania Governor, who does not utilize this discretion.[27] On top of this unfettered discretion to issue an execution warrant, the Florida Governor has the sole discretion to deny clemency.[28] The Governor's unfettered power has persevered with rulings like those *Zakrzewski,* which deprived this Court of the opportunity to second-guess the executive branch. *Id.* Full and unencumbered discretion to issue a death warrant, coupled with the opacity of the clemency and warrant processes violates the separation of powers and begs for this Court's intervention.

It is this Court's "constitutional responsibility to ensure the death penalty is administered in a fair, consistent and reliable manner[.]" *Arbelaez v. Butterworth*, 738 So. 2d 326, 326 (Fla. 1999).

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[27] Pam Quanrud, *DPI Analysis: Death Warrants Under a Spotlight*, Death Penalty Information Center, September 08, 2025, https://deathpenaltyinfo.org/dpi-analysis-death-warrants-under-a-spotlight.

[28] Per the Rules of Executive Clemency, the Governor has unfettered discretion to deny clemency.

Between the extensive time since Mr. Jennings' clemency denial and the unchecked powers bestowed onto the executive branch, the death penalty is not being administered in a fair, consistent or reliable manner – particularly in this instance.

Lastly, the circuit court denied this claim by incorrectly finding it time barred. R/435. Clemency is supposed to be the ***final*** protection against execution. In 2013, the Florida Legislature promulgated, and Governor Scott signed the Timely Justice Act ("TJA"), Fla. Stat. § 922.052, which states, in part:

> (2)(a) The clerk of the Florida Supreme Court shall inform the Governor in writing certifying that a person convicted and sentenced to death, before or after the effective date of the act, has:
> 1. Completed such person's direct appeal and initial postconviction proceeding in state court and habeas corpus proceeding and appeal therefrom in federal court; or
> 2. Allowed the time permitted for filing a habeas corpus petition in federal court to expire.
> (b) Within 30 days ***after*** receiving the letter of certification from the clerk of the Florida Supreme Court, the Governor shall issue a warrant for execution ***if*** the executive clemency process has concluded, directing the warden to execute the sentence within 180 days, at a time designated in the warrant.

(emphasis added).

Mr. Jennings never received an updated clemency proceeding at the conclusion of his postconviction proceedings as contemplated by the TJA. A capital postconviction defendant cannot adequately invoke the procedural protections of the "fail-safe" of our criminal justice system until the conclusion of their postconviction proceedings, which is clearly called for under the TJA. See *Harbison v. Bell*, 556 U.S. 180, 192 (2009) (quoting *Herrera v. Collins*, 506 U.S. 390, 415 (1993)). Furthermore, other similarly-situated individuals, either (1) have not receive a death warrant or (2) received a death warrant after the Governor's initiation of a new clemency proceeding. *See* Composite Exhibit 1 (reflecting renewed clemency proceedings for individuals similarly situated to Mr. Jennings—Kayle Bates and Stephen Booker).

The circuit court erroneously found that Mr. Jennings has not demonstrated any exceptions under Florida Rule of Criminal Procedure 3.851 ("3.851") (d)(2). R/435. This claim fits squarely into those exceptions and as well as those enumerated in 3.851 (e)(2). Under (d)(2)(a), 3.851 provides an exception when the facts could not have been ascertained by the exercise of due diligence. Secondly, section (e)(2) of 3.851 invokes the principle of good cause. It would

have been impossible to predict that the 1989 denial would be relied upon in 2025. No amount of due diligence could have ascertained that a clemency claim should have been raised before Mr. Jennings' direct appeal, during his various postconviction proceedings, or during any of the subsequent appeals therefrom in federal court. The TJA clearly intended for clemency to be the final step.

Since clemency is meant to be the final step in the postconviction process, any earlier claims would have undoubtedly been deemed unripe. At a minimum, in an effort the avoid this argument, good cause exists to have awaited the signing of a warrant, as precedent suggested that his clemency would have been updated. Additionally, Mr. Jennings did not have state court counsel during the last three years to raise such a claim, should the reliance on his 1988 clemency application have become apparent. See Issue II. Thus, any clemency claims were most appropriately raised after a death warrant was signed, as it was here.

A decision is only as good as the information supporting it. Here, the Governor's decision to deny Mr. Jennings clemency was based on wholly incomplete information that covered just one third of his life. Permitting this incomplete and elementary clemency review

to stand would be a miscarriage of justice that violates Mr. Jennings' rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions in the Florida Constitution. This Court must grant a stay of execution and remand for an evidentiary hearing on this largely fact-based claim.

ISSUE II: THE POST-WARRANT APPOINTMENT OF COUNSEL AND FAILURE TO ENTER A STAY OF THE PROCEEDINGS RENDERS THE WARRANT PROCEEDINGS INVALID AND IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION, AND FLORIDA STATUTES.

The State and the circuit court have persisted in misinterpreting Chapter 27 of the Florida Statutes, stating that Mr. Jennings "is not entitled to representation in between postconviction proceedings." R/438. In so holding, the circuit court cites to *Asay v. State*,[29] stating that Fla. Stat. § 27.710 "does not mandate active investigation between postconviction proceedings." R/438.

While *Asay* indeed holds that continuous, active investigation was not mandated by statute or due process, what the State and the

[29] 210 So. 3d 1, 27-28 (Fla. 2016).

circuit court missed from that opinion was the next sentence in the opinion: "Instead, **counsel is only required to represent the defendant 'until the sentence is reversed, reduced, or carried out or until released by order of the trial court**." *Asay*, at 28, quoting Fla. Stat., § 27.710(4). (emphasis added).

In its Emergency Motion to Appoint CCRC-M as Postconviction Counsel, the State acknowledges this requirement:

> The State submits that this Court should promptly appoint the Office of Capital Collateral Regional Counsel – Middle District [sic] for Jennings. Florida law requires capital defendants to be represented by state postconviction counsel, and it directs the Office of Capital Collateral Regional Counsel to represent "each person convicted and sentenced to death" for the purpose of raising collateral actions. § 27.702(1), Fla. Stat. (2025). **That representation shall continue "throughout all postconviction capital collateral proceedings."** § 27.711(2), Fla. Stat. (2025).

R/41. (emphasis added).

The State cannot now turn around and deny that which they acknowledged mere weeks ago when the State was scrambling to have state postconviction counsel appointed for Mr. Jennings after the governor signed his death warrant. The State's attempt to deny that Mr. Jennings was denied due process and access to the courts

through the failure to have state postconviction counsel appointed after prior counsel passed away is unequivocally wrong in principle and practice.

Further, the State's attempt to excuse this failure by asserting that Mr. Jennings had federal counsel is inapposite and of no moment.[30] The Florida Statutes and this Court's opinion in *Asay* make it clear that state court postconviction representation is required "throughout all postconviction capital collateral proceedings." Fla. Stat. § 27.711(2). Further, the Florida Rules of Criminal Procedure state that

> After the filing of a notice of appearance, Capital Collateral Regional Counsel, Registry Counsel, or a private attorney **must represent the defendant in the state courts until a judge allows withdrawal or until the sentence is reversed, reduced, or carried out, regardless of *whether another attorney represents the defendant in federal court.***

Fla. R. Crim. P. 3.851(b)(5). (emphases added). As the State noted at the hearing on the Motion to Vacate Death Warrant, or Alternatively

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[30] "Up until a couple of months ago, Mr. Jennings was actively litigating his second successive . . . Federal habeas petition in Federal Court. . . . So Mr. Jennings has been actively represented by counsel and he has been actively litigating this case for literally decades." R/1066-67.

to Stay the Proceedings, "I think it's important to note that the death warrant is not the initiation of a new proceeding, it does not reset the case to day one." R/1069. The State cannot have it both ways when it comes to the denial of Mr. Jennings' due process rights.

According to the statutes and rules, when state postconviction counsel is appointed after this Court affirms the judgment and sentence on direct appeal, counsel has a full year to gather information about the case from the courts, trial and appellate counsel, all of the investigating agencies, the client, his friends and family, and anyone that was involved in the prosecution. State postconviction counsel continues to represent this client until "the sentence is reversed, reduced, or carried out." *Id.* This process takes decades, and counsel remains in touch with their client throughout the entire process, regardless of whether counsel is actively investigating or litigating at any given time.

In order to appropriately prepare for and competently conduct litigation under the time constraints of an active death warrant, counsel should have at least represented the client for more than a week. When representing a person subject to a death warrant, counsel should have received the records necessary to raise

postconviction claims and had the opportunity to conduct more than a cursory review of those records; should have reviewed trial counsel's files and notes, should have reviewed the trial transcripts, and the records on appeal. Counsel should have spoken to the client more than twice. Criminal defendants are human beings, no matter what they are accused or convicted of. It is important for counsel to establish a relationship of trust with any client, it is exponentially more important when that client is sentenced to death and is mere weeks away from execution. None of that is happening in this case, because CCRC-M was appointed after the death warrant was signed and had no information regarding Mr. Jennings from any source.

In all of the warrants that were signed in recent memory, even if the original attorneys who began the postconviction process were no longer with CCRC, there exists a level of institutional knowledge that assists the current attorneys, not to mention that all of the records have been received, reviewed, and summarized previously. Obtaining records and information from federal counsel is not a substitute for the knowledge derived from a years-long personal or institutional relationship. However, this is not a normal warrant situation. The knowledge necessary to represent a man under a death

warrant cannot be gained in less than a week. In this unique situation, it is absurd to believe – and for the State to assert - that counsel was able to competently represent Mr. Jennings in accordance with Florida Statutes and rules of ethics, and ensure his constitutional rights are not being trampled in the State's race to the execution chamber.

For the last three years, the State failed to ensure Mr. Jennings had state postconviction counsel in accordance with Florida's statutes and rules. Only *after* the death warrant was signed did the State move to appoint CCRC-M—an agency and attorneys with no knowledge of Mr. Jennings or his case—as counsel.

Florida's actions relating to Mr. Jennings' postconviction procedure after his state postconviction attorney passed away does not comport with due process because the process did not provide Mr. Jennings adequate notice and opportunity to be heard pre- and post-deprivation on issues that manifested from the time counsel passed three years ago, to this date. *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner"); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542

(1985) (due process entails "notice and opportunity for hearing appropriate to the nature of the case"); *see also Asay* at 27 ("[d]ue process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided").

As to notice, Mr. Jennings was left unrepresented for over three years and had not received a clemency proceeding following his 2013 certification pursuant to the TJA. *See* Fla. Stat. § 922.052 (2)(b) ("Within 30 days after receiving the letter of certification from the clerk of the Florida Supreme Court, the Governor shall issue a warrant for execution if the executive clemency process has concluded, directing the warden to execute the sentence within 180 days, at a time designated in the warrant."). Mr. Jennings had no notice that his execution would be scheduled, based on the current pre-warrant process, nor did he have an attorney to advise him that the governor could sign his death warrant without first providing a post-TJA clemency proceeding. Because of this, Mr. Jennings has not been able to meaningfully avail himself of the warrant litigation process to which he is entitled.

Because of this gross due process violation, Mr. Jennings is unable to be meaningfully heard in the time the state courts have

allotted him to challenge his conviction and sentence before his execution. Normally, CCRC-M has at least represented the client for more than five days, has received the records necessary to raise postconviction claims, has reviewed the record on appeal, has spoken to the client, and has seen mitigation records.

Since being appointed to the case, CCRC-M has received over 76,000 pages of records. CCRC-M has been unable to learn the case, investigate and develop claims, and draft a fully pleaded Rule 3.851 motion to vacate in the seven days between appointment and the date the motion was due. The State's assurances that Mr. Jennings' case has been "thoroughly litigated" do nothing to assuage CCRC-M's concerns, and reviewing a lengthy list of the previous litigation is not a substitute for actual knowledge.

This conflicts with counsel's ethical and statutory obligations. *See* Fla. Stat. § 27.711(12) (postconviction counsel must provide quality representation); Fla. Bar. R. 4-1.1 ("A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."); Comment to Fla. Bar. R. 4-1.1 ("Competent handling of a particular matter

includes....adequate preparation. The required attention and preparation are determined in part by what is at stake.”).

Mr. Jennings went unrepresented in state court for three years. The post-warrant appointment of total strangers to Mr. Jennings and his case has rendered the entire warrant process meaningless, because the actions contemplated in the statutory and court-ordered post-warrant schemes cannot be accomplished by newly appointed counsel. Appointing unfamiliar counsel after a warrant was signed is tantamount to leaving Mr. Jennings unrepresented at this most critical juncture of litigation.

As counsel argued at the October 15, 2025, hearing on Mr. Jennings’ Motion to Vacate the Death Warrant or to Stay the Warrant Proceedings, they had no idea what claims could be raised, even within the confines of a post-warrant 3.851 litigation because they did not have enough time to determine whether claims had been raised or waived, properly preserved or foreclosed, whether there was any newly-discovered evidence or new claims to be raised; in short, CCRC-M was forced to file a motion with all of the claims relating to deficiencies in the last-minute appointment without having sufficient

time to determine the appropriate substantive claims that could have been brought before the circuit court.

The system the State outlines, with no right to counsel "between postconviction motions," aside from being an incorrect statement of Florida law, exposes defendants to extreme risk of a procedural bar for claims raised on either newly discovered evidence or changes in law. The State places the burden on the defendant to develop and file newly discovered evidence or change in law claims, but denies the defendant the means and opportunity to do so. This is especially true given Florida's rule forbidding self-representation by capital postconviction defendants and eviscerates due process.

The State violated its own laws as well as the United States and Florida Constitutions when it failed to ensure Mr. Jennings had continuous state postconviction counsel; this violation denied Mr. Jennings due process of law and prevented him from having meaningful access to state courts. Appointing brand-new counsel post-warrant and forcing expedited litigation furthered the violations, making the warrant procedure in this case constitutionally invalid. This Court should vacate the death warrant, or at the very least, stay these proceedings and the execution to enable late-appointed counsel

to perform their duties in a way that comports with the statutes and the Constitutions.

ISSUE III: FLORIDA'S CURRENT CAPITAL-SENTENCING SCHEME VIOLATES THE EIGHTH AND FOURTEENTH AMENDMENTS BECAUSE IT LACKS THE SAFEGUARDS NECESSARY TO ENSURE THE FAIR AND RELIABLE IMPOSITION OF THE DEATH PENALTY.

Florida's administration of capital punishment has reached a constitutional breaking point. The Eighth and Fourteenth Amendments demand that death be imposed only through procedures that ensure fairness, reliability, and transparency. *Furman v. Georgia*, 408 U.S. 238 (1972). Yet the State's current capital-sentencing framework — revived non-unanimous jury recommendations, abolition of proportionality review, unchecked executive control over warrant issuance, chronic failures in postconviction representation, and an obsolete, secretive clemency system—no longer provides any of those safeguards. Together, these defects have produced a system that is arbitrary in practice and unconstitutional in design.

The USSC has long recognized that the death penalty is unique in its finality and therefore must be administered under "heightened

standards of reliability." *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). Reliability presupposes structural integrity; when the basic features of a state's capital process permit error, indifference, or political manipulation, the Eighth Amendment is violated. *Gregg v. Georgia*, 428 U.S. 153, 189 (1976). Florida's capital system no longer meets that constitutional threshold.

A. Florida's statutory structure—non-unanimous death recommendations and the loss of proportionality review—destroys the reliability required by the Eighth Amendment.

The Eighth Amendment requires that capital sentencing procedures "minimize the risk of wholly arbitrary and capricious action." *Gregg*, 428 U.S. at 189. For decades after *Furman*, Florida justified its death penalty on the ground that its statutory safeguards prevented the very arbitrariness the Court had condemned. That is no longer true. In 2023, the Florida Legislature amended § 921.141 to restore a practice previously deemed unconstitutional — allowing a death recommendation on a vote of eight to four. § 921.141(2)(c), Fla. Stat. (2023).

This statute reverses the unanimous-jury rule established after *Hurst v. State*,[31] which required that "each fact necessary to impose a sentence of death must be found by a jury, not a judge, and found unanimously." By authorizing death despite the dissent of up to four jurors, Florida re-creates the very randomness that *Furman* held unconstitutional. When a divided jury recommends death, the community's moral judgment is fractured, not unified, and the resulting sentence lacks the reliability the Eighth Amendment demands. *Mills v. Maryland*, 486 U.S. 367 (1988); *McKoy v. North Carolina*, 494 U.S. 433 (1990).

Equally destabilizing is this Court's 2020 decision in *Lawrence v. State*,[32] which abolished proportionality review. For nearly half a century, proportionality analysis served as a critical appellate safeguard ensuring that Florida's death sentences were reserved for "the most aggravated and least mitigated" murders. *Id.* at 552 (Labarga, J., dissenting). By eliminating that review, the Court removed the only statewide mechanism for ensuring consistency across cases and counties. The result is a regime where similarly

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[31] 202 So. 3d 40, 44 (Fla. 2016).
[32] 308 So. 3d 544 (Fla. 2020).

situated defendants can receive vastly different outcomes depending on geography, prosecutorial discretion, or juror composition—precisely the "wanton and freakish" disparity that Justice Stewart identified as the core evil of *Furman*, 408 U.S. at 310 (Stewart, J., concurring).

Florida's departure from both unanimity and proportionality has made it an outlier. No other state in the nation currently allows death to be imposed on a non-unanimous jury vote while also providing no proportionality or relative culpability review on appeal. Such isolation demonstrates that Florida's capital scheme no longer reflects the "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). The Supreme Court has repeatedly looked to state consensus in determining whether a punishment or procedure is cruel and unusual. *Atkins v. Virginia*, 536 U.S. 304 (2002); *Roper v. Simmons*, 543 U.S. 551 (2005). Florida's regression to practices most other jurisdictions have rejected underscores the constitutional infirmity of its current law.

The predictable consequence of this regression is greater error. Florida already leads the nation in death-row exonerations—ninety-

three since 1973—and nearly all of those wrongful convictions arose from non-unanimous jury recommendations.[33] Reinstating the same procedure responsible for those miscarriages of justice cannot satisfy the Eighth Amendment's requirement that the death penalty be imposed with "heightened reliability." *Woodson*, 428 U.S. at 305.

B. Florida's systemic failure to ensure continuous, competent representation and meaningful clemency review exemplifies the broader collapse of safeguards required by the Eighth and Fourteenth Amendments.

1. Failure to provide continuous and competent postconviction counsel.

The right to counsel is the foundation of reliability in capital litigation. *Powell v. Alabama*, 287 U.S. 45 (1932). Florida law recognizes this principle by mandating continuous representation for death-sentenced prisoners in all collateral proceedings. §§ 27.7001 and 27.711(2), Fla. Stat. Those statutes require that representation "continue throughout all postconviction capital collateral proceedings." Yet for more than three years following the death of his

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[33] Bedard, Hayley, *Florida's Executions: Troubling Patterns of Secrecy and Inadequate Legal Representation*, Death Penalty Information Center, Aug. 7 2025, https://deathpenaltyinfo.org/news/floridas-executions-troubling-patterns-of-secrecy-and-inadequate-legal-representation.

long-time attorney in 2022, Mr. Jennings remained completely unrepresented, even though the State knew he was warrant-eligible.

The failure to appoint successor counsel until after the October 10, 2025, warrant violated both Florida statute and the Sixth and Fourteenth Amendments. When the Attorney General moved for appointment of counsel only after the warrant issued, new attorneys were forced to review a record spanning forty-six years, three trials, and more than seventy-six thousand pages within a matter of days. Under such conditions, meaningful representation is impossible. *Proffitt v. Wainwright*, 685 F.2d 1227, 1253 (11th Cir. 1982) ("reliability in the fact-finding aspect of sentencing has been a cornerstone of [the Supreme Court's] decisions").

The deprivation here is structural, not procedural. For three years, Mr. Jennings had no advocate to monitor his health, investigate mitigation, or preserve constitutional claims. The eleventh-hour appointment of unfamiliar counsel cannot cure that void. As in *Powell*, the appointment of counsel on the eve of a capital proceeding "is little better than no counsel at all." 287 U.S. at 58. The State's neglect rendered the adversarial process meaningless,

converting what should be a deliberate search for truth into a mechanical countdown to execution.

The warrant's timing compounds this violation. By choosing to sign a death warrant for an unrepresented prisoner while dozens of represented, warrant-eligible prisoners remained, the Governor exercised the State's ultimate power in a manner that was arbitrary and opaque. The Eighth Amendment forbids punishment that is "wanton or freakish." *Furman v. Georgia*, 408 U.S. 238, 310 (1972) (Stewart, J., concurring). A warrant process that targets an unrepresented prisoner because of bureaucratic happenstance cannot satisfy that standard.

2. A stale and secretive clemency process.

Clemency is supposed to function as the "fail-safe in our criminal justice system." *Harbison v. Bell*, 556 U.S. 180, 192 (2009). It is the final procedural safeguard ensuring that mercy, equity, and evolving standards of decency can temper the application of the death penalty. *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 280–81 (1998). In Florida, however, clemency has become illusory.

Mr. Jennings' sole clemency hearing occurred in 1988—thirty-seven years ago. No supplemental investigation or updated

presentation has ever been conducted. Because Article IV, § 8(a) of the Florida Constitution and § 14.28, Fla. Stat., render all clemency records confidential and exempt from disclosure, neither Mr. Jennings nor the courts can determine whether the Governor and Cabinet have reviewed his case since 1989 or considered new mitigation.

This lack of transparency eliminates any assurance that clemency decisions are informed or consistent. No Florida governor has granted clemency to a death-sentenced prisoner since 1983; Governor DeSantis "has never held a clemency hearing for a death-sentenced prisoner."[34] Florida's practice transforms clemency from a constitutional safeguard into a secret administrative ritual.

The USSC's plurality in *Woodard* held that even minimal due process applies to clemency because a condemned inmate "remains a living person and consequently has an interest in his life." 523 U.S. at 288 (plurality op.). Florida's refusal to revisit or disclose clemency proceedings for more than three decades violates that principle. Denying a prisoner any opportunity to supplement or renew his

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[34] Bedard, *Florida's Executions*, supra note 33.

clemency petition for thirty-six years is tantamount to denying access altogether. Such a frozen process cannot coexist with the Eighth Amendment's demand for fairness and evolving standards of decency. *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

The clandestine and seemingly random administration of Florida's clemency review also magnifies the unreliability of its warrant system. While other warrant-eligible prisoners have had recent clemency reviews,[35] Mr. Jennings now faces execution based on a record last considered when many current diagnostic tools, mitigation standards, and procedural protections did not exist. Further, counsel has no way of determining whether any of the information elicited decades ago was detrimental, favorable, or even accurate. Executing Mr. Jennings under these conditions constitutes cruel and unusual punishment under the Eighth Amendment and violates the Fourteenth Amendment's guarantee of due process.

C. Florida's opaque warrant process amplifies the arbitrariness and unreliability of its entire capital-sentencing framework.

The Eighth and Fourteenth Amendments forbid a state from administering capital punishment in a manner that is arbitrary,

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[35] *See* Composite Exhibit 1.

secret, or politically motivated. *Furman v. Georgia*, 408 U.S. 238 (1972). Yet Florida's warrant process operates entirely in the shadows. The governor retains absolute discretion to decide which among more than two hundred warrant-eligible prisoners will die and when, and the State provides neither judicial review nor public explanation for those decisions. No statute prescribes objective criteria, notice, or timing. This unfettered discretion is inconsistent with the constitutional requirement that death sentences be "fairly and consistently imposed." *Pulley v. Harris*, 465 U.S. 37, 45 (1984).

Unlike nearly every other death-penalty jurisdiction, Florida vests this authority solely in the executive.[36] In other states, courts or statutory rules ensure that no execution proceeds while postconviction litigation remains pending. In Florida, however, warrants are routinely signed even as constitutional claims await resolution. The selection of Mr. Jennings — an unrepresented prisoner whose clemency review occurred thirty-six years ago — illustrates how that unchecked discretion produces outcomes indistinguishable from chance. The Constitution does not permit the

[36] Quanrud, *DPI Analysis*, supra note 27.

most extreme punishment to hinge on unreviewable executive preference. *Godfrey v. Georgia*, 446 U.S. 420, 428 (1980).

This opacity interacts with the other defects in Florida's capital system to magnify arbitrariness. A fragmented jury vote, the absence of appellate proportionality review, the denial of continuous counsel, and a defunct clemency mechanism all converge at the warrant stage—where political expediency can determine which sentences will be carried out. The result is a process that bears no resemblance to the "measured, consistent, and reliable" framework approved in *Gregg v. Georgia*, 428 U.S. 153, 195 (1976). As Justice Stewart warned, when the state inflicts death "so wantonly and so freakishly," the punishment becomes cruel and unusual. *Furman*, 408 U.S. at 310 (Stewart, J., concurring).

D. The cumulative effect of Florida's systemic deficiencies renders its death-penalty regime unconstitutional as applied and requires vacatur or, at minimum, a stay and evidentiary hearing.

Each defect described above—the non-unanimous jury statute, the abolition of proportionality review, the failure to provide continuous and competent counsel, the stagnation of clemency, and the secrecy of the warrant process—independently undermines the reliability of Florida's capital punishment system. Together, they

create a structure incapable of ensuring that death is reserved for the most aggravated and least mitigated offenders. The Eighth Amendment's demand for heightened reliability and the Fourteenth Amendment's guarantee of due process are not satisfied by a patchwork of discretionary practices that vary from case to case. *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982).

Florida's capital framework now mirrors the unconstitutional conditions that led the USSC to strike down the death penalty in *Furman*: excessive discretion, inconsistent application, and a lack of meaningful procedural safeguards. By combining non-unanimous jury verdicts, unreviewable warrant selection, and outdated clemency practices, the State has re-created the very arbitrariness that *Furman* and *Gregg* sought to eliminate. Such a system cannot lawfully sustain the execution of Mr. Jennings or anyone else sentenced under its provisions.

The circuit court's summary denial of Mr. Jennings' motion ignored the constitutional magnitude of these intertwined violations. Therefore, this Court should reverse the order below, vacate the death sentence, or, at a minimum, stay the execution to allow late-appointed counsel to perform their statutory and constitutional

duties. The Eighth and Fourteenth Amendments (as discussed in *Furman*, *Gregg*, and the *Hurst* cases) require more than ritual and cursory adherence to procedure; they demand that the State's machinery of death operate only under the strictest guarantees of fairness and reliability. Florida's capital-sentencing scheme—shrouded in secrecy, driven by haste, and indifferent to constitutional restraint—has abandoned those guarantees. A system so untethered from the rule of law cannot stand.

CONCLUSION

Based on his arguments, Mr. Jennings respectfully requests that this Court remand his case for an evidentiary hearing, vacate his sentences of death, and/or grant a stay of execution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 31st day of October 2025, the foregoing was electronically filed with the Clerk of Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: the **Honorable Kelly J. McKibben**, **Circuit Judge**, Eighteenth Judicial Circuit, Brevard County Courthouse, 2825 Judge Fran Jamieson Way, Viera, Florida 32940, tracie.orman@flcourts18.org; **Will Scheiner, State Attorney**, Eighteenth Judicial Circuit, 2725 Judge Fran Jamieson Way, Viera, Florida 32940, wscheiner@sa18.org; **Linda McDermott, Chief Federal Public Defender**, Office of the Federal Public Defender – Northern District, 227 N. Bronough Street, Suite 4200, Tallahassee, Florida 32301, linda_mcdermott@fd.org; **Kristen Lonergan, Executive Senior Attorney**, Florida Department of Corrections, 501 South Calhoun Street, Tallahassee, Florida 32399, kristen.lonergan@fdc.myflorida.com, **Christina Porrello, FDOC Senior Attorney**, christina.porrello@fdc.myflorida.com**, Secretary Ricky Dixon**, ricky.dixon@fdc.myflorida.com, and courtfilings@fdc.myflorida.com; **Jonathan Tannen, Senior Assistant Attorney General**, Office of the Attorney General, 3507 E

Frontage Rd Ste 200, Tampa, FL 33607-7013, jonathan.tannen@myfloridalegal.com, capapp@myfloridalegal.com, paula.montlary@myfloridalegal.com, nanette.pelehach@myfloridalegal.com, and arianna.balda@myfloridalegal.com; **Ann Marie Testa, Court Reporter, Ryan Reporting**, info@ryanreporting.com, lynne@ryanreporting.com; **Michael W. Mervine, Special Counsel, Assistant Attorney General**, michael.mervine@myfloridalegal.com; **Naomi Nichols, Senior Assistant Attorney General**, naomi.nichols@myfloridalegal.com; **Rachel Sadoff, Clerk of the Court – Brevard County**, Rachel.Sadoff@brevardclerk.us; **Mikel Pelzman, General Counsel, Clerk of the Court**, mikel.pelzman@brevardclerk.us; **Kim Barding, Appellate Clerk**, Kimberly.Barding@brevardclerk.us; and the **Florida Supreme Court**, 500 South Duval Street, Tallahassee, Florida 32399, warrant@flcourts.org, canovak@flcourts.org.

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Counsel for Appellant

CERTIFICATE OF COMPLIANCE

We hereby certify that the Initial Brief has been produced in Bookman Old Style 14-point font. Pursuant to Fla. R. App. P. 9.210(a)(2)(D), this brief does not exceed 20,000 words or 75 pages.

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Counsel for Appellant

IN THE SUPREME COURT OF FLORIDA
CASE NUMBER: SC2025-1686
Lower Tribunal No. 1979-CF-773

BRYAN F. JENNINGS,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, STATE OF FLORIDA

APPENDIX TO INITIAL BRIEF OF THE APPELLANT

EXECUTION SCHEDULED FOR November 13, 2025, at 6:00P.M.

INDEX TO APPENDIX

COMPOSITE EXHIBIT 1 – CLEMENCY DENIAL AND CLEMENCY LETTERS FOR KAYLE BATES AND STEPHEN BOOKER

STATE OF FLORIDA
OFFICE OF EXECUTIVE CLEMENCY

RON D. DeSANTIS, GOVERNOR, CHAIRMAN
JAMES UTHMEIER, ATTORNEY GENERAL
BLAISE INGOGLIA, CHIEF FINANCIAL OFFICER
WILTON SIMPSON, COMMISSIONER OF AGRICULTURE

IAN F. BERRY, COORDINATOR

4070 Esplanade Way, Tallahassee, Florida 32399-2450
Phone: (850) 488-2952 Fax: (850) 488-0695
Toll Free: 1-800-435-8286

October 10th, 2025

Mr. Bryan Fredrick Jennings, DC# 073045
Union C.I.
25636 NE SR 16
PO BOX 1000
RAIFORD, FLORIDA 32083-0000

Re: *Bryan Fredrick Jennings, DC#073045 EC# D200039*

Dear Mr. Jennings:

This notification is being forwarded to your attention as we have been notified your clemency counsel is now deceased.

After a review of the clemency investigation material provided by the Florida Commission on Offender Review in accordance with the Rules of Executive Clemency, the Governor has denied your clemency.

A death warrant signed on October 10th, 2025, concludes the clemency process.

Sincerely,

Ian F. Berry

Ian F. Berry, Coordinator
Office of Executive Clemency

cc: Governor Ron DeSantis
C. Suzanne Bechard, Associate Deputy Attorney General
Brandy Fortune, Florida Commission on Offender Review
Eric Pinkard, CCRC
Inmate Bryan Fredrick Jennings [DC# 073045]

A.M. "TONY" FONTANA
COMMISSIONER CHAIRMAN

E. GUY REVELL, JR.
COMMISSIONER VICE CHAIRMAN

KENNETH W. SIMMONS
COMMISSIONER SECRETARY

MAURICE G. CROCKETT
COMMISSIONER

CHARLES H. LAWSON
COMMISSIONER

JUDITH A. WOLSON
COMMISSIONER

FLORIDA PAROLE AND

PROBATION COMMISSION

1309 WINEWOOD BOULEVARD, BUILDING 6, THIRD FLOOR, TALLAHASSEE, FLORIDA 32399-2450, (904) 488-1653

November 25, 1987

Mr. Kayle Barrington Bates, PR.# 088568
Florida State Prison
P. O. Box 747
Starke, Florida 32091

Dear Mr. Bates:

The Florida Parole and Probation Commission has been requested by the Governor and Cabinet to conduct an investigation into the factors in your case relevant to commutation of sentence.

Please be advised that you are scheduled for an interview at the Florida State Prison on January 29, 1988 at 11:00 a.m.

You and your attorney, Mr. Robert Woolfork, will be given an opportunity to present written and/or oral statements of testimony on your behalf at that time with regard to commutation of your sentence.

Very truly yours,

Carolyn W. Tibbetts
Specialist
Capital Punishment Investigations
Clemency Department

tkt

Attachment: Procedure Directive

cc: Mr. Robert Woolfork, Attorney
Pete Turner, Supt., FSP

FLORIDA COMMISSION ON OFFENDER REVIEW
(formerly Florida Parole Commission)
4070 Esplanade Way, Tallahassee, Florida 32399-2450

TENA M. PATE *Commissioner Chair* | MELINDA N. COONROD *Commissioner Vice-Chair* | RICHARD D. DAVISON *Commissioner Secretary*

May 22, 2015

Robert A. Morris, Esq
911 E. Park Ave.
Tallahassee, Florida 32301

RE: Agreement between the Florida Commission on Offender Review and Robert A. Morris – Agreement #10 – Kayle Bates DC# 088568

Dear Mr. Morris:

Your written request made on today's date for thirty (30) days extension to submit your memorandum/brief reference the above noted agreement is approved. The memorandum/brief is due to the Commissions on or before June 22, 2015.

Please feel free to contact me at 850-487-1175 or MichelleWhitworth@fpc.state.fl.us if you have any questions.

Very truly yours,

S. Michelle Whitworth
Capital Punishment Research Specialist
Clemency Investigations

FLORIDA PAROLE AND PROBATION COMMISSION

B.A. GREADINGTON
COMMISSIONER CHAIRPERSON

KENNETH W. SIMMONS
COMMISSIONER VICE CHAIRPERSON

MAURICE G. CROCKETT
COMMISSIONER SECRETARY

JACK V. BLANTON, COMMISSIONER

RAY E. HOWARD, COMMISSIONER

ANABEL P. MITCHELL, COMMISSIONER

CHARLES J. SCRIVEN, COMMISSIONER

COMMISSIONER EX OFFICIO
LOUIE L. WAINWRIGHT, SECRETARY
DEPARTMENT OF CORRECTIONS

1309 WINEWOOD BOULEVARD, BUILDING 6, THIRD FLOOR, TALLAHASSEE, FLORIDA 32301, (904) 488-0610

HERBERT M. GREENWOOD
EXECUTIVE CLEMENCY

February 9, 1982

M E M O R A N D U M

TO: Mrs. Alice Ragsdale, Coordinator
Office of Executive Clemency

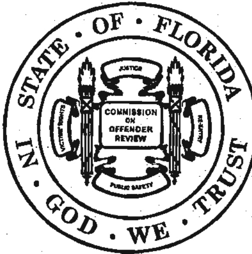
FROM: Mr. Peter K. Peterson, Parole Specialist
Executive Clemency Department

RE: Stephen Todd Booker, PR.#044049

Pursuant to Rule 7 A, Rules of Executive Clemency, copies of the Statement of Stephen Todd Booker, PR.#044049 have been appended and delivered hereto, so that this statement shall be distributed to the Governor and Cabinet for their review and consideration.

PKP/th

cc: Governor
Cabinet Members
Stephen N. Bernstein, Esquire
Kenneth C. Hebert, Esquire



FLORIDA COMMISSION ON OFFENDER REVIEW
4070 Esplanade Way, Tallahassee, Florida 32399-2450

TENA M. PATE
Commissioner/Chair

MELINDA N. COONROD
Commissioner/Vice-Chair

RICHARD D. DAVISON
Commissioner/Secretary

July 22, 2015

Stephen Booker DC# 044049
Union C.I.
Death Row
7819 N. W. 228th Street
Raiford, Florida 32026-1000

Mr. Booker:

The Florida Commission on Offender Review *(formally Florida Parole Commission)* has been requested by the Governor's Office to **update** the clemency investigation originally completed in your case in 1982.

Attorney Nah-Deh E. W. Simmons has been appointed as **Clemency Counsel** to represent you and will be given an opportunity to present written statements on your behalf during this process with regard to commutation of your sentence(s). Mr. Simmons will be in contact with you in the near future.

Sincerely,

S. Michelle Whitworth
Capital Punishment Research Specialist
Clemency Investigations

Cc: Nah-Deh E. W. Simmons, Esq.