Nos. 24A1211, 24-7387

IN THE

Supreme Court of the United States

ANTHONY FLOYD WAINWRIGHT,

Applicant,

— v. —

GOVERNOR OF FLORIDA, ET AL.,

Respondents.

ON EMERGENCY APPLICATION FOR A STAY OF EXECUTION AND ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF FLORIDA AS *AMICI CURIAE* IN SUPPORT OF APPLICANT/PETITIONER

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INTEREST OF AMICI[1]

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The ACLU has frequently appeared before this Court as direct counsel and as amicus curiae. The ACLU has filed amicus briefs in a broad range of civil liberties, civil rights, and criminal procedure cases before this Court, including cases addressing due process and access to counsel and the courts in capital cases. *See Hurst v. Florida*, 577 U.S. 92 (2016); *Maples v. Thomas*, 565 U.S. 266 (2012); *Holland v. Florida*, 560 U.S. 631 (2010); *Lawrence v. Florida*, 549 U.S. 327 (2007); *Williams v. Taylor*, 529 U.S. 362 (2000); *Gideon v. Wainwright*, 372 U.S. 335 (1963). The ACLU of Florida is one of the ACLU's state affiliates.

SUMMARY OF ARGUMENT

Petitioner Anthony Wainwright, who is scheduled to be executed at 6:00 p.m. tonight, has a right under Florida state law to file a state habeas petition and petition for a stay of execution. Through his pro bono counsel of choice—experienced capital post-conviction counsel who has long represented him in

[1] Pursuant to Supreme Court Rule 37.6, counsel for amici certify that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund the preparation or submission of the brief; and no person other than amici, their members, or their counsel contributed money intended to fund the preparation or submission of the brief.

previous federal habeas proceedings—Mr. Wainwright exercised that right by filing a state habeas petition that was timely under the state supreme court's scheduling order and complied with all governing state habeas laws and procedures. The Supreme Court of Florida struck that petition solely on the ground that it was not signed by Mr. Wainwright's state-assigned counsel, who had refused Mr. Wainwright's direction to file it. The State had not only sought dismissal on that ground in the Florida Supreme Court but, in the lower court, had opposed Mr. Wainwright's motion to substitute his counsel of choice for that state-assigned counsel. The trial court effectively denied substitution by disallowing any pleading filed by pro bono counsel without the assigned counsel's signature also included. These decisions arbitrarily blocked Mr. Wainwright's access to the courts on the eve of his execution and violated the Due Process Clause of the Fourteenth Amendment.

Mr. Wainwright filed the instant federal action under 42 U.S.C. § 1983 in the U.S. District Court for the Western District of Florida below, seeking injunctive relief from this due process violation. He seeks this Court's review of these profoundly important constitutional issues, which will become moot for him, and other condemned individuals in Florida who are assigned unaccountable "registry" counsel, if a stay is not granted.

The questions presented here are narrow but profound. Mr. Wainwright does not claim a constitutional right to post-conviction counsel, *see Murray v. Giarratano*, 492 U.S. 1, 13 (1989) (denying right to such counsel beyond direct

appeal); rather, he asks that the state court permit his counsel of choice to file a habeas petition that his state-assigned lawyer refused to file or even co-sign. Nor does Mr. Wainwright seek the State's affirmative assistance to access the courts, though this Court has held that such assistance is required in some circumstances. *See Bounds v. Smith*, 430 U.S. 817, 821 (1977) (affirming court order requiring prison to provide law library to ensure meaningful access to the courts). Mr. Wainwright's counsel of choice is willing to represent him pro bono and filed the state habeas petition at no expense to the State of Florida.

Mr. Wainwright seeks only to have the Supreme Court of Florida permit him to file the petition he timely submitted, as is his right under Florida state law, through his pro bono counsel of choice. Amici write in support of Mr. Wainwright's claim that the state supreme court's refusal to accept his petition merely because his state-assigned attorney did not sign it, and the trial court's denial of his motion to substitute his experienced capital post-conviction counsel of choice for that state-assigned attorney, violated due process. The State's opposition to Mr. Wainwright's substitution motion, and the state supreme court's rejection of his habeas petition, are inexplicable and arbitrary and therefore violate the Fourteenth Amendment. *See Powell v. Alabama*, 287 U.S. 45, 69 (1932).

Amici also write, as they did in *Lawrence v. Florida*, 549 U.S. 327 (2007), to set out the well-documented, broader defects of Florida's "registry" counsel system. Mr. Wainwright's assigned attorney was appointed through

this registry system, and the context for the constitutional issues raised here—registry counsel's refusal to file or co-sign the state habeas petition, the State's vigorous opposition to Mr. Wainwright's motion to substitute his experienced counsel of choice, and the state court's denial of Mr. Wainwright's substitution motion—are part of a system in which the State forces individuals under a death sentence to be represented by assigned counsel, and a larger pattern of those unaccountable registry lawyers waiving claims, filing "the wrong claims at the wrong time," and lacking the adequate training needed to represent people condemned to be executed by the State. These defects in the registry system have been documented by the Florida legislature's research agency, the Office for Program Policy and Government Accountability, state judges including justices of the Supreme Court of Florida, and the American Bar Association. The Court should grant review of Mr. Wainwright's due process claims, and a stay of execution to preserve the opportunity for that review, because these issues are of broader importance for individuals sentenced to death in Florida.

ARGUMENT

I. THE STATE COURT DEPRIVED PETITIONER OF DUE PROCESS BY DENYING HIM ACCESS TO THE COURTS AND COUNSEL OF CHOICE.

Under the Fourteenth Amendment, states may not deprive a person of life, liberty, or property without due process of law; at minimum, this means that states may not act arbitrarily, "even when the liberty itself is a statutory creation of the State." *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974); *see also Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998) ("Since the time of our early explanations of due process, we have understood the core of the concept to be protection against arbitrary action."); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("The Due Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.") (citation and internal quotation omitted). Thus, "when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause." *Evitts v. Lucey*, 469 U.S. 387, 401 (1985). For example, while a State is not required to provide for release on parole and has discretion in setting parole policies, if it does have a parole system, it must comport with due process. *Id.* at 400–01; *see also Wolff*, 418 U.S. at 557 (state creating a liberty-based right to "good-time credits" was "required by the Due Process Clause to ensure that the state-created right is not arbitrarily abrogated"). It

follows that a state may not withdraw a right of legal action, granted under state law, on an arbitrary basis in contravention of due process.

Florida law guarantees Petitioner the right to file an original state habeas corpus action in the Supreme Court of Florida. *See* Fla. Stat. § 79.01; *see also* Fla. Const. art. I, § 13; *id.* art. V, § (b)(8); Fla. R. App. P. 9.030(a)(3). That court nevertheless struck and dismissed his timely petition solely because it was filed by his experienced federal habeas counsel, who volunteered to file the state habeas petition pro bono after Petitioner's state-assigned counsel, who was appointed under Florida's registry system, refused to file a habeas petition or even co-sign the pleading prepared by pro bono counsel. Because of his counsel's refusal to file the petition, the state supreme court's refusal to accept it though timely filed, and the State's successful opposition to Mr. Wainwright's motion for substitution of counsel, Mr. Wainwright did not have any opportunity to be heard and was entirely deprived of the habeas proceeding which he was entitled to under state law. By throwing the state habeas petition out of court and deferring to registry counsel's refusal to follow his client's instructions to file it, the State of Florida deprived Petitioner of due process of law. *See Powell*, 287 U.S. at 69 ("If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.").

Perhaps no constitutional right has more importance for a person sentenced to death than the due process right of access to the courts. The courts provide the only forum that can hear legal claims and grant life-saving relief. The state supreme court did not reject Mr. Wainwright's petition on the merits or because it was untimely or otherwise procedurally barred; its order striking Mr. Wainwright's state habeas petition was thus arbitrary. By requiring Mr. Wainwright to proceed with an assigned attorney who refused to file a habeas petition he was entitled to file, the State violated his right of access to the courts when it mattered the most—when the death warrant issued and his execution became imminent.

This Court has long acknowledged it is "beyond doubt that prisoners have a constitutional right of access to the courts." *Bounds*, 430 U.S. at 821. The Court has further recognized that the right of access must be real and not an empty promise. *See, e.g.*, *Burns v. State of Ohio*, 360 U.S. 252, 257 (1959) (state's refusal to accept indigent person's timely motion for discretionary appeal for inability to pay filing fees violated due process). This principle applies in post-conviction as well as criminal proceedings. Indeed, this Court has long held that access to the courts through the writ of habeas corpus may not be "abridge[d] or impair[ed]" by the state. *Ex parte Hull*, 312 U.S. 546, 549 (1941). And while the right of access to the courts does not entail a right to appointed counsel, *see Murray*, 492 U.S. 1, it does bar courts form imposing obstacles such as filing fees in habeas as well as criminal

proceedings. *Smith v. Bennett*, 365 U.S. 708 (1961); *see also Johnson v. Avery*, 393 U.S. 483 (1969) (striking prohibition on prisoners helping one another with post-conviction petitions). In the habeas context, the Court has noted, "[s]ince the basic purpose of the writ is to enable those unlawfully incarcerated to obtain their freedom, it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed." *Id.* at 485.

Indeed, the right of access is so important that this Court has taken a broad view of what prisoners need for the right to be practically meaningful and not merely an empty promise on paper. *See*, *e.g.*, *Bounds*, 430 U.S. at 830 (holding that "adequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts" but "not foreclos[ing] alternative means to achieve that goal"). Thus, the right of access to the courts has been held to impose duties not only on the courts, but even on prison officials. *See, e.g.*, *Lewis v. Casey*, 518 U.S. 343, 363 (1996) (overturning lower-court decision that ordered remedy for violation of access to the courts without involving corrections officials in "devising a remedial plan"); *cf. Houston v. Lack*, 487 U.S. 266, 270 (1988) (concluding "that petitioner . . . filed his notice [of appeal under Fed. R. App. Proc. 4(a)(5)] within the requisite 30-day period when, three days before the deadline, he delivered the notice to prison authorities for forwarding to the District Court" and thus adopting the "prison mailbox rule").

Mr. Wainwright's petition does not require the Court to go nearly so far. By requiring Mr. Wainwright to proceed through assigned counsel who refused to file a state habeas petition, and rejecting the filing by pro bono counsel of choice, the State directly closed off Mr. Wainwright's access to the courts. Through his retained counsel of choice, Mr. Wainwright was able to file his petition and did so according to all Florida rules and by the court's deadline. The Supreme Court of Florida, required by Florida law to hear that petition, Fla. Stat. § 79.01; *see also* Fla. Const. art. I, § 13, refused to hear it—for the sole reason that Mr. Wainwright's counsel of choice, who is experienced in postconviction capital cases and had been his counsel of record in his federal proceedings, filed it, rather than Mr. Wainwright's state-assigned registry counsel. *See* Order, *Wainwright v. Sec'y, Dep't of Corr.*, No. SC2025-0709 (Fla. May 27, 2025) ("Since Baya Harrison is lead postconviction counsel for Wainwright, it is ordered that Mr. Harrison file a notice adopting the habeas petition and motion for stay of execution. Failure to file such an adoption by May 28, 2025, will result in the striking of said filings. All further filings on behalf of Wainwright in this case shall contain the signature of both counsel.").

Critically, the state supreme court did not reject the petition filed by pro bono counsel on the merits or on procedural grounds, other than that registry counsel did not file it. Nor did the state supreme court make any determination that pro bono counsel's entry into the case would cause any

delay or otherwise interfere with the orderly administration of justice. *See, e.g.*, *In re BellSouth Corp.*, 334 F.3d 941, 956 (2003) (noting that "there is a constitutionally based right to counsel of choice" that is not absolute and "a litigant's freedom to hire the lawyer of his choice can be overridden if a court finds that the choice would interfere with the orderly administration of justice") (citing, *inter alia*, *Wheat v. United States*, 486 U.S. 153, 160 (1988)).

Mr. Wainwright's preference for his pro bono counsel over his state-assigned registry lawyer was well-founded. The timing of the warrant of execution gave him only 32 days to exercise his right to file a state habeas petition under state law. His registry counsel chose to notify him of the death warrant not by any expeditious means such as an in-person meeting or by telephone but by a letter posted by regular mail, which did not arrive until long after prison officials had already moved Mr. Wainwright to the "death watch" unit reserved for people under warrant. Once there, Mr. Wainwright could no longer initiate phone calls or send emails. The letter invited Mr. Wainwright to call—which Mr. Wainwright could not do once he reached death watch—and promised that registry counsel would call Mr. Wainwright—which counsel never did. *See* Decl. of Anthony Floyd Wainwright, *Wainwright v. DeSantis*, No. 25-cv-607 (M.D. Fla. June 2, 2025), ECF No. 3 at 7. Registry counsel never met with him during the time between warrant and execution. Nevertheless, Mr. Wainwright managed to file a

timely state habeas petition through his pro bono counsel, who had represented him in his federal proceedings.

The state supreme court's rejection of that petition violated not only Mr. Wainwright's fundamental "right to counsel of choice," which includes the "right to be represented by an otherwise qualified attorney . . . who is willing to represent the defendant even though he is without funds," *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006), but also his fundamental right of access to the courts. The court refused substantive review of his state habeas petition because it did not agree with the decision of his counsel of "choice" to file the petition. That turned out to be a Hobson's choice. Mr. Wainwright chose the counsel who was willing to fight for his life and file the state habeas petition, as was his right under state law, but the state supreme court arbitrarily chose to enforce the State's preference for registry counsel over Mr. Wainwright's choice of counsel—even to the exclusion of his right to file his state habeas petition at all.

In sum, the combination of the court's refusal to accept a petition from counsel of choice and state-assigned counsel's refusal to file the habeas petition left Mr. Wainwright, like the petitioners in *Johnson*, deprived of state habeas counsel and "in effect, denied access to the courts." 393 U.S. at 488.[2]

[2] Had the Florida Supreme Court ruled on the merits of the original writ before it instead of rejecting it because Mr. Harrison did not sign on, Mr. Wainwright would have had an opportunity to file a petition for certiorari in this Court on any federal claims that were denied. The Florida Supreme Court's arbitrary action has thus constructively denied Mr. Wainwright of his right to access this Court as well.

Therefore, just as it did for the petitioners in *Johnson*, this Court should grant review to determine whether a capital defendant may benefit from the pro bono representation that he was able to secure from his experienced and qualified federal postconviction counsel, or whether instead the state court may arbitrarily strike that counsel's pleadings, foreclosing a condemned man's right to file a petition, merely because the State prefers a different lawyer.

This Court's rulings affirming the constitutionality of the death penalty assume that, through the moment of execution, the condemned will have access to the courts to raise any state or federal claims that may foreclose that execution. *See*, *e.g.*, *Gregg v. Georgia*, 428 U.S. 153, 195 (1976) (noting Georgia's "further safeguard of meaningful appellate review . . . to ensure that death sentences are not imposed capriciously or in a freakish manner"); *Panetti v. Quarterman*, 551 U.S. 930, 942–48 (2007) (holding that right to challenge competence does not ripen until an execution has been scheduled and therefore such claims are not considered "second or successive" under statute governing federal habeas review of state judgments); *Glossip v. Oklahoma*, 145 S. Ct. 612, 624, 630 (2025) (granting relief in response to due process claim under *Napue v. People of Ill.*, 360 U.S. 264 (1959) that was raised in fifth post-conviction petition, after granting a stay of petitioner's imminent execution date.). By its actions in this case, the Supreme Court of Florida has upended that assumption. This Court should grant review and

stay the execution so that it may consider the constitutionality of the State's and the state court's actions denying Mr. Wainwright's right of access to the courts.

II. THE PETITION PRESENTS ISSUES OF BROAD IMPORTANCE BECAUSE FLORIDA'S REGISTRY COUNSEL SYSTEM IS PLAGUED BY WIDESPREAD BREAKDOWNS IN CAPITAL REPRESENTATION.

The conduct of Mr. Wainwright's state-assigned counsel—as well as the State's endorsement of his refusal to file Mr. Wainwright's petition and stay application through its opposition to Mr. Wainwright's motion for substitution of counsel—are part of a troubling pattern of dysfunction in Florida's registry system for appointment of counsel in capital post-conviction cases. Prior documented failures of Florida's registry counsel, which are disturbingly similar to those raised in this case, have repeatedly arisen in other capital cases before this Court and the Supreme Court of Florida. *See Lawrence*, 549 U.S. at 330–31 (addressing failure of registry counsel to file federal petition within one-year statute of limitations under 28 U.S.C. § 2244(d)); *Holland v. Florida*, 560 U.S. 631, 652 (2010) (equitably tolling one-year statute of limitation where registry counsel did not file a timely pleading despite repeated admonitions from his client, did not respond to client's repeated requests for updates on the filing, failed to communicate with client, and apparently did no research); *Fla. Dep't of Fin. Servs. v. Freeman*, 921 So. 2d 598, 600 (Fla. 2006) (addressing registry counsel's request for almost $28,000 for preparation and filing of petition for writ of certiorari, well over

the statutory cap of $2,500). These and many other similar failures of the Florida registry counsel system have been well-documented by the Florida legislature's Office of Program Policy and Government Accountability ("OPPGA") and Florida state judges, including members of the Supreme Court of Florida.

Only three years after the Florida Legislature created a registry of private attorneys to address backlogs and handle conflicts with regional state postconviction offices,[3] the state legislature's OPPGA found significant problems with the registry. In a report widely known in Florida legal circles, the OPPGA documented those multiple problems with the registry, while finding that the separate regional post-conviction offices the legislature had created were performing well. OPPGA, *Performance of Collateral Counsels Improved; Registry Accountability Needs to be Revised* 8–11 (Nov. 2001), https://perma.cc/SY7F-EJJS. The report found that there were financial irregularities such as double billing, that registry counsel would withdraw at the time of death warrant, requiring the regional offices to step in, and that there were insufficient requirements for postconviction experience and training despite the gravity and complexity of this work. *Id.* at 8–11.

Most critically, the report described the lack of any remedies or recourse for poor performance. *Id.* at 9. Trial judges proved unwilling to remove counsel

[3] *See* 1998 Fla. Laws ch. 98-197, § 3 (creating section 27.710 of the Florida Statutes). *See also generally In re Rules of Criminal Procedure 3.851 & 3.850*, 719 So. 2d 869, 870 (1998) (setting out procedures of initial implementation).

for "substandard . . . work." *Id.* The Commission on Capital Cases, which is charged with overseeing the registry system, suggested that the Florida Bar should enforce standards for registry counsel. *Id.* But as the OPPGA rightly observed, there was no timely and realistic mechanism for the bar discipline system to ensure effective representation: "While a complaint could be filed with the Florida bar for violations of ethical standards, it is not clear who would file the complaint, as the defendants would have been executed." *Id.*

Notwithstanding the OPPGA's report documenting serious problems with registry counsel, the State placed even more responsibility for capital representation on the registry in 2003, piloting a closure of one of three state capital postconviction regional offices (which the OPPGA report had praised) and reassigning the cases to the registry attorneys.[4] This move resulted in a resounding failure of justice. In a panel discussion on the registry system, Justice Raoul Cantero of the Supreme Court of Florida said that capital registry attorneys provided "the worst lawyering" and some of "the worst briefs" he had ever seen,[5] and he noted that registry attorneys made the court's work more difficult for having to wade through a morass of "baseless claims." Echoing the OPPGA's report, Justice Cantero stated:

> If you look at some of the oral arguments, you will understand why. It seems to me some registry counsel have little or no experience in death penalty cases. They have not raised the right issues, from our review of the record. Sometimes, they raise too

[4] *See* 2003 Fla. Laws ch. 2003-399, § 84 (creating Fla. Stat. Ann. § 27.701(2) (2003)).
[5] Editorial, *A privatization failure*, St. Petersburg Times, Jan. 31, 2005, at 12A, 2005 WLNR 23901842.

> many issues and still they haven't raised the right ones. In arguments, they are unable to respond to questions or don't know what the record shows. They don't have a real good understanding of death penalty cases[.][6]

In 2005, then-Chief Justice Barbara Pariente, also of the Supreme Court of Florida, similarly described failings by registry counsel, writing, "[a]s for registry counsel, we have observed deficiencies and we would definitely endorse the need for increased standards for registry counsel, as well as a continuing system of screening and monitoring to ensure minimum levels of competence."[7] Chief Justice Pariente, joined by two other justices, also wrote an opinion urging the Florida legislature to reinstate the northern regional capital post-conviction office which had been dismantled in favor of the registry system (the exact opposite approach one would expect in light of the OPPGA report) because of concerns over "the quality of the attorneys who undertake the representation" and the public's "strong interest in cost-effective representation by the attorneys provided to indigent capital defendants in postconviction proceedings." *Freeman*, 921 So. 2d at 604 (Fla. 2006) (Pariente, C.J., concurring and joined by two other justices) (addressing deficiencies in registry counsel system as compared to regional offices, and urging the Legislature to take into account "quality of representation" and registry's lack of "centralized source of support for research, investigation,

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[6] Jan Pudlow, *Justice rips shoddy work of Private capital case lawyers*, The Florida Bar News (March 1, 2005), https://perma.cc/H22E-ENTQ.
[7] *Id.*

and pooling of information"). Around the same time Chief Justice Pariente documented these problems with the registry system, the American Bar Association also criticized it in its review of state systems for representation in capital cases.

At the urging of the state supreme court justices, in 2013 the Legislature reversed its 2003 decision to dismantle the northern regional office,[8] but still maintained the inadequately resourced and unaccountable registry system.

Registry attorneys themselves have acknowledged these failings. One capital trial attorney who agreed to join the registry at the request of a local trial judge belatedly recognized that he lacked sufficient knowledge of complex law governing habeas petitions.[9] The lawyer missed the federal filing deadline for his client's habeas petition and conceded "it was a terrible mistake for me to get involved." He noted that he was not alone and reported that "a lot of other lawyers I know who are messing with this are having a rough time of it."[10]

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[8] *See* 2013 Fla. Sess. Law Serv. Ch. 2013-216, § 3 (striking subdivision (2) of Fla. Stat. § 27.701). This legislative change took several years to enact. *See* Mark D. Killian & Gary Blankenship, *Senate panel OKs bill to revive CCRC North—Supreme Court throws support behind CCRC regional office structure*, The Florida Bar News (April 15, 2007), https://perma.cc/FFG3-8U9T ("The bill would reestablish the Northern CCRC office and reverts the registry attorneys to handling conflict and overflow cases.").

[9] Jo Becker, *System may be slowing appeals*, St. Petersburg Times, July 17, 2000 at 1B, 2000 WLNR 8776693.

[10] *Id.*

Indeed, amici have previously identified fourteen capital cases where registry counsel missed the federal habeas filing deadline and thereby jeopardized if not ultimately forfeited federal habeas review.[11] Although the State ultimately reopened the northern regional postconviction office, it did not remove registry counsel from its appointed cases. One of those fourteen cases is Mr. Wainwright's. Mr. Wainwright's prior registry counsel (not Mr. Harrison) missed the initial habeas filing deadline in his case.[12]

In the proceedings below, the State opposed the substitution of counsel and defended the qualifications of Mr. Wainwright's current registry counsel, Mr. Harrison, by pointing to four other capital cases in which he has served in state post-conviction or warrant proceedings:[13] Danny Rolling, John Ruthell Henry, Donald Dillbeck, and Larry Joe Johnson.[14] The outcome of

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[11] *See* Brief of Amici Curiae ACLU and the ACLU of Florida in Support of Pet'r, *Lawrence v. Florida*, No. 05-8820 (Sup. Ct. June 26, 2006) at 16.

[12] *See Wainwright v. Sec'y, Dep't of Corr.*, 537 F.3d 1282, 1287 (11th Cir. 2007) (affirming dismissal of federal habeas petition as untimely, explaining that tolling of statute of limitation ended with Supreme Court of Florida's decision in 2004, and that counsel filed the petition ultimately "six days after the statute ran[,]" and listing Joseph T. Hobson as counsel); *Wainwright v. State*, 896 So. 2d 695 (Fla. 2004) (also listing counsel as Joseph T. Hobson); Comm. on Cap. Cases, *Attorney Details*, https://perma.cc/G7SY-LDWL (last visited June 10, 2025) (listing Mr. Hobson as Mr. Wainwright's then "registry" counsel).

[13] Resp. to Mot. for Stay of Execution, *Wainwright v. DeSantis*, No. 25-cv-607 (M.D. Fla. June 3, 2025), ECF Doc. 16, at 2 n.2.

[14] The State also cited a direct appeal case where Mr. Harrison served as counsel. *See Noetzel v. State of Fla.*, 328 So. 3d 933 (Fla. 2021) (rejecting the two issues Mr. Harrison raised on behalf of his capitally sentenced clients). After oral argument, but before the court issued its decision, Mr. Noetzel "filed a pro se 'Motion to Discharge Counsel and Stop All Appeals in the Above Style Case.'" Motion, *Noetzel v. State of Fla.*, No. SC2020-0466 (Fla. Oct. 18, 2021). The court ordered that "[c]ounsel for the parties are hereby requested to file a response to the above-

these cases would have provided little confidence to Mr. Wainwright: Each of these four cases resulted in execution.[15]

Moreover, the reported decisions in the four cases cited by the State raise concerns about Mr. Harrison's representation that echo those Justice Cantero and Chief Justice Pariente found with the registry system more broadly. Mr. Harrison appears to have filed the wrong claims at the wrong times, and, as here, waived claims. In Larry Johnson's case, Mr. Harrison failed to raise in state post-conviction proceedings two potentially meritorious challenges to the aggravating circumstances, and thus procedurally defaulted the claims, preventing federal review.[16] In Danny Rolling's case, he dropped 29 of the 31 claims.[17] In John Ruthell Henry's case, Mr. Harrison waived all of Mr. Henry's claims with the exception of his competency to be executed, and then attempted to file an untimely intellectual disability claim only hours

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referenced motion on or before November 9, 2021." Florida responded promptly by that date, urging the motion be granted. Mr. Harrison, served with the order as counsel of record, never responded.

[15] Larry Joe Johnson was executed on May 5, 1993; Danny Rolling was executed on October 25, 2006; John Henry was executed on June 18, 2014; and Donald Dillbeck was executed on February 23, 2023. *See* Death Penalty Info. Ctr., *Execution Database*, https://deathpenaltyinfo.org/facts-and-research/data/executions (last visited June 10, 2025).

[16] *Johnson v. Singletary*, 991 F.2d 663, 666 (11th Cir. 1993) (affirming district court's holding that two claims "were never raised on the previous petitions, [and] were [thus] procedurally barred" and dismissing third claim as improper successor).

[17] *Rolling v. State*, 825 So. 2d 293, 295 n.1 (Fla. 2002); *Rolling v. Crosby*, 438 F.3d 1296, 1299 (11th Cir. 2006).

before his execution.[18] Mr. Henry had repeatedly "sent letters trying to fire Harrison, complaining that the lawyer wasn't doing enough."[19]

This lamentable history highlights the need for action by this Court to remedy the breakdown of justice that occurred in Mr. Wainwright's case.

[18] *See Henry v. State*, 141 So. 3d 557, 559 (Fla. 2014) ("At a hearing in the circuit court, defense counsel, with Henry's approval, waived judicial postconviction proceedings and announced the intent to pursue a determination of Henry's competency under section 922.07, Florida Statutes (2013)"); *id.* at 558–59 ("The circuit court dismissed the [Motion for Determination of Intellectual Disability as a Bar to Execution] as untimely . . . .").

[19] *See* Monica Hesse, "*I took an oath to defend this guy": One lawyer's eleventh hour scramble to halt a convicted murderer's execution*, Washington Post (June 19, 2014) https://perma.cc/265Z-3W7Y (describing Mr. Harrison's representation of Mr. Chandler). Oba Chandler was executed on November 15, 2011. See Death Penalty Info. Ctr., *Execution Database*, https://deathpenaltyinfo.org/facts-and-research/data/executions (last visited June 10, 2025).

CONCLUSION

The Court should grant the stay of execution, grant the petition for certiorari, reverse the decision below, and grant Petitioner's requested relief.

Respectfully Submitted,

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