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IN THE SUPREME COURT OF FLORIDA

GARY RAY BOWLES,

Petitioner,

Case No. _____

v.

EXECUTION SCHEDULED FOR AUGUST 22, 2019, At 6:00 P.M.

MARK S. INCH,
Secretary, Fla. Dept. of Corr.

Respondent.
_____/

PETITIONER'S MOTION FOR ORAL ARGUMENT

Petitioner Gary Ray Bowles moves, pursuant to Fla. R. App. P. 9.320, for oral argument to meaningfully address this appeal, his simultaneously filed habeas petition, and his request for a stay of execution (filed separately by motion).

On June 11, 2019, the Governor signed a death warrant for Mr. Bowles, and on the following day, June 12, 2019, this Court ordered that his pending intellectual disability litigation—which he had been attempting to litigate for nearly two years—be concluded by the circuit court in less than 40 days.

Pursuant to this Court's June 12th order, oral argument will be permitted "if necessary." Due to the important constitutional concerns in this case, including the fact that Mr. Bowles asserts that he is categorically ineligible for execution, a claim has never received merits review in any court, oral argument is appropriate here.

Oral argument is especially appropriate in this case because the circuit court did not make any rulings on Mr. Bowles's constitutional arguments, and found that Mr. Bowles's claim was time-barred in a manner that left him without a forum for his intellectual disability claim, in violation of the United States Constitution.

While the United States Supreme Court "left 'to the States the task of developing appropriate ways to enforce the constitutional restriction,'" that task is not without boundaries. *Hall v. Florida*, 572 U.S. 701, 719 (2014) (quoting *Atkins v. Virginia*, 536 U.S. 304, 317 (2002)). The charge to the states to develop methods for the enforcement of a constitutional restriction—in this case, to ensure that the intellectually disabled are not executed—is still bound by the restrictions of the Eighth and Fourteenth amendments, and "is not "unfettered.'" *Moore v. Texas*, 137 S. Ct. 1039, 1048 (2017) (quoting *Hall*, 572 U.S. at 719). These constitutional restrictions, the United States Supreme Court has instructed, mean that states may not adopt procedures that create an unacceptable risk of the execution of the intellectually disabled. *See Atkins*, 536 U.S. at 320; *Hall*, 572 U.S. at 723 (holding that Florida's ignoring the standard error of measurement for IQ tests impermissibly "risks executing a person who suffers from intellectual disability"); *Moore*, 137 S. Ct. at 1051 (rejecting Texas's *Briseno* factors because they "creat[e] an unacceptable risk that persons with intellectual disability will be executed.") (internal citation omitted).

At issue in this case is the imminent execution of Mr. Bowles, an individual who has been diagnosed by two separate mental health experts as having an intellectual disability, but who the circuit court has ruled may not receive a merits review of this constitutional claim as a result of this Court's rulings in *Rodriguez v. State*, 250 So. 3d 616 (Fla. 2016), *Blanco v. State*, 249 So. 3d 536 (Fla. 2018), and *Harvey v. State*, 260 So. 3d 906 (Fla. 2018). Those rulings have created a procedural bar to Mr. Bowles obtaining any review of his claim, and thus have created an unacceptable risk of the execution of an intellectual disabled man.

This is especially concerning, as Mr. Bowles's argues in his state habeas petition, in light of the national shift away from the use of capital punishment, and the particular concerns raised by Mr. Bowles's death sentence, which was obtained in one of the most prolific and death-seeking counties in the United States, Duval County, and in a state that leads the nation in death row exonerations and missed federal habeas deadlines in capital cases. *See* Death Penalty Information Center (DPIC), *Duval County, Florida, Leader in Death Sentences* (Dec. 1, 2014);[1] Richard C. Dieter, *The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases at Enormous Costs to All*, DPIC (Oct. 2013) (noting Duval County "is among the two percent of counties in the United States responsible for a majority of all

[1] *Available at* https://deathpenaltyinfo.org/news/duval-county-florida-leader-in-death-sentences

inmates on death row.");[2] DPIC, *Facts about the Death Penalty* (2019) (noting Florida has had twenty-nine exonerations from death row since 1973, including two exonerations within the last year, accounting for almost eighteen percent of death row exonerations nationally);[3] *Lugo v. Sec'y, Dep't. of Corr.*, 750 F. 3d 1198, 1216-1218 (11th Cir. 2014) (Martin, J., concurring) (explaining that at least thirty-four death row inmates in Florida have missed their one-year filing deadlines under the Anti-Terrorism and Effective Death Penalty Act of 1996).

The Court should grant oral argument in this case.

Respectfully submitted,

/s/ Terri Backhus
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[2] *Available at* https://files.deathpenaltyinfo.org/documents/pdf/TwoPercentReport.f1560295690.pdf

[3] Available at https://files.deathpenaltyinfo.org/documents/pdf/FactSheet.f1562867044.pdf

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service to Terri Backhus, Chief, Capital Habeas Unit, Federal Public Defender for the Northern District of Florida (terri_backhus@fd.org); Bernie de la Rionda (bdelarionda2@gmail.com); Assistant State Attorney Sheila Ann Loizos (sloizos@coj.net); Assistant Attorney General Jennifer A. Donahue (jennifer.donahue@myfloridalegal.com), Assistant Attorney General Charmaine Millsaps (Charmaine.millsaps@myfloridalegal.com), (capapp@myfloridalegal.com), the Circuit Court of the Fourth Judicial Circuit (pfields@coj.net), and the Florida Supreme Court (warrant@flcourts.org) this 26th day of July, 2019.

/s/ *Karin Moore*	/s/ *Terri Backhus*	/s/*Elizabeth Spiaggi*
Karin Moore	Terri Backhus	Elizabeth Spiaggi