CAPITAL CASE
EXECUTION SET FOR AUGUST 9, 2018 AT 7 PM
No. 18-___

IN THE

Supreme Court of the United States

BILLY RAY IRICK,
Petitioner,

v.

TONY MAYS, WARDEN
Riverbend Maximum Security Institution,
Respondent.

ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS, THIS IS A CAPITAL CASE EXECUTION SET FOR AUGUST 9, 2018 AT 7 PM

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF MENTAL HEALTH ORGANIZATIONS IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF MENTAL HEALTH ORGANIZATIONS IN SUPPORT OF PETITIONER

Pursuant to Supreme Court Rule 37.2(b), The National Alliance on Mental Illness ("NAMI"), NAMI Tennessee, Mental Health America ("MHA"), MHA Tennessee, Tennessee Mental Health Consumers' Association, and the Tennessee Coalition for Mental Health and Substance Abuse Services ("*Amici*") respectfully moves for leave to file the attached amicus curiae brief in support of Petitioners. The *Amici* obtained written consent from counsel for Petitioner to file the brief. Counsel for Respondents has not consented, hence the need for this motion. Sup. Ct. R. 37.2(b).

Amici are mental health organizations dedicated to improving the lives of those suffering from mental illness and to ensuring that they are treated fairly and humanely. They work with people with mental illness, their families, and their communities in all fifty states. Most pertinent to this case, because of their role as advocates for and their close relationships with people with mental illness, *Amici* have a unique knowledge of and a strong interest in providing the courts with information about the nature of severe mental illness and how significantly it can impair a person's judgment in ways that are directly relevant to criminal justice. Accordingly, *Amici* respectfully request that the Court grant leave to file their *amicus curiae* brief, attached hereto.

Respectfully submitted,

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INTEREST OF *AMICI*

Amici are organizations dedicated to improving the lives of those suffering from mental illness and to ensuring that they are treated fairly and humanely. Most pertinent to this case, because of their role as advocates for and their close relationships with people with mental illness, *Amici* have a strong interest in providing the courts with information about the nature of severe mental illness and how significantly it can impair a person's judgment in ways that are directly relevant to criminal justice.[1]

The National Alliance on Mental Illness (NAMI) is the nation's largest grassroots mental health organization dedicated to building better lives for the millions of Americans with mental illness. NAMI opposes the execution of Billy Ray Irick because it believes that the impact of Mr. Irick's severe mental illness on his capacity to exercise rational judgment or to conform his conduct to the requirements of the law was not adequately considered at his trial or in sentencing. NAMI Tennessee is a non-profit organization dedicated to improving quality of life for people with mental illness and their families through support, education, and advocacy.

Mental Health America (MHA), founded in 1909, is the nation's leading community-based, non-profit organization dedicated to addressing the needs of those

[1] The Amici provided notice of their intent to file this brief on August 6, 2018, more than ten days before it is due. The Amici obtained written consent from counsel for Petitioner to file the brief. Counsel for Respondents did not provide consent, hence the need for this motion. Sup. Ct. R. 37.2(b). No counsel for any party authored this brief in whole or in part, and no person or entity other than *Amici* or their counsel made any monetary contribution to the preparation or submission of this brief.

living with mental illness and to promoting the overall mental health of all Americans. MHA Tennessee's mission is to connect the community with specialized mental health and wellness resources, provide services that improve the quality of life, and promote effective services where mental health needs exist.

Tennessee Mental Health Consumers' Association's mission is to promote recovery and community through peer support, education, and advocacy for all mental health consumers in Tennessee.

The Tennessee Coalition for Mental Health and Substance Abuse Services is comprised of thirty hospitals, community mental health centers, and advocacy organizations that strive to make sweeping changes through better public policy, leading to recovery and quality of life.

SUMMARY OF ARGUMENT

Throughout his life, medical professionals recognized that Billy Ray Irick suffered from severe mental illness. The statements provided by the Jeffers, the victim's family, make clear that Billy was in a psychotic state leading up to, and during, the offense. Unfortunately, this evidence was not discovered until the issue of Billy's sanity at the time of the offense was procedurally defaulted. Now Billy faces execution for acts committed while he was in the throes of extremely severe mental illness, in contravention of the Constitution.

This Court has exempted both people with intellectual disabilities and juveniles from the death penalty, on the ground that they are categorically less culpable and less deterrable than the typical criminal. *Atkins v. Virginia*, 536 U.S. 304, 316 (2002); *Roper v. Simmons*, 543 U.S. 551, 567 (2005). In *Atkins* and *Roper*, this Court identified key characteristics of people with

intellectual disability and juveniles that required they be exempted from capital punishment: (1) diminished capacity to understand and process information; (2) diminished capacity to communicate; (3) diminished capacity to abstract from mistakes and learn from experience; (4) diminished capacity to engage in logical reasoning; (5) diminished capacity to control impulses; and (6) diminished capacity to understand other's reactions. *Atkins*, 536 U.S. at 318; *Roper*, 543 U.S. at 569–70. People who suffer from severe mental illness such as psychosis have all of these characteristics, and Billy Ray Irick's history shows that he was no exception.

Similarly, the impairments associated with severe mental illness such as schizophrenia, suffered during an offense, render an individual substantially less culpable and deterrable than the average criminal. As recognized by both the American Psychiatric Association and the American Psychological Association, severe mental illness is associated with delusions, hallucinations, and disorganized or grandiose thinking. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL 87, 105, 213 (5th ed. 2013); AMERICAN PSYCHOLOGICAL ASSOCIATION, TASK FORCE ON SERIOUS MENTAL ILLNESS AND SERIOUS EMOTIONAL DISTURBANCE, ASSESSMENT AND TREATMENT OF SERIOUS MENTAL ILLNESS 6 (August 2009), http://www.apa.org/practice/resources/smi-proficiency.pdf. Thus, under this Court's Eighth Amendment analysis, as informed by the expertise of professional organizations recognized as authoritative on mental disability in *Hall v. Florida*, 134 S. Ct. 1986, 2000 (2014) and *Moore v. Texas*, 137 S. Ct. 1039, 1049 (2017), execution of such offenders is unconstitutional. Further, given that the impairments of those with severe mental illness are at least as substantial as those individuals

with intellectual disability and adolescents, such executions have no rational basis under the Fourteenth Amendment.

The petitioner, Billy Ray Irick, has suffered from severe mental illness since early childhood. All evidence indicates that, at the time he committed the offense which led to his current death sentence, Billy was experiencing symptoms of severe mental illness in ways that substantially impaired his capacity for rational, reality-based judgment. Therefore, just as this Court held with respect to people with intellectual disability in *Atkins* and with respect to juveniles in *Roper*, his execution would offend evolving standards of decency. Additionally, given Billy's degree of impairment compared to that of the typical individual with intellectual disability and the typical youth, his execution would have no rational basis.

Accordingly, Billy Ray Irick's sentence of death by execution should be commuted to life without parole.

STATEMENT OF RELEVANT FACTS

As outlined in the Original Petition for Writ of Habeas Corpus of Billy Ray Irick (the "Petition"), Billy Ray Irick has a documented history of severe mental illness throughout his life, although unfortunately that history was not fully presented at his trial. Billy exhibited problematic and erratic behavior from a young age, and he was referred to the Knoxville Mental Health Center (the "Center") at the age of six. Billy later moved to a mental hospital, then to a home for children, all but ignored by his parents and with his medical problems all but untreated in his childhood and adolescence. He suffered abuse at the hands of both parents, as a child reporting his mother tied him up and beat him. On a rare visit from his

parents in June 1972, Billy's behavioral problems abruptly escalated, and he was transferred back to Eastern State psychiatric hospital as an inpatient and placed again on a Thorazine antipsychotic regimen. Despite this eight year documented history of mental illness, he was discharged in March 1973 to his parents' home with a diagnosis of "adjustment reaction to adolescence." Billy's parents never provided him with any additional treatment or examination by professionals. He continued to struggle with severe mental illness, now untreated, and his mental condition continued to deteriorate as he returned to his parents' home and suffered continual abuse.

In his twenties, Billy Ray Irick met and became friends with the Jeffers, Paula Dyer's family. The Jeffers were not interviewed until the habeas phase of proceedings, and the Petition explains that these statements show Billy's behavior in the weeks before his offense made it increasingly clear that he was suffering from severe mental illness. For example, Billy was found walking through the home of the victim's father with a machete. When asked what he was doing, Billy stated that he was going to kill her father. The Jeffers also described Billy "hearing voices" and "taking instructions from the devil." In particular, Cathy Jeffers recalled an incident where Billy believed police would enter the home to kill them with chainsaws, and that he at one point told her that "[t]he only person that tells me what to do is the voice."

All evidence shows that Billy Ray Irick was in a psychotic state at the time of the offense. The night of Paula Dyer's death, her mother, Kathy Jeffers, observed Billy "talking to himself." She could not understand what Billy was saying, and described what she heard as "mumbles." Later that evening, Kathy

learned that Billy had been chased out of Paula's father's home by Paula's grandmother, Linda Jeffers. Although concerned by his behavior, Kathy Jeffers asked him to babysit her children when she left for work. Paula Dyer was pronounced dead a few hours later, with Billy eventually charged with her rape and murder.

Billy's behavior in both the years and days leading up to Paula Dyer's death is entirely consistent with the presence of severe mental illness, according to Dr. Peter Brown, who was hired by habeas counsel. After examining Billy in 2009 and reviewing the relevant history related to Billy's mental state, Dr. Brown diagnosed Billy as suffering from psychotic disorder, cognitive disorder, paranoid personality disorder, and schizoid personality disorder, among other diagnoses. According to Dr. Brown, Billy's severe impairments existed from childhood and, importantly, would have been present "both at the time of the offense and at the time of his trial." Based on this evaluation, Dr. Brown reported that that there was "insufficient information to conclude that [Billy] was capable of forming specific intent in the commission of his offense," and that "his sanity at the time of the offense cannot be established beyond a reasonable doubt." Moreover, after reviewing much of the same evidence related to Billy's mental state—evidence which had not been previously made available to him—even the psychiatrist who conducted Billy's original pre-trial competency screening, Dr. Clifton Tennison, concluded that, given this new evidence and advances in medical science, "no confidence should be placed in [Billy's] 1985 evaluations of competency to stand trial and mental condition at the time of the alleged offense."

Notwithstanding these conclusions, very little of the relevant evidence and history concerning Billy's mental condition was presented at his trial or sentencing, or as required in appeals, and these issues were procedurally defaulted. The evidence provided by the Jeffers about Billy's increasingly unstable state leading up to the offense was not discovered until Billy's counsel at the federal habeas corpus stage had the Jeffers interviewed. Information from a neighbor about Billy's abuse at the hands of his father, including that his father had hit him in the back of the head with a piece of lumber, knocking him to the ground, was likewise not discovered until the federal habeas corpus investigation.

ARGUMENT

I. THE EIGHTH AMENDMENT PROHIBITS THE EXECUTION OF PEOPLE WITH SEVERE MENTAL ILLNESS

At the time of the offense, Billy Ray Irick suffered from severe mental illness that significantly diminished his capacity to act rationally. Just as this Court has found that, because of their reduced capacities, persons with intellectual disabilities and those who were juveniles when they offended may not be executed, it should find the Eighth Amendment prohibits the execution of those who, like Billy Ray Irick, suffered from severe mental illness at the time of the relevant crime.

A. In Cases Involving Categories Of Offenders, The Eighth Amendment Analysis Focuses Primarily On Relative Culpability And Deterrability

In *Gregg v. Georgia*, 428 U.S. 153, 183 (1976), this Court identified "two principal social purposes" that

justify imposition of the death penalty: retribution and deterrence. Thus, the Eighth Amendment prohibits the death penalty when it is disproportionate to the crime or would bring no appreciable deterrent effect. *Id.* Further, this Court stated the determination of proportionality required by the Eighth Amendment must be judged by current societal mores:

> The Eighth Amendment has not been regarded as a static concept. . . . [Instead] "[t]he Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Thus, an assessment of contemporary values concerning the infliction of a challenged sanction is relevant to the application of the Eighth Amendment. . . . It requires, rather, that we look to objective indicia that reflect the public attitude toward a given sanction.

Id. at 172–73 (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)) (internal citations omitted).

Twenty-six years later, in *Atkins v. Virginia*, 536 U.S. 304 (2002), this Court held that execution of those with intellectual disabilities offended contemporary values of proportionality. To make this determination, the Court looked first to the statutes and practices of the 50 states. It found that well over half of the states did not execute people with intellectual disabilities and that, of those that authorized such executions, few actually carried them out. *Id*. at 314–15. As a second rationale for its decision, it held, based on its own "independent evaluation," that the death penalty is an excessive penalty relative to the culpability and deterrability of people with intellectual disability, because of their "diminished capacities to understand and process information, to communicate, to abstract

from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others." *Id*. at 318, 321. The Court reasoned that "[i]f the culpability of the average murderer is insufficient to justify imposition of the most extreme sanction available to the State, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution." *Id*. at 319. It also continued to emphasize that the Eighth Amendment test is an evolving one: "A claim that punishment is excessive is judged not by the standards that prevailed in 1685 when Lord Jeffreys presided over the 'Bloody Assizes' or when the Bill of Rights was adopted, but rather by those that currently prevail." *Id*. at 311.

Three years later, in *Roper v. Simmons*, 543 U.S. 551 (2005), this Court followed the same analytical framework in holding that the execution of those who were under the age of 18 at the time of their crimes violated the Eighth Amendment. The Court first canvassed practices in the states and found that well over half the states did not permit execution of juveniles. *Id*. at 564–67. It then conducted an independent evaluation and concluded that "[o]nce the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them with lesser force than to adults." *Roper*, 543 U.S. at 571. As with people who have intellectual disability, juveniles "cannot with reliability be classified among the worst offenders." *Id*. at 569. And again this categorical finding was based on the assumption that the Eighth Amendment requires reference to "'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual." *Id*. at 560–61.

Seven years later, in *Miller v. Alabama*, 567 U.S. 460 (2012), this Court concluded that the Eighth Amendment also bars mandatory life without parole sentences for juvenile offenders. Although in both *Atkins* and *Roper* the Court examined statutory trends before moving to its independent evaluation of the distinctive traits of juveniles and the intellectually disabled, the *Miller* Court recognized the folly of trying to determine accepted evolving standards of decency through legislative nose-counting. *See id*. at 480–87 (considering "objective indicia" of state practices only after holding the mandatory life without parole is unconstitutional). Rather, it forthrightly stated that the rationale for treating juvenile offenders differently than adult offenders in the sentencing context was its belief that the two groups are different in legally relevant ways. As the majority stated in *Miller*: "Because juveniles have diminished culpability and greater prospects for reform, . . . 'they are less deserving of the most severe punishments.'" *Id.* at 471 (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)).

Thus, the focus of Eighth Amendment analysis in determining whether a group should be categorically exempt from the death penalty is its relative culpability and deterrability, based primarily on this Court's analysis of the group's relevant traits.

B. Offenders Suffering From Severe Mental Illness Have The Same Reduced Culpability As Those With Intellectual Disabilities And As Juveniles

In *Atkins* and *Roper*, the Court identified several specific characteristics of people with intellectual disability and juveniles that required they be exempted from capital punishment: (1) diminished capacity to understand and process information;

(2) diminished capacity to communicate; (3) diminished capacity to abstract from mistakes and learn from experience; (4) diminished capacity to engage in logical reasoning; (5) diminished capacity to control impulses; and (6) diminished capacity to understand other's reactions. *Atkins*, 536 U.S. at 318; *Roper*, 543 U.S. at 569–70. People who suffer from severe mental illness such as psychosis have all of these characteristics.

The following demonstration of that fact is based on the accumulated wisdom of the American Psychiatric Association expressed in the most recent edition of its Diagnostic and Statistical Manual [hereafter, DSM-5]. Reliance on such a source is, at the least, constitutionally preferred, and is perhaps required. As this Court recognized in *Hall v. Florida*, 134 S. Ct. 1986 (2014), in the course of fine-tuning the definition of intellectual disability under *Atkins*, "[i]n determining who qualifies as intellectually disabled, it is proper to consult the medical community." *Id*. at 1993. Similarly, in *Moore v. Texas*, 137 S. Ct. 1039 (2017), this Court recognized "[t]he medical community's current standards" as an important source of information about mental disability, stating that "current manuals offer 'the best available description of how mental disorders are expressed and can be recognized by trained clinicians.'" *Id*. at 1053 (citing DSM-5). Thus, DSM-5's descriptions of the symptoms of severe mental illness should be of utmost importance to the analysis. In linking these descriptions to the six characteristics that demarcate diminished culpability and deterrability under *Atkins* and *Roper*, the focus will be on schizophrenia and related psychotic disorders, the type of diagnosis most likely applicable to Billy Ray Irick.

1. **"Diminished capacity to understand and process information**:" Standard symptoms of the schizophrenia spectrum of disorders include "delusions" ("fixed" false beliefs that are often persecutory or grandiose) and "hallucinations" ("perception-like experiences that occur without an external stimulus"). DSM-5 at 87. A person experiencing such symptoms has great difficulty understanding the true nature of his or her interactions with others, and may easily misconstrue them in paranoid or otherwise unrealistic ways.

2. **"Diminished capacity to communicate**:" People with schizophrenia often have deficits in "declarative memory, working memory, language function, and other executive functions, as well as slower processing speed." DSM-5 at 101. "Abnormalities in sensory processing and inhibitory capacity, as well as reductions in attention, are also found." *Id*.

3. **"Diminished capacity to abstract from mistakes and learn from experiences**:" Because people with psychotic disorders often have delusional or paranoid thinking, they are less able to logically analyze past mistakes and experiences and draw appropriate conclusions. They also often "lack insight or awareness of their disorder," a condition that may result from brain damage known as anosognosia. *Id*. at 101.

4. **"Diminished capacity to engage in logical reasoning**:" A common feature of psychotic disorders is "disorganized think-

ing." This can include thought processes that are highly tangential, loose or incoherent (sometimes described colloquially as "word salad" locution). *Id*. at 88. Delusions, hallucinations and paranoid thinking can also interfere with a person's ability to engage in logical thought, in obvious ways.

5. **"Diminished capacity to control impulses**:" Because severe mental illness impairs understanding and processing of information as well as logical reasoning and one's ability to learn from mistakes, it can lead to behavior that is not well thought out.[2]

6. **"Diminished capacity to understand others' reactions**:" "Some individuals with schizophrenia show social cognition deficits, including deficits in the ability to infer the intentions of other people, . . . and [they] may attend to and then interpret irrelevant events or stimuli as meaningful, perhaps leading to the generation of explanatory delusions." *Id*. at 101.

Given these impairments, people with severe mental illness at the time of the offense are as impaired as people with intellectual disability and adolescent offenders. If people with intellectual disability and juveniles are categorically exempt from execution because their lesser culpability and

[2] Note, however, that "the vast majority of persons with schizophrenia are not aggressive and are more frequently victimized than are individuals in the general population." *Id*. at 101. Misperceptions about persons with schizophrenia, however, can prejudice jurors.

deterrability means they "cannot with reliability be classified among the worst offenders," *Roper*, 543 U.S. at 569, the same should be true of people with severe mental illness. These offenders are never among the small category of offenders who are eligible for the death penalty. *See id.* at 568 ("Capital punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'" (quoting *Atkins*, 536 U.S. at 319)).

C. Other Legal Mechanisms Are Insufficient To Protect The Eighth Amendment Interest Of People With Severe Mental Illness

In most jurisdictions, severe mental illness may be taken into account at four stages of a capital case. Proof of mental illness might support a finding of incompetency to stand trial prior to adjudication, a verdict of not guilty by reason of insanity during adjudication, a mitigating factor during sentencing, or a determination that a sentenced individual is incompetent to be executed. However, an exemption from the death penalty for those offenders who were severally mentally ill at the time of their offense is still necessary as a means of implementing the Eighth Amendment imperative of proportionality.

The two incompetency pleas have nothing to do with culpability or deterrability at the time of the offense. Competency to stand trial focuses on mental state at the time of adjudication, *Drope v. Missouri*, 420 U.S. 162 (1975), and competency to be executed becomes relevant only at the time of execution. *Ford v. Wainwright*, 477 U.S. 399 (1986). Given modern-day treatments and the possibility of natural remission, it is entirely possible for a person to be competent at both

of these stages but still to have experienced serious symptoms of mental illness at the time of the offense.

Unlike the competency tests, the insanity defense is focused on the individual's culpability at the time of the offense. However, in a few jurisdictions it has been abolished, and in virtually all jurisdictions it has been narrowly focused on the individual's ability to distinguish right from wrong at the time of the offense, as formulated in the nineteenth-century English decision in *M'Naghten's Case*. *See Clark v. Arizona*, 548 U.S. 735, 750–52 (2006) (describing the insanity formulations in all 50 states). While application of this standard may lead to a finding of not guilty by reason of insanity in cases of very serious illness, it is meant to define who should be excused entirely from crime. In contrast, the purpose of the Eighth Amendment exemption is solely to determine who, among those convicted of capital murder, should not receive the death penalty; if the exemption applies, the offender still receives a life sentence.

Thus, for instance, in their Joint Resolution calling for such an exemption, the American Bar Association, the American Psychiatric Association, the American Psychological Association, and the National Alliance on Mental Illness (an *amicus* on this brief) stated that the exemption should apply not only to individuals who, because of "severe mental disorder or disability" were "significantly impaired in their capacity to appreciate the nature, consequences or wrongfulness of their conduct" (which is similar to, although broader than, the test derived in *M'Naghten's Case*), but also to those who by virtue of mental illness were "significantly impaired in their capacity to exercise rational judgment in relation to conduct, or to conform their conduct to the requirements of the law." *See*

AM. BAR ASS'N RESOLUTION 122A, www.americanbar.org/groups/crsj/projects/death_penalty_due_process_review_project/serious-mental-illness-initiative-.html; AM. PSYCHIATRIC ASS'N, POSITION STATEMENT ON DIMINISHED RESPONSIBILITY IN CAPITAL SENTENCING, www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2014-Capital-Sentencing-Diminished-Responsibility.pdf; AM. PSYCHOLOGICAL ASS'N, MENTAL DISABILITY AND THE DEATH PENALTY (2006), www.apa.org/about/policy/chapter-4b.aspx#death-penalty; NAT'L ALLIANCE ON MENTAL ILLNESS, PUBLIC POLICY PLATFORM OF THE NATIONAL ALLIANCE ON MENTAL ILLNESS, § 10.9.1.2 (2016), www.nami.org/getattachment/ About-NAMI/Policy-Platform/-Public-Policy-Platform-up-to-12-09-16.pdf [hereafter Joint Resolution]. This definition is rightfully more expansive than *M'Naghten* because it is meant to define not a defense resulting in complete exculpation, but rather a bar solely to the ultimate penalty of death.

Finally, the fact that mental illness can be introduced as a mitigating factor at the capital sentencing proceeding is not an adequate implementation of the Eighth Amendment. This Court has recognized that persons subject to a capital sentencing proceeding must be permitted to present in mitigation "relevant facets of the character and record of the individual offender or the circumstances of the particular offense," *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (quoting *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976)), which would include the types of conditions described in the Joint Resolution. But as this Court recognized in *Atkins*, "reliance on mental retardation as a mitigating factor can be a two-edged sword that may enhance the likelihood that the aggravating

factor of future dangerousness will be found by the jury." 536 U.S. at 321. When the mitigation focuses on mental illness, the possibility that the jury will misuse the evidence in this way is even greater. Laypeople view people with mental illness to be abnormally dangerous. David L. Penn et al., *Dispelling the Stigma of Schizophrenia: II. The Impact of Information on Dangerousness*, 25 SCHIZOPHRENIA BULL. 437 (1999). Capital sentencing juries are no exception; several studies have even found that unsuccessfully raising an insanity defense correlates positively with a death sentence. Gary S. Goodpaster, *The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases*, 58 N.Y.U. L. REV. 299, 332 (1983); DAVID BALDUS, GEORGE WOODWORTH & CHARLES A. PULASKI, EQUAL JUSTICE AND THE DEATH PENALTY 644–45 (1999); Julie Goetz & Gordon P. Waldo, *Why Jurors in Florida Vote for Life or Death: The Florida Component of the Capital Jury Project*, presented at Life Over Death XV Conference, Ft. Lauderdale (Sept. 27, 1996).

As noted above, the belief that people with severe mental illness are disproportionately dangerous is erroneous. *See also* Jennifer Skeem et al., *Correctional Policy for Offenders with Mental Illness: Creating a New Paradigm for Recidivism Reduction*, 35 L. & HUM. BEHAV. 110 (2011). More importantly, a regime that permits a capital sentencing jury to act on such a belief is inimical to this Court's Eighth Amendment jurisprudence. *See Zant v. Stephens*, 462 U.S. 862, 885 (1983) (stating, in dictum, that it would be constitutionally impermissible to give aggravating effect to "conduct that actually should militate in favor of a lesser penalty, such as perhaps the defendant's mental illness").

Even if this clear misapplication of evidence of mental illness could be avoided, a death penalty exemption would still be required for people with severe mental illness. Just as a finding of insanity at trials leads to a finding of not guilty, regardless of the rest of the prosecution's case, an offender who is able to show the necessary impairment should be immune from the death penalty regardless of the aggravation factors advanced by the prosecution. As the American Bar Association, the American Psychiatric Association, the American Psychological Association, and the National Alliance on Mental Illness recognize in the aforementioned Joint Resolution, such an individual is not sufficiently culpable to deserve the death penalty.

II. IMPOSING THE DEATH PENALTY ON THOSE WITH SEVERE MENTAL ILLNESS VIOLATES THE EQUAL PROTECTION CLAUSE

Because, as demonstrated above, people with severe mental illness at the time of the offense are at least as impaired as people with intellectual disability and juveniles, their execution would also be a violation of equal protection under the Fourteenth Amendment. This Court has held that mental disability is not a "quasi-suspect class" for purposes of equal protection analysis. *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 365–68 (2001); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985). It is not yet clear, however, whether this holding applies to the imposition of capital punishment. In light of the research just described, such punishment could deprive a person of the fundamental interest in life and liberty based on an "irrational prejudice" about the dangerousness of people with mental illness. *Cf. City of Cleburne*, 473 U.S. at 450 (holding that the

denial of a group home permit for persons with intellectual disabilities to avoid "danger to other residents" was based on an "irrational prejudice"); *Foucha v. Louisiana*, 504 U.S. 71, 86 (1992) (plurality opinion) ("Freedom from physical restraint being a fundamental right, the State must have a particularly convincing reason . . . for [confinement of] insanity acquittees who are no longer mentally ill.").

However, even if the rational basis test applies in this context, a comparison of severe mental illness with intellectual disability and youth demonstrates that there is no plausible basis for differentiating between these groups in death penalty cases. People with severe mental illness at the time of the offense are at least as diminished in culpability and deterrability as people with intellectual disabilities and juvenile offenders. While identifying who suffered from severe mental illness at the time of the offense may present challenges, difficulties in determining whether someone has an intellectual disability, amply demonstrated in *Hall* and *Moore*, have not deterred the Court from adhering to *Atkins*. *See Hall*, 134 S. Ct. at 2001 (holding that because IQ tests are "imprecise" and must be subject to "studied skepticism," offenders "must be able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits"); *Moore*, 137 S. Ct. at 1051 (describing the intricacies of evaluating adaptive functioning in Moore's case and noting the lower court's view that such assessments are "exceedingly subjective"). In any event, diagnosis of psychosis—the focus here—is generally very reliable. Enrique Baca-Garcia et al., *Diagnostic Stability of Psychiatric Disorders in Clinical Practice*, 210 BRIT. J. PSYCHIATRY 214 (2007) (finding inter-rate reliability of 79.2% for schizophrenia, 81.1% agreement for bipolar affective

disorder); Michael R. Phillips et al., *Psychiatry and the Criminal Justice System: Testing the Myths*, 145 AM. J. PSYCHIATRY 605 (1988) (finding seventy-six percent agreement on a diagnosis of psychosis); Kenneth K. Fukunaga et al., *Insanity Plea: Inter-Examiner Agreement and Concordance of Psychiatric Opinion and Court Verdict*, 5 L. & HUM. BEHAV. 325 (1981) (finding ninety-two percent inter-rater agreement on gross impairment).

Also important to note is the fact that states routinely purport to be able to provide "clear and convincing evidence" or even proof beyond a reasonable doubt of severe mental illness in various settings, ranging from civil commitment to detention of violent sex offenders. *Cf. Addington v. Texas*, 441 U.S. 418, 433 (1979) (requiring clear and convincing proof of all civil commitment elements, including mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 364 (1997) (upholding statute that required proof beyond a reasonable doubt that respondent is a sexually violent predator). While the state would be justified in placing the burden on offenders to show they suffered from severe mental illness at the time of the offense, it should not be able to put to death a group of people that is clearly undeserving of the death penalty simply because the members of that group cannot always be easily identified, especially in light of the fact that the state purports to be able to do so in many other contexts.

CONCLUSION

For the reasons stated above, *Amici* requests the Court grant certiorari and schedule this case for briefing and oral argument.

Respectfully submitted,

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