No. 11-1515

In The Supreme Court of the United States

JOHN JOSEPH DELLING,

Petitioner,

v.

IDAHO,

Respondent.

On Petition For A Writ Of Certiorari To The Idaho Supreme Court

BRIEF OF *AMICI CURIAE* THE IDAHO ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, THE KANSAS ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, THE UTAH ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND THE MONTANA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONER

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The Idaho Association of Criminal Defense Lawyers (IACDL), the Kansas Association of Criminal Defense Lawyers (KACDL), the Utah Association of Criminal Defense Lawyers (UACDL), and the Montana Association of Criminal Defense Lawyers (MACDL) respectfully submit this brief of *amici curiae* in support of the Petitioner.[1]

INTERESTS OF *AMICI CURIAE*

Amici IACDL, KACDL, UACDL, and MACDL are non-profit organizations representing nearly 1300 criminal defense lawyers and related law professionals in four states. The combined mission of these organizations is to promote the proper administration of justice, to foster, maintain, and encourage the integrity and independence of the judicial system and the expertise of the defense lawyer in protecting individual rights guaranteed under their respective state constitutions and the Constitution of the United States, and to ensure justice and due process for persons accused of crime.

Amici agree with Petitioner's argument in his Petition for a Writ of Certiorari and offer additional

[1] This brief was written entirely by *amici* and their counsel. No contributions were made to the preparation or submission of this brief by any party or from any outside source. Both parties received at least ten days notice of the intention to file and have consented in writing to the filing of this brief.

reasons why it is important for the Court to hear this case. *Amici* write to underscore the important, deeply-rooted and therefore fundamental principle of criminal responsibility underlying the insanity defense, and the failure to appreciate the critical distinction between criminal responsibility and elements *mens rea* which has caused the Idaho Supreme Court in this case, and the supreme courts of Kansas, Utah, and Montana in similar cases, to cast aside this fundamental principle in upholding their laws abolishing the insanity defense. *Amici* also have an interest in this case to provide the Court with their perspective on the importance of the insanity defense to a lawyer's ability to present evidence that their mentally ill client is not criminally responsible because he or she was unable to appreciate the wrongfulness of their conduct at the time of the offense. In the four states represented by *amici*, such evidence is deemed inadmissible or irrelevant, and consequently, there is no vehicle available in these states to allow an insane defendant who was unable to appreciate the wrongfulness of their conduct to be acquitted. *Amici*'s members are unified in their support for Petitioner's argument that the insanity defense is required under the Fourteenth and Eighth Amendments.

SUMMARY OF ARGUMENT

This Court should grant *certiorari* in this case because the decision of the Idaho Supreme Court upholding the abolition of the insanity defense is endemic to

the *mens rea* model states. The statutory *mens rea* model upheld by the Idaho Supreme Court practically mirrors those adopted in Kansas, Utah and Montana in prohibiting any defense to a criminal charge based on evidence that the accused was unable to appreciate the wrongfulness of their conduct at the time it was committed.

I. The Idaho Supreme Court's decision, and decisions like it from the other three *mens rea* model states, is based on a failure to recognize the distinction between legal capacity for criminal responsibility and elements *mens rea*. This Court and individual Justices of the Court have repeatedly recognized the distinction between evidence that creates a reasonable doubt about the state's proof of offense elements, and evidence that establishes an accused's lack of criminal responsibility due to legal insanity. *See*, *e.g.*, *Leland v. Oregon*, 343 U.S. 790, 793-800 (1952); *Mullaney v. Wilbur*, 421 U.S. 684, 706 (1975) (Rehnquist, J., concurring); *Clark v. Arizona*, 548 U.S. 735, 796 (2006) (Kennedy, J., dissenting). The Nevada Supreme Court also recognized this distinction in striking down that state's law abolishing the insanity defense. *Finger v. State*, 27 P.3d 66, 85 (Nev. 2001).

By failing to recognize these categorical distinctions, the Idaho Supreme Court, and the supreme courts of Kansas, Utah, and Montana, have confused elements *mens rea* with the question of insanity. By failing to understand and give weight to that category of *mens rea* doctrine that addresses the legal capacity for criminal responsibility, extrinsic to offense elements,

those courts have abandoned a deeply-rooted principle of law underlying the insanity defense that is fundamental to the American scheme of criminal justice: Namely, that a person who by reason of mental disease or defect was unable to appreciate the wrongfulness of their conduct is not morally blameworthy and thus is not criminally responsible.

II. The experience of *amici* and its members is that, practically speaking, a lawyer defending a mentally ill client in a *mens rea* model state, in addition to the ordinary difficulties inherent to such representation, must advise his or her client that no defense is available because evidence that might acquit them of criminal responsibility is deemed either inadmissible or irrelevant. The options available to defense counsel and their clients in these cases amount to a Hobson's choice: They can seek to negotiate and enter a guilty plea, despite evidence showing that the accused was unable to appreciate the wrongfulness of their conduct that would potentially excuse them from criminal responsibility based on the insanity defense; or they can take their case to trial knowing that such evidence will not be considered. In either case, an insane person will be convicted and punished, because there is no vehicle for an acquittal based on that person's lack of legal capacity for criminal responsibility. Worse still, the person will often receive a harsher punishment *because of his insanity* than a sane defendant convicted of the same crime.

Granting *certiorari* in this case will provide this Court with the opportunity, not only to preserve

the fundamental principle of criminal responsibility dictating that an insanity defense is constitutionally required, but to preserve the right of mentally ill defendants to present a defense based on their inability to appreciate the wrongfulness of their conduct.

ARGUMENT

I. By abolishing the insanity defense and limiting evidence of mental disease or defect to that which negates an element of the crime charged, the laws of Idaho, Kansas, Utah, and Montana have unconstitutionally eliminated the fundamental principle underlying the insanity defense that encompasses the legal capacity for criminal responsibility, not at the offense level through elements of the crime, but through the affirmative insanity defense.

Certiorari should be granted in this case to preserve the basic, founding principle of our criminal justice system that a person who is not morally blameworthy is not criminally responsible. Historically and in modern practice, the insanity defense rests on this fundamental principle, rooted in ancient and common-law doctrine, which holds that one who lacks capacity to rationally distinguish between good and evil, *i.e.*, to appreciate the wrongfulness of their conduct, is morally blameless and cannot be punished. *See* Pet. 18-27. The insanity defense, therefore, like other basic rules of criminal law, is "fundamental

to the American scheme of justice." *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968).

The *mens rea* model upheld by the Idaho Supreme Court and by the supreme courts of Kansas, Utah, and Montana, abandons the fundamental principle underlying the insanity defense by substituting it with an evidentiary rule allowing evidence of mental disease or defect only to negate the statutory *mens rea* element of a particular offense. The decisions upholding the *mens rea* model are based in part on an assertion that the insanity defense and the *mens rea* model evidentiary rule are synonymously directed at evidence negating common-law criminal responsibility. *See* Pet. at 30 (citing *State v. Korrell*, 690 P.2d 992, 999 (Mont. 1984); *State v. Searcy*, 798 P.2d 914, 917 (Idaho 1990)). *See also State v. Bethel*, 66 P.3d 840, 851 (Kan. 2003) (erroneously suggesting that the insanity defense was not abolished, but merely "redefined"); *cf. State v. Pennington*, 132 P.3d 902, 908 (Kan. 2006) (acknowledging abolition of insanity defense).

This assumption is manifestly incorrect. What the courts upholding the *mens rea* model fail to recognize is that the *mens rea* model evidentiary rule addresses elements *mens rea*, which is solely concerned with the mental state required as an element of the crime. The question of insanity, however, is a separate inquiry concerned with legal capacity, which is the fundamental precondition for criminal responsibility, extrinsic to the elements of the crime. Since the insanity defense is concerned with legal capacity

for criminal responsibility, or moral blameworthiness, the issue of whether a person is insane because he could not appreciate the wrongfulness of his conduct is not an element of a crime that the prosecution must prove, but rather, is addressed through the affirmative defense of insanity.

Common-law *mens rea* doctrine diverged into these dual categories as the judiciary began to struggle with sometimes unpredictable and unjust results of a strict application of evil motive, such as when a person who acted with the requisite evil motive was nevertheless declared not guilty of the unintended consequences of their intended act. To correct such anomalous results, courts began to identify *mens rea* elements of various offenses. *See* Martin R. Gardner, "*The Mens Rea Enigma: Observations on the Role of Motive in the Criminal Law Past and Present*," 1993 UTAH L. REV. 635, 673-674 (citing *Regina v. Pembliton*, (1874) L.R.-Cr. Cas. Res. 119). Even so, "evil motive" or "vicious will," signifying moral blameworthiness as a precondition of criminal responsibility, was preserved in excuse doctrine. 4 W. Blackstone, Commentaries on the Laws of England 21 (1769) ("[A]n unwarrantable act without a vitious will is no crime at all"). *See also* Francis Bowes Sayer, "*Mens Rea*," 45 HARV. L. REV. 974, 1020 (1932) (notwithstanding gradual common-law development of criminal law into requisite mental elements of various felonies, "the strong tendency of the early days to link criminal liability with moral guilt made it necessary to free from punishment those who perhaps satisfied the

requirements of specific intent for particular crimes but who, because of some personal mental defect or restraint, should not be convicted of any crime"); Guyora Binder, "*The Rhetoric of Motive and Intent*," 6 BUFF. CRIM. L. REV. 1, 19-20 (2002) (describing *mens rea* for criminal liability in late eighteenth century English criminal law as "a presumed capacity for moral agency to be disproved by the defense").

Thus, if an unlawful act was committed, but, by reason of duress, infancy or insanity the accused lacked the capacity for moral blameworthiness, a defense existed to the otherwise criminal conduct. *See* Gardner, *supra*, at 695. In *M'Naghten's Case*, for example, the Judges of the Queen's Bench determined that, notwithstanding proof that an accused committed a criminal act with the requisite *mens rea*, it was a defense to criminal responsibility if the accused "clearly proved that, at the time of the committing of the act, [he] was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong." *M'Naghten's Case*, (1843) 8 Eng. Rep. 718, 722.

This Court has implicitly recognized this distinction between elements *mens rea* and criminal responsibility in the context of the insanity defense. In *Leland v. Oregon*, 343 U.S. 790 (1952), the petitioner argued that placing the burden on him to prove legal insanity violated due process because it required him to disprove the elements of the crime of murder. In

rejecting this argument, the Court acknowledged the distinction between the question of guilt or innocence on the elements of the crime and the question of criminal responsibility addressed by the affirmative defense of insanity, and noted the difference between evidence which creates a reasonable doubt about the prosecution's proof of offense elements, and evidence which establishes an accused's lack of criminal responsibility. *Id*., at 793-800. *See also Clark v. Arizona*, 548 U.S. 735, 796 (2006) (Kennedy, J., dissenting) ("Criminal responsibility involves an inquiry into whether the defendant knew right from wrong, not whether he had the *mens rea* elements of the offense. While there may be overlap between the two issues, 'the existence or nonexistence of legal insanity bears no necessary relationship to the existence or nonexistence of the required mental elements of the crime'") (quoting *Mullaney v. Wilbur*, 421 U.S. 684, 706 (1975) (Rehnquist, J., concurring)).

The Nevada Supreme Court also recognized these distinct inquiries, in holding that abolition of the insanity defense violated due process under the state and federal constitutions. *Finger v. State*, 27 P.3d 66, 68, 85 (Nev. 2001). The court rightly analyzed the issue of criminal responsibility as a person's legal capacity to appreciate the wrongfulness of their actions, which can only be addressed by an affirmative insanity defense. *Id.*, at 79-85.

Since the insanity defense relates to a person's legal capacity for criminal responsibility, an accused that is unable to appreciate the wrongfulness of their

conduct is not criminally responsible, regardless of whether the elements *mens rea* of the charged crime is proven beyond a reasonable doubt. Insanity excuses a person from criminal responsibility, not because he did not commit the act in question, but because his mental disease or defect robbed him of his capacity to make a free, meaningful choice when he did act. *See Davis v. United States*, 160 U.S. 469, 485 (1895) ("if [a person's] reason and mental powers are either so deficient that he has no will, no conscience, or controlling mental power, or if, through the overwhelming violence of mental disease, his intellectual power is for the time obliterated, he is not a responsible moral agent and is not punishable for his criminal acts"). *See also Morissette v. United States*, 342 U.S. 246, 250 (1952) (the notion of *mens rea* "is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil").

In finding the abolition of the insanity defense constitutional, the courts in Idaho, Kansas, Utah, and Montana eliminate the fundamental inquiry concerned with criminal responsibility, which is done not at the offense level through the elements of the crime, but at the defense level through the affirmative defense of insanity. These four states have thus turned a fundamental, founding principle of our criminal justice system on its head: an insane person – who committed an act for which he or she lacks legal capacity for criminal responsibility and is thus not

morally blameworthy and not subject to punishment – is held criminally responsible and punished for that act. Moreover, as Mr. Delling's own case shows, an insane person in these states is often punished more severely *because he is insane*. *See* Pet. App. 23a-25a.

Evidence showing that an accused, because of a mental disease or defect, was unable to appreciate the wrongfulness of their conduct and therefore lacks the legal capacity for criminal responsibility, can be taken into account only through the affirmative insanity defense. This case thus raises vital issues of criminal law implicating both the Fourteenth and Eighth Amendments, and warrants review by this Court.

II. Because abolition of the insanity defense in the four *mens rea* model states eliminates any vehicle for consideration of evidence showing that the accused was unable to appreciate the wrongfulness of their conduct at the time of its commission, those states, as a practical matter, prohibit an accused from presenting any defense that they lacked the legal capacity for criminal responsibility.

Mr. Delling's is a perfect case in point. The trial court expressly found that Delling lacked "the ability to appreciate the wrongfulness of his conduct" at the time he committed the crimes due to "severe delusional thinking." Pet. 4-5. However, because of Idaho's abolition of the insanity defense, Delling could not

argue that he lacked the legal capacity for criminal responsibility and therefore could not be convicted and punished. Instead, because it was undisputed that Delling's conduct in killing two people was intentional, Delling was not only held criminally responsible, but he received the maximum punishment of life without parole because his mental illness was, in the trial court's view, an *aggravating* factor. Pet. 6-7. Thus, in actuality, the most severe punishment available was meted out to Delling because he was insane. This outcome runs completely counter to the fundamental principle of criminal responsibility underlying the insanity defense, *i.e.*, that one who cannot rationally distinguish between right and wrong is not morally blameworthy and cannot be convicted.

This case is not an isolated one. Indeed, in the experience of *amici* and its members, a lawyer in a *mens rea* model state representing a mentally ill person who committed an unlawful act must inevitably advise their client that there is no defense to the criminal charge, because the only evidence that might acquit them is either inadmissible or irrelevant. In such circumstances, the already inherently difficult task of advising a mentally ill client is made impossible when defense counsel is unable to argue, as a defense, that their client was unable to understand or appreciate the wrongfulness of their conduct and thus lacked the legal capacity for criminal responsibility. In such cases, defense counsel is left with two equally undesirable options: 1) negotiate a guilty plea despite the existence of evidence that their client

is not criminally responsible because he is insane; or 2) take the case to trial knowing that such evidence will be ruled inadmissible at the outset or, even if it is admitted, will not be allowed to be considered by the finder of fact in determining guilt or innocence because it does not negate an element of the crime.

Case law from the *mens rea* model states bears out these stark realities. In *State v. Bethel*, for example, it was undisputed that Bethel, a paranoid schizophrenic, possessed the requisite elements *mens rea* because he intentionally killed three people, explaining to police that God had told him to kill them. 66 P.3d at 842-843. The defense proffered an expert's report concluding that Bethel's mental state at the time of the killings precluded him from understanding the difference between right and wrong or from understanding the consequences of his actions, yet the trial court held the evidence was *per se* inadmissible because Bethel's inability to appreciate the wrongfulness of his conduct was not a defense under Kansas law. *Id.*, at 843 (citing KAN. STAT. ANN. § 22-3220 [recodified under KAN. STAT. ANN. § 21-5209]). Bethel subsequently waived his right to a jury trial, proceeded to a bench trial on stipulated facts, and was convicted of one count of capital murder and two counts of premeditated first-degree murder. Even though the prosecution agreed not to pursue the death penalty, Bethel was sentenced to a controlling 100-year term of imprisonment. *Id.*, at 841. Upholding the trial court's judgment, the Kansas Supreme Court relied on decisions from Montana, Idaho, and

Utah in holding that the Kansas statutory *mens rea* model did not violate the Due Process Clause or the Eighth Amendment. *Id*., at 844-852 (citing *State v. Korrell*, 690 P.2d 992 (Mont. 1984); *State v. Searcy*, 798 P.2d 914 (Idaho 1990); *State v. Herrera*, 895 P.2d 359 (Utah 1995)).

As was the case with Mr. Delling (*see* Pet. 6-7), similarly-situated defendants in other cases, left without a defense to the State's charge, have entered a conditional guilty plea for the sole purpose of preserving for appeal their challenge to the constitutionality of the state's statutory *mens rea* model. *See*, *e.g.*, *State v. Herrera*, 993 P.2d at 858-859; *State v. Mace*, 921 P.2d 1372, 1375 (Utah 1996); *State v. Rhoades*, 809 P.2d 455, 457 (Idaho 1991). Still other defendants have proceeded to trial, but largely for the same purpose. *See*, *e.g.*, *State v. Byer*s, 861 P.2d 860 (Mont. 1993); *State v. Cowan*, 861 P.2d 884 (Mont. 1993); *State v. Card*, 425 P.2d 1081 (Idaho 1991); *State v. Pennington*, 132 P.3d 902 (Kan. 2006); *State v. White*, 109 P.3d 1199 (Kan. 2005); *State v. Lafferty*, 749 P.2d 1239 (Utah 1988). In all of these cases, the courts have adhered to the view that the insanity defense is not constitutionally required.

If defense counsel does take the case to trial, no viable defense is available in a case where the defendant's conduct was intentional but his mental illness prevented him from appreciating the wrongfulness of his conduct. Indeed, the experience of counsel in *mens rea* model states is that, short of outright jury nullification, a trial by definition can

never result in an acquittal in these cases because even severely mentally ill persons almost always intend their conduct. *See* Stephen J. Morse, "*Undiminished Confusion in Diminished Capacity*," 75 J. CRIM. L. & CRIMINOLOGY 1, 41 (1984) (elements *mens rea* "is rarely negated by mental abnormality, no matter how severe the disorder or defect . . . [f]or instance, a person who kills because he feels totally controlled by an influencing machine operated by hostile forces may ultimately be legally insane, but surely he intends to kill his victims").

For example, in *State v. Pennington*, *supra*, the defense expert explained to the trial court that Pennington's capacity to form specific intent was questionable because it was "based on his delusional system." 132 P.3d at 906. When pressed by the trial court, however, the expert candidly admitted he was unable to supply a definitive yes or no answer to the question of whether Pennington was able to form the intent necessary for the crimes charged. The expert explained that he had always had difficulty with the *mens rea* model statute because "it's difficult for me to imagine any type of behavior that was not preceded by intent of some kind." *Id*., at 906-907. The trial court ruled the testimony inadmissible. The Kansas Supreme Court affirmed, finding that under the *mens rea* model, "it is no longer relevant whether intent is formed rationally or whether it is formed based on delusions," because "[t]he mens rea defense . . . only allows evidence of a mental disease or defect

that negates the mental state element of the crime charged." *Id*., at 908.

This same result plays out in virtually every case where defense expert testimony regarding the defendant's state of mind is admitted at trial. The explanation provided by the expert in *Pennington* reflects the brick wall that defense counsel in the *mens rea* model states invariably confront, *i.e.*, the reality that "any type of behavior is preceded by intent of some kind." *Id*., at 906-907.

The inability of defense counsel to present a defense in these cases is exacerbated when the client is charged with a general intent crime. In *State v. Byers*, *supra*, and *State v. Cowan*, *supra*, the defendants were each convicted of deliberate homicide and attempted deliberate homicide, respectively – requiring only proof in each case that the defendant acted "knowingly" or "purposely." *Byers*, 861 P.2d at 864; *Cowan*, 861 P.2d at 886. The Montana Supreme Court concluded in both cases that "the existence of a mental disease or defect in a person does not necessarily preclude such a person from acting knowingly or purposely." *Byers*, at 865 (citing *State v. Korrell*, *supra*, 690 P.2d 992); *Cowan*, at 887 (citing *Byers* and *Korrell*).

In *Cowan*, the majority clearly suggested that Cowan's mental disease or defect, consisting of evidence of "bizarre, senseless" behavior at the time of the crime indicating that Cowan was under a delusional belief that his actions were justified, was

simply irrelevant to whether he acted with the requisite intent because his capacity to form intent was not in issue. 861 P.2d at 887 ("the issue before the court in the trial phase of this action was not whether Cowan was in a psychotic state, but . . . whether he acted purposely or knowingly"). This is precisely the kind of evidence that is relevant to legal insanity even though it does not create a reasonable doubt with respect to the *mens rea* element of the crime. *See id*., at 890 (Trieweiler, J., dissenting) ("[b]ased on Montana's definitions of knowingly and purposely, [Cowan] could act with both states of mind and still not appreciate the criminality of his conduct nor be able to conform his conduct to the law"). *See also Byers*, at 881 (Trieweiler, J., dissenting). If an accused's capacity to form intent is not even a fact at issue in general intent crimes, then the prosecution bears no burden of proving that fact as an element of the crime. In such cases, an accused's mental disease or defect does not even come into play.

Finally, in those instances where evidence of mental disease or defect is allowed to be taken into account at sentencing, the punishment imposed may actually be harsher, as it was for Mr. Delling, than for those who are morally blameworthy. In *State v. Watson*, 686 P.2d 879 (Mont. 1984), the defendant, who was indisputably mentally ill at the time of his conduct, but whose evidence was admissible only within the confines of elements *mens rea*, was ultimately sentenced to imprisonment for 300 years without parole on convictions of deliberate homicide,

aggravated assault, and burglary. *Id*., at 881. In a forceful dissent, Justice Sheehy noted the evident purpose of the punishment was to put Watson "on ice" for the rest of his life, where "he will be preserved in his present state, without hope of treatment until death overtakes him," which "is cruel and unusual punishment." *Id*., at 892 (Sheehy, J., dissenting). *See also Herrera*, *supra*, 895 P.2d at 381 (Stewart, Assoc. C.J., dissenting) (noting "the kleptomaniac propensities of Alzheimer's patients that might well result in imprisonment under the Utah [*mens rea* model] scheme of persons whom everyone would agree are not morally blameworthy and whose imprisonment could only be cruel, if not barbaric").

Every criminal defendant has a due process right to defend against the State's accusations. *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). The experience of counsel defending clients in the *mens rea* model states, however, is that a defendant who was mentally incapable of understanding the wrongfulness of their conduct is in the worst of all possible worlds – one that claims to have an adequate substitute for the insanity defense, but which provides no outlet for evidence of insanity.

Moreover, counsel in these states know that, in actuality, a person's insanity often leads to a more severe punishment. A harsh prison term is not uncommon, as this case and cases from other *mens rea* model states show. Beyond mere length, however, the prison term of an insane person is often accompanied by the crushing isolation of solitary confinement or

administrative segregation because of the person's severe mental illness, with scant hope of treatment except perhaps at the discretion of prison officials. Even then, resources for providing such treatment in a prison setting may be inadequate or non-existent. *See*, *e.g.*, Pet. 15 n. 3. There is a stark difference between the conditions of confinement for an insane person in a prison ill-equipped to deal with such inmates, often for life or its functional equivalent, and the conditions accompanying civil commitment of an insanity acquittee to a state mental hospital which exists precisely for the purpose of providing care and treatment to the severely mentally ill until they no longer pose a danger to themselves or others.

Without an affirmative insanity defense, a person whose mental illness prevented them from appreciating the wrongfulness of their conduct, and who therefore lacked the legal capacity for criminal responsibility, cannot be acquitted. The result is that persons who lack the moral blameworthiness prerequisite to criminal responsibility are convicted and imprisoned for crimes committed while they were insane, in violation of the Fourteenth Amendment's Due Process Clause and the Eighth Amendment proscription of cruel and unusual punishment.

CONCLUSION

The petition for writ of *certiorari* should be granted.

July, 2012

Respectfully submitted,

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