No. 20-5786

IN THE

Supreme Court of the United States

WILLIAM EARL SWEET,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether, in the context of considering claims Petitioner sought to raise in his eighth petition for post-conviction relief, the Florida Supreme Court erred insofar as it either rejected or did not address various arguments—including federal constitutional claims Petitioner did not raise in the proceeding below—based on alleged ineffective assistance of Petitioner's initial-review post-conviction counsel.

2. Whether the Florida Supreme Court erred when it determined that arrest records of a witness who first testified in post-conviction review proceedings, and whose testimony was deemed not credible for reasons unrelated to those records, were not material under *Brady v. Maryland*, 373 U.S. 83 (1963).

3. Whether the Florida Supreme Court erred in rejecting Petitioner's most recent claim of actual innocence, where courts have repeatedly considered and rejected his claims based on the same or similar evidence in prior post-conviction proceedings.

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INTRODUCTION

Petitioner seeks review of the Florida Supreme Court's denial of his eighth petition for post-conviction review. In doing so, Petitioner facially attacks Florida's post-conviction review procedures, arguing that Florida must recognize a claim of ineffective assistance of post-conviction counsel even though federal courts must reject such claims, 28 U.S.C. § 2254(i), and even though this Court has repeatedly held that prisoners have no right to counsel on post-conviction review, *e.g.*, *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Likewise, Petitioner argues that Florida must recognize a free-standing actual innocence claim even though Florida provides a scheme to show innocence on collateral review and must be given "flexibility" to make that choice, *Dist. Att'y's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 69 (2009), and even though this Court has never recognized such a claim, *id.* at 71. Finally, Petitioner seeks review of a fact-bound *Brady* claim.

"Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). But those interests have been frustrated in this case. *See Bucklew v. Precythe*, 139 S. Ct. 1112, 1133 (2019). Petitioner was sentenced to death for murdering a 13-year-old girl and attempting to murder three others almost 30 years ago. Since then, he has taken a direct appeal, sought certiorari four times, sought federal habeas review twice, and filed eight petitions for state post-conviction review. Each time Petitioner's arguments have been rejected. And

yet, by filing "lawsuit after lawsuit," Petitioner "has managed to secure delay." *Id.* at 1133-34. "The people of [Florida], the surviving victims of Mr. [Sweet's] crimes, and others like them deserve better." *Id.* at 1134.

Petitioner's questions presented do not warrant review. He identifies no splits, fails to explain why his preferred changes to state habeas procedure are important given the backstop of federal habeas review, and cannot show that the Florida Supreme Court erred in denying him relief. The delay should end; this Court should deny review.

STATEMENT

1. On June 6, 1990, Marcine Cofer was attacked in her apartment and robbed by three men. *Sweet v. State*, 624 So. 2d 1138, 1139 (Fla. 1993). On June 26, Cofer went to the police station to view a photo array to identify the assailants. *Id.* Unfortunately, Petitioner saw the police detective drop Cofer off at her apartment following her meeting at the station. *Id.* That night, Cofer, who did not want to stay home alone because of the robbery, asked her next-door neighbor, Mattie Bryant, to allow the neighbor's daughters, Felicia, who was 13, and Sharon, who was 12, to stay with Cofer. *Id.* The children went to Cofer's around 8 p.m. *Id.*

Unknown to Cofer, Petitioner had already implicated himself in the robbery and had seen her speaking to detectives. *Id.* To "eliminate a potential witness in the pending robbery investigation," Petitioner devised a plan to murder Cofer. *Id.* at 1142.

That night, at about 1 a.m., Sharon Bryant heard a loud knock at Cofer's apartment door. *Id.* at 1139. Sharon then saw someone pulling on the living room screen. *Id.* Afraid, Sharon woke up Cofer, and the two of them went to the apartment door, looked through the peephole, and saw Petitioner standing outside. *Id.* Petitioner demanded that Cofer open the door. *Id.*

Cofer did not; instead, she tried to get Mattie Bryant's attention. *Id.* Eventually, after Mattie also came to Cofer's apartment, the four of them—Cofer, Mattie, Sharon, and Felicia—planned to escape the apartment to avoid Petitioner. *Id.* The four lined up at the door, preparing to open the door and flee to the Bryant's apartment. *Id.*

But when they opened the door to leave, Petitioner forced his way into the apartment and opened fire. *Id.* Petitioner fired six shots, injuring Cofer, Mattie, and Sharon, and killing 13-year-old Felicia Bryant. *Id.*

Petitioner was brought to trial in 1991. At the trial, both Cofer and Sharon Bryant identified him as the shooter. *Id.*; Tr. 5/21/1991 at 509-11, 515 (Cofer identification) & 623-25, 630 (Bryant identification). These identifications were buttressed by Petitioner's confession to Solomon Hansbury, who testified that Petitioner admitted to the murder while the two were in jail. *Sweet v. State*, 810 So. 2d 854, 867 (Fla. 2002). The State also put on evidence of Petitioner's motive—he confessed to Manuela Roberts, *id.* at 870, that he had robbed Cofer, *see Sweet*, 624 So. 2d at 1142.

The jury unanimously convicted Petitioner on five counts: one count of first-degree murder, three counts of attempted first-degree murder, and one count of burglary. *Id.* at 1139.

At the penalty phase, the State proved four aggravating circumstances: "(1) Sweet had previously been convicted of several violent felonies . . . ; (2) the murder was committed to avoid arrest; (3) the murder was committed during a burglary; and (4) the murder was cold, calculated, and premeditated." *Id.* at 1142. Although Petitioner proved no statutory mitigators, he did show that he lacked parental guidance, a non-statutory mitigator. *Id.* Considering these aggravators and mitigators, the jury recommended, and the trial court imposed, a sentence of death. *Id.* at 1139.

Petitioner appealed, raising alleged errors at both the guilt and penalty phase, but the Florida Supreme Court unanimously affirmed. *See Sweet*, 624 So. 2d 1138. This Court denied certiorari. *Sweet v. Florida*, 510 U.S. 1170 (1994).

2. In 1995, Petitioner filed his first petition for post-conviction relief, ultimately raising 28 claims, including both an ineffective-assistance-of-trial-counsel claim and a claim that his conviction should be overturned because Hansbury, one of the trial witnesses, recanted. *Sweet*, 810 So. 2d at 867. The trial court held a three-day evidentiary hearing after which it denied relief. *Id.* at 858. The Florida Supreme Court unanimously affirmed. *Id.* at 871. In doing so, the Court found that Petitioner failed to show

ineffective assistance of counsel at either the guilt or the penalty phase. *Id.* at 858-62 (guilt phase); 862-66 (penalty phase). The Florida Supreme Court also rejected a claim based on Hansbury's recantation because, as the trial court had found after hearing Hansbury testify, the recantation was "incredible." *Id.* at 867.

In 2003, having exhausted his traditional state collateral review options, Petitioner filed a second motion for post-conviction review, which was denied. *Sweet v. State*, 900 So. 2d 555 (Fla. 2004). Petitioner then sought federal habeas review, but his petition was dismissed as untimely because it was filed nearly a year and a half too late. *Sweet v. Crosby*, No. 3:03-cv-844, 2005 WL 1924699, at *2-3 (M.D. Fla. Aug. 8, 2005). The Eleventh Circuit affirmed, *Sweet v. Sec'y, Dep't of Corr.*, 467 F.3d 1311 (11th Cir. 2006), and this Court denied certiorari. *Sweet v. McDonough*, 550 U.S. 922 (2007).

Back in state court, and more than a decade after he murdered Felicia Bryant, Petitioner filed his third and fourth petitions for post-conviction review. Both were denied. *See Sweet v. State*, 248 So. 3d 1060, 1064 n.3 (Fla. 2018).

Following this Court's decision in *Martinez v. Ryan*, 566 U.S. 1 (2012), Petitioner filed his fifth petition for post-conviction review. Petitioner argued that *Martinez* announced a new constitutional rule, which he claimed allowed prisoners seeking state habeas relief to raise trial counsel ineffectiveness claims despite state-law procedural bars if the

procedural default was caused by post-conviction counsel's own ineffectiveness. The post-conviction court denied relief, finding that *Martinez* does not apply in state courts. *Florida v. Sweet*, No.16-1991-CF-2899 (Fla. Cir. Ct. Sept. 20, 2013). Petitioner neither appealed nor sought certiorari.

In 2017, claiming that he had discovered new evidence that proved his innocence, Petitioner filed his sixth state-court petition for post-conviction relief. *See Sweet*, 248 So. 3d at 1061. Petitioner pointed to two new sources of evidence: (1) an affidavit from a prisoner named Eric Wilridge, who claimed that he witnessed the shooting and did not see Petitioner, *id.* at 1065, and (2) post-trial statements from Cofer suggesting that she might have misidentified Petitioner at trial. *Id.* The post-conviction court granted Petitioner an evidentiary hearing to develop this new evidence. *Id.* At the evidentiary hearing, the State introduced arrest records, which showed that on June 22, 1990—four to five days before the crime—Wilridge had been arrested and subject to a high bond amount. *Id.*; R. 605-19. The State argued that Wilridge was likely in custody at the time of the crime and therefore could not have witnessed it. Following testimony from both Wilridge and Cofer, the post-conviction court found Petitioner's new evidence incredible and denied relief. *Sweet*, 248 So. 3d at 1066-69.

Petitioner appealed to the Florida Supreme Court, arguing that the trial court erred in admitting the arrest records, erred in finding Wilridge and Cofer's new statements incredible, and in any event, should

have found him actually innocent. *Id.* The Florida Supreme Court affirmed. *Id.* As to the arrest records, the court found that any error was harmless because "[t]he trial court's determination of Wilridge's credibility did not rest on the admission of the arrest record." *Id.* at 1066. On credibility, the Florida Supreme Court accepted the trial court's credibility findings, noting that Cofer's testimony at the hearing was equivocal and that her memory was clouded by drug use and friendliness with Petitioner, *id.* at 1066-67, and that Wilridge repeatedly changed his story, was serving a life sentence, and waited over 20 years to come forward, *id.* at 1067-68. Finally, after evaluating all of Petitioner's evidence of innocence, including evidence adduced in the first post-conviction review proceeding, the Florida Supreme Court held that Petitioner was not entitled to a new trial. *Id.* at 1069.

While his sixth petition for post-conviction review was pending, Petitioner filed his seventh petition for post-conviction review, but again the Florida Supreme Court rejected the claim. *Sweet v. State*, 234 So. 3d 646 (Fla. 2018). This Court denied certiorari. *Sweet v. Florida*, 139 S. Ct. 133 (2018).

After his sixth petition for post-conviction review was denied, Petitioner filed his second federal habeas petition. *See Sweet v. Sec'y, Fla. Dep't of Corrs.*, No. 3:18-cv-00874 (M.D. Fla. 2018). In that petition, Petitioner argued that his death sentence was unconstitutional given Cofer and Wilridge's new statements. *Id.*, D.E. 1, at 17-24. That petition is still

pending in the district court, although the State has moved to dismiss for lack of jurisdiction.

3. Petitioner then filed his eighth petition for post-conviction review, which is at issue here. Petitioner raised three claims: *first*, he asserted that his post-conviction counsel was ineffective for failing to properly raise an ineffective assistance of trial counsel claim (even though his post-conviction counsel had brought precisely that claim two decades earlier) and for failing to argue that the prosecution had suborned perjury when Hansbury testified at trial because Hansbury later recanted (even though the recantation was found incredible); *second*, pointing to a different version of the Wilridge arrest records, which contained different stamping, he argued that the State violated his *Brady* rights when it provided only one copy of the arrest record in the sixth post-conviction proceeding; and *third*, pointing to the same evidence that had been rejected at the sixth post-conviction proceeding, he claimed he was actually innocent.

The post-conviction court summarily denied relief, and the Florida Supreme Court unanimously affirmed. *Sweet v. State*, 293 So. 3d 448 (Fla. 2020). As the Florida Supreme Court explained, Florida does not recognize an ineffective assistance of post-conviction counsel claim, *id.* at 453, the Wilridge arrest records were not material under *Brady* because Wilridge was found incredible for reasons unrelated to the records, *id.* at 451-53, and Florida does not recognize a free-standing actual innocence claim

apart from its normal procedure for handling newly discovered evidence, *id*. at 453-54.

Petitioner now seeks this Court's review.

REASONS FOR DENYING THE PETITION

I. This Court should not grant review to determine whether states must allow ineffective assistance of post-conviction counsel claims on state habeas review.

Petitioner claims that one of the lawyers on his previous seven post-conviction petitions was constitutionally ineffective for failing adequately to raise an ineffective assistance of trial counsel claim and a claim that the prosecution knowingly presented perjured testimony. Pet. 13-26. The Florida Supreme Court rejected the claim because "ineffective assistance of postconviction counsel is not a viable basis for relief." *Sweet*, 293 So. 3d at 453. Petitioner now asks this Court to grant review to constitutionalize a requirement that states provide effective counsel in post-conviction proceedings. The Court should decline that invitation: Petitioner presents no split of authority, he does not raise an important question because federal habeas review already permits the argument that post-conviction counsel was ineffective, and this case is a poor vehicle for addressing the question presented.

1. Petitioner argues that Florida "should . . . recognize a claim of ineffective assistance of postconviction counsel[,]" Pet. 15, but he identifies

no split on the question. Nor could he, because the lower courts have consistently found that post-conviction ineffectiveness is not a viable claim. *See Gerth v. Warden, Allen Oakwood Corr. Inst.*, 938 F.3d 821, 830 (6th Cir. 2019); *Roy v. Warden James T. Vaughn Corr. Ctr.*, No. 19-1741, 2019 WL 4862138, at *1 (3d Cir. Sept. 17, 2019); *In re Sepulvado*, 707 F.3d 550, 554 (5th Cir. 2013); *Barbour v. Haley*, 471 F.3d 1222, 1230 (11th Cir. 2006); *Cox v. Burger*, 398 F.3d 1025, 1030 (8th Cir. 2005); *Poland v. Stewart*, 169 F.3d 573, 588 (9th Cir. 1999); *Steward v. Gilmore*, 80 F.3d 1205, 1212 (7th Cir. 1996); *Dennis v. Gotcher*, 24 F.3d 245 (9th Cir. 1994); *see also Barton v. State*, 486 S.W.3d 332, 336 (Mo. 2016); *Stokes v. State*, 146 S.W.3d 56, 60 (Tenn. 2004); *People v. Boyer*, 133 P.3d 581, 635 (Cal. 2006).[1]

[1] Petitioner identifies several states that allow prisoners to use the ineffectiveness of post-conviction counsel to avoid a state procedural bar. But those rules are not grounded in a federal constitutional right, and therefore say nothing about whether Florida must recognize such a claim. *See Rippo v. State*, 423 P.3d 1084, 1097-98 (Nev. 2018) ("But unlike the rights to effective assistance of trial and appellate counsel, which are guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, there is no recognized constitutional right to effective assistance of postconviction counsel[.]"); *People v. Valdez*, 178 P.3d 1269, 1278 (Colo. App. 2007) (analyzing Colorado's statutory right to counsel); *Goode v. State*, 920 N.W.2d 520, 527 (Iowa 2018) (explaining that "the statutory right to postconviction counsel implies a right to effective postconviction counsel in Iowa"); *cf. Pearson v. State*, 891 N.W.2d 590, 602 (Minn. 2017) (not discussing the source of the state right to effective post-conviction counsel); *State v. Romero-Georgana*, 849 N.W.2d 668, 678 (Wis. 2014) (noting that the Sixth Amendment guarantees the right to counsel, but not discussing the source of a right to post-conviction counsel, and ultimately rejecting a claim of ineffectiveness).

The lower courts are correct in rejecting ineffective assistance of post-conviction counsel claims. Indeed, allowing such claims would conflict with this Court's Sixth Amendment jurisprudence. The Sixth Amendment requires that indigent prisoners be provided counsel both at trial, *Gideon v. Wainwright*, 372 U.S. 335, 342 (1963), and in a first appeal as of right. *Douglas v. California*, 372 U.S. 353, 356 (1963). But "the right to appointed counsel extends . . . no further," *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987), and accordingly, defendants have, for example, no right to an attorney when they pursue discretionary direct review. *See Ross v. Moffitt*, 417 U.S. 600, 602-05 (1974).

Consistent with these decisions, this Court has repeatedly held that states need not provide counsel in post-conviction proceedings. *E.g.*, *Finley*, 481 U.S. at 555 ("We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions, and we decline to so hold today." (internal citations omitted)). "Postconviction relief," after all, "is even further removed from the criminal trial than is discretionary direct review." *Id.* at 556-57; *see Murray v. Giarratano*, 492 U.S. 1, 10 (1989) (plurality op.) ("State collateral proceedings are not constitutionally required as an adjunct to the state criminal proceedings and serve a different and more limited purpose than either the trial or appeal.").

Because states are not constitutionally compelled to provide attorneys in post-conviction proceedings, it

follows that attorneys in post-conviction proceedings cannot be constitutionally ineffective. *Coleman v. Thompson*, 501 U.S. 722, 752 (1991) ("Because there is no constitutional right to an attorney in state postconviction proceedings, a petitioner cannot claim constitutionally ineffective assistance of counsel in such proceedings." (internal citation omitted)); *see also Davila v. Davis*, 137 S. Ct. 2058, 2065 (2017); *Wainwright v. Torna*, 455 U.S. 586, 587-88 (1982).

To be sure, some statements in this Court's decisions may seem to leave open the possibility that a prisoner may have a constitutional right to effective post-conviction counsel when post-conviction proceedings provide the "first occasion to raise a claim of ineffective assistance at trial." *Martinez*, 566 U.S. at 8.[2] But even Petitioner does not embrace this question as a reason to grant review. That decision is sensible. For one thing, Petitioner raised an ineffective assistance of trial counsel claim in his first petition for post-conviction review, which made similar ineffectiveness arguments to the ones he is now pursuing. But more than that, the question has not divided the courts. On the contrary, "every federal court of appeals" that has considered whether the Constitution requires post-conviction counsel to raise trial-counsel ineffectiveness has "rejected" the claim. *Gibson v. Turpin*, 513 S.E.2d 186, 191 (Ga. 1999); *see, e.g.*, *Murden v. Artuz*, 497 F.3d 178, 194 (2d Cir. 2007); *Martinez v. Johnson*, 255 F.3d 229, 240 (5th

[2] Florida allows a defendant to raise ineffective assistance claims on direct review, but only when both deficiency and prejudice can be easily assessed from the trial record. *Smith v. State*, 998 So. 2d 516, 523 (Fla. 2008).

Cir. 2001); *Mackall v. Angelone*, 131 F.3d 442, 449 (4th Cir. 1997) (en banc); *Parkhurst v. Shillinger*, 128 F.3d 1366, 1371 (10th Cir. 1997); *Hill v. Jones*, 81 F.3d 1015, 1025 (11th Cir. 1996); *Nolan v. Armontrout*, 973 F.2d 615, 617 (8th Cir. 1992); *People v. Ligon*, 940 N.E.2d 1067, 1078 (Ill. 2010). Accordingly, this Court has repeatedly declined to take up the question. *E.g.*, *In re Moesch*, No. WR-88,589-01 (Tex. Ct. Crim. App. 2018), *cert. denied*, *Moesch v. Texas*, 139 S. Ct. 1199 (2019) (denying certiorari that asked to consider the "open question"); *United States v. Komoroski*, No. 12-1909 (3d Cir. 2013), *cert. denied*, *Komoroski v. United States*, 572 U.S. 1136, (2014) (same).

2. Review is also unwarranted because the question presented is not an important question of federal law as it is unlikely to impact many prisoners' cases. For one thing, "[m]ost jurisdictions have in place procedures to ensure counsel is appointed for substantial" state habeas claims. *Martinez*, 566 U.S. at 14. And when counsel is appointed "[i]t is likely that most of the attorneys appointed by the courts are qualified to perform, and do perform, according to prevailing professional norms." *Id.*

But even when states fail to provide effective post-conviction counsel, state prisoners are seldom left without a remedy. That is because a state's failure to provide effective counsel in post-conviction proceedings can, in certain circumstances, provide cause to raise ineffectiveness of trial counsel claims on federal habeas review. *Trevino v. Thaler*, 569 U.S. 413, 428 (2013). Thus, if a substantial claim of trial-counsel ineffectiveness is negligently forfeited in an

initial-review state collateral proceeding, a prisoner may still be able to seek appropriate relief in a federal habeas proceeding. *Martinez*, 566 U.S. at 17.

This approach ensures that many ineffective assistance of post-conviction counsel claims will be raised in federal court: If a trial counsel's error is so obvious that post-conviction counsel is ineffective for failing to raise the error, "then *Martinez* . . . already provide[s] a vehicle for obtaining review of that error in most circumstances." *Davila*, 137 S. Ct. at 2068. "Petitioner's proposed rule is thus unnecessary for ensuring that trial errors are reviewed by at least one court." *Id.*

3. Finally, this case presents a poor vehicle to consider the first question presented for four reasons: (1) Petitioner did not raise his federal claim below; (2) Petitioner already raised this claim in a prior post-conviction review proceeding from which he did not seek certiorari, and provides no explanation for why he should be permitted to raise the claim again; (3) Petitioner assumes away substantial antecedent questions to his constitutional theory; and (4) Petitioner's merits claims are weak, and thus, any decision here would be unlikely to benefit him.

First, Petitioner did not raise his federal claim below. That alone is reason enough to reject the petition. "With 'very rare exceptions,'" this Court has "adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that [it] will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the

state court." *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (quoting *Yee v. Escondido*, 503 U.S. 519, 533 (1992)). But here, although Petitioner argued below that the Florida courts should waive their procedural rules when faced with a claim of post-conviction counsel's ineffectiveness, Petitioner did not argue for a substantive right to post-conviction counsel and did not frame his argument in federal terms. *See* Pet.'s Br., *Sweet v. State*, 2019 WL 2123117, at *35-36 (Fla. 2019). Indeed, Petitioner's state-court reply brief on this issue cited a single federal case and only for the proposition that death is different. Pet.'s Reply Br., *Sweet v. State*, 2019 WL 2489227, at *2-6 (Fla. 2019). For that reason, the Florida Supreme Court rejected Petitioner's claim without referencing federal law. In short, Petitioner's newfound constitutional claim should not be addressed here because it was neither presented nor addressed below.

Second, Petitioner previously raised and lost his claim that the Constitution entitled him to effective representation in post-conviction proceedings in his fifth petition for post-conviction review. In that petition, Petitioner argued (wrongly, as explained below) that *Martinez* was a constitutional holding entitling him to effective collateral counsel. The Florida trial court rejected the claim because *Martinez* does not apply in state courts, and Petitioner neither appealed nor sought this Court's review. Now, seven years later, Petitioner seeks to revive his previously denied federal claim. But that effort is barred by Florida's res judicata and timeliness rules. *See Moat v. Mayo*, 82 So. 2d 591, 591 (Fla. 1955) (res judicata bars habeas claim); Fla. R. Crim. P. 3.850 (general

two-year limitations period for habeas claims); *McCray v. State*, 699 So. 2d 1366, 1368 (Fla. 1997) (laches bars habeas filed after unexplained delay).

Third, Petitioner's claim assumes that a favorable ruling would be retroactive. It is clear that Petitioner seeks retroactive application of a new right to effective post-conviction counsel: He asks the Court to decide in an appeal from his eighth post-conviction review proceeding that he was entitled to effective counsel in his first proceeding, which became final nearly twenty years ago. But although this retroactivity question raises a threshold issue that must be decided before the merits, Petitioner says nothing of it. *See Caspari v. Bohlen*, 510 U.S. 383, 389 (1994) ("[I]f the State does argue that the defendant seeks the benefit of a new rule of constitutional law, the court *must* apply *Teague* before considering the merits of the claim."); *Graham v. Collins*, 506 U.S. 461, 477 (1993) (refusing to reach the merits when petitioner asked for a new rule to be applied to his case on habeas because any decision would not have been retroactive).

And there is good reason to believe that any decision would not be retroactive. For one, it remains an open question whether states even need to make procedural rules retroactive in state habeas proceedings. *See Montgomery v. Louisiana*, 136 S. Ct. 718, 729 (2016) ("[T]he constitutional status of *Teague*'s exception for watershed rules of procedure need not be addressed here."). And if states must apply watershed procedural rules retroactively, Petitioner assumes that a right to post-conviction counsel would be a watershed procedural rule even

though those rules are "hen's-teeth rare." *Sepulveda v. United States*, 330 F.3d 55, 61 (1st Cir. 2003). That Petitioner assumes away a substantial antecedent question to his relief is another reason to deny the petition. *See N.C.P. Mktg. Grp., Inc. v. BG Star Prods., Inc.*, 556 U.S. 1145, (2009) (Kennedy, J., respecting denial of writ of cert.) (explaining that certiorari was properly denied because answering the question presented would have required the Court to answer "antecedent questions under state law and trademark-protection principles"); *McDonough v. Smith*, 139 S. Ct. 2149, 2161-62 (Thomas, J., dissenting) (arguing that the Court should have dismissed the writ of certiorari as improvidently granted because it assumed away key antecedent questions).

Fourth, Petitioner's underlying merits claims are weak, and he is therefore unlikely to obtain any relief even if the Court were to adopt his constitutional position. That renders his first question essentially "academic." *Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 74 (1955) (certiorari should not be granted when the "problem" is only "academic").

Start with Petitioner's ineffective assistance of trial counsel claim. Petitioner argues that his trial counsel was a drunk, which purportedly caused his counsel to put forward an insufficient penalty-phase case, and perhaps—although Petitioner doesn't say how—other ineffectiveness. *But see Wong v. Belmontes*, 558 U.S. 15, 16 (2009) (petitioner must show deficiency and prejudice). However, the Florida courts rejected Petitioner's claim of penalty-phase

ineffectiveness 18 years ago. *Sweet*, 810 So. 2d at 867. In doing so, the Florida courts rejected essentially the same arguments Petitioner now seeks to relitigate.

For example, Petitioner claims that his trial lawyers failed to properly investigate mitigation defenses. But the Florida courts rejected this argument years ago, finding that Petitioner's counsel performed adequately, including by speaking "to various potential witnesses concerning mitigation, including Sweet's mother, his girlfriend, his girlfriend's mother, and his foster parents." *Id*. at 863.

Likewise, although Petitioner now faults counsel for failing to put on evidence of his troubled childhood, his counsel already put on evidence of Petitioner's "lack[]" of "parental guidance" as a mitigator. *Sweet*, 624 So. 2d at 1142. So, the "new" mitigation evidence Petitioner stresses "would barely have altered the sentencing profile presented to the sentencing judge." *Strickland v. Washington*, 466 U.S. 668, 700 (1984). In fact, in 2002, the Florida Supreme Court found that putting on additional mitigation evidence would have opened the door to additional, damaging aggravating evidence. *Sweet*, 810 So. 2d at 864 ("Thus, to the extent that the jury may have benefitted from this additional testimony, the jury also would have heard potentially damaging information regarding Sweet's juvenile record and prior violent behavior.").

Petitioner's *Giglio* claim, which he claims post-conviction counsel should have raised, fares even worse. To state a *Giglio* claim, Petitioner must show that the prosecution knowingly presented perjured

testimony and that the perjured testimony was material. *United States v. Agurs*, 427 U.S. 97, 103 (1976). But here, Petitioner has no evidence that the prosecution knowingly presented perjured testimony. Indeed, he was candid about his need to develop this evidence below, arguing that he needed more discovery to substantiate his *Giglio* claim. Pet.'s Br., *Sweet v. State*, 2019 WL 2123117, at *47 ("Whether . . . [the] State Attorneys knew of Mr. Hansbury's fabrication, or assisted in his fabrication, is critical to Mr. Sweet's claims[.]"). But now that the Florida courts denied Sweet's discovery request on state-law grounds, Petitioner cannot simply assert knowing perjury when he couldn't before.

Nor do Petitioner's claims of knowing perjury ring true. Petitioner argues that Hansbury must have perjured himself when he testified that Petitioner told him that he was in jail on three attempted murder charges because, when Petitioner spoke to Hansbury, he had yet to be charged with three attempted murders. But, in context, Hanbury asked what Petitioner was "in there for," not what Petitioner had been charged with. Pet. 21. Thus, the far more natural explanation of the exchange is that Petitioner told Hansbury what he had done, i.e., what he was "in there for." Regardless, even crediting Petitioner's theory that he and Hansbury were speaking like lawyers formally discussing charges with rigid attention to detail, Petitioner says nothing to suggest that the prosecution could not have believed Hansbury when he testified differently about the conversation. Likewise, Petitioner seems to assume that Hansbury must have committed perjury at trial

because Hansbury later recanted, but the Florida courts found the recantation incredible, *Sweet*, 810 So. 2d at 867, which is reasonable because "recantations are generally viewed with considerable skepticism." *United States v. Carbone*, 880 F.2d 1500, 1502 (1st Cir. 1989). And again, even crediting the incredible recantation, the fact that Hansbury recanted does not show that the prosecution knew that Hansbury was lying when he testified. *Hollins v. Terhune*, 40 F. App'x 353, 355 (9th Cir. 2002).

4. Perhaps recognizing that his substantive constitutional claim does not satisfy any of the normal certiorari standards, Petitioner advances an alternative procedural claim—that Florida should have waived its procedural default rules to allow him to raise a trial-counsel ineffectiveness claim because the claim was allegedly forfeited by ineffective post-conviction counsel. But even that more limited claim is not certworthy.

For reasons of "finality, comity, and orderly administration of justice," federal law generally respects state choices about the procedural design of post-conviction review. *Dretke v. Haley*, 541 U.S. 386, 388 (2004). Indeed, states have substantial "flexibility in deciding what procedures are needed in the context of postconviction relief." *Osborne*, 557 U.S. at 69. Thus, when states apply their own procedural rules to bar claims on post-conviction review, federal courts respect the state's procedural bar unless the prisoner can show cause for the default and prejudice. *Wainwright v. Sykes*, 433 U.S. 72, 84 (1977). And this general rule applies with full force to claims of

attorney error on post-conviction review. *E.g.*, *Coleman*, 501 U.S. at 754.

In *Martinez v. Ryan*, this general rule was equitably relaxed in federal habeas cases when a prisoner makes a substantial showing that her trial counsel was ineffective, the state channeled that ineffectiveness claim to post-conviction review, and post-conviction counsel's ineffectiveness caused a default of the trial-counsel ineffectiveness claim in an initial-review proceeding. 566 U.S. 1, 17 (2012). In that circumstance, a federal habeas court will treat post-conviction counsel's ineffectiveness as cause to excuse the state-law procedural default. *Id.* at 9.

Petitioner now argues that the Court should grant the petition to extend *Martinez*'s equitable rule to state habeas proceedings. As with his substantive claim, the Court should decline the invitation.

To begin, Petitioner identifies no split on whether *Martinez* applies to the states, and there is none. On the contrary, the states uniformly hold that "the *Martinez* decision is limited to the application of the procedural default doctrine that guides a federal habeas court's review," and therefore, "says nothing about the application of state procedural default rules." *Brown v. McDaniel*, 331 P.3d 867, 871 (Nev. 2014). For that reason, state courts have concluded that they "are not obligated to follow *Martinez*." *Johnson v. State*, 395 P.3d 1246, 1261 (Idaho 2017); *accord In re Towne*, 182 A.3d 1149, 1161 (Vt. 2018); *Reese v. State*, 157 A.3d 215, 218 (Me. 2017); *Ex parte Preyor*, 537 S.W.3d 1, 2 (Tex. Crim. App. 2017)

(Newell, J., concurring); *Cunningham v. Premo*, 373 P.3d 1167, 1178 (Or. 2016); *Evans v. State*, 868 N.W.2d 227, 229 n.3 (Minn. 2015); *Salter v. State*, 184 So. 3d 944, 950 (Miss. Ct. App. 2015); *Lehman v. State*, 847 N.W.2d 119, 125-26 (N.D. 2014); *State v. McBroom*, 142 So. 3d 59, 60 (La. Ct. App. 2014); *Kelly v. State*, 745 S.E.2d 377 (S.C. 2013).

The states' uniformity is logical because *Martinez* was an equitable, not a constitutional, holding. 566 U.S. at 16; *see also Davila*, 137 S. Ct. at 2066. For that reason, the Court noted that the decision "permits a State to elect between appointing counsel in initial-review collateral proceedings or not asserting a procedural default and raising a defense on the merits in federal habeas proceedings." *Martinez*, 566 U.S. at 16. Because *Martinez* did nothing but craft an equitable means to establish cause in federal habeas cases, the Court was clear that "state collateral cases on direct review from state courts," were "unaffected" by *Martinez*'s holding. *Id.*

Nor is there any reason to extend *Martinez* to the states. The "chief concern" of *Martinez* was to ensure that "meritorious claims of trial error receive review by at least one state or federal court." *Davila*, 137 S. Ct. at 2067. But *Martinez* already remedies that concern by allowing federal courts to hear defaulted ineffective assistance claims on habeas review.

At bottom, whether cast as a substantive claim or a procedural claim, Petitioner identifies no reason for this Court to review the Florida Supreme Court's

decision on his ineffective assistance of post-conviction counsel claim.

II. Petitioner's *Brady* claim does not warrant review.

In his sixth petition for post-conviction review, Petitioner submitted a new affidavit from Eric Wilridge—a seven-time convicted felon, who is serving a life sentence, and who waited twenty-four years to come forward—which stated that he witnessed the offense but did not see Petitioner. In an evidentiary hearing, the State introduced arrest records showing that Wilridge had been arrested days before the offense. The State argued that Wilridge was likely in jail at the time of the offense and thus could not have witnessed it. In response, Wilridge admitted that he had been arrested days before the offense but claimed that he had been released on his own recognizance. The post-conviction court rejected Wilridge's evidence, finding that Wilridge's identification testimony was not significant because he was "was not a credible witness and, [] even if he were, he did not witness the offenses and cannot shed light on who the true perpetrator was." *Florida v. Sweet*, No. 16-1991-CF-02899, at *15 (Fla. Cir. Ct. Sept. 29, 2017). Petitioner appealed to the Florida Supreme Court, arguing that it was error to admit the arrest records, but the Court rejected the claim, finding that any error was harmless because "[t]he trial court's determination of Wilridge's credibility did not rest on the admission of the arrest record." *Sweet*, 248 So. 3d at 1066.

Now in his eighth post-conviction proceeding, Petitioner claims that the State withheld *Brady* evidence because he secured a different copy of the Wilridge arrest records, which, although having the same date of arrest as the State's evidence in the sixth post-conviction proceeding, have different stamping. The Florida Supreme Court rejected the *Brady* claim, explaining that Petitioner "failed to describe evidence that is material to his guilt or punishment" because "the determination of Wilridge's credibility was based on inconsistencies in his accounts, not on whether he was incarcerated," and therefore, "any discrepancy in Wilridge's jail records is simply too little and too weak to be material." *Sweet*, 293 So. 3d at 452.

Petitioner argues that the Court should grant review to correct the Florida Supreme Court's alleged error in adjudicating his *Brady* claim. Pet. 26-30. But the question is not certworthy, and the Florida Supreme Court's ruling is correct.

1. Petitioner's request for fact-bound error correction of the Florida Supreme Court's materiality determination does not satisfy any traditional ground for certiorari, and Petitioner does not argue otherwise. Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . misapplication of a properly stated rule of law.").

2. In any event, the Florida Supreme Court correctly rejected Petitioner's *Brady* claim. First, "*Brady* is not a cognizable constitutional right in post-conviction proceedings." *In re Bolin*, 811 F.3d 403, 409 (11th Cir. 2016). Thus, for example, this Court has

held that *Brady* "is the wrong framework" to analyze new DNA procedures that become available during a post-conviction proceeding. *Osborne*, 557 U.S. at 69. The same logic applies here: the Wilridge arrest records were not *Brady* material at trial; they did not become relevant until the post-conviction proceedings when Wilridge submitted his affidavit. So, by the time the arrest records became relevant, Petitioner had already "been found guilty at a fair trial," such that *Brady* does not apply to Petitioner's claim concerning those records. *Osborne*, 557 U.S. at 69-70.

Regardless, Petitioner's *Brady* claim fails on its own terms. Begin with whether the records at issue are favorable to Petitioner for purposes of *Brady*. Two facts from the arrest records impeached Wilridge's testimony that he witnessed the crime: (1) the date he was arrested offered circumstantial evidence that he did not witness the crime, and (2) the bond amount refuted Wilridge's explanation that he was released on his own recognizance. Both versions of the arrest record have the same date of arrest and the same bond amount, and therefore, the records in question are not favorable to Petitioner for purposes of *Brady*. *See, e.g.*, *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999); *see also United States v. Johnson*, 872 F.2d 612, 619 (5th Cir. 1989) (explaining that even "[n]eutral . . . evidence is not within the purview of *Brady*."). Indeed, the differences between the arrest records appear to be clerical: The state-produced copy and Petitioner's new copy have different stamping, indicating that the state-produced version was a copy and Petitioner's new document is the filed original. But Petitioner has not explained how these differences are favorable to

him. In fact, Petitioner admitted below that he "could never know the meaning" of the different stamping without the discovery that he was denied in the trial court. Pet.'s Reply Br., *Sweet v. State*, 2019 WL 2489227, at *11 (Fla. 2019). Given the concession below, Petitioner's argument is based on speculation about what the stamps mean. But "speculative evidence" is not favorable. *United States v. Gillings*, 156 F.3d 857, 860 (8th Cir. 1998).

Even assuming that Petitioner's copy of the arrest records is favorable to his position, that evidence is not material. The Florida Supreme Court held that admitting the records in the first place was harmless because Wilridge's testimony was incredible even if he were not incarcerated at the time of the crime. *Sweet*, 293 So. 3d at 452. And if the arrest records had no impeachment value in the first place, Petitioner's claim that he could have challenged the records with new documents could not make a difference. *See Turner v. United States*, 137 S. Ct. 1885, 1893 (2017).

In sum, Petitioner's *Brady* claim does not warrant review because it presents, at most, fact-bound error correction, but even then, Petitioner points to no error.

III. Petitioner's actual-innocence claim does not merit review.

Petitioner argues that Florida's post-conviction review is "insufficient to remedy" instances of actual innocence because Florida recognizes no "[f]reestanding [i]nnocence [c]laim" and instead

requires a defendant to establish that newly discovered evidence undermines the validity of his conviction. Pet. 31, 33. For four reasons, that question is not worthy of review.

1. To begin, the premise of Petitioner's question is incorrect: As the Florida Supreme Court has explained, "the standard in Florida for a newly discovered evidence claim is more liberal than the standard for raising an actual innocence claim in federal courts." *Tompkins v. State*, 994 So. 2d 1072, 1089 (Fla. 2008); *see also Perez v. State*, 118 So. 3d 298, 301 (Fla. 3d DCA 2013).

Florida's post-conviction review scheme allows prisoners ample opportunity to seek relief based on newly discovered evidence. *See* Fla. R. Crim. P. 3.850(a), (b). In such proceedings, a prisoner can marshal newly discovered evidence to show actual innocence. *Tompkins*, 994 So. 2d at 1089; *see Rutherford v. State*, 926 So. 2d 1100, 1108 (Fla. 2006). If the court finds that the newly discovered evidence "would probably produce an acquittal on retrial," then it will grant relief. *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991) (emphasis omitted).

The standard applicable in federal court is more demanding. After all, to use innocence to even avoid a procedural bar in federal proceedings, a prisoner must show "that, in light of new evidence, 'it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." *House v. Bell*, 547 U.S. 518, 536-37 (2006) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). And a free-standing

innocence claim would require even "more convincing proof of innocence." *Id.* at 555.

Petitioner's real problem is not that that Florida law does not afford him an adequate procedure for raising a viable claim of actual innocence based on newly discovered evidence—it is that his innocence claims were rejected by the fact finder in his previous post-conviction proceedings. Petitioner has twice raised new evidence claims under Florida's "more liberal" standard for assessing newly discovered evidence, *Tompkins*, 994 So. 2d at 1089, which collectively raised the same evidence he now argues shows his innocence. At the time, Petitioner expressly framed his claims as raising actual innocence. Pet.'s Br., *Sweet v. State*, 2018 WL 509798, at *31 (Fla. 2018). The Florida courts have denied relief, however, finding Petitioner's new evidence to be both incredible and irrelevant. *See Sweet*, 248 So. 3d at 1066-68 (finding that Cofer's recantation was neither credible nor a true recantation; finding Wilridge's allegedly exculpatory testimony incredible; and finding that the cumulative new evidence, including the Hansbury recantation and the proffered McNish statement, did not show innocence); *Sweet*, 810 So. 2d at 867 (finding Hansbury's recantation incredible and insufficient for a new trial).

2. Regardless, Petitioner identifies no split on whether federal law requires states to recognize a free-standing actual innocence claim of the kind at issue here.

This Court has never held that free-standing actual innocence claims are cognizable. *E.g.*, *Osborne*, 557 U.S. at 71. Nonetheless, states have "grappl[ed] with the best means of addressing" actual-innocence claims. Matthew J. Mueller, Comment, *Handling Claims of Actual Innocence: Rejecting Federal Habeas Corpus As the Best Avenue for Addressing Claims of Innocence Based on DNA Evidence*, 56 Cath. U. L. Rev. 227, 260 (2006). In doing so, "[s]tates do not treat claims of actual innocence uniformly." John M. Leventhal, *A Survey of Federal and State Courts' Approaches to A Constitutional Right of Actual Innocence: Is There A Need for A State Constitutional Right in New York in the Aftermath of Cpl S 440.10(1)(G-1)?*, 76 Alb. L. Rev. 1453, 1471 (2013). "Depending on the state of conviction, a defendant may base his or her challenge on post-conviction relief statutes or make a freestanding constitutional claim of actual innocence." *Id*. In fact, "most states do not acknowledge a freestanding claim of actual innocence." *Id*. at 1473.

Petitioner presents no split on whether any of these state procedures are constitutionally defective because they exclude free-standing innocence claims. Nor could he because this Court has indicated that, even if a free-standing actual innocence claim is viable, the remedy for a state's failure to recognize such claims would not be rewriting the state's habeas system but allowing the claim on federal habeas review. *See Herrera v. Collins*, 506 U.S. 390, 416 (1993) ("We may assume, for the sake of argument in deciding this case, that in a capital case a truly persuasive demonstration of 'actual innocence' made

after trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim."); *cf. Royal v. Taylor*, 188 F.3d 239, 243 (4th Cir. 1999) (declining to consider a federal innocence claim because the state allowed innocence to be considered in clemency proceedings); *Pettit v. Addison*, 150 F. App'x 923, 926 (10th Cir. 2005) (same). It therefore makes sense that federal courts have consistently rejected challenges to state actual-innocence procedures, *see, e.g.*, *Farrar v. Raemisch*, 924 F.3d 1126, 1134 (10th Cir. 2019); *Young v. Phil. Cty. Dist. Att'y's Office*, 341 F. App'x 843, 845 (3d Cir. 2009), and that this Court has rejected petitions like this one. *E.g.*, *Drane v. Sellers*, No. S17E1366 (Ga. Feb. 19, 2018), *cert. denied*, 139 S. Ct. 262 (2018) (denying certiorari petition that asked whether Georgia was required to recognize free-standing actual innocence claims).

3. Petitioner's request to constitutionalize state procedures for claims to post-conviction relief based on newly discovered evidence contradicts this Court's precedent and sound policy.

On precedent, this Court has been clear that, compared to direct criminal proceedings, states have "more flexibility in deciding what procedures are needed in the context of postconviction relief." *Osborne*, 557 U.S. at 69. This flexibility flows from the fact that state "collateral proceedings are not constitutionally required" at all. *Murray*, 492 U.S. at 10 (plurality op.). If states "are under no obligation to permit collateral attacks on convictions that have

become final, . . . they are free to limit the circumstances in which claims may be relitigated." *Foster v. Chatman*, 136 S. Ct. 1737, 1759 (2016) (Alito, J., concurring). Given this flexibility, it follows that states are constitutionally permitted to innovate various approaches to handling post-conviction claims of innocence.

Indeed, state innovation in this area promotes good policy. State-driven solutions offer the best way to balance claims based on newly discovered evidence against state interests in finality and the orderly administration of justice. By leaving the issue to the states, "each state is free to" design its own post-conviction review system "based on its own application of principles of finality and due process." Honorable Laura Denvir Stith, *A Contrast of State and Federal Court Authority to Grant Habeas Relief*, 38 Val. U. L. Rev. 421, 449 (2004). Conversely, dictating "to the states the precise manner in which to provide post-conviction review of innocence claims" would have "detrimental impact[s] upon comity and federalism." Kathleen Callahan, Note, *In Limbo:* In Re Davis *and the Future of* Herrera *Innocence Claims in Federal Habeas Proceedings*, 53 Ariz. L. Rev. 629, 654 (2011).

4. Finally, Petitioner's case is a poor vehicle to consider whether states must adopt a federal, free-standing actual innocence test on top of their state procedures because Petitioner could not satisfy the federal standard, even assuming that actual innocence presents a viable federal claim.

This Court has never held that free-standing actual innocence states a cognizable claim for post-conviction relief. *Osborne*, 557 U.S. at 71. That said, the Court has theorized that if the claim exists, "the threshold" for obtaining relief would be "extraordinarily high." *Herrera*, 506 U.S. at 417. Petitioner cannot make that showing because he has no evidence to challenge Sharon Bryant's trial identification, Pet. 3-4, 34, and the evidence he marshals to show innocence has already been rejected as incredible by the state courts—a determination that he does not (and cannot) challenge here. *See Sweet*, 248 So. 3d at 1066-69; *Sweet*, 810 So. 2d at 867.

For example, Petitioner makes much of Cofer's new testimony, which he introduced in his sixth petition for post-conviction relief. Pet. 9-12, 34-35. But he does little to grapple with the fact that the post-conviction judge, who had the benefit of observing the testimony, found Cofer's "recantation" unhelpful and incredible, noting that Cofer stated that her trial testimony was the truth, that her memory "goes in and out" and is "blurry"—likely the result of her heavy marijuana use—and concluded that Cofer was biased in Petitioner's favor. *Sweet*, 248 So. 3d at 1067.

Same for Wilridge. Again, although Petitioner asserts that Wilridge gave material exculpatory testimony, Pet. 9; *see also* Pet. 9-12, 26-30, 34-35, the Florida court that actually witnessed Wilridge's testimony concluded otherwise, finding that he was incredible because he came forward 24 years after the crime, disclaimed his own exculpatory affidavit, wrote a letter to the court claiming that he remembered

nothing about the night of the crime, testified inconsistently about his recollection, and is a seven-time convicted felon. *Sweet*, 248 So. 3d at 1067-68.

The same is true for Hansbury's 1999 recantation, Pet. 7-8, 22-26, 34, and McNish's post-trial statements, which were both rejected by the state courts as incredible or irrelevant. *Sweet*, 810 So. 2d at 862 & 867.

Considering all this evidence, the state court found that the new evidence "would not produce a reasonable probability of a different outcome at trial." *Sweet*, 248 So. 3d at 1068. Given the state court's finding—made after observing the witnesses—that Petitioner's new evidence is not credible, it cannot be said that Petitioner has "offered objective and highly reliable evidence of actual innocence," and therefore, even assuming a free-standing federal actual innocence claim exists, Petitioner's claim would fail. *Tabb v. Christianson*, 855 F.3d 757, 764 (7th Cir. 2017).[3]

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[3] Petitioner also alludes to a claim that the Florida courts' alleged failure to consider his innocence violates the Suspension Clause. That argument is independently not certworthy for two additional reasons. *First*, Petitioner did not make a Suspension Clause argument below; instead, in the Florida Supreme Court, he grounded his innocence theory on the Eighth Amendment alone. *See Adams*, 520 U.S. at 86 (the Court rarely reviews questions that were not raised below). *Second*, a Suspension Clause theory lacks merit because the "Suspension Clause does not apply to Florida's actions." *Smith v. Sec'y, Dep't of Corr.*, No. 17-11330-G, 2017 WL 4457448, at *2 (11th Cir. June 7, 2017) (citing *Gasquet v. Lapeyre*, 242 U.S. 367, 369 (1917)); *see also Shove v. Chappell*, No. 13-56448, 2013 WL 7647168, at *1 (9th Cir. Dec. 17, 2013) ("[T]he Suspension Clause of the United

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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States Constitution does not apply to the States."); *Geach v. Olsen*, 211 F.2d 682, 684 (7th Cir. 1954) ("[T]he refusal by state authorities to entertain a petition for a writ of habeas corpus . . . does not raise a federal question.").