No. 24-7169

In the
Supreme Court of the United States

GLEN EDWARD ROGERS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR MAY 15, 2025, AT 6:00 P.M.

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CAPITAL CASE

QUESTIONS PRESENTED

I. Whether this Court should address a constitutional challenge to Florida's procedural rules for successive postconviction motions, where the Florida Supreme Court found that this argument was unpreserved.

II. Whether the state postconviction court's summary denial of Petitioner's as-applied method-of-execution claim without an evidentiary hearing violated Petitioner's rights to equal protection or due process.

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OPINION BELOW

The decision below of the Florida Supreme Court appears as *Rogers v. State*, No. SC2025-0585, 2025 WL 1341642 (Fla. May 8, 2025).

JURISDICTION

Petitioner asserts that this Court's jurisdiction is based upon 28 U.S.C. § 1257. Respondent agrees that this statute sets out the scope of this Court's certiorari jurisdiction. Because the issues raised were resolved on independent and adequate state law grounds, however, this Court lacks jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the constitutional and statutory provisions involved.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Glen Edward Rogers is a serial killer who murdered four women over the course of a cross-country killing spree in the fall of 1995. In 1997, Rogers was sentenced to death in Hillsborough County, Florida, for the murder of Tina Marie Cribbs. On April 15, 2025, Governor Ron DeSantis signed Rogers' death warrant, setting his execution for May 15, 2025, at 6:00 p.m.

Facts of the Crimes

On November 4, 1995, Rogers checked into a motel in Tampa, Florida. The next day around 11:00 a.m., he visited the Showtown Bar, where he met Cribbs. *Rogers v. State*, 783 So. 2d 980, 985-86 (Fla. 2001). Unknown to Cribbs, Rogers had just arrived in Florida after murdering Sandra Gallagher in California and Linda Price in Mississippi. *See People v. Rogers*, 304 P.3d 124, 128-39 (Cal. 2013) (affirming Rogers'

California death sentence for the murder of Gallagher, and describing his additional murders committed in other states), *cert. denied*, 571 U.S. 1206 (2014).[1] Rogers bought drinks for Cribbs and her group of friends and eventually asked Cribbs, the only single woman in her group, to give him "a ride." *Rogers*, 783 So. 2d at 985. Rogers and Cribbs went to his motel room, where Rogers brutally stabbed her to death. *Id.* at 985-86. That evening, Rogers went to the motel clerk, paid for an extra night, and requested a "Do Not Disturb" sign. *Id.* at 985. The motel did not have one, so Rogers handwrote a sign and placed it on his motel room door before leaving in Cribbs' vehicle early the next morning. *Id.*

Cribbs' body was discovered on Tuesday, November 7, 1995, when a cleaning person went into the motel room and found her body in the bathtub. *Id.* at 985-86. Cribbs was found lying on her back wearing a damp tee shirt, underwear, and socks. Cribbs' mother later testified that Cribbs habitually wore a sapphire and diamond square ring and a gold heart-shaped watch, but those items were missing from her body. *Id.* at 986. The State's forensic pathologist determined that Cribbs died as a result of two stab wounds, one to her chest and one to her buttocks. *Id.* The fatal

[1] On September 29, 1995, Rogers picked up Gallagher at a California bar and strangled her to death several hours later, burning her body in the passenger compartment of her truck. *Rogers*, 304 P.3d at 129-33. Rogers fled to Mississippi, where he met Price at the Mississippi State Fair ten days after Gallagher's murder. Rogers and Price engaged in a brief romantic relationship until Rogers ultimately slashed and stabbed her to death in late October. *Id.* at 138-39. Rogers then fled to Louisiana, where he met Andy Lou Sutton at a bar on November 2, 1995. Rogers spent the night with Sutton and left the following day, telling her he would return. *Id.* at 133-34. From there, he traveled to Tampa, where he murdered Cribbs. A few days later, Rogers, driving Cribbs' car, returned to Sutton's apartment in Louisiana. That night, Rogers stabbed Sutton to death. *Id.* at 134-37.

wounds were 8.5 and 9 inches deep. Both stab wounds were L-shaped, indicating that the perpetrator deliberately inserted a very long knife, twisted it to a 90-degree angle, and then pulled it out. The two stab wounds sliced through major arteries, causing Cribbs to bleed to death. *Id.* at 989; *Rogers*, 2025 WL 1341642, at *1 & n.2. There were also blunt impact injuries to Cribbs' torso and a laceration to her left wrist that appeared to be a defensive wound, indicating that she was conscious and struggled for her life during the fatal attack. *Rogers*, 783 So. 2d at 994.

On the afternoon of November 6, 1995, maintenance workers at an I-10 rest area near Tallahassee found Cribbs' wallet in a trash can. Two latent fingerprints matched to Rogers were identified inside the wallet. *Id.* at 986, 990. Fingerprints lifted from the motel room also matched Rogers' fingerprints. *Id.* at 986.

Rogers was eventually apprehended in Kentucky a week after Cribbs' murder. *Id.* In the interim, Rogers traveled to Louisiana, where he murdered Andy Lou Sutton. *See* footnote 1, *supra*. After being informed that Rogers was in the area, Kentucky officers spotted Rogers driving Cribbs' vehicle. *Rogers*, 783 So. 2d at 986. They attempted to stop him, and a high-speed chase ensued. During the pursuit, Rogers pelted the pursuing officers with beer cans and plowed through a roadblock until he was eventually forced off the road and arrested. *Id.*

During an inventory of Cribbs' car, officers discovered, among other items, Mississippi and Florida license plates, a key to the motel room where Cribbs' body was found, and a pair of blood-stained blue jeans. *Id.* A smear on the inside of the driver's door also tested positive for blood. *Id.* When questioned by Kentucky law

enforcement after his apprehension, Rogers claimed that "a girl," whom he could not describe, had loaned him the car and he had left her, alive, in a motel room and never planned on returning. *Id.* When the investigating officer told Rogers he just wanted the truth, Rogers replied, "I can't tell you the truth." *Id.*

Procedural History

Rogers was indicted in Florida for first-degree murder, armed robbery, and grand theft of a motor vehicle. A jury found Rogers guilty on all counts. *Id.* at 985-87. At the ensuing penalty phase, Rogers called a number of witnesses to establish mitigation, including two experts who testified that Rogers suffers from a genetic disorder called porphyria. *Id.* at 995-96. At the conclusion of the penalty phase, the jury unanimously recommended the death penalty. The trial court accepted the jury's recommendation and sentenced Rogers to death. The trial court found that two aggravating circumstances applied: (1) the murder was committed for pecuniary gain; and (2) the murder was heinous, atrocious, or cruel. *Id.* at 987. The Florida Supreme Court affirmed the convictions and death sentence on direct appeal. *Id.* at 988-1004. Rogers did not seek certiorari review in this Court.

After his convictions and death sentence became final, Rogers filed a motion for postconviction relief in state circuit court under Rule 3.851 of the Florida Rules of Criminal Procedure , which the circuit court denied after an evidentiary hearing. *Rogers v. State*, 957 So. 2d 538, 543-44 (Fla. 2007). Rogers appealed that decision to the Florida Supreme Court and simultaneously petitioned for a writ of habeas corpus.

Id. at 544. The Florida Supreme Court affirmed the circuit court's denial of relief and denied Rogers' habeas petition. *Id.* at 545-56.

Next, Rogers filed a petition for writ of habeas corpus in the United States District Court for the Middle District of Florida. The district court denied Rogers' habeas petition, and the Eleventh Circuit Court of Appeals denied a certificate of appealability. *Rogers v. Sec'y, Dep't of Corr.*, No. 8:07-cv-1365, 2010 WL 668261 (M.D. Fla. Feb. 19, 2010), *certificate of appealability denied*, No. 10-11246, slip op. (11th Cir. June 11, 2010). Rogers then petitioned this Court for a writ of certiorari, which the Court denied. *Rogers v. McNeil*, 562 U.S. 1149 (2011).

Rogers thereafter filed multiple successive motions for postconviction relief in state circuit court under Rule 3.851. The circuit court summarily denied all of those motions, and the Florida Supreme Court affirmed each of those rulings on appeal. *See Rogers v. State*, 97 So. 3d 824 (Fla. 2012) (affirming denial of first successive postconviction motion); *Rogers v. State*, 235 So. 3d 306 (Fla. 2018) (affirming denial of second successive postconviction motion); *Rogers v. State*, 327 So. 3d 784 (Fla. 2021) (affirming denial of third successive postconviction motion). Additionally, in 2012, Rogers sought leave from the Eleventh Circuit to file a second or successive federal habeas petition, which the Eleventh Circuit denied. *See In re: Glen Edward Rogers*, No. 12-14137, slip op. (11th Cir. Sept. 6, 2012).

In 2022, Rogers joined two other Florida capital inmates in filing a federal lawsuit under 42 U.S.C. § 1983 against the Chief Justice of Florida, arguing that Florida's rules and policies prohibiting them from filing pro se pleadings violated

their federal constitutional rights. The district court dismissed the case for lack of jurisdiction, and the Eleventh Circuit affirmed. *Sweet v. Chief Just. of Fla. Sup. Ct.*, No. 23-13025, 2025 WL 915740 (11th Cir. Mar. 26, 2025).

Proceedings Under Warrant

After Governor DeSantis signed Rogers' death warrant, Rogers filed a fourth successive postconviction motion in state circuit court, raising three claims for relief. *Rogers*, 2025 WL 1341642, at *1. In one of his claims, Rogers argued for the first time that due to his porphyria diagnosis, Florida's lethal injection procedures as applied to him constituted cruel and unusual punishment under the Eighth Amendment. The postconviction court summarily denied the motion, finding that all of Rogers' claims were untimely, procedurally barred, and/or meritless, and it specifically held that his lethal injection challenge was both time-barred and meritless. *Id.* at *1, *7. On appeal, the Florida Supreme Court affirmed the denial of postconviction relief and denied Rogers' motion for a stay of execution. *Id.* at *1.

Relevant here, before it addressed Rogers' method-of-execution claim, the Florida Supreme Court rejected Rogers' argument (which he had also raised with respect to a different claim) that Rule 3.851(d)–requiring postconviction claims to be raised within one year of a conviction and death sentence becoming final absent certain limited exceptions–is unconstitutional as applied to defendants who are under an active death warrant. *Id.* at *6. The Florida Supreme Court initially determined that Rogers' argument was unpreserved for appellate review because Rogers had failed to raise it in the circuit court. *Id.* The Florida Supreme Court further concluded

that the argument was meritless, explaining that it had recently rejected the same argument in another case. *Id.* (citing *Ford v. State*, 402 So. 3d 973, 977 (Fla. 2025), *cert. denied*, 145 S. Ct. 1161 (2025)).

Turning to Rogers' lethal injection challenge, Rogers' argument on appeal was premised in part on an affidavit from his expert, Dr. Joel Zivot, that Rogers had submitted to the Florida Supreme Court in an appendix to his appellate brief. But the Florida Supreme Court found that because the affidavit was never presented in the circuit court, it was "not part of the record on appeal," and thus, the Florida Supreme Court "sustain[ed] the State's objection to it." *Id.* at *7 n.11. The Florida Supreme Court also rejected Rogers' argument that several previous cases in which evidentiary hearings were granted "require relinquishment of jurisdiction to the circuit court with instructions to hold an evidentiary hearing on his as-applied claim and a stay to afford time to conduct a full and fair hearing." *Id.* at *7 n.12 (citing *Long v. State*, 271 So. 3d 938 (Fla. 2019), *Correll v. State*, 184 So. 3d 478 (Fla. 2015), *Henry v. State*, 134 So. 3d 938 (Fla. 2014), *Howell v. State*, 133 So. 3d 511 (Fla. 2014), and *Davis v. State*, 142 So. 3d 867 (Fla. 2014)). The Florida Supreme Court noted, "[t]hese decisions in no way stand for that legal proposition." *Id.*

Next, the Florida Supreme Court agreed with the postconviction court that Rogers' method-of-execution claim was time-barred. Rogers argued that the facts underlying his challenge met the newly discovered evidence exception to the one-year limitations period, and that he could not raise the claim sooner because he did not know what procedures would be in place until his death warrant was signed. *Id.* at

*7. The Florida Supreme Court disagreed, explaining that it has "generally held that method-of-execution claims are procedurally barred unless the method itself changes or new facts about the current method arise during a prior execution." *Id.* (citing *Schwab v. State*, 969 So. 2d 318, 321 (Fla. 2007)). And it pointed out that Rogers had conceded in the circuit court that Florida's lethal injection protocol has not materially changed since 2017. *Id.* Further, the Florida Supreme Court had recently affirmed the denial of a similar lethal injection challenge as untimely where the claim was not raised until after the death warrant was signed and was based on medical conditions that were present "well over a decade before the signing of the warrant." *Id.* at *8 (citing *Tanzi v. State*, No. SC2025-0371, 2025 WL 971568, at *4 (Fla. Apr. 1, 2025), *cert. denied*, No. 24-6932, 2025 WL 1037494 (U.S. Apr. 8, 2025)).

Finally, the Florida Supreme Court agreed with the postconviction court that Rogers' method-of-execution claim was meritless because Rogers could not satisfy the two-part test established by this Court for such claims: (1) "the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering"; and (2) "a known and available alternative method of execution that entails a significantly less severe risk of pain." *Id.* (quoting *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip v. Gross*, 576 U.S. 863, 877 (2015)). As to the first prong, the use of etomidate in Florida's protocol has been repeatedly upheld, and Rogers failed to "explain how his speculative porphyria attack overcomes the well-established fact that the administration of etomidate will render him unconscious likely within one minute." *Id.* As to the second prong, Rogers failed

to show how either of his proposed alternatives, lethal gas or firing squad, could be readily implemented or would significantly reduce the risk of pain. *Id.* Accordingly, the summary denial of Rogers' claim was affirmed. *Id.* at *9.

REASONS FOR DENYING THE PETITION

I. Rogers' Due Process Challenge to Rule 3.851(d) Was Unpreserved in State Court and Does Not Warrant This Court's Review.

In both the postconviction court and the Florida Supreme Court, Rogers' as-applied challenge to Florida's lethal injection protocol was rejected under well-established principles of Florida law which made clear that his claim was untimely. The Florida Rules of Criminal Procedure provide that any motion to vacate a judgment of conviction and sentence of death must be filed no later than one year after the judgment and sentence become final. Fla. R. Crim. P. 3.851(d)(1). The one-year limitations period is subject to only three exceptions:

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2).

A successive motion for postconviction relief must be dismissed if "there was no good cause for failing to assert th[e] grounds [for relief] in a prior motion" or "the claim fails to meet the time limitation exceptions set forth in subdivision (d)(2)." Fla. R. Crim. P. 3.851(e). "For an otherwise untimely claim to be considered timely [under

the first exception] as newly discovered evidence, it must be filed within a year of the date the claim became discoverable through due diligence." *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020). Further, "[i]t is incumbent upon the defendant to establish the timeliness of a successive postconviction claim." *Id.*

Here, there could be no reasonable dispute that Rogers' as-applied method-of-execution claim was untimely. Rogers based the claim on porphyria, but he has known about that diagnosis since, at least, his 1997 penalty phase proceedings. *See Rogers*, 783 So. 2d at 995-96 (summarizing testimony by defense experts Drs. Robert Berland and Michael Maher regarding Rogers' porphyria). And as Rogers acknowledged in the circuit court, Florida's lethal injection protocol has not materially changed since 2017. *See Rogers*, 2025 WL 1341642, at *7. Significantly, Rogers has filed multiple successive collateral motions over the years, including one (his third successive motion) that raised a claim of newly discovered evidence, *see Rogers*, 327 So. 3d at 786-88, but he has never before raised a challenge to the lethal injection protocol based on his long-known porphyria diagnosis. In his state court filings, moreover, Rogers alleged nothing new about either his condition or Florida's lethal injection protocol that would satisfy Rule 3.851(d)(2)(A).

In an effort to circumvent the clear and dispositive time bar, Rogers asserted in the Florida Supreme Court that Rule 3.851(d)(1) is unconstitutional as applied to defendants who are under an active death warrant. *Rogers*, 2025 WL 1341642, at *6. He now raises the same argument as a basis for certiorari review in this Court. The petition, however, must be denied because (a) the Florida Supreme Court's decision

was based on independent and adequate state law grounds, and (b) this case does not present any disputed or unsettled question of federal law.

A. This Court Lacks Jurisdiction.

When both state and federal questions are involved in a state court proceeding, this Court has no jurisdiction to review the case if the state court judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the state court's decision. *See Foster v. Chatman*, 578 U.S. 488, 497 (2016). This "adequate and independent state grounds" rule stems from the fundamental principle that this Court lacks jurisdiction to review matters of state law. *See Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945). This Court has stated that its "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And [that] power is to correct wrong judgments, not to revise opinions" or "render an advisory opinion." *Id.* "[I]f the same judgment would be rendered by the state court after [this Court] corrected its views of federal laws, [this Court's] review could amount to nothing more than an advisory opinion." *Id.* at 126. Thus, if a state court's decision is separately based on state law, this Court "will not undertake to review the decision." *Florida v. Powell*, 559 U.S. 50, 57 (2010).

In this case, the Florida Supreme Court held that Rogers' due process challenge to the one-year limitations period of Rule 3.851(d)(1) was "unpreserved because he failed to raise it below." *Rogers*, 2025 WL 1341642, at *6. The Florida Supreme Court relied upon the settled principle of Florida law that "[i]n order to preserve an issue for appeal, the issue must be presented to the lower court and the *specific legal*

argument or grounds to be argued on appeal must be part of that presentation." *Id.* (original emphasis) (quoting *State v. Poole*, 297 So. 3d 487, 494 (Fla. 2020)); *see also Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985) ("In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved.").

The Florida Supreme Court's finding that the argument was unpreserved is an independent and adequate state law ground for the denial of relief. *See, e.g.*, *Sochor v. Florida*, 504 U.S. 527, 534 (1992) (holding that this Court lacked jurisdiction to decide a federal claim that the Florida Supreme Court decided both on the merits and on preservation grounds); *Wainwright v. Sykes*, 433 U.S. 72, 86-87 (1977) (concluding that Florida procedure regarding preservation amounted to an independent and adequate state procedural ground which prevented review); *see also Johnson v. Lee*, 578 U.S. 605, 609 (2016) (acknowledging that state postconviction court is generally not used to litigate claims that were or could have been raised at trial or direct appeal, and finding that the procedural bar "qualifies as adequate to bar federal habeas review"). As a consequence, this Court lacks jurisdiction.

B. There is No Conflict or Important or Unsettled Question of Federal Law Justifying Certiorari Review.

Even if this Court had jurisdiction, review would be unwarranted. As a general matter, this Court does not review state court decisions merely because a question of federal law is implicated. Rather, the state court typically must have "decided an important question of federal law in a way that conflicts with the decision of another

state court of last resort or of a United States court of appeals" or "with relevant decisions of this Court," or "decided an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10. "A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." *Id.*

None of the above grounds are present here. Clearly, Florida has the authority to adopt procedural rules that apply in its courts. Indeed, this Court has observed that "[a] State's procedural rules are of vital importance to the orderly administration of its criminal courts; [and] when a federal court permits them to be readily evaded, it undermines the criminal justice system." *Johnson v. Lee*, 578 U.S. 605, 612 (2016) (quoting *Lambrix v. Singletary*, 520 U.S. 518, 525 (1997)). Time bars, specifically, are not unusual and are necessary to discourage dilatory tactics. *See, e.g.*, *Henyard v. Sec'y, Dept. of Corr.*, 543 F.3d 644, 647 (11th Cir. 2008) (applying Florida's four-year statute of limitations to bar section 1983 lethal injection challenge); *McNair v. Allen*, 515 F.3d 1168, 1172-78 (11th Cir. 2008) (finding lethal injection challenge barred under Alabama's two-year statute of limitations); *see also* § 924.051(8), Fla. Stat. (instructing "that all terms and conditions of direct appeal and collateral review be strictly enforced, including the application of procedural bars, to ensure that all claims of error are raised and resolved at the first opportunity").

Moreover, the Florida Supreme Court properly determined that there was no violation of due process here. In rejecting Rogers' challenge to Rule 3.851(d), the Florida Supreme Court pointed out that it had recently rejected exactly the same

argument in the case of James Ford. *See Rogers*, 2025 WL 1341642, at *6. Ford, like Rogers, was attempting to raise successive postconviction claims under an active death warrant. In rejecting Ford's contention that the procedural limitations of Rule 3.851(d) violated his right to due process, the Florida Supreme Court stated, "[d]ue process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." *Ford v. State*, 402 So. 3d 973, 978 (Fla. 2025) (quoting *Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023)). Ford, however, did "not allege that he was denied notice and an opportunity to be heard." *Id.* Rather, Ford was "simply objecting to the fact that he d[id] not have the opportunity to be reheard." *Id.*

The same is true of Rogers, who has known about his porphyria diagnosis for decades, yet waited until after his execution was scheduled to initiate a challenge to Florida's lethal injection protocol. *See Grayson v. Allen*, 491 F.3d 1318, 1321-26 (11th Cir. 2007) (affirming dismissal of lethal injection challenge on equitable grounds for unreasonable delay, and noting that "[i]f Grayson truly had intended to challenge Alabama's lethal injection protocol, he would not have deliberately waited to file suit until a decision on the merits would be impossible without entry of a stay or an expedited litigation schedule"). While Rogers argues that the issue was not ripe until his death warrant was signed, he provides no authority to support that proposition, and the Florida Supreme Court has long held otherwise. *See Ferguson v. State*, 101 So. 3d 362, 365 (Fla. 2012) (rejecting the argument that a method-of-execution claim is not ripe until a death warrant is signed); *see also Muhammad v. State*, 132 So. 3d 176, 186-88 (Fla. 2013) (recounting how Muhammad filed a successive postconviction

motion challenging Florida's lethal injection procedure before the Governor signed his death warrant, and later filed another successive motion after the warrant was signed challenging the revised lethal injection procedure that included a new drug); *Ventura v. State*, 2 So. 3d 194, 196 (Fla. 2009) (raising a newly discovered evidence claim challenging Florida's lethal injection protocol after Angel Diaz's execution and before the Governor signed a death warrant for Ventura); *cf. Tanzi*, 2025 WL 971568, at *3 (finding post-warrant lethal injection challenge untimely where it was based on medical conditions that were "present as early as November 2009").

Rogers had ample notice and opportunity to raise a timely as-applied lethal injection challenge if he had chosen to do so. Yet he did not, despite the fact that he previously filed multiple successive postconviction motions raising other issues. The Florida Supreme Court correctly found that there was no denial of due process under these facts. Perhaps more importantly, there is no conflict among state or federal courts on the question presented. Indeed, Rogers cites not a single case–from this Court or any other–holding that a time limit for raising successive postconviction claims becomes unconstitutional once a death warrant has been issued. Accordingly, certiorari should be denied. *See Bartlett v. Stephenson*, 535 U.S. 1301, 1304 (2002) (stating that issues with few, if any, ramifications beyond the present case do not satisfy any of the criteria for exercise of certiorari jurisdiction).

II. Rogers' Argument that He Was Entitled to an Evidentiary Hearing on His Eighth Amendment Claim Does Not Warrant Review.

Rogers further argues that the state courts' denial of his lethal injection claim without an evidentiary hearing violated his federal constitutional rights to equal

protection and due process. Again, this Court lacks jurisdiction, and Rogers fails to set forth any compelling basis for certiorari review.

A. The Denial of Rogers' Eighth Amendment Claim Rests on an Independent and Adequate State Law Ground.

As discussed at length above, Rogers' as-applied Eighth Amendment challenge to Florida's lethal injection protocol was denied by the postconviction court, in part, because it was facially untimely, and the Florida Supreme Court agreed with that determination. *See Rogers*, 2025 WL 1341642, at *7-8. A state court's finding that a federal law claim is time-barred under the state's procedural rules constitutes an independent and adequate state law ground for rejecting the claim. *See Walker v. Martin,* 562 U.S. 307, 316-17 (2011) (finding that California's time bar qualified as an adequate state procedural ground); *Jeter v. Sec'y, Fla. Dep't of Corr.*, 479 F. App'x 286, 287-88 (11th Cir. 2012) (holding that the Florida courts' dismissal of Jeter's postconviction motion as untimely under Fla. R. Crim. P. 3.850 was a rejection on adequate and independent state procedural grounds).

Because the claim was time-barred under state law, and this Court may not second-guess that determination, the absence of an evidentiary hearing is irrelevant. Even if this Court were to grant review and conclude that an evidentiary hearing was required as a matter of federal constitutional law, the outcome of Rogers' method-of-execution claim would be the same: because he failed to timely raise the claim under Florida law, the claim is procedurally barred. Thus, any ruling by this Court would be a mere "advisory opinion," *Herb*, 324 U.S. at 125-26, and this Court consequently lacks jurisdiction over Rogers' second question presented.

B. Rogers' Equal Protection and Due Process Arguments Were Not Properly Presented to the Florida Supreme Court.

Jurisdiction is also lacking because Rogers' due process and equal protection arguments were not properly presented to the state courts, and the point was not addressed in the Florida Supreme Court's opinion.

This Court's jurisdiction to review a case from a state court of last resort is premised on the state court "decid[ing]" an important question of federal law. Sup. Ct. R. 10(b)-(c). "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 [the claim] was either addressed by, or properly presented to, the state court that rendered the decision [this Court has] been asked to review." *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (cleaned up). If a federal question was not properly presented in state court, then this Court has "no power to consider it." *Street v. New York*, 394 U.S. 576, 582 (1969). "[W]hen, as here, the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Id.*

Rogers cannot meet that burden. In his initial brief in the Florida Supreme Court, Rogers argued that the postconviction court erred in denying his as-applied lethal injection claim because evidentiary hearings had been granted on such claims in other cases decided by the Florida Supreme Court. The crux of Rogers' argument appeared to be that because evidentiary hearings were granted in those cases, the postconviction court violated controlling precedent by failing to hold an evidentiary

hearing in Rogers' case. Appendix B to Cert. Petition, at 50-57. At the end of that section of his argument, Rogers threw in a single sentence claiming that his federal constitutional rights were violated. *Id.* at 57 ("To treat Rogers differently by denying him an evidentiary hearing when these defendants received one violates Rogers' Fourteenth Amendment rights to Equal Protection and Due Process."). This sentence was unaccompanied by any explanation or supporting citations. *Id.*

Subsequently, when the Florida Supreme Court issued its opinion, it dispensed with Rogers' argument that the prior cases mandated an evidentiary hearing in a short footnote. *See Rogers*, 2025 WL 1341642, at *7 n.12 ("At the outset, Rogers argues that this Court's decisions in [five prior cases] require relinquishment of jurisdiction to the circuit court with instructions to hold an evidentiary hearing on his as-applied claim and a stay to afford time to conduct a full and fair hearing. These decisions in no way stand for that legal proposition."). The Florida Supreme Court did not address Rogers' assertion that because evidentiary hearings were granted in those earlier cases, the failure to hold one in his case violated his equal protection and due process rights under the Fourteenth Amendment.

That the Florida Supreme Court did not address the point is not surprising. Under the Florida Rules of Appellate Procedure, arguments in an initial brief must be accompanied by "citation to appropriate authorities." Fla. R. App. P. 9.210(b)(5). Conclusory assertions made in passing without any explanation or accompanying citations are considered waived. *See, e.g.*, *Knight v. State*, 225 So. 3d 661, 675 (Fla. 2017) (argument in initial brief comprised of two sentences that did not cite any case

law or refer to any supporting facts was insufficiently pled); *Miller v. State*, 161 So. 3d 354, 383 (Fla. 2015) (argument on appeal consisting of a single, conclusory statement was insufficiently presented and therefore waived); *Reynolds v. State*, 99 So. 3d 459, 485 (Fla. 2012) (assertion made "in passing" without any "argument, analysis, or elaboration" was deemed to have been waived).

Consequently, the record establishes that Rogers' equal protection and due process arguments were not "properly presented to" the Florida Supreme Court, *Adams*, 520 U.S. at 86, nor did the Florida Supreme Court address those arguments. For that reason, as well, this Court lacks jurisdiction.

C. Rogers' As-Applied Method-of-Execution Challenge is Facially Meritless Under *Baze-Glossip*.

Finally, there is nothing in the Florida Supreme Court's decision on the merits of Rogers' method-of-execution claim that warrants certiorari review. In addressing the merits of the claim, after first finding that it was time-barred, the Florida Supreme Court cogently explained why the claim was properly denied without an evidentiary hearing. *See Rogers*, 2025 WL 1341642, at *7-8.

Method-of-execution challenges are governed by the two-part "*Baze-Glossip* test." *Bucklew v. Precythe*, 587 U.S. 119, 133-35 (2019); *see Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). As the Florida Supreme Court correctly stated, under this Court's precedent "successfully challenging a method of execution requires that a defendant '(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of

execution that entails a significantly less severe risk of pain.'" *Rogers,* 2025 WL 1341642, at *7. (quoting *Asay*, 224 So. 3d at 701) (citing *Glossip*, 576 U.S. at 877).

On the face of his fourth successive postconviction motion, Rogers failed to satisfy either prong. Regarding the first prong, Rogers asserted in his motion that, according to his expert, the first drug in the lethal injection protocol, etomidate, could induce a porphyria attack and trigger a variety of painful symptoms. However, the use of etomidate has been repeatedly upheld. *Id.* (citing *Tanzi*, 2025 WL 971568, at *4; *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024), *cert. denied*, 145 S. Ct. 109 (2024); *Long v. State*, 271 So. 3d 938, 945 (Fla. 2019), *cert. denied*, 587 U.S. 1023 (2019)). Moreover, Rogers' motion was silent regarding "the well-established fact that the administration of etomidate will render him unconscious likely within one minute." *Id.* at *8; *see Asay*, 224 So. 3d at 701 ("Intravenous injection of etomidate produces hypnosis characterized by a rapid onset of action, usually within one minute.") (quoting the drug insert for etomidate); *Long*, 271 So. 3d at 944 (quoting lower court order recounting expert testimony that "the massive dose of 200 milligrams of etomidate would produce such a deep state of burst suppression and unconsciousness that it would eliminate any possible seizure activity, and render a person . . . unaware of noxious stimuli"); *see also Davis v. State*, 142 So. 3d 867, 872 (Fla. 2014) (holding that Davis could not carry his burden on his as-applied lethal injection claim because his expert "failed to demonstrate that the injection of midazolam, as the first drug in the lethal injection protocol, would not render Davis unconscious and insensate prior to him experiencing any possible symptoms of a porphyria attack"). Obviously, in

adhering to its long-standing protocol the State is not attempting to "super add" pain or terror to the execution. *See City of Grants Pass, Or. v. Johnson*, 603 U.S. 520, 543 (2024) ("None of the city's sanctions qualifies as cruel because none is designed to 'superad[d]' 'terror, pain, or disgrace.'") (quoting *Bucklew*, 587 U.S. at 130).

Rogers also failed to meet the second prong. Specifically, Rogers failed to show "how either of his two proposed alternate methods [lethal gas or firing squad] could be readily implemented, or in fact significantly reduce the substantial risk of severe pain, given the physical conditions he describes." *Rogers*, 2025 WL 1341642, at *8 (quoting *Tanzi*, 2025 WL 971568, at *4) (cleaned up). The only alternative by statute is electrocution, *see* § 922.105(3), Fla. Stat., but Rogers disavowed that option, even though the constitutionality of that method is well-established, *see Bucklew*, 587 U.S. at 131-32 (citing *In re Kemmler*, 136 U.S. 436, 447 (1890)), and it would avoid any concerns Rogers has regarding his porphyria diagnosis.

That evidentiary hearings have been held on as-applied method-of-execution challenges in other cases says nothing about whether an evidentiary hearing was warranted in this specific case. The Florida Supreme Court found, upon review of Rogers' fourth successive postconviction motion, that Rogers had failed to set forth sufficient allegations to support a viable claim for relief, and thus, no evidentiary hearing was necessary. *See Rogers*, 2025 WL 1341642, at *3 (stating that summary denial of a successive Rule 3.851 motion is appropriate if the motion, files, and records in the case conclusively show that the movant is entitled to no relief, or if the claims raised are untimely or procedurally barred). Rogers fails to cite any case holding that

an evidentiary hearing is *always* required when an as-applied method-of-execution claim is raised, let alone that the summary denial of such a claim violates a capital defendant's rights to equal protection or due process.

In summation, Rogers fails to establish any conflict on an important question of federal law, or any unsettled federal law question warranting resolution by this Court. For all of the above reasons, there is no compelling issue to justify a writ of certiorari, and the petition should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

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