*** CAPITAL CASE ***

No. _____

IN THE

Supreme Court of the United States

ANTHONY FLOYD WAINWRIGHT,
Petitioner,

v.

GOVERNOR OF FLORIDA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

THIS IS A CAPITAL CASE WITH AN EXECUTION SCHEDULED FOR TUESDAY, JUNE 10, 2025, AT 6:00 PM.

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*** CAPITAL CASE ***

QUESTIONS PRESENTED

Throughout Anthony Wainwright's under-warrant litigation, his sole objective was to have his substantial claims of constitutional deprivation and error heard by the courts. When he was denied that right due to an arbitrary and flawed process, he sought refuge from the federal courts under the promise that they would vindicate his rights to Due Process and Equal Protection under the U.S. Constitution. However, in the courts below, Mr. Wainwright was subjected to an overly burdensome dismissal standard under Fed. R. Civ. P. 12(b)(6). On appeal, and again without notice or opportunity to be heard, the Eleventh Circuit harnessed an arcane and disfavored legal doctrine to evade engaging with his compelling claim that the Florida state courts' capital postconviction process does not comply with Due Process or Equal Protection.

In these last hours before a grave miscarriage of justice, this Court must step in to correct not just the error that has occurred in Mr. Wainwright's case, but also to prevent the constitutional harms of the defective postconviction process, which would deprive a defendant of his choice of counsel in his most vulnerable time. This Court should provide the opportunity for Mr. Wainwright to finally be heard through a grant of certiorari.

The questions presented in this petition are:

1. Whether a State violates the Due Process Clause of the Fourteenth Amendment when it mandates that capital litigants have counsel during their state postconviction proceedings, yet precludes them from accessing the state-created habeas process with their pro bono counsel of choice?

2. Whether a system that functionally prevents a litigant from presenting claims to the courts with choice of counsel satisfies the right to due process and access to the courts?

3. Whether a State violates the Equal Protection Clause of the Fourteenth Amendment when it precludes indigent capital litigants under a death warrant from proceeding with their qualified pro bono counsel of choice, where no prejudice to the State or administration of justice would occur and a non-indigent litigant would be entitled to such a choice?

4. Whether a court may justify denying relief by *sua sponte* raising the *Rooker-Feldman* doctrine, which was found to "probably" apply, to avoid addressing the merits of a § 1983 action challenging the constitutionality of a state's capital postconviction process governed by statutes and procedural rules?

LIST OF DIRECTLY RELATED PROCEEDINGS

Underlying Criminal Trial

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 1994 CF 150

Direct Appeal

Florida Supreme Court (No. 86022)
Anthony Floyd Wainwright v. State of Florida, 704 So. 2d 511 (Fla. 1997)
Judgment Entered: November 13, 1997 (affirming)
Rehearing Denied: January 16, 1998

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 97-8324)
Anthony Floyd Wainwright v. State of Florida, 118 S. Ct. 1814 (1998)
Judgment Entered: May 18, 1998

Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: April 12, 2002 (denying motion for postconviction relief)

Florida Supreme Court (Nos. SC02-1342; SC02-2021)
Anthony Floyd Wainwright v. State of Florida, 896 So. 2d 695 (Fla. 2004)
Judgment Entered: November 24, 2004 (affirming denial of postconviction relief and denying state habeas corpus relief)
Rehearing Denied: March 1, 2005

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 05-5025)
Anthony Floyd Wainwright v. State of Florida, 126 S. Ct. 188 (2005)
Judgment Entered: October 3, 2005

Federal Habeas Proceedings

District Court for the Middle District of Florida
Wainwright v. Sec'y, Fla. Dep't of Corr., Case No. 3:05-cv-276-TJC
Judgment Entered: March 10, 2006 (dismissing habeas petition as untimely)
Reconsideration Denied: May 12, 2006

Eleventh Circuit Court of Appeals (No. 06-13453)

Wainwright v. Sec'y, Fla. Dep't of Corr., 537 F.3d1282 (11th Cir. 2007)
Judgment Entered: November 13, 2007 (affirming habeas dismissal)
Rehearing Denied: December 26, 2007

First Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: September 20, 2007 (summarily denying)

Florida Supreme Court (No. SC07-2005)
Anthony Floyd Wainwright v. State of Florida, 2 So. 3d 948 (Fla. 2008)
Judgment Entered: November 26, 2008 (affirming)
Rehearing Denied: February 6, 2009

Second Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: June 15, 2009 (dismissing)

Florida Supreme Court (No. SC09-1411)
Anthony Floyd Wainwright v. State of Florida, 43 So. 3d 45 (Fla. 2010)
Judgment Entered: May 6, 2010 (affirming)
Rehearing Denied: August 3, 2010

Third (Amended) Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: June 15, 2012 (denying)

Florida Supreme Court (No. SC11-1669)
Anthony Floyd Wainwright v. State of Florida, 77 So. 3d 648 (Fla. 2011)
Judgment Entered: December 2, 2011 (affirming)

Fourth Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: June 15, 2012 (denying)

Florida Supreme Court (No. SC11-1669)
Anthony Floyd Wainwright v. State of Florida, 77 So. 3d 648 (Fla. 2011)

Judgment Entered: December 2, 2011 (affirming)

Fifth Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: February 6, 2014 (denying)
Judgment Amended: April 24, 2014

Sixth Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgments Entered: June 2, 2015 and September 22, 2015 (denying)

Florida Supreme Court (No. SC15-2280)
Anthony Floyd Wainwright v. State of Florida, 2017 WL 394509 (Fla. Jan. 30, 2017)
Judgment Entered: January 30, 2017

Seventh Successive Postconviction Proceedings

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: July 15, 2022 (denying)
Rehearing Denied: August 4, 2022

Florida Supreme Court (No. SC22-1187)
Anthony Floyd Wainwright v. State of Florida, 2022 WL 4282149
Judgment Entered: September 16, 2022 (striking)
Rehearing Denied: January 12, 2023

Proceedings Under Federal Rule of Civil Procedure 60(b)

District Court for the Middle District of Florida
Wainwright v. Sec'y, Fla. Dep't of Corr., Case No. 3:05-cv-276-J-TJC
Judgment Entered: January 27, 2020 (denying relief from judgment in part and dismissing in part)
Reconsideration Denied: August 24, 2020

Eleventh Circuit Court of Appeals
Wainwright v. Sec'y, Fla. Dep't of Corr. (No. 20-13639)
Judgment Entered: July 18, 2023 (affirming)
Rehearing Denied: October 13, 2023

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 23-6737)
Anthony Floyd Wainwright v. Sec'y, Fla. Dep't of Corr., 144 S. Ct. 1363 (2024)
Judgment Entered: April 15, 2024

Eighth (Amended) Successive Postconviction Proceedings and State Habeas (under warrant)

Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: May 20, 2024 (denying)

Florida Supreme Court (No. SC25-0708)
Anthony Floyd Wainwright v. State of Florida, 2025 WL 1561151 (Fla. June 3, 2025)
Judgment Entered: June 3, 2025 (affirming)

Florida Supreme Court (No. SC25-0709) (state habeas)
Anthony Floyd Wainwright v. Sec'y Fla. Dep't of Corr., 2025 WL 1531495
Judgment Entered: May 29, 2025 (striking)

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 24-7365)
Anthony Floyd Wainwright v. State of Florida, 2025 WL 1621505 (June 9, 2025)
Judgment Entered: June 9, 2025

Petition for a Writ of Habeas Corpus (under warrant)

Petition for Writ of Habeas Corpus Denied:
Supreme Court of the United States (No. 24-7368)
In re Anthony Floyd Wainwright, 2025 WL 1621506 (June 9, 2025)
Judgment Entered: June 9, 2025

Related Proceedings Under 42 U.S.C. § 1983 (under warrant)

District Court for the Middle District of Florida
Wainwright v. Governor of Florida, et al., Case No. 3:25-cv-607-WWB
Judgment Entered: June 6, 2025 (granting motion to dismiss and denying a stay of execution)

Eleventh Circuit Court of Appeals
Wainwright v. Governor of Florida, et al., No. 25-11910
Judgment Entered: June 9, 2025 (denying a stay of execution)

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Statutes and Constitutional Provisions

Petitioner Anthony Floyd Wainwright, a prisoner on Florida's death row whose scheduled execution is mere hours away, respectfully urges this Honorable Court to issue its writ of certiorari to review the Eleventh Circuit Court of Appeals' order issued on June 9, 2025.

DECISION BELOW

The Eleventh Circuit Court of Appeals' unpublished order denying Mr. Wainwright's motion for stay of execution appears as *Wainwright v. DeSantis, et al.*, Case No. 25-11910 (11th Cir. June 9, 2025), and is reproduced in the Appendix at A1.

JURISDICTION

The Eleventh Circuit's judgment was entered on June 9, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides, in relevant part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in

> such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

STATEMENT OF THE CASE

I. Factual background

Mr. Wainwright has been on death row since 1994, when he was convicted and sentenced to death for first-degree murder and associated charges in Hamilton County, Florida. *Wainwright v. State*, 704 So. 2d 511 (Fla. 1997). On May 9, 2025, Defendant Ron DeSantis signed Mr. Wainwright's death warrant and scheduled his execution for June 10, 2025, at 6:00 P.M. That same day, Defendant Carlos G. Muñiz issued an expedited briefing schedule for the circuit court proceedings. MDFL-ECF No. 3 at 5-6.

Upon the signing of his death warrant, Mr. Wainwright was transported from Union Correctional Institution, which houses Florida's death row inmates, to the Florida State Prison. There, Mr. Wainwright began Phase I of death-watch. Under Phase I, Mr. Wainwright's visitation and contact with the outside world is even more restricted than on death row. His tablet issued by Defendant Ricky Dixon, which generally allows those on death row to contact friends and family through email, access movies, eBooks, audiobooks, music, and educational content, was confiscated. His visitation was restricted to only individuals who were already on his approved visitation list. His legal phone calls were restricted to thirty-minute durations and can only be scheduled upon the request of his attorneys.

In response to Mr. Wainwright's death warrant being signed, Baya Harrison, Mr. Wainwright's state court registry counsel, mailed Mr. Wainwright a letter informing him of the death warrant. Mr. Harrison wrote:

> I am doing all in my power to come up with additional grounds for post conviction relief for you to include a stay of execution and a new trial. I will consult with Ms. McDermott. I will keep you posted.
>
> Because so much work needs to be done here, I cannot travel to the prison. Therefore I ask that you write me and call me. I will place a call to the prison to speak to you as well.

MDFL-ECF No. 3 at 18. Mr. Harrison was appointed as postconviction registry counsel on February 6, 2014, by the Circuit Court of the Third Judicial Circuit, in and for Hamilton County, Florida. The appointment was in response to prior counsel's motion to withdraw. The circuit court previously appointed Capital Collateral Regional Counsel-North to represent Mr. Wainwright in his postconviction proceedings, but because the office was not yet operational, the court appointed Mr. Harrison from the capital collateral registry. On February 24, 2014, Mr. Harrison filed a notice of appearance in Mr. Wainwright's state postconviction proceedings. He has remained counsel of record despite several unsuccessful attempts by Mr. Wainwright over the following eleven years to have Mr. Harrison removed as his counsel.

Mr. Harrison's letter to Mr. Wainwright informing him of the death warrant was dated May 10, 2025, and postmarked May 13, 2025. The letter took over ten days

to reach Mr. Wainwright, and was addressed to the incorrect institution, likely contributing to its delay in reaching Mr. Wainwright. MDFL-ECF No. 3 at 7-8; 18-19.

II. State circuit court proceedings

On May 9, 2025, at 9:51 p.m., Mr. Harrison emailed Linda McDermott, Chief of the Capital Habeas Unit that represents Mr. Wainwright in his federal habeas proceedings, asking if she wished to work together on Mr. Wainwright's death-warrant litigation:

> Linda, are you wishing to be in on this? Needless to say it would be appreciated. Please advise via email and know I am available to discuss this weekend. Please include Steve Alex.

MDFL-ECF No. 3 at 10. McDermott had also emailed Mr. Harrison several hours prior to inform him that her office represents Mr. Wainwright in his federal proceedings and that Mr. Harrison could contact her if he wanted to discuss anything regarding Mr. Wainwright's death warrant litigation. MDFL-ECF No. 3 at 12. Both agreed to speak the following morning over the phone. MDFL-ECF No. 3 at 12; 15-16.

During the May 10, 2025, phone call, McDermott and undersigned shared ideas for claims and issues with Mr. Harrison that could be raised on Mr. Wainwright's behalf, including one Mr. Wainwright's federal team had begun to develop shortly before the death warrant was signed, as well as a claim for a state petition for writ of habeas corpus to the Florida Supreme Court. MDFL-ECF No. 3 at

15-16. Mr. Harrison affirmed that the ideas sounded good, and the parties agreed to confer after the status conference on May 12, 2025. MDFL-ECF No. 3 at 15-16.

On May 11, 2025, without consulting Mr. Wainwright, Mr. Harrison filed a response to the State's proposed scheduling order in which, though the successive postconviction motion had not yet been filed, he indicated there was no need for an evidentiary hearing on the claims. MDFL-ECF No. 3 at 15-16; 21-22.

On May 12, 2025, the circuit court issued a scheduling order directing Defendant Dixon to provide Mr. Wainwright's updated inmate records, and directing Mr. Wainwright to file any additional agency public records demands by May 13, 2025, at 3:00 p.m. MDFL-ECF No. 3 at 27-32. In response to the circuit court's scheduling order, and again without consulting Mr. Wainwright, Mr. Harrison filed a notice that Mr. Wainwright did not seek additional public records from Defendant Dixon despite the circuit court's order. MDFL-ECF No. 3 at 34-35. Mr. Harrison further represented that Mr. Wainwright did not seek any additional public records from any other agency. MDFL-ECF No. 3 at 34-35.

Shortly after the May 12, 2025, status conference, Terri Backhus, Mr. Wainwright's former federal counsel and pro bono counsel of choice who has since transitioned to private, part-time legal practice, became aware that Mr. Harrison had waived several of Mr. Wainwright's rights without his consent. MDFL-ECF No. 3 at 39-41. Ms. Backhus observed that Mr. Harrison waived routine public records requests that were likely to have been granted. MDFL-ECF No. 3 at 39-41. Mr.

Wainwright expressed extreme concern about his rights being waived, and fear that it was indicative that Mr. Harrison was also not going to file the claims Mr. Wainwright wanted to raise and federal counsel was in the process of developing. MDFL-ECF No. 3 at 39-41. During her conversation with Mr. Wainwright, Ms. Backhus also learned that Mr. Harrison had yet to contact Mr. Wainwright, and was concerned because Fla. R. Crim. P. 3.851(e)(1)(F) requires counsel to certify that they have discussed the contents of the motion with the client. MDFL-ECF No. 3 at 39-41.

Mr. Harrison filed a single-claim postconviction motion on May 14, 2025, without conferring with Mr. Wainwright, and mailed Mr. Wainwright a copy. Thus, at Mr. Wainwright's request, Ms. Backhus timely filed a postconviction motion raising two fact claims, including a *Brady* claim, as well as a motion for substitution of counsel, and a request for substitution of counsel by Mr. Wainwright. In the request, Mr. Wainwright represented that he conferred with Ms. Backhus regarding the claims she intended to raise, and consented to the filing of the motion for postconviction relief on his behalf. MDFL-ECF No. 3 at 37. Ms. Backhus has litigated numerous death warrant cases over several decades and meets the qualifications set forth in Fla. R. Crim. P. 3.112(k). Ms. Backhus further agreed to represent Mr. Wainright pro bono. MDFL-ECF No. 3 at 39-41.

The State objected to the motion for substitution of counsel, which it later amended, on May 14, 2025. It also moved for an emergency hearing on the motion for substitution of counsel and moved to strike the successive postconviction motion filed

by pro bono counsel. An emergency hearing on the motion to substitute counsel was held on May 15, 2025. At the emergency hearing, Mr. Harrison falsely represented that McDermott agreed to communicate with Mr. Wainwright on his behalf; that filing public records request as general practice in death-warrant proceedings was a "complete and total waste of time"; that he did not have faith in the claims Backhus sought to raise in her Rule 3.851 motion, referring to them as "gobbledygook"; and that while he had never worked with pro bono counsel, he did not believe that he could successfully. Defendant Uthmeier protested Backhus' involvement in any capacity at the emergency hearing and in the State's filings.

The circuit court granted, in part, the State's motion for substitution of counsel, and granted the State's motion to strike Backhus' postconviction motion. It allowed Backhus to appear as second chair counsel-of-record, but restricted her from filing any pleading or making any argument without the express approval of Mr. Harrison. It then gave Ms. Backhus and Mr. Harrison until 6:00 p.m. that evening to file an amended postconviction motion, with Mr. Harrison's sole approval.

Mr. Harrison emailed Ms. Backhus a draft of the amended postconviction motion and gave her approximately twenty minutes to review the document. Backhus replied that she was concerned the amended motion did not properly preserve Mr. Wainwright's claims, and that she had not been allotted sufficient time to fully review the draft. Mr. Harrison responded that Ms. Backhus' "improper delay tactics never change," that he would be filing without her input, and that she could "tell it to the

judge." Mr. Harrison then filed the amended postconviction motion containing his single claim, and Backhus' two fact-intensive claims to which he dedicated less than a combined six pages. MDFL-ECF No. 3 at 61-66.

The circuit court denied the postconviction motion on May 20, 2025, and Mr. Harrison and Ms. Backhus filed a notice of appeal in the Florida Supreme Court under case number SC2025-0708.

III. State habeas litigation

That same day, Ms. Backhus informed Mr. Harrison that Mr. Wainwright specifically requested pro bono counsel to file a state petition for writ of habeas corpus. MDFL-ECF No. 3 at 39-41. She offered to provide Mr. Harrison a draft before filing the petition, and clarified that she hoped he would sign on to the petition. MDFL-ECF No. 3 at 39-41.

Mr. Harrison issued two responses: in the first he indicated that he was preoccupied with the initial brief and wanted nothing to do with the state habeas petition; in the second he defended the actions of Clyde Taylor, Victor Africano, and Jerry Blair, whose conduct and representation were challenged in the state habeas petition. MDFL-ECF No. 3 at 39-41. Mr. Harrison provided that they represent the "best of the legal profession," and that, in his opinion, they did not trample Mr. Wainwright's rights. MDFL-ECF No. 3 at 39-41.

Consequently, Mr. Wainwright, through Backhus only, timely filed a state petition for writ of habeas corpus in the Florida Supreme Court under case number

SC2025-0709. MDFL-ECF No. 3 at 39-41. The state habeas petition constituted an original proceeding under Florida Rule of Appellate Procedure 9.100(a), and the Florida Supreme Court had original jurisdiction under Florida Rule of Appellate Procedure 9.030(a)(3), and Art. V, §§ 3(b)(1) and (b)(9), Fla. Const. Backhus also contemporaneously filed a Notice of Appearance, Motion for Stay of Execution, and a Notice of filing an attached, notarized authorization by Mr. Wainwright. MDFL-ECF No. 3 at 105. In the authorization, Mr. Wainwright indicated that he authorized Backhus to represent him in the original proceeding, and further indicated the following:

> I have been informed and have consulted with Ms. Backhus about the issues to be raised in the petition for writ of habeas corpus. I have had no communication with the court-appointed Registry Counsel about the petition for any other matter concerning my under-warrant litigation. Ms. Backhus has consulted with me about the argument she intends to raise in the petition and I hereby consent to her representing me in this litigation.

MDFL-ECF No. 3 at 105.

The Florida Supreme Court directed the State to respond and set out a schedule for the response and reply. MDFL-ECF No. 3 at 107. Over a full week later, the State responded and argued that the petition should be stricken because it was filed by Ms. Backhus and not Mr. Harrison. Within hours of that and a day prior to the deadline for Mr. Wainwright's reply, the Florida Supreme Court issued an order stating that if Mr. Harrison did not adopt the filing by the following day, it would be stricken. MDFL-ECF No. 12 at 11. Mr. Harrison responded the next day refusing to

adopt the petition. Mr. Wainwright, through Ms. Backhus, filed an emergency motion for rehearing in the Florida Supreme Court discussing the due process and equal protection violations that would occur if the petition was stricken. However, the Florida Supreme Court denied rehearing and struck the petition on May 28, 2025. Subsequently, on June 3, 2025, the Florida Supreme Court affirmed the circuit court's denial of postconviction relief. *Wainwright v. State*, 2025 WL 1561151 (Fla. June 3, 2025).

IV. Proceedings below

Mr. Wainwright filed a complaint under 42 U.S.C. § 1983 and an accompanying memorandum of law on June 2, 2025, naming Governor Ron DeSantis; Attorney General James Uthmeier; Ricky D. Dixon, Secretary of the Florida Department of Corrections; David Allen, Warden of Florida State Prison; and the Honorable Carlos G. Muñiz, Chief Justice of the Florida Supreme Court as defendants. MDFL-ECF No. 1. Accompanying this complaint and memorandum was an emergency stay of execution. MDFL-ECF Nos. 2, 4. The complaint was subsequently amended on June 3, 2025, to include additional allegations in the wake of the Florida Supreme Court's postconviction decision earlier that day. MDFL-ECF No. 12.

Mr. Wainwright's amended complaint set forth claims related to the violation of his rights to Due Process and Equal Protection, including his ability to access the courts. MDFL-ECF No. 12. Specifically, Mr. Wainwright detailed the circumstances that had occurred in the state courts that unreasonably precluded his choice of

counsel to represent him in his death warrant litigation. MDFL-ECF No. 12. Mr. Wainwright secured pro bono representation from his former federal court counsel, Terri Backhus, who had decades of capital postconviction experience and met the minimum qualifications. Backhus agreed to represent Mr. Wainwright at no cost to the State and without any delay to the litigation schedules imposed by the state courts. The State's interference with Mr. Wainwright's choice of counsel and the state courts' refusal to permit Backhus to file pleadings and make arguments that she believed were in Mr. Wainwright's best interest resulted in two clear deprivations: first, Mr. Wainwright was blocked from filing a viable petition for writ of state habeas before the Florida Supreme Court; and second, due to Backhus' inability to proceed on Mr. Wainwright's authorized Rule 3.851 motion, the Florida Supreme Court, at the behest of the State, held that Mr. Wainwright's argument concerning a violation of the Eighth Amendment was not properly presented. MDFL-ECF Nos. 2, 12.

On June 3, 2025, the State filed a motion to dismiss. MDFL-ECF No. 15. The following day, Mr. Wainwright responded. MDFL-ECF No. 17. On June 6, 2025, the district court granted Defendants' motion to dismiss and denied as moot Mr. Wainwright's stay of execution. MDFL-ECF Nos. 25, 26. Mr. Wainwright appealed. MDFL-ECF No. 27.

The Eleventh Circuit ordered expedited briefing as to the district court's order dismissing the § 1983 action. On June 9, the Eleventh Circuit issued an order denying Mr. Wainwright's accompanying motion for a stay of execution. App. A1. However,

the court "[did] not address, at this time, the ultimate merits of Mr. Wainwright's appeal from the dismissal of his complaint." App. A1 at 15.

The Eleventh Circuit found that a stay was not warranted because Mr. Wainwright had failed to show a substantial likelihood of success on the merits. App. A1 at 15. As to his due process and equal protection claims, the court found, "[w]ithout definitively deciding the matter, [that] it is probable that [the] claims are precluded by the *Rooker-Feldman* doctrine" because they "mirror the due process and equal protection arguments that Mr. Wainwright raised in his emergency motion for rehearing and that were rejected by the Florida Supreme Court in its order striking the habeas petition." App. A1 at 16, 19. Therefore, in the court's view, "granting the relief sought by Mr. Wainwright on his due process and equal protection claims would probably amount to [the court] effectively reversing the Florida Supreme Court's decision[.] App. A1 at 19. Thus, without definitively deciding the matter, the Eleventh Circuit "found it probable that . . . [it] lack[ed] subject-matter jurisdiction to review [the claims] under *Rooker-Feldman*." App. A1 at 19.

Regarding the access-to-the-courts argument, the Eleventh Circuit acknowledged that "[p]risoners have a right of access to the courts." App. A1 at 20. However, the court concluded that the claim did not have a substantial likelihood of success. First, that Mr. Wainwright did not cite a case "standing for the proposition that a 32-day warrant period per se violates the right of access to the courts of a capital defendant who is represented by appointed counsel and is able to file [a

postconviction motion." App. A1 at 20. Second, the court found that Mr. Wainwright's complaint showed that he could communicate with his pro bono counsel in order to approve the claims that she filed on his behalf. App. A1 at 21. Third, registry counsel and Ms. Backhus filed the Rule 3.851 motion jointly, and Ms. Backhus filed the state habeas corpus petition that Mr. Wainwright had wanted her to submit. App. A1 at 21. "The problem for Mr. Wainwright was that [registry counsel] refused to adopt the state habeas corpus petition . . . and as a result the Florida Supreme Court struck that petition. That judicial action was not related to or caused by the 32-day warrant period or by Mr. Wainwright's transfer to death watch." App. A1 at 21.

Judge Jordan concurred, noting that while he agreed with the court's denial of a stay, he was concerned with "the allegations in the complaint . . . that [registry counsel] did not meet with or consult with Mr. Wainwright before the filing of the Rule 3.851 motion and that Mr. Harrison falsely represented that [federal counsel] agreed to communicate with Mr. Wainwright on his behalf." App. A1 at 22.

REASONS FOR GRANTING THE WRIT

I. The *Rooker-Feldman* doctrine, disfavored by this Court, was misapplied by the Eleventh Circuit.

The Eleventh Circuit's application of the *Rooker-Feldman* rule to Mr. Wainwright's claims broadens an intentionally narrow doctrine seldom employed by this Court. *Lance v. Dennis,* 546 U.S. 459, 464 (2006) ("Neither *Rooker* nor *Feldman* elaborated a rationale for a wide-reaching bar on the jurisdiction of lower federal courts, and our cases since *Feldman* have tended to emphasize the narrowness of the

Rooker-Feldman rule"); *Exxon Mobil Corp. v. Saudi Basic Industries Corp.,* 544 U.S. 280, 291 (2005) (discussing that *Rooker-Feldman* should only be applied in "limited circumstances"); *Skinner v. Switzer,* 562 U.S. 521, 532 (2011) (explaining that statutes or rules governing a state court decision may be challenged in a federal action); *Reed v. Goertz,* 598 U.S. 230, 235 (2023) (declining to apply *Rooker-Feldman* in a suit challenging the constitutionality of an underlying statute, rather than the state court decision applying that statute to the plaintiff).

This Court has previously observed that federal courts have "construed [the doctrine] to extend far beyond the contours of the *Rooker* and *Feldman* cases." *Exxon,* 544 U.S. 283. This Court responded to the federal courts' extension by limiting the scope of the rule. *Id.* at 284 ("*Rooker–Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions.") The Eleventh Circuit, unprompted, applied an arcane legal doctrine that had not even been raised by the federal district court in its dismissal, nor was it argued by the State in the district court or in the appellate level.

This Court has made clear that "[i]f a federal plaintiff 'present[s] [an] independent claim,'" *Rooker-Feldman* "is not an impediment to the exercise of federal jurisdiction that the 'same or a related question' was earlier aired between the parties in state court." *Skinner,* 562 U.S. 532 (citing *Exxon*, 544 U.S. at 292-93). The potential harm that this doctrine contemplates, wherein petitioners utilize federal courts for

another round of state court appeals, is not present in Mr. Wainwright's complaint. In fact, Wainwright initiated the proceedings below on June 2, 2025 by filing the original complaint under § 1983. After his post-conviction claims were denied by the Florida Supreme Court, Wainwright amended the complaint not to further litigate the merits of those claims, but to further demonstrate the constitutional failings of Mr. Wainwright's appointed registry counsel.

Mr. Wainwright's claims are expressly permitted under the *Rooker-Feldman* rule, which has been interpreted by this Court to hold that while a "state-court decision is not reviewable by lower federal courts," a "statute or rule governing the decision may be challenged in a federal action." *Skinner,* 562 at 532. Mr. Wainwright is not challenging the Florida Supreme Court's adverse decision itself, but rather asserting that the Florida statutes and rules, specifically Florida Rule of Criminal Procedure 3.851(b)(4)-(6), and restricting his choice of counsel violates his constitutional due process and equal protection rights. *See* MDFL-ECF No. 2 at 18-19 ("[T]he provisions cited by the Florida Supreme Court were inapplicable to the issue of Mr. Wainwright's choice of counsel and access to the Florida Supreme Court and violate Mr. Wainwright's right to equal protection."). Particularly at this juncture, where the question addressed to the Eleventh Circuit concerned "whether his complaint was sufficient to cross the federal court's threshold [under Fed. R. Civ. P. 12(b)(6)]" *Skinner,* 562 U.S. at 530, Mr. Wainwright has provided the sufficient legal basis to support a claim outside the purview of *Rooker-Feldman. See also*

Robertson v. Johnson, 376 F.2d 43 (5th Cir. 1967) (if facts alleged could provide for relief under *any* possible legal theory, dismissal is inappropriate).

This Court distinguished in *Feldman*, "[t]o the extent that [Mr. Wainwright] mounted a general challenge to the constitutionality of [Fla. R. Crim. P. 3.851(b)] … the District Court [had] subject matter jurisdiction over [his] complaint[]." *District of Columbia v. Feldman,* 460 U.S. 462, 482-83 (1983). The interpretation of *Rooker-Feldman* adopted by the Eleventh Circuit, "without definitively deciding the matter," App. A1 at 16, is so impermissibly broad that it would bar any state court due process claims that this Court acknowledged are cognizable in this doctrine's namesake. Therefore, the Eleventh Circuit's conclusion that Mr. Wainwright's claims were precluded by the *Rooker-Feldman* doctrine constituted an impermissible expansion of the rule and is in direct contradiction with established law of this Court.

II. The State violated Mr. Wainwright's due process rights by prohibiting him from litigating his claims through his pro bono counsel of choice.

A. The Due Process Clause

The Fourteenth Amendment to the United States Constitution provides that a state shall not "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Although there is no constitutional right to postconviction counsel, if a state opts to afford postconviction proceedings to indigent inmates, they "must comport with the Due Process and Equal Protection Clauses of the Fourteenth Amendment." *Tamalini v. Stewart*, 249 F.3d 895, 902 (9th Cir. 2001); *Smith v. Att'y Gen.*, No. 22-12950, 2023 WL 2592286 (11th Cir. Mar. 22, 2023) ("There

is no federal constitutional right to a direct appeal or to postconviction review by the states, but once such a remedy is granted, its operation must conform to the due process requirements of the Fourteenth Amendment."). Further, because "minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate." *Vitek v. Jones*, 445 U.S. 480, 491 (1980).

Florida has established a statutory right to postconviction counsel for death-sentenced inmates for pursuing any collateral attack on their convictions and sentences. *See* Fla. Stat. § 27.702(1). And Florida Rule of Criminal Procedure 3.851(b)(4)-(6) reinforces this right by mandating the appointment of counsel and prohibiting self-representation in capital cases. Thus, by providing a statutory mechanism for death-sentenced litigants to proceed on their collateral attacks, including state habeas proceedings, Florida has bound itself to the mandate that its processes conform to the due process requirements of the Fourteenth Amendment. And by precluding Mr. Wainwright from availing himself of the state habeas process with his pro bono counsel of choice under an active death warrant, Florida's capital postconviction process, namely Rule 3.851(b)(4)-6), is constitutionally inadequate to comport with due process. *See Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003) (to succeed on a procedural due process violation, a plaintiff must prove 1) deprivation of a constitutionally-protected liberty or property interest; 2) state action; and 3) constitutionally-inadequate process).

B. The State violated Mr. Wainwright's liberty interest in accessing the state habeas process with his pro bono counsel of choice.

From early in this Nation's history, this Court has recognized that "[w]herever one is assailed in his person or his property, there he may defend." *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876). This principle has been explicitly reinforced in terms of due process, finding that the right to due process "at a minimum [requires] that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971) (citing *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)). "[D]enial of due process is the failure to observe that fundamental fairness essential to the very concept of justice." *Lisenba v. People of State of California*, 314 U.S. 219, 236 (1941).

Where the State has created a procedural entitlement, even if significant discretion is involved in carrying it out, the process must comply "with the dictates of the Constitution-and, in particular, in accord with the Due Process Clause." *Evitts v. Lucey*, 469 U.S. 387, 389 (1985). A state creates a protected liberty interest by placing substantive limitations on official discretion." *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983). This occurs when a State: 1) establishes "substantive predicates" to guide official decision-making; and (2) mandates the outcome to be reached through "explicitly mandatory language." *Kentucky Dep't of Corrs. v. Thompson*, 490 U.S. 454 (1989). This includes death-warrant proceedings in the Florida state courts. *Tanzi v. State*, -- So. 3d -- 2025 WL 971568 *2 (Fla. 2025), *cf. Ohio Adult Parole Auth. v.*

Woodard, 523 U.S. 272, 288 (1998) (recognizing that even in wholly discretionary proceedings such as Executive clemency determinations, there remains a life interest protected by the Due Process Clause).

Under Florida law, "any person detained in custody, whether charged with a criminal offense or not," may petition the Florida Supreme Court for a writ of habeas corpus. § 79.01, Fla. Stat.; *see also* Art. I, § 13, Fla. Const. The writ "shall be grantable of right, freely and without cost." Art. I, § 13. The state-created right to petition for habeas corpus gives rise to a liberty interest protected by due process. *See Redd v. Guerrero*, 84 F.4th 874, 898 (9th Cir. 2023); *Vitek*, 445 U.S. at 488-89 (quoting *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974) ("Once a State has granted prisoners a liberty interest, we held that due process protections are necessary 'to insure that the state-created right is not arbitrarily abrogated.'")).

Furthermore, due process entails "notice and opportunity for hearing appropriate to the nature of the case," *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Mullane*, 339 U.S. at 313), which takes place "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In the case of collateral death-warrant proceedings provided by a State, this means the ability to prepare and file the relevant pleadings.

Here, Mr. Wainwright was wholly deprived of his ability to pursue a viable path to relief from his death sentence that had been explicitly contemplated in his case by the Florida Supreme Court's scheduling order. Although Mr. Wainwright

filed a legally sufficient, timely petition for habeas corpus relief in the Florida Supreme Court, the petition was stricken for no other reason than that his chosen counsel filed it.

Further, once the State requested that the petition be stricken—in a substantive response filed a week later with only two weeks preceding Mr. Wainwright's execution—Mr. Wainwright was provided no opportunity to be heard on the matter. Despite the Florida Supreme Court previously having advised Mr. Wainwright that his substantive reply would be due on May 28, 2025 (a day after the State's substantive response), prior to that deadline the Florida Supreme Court ordered that if Mr. Harrison did not adopt the state habeas petition, the pleading would be stricken. Indeed, when Mr. Wainwright filed an emergency motion for rehearing of the May 27, 2025 order with a proffered substantive reply attached, the Florida Supreme Court denied the rehearing motion and struck the reply. There could be no clearer deprivation of notice and an opportunity to be meaningfully heard. As a result, despite the Florida Supreme Court allowing numerous other indigent state habeas petitioners to proceed with chosen pro bono or retained counsel, Mr. Wainwright was not just denied his choice of counsel but his under-warrant state habeas proceedings *in toto*.

C. The State violated Mr. Wainwright's property interest in having pro bono counsel's services during his state habeas litigation

To have a property interest in a benefit, a person must "have a legitimate claim of entitlement to it." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972).

Such entitlements are "created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Id.* Due process recognizes and protects property interests "well beyond actual ownership of real estate, chattels, or money." *Bd. of Regents of State Colls.*, 408 U.S. at 571-72; *see also Redd*, 84 F.4th at 893. "The hallmark of property…is an individual entitlement grounded in state law." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-30 (1982) (overruled on other grounds); *see also Roth*, 408 U.S. at 577. Such entitlements are "created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Id.* A state "may elect not to confer a property interest," but "it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards." *K.W. ex rel. D.W. Armstrong*, 789 F.3d 962, 973 (9th Cir. 2015) (citing *Cleveland Bd. of Educ.*, 470 U.S. at 541).

Where a right has been created through state action, due process protects, via property interest, "those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." *Roth*, 408 U.S. at 577. Among these rights, the United States Supreme Court has included such interests as in utility services, *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 9, 11-12 (1978); public education, *Goss v. Lopez*, 419 U.S. 565, 573 (1975); welfare benefits, *Goldberg v. Kelly*, 397 U.S. 254, 261-63 (1970); driver's licenses, *Bell v. Burson*, 402 U.S. 535, 539 (1971); and nursing care. *O'Bannon v. Town Ct. Nursing Ctr.*, 447 U.S. 773, 786 (1980).

Likewise, where a state has made the appointment of collateral counsel available to indigent capital prisoners who opt for it, a property interest in such counsel is conferred. *Redd*, 84 F.4th at 892-93; *see also Town of Castle Rock*, 545 U.S. 748, 767 (2005) (recognizing entitlements with "some ascertainable monetary value" as triggering a property interest). And, where a deliberate decision of government officials deprives such an interest, due process has been violated. *See Daniels v. Williams*, 474 U.S. 327 (1986) (collecting cases).

Furthermore, the State, an adverse party actively seeking Mr. Wainwright's execution, cannot play a role in dictating who serves as Mr. Wainwright's counsel, and hence depriving him of his property interest in pro bono counsel's services. Mr. Wainwright's state habeas petition; the accompanying motion for a stay of execution; Ms. Backhus' notice of appearance; and Mr. Wainwright's notarized authorization were filed in the Florida Supreme Court on May 20, 2025. On that day, the court accepted the filings and ordered the State to file a substantive response by May 27, 2025. App. A5 at 3 (scheduling order). A full week passed—precisely one-third of the time until Mr. Wainwright's scheduled execution date—with no noted concerns by the State or the Florida Supreme Court regarding Ms. Backhus' representation in the original state habeas action. Then, within hours of the State's response, which argued that the petition should be stricken because it was filed by Ms. Backhus and not Mr. Harrison, the Florida Supreme Court issued its order stating that without Mr. Harrison's express adoption within the next day, the pleadings would be stricken.

The timing of the order demonstrates that it was responsive to the State's arguments regarding the issue of Mr. Wainwright's counsel.

But the party-opponent seeking to enforce Mr. Wainwright's execution warrant must not be permitted input as to how decisions regarding his litigation are made and by whom. Allowing the State input in this manner, when no prejudice would ensue from Ms. Backhus' representation of Mr. Wainwright, violated Mr. Wainwright's right to a fundamentally fair proceeding. *See Wilson v. Wainwright*, 474 So. 2d 1162, 1164 (Fla. 1985) (the basic requirement of due process in an adversarial system is that an accused be zealously represented at "every level"; in a capital case such representation is the "very foundation of justice"); *Ford v. Wainwright*, 477 U.S. 399, 424 (1986) (Powell, J., concurring in part and in the judgment) ("[F]undamental fairness is the hallmark of the procedural protections afforded by the Due Process Clause."). *See also Serra v. Mich. Dep't of Corrs.*, 4 F.3d 1348, 1358 (6th Cir. 1993) (Merrit, C.J., dissenting in part) (a judge "should not be allowed some broad discretion to choose the lawyer for the accused against his will….Neither should the prosecution be invited to use trial stratagems to defeat a defendant's choice of counsel.").

Indeed, the failure to permit Mr. Wainwright to be represented by the pro bono counsel he authorized was indeed arbitrary, as the Florida Supreme Court has permitted such representation in indistinguishable under-warrant circumstances. *See Howell v. State*, 109 So. 3d 763, 773 (Fla. 2013) ("In reality, the trial court permitted Howell to exercise his choice of counsel by recognizing [retained counsel]

as counsel of record…and since retained counsel filed their notice of appearance, they have filed motions, conducted discovery, and even filed the current appellate briefs with this Court."). Notably, although appointed counsel was not removed in *Howell*, retained counsel alone signed the appellate briefs, and subsequently served appointed counsel along with opposing counsel. In *Howell*, retained counsel had neither prior familiarity with Mr. Howell's case nor the extensive capital postconviction experience Ms. Backhus has. Inexplicably, Mr. Howell unlike Mr. Wainwright, was able to obtain counsel of his choice who advanced the claims of his choosing.

D. The State prevented Mr. Wainwright from accessing the state-court process to which he was entitled.

"It is…clearly established that prisoners have a constitutional right of access to the courts." *Barbour v. Haley*, 471 F.3d 1222, 1225 (11th Cir. 2006) (citing *Bounds v. Smith*, 430 U.S. 817, 821, 824 (1977)). This right is grounded in various portions of the Constitution, including the Article IV Privileges and Immunities Clause, First Amendment Petition Clause, Equal Protection, and Due Process under the Fifth and Fourteenth Amendment. *See Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002). And, unlike the other Due Process and Equal Protection claims presented by Mr. Wainwright's § 1983 action, the Eleventh Circuit did not apply the *Rooker-Feldman* doctrine to his claim that he had been denied access to the courts.

However, the lower court ruled that there was no substantial likelihood of success on the claim because (1) despite the truncated warrant period, Mr.

Wainwright was "represented by appointed postconviction counsel who was able to file an application for relief[;]" (2) he "was able to communicate with his pro bono counsel, Ms. Backhus" and was able to approve the Rule 3.851 and state habeas claims she wanted to bring on his behalf[;]" and (3) "Mr. Harrison and Ms. Backhus filed and litigated a Rule 3.851 motion…and Ms. Backhus separately filed the state habeas corpus petition[.]" App. A1 at 21. Although the court acknowledged that "Mr. Harrison refused to adopt the state habeas corpus petition filed by Ms. Backhus and as a result the Florida Supreme Court struck that petition[,]" it apparently found that there was no actual injury because the judicial action "was not related to or caused by the 32-day warrant period or by Mr. Wainwright's transfer to death watch." *Id*. This ruling distorted and improperly parsed Mr. Wainwright's claim for relief.

The fact that Mr. Wainwright had an appointed lawyer (Baya Harrison) who had the authority to file for postconviction relief was meaningless in the face of Mr. Harrison's failure to "meet with or consult with" Mr. Wainwright before doing so (or in the decade prior), and his false representations to the state court regarding this. App. A1 at 22. Mr. Wainwright's ability to communicate with Ms. Backhus was similarly meaningless given that her ability to represent him was wholly restricted to Mr. Harrison's dictates—which did not include the state habeas, nor the properly pleaded version of the Rule 3.851 motion Mr. Wainwright had authorized. Accordingly, Mr. Wainwright's "attempts to seek state habeas corpus relief" were not "hindered to some degree[.]" App. A1 at 22. They were foreclosed entirely.

Further, it was of no meaningful consequence that "Mr. Harrison and Ms. Backus filed and litigated a Rule 3.851 motion…and Ms. Backhus separately filed the state habeas corpus petition[.]" App. A1 at 21. The *Barbour* court, citing this Court's "instruction" in *Lewis v. Casey*, explicitly rejected "the State's position that because [an incarcerated litigant was] actually able to file a postconviction petition, even if subsequently dismissed, [he] cannot prove actual injury." *Barbour*, 471 F.3d at 1225 (citing *Lewis*, 518 U.S. 343, 351 (1996)). Access to the courts is not satisfied by the mere fact that Mr. Wainwright "was able to approve the Rule 3.851 claims…and those claims were included in the amended motion" or that Ms. Backhus filed what "Mr. Wainwright wanted[.]" App. A1 at 21. After all, not only was Mr. Wainwright's habeas petition stricken as a result of Defendants' actions in precluding Ms. Backhus from filing anything independent of Mr. Harrison, the Rule 3.851 petition he authorized was also stricken for the same reason and replaced with one under Mr. Harrison's sole control. Thus, Mr. Wainwright was also deprived of a meaningful opportunity to be heard on his chosen constitutional claims.

As with other claims grounded in Due Process concerns, Mr. Wainwright's access to the courts claim cannot be considered piecemeal or in a vacuum. Rather, evaluation of the claim must take into account what is "appropriate to the nature of the case." *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)); *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971) (same). And this Court has endorsed a

cumulative approach in the context of evaluating such violations. *See, e.g.*, *Taylor v. Kentucky*, 436 U.S. 478, 487 n.15 (1978) ("[We conclude] that the cumulative effect of the potentially damaging circumstances of this case violated the due process guarantee of fundamental fairness[.]"). Specifically with reference to claims regarding a prisoner's access to the courts, *Bounds* "guarantees no particular methodology but rather the conferral of a capability—the capability of bringing contemplated challenges to sentences." *Lewis*, 518 U.S. at 356.

Under the law of this Court and the Eleventh Circuit, an official's action that "frustrates or impedes" a prisoner's effort to pursue collateral relief constitutes actual injury. *Barbour*, 471 F.3d at 1225 (citing *Lewis*, 518 U.S. at 351). "[E]ven harms that flow indirectly from the action in question can be said to be 'fairly traceable' to that action." *Barbour*, 471 F.3d at 1225 (citing *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1273 (11th Cir. 2003)).

Mr. Wainwright's access to the courts claim thus turns on the fact that his attempts to collaterally attack his sentence were "stymied by inadequacies" that flowed from official actions by all named Defendants. *Lewis*, 518 U.S. at 351, 355. Contrary to the Eleventh Circuit's ruling, the deprivation of his ability to bring arguable claims was not solely attributable to the 32-day warrant period or death watch conditions. *See id.* at 353 n.3. Rather, it was the combined effect of those restrictive conditions, and the extreme restrictions placed on Ms. Backhus' representation by the other named Defendants, that prevented Mr. Wainwright from

having any meaningful opportunity to be heard in the state courts.

III. The State violated Mr. Wainwright's right to equal protection by preventing him from proceeding with his pro bono counsel even though no prejudice to the State or the orderly administration of justice would have resulted and although a non-indigent litigant would be entitled to such a choice.

A. The Equal Protection Clause protects Mr. Wainwright's choice of counsel in his capital postconviction proceedings.

The Fourteenth Amendment to the U.S. Constitution states: "No State shall… deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, § 1. Moreover, "[e]qual protection … emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable." *Ross v. Moffitt*, 417 U.S. 600 (1974).

B. Mr. Wainwright's choice of counsel was blocked from advancing his objectives through claims in his Rule 3.851 motion and petition for writ of habeas corpus.

In Mr. Wainwright's death warrant litigation, he secured well-qualified pro bono counsel, familiar with his case, to represent him as his choice of counsel. No delay or prejudice was caused by pro bono counsel's appearance, and it was at no expense to the State. Pursuant to Fla. R. Crim. P. Rule 3.851(e)(1)(f) and (e)(2)(a) and Rule 4-1.4 of the Rules of Professional Conduct, counsel for Mr. Wainwright was required to confer with him before filing his Rule 3.851 motion in order to determine his objectives and so that he could make informed decisions regarding his case. When state-appointed counsel failed to abide by his obligations to Mr. Wainwright—never

once speaking with him and failing to meet the standards set forth in Rule 3.851(e)(1)(f) and required by the Florida Bar—he secured pro bono counsel. In any other circumstance from civil to criminal courts, a litigant's choice of counsel when not causing any delay, concerns with judicial administration, or expense to the State would be honored.

After securing his choice of counsel, Mr. Wainwright sought to present the claims that advanced his objectives and decisions in his Rule 3.851 motion and in a completely separate and original proceeding before the Florida Supreme Court. *See* Fla. R. App. P. 9.100 (a) and (g). The pleadings were wholly authorized by Mr. Wainwright and timely filed by pro bono counsel. However, based upon the State's objections, the Florida Supreme Court struck the petition citing to Fla. R. Crim. P. 3.851(b)(4)-(6), and later denied Mr. Wainwright's Eighth Amendment claim, holding that it was not properly presented.

C. Mr. Wainwright's Equal Protection rights were violated.

In *Plyer v. Doe*, 457 U.S. 202, 216 (1982), this Court held:

> The Equal Protection Clause was intended as a restriction on state legislative action inconsistent with elemental constitutional premises. Thus we have treated as presumptively invidious those classifications that disadvantage a "suspect class," or that impinge upon the exercise of a "fundamental right." … In addition, we have recognized that certain forms of legislative classification, while not facially invidious, nonetheless give rise to recurring constitutional difficulties; in these limited circumstances we have sought the assurance that the classification reflects a reasoned judgment consistent with the ideal of equal protection by inquiring whether it may fairly be viewed as furthering a substantial interest of the State.

(footnotes omitted). Mr. Wainwright, as an indigent capital postconviction defendant, was required to be treated similarly to any other litigant availing themselves of a legal process. Here, that process was the capital postconviction process designed by the Florida Legislature and Florida Supreme Court. *See* Fla. Stat. §§ 27.7001, 27.710, 27.711; Fla. R. Crim. P. 3.851. However, the protections, specifically, his right to counsel, afforded by the process were unreasonably denied to Mr. Wainwright when he was denied choice of counsel and blocked from any meaningful access to the postconviction process.

As this Court recognized in *Ross v. Moffitt*, 417 U.S. 600, 611 (1974), the Equal Protection Clause requires "the state appellate system be 'free of unreasoned distinctions'". 417 U.S. 600, 611 (1974) (citing *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966)). Further, "[t]he State cannot adopt procedures which leave an indigent defendant entirely 'cut off from any appeal at all,' by virtue of his indigency, or extend to such indigent defendants merely a 'meaningless ritual' while others in better economic circumstances have a 'meaningful appeal.' *Id*. (citations omitted). Here, Mr. Wainwright, an indigent capital postconviction defendant, was cut off from an appeal despite the fact that he obtained pro bono counsel to represent him in his state habeas corpus proceedings.

Further, there is simply no rational reason to treat Mr. Wainwright differently or to limit his right to counsel of his choice. In the Sixth Amendment context, though this Court has noted that the right to choice of counsel is not absolute, none of the

concerns identified were present here. *See United States v. Gonzalez-Lopez*, 548 U.S. 140, 151 (2005) ("Nor may a defendant insist on representation by a person who is not a member of the bar, or demand that a court honor his waiver of conflict-free representation."); *see also Wheat v. United States*, 486 U.S. 153, 159-60 (1988).

Mr. Wainwright's choice of counsel is a member in good standing with the Florida Bar, met the rule-based qualifications to represent a death-sentenced individual in his postconviction appeals, was familiar with Mr. Wainwright's case having previously represented him for several years, conferred with Mr. Wainwright, and timely filed his Rule 3.851 motion and petition for writ of habeas corpus. Thus, although there was no Sixth Amendment right for an indigent defendant to obtain specific counsel of his choice at the State's expense, the calculus was altered when—as here—the defendant sought to proceed in his death penalty litigation while represented by well-qualified pro bono counsel who is familiar with the specific client and case, and able to proceed on the Court's predetermined schedule. *See Caplin & Drysdale, Chartered v. U.S.*, 491 U.S. 617, 625-25 (1989) ("the Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, *or who is willing to represent the defendant even though he is without funds*.").[1]

[1] *See also Randolph v. Sec'y, Penn. Dep't of Corrs.*, 5 F.4th 362, 378 (3d Cir. 2021) (for this right to be meaningful, courts must provide "every reasonable accommodation to facilitate that representation, provided that the selection and retention of that counsel will not substantially prejudice the prosecution" or impair a court's ability to proceed).

And, while other similarly situated defendants have been permitted to proceed with their choice of counsel in capital postconviction proceedings, even in active death warrant litigation, for no rational reason, Mr. Wainwright was not. *See Dillbeck v. Sec'y, Fla. Dep't of Corrs.*, No. 4:07-cv-388 (N.D. Fla. Jan. 26, 2023); *State v. Dailey*, Pinellas Cnty. Case No. 1993-CF-7084A; *Howell v. State*, 109 So. 3d 763 (Fla. 2013). Rule 3.851(b)(4)-(6) does not preclude choice of counsel by its own language and in practice. *See In re Amendments to the Fla. Rules of Jud. Admin; The Fla. Rules of Crim. P.; and the Fla. Rules of App. P.—Capital Postconviction Rules*, 148 So. 3d 1171, 1174 (2014). If it were to do so, as Mr. Wainwright stated in his pleadings before the district court, it violates his right to Equal Protection. MDFL.ECF 2 at 18-19.

D. Conclusion.

Restricting Mr. Wainwright's choice of counsel when he was able to obtain the services of an extremely experienced attorney over an attorney who just two years before had been deemed inadequate in under-warrant litigation, and when other capital postconviction defendants were allowed choice of counsel without any rational basis violated the Constitution.

CONCLUSION

The Court should grant the petition for a writ of certiorari and review the decision of the Eleventh Circuit.

Respectfully submitted,

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