

No. _____

IN THE
Supreme Court of the United States

THOMAS LEE GUDINAS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JUNE 24, 2025, AT 6:00 P.M.**

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether Florida abused its discretion in denying Gudinas's demand for public records from the Executive Office of the Governor, in violation of Gudinas's rights under the Eighth and Fourteenth amendments to the United States Constitution
2. Whether Florida providing unbridled, unfettered, discretion solely to the Governor for death warrant selection is unconstitutional, in violation of Gudinas's rights under the Eighth and Fourteenth amendments to the United States Constitution

LIST OF PARTIES

All parties appear in the caption of the case on the cover page. Petitioner, Thomas Gudinas, a death-sentenced Florida prisoner, was the appellant in the Supreme Court of Florida. Respondent, State of Florida, was the appellee in the Supreme Court of Florida.

LIST OF RELATED CASES

Trial

Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida

State of Florida v. Thomas Gudinas; Case No. CR94-7132

Verdict entered: May 4, 1995. Guilty as charged of first-degree murder, two counts of sexual battery, attempted sexual battery, and attempted burglary with an assault. Death sentence imposed on June 16, 1995.

Direct Appeal

Florida Supreme Court Case No. 86070

Gudinas v. State, 693 So. 2d 953 (Fla. 1997)

Judgment entered: April 10, 1997. Rehearing Denied: May 20, 1997

Denial of Certiorari

United States Supreme Court Case No. 97-5684

Gudinas v. Florida, 522 U.S. 936 (1997).

Denial entered: October 20, 1997

Denial of Appeal on Release of DNA

Florida Supreme Court Case No. 96,027

Gudinas v. State, No. 96,027, (Fla. Sept. 16, 1999)

Denial entered: September 16, 1999

Denial of 3.851 Motion for Postconviction Relief

Orange County Circuit Court Case No. CR94-7132

Order Denying Second Amended 3.851 Motion for Postconviction

Relief filed on March 20, 1999

Appeal of Denial of Postconviction Relief and State Petition for Habeas Corpus

Florida Supreme Court Case Nos. SC00-954, SC002495

Gudinas v. State, 816 So. 2d 1095 (Fla. 2002)

Judgment entered: March 28, 2002; Rehearing denied: May 7, 2002

Denial of Successive Postconviction Motion

Orange County Circuit Court Case No. CR94-7132

Final Order Denying Defendant's Successive Motion for
Postconviction Relief by on January 13, 2003

Appeal of Denial of Successive Postconviction Motion

Florida Supreme Court Case No. SC03-416

Gudinas v. Florida, 879 So.2d 61 (Fla. 2004)

Judgment entered: May 13, 2004; Rehearing denied: July 29, 2004

Denial of Motion for Appointment of Conflict-free Counsel

Orange County Circuit Court Case No. CR94-7132

Final Order Denying Defendant's Motion on May 21, 2007

Appeal of Denial of Motion for Appointment of Conflict-free Counsel

Florida Supreme Court Case No. SC07-1170

Gudinas v. State, 982 So.2d 684 (Fla. 2008)

Judgment entered: April 17, 2008

Denial of Federal Habeas Relief and Certificate of

Appealability (Following October 17, 2002 stay of proceedings)

U.S.D.C.-Middle District Case No. 2:06-cv-357-FtM-36DNF

Gudinas v. Sec'y, Dept. of Corr., et al., 2010 WL 3835776 (M.D.

Fla. Sep. 30, 2010) (unpublished)

Eleventh Circuit Court of Appeals Denial of COA

11th Circuit USCA Case No. 10-14921-P

Gudinas v. Sec'y, Fla. Dep't of Corr., et al., 436 Fed.Appx. 895, (11th Cir. July 28, 2011)

Denial of Certiorari

United States Supreme Court Case No. 11-7738

Gudinas v. Florida, 565 U.S. 1247 (2012)

Denial entered: March 5, 2012

Denial of Second Successive Postconviction Motion-Hurst

Orange County Circuit Court Case No. CR94-7132

Order Denying Defendant's Second Successive Motion to Vacate
Death Sentence by on March 29, 2017

**Appeal of Denial of Second Successive Postconviction Motion-
*Hurst***

Florida Supreme Court Case No. SC17-919

Gudinas v. State, 235 So. 3d 303 (Fla. 2018)

Judgment entered: January 30, 2018

**Denial of Defendant's Demand for Public Records (Executive Office of the
Governor) (Death Warrant)**

Orange County Circuit Court Case No. CR94-7132

Order Denying Public Records Demand by Judge John Jordan on May 29, 2025

**Denial of Successive Postconviction Motion for Postconviction Relief
(Death Warrant)**

Orange County Circuit Court Case No. CR94-7132

Final Order Denying Successive Motion for Postconviction Relief by Judge John Jordan on June 5, 2025

**Appeal of Denial of Successive Postconviction Motion for Postconviction
Relief (Death Warrant)**

Florida Supreme Court Case No. SC25-0794

Gudinas v. State, No. SC25-0794 (Fla. 2025)

Judgment entered: June 17, 2025

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Thomas Gudinas (“Gudinas”) respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida.

OPINIONS BELOW

This is a petition regarding the errors of the Supreme Court of Florida in affirming the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida, Final Order Denying Successive Motion for Postconviction Relief and May 29, 2025 Order Denying Public Record Demand. See *Appendix B*. The opinion at issue is unreported and reproduced at *Appendix A*.

JURISDICTION

The opinion of the Supreme Court of Florida was entered on June 17, 2025. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment provides: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment provides: 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.

STATEMENT OF THE CASE

I. Procedural History

On July 15, 1994, an Orange County, Florida grand jury indicted Gudinas of first-degree murder, two counts of sexual battery, attempted sexual battery, and attempted burglary with an assault. Gudinas was tried for the May 24, 1994 crimes on May 1-4, 1995, and was found guilty of all counts. The penalty phase commenced on May 8, 1995. The trial court excluded the State's proffer of victim impact evidence and heard such testimony and evidence outside the presence of the jury. The State introduced three prior convictions and rested. After a penalty phase conducted on May 8-10, 1995, the jury recommended death by a vote of ten to two. On June 16, 1995, the trial court sentenced Gudinas to death.

The trial court found the following Aggravators at sentencing:

- (1) Mr. Gudinas had been convicted of the commission of a prior violent felony, § 921.141 (5) (b), Fla. Stat. (1995);
- (2) the murder was committed during the commission of a sexual battery, § 921.141 (5)(d); and
- (3) the murder was especially heinous, atrocious, or cruel, § 921.141 (5) (h).

The trial court found the following Mitigators at sentencing:

The court found one statutory mitigator: Mr. Gudinas committed the murder while under the influence of an extreme mental or emotional disturbance, § 921.141 (6) (b).

The court found twelve nonstatutory mitigating factors and accorded them very little weight:

- (1) Mr. Gudinas had consumed cannabis and alcohol the evening of the homicide;
- (2) Mr. Gudinas had the capacity to be rehabilitated;
- (3) Mr. Gudinas's behavior at trial was acceptable;
- (4) defendant had an IQ of 85;

- (5) Mr. Gudinas was religious and believed in God;
- (6) Mr. Gudinas's father dressed as a transvestite;
- (7) Mr. Gudinas suffered from personality disorders;
- (8) Mr. Gudinas was developmentally impaired as a child;
- (9) Mr. Gudinas was a caring son to his mother;
- (10) Mr. Gudinas was an abused child;
- (11) Mr. Gudinas suffered from attention deficit disorder as a child; and
- (12) Mr. Gudinas was diagnosed as sexually disturbed as a child.

On direct appeal, Gudinas raised twelve claims concerning how the trial court erred in ruling on the following matters, which the FSC decided as follows:

- (1) the trial court erred in denying Gudinas' motion to sever counts I and II from the remaining charges;
- (2) the trial court erred in conducting several pretrial hearings without Gudinas present;
- (3) the trial court erred in not granting Gudinas' motion for judgment of acquittal for the attempted sexual battery of Rachelle Smith;
- (4) the trial court failed to conduct an adequate inquiry after Gudinas complained about lead counsel;
- (5) the trial court erred in overruling Gudinas' objections and allowing graphic slides into evidence;
- (6) the trial court erred in allowing the State to bolster a witness's testimony with a hearsay statement;
- (7) the introduction of collateral evidence denied Gudinas his constitutional right to a fair trial;
- (8) the trial court erred in denying Gudinas' motion in limine;
- (9) the trial court erred in restricting Gudinas' presentation of evidence;
- (10) the jury's advisory sentence was unconstitutionally tainted by improper prosecutorial argument and improper instructions;
- (11) the trial court erred in finding the heinous, atrocious, or cruel aggravating circumstance; and
- (12) the trial court erred in its consideration of the mitigating evidence.

The judgment and sentence for first degree murder in this case were affirmed on direct appeal by the Florida Supreme Court ("FSC") on April 10, 1997. *Gudinas v. State*, 693 So. 2d 953 (Fla. 1997). The United States Supreme Court ("USSC") denied certiorari on October 20, 1997. *Gudinas v. State*, 522 U.S. 936 (1997).

Gudinas filed a postconviction motion pursuant to Florida Rule of Criminal Procedure 3.850 on June 5, 1998. An evidentiary hearing was held on December 17, 1999. On March 20, 2000, the postconviction court entered an order denying Gudinas relief on all grounds. Gudinas appealed the order denying him relief. On March 28, 2002, the FSC denied Gudinas relief on all grounds. *Gudinas v. State*, 816 So. 2d 1095 (Fla. 2002). On October 14, 2002, Gudinas filed a successive postconviction motion, challenging his death sentence in light of this Court’s decision in *Ring v. Arizona* and his habitual violent felony offender (“HVFO”) sentences under *Apprendi v. New Jersey*. On January 7, 2003, the postconviction court denied relief. The FSC affirmed the denial of relief on May 13, 2004. Gudinas filed his initial petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. His amended petition was denied on September 30, 2010. Gudinas was granted a certificate of appealability on one claim. The United States Court of Appeals for the Eleventh Circuit denied relief on July 28, 2011. A petition for writ of certiorari was denied by this Court on March 5, 2012. *Gudinas v. Tucker*, 565 U.S. 1257 (2012).

Governor Ron DeSantis signed Gudinas’s active death warrant on May 23, 2025. The execution is scheduled to take place on Tuesday, June 24, 2025. The first case management conference was held on May 27, 2025 before Judge John E. Jordan. The scheduling order followed the same day. After a timely filed demand pursuant to Florida Rule of Criminal Procedure 3.852, a public records hearing occurred on May 29, 2025. *See Appendix C*. The circuit court denied the demand shortly after the hearing with a written order. *See Appendix B*. Gudinas timely filed his successive motion

pursuant to Florida Rule of Criminal Procedure 3.851 on May 31, 2025. The State's timely response was filed the next day. The circuit court denied all relief on June 5, 2025. A timely appeal followed. The Florida Supreme Court denied all relief, with an opinion rendered on June 17, 2025. *See Appendix A*. This petition follows.

REASONS FOR GRANTING THE PETITION

Florida reviews rulings based on public records requests pursuant to Florida Rule of Criminal Procedure 3.852 for abuse of discretion. *Hannon v. State*, 228 So. 3d 505, 511 (Fla. 2017). Due to the irregular factors surrounding the signing of Gudinas's May 23, 2025 death warrant, Gudinas made a demand to the circuit court pursuant to Florida Rule of Criminal Procedure 3.852(h)(3) and (i) to the Executive Office of the Governor ("EOG"). The records requested were as follows:

- a. Copies of all emails, correspondence, and recorded communications, regardless of form, between Governor Ron DeSantis and/or any current or former employee of the Governor's Office, and the Florida Parole Commission and/or Office of Executive Clemency that relates in any way whatsoever to Thomas Gudinas (DOB 02/27/1974; DC# 379799);
- b. Copies of all correspondence and recorded communications, regardless of form, between Governor Ron DeSantis and/or any current or former employee of the Governor's Office, and/or any current or former employee of the Office of the Attorney General that relates in any way whatsoever to Thomas Gudinas (DOB 02/27/1974; DC# 379799);
- c. All emails, policies, procedures, internal memoranda, or other documents (or a statement indicating lack of same) outlining the criteria and selection process for inmates to receive executive clemency, including but not limited to how an inmate is selected for consideration of clemency, when an inmate is eligible for consideration, and any other pertinent information regarding the selection process and criteria;
- d. All policies, procedures, internal memoranda, or other documents (or a statement indicating lack of same) outlining the criteria for determining how to grant executive clemency, including but not limited to, what factors are considered in determining whether to grant clemency, how much weight should be given to each factor, and any other pertinent information regarding the process;

- e. The number of individuals presently on death row who have been selected for clemency review, as well as the number of individuals whose clemency review has been completed;
- f. All emails, policies, procedures, internal memoranda, or other documents outlining the criteria and selection process for inmates to receive a death warrant, including but not limited to how an inmate is selected for a warrant, when an inmate is eligible for a warrant, what factors are considered in determining whether to issue a warrant, and any other pertinent information regarding the process;
- g. Any email, document, record, list, or other memoranda naming individuals currently on Florida's Death Row who have had complete or partial clemency investigations or whose cases have resulted in clemency, pursuant to the authority prescribed in Article IV, Section 8(a) of the Florida Constitution and Rule 15 of the Rules for Executive Clemency. This request does not seek documents generated in any particular individual's clemency investigation, but only records indicating the existence of such an investigation and/or clemency determination;
- h. Any email, document, record, list, or other memoranda indicating, for those individuals to whom clemency was denied, the date of the denial of clemency by the Governor and Clemency Board. This request does not seek documents generated in any particular individual's clemency investigation, but only records indicating that a clemency determination has been made; and
- i. Any letters, emails, notices, or other written correspondence, regardless of form, received by the Office of the Governor from the Florida Supreme Court notifying the Governor of the names of individuals sentenced to death who are eligible for a death warrant, between January 1, 2023 and the present.¹

As counsel explained at the hearing, Gudinas is also willing to further streamline his demand requests in an effort to protect his constitutional rights. *See Appendix C* at 9. As argued below, the requested records relate to colorable claims for relief, as they are relevant to the subject matter of the pending postconviction proceeding and are reasonably calculated to lead to the discovery of admissible evidence. Such records may contain, or, through further investigation may lead to the discovery of, evidence

¹ As counsel clarified at the hearing, all demands to the EOG are limited to the time periods from January 1, 2023 onward. *Appendix C* at 19-21.

that Gudinas's death warrant was submitted in violation of his rights under the Eighth and Fourteenth Amendments, including his rights to substantive and procedural due process related to the death penalty being administered in a fair, consistent, and reliable manner. (see *Arbelaez v. Butterworth*, 738 So. 2d 326 (Fla. 1999)); his right to competent mental health assistance (see *Ake v. Oklahoma*, 470 U.S. 68 (1985)); and his right to fundamental fairness, which is the hallmark of procedural protections afforded by the Due Process Clause. (see *Ford v. Wainwright*, 477 U.S. 399, 424 (1986)). Specifically, the colorable claims for relief include:

1. Whether, and to what extent Gudinas's Eighth Amendment and due process rights pursuant to the Fourteenth Amendment are being violated due to irregular and unique circumstances in which his death warrant was signed.
2. Whether and to what extent Gudinas's Eighth Amendment and equal rights pursuant to the Fourteenth Amendment are being violated due to irregular and unique circumstances in which his death warrant was signed.
3. Whether Florida's lack of criteria in determining or procedure in determining whom to execute is arbitrary and capricious leading to an absurd result that violates the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

Gudinas is not making any allegations, and nor is he merely speculating about the Governor's actions, as the circuit order opined. See *Appendix B* at 9. Rather, Gudinas was respectfully meeting his pleading requirement for the records that were the subject of his demand, based on the specific factual basis argued on May 29, 2025 and further articulated below. Gudinas could not have raised his claim prior to the signing of the warrant. Though Gudinas argued for an exception to the requirements of Rule 3.852 (h)(3) due to the unusual fact pattern giving rise to his death warrant, he was

clearly timely under subsection (i) of the state rule. The signing of the warrant gives rise to the claim itself, as will be clearly detailed in the fact pattern below. There was no reason at all to demand these records until Gudinas's death warrant was signed, as his challenge is specific to his circumstances.

A Fact Pattern Distinguished from Florida's Precedent

In Florida, "generally," based on separation of powers, courts do not "second-guess" the clemency considerations of the executive branch. *Lambrix v. State*, 217 So. 3d 970, 990 (Fla. 2017). As counsel argued at the hearing below, the precedent does have qualifying language, *See Valle v. State*, 70 So. 3d 530, 552 (Fla. 2011), "proceed carefully in addressing claims regarding separation of powers." A true holding that the Governor has "unfettered discretion" in death warrant selection, *Gore v. State*, 91 So. 3d 769, 779 (Fla. 2012), and that his actions may not be "second-guessed," *See Carroll v. State*, 114 So. 3d 883, 888 (Fla. 2013), would be an abdication of authority. No citizen, including the chief executive of a state, is immune from following the United States Constitution. *See American Federation of State, County, and Municipal Employees Council 79 v. Rick Scott*, 717 F. 3d 851, 875-80 (11th Cir. 2013) (rejecting the Governor's executive order mandating the drug-testing of all state employees, in part on Fourth Amendment grounds); *see also In re Bush*, 164 Wash. 2d 697, 700 (Wash. 2008) (finding a 14th Amendment non substantive, procedural due process violation when the Washington Governor revoked Bush's conditional sentence commutation, without providing an opportunity to be heard). Moreover, Article II, Section 5 of the Florida Constitution requires the Governor support, protect, and defend the

Constitution and Government of the United States. No person, not even a president, is above the law. *United States v. Nixon*, 418 U.S. 683 (1974).

These specific proceedings require this Court's intervention, due to the irregular nature regarding the manner of which Gudinas's death warrant was submitted. Despite the number of capital postconviction attorneys practicing in Florida, and the amount of post clemency warrant eligible men on death row, Gudinas's undersigned counsel under this warrant, Attorney Ali Shakoor, is litigating his fourth separate death warrant since July 29, 2024; that is four separate death warrants for the same specific undersigned counsel, in less than a year.² The irregularity is further established by the fact that Gudinas's counsel of record, Attorney Ali Shakoor, has been served by the executive branch on **three** death warrant cases, of which Attorney Shakoor was never counsel of record.³ Moreover, the peculiar nature of Gudinas's clemency proceeding and warrant selection is demonstrated by the fact that his clemency interview occurred on April 4, 2025, followed by the death warrant being submitted less than two months later on May 23, 2025. The requested records will establish to what extent these irregular and concerning factors violated Gudinas's rights to a fundamentally fair clemency process.

Attorney Shakoor is one of fourteen attorneys that work for Capital Collateral Regional Counsel-Middle Region. Capital Collateral Regional Counsel-North Region

² See Loran Cole, DC #335421 (Executed August 29, 2024); James Ford, DC #763722 (Executed February 13, 2025); Glen Rogers, DC #124400 (Executed May 15, 2025) and Thomas Gudinas, DC #379799 (Warrant Signed May 23, 2025).

³ See Michael Tanzi, DC #K04389 (Served on March 10, 2025); Jeffrey Glenn Hutchinson, DC #124849 (Served on March 31, 2025); Anthony Floyd Wainwright, DC #123847 (Served on May 9, 2025).

has four lead attorneys and three second chairs. Capital Collateral Regional Counsel-South Region has five lead qualified attorneys. As of August 14, 2024, Florida's Justice Administrative Commission website lists thirty-five attorneys on the Capital Collateral Attorney Registry. Based on this data, Attorney Shakoor is one of sixty-one attorneys practicing capital postconviction law in this state. The Florida Department of Corrections website currently lists 271 people on Florida's death row. The specific number of people who have gone through clemency is unknown and was one of the subjects of Gudinas's records demand. A recent article from the Tallahassee Democrat opines that about 100 inmates are eligible for execution, "including seven added to the list this year." Call, James, Gov. DeSantis Nears Record as Florida Ramps up Executions in 2025 (2025, May 30). *The Tallahassee Democrat* <https://www.tallahassee.com/story/news/local/state/2025/05/30/gov-desantis-signs-7-death-warrants-in-3-months-amid-trump-pivot/83902655007/>. Considering the number of death eligible inmates and practicing capital collateral attorneys, it defies statistical probability for Thomas Gudinas to be Attorney Shakoor's fourth death warrant in less than one year. Additional scrutiny is required.

The peculiarity of Gudinas's death warrant is further highlighted by the fact that Attorney Shakoor was served on three separate death warrants for clients he did not represent. See Appendix C at 13-14. Again, Attorney Shakoor is just one of approximately sixty-one lead counsel practicing capital postconviction in Florida; a mere lawyer, Attorney Shakoor is not the appointed head of any CCRC and nor does he have the authority to assign anyone to work on a death warrant. Still, Attorney

Shakoor was served by counsel for the Governor, Attorney Zachary Loyed, on the following cases: *Michael Tanzi, DC #K04389 (Served on March 10, 2025)*; *Jeffrey Glenn Hutchinson, DC #124849 (Served on March 31, 2025)*; *Anthony Floyd Wainwright, DC #123847 (Served on May 9, 2025)*. Attorney Shakoor further explained at the May 29, 2025 hearing that serving him in error inhibits the already expedited process for the proper attorneys and clients, who should be properly served. See Appendix C at 14, 17. The information regarding who represents individuals on death row is public accessible on the Internet. The focus on Attorney Shakoor, one of approximately sixty-one practicing postconviction attorneys, is peculiar and concerning.

Another concerning aspect of Gudinas being Attorney Shakoor's fourth death warrant since July 29, 2024, is that Gudinas had his clemency interview on April 4, 2025. The fact that Gudinas received a death warrant while represented by Attorney Shakoor on May 23, 2025, less than two months after his clemency interview, proves him to be an outlier compared to other death warrants. Gudinas receiving a death warrant while being an Attorney Shakoor client is unique and peculiar under these circumstances.

The Fourteenth Amendment

Gudinas has a due process right to a fair and legitimate clemency process. Florida's interest in the timely enforcement of judgments handed down by its courts must be weighed against Gudinas's continued interest in his life. *See Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) ("[I]t is incorrect . . . to say that a prisoner

has been deprived of all interest in his life before his execution.”) (O’Connor, J., plurality opinion). “Judicial intervention, might, for example, be warranted in the face of a scheme whereby a state official flipped a coin to grant clemency.” *Id.* The constitutional concerns here are worse than flipping a coin, as one could surmise that a Florida Governor could sign a death warrant on anyone on death row post clemency, **for any reason at all**, irrespective of the United States Constitution. Hypothetically, a Governor could sign a death warrant every month, on the same attorney’s clients, **for any reason all**, irrespective of the Constitution. We know that this is not true and would not be constitutional. The time has come for judicial intervention to show that the Governor’s discretion in signing death warrants is not “unfettered,” and that he is not immune from following the United States Constitution. The clemency process is the “fail safe” in our criminal justice system. *Harbison v. Bell*, 129 S. Ct. 1481, 1490 (2009). Even Florida state law explains that clemency proceedings are part of the total death penalty procedural scheme in the state. *Remeta v. State*, 559 So. 2d 1132, 1135 (Fla. 1990).

Under an equal protection analysis, fairness also requires that Gudinas is not treated disparately to similarly situated defendants, even based on who represents him. *See Appendix C* at 14-16. The level of scrutiny under an equal protection clause analysis would depend on the reasons for the disparate treatment, but Florida does not even have a rational basis for Gudinas being Attorney Shakoor’s fourth death warrant since July 29, 2024. It defies statistical probability. This Court can study the analogy of selective prosecutions, in that the requirements for a selective-prosecution

claim draw on “ordinary equal protection standards.” The claimant must demonstrate that the federal prosecutorial policy “had a discriminatory effect and that it was motivated by a discriminatory purpose.” *See U.S. v. Armstrong*, 517 U.S. 456, 465 (1996) (internal citations omitted). *Armstrong* further states:

A prosecutor’s discretion is “subject to constitutional constraints.” *United States v. Batchelder*, 442 U.S. 114, 125, 99 S.Ct. 2198, 2204–2205, 60 L.Ed.2d 755 (1979). One of these constraints, imposed by the equal protection component of the Due Process Clause of the Fifth Amendment, *Bolling v. Sharpe*, 347 U.S. 497, 500, 74 S.Ct. 693, 694–695, 98 L.Ed. 884 (1954), is that the decision whether to prosecute may not be based on “an unjustifiable standard such as race, religion, or other arbitrary classification,” *Oyler v. Boles*, 368 U.S. 448, 456, 82 S.Ct. 501, 506, 7 L.Ed.2d 446 (1962). A defendant may demonstrate that the administration of a criminal law is “directed so exclusively against a particular class of persons ... with a mind so unequal and oppressive” that the system of prosecution amounts to “a practical denial” of equal protection of the law. *Yick Wo v. Hopkins*, 118 U.S. 356, 373, 6 S.Ct. 1064, 1073, 30 L.Ed. 220 (1886).

Id. at 464-65. As argued at the May 29, 2025 hearing, it would be naïve and irresponsible to not make a record and request more evidence at this juncture. *See Appendix C* at 14-15. Tellingly, undersigned counsel did not request these EOG records for the previous three death warrants litigated since July 29, 2024. *See Appendix C* at 15-16. However, it is now crucial to protect Gudinas’s constitutional rights. The time has come for judicial intervention.

Eighth Amendment

Gudinas does not argue that because the Governor has some discretion the system is *per se* arbitrary and capricious. Gudinas does not dispute that if the Governor or other decision-making body⁴ had some criteria, the Governor or other body would be free to choose from among any of the defendants who fit the criteria. Gudinas argues there must be *some* criteria. Florida's Governor has no criteria, procedure, or guidelines in place for selecting who lives and who dies. Granting the Governor unfettered discretion has, in practice, led to a completely arbitrary process for determining who lives and who dies. There are no articulated limits to the executive discretion, there are no guidelines for the selection process, and the entire process is cloaked in secrecy. *C.f. Furman v. Georgia*, 408 U.S. 238, 309-10 (1972) (Stewart, J., concurring) ("These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders . . . many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed.").

This Court has repeatedly "held that the Eighth Amendment requires increased reliability of the process by which capital punishment may be imposed." *Herrera v. Collins*, 506 U.S. 390 (1993); *McKoy v. North Carolina*, 494 U.S. 433 (1990); *Eddings v. Oklahoma*, 455 U.S. 104 (1982); *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality). The imposition of a death sentence *and* the process of carrying out an

⁴ For example, in Tennessee, the state supreme court sets execution dates. *See, e.g., Tennessee* <http://www.tncourts.gov/news/2018/11/16/supreme-court-sets-execution-dates>.

execution must withstand constitutional scrutiny.

If the Constitution renders the fact *or timing* of his execution contingent upon establishment of a further fact . . . “then that fact must be determined with the high regard for truth that befits a decision affecting the life or death of a human being.”

Herrera, 506 U.S. at 405-06 (quoting *Ford*, 477 U.S. at 411). This Court has held that factual determinations related to the constitutionality of a person’s execution are “properly considered in proximity to the execution.” *Id.* at 406 (noting competency to be executed determination is more reliable near time of execution whereas guilt or innocence determination becomes less reliable). In other words, whether the carrying out of a death sentence violates the Eighth Amendment depends on the facts existing after a death warrant is signed and the determination of these facts requires *increased reliability*.

Despite this requirement, Florida vests the Governor with unbridled authority not only to sign death warrants but also to set the date of execution, all of which is done under a veil of secrecy and without any governing standards as to how the Governor should exercise his warrant signing power. The inescapable corollary to this authority is that the Governor controls how much process is available to make these critical factual determinations *if any*. The result is unchecked power—an absolute veto, in absolute secrecy—over the Eighth Amendment.

The Governor’s absolute discretion to decide who lives and who dies must be compared with the standards and limits placed upon a sentencing judge’s decision to impose a death sentence. The Governor’s decision to sign a death warrant is just as necessary to carrying out a death sentence as the sentencing judge’s decision to sign

his name to a document imposing the death sentence. In Florida, no death sentence can be imposed unless the judge signs the sentencing order imposing a sentence of death. Similarly, no individual who receives a sentence of death will in fact be executed until the Governor exercises his discretion to sign a death warrant. The Eighth Amendment requires there to be a principled way to distinguish between who is executed by a state and who is not and how much time they are afforded to investigate and present their claims under warrant.

Florida has yielded entirely to the EOG. Section 922.052, Florida Statutes, sets a maximum 180-day warrant period, yet here, the Governor afforded Gudinas only thirty-two days to litigate his warrant. Gudinas alerted the circuit court to his need for the EOG records under the unnecessarily expedited and difficult warrant schedule, which were denied. The Florida courts' abdication violates the separation of powers articulated in Article II, Section 3 of the Florida Constitution and, the Eighth and Fourteenth Amendments to the United States Constitution, as applied to Gudinas.

Florida has declined to address the Governor's unbridled discretion in determining who shall die and when, noting that such an inquiry "triggers separation of powers concerns." *Valle v. State*, 70 So. 3d 530 (Fla. 2011). There must be some form of test where varying factors are determined. It is well past time. The Governor's power is not absolute. The United States Constitution still controls. Whether to grant clemency is discretionary. Whether to follow the Constitution in carrying out a death sentence is not. The Eighth Amendment still applies, even though the Governor sits in a different branch of government.

Death Warrant Selection in Other State Jurisdictions

It would be instructive for this Court to review how other states handle the death warrant selection process, as another basis why the petition should be granted. Due to the fluidity in which states across the country have altered their capital jurisprudence, Petitioner will focus on those “active” states that have conducted executions within the last five years:

Alabama – In Alabama, similar to Florida, the governor has the authority to set the condemned inmate’s execution date within a designated time frame.

Arizona – A.R.S. § 13–759(A) and Arizona Rule of Criminal Procedure 31.23(b) control the matter, whereas the attorney general files a motion with the state supreme court requesting a briefing schedule for a warrant.

Indiana – In Indiana, rule IN ST 35-38-6-2 allows for the state Attorney General to file a motion to the court requesting a death warrant.

Louisiana – The state attorney is permitted to file a motion requesting a death warrant under LA Rev Stat § 15:567 (2024).

Mississippi – The state files a motion setting an execution date for a death warrant pursuant to Miss. Code Ann. § 99-19-106.

Missouri – In Missouri the state supreme court sets execution dates, which shall be stayed upon timely filed appellate and postconviction pleadings. *See* Missouri Supreme Court Rule 30.30.

Oklahoma – The Court of Appeals issues an execution date pursuant to 22 OK Stat § 1001.1 (2024).

South Carolina – The state supreme court sets execution dates under the authority of SC Code § 17-25-370 (2024).

Tennessee – TN ST § 40-30-120 gives the Tennessee supreme court authority to set execution dates.

Texas – A district attorney can file a motion for an execution date in court before Texas C.C.P. Art. 43.141 controls the proceedings.

Utah – UT ST § 77-19-6 is the authority that sets an execution date when the judge signs the warrant after the death judgment is rendered.

A review of that data shows Florida is an extreme outlier in that the Governor has such unmitigated power for death warrant selection, without necessary checks and balances to protect defendants' rights. Only Alabama has a system that reserves such control *exclusively* to the state's executive branch of government; the Alabama process was recently enacted in 2023, whereas prior, Alabama gave its state supreme court authority to set execution dates. Meanlins, Evan AL Supreme Court gives governor power to set timeframe for executions (2023, January 13), Montgomery Advertiser <https://www.montgomeryadvertiser.com/story/news/2023/01/13/al-supreme-court-gives-governor-power-to-set-timeframe-for-executions/69805360007/>. Considering Florida's status as an outlier compared to other jurisdictions, and the peculiar and concerning facts giving rise to Petitioner's death warrant, this Court's intervention is essential to resolve these constitutional questions pertaining to executive power over death condemned inmates' liberty interests.

Florida's system lacks oversight, checks and balances regarding the clemency review process which leads to the Governor having unfettered, unbridled, authority. There must be some form of formal test to protect liberty interests in the process. By analogy, *Hoffa v. Saxbe*, 378 F. Supp. 1221, 1236-38 (D.D.C. 1974), established a test for the power of the President regarding sentence commutation which balanced public interests with the "reasonableness" of the action imposed by the executive branch. Some type of test is needed to protect Florida's death-condemned inmates from executive overreach. Gudinas has been very reasonable in litigating the initial claim regarding this issue, willing to streamline his demand to more specific factors which protect Gudinas's constitutional rights as balanced with the needs of the executive branch. The requested records are imperative to investigating the very concerning facts surrounding the signing of Gudinas's death warrant. Florida's lack of a test to ensure accountability in the selection process is yet another basis for granting the petition

Gudinas must have a fair opportunity to show that the Constitution prohibits his execution, as the death penalty is the gravest sentence. *Hall v. Florida*, 572 U.S. 701, 724 (Fla. 2014). Gudinas, who has been severely mentally ill his entire life, was quietly serving his time on death row, until he had the misfortune of being Attorney Ali Shakoor's 4th death warrant since July 29, 2024. Petitioner remains severely mentally ill to this day. *See Appendix D*. The tragic letter to President Trump is a result of Gudinas's continued mental deterioration, only exacerbated by his being selected

for a death warrant a mere forty-nine days after his clemency interview. Time limitations of the death warrant litigation, along with Florida's procedural bar, stops Petitioner from seeking cert review of the Arguments I through III from his initial brief under warrant. *See Appendix A*. Gudinas's counsel is under no delusions that fundamental changes in capital jurisprudence regarding *evolving standards of decency* will occur under the exigencies of *Gudinas's* death warrant litigation. Indeed, Florida's procedural bar and the time limitations of death warrant proceedings hinder Gudinas' ability to make a complete record for judicial review. However, the issue before this Court regarding Florida's death warrant selection procedure is timely and fully preserved for consideration. That said, this Court needs to fully understand and read that actions have consequences, and Gudinas is a living being, severely mentally sick, and negatively affected by the unconstitutional overreach of Florida's executive branch.

Despite the number of death eligible defendants, and the approximately sixty-one lead postconviction attorneys in Florida, the Governor chose Gudinas just forty-nine days after his very recent April 4, 2025 clemency interview. Gudinas is merely requesting records from the EOG to investigate to what extent his constitutional rights have been violated. The demand can even be streamlined to a fixed time-period and terms more specific to Gudinas. This Court has the authority to remand and set the parameters for review. Florida's outlier status regarding executive authority also requires this Court's intervention. This Court should grant the petition.

CONCLUSION

This Court should grant the petition for a writ of certiorari; stay the execution and order further briefing; and/or vacate and remand this case to the Florida Supreme Court.

Respectfully submitted,

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June 18, 2025

Dated