No. 24-7457

In the
Supreme Court of the United States

THOMAS GUDINAS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR JUNE 24, 2025, AT 6:00 P.M.

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CAPITAL CASE

QUESTIONS PRESENTED

Whether this Court should deny certiorari where the Florida Supreme Court affirmed the denial of a demand for clemency and warrant selection records from the Florida Governor's Office based purely on state law?

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OPINION BELOW

The decision below of the Florida Supreme Court appears as *Gudinas v. State,* No. SC2025-0794, 2025 WL 1692284 (Fla. June 17, 2025).

JURISDICTION

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Thomas Gudinas was sentenced to death in Orange County, Florida, in June 1995 for the murder of M.M.[1] On May 23, 2025, Governor Ron DeSantis signed Gudinas's death warrant, setting his execution for June 24, 2025, at 6:00 p.m.

Facts of the Crimes

On the evening of May 23, 1994, Gudinas arrived at Barbarella's, an Orlando bar, with three of his roommates. *Gudinas v. State*, 693 So. 2d 953, 956 (Fla. 1997). When the bar closed at 3:00 a.m. the following morning, the roommates could not find Gudinas. After not finding Gudinas at home, two of the roommates went in search of

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[1] The victim's initials are used due to the sexual nature of the crime.

him but were unsuccessful even after driving around the area looking for him. When the roommates saw Gudinas the next afternoon, they saw blood on his clothes and injuries to his hand. *Id.* at 957.

When seeing composite sketches of the murder suspect at a neighborhood store, Gudinas volunteered that "none of [the sketches] look like me." One of the roommates asked Gudinas if the victim was "a good f*ck", to which he replied "Yes, and I f*cked her while she was dead." A day or two after the murder, Gudinas showed a roommate a scrape or cut on his penis. *Id.* at 957.

On May 23, 1994, R.S. and her fiancé arrived at Barbarella's between 11:00 and 11:30 p.m., remaining until about 2:00 a.m. When R.S. left the bar and went to her car, her fiancé stayed inside saying goodbye to friends. S.R. mistakenly went to the wrong parking lot and, while looking for her car, saw a man crouched down behind a car watching her. R.S. later identified that man as Gudinas. Realizing she was in in the wrong lot, R.S. headed to the correct lot but felt someone following her. She got into her car and locked the door. When she looked in the mirror, she saw Gudinas behind her car. He then approached R.S.'s passenger door and tried to open it without success. Gudinas next crouched down, moved behind her car to the driver's side, and tried to open that door. He also screamed "I want to f*ck you," covered his hand with his shirt-tail, and tried to smash her driver's side window. R.S. "laid on the horn," scaring Gudinas away. After learning about the murder in the same area that night, R.S. called law enforcement and gave a description of Gudinas as her attacker. *Id.* at 956.

Between 10:30 and 11:00 p.m. on the same evening, M.M. parked her car in the lot where R.S. first saw Gudinas. M.M. was last seen at Barbarella's about 2:45 a.m. "Culbert Pressley found M.M.'s keys and a bundle of clothes next to her car. Her body was discovered at about 7:30 a.m. in an alley next to Pace School. M.M. was naked, except for a bra which was pushed up above her breasts." *Id.* at 956-57.

Jane Brand worked at the Pace School, and on May 24, 1994, she arrived at work around 7:00 a.m. when she saw a man within the school's gates sitting on the steps leading to the school's door. When he stood up to leave, he seemed to be either fastening his shorts or tucking in the tail of his loose-fitting shirt. Brand heard a loud crash from the alley a short time later and looked outside. There, she saw a woman's body lying in the alley. She flagged down Officer John Chisari. Brand identified Gudinas as the man that she saw that morning. Chisari saw a man he identified as Gudinas drive off in a red Geo from the lot where M.M. had left her car. Pressley had written down the Geo's license number which was later traced to M.M. The car was later found close to Gudinas's apartment. *Id.* at 957.

Dr. Thomas Hegert, the Medical Examiner, testified that the cause of M.M.'s death was a brain hemorrhage resulting from blunt force injuries to her head, probably inflicted by a stomping-type blow from a boot. From the severe cerebral edema the doctor determined that M.M. died thirty to sixty minutes after the fatal injury, the forceful blow to the head. He also found defensive wounds on one of her hands and two broken sections of a stick, one inserted two inches into her vagina and the other inserted three inches into the area near her rectum. From trauma to her

cervix, he opined that M.M. also had been vaginally and anally penetrated by something other than the sticks. Dr. Hegert estimated the time of death to be between 3 and 5 a.m. *Id.* at 957.

A latent fingerprint examiner identified latent fingerprints found on the alley gate push-bar and on the car loan payment book found in M.M.'s car as belonging to Gudinas. A serologist with the Florida Department of Law Enforcement analyzed swabs taken from M.M.'s body and found that semen was present on the vaginal swab as well as on a swab of her thigh. *Id.* at 957.

Pertinent Penalty Phase Evidence

Gudinas presented Dr. James Upson, a clinical neuropsychologist, who testified that Gudinas has a full-scale IQ of 85 and has no neuropsychological impairment.[2] Persons with his personality type usually exhibit a higher degree of impulsivity, sexual confusion and conflict, bizarre ideation, and are manipulative. Such people tend to be physically abusive and possess the capacity and ability to be violent. The doctor thought that Gudinas was seriously emotionally disturbed at the time of the crime, and that the "symbolism" of the crime indicates that he is "quite pathological in his psychological dysfunction." However, he admitted that Gudinas's problems have always been behavioral, and he has no real desire to control his behavior, as evidenced by, among other things, his disruptive behavior while in jail awaiting trial. Dr. Upson opined that Gudinas will be a danger in the future and

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[2] Gudinas included writings in his appendix which were not presented to or considered by the state court. The Florida Supreme Court declined to consider this material as should this Court.

stated that the murder of M.M. is consistent with the behavior of a person of Gudinas's psychological makeup. Gudinas had engaged in sexually inappropriate behavior in the past, including some sort of encounter with his sister. *Id.* at 958.

Procedural History

Gudinas was indicted in Florida for first-degree murder, two counts of sexual battery, attempted sexual battery, and attempted burglary with an assault. A jury found Gudinas guilty on all counts. *Id.* at 957. At the ensuing penalty phase, Gudinas called numerous witnesses to establish mitigation, including two experts who testified that Gudinas was severely emotionally disturbed, had a substance abuse disorder, and was under the influence of alcohol and drugs at the time of the crime. *Id.* at 958-59. At the conclusion of the penalty phase, the jury recommended the death penalty by ten votes to two. The trial court accepted the jury's recommendation and sentenced Gudinas to death. The court found three aggravating circumstances: (1) prior violent felony; (2) murder was committed during the commission of a sexual battery; and (3) the murder was especially heinous, atrocious, or cruel ("HAC"). The court found the statutory mitigator of extreme mental or emotional disturbance and twelve non-statutory mitigators. The court also sentenced Gudinas to thirty years for attempted burglary with an assault of R.S., thirty years for attempted sexual battery of R.S., and life imprisonment for each count of sexual battery of M.M. *Id.* at 959- n.7. The Florida Supreme Court affirmed the convictions and death sentence on direct appeal. *Id.* at 968. Gudinas filed a petition for certiorari which this Court denied on October 20, 1997. *Gudinas v. Florida*, 522 U.S. 936 (1997).

After his convictions and death sentence became final, Gudinas filed a motion for postconviction relief in state circuit court under Rule 3.851 of the Florida Rules of Criminal Procedure, which the circuit court denied after an evidentiary hearing. Gudinas appealed that decision to the Florida Supreme Court and simultaneously petitioned for a writ of habeas corpus. The Florida Supreme Court affirmed the circuit court's denial of relief and denied Gudinas's habeas petition. *Gudinas v. State,* 816 So. 2d 1095 (Fla. 2002) (*Gudinas II*).

In 2002, Gudinas filed a successive postconviction motion, raising a *Ring v. Arizona,* 536 U.S. 584 (2002) claim. The court summarily denied the *Ring* claim and Gudinas appealed. The Florida Supreme Court affirmed the denial of relief. *Gudinas v. State,* 879 So. 2d 61 (Fla. 2004).

In 2002, Gudinas filed his initial federal petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the Middle District of Florida, Orlando Division. On October 26, 2004, Gudinas was granted leave to amend his petition, raising 18 issues. On September 30, 2010, the federal district court denied relief on all the issues. *Gudinas v. Sec'y, Dept. of Corr.*, 2010 WL 3835776.

Gudinas appealed the denial of his federal habeas petition to the Eleventh Circuit Court of Appeals. That court affirmed the denial of habeas relief on July 28, 2011. *Gudinas v. Sec'y, Dept. of Corr.*, 436 Fed. Appx. 895 (11th Cir. 2011). Gudinas then filed a petition for a writ of certiorari which this Court denied on March 5, 2012. *Gudinas v. Florida*, 565 U.S. 1247 (2012).

On January 9, 2017, Gudinas filed his second successive postconviction motion

based on *Hurst v. State,* 202 So. 3d 40 (Fla. 2016), and *Hurst v. Florida,* 577 U.S. 9 (2016). The postconviction court summarily denied the motion and Gudinas appealed. The Florida Supreme Court affirmed the denial on January 30, 2018. *Gudinas v. State,* 235 So. 3d 303 (Fla. 2018).

Proceedings Under Warrant

On May 23, 2025, Governor DeSantis signed Gudinas's death warrant. Thereafter, Gudinas filed his demand for public records from the Executive Office of the Governor ("EOG") and his third successive motion for postconviction relief, fourth overall, raising three claims. Following hearings, the court denied the requested public records and summarily denied relief, finding the claims time barred, procedurally barred, and/or meritless. On appeal, the Florida Supreme Court affirmed the denial of postconviction relief and denied Gudinas's motion for a stay of execution. *Gudinas v. State,* No. SC2025-0794, 2025 WL 1692284 (Fla. June 17, 2025). Regarding the public records claim, the court found that the requested clemency records are exempt from disclosure under state law and were not reasonably calculated to lead to a colorable claim for relief. *Id.* at *8-*10.

REASONS FOR DENYING THE PETITION

Gudinas seeks this Court's review of the Florida Supreme Court's denial of a public records request for clemency and warrant selection records from the Office of the Governor of the State of Florida. Gudinas suggests he could use those records to present a constitutional challenge to both the Governor's selection of him for the death warrant and to make a broader challenge to Florida's clemency and warrant

selection process. Gudina's public records request was raised in terms of state law. The Florida Supreme Court rested its rejection of Gudinas's public record request on state law grounds alone and nothing in that opinion implicates federal constitutional law. The denial of his public records request does not present a valid basis for certiorari review under Rule 10 of the Rules of the Supreme Court. Likewise, Gudinas's assertion that his Eighth and Fourteenth Amendment Rights were violated was not raised as a stand-alone claim of constitutional error before the Florida Supreme Court, placing it outside this Court's circumscribed limits for certiorari review.

Gudinas received both state and federal review of his convictions and sentences over the last 30 years satisfying all constitutional demands. This Court should decline to evaluate Florida's clemency and warrant selection process which, under Florida law, is within the Florida Governor's sound discretion and does not violate the limited due process provided under *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998), and *Connecticut Bd. Of Pardons v. Dumschat*, 452 U.S. 458 (1981). Gudinas cannot point to any conflict between courts or unsettled constitutional law to merit a granting of a writ of certiorari.

A. This Court Lacks Jurisdiction.

When both state and federal questions are involved in a state court proceeding, this Court has no jurisdiction to review the case if the state court judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the state court's decision. *See Foster v. Chatman*, 578 U.S. 488,

497 (2016). This "adequate and independent state grounds" rule stems from the fundamental principle that this Court lacks jurisdiction to review matters of state law. *See Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945). This Court has stated that its "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And [that] power is to correct wrong judgments, not to revise opinions" or "render an advisory opinion." *Id.* "[I]f the same judgment would be rendered by the state court after [this Court] corrected its views of federal laws, [this Court's] review could amount to nothing more than an advisory opinion." *Id.* at 126. Thus, if a state court's decision is separately based on state law, this Court "will not undertake to review the decision." *Florida v. Powell*, 559 U.S. 50, 57 (2010).

The Florida Supreme Court determined that Gudinas was not entitled to the records nor could he raise a colorable claim based on them under state law. Additionally, the Florida Supreme Court held that Gudinas's failure to previously request the clemency documents foreclosed any attempt to now demand those same records at this late stage of litigation. That holding is an independent and adequate state law ground for the denial of relief. *See, e.g., Sochor v. Florida*, 504 U.S. 527, 534 (1992) (holding that this Court lacked jurisdiction to decide a federal claim that the Florida Supreme Court decided both on the merits and on preservation grounds); *Wainwright v. Sykes*, 433 U.S. 72, 86-87 (1977) (concluding that Florida procedure regarding preservation amounted to an independent and adequate state procedural ground which prevented review); *see also Johnson v. Lee*, 578 U.S. 605, 609 (2016) (acknowledging that state postconviction court is generally not used to litigate claims

that were or could have been raised at trial or direct appeal, and finding that the procedural bar "qualifies as adequate to bar federal habeas review").

In affirming the denial of the records, the Florida Supreme Court also cited state law which makes the records Gudinas sought confidential and excluded from public record production since they relate to the clemency process. *Gudinas*, 2025 WL 1692284 at *8-*9; *see also* § 14.28, Fla. Stat. (2024); *Chavez v. State*, 132 So. 3d 826, 830-31 (Fla. 2014); *Muhammad v. State*, 132 So. 3d 176, 200 (Fla. 2013). Under Rule 16, Rules of Executive Clemency, only the Governor "has the discretion to allow such records and documents to be inspected or copied." No individual or branch of government may disclose or order the production of these records. *Parole Commission v. Lockett*, 620 So. 2d 153, 157-58 (Fla. 1993) (the clemency investigative files and reports relating to clemency are subject solely to the Rules of Executive Clemency).

The Florida court also ruled that the records were not related to a colorable claim for postconviction relief under Florida law. *Gudinas*, 2025 WL 1692284 at *8-*9. Gudinas wants this Court to order the Florida courts to release the requested records so he can then potentially challenge both the Governor's selection of him for a death warrant and the broader Florida clemency structure for lacking criteria or procedures to determine whom to execute as violations of the Eighth and Fourteenth Amendments.[3] While he asserts that such claims would be meritorious, the Florida

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[3] This is a Court of final review, "not of first review." *Moody v. NetChoice, LLC*, 603 U.S. 707, 726 (2024) (citing *Cutter v. Wilkinson*, 544 U.S. 709, 718, n. 7 (2005)). This Court's jurisdiction is limited to only those federal constitutional issues which were presented and considered by the court below. *Illinois v. Gates*, 462 U.S. 213, 217-19 (1983); *Webb v. Webb*, 451 U.S. 493, 496-97 (1981).

Supreme Court has repeatedly held that the clemency process and the Governor's absolute discretion to issue death warrants are constitutional, thus any challenge to the denial of records or allegation of constitutional error does not establish a colorable claim. Because he is not entitled to the records, he has not made a colorable claim for relief. *See Bolin v. State*, 184 So. 3d 492, 503 (Fla. 2015) (rejecting claim that Governor's discretion to select an inmate for execution is unconstitutional); *Muhammad*, 132 So. 3d at 203-04 (concluding that "records would not relate to a colorable claim because we have held many times that claims challenging clemency proceedings are meritless"); *Wheeler v. State*, 124 So. 3d 865, 890 (Fla. 2013) (rejecting claim that because there are no meaningful standards that constrain the Governor's absolute discretion in determining which death warrant to sign, Florida's capital sentencing scheme violates the Eighth Amendment); *Carroll v. State*, 114 So.3d 883, 887 (Fla. 2013) (rejecting argument that the Governor's power to select which death row prisoner for whom he will sign a death warrant is arbitrary, without standards, and without any process for review, thus rendering the death penalty unconstitutional); *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013) (holding that records sought in the hopes of supporting allegation that the Governor's selection of Mann for a death warrant was somehow tainted by public input were not relevant to any colorable claim, and that such a claim is not cognizable). Consequently, Gudinas could not raise a meritorious claim challenging Florida's clemency and death warrant process.

As a consequence, this Court lacks jurisdiction.

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

Even if this Court had jurisdiction, review would be unwarranted. Gudinas cannot demonstrate any basis for this Court to grant certiorari review pursuant to Supreme Court Rule 10. This Court has noted that cases which have not divided the federal or state courts, or presented important, unsettled questions of federal law do not usually merit certiorari review. *Rockford Life Ins. Co. v. Illinois Dept. of Revenue*, 482 U.S. 182, 184 n.3 (1987). The Florida Supreme Court's decision does not conflict with any decision from another state court of last resort, from a United States Court of Appeals, or from this Court. Furthermore, it is well-established that this Court does not grant certiorari "to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925). Here, the state courts' findings clearly demonstrate that Gudinas has failed to carry his burden of establishing that his constitutional rights have been violated. Thus, because there is no compelling reason for this Court to grant certiorari, this Court should deny Gudinas's petition.

Gudinas has had a full review of his case and sentence in both the state and federal courts. Any Eighth Amendment claims have already been fully reviewed. He has been eligible to have a death warrant signed for years. His selection now for a death warrant does not raise any Eighth Amendment issues. Gudinas cites to no federal case or law supporting his claim either on the records denial or that his selection is faulty or suspect.[4] There are no United States Supreme Court cases

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[4] The closest he comes to making a claim is to insinuate some sort of nefarious intent on the Governor's part merely because his counsel represented three other death

finding that a governor or other deciding body lacks discretion to grant or deny clemency or to select a defendant for a death warrant.

While recognizing that "pardon and commutation decisions have not traditionally been the business of courts," *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981), in *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998), a plurality of this Court held that "*minimal* procedural safeguards" apply to death-penalty clemency proceedings in order to prevent them from becoming so capricious as to involve "a state official flipp[ing] a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process." *Woodard*, 523 U.S. at 289 (O'Connor, J., concurring in part and concurring in judgement). In Florida, the state's constitution vests in the Governor, with the approval of two of his cabinet members, the discretion to commute the punishment of individuals not convicted of treason or impeachment. *See* art. IV, § 8, Fla. Const.; *see also* Florida Rules of Executive Clemency, Rule 4 ("The Governor has the unfettered discretion to deny clemency at any time, for any reason.") Because clemency is committed to the discretion of the executive, due process provides only minimal protections for death-row inmates in the clemency process. *See Sullivan v. Askew*, 348 So. 2d 312 (Fla. 1977) (stating that procedures adopted by the governor for the exercise of his exclusive pardon power were not unconstitutional). Florida's clemency rules clearly comport with the minimal due process required by the majority

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warrant defendants in the prior twelve months. Such a claim would hardly be a violation of Gudinas's constitutional Amendment rights.

in *Woodard* as Gudinas received the clemency process explicitly set forth by Florida's laws. Gudinas had notice of the clemency process and participated in it. The fact that the Governor subsequently denied his request for clemency, selected Gudinas for a death warrant, and Gudinas has not been allowed to review confidential documents from the clemency process does not equate to a finding that his due process rights were violated. *See Woodard*, 523 U.S. at 276 (reaffirming its holding in *Dumschat* that "[t]he Due Process Clause is not violated where, as here, the procedures in question do no more than confirm that the clemency and pardon powers are committed, as is our tradition, to the authority of the executive"); *Mann v. Palmer*, 713 F.3d 1306, 1316-17 (11th Cir. 2013) (holding that inmate could not show due process violation because "[t]he process [Mann] received, including notice of the hearing and an opportunity to participate . . . comports with [Florida's] regulations and observes whatever limitations the Due Process Clause may impose on clemency proceedings"); *Duvall v. Keating*, 162 F.3d 1058, 1061 (10th Cir. 1998) (stating that inmate failed to establish due process violation "[b]ecause clemency proceedings involve acts of mercy that are not constitutionally required, the minimal application of the Due Process Clause only ensures a death row prisoner that he or she will receive the clemency procedures explicitly set forth by state law, and that the procedure followed in rendering the clemency decision will not be wholly arbitrary, capricious or based upon whim, for example, flipping a coin."). There simply is no due process requirement that a death-sentenced inmate has access to confidential clemency documents as part of his clemency determination. *See Woodard*, 523 U.S.

at 285 (stating that "the executive's clemency authority would cease to be a matter of grace committed to the executive authority if it were constrained by the sort of procedural requirements that respondent urges").

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

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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