No. 24-7457

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

REPLY TO BRIEF IN OPPOSITION

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

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CAPITAL CASE

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PRELIMINARY STATEMENT

Petitioner, Thomas Lee Gudinas ("Gudinas"), offers the following Reply to the Brief in Opposition from the Respondent ("BIO"). Gudinas will not reply to every issue and argument raised by Florida and will only address specific points. References to the *Appendix A/B/C* are regarding those same attachments to the pending Petition for a Writ of Certiorari ("Petition"). Gudinas expressly does not abandon any issue not specifically replied to herein and relies upon his Petition in reply to any argument or authority not specifically addressed.

REPLY REGARDING STAY

Gudinas's execution is currently scheduled for June 24, 2025, only three days from the date of the filing of this Reply. Filed contemporaneously with the BIO on June 19, 2025, the State also submitted a Response to Application for Stay of Execution. This Court should grant Gudinas a stay.

Florida's compressed thirty-two-day death warrant litigation schedule is completely insufficient to protect Gudinas's constitutional rights. The standards for granting a stay of execution are well-established. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). There "must be a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; there must be a significant possibility of reversal of the lower court's decision; and there must be a likelihood that irreparable harm will result if that decision is not stayed." *Id*. (internal quotations omitted).

There is indeed a reasonable probability that four justices would consider

Florida's death warrant selection scheme, and refusal to provide Gudinas the demanded records from the Executive Office of the Governor ("EOG") to be a sufficiently meritorious issue for certiorari. In the Petition at 17-18, Gudinas cited to examples from other states that have a death warrant and execution date selection process distinct from Florida's where the Governor maintains exclusive control. The jurisdictions represent various regions of the country. Florida is an extreme outlier when it comes to the exclusive authority provided to the Governor. This Court should intervene so that Florida is more aligned with the rest of the United States when it comes to selecting a candidate for execution. The death penalty is the "gravest sentence." *Hall v. Florida*, 502 U.S. 701,724 (Fla. 2014).

Moreover, Gudinas also seeks necessary records, pursuant to his protections under the Eighth Amendment and Fourteenth Amendment to the United States Constitution. Petitioner provided a thorough and unimpeachable factual basis in support of his colorable claims for relief. This Court is likely to reverse Florida's decision, as there is no basis for the obstruction and secrecy concerning Gudinas's access to records. Gudinas's willingness to streamline his demand for the records to address his constitutional concerns serves more specifically as another basis why this Court is likely to remand the proceedings back to Florida.

Gudinas will be irreparably harmed if a stay is not granted. If this Court does not intervene by pausing Gudinas's unnecessarily expedited warrant schedule, he faces the ultimate and final sanction of death when Florida executes him via lethal injection at 6:00pm on June 24, 2025. This Court has recognized that "execution is

the most irremediable and unfathomable of penalties; that death is different." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (citing *Woodson v. North Carolina,* 428 U.S. 280, 305 (1976)). Gudinas's unnecessarily expedited warrant schedule simply does not honor our justice system's acknowledgement that "death is different."

The irreparable harm to Gudinas is clear. *Wainwright v. Booker*, 473 U.S. 935, 937 n.1 (1985) (Powell, J., concurring) (finding the requirement of irreparable harm as "necessarily present in capital cases"). Additionally, the Florida Supreme Court's refusal to allow Gudinas records from the EOG is not just a matter of life and death for Gudinas. The Eighth Amendment not only protects the individual from cruel and unusual punishment, but it also safeguards the public's interest in living in a humane society. See, e.g., *Ford*, *supra*, at 409-10 (Eighth Amendment restriction protects not only the individual, but "the dignity of society itself from the barbarity of exacting mindless vengeance[.]"). Gudinas respectfully requests that this Court stay his execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), pending consideration of his petition for writ of certiorari.

RESPONSE TO STATE'S REASONS FOR DENYING THE WRIT

Gudinas prays for relief from this Court due to Florida's unconstitutional death warrant selection process as applied to Petitioner. The scheme is cloaked in secrecy and shielded with obstruction. The BIO misstates the purpose of these proceedings in presenting its "Questions Presented" by stating that the Florida Supreme Court affirmed the denial of relief "purely based on state law." BIO at i. Gudinas's claims were articulated based on a violation of federal law. State procedures are not

permitted to violate the United States Constitution. Restated, the first question presented before this Court is:

1. Whether Florida is violating Gudinas's access to the courts and the ability to pursue claims of relief based on the United States Constitution, in violation of Gudinas's rights under the Eighth and Fourteenth amendments to the United States Constitution.

The BIO at 8-9 is simply incorrect in arguing that this Court does not have jurisdiction over these issues. Petitioner fully litigated and preserved the claims below, citing federal authority and the relevant constitutional amendments. Though Gudinas was only allotted State procedures to request the necessary records, he at all times sought vindication for his rights under the United States Constitution and continues to do so here. Specifically, Gudinas has raised federal claims regarding the circumstances pertaining to his suspicious, highly irregular, death warrant selection. Gudinas is being foreclosed from litigating the constitutionality of his death warrant, due to the unconstitutional obstruction and secrecy being used against him. This Court has authority to review and intervene on actions by state courts that do not comport with the U.S. Constitution. Florida does not even concede the Governor's alleged "unfettered discretion," is reviewable by the highest court in the nation. Considering these federal claims were raised and preserved at the state level, both in the circuit court records demand, and timely briefed to the Florida Supreme Court ("FSC"), with the proper federal citations, this Court's interpretation of State actions is essential and timely. It is the role of this Court to determine federal constitutional

violations. *Marbury v. Madison*, 5 U.S. 1 (1803).

The BIO does not address the due process implications of the Governor's authority as it relates to Gudinas's death warrant selection. This Court is guided on the issue pursuant to *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998). The controlling plurality held:

> A prisoner under a death sentence remains a living person and consequently has an interest in his life. The question this case raises is the issue of what process is constitutionally necessary to protect that interest in the context of Ohio's clemency procedures. It is clear that "once society has validly convicted an individual of a crime and therefore established its right to punish, the demands of due process are reduced accordingly." *Ford v. Wainwright,* 477 U.S. 399, 429, 106 S.Ct. 2595, 2612, 91 L.Ed.2d 335 (1986) (O'CONNOR, J., concurring in result in part and dissenting in part). I do not, however, agree with the suggestion in the principal opinion that, because clemency is committed to the discretion of the executive, the Due Process Clause provides no constitutional safeguards. THE CHIEF JUSTICE's reasoning rests on our decisions in *Connecticut Bd. of Pardons v. Dumschat,* 452 U.S. 458, 101 S.Ct. 2460, 69 L.Ed.2d 158 (1981), and *Greenholtz v. Inmates of Neb. Penal and Correctional Complex,* 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979). In those cases, the Court found that an inmate seeking commutation of a life sentence or discretionary parole had no protected liberty interest in release from lawful confinement. When a person has been fairly convicted and sentenced, his liberty interest, in being free from such confinement, has been extinguished. But it is incorrect, as Justice STEVENS' dissent notes, to say that a prisoner has been deprived of all interest in his life before his execution. See *post,* at 1254–1255. Thus, although it is true that "pardon and commutation decisions have not traditionally been the business of courts," *Dumschat, supra,* at 464, 101 S.Ct. at 2464, and that the decision whether to grant clemency is entrusted to the Governor under Ohio law, I believe that the Court of Appeals correctly concluded that some *minimal* procedural safeguards apply to clemency proceedings. Judicial intervention might, for example, be warranted in the face of a scheme whereby a state official flipped 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.

Id. at 289. The key phrase is some "minimal procedural safeguards." Florida is not

providing Gudinas with the minimal procedural standards based on the concerning factual basis provided. Minimal safeguards would be satisfied if Gudinas were provided access to the records from the EOG. The fact that Gudinas is willing to further moderate the demand to address his specific constitutional concerns, also shows that Petitioner is seeking only "minimal procedural safeguards." To determine if a violation of due process has occurred, we must first decide whether the complaining party has been deprived of a constitutionally protected liberty or property interest. *Econ. Dev. Corp. of Dade Cnty., Inc. v. Stierheim,* 782 F.2d 952, 953–54 (11th Cir.1986). Absent such a deprivation, there can be no denial of due process. *Id.* Due process is a flexible concept. *Gilbert v. Homar,* 520 U.S. 924, 930 (1997)). "It is by now well established that "'due process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." *Cafeteria & Restaurant Workers v. McElroy,* 367 U.S. 886, 895 (1961). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." '*Morrissey v. Brewer,* 408 U.S. 471, 481 (1972). *Id.* Gudinas's liberty interests in his life and a fair clemency proceeding require this Court's intervention.

The BIO does not even address the facts giving rise to these claims. The BIO does provide historical facts from the penalty phase for claims no longer being litigated regarding Gudinas's mitigation. BIO at 4-5. Similarly, in Appendix A of the Petition, the FSC thoroughly addresses and gets deep into the facts of Gudinas's procedurally barred claims related to "evolving standards of decency." *See Appendix*

A at 11-21. However, when it comes to the issues before this Court regarding Gudinas's access to public records, the FSC simply relies on the holdings from alleged "precedent," and refuses to engage with the troubling facts that gave rise to Gudinas's death warrant. *See Appendix A* at 26-33. The circuit court refused to thoroughly address the case facts in denying Gudinas access to records. *See Appendix B.* The failure of Florida to address the facts as applied to the law, is another reason this Court should remand back to Florida for further proceedings consistent with the United States Constitution.

The facts are concerning and unimpeachable. This Court must intervene. This is a highly irregular case with potent constitutional concerns. 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. 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.[1] The irregularity is further established by the fact that Gudinas's counsel of record,

[1] 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).

Attorney Ali Shakoor, has been served by the executive branch on **three** death warrant cases, of which Attorney Shakoor was never counsel of record.[2] The requested records will establish to what extent these abnormal and concerning issues violated Gudinas's rights to a fundamentally fair clemency process.

This is about math and common sense. Alleged "discretion" can never be absolute in this country. Again, Attorney Shakoor is one of fourteen attorneys that work for Capital Collateral Regional Counsel-Middle Region. Capital Collateral Regional Counsel-North Region 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. However, 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 obstruction and secrecy being imposed on Gudinas is oppressive to his pursuit for justice. The only means for Gudinas to challenge the constitutionality of his death warrant selection

[2] *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).

is to access the records being hidden by the EOG. That means the judiciary must command the EOG to comply with constitutional protections.

Besides the violation of Gudinas's due process rights under the Fourteenth Amendment, he has also raised colorable claims regarding equal protection violations. Gudinas specifically addressed equal protection concerns at the hearing in Florida. See Appendix C at 14-16. Florida is not constitutionally permitted to treat Gudinas disparately based any characteristics of his attorney, nor Petitioner's own constitutionally protected qualities. This Court should look to the law regarding 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). Distinctions in state criminal laws that impinge upon fundamental rights must be strictly scrutinized. *See, e.g., Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964); *Eisenstadt v. Baird*, 405 U.S. 438, 447 (1972). Capital defendants have a fundamental right to due process and equal protection of the laws. When a state draws a distinction between those capital defendants who will receive the benefit of a constitutionally valid due process procedure pursuant to the Eighth Amendment, and those who will not, the state's justification for the distinction must satisfy strict scrutiny. The distinction made by the state courts in Florida cannot meet that standard. *See Dep't of Agriculture v. Moreno*, 413 U.S. 528, 538 (1973).

Regarding the status of a class of one, this Court has stated:

> The Equal Protection Clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike. *Plyler v. Doe,* 457 U.S. 202, 216, 102 S. Ct. 2382, 2394, 72 L.Ed.2d 786 (1982)."

City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985).

And also:

> Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 340 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336, 109 S. Ct. 633, 102 L.Ed.2d 688 (1989). In so doing, we have explained that "'[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.'" *Sioux City Bridge Co.*, supra, at 445, 43 S. Ct. 190 (quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352, 38 S. Ct. 495, 62 L. Ed. 1154 (1918)).

Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). *See also Clubside, Inc. v. Valentin*, 468 F.3d 144, 159 (2d Cir. 2006) (requiring an "extremely high degree of similarity" between the plaintiff and those similarly situated).

Florida courts have similarly violated Gudinas's equal protection rights. Gudinas is possibly being treated differently from similarly situated capital litigants under a death warrant, based on who represents him. The unequal treatment Gudinas would receive if he were executed would further violate Gudinas's rights to equal protection and fundamental fairness.

The Eighth Amendment demands more than what Florida has allowed for

Gudinas. 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. *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.").

The *Furman* Court held that the "Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and freakishly imposed." *Id.* at 310 (Stewart, J., concurring). Death penalty procedures which are "little more than a lottery system" were prohibited as they were held to violate the protection afforded by the Eighth Amendment. *Id.* at 293 (Brennan, J., concurring). The infliction of the death penalty is cruel and unusual and, hence, forbidden by the Eighth Amendment when its imposition is akin to being struck by lightning." *Id.* at 309 (Stewart, J., concurring). The execution of a death sentence on a "capriciously selected" inmate is prohibited by the Eighth Amendment. *Id.* at 309-10 (Stewart, J., concurring). This Court ruled the relevant capital statutes unconstitutional, stating that the laws contained no standards to govern who receives the death penalty. Tellingly, this Court, referring to standards applicable to the judge and jury whose determinations are subject to appellate review, stated, "[p]eople live or die, dependent on the whim of one man or of 12." *Id.* at 253 (Douglas, J., concurring).

This Court subsequently held, in *Gregg v. Georgia,* 428 U.S. 153 (1976), that the imposition of the death penalty could be constitutional, provided that satisfactory procedures were in place to reduce the risk of arbitrary infliction of it. Similarly, in considering Florida's death penalty scheme, the United States Supreme Court relied on the existence of safeguards against the imposition of the death penalty in an arbitrary manner in upholding Florida's scheme. *Proffitt v. Florida,* 428 U.S. 242 (1976). The existence of meaningful protections is an irreducible requirement for a death penalty scheme to be constitutional. The absence of meaningful protections risks the arbitrary imposition of the death penalty, and places such a deficient scheme at odds with the Eighth Amendment.

In Florida, the Governor has the absolute discretion and unconstrained power to schedule executions. The decision by a Florida governor to sign a death warrant is just as necessary as the sentencing judge's decision to sign his name to a document imposing a sentence of death. 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. There are absolutely no governing standards as to how the Governor should exercise his warrant signing power. This process is veiled in secrecy, with no opportunity for the condemned to be heard.

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 Eighth Amendment requires there to be a principled

way to distinguish between who is executed by a state and who is not. It is this constitutional principle that has required the sentencing judge to specifically address what aggravating and mitigating circumstances are present. It is because of the Eighth Amendment that Florida requires the sentencing judge to weigh the aggravating circumstances against the mitigating circumstances when deciding whether to impose a sentence of death.

In 1992, this Court found that because the jury's role in making a sentencing recommendation was an essential step in the Florida capital scheme, the jury should be viewed as a co-sentencer and its decision-making process should be subject to the same Eighth Amendment constraints that had been imposed upon the sentencing judge in a capital case in Florida. *Espinosa v. Florida,* 505 U.S. 1079, 1082 (1992). There is really no principled way to distinguish between the individual who signs a document entitled "the sentence" which imposes a death sentence, a necessary step before an individual in Florida can be executed, and the individual who signs a document entitled "death warrant" which is an equally necessary step before an individual in Florida can be executed. For the same reasons that this Court determined that the Florida penalty phase jury's recommendation was just as much an essential component to the death penalty scheme as the judge's decision to impose a death sentence and found the Eighth Amendment constraints applicable to the penalty phase jury, the Governor's absolute power to sign or not sign a death warrant must be subject to the Eighth Amendment. Without the Governor's signature upon a death warrant, an individual housed on Florida's death row will never be executed.

Currently without any meaningful standards constraining the Governor's otherwise absolute discretion, the Florida capital sentencing scheme violates the Eighth Amendment principles set forth in *Furman*.

If this Court were not inclined to do a holistic review of Florida's death warrant selection scheme—and it should—this Court can also narrowly decide these proceedings for Gudinas. Gudinas should at a minimum be granted select specific records from the EOG, that directly pertain to his highly suspicious selection for death. In Florida Gudinas even offered a narrowly tailored *in camera* review process, to protect his rights against the protective needs of the executive branch. This Court may also take guidance in protective measures provided in the criminal context, measuring the rights of the government with the vulnerable defendant. *Roviero v. U.S.*, 353 U.S. 53 (1957).

Petitioner's issue is timely and ripe for this Court's review. Gudinas did not have a claim regarding the EOG until his highly suspicious and constitutionally concerning death warrant. Gudinas is severely mentally ill. *See Appendix D.* The FSC and Respondents spent a great deal of time explaining away the significance of the mental mitigation in Gudinas's case. And indeed, Florida's oppressive procedural bar and "conformity clause" foreclose Gudinas from asking this court to consider the expansion of policy considerations concerning evolving the standards of decency; particularly so under the exigencies of litigation started by the warrant being signed the weekend before Memorial Day. For the severely mentally ill Thomas Gudinas to be selected for a death warrant at all, under these peculiar and constitutionally

concerning circumstances, this Court must intervene. Florida's Governor is not above the law. The time has come for judicial intervention to show that the Governor's discretion in signing death warrants is not "unfettered," and the office is not immune from following the United States Constitution. Whatever discretion the Governor has he must exercise constitutionally. Relief is proper. This Court should grant the petition for a writ of certiorari.

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 21, 2025
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