No. 25-6061

IN THE
SUPREME COURT OF THE UNITED STATES

BRYAN FREDRICK JENNINGS,
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 NOV. 13, 2025, AT 6:00 P.M.

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CAPITAL CASE

QUESTIONS PRESENTED

I. Whether the Florida Supreme Court misinterpreted state law in concluding that, under Florida Rule of Criminal Procedure 3.851 and Chapter 27 of the Florida Statutes, a death-sentenced inmate is not required to have state collateral counsel when no state collateral proceedings are pending.

II. Whether the state courts violated a death-sentenced inmate's federal rights to due process and access to the courts by failing to appoint new state collateral counsel for the inmate following his former state counsel's death, where the inmate's last state postconviction proceeding concluded years earlier, he never requested the appointment of new state counsel, and he remained represented by federal counsel in ongoing federal habeas corpus proceedings.

III. Whether the Eighth and Fourteenth Amendments require unanimous jury sentencing, comparative proportionality review on appeal, and successive executive clemency proceedings in capital cases.

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The opinion below is reported as *Jennings v. State*, Nos. SC2025-1642, SC2025-1686, SC2025-1687, 2025 WL 3096812 (Fla. Nov. 6, 2025).

JURISDICTION

Petitioner seeks to invoke this Court's jurisdiction under 28 U.S.C. § 1257. However, this Court lacks jurisdiction as to all three of the questions presented in the petition for writ of certiorari. Initially, this Court lacks jurisdiction as to Petitioner's first and second questions presented because they are premised on a purported misinterpretation of state law by the Florida Supreme Court, and federal courts may not overrule a state's highest court on a question of state law. Petitioner's claim, in his second question presented, of the denial of a property interest in his supposed state-law right to continuous counsel is separately jurisdictionally barred because it was rejected in state court on independent and adequate state-law grounds. As to Petitioner's third question presented, all three subpoints are jurisdictionally barred because they were either decided on independent and adequate state-law grounds (jury unanimity and executive clemency) or are irrelevant to Jennings' case and any decision by this Court on the issue would be a mere advisory opinion (proportionality). Finally, even if jurisdiction were present, this case would be inappropriate for the exercise of this Court's discretionary jurisdiction because the Florida Supreme Court's opinion does not conflict with any decision by this Court, another state court of last resort, or a United States court of appeals, nor does it decide any important or unsettled question of federal law. *See* Sup. Ct. R. 10(b)-(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Bryan Fredrick Jennings, is an inmate in the custody of the Florida Department of Corrections who was sentenced to death in 1986 for his kidnapping, rape, and murder of six-year-old Rebecca Kunash in Brevard County, Florida. In the decades that followed, Jennings filed a plethora of collateral challenges to his death sentence in both state and federal court. At all times, Jennings was represented by state collateral counsel, federal habeas counsel, or both. Jennings' final pre-warrant collateral proceeding recently concluded on March 31, 2025, when this Court denied certiorari review of the dismissal of Jennings' second federal habeas petition. On October 10, 2025, Governor Ron DeSantis signed Jennings' death warrant, and his execution is scheduled for November 13, 2025, at 6:00 p.m.

Convictions and Death Sentence

The horrific crimes for which Jennings was sentenced to death were recounted as follows in the trial court's sentencing order:

> In the early morning hours of May 11, 1979, Rebecca Kunash was asleep in her bed. A nightlight had been left on in her room and her parents were asleep in another part of the house. [Jennings] went to her window and saw Rebecca asleep. He forcibly removed the screen, opened the window, and climbed into her bedroom. He put his hand over her mouth, took her to his car and proceeded to an area near the Girard Street Canal on Merritt Island. He raped Rebecca, severely bruising and lacerating her vaginal area, using such force that he bruised his penis. In the course of events, he lifted Rebecca by her legs, brought her back over his head, and swung her like a sledge hammer onto the ground fracturing her skull and causing extensive damage to her brain. While she was still

> alive, [Jennings] took her into the canal and held her head under the water until she drowned. At the time of her death, Rebecca Kunash was six (6) years of age.

Jennings v. State, 512 So. 2d 169, 175-76 (Fla. 1987).

Jennings was tried, convicted, and sentenced to death for the murder three times: in 1980, 1982, and 1986. The Florida Supreme Court vacated Jennings' first conviction and death sentence and ordered a new trial on the ground that Jennings' counsel was unable to cross-examine a witness due to a conflict of interest. *Jennings v. State*, 413 So. 2d 24, 25-26 (Fla. 1982). Jennings' second conviction and death sentence were initially affirmed by the Florida Supreme Court. *Jennings v. State*, 453 So. 2d 1109 (Fla. 1984). On certiorari review, however, this Court vacated the Florida Supreme Court's judgment and remanded for reconsideration in light of *Shea v. Louisiana*, 470 U.S. 51 (1985), and *Smith v. Illinois*, 469 U.S. 91 (1984). *Jennings v. Florida*, 470 U.S. 1002 (1985). On remand, the Florida Supreme Court again ordered a new trial. *Jennings v. State*, 473 So. 2d 204 (Fla. 1985).

At his third jury trial in 1986, Jennings was again convicted of first-degree murder, as well as kidnapping with intent to commit sexual battery, sexual battery, and burglary. At the end of his third penalty-phase proceeding, the jury recommended death by a vote of eleven to one, and the trial court again sentenced Jennings to death. *Jennings*, 512 So. 2d at 171. The Florida Supreme Court affirmed the convictions and death sentence on direct appeal. *Id.* at 176. Jennings' death sentence became final on February 22, 1988, when this Court denied his petition for a writ of certiorari. *Jennings v. Florida*, 484 U.S. 1079 (1988).

Years later, a federal district court, in denying Jennings' first petition for writ of habeas corpus, commented as follows on the strength of the evidence supporting Jennings' convictions and death sentence: "The evidence against Mr. Jennings was vast, including three witnesses to whom he confessed. . . . Additionally, Mr. Jennings' fingerprints were found on [Rebecca Kunash's] bedroom window; there was testimony that a nearby shoe print was consistent with his shoes; there was evidence that his clothes were wet on the morning of the crime; and he had abrasions on his penis." *Jennings v. Crosby*, 392 F. Supp. 2d 1312, 1324 (N.D. Fla. 2005), *aff'd*, 490 F.3d 1230 (11th Cir. 2007), *cert. denied*, 552 U.S. 1298 (2008).

Prior State and Federal Collateral Proceedings

In 1989, Jennings filed his first motion for postconviction relief in state circuit court under Fla. R. Crim. P. 3.850. Jennings was represented in that proceeding by attorneys Larry Helm Spalding, Martin J. McClain, and Jerome H. Nickerson of the Office of the Capital Collateral Representative (CCR). *See Jennings v. State*, 583 So. 2d 316, 317 (Fla. 1991). The state postconviction court denied the motion. *Id.* On appeal, the Florida Supreme Court affirmed the lower court's denial of the claims raised in the postconviction motion, but it agreed with Jennings that he was entitled to certain portions of the prosecutor's files as public records. The Florida Supreme Court therefore directed that, on remand, Jennings would be given 60 days to file any new collateral claims that arose from the prosecutor's files. *Id.* at 319, 323. Contemporaneously with that appeal, Jennings also filed a petition for writ of

habeas corpus in the Florida Supreme Court. *Id.* at 322-23. The Florida Supreme Court denied Jennings' habeas petition. *Id.* at 323.

Jennings raised new collateral claims on remand from the Florida Supreme Court. In the proceedings on remand, Jennings continued to be represented by McClain as registry counsel after McClain parted with CCR. *See Jennings v. State*, 782 So. 2d 853, 855 (Fla. 2001); Fla. Stat. § 27.710 (providing for the maintenance of a statewide registry of attorneys in private practice who are qualified to represent capital defendants in postconviction proceedings). The postconviction court later held an evidentiary hearing on Jennings' new claims, and a final order denying postconviction relief was entered on March 18, 1998. The Florida Supreme Court affirmed the postconviction court's decision on appeal. *Jennings*, 782 So. 2d at 855-65. Jennings then filed a petition for writ of certiorari in this Court, which denied review. *Jennings v. Florida*, 534 U.S. 1096 (2002).

Thereafter, Jennings, who continued to be represented by McClain, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Northern District of Florida. The district court denied Jennings' habeas petition on September 29, 2005. *Jennings*, 392 F. Supp. 2d at 1315. Jennings appealed, and the Eleventh Circuit affirmed the district court's decision. *Jennings v. McDonough*, 490 F.3d 1230 (11th Cir. 2007). This Court denied review on March 31, 2008. *Jennings v. McNeil*, 552 U.S. 1298 (2008).

In the years following the conclusion of his initial state postconviction and initial federal habeas proceedings, Jennings filed four successive motions for

postconviction relief in state court under Fla. R. Crim. P. 3.851, all of which were unsuccessful. Jennings was represented in each of those proceedings by McClain. In each instance, the state postconviction court denied the successive postconviction motion, and the Florida Supreme Court affirmed the postconviction court's decision on appeal. As to his second, third, and fourth successive state postconviction motions, Jennings also sought certiorari review in this Court, which this Court denied. *See Jennings v. State*, 36 So. 3d 84 (Fla. 2010) (affirming denial of first successive motion); *Jennings v. State*, 91 So. 3d 132 (Fla. 2012) (affirming denial of second successive motion), *cert. denied*, 568 U.S. 1100 (2013); *Jennings v. State*, 192 So. 3d 38 (Fla. 2015) (affirming denial of third successive motion), *cert. denied*, 580 U.S. 857 (2016); *Jennings v. State*, 265 So. 3d 460 (Fla. 2018) (affirming denial of fourth successive motion), *cert. denied*, 587 U.S. 990 (2019).

In 2015, the Capital Habeas Unit of the Office of the Federal Public Defender (CHU) was appointed to represent Jennings in federal court. The order appointing CHU as Jennings' federal counsel stated that McClain would remain as co-counsel. *See Jennings v. Moore*, No. 5:02-cv-174, Doc. 57 (N.D. Fla. Sept. 12, 2015). In 2018, McClain and CHU jointly filed a second petition for writ of habeas corpus in federal district court. As alternative relief, the petition sought relief from the denial of Jennings' initial federal habeas petition under Fed. R. Civ. P. 60(b). The district court ultimately dismissed the petition for lack of jurisdiction on the ground that Jennings failed to seek authorization from the Eleventh Circuit before filing his successive petition, *see* 28 U.S.C. § 2244(b)(3)(A), and also denied relief under Rule

60(b). *Jennings v. Inch*, No. 5:18-cv-281, Doc. 25 (N.D. Fla. Mar. 6, 2020). Jennings appealed, and the Eleventh Circuit affirmed the district court's decision. *Jennings v. Sec'y, Fla. Dep't of Corr.*, 108 F.4th 1299 (11th Cir. 2024).

In 2022, three years after Jennings' fourth successive state postconviction proceeding concluded, and while Jennings' second appeal to the Eleventh Circuit was still pending, McClain passed away. *Jennings*, 2025 WL 3096812, at *6. However, Jennings continued to be represented in his Eleventh Circuit appeal by his federal CHU counsel. Following McClain's death, Jennings' federal counsel filed a certificate of interested persons in the Eleventh Circuit identifying McClain as "[f]ormer federal habeas and state postconviction counsel, deceased." Certificate of Interested Persons and Corporate Disclosure Statement, *Jennings v. Sec'y, Fla. Dep't of Corr.*, No. 20-12555, Doc. 17 at 3 (11th Cir. May 22, 2023). Jennings did not, however, request the appointment of new state collateral counsel. *See Jennings*, 2025 WL 3096812, at *8. After the Eleventh Circuit affirmed the dismissal of his successive habeas petition, Jennings, through his federal counsel, filed a certiorari petition in this Court seeking review of the Eleventh Circuit's decision. This Court denied certiorari review on March 31, 2025. *Jennings v. Dixon*, 145 S. Ct. 1472 (2025).

State Proceedings Under Warrant

Just over six months later, on October 10, 2025, Governor DeSantis signed Jennings' death warrant and set his execution for November 13, 2025. That same day, the State filed a motion in the state circuit court to have the Office of the Capital Collateral Regional Counsel – Middle Region (CCRC-M) appointed as Jennings' state

counsel, noting that he would require state collateral counsel during the warrant proceedings. *Jennings*, 2025 WL 3096812, at *3; *see* Fla. Stat. § 27.701 (creating the offices of the capital collateral regional counsel and designating CCRC-M as the office for Florida's Eighteenth Judicial Circuit, which includes Brevard County); Fla. Stat. § 27.702(2) (providing that each CCRC office "shall represent persons convicted and sentenced to death within the[ir] region in collateral postconviction proceedings, unless a court appoints or permits other counsel to appear as counsel of record"); Fla. R. Crim. P. 3.851(b)(6) (stating that a death-sentenced inmate "may not represent himself or herself in a capital postconviction proceeding"). CCRC-M filed a limited notice of appearance along with a motion to vacate the death warrant or stay the warrant proceedings. The circuit court appointed CCRC-M as Jennings' counsel and denied the motion to vacate or stay. *Jennings*, 2025 WL 3096812, at *3. Jennings petitioned the Florida Supreme Court for review of the circuit court's nonfinal order denying his motion to vacate or stay, *see* Fla. R. App. P. 9.142(c), which the Florida Supreme Court later denied. *Jennings*, 2025 WL 3096812, at *3, *10.

On October 21, 2025, Jennings, through his CCRC-M counsel, filed a fifth successive motion for postconviction relief under Rule 3.851 in the state circuit court, raising three claims: (1) the Governor's determination that executive clemency was not appropriate based on Jennings' clemency denial in 1989 violated Jennings' rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments; (2) the post-warrant appointment of CCRC-M and failure to stay the proceedings rendered the warrant proceedings invalid and in violation of the Fifth, Sixth, Eighth, and Fourteenth

Amendments; and (3) Florida's capital sentencing scheme violates the Eighth and Fourteenth Amendments because it lacks essential safeguards against arbitrary and capricious imposition of the death penalty. *Id.* at *4. The circuit court rejected all three claims and entered a final order denying relief on October 28, 2025. Jennings appealed to the Florida Supreme Court, which affirmed. *Id.* at *4-9.[1]

As to his first claim, Jennings specifically argued that the Governor improperly denied executive clemency based on a clemency proceeding that was conducted in 1989. According to Jennings, the Governor should have conducted a new clemency proceeding before signing the death warrant to consider new evidence that was not presented in the original proceeding. *Id.* at *4. The Florida Supreme Court initially found the claim to be untimely and procedurally barred under Florida law, since Jennings had been on notice since at least 2016 that he was eligible for a death warrant, the "new facts" Jennings cited were "either public knowledge or were known to him since 1989," and Jennings admitted that he could have reapplied for clemency since the 1989 denial, but he never did. *Id.* The Florida Supreme Court held that because Jennings failed to show that any exception to Florida's one-year limitations period for collateral claims applied under Rule 3.851(d)(2), the claim was time-barred. *Id.* And because Jennings could have raised the claim in a prior proceeding, the claim was also procedurally barred under Rule 3.851(e)(2). *Id.*

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[1] In his Statement of the Case, Jennings claims that the circuit court violated Fla. R. App. P. 9.142(c)(9)(B) by entering a final order while his interlocutory petition challenging the circuit court's nonfinal order denying his motion to vacate or stay was still pending. Petition at 19. That is incorrect. The Florida Supreme Court previously entered a scheduling order requiring the circuit court to enter any final order no later than October 29, 2025, which superseded Rule 9.142(c)(9)(B).

The Florida Supreme Court further concluded that the claim was meritless. It explained that the Florida Constitution vests the power to grant clemency solely in the executive branch. *Id.* at *5 (citing Fla. Const. art. IV, § 8(a)). It further observed that although "[i]n *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998), five justices of [this] Court concluded that some minimal procedural due process requirements should apply to clemency proceedings[,] . . . none of the opinions in that case required any specific procedures or criteria to guide the executive's signing of warrants for death-sentenced inmates." *Id.* (first alteration in original) (quoting *Marek v. State*, 14 So. 3d 985, 998 (Fla. 2009)). The Florida Supreme Court reiterated that Jennings could have, but did not, reapply for clemency in the 36 years since the 1989 denial, and it concluded that the clemency proceeding that was conducted in Jennings' case satisfied his federal constitutional rights. *Id.* at *5-6.

On Jennings' second claim, the Florida Supreme Court began its analysis by reciting Jennings' history of continuous representation by counsel throughout his numerous state and federal collateral proceedings. *Id.* at *6. It proceeded to reject Jennings' claim that the gap in state collateral counsel from 2022 until the signing of the warrant violated his rights to due process under the Fifth Amendment, effective assistance of counsel under the Sixth Amendment, or access to the courts under the Fourteenth Amendment. Initially, the Florida Supreme Court rejected Jennings' argument that, as a matter of Florida law, he was entitled to the representation of counsel even when no state postconviction proceedings were pending. The Florida Supreme Court explained, "[R]ule 3.851 and [C]hapter 27 only

require representation during postconviction proceedings. They are silent about representation when no matters are pending." *Id.* at *7. In Jennings' case, the Florida Supreme Court found no violation of his state-law right to counsel, despite the three-year gap in state counsel, where he was represented by McClain "in all five of his state postconviction motions," "he continued to be represented by federal counsel even after Mr. McClain's passing," and he was "appointed the services of CCRC-M" for his sixth postconviction motion. *Id.*

Continuing, the Florida Supreme Court rejected Jennings' arguments that he was denied due process, access to the courts, or the effective assistance of counsel under the facts of his case. As to Jennings' claim that "without continuous state postconviction counsel, no one has tracked any changes in his mental or physical health or any other possible grounds for postconviction relief," the Florida Supreme Court observed that Jennings' federal CHU counsel was available to do exactly that. *Id.* As well, the Florida Supreme Court cited its previous holdings in *Asay v. State*, 210 So. 3d 1, 27-28 (Fla. 2016), that (a) even a 10-year gap in state counsel did not violate due process where the defendant was represented by counsel in each of his previous postconviction proceedings, and (b) section 27.710 "does not mandate that postconviction counsel actively investigate a defendant's case and continuously bring forth new arguments" once the defendant's initial postconviction proceedings have concluded. *Id.* at *7. The Florida Supreme Court also observed that to the extent Jennings wanted new state collateral counsel to investigate potential new claims after McClain's death, "Jennings does not say that he sought the appointment of

counsel for that purpose." *Id.* at *8. Finally, the Florida Supreme Court rejected Jennings' assertion that he was denied the "effective assistance" of state collateral counsel, explaining that there is no such right as a matter of Florida or federal law, and that Jennings' CCRC-M counsel had "zealously represented him" since they were appointed, which is "what the statute requires." *Id.*

In his third claim, Jennings broadly argued that Florida's capital sentencing scheme is now unconstitutional based on a lack of unanimous jury sentencing and proportionality review, purported defects in the Governor's warrant selection and clemency processes, and Jennings' lack of continuous counsel. *Id.* at *9. The Florida Supreme Court rejected each subclaim, finding that Jennings' jury sentencing, proportionality, and warrant selection arguments were foreclosed by precedent, and that his clemency and continuous counsel arguments "were simply repackaged versions of his first two claims" that it had already rejected. *Id.*

Contemporaneously with his appeal, Jennings also filed a petition for writ of habeas corpus in the Florida Supreme Court arguing that he was "deprived of life, liberty, and property interests based on the lack of state court representation since his attorney passed in 2022," and that "the lapse in representation violate[d] his due process rights under the Fourteenth Amendment." *Id.* at *10.

The Florida Supreme Court first rejected the petition on procedural grounds, noting that it was merely a variation on Jennings' second claim from his fifth successive postconviction motion, which Jennings had "simply reword[ed] . . . as a deprivation of life, liberty, and property interests." *Id.* Under Florida law, however,

"[h]abeas corpus is not to be used to litigate or relitigate issues which could have been, should have been, or were previously raised." *Id.* (quoting *Gaskin v. State*, 361 So. 3d 300, 309 (Fla. 2023)). Nonetheless, the Florida Supreme Court also rejected the claim on the merits for largely the same reasons that it had stated previously, including that "[C]hapter 27 only requires representation during postconviction proceedings," there is no constitutional right to "effective" collateral counsel, and "Jennings was not denied due process when he was provided counsel at all relevant stages of his postconviction proceedings." *Id.*

Accordingly, Jennings' habeas petition was denied. The Florida Supreme Court also denied his concurrent motion to vacate the warrant or stay the execution, and his petition challenging the circuit court's nonfinal order denying his motion to vacate the warrant or stay the execution. *Id.* at *10-11.

Federal Proceedings Under Warrant

While his post-warrant proceedings were still pending in state court, Jennings, through his federal CHU counsel, also filed a complaint in federal district court under 42 U.S.C. § 1983, in which he again claimed that the lapse in state counsel from his prior counsel's death in 2022 until the signing of the warrant violated his federal constitutional rights. In addition, Jennings filed an emergency motion to stay his execution. The district court ordered the State to respond to the stay motion. After receiving the response, the district court denied Jennings' request for a stay of execution, finding that he had failed to establish a substantial likelihood of success on the merits and that a stay was not warranted on equitable grounds. *Jennings v.*

DeSantis, No. 4:25-cv-449, Doc. 22 (N.D. Fla. Oct. 30, 2025). In reaching its decision, the district court observed that Jennings did not claim that "he requested and was denied the appointment of new state postconviction counsel following his lawyer's death[,] [n]or d[id] he explain why it took over three years to seek relief [in federal] [c]ourt for his deprivation of state counsel while he was simultaneously represented by federal habeas counsel." *Id.* at *5. The district court noted: "Mr. Jennings's argument is, in effect, that you can sit on your rights, pocket a motion to stay execution, and under the theory that there may be a non-frivolous collateral challenge that you could have filed, move to stay your execution based on the failure to appoint state counsel sooner. This is not the law." *Id.* at *4 n.2.

Jennings did not appeal from or otherwise challenge the district court's order denying his motion for a stay of execution. After the Florida Supreme Court issued its opinion in Jennings' state-court proceedings, however, Jennings filed the instant certiorari petition seeking review of the Florida Supreme Court's decision. As set forth below, Jennings has failed to identify any ground that would warrant certiorari review by this Court, and his petition should be denied.

REASONS FOR DENYING THE PETITION

I. This Court Lacks Jurisdiction to Overrule a State's Highest Court on a Question of State Law.

The first two questions presented in Jennings' certiorari petition are premised on a purported misinterpretation of state law by the Florida Supreme Court. According to Jennings, Rule 3.851 of the Florida Rules of Criminal Procedure and Chapter 27 of the Florida Statutes establish a right to "continuous" state collateral

counsel for death-sentenced inmates. Petition at ii. The Florida Supreme Court rejected that argument, finding that while Rule 3.851 and Chapter 27 "require representation *during* postconviction proceedings[,] [t]hey are silent about representation when no matters are pending." *Jennings*, 2025 WL 3096812, at *7 (emphasis added). In Jennings' case, he was represented by counsel in all five of his prior state postconviction proceedings, no such proceedings were pending at the time of his former state counsel's death in 2022, and new state collateral counsel was appointed to represent him following the signing of his death warrant. Thus, the Florida Supreme Court found no violation of Florida law. *Id.* It further rejected Jennings' argument, which he now raises as his second question presented in this Court, that he was deprived of a "property interest" in his supposed state-law right to continuous counsel for purposes of due process. *Id.* at *10.

This Court lacks jurisdiction to hold that the Florida Supreme Court erred in its interpretation of state law. It is a "fundamental principle" that "our Constitution establishes a system of dual sovereignty between the States and the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). While this Court is the highest authority on the interpretation of federal law, "[t]he highest court of each State, of course, remains 'the final arbiter of what is state law.'" *Montana v. Wyoming*, 563 U.S. 368, 377 n.5 (2011) (quoting *West v. Am. Telephone & Telegraph Co.*, 311 U.S. 223, 236 (1940)). As a consequence, "the views of the state's highest court with respect to state law are binding on the federal courts." *Wainwright v. Goode*, 464 U.S. 78, 84 (1983); *see also Animal Sci. Prods., Inc. v. Hebei Welcome*

Pharm. Co., 585 U.S. 33, 44 (2018); *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975). In this case, Jennings asks this Court to overturn the Florida Supreme Court on a question of state law, which it cannot do. For that reason alone, this Court lacks jurisdiction as to the first two questions presented in the petition.[2]

Jennings' second question presented is further jurisdictionally barred because it was rejected by the Florida Supreme Court on independent and adequate state-law grounds. This Court has long held that when both state and federal questions are involved in a state court proceeding, this Court lacks jurisdiction to review the case "if the 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." *Foster v. Chatman*, 578 U.S. 488, 497 (2016) (quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989)). The "adequate and independent state grounds" rule is based on "the partitioning of power between the state and federal judicial systems and in the limitations of [this Court's] jurisdiction." *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945).

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[2] As well, the Florida Supreme Court was correct in concluding that neither Rule 3.851 nor Chapter 27 creates a right to "continuous" state collateral counsel. Rule 3.851 does provide for the appointment of capital collateral counsel after the defendant's conviction and death sentence become final, Fla. R. Crim. P. 3.851(b)(1), and further states that the appointed attorney "must represent the defendant in the state courts until a judge allows withdrawal or until the sentence is reversed, reduced, or carried out, regardless of whether another attorney represents the defendant in a federal court," Fla. R. Crim. P. 3.851(b)(5). Chapter 27 contains similar language. Fla. Stat. § 27.711(2). But as the Florida Supreme Court observed nearly a decade ago, neither the rule nor the relevant statutes impose any obligation on counsel to continue to investigate and raise claims once the defendant's initial collateral proceedings have concluded. *Asay*, 210 So. 3d at 27-28. Nor do they set out any procedures to be followed when the attorney withdraws or passes away "when no matters are pending." *Jennings*, 2025 WL 3096812, at *7. Certainly, there is no provision requiring the state courts to *sua sponte* appoint new counsel when there are no matters pending and the defendant has not requested it.

This Court has explained 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.* at 125-26. "[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 denial of relief on a question of federal law is separately based on state law, this Court "will not undertake to review the decision." *Florida v. Powell*, 559 U.S. 50, 57 (2010) (quoting *Michigan v. Long*, 463 U.S. 1032, 1041 (1983)).

Here, Jennings argues that by refusing to honor his supposed state-law right to continuous collateral counsel, the Florida Supreme Court deprived him of a "protected property interest" in that right and thereby violated his federal right to due process. Petition at 26. In state court, Jennings raised that argument for the first time in his petition for writ of habeas corpus to the Florida Supreme Court. *See Jennings*, 2025 WL 3096812, at *10. The Florida Supreme Court held that the claim was procedurally barred, since it was merely a variation on the denial-of-counsel claim Jennings had raised in claim two of his fifth successive Rule 3.851 motion, albeit reworded "as a deprivation of life, liberty, and property interests." *Id.* The Florida Supreme Court explained that under Florida law, "[h]abeas corpus is not to be used to litigate or relitigate issues which could have been, should have been, or were previously raised." *Id.* (quoting *Gaskin*, 361 So. 3d at 309).

The Florida Supreme Court's finding that Jennings' argument that he was deprived of a protected property interest was procedurally barred is an independent and adequate state-law ground for its denial of relief. *See, e.g.*, *Sochor v. Florida*, 504 U.S. 527, 533-34 (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); *see also Martinez v. Ryan*, 566 U.S. 1, 10 (2012) (noting, for purposes of federal habeas review, that there was "no dispute that Arizona's bar on successive petitions is an independent and adequate state ground"); *Walker v. Martin*, 562 U.S. 307, 316-17 (2011) (holding that California's timeliness rule for state habeas petitions was an independent and adequate state procedural ground). As a result, even if the Florida Supreme Court's rejection of Jennings' argument on the merits had not rested on an underlying question of state law, and even if its merits determination had been wrong, relief on that claim would still have been denied as a matter of state procedural law. For that reason, as well, this Court lacks jurisdiction as to Jennings' second question presented.

II. There Is No Constitutional Right to Postconviction Counsel. Further, Jennings Has Never, At Any Time, Been Without Counsel.

Even if Jennings' denial-of-counsel claims were properly before this Court, review would be unwarranted. It is well-established that this Court does not review state court decisions merely because a question of federal law is implicated. Rather, "[a] petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. Typically, certiorari review will be granted from a decision of a state court of last resort only when that court [1] "has decided an important federal question in

a way that conflicts with the decision of another state court of last resort or of a United States court of appeals," [2] "has decided an important question of federal law that has not been, but should be, settled by this Court," or [3] "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(b)-(c). None of these circumstances are present here.

At the outset, the Florida Supreme Court's decision was consistent with this Court's long-settled precedents holding that "[t]here is no constitutional right to an attorney in state post-conviction proceedings," and that a defendant cannot "claim constitutionally ineffective assistance of counsel in such proceedings." *Coleman v. Thompson*, 501 U.S. 722, 752 (1991) (citations omitted). The Sixth Amendment right to counsel, this Court has said, applies to the "trial stage of a criminal proceeding" and to "an initial appeal from the judgment and sentence of the trial court." *Murray v. Giarratano*, 492 U.S. 1, 7 (1989). It does not extend to postconviction proceedings, which are not constitutionally required and are "considered to be civil in nature" rather than "part of the criminal proceeding itself." *Id.* at 7-8 (quoting *Pennsylvania v. Finley*, 481 U.S. 551, 556-57 (1987)); *see also Finley*, 481 U.S. at 555 ("Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further."). It is axiomatic that "where there is no constitutional right to counsel[,] there can be no deprivation of effective assistance." *Coleman*, 501 U.S. at 753 (citing *Wainwright v. Torna*, 455 U.S. 586 (1982)); *see also Davila v. Davis*, 582 U.S. 521, 524 (2017) (noting that there is no constitutional right to counsel in postconviction proceedings); *Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007) (same).

And this Court has not limited that principle to the Sixth Amendment. In *Finley*, this Court concluded "that neither the Due Process Clause of the Fourteenth Amendment nor the equal protection guarantee of 'meaningful access' required the State to appoint counsel for indigent prisoners seeking state postconviction relief." *Giarratano*, 492 U.S. at 7; *see Finley*, 481 U.S. at 555-56. Relevant here, the Court further held in *Finley* that when a state does choose to provide inmates with postconviction counsel, due process does not expand that state-created right beyond what state law provides. *Finley*, 481 U.S. at 558-59. The Court noted that it was "unwilling to accept [the premise] that when a State chooses to offer help to those seeking relief from convictions, the Federal Constitution dictates the exact form such assistance must assume." *Id.* at 559. And in *Giarratano*, this Court held that the rule stated in *Finley* applies "no differently in capital cases than in noncapital cases." 492 U.S. at 10. The Court rejected the suggestion that "under the Eighth Amendment, 'evolving standards of decency' do not permit a death sentence to be carried out while a prisoner is unrepresented." *Id.* at 8. This Court explained that "[t]he additional safeguards imposed by the Eighth Amendment at the trial stage of a capital case are, we think, sufficient to assure the reliability of the process by which the death penalty is imposed." *Id.* at 10. It "therefore decline[d] to read either the Eighth Amendment or the Due Process Clause to require yet another distinction between the rights of capital case defendants and those in noncapital cases." *Id.*

In this case, Jennings has never, at any time, been unrepresented by counsel. He was represented by counsel in his initial state postconviction proceedings, his

initial federal habeas proceeding, his four prior successive state postconviction proceedings, and his second federal habeas proceeding. Even after his former state counsel died in 2022, he continued to be represented in federal court by his federal CHU counsel, who at that time was actively litigating his second federal habeas proceeding in the Eleventh Circuit. And after Jennings' death warrant was signed just over six months after the second federal habeas proceeding concluded, he was appointed new state counsel to represent him in any post-warrant proceedings in state court. In those proceedings, Jennings' new state counsel filed a fifth successive motion for postconviction relief on his behalf. At the same time, his federal counsel filed a section 1983 lawsuit on his behalf in federal district court.

Jennings cannot claim under these circumstances that he was deprived of counsel. Instead, his argument is that his new state counsel was unable to properly represent him because they purportedly lacked sufficient time to review the records of his prior proceedings and investigate his case in order to try to develop new postconviction claims that were not raised previously. In other words, his claim is not that he was deprived of counsel, but of the *effective assistance* of counsel. Perhaps recognizing that such claims are flatly barred by this Court's precedent, Jennings argues that the state courts' failure to *sua sponte* appoint new counsel for him after his former state counsel's death—despite the fact that he never requested new state counsel and remained represented by federal counsel—violated his state-law right to "continuous" counsel, and that that failure, in turn, resulted in a denial of his federal rights to due process and meaningful access to the courts.

The Florida Supreme Court properly found that Jennings' state and federal rights were not violated and that he was not entitled to any relief. As discussed, the Florida Supreme Court initially rejected Jennings' assertion that he was entitled, as a matter of state law, to continuous representation by state collateral counsel even when there were no state postconviction proceedings pending, which it had previously ruled in a similar case nearly a decade earlier. *See Asay*, 210 So. 3d at 27-28 (holding that the post-warrant appointment of new state collateral counsel after a 10-year lapse in state representation did not violate the defendant's state or federal rights where the defendant was "represented by counsel at every stage of his [collateral] proceedings as required by statute"). This Court, of course, is bound by that ruling. *See Goode*, 464 U.S. at 84. Since Jennings' state-law right to appointed counsel was satisfied, and Jennings had no right to collateral counsel at all under the Fifth, Sixth, Eighth, and Fourteenth Amendments, *see Giarratano*, 492 U.S. at 7-10, the Florida Supreme Court correctly held that Jennings' due process, ineffective assistance, and meaningful access claims were meritless. Jennings fails to identify any error in the Florida Supreme Court's ruling, let alone any conflict of decisions or unsettled question of federal law that would warrant certiorari review.

Furthermore, even if Jennings had a right to continuous state counsel, his constitutional arguments would still be meritless under the facts of this case. It bears repeating that Jennings continued to be represented by his federal counsel even after his former state counsel died in 2022. Additionally, Jennings has been on notice that he was eligible for a death warrant since at least 2016, when the State filed a notice

of finality under Fla. R. Crim. P. 3.851(j) advising that Jennings had completed his direct appeal, initial state postconviction proceeding, and initial federal habeas proceeding. *See Jennings*, 2025 WL 3096812, at *4. Thus, "in addition to the thirty-[seven] years of notice since the imposition of his death sentence[], [Jennings] has been on notice for nearly [nine] years that he is 'warrant-eligible,' meaning 'the [G]overnor could sign a warrant for his execution.'" *Id.* (original alterations) (quoting *Jones v. State*, No. SC2025-1422, 2025 WL 2717027, at *4 (Fla. Sept. 24, 2025), *cert. denied*, No. 25-5745, 2025 WL 2775490 (U.S. Sept. 30, 2025)).

"The core of due process is the right to notice and a meaningful opportunity to be heard." *LaChance v. Erickson*, 522 U.S. 262, 266 (1998); *see also Dist. Att'y's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009) (stating that "due process [in the postconviction context] is not parallel to a trial right but rather must be analyzed in light of the fact that [the defendant] has already been found guilty at a fair trial, and has only a limited interest in postconviction relief"). Here, the record establishes that Jennings was both aware of his former state counsel's death[3] and on notice that a death warrant could be issued at any time. If Jennings had wanted new state counsel appointed upon his former counsel's death or at any time prior to the signing of the death warrant, or if he became aware of any new information that could have formed the basis for a new collateral claim, he could have raised those issues through

[3] As noted previously, Jennings filed a certificate of interested persons in the Eleventh Circuit in 2023 advising that McClain was deceased. Thus, Jennings and his federal counsel were indisputably aware of McClain's passing. Further, Jennings' lead federal counsel was McClain's law partner during much of the time that McClain represented Jennings in state court. *See Jennings*, 2025 WL 3096812, at *6 (collecting cases identifying McClain's law firm as "McClain & McDermott, P.A.")

his federal counsel. "Instead, [he] apparently alerted nobody and waited until the eleventh hour to . . . seek a stay of execution based on the lack of state counsel for the past three years." *Jennings v. DeSantis*, Doc. 22 at 7. As the district court observed in denying Jennings' stay motion in his section 1983 suit,

> Mr. Jennings does not contend that he lacked notice that his original state counsel had died in 2022, nor that he requested and was denied the appointment of new state postconviction counsel following his lawyer's death. Nor does he explain why it took over three years to seek relief from this Court for his deprivation of state counsel while he was simultaneously represented by federal habeas counsel. In short, this does not a due process claim make.

Id. at 5.

Nor was Jennings ever deprived of meaningful access to the courts. Before his death warrant was signed, he had nearly four decades to raise claims in opposition to his death sentence and execution—which he did, repeatedly, through numerous state and federal proceedings. In all of those proceedings, Jennings was represented by appointed counsel. And he continued to be represented by his federal counsel after the death of his former state counsel. Again, if he had wanted more time for his state counsel to investigate whether there were any new claims that could be raised in another state postconviction motion, he could have asked for the appointment of such counsel years before the death warrant was signed.

Finally, even if a right to the effective assistance of collateral counsel existed, there is no merit to Jennings' claim that his CCRC-M counsel was unable to effectively represent him under these circumstances. Jennings argued in state court that because of the three-year gap in state counsel, there was "no one [to] track[] any

changes in his mental or physical health or any other possible grounds for postconviction relief" during that period. *Jennings*, 2025 WL 3096812, at *7. But as the Florida Supreme Court pointed out in response, "that ignores exactly what his federal counsel was available to do." *Id.* Moreover, if there had been any changes in Jennings' condition or any new developments in his case that could have formed the basis for a new collateral claim, his federal counsel should have been aware of it and able to provide that information to his state collateral counsel. *See, e.g.*, *Bell v. State*, 415 So. 3d 85, 95 (Fla.) (recounting that after Bell's death warrant was signed, his federal CHU counsel contacted his state collateral counsel and provided information about claims that could be raised in a post-warrant motion for postconviction relief in state court), *cert. denied*, 145 S. Ct. 2872 (2025). Tellingly, despite the fact that he has been continuously represented by his federal counsel since 2015, Jennings identifies no specific claim that his state counsel was unable to develop and present in his fifth successive motion for postconviction relief.

In summary, there has been no violation of Jennings' rights to due process, access to the courts, or the assistance of counsel. On the contrary, Jennings has been given far more than the Constitution requires, including the opportunity to challenge his convictions and death sentence in numerous state and federal collateral proceedings and the assistance of appointed counsel in each of those proceedings. *Cf. Giarratano*, 492 U.S. at 7-10 (holding that there is no constitutional right to collateral counsel, even in capital cases, and explaining that "[s]tate collateral proceedings are not constitutionally required" at all). There is simply no merit to Jennings' claim that

he must be given yet another opportunity for his state counsel to investigate his case and attempt to raise yet more postconviction claims, especially given his continuous and uninterrupted representation by his federal counsel for the last ten years. Perhaps more importantly, Jennings has failed to identify any conflict of decisions or important and unsettled federal question to warrant review by this Court. *See* Sup. Ct. R. 10. Consequently, certiorari on this issue should be denied.

III. Jennings' Jury Unanimity, Proportionality, and Executive Clemency Arguments Are Barred for Lack of Jurisdiction and Facially Meritless Under This Court's Settled Precedent.

In his third question presented, Jennings launches a broad attack on Florida's overall capital scheme on the grounds that unanimous jury recommendations in favor of the death penalty are not required at sentencing, death sentences are no longer reviewed by the Florida Supreme Court on direct appeal for proportionality, and the executive clemency process is purportedly deficient. However, this Court lacks jurisdiction as to all three subparts of Jennings' argument. Moreover, none of these points have merit or warrant a writ of certiorari.

A. Jury Unanimity.

Jennings first argues that the capital sentencing scheme is unconstitutional because, under current law, a death sentence may be imposed on a supermajority jury recommendation of eight to four in favor of the death penalty, provided that the jury has unanimously found at least one aggravating factor beyond a reasonable doubt. *See* Fla. Stat. § 921.141(3)(a)2. (2025). Notably, that is not the scheme Jennings was sentenced under, and he does not argue that the scheme was

unconstitutional in 1986 when his sentence was imposed, although nonunanimous jury recommendations were also permitted at that time. *See Jennings*, 512 So. 2d at 171 (recounting that Jennings was sentenced to death by the trial court after the jury recommended death by a vote of eleven to one).

Regardless, there is no basis for a writ of certiorari on this issue. First, the state circuit court rejected this claim on the independent and adequate state-law ground that it was procedurally barred because the same claim was raised and rejected in one of Jennings' previous motions for postconviction relief. *See* Fla. R. Crim. P. 3.851(e)(2) (providing that a claim in a successive postconviction motion is procedurally barred when "it fails to allege new or different grounds for relief and the prior determination was on the merits"). Specifically, Jennings challenged his nonunanimous jury recommendation under *Hurst v. Florida*, 577 U.S. 92 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), *receded from in part by State v. Poole*, 297 So. 3d 487 (Fla. 2020), in his fourth successive postconviction motion. The Florida Supreme Court denied relief, finding that *Hurst* did not apply retroactively to Jennings' sentence, and this Court denied certiorari review. *See Jennings*, 265 So. 3d at 461; *Jennings*, 587 U.S. at 990; *see also McKinney v. Arizona*, 589 U.S. 139, 145 (2020) ("*Hurst* do[es] not apply retroactively on collateral review."). Thus, this Court lacks jurisdiction as to this subclaim.

Further, Jennings' argument is meritless under this Court's precedent. This Court has repeatedly made clear that while a jury must unanimously find at least one aggravating factor that makes the defendant eligible for the death penalty, a

jury need not make any recommendation as to the appropriate sentence, let alone do so unanimously. *McKinney*, 589 U.S. at 144 ("[I]n a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range."). Therefore, the Florida Supreme Court correctly ruled that Jennings' jury unanimity argument was meritless, *Jennings*, 2025 WL 3096812, at *9, and there is no conflict of decisions or unsettled federal question to warrant review.

B. Proportionality.

Jennings next challenges Florida's capital scheme based on the Florida Supreme Court's holding in *Lawrence v. State*, 308 So. 3d 544, 545 (Fla. 2020), that it is prohibited from reviewing death sentences for comparative proportionality on direct appeal under the Florida Constitution. The problem with Jennings' argument is that his death sentence was, in fact, reviewed for proportionality by the Florida Supreme Court and found to be proportionate. *See Jennings*, 453 So. 2d at 1116. Therefore, any holding by this Court in Jennings' case that proportionality review is constitutionally required would be a mere "advisory opinion," since his death sentence would still be constitutional. *Herb*, 324 U.S. at 126. Thus, this argument is likewise barred from review by this Court for lack of jurisdiction. In any event, the argument is also facially meritless, since this Court has long "declined to hold that the Eighth Amendment require[s] appellate courts to perform proportionality review of death sentences." *Giarratano*, 492 U.S. at 9 (citing *Pulley v. Harris*, 465 U.S. 37

(1984)). Again, the Florida Supreme Court's rejection of this subclaim on the merits does not warrant review. *Jennings*, 2025 WL 3096812, at *9.

C. Clemency.

In his final subclaim, Jennings argues that the Governor's signing of his death warrant without providing an updated clemency proceeding violated the "Eighth Amendment's demand for fairness and evolving standards of decency." Petition at 36-37. The warrant states that "executive clemency . . . was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate." *Jennings*, 2025 WL 3096812, at *5. Jennings argued in his fifth successive Rule 3.851 motion that although he participated in a clemency proceeding in 1988 at which he was represented by counsel, "the thirty-six-year time lapse between his clemency proceeding and the signing of his death warrant makes his clemency determination inadequate as an arbitrary denial." *Id.* at *4-5.

Once again, this subclaim is barred for lack of jurisdiction because the Florida Supreme Court rejected Jennings' argument on the independent and adequate state-law grounds that it was time-barred and procedurally barred. The Florida Supreme Court found that the "new facts" Jennings argued the Governor should have considered were "either public knowledge or [had been] known to [Jennings] since 1989." *Id.* at *4. Further, Jennings acknowledged that he could have reapplied for clemency over the 36 years since his original application was denied, but he never did. Thus, the Florida Supreme Court found that the claim was both untimely under Rule 3.851(d) and procedurally barred under Rule 3.851(e)(2). *Id.*

Even so, certiorari review is again unwarranted on the merits. Jennings claims in his petition that he was "den[ied] . . . any opportunity to supplement or renew his clemency petition for thirty-six years," and that the purported denial "is tantamount to denying access altogether." Petition at 36. But that is directly contrary to what he said in his fifth successive postconviction motion, in which he acknowledged that he could have reapplied for clemency but did not. *Jennings*, 2025 WL 3096812, at *4. As the Florida Supreme Court also accurately observed, this Court has never "required any specific procedures or criteria to guide the executive's signing of warrants for death-sentenced inmates." *Id.* at *5 (quoting *Marek*, 14 So. 3d at 998). On the contrary, this Court has stated that "pardon and commutation decisions have not traditionally been the business of courts; as such, they are rarely, if ever, appropriate subjects for judicial review." *Woodard*, 523 U.S. at 276 (quoting *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1985)).

This Court has never required a formal clemency proceeding, "much less a second clemency proceeding to present purportedly developed mitigation." *Jennings*, 2025 WL 3096812, at *6. Even if "some *minimal* procedural safeguards apply to clemency proceedings," *Woodard*, 523 U.S. at 289 (O'Connor, J., concurring) (original emphasis), they were satisfied here. Moreover, Jennings—who kidnapped, raped, and murdered a six-year-old girl, and whose guilt for those crimes is not disputed, *see Jennings*, 392 F. Supp. 2d at 1315 n.1, 1324 (observing that Jennings has never "claimed innocence" and that the evidence of his guilt was "overwhelming")—is an exceptionally poor candidate for clemency under any circumstances. And again, even

if this Court had jurisdiction, Jennings fails to identify any conflict of decisions or unsettled federal question that would warrant review.

CONCLUSION

The petition for a writ of certiorari should be denied.

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