No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD BARRY RANDOLPH,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI
CAPITAL CASE

SET FOR EXECUTION ON NOVEMBER 20TH AT 6:00PM ON

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether Florida violated the Supremacy Clause by constructing a system of post-conviction litigation that provides no avenue for the assertion of applicable rules of federal constitutional law.

2. Whether Florida denied Mr. Randolph minimal due process involving clemency.

PARTIES TO THE PROCEEDING BELOW

Petitioner Richard Randolph, a death-sentenced Florida inmate facing imminent execution, was the Appellant and the State of Florida was the Appellee in the Florida Supreme Court.

LIST OF DIRECTLY RELATED PROCEEDINGS

Per Supreme Court Rule 14.1(b)(iii), the following proceedings relate to the case at issue in this Petition:

Underlying Trial:

Seventh Judicial Circuit Court of Putnam County, Florida
State of Florida v. Richard Barry Randolph, Case No. 88-1357-CF-M
Judgment Entered: April 5, 1989

Direct Appeal:

Florida Supreme Court, Case No. SC60-74083
Randolph v. State, 562 So. 2d 331 (Fla. 1990)
Judgment Entered: May 3, 1990

Supreme Court of the United States, Case No. 90-5949
Randolph v. Florida, 498 U.S. 992 (1990)
Judgment Entered: November 26, 1990

Initial Postconviction Proceedings:

Circuit Court of Putnam County, Florida
State of Florida v. Richard Barry Randolph, Case No. 88-1357-CF-M
Judgment Entered: April 2, 1993 (Claim 5); February 24, 1998 (Claims 1-19); and May 14, 1998 (Claim 20)

Florida Supreme Court, Case No. SC60-81950
Randolph v. State, 676 So. 2d 369 (Fla. 1996)
Judgment Entered: March 7, 1996

Florida Supreme Court, Case No. SC60-93675
Randolph v. State, 853 So. 2d 1051 (Fla. 2003)
Judgment Entered: April 24, 2003

State Habeas Proceedings

Florida Supreme Court, Case No. SC01-2855
Randolph v. James v. Crosby, Jr., etc., 853 So. 2d 1051 (Fla. 2003)
Judgment Entered: April 24, 2003

Subsequent State Habeas Proceedings

Florida Supreme Court, Case No. SC03-1056
Randolph v. James v. Crosby, 861 So. 2d 430 (Fla. 2003)
Judgment Entered: November 21, 2003

Supreme Court of the United States, Case No. 03-8419
Randolph v. Sec'y, Fla. Dep't of Corr., 541 U.S. 961 (2004)
Judgment Entered: March 29, 2004

Federal Habeas Proceedings

United States District Court for the Middle District of Florida
Randolph v. Walter A. McNeil, No. 3:04-CV-1206-J-33, 2008 WL 11438125, at *1 (M.D. Fla. Feb. 19, 2008)
Judgment Entered: February 19, 2008

United States Court of Appeals for the Eleventh Circuit, Case No. 08-12854
Randolph v. Walter A. McNeil, Bill McCollum, 590 F.3d 1273 (11th Cir. 2009)
Judgment Entered: December 22, 2009

Supreme Court of the United States, Case No. 10-5601
Randolph v. Walter A. McNeil, Sec'y, Fla. Dep't of Corr., et al., 131 S. Ct. 506 (2010)
Judgment Entered: November 1, 2010

Subsequent Successive Postconviction Proceedings

Circuit Court of Putnam County, Florida
State of Florida v. Richard Barry Randolph, Case No. 88-1357-CF-M
Judgment Entered: March 7, 2011

Florida Supreme Court, Case No. SC11-725
Randolph v. State, 91 So. 3d 782 (Fla. 2012)
Judgment Entered: April 26, 2012

Subsequent Successive Postconviction Proceedings

Circuit Court of Putnam County, Florida
State of Florida v. Richard Barry Randolph, Case No. 88-1357-CF-M
Judgment Entered: December 31, 2019

Florida Supreme Court, Case No. SC20-287
Randolph v. State, 320 So. 3d 629 (Fla. 2021)
Judgment Entered: February 4, 2021
Rehearing Denied: June 22, 2021

Subsequent Successive Postconviction Proceedings

Circuit Court of Putnam County, Florida
State of Florida v. Richard Barry Randolph, Case No. 88-1357-CF-M
Judgment Entered: December 11, 2023

Florida Supreme Court, Case No. SC2024-0273
Randolph v. State, 403 So. 3d 206 (Fla. 2024)
Judgment Entered: December 5, 2024
Rehearing Denied: February 26, 2025

Subsequent Successive Postconviction Proceedings

Circuit Court of Putnam County, Florida
State of Florida v. Richard Barry Randolph, Case No. 88-1357-CF-M
Judgment Entered: October 31, 2025

Florida Supreme Court, Case No. SC2025-1722
Randolph v. State, SC2025-1722; 2025 WL 3170826 (November 13, 2025)
Judgment Entered: November 13, 2025

Subsequent State Habeas Proceedings

Florida Supreme Court, Case No. SC2025-1723
Randolph v. Sec'y of Corr., SC2025-1722; 2025 WL 3170826 (November 13, 2025)
Judgment Entered: November 13, 2025

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Richard Barry Randolph respectfully petitions this Court for a writ of certiorari to review the judgments of the Florida Supreme Court entered on November 13, 2025 denying his motion for post-conviction relief and petition for a writ of habeas corpus.

ORDERS AND OPINIONS BELOW

In the courts below Mr. Randolph sought relief from his death sentence by filing a motion for postconviction relief in the court of conviction pursuant to Florida Rule of Criminal Procedure 3.851 and a petition for habeas corpus with the Florida Supreme Court. The Florida Supreme Court denied relief in both proceedings in a single opinion. *Randolph v. State*, Case No. SC2025-1722, 1723 (Fla. November 13, 2025) (Appendix A). The unpublished order of the lower state court denying Petitioner's postconviction motion appears as Appendix B.

JURISDICTION

This Court's jurisdiction to review the decision of the Florida Supreme Court is invoked pursuant to 28 U.S.C. § 1257(a). The Florida Supreme Court issued its decision on November 13, 2025; thus, this Petition is timely.

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides in pertinent part:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Supremacy Clause, found in Article VI, Clause 2, of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

INTRODUCTION AND STATEMENT OF THE CASE

The State of Florida seeks to execute Richard Barry Randolph, an indigent defendant and military veteran, who was horribly abused as a child by his adoptive parents and who was represented at trial by counsel who failed to effectively investigate and present his background and life story, and who was a special deputy sheriff in three Florida counties at the time he represented Mr. Randolph. In spite of trial counsel's half-hearted, single-witness, penalty phase presentation, Mr. Randolph's penalty phase jury sentenced him by a mere eight-to-four verdict in favor of death. [1]

It is common ground that the rape and murder of a woman during a botched robbery is deeply reprehensible and should be punished accordingly. Mr. Randolph's crime, though, was neither the most aggravated nor the least mitigated of murders. But the Florida court system in this case – as it consistently does in capital cases—disregarded multiple rulings of this Court as it erected a series of obstacles to his meaningful presentation of his life history to a sentencing jury and challenges to the constitutionality of his sentence and method of execution.

A. Facts of Crime

Mr. Randolph was charged in Putnam County Circuit Court, Seventh Judicial Circuit, with first degree murder, armed robbery, sexual battery, and grand theft of a motor vehicle in connection with the death and assault of Minnie Ruth McCollum.

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1 Florida remains an outlier in allowing a mere eight to four majority to impose a sentence of death. No other state in the nation authorizes a death sentence on such a verdict.

Randolph v. State, 562 So. 2d 331 (Fla. 1990). Ms. McCollum was the manager of a Handy-Way store in Palatka, Florida, where Mr. Randolph had worked. *Id*. at 332. Mr. Randolph entered the store in the early morning hours with the intent to steal money form the safe, but brutally attacked Ms. McCollum when she surprised him, ransacked the store, and left the store in her car. *Id*. When police entered the store later that morning, they found Ms. McCollum on the floor, semi-conscious, partially nude, and bleeding from her head. *Id*. She died six days later from her injuries. *Id*. at 333.

B. Initial Proceedings

Mr. Randolph was represented at trial by court-appointed counsel, Howard Pearl.[2] The State presented testimony that Mr. Randolph admitted that he had ridden his bicycle to the store carrying a toy gun, and had planned to enter the store and tried to obtain money from the safe before the manager came back from outside, but had been discovered by Ms. McCollum, who he attacked and eventually stabbed as she continued to attempt to stop him. Mr. Randolph was found guilty by jury trial on February 23, 1989.

The very next day, February 24, 1989, his trial counsel presented a single witness, a forensic psychologist, Dr. Harry Krop, at his half-day penalty phase proceeding. Dr. Krop's background review consisted of him speaking to Mr. Randolph, Mr. Randolph's adoptive father and Mr. Randolph's ex-girlfriend. (R. 1720). Defense

[2] Howard Pearl had "special deputy" status with the Marion County, Florida Sheriff's Office and had armed himself during a capital trial against his client "in response to a perceived threat to his personal safety[.]" *Teffeteller v. Dugger*, 734 So. 2d 1009, 1017 (Fla. 1999).

counsel failed to provide any background records to his expert. Dr. Krop testified that "there were none of the statutory mitigating factors which existed from a psychological point of view." (R. 1725).

The limited testimony he provided included that Mr. Randolph was adopted at five months old. The extent of the information provided about Mr. Randolph's birthparents was that they were two college students who had a baby and put "it" up for adoption. "And that's as far as we know about his early life." (R. 1732)

Dr. Krop did admit that he had been told by Mr. Randolph and his adoptive father, that Mr. Randolph's adoptive mother was emotionally unstable, had been hospitalized on a "couple of occasions" for psychiatric reasons, and was an ineffective parent. (R. 1733) Dr. Krop mentioned to the jury, in a single passing reference, that Mr. Randolph's adoptive father physically abused him by tying him up and beating him all over his body with his hands, a broomstick or a belt. Dr. Krop further acknowledged that the father downplayed this physical abuse as needed discipline. (R. 1733). Dr. Krop stated Mr. Randolph graduated high school and served in the military with an honorable discharge, but subsequently became addicted to crack-cocaine. (R. 1734). In spite of this abysmal effort and presentation, the jury rendered an advisory recommendation for death by a mere eight (8) to four (4) vote. The jury was not asked to make any factual findings.

On April 5, 1989, the trial court sentenced Mr. Randolph to death. The trial court failed to acknowledge or mention the abuse suffered by Mr. Randolph in pronouncing sentence. The trial court found four (4) aggravating factors: (1) the crime was committed while engaged in the commission or flight after commission of a sexual

battery; (2) the crime was committed for the purpose of avoiding or preventing a lawful arrest; (3) the crime was committed for pecuniary gain; and the crime was especially heinous, atrocious, or cruel (HAC). The trial court rejected proposed statutory mitigation of no significant history of criminal activity based on information in the pre-sentence report which had not been presented to the jury and rejected the statutory mitigating factor of extreme mental or emotional disturbance. The court found two (2) non-statutory mitigating factors (1) Mr. Randolph possesses an a-typical personality disorder; and (2) Mr. Randolph expressed shame or remorse for his conduct but stated that "said factors even if proven would not outweigh any one of the aggravating factors standing alone." (R. 645-46). The Florida Supreme Court affirmed Mr. Randolph's convictions and sentences. *Randolph v. State*, 562 So. 2d 331 (Fla. 1990), *cert. denied, Randolph v. Florida,* 498 U.S. 992 (1990).

C. Initial State Postconviction Proceedings

On April 6, 1992, Mr. Randolph timely filed his initial postconviction motion pursuant to Fla. R. Crim. Pro. 3.850, which he amended on July 6, 1992. The postconviction court summarily denied relief. The Florida Supreme Court reversed and remanded the case for an evidentiary hearing. *Randolph v. State,* 676 So. 2d 369 (Fla. 1996).

Postconviction counsel for Mr. Randolph presented multiple witnesses, both family and friends, that testified with firsthand, emotionally charged accounts of the horrific childhood abuse Mr. Randolph suffered, including being beaten and shut in a closet for days. The witnesses also testified about Mr. Randolph's emotional problems and drug abuse. Postconviction counsel also presented neuro-psychologist Dr. Hyman

Eisenstein, who found the existence of mental health statutory mitigation, and addiction expert Dr. Milton Burglass, who explained Mr. Randolph's addiction and the effects of that addiction on his reasoning and thought processes.

Mr. Randolph's family and friends testified in striking detail about Mr. Randolph's drug problems, emotional problems, child abuse and personal history, including how his adoption made him feel like he was not a real boy, how he was at times locked in a closet for days at a time as punishment. Howard Pearl failed to contact the witnesses and as a result the sentencing jury and judge never heard this mitigating evidence.

Mr. Randolph's father, Timothy Randolph, testified that in 1969 or 1970, the school, concerned about Mr. Randolph's behavior, recommended that Timothy Randolph and his wife—Mr. Randolph's adoptive mother—Pearl Randolph, take Mr. Randolph to a psychiatrist for medication to control his behavior. (PCR. 3624). Mr. Randolph was medicated for over two years, and it seemed to help. (PCR. 3624-25). Timothy Randolph explained that he punished and beat Mr. Randolph to control his "disruptive behavior." (PCR. 3642-45). Timothy Randolph claimed that Pearl Randolph loved Mr. Randolph until she lost control when Mr. Randolph was a little boy. (PCR. 3645).

Timothy Randolph said he divorced Pearl in 1972, when Mr. Randolph was 10, because of Pearl's drinking problem and resulting behavior. (PCR. 3619-20). When Pearl became intoxicated, she would frequently burn meals and engage in bouts of uncontrollable behavior. (PCR. 3620). Timothy Randolph also testified that they frequently argued in front of their son. (PCR. 3622). Timothy Randolph was contacted

to attend the sentencing after Mr. Randolph was convicted but never asked to testify. Timothy Randolph explained that had he been asked to testify, he would have done so. (PCR. 3640).

During the evidentiary hearing, Pearl Randolph testified that Timothy Randolph had suggested they adopt a child. (PCR. 3660). Having never heard of adoption, Pearl Randolph was initially not agreeable, but eventually agreed. (PCR. 3660). Pearl Randolph explained that she went to an agency and after two years was told the agency had a boy child for her. They named the child Richard Barry Randolph. (PCR. 3661). During the first two years, Pearl Randolph noticed Mr. Randolph not acting normally. He cried such that Pearl Randolph believed something was out of the ordinary. (PCR. 3662-63). Mr. Randolph would have tantrums, grit his teeth, and do unusual things. (PCR. 3663). Pearl Randolph noticed that neither his hands nor feet developed normally. (PCR. 3663). Pearl Randolph came to believe that the adoption agency knew something was wrong with the infant or the mother but had not told her. (PCR. 3663). Mr. Randolph's unusual behavior continued as he grew up.

When Mr. Randolph was told of his adoption, he was extremely upset, screaming and crying, and could not accept the news; he was four- or five-years-old at the time (PCR. 3664-65). Concerning the demise of her marriage to Timothy Randolph, Pearl Randolph said that it was Mr. Randolph who learned that Timothy Randolph was talking on the phone to other women, and that it was Mr. Randolph who told her about the phone conversations. (PCR. 3665). Thus, it was Mr. Randolph's disclosure of his father's infidelity that led to the separation of his parents. After

Timothy Randolph left Pearl, she saw him harshly beat Mr. Randolph. (PCR. 3667). Pearl said she told Timothy to hit her instead and explained that Timothy Randolph had previously beaten her with a broom, injuring her and prompting her to call the police. (PCR. 3668). Pearl Randolph had to get psychological help when she learned that Timothy Randolph was going to remarry. (PCR. 3671). Pearl Randolph usually relieved her emotional pain by drinking beer. (PCR. 3671).

Mr. Randolph's stepmother, Shirley Randolph, also testified at the evidentiary hearing. Shirley Randolph explained how Mr. Randolph came to live with her and Timothy Randolph shortly after they were married and stayed until his senior year. Shirley described their relationship as not the best, but not terrible, (PCR. 3649) and explained that Mr. Randolph had a good relationship with Jermaine, his young stepbrother. (PCR. 3649). Shirley Randolph explained that Mr. Randolph did not speak about Pearl Randolph or express much emotion, (PCR. 3649), and he never saw Pearl Randolph while living with her and Timothy Randolph. To her recollection, Pearl Randolph never called, never sent for him, never came to visit, and never sent him birthday cards or even tried to call him on his birthday. (PCR. 3650- 51). Shirley Randolph also admitted, however, that neither she nor Timothy Randolph ever celebrated Mr. Randolph's birthday. (PCR. 3655).

In addition to family members, Mr. Randolph presented the testimony of other witnesses who had not been contacted by trial counsel. Janene Betts's mother, Verna Whitney Betts (PCR. 3297), testified that she met Mr. Randolph in Fairfield, North Carolina in 1986 when he was Janene's boyfriend. (PCR. 3298). He called Verna Betts

"mama" and wanted her to be his mother because she did not use punishment in the unusual and severe way his father had. (PCR. 3336, 3339).

Mrs. Betts and Mr. Randolph became close. Mrs. Betts testified that Mr. Randolph had suffered severe punishment for minor things during his childhood. (PCR. 3318). His parents put him in a room or closet for two to three days in the dark and forced him to eat alone. (PCR. 3318, 3339). Mr. Randolph was required to be an A student by his father and tried and tried to get good grades to avoid punishment. Mr. Randolph felt badly because he saw Mrs. Betts's treatment of her children and it hurt him that he was not treated as a "real" child of his father's or as well as his father's natural son. (PCR. 3319, 3324). Mr. Randolph felt like an outcast in his own family. (PCR. 3325).

The court denied relief. Mr. Randolph timely appealed and filed a timely state habeas petition, alleging the Florida death penalty scheme violated *Ring v. Arizona*, 536 U.S. 584 (2002),which the Florida Supreme Court denied. *Randolph v. State,* 853 So. 2d 1051 (Fla. 2003); *Randolph v. Crosby*, 861 So. 2d 430 (Fla. 2003).

D. *Porter* proceedings

In 2011, Mr. Randolph filed a successive motion arguing that this Court's decision in *Porter v. McCollum*, 558 U.S. 30 (2009) finding the Florida Supreme Court's analysis in *Porter v. State*, 788 So. 2d 917 (Fla. 2001) to be an unreasonable application of clearly established federal law, warranted reconsideration of his claim of ineffective assistance of counsel for counsel's failure to investigate and present his childhood abuse and military service at his penalty phase trial. Mr. Randolph argued that the Florida courts had unreasonably discounted his history of child abuse, just

as they had in *Porter*. The Florida Supreme Court denied this claim in a summary order. *Randolph v. State,* 91 So. 3d 782 (Fla. 2012)

E. ***Hurst* proceedings**

After this Court held in *Hurst v. Florida*, 577 U.S. 92 (2016) that Florida's death penalty scheme violated *Ring,* Mr. Randolph timely renewed his prior *Ring* claim, once again arguing that his death sentence was unconstitutional under the Sixth Amendment. The postconviction court denied his claim and the Florida Supreme Court affirmed, finding that because his case was final prior to the issuance of *Ring*, Mr. Randolph was not entitled to relief. *Randolph v. State*, 320 So. 3d 629 (Fla. 2021)

F. Newly discovered evidence of birth family

In 2023, Mr. Randolph filed a timely successive motion raising the claim that newly discovered evidence of the identity of his birth parents warranted a new penalty phase proceeding where jurors could give greater weight and meaning to the abuse he suffered at the hands of his adoptive parents. Mr. Randolph argued that his birth parents, who were both well-educated and had lived stable lives without experiencing or engaging in domestic violence, criminality or drug or alcohol addiction, demonstrated that the extent of the abuse Mr. Randolph suffered as a child had a deep and profound effect on his emotional and psychological development, and was a fact which would probably persuade a reasonable juror to vote for life. The lower court summarily denied the claim and the Florida Supreme Court affirmed. *Randolph v. State*, 403 So. 3d 206 (Fla. 2024)

G. Clemency

On February 18, 2014, the State of Florida appointed the Regional Conflict Counsel for the Fifth District (RCC-5) to represent Mr. Randolph in his clemency proceedings. (App., 121a) Mr. Randolph's postconviction counsel are precluded from representing Mr. Randolph in clemency proceedings under Florida statutory law.

RCC-5 represented Mr. Randolph in his clemency proceedings from February 18, 2014 to June 26, 2014. (App., 121a.) RCC-5 did no work on Mr. Randolph's clemency proceedings since 2014, was never contacted by the State, the Office of the Governor, or the Clemency Board until October 21, 2025, when RCC-5 received a letter from Ian F. Berry, Coordinator of the Office of Executive Clemency, stating that the Governor's signing of Mr. Randolph's death warrant "concludes the clemency process." Florida, which has carried out the most executions in 2025, provides no public information about how prisoners are selected for execution or clemency denial. Florida's clemency process is shrouded in complete secrecy. No death row prisoner in Florida has been granted clemency since 1983. *https://deathpenaltyinfo.org/news/mid-year-review-2025-new-death-sentences-remain-low-amidst-increase-in-executions-2* (last visited November 16, 2025).

H. Warrant Proceedings

On October 21, 2025, the governor signed a warrant for Mr. Randolph's execution, setting the execution for November 20, 2025. Mr. Randolph had no advance warning or notice that he would be selected for execution out of the other hundred plus warrant-eligible capital defendants on death row. Pursuant to a scheduling order issued by the warrant court, Mr. Randolph had to file his public records by October 23, 2025, by 3:00 p.m. and his motion by Tuesday, October 28, 2025, at 3:00 p.m.,

giving Mr. Randolph less than 5 business days to investigate and file a fully pleaded successive motion.

As required by Florida law, Mr. Randolph sought discovery under Florida Rule of Criminal Procedure 3.852. Mr. Randolph filed 3.852(h) demands on agencies that had previously provided records and 3.852(i) demands on agencies from which records were not previously requested, within 24 hours. Mr. Randolph sought records from a number of agencies relevant to lethal injection and clemency. (WR. 307-15).

Mr. Randolph filed a Demand to the Florida Department of Corrections ("FDOC"), requesting both an update of Mr. Randolph's classification and medical files and records pertaining to lethal injection. (WR. 116, App.,131a). FDOC filed a notice of compliance and produced Mr. Randolph's updated classification and medical records. (WR. 164). As to the lethal injection records, FDOC objected, arguing such records were exempt, Mr. Randolph had not related the records to a colorable claim, and an "as applied" challenge would be legally insufficient. (WR. 255). Mr. Randolph again acknowledged the exemptions under Florida law, but asked the lower court to reserve ruling until he filed his 3.851 motion the next day. (WR. 367). The court sustained all of the objections, relying on Florida law which essentially precludes any state court discovery of lethal injection records under Fla. R. Crim. Pro. 3.852, although non-capital defendants can obtain the same information under Florida's public records law. (App., 33a).

Mr. Randolph filed a 3.852(i) demand on the Office of the Medical Examiner, District 8, seeking all autopsy protocols and reports and records for twenty men executed by the State of Florida for the preceding three years, by name. (App., 139a).

The Office of the Attorney General filed a written objection on behalf of the Medical Examiner's Office, claiming that Mr. Randolph was not entitled to seek public records from this office, as he had never sought records prior, that the records were not related to a colorable claim, that good cause was not demonstrated in the delay of requesting these records and "as applied" arguments would be legally insufficient. (WR-244). Mr. Randolph, again asked the lower court to reserve ruling for 24 hours so that the court would have the benefit of Mr. Randolph's 3.851 Motion which included a challenge to lethal injection due to Mr. Randolph's medical condition, and his right under the Eighth Amendment to be free from cruel and unusual punishment, including excessive pain and a tortuous death. (WR-363). The lower court issued a written ruling, sustaining all objections, relying on current Florida caselaw. (App. 33a).

Mr. Randolph also filed 3.852(i) demand to Florida Department of Law Enforcement ("FDLE") concerning Lethal injection protocols and information pertaining to the last 20 executions. (App.,123a). FDLE filed a written objection that the defense had not established a colorable claim citing to the current Florida case law. (WR-192). While Mr. Randolph was mindful of current Florida law, he again asked the lower court to reserve ruling on the objections until the court had the benefit of the Rule 3.851 motion with the "as applied challenge." (WR-360). The lower court issued a written order sustaining all objections the same day. (App.,33a).

Mr. Randolph raised three claims in his successive motion: 1. An applied challenge to Florida's lethal execution protocol based on Mr. Randolph's lupus and the continual effects of this disease on Mr. Randolph; 2. A due process and Eighth

Amendment challenge to the truncated warrant process Mr. Randolph was forced to raise his federal constitutional claims, including his lethal injection claim; 3. That Mr. Randolph was denied minimal due process for his clemency proceedings because his clemency interview took place in 2014 failed to consider his personal and spiritual growth and consider his daily struggle with lupus and the overall deterioration of Mr. Randolph's medical condition due to FDOC's failure to provide medically necessary treatment of his lupus. (App.,42a)

The State filed their Response Thursday, October 30, 2025. On October 30, 2025 the warrant court held a case management hearing on the motion. The warrant court denied an evidentiary hearing on all claims about two hours later. The warrant court entered its final order denying Mr. Randolph's motion the next day, October 31, 2025. Mr. Randolph timely appealed the denial of his claims to the Florida Supreme Court and the warrant court's denial of all record demands under Fla. R. Crim. Pro. 3.852. He also filed a state habeas petition in the Florida Supreme Court raising a claim that Mr. Randolph's trial counsel violated his Sixth Amendment right to autonomy based on this Court's opinion in *McCoy v. Louisiana*, 584 U.S. 414 (2018).

On November 13, 2025, the Florida Supreme Court affirmed the warrant court and denied habeas relief. (App., 1a.) The court affirmed the warrant court's denial of Mr. Randolph's public record demands after "applying our deferential abuse-of-discretion standard of review. . ." (App., 7a.) The Florida Supreme Court did not address a single record demand and appeared to disregard argument made in Mr. Randolph's briefing. The court acknowledged that: "Within this issue, Randolph advances some constitutional challenges to Florida Rule of Criminal Procedure 3.852,

which governs the production of public records in capital postconviction proceedings." App., 8a-9a. The court did not acknowledge any of the particulars of Mr. Randolph's claims, merely denying his claim premised on a string cite of prior warrant record denial claims concerning various constitutional challenges from the past. App., 8a-9a. The court concluded that Mr. Randolph 'has not advanced any argument giving us reason to doubt our rule 3.852 precedent." App., 9a.

The court affirmed the warrant court's ruling on claim I, lethal injection, because, the court "totally agree[d]" with the warrant court that, "it was untimely, procedurally barred, and legally insufficient." App., 9a. The court affirmed the warrant court's denial of claim II (the truncated warrant period and denial of public records because, in the court's view, "it lacked merit" based on the Florida Supreme Court's own precedent. App., 12a-13a. The court affirmed the denial of claim III (denial of a full and fair clemency) because it too "lacked merit." This was also based on the Florida Supreme Court's own precedent. App., 14a. Finally, the court denied Mr. Randolph's habeas petition. App., 16a

REASONS FOR GRANTING THE WRIT

I. Florida has Violated the Supremacy Clause by Constructing a System of Postconviction Warrant Litigation that Provides no Avenue for the Assertion of Applicable Rules of Federal Constitutional Law.

To sustain an as-applied challenge to a method of execution challenge under the Eighth Amendment, a prisoner must make the same showing as required for a facial challenge. *Bucklew v. Precythe*, 587 U.S. 119, 140 (2019). Mr. Randolph must: (1) "establish that the method presents a risk that is 'sure or very likely to cause serious illness and needless suffering,'" *Glossip v. Gross*, 576 U.S. 863 at 877 (2015)

(quoting *Baze v. Rees*, 553 U.S. 35 at 50-52 (2008)); and, (2) "identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip*, 576 U.S. at 877)). Mr. Randolph must also show that the State has failed to adopt an alternative "without a legitimate penological reason." *Bucklew* at 134.

Mr. Randolph met the preliminary pleading requirements to sustain an Eighth Amendment as-applied challenge, arguing that the progression of his lupus had so damaged his lung capacity that execution by Florida's three-drug execution protocol would very likely cause serious illness and needless suffering. Mr. Randolph offered two known and readily available alternatives: 1) execution by firing squad, and 2) execution by a single dose of pentobarbital. Both alternatives have been used in other states and by the federal government within the last ten years. Indeed, South Carolina executed three prisoners by firing squad in 2025, including most recently on November 14, 2025. https://www.nbcnews.com/news/us-news/man-executed-firing-squad-south-carolina-deaths-3-people-2004-rcna244075 (last visited November 16, 2025) This Court, in *Wilkerson v. Utah*, 99 U.S. 130, 25 L.Ed. 345 (1879), determined execution by firing squad to be constitutional. Further, the Florida Legislature just passed, and the Governor signed, legislation (Fla. Stat. 922.10; Ch. 2025-81) which went into effect July 1, 2025, providing that "a method not deemed unconstitutional" is an acceptable form of execution in Florida. Both of Mr. Randolph's alternative methods are permissible under Fla. Stat. 922.10 (2025) and are readily available.

However, despite meeting preliminary pleading requirements, the Florida courts denied him both discovery and the opportunity to present evidence to support

his claim. Contrary to the U.S. Constitution, and this Court's body of case law, the Florida courts precluded Mr. Randolph from any opportunity to present evidence in support of his federal constitutional claim.

A. The Evidence Mr. Randolph Proffered Showed That Mr. Randolph had Made a Prima Facie Showing for an As-Applied Eighth Amendment Challenge.

Mr. Randolph has lupus, an autoimmune disorder. Individuals with lupus experience damage to their organs when their body's immune system attacks its own tissues and organs. (App., 106a-111a) Inflammation caused by lupus can affect many different body systems—including "joints, skin, kidneys, blood cells, brain, heart and lungs."[3] Mr. Randolph was diagnosed with lupus by the Florida Department of Corrections (hereinafter "FDOC") in 1990. "Scientists aren't sure what exactly causes lupus. But most believe it's a combination of genes, hormones, and environment."[4]

To develop this claim, counsel sought updated medical records from the FDOC in June of 2025. Additionally, counsel retained anesthesiologist Dr. Joel Zivot, to review Mr. Randolph's medical records and to assess whether the progression of Mr. Randolph's lupus had reached the point where Florida's lethal injection protocol might cause serious illness and needless suffering. Before Dr. Zivot could evaluate Mr. Randolph, on October 21, 2025, the Governor signed the warrant for Mr. Randolph's execution, currently scheduled for November 20, 2025.

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[3] https://www.mayoclinic.org/diseases-conditions/lupus/symptoms-causes/syc-20365789#overview.

[4] https://www.mayoclinic.org/diseases-conditions/lupus/symptoms-causes/syc-20365789#overview. (last visited November 16, 2025)

Mr. Randolph was able to arrange with the FDOC for Dr. Zivot to speak with Mr. Randolph by telephone, although there was insufficient time for Dr. Zivot to evaluate Mr. Randolph in person. Following his review of Mr. Randolph's medical records and his telephonic evaluation of Mr. Randolph and his symptoms, Dr. Zivot wrote a report, opining that due to the progression of Mr. Randolph's lupus, particularly when considering his lung function, execution using Florida's three-drug protocol would result in serious illness and needless suffering as Mr. Randolph would experience pulmonary edema which is indisputably extraordinarily painful.

Florida law requires a postconviction court, and an appellate court, to accept a criminal defendant's pleadings as true unless refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009) ("Because the circuit court denied postconviction relief without an evidentiary hearing, this Court must accept the factual allegations presented in [Mr. Randolph's] motion as true to the extent that they are not conclusively refuted by the record.") Mr. Randolph pleaded that because of his lupus, "the method presents a risk that is 'sure or very likely to cause serious illness and needless suffering,'" *Glossip*, 576 U.S. at 877 (quoting *Baze*, 553 U.S. at 50-52. In his motion he "identif[ed] a known and available alternative method of execution that entails a significantly less severe risk of pain." *Glossip*, 576 U.S. at 877.

In support of his claim, Mr. Randolph attached the report of Dr. Zivot, which stated in relevant part:

> Mr. Randolph has been diagnosed with discoid lupus and systemic lupus. Lupus is a chronic autoimmune disease in which the immune system mistakenly attacks the body's own healthy tissues and organs. This condition tends to flare up at various times and can cause severe dysfunction. Discoid lupus describes the condition when it is confined to

the skin. Mr. Randolph was initially diagnosed with this form of lupus, but the condition quickly became more generalized.

Lupus can be described in three levels of severity: mild, moderate, and severe. Mild lupus includes a skin rash and joint pains. Mr. Randolph has at least these complaints Moderate lupus includes a skin rash, joint pain, constitutional symptoms, and blood disorders. Mr. Randolph has a chronically reduced white blood cell count. This is likely the consequence of lupus and now puts him in the moderate category. In the severest form, organ damage to the kidneys, brain, and lungs can be seen. Specific diagnostic blood tests can be done to confirm the presence of lupus.

On balance, Mr. Randolph is in marginal health. He has received chronically poor health care while incarcerated. This poor care is a direct contributor to his poor health. I have serious concerns about his lung function. He also gets occasional chest pain and is treated for hypertension. Heart and lung dysfunction significantly raises the risk of profound and painful organ failure and increases the known risk of pulmonary edema, an unnecessarily painful condition, which is often observed in lethal injection executions.

A review of the Florida lethal execution protocol involves the sequential intravenous delivery of three drugs to a person to be executed. The first drug is Etomidate, followed by Rocuronium Bromide, and then Potassium Acetate. Etomidate is a non-barbiturate sedative hypnotic drug used in anesthesiology practice in several different situations. Etomidate is primarily metabolized in the liver, which means it will accumulate rapidly there. Etomidate is not classically considered an analgesic (used for the control of pain). Neither of the subsequent drugs used in the protocol is analgesic. Rocuronium Bromide is a rapidly acting paralyzing drug and will paralyze any individual, in this case, the prisoner, making it impossible to communicate to observers that pain is occurring. Potassium Acetate is a drug that regulates heart contraction. In large doses, Potassium Acetate is painful when injected and will cause the heart to cease functioning.

> [Dr. Zivot] anticipate[s] many severe and painful outcomes during any attempt to execute Mr. Randolph. Positioning him will lead to an immediate state of severe pain. The sequential injection of the lethal chemicals will cause his lungs to fill with bloody froth as he slowly dies. Observers may see little of this, as the paralyzing drug will effectively block the outward appearance of his drowning in his blood. All of this is unnecessary as it is the direct consequence of the State of Florida's execution technique. Mr. Randolph will die a needlessly cruel death if Florida insists on trying to kill him with Florida's version of lethal injection.

(App., 106-111a).

Mr. Randolph also "identif[ied] a known and available alternative method of execution that entails a significantly less severe risk of pain." *Glossip*, 576 U.S. at 877. Mr. Randolph offered two alternatives, as noted *supra*, which are both "feasible, readily implemented, and in fact significantly reduce [ ] substantial risk of severe pain." *See Glossip*, 576 U.S. at 877 (quoting *Baze*, 533 U.S. at 52).

Mr. Randolph suggested that a two-drug lethal injection protocol consisting of a pre-dose of fentanyl followed by a dose of non-compounded FDA-approved or properly compounded pentobarbital and execution by firing squad with a pre-execution sedative (valium) with a kill shot to chest or head are readily available alternatives.

While these methods are not currently implemented in Florida, "[a]n inmate seeking to identify an alternative method of execution is not limited to choosing among those presently authorized by a particular State's law . . . a prisoner may point to a well-established protocol in another State as a potentially viable option." *Bucklew,* 587 U.S. at 139-40. ("An inmate seeking to identify an alternative method of execution is not limited to choosing among those presently authorized by a

particular State's law . . . for example, a prisoner may point to a well-established protocol in another State as a potentially viable option.").

Four states directly authorize by statute execution by firing squad.[5] As noted above, this Court has previously found execution by firing squad to be constitutional. Execution by firing squad will significantly reduce the substantial risk of severe pain and needless suffering that Mr. Randolph faces from Florida's lethal injection protocol because this method does not implicate pulmonary edema due to Mr. Randolph's reduced lung capacity from the progressive damage of lupus, that Florida's lethal injection protocol will cause.[6]

Mr. Randolph asserted that FDOC can readily obtain bullets, has employees trained in the use of firearms, and has access to Valium. Additionally, a two-drug protocol, with an initial dose of 1,500 micrograms of fentanyl to minimize the pain from pulmonary edema caused by the pentobarbital, is a readily feasible alternative. Pentobarbital is readily available to the Florida Department of Corrections. Pentobarbital is one of the most commonly used lethal injection drugs in the nation. Georgia, Texas, Missouri, South Dakota, Arizona, Utah, and the Federal Government have all obtained pentobarbital for use in executions within the last ten years.

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[5] Mississippi, South Carolina, Utah, and Idaho. Miss. Code § 99-19-51; S.C. Code § 24-3-530; Utah Code § 77-18-5.5; Idaho Code § 19-2716.

[6] Undersigned counsel acknowledged that Florida Statutes authorizes execution by electrocution, however, that method is not being offered as an alternative because it has been shown to be torturous during past executions. Florida's electric chair has not been used for an execution since 1999.

Mr. Randolph needed to show that the State has failed to adopt an alternative "without a legitimate penological reason." *Bucklew*, 587 U.S. at 134.

B. The Florida Supreme Court Disregarded This Court's Holdings When it Denied Mr. Randolph the Opportunity to Present Evidence in Support of His Claim

The Florida Supreme Court found Mr. Randolph's "method of execution claim . . . untimely and procedurally barred" App., 9a. The court's reasoning was:

> Randolph's method-of-execution claim was not timely raised. To be timely, a postconviction claim must be asserted within one year of when the capital defendant's conviction and sentence became final. Fla. R. Crim. P. 3.851(d)(1). Undeterred by this limitation, Randolph relies on an exception which applies to claims predicated on facts "unknown" or those that "could not have been ascertained by the exercise of due diligence." Fla. R. Crim. P. 3.851(d)(2)(A). However, even when based on facts meeting this demanding standard, the claim must still be filed within a year of when those facts became discoverable. *Bates*, 416 So. 3d at 319.
>
> Here, Randolph concedes that he was diagnosed with lupus in 1990 and has had the disease his entire life. Moreover, the current three-drug protocol has remained essentially unchanged since 2017. That being the case, the facts on which this claim is predicated have been available since at least 2017. Randolph's current claim was raised eight years later and is thus untimely. *See Tanzi v. State*, 407 So. 3d 385, 392 (Fla.), *cert. denied*, 145 S. Ct. 1914 (2025); *Rogers v. State*, 409 So. 3d 1257, 1267-68 (Fla.), *cert. denied*, 145 S. Ct. 2695 (2025); *Cole v. State*, 392 So. 3d 1054, 1064 (Fla.), *cert. denied*, 145 S. Ct. 109 (2024).
>
> Also, for the reasons identified above, Randolph's claim is procedurally barred. That is because he could have raised the claim earlier but failed to do so. *See Bates*, 416 So. 3d at 320 (enforcing procedural bar where claims could have been raised in earlier postconviction proceedings).

App., 10a-11a. The Florida Supreme Court decided the merits as well, holding:

> Lastly, Randolph's claim lacks merit as a matter of law. To succeed on his as-applied method-of-execution claim, Randolph must "(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Cole*, 392 So. 3d at 1065 (quoting *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017)). While we have significant doubts about the legal sufficiency of the first prong, we need not address that here because Randolph fails on the second prong. He asserts that a different combination of drugs or a firing squad are qualifying alternatives. Consistent with our recent death-penalty jurisprudence, we hold that neither of Randolph's proposed methods "could be 'readily implemented,' or in fact significantly reduces the substantial risk of severe pain, given the physical conditions he describes." *Tanzi*, 407 So. 3d at 393; *see Rogers*, 409

App., 11a-12a.

The Florida Supreme Court, in sum, held that Mr. Randolph should have anticipated the progression of his disease in 1990 or 2017. For the alternative methods requirement, despite the court's "significant doubts," as to the first requirement, the court held that none of alternative methods were "readily implemented" without ever affording Mr. Randolph discovery or a hearing to demonstrate that his proposed methods are readily available and feasible.

C. This Court should grant certiorari because the Florida Supreme Court's decision barred any meaningful as-applied challenge in violation of the Supremacy Clause.

Whether a condemned inmate facing imminent execution can meaningfully challenge a method of execution that very likely will result in severe illness and needless suffering is one of the most important questions this Court can decide. Through a series of decisions culminating with Mr. Randolph's case, the Florida

courts have essentially abolished as-applied challenges and "overruled" the Eighth Amendment. Death-sentenced prisoners have been perfunctorily and routinely denied access to records to prove their claims and have been denied evidentiary development. This Court has never held that as-applied challenges are impossible. The Florida Supreme Court has defied this Court's rulings by refusing to allow any discovery or evidentiary development on as-applied method of execution challenges for individuals under warrant.

When a defendant presents a state court with a well-pleaded claim of violation of a federal constitutional right, that court is obliged to give the defendant an opportunity for fact development to prove the claim; the state court cannot simply dismiss the claim on the face of the defendant's pleading. *Cash v. Culver*, 358 U.S. 633 (1959); *McNeal v. Culver*, 365 U.S. 109 (1961); *Carnley v. Cochran*, 369 U.S. 506 (1962). This was exactly what the Florida courts did in Mr. Randolph's case.

The petitioners in *Cash*, *McNeal*, and *Carnley*, sought habeas relief after being convicted and sentenced without the assistance of legal counsel. Although *Gideon*[7] had not yet been decided, this Court had already issued several key decisions establishing a constitutional right to counsel in specific circumstances. The state court denied each defendant's habeas petition without holding a hearing, despite the need for fact-finding to determine whether the specific circumstances existed to warrant the appointment of counsel. This Court reversed, holding that the petition's allegations were sufficient to state a Due Process Clause right-to-counsel claim:

[7] *Gideon v. Wainwright*, 372 U.S. 335 (1963).

> The requirements of due process made necessary the assistance of a lawyer if the circumstances alleged in the habeas corpus petition are true. On the present record there is no way to test their truth. But the allegations themselves made it incumbent upon the Florida courts to determine what the true facts were.

Cash, 358 U.S. at 638.

A state court is not permitted to evade its Supremacy Clause obligations by manipulating the requirements of state law to deflect a potentially meritorious constitutional claim. A state court may not "under the color of local practice," *Rogers v. Alabama*, 192 U.S. 226, 230 (1904) (Holmes, J.), use a cloudy and manipulable state-law standard to evade review of a federal constitutional right it disfavors. When a state court engages in such behavior, the federal courts will ignore the purported state ground and reach the constitutional merits. *See, e.g., Lee v. Kemna*, 534 U.S. 362 (2002); *Harris v. Reed*, 489 U.S. 255 (1989). For example, this Court has recently held that a decision of the Arizona Supreme Court denying state postconviction relief to a capital prisoner rested on a purported state-law basis "so novel and unfounded that it does not constitute an adequate state procedural ground," *Cruz v. Arizona*, 598 U.S. 17, 29 (2023) (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 457 (1958)).

Cases like *James v. Kentucky*, 466 U.S. 341, 348-349 (1984), hold that only a "firmly established and regularly followed state practice can prevent implementation of federal constitutional rights." *See, e.g., Ford v. Georgia*, 498 U.S. 411 (1991); *Barr v. City of Columbia*, 378 U.S. 146, 149 (1964); *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288, 297 (1964). What is true in federal court review of state court judgments is equally true in state postconviction proceedings. *See Montgomery v. Louisiana*, 577

U.S. 190 (2016); *see also*, *Skinner v. Switzer*, 562 U.S. 521 (2011); *Dist. Att'y's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52 (2009).

The rote denial of even the ability to challenge the method of execution is bound to reoccur and increase the risk that prisoners in Florida will suffer cruel and unusual torturous deaths in violation of the Eighth Amendment. This constitutional problem is twofold: 1) Florida courts do not allow the person facing execution to develop an as-applied claim because of the exigencies of a warrant and the complete denial of public records based on an illogical timing analysis regarding the ripeness of as-applied challenges, and 2) Florida courts do not allow for evidentiary development through an assorted array of cases that serve merely to facilitate executions but prevent the enforcement of well-established prohibitions on cruel and unusual punishment.

1. The Florida Court's Illogical Timing Requirement Is Not An Independent And Adequate State Ground That Allows Mr. Randolph To Suffer A Torturous Death.

The Florida courts' finding that Mr. Randolph's claim should have been raised within one year of his case becoming final, over 30 years ago, or in 2017 when the current protocol was implemented, serves to arbitrarily deprive Mr. Randolph of meaningful review. This Court has recognized that some claims may only be brought once a warrant is signed. This principle is clearly seen in competency to be executed claims. As this Court made clear in *Panetti v. Quarterman*, 551 U.S. 930 (2007), some claims only become ripe upon signing of a death warrant. *Id.* at 947. This Court found that premature *Ford* claims were: "An empty formality requiring prisoners to file unripe *Ford* claims neither respects the limited legal resources available to the States nor encourages the exhaustion of state remedies." *Id.* at 446. Mr. Randolph could not

have predicted in 1990, when he was first diagnosed with lupus, that his lung function would so deteriorate prior to his execution.

The Florida Supreme Court's holding that he should have raised his claim 30 years ago, or in 2017 when the protocol was established, results in "an empty formality" that precludes review of prisoners' as-applied lethal injection challenges in Florida. Much like the person raising competency to be executed, those with medical conditions such as Mr. Randolph's lupus face a worsening over time. While Mr. Randolph may have been diagnosed with lupus in 1990, this insidious disease had not taken progressed to the point where it compromised his lung function until recently. Much like mental illness and competency, physical ailments such as lupus may ebb and flow. It is the condition of Mr. Randolph when he is actually executed that matters.

The Florida Supreme Court's rule for raising an as-applied challenge requires counsel in Florida to plead all known medical conditions that may affect an execution regardless of whether the disease has progressed to the point of concern. If the Eighth Amendment is to have any application in Florida, prisoners must be given a meaningful opportunity to raise and present as-applied challenges to their execution when those claims arise, even if they arise close in time to their scheduled execution. This is particularly so in Florida where prisoners have no advance notice of when their execution should be scheduled and usually less than five days to raise a claim. The Florida Supreme Court's decision was not premised on a routinely and fairly applied independent and adequate state ground, it the Florida Supreme court defied this s Court's decisions and the U.S. Constitution.

2. The Florida Supreme Court's Failure To Engage With Mr. Randolph's Alternative Methods And Findings On Those Methods Also Requires This Court's Intervention As Well.

Mr. Randolph pleaded and argued two readily available alternative methods of execution that would have limited his suffering significantly. As this Court made clear, Mr. Randolph needed to "identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Glossip*, 576 U.S. at 877. Mr. Randolph offered two alternatives: a combination of other drugs and the firing squad. They are "feasible, readily implemented, and in fact significantly reduce [ ] substantial risk of severe pain." *See Glossip*, 576 U.S. at 877 (quoting *Baze*, 533 U.S. at 52). The Florida Supreme Court did not explain how these alternatives were not, but nevertheless based its entire merits ruling on their inadequacy.

This Court has held that "[a]n inmate seeking to identify an alternative method of execution is not limited to choosing among those presently authorized by a particular State's law . . . a prisoner may point to a well-established protocol in another State as a potentially viable option." *Bucklew,* 587 U.S. at 139-40. ("An inmate seeking to identify an alternative method of execution is not limited to choosing among those presently authorized by a particular State's law . . . for example, a prisoner may point to a well-established protocol in another State as a potentially viable option.").

What was required under *Bucklew*, was precisely what Mr. Randolph pleaded. For the alternative form of lethal injection, that would have been proven the methods offered by Mr. Randolph would have greatly limited his suffering in comparison to Florida's current protocol, and, under Florida law, as noted *supra*, had to be

considered as true unless refuted by the record. Mr. Randolph also showed that under Florida law, both of his methods were allowed because they both are not a "method not deemed unconstitutional." Fla. Stat. § 922.10 (2025).

II. Mr. Randolph Was Denied Meaningful Clemency Proceedings And The Opportunity To Confront The Clemency Investigation's Finding In Violation Of The Due Process and Equal Protection Clauses of the Fourteenth Amendment. For Mr. Randolph And Any Future Condemned Individuals Facing A Death Warrant, This Court's Intervention Is Necessary To Ensure That The Condemned Have At Least The Opportunity To Have Important Information Considered.

While Mr. Randolph was denied his right to show his execution violated the U.S. Constitution, further intervention from this Court is necessary because Mr. Randolph was denied the opportunity to meaningfully participate in the Governor's clemency decision issued the same day the Governor signed Mr. Randolph's wararnt. Additionally, whatever information that the Governor made the decision to deny clemency, Mr. Randolph was denied the opportunity to correct or rebut what the Governor based his clemency decision.[8]

A. Mr. Randolph Was Not Given An Opportunity To Provide Information Since His Original Clemency Review In 2014.

Clemency is enshrined in the Florida Constitution, under Article IV, Section 8. Clemency is deeply rooted in our history as a Nation and before. As this Court has stated: "Clemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been

[8] The Governor may decide that clemency is not appropriate and simply sign the warrant. In order for any clemency to be granted, the Governor and two other cabinet members must agree on the specifics such as commutation.

exhausted." *Herrera v. Collins*, 506 U.S. 390, 411–12 (1993) (footnotes omitted). As this Court noted in *Herrera*, "[t]he term 'clemency' refers not only to full or conditional pardons, but also commutations, remissions of fines, and reprieves. See Kobil, The Quality of Mercy Strained: Wresting the Pardoning Power from the King, 69 Texas L.Rev. 569, 575-578 (1991)." *Id.* at 412 n.12. While it is true that there are few Due Process protections afforded in clemency proceedings,

> 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.

Ohio Adult Parole Auth. v. Woodard, 523 U.S. 272, 289 (O'Connor, J. concurring, joined by Souter, J., Ginsburg, J., and Breyer, J.) (1998) Clemency is a "fail-safe in our criminal justice system." *Harbison v. Bell,* 556 U.S. 180, 192 (2009).

In Mr. Randolph's case, his opportunity for meaningful participation ceased to exist in 2014. But, suddenly, on October 21, 2025, the Governor denied Mr. Randolph's clemency by signing his death warrant and arbitrarily denied him access to Florida's clemency process.

At the time of his clemency proceedings and trial, neither Mr. Randolph's jury nor the Governor could consider the person Radolph became after 2014. Because Mr. Randolph's clemency investigation occurred in 2014, the clemency board and the Governor could not consider critical information that shows that clemency is warranted in Mr. Randolph's case and as a result arbitrarily and effectively denied Mr. Randolph meaningful access to Florida's clemency process. Between 2014 and the signing of the warrant, significant new information has arisen that should have been

considered in determining whether clemency should have been granted or denied. granted. As noted supra, clemency counsel, Jeffrey Deen, attested that all clemency interactions ended in 2014. (WR. 481-82). App., 121a. Mr. Randolph is not the same person that was sentenced to death in 1988. Since 2014 substantive material evidence in mitigation has come to light showing that clemency should be granted, or at the very least, minimal due process concerns require that the evidence available in 2025 should have been considered. The evidence is as follows:

B. Good Behavior While Incarcerated

Since 2014, Mr. Randolph has obtained the distinction of not having a single Disciplinary Report (DR) brought against him by FDOC. Prior to 2014, Mr. Randolph had very limited DRs, all of which were for minor infractions and none of which involved threats of violence to other inmates or staff. Mr. Randolph identified Raul S. Banasco, MPA, CPM, CJM, CCE, as a witness who could provide the court with an analysis of Mr. Randolph's conduct on death row over the last eleven years. Mr. Banasco is a well-qualified expert in corrections with over 39 years of distinguished service in corrections and public safety and, a senior-level correctional leader with a proven record of executive leadership across city, county, and state government agencies, as well as non-profit community supervision programs. Mr. Banasco would have testified, that Mr. Randolph has been a model inmate since 2014 and was well-adjusted before that as well. It is rare for inmates in general population, let alone on death row, to avoid DRs, but Mr. Randolph has conducted himself admirably in this regard.

This is material evidence that should have been considered in determining whether Mr. Randolph is executed. This Court stated as much in *Skipper v. South Carolina*, 476 U.S. 1 (1986). In *Skipper,* the "Petitioner also sought to introduce testimony of two jailers and one 'regular visitor' to the jail to the effect that petitioner had 'made a good adjustment' during his time spent in jail. The trial court, however, ruled that under [state law] such evidence would be irrelevant and hence inadmissible." *Id*. at 3. On appeal, this ruling was affirmed based on state law. *Id*. This Court granted certiorari to decide whether the state court's "decision [was] inconsistent with [the] Court's decisions in *Lockett* and *Eddings,* and . . . reverse[d]." *Id*. at 4.

The Court held that the petitioner had the right to present the evidence in question because "evidence that the defendant would not pose a danger if spared (but incarcerated) must be considered potentially mitigating." *Id.* at 5. Mr. Randolph had no such testimony at trial. He had not been incarcerated very long at the time of his trial. There was some discussion of his minor, non-violent DRs at his clemency interview but it would have been impossible for the Clemency Board to consider and present to the governor that Mr. Randolph has been DR free since 2014.

Mr. Randolph's adjustment to prison is highly mitigating. *Skipper* stands for the principle that adjustment to prison is such. It has also been recognized by the American Bar Association that Counsel should also address concerns of future dangerousness, even when not a statutory factor in aggravation. "Studies show that future dangerousness is on the minds of most capital jurors, and is thus 'at issue' in virtually all capital trials." American Bar Association Guidelines for the Appointment

and Performance of Counsel in Death Penalty Cases, 10.11 (Commentary, p. 113) (2003). "Evidence that the client has adapted well to prison and has had few disciplinary problems can allay jurors' fears and reinforce other positive mitigating evidence." *Id.* It is well-established that Mr. Randolph's adaption to prison is highly mitigating.

This Court made clear in *Eddings v. Oklahoma*, 455 U.S. 104 (1982):

> [T]he rule in *Lockett* followed from the earlier decisions of the Court and from the Court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus "on the characteristics of the person who committed the crime," *Gregg v. Georgia, supra*, at 197, 96 S.Ct., at 2936, the rule in *Lockett* recognizes that "justice . . . requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." *Pennsylvania v. Ashe*, 302 U.S. 51, 55, 58 S.Ct. 59, 60, 82 L.Ed. 43 (1937). By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in *Lockett* recognizes that a consistency produced by ignoring individual differences is a false consistency.

Id. at 112.

Mr. Randolph retained a well-qualified expert, Raul S. Banasco, MPA, CPM, CJM, CCE, who produced a report after speaking to Mr. Randolph and reviewing voluminous prison records. His report was attached to Mr. Randolph's motion, and incorporated by reference. (App., 113a-119a). As Mr. Banasco stated:

> Based on my **39 years of correctional experience**, a thorough review of the records provided, and my interview with **Mr. Richard B. Randolph**, it is my professional opinion that he has gained significant insights from his early experiences within the prison system. Mr. Randolph entered the system at the age of **27** and is now **63 years old**, having spent over **three decades** within the prison system, which he has spent on **death row**. Over this time,

> it is clear that Mr. Randolph has matured considerably. His behavior and conduct demonstrate this growth, and it is my belief that he now possesses a greater understanding of his circumstances.
>
> Currently, Mr. Randolph does not pose any significant concerns regarding **security** or **safety** within a **general population** setting in a correctional facility. His years of experience and positive adjustments indicate that he can function appropriately within such an environment.

(App., 118a). At an evidentiary hearing, Mr. Banasco would have testified in greater depth about what the Clemency Board never considered.

The mitigating evidence that showed that Mr. Randolph would become a model prisoner was not available at the time of trial because he had not become the person he grew to be. Consideration in clemency is necessary because this vital information because of this fact.

C. Medical Condition

There is no indication that the clemency process considered Mr. Randolph's medical condition. As noted supra, Mr. Randolph suffers from lupus. Mr. Randolph is in great danger of suffering a torturous death. In Florida it seems that the clemency investigation should have included some sort of medical evaluation. *See Pardo v. State*, 108 So. 3d 558, 568 (Fla. 2012) ("Other documents in the record indicate that Pardo underwent an evaluation by FDOC medical personnel around the same time for clemency purposes."). But Mr. Randolph received no such evaluation and certainly the State has not provided any evidence that it occurred. If Mr. Randolph was evaluated medically as part of clemency, he certainly has not received the results from the Clemency Board or any state agency. Moreover, he was not given the opportunity to offer evidence of his own current medical condition at the time of his

imminent execution and show that FDOC has not provided treatment for his lupus. As Dr. Zivot explained:

> After reviewing the medical records and in consultation with Mr. Randolph, I see no evidence that he ever received this treatment. This is a disturbing lack of standard medical care that Mr. Randolph has the right to receive. In place, he was given occasional acetaminophen (Tylenol) and occasional ibuprofen (Motrin).

(App.,109a). Mr. Randolph's lupus has been a challenge. That he has dealt with it with dignity and grace, shows his character and should be considered for clemency. The jury that recommended death could not have considered this at the time they recommended death by an 8 to 4 vote. Clemency should have.

D. Faith

Mr. Randolph has shown rehabilitation as he has matured. His DRs were non-violent, he has consistently shown remorse, and he has developed into a mature, calm, thoughtful 63-year-old. In 1993, influenced by a fellow inmate, Mr. Randolph became a Muslim. Mr. Randolph's religious focus has helped him stay out of trouble and contributes to his personal development. It has helped him to adapt to the prison environment and deal with anger and frustration. Mr. Randolph helps others and helps keep a calm prison wing, evidenced by his selection as a "houseman" by the Department of Corrections. He has also taken on the role of mentoring younger death row inmates offering guidance to them in adapting to death row. If allowed to live, Mr. Randolph would continue to contribute to the death row community or in the general population. Because his clemency interview was so long ago, none of this was considered.

E. Recent Relationship With Birth-Mother

Lastly, Mr. Randolph has made contact with his birth family and has started building relationships with them. Mr. Randolph had hoped to meet his half-brother in person for the first time before his execution, but this has been denied by the Department of Corrections. All relationships with Mr. Randolph's newly found birth family will cease, along with those of his adoptive family and his biological family, if he is executed. Mr. Randolph raised the finding of his biological family in a previous successive motion which the Florida Supreme Court affirmed the denial of relief on his claim. *See Randolph v. State*, 403 So. 3d 206 (Fla. 2024). But the fact remains that the jury never heard that Mr. Randolph had made contact with his biological family in 2023 after a change in New York adoption law. Certainly, the current societal concern with lineage and genealogy would have been likewise a strong consideration of the jury at Mr. Randolph's penalty phase. If two jurors thought it was important enough that Mr. Randolph had time to form a relationship with each other, that may have saved Mr. Randolph's life.

Mr. Randolph was denied consideration of these factors because clemency was so long ago. To fulfill its time-honored function, clemency proceedings must consider the man near the execution, not the man as presented eleven years ago in 2014. It is the man as he is today, with all his human frailties and growth, who deserves consideration for clemency.

Mr. Randolph stands on the clear notion that the minimal due process afforded in clemency proceedings requires a consideration of the man he is today before the executive grants or denies clemency. Each and every day since Mr. Randolph's

clemency interview in 2014, Mr. Randolph has worked to better himself and attempt to make amends for his crime. He has grown far beyond the man interviewed in 2014. Fundamental fairness and due process require that this should be considered.

"No State shall . . . deprive any person of life, liberty, or property without due process of law." Amend. XIV, U.S. Const. "A fundamental requirement of due process is 'the opportunity to be heard' . . . which must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)); *see Ford v. Wainwright*, 477 U.S. 399 (1986). "It is axiomatic that due process 'is flexible and calls for such procedural protections as the particular situation demands.'" *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 13 (1979) (quoting *Morrissey v. Brewer*,408 U.S. 471, 481 (1972)).

Whether the State has provided the required meaningful hearing is evaluated under the *Mathews* balancing framework. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Under *Mathews*, "the process due in any given instance is determined by weighing the private interest that will be affected by the official action against the Government's asserted interest, including the function involved and the burdens the Government would face in providing greater process." *Hamdi*, 542 U.S. at 529 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976))(quotations omitted).

Here, the State seeks to kill Mr. Randolph, who is "a living person and consequently has an interest in his life." *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 288 (1998) (O'Connor, J. concurring). Clemency is the ultimate decision that determines whether Mr. Randolph lives or dies. Due process requires that he have

access to the process to provide updates of factual information that was not available at trial and not available during his 2014 clemency interview.

Surely, Mr. Randolph has a minimal due process right to present updated case for clemency. This Court should intervene to ensure that Mr. Randolph and future individuals subject to imminent execution have at least the opportunity and right to plead for their lives.

CONCLUSION

For the above reasons, Petitioner respectfully requests that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

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