No. 25-6133

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 SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR NOV. 20, 2025, AT 6:00 P.M.

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CAPITAL CASE

QUESTIONS PRESENTED

I. Whether certiorari is warranted where the Florida Supreme Court determined that Randolph was not entitled to relief on his untimely as-applied challenge to Florida's lethal injection protocol that was based on his lifelong condition of lupus and was procedurally barred under well-established and routinely followed Florida law.

II. Whether certiorari is warranted where the Constitution confers no right to any particular clemency procedure.

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The decision below of the Florida Supreme Court appears as *Randolph v. State*, No. SC2025-1722, 2025 WL 3170826 (Fla. Nov. 13, 2025).

JURISDICTION

Richard Barry Randolph asserts that this Court's jurisdiction is based upon 28 U.S.C. § 1257. The State of Florida agrees that this statute sets out the scope of this Court's certiorari jurisdiction, but for reasons outlined below, it asserts that this case is inappropriate for the exercise of this Court's discretionary jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United State Constitution provides in part that "cruel and unusual punishments [shall not be] inflicted." U.S. Const. amend. VIII.

The Fourteenth Amendment to the United States Constitution provides in part that ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens 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 . . ." U.S. Const. amend. XIV.

The Supremacy Clause provides that "[t]his Constitution, and the Laws 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." U.S. Const. art. VI, cl. 2.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Richard Barry Randolph, is an inmate in the custody of the Florida Department of Corrections who was sentenced to death for the 1988 first-degree murder of Minnie Ruth McCollum in Palatka, Florida. *Randolph v. State*, 562 So. 2d 331 (Fla. 1990). Over the last thirty-five years since the murder, Randolph has unsuccessfully challenged his convictions and sentences through his direct appeal, five postconviction motions, with two evidentiary hearings, and a federal habeas petition, none of which were successful.

On October 21, 2025, Governor Ron DeSantis signed a death warrant with the execution set for November 20, 2025. On October 28, 2025, Randolph filed his fourth successive postconviction motion, which was summarily denied. He appealed and the Florida Supreme Court affirmed the denial of relief. *Randolph v. State*, No. SC2025-1722, 2025 WL 3170826 (Fla. Nov. 13, 2025).

Convictions and Death Sentence

Facts of the Crime

On the morning of August 15, 1988, Minnie Ruth McCollum, manager of a Handy-Way convenience store was brutally beaten, strangled, stabbed, and sexually assaulted by Randolph, a former employee of the store. *Randolph,* 562 So. 2d at 332-33.

Responding deputies forced entry into the store and found McCollum lying on her back, naked from the waist down, with blood pooling from the back of her head and neck and a knife beside her head. *Id.* She was still alive but only barely breathing and moaning when officers arrived. *Id.*

Upon arrival at the hospital, McCollum was nonresponsive. *Id.* Her head was "massively beaten and contused," with multiple lacerations across the scalp, face, and neck, and a fractured jawbone. *Id.* Knife wounds to the left side of the neck caused a hematoma around the heart, and there was also a stab wound near the left eye. *Id.* McCollum remained in a coma for six days before dying from her injuries. *Id.*

After Randolph was apprehended, he confessed to the attack, providing a graphic and detailed account of the assault. *Id.* at 333-34. He admitted that he rode his bicycle to the store intending to rob it with a toy gun, knowing from his prior employment that approximately $1,000 was in the safe. *Id.* at 334. When McCollum unexpectedly returned and caught him, he attacked her. Randolph said that she was "a lot tougher than he had expected." *Id.* Randolph forced her into the back room and beat her with his hands and fists until she "quieted down," but when she began to move again, he strangled her with the drawstring from his sweatshirt until she stopped struggling. *Id.*

When McCollum made noise, Randolph beat her again, then stabbed her, and tightened the string around her neck to silence her. *Id.* And to make the crime appear as though it had been committed by "a maniac," Randolph raped her. *Id.* Before leaving, he donned a Handy-Way uniform, ripped the store's video camera from its mount, locked the store door behind him, and took McCollum's keys and car. *Id.*

The jury found Randolph guilty of first-degree murder, armed robbery, and sexual battery. *Id.* at 332.

At the end of the penalty phase, the jury recommended the death penalty by a vote of eight to four. *Id.* at 332. The judge accepted the jury recommendation and imposed a sentence of death. The trial court found four 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 (4) the crime was especially heinous, atrocious, or cruel. *Id.*

The Florida Supreme Court affirmed Randolph's convictions and sentence, and this Court denied certiorari. *Randolph v. Florida*, 498 U.S. 992 (1990).

Prior State and Federal Collateral Proceedings

On April 6, 1992, Randolph filed his first motion for postconviction relief, which was amended several times. *Randolph v. State,* 853 So. 2d 1051, 1055 (Fla. 2003). After conducting two separate evidentiary hearings on Randolph's amended motions, the circuit court denied postconviction relief. Randolph appealed, presenting seven issues for review before the Florida Supreme Court, along with a companion habeas petition that raised five claims. *Id.* at 1055.

The court found several of Randoph's claims to be either procedurally barred, facially or legally insufficient, or clearly without merit as a matter of law. *Id.* The Florida Supreme Court affirmed the denial of postconviction relief and denied the petition for a writ of habeas corpus. *Id.* at 1069.

On June 16, 2003, Randolph filed another habeas petition in the Florida Supreme Court, asserting a claim under *Ring v. Arizona*, 536 U.S. 584 (2002). The

Florda Supreme Court denied relief in an unpublished opinion. *Randolph v. Crosb*y, 861 So. 2d 430 (Fla. 2003).

Federal Habeas Proceedings

Randolph subsequently sought federal habeas relief with the United States District Court for the Middle District of Florida, which denied the petition. *Randolph v. McNeil*, 590 F.3d 1273, 1275 (11th Cir. 2009). The United States Court of Appeals for the Eleventh Circuit affirmed the denial of relief, and this Court denied certiorari. *Randolph v. McNeil*, 562 U. S. 1006 (2010).

Additional Successive Postconviction Proceedings

On November 23, 2010, Randolph filed a successive motion for postconviction relief alleging this Court's decision in *Porter v. McCollum,* 130 S. Ct. 447 (2009), created a change in Florida's *Strickland* jurisprudence that required consideration and granting of Randolph's postconviction claims. On March 7, 2011, the circuit court denied the motion as untimely, successive, procedurally barred, and failing to raise any new retroactive claims. The Florida Supreme Court affirmed the denial of relief. *Randolph v. State,* 91 So. 3d 782 (Fla. 2012) (mem.).

On January 10, 2017, Randolph filed a second successive motion for postconviction relief raising four claims based on *Hurst v. Florida,* 577 U.S. 92 (2016) *(Hurst I),* and *Hurst v. State,* 202 So. 3d 40 (Fla. 2016). Randolph later amended the motion to include a fifth claim, alleging his sentence violated the Eighth Amendment. *Randolph v. State*, 320 So. 3d 629, 630 (Fla. 2021). On December 31, 2019, the trial

court summarily denied relief, and the Florida Supreme Court affirmed. *Id.* at 631. This Court denied certiorari. *Randolph v. Florida*, 142 S. Ct. 905 (2022).

On October 1, 2023, Randolph filed a third successive postconviction motion claiming that the identities of his birth parents constituted newly discovered mitigation evidence. *Randolph v. State*, 403 So. 3d 206, 208 (Fla. 2024). The circuit court summarily denied Randolph's motion, and the Florida Supreme Court affirmed. *Id.*

State Proceedings Under Warrant

On October 21, 2025, Governor Ron DeSantis signed Randolph's death warrant, scheduling the execution for November 20, 2025. This prompted Randolph to file demands for additional public records, and his fourth successive postconviction motion accompanied by a motion to stay his execution. Randolph's successive motion raised the following three claims: (1) an as-applied challenge to the method of execution because of the progression of his lupus; (2) Florida's warrant process violated his substantive and due process rights under the Fifth and Fourteenth Amendments; and (3) the clemency proceedings violated his due process and equal protection rights under the Fourteenth Amendment. After the Case Management/*Huff*[1] hearing the circuit court summarily denied Randolph's claims finding them untimely, procedurally barred, and without merit.

Randolph appealed the circuit court's denial of postconviction relief to the Florida Supreme Court and contemporaneously filed a petition for writ of habeas

[1] *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

corpus claiming for the first time since his convictions and sentence became final, that his attorney conceded his guilt during his trial in violation of *McCoy v. Louisiana,* 584 U.S. 414, 420 (2018). The Florida Supreme Court affirmed the denial of Randolph's fourth successive motion for postconviction relief, denied his habeas petition, and denied his motion for stay of execution. *Randolph v. State*, No. SC2025-1722, 2025 WL 3170826, at *2 (Fla. Nov. 13, 2025).

The Florida Supreme Court found Randolph's as-applied method-of-execution claim untimely. *Id.* at *10 *(*citing *Bates v. State,* 416 So. 3d 312, 321 (Fla. 2025)). The court highlighted that Randolph had conceded that he was diagnosed with lupus in 1990, and the current three-drug protocol has remained essentially unchanged since 2017. Thus, the facts on which this claim was predicated have been available since at least 2017, and Randolph could have raised this claim earlier but failed to do so. *Id.* at *10-11. The court also found that Randolph's claim lacked merit. The court specifically determined that neither of Randolph's proposed alternative methods could be readily implemented, nor do they significantly reduce the substantial risk of severe pain. *Id.*

The Florida Supreme Court also rejected Randolph's claim that a 30-day warrant period violated his due process rights. *Id.* at *12; *see also Bates v. States,* 416 So. 3d 312, 321 (rejecting argument that a thirty-day warrant period—coupled with the denial of all demanded public records—deprived the defendant of due process and right to counsel); *Tanzi v. State*, 407 So. 3d 385, 390 (Fla. 2025) (rejecting due-process challenge despite "the truncated warrant period and the denial of his

public records requests"); *Hutchinson v. State*, 416 So. 3d 273, 279-80 (Fla. 2025) (rejecting due-process challenge where, despite condensed warrant period, defendant had fair opportunity to raise claims and advance argument in support of them).

The court found Randolph's third claim that Florida's clemency process violated federal and state constitutions without merit. *Id.* at *13. The court rejected Randolph's argument that capital defendants have a right to an updated investigation when there has been a significant lapse of time between the original investigation and the denial of clemency. *Id.*

Randolph's final claim was that he was entitled to public records related to the state's lethal injection protocol and past executions. Applying a deferential abuse-of-discretion standard of review, the Florida Supreme Court affirmed the circuit court's denial of the public records. *Id.* at *8.

The Florida Supreme Court also denied Randolph's petition for writ of habeas corpus that alleged an error under *McCoy v. Louisiana,* 584 U.S. 414, 420 (2018). The court found the claim untimely and procedurally barred.

Randolph now seeks certiorari with this Court, but he has failed to identify any grounds that would warrant this Court's review. His petition should, therefore, be denied.

REASONS FOR DENYING THE PETITION

I. The Florida Supreme Court correctly determined that Randolph was not entitled to relief on his untimely as-applied challenge to Florida's lethal injection protocol that was based on his lifelong condition of lupus.

Randolph challenges the Florida Supreme Court's affirmance of the summary denial of his method-of-execution claim based on lupus. The state courts found Randolph's claim time barred under state law. The time bar alone is reason enough for this Court to deny review.

When both state and federal questions are involved in a state court proceeding, this Court has no jurisdiction to review the case if the state court judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the court's decision. *Foster v. Chatman*, 578 U.S. 488, 497 (2016). This "independent and adequate state ground" rule stems from the fundamental principle that the Court lacks jurisdiction to review matters of state law. *See Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1945). If a state court's decision is based on separate state law, this Court "of course, will not undertake to review the decision." *Florida v. Powell*, 559 U.S. 50, 57 (2010). This Court should not review the Florida Supreme Court's decision when Randolph's claim was deemed untimely under state law.

A. The Florida Supreme Court's denial of this claim rests on adequate and independent state law grounds.

Florida has strict time limitations for the filing of postconviction motions. Generally, a postconviction motion 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).

The filing of successive postconviction motions is limited, and to be considered timely filed, one of the following circumstances must exist:

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2). Thus, after the initial postconviction motion is filed, capital postconviction litigants must rely on a recognized exception and timely file their claims or be barred by Fla. R. Crim. P. 3.851(d)(1). This rule is well established in Florida and routinely followed. *See, e.g., Tanzi v. State*, 407 So. 3d 385, 392 (Fla. 2025) (finding Tanzi's lethal injection claim based on his "present medical conditions" untimely when his medical conditions were present as early as 2009); *Rogers v. State*, 409 So. 3d 1257, 1267 (Fla. 2025) (finding an as-applied challenge untimely when it could have been raised previously); *Cole v. State*, 392 So. 3d 1054, 1064 (Fla. 2024) (rejecting a method-of-execution claim as untimely when Cole "failed to raise any argument related to the method of execution until after the Governor signed a death warrant"); *Zack v. State*, 371 So. 3d 335, 345 (Fla. 2023) (finding the defendant's claim about fetal alcohol syndrome and low IQ being a barrier to his execution time barred when the defendant had long known of these conditions prior to filing his successive motion under an active death warrant).

"It is incumbent upon the defendant to establish the timeliness of a successive postconviction claim." *Mungin v. State*, 320 So. 3d 624 (Fla. 2020). Randolph did not establish that his claim fell under any of the enumerated exceptions that would render his successive motion timely. The Florida Supreme Court recognized that "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.'" *Randolph*, 2025 WL 3170826, at *3. "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." *Id*.

Here, Randolph conceded that he was diagnosed with lupus in 1990 and has had the disease his entire life. Florida's current three-drug protocol has remained essentially unchanged since 2017. Thus, the Florida Supreme Court determined that "the facts on which this claim is predicated have been available since at least 2017.[2] Randolph's current claim was raised eight years later and is thus untimely." *Id*.

A state court's finding that a federal law claim is time barred under the state's procedural rules constitutes an independent and adequate state law ground for rejecting the claim. *See Walker v. Martin,* 562 U.S. 307, 316–17 (2011) (finding

[2] Contrary to what Randolph asserts, the Florida Supreme Court never stated that Randolph "should have anticipated the progression of his disease in 1990 or 2017." It is the disease itself that is the triggering event, not any alleged (and minor) progression of the disease. Randolph knew about his lupus diagnosis—his attempt to circumvent the time bar by relying on the "progression" of his lupus, which was assessed in anticipation of his death warrant, is unavailing. This is especially true because (as will be shown below) even when relying on the progressed state of his disease as the basis of his claim, Randolph fails to satisfy the basic pleading requirements for a method-of-execution claim.

California's time bar qualified as an adequate state procedural ground); *Sochor v. Florida*, 504 U.S. 527, 534 (1992) (holding this Court lacked jurisdiction to decide a federal claim that the Florida Supreme Court decided both on the merits and on preservation grounds); *Wainwright v. Sykes*, 433 U.S. 72, 86–87 (1977) (concluding that Florida procedure regarding preservation amounted to an independent and adequate state procedural ground which prevented review); *see also Johnson v. Lee*, 578 U.S. 605, 609 (2016) (acknowledging that state postconviction court is generally not used to litigate claims that were or could have been raised at trial or direct appeal, and finding that the procedural bar "qualifies as adequate to bar federal habeas review"); *Jeter v. Sec'y, Fla. Dep't of Corr.,* 479 F. App'x 286, 287-88 (11th Cir. 2012) (holding that the Florida courts' dismissal of Jeter's postconviction motion as untimely was a rejection on adequate and independent state procedural grounds).

The Florida Supreme Court's determination that the claim was time barred is based on independent and adequate state grounds that is independent of any federal question. This Court has long recognized that where a state court judgment rests on non-federal grounds, where the non-federal grounds are an adequate basis for the ruling independent of the federal grounds, "our jurisdiction fails." *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); *Coleman v. Thompson*, 501 U.S. 722, 729 (1991); *Michigan v. Long*, 463 U.S. 1032, 1038, 1041-42 (1983).

Application of such time bars is not unusual, and time bars are necessary to discourage dilatory tactics. *See McNair v. Allen*, 515 F.3d 1168, 1174 (11th Cir. 2008) (applying Florida's four-year statute of limitations to bar § 1983 lethal injection

challenge), *Henyard v. Sec'y, Dept. of Corr.*, 543 F.3d 644, 647 (11th Cir. 2008) (same). Federal courts must not lightly "disregard state procedural rules that are substantially similar to those to which we give full force in our own courts." *Lee*, 578 U.S. at 609. Randolph's assertion that his as-applied challenge should be immune from Florida's procedural rules is misguided, especially considering similar time bars apply in federal method-of-execution challenges.

As this Court has long recognized, challenges to the constitutionality of an execution method can be brought as a civil rights claim under 28 U.S.C. § 1983. *Nelson v. Campbell*, 541 U.S. 637 (2004) (raising an Eighth Amendment claim based on a state's cut-down procedure). A method-of-execution challenge raised under § 1983 is subject to the statute of limitations governing personal injury actions in the state where the challenge was brought. *Gissendaner v. Comm'r, Georgia Dep't of Corr.*, 779 F.3d 1275, 1280 (11th Cir. 2015). Georgia has a two-year limitation, and the claim accrues on the later date of either when direct review is completed by the denial of certiorari or the date of which the capital litigant becomes subject to a new or substantially changed execution protocol. *Id.* Florida had a four-year statute of limitations that was recently reduced to a two-year period. *See Henyard*, 543 F.3d at 647; § 95.11 (5), Fla. Stat. (2025). Just as time bars apply to federal claims[3] challenging a method of execution, Florida's time bar applies to Randolph's claim

[3] Eighth Amendment claims raised in federal habeas petitions are also subject to a one-year statute of limitations. *See* 28 U.S.C.A. § 2244(d)(1). Florida's limitation on successive postconviction motions is similar to, but more generous than, the federal standard for successive habeas corpus applications. *See* 28 U.S.C.A. § 2244(b)(2)(A)(B)(i).

raised in a state postconviction motion. Randolph's assertion that he was entitled to an evidentiary hearing because the time bar did not apply is unsupported by Florida law as well as federal law.

What is more, this Court has similarly denied certiorari review in other death-warrant cases where inmates challenged Florida's time bar applied to Eighth Amendment method-of-execution challenges raised in state postconviction motions. *See Rogers v. Florida*, 145 S. Ct. 2695 (2025); *Cole v. Florida*, 145 S. Ct. 109 (2024). Certiorari should also be denied here.

B. The Florida Supreme Court ruled on alternative grounds, and the alternative ruling precludes review.

In addition to finding the claim time barred, the Florida Supreme Court found the claim procedurally barred under state law. *Randolph*, 2025 WL 3170826, at *3 (citing a prior decision enforcing a procedural bar where claims could have been raised in earlier postconviction proceedings). A successive postconviction claim is procedurally barred when it could have been raised in a prior proceeding. *See* Fla. R. Crim. P. 3.851(e)(2) ("A claim raised in a successive motion must be dismissed if the trial court finds that it fails to allege new or different grounds for relief and the prior determination was on the merits; or, if new and different grounds are alleged, the trial court finds that the failure to assert those grounds in a prior motion constituted an abuse of the procedure; or, if the trial court finds there was no good cause for failing to assert those grounds in a prior motion . . . ."). Given that Randolph had lupus his entire life and Florida's current lethal injection protocol has been in effect since 2017, Randolph could have raised his claim in one of his earlier postconviction

motions, but he failed to do so. *See, e.g., Reynolds v. State*, 373 So. 3d 1124, 1126-27 (Fla. 2023) (finding claim procedurally barred because it could have been raised in a prior postconviction motion); *Rogers*, 409 So. 3d at 1263 ("[I]n an active warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred."). Randolph had ample opportunity to raise a timely as-applied lethal injection challenge, but he instead filed multiple successive postconviction motions raising other issues. Under well-established and routinely followed Florida law, this claim was procedurally barred for not having been raised sooner.

Notably, Randolph only challenged the Florida Supreme Court's holding as it applied to the state's time bar, and not the alternative, procedural bar holding. Given the Florida Supreme Court's alternative ruling that Randolph's as-applied challenge was procedurally barred under state law, the outcome of this case would not change even if this Court granted certiorari on the time-bar issue. Accordingly, an independent alternative ground exists for denying Randolph's as-applied claim that Randolph has not challenged, and that alternative ground would remain unaffected by any determination in this case. For all these reasons, this Court should deny certiorari review.

C. Randolph's Supremacy-Clause argument was never presented in state court.

To the extent that Randolph now challenges the Florida Supreme Court's adjudication of his as-applied claim based on the Supremacy Clause, that argument was never raised in state court. Randolph's brief never mentioned the Supremacy Clause, nor did it cite Article VI of the Constitution. Likewise, the Florida Supreme

Court did not analyze Randolph's as-applied claim under the Supremacy Clause, although it correctly recited the standard outlined by this Court for challenging a state's method of execution. But because Randolph never framed this claim within the scope of the Supremacy Clause, the Florida Supreme Court did not address whether applying the time bar to Randolph's case would constitute a violation of the Supremacy Clause.[4]

This Court's jurisdiction to review a case from a state court of last resort is premised on the state court *deciding* an important federal question. Sup. Ct. R. 10(b)(c). If a federal question has not first been presented to a state court, this Court has "no power to consider it." *Street v. New York*, 394 U.S. 576, 581–82 (1969); *see also Hill v. California,* 401 U.S. 797, 805 (1971) (finding an issue was not properly before this Court when it was never raised, briefed, or argued in the state appellate court).

This Court has recognized that when "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Street*, 394 U.S. at 582. Randolph never made any Eighth Amendment argument to the Florida Supreme Court based on the Supremacy Clause. Indeed, Randolph made no effort to show that *this* federal issue was properly raised, nor does he show that the Florida Supreme Court's failure to consider it was

[4] As demonstrated throughout the instant pleading, it clearly does not.

for a reason other than lack of presentation. This Court therefore lacks jurisdiction to review this specific question, and certiorari should be denied.

D. This case presents no conflict.

In addition to this case having serious vehicle problems, Randolph has failed to provide any compelling reasons to warrant this Court's review. Randolph makes vague and unfounded assertions that the Florida Supreme Court disregarded this Court's holdings, but he fails to explain which cases the lower court's opinion allegedly contravenes. Randolph has not presented any true conflict between the Florida Supreme Court and this Court, or any other court for that matter.

As this Court has observed, a principal purpose for certiorari jurisdiction "is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991) (listing conflict among federal appellate courts and state supreme courts as a consideration in the decision to grant review). Issues that have not divided the courts or are not important questions of federal law do not merit this Court's attention. *Rockford Life Ins. Co. v. Ill. Dep't of Revenue*, 482 U.S. 182, 184 n.3 (1987). In the absence of such conflict, certiorari is rarely warranted. "[T]here are strong reasons to adhere scrupulously to the customary limitations of [the Court's] discretion." *Illinois v. Gates,* 462 U.S. 213, 232 (1983). No compelling reasons exist here to warrant this Court's exercise of review.

E. The Florida Supreme Court's decision was correct.

Randolph's method-of-execution claim fails in its entirety on the merits. Method-of-execution challenges are governed by the two-part "*Baze-Glossip* test." *Bucklew v. Precythe*, 587 U.S. 119, 133-35 (2019); *see Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). As the Florida Supreme Court correctly stated, under this Court's precedent, "[t]o 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." *Randolph*, 2025 WL 3170826, at *3 (quoting *Asay*, 224 So. 3d at 701) (citing *Glossip,* 576 U.S. at 877). Randolph's as-applied challenge failed both prongs.

Randolph claimed that lupus would cause him to suffer a "tortuous death" under the current lethal injection protocol, but he failed to provide any details in his successive postconviction motion of how that would allegedly occur. Instead of identifying specific conditions caused by lupus that would impact the effect of the lethal injection drugs, Randolph's motion cited Dr. Zivot's generalized complaints about the lethal injection procedure. Dr. Zivot's affidavit stated that Randolph must "reposition himself frequently during sleep and complains of significant neck pain when he lies on his back." He concluded that "many severe and painful outcomes" will occur during "any attempt to execute" Randolph, and "[p]ositioning him will lead to an immediate state of severe pain." This is not unconstitutional pain.

As this Court has recognized, the Eighth Amendment does not require "the avoidance of all risk of pain" in any method of execution. *Bucklew*, 587 U.S. at 134. Nor does it guarantee a prisoner a painless death. *Id*. (citing *Glossip*, 576 U.S. at 869). "Instead, what unites the punishments the Eighth Amendment was understood to forbid and distinguishes them from those it was understood to allow, is that the former were long disused (unusual) forms of punishment that intensified the sentence of death with a (cruel) superadd[ition] of terror, pain, or disgrace." *Bucklew*, 587 U.S. at 133 (internal citations and quotations omitted). The possibility that Randolph might experience pain during the lethal injection procedure due to pain that he already has to begin with does not amount to "superadded" pain that would constitute cruel and unusual punishment. *Bucklew*, 587 U.S. at 130.

To the extent that Dr. Zivot[5] suggests that etomidate will not fully render Randolph unconscious, that is more of a general grievance about the functioning of etomidate, which has already been fully litigated in Florida. *See, e.g.*, *Asay v. State* (*Asay VI*), 224 So. 3d 695, 701 (Fla. 2017) ("Intravenous injection of etomidate produces hypnosis characterized by a rapid onset of action, usually within one minute."); *Long v. State*, 271 So. 3d 946, 944 (2019) (crediting the testimony of the State's expert witness, Dr. Yun, who testified "that the massive dose of 200 milligrams of etomidate would produce such a deep state of burst suppression and

[5] Dr. Zivot's affidavit fails to address the well-known and established effect of etomidate, an FDA approved hypnotic/anesthetic. Randolph will be rendered unconscious almost immediately by etomidate—within one minute. *See Asay*, 224 So. 3d 701 ("Intravenous injection of etomidate produces hypnosis characterized by a rapid onset of action, usually within one minute.") (quoting package insert).

unconsciousness that it would . . . render a person . . . unaware of noxious stimuli"). The Florida Supreme Court has fully considered and approved Florida's current lethal injection protocol. *See* Asay VI, 224 So. 3d at 700-02; *Hannon v. State*, 228 So. 3d 505, 508-09 (Fla. 2017); *see also Jimenez v. State*, 265 So. 3d 462, 474-75 (Fla. 2018) (noting that in *Asay VI* it "fully considered and approved of the current lethal injection procedure").

Dr. Zivot's reference to pulmonary edema, even if accepted as true, does not bring merit to Randolph's claim. Dr. Zivot recognizes that pulmonary edema is "often observed in lethal injection executions" and would result from "[t]he sequential injection of the lethal chemicals[.]" Thus, pulmonary edema would occur from the lethal injection drugs, and hence, after the inmate is rendered unconscious by etomidate. In essence, this is a facial challenge to the etomidate protocol disguised as an as-applied challenge.

Even if his claim had been timely raised, Randolph was in no way entitled to an evidentiary hearing so he could relitigate whether etomidate functions properly under the state's protocol. Nor was he entitled to a hearing to litigate whether his positioning on the gurney and in restraints would somehow amount to superadded pain in violation of the Eighth Amendment.

Notably, Randolph's successive postconviction motion was entirely silent on how his proposed alternative methods would result in a "clear and considerable' difference in reducing pain given that his chief concern was positioning. Randolph proposed a two-drug protocol consisting of fentanyl and pentobarbital as well as a

firing squad as his alternative methods of execution. Randolph failed to explain how positioning him for lethal injection using different drugs—fentanyl and pentobarbital—would cause a clear difference in pain. Randolph's positioning for intravenous line insertion and the preparation to receive lethal injection drugs will likely be the same regardless of the actual drugs used. Randolph did not explain this point.

The same is true for Randolph's other proposed alternative of a firing squad. While it presumably would not involve intravenous line placement, execution by firing squad would nevertheless require Randolph to be restrained and remain in the same position for the execution to be successful. Simply put, if positioning is the reason for Randolph's alleged pain, Randolph failed to show that his alternative methods would constitute a clear and considerable difference in reducing pain associated with positioning during the execution. *See, e.g., Bucklew*, 139 S. Ct. at 1130 (rejecting Bucklew's examples for why nitrogen gas would significantly reduce his pain as opposed to pentobarbital when he speculated that with pentobarbital there may be problems with the IV process; forcing him to lie on his back may impair his breathing; and the stress may cause his tumors to bleed). Accordingly, Randolph failed to meet his burden of a showing an alternative method that "entails a significantly less severe risk of pain." *Glossip*, 576 U.S. at 877.[6] On the face of his

[6] Randolph further did not show that the State could carry out his proposed alternative methods "relatively easily and reasonably quickly." *Bucklew*, 587 U.S. at 141 (internal quotations omitted). For example, problems obtaining pentobarbital have long been documented. *See Correll v. State*, 184 So. 3d 478, 490 (Fla. 2015) (rejecting defendant's claims that Florida can obtain pentobarbital from other states

fourth successive postconviction motion, Randloph failed to satisfy this Court's *Baze-Glossip* standard. The Florida Supreme Court appropriately found that "Randolph's claim lacks merit as a matter of law." *Randolph*, 2025 WL 3170826, at *3.

This Court should not consider Randolph's last-ditch effort to delay his execution. This is especially true given that the vehicle in which this issue reaches this Court is unworkable—the Florida Supreme Court had an independent and adequate basis to reject Randolph's claim based on it being untimely and procedurally barred under state law, and Randolph failed to raise any Supremacy Clause argument below. On top of that Randolph's as-applied challenge is facially meritless under the *Baze-Glossip* standard. For all these reasons, this Court should deny certiorari review.

II. Randolph fails to identify any constitutional deficiency in Florida's clemency process.

In his Petition to this Court, Randolph argues that he was denied a meaningful clemency proceeding and opportunity to confront clemency investigation findings in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Petition at 30. The warrant states that "executive clemency . . . was considered pursuant to the Rules of Executive Clemency, and it has been determined

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or that it could license a compounding pharmacy to make it); *Long*, 271 So. 3d at 945 (holding that competent, substantial evidence supports the postconviction court's finding that Long failed to identify a known and available alternative method of execution by naming pentobarbital and fentanyl as his proposed alternative methods of lethal injection); *see also In re Ohio Execution Protocol*, 860 F.3d 881, 891 (6th Cir. 2017) (In finding pentobarbital unavailable, the court stated: "Ohio need not already have the drugs on hand. But for [the *Glossip/Baze*] standard to have practical meaning, the State should be able to obtain the drugs with ordinary transactional effort. Plainly it cannot").

that executive clemency is not appropriate." Randolph argues that he was not given an opportunity to provide information since his original clemency review in 2014, nor was he allowed to review the findings for his denial of clemency. Petition at 30.

The Florida Supreme Court rejected Randolph's argument finding that the court had previously squarely rejected the argument that a capital defendant has the "right to review and rebut evidence" underlying the rejection of clemency. *Randolph,* 2025 WL 3170826 at *14 (*citing Bates*, 416 So. 3d at 320-21); s*ee also Jennings v. State*, 50 Fla. L. Weekly S289, S291 (Fla. Nov. 6) (citing cases decided in 1986, 2010, and 2012 in support of rejection of clemency-based claims), *cert. denied*, No. 25-6061, 2025 WL 3157365 (U.S. Nov. 12, 2025).

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." *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 276 (1998) (quoting *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1985)). 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 when Randolph was appointed clemency counsel, submitted an application, submitted information to be considered, and was granted an interview. The Constitution does not require the States to enact a specific clemency mechanism. *Herrera v. Collins*, 506 U.S. 390, 414 (1993).

Moreover, Randolph—who, raped, stabbed, strangled and murdered a woman, and whose guilt for those crimes is not disputed, *see Randolph*, 562 So. 2d 331, 338

(Fla. 1990) (observing he has never claimed innocence and rejecting Randolph's claim that the murder was not heinous, atrocious, or cruel)—is an exceptionally poor candidate for clemency under any circumstances. And again, even if this case were an appropriate vehicle for certiorari review, Randolph fails to identify any conflict of decisions or unsettled federal question that would warrant review. Accordingly, this Court should deny the instant petition.

CONCLUSION

The petition for a writ of certiorari should be denied.

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