

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

FRANK EVANS,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether this Court should grant a petition for writ of certiorari, vacate the decision of the court of appeals, and remand for further consideration in light of *Margolin v. Nat’l Assn. of Immigration Judges*, 608 U.S. ____ (May 26, 2026) (No. 25-767) (*per curiam*), where the court of appeals resolved the appeal on an issue the parties had not raised?

INTERESTED PARTIES

The parties to the proceeding in this Court and the courts below are:

Frank Evans, Petitioner

Secretary, Florida Department of Corrections, Respondent

RELATED PROCEEDINGS

United States Court of Appeals (11th Cir.):

Frank Evans v. Sec’y, Fla. Dep’t of Corr., No. 24-10464
(March 4, 2026)

United States Court of Appeals (S.D. Fla.):

Frank Evans v. Sec’y, Fla. Dep’t of Corr., No. 21-cv-22511-KMW
(Jan. 26, 2024)

Florida Supreme Court:

Frank Evans v. State, No. SC18-1882
(Dec. 3, 2018)

Florida District Court of Appeal (3rd Dist.):

Frank Evans v. State, No. 3D21-441,
(Mar. 24, 2021)

Frank Evans v. State, No. 3D17-590
(Oct. 3, 2018)

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PETITION FOR WRIT OF CERTIORARI

Frank Evans respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 24-10464 in that court.

OPINIONS BELOW

The decision of the court of appeals, which is unpublished and available at 2026 WL 607318, is reproduced in Appendix A-1. The district court's decision, which is unpublished, is reproduced in Appendix A-2.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The jurisdiction of the district court was invoked under 28 U.S.C. § 2254. The court of appeals had jurisdiction under 28 U.S.C. §§ 1291 and 2253. On March 4, 2026, the court of appeals affirmed the district court's order denying Petitioner's habeas corpus petition. This petition is timely filed under Supreme Court Rule 13.1.

CONSTITUTIONAL PROVISION INVOLVED

Petitioner intends to rely on the following constitutional provision:

United States Constitution, Amend. V, cl. 2

. . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb . . .

STATEMENT OF THE CASE

1. In 2016, Petitioner was charged with attempted second-degree murder with a deadly weapon following a confrontation with another resident at the boarding house where they both lived. App. A-1: 1-2. He proceeded to trial. *Id.* at 2.

2. “At the conclusion of the parties’ cases, as is the usual course, the trial court instructed the jurors on the law and then sent them to deliberate. The court, however, did not provide the jurors with the verdict form or the jury instructions” as is required by Florida law. *Id.* (citations omitted) “About an hour later, the court realized its mistake, but by then the jurors had already returned a verdict.” *Id.* The trial court did not accept the jury's verdict but instead required them to return

to the jury room to review the written instructions. *Id.* at 2-3. The jurors retired for further deliberations and later returned with a verdict convicting Petitioner of the lesser-included offense of aggravated battery. *Id.* at 3.

3. After exhausting state remedies, *see id.* at 3-4, Petitioner filed a *pro se* 28 U.S.C. § 2254 petition for writ of habeas corpus in the United States District Court for the Southern District of Florida. *See id.* at 4. One of the claims raised in the petition was that the trial court violated his double jeopardy rights based on its “purported refusal to ‘render . . . the jury’s original verdict in his trial’” because his original verdict was an acquittal. *Id.* at 8, 9. The district court, however, rejected that claim by analyzing crimes that Petitioner was not charged with nor convicted of – lewd and lascivious molestation and lewd and lascivious battery – using the “same elements” test in *Blockburger v. United States*, 284 U.S. 299 (1932). *Id.* at 5-6; App. A-2: 11-15.

4. Petitioner appealed. App. A-1: 6. The sole issue on which the court of appeals granted a certificate of appealability was whether the district court erred when it denied Petitioner’s double jeopardy claim, “where its analysis was based on purported convictions for lewd and lascivious molestation and lewd and lascivious battery, but Evans was convicted of a single count of aggravated battery.” *Id.* (internal quotation marks and citation omitted).

5. Petitioner’s brief argued the issue on which the certificate of appealability was granted, contending that the district court erred when it analyzed

his double jeopardy claim using offenses for which Petitioner was never charged or convicted. *See id.* at 7.

6. The State’s answer brief did not contest that the district court erred in the manner Petitioner asserted, but argued that its decision could nonetheless be affirmed because Petitioner’s double jeopardy claim was unexhausted. *See* Brief of Appellee, *Evans v. Sec’y Fla. Dep’t of Corr.* No. 24-10464 (11th Cir. May 14, 2025), ECF No. 60: 20. With respect to the district court’s denial of Petitioner’s double jeopardy claim, the “Summary of Argument” in the State’s brief stated, *in toto*:

The district court did not err in denying ground I of Evans’s § 2254 federal habeas petition. Evans failed to properly develop his double jeopardy claim based on the trial court’s rejection of the verdict. He advanced a jury instruction claim based only on state rule of criminal procedure 3.400(b), and what he calls a “manifest necessity” and the state court’s ‘choice of mistrial.’ Consequently, the state court did not address any double jeopardy claim. Therefore, any double jeopardy claim was unexhausted. The federal district court properly denied the claim.

Id.

6. The Eleventh Circuit affirmed. App. A-1. The court of appeals held that the district court erred when it “incorrectly analyzed the elements of a completely different offense than what [Petitioner] was charged with or convicted of under the *Blockburger* ‘same elements’ test.” *Id.* at 8. It explained that the district court “misunderstood Mr. Evans’s double jeopardy claim and applied the wrong law to the wrong facts.” *Id.*

7. The court of appeals acknowledged that “[n]ormally, an error of this kind would warrant a reversal and remand for further proceedings.” *Id.* However, it

determined that it “need not reverse and remand where there is no viable claim and remand would be futile,” *id.*, and affirmed the district court’s denial of the petition, *id.* at 10.

8. The Eleventh Circuit did not rely on the exhaustion argument put forth by the State’s brief to conclude that remand would be futile. *See id.* at 9-10. Rather, it considered the merits of Petitioner’s double jeopardy claim, and held that Petitioner’s “double jeopardy protections were not triggered” by the trial court’s rejection of the original verdict and instructions to the jury to redeliberate. *Id.* at 10. To justify its decision to resolve an issue not addressed by the parties, the court of appeals relied on circuit law holding that it “need not reverse and remand when there is no viable claim and remand would be futile.” *Id.* at 8 (citing *Santos v. United States*, 982 F.3d 1303, 1314-15 (11th Cir. 2020); *Ali v. Florida*, 777 F.2d 1489, 1490 (11th Cir. 1985)). In the cited cases, however, the conclusion that remand was futile was based on arguments made by the appellee and to which the appellant had the opportunity to respond. *See Santos*, 982 F.3d at 1308 (noting the government “suggest[ed] remand would be futile” at oral argument); *Ali*, 777 F.2d at 1490 (concluding remand of habeas petition containing unexhausted claims to allow State chance to waive exhaustion would be futile “because it is clear from the State’s brief on appeal that it would not waive the exhaustion issue”).

REASONS FOR GRANTING THE WRIT

- I. The Court should grant the petition, vacate the lower court’s order, and remand with instructions that the court of appeals reconsider its decision in light of *Margolin v. Nat’l Assn. of Immigration Judges*, 608 U.S. ____ (May 26, 2026).**

In *Margolin v. Nat’l Assn. of Immigration Judges*, 608 U.S. ____, ____ S. Ct. _____. 2026 WL 1463466, *2 (2026) (No. 25-767) (*per curiam*), the Court reaffirmed that “[f]ederal courts adhere to the principle of party presentation.” Under the party presentation principle, “points not argued will not be considered.” *Id.* (quoting *Clarke v. Sweeney*, 607 U.S. 7, 9-10 (2025) (*per curiam*)). Instead, courts must “rely on the parties to ‘frame the issues for decision’ and decide ‘only the questions presented.’” *Id.* (quoting *United States v. Sineneng-Smith*, 590 U.S. 371, 375-76 (2020) (internal question marks omitted in *Margolin*)).

In *Margolin*, the Court held that the Fourth Circuit “violated the party-presentation principle when it decided a case different from the one [respondent] advanced.” *Id.* (internal quotation marks and citation omitted). In the court of appeals, the parties “confined their arguments to [a] narrow question.” *Id.* Despite rejecting respondent’s arguments on the narrow question, the court appeals “*sua sponte* addressed a much broader one and remanded for further proceedings on that question.” *Id.* “And the court did so without giving either side a chance to address its theory.” *Id.* The Court concluded that the Fourth Circuit’s actions were a “drastic departure from the principle of party presentation,” and constituted an abuse of discretion. *Id.* (cleaned up).

The same is true here. The narrow claim on which the Eleventh Circuit granted a certificate of appealability was whether the district court erred when it analyzed the wrong offenses to deny Petitioner’s double jeopardy claim. App. A-1: 6. In addition to addressing that issue, the State argued that remand was unwarranted because the claim was unexhausted. See Brief of Appellee, *Evans v. Sec’y Fla. Dep’t of Corr.* No. 24-10464 (11th Cir. May 14, 2025), ECF No. 60: 20. However, the court of appeals decided the case on a broader ground not argued by either party – that remand was futile because Petitioner’s double jeopardy claim failed on its merits. App. A-1: 9-10.

To support its futility decision, the court of appeals relied on circuit law holding that it “need not reverse and remand when there is no viable claim and remand would be futile.” *Id.* at 8 (citing *Santos v. United States*, 982 F.3d 1303, 1314-15 (11th Cir. 2020); *Ali v. Florida*, 777 F.2d 1489, 1490 (11th Cir. 1985)). In both of those cases, however, the court determined remand was futile based on arguments made by the appellee and to which the appellant had the opportunity to respond. See *Santos*, 982 F.3d at 1308 (noting that government “suggest[ed] remand would be futile” at oral argument); *Ali*, 777 F.2d at 1490 (concluding remand of habeas petition containing unexhausted claims to allow State chance to waive exhaustion would be futile “because it is clear from the State’s brief on appeal that it would not waive the exhaustion issue”). That was not the case here. Although the State argued below that remand was unwarranted, it did so on the grounds that Petitioner’s double jeopardy claim was unexhausted. Yet the court of appeals did not affirm the denial of

the petition on that ground. Instead, it affirmed the district court's decision because it found Petitioner's claim meritless.

Accordingly, this case is just like *Margolin*. The court of appeals *sua sponte* decided the appeal on an issue broader than that presented by the parties' briefing and did so without offering the parties an opportunity to address its theory. *See Margolin*, 2026 WL 1463466, at *2. It therefore violated the party presentation principle. *See id.* The Court should grant the instant petition, vacate the decision of the court below, and remand for further proceedings in light of *Margolin*.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari, vacate the decision of the United States Court of Appeals for the Eleventh Circuit, and remand for further proceedings in light of *Margolin*.

Respectfully submitted,

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