

No. 25-7525

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

REPLY BRIEF FOR PETITIONER

HECTOR A. DOPICO
Federal Public Defender

JANICE L. BERGMANN
Assistant Federal Public Defender
*Counsel for Petitioner
One E. Broward Blvd., Suite 1100
Fort Lauderdale, Florida 33301-1100
Telephone No. (954) 356-7436
Janice_Bergmann@fd.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
REPLY BRIEF FOR PETITIONER.....	1
CONCLUSION.....	4

TABLE OF AUTHORITIES

CASES:

Evans v. State,

320 So.3d 735 (Fla. 3d Dist. Ct. App. 2021) 2

Griffin v. State,

414 So.2d 1025 (Fla. 1982)..... 2

Margolin v. Nat’l Assn. of Immigration Judges,

608 U.S. ___, 146 S. Ct. 1285..... 1, 2, 3, 4

Wood v. Milyard,

566 U.S. 463 (2012) 3

OTHER AUTHORITY:

Brief of Appellee, *Evans v. Sec’y, Fla. Dep’t of Corr.*, No. 24-10464

(11th Cir. May 14, 2025), ECF No. 60..... 1

Reply Brief, *Evans v. Sec’y, Fla. Dep’t of Corr.*, No 24-10464

(11th Cir. July 7, 2025), ECF No. 62..... 2

REPLY BRIEF FOR PETITIONER

To distinguish this case from *Margolin v. Nat’l Ass’n of Immigration Judges*, 608 U.S. ___, 146 S. Ct. 1285 (2026), the State makes two arguments. The first is not supported by the record; the second is inapplicable in these circumstances. Neither precludes this Court from granting the petition, vacating the Eleventh Circuit’s decision, and remanding for further consideration in light of *Margolin*.

The State contends Petitioner is “simply incorrect” in his assertion that it failed to argue the merits of his double jeopardy claim in its brief in the court of appeals. BIO at 5-6. It does not, however, contest Petitioner’s characterization of the “Summary of Argument” in its appellate brief as arguing only that his claim was unexhausted. *See id.*, *passim*. Rather, the State asserts it argued the merits of that claim in several other paragraphs in its brief. *Id.* (citing Br. of Appellee, *Evans v. Sec’y, Fla. Dep’t of Corr.*, No. 24-10464 (11th Cir. May 14, 2025), ECF No. 60: 24-25). The State neglects to mention, however, that the arguments it cites are found in a section of its brief entitled, “The State Trial Court’s Ruling,” *see* Br. of Appellee, ECF No. 60: 21, and comprise part of its explanation as to why Petitioner failed to fairly present his double jeopardy claim to the state courts for exhaustion purposes, *see id.* at 21-25. Moreover, in the very next section of its brief – entitled “The Federal District Court’s Ruling” – the only argument made by the State was that Petitioner failed to exhaust a double jeopardy claim in the state court proceedings, *id.* at 26-31, and the only remedy it sought was that the court of appeals “affirm as the district court’s ruling that this is an unexhausted state law claim is correct.” *Id.* at 31.

The BIO further asserts that Petitioner “acknowledged and replied to the Secretary’s merits argument.” BIO at 6 (citing Reply Br., *Evans v. Sec’y, Fla. Dep’t of Corr.*, No. 24-10464 (11th Cir. July 7, 2026), ECF No. 62: 8). That is simply not true. First, the page of Petitioner’s reply brief cited by the State makes no mention of the merits of Petitioner’s claim, but instead describes only a portion of the trial proceedings. *See* Reply Br., ECF No. 62: 8. More importantly, when Petitioner replied to these so-called “merits” arguments, he did so only in response to the State’s contentions regarding exhaustion and procedural default, stating:

Finally, the State argues that “[a]ssuming *arguendo* that the claim of double jeopardy based on the court’s refusal to accept the jury verdict would have been clearly developed [in the state court proceedings], it would have failed” on the merits under Florida law. 11th Cir. DE 60: 24 (citing *Griffin v. State*, 414 So.2d 1025, 1028 (Fla. 1982)). But as Mr. Evans explained in his initial brief, 11th Cir. DE 52: 56-57, the state courts did *not* reach the merits of Mr. Evans’s double jeopardy claim. Rather, the state postconviction court denied the claim as procedurally barred because it was not raised on direct appeal. *See* DE 27-2: 60. The state appellate court affirmed that decision in an unexplained *per curiam* decision. *Evans v. State*, 320 So.3d 735 (Fla. 3d Dist. Ct. App. 2021).

Moreover, even if the state courts would have denied Mr. Evans’ double jeopardy claim on its merits in addition to finding it procedurally barred, that does not render the claim unexhausted. . . .

Id. at 19-20. Thus, contrary to the State’s assertions, to the extent the merits of Petitioner’s double jeopardy claim were mentioned in the briefing before the court of appeals, it was only in the exhaustion context.

In sum, 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*, 146

S. Ct. at 1288. It therefore violated the party presentation principle. *See id.* at 1288-89. The Court should grant the instant petition, vacate the decision of the court below, and remand for further proceedings in light of *Margolin*.

Perhaps recognizing the weakness of its attempt to distinguish *Margolin*, the State argues a GVR is unwarranted under *Wood v. Milyard*, 566 U.S. 463 (2012), because this is a habeas corpus case and Petitioner “has no valid claim on the merits.” BIO at 8. In fact, *Wood* supports the application of the party-presentation principle in habeas cases. There, the district court denied the petitioner’s claim on the merits, but the court of appeals *sua sponte* questioned the petition’s timeliness and affirmed the denial of relief after finding the petition untimely. ~~466~~566 U.S. at 473. This Court reversed. *Id.* at 475. It held that “a federal court does not have *carte blanche* to depart from the principle of party presentation basic to our adversary system,” *id.* at 472, and can do so only in “exceptional cases,” *id.* at 473. Because the State “deliberately steered” the courts away from the timeliness issue and towards the merits, the Supreme Court held that the court of appeals abused its discretion by dismissing the petition as untimely. *Id.* at 473-74.

The same is true here. On appeal, the State’s arguments “deliberately steered” both Petitioner and the court of appeals away from the merits and towards exhaustion. Petitioner responded only to the exhaustion arguments. Yet, the Eleventh Circuit affirmed not on exhaustion grounds, but by finding the claim meritless. As was true in *Wood*, this was not an “exceptional case” where the court of appeals could depart from the party presentation principle. Rather, it was an abuse

of discretion for the Eleventh Circuit to *sua sponte* affirm the denial of relief on a basis not argued by the parties.

CONCLUSION

Based upon the arguments presented herein and in the petition for writ of certiorari, 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,

HECTOR A. DOPICO
FEDERAL PUBLIC DEFENDER

By: *s/Janice L. Bergmann*
JANICE L. BERGMANN
Assistant Federal Public Defender
Counsel for Petitioner

Fort Lauderdale, Florida
July 7, 2026