No. _____

IN THE

Supreme Court of the United States

JESSE GUARDADO ,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, NOVEMBER 5, 2026, AT 6:00 PM

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CAPITAL CASE

QUESTIONS PRESENTED

Petitioner Jesse Guardado is scheduled to be executed by the State of Florida on November 5, 2026. In denying Guardado's claim that Florida's clemency process violated his due process as promised by the Fourteenth Amendment, the Florida Supreme Court held that no Due Process violation has occurred because the governor has unfettered power to deny clemency to death-sentenced prisoners.

Guardado raises the following issues in this petition:

1. Whether the Fourteenth Amendment is violated when the State of Florida has a clemency process yet fails to ensure that it comports with due process requirements when it comes to death-sentenced individuals.

2. Whether the Fourteenth Amendment is violated when the State of Florida has a clemency procedure yet fails to ensure that the executive complies with those procedures when it comes to death-sentenced individuals.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page. Petitioner, Jesse Guardado, a death-sentenced Florida prisoner, was the appellant in the Supreme Court of Florida. Respondent, the State of Florida, was the appellee in the Supreme Court of Florida.

LIST OF RELATED CASES

Per Supreme Court Rule 14.1(b)(iii), the following cases relate to this petition:

Underlying Trial:
Circuit Court of the First Judicial Circuit, in and for Walton County, Florida
State of Florida v. Jesse Guardado, Case No. 2004-CF-0903
Judgment Entered: October 13, 2005

Supreme Court of Florida (Case No. SC05-2035)
Guardado v. State, 965 So. 2d 108 (Fla. 2007) (affirming)
Judgment Entered: June 28, 2007, *reh'g denied* September 10, 2007

Supreme Court of the United States (Case No. 07-8094)
Guardado v. Florida, 552 U.S. 1197 (2008) (denying certiorari)
Judgment Entered: February 19, 2008

Initial Postconviction Proceedings:
Circuit Court of the First Judicial Circuit, in and for Walton County, Florida
State of Florida v. Jesse Guardado, Case No. 2004-CF-0903 (denying all claims)
Judgment Entered: March 30, 2012

Supreme Court of Florida (Case No. SC12-1040)
Guardado v. State, 176 So. 3d 886 (Fla. 2015) (affirming)
Judgment Entered: April 15, 2015, *rev. on reh'g* October 8, 2015

***Hurst* State Habeas Petition:**
Supreme Court of Florida (Case No. SC17-389)
Guardado v. Jones, 226 So. 3d 213 (Fla. 2017) (denying)
Judgment Entered: May 11, 2017

Supreme Court of the United States (Case No. 17-7171)
Guardado v. Jones, 584 U.S. 922 (2018) (denying certiorari)
Judgment Entered: April 2, 2018

***Hurst* Successive Postconviction Motion:**
Circuit Court of the First Judicial Circuit, in and for Walton County, Florida
State of Florida v. Jesse Guardado, Case No. 2004-CF-0903 (denying motion)
Judgment Entered: September 27, 2017

Supreme Court of Florida (Case No. SC17-1903)
Guardado v. State, 238 So. 3d 162 (Fla. 2018) (affirming)
Judgment Entered: March 8, 2018

Supreme Court of the United States (Case No. 17-9284)
Guardado v. Florida, 586 U.S. 1004 (2018) (denying certiorari)
Judgment Entered: November 13, 2018

Federal Habeas Petition:
United States District Court, Northern District of Florida, Tallahassee Division
Guardado v. Sec'y, Fla. Dep't of Corr., No. 4:15-cv-256-RH, 2022 WL 22863709 (N.D. Fla. Jan. 19, 2022) (denying petition)
Judgment Entered: January 19, 2022

United States District Court, Northern District of Florida, Tallahassee Division
Guardado v. Sec'y, Fla. Dep't of Corr., No. 4:15-cv-256-RH, 2022 WL 22863708 (N.D. Fla. Feb. 22, 2022) (denying motion to alter or amend or to reconsider certificate of appealability)
Judgment Entered: February 22, 2022

United States Court of Appeals, Eleventh Circuit
Guardado v. Sec'y, Fla. Dep't of Corr., No. 22-10957, 112 F. 4th 958 (11th Cir. 2024) (denying)
Judgment Entered: August 12, 2024

Supreme Court of the United States:
Guardado v. Dixon, 145 S. Ct. 2822 (Mem) (2025) (denying certiorari)
Judgment Entered: June 23, 2025

Federal § 1983 Action
United States District Court, Middle District of Florida, Jacksonville Division
Guardado v. Sec'y, Fla. Dep't of Corr., No. 3:26-cv-2596-MMH-SJH
Judgement Pending

Second Successive Postconviction Motion:
Circuit Court of the First Judicial Circuit, in and for Walton County, Florida
State of Florida v. Jesse Guardado, Case No. 2004-CF-0903
Judgment Entered: October 19, 2026

Supreme Court of Florida (Case No. SC2026-1605)
Guardado v. State, ____ So. 3d _____ (Fla. 2026) (affirming)
Judgment Entered: October 29, 2026

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Ariz. Rev. Stat. Ann. §31-445 14

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Mo. Rev. Stat. §217.800 15

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Tenn. Code Ann. §§ 40-21-101 to 40-27-109 15

Tex. Code Crim. Proc. Ann., Article 48.01 15

Utah Code Ann. § 77-27-5.5 15

Wyo. Stat. § 7-13-801 15

OTHER AUTHORITIES **PAGE(S)**

Death Penalty Information Center, List of Clemencies Since 1976, https://deathpenaltyinfo.org/policy-issues/policy/clemency/list-of-clemencies-since-1976 (last visited Oct. 30, 2026). 12

Press Release, Fla. Comm'n on Offender Review, Board of Clemency Adopts Governor's Proposal to Categorically Remit All Fines Related to COVID-19 Restrictions and to Revise the Rules of Executive Clemency Adopted by the Clemency Board (Mar. 10, 2021), https://www.fcor.state.fl.us/content/download/32564/file/2021%20Clemency%20Rule%20Change%20Press%20Release.pdf?version=1(last visited October 30, 2026). 13

IN THE SUPREME COURT IF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Jesse Guardado respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida.

OPINIONS BELOW

This is a petition regarding the errors of the Supreme Court of Florida in affirming the Circuit Court of The First Judicial Circuit, In and For Walton County, Florida's ("circuit court") Order Denying Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence. The opinion at issue is unreported and reproduced at App. A. The circuit court's unpublished Order Denying Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence is reproduced at App. B.

JURISDICTION

The opinion of the Supreme Court of Florida was entered on October 19, 2026. Jurisdiction of this Court is invoked under 28 U.S.C. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI.

The Eighth Amendment provides, in relevant part:

> Excessive bail shall not be required…nor cruel and unusual punishments inflicted.

U.S. Const. amend. VIII.

The Fourteenth Amendment provides, in relevant part:

> No State shall . . . 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.

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

At his arraignment on October 19, 2004, Guardado waived counsel and pled guilty to first-degree murder and robbery with a weapon. *See Guardado v. State*, 965 So. 2d 108, 100 (Fla. 2007). Trial counsel was later appointed and his penalty phase took place in September 2005. *Id.* at 111, 113. The jury unanimously recommended the death penalty. *Id.* at 111. Guardado was sentenced to death on October 13, 2005. *Id.* at 111-112.

On direct appeal Guardado argued that the trial court erred in denying his request to discharge his court-appointed counsel and his motion to dismiss, and that there was no competent substantial evidence to establish the heinous, atrocious or cruel or cold, calculated and premeditated aggravators. Guardado, 965 So. 2d at 113-18. The Florida Supreme Court affirmed on direct appeal. *Guardado*, 965 So. 2d at 120. His petition for writ of certiorari was also denied. *Guardado v. Florida*, 552 U.S.

1197 (2008).

Registry counsel was appointed to represent Guardado in his state postconviction proceedings. *Guardado v. State*, 176 So. 3d 886 (Fla. 2015). Guardado filed his initial motion for state postconviction relief on October 15, 2008, and on June 1, 2010, he filed an amended motion raising four claims of ineffective assistance of counsel for failing to contact potentially mitigating witnesses, failing to expand the investigation into Guardado's substance abuse issues, failing to object to the State's cause challenge to a prospective juror, and failing to raise or preserve a challenge based on the pro-death penalty bias of a prospective juror. *Id*. at 892, 899. After an evidentiary hearing, all of Guardado's claims were denied. *Id*. at 892. The Florida Supreme Court affirmed. *Id*.

Guardado subsequently filed both a state habeas corpus petition, as well as a successive motion under Rule 3.851 of the Florida Rules of Criminal Procedure, based on *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). The Florida Supreme Court denied relief in both instances. *Guardado v. Jones*, 226 So. 3d 213 (Fla. 2017), *cert. denied*, 584 U.S. 922 (2018); *see also Guardado v. State*, 238 So. 3d 162 (Fla. 2018), *cert. denied*, 586 U.S. 1004 (2018).

In federal court, Guardado filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. *See Guardado v. Sec'y, Fla. Dep't of Corr*., No. 4:15-cv-256-RH, 2022 WL 22863709 (N.D. Fla. Jan. 19, 2022). His petition was denied with prejudice and a certificate of appealability was also denied. Id. at *21. Additionally, the federal district court denied Guardado's subsequent Motion to Alter or Amend the Judgment

or to Reconsider Denial of a Certificate of Appealability. *See Guardado v. Sec'y, Fla. Dep't of Corr.*, No. 4:15-cv-256-RH, 2022 WL 22863708 (N.D. Fla. Feb. 22, 2022). This decision was affirmed by the Eleventh Circuit Court of Appeals. *See Guardado v. Sec'y, Fla. Dep't of Corr*., No. 22-10957, 112 F. 4th 958 (11th Cir. 2024), *cert. denied*, *Guardado v. Dixon*, 145 S. Ct. 2822 (Mem) (2025).

On September 28, 2026, Guardado filed a 42 U.S.C. § 1983 suit challenging Florida's current lethal injection protocol on Eighth Amendment grounds in the United States District Court for the Middle District of Florida, Jacksonville Division. *See Guardado v. Sec'y, Dep't of Corr., et. al*., No. 3:26-cv-02596-MMH-SJH. The litigation in the federal court is currently still pending.

On October 5, 2026, Governor Ron DeSantis signed a death warrant for Guardado. PCR-W 56. His execution is scheduled for November 5, 2026, at 6:00 p.m. On October 12, 2026, Guardado filed a successive motion under Rule 3.851 of the Florida Rules of Criminal Procedure. PCR-W 286-417. The State filed an answer on October 13, 2026. PCR-W 418-39. The lower court held a case management conference on October 14, 2026 (PCR-W 111), and on the same day denied Guardado's request for an evidentiary hearing. PCR-W 440-42. On October 19, 2026, the lower court denied Guardado's successive motion to vacate his judgment and death sentence. PCR-W 445-52. Guardado appealed to the Florida Supreme Court and filed his initial brief on October 22, 2026. The State filed its answer brief on October 23, 2026, and Guardado replied on October 24, 2026. On October 29, 2026, the Florida Supreme Court affirmed. App. A.

B. STATEMENT OF FACTS

Filled with remorse over the death of Jackie Malone, Jesse Guardado turned himself in to law enforcement and confessed to detectives on September 24, 2004. He subsequently waived counsel, and pled guilty to first-degree murder and robbery with a weapon at his arraignment on October 19, 2004. (R347; Plea Tr. 25-28, 33).[1] Guardado later asked that penalty phase counsel be appointed. *Guardado v. State*, 965 So. 2d 108, 113 (2007). Following penalty phase proceedings and a *Spencer* hearing, Guardado was sentenced to death on October 13, 2005. *Id*. at 111-112.

Among the nonstatutory mitigation presented at Guardado's penalty phase were: his acceptance of responsibility for his actions; his great remorse; his cooperation with law enforcement; his guilty plea to first-degree murder without any sentencing guarantees; his lengthy history of substance abuse that began when he was a young teenager; the death of his father while he was still a young child; the crib death of his sibling; and the sexual abuse by a neighbor as a child. *Id*. at 120.

However, compelling mitigation later uncovered during federal postconviction proceedings was never considered by Guardado's jury. This included a vastly more comprehensive and detailed investigation into Guardado's life, which was replete with trauma.

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[1] Page references to the 2006 record on appeal are designated as (R: page number). Page references to the 2012 postconviction record on appeal are designated as (2012 ROA R: page number). Page references to the penalty-phase trial transcripts are designated as (TT: page number). Page references to the plea hearing transcript are designated as (Plea Tr: page number).

When Guardado was three years old, his father didn't just die, he committed suicide. PCR-W 294. His maternal grandfather also committed suicide. These tragic deaths impacted everyone in the family. *Id*. When Guardado was in kindergarten, he witnessed his younger brother die of sudden infant death syndrome. *Id*. Following his brother's death, he was frequently sent home from school because he kept crying about his "dead baby brother." *Id*. Guardado predictably suffered from neglect by his mother due to her struggles following these family tragedies. *Id*. He was soon preyed upon by an older neighbor who sexually molested him. *Id*. As a result of this neglect and untreated trauma, he began to associate with negative influences in his neighborhood where he descended into drug and alcohol abuse. *Id.* He quickly fell under the influence of a drug dealer who forced him to commit robberies.

Despite her own struggles, Guardado's mother attempted to get help for him. When she found marijuana in his room, she sought help from the police. *Id*. Unfortunately, Guardado's interactions with the juvenile justice system did not provide him with the help sought by his mother, but instead only traumatized him further.

During his first commitment at the age of 13 or 14, Guardado was viciously attacked and raped by a detention officer. *Id*. Later, between the ages of 15 and 17, he was detained in various commitment facilities. *Id*. He self-harmed by cutting himself and once shot himself in the shoulder with a shotgun. *Id*. However, despite his depression and anxiety and his problems with substance abuse, his family and friends still described him as kind, sensitive, and a loyal friend. *Id*.

When Guardado was 17 years old, he was sent to the now-infamous Dozier School for Boys for a drug possession charge.[2] *Id.* While at Dozier, Guardado was repeatedly shackled and beaten by guards. *Id*. He also witnessed the horrific abuse against other children housed there. *Id*. He and other boys were routinely marched past the infamous "White House" where they knew other boys had been beaten to death. *Id*. Psychologist Dr. Faye Sultan examined Guardado during his federal habeas proceedings and found that he had suffered severe psychological trauma at Dozier which impacted his ability to cope outside a prison environment. *Id*. 351-376. The state not only failed to protect Guardado as a child, but also subjected him to the horrifying abuse at Dozier which exacerbated his trauma and substance abuse.

After his release from Dozier, Guardado was either in the county jail or adult prison between the ages of 17 and 27. *Id*. at 296-97. He was violently raped by a

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[2] Dozier was shut down by the United States Department of Justice in 2011 after an investigation into the violence, and the deaths of at least 98 boys between 1914-1973, with multiple suspicious, violent, and unexplained deaths. Kimmerle, E. H., Wells, E. C., & Jackson, A. O. 2016. *Report on the investigation into the Arthur G. Dozier School for Boys*. University of South Florida. usf.edu. Florida Senate Resolution 1440 (SR 1440 / CS/SR 1440), adopted on April 26, 2017, is a formal legislative resolution by the Florida Senate, with a companion resolution in the House, apologizing for the physical and sexual abuse of boys at the Arthur G. Dozier School for Boys. Fla. S. Res. 1440, 2017 Reg. Sess. 2017. flsenate.gov. At least 34 former Dozier boys have been sentenced to death in the state of Florida. even after acknowledgment of the abuses they suffered. The Marshall Project. 2025, July 14. *The Dozier School to Death Row Pipeline*, Governor Ron DeSantis signed Florida House Bill 21 into law in June 2024, established a $20 million compensation program for living survivors who suffered physical, mental, or sexual abuse while confined at the Dozier or Okeechobee reform schools. *See* § 16.63, Fla. Stat. Since the signing of House Bill 21 and apology from the Florida Senate, Mr. Guardado will become at least the fourth former Dozier student to be executed in the state of Florida. *See* CBS12. 2025, September 30. Florida executes third disgraced Florida School for Boys alumni in just over a year. CBS12 News.

prisoner while serving one of those sentences. *Id*. His mental health suffered greatly as a result of this and he began to self-medicate with drugs, including crack cocaine. *Id*. His lack of coping mechanisms led him to commit several robberies. *Id*. When he received conditional release, he struggled to cope in an unfamiliar world. *Id*. at 380-416. He again lapsed into drug and alcohol abuse in order to self-medicate. *Id*.

He was on a two-week crack cocaine binge when he killed Ms. Malone. *Id.* She had been a good friend to him and had helped him find employment and housing. *Id*. He would have never harmed Ms. Malone if he had not been on a drug fueled binge and desperate for money to support his addiction.

Consistently from the time he turned himself in for Ms. Malone's murder to today, Guardado has been sincerely remorseful for what he did to Ms. Malone. He pled guilty without counsel 25 *days* after his arrest. He has been on Florida's death row since 2005 and has tried to help other inmates and has maintained his steadfast remorse for his crimes. This may have been an aggravated murder, but it was certainly not the least mitigated of murders. Unfortunately, the jury never heard much of this compelling mitigation. Guardado deserved a meaningful clemency review as his fail-safe and did not get it when the governor of Florida has stated that he will not grant clemency to murderers, and has proved that by signing death warrants for 50 death-sentenced prisoners without a single grant of clemency.

REASONS FOR GRANTING THE PETITION

A. IN PRACTICE, FLORIDA'S CLEMENCY PROCEEDINGS FOR DEATH-SENTENCED PRISONERS VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

1. Death-sentenced prisoners are entitled to due process in state clemency proceedings.

"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 exhausted." *Herrera v. Collins*, 506 U.S. 390, 411-12 (1993). It is a "failsafe" recognized as a last resort after "judicial process has been exhausted." *Harbison v. Bell*, 566 U.S. 180, 192 (2009) (citing *Herrera,* 506 U.S. at 411-12). Clemency is an act of leniency or an extension of mercy to inmates. In a capital case, it is a plea by an individual for grace, for one's life to be spared after consideration of one's life circumstances before, during, and after the crime. It recognizes that people change and that there is value and dignity in all human life, even for those who have been convicted of murder. *See* § 922.052(2), Fla. Stat. (2026). Further, the United States Supreme Court has explained that "the heart of executive clemency, which is to grant clemency as a matter of grace," allows "the executive to consider a wide range of factors not comprehended by earlier judicial proceedings and sentencing determinations." *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 280-81 (1998).

The plain text of the Fourteenth Amendment provides in pertinent part that no state may "deprive any person of life, liberty, or property, without due process of law, . . . U.S. Const. amend. XIV, § 1.

In *Woodard*, a 4-4-1 decision, Justice O'Connor, joined by Justices Souter, Ginsburg, and Breyer, held that a death-sentenced prisoner retains a protected life interest during State clemency proceedings, which require minimal procedural safeguards. *Id*. at 288. When a state offers clemency, it must comport with minimal due process required under the Fourteenth Amendment. U.S. Const. amend. XIV, § 1, and *see Woodard*, 523 U.S. at 289 (1998). And in his dissenting opinion, Justice Stevens noted, importantly, the importance to the defendant and the public that the decision to take the life of one of its citizens be "based on reason rather than caprice or emotion" (quoting *Gardner v. Florida*, 430 U.S. 349, 357-58 (1977)). He then stated the obvious: "[t]hose considerations apply with special force to the final stage of the decisional process that precedes an official deprivation of life." *Id*. at 294-95.

Today, 27 states and the federal government permit capital punishment. Every one of those jurisdictions has codified procedures for seeking clemency by constitution, statute, or both. "There is, however, no room for legitimate debate about whether a living person has a constitutionally protected interest in life. He obviously does." *Woodard*, 523 U.S. at 292 (Stevens, concurring and dissenting in part). And the majority of those states, including Florida, recognize that death-sentenced defendants have a limited cognizable due-process interest in their state clemency proceedings. *See Zack v. Gov. of Fla.*, No. 23-13021, 2023 WL 6376654, at *3 (11th Cir. Sept. 26, 2023) (quoting *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998); *see also Barwick v. Gov. of Fla.*, 66 F4th 896, 902 (11th Cir. 2023).

Although the lower court recognized this Court's holding in *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 572 (1998), that a death-sentenced prisoner retains a protected life interest during State clemency proceedings, it failed to recognize that in reality, the clemency process in Florida for death-sentenced prisoners is meaningless and violates due process. App. A at 10. It declined to rule on whether any specific procedures in Florida's clemency process violate the Due Process Clause. *Id*.

2. Clemency proceedings in Florida have been rendered a nullity for death-sentenced prisoners.

In Florida, the state constitution vests sole authority to grant clemency in the governor. Art. IV, § 8, Fla. Const. A warrant for the execution of an individual who has been sentenced to death may not be issued until the clemency process under section 922.052(2) of the Florida Statutes has concluded. However, in Florida, once clemency proceedings have commenced for death-sentenced individuals, it is already a foregone conclusion that they will be executed. Going through the motions of appointing clemency counsel and having an interview with members of the clemency board merely serve as a checklist to be completed before an execution can be carried out. This is evidenced by the standard clemency denial letter which is dated the same day as the execution warrant is signed.

a. There have been no grants of clemency since 1983.

No governor in Florida has granted clemency to a death-sentenced prisoner since 1983 when Governor Bob Graham granted clemency to Jesse Rutledge, due to

the Governor's concern that Rutledge might be innocent.[3] Forty-three years have now passed since clemency was last granted in a capital case in Florida. One-hundred and thirty-eight people have been executed in this state without a single grant of mercy since Governor Graham granted mercy to Rutledge.[4]

Florida's current governor has issued death warrants for 50 capital defendants since he took office in January 2019, with 40 of those warrants being issued since January 2025. Only two of those individuals have avoided the execution chamber thus far. Neither was spared by clemency or any grant of mercy.[5] The fact that there is no real possibility that the Governor will grant clemency is akin to being arbitrarily denied access to Florida's clemency process.

The fact that there is no real possibility that the governor will grant clemency is akin to being arbitrarily denied access to Florida's clemency process. *See Woodard*, 523 U.S. at 289.

b. Clemency decisions are predetermined for death-sentenced prisoners.

On March 10, 2021, at the conclusion of a meeting of the Board of Executive Clemency, Governor DeSantis announced that he would not grant clemency to

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[3] *See Death Penalty Information Center*, List of Clemencies Since 1976, https://deathpenaltyinfo.org/policy-issues/policy/clemency/list-of-clemencies-since-1976 (last visited Oct. 30, 2026).

[4] *Id*.

[5] The first was due to the expiration of James Dailey's warrant on December 30, 2019, while litigation persisted regarding his innocence. The second recently occurred on October 8, 2026, when William Thompson's warrant was withdrawn by the Governor without explanation after a competency-to-be-executed challenge was filed under Rule 3.811 of the Florida Rules of Criminal Procedure.

murderers or felony sex offenders.[6] Such a policy of automatically denying clemency to all individuals convicted of first-degree murder and sentenced to death renders the entire clemency process nothing more than a façade. Such a policy also thwarts the intention of the clemency process as mandated by Florida's Constitution and established in the Florida Statutes. Although the State and the lower court have declined to either confirm or deny that the governor does in fact have an automatic denial policy for clemency for death-sentenced prisoners, his record of executions speaks for itself. AB 11, n. 6; App. at 11.

When the clemency process is rendered effectively meaningless to entire classes of individuals convicted of certain offenses, the scheme is rendered constitutionally defective. There is no meaningful access to clemency when it is predetermined by the governor's expressed statement that it will be denied.

Florida's executive clemency process, which Guardado was just recently subjected to, is unconstitutional because due process requires "minimal procedural safeguards" in State clemency proceedings. *See Woodard*, 523 U.S. at 289. Guardado is entitled to a constitutional clemency process, and his execution should not proceed until his clemency procedure comports with the Due Process Clause to the United States Constitution.

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[6] *See* Press Release, Fla. Comm'n on Offender Review, Board of Clemency Adopts Governor's Proposal to Categorically Remit All Fines Related to COVID-19 Restrictions and to Revise the Rules of Executive Clemency Adopted by the Clemency Board (Mar. 10, 2021), https://www.fcor.state.fl.us/content/download/32564/file/2021%20Clemency%20Rule%20Change%20Press%20Release.pdf?version=1(last visited October 30, 2026).

Woodard did not hold that a governor may arbitrarily deny clemency to every death-sentenced prisoner whose case is presented to the clemency board. Justice O'Connor's controlling opinion in *Woodard* held that the Due Process Clause prohibits arbitrary action. *Id*. In her concurring opinion, accepted by the lower court and a majority of other jurisdictions as controlling,[7] Justice O'Connor took exception to Justice Rehnquist's ". . . suggestion that, because clemency is committed to the discretion of the executive, the Due Process Clause provides no constitutional safeguards," and posited that "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." *Id*. Here, the executive has flipped a coin that says denied on both sides and has arbitrarily denied meaningful clemency review to Guardado and the other 49 death-sentenced prisoners that he has signed death warrants for since taking office.

c. Florida does not follow its own procedures for clemency.

Every state that has capital punishment has adopted some form of clemency review and procedures for its use.[8] Florida has not only established a right to

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[7] In the decision below, the lower court acknowledged Justice O'Connor's concurring opinion as controlling, but stated it "has never adopted a requirement of specific procedural safeguards applicable to the clemency process." App. A at 10.

[8] Ala. Const. Amdt. 38; Ala. Code §15-18-100; Ariz. Const., Art. V, §5; Ariz. Rev. Stat. Ann. §§31-445; Ark. Const., Art. VI, §18; Ark. Code Ann. §5-4-607, §16-93-204; Cal. Const., Art. V, §8; Cal. Penal Code Ann. §§4800-4807; Fla. Const., Art. IV, §8; Fla. Stat. §940.01; Ga. Const., Art. IV, §2; Ga. Code Ann. §§42-9-20, 42-9-42; Idaho Const., Art. IV, §7; Idaho Code §20-240; Ind. Const., Art. V, §17; Ind. Code §§11-9-2-1 to 11-

clemency review for death-sentenced prisoners, it is a condition precedent for the issuance of a death warrant. *See* §922.052, Fla. Stat. (2026). Failure of a state to follow its own procedures implementing the clemency process may also constitute a due process violation. *Woodard*, 283 U.S. at 289. Most states, including Florida[9], subscribe to the tenet that when a state establishes a clemency review process for death-sentenced prisoners, state officials must comply with those procedures. *See Connecticut Bd. Of Pardons v. Dumschat*, 452 U.S. 458, 463 (1981) ("A state created right can, in some circumstances, beget yet other rights to procedures essential to the realization of the parent right.") *See also Young v. Hayes*, 218 F.3d 850, 853 (8th Cir. 2000) **("The Constitution does not require a that a state have a clemency procedure, but, in our view, it does require that, if such a procedure is**

9-2-4, 35-38-6-8; Kan. Const., Art. I, §7; Kan. Stat. Ann. §22-3701; Ky. Const., §77; La. Const., Art. IV, §5(E); La. Rev. Stat. Ann. §15:572; Miss. Const., Art. V, §124; Miss. Code Ann. §47-5-115; Mo. Const., Art. IV, §7; Mo. Rev. Stat. §§217.220, 217.800, 552.070; Mont. Const., Art. VI, §12; Mont. Code Ann. §§46-23-301 to 46-23-316; Neb. Const., Art. IV, §13; Neb. Rev. Stat. §§83-1,127 to 83-1,132; Nev. Const., Art. V, §13; Nev. Rev. Stat. §213.080; N.C. Const., Art. III, §5(6); N.C. Gen. Stat. §§147-23 to 147-25; Ohio Const., Art. III, §11; Ohio Rev. Code Ann. §§2967.01 to 2967.12; Okla. Const., Art. VI, §10; Okla. Stat., Tit. 21, § 701.11a; Ore. Const., Art. V, §14; Ore. Rev. Stat. §§144.640 to 144.670; Pa. Const., Art. IV, §9; S.C. Const., Art. IV, §14; S.C. Code Ann. §§ 24-21- 910 to 24-21-1000; S.D. Const., Art. IV, §3; S.D. Codified Laws §§23A-27A-20 to 23A-27A-21, 24-14-1 to 24-14-7; Tenn. Const., Art. III, § 6; Tenn. Code Ann. §§40-21-101 to 40-27-109; Tex. Const., Art. IV, §11; Tex. Code Crim. Proc. Ann., Art. 48.01; Utah Const., Art. VII, §12; Utah Code Ann. §77-27-5.5; Wyo. Const., Art. IV, §5; Wyo. Stat. §7-13-801.

[9] *See Bryan v. DeSantis*, 343 So.3d 127, 129 (Fla. 1st DCA 2022), a lower appeals court decision that held that due process concerns are met when "as long as the State follows the procedures set out in State law, the State does not arbitrarily deny the prisoner all access to the clemency process. And the clemency decision is not wholly arbitrary or capricious.") (quoting *Allen v. Hickman*, 407 F. Supp. 2d 1098, 1103-04 (N.D. Cal. 2005)).

created, the state's own officials refrain from frustrating it.") (emphasis added).

Florida does not comply with its own procedures when the outcome of a clemency review for Guardado and similarly situated death-sentenced prisoners is predetermined by more than four decades of denials and 50 so far with the current governor who has stated he will not grant clemency to murderers. The time-honored purpose of the fail-safe of clemency, an opportunity to grant mercy to the most deserving of prisoners, is frustrated when the executive will not consider it for Guardado and other death-sentenced prisoners. The clemency process in Florida is merely perfunctory, a façade, and does not comport with even the minimal due process requirements required by the Fourteenth Amendment.

CONCLUSION

There are compelling reasons for granting this petition. Despite the lower court's acknowledgment of the holding in *Woodard*, 523 U.S. at 572, that a death-sentenced prisoner retains a protected life interest during state clemency proceedings, it fails to provide that safeguard when there has been no clemency granted to a death-sentenced prisoner in Florida since 1983 and the current governor, who has signed 50 death warrants since taking office in 2019, has expressly stated that he will not grant clemency to murderers and felony sex offenders. Hence, the clemency proceeding for death-sentenced prisoners in Florida is meaningless and cannot survive scrutiny under the Due Process Clause when there is no chance of it being granted and the State does not follow its own procedures for clemency review

for Guardado and similarly situated death-sentenced defendants.

For all of these reasons, the Court should grant the petition for a writ of certiorari; stay the execution and order further briefing; and/or vacate and remand this case to the Florida Supreme Court.

Respectfully submitted,

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