No. 26-6013

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

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR NOVEMBER 5, 2026, AT 6:00 P.M.

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CAPITAL CASE

QUESTIONS PRESENTED

In 2004, Jesse Guardado slashed the throat of a good Samaritan who repeatedly helped him because he knew she had money and he wanted to continue his two-week crack cocaine binge. He pleaded guilty and received a death sentence that became final in 2008. After Florida Governor Ron DeSantis considered clemency under the Rules of Executive Clemency and determined that clemency was not appropriate, Florida scheduled Guardado's execution for November 5, 2026.

Post-warrant, Guardado invoked Florida's successive postconviction procedures to attack Florida's clemency process. He argued that Florida's historic lack of clemency grants in capital cases, combined with the Governor's alleged blanket policy of denying clemency to murderers, violated minimal due process. But Florida's courts held Guardado's clemency process satisfied minimal due process.

Guardado now asks this Court to decide whether the Constitution requires Florida Governors to grant clemency on his schedule and prevents the executive branch from having blanket policies on when clemency is inappropriate. This Court should decline certiorari jurisdiction over the following questions presented:

I. Does minimal due process under Justice O'Conner's concurring opinion in *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272 (1998) require an executive with "unfettered" clemency discretion to occasionally grant clemency in capital cases?

II. Does minimal due process under *Woodard* prohibit an executive with "unfettered" discretion to deny clemency "for any reason" from adopting a blanket policy against granting clemency to admitted murderers?

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OPINION BELOW

Guardado seeks certiorari review of the Florida Supreme Court's decision rejecting his post-warrant challenges to execution. *See Guardado v. State*, No. SC2026-1605, 2026 WL 3267707 (Fla. Oct. 29, 2026).

JURISDICTION

This Court has jurisdiction over Guardado's questions. *See* 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The State accepts Petitioner's statement of the constitutional provisions.

BACKGROUND ON FLORIDA CLEMENCY

Clemency in Florida derives "solely from the Florida Constitution." *Davis v. State*, 142 So. 3d 867, 877 (Fla. 2014). Florida's Constitution provides the Governor, "with the approval of two" Cabinet members,[1] may "commute punishment" for offenses. Art. IV, § 8(a), Fla. Const. In this constitutional provision, the People of Florida vested "sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace." *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977); *Davis*, 142 So. 3d at 877. As a matter of pure state law under the Florida Constitution, nothing can constrain the executive branch's unbridled discretion to grant clemency "at any time, for any reason." Fla. R. Exec. Clemency 4. Likewise, "the Governor has

[1] The Cabinet is made up of Florida's Attorney General, Chief Financial Officer, and Commissioner of Agriculture. Art. IV, § 4(a), Fla. Const. Florida's Governor and Cabinet are elected every four years. Art. IV, § 5(a), Fla. Const. Neither the Governor nor the Cabinet may seek re-election immediately following two terms in office. *See* art. IV, § 5(b), art. VI, § 4(a), Fla. Const.

unfettered discretion to deny clemency at any time, for any reason." Fla. R. Exec. Clemency 4. Clemency requires the Governor's agreement. Art. IV, § 8(a), Fla. Const.

Florida's constitutional decision to vest clemency power exclusively in the executive branch means neither the state legislative nor judicial branches may intrude on that power, apart from the judiciary's duty to enforce constitutional law. *Parole Comm'n v. Lockett*, 620 So. 2d 153, 154–58 (Fla. 1993); *Chavez v. State*, 132 So. 3d 826, 830–32 (Fla. 2014). Florida's Clemency Board, made up of the Governor and Cabinet, has adopted *non-binding* Rules of Executive Clemency. *See Barwick v. Gov. of Fla.*, 66 F.4th 896, 898 (11th Cir. 2023) (citing *Lockett*, 620 So. 2d at 155); Fla. R. Exec. Clemency 1, 2.A. But "*nothing* contained within these rules *can or is intended to limit the authority or discretion given to the Clemency Board in the exercise of its constitutional prerogative*." Fla. R. Exec. Clemency 2.A. (emphasis added). Unless the Governor decides otherwise, only Rules 1, 2, 3, 4, 15, and 16 generally apply to clemency proceedings involving a death sentence. *See* Fla. R. Exec. Clemency 4, 15. By state constitutional design, Florida's clemency process has no binding standards. *See Barwick*, 66 F.4th at 898, 903–04.

Unless the Governor in his unfettered discretion decides otherwise, an "application for executive clemency for a person who is sentenced to death *must* be filed within 1 year after the date the Supreme Court issues a mandate on a direct appeal or the United States Supreme Court denies a petition for certiorari, whichever is later." § 940.03, Fla. Stat. (emphasis added); *Abdool v. Bondi*, 141 So. 3d 529, 545

(Fla. 2014) ("Section 940.03 provides that the executive clemency process in a capital case is initiated by the defendant.").

In capital cases, the Florida Commission on Offender Review ("FCOR")[2] "may conduct a thorough and detailed investigation into all factors relevant to" clemency, including a defendant interview, and "provide a final report to the Clemency Board." Fla. R. Exec. Clemency 15.B. That investigation begins when the Governor instructs or when the Eleventh Circuit affirms the denial of the capital defendant's 28 U.S.C. § 2254 petition. Fla. R. Exec. Clemency 15.B., C. After the investigation, the Commissioners prepare a report. Fla. R. Exec. Clemency 15.D. That report includes statements made by the defendant and his counsel, a detailed summary of the interview, and any information gathered during the investigation. Fla. R. Exec. Clemency 15.D.

Despite lacking any constitutional obligation to do so, Florida provides for clemency counsel in death cases at the discretion of the Clemency Board and compensates counsel at a maximum of $10,000. § 940.031, Fla. Stat. Clemency counsel may be present at the clemency interview, receive a copy of any clemency-related statements or testimony by the defendant, provide a statement in support of clemency, receive notice of any scheduled hearing, and make an oral presentation if a hearing is scheduled. Fla. R. Exec. Clemency 15.B., D., E., G. If a hearing is

[2] FCOR is separate from the Clemency Board. *Bowles v. DeSantis*, 934 F.3d 1230, 1236 (11th Cir. 2019).

scheduled, clemency counsel is generally allotted fifteen minutes to make an oral presentation regarding clemency's appropriateness. Fla. R. Exec. Clemency 15.H.

Florida's Governor also has "unfettered discretion to issue [death] warrants." *Abdool*, 141 So. 3d at 543–44. While § 922.052(2)(b), Florida Statutes, requires a death warrant "if the clemency process has concluded," that "condition is exclusively within the control and discretion of the executive branch." *Abdool*, 141 So. 3d at 543–44. For that reason, "the Governor's discretion in issuing warrants is *not* curtailed by" that statute. *Id.* (emphasis added).

The Governor's act of signing a death warrant with an attestation that clemency was considered and deemed not appropriate means clemency was "considered by the executive branch prior to the signing of the warrant." *Johnston v. State*, 27 So. 3d 11, 24 (Fla. 2010); *Carroll v. State*, 114 So. 3d 883, 888 (Fla. 2013). But nothing prevents the Board from reconsidering clemency at any time and for any reason, including post-warrant. *See* Fla. R. Exec. Clemency 4; *Davis*, 142 So. 3d at 877. Florida's Governor also has the unilateral power to stay an execution. § 922.06(1), Fla. Stat.

STATEMENT OF THE CASE AND FACTS

Nearly two decades ago, Guardado beat and murdered Jackie Malone by cutting her throat so he could rob her. This case has been thoroughly litigated and re-litigated for decades in state and federal courts. *See Guardado v. State*, No. SC2026-1605, 2026 WL 3267707, at *2–3 & n.5 (Fla. Oct. 29, 2026) (collecting cases).

Murders and Pre-Warrant Litigation

James Brown knelt in the supermarket aisle of a small-town Winn-Dixie. The evening was busy at the store, and Mr. Brown had been hard at work restocking groceries. Mr. Brown stooped to reach a shelf near the floor and suddenly felt the cold steel of a knife against his throat. "Give me your wallet," demanded the man over Mr. Brown's shoulder. But Mr. Brown didn't comply. He hollered for help and grabbed for the knife. The man pulled the knife back, slicing two of Mr. Brown's fingers, and ran from the store before Mr. Brown got a good look at his face.

The knifeman was Guardado. After Mr. Brown hollered for help, Guardado rushed to the Winn-Dixie parking lot and fled the scene.

He'd been out of prison on conditional release for about a year and a half after spending most of his adult life behind bars. Convicted for armed robbery in 1984. Robbery with a deadly weapon in 1990. Robbery with a weapon again in 1991. And now, on September 13, 2004, he'd attempted to rob a Winn-Dixie employee—all because he needed a crack cocaine fix. And he needed it bad. His crack binge was two weeks strong and counting, but he had to have more money to keep it going.

As darkness fell in the late summer sky over DeFuniak Springs, Guardado's thoughts turned to Ms. Malone. Guardado had known Ms. Malone since meeting her the year before, shortly after his release from prison, and she'd been good to him despite his past. She helped him find a place to stay and rented him one of her properties. She provided money and helped him find his current job at the wastewater treatment plant in Niceville. She had even told him where he could find the spare key to her home and let him crash there overnight between rentals.

But none of that mattered to Guardado now. What did matter was that Ms. Malone lived in a secluded area. That she trusted him enough to open her home to him if he showed up in the middle of the night. That she had money. And that he knew where to find it. To get the money, all he had to do was kill her.

With a plan in place, Guardado swung by his truck and got a kitchen knife. He left home around ten o'clock and drove toward Ms. Malone's house, armed with the kitchen knife and a breaker bar.

Ms. Malone was asleep in her bed when Guardado arrived. Guardado appeared at the front door with the weapons tucked in the small of his back, then knocked and knocked until Ms. Malone woke up and

answered. He identified himself through the door, and Ms. Malone opened the door in her nightgown and greeted him. Guardado told her he needed to use her phone, so Ms. Malone turned away to allow him inside. Then Guardado hit Ms. Malone over the head with the breaker bar. When that didn't kill her, he struck her again and again and again. When that didn't kill her, he grabbed his knife and stabbed her through the chest. Five times. When that didn't kill her, he slashed her throat.

Twice.

That killed her.

Guardado got up, went to Ms. Malone's bedroom, and rooted through her valuables. He took her jewelry box, briefcase, purse, checkbook, and cell phone, as well as eighty dollars in cash. With enough in hand to guarantee his next high, he left Ms. Malone's broken body on the floor behind her couch and drove off into the night.

Two days later, Ms. Malone's brother found her dead body and called the police. The Walton County Sheriff's Office opened an investigation and quickly homed in on Guardado as a suspect.

On September 21, the Niceville Police Department notified investigators in the Walton County Sheriff's Office that Guardado wanted to speak with them. A meeting was arranged between Guardado and the Walton County investigators near Guardado's broken-down truck in a Walmart parking lot. Once inside the investigators' car, Guardado blurted out that "that lady" didn't deserve what he'd done to her. The investigators suggested that he pipe down until he had a lawyer.

After meeting with an attorney who advised Guardado against talking to the investigators, Guardado still wanted to speak with them. He sat down with three of them—one of whom advised Guardado of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966)—and confessed to his crimes.

Guardado told the investigators that after he had killed Ms. Malone, he burned his clothes, Ms. Malone's jewelry box and purse, and the knife he used in the murder. He discarded the breaker bar, the charred knife, the checkbook, the briefcase, and the jewelry—which he thought would be worthless to sell. Then he headed for his shift at the plant, where he worked for a little while before going to a local convenience store, cashing four of Ms. Malone's checks, and buying some cigarettes. He contacted his drug dealers in DeFuniak Springs to buy more crack

> cocaine and continued binging crack before returning to work.
>
> Law enforcement later recovered the items Guardado discarded and the charred remains of the ones he burned, including the knife, the briefcase, and the breaker bar. On October 19, 2004, having waived his right to counsel, Guardado pleaded guilty to murder without the benefit of a plea bargain.

Guardado v. Sec'y, Fla. Dep't of Corr., 112 F.4th 958, 962–64 (11th Cir. 2024) (cleaned up). Guardado proceeded to a penalty phase where counsel represented him. *Id.* at 964. A jury unanimously recommended death, and the sentencing judge followed that recommendation after finding five aggravating factors:

> (1) the capital felony was committed by a person under sentence of imprisonment or on conditional release supervision; (2) the defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person (to wit: armed robbery, April 9, 1984; robbery with a deadly weapon, July 6, 1990; robbery, January 23, 1991; robbery with a weapon, January 23, 1991; attempted robbery with a deadly weapon, February 17, 2005); (3) the capital felony was committed while the defendant was engaged in the commission of, or attempt to commit, or escape after committing, a robbery with a weapon; (4) the capital felony was especially heinous, atrocious, or cruel (HAC); and (5) the crime was committed in a cold, calculated and premeditated manner (CCP).

Guardado v. State, 965 So. 2d 108, 111–12 (Fla. 2007). Guardado's convictions and death sentence became final in 2008. *Guardado v. Florida*, 552 U.S. 1197 (2008).

In the following decades, state and federal courts rejected several challenges to Guardado's death sentence. *Guardado v. State*, 176 So. 3d 886, 889 (Fla. 2015) (affirming denial of initial state postconviction relief); *Guardado v. Jones*, 226 So. 3d 213, 215 (Fla. 2017) (denying initial state habeas relief); *Guardado v. State*, 238 So. 3d 162, 164 (Fla. 2018) (affirming denial of first successive postconviction motion); *Guardado*, 112 F.4th at 962 (affirming denial of federal relief).

Guardado became "warrant-eligible," meaning Florida's Governor could sign his death warrant at any time, in 2025. *See Jones v. State*, 419 So. 3d 619, 626 (Fla. 2025) (explaining capital defendants are "warrant-eligible" after exhaustion of initial state and federal postconviction review); *Guardado v. Dixon*, 145 S. Ct. 2822 (2025).

Post-Warrant Litigation

Governor Ron DeSantis signed Guardado's death warrant on October 5, 2026, with the execution scheduled for November 5, 2026. The death warrant certified: "executive clemency for JESSE GUARDADO, as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate."

Guardado then filed a postconviction motion raising three numbered claims in state court: (1) Governor DeSantis' alleged categorical policy of refusing clemency to murderers, along with the historical lack of clemency grants in Florida, violates minimal due process; (2) both trial and postconviction counsel ineffectively represented Guardado over the past decades; and (3) expedited warrant proceedings violate several constitutional rights. (WPCR:286–307.)

The state post-warrant court denied Guardado's claims without an evidentiary hearing. In relevant part, the court ruled Guardado's attacks on Florida's clemency process untimely and procedurally barred under state law because they could have been raised more than a year ago. (WPCR:446–47.) But the court also found the clemency claims failed as a matter of law. (WPCR:446–47.) For those reasons, the post-warrant court summarily denied Guardado's clemency claim.

The Florida Supreme Court affirmed by addressing the merits alone. *See Guardado v. State*, No. SC2026-1605, 2026 WL 3267707, at *3–4 (Fla. Oct. 29, 2026). Guardado's attacks on Florida's clemency process failed under *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (O'Conner, J., concurring) because minimal due process does not prohibit the Governor from having a "blanket policy" against denying clemency for certain offenders or require scheduled clemency grants. *Guardado*, 2026 WL 3267707, at *3–4. The death warrant itself stated the Governor considered clemency and determined it was "not appropriate" for Guardado's case. *Id.* at *4. Since Guardado had not been "denied all access to the statutorily established clemency process, identified any procedures the Governor violated, or demonstrated that the Governor failed to consider any required criteria," he could not prevail under *Woodard*. *Id.* The Florida Supreme Court affirmed the order summarily denying Guardado postconviction relief and refused to stay his execution, hold oral argument, or entertain rehearing. *Id.* at *5.

Six days before his scheduled execution, Guardado filed his certiorari petition in this Court seeking review of the following two questions presented:

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.

The State opposes certiorari.

REASONS FOR DENYING THE PETITION

Guardado has litigated and re-litigated his death sentence for nearly two decades. Now, on the eve of his execution, he asks this Court to intervene in his penultimate attempt to rob justice from his victims for the heinous crimes he committed in 2004. He claims Florida's clemency process violated his minimal due process rights under *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (O'Conner, J., concurring) and demands this Court grant him another shot at grace.

Guardado's dual questions seem to ask this Court to decide: (1) whether state executives violate minimal due process if they do not occasionally grant clemency to capital defendants over four decades; and (2) whether Governor DeSantis' alleged categorical policy against granting clemency to murderers violates minimal due process. But this Court has repeatedly refused to take up post-warrant challenges to Florida's clemency process. *E.g.*, *Barwick v. DeSantis*, 143 S. Ct. 2452 (2023) (22-7412); *Zack v. DeSantis*, 144 S. Ct. 273 (2023) (23-5667).

It should do so again by denying review of both Guardado's questions presented for five reasons: (A) the Petition lacks enough clarity to consider granting certiorari; (B) Guardado failed to establish conflict and none exists; (C) Guardado unduly delayed challenging Florida's clemency process; (D) Guardado would not clearly obtain substantive relief even if this Court reversed; and (E) Guardado's attacks on Florida clemency fail on the merits under *Woodard*. *See* Sup. Ct. R. 10. This case would be unworthy of certiorari under normal circumstances, much less on the eve of an execution. Review should be denied.

A. No Clarity in the Petition.

Guardado's Petition and questions presented lack the clarity needed to consider granting certiorari. *See* Sup. Ct. R. 14.4 (explaining lack of clarity is a reason to deny certiorari); *Yee v. City of Escondido*, 503 U.S. 519, 535–36 (1992) (explaining a petition for certiorari should both provide the Respondent notice of the grounds for certiorari and help the court select cases). The Petition broadly alleges Florida does not follow its own clemency procedures without identifying which procedures demanded by state law are not followed. Likewise, Guardado's first question is a tautology and his second his non-descript. Both vaguely allude to perceived issues in Florida's clemency process without identifying them clearly.

Florida vests clemency in the "unfettered discretion" of its executive branch. *See* Fla. R. Exec. Clemency 4; *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977).[3] There are no binding clemency rules or procedures that must be followed under state law. *See* Fla. R. Exec. Clemency 2.A.; *Barwick v. Gov. of Fla.*, 66 F.4th 896, 903 (11th Cir. 2023) (holding Florida's failure to provide "any standards" for clemency does not violate due process). It is difficult to see why Guardado thinks Florida's executive branch could ever violate Florida's clemency procedures, much less how. *See Chavez v. State*, 132 So. 3d 826, 829–30 (Fla. 2014) (explaining the rules of executive clemency control over Florida statutes); *Abdool v. Bondi*, 141 So. 3d 529, 540, 543–44 (Fla. 2014) (explaining statutes cannot restrict the Governor's unfettered clemency

[3] The clemency power wielded by the President of the United States operates much the same. *See Rosemond v. Hudgins*, 92 F.4th 518, 525 (4th Cir. 2024).

discretion or authority to issue death warrants).

The Florida Supreme Court recognized Guardado did not identify any state procedure the executive branch failed to follow before denying him clemency. *See Guardado v. State*, No. SC2026-1605, 2026 WL 3267707, at *3–4 (Fla. Oct. 29, 2026) His Petition does no better than his brief below. It relies on vague generalities and broad statements rather than a clear statement of the issue. The lack of clarity permeating both the Petition and questions presented warrants denying certiorari.

B. No Conflicting Decisions.

There is no conflict between the decision below and any decision of this Court, or any other court for that matter. The lack of conflict strongly favors denying certiorari here. *See Braxton v. United States*, 500 U.S. 344, 347 (1991) (explaining certiorari is primarily used to resolve lower-court conflicts on federal law); *Rockford Life Ins. Co. v. Ill. Dep't of Revenue*, 482 U.S. 182, 184 n.3 (1987) (recognizing issues that have "divided neither the federal courts of appeals nor the state courts" rarely deserve this Court's review).

The decision below does not conflict with *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458 (1981), which held state clemency systems that provide "unfettered discretion" to grant or deny clemency do not create rights enforceable by due process. *Id.* at 464–67. Florida vests unfettered clemency discretion in its executive branch alone. *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977) (recognizing clemency resides in the executive branch alone under Florida law); Fla. R. Exec. Clemency 2.A. ("Nothing contained within these rules can or is intended to

limit the authority or discretion given to the Clemency Board in the exercise of its constitutional prerogative."); Fla. R. Exec. Clemency 4 (leaving the decision to grant or deny clemency to the executive branch's "unfettered discretion"). So, under *Dumschat*, Guardado lacks any cognizable claim. The decision below denying relief cannot conflict with *Dumschat*.

Nor does the decision below conflict with *Woodard*. In *Woodard*, a four-justice plurality determined *Dumschat*'s holding applied the same way in capital cases. *See Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 279–85 (1998) (plurality opinion) (explaining the "residual life interest" a capital defendant retains protects him only from being summarily executed, does not support due process challenges to clemency proceedings, and even mandatory clemency procedures do not create interests protected by due process). In line with *Dumschat*, the plurality refused to find any cognizable due process challenge to clemency proceedings. *Id.*

But Justice O'Conner—whose concurring opinion provides *Woodard*'s holding under *Marks v. United States*, 430 U.S. 188 (1977)—held due process imposes some "minimal" safeguards on state clemency. *See Woodard*, 523 U.S. at 288–90 (O'Conner, J., concurring) (emphases added). Those safeguards are truly "minimal," however. *See id.* Justice O'Conner held Ohio's clemency system satisfied due process despite the fact the capital defendant was afforded only "3 days' notice of the interview, and 10 days' notice of the hearing," and claimed he did not have a "meaningful opportunity to prepare his clemency application." *Id.* at 289. Excluding clemency counsel from the interview and letting counsel participate in the hearing only at the parole board

chair's discretion did not violate minimal due process either. *Id.* Nor did it violate minimal due process to stop *Woodard* from "testifying or submitting documentary evidence at the hearing." *Id.* at 289–90. Notice and an opportunity to participate in clemency sufficed for minimal due process. *Id.* at 290.

Nothing in Justice O'Conner's concurrence suggests minimal due process requires state executives to grant clemency to capital defendants every so often or prohibits state executives from having blanket policies against granting clemency for murderers. *See Woodard*, 523 U.S. at 288–90. Neither example she gave of possible minimal due process violations describes those situations. *See id.* at 289 ("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.").

No decision from this Court conflicts with the Florida Supreme Court's holding that Guardado received minimal due process despite the Governor's alleged blanket policy and Florida's historic lack of clemency grants. *See Guardado v. State*, No. SC2026-1605, 2026 WL 3267707, at *3–4 (Fla. Oct. 29, 2026). Neither *Dumschat* nor *Woodard* addressed complaints like Guardado's. And the critical reasoning both used supports, rather than conflicts with, the decision below. *Cf. Bucklew v. Precythe*, 587 U.S. 119, 136 (2019) ("Just as binding as this holding is the reasoning underlying it.").

The decision below does not conflict with any federal appellate decision or state court of last resort either. Indeed, every appellate court to address Guardado's specific complaints has held them without merit. *See In re Sapp*, 118 F.3d 460, 465–66 (6th

Cir. 1997) (rejecting the argument that a state governor violated due process "when he announced a general policy of not granting clemency in capital cases"); *Anderson v. Davis*, 279 F.3d 674, 675–76 (9th Cir. 2002) (explaining blanket policy allegations are not "coin-flipping or another capricious decisionmaking process" within *Woodard*'s framework); *Banks v. Sec'y, Fla. Dep't of Corr.*, 592 F. App'x 771, 773 (11th Cir. 2014) (rejecting an attack on Florida's clemency system based in part on the fact that "no death-sentenced inmate has been granted clemency in Florida in over thirty-one years"); *Bryan v. DeSantis*, 343 So. 3d 127, 128–30 (Fla. 1st DCA 2022) (holding *Woodard* lets the Governor have a blanket "policy that denies clemency merely based on the type of crime committed"). The decision below fits right with those precedents. *See Guardado*, 2026 WL 3267707, at *3–4.

Guardado misplaces his reliance on *Young v. Hayes*, 218 F.3d 850, 852 (8th Cir. 2000) to show conflict. The Eighth Circuit there found a minimal due process violation under *Woodard* because an elected prosecutor threatened to fire a subordinate who promised to provide information supporting clemency to Missouri's Governor. *Id.* at 851–53. But the Eighth Circuit later limited *Young* to when state actors *successfully* prevent clemency information from reaching a governor and expressed "no view" on *Young*'s merit or continuing vitality. *Winfield v. Steele*, 755 F.3d 629, 631 (8th Cir. 2014) (en banc). Judge Gruender, however, advocated to overrule *Young* outright as a clear misapplication of *Woodard*. *Winfield*, 755 F.3d 629, 631–32 (Gruender, J., concurring) ("*Young* also runs counter to the weight of authority from other courts. *Young* is an outlier when compared to the narrower

approaches adopted by our sister circuits, which have taken to heart Justice O'Connor's emphasis on the word 'minimal.'").

Whatever *Young*'s vitality as Eighth Circuit precedent, it does not conflict with the decision below. Guardado never alleged state agents conspired and prevented clemency information from reaching Florida's Governor. He instead took issue with the current Governor's alleged blanket refusal to grant clemency to murderers and how past Governors have long refused to grant clemency in capital cases. *Young* does not apply to that situation at all. *See Winfield*, 755 F.3d at 631–32 (limiting *Young* to its facts). Florida law provides Guardado with no more than he received; the chance to ask for clemency and have the Governor decide in his unfettered discretion whether to grant it. *See* Fla. R. Exec. Clemency 2.A.; Fla. R. Exec. Clemency 4; § 922.052(2)(b), Fla. Stat. *Young* thus provides no basis for conflict. *See Guardado*, 2026 WL 3267707, at *4 ("Guardado has not been denied all access to the statutorily established clemency process, identified any procedures the Governor violated, or demonstrated that the Governor failed to consider any required criteria.").

This Court should not grant certiorari on the eve of an execution when there is no conflict and the decision below falls in line with every other appellate court to reach the same issue.

C. Undue Delay.

Guardado's undue delay in challenging Florida's clemency process provides another reason to deny certiorari. Since this Court denied certiorari from Guardado's direct appeal in February 2008, *Guardado v. Florida*, 552 U.S. 1197 (2008), Florida

law required him to seek clemency no later than February 2009. § 940.03, Fla. Stat. Florida law also allowed him to attack the clemency process before the Governor denied his application. *See Sullivan v. Askew*, 348 So. 2d 312, 313–14, 316 (Fla. 1977) (rejecting several challenges arguing "the scheduled [clemency] hearings deny due process" on the merits before the Governor decided clemency for the capital challengers). But Guardado waited nearly twenty years, long after the time elapsed for him to petition for clemency and raise a *Sullivan*-like challenge, to attack Florida's clemency process. *See* § 940.03, Fla. Stat. That excessive and undue delay warrants denying certiorari now. *See Bucklew v. Precythe*, 587 U.S. 119, 151 (2019) (encouraging federal courts to "dismiss or curtail" dilatory suits).

D. No Clear Path to Relief.

This Court should also deny certiorari because Guardado would not necessarily receive merits relief even if this Court agreed with him. When the only benefit a capital defendant proves he will receive is putting off his execution date, certiorari should be denied. *See Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 74 (1955) (explaining certiorari should not be granted when the issue is only academic); *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945) (explaining certiorari is the power "to correct wrong judgments, not to revise opinions").

Delay alone is certain if this Court granted certiorari. The state circuit court below found Guardado's clemency challenges untimely and barred on state-law procedural grounds. (WPCR:446–47.) *See also Ferguson v. State*, 101 So. 3d 362, 366 (Fla. 2012) (holding a post-warrant, clemency claim untimely because the defendant

had spent decades on death row and could have raised the claim earlier); § 940.03, Fla. Stat. (requiring capital defendants to seek clemency the year after direct-appeal proceedings finish). That was so because Florida permits capital defendants to challenge clemency proceedings before the Governor denies clemency. *See Sullivan v. Askew*, 348 So. 2d 312, 313–14, 316 (Fla. 1977); *id.* at 318–19 (England, J., concurring specially); *Sullivan v. State*, 441 So. 2d 609, 611–12 (Fla. 1983) (noting the Governor signed Sullivan's first death warrant around 1979 and second in 1983); *see also Rose v. State*, 774 So. 2d 629, 637 n.12 (Fla. 2000) (rejecting a clemency claim brought in a pre-warrant state postconviction motion as without merit). The factual basis for Guardado's claim—Florida's historic refusal to grant clemency in capital cases and an alleged public blanket policy against clemency since 2021—have existed for years.

That means Guardado's claims are likely barred on state law grounds. The Florida Supreme Court did not overrule *Ferguson* or disagree with the lower court. It simply addressed the merits instead. *See Carey v. Saffold*, 536 U.S. 214, 225 (2002) (providing several reasons courts may consider untimely claims on the merits). Under these circumstances, where a state court has ruled Guardado's claims barred and the Florida Supreme Court only addressed the merits without disapproving the procedural bar, this Court should not grant certiorari and find out later whether state law bars Guardado's claims. *Cf. Bucklew v. Precythe*, 587 U.S. 119, 149 (2019) (decrying the useless, years-long delay obtained by a capital defendant challenging a state's chosen method of execution). It should deny certiorari instead.

E. No Merit in the Questions.

Finally, this Court should deny certiorari and refuse to stay Guardado's execution because his challenges to Florida's clemency process fail. The Federal Constitution only requires Florida to provide clemency seekers with "minimal" due process. *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (O'Conner, J., concurring). This "Court has never recognized a case in which clemency proceedings conducted pursuant to a state's executive powers have implicated due process." *Pizzuto v. Valley*, 177 F.4th 1042, 1053 (9th Cir. 2026).

The only "tangible" examples that might violate minimal due process are: "(1) a scheme whereby a state official flipped a coin to determine whether to grant clemency, or (2) a case where the State arbitrarily denied a prisoner any access to its clemency process." *Barwick v. Gov. of Fla.*, 66 F.4th 896, 904 (11th Cir. 2023). "Outside of similarly 'extreme situations,' the federal Due Process Clause does not justify judicial intervention into state clemency proceedings." *Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 794 F.3d 1327, 1331 (11th Cir. 2015).

An allegation the Governor "has a blanket policy" to deny all clemency applications from murderers without a fact-specific analysis fits neither situation Justice O'Conner suggested. *See In re Sapp*, 118 F.3d 460, 465–66 (6th Cir. 1997); *Anderson v. Davis*, 279 F.3d 674, 675–76 (9th Cir. 2002); *Bryan v. DeSantis*, 343 So. 3d 127, 128–30 (Fla. 1st DCA 2022). Nor does Guardado's proposed requirement for a due process quota of capital clemency grants every few decades. *See Banks v. Sec'y, Fla. Dep't of Corr.*, 592 F. App'x 771, 773 (11th Cir. 2014).

The Florida Supreme Court below correctly rejected Guardado's complaints as a matter of law. He had his opportunity to petition Florida's Governor for clemency based on the specific facts of his case. *See* § 940.03, Fla. Stat. That gave him access to the clemency process in compliance with *Woodard*. And he does not allege the Governor flipped a coin to decide whether to grant him clemency—quite the opposite, in fact. If he is right, the Governor has exercised his executive discretion and determined that admitted murderers should not receive clemency. That does not constitute the coin-flipping prohibited by *Woodard*. Florida's Governor did not leave the clemency decision to the whim of chance. He instead *decided* to deny clemency to all admitted murderers. Guardado's tired analogy to a single-sided coin misunderstands what *Woodard* prohibits: chance not choice. An executive who always denies clemency is exercising discretion rather than leaving it up to chance.

Guardado's appeals to clemency as a "fail safe" ring utterly hollow where no one—including Guardado himself—disputes he beat, stabbed, and cut the throat of a woman trying to help him. *See Herrera v. Collins*, 506 U.S. 390, 415, 417 (1993) (describing clemency as a "fail safe" for "actual innocence" claims); *Roach v. Quarterman*, 220 F. App'x 270, 274–75 (5th Cir. 2007) (holding clemency officials could "seriously consider only actual innocence" as a ground "for commutation of a death sentence" without violating *Woodard*). Minimal due process does not require more process than Guardado received. *See Bryan*, 343 So. 3d at 128–30. Nor does minimal due process require Florida's executive branch to grant a capital defendant clemency every decade or so. *See Banks*, 592 F. App'x at 773.

Florida law gave Guardado only the chance to plead for mercy which could be granted or denied at the "unfettered discretion" of Florida's executive branch. *See* Fla. R. Exec. Clemency 2.A.; Fla. R. Exec. Clemency 4. Without coin-flipping or *complete* denial of access to the clemency process allegations, courts may not second-guess the Governor's exercise of his "unfettered" clemency discretion.

This Court should not entertain Guardado's speculative attempt to contort *Woodard* beyond recognition at this late hour. *See Bucklew v. Precythe*, 587 U.S. 119, 149–51 (2019) (bemoaning the delay achieved by a capital defendant whose suit was "little more than an attack on settled precedent" and urging courts to curtail suits based on "speculative theories"). His complaints that Florida's Governors have exercised their clemency power in "too stingy a way" call for—if anything—"political correctives, not judicial intervention." *See Cavazos v. Smith*, 565 U.S. 1, 9 (2011).

For all these reasons, this Court should deny Guardado's Petition.

CONCLUSION

The petition for a writ of certiorari should be denied.

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