No. ____

IN THE SUPREME COURT OF THE UNITED STATES

THOMAS MITCHELL OVERTON
Petitioner,
v.
STATE OF FLORIDA, ET AL.,
Respondents,

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

---

PETITION FOR WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
EXECUTION SCHEDULED FOR
THURSDAY, NOVEMBER 19, 2026, at 6:00 P.M.

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QUESTIONS PRESENTED – CAPITAL CASE – DEATH WARRANT

The Governor of Florida has sole plenary authority and discretion to sign a death warrant; the Governor cannot sign a death warrant until the executive clemency process has concluded, pursuant to Florida Statutes, section 922.052. In 2021, Florida's current governor unilaterally exercised his clemency powers to deny all pending clemency applications of those convicted of murder and felony sex offenses. No one convicted of those offenses has been granted the mercy of clemency since then. The first question presented is:

1. When an executive with unfettered discretion to grant the mercy of clemency to a death-sentenced individual and decide who lives and who dies when signing a death warrant has stated unequivocally that he would never grant clemency to anyone convicted of murder, has the clemency process in Florida been rendered a sham and violative of due process and equal protection?

Florida has enshrined its Government-in-the-Sunshine in Article I, section 24 of the state constitution. However, an important aspect of Florida's government is hidden behind a wall of secrecy and executive power: the granting or denial of clemency and the signing of death warrants. Inmates who have been sentenced to death subject to a warrant for their execution are prevented from obtaining any information regarding the consideration of their clemency submission and the determination of the warrant. The second question presented is:

2. When a death-sentenced individual attempts to raise a claim that the clemency process in Florida is a sham and clemency a legal impossibility in violation of due process and equal protection and is prevented from accessing records that would support his claim by the executive who has unfettered discretion to determine when he dies, has the secrecy of the clemency and warrant process led to executive overreach and violated his right to access to the courts?

LIST OF PARTIES

All parties appear in the caption on the cover page. Petitioner, Thomas Mitchell Overton, a death-sentenced Florida prisoner, was the appellant and petitioner in the Supreme Court of Florida. Respondents, the State of Florida and Richard D. Comerford, were the appellees and respondents 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:

Direct Appeal

Overton v. State, 801 So. 2d 877 (Fla. 2001)
Supreme Court of Florida, No. 95404
September 13, 2001; Convictions and sentences affirmed

State Collateral Proceedings

Overton v. State, 976 So. 2d 536 (Fla. 2007)
Supreme Court of Florida, Nos. SC04-2071, SC05-964, SC06-237
November 29, 2007; Affirmed denial

Overton v. State, 129 So. 3d 1069 (Fla. 2013) (successive postconviction motion)
Supreme Court of Florida, No. SC12-1160
August 8, 2013; Affirmed denial

Overton v. State, 236 So. 3d 238 (Fla. 2018) (successive postconviction motion)
Supreme Court of Florida, No. SC17-1435
February 2, 2018; Affirmed denial

Overton v. State, (Fla. 2026) (successive postconviction motion)
Supreme Court of Florida, No. SC2026-1724, SC2026-1725

State Habeas Review

Overton v. State, 976 So. 2d 536 (Fla. 2007)
Supreme Court of Florida, Nos. SC04-2071, SC05-964, SC06-237
November 29, 2007; Denied habeas relief

Federal Habeas Review

Overton v. Jones, 155 F. Supp. 3d 1253 (S.D. Fla. 2016)
United States District Court for the Southern District of Florida
No. 13-10172-CIV-MOORE
January 12, 2016; Petition denied

Overton v. Sec'y, Fla. Dept. of Corr., 2025 WL339895
United States Court of Appeals for the Eleventh Circuit
Nos. 16-10654, 21-13309
January 30, 2025; Affirmed denial

Overton v. Sec'y, Fla. Dept. of Corr., 2025 WL1766048
United States Court of Appeals for the Eleventh Circuit
Nos. 16-10654, 21-13309
June 26, 2025; Vacated prior opinion and substituting opinion affirming denial

Certiorari Review

Overton v. Florida, 535 U.S. 1062 (2002)
Supreme Court of the United States, No. 01-8915
May 13, 2002; *cert denied*

Overton v. Dixon, 146 S. Ct. 1626 (Mem)
Supreme Court of the United States, No 25-516
February 23, 2026; *cert denied*

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Appendix B: Appeal opinion of the Florida Supreme Court, affirming the denial of the Successive Motion to Vacate Judgment and Sentence and denying State Habeas Petition; Overton v. State, Case Numbers SC2026-1724 & SC2026-1725.

Appendix C: Press release dated March 10, 2021, from Florida Commission on Offender Review.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Thomas Mitchell Overton, prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The Order denying the Successive Motion for Postconviction Relief appears at Appendix A to this petition. The opinion of the Florida Supreme Court appears at Appendix B to this petition and is currently unreported.

JURISDICTION

The Florida Supreme Court decided the case on November 13, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. Mr. Overton fully exhausted the federal claims at issue in the Florida courts by filing his Fourth Successive Motion for Postconviction Relief, appealing the same to the Florida Supreme Court, and by filing a Petition for Writ of Habeas Corpus in the Florida Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Florida Statutes, Chapter 27

Florida Rule of Criminal Procedure 3.851

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Section One of the Fourteenth Amendment to the United States Constitution 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.

STATEMENT OF THE CASE

Mr. Overton was convicted for the murders of Michael and Susan Michelle ("Missy") MacIvor as well as of the killing of an unborn child, burglary of a dwelling with assault or battery, and sexual battery with force likely to cause serious bodily injury. Mr. Overton refused a mitigation presentation. Despite hearing no mitigation, the jury recommended sentences of death by non-unanimous verdicts of 8-4 for Michael MacIvor and 9-3 for Missy MacIvor. The jury made no factual findings or other determinations and simply rendered a general verdict. The jury was also instructed on multiple occasions that its verdict was merely advisory and that the trial court would render the actual sentence.

The trial judge found the following aggravators for each victim: 1) the defendant had been convicted of another capital murder; 2) the crime was committed during the commission of a burglary and/or sexual battery; 3) the crime was especially heinous, atrocious, or cruel; 4) the crime was committed in a cold, calculated, and premeditated manner; 5) the crime was committed for the purpose of avoiding or preventing a lawful arrest. The trial judge also found no statutory mitigating factors and two non-statutory mitigators: the fact that Mr. Overton would spend the rest of his life in prison (little weight) and Mr. Overton's courtroom demeanor (little weight). The trial court sentenced Mr. Overton to death on March 18, 1999.

Mr. Overton raised the following issues on direct appeal:

1) the trial court erred in denying defense challenges for cause as to prospective jurors Russell and Hussein;
2) the trial court erred admitting the State's DNA testing where the defense was not provided with Bode Tech's protocol manuals, lab validations and proficiency tests;
3) the trial court erred in refusing to grant a defense motion for continuance where the defense was not given an opportunity to access the essential documents requested in discovery;
4) the trial court erred in not appointing an additional defense expert to rebut the State's evidence relating to the presence of Nonoxynol-9 in the bedding found in the MacIvor home;
5) the trial court erred in denying defendant's motion for mistrial after the prosecutor made statements during the State's rebuttal that the defense had requested only one Nonoxynol test, while the prosecution sought additional testing;
6) the trial court erred in allowing the State to bolster the testimony of Zeintek through the testimony of the prison chaplain;
7) the trial court erred in precluding defense counsel from establishing that the defendant had filed an internal affairs complaint against Officer Visco to show this officer's bias and motive to plant evidence, by improperly finding that this testimony would open the door to evidence of other crimes;
8) a new sentencing hearing is required where three of five aggravators are invalid; and
9) the trial court erred in failing to consider available mitigating evidence.

The Florida Supreme Court ("FSC") affirmed. *Overton v. State*, 801 So. 2d 877 (Fla. 2001), and denied rehearing on December 3, 2001. The Mandate issued the same day, and the Office of the Capital Collateral Regional Counsel for the Southern Region ("CCRC-S") was appointed to represent Mr. Overton in postconviction. On March 13, 2002, Mr. Overton filed a Petition for Writ of Certiorari in this Court ("USSC") which was denied on May 13, 2002. *Overton v. Florida*, 535 U.S. 1062

(2002). Mr. Overton's case became final approximately two years after *Apprendi*[1] was decided, and mere weeks before *Ring*[2] was issued.

Mr. Overton filed his first motion for postconviction relief on April 29, 2003. The State filed a motion to strike on May 15, 2003, and CCRC-S filed a "corrected motion" on May 22, 2003. The motion to strike was granted on June 12, 2003. Mr. Overton filed a second amended postconviction motion on October 30, 2003, raising the following issues:

> I) Mr. Overton is being denied his rights to due process and equal protection as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution and the Corresponding provisions of the Florida Constitution because access to the files and records pertaining to Mr. Overton's case in the possession of certain state agencies have been withheld in violation of Fla. R. Crim. P. 3.852
> II) Mr. Overton was denied the effective assistance of counsel at the guilt phase, in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. Trial counsel was rendered ineffective by the actions of the trial court and the State. Trial counsel failed to adequately investigate and prepare a defense or challenge the State's case. As a result, the convictions and death sentences are unreliable.[3]
> III) Mr. Overton was deprived of his rights to due process under the Fourteenth Amendment to the United States Constitution as well as his rights under the Fifth, Sixth, and Eighth Amendments, because the State withheld evidence that was material and exculpatory in nature and because the State either knowingly presented or failed to correct material false testimony. To the extent that trial counsel had this

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[1] *Apprendi v. New Jersey*, 530 U.S. 466 (2000).
[2] *Ring v. Arizona*, 536 U.S. 584 (2002). *Ring* was decided on June 24, 2002.
[3] Subclaims pled under this claim were: Failure to adequately attach the admissibility of evidence during the *Frye* hearing; Failure to adequately utilize expert knowledge; Police connection to Mr. Overton's girlfriend, Lorna Swaby; Failure to adequately conduct cross-examination during trial; Failure to investigate alibi witnesses; Investigation into alternate theories of the crime; Harassment of Mr. Overton by law enforcement; Failure to impeach the testimony of James Zientek.

information available to them and did not utilize it, counsel rendered ineffective assistance of counsel.

IV) The State's unconstitutional use of jailhouse informants to obtain statements violated Mr. Overton's Fifth, Sixth, Eighth, and Fourteenth Amendments. [*sic*]

V) Mr. Overton suffered ineffective assistance of counsel when his counsel failed to object to the pre-indictment delay in his case.

VI) Mr. Overton's trial counsel was operating under a conflict of interest which rendered his representation of Mr. Overton unconstitutional and violated Mr. Overton's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

VII) Mr. Overton's guilty verdict and jury recommended death sentence are constitutionally unreliable in violation of the Sixth, Eighth, and Fourteenth Amendments, because the trial court erroneously instructed Mr. Overton's jury on the standard by which they must judge expert testimony. The jury made decisions of law that should have been within the province of the court. Trial counsel was ineffective for failing to object to the improper instruction.

VIII) Mr. Overton is being denied his First, Sixth, Eighth, and Fourteenth Amendment rights to the United States Constitution and the corresponding provisions of the Florida Constitution and is being denied effective assistance of counsel in pursuing his postconviction remedies because of the rules prohibiting Mr. Overton's lawyers from interviewing jurors to determine if constitutional error was present.

IX) Mr. Overton's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution were violated during voir dire whether due to counsel's ineffectiveness or being rendered ineffective by State action.

X) Mr. Overton's trial was fraught with procedural and substantive errors which cannot be harmless when viewed as a whole, since the combination of errors deprived him of the fundamentally fair trial guaranteed under the Sixth, Eighth, and Fourteenth Amendments.

XI) Mr. Overton suffered ineffective assistance of counsel due to counsel's failure to object to the introduction of time-barred offenses.

XII) Mr. Overton's conviction and sentence are unconstitutional under *Ring v. Arizona*.

On April 22, 2004, the postconviction court entered an order setting an evidentiary hearing on parts of Claim II, all of Claims IV, VI, and denied a hearing on all other claims. Mr. Overton filed a third amended motion on October 8, 2004. In the third amended motion, Overton amended Claim V and added Claim VIII: Mr. Overton suffered ineffective assistance of counsel when counsel failed to request, and the trial court failed to hold a *Richardson* hearing after the State violated the defendant's discovery rights. After an evidentiary hearing on November 15-17, 2004, the postconviction court denied relief on January 14, 2005, and denied a motion for rehearing on March 21, 2005.

Mr. Overton appealed the denial and filed a petition for writ of habeas corpus in the FSC on May 8, 2006. While that appeal was pending, Mr. Overton filed a successive motion for postconviction relief on June 16, 2006.[4] Mr. Overton filed a

[4] Mr. Overton raised the following claims in the successive motion: I) Mr. Overton was deprived of his rights to due process under the Fourteenth Amendment as well as his rights under the Fifth, Sixth, and Eighth Amendments, because either the State failed to disclose evidence which was material and exculpatory in nature and/or presented misleading evidence and/or defense counsel unreasonably failed to discover and present exculpatory evidence, and/or the State violated *Giglio* and/or newly discovered evidence established manifest injustice and confidence in the outcome of his trial is undermined; II) The State withheld material, exculpatory information and/or presented false or misleading information in violation of Mr. Overton's rights to due process under the Fourteenth Amendment as well as his rights under the Fifth, Sixth, and Eighth Amendments. These omissions and/or false or misleading information prevented a full adversarial testing of the evidence and rendered defense counsel's representation ineffective; III) The State's intentional use of inconsistent, irreconcilable, and misleading assertions concerning the credibility of a jailhouse informant, and/or the State's withholding of material, exculpatory information and/or presentation of false or misleading information violated Mr. Overton's constitutional right to a fair trial and due process under the Fifth, Sixth, Eighth, and Fourteenth Amendments and prevented a full adversarial testing of the evidence.

motion to relinquish jurisdiction, which the Florida Supreme Court denied. Mr. Overton raised the following claims in his postconviction appeal:

> 1) the motion to disqualify the circuit court judge was legally sufficient and should have been granted as a matter of law;
> 2) the state's failure to disclose material impeachment evidence and/or the use of inconsistent theories before different fact-finders in different proceedings violated Mr. Overton's constitutional rights to a fair trial and due process;
> 3) newly discovered evidence that the deceased were under surveillance and that another person may have committed this crime supports the defense claim of actual innocence;
> 4) the denial of the motion to compel DNA testing was an abuse of discretion where the state failed to follow the trial court's initial order;
> 5) the court's summary denial of Overton's claims, including his *Ring* claim, was error.

On November 9, 2007, the FSC denied Mr. Overton's habeas petition and affirmed the denial of Overton's motions for postconviction relief and additional DNA testing. *Overton v. State*, 976 So. 2d 536 (Fla. 2007).

The postconviction court was unaware of the successive motion until 2011, when it entered an order that the State file a response on October 5, 2011. After an evidentiary hearing on January 24, 2012, the postconviction court denied the successive motion to vacate on April 10, 2012. Mr. Overton appealed, and the FSC denied all claims. *Overton v. State*, 129 So. 3d 1069 (Table) (Fla. 2013).

Mr. Overton sought relief in the Southern District of Florida. The petition for writ of habeas corpus and memorandum of law was filed on November 8, 2013, and raised the following issues:

> 1) Petitioner was deprived of his constitutional right to a fair and impartial jury due to the denial of his challenges for cause and the denial

> of his motion for change of venue; appellate counsel was deficient in failing to challenge the denial of change of venue on direct appeal;
> 2) Overton was deprived of his right to the effective assistance of trial and appellate counsel and his rights to a fair trial and due process of law under the Fifth, Sixth, Eighth, and Fourteenth Amendments due to the admission of unreliable DNA evidence at trial;
> 3) The results of Overton's trial at both the guilt and penalty phase were unreliable due to the deprivation of the effective assistance of counsel and/or the state's failure to disclose material impeachment evidence and/or the use of inconsistent theories before different fact-finders in different proceedings; and
> 4) The conviction and sentences are unreliable due to the ineffective assistance of counsel in investigating the alibi and objecting to the pre-indictment delay; newly discovered evidence supports Overton's claims of innocence.

The petition and a certificate of appealability were denied on January 12, 2016. *Overton v. Jones, Sec'y, Fla. Dept. of Corr.*, 155 F. Supp. 3d 1253 (S.D. Fla. 2016).

During postconviction litigation Mr. Overton and counsel at CCRC-S came into conflict to the extent that Mr. Overton requested conflict-free counsel on February 10, 2016, and his postconviction attorneys agreed. While still representing him, Mr. Overton's attorneys at CCRC-S filed a third successive motion for postconviction relief on January 11, 2017, raising the following claims:

> 1) Overton's death sentence stands in violation of the Sixth Amendment under *Hurst v. Florida* and must be vacated;
> 2) Overton's death sentence stands in violation of the Eighth Amendment under *Hurst v. State* and must be vacated; and
> 3) The new law that would govern at a resentencing must be part of the prejudice analyses of Overton's previously presented *Brady*, *Giglio*, and *Strickland* claims. The new law, due process, and the Eighth Amendment all require this Court to revisit Mr. Overton's previous claims and determine whether a different outcome is likely to result.

The postconviction court denied the successive motion on May 31, 2017.

The Eleventh Circuit granted Mr. Overton conflict-free counsel on March 9, 2017; on January 12, 2018, the law firm of Wilson Sonsini was appointed to represent Mr. Overton as conflict-free counsel in his federal proceedings. Mr. Overton filed an application for certificate of appealability with the Eleventh Circuit on July 9, 2018, which was granted in part on the following issues:

> 1) whether Mr. Overton is entitled to statutory tolling under 28 U.S.C. § 2244(d)(2); 2) whether trial counsel's preparation for and participation in the *Frye* hearing violated Mr. Overton's right to effective assistance of counsel under the Sixth and Fourteenth Amendments; and 3) whether the state's nondisclosure of Dr. Donald Pope's ("Dr. Pope," the State's serology expert) evidence collection in other cases, including *Allen v. State*, 854 So. 2d 1255 (Fla. 2003), violated Mr. Overton's rights under *Brady v. Maryland*, 373 U.S. 83 (1963).

On October 29, 2019, the circuit court granted CCRC-South's motion to withdraw due to conflict of interest and appointed CCRC-Middle as non-conflicted state court counsel.

Mr. Overton filed his initial brief in the Eleventh Circuit on April 24, 2023; oral argument occurred on June 26, 2024. The Eleventh Circuit issued its opinion on January 30, 2025;[5] this ruling was vacated and superseded on rehearing on June 26, 2025.[6] Mr. Overton filed a petition for certiorari with this Court on October 24, 2025; certiorari was denied on February 23, 2026. *Overton v. Dixon, et al*, 146 S.Ct. 1626 (2026).

[5] 2025 WL 339895 (11th Cir. January 30, 2025).
[6] 2025 WL 1766048 (11th Cir. June 26, 2025).

Governor Ron DeSantis signed a death warrant for Mr. Overton on Wednesday, October 21, 2026, scheduling Mr. Overton's execution on Thursday, November 19, 2026, at 6:00 p.m. Also on that date the Florida Supreme Court entered an Order directing "that all further proceedings in this case be expedited," and ordering that all proceedings in the circuit court be completed no later than 11:00 a.m. on Wednesday, November 4, 2026.

On October 21, 2026, the Honorable Timothy J. Koenig was assigned to conduct the warrant proceedings. The court conducted a case management scheduling conference on October 22, 2026, and entered a scheduling order the same day. Pursuant to that order, Mr. Overton served public records demands on October 23, 2026. After all agencies filed objections to the production of records, the court held a hearing on those objections on October 26, 2026, and sustained all the agencies' objections.

On October 28, 2026, Mr. Overton filed his Successive Motion to Vacate Judgment of Conviction and Sentences of Death after Death Warrant Signed as well as a Motion for Stay of Execution. Attached to the motion was a copy of an all-writs petition Mr. Overton had filed *pro se* on October 1, 2026. The circuit court held a case management conference on October 30, 2026.

The circuit court entered an order denying an evidentiary hearing on the Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death Warrant Signed on November 1, 2026; in that order, the circuit court indicated it would file a written order on the postconviction motion prior to 11:00 a.m. on

November 4, 2026, pursuant to the Florida Supreme Court's scheduling order. The circuit court denied Mr. Overton's Motion to Stay on November 2, 2026.

The circuit court entered its order denying Mr. Overton's Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death Warrant Signed on November 4, 2026. Mr. Overton appealed and filed a state petition for habeas corpus; the Florida Supreme Court entered its Opinion upholding the summary denial of the Successive Motion and denying the state habeas petition on November 13, 2026.

REASONS FOR GRANTING THE PETITION

I. The grant of absolute power to deny clemency and issue death warrants to the executive violates the separation of powers as well as the guarantees of due process and equal protection under the law.

A. The power to grant clemency and decide who will receive a death warrant is vested solely in the governor and executive branch; the Florida Supreme Court refuses to question clemency and warrant decisions.

The separation of powers exists in the United States because the Framers' experience with the monarchy led to their belief that concentrating distinct governmental powers in a single entity would subject citizens to arbitrary and oppressive government action.[7] Florida has long recognized this necessity:

> As previously noted, article II, section 3, of the Florida Constitution provides that "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." This provision encompasses two fundamental prohibitions. *See Chiles v. Children A, B, C, D, E, & F,* 589 So.2d 260,

[7] THE FEDERALIST NO. 48 (James Madison) ("[T]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.")

> 264 (Fla.1991). The first is that no branch may encroach upon the powers of another. *Id.* The second is that no branch may delegate to another branch its constitutionally assigned power. *Id.* However, the separation of powers doctrine does not contemplate that every governmental activity must be classified as belonging exclusively to a single branch. *See State v. Johnson,* 345 So.2d 1069, 1071 (Fla.1977). Rather, a branch of government is prohibited from the exercise of power that has been constitutionally assigned exclusively to another branch. *State v. Palmer,* 791 So.2d 1181, 1183 (Fla. 1st DCA 2001), *rev. denied,* 817 So.2d 849 (Fla.2002).

Abdool v. Bondi, 141 So. 3d 529, 547–48 (Fla. 2014). *See also Parole Comm'n v. Lockett*, 620 So. 2d 153, 154–55 (Fla. 1993); *Ford v. Wainwright*, 477 U.S. 399, 400, 106 S. Ct. 2595, 2597, 91 L. Ed. 2d 335 (1986).

However, and in spite of this, the executive branch in Florida holds unchecked power in relation to death-sentenced individuals. The Florida executive has sole, unfettered discretion to deny clemency and to issue an execution warrant. Art. IV, § 8, Fla. Const.; Florida Statutes, § 922.052. This process is conducted under a veil of secrecy and with no governing standards regarding how the governor should exercise his unconstrained power. The inescapable corollary to this authority is that the governor controls how much process is available to make these critical factual determinations *if any*. *See Guardado v. State*, 2026 WL 3267707 (Fla. Oct. 29, 2026). The result is unchecked power in the executive branch - absolute power, in absolute secrecy - over the rights guaranteed to capital criminal defendants by the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

With regard to clemency and warrant signing, the Florida Supreme Court has yielded entirely to the executive office. "The clemency process in Florida derives solely from the Florida Constitution and we have recognized that the people of the State of Florida have vested 'sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace.'" *Carroll v. State*, 114 So. 3d 883, 888 (Fla. 2013), quoting *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977). This abdication violates the separation of powers articulated in the Federal and State Constitutions as well as the Eighth and Fourteenth Amendments to the United States Constitution, as applied to Mr. Overton and all similarly situated capital defendants.

The Florida Supreme Court has stated, "[i]t is not our prerogative to second-guess the application of [the] exclusive executive function," and that "the principle of separation of powers requires the judiciary to adopt an extremely cautious approach in analyzing questions involving this admitted matter of executive grace." *Bundy v. State*, 497 So. 2d 1209, 1211 (Fla. 1986). Resting absolute power over life and death in the executive is a profound violation of the separation of powers and has led to exactly the result envisioned by the Framers. This must not be allowed to continue. The United States Constitution must still control. Whether to grant clemency is discretionary. Whether to sign a death warrant is discretionary. Whether to follow the Constitution in carrying out a death sentence is not.

B. Capital Clemency has devolved to a sham proceeding.

The clemency process as it was originally intended no longer exists for death-sentenced inmates in Florida. Clemency for death-sentenced inmates was already so

infrequently granted in Florida that the process had become meaningless; the last grant of clemency in a capital case was in 1983.[8] One hundred and forty-four people have been executed in Florida since then without a single grant of mercy. This is despite the fact that each condemned prisoner participated in a clemency process and despite the fact that the Governor may not sign a death warrant until the clemency process is complete. Florida Statutes, § 922.052 (2)(b).

Clemency for those convicted of murder has become extinct in Florida not only because it has not been granted in 43 years, but also because on March 10, 2021, the Governor unilaterally and extrajudicially exercised his clemency powers to deny the pending clemency applications of all individuals convicted of murder and felony sex offenses with one statement: they would never receive the mercy of clemency. See Appendix C. On that day, approximately 300 pending clemency applications were summarily dismissed, meaning the State acted on this extra-judicial statement. There has been no retraction of this avowal to date, meaning regardless of what is presented to the clemency board by a death-sentenced prisoner, clemency will **never** be granted.

C. The executive's unrestricted power over life and death violates due process and equal protection.

The right to due process guarantees, *inter alia*, the right to an impartial decision maker and the opportunity to be heard at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

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[8] *See* *Death Penalty Information Center*, List of Clemencies Since 1976, https://deathpenaltyinfo.org/policy-issues/policy/clemency/list-of-clemencies-since-1976.

The Florida Supreme Court has repeatedly held that "the Governor's absolute discretion to sign death warrants, thereby deciding who lives and who dies," does not violate due process, including in this case. *Gore v. State*, 91 So. 3d 769, 780 (Fla. 2012); *Ferguson v. State*, 101 So. 3d 362, 366 (Fla. 2012). *See* Appendix B; *see also Guardado v. State*, 2026 WL 326WL3267707 (Fla. Oct. 29, 2026). The recent decisions in this case and *Guardado* were based in part because the Florida Supreme Court defers to the governor's unfettered discretion without question.

In the *Guardado* opinion, the Florida Supreme Court noted that the death-sentenced inmate was not denied due process because he was not denied *all* access to the clemency process. This is true, to a certain extent. Death-sentenced prisoners receive notice of the clemency process, are assigned an attorney, and participate in a clemency interview. After the clemency interview, the appointed attorney submits materials that should be considered by the clemency board, as well as any other agencies that weigh in on the clemency decision. However, the result of the capital clemency process is always a foregone conclusion because of the executive's action outside the process which has predetermined its outcome. As a result, the process itself has become pointless and capital clemency has become a legal impossibility, thereby denying death-sentenced inmates' meaningful process.

In Florida, the sole decision maker with absolute power over life and death has already chosen the outcome and done so publicly.[9] If the decision maker has chosen the outcome, then the decision maker is no longer neutral, in violation of due process

[9] Compare this to the Florida executive's actions in suspending two elected State Attorneys who made similar statements with regard to the handling of prosecutions with which the executive did not agree.

under the Fifth and Fourteenth Amendments. Presenting evidence or making an argument is meaningless if the person listening has already closed their mind to persuasion.

The full measure of the clemency process will never be available to convicted murderers despite the State's avowal that it is providing all of the trappings of the clemency process. But process is not process if the result is a *fait accompli*. To satisfy due process, an opportunity must be given to present a case in a meaningful manner[10] and "process which is a mere gesture is not due process." *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306 (1950). Florida's clemency rules state that an inmate has the opportunity to present information to the board prior to a decision being made regarding clemency – but here, the decision had already been made and was made years ago, years before Mr. Overton ever had the opportunity to present his information to the clemency board.

If the result has already been determined, regardless of how much "process" a capital defendant receives by having a clemency attorney appointed and an interview, that manner isn't meaningful and the clemency process is a mere gesture.

In this case, the Florida Supreme Court denied Mr. Overton's claim based on its prior opinions that there is no due process violation, citing *Guardado*, and many other cases. The Florida Supreme Court denied Guardado's claim at least in part because he merely challenged the sufficiency of the clemency process as a violation of due process. Here, Mr. Overton is not merely challenging the sufficiency of the

[10] *Armstrong v. Manzo*, 380 U.S. 545 (1965).

process. Mr. Overton is also arguing that regardless of how much clemency "process" is afforded, the fact that the means will lead to only one end violates his right to equal protection under the law. The Florida Supreme Court did not address Mr. Overton's equal protection claim in its opinion, merely choosing to misinterpret Mr. Overton's argument that the executive's unchecked clemency and warrant power is *tantamount* to a bill of attainder because it is an egregious violation of equal protection.

The governor made it clear that he would never grant clemency to an entire class of inmate – meaning a viable legal remedy that is on its face applicable to everyone except those convicted of treason – is now unavailable to this specific class of people despite their not being specifically named in Article IV, Section 8 of the Florida Constitution as unable to avail themselves of that remedy. Denying relief or access to an individual or easily identifiable group without the benefit of full process is an unconstitutional violation of equal protection.

In *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886), this Court held, "[t]hough the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution." This has held true for well over a century. The government must treat individuals in similar situations alike and apply laws impartially. When an outcome is predetermined, that constitutional guarantee breaks down in practice, even if the rules appear neutral on paper.

The blanket denial of clemency to an entire class of offenders uses a sledgehammer when a scalpel would suffice. This is especially true when this class of offenders is particularly vulnerable because of the governor's unchecked power to deny clemency and sign a death warrant. Executive clemency is a discretionary power of grace, but it intersects with equal protection when those decisions cross the line into arbitrary and discriminatory patterns. While the executive can choose whom to grant or deny mercy to for any number of reasons, clemency cannot be administered arbitrarily or through invidious discrimination, even if the class being discriminated against is convicted murderers. While the clemency process may be facially fair, a blanket denial of clemency to all convicted murderers means with no consideration of any other information means that clemency is being applied unequally with no rational basis and is therefore a violation of equal protection.

Due process requires a fair hearing before an unbiased decision maker and equal protection guarantees impartial treatment compared to others. If the result is determined before the evidence is heard, the proceeding becomes a sham, stripping the individual of both due process and equal standing before the law. The clemency review and warrant process to which Mr. Overton and all other death-sentenced individuals have been subjected has violated rights guaranteed by the State and Federal constitutions.

II. Florida's public records laws are unconstitutional in capital post-warrant litigation because they prevent capital defendants from ever piercing the veil of secrecy surrounding the clemency and warrant processes and make it impossible to ensure that the executive is not violating the separation of powers, due process, and equal protection when making clemency determinations and signing death warrants.

Florida Statutes, § 14.28 states that all records developed or received pursuant to a Board of Executive Clemency investigation are confidential and exempt from disclosure and may only be released upon the approval of the Governor. The Rules of Executive Clemency provide that all records and documents gathered and generated in the clemency process are confidential and not available for inspection. Rule 16, Rules of Executive Clemency. The Florida Supreme Court has repeatedly held that all records in the clemency process, even non-investigatory records, are confidential, as part of their complete deference to the executive in clemency and warrant matters. *See Chavez v. State*, 132 So. 3d 826, 830-31 (Fla. 2014); *Parole Commission v. Lockett*, 620 So. 2d 153, 157-58 (Fla. 1993).

Mr. Overton timely served public records demands under Rule 3.852 to state agencies to support his claims for postconviction relief. Specifically, Mr. Overton requested records from the Executive Office of the Governor, the Florida Commission on Offender Review, and the Office of the Attorney General related to the process by which the Governor denied executive clemency and signed his death warrant. The circuit court denied these demands in a written order filed on October 26, 2026. See Appendix A. The Florida Supreme Court upheld the denial, because of the executive's absolute power over not only the process of clemency and warrant signing, but also over access to any information relating to that process. The Florida Supreme Court opinion stated that the demands "are not tools by which to conduct a fishing expedition," noted that the demands are supposed to be targeted, specific, and relevant to colorable claims for relief, and stated that Mr. Overton had not stated any

such colorable claims. See Exhibit B.

However, Mr. Overton's demands *were* related to colorable claims for postconviction relief; denial of access to the records that would have supported those claims denied Mr. Overton and capital defendants like him the due process and access to the courts to which they are entitled under the United States and Florida Constitutions.

A state violates a criminal defendant's right to due process when it arbitrarily and completely denies him access to its clemency process. *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (O'Connor, J., concurring in part and concurring in the judgment). The Florida Supreme Court has acknowledged Justice O'Connor's concurring opinion in *Woodard* as a correct statement of the law. *Reaves v. State*, No. SC2026-1512, 2026 WL 3071534, at *3 (Fla. Oct. 14, 2026) (Justice O'Connor's concurrence "support[s] the proposition that 'some minimal procedural safeguards apply to clemency procedures'"); *see also Barwick v. Governor of Fla.*, 66 F.4th 896, 902 (11th Cir. 2023) ("Justice O'Connor's concurring opinion provides the holding in *Woodard*"). It follows, then, that the general statement in the Florida Supreme Court's opinion that clemency is not a cognizable claim for postconviction relief is incorrect. A complete denial of access to clemency *is* a cognizable claim, and it was precisely the claim Mr. Overton attempted to raise. *Thompson v. State*, No. SC2026-1465, 2026 WL 3023727, at *2 (Fla. Oct. 8, 2026) (evaluating Thompson's claim of complete denial of clemency on the merits as opposed to rejecting the claim as non-cognizable).

While this Court has never conclusively ruled what, if any, procedural safeguards are required in clemency proceedings, it is apparent that a defendant must be afforded notice and an opportunity to be heard regarding any potential defect in the process. *Ohio Adult Parole Auth.*, 523 U.S. at 290 (O'Connor, J.). This opportunity to be heard can only comport with due process if it is full and fair, as opposed to "merely colorable and illusory." *Redman v. Kyle*, 76 Fla. 79, 91, 80 So. 300, 304 (1918). Put plainly, the right to an opportunity to be heard implies a tribunal that will listen and in Florida, there is no opportunity to be heard on the sufficiency of the process because there is no required process. Rather, Mr. Overton is arguing and has alleged sufficient facts to show that he was completely denied access to meaningful clemency proceedings[11].

While the Florida Supreme Court has credited the boilerplate statements in death warrants that clemency was considered and denied, *see e.g. Carroll v. State*, 114 So. 3d 883, 888 (Fla. 2013), that reliance is misplaced. The Governor, in a publicly released statement, declared that no person convicted of murder or a sex offense will ever be granted clemency. This contradiction between the Governor's statements and the boilerplate nature of the language in death warrants underscores the need for the offices involved in the clemency and warrant process to provide their records so that Mr. Overton, and others like him, may determine whether he received the minimal process he is due.

[11] A Rule 3.851 motion is a notice pleading whose factual allegations must be taken as true if summarily denied. *See Hojan v. State*, 212 So. 3d 982, 988-89 (Fla. 2017).

The purpose of clemency has been rendered impossible by the governor's statement that he will never grant clemency to someone convicted of murder, and the State's continued enforcement of this statement. The ends of clemency are rendered further impossible by the public records aspect of clemency. The Office of the Attorney General, the Florida Commission on Offender Review, and the Governor's Office all play a part in the clemency and warrant process. Each of those agencies have claimed and received exemptions from disclosure because of the rules of executive clemency and Florida law. The clemency rules and Florida law, as well as all Florida Supreme Court case law support this because each link in the chain of secrecy that binds the clemency process reinforces the others. The agencies and the courts have made this chain all but unbreakable, thereby violating due process and denying access to the courts.

It is also impossible for any capital defendant under warrant or otherwise to ever satisfy the pleading rules that require challenges to be raised in a particular manner when the government is denying access to the evidence that would support that claim.

Mr. Overton's colorable claim that the clemency and warrant process are being implemented in an arbitrary and capricious manner required the trial court to order the agencies to provide him with records of his clemency and warrant process; those are the records that would either prove or disprove his claims. "The language of section 119.19 and of rule 3.852 clearly provides for the production of public records after the governor has signed a death warrant." *Sims v. State*, 753 So. 2d 66, 70 (Fla.

2000). To be entitled to records, a defendant's claim must only be colorable, not conclusively established. "Colorable claim" means "a plausible claim that may be reasonably asserted, given the facts presented and the current law." *Colorable Claim*, *Black's Law Dictionary* (12th ed. 2004). To require Mr. Overton to conclusively establish that he has been denied all access to a meaningful clemency proceeding before he can access the records containing that conclusive proof and before he has even filed a motion for postconviction relief is perverse and a contortion of the Rule's intent.

When the Florida Supreme Court promulgated amendments to Rule 3.852 regarding public records, it explained that "[w]e intend for this rule to serve as a basis for providing to the postconviction process all public records that are relevant or would reasonably lead to documents that are relevant to postconviction issues." *Amends. to Fla. Rules of Crim. Proc. 3.852 (Cap. Postconviction Pub. Recs. Prod.) & Rule 3.993 (Related Forms)*, 754 So. 2d 640, 642 (Fla. 1999). Showing relevance to postconviction issues is a far lower bar than conclusively proving a claim.

In *Gardner v. Florida*, 430 U.S. 349 (1977), this Court held that information unexposed to adversary testing does not qualify as reliable. *Gardner*, at 358. The *Gardner* court vacated the defendant's death sentence because the trial court imposed the sentence based at least in part on information in a presentence report that was not disclosed to the defense, hence the defense had no opportunity to deny or explain the information. In Florida, all of the clemency and warrant information is unexposed to adversarial testing.

Florida's clemency process must meet the minimum requirements of federal due process. *Barwick v. Gov. of Fla.*, 66 F.4th 896, 902 (11th Cir. 2023) (*citing Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272 (1998)). A claim that Florida's clemency process violates due process ripens with the signing of a death warrant, given that in Florida the issuance of a warrant is how a defendant learns that clemency was denied. *Id*. As such, Mr. Overton was entitled to raise a timely claim that the denial of executive clemency in his case violates federal due process; however, Florida's secrecy rules regarding clemency make it impossible for Mr. Overton to know if due process was followed in his case. The Florida Commission on Offender Review does not even allow a capital defendant to obtain the transcript from *his own clemency review*, or any materials submitted by clemency counsel. *See* Florida Statutes, § 940.031(2); Fla. R. Exec. Clem. 15(A) ("[A]ll records and documents generated and fathered in the clemency process . . . are confidential and shall not be made available to any person except members of the Clemency Board and their staff.").

This violates Mr. Overton's rights to procedural due process and access to the courts. *See, e.g., Lankford v. Idaho*, 500 U.S. 110, 126 (1991) ("fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights."). The secrecy of Florida's clemency and warrant process enables the executive branch to block his ability to raise an available constitutional claim. Mr. Overton has no means of determining what standards, if any, guided the clemency decision and decision to sign his death warrant, and whether they were followed in this case. Given the speed with which Mr. Overton's clemency was initiated after he became warrant eligible, and the

short time between the submission of the clemency packet and the signing of the warrant, it is evident that little thought or analysis went into the Governor's choice to sign a warrant on Mr. Overton. This Court should grant the writ to ensure that Florida law is being followed with regard to the clemency and warrant processes.

As Justice Sotomayor noted in her statement respecting the denial of the application for stay of execution and denial of certiorari, the post-warrant public records process places prisoners in a Catch-22: the courts deny access to records because the prisoner has not raised a "colorable claim," but "[t]he very reason the prisoners are seeking the records. . . is to gather enough information to raise a colorable. . . claim." *Trotter v. Florida*, 607 U.S. ___, 146 S.Ct. 755, 756 (Mem) (February 24, 2026). As the Justice noted, individuals seeking to challenge Florida's actions "should not have to guess at" whether the State is following its rules and statutes. While the *Trotter* statement was raised in relation to records regarding execution protocols, Mr. Overton contends that it holds true in relation to clemency and warrant records. "By continuing to shroud its executions in secrecy, Florida undermines both the integrity of its own execution process and, potentially, this Court's ability to ensure the State's compliance with its constitutional obligations." *Id*. See also *Guardado v. Sec'y, Dep't of Corr*., 2026 WL 3327719 *8 (11th Cir. November 2, 2026) (Pryor, J., concurring) ("a State's failure to maintain accurate records will invariably lead to concerns and questions about whether the State is adhering to its protocol as well as the efficacy and constitutionality of that protocol.").

Florida not only has constitutional obligations with respect to the carrying out of executions; those obligations remain true throughout the process, including clemency and warrant selection. Florida's rules, statutes, and caselaw regarding capital postconviction and post-warrant records demands is an unconscionable ouroboros from which death-sentenced individuals are prevented from escaping by the very same rules. This cycle must be broken to prevent further constitutional and moral injury to capital defendants. Mr. Overton urges this Court to grant the writ and correct the injustice that is Florida's clemency and warrant process.

CONCLUSION

The petition for writ of certiorari should be granted.

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