No. 26-6154

IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS M OVERTON,

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 19, 2026, AT 6:00 P.M.

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CAPITAL CASE

QUESTION PRESENTED

Overton asks this Court to decide whether the Florida Governor's broad discretion in the clemency determination and whether Florida's public records law violate separation of powers, the due process and equal protection clauses to the United States Constitution. This Court should deny certiorari jurisdiction over the two 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) prohibit an executive with "unfettered" discretion under state law to deny clemency "for any reason" from adopting a blanket policy against granting clemency to capital defendants?

II. Does the Fourteenth Amendment require a State to provide to a defendant clemency records, which are exempt under state law, and are sought, not to litigate an existing constitutional claim, but to determine whether one might exist?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

OPINION BELOW 1

JURISDICTION 2

STATEMENT OF THE CASE AND FACTS 5

REASONS FOR DENYING THE PETITION 12

ISSUE I – Does minimal due process under Justice O'Connor's concurring opinion in *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272 (1998) prohibit an executive with "unfettered" discretion under state law to deny clemency "for any reason" from adopting a blanket policy against granting clemency to capital defendants? 12

A. Failure to Preserve 13

B. No Clarity in the Petition 14

C. No Conflicting Decisions 14

D. No Merit in the Question 17

ISSUE II – Whether the Fourteenth Amendment requires a State to provide postconviction public records discovery to a defendant who seeks the requested materials not to litigate an existing constitutional claim, but to determine whether one might exist? 20

A. The Decision Rests on an Independent and Adequate State Law Ground 22

B. The Decision Below Correclty Applies Settled Federal Law 25

C. The Petition Raises No Conflict and No Important Federal Question 26

D. Florida's Denial of Public Records Did Not Violate His Rights to Due Process and Equal Protection 27

E. Florida's Discovery Rule Does Not Deny Meaningful Access to the Courts 30

CONCLUSION 31

TABLE OF AUTHORITIES

Page(s)

Cases

Abdool v. Bondi,
141 So. 3d 529 (Fla. 2014) 3, 4
Anderson v. Davis,
279 F.3d 674 (9th Cir. 2002) 17, 18
Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.,
585 U.S. 33 (2018) 23
Asay v. State,
224 So. 3d 695 (Fla. 2017) 24
Banks v. Sec'y, Fla. Dep't of Corr.,
592 F. App'x 771 (11th Cir. 2014) 17, 18, 19
Barwick v. DeSantis,
143 S. Ct. 2452 (2023) 1, 13
Barwick v. Gov. of Fla.,
66 F.4th 896 (11th Cir. 2023) 2, 3, 18
Bowles v. DeSantis,
934 F.3d 1230 (11th Cir. 2019) 3
Brady v. Maryland,
373 U.S. 83 (1963) 28
Braxton v. United States,
500 U.S. 344 (1991) 15
Bryan v. DeSantis,
343 So. 3d 127 (Fla. 1st DCA 2022) 17, 18, 19
Bucklew v. Precythe,
587 U.S. 119 (2019) 17, 20
Carroll v. State,
114 So. 3d 883 (Fla. 2013) 5
Cavazos v. Smith,
565 U.S. 1 (2011) 20
Chavez v. State,
132 So. 3d 826 (Fla. 2014) 2, 21
City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC,
596 U.S. 61 (2022) 13
City of Cleburne v. Cleburne Living Ctr.,
473 U.S. 432 (1985) 29
Connecticut Bd. Of Pardons v. Dumschat,
452 U.S. 458 (1981) 13, 15
Dailey v. State,
283 So. 3d 782 (Fla. 2019) 24

Davis v. State,
142 So. 3d 867 (Fla. 2014) 1, 2, 5
Engquist v. Oregon Dep't of Agric.,
553 U.S. 591 (2008) 29
Florida v. Powell,
559 U.S. 50 (2010) 23
Foster v. Chatman,
578 U.S. 488 (2016) 22
Gissendaner v. Comm'r, Ga. Dep't of Corr.,
794 F.3d 1327 (11th Cir. 2015) 18
Gray v. Netherland,
518 U.S. 152 (1996) 26, 28
Gregory v. Ashcroft,
501 U.S. 452 (1991) 22
Guardado v. State,
No. SC2026-1605, 2026 WL 3267707 12
Heckler v. Chaney,
470 U.S. 821, 105 S.Ct. 1649, 84 L.Ed.2d 714 (1985) 27
Herb v. Pitcairn,
324 U.S. 117 (1945) 24
Herrera v. Collins,
506 U.S. 390 (1993) 19
Hurst v. Florida,
577 U.S. 92 (2016) 10
In re Amends. to Fla. Rules of Crim. Proc.,
683 So. 2d 475 (Fla. 1996) 29
In re Sapp,
118 F.3d 460 (6th Cir. 1997) 17, 18
Jennings v. State,
422 So. 3d 107 (Fla.) 12
Johnston v. State,
27 So. 3d 11 (Fla. 2010) 4-5
King v. State,
434 So.3d 969 (Fla.) 24
Lewis v. Casey,
518 U.S. 343 (1996) 26, 30, 31
Marks v. United States,
430 U.S. 188 (1977) 15
Mathews v. Eldridge,
424 U.S. 319 (1976) 27
Michigan v. Long
463 U.S. 1032 (1983) 24, 25
Montana v. Wyoming,
563 U.S. 368 (2011) 23

Mullaney v. Wilbur,
421 U.S. 684 (1975) 23
Murray v. Giarratano
492 U.S. 1, (1989) 28
Ohio Adult Parole Auth. V. Woodard,
523 U.S. 272 (1998) ..... i, ii, 12, 15
Overton v. Jones,
155 F. Supp. 3d 1253 (S.D. Fla. 2016) 10
Overton v. Sec'y, Florida Dep't of Corr.,
No. 16-10654, 2025 WL 1766048 (11th Cir. June 26, 2025) 11
Overton v. State,
129 So. 3d 1069 (Fla. 2013) 10
Overton v. State,
236 So. 3d 238 (Fla.) 10
Overton v. State,
801 So. 2d 877 (Fla. 2001) 5, 7, 8, 9
Overton v. State,
976 So. 2d 536 (Fla. 2007) 10
Overton v. State,
No. SC2026-1724, 2026 WL 3512637 (Fla. Nov. 13, 2026) 1, 6-8, 11, 14-17, 21-24
Parole Comm'n v. Lockett,
620 So. 2d 153 (Fla. 1993) 2, 21
Pennsylvania v. Finley,
481 U.S. 551 (1987) 27, 28
Pizzuto v. Valley,
177 F.4th 1042 (9th Cir. 2026) 18
Reaves v. State,
No. SC2026-1512, 2026 WL 3071534 (Fla. Oct. 14) 12
Roach v. Quarterman,
220 F. App'x 270 (5th Cir. 2007) 19
Rockford Life Ins. Co. v. Ill. Dep't of Revenue,
482 U.S. 182 (1987) 15
Rosemond v. Hudgins,
92 F.4th 518 (4th Cir. 2024) 2
Sims v. State,
753 So. 2d 66 (Fla. 2000) 24
Sullivan v. Askew,
348 So. 2d 312 (Fla. 1977) 2
United States ex. rel. Kaloudis v. Shaughnessy,
180 F.2d 489 (2d Cir.1950) 27
United States v. Pollard,
416 F.3d 48 (D.C. Cir. 2005) 27
Village of Willowbrook v. Olech,
528 U.S. 562 (2000) 29

Wainwright v. Goode,
464 U.S. 78 (1983) 23, 25
Wardius v. Oregon,
412 U.S. 470 (1973) 28
Weatherford v. Bursey,
429 U.S. 545 (1977) 26, 28
West v. Am. Telephone & Telegraph Co.,
311 U.S. 223 (1940) 23
Willacy v. State,
431 So. 3d 254 (Fla. Apr. 15, 2026) 24
Williams v. Hobbs,
658 F.3d 842 (8th Cir. 2011) 27
Yee v. City of Escondido,
503 U.S. 519 (1992) 14
Zack v. DeSantis,
144 S. Ct. 273 (2023) 1, 13

Statutes

28 U.S.C. § 1257 1
28 U.S.C. § 2254 3
Art. IV, § 4(a), Fla. Const 2
Art. IV, § 5(a), Fla. Const 2
art. IV, § 5(b), art. VI, § 4(a), Fla. Const 2
Art. IV, § 8(a), Fla. Const 2
U.S. Const. art. II, § 2, cl. 1 27
§ 14.28, Fla. Stat 21
§ 922.052(2)(b), Florida Statutes 4
§ 922.06(1), Fla. Stat 5
§ 940.03, Fla. Stat 3, 18
§ 940.031, Fla. Stat 4

Rules

Fla. R. Crim. P. 3.851(e)(2) 12
Fla. R. Crim. P. 3.852(i)(2)(A)-(D) 23
Florida Rule of Criminal Procedure 3.851 ..... 5, 11, 23
Florida Rule of Criminal Procedure 3.852 ..... 21, 23, 24, 25, 26, 29, 30, 31

OPINION BELOW

The opinion of the Florida Supreme Court is reported as *Overton v. State*, No. SC2026-1724, 2026 WL 3512637 (Fla. Nov. 13, 2026).

JURISDICTION

Petitioner seeks to invoke this Court's jurisdiction under 28 U.S.C. § 1257. However, 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). Further, the challenge to the denial of public records rests on independent and adequate state law grounds which is a proper basis to deny certiorari. Even if jurisdiction were present, this case is inappropriate for the exercise of this Court's discretionary jurisdiction as to the questions presented because the Florida Supreme Court's opinion does not conflict with any decision by this Court, another state court of last resort, or a United States court of appeals, nor does it decide any important and unsettled question of federal law. See Sup. Ct. R. 10(b)-(c).

CONSTITUTIONAL PROVISIONS INVOLVED

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

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] the authority to "commute punishment" for offenses. Art. IV, § 8(a), Fla. Const. With this constitutional provision, the People of Florida vest "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 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.[2]

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.

[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.

[2] 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).

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")[3] "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 so 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,

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

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 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). 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

On October 21, 2026, Governor DeSantis signed a death warrant setting Thomas M. Overton's execution for November 19, 2026. Overton petitions for a writ of certiorari following the denial of his post-warrant successive postconviction relief motion under Florida Rule of Criminal Procedure 3.851. Overton's death warrant is for his February 1, 1999, convictions for the first-degree murders of Michael MacIvor, and S.M.,[4] committed on August 21-22, 1991, and his March 18, 1999, death sentences. *Overton v. State*, 801 So. 2d 877 (Fla. 2001), *cert. denied*, 535 U.S. 1062 (2002). Overton was also convicted of the crimes of the Killing of an Unborn Child, Burglary of a Dwelling, and Sexual Battery Involving Serious Physical Force committed during the double homicide. He pursued state postconviction, state habeas, and federal habeas relief. All relief was denied.

Facts of Crime and Penalty Phase

Michael MacIvor and S.M., eight-months pregnant at the time with their first child, were last seen alive on the evening of August 21, 1991, at a childbirth class,

[4] The victim's initials are used due to the sexual nature of the crime.

and they were found dead the next morning. *Overton*, 2026 WL 3512637 at *1.[5] Law enforcement investigated and processed the scene finding both victims had been bound, blind-folded with masking tape, strangled to death, and S.M. raped. *Id.*

Michael was found in the living room, and it was determined that he died "from asphyxiation by ligature strangulation" and that his larynx, hyoid bone, and epiglottis were fractured and his neck dislocated at the fifth cervical vertebrae. Michael also suffered other injuries including severe blows to the back of his skull and shoulder as well as a kick to his abdomen. S.M. was found naked on top of a white comforter in the master bedroom. *Id.* Her nightshirt had been ripped from her body and her underwear was cut from her hips. The investigators found presumptive seminal stains on S.M.'s pubic area, buttocks, inner thighs. The medical examiner concluded that S.M. "had been sexually battered." S.M. "had visible ligature marks on her neck and wrists" and discoloration to "her face indicated an incomplete application of the ligature" causing "her to suffer for longer before being rendered unconscious and dying." Signs she struggled against her attacker included friction marks from the ligatures, clenched hands, and abrasions to her vulva and legs. The autopsy revealed that S.M.'s baby boy, who would have been viable if born, survived his mother by thirty minutes.[6] *Overton*, 2026 WL 3512637 at *1

As part of the investigation, cuttings were taken from the sheet and mattress

[5] *See also Overton v. State*, So. 2d 801, 881 (Fla. 2001).
[6] *See Overton*, So. 2d at 883.

pad based on markings made at the scene which tested positive for sperm.[7] Those cuttings were sent for DNA testing, but no matches were found.[8] In late 1996, Overton was arrested during an attempted burglary. *Id*. at *1-*2. While incarcerated,[9] law enforcement obtained Overton's blood and compared it to the DNA profile developed by FDLE from the sperm cells found on the cuttings from S.M.'s bedding. *Id*. at *2. An "exact match" was found at the six loci considered in RFLP testing. *Id*. at *2, n. 2. In 1998, the cuttings were sent to another lab for short tandem repeat ("STR") DNA testing resulting in matches at all twelve loci tested. *Id*. at *2, n. 3.[10] Following these results, Overton was indicted for two counts of murder, killing an unborn child, burglary, and sexual battery. *Id*. at *2.

Overton proceeded to trial and the State relied on the DNA evidence as well as two former inmates of Overton, James Zientek and William Guy Green, who testified

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[7] On direct appeal, the Florida Supreme Court noted that Overton's defense theme was that "law enforcement officers, Detective Visco in particular, had planted Overton's semen in the bedding," however, there was not "a scintilla of evidence" that Overton's seminal fluid was planted. *Overton,* 801 So. 2d at 887, 897.

[8] The cuttings were sent to the Florida Department of Law Enforcement ("FDLE") Lab for restriction fragment length polymorphism ("RFLP") DNA testing and a profile was developed, but no comparisons were done at that time as there were no identified suspects. *Overton*, 801 So. 2d at 883-84.

[9] While in jail, Overton asked correction officers for a razor, and once one was provided, he used the blade to make two cuts to his throat. The towel used to stem the bleeding was turned over to investigators by corrections officers. Based on preliminary testing, the police obtained a court order to withdraw Overton's blood for testing. *Overton*, So. 2d at 884.

[10] "Overton's DNA and that extracted from a stain at the scene matched at all twelve loci." *Overton*, 801 So. 2d at 884-85. The Bode Lab expert reported that the likelihood of finding another person whose DNA profile would match at twelve loci was one in four trillion Caucasians, one in twenty-six quadrillion African Americans and one in fifteen trillion Hispanics. *Id*.

to admissions Overton made and his description of how he killed the victims.[11] Zientek testified that Overton described in detail about his criminal actions of August 21, 1991, including that Overton had planned to rape S.M.,[12] how he cut the telephone lines to her residence, snuck into the home in the dead of the night, "ambushed Michael in the kitchen with a pipe, knocked him out, and chased [S.M.] back into the bedroom where he bound her with scarves and belts from her dresser." Zeintek also testified that Overton told him S.M. "screamed, 'I know who you are. Why are you doing this to me?' and pleaded for Michael's life and the life of their baby." Witness Zeintek also stated that Overton admitted that he "placed a sock over Michael's eyes and wrapped his head with masking tape," "raped and strangled" S.M. and after she was dead, Overton "placed a hand on her stomach and felt her baby move." Overton also admitted to Zeintek that when Michael regained consciousness, Overton strangled him. The jury was also told that Overton admitted to attempting "to obfuscate the crime scene" by ripping pages from an address book he found at the scene and taking things that no one would realize were gone.[13] *Overton*, 2026 WL 3512637 at *2.

Based on the trial evidence, the jury convicted Overton as charged. *Id.*

Overton waived a penalty phase mitigation presentation. *Id.* The jury

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[11] See *Overton*, 801 So. 2d at 885-87.

[12] Overton met S.M. at the Amoco Station where he worked and where S.M. purchased her fuel which was approximately a mile from her home. *Overton*, 801 So. 2d at 885-87. (direct appeal record vol. 26 3044, 3047-48; vol.33 4152).

[13] *See also Overton*, 801 So. 2d at 886.

recommended imposition of the death penalty by a vote of nine to three for S.M.'s murder and by a vote of eight to four for the murder of Michael. *Id*. The sentencing court found the following aggravators for both victims: (1) heinous, atrocious or cruel; (2) cold, calculated and premeditated manner; (3) prior violent felony (contemporaneous murder); (4) during the commission of a sexual battery and burglary; and (5) avoid arrest. *Overton v. State*, 801 So. 2d 877, 888-89 (Fla. 2001). The sentencing court considered: "the defendant's family background, military record, employment record, possible history of substance abuse and possible mental health problems." *Id*. at 889. Ultimately, the sentencing court found no statutory mitigators but found non-statutory mitigation of: (1) Overton "would be incarcerated for the rest of his life with no danger of committing any other violent acts" (little weight) and (2) Overton's "courtroom demeanor and behavior (some weight)" was found. In weighing the five aggravators against the mitigation, the sentencing court determined "the scales of life and death tilt unquestionably to the side of death" and sentenced Overton to death for both murders. *Id*. He was sentenced to fifteen years for the killing of an unborn child, and two life terms for the burglary and sexual battery. *Id*.

On direct appeal, the Florida Supreme Court affirmed Overton's convictions and death sentences. *Overton*, 801 So. 2d at 906. Thereafter, Overton filed a certiorari petition in this Court and on May 13, 2002, certiorari was denied. *Overton v. Florida*, 535 U.S. 1062 (2002).

Postconviction Litigation

On April 30, 2002, Overton filed his initial motion for postconviction relief followed by amendments on which an evidentiary hearing was granted. *Overton v. State*, 976 So. 2d 536, 545 (Fla. 2007). On April 5, 2004, Overton moved for DNA testing and the trial court granted the motion in part and denied it in part. *Id*. at 546. An evidentiary hearing commenced on November 15, 2004, following which, on February 14, 2005, all relief was denied. *Id*. Overton appealed the denial of his request for DNA testing and denial of postconviction relief, and later filed with the Florida Supreme Court a state habeas petition. Those three cases were consolidated, and the Florida Supreme Court affirmed the trial court's orders denying postconviction relief and DNA testing and denied habeas relief. *Id.* at 575.

During the pendency of the above appeal, Overton filed his first successive motion for postconviction relief. Following an evidentiary hearing, all relief was denied and the Florida Supreme Court affirmed. *Overton v. State*, 129 So. 3d 1069 (Fla. 2013) (Table). Later, Overton filed a second successive motion for postconviction relief raising a claim of *Hurst v. Florida*, 577 U.S. 92 (2016) error. Relief was denied and the Florida Supreme Court affirmed. *Overton v. State*, 236 So. 3d 238 (Fla.), *cert. denied*, 586 U.S. 883 (2018).

On November 8, 2013, Overton filed a federal petition for writ of habeas corpus. Relief was summarily denied and Overton appealed. The Eleventh Circuit Court of Appeals ordered a limited remand following which, relief again was denied. *Overton v. Jones*, 155 F. Supp. 3d 1253 (S.D. Fla. 2016). Ultimately, the United States Circuit

Court of Appeals for the Eleventh Circuit found that Overton was not entitled to habeas relief. *Overton v. Sec'y, Florida Dep't of Corr.*, No. 16-10654, 2025 WL 1766048 (11th Cir. June 26, 2025), *cert. denied*, 146 S. Ct. 1626 (2026).

Active Death Warrant Litigation

Following the October 21, 2026, signing of Overton's death warrant, he made public records demands of Florida Department of Corrections, Office of Executive Clemency-Florida Commission on Offender Review, Florida Department of Law Enforcement, Office of the Attorney General, Office of the State Attorney-Sixteenth Judicial Circuit, and Monroe County Sheriff's Office. (DW 425-60).[14] After a hearing, all demands were denied. (DW 572-612; SDW 1-3). On October 28, 2026, Overton moved for a stay of execution and filed his post-warrant successive Fla. R. Crim. P. 3.851 motion raising three claims. Of import here, he claimed that Florida's clemency process denies Overton due process. (DW 621-907) The State responded to both motions. (DW 1207-36, 1240-47). On November 2, 2026, the court denied Overton's request for a stay of execution, and on November 4, 2026, summarily denied postconviction relief. (DW 1309-53, 1354-59, 1362-77).

Overton appealed among other issues not relevant here, that it was error to deny his public records demands for clemency records and that Florida's clemency process denies him due process. The Florida Supreme Court affirmed the trial court's denial of records and the summary denial of postconviction relief. *Overton*, case no.

[14] "DW" references the appellate record in his post-warrant litigation.

2026 WL 3512637 at *4. With respect to the clemency claim, the Florida Supreme Court recognized that it had rejected similar attacks on Florida's clemency process repeatedly[15] and found that the trial court "did not err in summarily denying this legally non-cognizable claim." *Id.* at *5.

REASONS FOR DENYING THE PETITION

ISSUE I

Does minimal due process under Justice O'Conner's concurring opinion in *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272 (1998) prohibit an executive with "unfettered" discretion under state law to deny clemency "for any reason" from adopting a blanket policy against granting clemency to capital defendants?

Overton has litigated and re-litigated his death sentence for over three decades and no court has granted relief. Now, on the eve of his execution, he claims Florida's clemency process is rendered a sham due to the executive's unfettered discretion to

[15] *See Guardado v. State*, No. SC2026-1605, 2026 WL 3267707, at *3-*5 (Fla. Oct. 20, (rejecting challenge to Florida's clemency process under *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) because minimal due process does not prohibit the Governor from having a 'blanket policy' against clemency for certain offenders or require scheduled grants of clemency and Guardado's death warrant stated that clemency was considered and was determined 'not appropriate' in his case), *cert. denied*, No. 26-6013, 2026 WL 3342321 (U.S. Nov. 5, 2026); *Reaves v. State*, No. SC2026-1512, 2026 WL 3071534, at *2-*3 (Fla. Oct. 14) (emphasizing "the unlimited discretion vested solely in the executive branch, both to decide whether to grant clemency and to establish the procedures governing the clemency process;" and that a capital defendant does not have "any entitlement to records relating to his clemency proceeding" nor does a defendant have a "constitutional right to the effective assistance of clemency counsel"), *cert. denied*, No. 26-5865, 2026 WL 3132759 (U.S. Oct. 20, 2026); *Jennings v. State*, 422 So. 3d 107, 114–16, 120 (Fla.) (finding where defendant had no good cause for failing to raise clemency claim earlier, it was procedurally barred under Fla. R. Crim. P. 3.851(e)(2)), *cert. denied*, 146 S. Ct. 402 (2025).

grant or deny clemency in violation of the separation of powers, due process, and equal protection clauses under the United States and Florida Constitutions. He asks this Court to grant relief.

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); *Guardado v. Florida*, No. 26-6013, 26A623, 2026 WL 3342321 (2026). Clemency is a discretionary act of grace. Because it is not a right to which any death row inmate is entitled, there can be no violation of any constitutional right. This case would be unworthy of certiorari under normal circumstances, much less on the eve of an execution. Review should be denied.

A. Failure to Preserve.

Overton now raises a separation of powers argument for the first time, placing it outside this Court's defined boundaries for certiorari review. *See City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 76-77 (2022) ("This Court, however, is 'a court of final review and not first view,' and it does not '[o]rdinarily ... decide in the first instance issues not decided below.'"). Overton received both state and federal review of his convictions and sentences over the last 35 years satisfying all constitutional demands. This Court should decline to evaluate Florida's clemency and warrant selection process which, under Florida law, is within the Florida Governor's sound discretion and does not violate the limited due process provided under *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998), and *Connecticut Bd. Of Pardons v. Dumschat*, 452 U.S. 458 (1981).

B. No Clarity in the Petition.

Overton'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). Overton broadly alleges a separation of powers violation because clemency matters are delegated solely to the executive branch. Overton's argument suggests that the judiciary *should* intervene in this process, despite no authority to do so. By pointing out that the Florida Supreme Court always yields to the executive branch in clemency matters, he is, in effect, making a reverse separation of powers argument. Overton's question does not adequately provide Respondent or this Court notice of the grounds for certiorari.

Florida vests clemency in the "unfettered discretion" of its executive branch. Overton continues to raise the same clemency challenges that other death row inmates have raised and the Florida Supreme Court has held these claims are legally uncognizable. *See Overton*, 2026 WL 3512637 at *5. 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 in this question presented warrants denying certiorari.

C. No Conflicting Decisions.

Overton fails to identify any conflict of decisions or unsettled federal question that would warrant review. 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. Overton lacks any cognizable claim under *Dumschat* and the decision below denying relief does not 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 Overton received minimal due process despite the Governor's alleged blanket policy and Florida's historic lack of clemency grants. *See Overton,* 2026 WL 3512637 at *5. Neither *Dumschat* nor *Woodard* addressed complaints like Overton'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 Overton's 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 decision-making 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 Overton*2026 WL 3512637 at *5. Consequently, this Court should deny 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.

D. No Merit in the Question.

Finally, this Court should deny certiorari and refuse to stay Overton's execution because his constitutional challenges to Florida's clemency process fail. The

Federal Constitution only requires Florida to provide clemency seekers with "minimal" due process. *Woodard*, 523 U.S. at 289. 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 Overton'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 Overton'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 Overton. An executive who always denies clemency is exercising discretion rather than leaving it up to chance.

Given the strength of the evidence that supports his convictions, and the horrifying facts of these murders, Overton is an exceptionally poor candidate for clemency. *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 Overton 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 Overton 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 Overton's 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 Overton's Petition.

ISSUE II

Whether the Fourteenth Amendment requires a State to provide postconviction public records discovery to a defendant who seeks the requested materials not to litigate an existing constitutional claim, but to determine whether one might exist?

The petition does not warrant review. It arises from a case-specific discovery dispute involving public records requests and the decision below rests on independent and adequate state law grounds, is consistent with settled federal law, and creates no conflict warranting this Court's intervention. Overton seeks this Court's review of the Florida Supreme Court's denial of public records requests for clemency and warrant selection records from the Florida Office of the Governor, the Florida Commission on Offender Review, and the Florida Office of the Attorney General. He asks this Court to constitutionalize Florida's postconviction public records procedures by holding that the Fourteenth Amendment requires a State to provide discovery

whenever a defendant seeks records to determine whether a constitutional claim might exist. The Florida Supreme Court rejected that theory, concluding that Florida Rule of Criminal Procedure 3.852 authorizes additional public records discovery only when the requested materials are relevant to a colorable postconviction claim and that Overton sought records merely to investigate whether one could be developed.[16] *Overton*, 2026 WL 3512637 at *4.

The Florida Supreme Court's decision presents no basis for this Court's review. First, the judgement rests on the Florida Supreme Court's settled interpretation of Rule 3.852, an independent and adequate state law ground which fully supports the result. Overton's disagreement is, therefore, with Florida's collateral review procedures, not with any unsettled question of federal constitutional law. Second, the petition identifies no compelling reason for review under Rule 10. It presents no conflict among state supreme courts or federal circuit courts of appeal, the lower courts, no departure from this Court's precedents, and no important, unsettled question of federal law warranting this Court's intervention. Instead, the decision below is consistent with this Court's settled jurisprudence governing criminal

[16] Under Florida law, all clemency records are exempt from disclosure. § 14.28, Fla. Stat. ("All records developed or received by any state entity pursuant to a Board of Executive Clemency investigation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. l of the State Constitution."); Rule 16, Rules of Executive Clemency; *Chavez v. State*, 132 So. 3d 826, 830-31 (Fla. 2014) (Rule 16 protects "all records in the clemency process [as] confidential[,]" even non-investigatory records); *Parole Com'n v. Lockett*, 620 So. 2d 153 (Fla. 1993) (Clemency investigation files and reports relating to the granting of clemency are subject solely to the rules of executive clemency and may not be ordered to be produced pursuant to a state's public records law).

discovery, collateral review, and access to the courts. Finally, this case is an exceptionally poor vehicle for review because, even if Overton prevailed, the only consequence would be additional state collateral discovery proceedings rather than resolution of any constitutional challenge to his conviction, sentence, or clemency proceedings.

Even setting aside these threshold obstacles to review, Overton's constitutional theories independently fail on the merits. This Court's precedents recognize that States retain broad authority to structure collateral review and foreclose the novel constitutional entitlement to exploratory postconviction discovery that Overton asks this Court to create. His due process, access-to-courts, and equal protection theories provide no basis for a different result. Neither Rule 10 nor this Court's precedents provide any basis for granting review or recognizing the novel constitutional rule Overton asks this Court to create.

A. The Decision Rests on an Independent and Adequate State Law Ground.

When both state and federal questions are involved in a state court proceeding, this Court has no jurisdiction to review the case if the state court judgement rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the state court's decision. *See Foster v. Chatman*, 578 U.S. 488, 497 (2016). It is a "fundamental principle" that "our Constitution establishes a system of dual sovereignty between the States and the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). While this Court is the highest authority on the interpretation of federal law, "[t]he highest court of each State, of course, remains

'the final arbiter of what is state law.'" *Montana v. Wyoming*, 563 U.S. 368, 377 n.5 (2011) (quoting *West v. Am. Telephone & Telegraph Co.*, 311 U.S. 223, 236 (1940)). As a consequence, "the views of the state's highest court with respect to state law are binding on the federal courts." *Wainwright v. Goode*, 464 U.S. 78, 84 (1983); *see also Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 585 U.S. 33, 44 (2018); *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975). Thus, if a state court's decision is separately based on state law, this Court "will not undertake to review the decision." *Florida v. Powell*, 559 U.S. 50, 57 (2010).

That principle controls here. Although Overton invokes due process and equal protection, the decision below turns on the Florida courts' application of their settled, claim-driven framework for capital postconviction public records demands. Under Rule 3.852, a capital defendant is not entitled to free-ranging access to public records. Instead, the rule conditions any additional records production on a series of threshold showings: the defendant must identify specific materials not already available in the central records repository; demonstrate that the requested records are relevant to a postconviction proceeding under Rule 3.851 or reasonably calculated to lead to admissible evidence; and ensure that the request is narrowly tailored and not unduly burdensome. Fla. R. Crim. P. 3.852(i)(2)(A)-(D). This framework reflects Florida's settled precedent that additional postconviction public record requests serve to develop claims, not to search for new ones.

Applying those standards, the Florida Supreme Court concluded that Overton failed to satisfy Rule 3.852's threshold requirements because his requests were not

tied to any colorable postconviction claim and one was overly broad and unduly burdensome. *See Overton*, SC2026-1724, 2026 WL 3512637, at *4. Instead, the court explained that Overton sought discovery to determine whether such a claim might exist. *Id.* That determination is dispositive as a matter of state law and fully sufficient to support the decision. *See Long*, 463 U.S. at 1041-42.

Overton's effort to recast that state law ruling as a federal constitutional violation does not alter the jurisdictional analysis. This Court "correct[s] wrong judgments" only insofar as they "incorrectly adjudge federal rights," not to revisit a state court's interpretation of its own procedural rules. *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945). Because the judgement below rests on independent and adequate state grounds, this Court lacks authority to review it.

The decision below thus applied settled Florida law, not a novel procedural limitation. For years, the Florida Supreme Court has consistently held that Rule 3.852 authorizes additional discovery only upon a demonstrated nexus between the requested records and a colorable postconviction claim. *See Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000); *Asay v. State*, 224 So. 3d 695, 699-700 (Fla. 2017); *Dailey v. State*, 283 So. 3d 782, 792-93 (Fla. 2019). The court recently reaffirmed those same principles in materially similar litigation involving requests for execution-related records. *See Willacy v. State*, 431 So. 3d 254, 261-65 (Fla. Apr. 15, 2026), *cert. denied*, No. 25-7220 (U.S. Apr. 21, 2026); *King v. State*, 434 So.3d 969, 974-77 (Fla.), *cert. denied*, 146 S. Ct. 1802 (2026). Overton's disagreement is ultimately with the Florida Supreme Court's construction of Rule 3.852 itself.

Overton argues that the Florida rules and caselaw puts him in a "Catch-22" position because he needs the records to see if Florida is providing him with the minimal due process in the clemency proceedings. He alleges that the denial of the records is the equivalent of a total denial of access to clemency and is a colorable claim under Florida law. The Constitution does not require discovery merely because a litigant believes additional information might support a future claim. Those allegations merely explain why Overton seeks additional discovery; they do not alter the Florida Supreme Court's state law conclusion that Rule 3.852 authorizes additional public records discovery only upon a sufficient showing of a colorable claim.

Nor can Overton avoid that independent state law ground by recasting his disagreement as one of due process or equal protection. State courts are the final arbiters of state law, and federal courts are bound by a state supreme court's construction of its own statutes and procedural rules. *Wainwright v. Goode*, 464 U.S. 78, 84 (1983). Given that the Florida Supreme Court's interpretation of Rule 3.852 independently supports the decision, review is foreclosed regardless of Overton's constitutional characterization of that state law determination. *Michigan v. Long*, 463 U.S. at 1041-42.

B. The Decision Below Correctly Applies Settled Federal Law.

Even if jurisdiction existed, the decision below is correct and presents no unsettled question of federal law. Overton's claims rest on a premise this Court has repeatedly rejected: that the Constitution entitles a litigant to obtain discovery in order to identify or develop a claim. It does not. The right of access to courts

guarantees only the ability to bring claims, not to discover them, and due process has "little to say regarding the amount of discovery which the parties must be afforded." *Lewis v. Casey*, 518 U.S. 343, 354-56 (1996); *Gray v. Netherland*, 518 U.S. 152, 168 (1996).

C. The Petition Raises No Conflict and No Important Federal Question.

Rather than identifying a conflict, Overton asks this Court to create a constitutional right that no court has recognized. He cites no decision of this Court holding that the Due Process Clause or Equal Protection Clause entitles a defendant to obtain postconviction public records merely to investigate whether a constitutional claim might exist. Nor does he identify any state court of last resort invalidating a collateral discovery rule comparable to Florida Rule of Criminal Procedure 3.852 because it limits discovery to requests bearing a sufficient relationship to a colorable postconviction claim. Overton's question seeks the creation of a new constitutional rule, not resolution of a disagreement over an existing one. That circumstance strongly weighs against review. *See* Sup. Ct. R. 10.

Overton fails to identify any disagreement concerning this Court's precedents governing criminal discovery and collateral review. On the contrary, the decision below is consistent with settled law recognizing that the Constitution creates no general right to criminal discovery, *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977); that due process imposes only limited disclosure obligations, *Gray v. Netherland*, 518 U.S. 152, 168 (1996); and that States retain broad authority to structure collateral review because postconviction proceedings are not constitutionally required.

Pennsylvania v. Finley, 481 U.S. 551, 557-59 (1987). The D.C. Circuit Court of Appeals has addressed an issue of clemency documents in the federal context, saying:

> The Constitution entrusts clemency decisions to the President's sole discretion. U.S. Const. art. II, § 2, cl. 1 (the President "shall have Power to grant Reprieves and Pardons for Offenses against the United States ..."). Even when governed by legislation, such actions as regulatory enforcement and criminal prosecution, which are the "special province of the Executive Branch," are presumptively off-limits to the courts. *Heckler v. Chaney*, 470 U.S. 821, 832, 105 S.Ct. 1649, 84 L.Ed.2d 714 (1985). Clemency, over which neither Congress nor the courts share any constitutional authority, is more properly the exclusive province of the Executive. As stated by Judge Learned Hand, "[i]t is a matter of grace, over which courts have no review[.]" *United States ex. rel. Kaloudis v. Shaughnessy*, 180 F.2d 489, 491 (2d Cir.1950). Thus, it is entirely out of our power to compel discovery of or access to documents for the sake of a clemency petition. We therefore remand this final claim for dismissal for lack of jurisdiction.

United States v. Pollard, 416 F.3d 48, 57 (D.C. Cir. 2005). The same must hold true for the clemency procedure and documents from Florida.

That settled framework forecloses Overton's theories. He does not contend that he is unable to bring a constitutional challenge to Florida's clemency process; he asserts only that he lacks information to discover one. But the Constitution guarantees an opportunity to be heard, not a right to conduct open-ended discovery in search of a claim. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Williams*, 658 F.3d at 852. In any event, Overton received all the process he was due, including notice, a hearing, and appellate review.

D. Florida's Denial of Public Records Did Not Violate His Rights to Due Process and Equal Protection.

Overton's remaining constitutional theories do not alter that conclusion.

Overton's due process theory begins from a premise this Court has consistently rejected, i.e., that the Constitution guarantees discovery whenever additional information might assist a litigant in developing constitutional claims. This Court has long held that there is no general constitutional right to discovery in a criminal case. *Weatherford*, 429 U.S. at 559. Consistent with that principle, the Court explained that "'the Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded.'" *Gray*, 518 U.S. at 168 (quoting *Wardius v. Oregon*, 412 U.S. 470, 474 (1973)). Except for specific constitutional disclosure obligations, such as those imposed by *Brady v. Maryland*, 373 U.S. 83 (1963), the Constitution generally leaves questions concerning discovery to the jurisdictions administering criminal proceedings.

That principle applies with even greater force in collateral review. Because States are not constitutionally required to provide postconviction proceedings, they retain broad authority to define the procedures governing them, including reasonable limitations on discovery. *See Finley*, 481 U.S. at 557-59; *Giarratano*, 492 U.S. at 10. Florida exercised that authority by limiting postconviction public records discovery to requests bearing a sufficient relationship to a colorable claim. Applying that settled rule, the Florida Supreme Court concluded that Overton sought discovery not to litigate a claim, but to determine whether one might exist.

Overton identifies no decision of this Court holding that due process requires States to provide discovery for such exploratory purposes. To recognize the constitutional entitlement, he proposes speculative allegations into a federal right to

broad collateral discovery, notwithstanding a State's reasonable procedural limitations on postconviction litigation. This Court's due process jurisprudence provides no support for that result. Overton received all the process the Constitution requires: notice, a hearing, and appellate review. What he seeks is something more, a constitutional right to discovery untethered to any colorable postconviction claim. This Court's precedent forecloses that theory.

His equal protection claim fails because he is not similarly situated to members of the general public; he seeks records through a specialized, litigation-specific framework governing capital postconviction proceedings. Fla. R. Crim. P. 3.852; *In re Amends. to Fla. Rules of Crim. Proc.*, 683 So. 2d 475, 476 (Fla. 1996). Overton's equal protection claim fails for an independent reason: he does not allege that Florida treated him differently from any similarly situated capital defendant. The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Accordingly, a plaintiff ordinarily must identify similarly situated persons who received more favorable treatment and demonstrate that the differential treatment lacks a constitutionally sufficient justification. *Engquist v. Oregon Dep't of Agric.*, 553 U.S. 591, 601-02 (2008); *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

Overton makes no such showing. The Florida Supreme Court applied the same Rule 3.852 standards it has consistently applied to all capital defendants seeking postconviction public records. Applying those settled standards, the court concluded that Overton failed to demonstrate the requisite connection between the requested

records and a colorable postconviction claim because his allegations remained speculative. Nothing in the decision below suggests that Overton received treatment different from any similarly situated litigant.

Ultimately, Overton's equal protection claim is simply another attempt to constitutionalize Florida's collateral discovery procedures. He does not contend that Rule 3.852 discriminates among capital defendants or that Florida affords similarly situated prisoners broader discovery. Instead, he argues that the Constitution required Florida to provide additional public records so he could investigate whether an equal protection claim might exist. But because the Constitution does not require States to provide exploratory postconviction discovery, Overton cannot transform the denial of that discovery into an equal protection violation. The Florida Supreme Court therefore correctly rejected his equal protection claim.

E. Florida's Discovery Rule Does Not Deny Meaningful Access to the Courts.

Overton alternatively contends that Florida denied him meaningful access to the courts by refusing to compel additional public records discovery. That argument rests on the mistaken premise that the constitutional right of access includes a right to obtain information in the hope of discovering future claims. Again, this Court's precedents foreclose that proposition.

In *Lewis v. Casey*, this Court explained that the constitutional right of access guarantees prisoners only the capability of presenting nonfrivolous claims to a court of competent jurisdiction. 518 U.S. 343, 354-56 (1996). It does not require States to "enable the prisoner to discover grievances, and to litigate effectively once in court."

Id. at 354 (emphasis omitted). Rather, the Constitution requires only a reasonably adequate opportunity to present existing claims. *Id.* at 351.

Florida afforded Overton precisely that opportunity. Overton filed a demand for additional public records, litigated the demand in circuit court, and received appellate review in the Florida Supreme Court. The only limitation imposed was Florida's determination that Rule 3.852 did not authorize additional public records discovery because Overton failed to demonstrate that the requested records bore a sufficient relationship to a colorable postconviction claim.

That determination did not deny Overton access to the courts. His asserted injury is not the inability to present a constitutional claim, but the inability to search for facts that might support future ones. *Lewis* expressly rejected the notion that the Constitution requires States to furnish prisoners the means to investigate or discover potential causes of action. 518 U.S. at 354-55. Overton's theory therefore seeks precisely the expansion of the right of access that *Lewis* refused to recognize. Accepting Overton's theory would fundamentally alter the constitutional right of access by transforming ordinary disputes over the scope of state collateral discovery into federal constitutional controversies. This Court has never recognized such a right, and *Lewis* squarely forecloses it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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