No. 2026A-623

IN THE

Supreme Court of the United States

JESSE GUARDADO,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

REPLY TO RESPONSE TO APPLICATION FOR STAY OF EXECUTION

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

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To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Respondent's position that this Court should deny Mr. Guardado a stay of execution is premised upon mischaracterizations of his claims, the facts supporting those claims, and misapprehension of the applicable law. Mr. Guardado submits that he has shown that a stay of execution is appropriate pursuant to this Court's three-factor test in *Barefoot v. Estelle*, 463 U.S. 880 (1983).

I. Reasonable probability of certiorari grant

Respondent argues that "[f]our justices would not probably not vote to grant certiorari on either of Guardado's questions presented." Response at 5.

Respondent first argues that Guardado was dilatory in bringing his challenge to Florida's clemency scheme so his request for a stay should be denied. Response at 3. Guardado's clemency process was initiated by the executive branch in March 2026. Guardado's interview with investigators was held in July of this year and he was not informed of the denial until after his death warrant was issued by Governor DeSantis on October 5, 2026. He challenged it in his successive motion for postconviction relief seven days later on October 12, 2026. PCR-W 286-307.

Next, Respondent argues that Guardado's due process challenges to Florida's clemency process are speculative. Response at 3. Guardado argued in his petition that Florida's clemency process for death-sentenced prisoners does not comply with the minimum due process requirements under *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272 (1998) because it has not been granted in 43 years, 143 prisoners have been

executed since it was last granted, and the current governor's stated policy that he will not grant clemency to murderers denies minimal due process and renders the clemency process a facade.

While acknowledging that Justice O'Connor's concurring opinion in *Woodard* that requires minimum due process in clemency proceedings is controlling, Respondent argues and the court below found that sufficient due process exists. Response at 3-5, Florida Supreme Court (FSC) at 10. The lower court also declined to extend the position held by a majority of states and circuits that those safeguards must extend to the procedures put in place to implement the clemency process. App. at 10.

Respondent overlooks that there is a split in circuits and states regarding the scope of rights under Justice O'Connor's controlling opinion in *Woodard*. *See Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 794 F.3d 1327, 1333 (11th Cir. 2015) (acknowledging split). The majority rule is that the Due Process Clause requires States to comply with their own State-created clemency procedures in death penalty cases. *See, e.g., Com. v. Michael*, 56 A.3d 899, 903 (Pa. 2012); *Aruanno v. Corzine*, 413 Fed. Appx. 494, 497 (3d Cir. 2011); *Baze v. Thompson*, 302 S.W.3d 57, 59-60 (Ky. 2010); *Young v. Hayes*, 218 F.3d 850, 853 (8th Cir. 2000); *Sellers v. State*, 973 P.2d 894, 896 (Okla. Crim. App. 1999); and *Duvall v. Keating*, 162 F.3d 1058, 1061 (10th Cir. 1998). The minority position is that States do not have to comply. *Garcia v. Jones*, 910 F.3d 188, 191 (5th Cir. 2018); *Gissendaner*, 794 F.3d at 1333.

When the state automatically denies clemency to Guardado and other death-sentenced prisoners, as Florida does, the laws and rules it has put into place to ensure a meaningful clemency review are defeated and minimal due process is denied.

Based on the foregoing, there is a reasonable probability that four Justices, when evaluating Mr. Guardado's claims, will find the issues sufficiently meritorious to grant certiorari review.

II. Significant possibility of reversal

Respondent argues that there is no significant possibility of reversal on the issue. Based upon the automatic denial of clemency to death-sentenced prisoners in Florida that results in the illusory process called clemency in Florida, there is a significant possibility of reversal.

III. Irreparable injury

The clemency process afforded Guardado and the last 143 citizens executed by Florida is a facade. If a new clemency review were granted where the executive actually reviewed the missed mitigation cited in the petition and Guardado's conduct in prison for the last 21 years, he would likely be granted clemency. Guardado will suffer irreparable injury.

IV. Conclusion

Guardado has demonstrated that the questions involving the absence of minimal due process in Florida's clemency scheme satisfy this Court's three-factor test to grant a stay of execution. *See Barefoot*, 463 U.S. at 895.

Respectfully submitted,

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November 3, 2026
Dated