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Case No. SC2025-1722

IN THE SUPREME COURT OF FLORIDA

Richard Randolph,
Appellant,

v.

State of Florida,
Appellee.

On Appeal From The Circuit Court Of The Seventh Judicial Circuit,
In And For Putnam County, Florida

Lower Court Case No. 88-1357-CF

INITIAL BRIEF OF THE APPELLANT

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REQUEST FOR ORAL ARGUMENT

Mr. Randolph respectfully requests oral argument pursuant to Florida Rule of Appellate Procedure 9.320. The resolution of the issues involved in this action may determine whether Mr. Randolph lives or dies. This Court has granted oral argument in other capital cases in a similar procedural posture. A full opportunity to argue the issues at oral argument is appropriate in this case because of the seriousness of the claims at issue and the penalty that the State seeks to impose on Mr. Randolph.

CITATIONS TO THE RECORD

References to the record on direct appeal from Mr. Randolph's judgment of conviction and death sentence appear as: R. [page #]. References to the first postconviction record on appeal appear as: PCR1. [page #]. References to the third postconviction record on appeal appear as: PCR3. [page #]. References to the record on appeal from the post-warrant proceedings appear as: WR. [page #].

To the extent that documents from prior records on appeal were attached to Mr. Randolph's post-warrant motion to vacate judgement and sentence, citations are to the record on appeal from the post-warrant proceedings for the Court's convenience. All other references

are self-explanatory.

Generally, Richard Randolph is referred to as “Mr. Randolph” and the State of Florida is referred to as “the State.”

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STATEMENT OF THE CASE AND FACTS

On October 21, 2025, the governor signed a warrant for Mr. Randolph's execution, setting it for November 20, 2025, a mere 30 days later. Neither Mr. Randolph nor his counsel had any forewarning (although it is believed that the Attorney General's Office has advance notice of execution warrants). On the same day, the governor denied Mr. Randolph clemency based on information that had not been updated since June 26, 2014. (WR. 481).

After his death warrant was signed, Mr. Randolph moved for postconviction relief, raising three claims he could not have raised previously: (1) Mr. Randolph's health had deteriorated due to the progression of the disease of lupus such that, as applied to him, Florida's three-drug protocol would violate the Eighth Amendment, (WR. 402-406); (2) the governor's denial of clemency was based on a stale review proceeding that had laid dormant for 14 years and, thus, failed to consider 63-year-old Mr. Randolph's growth as a person and his positive prison record, which included the Department of Corrections designating him a "houseman" on death row in recognition of his adjustment and the trust he had earned, (WR. 396-397); and, (3) the truncated warrant process violates Mr. Randolph's

due process rights as it deprives him meaningful end-stage review, (WR. 406-413).

As has become typical in Florida's record-breaking streak of executions, the circuit court, with no prior knowledge of Mr. Randolph's case, denied all of his public records requests, (WR. 307-15), and summarily denied his postconviction motion, (WR. 525-39).

Trial Proceedings

The State charged Mr. Randolph with first-degree murder, armed robbery, sexual battery, and grand theft of a motor vehicle in relation to the 1988 death of Minnie Ruth McCollum. *Randolph v. State*, 562 So. 2d 331 (Fla. 1990). Ms. McCollum had been found partially nude and beaten. She died a few days later from her injuries. The jury found Mr. Randolph guilty on February 23, 1989. *Id.*

The next day, Mr. Randolph's case proceeded to the penalty phase, which was only half a day long. His trial counsel presented a single witness—Dr. Harry Krop. Dr. Krop's evaluation consisted entirely of interviews with Mr. Randolph, Mr. Randolph's adoptive father, Timothy Randolph, and Mr. Randolph's ex-girlfriend. (R. 1720). Trial counsel failed to give Dr. Krop any records to use in his evaluation. (PCR1. 194).

Dr. Krop's limited testimony noted Mr. Randolph's adoption at five months old. Mr. Randolph's birthparents were college students who, after having their baby, put "it" up for adoption. (R. 1732) "And that's as far as we know about his early life." (R. 1732). Testifying about Mr. Randolph's therapeutic treatment in the third grade, Dr. Krop admitted that Timothy Randolph "was not particularly a good historian in terms of the nature of any kind of diagnosis, so again, we don't have records, we just know that he was in trouble in terms of seeking professional help from a young boy." (R. 1728). Dr. Krop further stated, "I do not have records of that, and the father was not particularly helpful." (R. 1733).

Dr. Krop testified that Mr. Randolph's adoptive mother, Pearl Randolph, was "an emotionally unstable individual," had been "hospitalized on a couple of occasions for psychiatric reasons," and "was a fairly ineffective parent." (R. 1733). Dr. Krop made a passing reference to the jury about Mr. Randolph's physical abuse by Timothy Randolph, noting "his father would tie him up, put his hands in a banister, and then for punishment either use his hand, a broomstick, or a belt and hit [Mr. Randolph] all over the body." (R. 1733). Dr. Krop testified that Timothy Randolph "was rather guarded" but had stated

"because my wife wasn't able to discipline him I had to do the disciplining." (R. 1733). Dr. Krop also told the jury that Mr. Randolph graduated high school and served in the military with an honorable discharge, but subsequently became addicted to crack cocaine. (R. 1734).

On cross-examination, the prosecutor had Dr. Krop reaffirm that Mr. Randolph's biological parents were college students when they gave him up for adoption. (R. 1753). The prosecutor further insinuated that Timothy and Pearl Randolph must have loved Mr. Randolph because they adopted him. (R. 1753).

Despite this abysmal penalty phase presentation, the jury rendered an advisory recommendation for a sentence of death by a mere eight (8) to four (4) vote. The jury was not asked to make any factual findings.

Trial counsel did not present any additional evidence at the *Spencer*[1] hearing. The trial court found the non-statutory mitigating circumstances that Mr. Randolph was addicted to crack cocaine, was adopted, had never really bonded with his mother, and had a history

[1] *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

of mental illness. However, the court discounted the weight of this mitigation, stating that "even if proven [it] does not rise to the level of a mitigating circumstance which would . . . outweigh the aggravating circumstances found to exist." (WR. 436).

On April 5, 1989, the trial court sentenced Mr. Randolph to death. In its sentencing order, the trial court found four aggravators: (1) the crime was committed while engaged in the commission or flight after commission of a sexual battery; (2) the crime was committed for avoiding or preventing a lawful arrest; (3) the crime was committed for pecuniary gain; and (4) the crime was heinous, atrocious, or cruel. (WR. 432-34). The trial court rejected proposed statutory mitigation of no significant history of criminal activity based on information in a pre-sentence report that was never presented to the jury. (WR. 435). Further, the trial court rejected the statutory mitigator of extreme mental or emotional disturbance. (WR. 435). The trial court found (but gave little or no weight to) two non-statutory mitigators: (1) Mr. Randolph possesses an a-typical personality disorder and (2) Mr. Randolph expressed shame or remorse for his conduct. (WR. 436-37).

The trial court unreasonably determined that "Dr. Krop testified

that the Defendant was loved by both parents." (R.1902). (emphasis added). Dr. Krop actually testified:

> Q. [T]he mere fact that he had adoptive parents, adoptive parents would indicate that someone had loved him?
>
> A. I'm not questioning, as I indicated, that his parents loved or didn't love him, I don't know that. The father indicated to me that he's always seen his son as being different, and always in need of help psychologically. But it's, in my opinion, Mr. Randolph's perception [is] that he was not loved.

(R. 1751).

The Sentencing Order failed to mention the abuse inflicted upon Mr. Randolph by his adoptive parents, noting instead that Mr. Randolph was adopted and never bonded with his mother, while repeating the erroneous factual finding that Mr. Randolph was loved by his adoptive parents:

> The Defendant, having been adopted, never had a loving relationship with his mother. This testimony adduced through Dr. Harry Krop, shows a young man whose mother had a history of mental problems. Regardless, Dr. Krop testified that the Defendant was loved by both parents. Thus, this factor even if proven does not rise to the level of a mitigating circumstance which would, in conjunction with Paragraph One, outweigh the aggravating circumstances found to exist.

(WR. 436).

Direct Appeal

This Court affirmed Mr. Randolph's convictions and sentences on direct appeal. *Randolph*, 562 So. 2d 331, cert. denied, *Randolph v. Florida*, 498 U.S. 992 (1990).

Prior Postconviction Proceedings

On April 6, 1992, Mr. Randolph timely filed an initial postconviction motion, which was amended three times. The postconviction court summarily denied relief, but this Court reversed and remanded for an evidentiary hearing. *Randolph v. State*, 676 So. 2d 369 (Fla. 1996).

At the postconviction evidentiary hearing, Mr. Randolph presented multiple witnesses, both family and friends, who testified for the first time about the horrific childhood abuse Mr. Randolph suffered, including how his adoptive parents beat him and shut him in a closet for days. (PCR. 3614-81)

Trial counsel, Howard Pearl, admitted that he conducted no investigation into Mr. Randolph's background in preparation for Mr. Randolph's penalty phase. Rather, trial counsel inexplicably testified that he delegated this responsibility Dr. Krop, a mental health expert witness, to determine what investigation was needed and to conduct the investigation himself. (PCR. 3181, 3193). In other words, Mr.

Pearl gave Mr. Krop the authority "to be the judge of what was relevant and to conduct any investigation." (PCR. 3181, 3193). As Mr. Pearl put it: "Dr. Krop finds these things out. He selects those things which he feels are relevant to the testimony he wants to give." (PCR. 3194).

Postconviction counsel presented a neuropsychologist, Dr. Hyman Eisenstein, who testified to finding statutory and nonstatutory mental health mitigation, (PCR. 3418-3490), and an addiction expert, Dr. Milton Burglass, who explained Mr. Randolph's addiction and its effects on his reasoning and thought processes. (PCR. 3517-42).

Mr. Randolph's family and friends testified in striking detail about his drug abuse, emotional problems, childhood abuse, and personal history. (PCR. 3614-81). Because trial counsel failed to conduct a reasonable investigation as required under prevailing norms, the sentencing jury and judge never heard any of the mitigating evidence set out in postconviction.

At the evidentiary hearing, Timothy Randolph testified that in 1969 or 1970 Mr. Randolph's school was concerned about his behavior and recommended that he be taken to a psychiatrist for

medication. (PCR. 3624). Mr. Randolph was medicated for over two years and it seemed to help control his behavior. (PCR. 3624-25).

Timothy Randolph also testified that he beat Mr. Randolph to punish him and control his "disruptive behavior." (PCR. 3642-45). He claimed that Pearl Randolph loved Mr. Randolph until she lost control of him as a little boy. (PCR. 3645). When Mr. Randolph was 10, Timothy Randolph divorced Pearl Randolph because of her drinking problem and resultant behavior. (PCR. 3619-20). When Pearl Randolph became intoxicated, she would frequently burn meals and behave uncontrollably. (PCR. 3620). Timothy Randolph also testified that they frequently argued in front of Mr. Randolph. (PCR. 3622).

Timothy Randolph was contacted to attend his son's sentencing, but was never asked to testify. He explained that had he been asked to testify, he would have done so. (PCR. 3640).

Regarding Pearl Randolph, trial counsel testified that he would have wanted (but never asked) Dr. Krop to inquire into Mr. Randolph's parents, regardless of whether he, as counsel, had the information or not. Trial counsel said that if he knew of the information Pearl Randolph later provided, he would have elicited it during Dr. Krop's testimony. (PCR. 3197).

During the evidentiary hearing, Pearl Randolph testified that Timothy Randolph had suggested they adopt a child. (PCR. 3660). Having never heard of adoption, she was not agreeable at first, but eventually agreed. (PCR. 3660). Pearl Randolph explained that she went to an agency and, after two years, the agency had a baby boy for her. They named the child Richard Barry Randolph. (PCR. 3661).

Within two years of adopting Mr. Randolph, Pearl Randolph noticed he not acting normally. He cried such that Pearl Randolph believed something was out of the ordinary. (PCR. 3662-63). Mr. Randolph would throw tantrums, grit his teeth, and do unusual things. (PCR. 3663). Pearl Randolph noticed that neither his hands nor his feet developed normally. (PCR. 3663). She came to believe that the adoption agency knew something was wrong with the infant or the birth mother but had not told her. (PCR. 3663).

When Mr. Randolph was told that he was adopted, he became extremely upset, screaming, crying, and unable to accept the news. He was four or five years old. (PCR. 3664-65).

As to her divorce, Pearl Randolph said that it was Mr. Randolph who first learned that Timothy Randolph was talking to other women on the phone and had told her. (PCR. 3665). Thus, Mr. Randolph's

disclosure of his father's infidelity led to his parents' divorce. After Timothy Randolph left, Pearl Randolph saw him beat Mr. Randolph harshly. (PCR. 3667).

Pearl Randolph said she told Timothy Randolph to hit her instead and explained that Timothy Randolph had previously beaten her with a broom, injuring her, and prompting her to call the police. (PCR. 3668). Pearl Randolph testified that she needed psychological care after learning that Timothy Randolph was going to remarry. (PCR. 3671). She relieved her emotional pain by drinking beer. (PCR. 3671).

No one from Mr. Randolph's defense team ever attempted to contact Pearl Randolph. She testified that she would have testified on her son's behalf if asked. (PCR. 3676).

Mr. Randolph's stepmother, Shirley Randolph, also testified at the evidentiary hearing. Shirley Randolph explained that Mr. Randolph lived with her and Timothy Randolph after their marriage and stayed until his senior year. Shirley Randolph described their relationship as not the best, but not terrible, (PCR. 3649) and explained that Mr. Randolph had a good relationship with Jermaine, his younger stepbrother. (PCR. 3649). Shirley Randolph explained

that Mr. Randolph did not express much emotion, speak about, or see Pearl Randolph during that time. (PCR. 3649). By her recollection, Pearl Randolph never called Mr. Randolph, never sent for him, never came to visit, and never sent a card or called on his birthday. (PCR. 3650-51). Shirley Randolph also admitted, however, that neither she nor Timothy Randolph ever celebrated Mr. Randolph's birthday. (PCR. 3655).

Shirley Randolph was never contacted by trial counsel or any other member of Mr. Randolph's defense team, but would have testified had she been asked. (PCR. 3654).

Verna Whitney Betts testified that she met Mr. Randolph when he was 17 in Fairfield, North Carolina. Verna Betts's daughter, Janene, was Mr. Randolph's girlfried at the time. (PCR. 3298). He called Verna Betts "mama" and wanted her to be his mother because she did not use punishment in the unusual and severe way his father had. (PCR. 3336, 3339). Verna Betts and Mr. Randolph became close.

Verna Betts testified that Mr. Randolph had suffered severe punishment for minor things during his childhood. (PCR. 3318). His parents would shut him in a dark room or closet for two or three days and would make him eat alone. (PCR. 3318, 3339). Timothy

Randolph demanded that Mr. Randolph an A student, so he tried and tried to earn good grades to avoid punishment. Mr. Randolph felt badly because he saw how much better Verna Betts treated her children. It hurt because Timothy Randolph did not treat Mr. Randolph as his "real" child and favored his biological son. (PCR. 3319, 3324). Mr. Randolph felt like an outcast in his own family. (PCR. 3325).

Verna Betts described how, when Mr. Randolph become angry, he would bite his own arms, hands, and fingers. (PCR. 3321-22). Mr. Randolph would harm himself when frustrated. (PCR. 3326).

Verna Betts did not recall anyone from Mr. Randolph's defense team interviewing her. (PCR. 3302). She would have shared what she knew about Mr. Randolph or testified if asked. (PCR. 3302).

The postconviction court denied relief on May 14, 1998. (PCR. 4606-4607). This Court affirmed on appeal without comment on Dr. Eisenstein or Dr. Burglass' opinions. *Randolph v. State*, 853 So. 2d 1051 (Fla. 2003). As to the lay mitigation witnesses, this Court found that competent, substantial evidence supported the postconviction court's determination that "none of the witnesses at the evidentiary hearing offered any mitigation testimony in addition to that presented

by Dr. Krop." *Id.* at 1060.[2]

Third Successive Postconviction Motion

On October 1, 2023, Mr. Randolph timely filed his Third Successive Motion to Vacate Judgements of Conviction and Sentence based upon newly discovered evidence about his adoption. (PCR3.14-64). In 2019, the New York Legislature passed Senate Bill 2019-S3419 ("The Act"), establishing the right of adoptees to receive a certified copy of their original birth certificate upon reaching the age of 18.[3] The Act changed a 78-year-old New York law that had kept adoptions "closed" and shielded the identities of birth parents from disclosure. The Act took effect on January 15, 2020.

Upon learning of the Act, Mr. Randolph promptly applied for his pre-adoption birth certificate. After a diligent, continuous effort he

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[2] Mr. Randolph's first successive postconviction motion argued his eight-to-four jury recommendation was unconstitutional under *Ring v. Arizona*, 536 U.S. 584 (2002), but this Court found no error. *Randolph v. Crosby*, 861 So. 2d 430 (Fla. 2003). Later he moved for relief under *Hurst v. Florida*, 577 U.S. 92 (2016) (holding Florida's capital sentencing scheme violated *Ring*), but this Court found that his sentence's finality date disqualified him. *Randolph v. State*, 320 So. 3d 629 (Fla. 2021).In 2011, Mr. Randolph moved for postconviction relief based on *Porter v. McCollum*, 558 U.S. 30 (2009), arguing his childhood abuse was "unreasonably discounted" to irrelevance. *Randolph v. State*, No. SC11-725 (Fla. Apr. 26, 2012).

[3] N.Y. Pub. Health Law § 4138-e.

obtained his pre-adoption birth certificate on October 4, 2022. (PCR3. 41). This was the first time Mr. Randolph knew or could have known the name of his birth mother.

Upon receiving Mr. Randolph's pre-adoption birth certificate, postconviction counsel located and spoke to Mr. Randolph's birth mother, Wanda Branch Kelly. In speaking to Ms. Kelly, counsel learned that the information relayed to Dr. Krop and, through him, to the jury and sentencing judge, about Mr. Randolph's birth parents being college students was incorrect. In fact, the information given to the sentencing judge and jury about Mr. Randolph's adoption was not true or accurate.

Ms. Kelly and, Mr. Randolph's birth father, Mr. Streeter, were actually high school students when Mr. Randolph was conceived. Ms. Kelley was 16 years old when Mr. Randolph was conceived and had just turned 17 when she gave birth. Mr. Randolph was not placed for adoption by a college student who was impregnated by another college student, Rather he was born to a 17-year-old girl who went to a home for unwed mothers so that her unborn baby could live. She was later made to give her baby up for adoption, a decision she did not fully understand at the time and wondered about for much of her

life. (PCR3. 31).

David M. Brodzinsky, Ph.D., an expert in the psychological impact of adoptions on children, interviewed Mr. Randolph, Ms. Kelly, and Mr. Streeter, and reviewed documents describing the adoption. (PCR3. 33). Dr. Brodzinsky's report was attached to Mr. Randolph's motion.

Dr. Brodzinsky would have testified about the emotional and psychological impact Ms. Kelly suffered after learning of the abusive and neglectful childhood her baby experienced. He would have also testified about the nature of her new connection with her long-lost child and its implications for Mr. Randolph. (PCR3. 47-57).

Ms. Kelly would have testified that she is now a retired widow, holds an advanced degree in business, had a successful career in the banking industry, and had a long happy marriage. She never had any children of her own and often wondered what had happened to the baby boy she had given up for adoption. She now regrets not asserting herself and keeping her baby, but as a child herself she did not fully comprehend the situation's significance or her own rights.

Shortly after Ms. Kelly married at 29 years old, she began searching for Mr. Randolph. She tracked down the adoption agency

her family used, Spence Chapin, but they refused to provide any information based on New York law at the time. She also attempted to gain information from the hospital where he was born, City Hospital at Elmhurst, but all attempts were thwarted by New York's closed adoption laws. While Ms. Kelly was deeply disappointed, she remained hopeful that one day her son would find her. (PCR3. 31-32).

When a CCRC-S investigator first contacted her, Ms. Kelly was joyful and excited, but those feelings quickly turned to dismay when she learned of Mr. Randolph's circumstances. However, while recognizing the horrific nature of the crime, Ms. Kelly and Mr. Randolph have nonetheless developed a relationship and bond that continues to this day. Both she and Mr. Randolph have found meaning–and healing–in getting to know each other. After spending a lifetime believing he was unwanted, Mr. Randolph finally learned that his birth mother, in fact, wanted him very much and went to great lengths to find him. *Id*.

Counsel contacted Mr. Streeter on July 12, 2023, in California. Mr. Streeter has since passed away. Mr. Streeter relayed that he met Ms. Kelly as a high school student. Ms. Kelly's mother and stepfather

told him about the pregnancy when he had just started college. Mr. Streeter remembered that Ms. Kelly's stepfather placed a gun on the table while telling him about the pregnancy. Mr. Streeter felt scared and threatened and interpreted it as a warning to stay far away from Ms. Kelly. Mr. Streeter has had no contact with Ms. Kelly since that day. He did not know that she had put their son up for adoption until informed by the CCRC-S investigator in July of 2023. This is significant to Mr. Randolph because, again, he was raised to believe that college students gave him up for adoption, not that his biological father was scared away and did not even know he was placed for adoption. (PCR3. 33-34).

Much like Ms. Kelly, Mr. Streeter lived an emotionally stable life, held an advanced degree, had a distinguished career as an engineer, worked with government agencies, and received a number of awards for his work. Mr. Streeter had been married twice, had adult children, and, when contacted by counsel, was retired but teaching math to children part-time. (PCR3. 33-34).

Much like Ms. Kelly, Mr. Streeter was shocked to hear about Mr. Randolph and the crime, but would have liked to get to know his son and had begun the process of setting up a means to communicate

with Mr. Randolph. (PCR3. 33-34). His ability to do so was impaired by a diagnosis of dementia before his death.

Dr. Brodzinsky reviewed the psychological and emotional implications of the newly discovered evidence. Dr. Brodzinsky reviewed transcripts and conducted clinical interviews of Mr. Randolph, Ms. Kelly, and Mr. Streeter. Dr. Brodzinsky found that, "[t]he new information provides an important and previously undisclosed context for interpreting information already heard by the court."

The most important feature of this newly discovered evidence is the impact it had on Mr. Randolph, who grew up believing he was unwanted, when, in fact, his birth mother went to great lengths to find him. (PCR3. 47-57). Additionally, this new evidence would have provided a basis for a reasonable juror to determine that the abuse Mr. Randolph suffered from his adoptive parents had a profound effect on his life. In particular, because his birth parents were highly accomplished and emotionally stable, Mr. Randolph lacked a genetic predisposition towards substance abuse and mental health issues.

The postconviction court summarily denied the motion in a written order on December 11, 2023. (PCR3. 84-96). Mr. Randolph

appealed to this Court, arguing that the postconviction court had misapprehended his claim and improperly denied him evidentiary development. This Court affirmed on appeal. *Randolph v. State*, 403 So. 3d 206, 208-209 (Fla. 2024). This litigation took place after Mr. Randolph's clemency investigation had ended but before clemency was denied.

Warrant Proceedings

Counsel for Mr. Randolph received notice at 4:59 p.m. on Tuesday, October 21, 2025, that the governor signed a warrant for Mr. Randolph's execution on November 20, 2025. That evening at 5:30 p.m., this Court issued a scheduling order directing "that all further proceedings in this case be expedited." Scheduling Order, *Randolph v. State*, SC1960-74083 (Fla. October 21, 2025). This Court ordered that the warrant court's proceedings "shall be completed and orders entered . . . by no later than 11:00 a.m. Tuesday, November 4, 2025." *Id.* The warrant court held a case management conference the next afternoon at 3:00 p.m. to establish a schedule.

Public Records Litigation

Adopting the State's proposed scheduling order without deviation and over objection, the warrant court ordered Mr. Randolph

to file all record demands by 3:00 p.m. the next day—less than 24 hours later. The agencies then had to file their objections by 3 p.m. on Friday, October 24, 2025. The warrant court held a records hearing at 10 a.m. on Monday, October 27, and issued a ruling the same day, sustaining each objection and denying the record disclosure.

Mr. Randolph timely filed 3.852(h) demands on agencies that had previously provided records and 3.852(i) demands on agencies from which records were not previously requested. The demand to the Office of the State Attorney for the 7th Circuit (WR-94), was for any and all records not previously provided that were not subject to an objection on Mr. Randolph's case. The Office of the State Attorney filed a Response and Objection to the Demand, first attesting and certifying that there were no new or additional public records to turn over and then objecting that the demand failed to show how the records requested related to a colorable claim and failed to establish good cause as to why the request was not made until after the warrant was signed. (WR. 180). Mr. Randolph argued at the records hearing that, because the State complied with his demand, any objections were moot, but the State argued his demand was

overbroad regardless. (WR.379). The warrant court sustained the State's objection. (WR. 307-315).

Mr. Randolph filed a similar 3.852(h) demand with the Putnam County Sherriff's Office, (WR. 105), which objected for failure to meet the requirements of 3.852(i), (WR. 201), despite also complying with the demand (WR. 207-209). Again, Mr. Randolph argued that, since the agency complied with the demand, the objections were moot. The court sustained the Sherriff's objections nonetheless. (WR-307-315).

Mr. Randolph filed a 3.852(h) demand to the Office of the Attorney General, (WR. 83), seeking any and all records pertaining to Mr. Randolph's case that had not been previously provided, as well as records concerning Mr. Randolph's denial of clemency. The agency filed a written response and objection, first establishing that the request for an update on Mr. Randolph's records was complied with and then objecting to the request as being duplicative, overly broad, and failing to meet the requirements of 3.852(i) despite being a 3.852(h) demand. As to the clemency records, the agency objected to production because they are confidential under current Florida statute. Mr. Randolph argued that, because the agency had complied, the agency's objections were moot. (WR. 374). Accordingly, Mr.

Randolph asked the court to reserve ruling until his 3.851 motion was filed because he was raising a claim that the clemency records exemption was unconstitutional. (WR-371). The court in written order sustained all objections and found the request "irrelevant to the instant proceedings." (WR. 307-15).

Mr. Randolph filed a Demand to the Florida Department of Corrections ("FDOC"), requesting both an update of Mr. Randolph's classification and medical files and records pertaining to lethal injection. (WR. 116). Mr. Randolph inadvertently filed the demand to the FDOC under 3.852(i) but orally corrected the matter at the public records hearing. (WR. 368). FDOC filed a notice of compliance and produced Mr. Randolph's updated classification and medical records. (WR. 164). As to the lethal injection records, FDOC objected, arguing such records were exempt, Mr. Randolph had not related the records to a colorable claim, and an "as applied" challenge would be legally insufficient. (WR. 255). Mr. Randolph again acknowledged the exemptions under Florida law, but asked the lower court to reserve ruling until he filed his 3851 motion the next day. (WR. 367). The court sustained all of the objections, relying on current Florida caselaw. (WR. 307-15).

Mr. Randolph filed a 3.852(i) demand on the Office of the Medical Examiner, District 8, seeking all autopsy protocols and reports and records for twenty men executed by the State of Florida for the preceding three years, by name. (WR-143). The Office of the Attorney General filed a written objection on behalf of the Medical Examiner's Office, claiming that Mr. Randolph was not entitled to seek public records from this office, as he had never sought records prior, that the records were not related to a colorable claim, that good cause was not demonstrated in the delay of requesting these records and "as applied" arguments would be legally insufficient. (WR-244) Mr. Randolph, again asked the lower court to reserve ruling for 24 hours so that the court would have the benefit of Mr. Randolph's 3.851 Motion which included a challenge to Lethal Injection due to Mr. Randolph's medical condition, and his right under the Eighth Amendment to be free from cruel and unusual punishment, including excessive pain and a tortuous death. (WR-363). The lower court issued a written ruling, sustaining all objections, relying on current Florida caselaw. (WR-307-315).

Mr. Randolph also filed 3.852(i) demand to Florida Department of Law Enforcement ("FDLE") concerning Lethal Injection protocols

and information pertaining to the last 20 executions. (WR-124). FDLE filed a written objection that the defense had not established a colorable claim citing to the current Florida case law. (WR-192). While Mr. Randolph was mindful of current Florida law, he again asked the lower court to reserve ruling on the objections until the court had the benefit of the 3.851 motion with the "as applied challenge." (WR-360) The lower court issued a written order sustaining all objections the same day. (WR-307-315).

Mr. Randolph filed similar demands pursuant to 3.852(i) to the Office of Executive Clemency and Executive Office of the Governor regarding clemency. (WR-132, 151) Both offices filed similar objections citing to the exemption of these records from disclosure, that the demand was overly broad and unduly burdensome, the records being sought were not related to a colorable claim, and good cause did not exist as to why these records weren't sought sooner. (WR-168, 270). Again, mindful of current caselaw, Mr. Randolph asked the lower court to reserve ruling in order for the 3.851 motion to be filed, so the court would be able to decide as to whether a colorable claim was presented, as the defense was bringing a challenge. (WR-370, 377). The lower court, instead issued a ruling

the same day, sustaining all objections from both offices and denying Mr. Randolph any records. (WR-307-315).

The warrant court ordered Randolph to file his successive motion by Tuesday, October 28, 2025, at 3:00 p.m., giving Mr. Randolph less than 5 business days to investigate and file a fully pleaded successive motion. The State's Response was due Thursday, October 30, 2025. On October 30, 2025 the warrant court held a *Huff* hearing on the motion. The warrant court denied an evidentiary hearing the same day. The warrant court entered its Order denying Randolph's motion on October 31, 2025.

Claims Raised Below

In his motion, Mr. Randolph set out that Regional Conflict Counsel (RCC) was appointed to represent him for clemency proceedings in 2014. In an affidavit by Jeffrey Deen, Esq., which was attached to Mr. Randolph's motion, Mr. Randolph showed that the entirety of his clemency proceedings occurred between February 18, 2014, and June, 26, 2014. There was no other communication from the State or the Executive Branch after June 26, 2014, until the signing of the warrant on Tuesday, October 21, 2025. (WR. 481). Mr. Randolph argued that the clemency process violated his due process

rights because the clemency decision was predicated on outdated information and amounted to no meaningful clemency review.

Mr. Randolph also raised an as-applied challenge to the State's method of execution, asserting that, due to the progression of his lupus and its effect on his lung function, he will experience serious illness and unnecessary suffering due to pulmonary edema, which is indisputably painful. Mr. Randolph identified two readily available methods of alternate methods of execution: (1) firing squad with a kill-shot to the head or chest and administration of valium beforehand; and, (2) a single lethal dose of pentobarbital, preceded by fentanyl.

Lastly, Mr. Randolph raised the claim that the unduly short time frames set out under warrant litigation in Florida denied Mr. Randolph meaningful review and that Florida is an outlier in its process.

The State filed their response and argued that Mr.Randolph's claims were untimely, without merit, and procedurally barred. See (WR. 487-88). The State also argued that Mr. Randolph was not entitled to an evidentiary hearing. (WR. 483-508).

The warrant court denied all of Mr. Randolph's claims, ruling

that his method of execution challenge was untimely, Mr. Randolph had failed to provide an exception to the time bar, his claim lacked merit as it was based on mere speculation, and he failed to show good cause for the filing of his motion. (WR. 532-34). As to the unduly truncated warrant process, the warrant court held that due process was met because Mr. Randolph was given notice and an opportunity to be heard and this Court has denied similar claims. (WR. 535). As to his clemency claim, the warrant court dimissed the lack of additional consideration of Mr. Randolph's claims since 2014 as meritless because due process rights in clemency are minimal, the claim was untimely, and Mr. Randolph failed to show good cause as to why he had not raised the claim earlier. (WR. 535-38).

This appeal follows.

SUMMARY OF ARGUMENTS

Florida's three-drug lethal injection method is unconstitutional as applied to Mr. Randolph as the progression of the disease lupus, from which Mr. Randolph suffers, has diminished his lung capacity so significantly that he will very likely suffer severe illness and an unnecessarily cruel and painful death. Mr. Randolph has identified two readily available methods – administration of a lethal dose of

pentobarbital after administration of fentanyl, or, the firing squad with a kill shot to the head or chest, preceded by the administration of valium, that would not result in cruel and unusual punishment. The warrant court unreasonably and erroneously denied this claim without an evidentiary hearing. This Court should reverse, stay the proceedings, and allow Mr. Randolph the right to present evidence and testimony in support of his claim.

Florida's unduly truncated warrant process deprived Mr. Randolph of his substantive and procedural due process rights to full and fair postconviction proceeding in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution. The truncated nature of the proceedings and the warrant court's denial of evidentiary development when Mr. Randolph established facts that deserved meaningful consideration is also in violation of the requirement for heightened reliability in capital cases under the Eighth Amendment to the U.S. Constitution.

Mr. Randolph's clemency proceedings rose to the level of a constitutional violation because the governor's clemency determination was based on evidence presented more than eleven years ago. While the governor's discretion in clemency is almost

unlimited, basing a clemency decision on information produced more than a decade ago without considering any updated information violates Mr. Randolph's due process rights to a full and fair clemency procedure.

The warrant court's complete denial of Mr. Randolph's public records requests denied Mr. Randolph a fundamentally fair proceeding. Furthermore, the warrant court's interpretation of public records law amounts to a complete evisceration of Florida Rule of Criminal Procedure 3.852. Indeed, the denial of records infected all of the claims now before this Court.

STANDARD OF REVIEW

Because the circuit court denied postconviction relief without an evidentiary hearing, this Court must accept the factual allegations presented in Mr. Randolph's motion and in this appeal as true to the extent that they are not conclusively refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). Further, this Court "review[s] the trial court's application of the law to the facts de novo." *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008). A postconviction court's decision whether to grant an evidentiary hearing is likewise subject to de novo review. *Rose v. State*, 985 So. 2d 500, 505 (Fla.

2008). Denial of public records requests are reviewed for an abuse of discretion. *Cole v. State*, 392 So. 3d 1054 (Fla. 2024).

ARGUMENT

Argument I

Florida's Execution Of Mr. Randolph, Who Suffers From Lupus, Using Its Three-Drug Protocol Presents A Substantial And Imminent Risk That Mr. Randolph Will Suffer Needlessly And Is Thus Cruel And Unusual Punishment Violating The Eighth And Fourteenth Amendments To The U.S. Constitution And The Corresponding Provisions Of The Florida Constitution. The Warrant Court Should Have Granted An Evidentiary Hearing And Relief.

Mr. Randolph asserted in his Fla. R. Crim. Pro. 3.851 motion that due to the progression of the disease lupus, from which Mr. Randolph suffers, his lung capacity is so diminished that Florida's three-drug lethal injection protocol, as applied to him, will result in "severe illness and an unnecessarily painful death in violation of the Eighth Amendment." (WR. 403). Mr. Randolph included the report of Dr. Joel Zivot as evidence in support of his claim and also asserted that the progression of the lupus within the last year has created this unconstitutional risk. (WR. 401).

The warrant court denied Mr. Randolph's claim, holding the claim was untimely because Mr. Randolph has had lupus all his life.

(WR. 523). In so doing, the warrant court misapprehended or misstated Mr. Randolph's claim, which was in fact that it is the progression of the lupus within the past year that gives rise to the claim. The warrant court erred and in so doing misapprehended this Court's precedent, or, conversely, if there can be no as-applied method of execution challenges under Florida law, then the law itself violates Mr. Randolph's due process rights and access to the court. On the warrant court's denial of Mr. Randolph's claim on the merits, the warrant court made factual determinations without granting evidentiary development, a clear violation of Florida law which requires a court to accept his allegations as true absent evidence in the record refuting his allegations. This Court should reverse, enter a stay, and allow Mr. Randolph to have a hearing to establish his claim.

The Eighth Amendment prohibits the infliction of "cruel and unusual punishments." *Glossip v. Gross*, 576 U.S. 863, 876 (2015); *Baze v. Rees,* 553 U.S. 35 (2008). Florida's three-drug protocol, as applied to Mr. Randolph, who suffers from lupus, creates an intolerable risk that Mr. Randolph's death will be cruel and unusual. Randolph submitted a report that asserted that due to the poor

medical treatment for lupus that Mr. Randolph received while in the custody of the Florida Department of Corrections, his disease has progressed to a point where the lethal injection procedure is sure or very likely to cause serious illness and needless suffering in violation of the Eighth Amendment.

a. Requirements To Prove An As-Applied Lethal Injection Challenge

Mr. Randolph raised an as-applied challenge to prohibit the State from executing him in a manner that would result in serious illness and an unnecessarily painful death. The U.S. Supreme Court has described the necessary showing to sustain an as-applied Eighth Amendment method-of-execution claim is the same as that required for a facial challenge. *Bucklew v. Precythe*, 587 U.S. 119, 140 (2019). Mr. Randolph must: (1) "establish that the method presents a risk that is 'sure or very likely to cause serious illness and needless suffering,'" *Glossip*, 576 U.S. at 877 (quoting *Baze*, 553 U.S. at 50-52); and, (2) "identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip*, 576 U.S. at 877). Mr. Randolph must also show that the State has failed to adopt

an alternative "without a legitimate penological reason." *Bucklew*, 587 U.S. at 134. The U.S. Supreme Court, in *Wilkerson v. Utah*, 99 U.S. 130, 25 L.Ed. 345 (1879), determined execution by firing squad to be constitutional. Indeed, the Florida Legislature just passed, and the Governor signed, legislation (Fla. Stat. § 922.10; Ch. 2025-81), which went into effect July 1, 2025, providing that "a method not deemed unconstitutional" is an acceptable form of execution. Both of Mr. Randolph's alternative methods are permissible under Fla. Stat. § 922.10 (2025).

b. The Warrant Court's Ruling

The warrant court ruled as follows:

Untimely Claim

> Defendant's instant claim is procedurally barred as untimely. "Summary denial of a successive rule 3.851 motion is appropriate if 'the motion, files, and records in the case conclusively show that the movant is entitled to no relief.'" *Rogers v. State*, 409 So. 3d 1257, 1262 (Fla. 2025) (quoting *Zack v. State*, 371 So. 3d 335, 344 (Fla. 2023)). "A postconviction court may also appropriately summarily dismiss untimely or procedurally barred claims under the rule, too." *Id.*
>
> With limited exceptions, rule 3.851(d)(1) imposes a one-year time limitation on any motion to vacate a final judgment and sentence of death. Relevant here is an exception to this one-year limitation, when "the facts on which the claim is predicated were unknown to the movant

> or the movant's attorney and could not have been ascertained by the exercise of due diligence."
>
> *Id.* at 1262-1263. The Florida Supreme Court has "generally held that method-of-execution claims are procedurally barred unless the method itself changes or new facts about the current method arise during a prior execution." *Id.* at 1267.
>
> In the instant case, Defendant has failed to argue that any exception to the Florida Rule of Criminal Procedure 3.851(d)(1) time bar exists. Importantly, the defense concedes that Defendant has known of his lupus diagnosis for a "long time". Counsel stated Defendant was born with lupus. The court file contains some of Defendant's Department of Corrections medical records which were first produced to defense counsel in 1992. Per those records, the lupus diagnosis was made by DOC in 1990. Even if Defendant's lupus diagnosis has worsened throughout the years, this court finds that Defendant had ample time to gather information regarding the interactions between lupus and Florida's execution protocol prior to the signing of his death warrant. As a result, this court finds that Defendant's Motion is procedurally barred as untimely. Therefore, Ground I is **DENIED**.

(WR. 531-32). The warrant court also ruled on the merits, finding:

> *Meritless Claim*
>
> Additionally, this court finds that Defendant's claim is meritless.
>
> > [A successful challenge to] a method of execution requires that a defendant "(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available

> alternative method of execution that entails a significantly less severe risk of pain."
>
> *Rogers*, 409 So. 3d at 1268. "Under the first prong, the question is not merely whether any pain is inflicted, for 'the Eighth Amendment "does not demand the avoidance of all risk of pain in carrying out executions."'" *Id.* "Rather, the Eighth Amendment 'come[s] into play' when 'the risk of pain associated with the State's method is "substantial when compared to a known and available alternative."'" *Id.*; *see also Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024) (quoting *Schwab v. State*, 995 So. 2d 922, 927 (Fla. 2008)) (holding that "[b]eing pricked numerous times in the course of having an IV inserted is not cruel and unusual punishment, however uncomfortable it may be.").
>
> Defendant speculates that during the administration of his execution pursuant to Florida's "three-drug" protocol that he will experience "many severe and painful outcomes during[,]" such as: (1) "Positioning [Defendant] will lead to an immediate state of severe pain[;]" and (2) "The sequential injection of the lethal chemicals will cause his lungs to fill with bloody froth as he slowly dies." Defendant fails to establish how the speculated pain he will receive by being positioned to receive the injection as part of Florida's "three-drug" protocol rises to the level of cruel and unusual punishment. *See id.* Additionally, Defendant fails to explain how his speculative pain during the injections "overcomes the well-established fact that the administration of etomidate will render him unconscious likely within one minute." *Rogers*, 409 So. 3d at 1268. Defendant's pleadings do not refute this finding. As a result, the court finds that Defendant's instant claim is meritless as it is speculative and legally insufficient. Therefore, **GROUND I REMAINS DENIED** in the alternative.

(WR. 532-34). Finally, the warrant court found:

Failure to Provide Good Cause

> Alternatively, this court finds that Defendant's instant ground is successive. Defendant fails to provide good cause as to why he failed to assert the instant ground in any of his prior motions for post-conviction relief, the last of which was filed on October 1, 2023. As a result, the court finds that Defendant is procedurally barred from filing this claim. *See* Fla. R. Crim. P. 3.851(e)(2). Therefore, **GROUND I REMAINS DENIED** in the alternative.

(WR. 534).

This Court should reverse. Mr. Randolph was entitled to hearing to prove his imminent torturous death and entitled to relief.

c. Florida's Lethal Injection Protocol Is Sure Or Very Likely To Cause Serious Illness And Needless Suffering In Light Of Mr. Randolph's Lupus.

Mr. Randolph suffers from lupus. "Lupus is a disease that occurs when your body's immune system attacks your own tissues and organs (autoimmune disease). Inflammation caused by lupus can affect many different body systems—including your joints, skin, kidneys, blood cells, brain, heart and lungs." https://www.mayoclinic.org/diseases-conditions/lupus/symptoms-causes/syc-20365789#overview. Lupus has had a profound effect on Mr. Randolph's life. It will also cause him to suffer a torturous death.

Dr. Joel Zivot, a nationally recognized expert in anesthesiology

who has practiced anesthesiology and critical care medicine for 30 years, and personally performed or supervised the care of over 50,000 patients, reviewed Mr. Randolph's medical records and evaluated him by telephone consultation. *See* (WR. 440-64, 466-71). Dr. Zivot reviewed Mr. Randolph's medical records and then spoke with Mr. Randolph by telephone to obtain Mr. Randolph's medical history and verify various medical reports that had been provided to Dr. Zivot for purposes of his evaluation. The evaluation was done to assess the risks posed to Mr. Randolph if he is executed according to Florida's lethal injection protocol. Dr. Zivot's report was attached to the motion and is specifically incorporated herein. WR-466-71. If Mr. Randolph were granted a hearing, Dr. Zivot would have testified as stated in his report with a high degree of medical certainty that:

> Mr. Richard Randolph is a 63-year-old man who suffers from many medical problems, including discoid lupus erythematosus, systemic lupus erythematosus, hypertension, gastroesophageal reflux disease, leukopenia, chronic pain, 35 pack years of smoking (quit 2011), and possible coronary artery disease disorder . . . [Mr. Randolph] reports many years of pain that is at times incapacitating and prevents him from performing the simplest tasks of his activities of daily living. He needs to reposition himself frequently during sleep and complains of significant neck pain when he lies on his back. For this pain, he has been prescribed oral ibuprofen (Motrin) and acetaminophen (Tylenol).

Mr. Randolph has been diagnosed with discoid lupus and systemic lupus. Lupus is a chronic autoimmune disease in which the immune system mistakenly attacks the body's own healthy tissues and organs. This condition tends to flare up at various times and can cause severe dysfunction. Discoid lupus describes the condition when it is confined to the skin. Mr. Randolph was initially diagnosed with this form of lupus, but the condition quickly became more generalized.

Lupus can be described in three levels of severity: mild, moderate, and severe. Mild lupus includes a skin rash and joint pains. Mr. Randolph has at least these complaints Moderate lupus includes a skin rash, joint pain, constitutional symptoms, and blood disorders. Mr. Randolph has a chronically reduced white blood cell count. This is likely the consequence of lupus and now puts him in the moderate category. In the severest form, organ damage to the kidneys, brain, and lungs can be seen. Specific diagnostic blood tests can be done to confirm the presence of lupus.

On balance, Mr. Randolph is in marginal health. He has received chronically poor health care while incarcerated. This poor care is a direct contributor to his poor health. I have serious concerns about his lung function. He also gets occasional chest pain and is treated for hypertension. Heart and lung dysfunction significantly raises the risk of profound and painful organ failure and increases the known risk of pulmonary edema, an unnecessarily painful condition, which is often observed in lethal injection executions.

A review of the Florida lethal execution protocol involves the sequential intravenous delivery of three drugs to a person to be executed. The first drug is Etomidate, followed by Rocuronium Bromide, and then Potassium Acetate. Etomidate is a non-barbiturate sedative hypnotic drug used in anesthesiology practice in several different

> situations. Etomidate is primarily metabolized in the liver, which means it will accumulate rapidly there. Etomidate is not classically considered an analgesic (used for the control of pain). Neither of the subsequent drugs used in the protocol is analgesic. Rocuronium Bromide is a rapidly acting paralyzing drug and will paralyze any individual, in this case, the prisoner, making it impossible to communicate to observers that pain is occurring. Potassium Acetate is a drug that regulates heart contraction. In large doses, Potassium Acetate is painful when injected and will cause the heart to cease functioning.
>
> [Dr. Zivot] anticipate[s] many severe and painful outcomes during any attempt to execute Mr. Randolph. Positioning him will lead to an immediate state of severe pain. The sequential injection of the lethal chemicals will cause his lungs to fill with bloody froth as he slowly dies. Observers may see little of this, as the paralyzing drug will effectively block the outward appearance of his drowning in his blood. All of this is unnecessary as it is the direct consequence of the State of Florida's execution technique. Mr. Randolph will die a needlessly cruel death if Florida insists on trying to kill him with Florida's version of lethal injection.

(WR. 467-71).

Accepting Mr. Randolph's allegations as true, Mr. Randolph will suffer cruel and unusual punishment at his execution on November 20, 2025. This Court should intervene to prevent Mr. Randolph's death under these circumstances, or at least allow him an opportunity to prove that it will occur.

d. Mr. Randolph Offered An Alternative To

Florida's Lethal Injection Protocol.

Mr. Randolph was required to "identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Asay*, 224 So. 3d at 701. He did so. These methods will result in less suffering. They are "feasible, readily implemented, and in fact significantly reduce [ ] substantial risk of severe pain." *See Glossip*, 576 U.S. at 877 (quoting *Baze*, 533 U.S. at 52). Mr. Randolph suggested that a two-drug lethal injection protocol consisting of a pre-dose of fentanyl followed by a dose of non-compounded FDA-approved or properly compounded pentobarbital and execution by firing squad with a pre-execution sedative (valium) with a kill shot to chest or head are readily available alternatives. Both are feasible and will significantly reduce the substantial risk of severe pain that Mr. Randolph faces from lethal injection.

While these methods are not currently implemented in Florida, "[a]n inmate seeking to identify an alternative method of execution is not limited to choosing among those presently authorized by a particular State's law . . . a prisoner may point to a well-established protocol in another State as a potentially viable option." *Bucklew,* 587 U.S. at 139-40. ("An inmate seeking to identify an alternative method

of execution is not limited to choosing among those presently authorized by a particular State's law . . . for example, a prisoner may point to a well-established protocol in another State as a potentially viable option.").

Four states directly authorize by statute execution by firing squad.[4] As noted above, the U.S. Supreme Court has previously found execution by firing squad to be constitutional. Execution by firing squad will significantly reduce the substantial risk of severe pain and needless suffering that Mr. Randolph faces from Florida's lethal injection protocol because this method does not implicate pulmonary edema due to Mr. Randolph's reduced lung capacity from the progressive damage of lupus, that Florida's lethal injection protocol will cause.[5]

FDOC can readily obtain bullets, has employees trained in the

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[4] Mississippi, South Carolina, Utah, and Idaho. Miss. Code § 99-19-51; S.C. Code § 24-3-530; Utah Code § 77-18-5.5; Idaho Code § 19-2716.

[5] Undersigned counsel acknowledged that Florida statute authorizes execution by electrocution, however, that method is not being offered as an alternative because it has been shown to be torturous during past executions. Florida's electric chair has not been used for an execution since 1999 and there is no way for Mr. Randolph to assess if the chair functions properly prior to his execution.

use of firearms, and has access to Valium. Additionally, a two-drug protocol, with an initial dose of 1,500 micrograms of fentanyl to minimize the pain from pulmonary edema caused by the pentobarbital, is a readily feasible alternative. Pentobarbital is readily available to the Florida Department of Corrections. Pentobarbital is one of the most commonly used lethal injection drugs in the nation. Georgia, Texas, Missouri, South Dakota, Arizona, Utah, and the Federal Government have all obtained pentobarbital for use in executions within the last ten years.

e. This Court Should Reverse.

Despite the significant risk that Mr. Randolph will die a torturous death under Florida's lethal injection protocol based on his lupus, the warrant court denied an evidentiary hearing where Mr. Randolph could show that his execution will be cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. Due process required that he be allowed to prove his Eighth Amendment claim.

f. Mr. Randolph's Claim Was Timely To Stop His Torturous Death.

As Mr. Randolph explained below it was only during the last

year that Mr. Randolph's condition worsened to the point that his execution under the existing protocol would cause severe illness or unnecessary suffering. Counsel had hired Dr. Zivot approximately four months before the warrant was signed. Mr. Randolph had requested his updated medical records from FDOC, which were necessary to prove his claim. Mr. Randolph even asked for his request to be expedited, but was denied. Mr. Randolph received the updated medical records mere weeks before the governor signed his death warrant.

It was essential that Mr. Randolph present a real account of his own medical condition and provide records for Dr. Zivot to review. Any court would have quickly denied a motion based on speculation as to what his condition would be if and when the Governor signed his warrant. An as-applied challenge must consider the medical condition in close proximity to the execution date. Counsel had no way of pleading what Mr. Randolph's condition would be after the FDOC left his lupus untreated for many years. He could not anticipate the extent of the organ damage he would later suffer because of his disease and lack of treatment. Everyday that Mr. Randolph's lupus went untreated his medical condition worsened.

How much it would worse and to what extent it would impact his execution could only be determined when his execution was imminent.

It borders on absurd that to raise a timely as-applied challenge, it is necessary that the diseased individual raise a challenge when first diagnosed. While experts may offer a prognosis when diagnosing a patient, it is a mere prediction and not a pleadable fact.

g. Mr. Randolph Was Entitled To An Evidentiary Hearing On This Claim.

Mr. Randolph was entitled to an evidentiary hearing because the files and records failed to show conclusively that he is entitled to no relief. *See Lemon v. State,* 498 So. 2d 923 (Fla. 1986) (citing *State v. Crews*, 477 So. 2d 984 (Fla. 1984); *Callaghan v. State*, 461 So. 2d 1354 (Fla. 1984)). Florida Rule of Criminal Procedure 3.851(f)(5)(B) requires that an evidentiary hearing be held on successive postconviction motions where claims require a factual determination.

This claim required numerous factual determinations. At an evidentiary hearing, Mr. Randolph would have proven that Florida's lethal injection protocol, due to the progression of Mr. Randolph's lupus, will superadd suffering and lead to a torturous death. The

Eighth Amendment tolerates no such punishment.

When a defendant presents a state court with a well-pleaded claim of violation of a federal constitutional right, that court is obliged to give the defendant an opportunity for fact development to prove the claim; the state court cannot simply dismiss the claim on the face of the defendant's pleading. *Cash v. Culver*, 358 U.S. 633 (1959); *McNeal v. Culver*, 365 U.S. 109 (1961); *Carnley v. Cochran*, 369 U.S. 506 (1962).

The petitioners in *Cash*, *McNeal*, and *Carnley*, sought habeas relief after being convicted and sentenced without the assistance of legal counsel. Although *Gideon*[6] had not yet been decided, the U.S. Supreme Court had already issued several key decisions establishing a constitutional right to counsel in specific circumstances. This Court denied each defendant's habeas petition without holding a hearing, despite the need for fact-finding to determine whether the specific circumstances existed to warrant the appointment of counsel. The U.S. Supreme Court reversed, holding that the petition's allegations were sufficient to state a Due Process Clause right-to-

[6] *Gideon v. Wainwright*, 372 U.S. 335 (1963).

counsel claim:

> The requirements of due process made necessary the assistance of a lawyer if the circumstances alleged in the habeas corpus petition are true. On the present record there is no way to test their truth. But the allegations themselves made it incumbent upon the Florida courts to determine what the true facts were.

Cash, 358 U.S. at 638.

Accordingly, an evidentiary hearing should have been held on Mr. Randolph's claims, after which the relief sought herein should be granted.

Argument II

Florida's Warrant Process Deprives Mr. Randolph Of A Full And Fair Postconviction Proceeding In Violation Of His Constitutional Right To Substantive and Procedural Due Process and Access to the Courts Under The Fifth And Fourteenth Amendments To The U.S. Constitution And Corresponding Provisions Of The Florida Constitution, And The Proceedings Further Ran Afoul Of The Requirement for Heightened Reliability in Capital Cases.

Florida law vests the Governor with authority over the death warrant process, which falls squarely within the executive branch, but unlike the law of other states provides no structure to ensure that capital defendants receive due process and a meaningful opportunity to be heard in the final stage of litigation. The reality is

that this structure has resulted in a process that fails to conform with the requirements of the Fifth, Sixth, Eighth and Fourteenth Amendments facially and as applied to Mr. Randolph. Mr. Randolph pleaded a compelling claim in the warrant court. The warrant court denied an evidentiary hearing and ruled:

Meritless Claim

> Defendant's instant claim effectively makes the argument that the compressed nature of the warrant litigation schedule violates his due process rights. Defendant's assertion fails as a matter of law. "'Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided.'" *Tanzi v. State*, 407 So. 3d 385, 390 (Fla. 2025) (quoting *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016)). The Florida Supreme Court "has previously rejected the argument that a 30-day 'compressed warrant litigation schedule' denies a capital defendant 'his rights to due process.'" *Id.* Similar to the *Tanzi* Court, Defendant "has not shown how the warrant schedule denied him notice or an opportunity to be heard." *Id.* at 390-391. As a result, this court finds that Defendant's instant claim is meritless. Therefore, Ground II is **DENIED**.

WR-534-35.

a. Warrant Proceedings

Counsel for Mr. Randolph received notice at 4:59 p.m. on Tuesday, October 21, 2025, that the Governor had signed a warrant for Mr. Randolph's execution on November 20, 2025. At 5:30 p.m.,

this Court issued a scheduling Order directing "that all further proceedings in this case be expedited." Scheduling Order, *Randolph v. State*, SC1960-74083 (Fla. October 21, 2025). This Court ordered that the warrant court's proceedings "shall be completed and orders entered . . . by no later than 11:00 a.m. Tuesday, November 4, 2025." *Id*. The warrant court held a case management conference the next afternoon at 3:00 p.m. to address scheduling of the warrant court proceedings. Due to the truncated warrant proccess Mr. Randolph was given less than less than 5 business days to investigate and file a fully pleaded successive motion.

While counsel can draft pleadings at night and on the weekends, the business days are important because access Mr. Randolph is limited by FDOC's restrictions on access to clients on death watch. Counsel is not permitted to speak with him on weekends, holidays, or after hours, and only for 30 minutes. Nor are experts permitted to conduct evaluations during these times. Calls, visits, and expert evaluations are limited by overlapping warrants; three capital defendants are on death watch at this time. This was particularly acute with regards to the experts Mr. Randolph presented in his warrant litigation. While these experts were able to

offer reports showing that relief was required, neither expert could actually meet with Mr. Randolph. Any argument by the State that Mr. Randolph did not make a sufficient showing because of the lack of an in person visit, demonstrates how the unduly truncated warrant proceedings serve to violate a capital litigants due process rights.

This process frustrates counsel's ability to meet ethical duties and undermines confidence in our system of justice. Limited phone calls impact counsel's ability to communicate effectively with Mr. Randolph about the proceedings or to have expert evaluations Counsel cannot effectively represent Mr. Randolph under these circumstances.

The signing of a warrant is a surprise to the Defendant, defense counsel, and the courts (although it appears that the Attorney General's Office has advanced knowledge of forthcoming warrants). The process is needlessly disruptive and unduly burdensome on all parties and the judicial system's limited resources.[7] Warrant courts

[7] Mr. Randolph is unaware of any other state which sets such a short warrant period. Several states provide by statute or rule a minimum of 90 days in which to raise challenges under warrant. In Missouri, Texas, and California, when an execution warrant is signed, the execution must be set for no earlier than 90 days. Tex. Code Crim. Proc. Ann. art. 43.141(c) (2015); Mo. Sup. Ct. R. 29.08 (2014); Cal.

must quickly clear schedules and move other cases to accommodate emergency hearings. Although the warrant court may be able to set the hearings and clear its calendar, it has never heard proceedings in this case and is faced with an impossible task—becoming familiar in a matter of days with a case that spans decades, includes thousands of pages of records throughout which Mr. Randolph has presented detailed and compelling evidence undermining the reliability of his sentence.

The burden on the warrant court also impacts court staff. The court reporter is tasked with producing transcripts from each hearing in a matter of hours. The Clerk's Office is given just 6 hours to compile the record on appeal to submit to this Court. Outside agencies are required to respond to records demands in 24 hours or less and appear at emergency court hearings regardless of their

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Penal Code § 1193 (2024). The Missouri Supreme Court Rules provide a window of between 90-120 days for the warrant period. Mo. Sup. Ct. R. 29.08. Oklahoma requires that an execution be set not be less than 60 days from the issuance of a warrant. Okla. Stat. Ann. tit. 22, § 1001 (2025). Louisiana also requires a minimum warrant period of 60 days and provides up to 90 days from the warrant being issued. La. Stat. 15:567(B) (2024). In Ohio, the Supreme Court sets the execution date between 2-3 years in advance, thus there is no surprise and adequate time for stakeholders to conduct meaningful review.

availability. Moreover, the process impacts counsel's ability to effectively represent other clients. While Rule 3.851(h)(2) provides that warrant proceedings take precedence over all other cases and courts may be willing to move previously scheduled hearings, counsel is not absolved from their ethical and constitutional obligations to other clients. The very nature of warrant proceedings under this truncated time frame requires around-the-clock representation of just a single client.

b. Mr. Randolph's Rights To Substantive And Procedural Due Process, Access To The Courts, Under The Fifth And Fourteenth Amendments To The U.S. Constitution And Corresponding Provisions Of The Florida Constitution, As Well As The Eighth Amendments And Fourteenth Amendments Requirement Of Reliability.

"No State shall . . . deprive any person of life, liberty, or property without due process of law." Amend. XIV, U.S. Const. "A fundamental requirement of due process is 'the opportunity to be heard' . . . which must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)); *see Ford v. Wainwright*, 477 U.S. 399 (1986). "It is axiomatic that due process 'is flexible and calls for

such procedural protections as the particular situation demands.'" *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 13 (1979) (quoting *Morrissey v. Brewer*,408 U.S. 471, 481 (1972)).

Whether the State has provided the required meaningful hearing is evaluated under the *Mathews* balancing framework. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Under *Mathews*, "the process due in any given instance is determined by weighing the private interest that will be affected by the official action against the Government's asserted interest, including the function involved and the burdens the Government would face in providing greater process." *Hamdi*, 542 U.S. at 529 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976))(quotations omitted).

Here, the State seeks to kill Mr. Randolph, who is "a living person and consequently has an interest in his life." *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 288 (1998) (O'Connor, J. concurring). Neither Mr. Randolph's sentence of death nor the impossibility of freedom extinguishes this interest. *Id.* at 291 (Stevens, J. concurring) ("There is no room for legitimate debate about whether a living person has a constitutionally protected

interest in life. He obviously does."). Thus, the Due Process Clause demands a meaningful procedure, including a fair hearing at which "to substantiate a claim before it is rejected." *Ford*, 477 U.S. at 411 (quoting *Solesbee v. Balkcom*, 339 U.S. 9, 23 (1950) (Frankfurter, J. dissenting)).

Mr. Randolph submits that the truncated warrant period and limitations on relief violate Due Process in light of the interests at stake. *See Boumediene v. Bush*, 553 U.S. 723, 781 (2008) (citing *Mathews*, 424 U.S. at 335) (applying the due process test requiring "assessment of, inter alia, "the risk of an erroneous deprivation of [a liberty interest;] and the probable value, if any, of additional or substitute procedural safeguards" in habeas proceeding). There is no greater threat to a person's liberty interests than an imminent execution by the State. Thus, the State must afford Mr. Randolph meaningful process. "The basic cornerstones of procedural due process are notice of the case and an opportunity to be heard." *A&S Entm't, LLC v. Fla. Dep't of Revenue,* 282 So. 3d 905, 908 (Fla. 3rd DCA 2019). Under the Fourteenth Amendment, this Court owes Mr. Randolph an opportunity "to substantiate a claim before it is rejected." *Ford,* 477 U.S. at 411.

The U.S. Supreme Court has held that factual determinations related to the constitutionality of a person's execution are "properly considered in proximity to the execution." *Id.* at 406 (noting competency to be executed determination is more reliable near time of execution whereas guilt or innocence determination becomes less reliable). In other words, whether the carrying out of a death sentence violates the Eighth Amendment depends on the facts existing after a death warrant is signed and the determination of these facts requires *increased reliability*. When a claim sufficiently alleges a federal constitutional violation and a factual dispute exists, state courts must allow factual development—they cannot simply deny relief. *See Cash v. Culver*, 358 U.S. 633 (1959); *McNeal v. Culver*, 365 U.S. 109 (1961); *Carnley v. Cochran*, 369 U.S. 506 (1962). The truncated warrant period obliterates Mr. Randolph's ability to bring such claims.

c. The Rote Denial Of Public Records Denied Mr. Randolph The Same Rights.

The truncated warrant period and rote denial of discovery precluded any meaningful hearing at which Mr. Randolph could substantiate a claim. Mr. Randolph needs public records to enforce

inter alia his federal right to be free from the infliction of cruel and unusual punishment by raising an as applied method-of-execution challenge. This requires two fact-intensive showings: (1) whether "the method presents a risk that is 'sure or very likely to cause serious illness and needless suffering," *Glossip*, 576 U.S. at 877; and, (2) whether there is "a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain . . . that the State has refused to adopt without a legitimate penological reason." *Bucklew*, 587 U.S. at 134. Mr. Randolph cannot make these showings without access to discovery. But, cyclically, he cannot access discovery without first making the necessary showings. The obvious result is the complete unavailability of discovery and, thus, process. Undersigned counsel acknowledges that this Court has rejected much of this argument in recent warrant decisions, finding *inter alia* that lethal injection records are unrelated to a colorable claim. But, if this is so and there can never be an as-applied method of execution challenge in Florida, then this Court's decisions operate as a complete deprivation of Mr. Randolph's Due Process rights.

Additionally, counsel for Mr. Randolph is obligated to seek and

obtain every public record in existence in his case, as the failure of collateral counsel to do so will result in a procedural default assessed against his client. *Porter v. State*, 653 So. 2d 375 (Fla. 1995). A concomitant obligation rests with the State to furnish the requested materials. *Ventura v. State*, 673 So. 2d 479 (Fla. 1996). The signing of a death warrant relieves neither party of these obligations.

Florida Rule of Criminal Procedure 3.852 was promulgated to govern the production of public records for capital postconviction defendants. Fla. R. Crim. P. 3.852(a). But it "was never intended to, and, indeed, [can]not, diminish a citizen's constitutional right to access to public records." *In re Amendment to Fla. R. Crim. P.—Capital Postconviction Records Production*, 683 So. 2d 475, 477 (Fla. 1996) (Anstead, J., specially concurring); *Sims v. State*, 753 So. 2d 66, 71-72 (Fla. 2000) (Anstead, J., concurring) ("We need to be very careful that we not end up with an outcome where a death-sentenced defendant, whose life may literally be affected, is barred from enforcing his constitutional right as a citizen to access to public records that any other citizen could routinely access."). "[A]ccess to public records is an essential ingredient in any meaningful postconviction review," *Sims*, 753 So. 2d at 71 n.10 (Anstead, J.,

concurring), and in safeguarding a death-sentenced individual's due process rights under both the federal and state constitutions. See *Evitts v. Lucey*, 469 U.S. 387, 401 (1985). The setting of an execution date does not vitiate these fundamental rights, as "[t]he 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*, 753 So. 2d at 70.

The severely limited time that Mr. Randolph was given to seek public records under warrant and the rote denial of discovery effectively precluded any meaningful access to public records in violation of his rights to Due Process under the Florida and U.S. Constitutions. The truncated warrant period also violated Mr. Randolph's Equal Protection and Due Process Clause Rights under the Fourteenth Amendment to the U.S. Constitution and the corresponding provisions of the Florida Constitution. Moreover, it violates his right to access to the courts and seek remedies for the myriad constitutional violations committed throughout these proceedings against him, including his right to petition for a writ of habeas corpus under the Florida and U.S. Constitutions.

Mr. Randolph faces imminent execution. Fundamental notions

of dignity and fairness demand that he be able to challenge his death sentence and the State's intended method of execution through meaningful collateral proceedings. Mr. Randolph has been denied his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution. While Mr. Randolph may not receive relief from any court, the historical record will show that Florida extinguished any meaningful way to challenge imminent execution and refused to recognize the fundamental dignity of every individual.

This Court should grant all appropriate relief.

Argument III

Mr. Randolph Was Denied Meaningful Clemency Proceedings And The Opportunity To Confront The Clemency Investigation's Finding In Violation Of The Due Process and Equal Protection Clauses of the Fourteenth Amendment.

Clemency is the last refuge of the condemned; no just society would refuse to consider their pleas. This claim is pleaded with the acknowledgement that the courts have recognized the Governor has almost unfettered discretion regarding clemency. Mr. Randolph challenges his denial of his right to influence this discretion. Mr. Randolph pleaded a compelling claim in the warrant court that

should have received an evidentiary hearing after which relief was certain.

The warrant court first denied an evidentiary hearing and then denied the claim, ruling:

Meritless Claim

> Defendant asserts a claim that his due process rights regarding clemency proceedings were violated when he was denied the opportunity to provide additional information to support clemency. Defendant's assertion fails as a matter of law.
>
> The minimal due process rights regarding clemency, established by the United States Supreme Court in *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 280-281 (1998), do not apply to clemency updates. In fact, there is no constitutional right to clemency. *Bowles v. DeSantis*, 934 F.3d 1230, 1242 (11th Cir. 2019) (citing *Herrera v. Collins*, 506 U.S. 390, 414 (1993)) (noting the Constitution "does not require the States to enact a clemency mechanism"). There is no specific procedure mandated in the clemency process. *Johnston v. State*, 27 So. 3d 11, 25-26 (Fla. 2010).
>
> The Florida Supreme Court has rejected arguments that the first clemency hearing was inadequate because it was conducted before the capital defendant's "full life history and mental illness history were developed." *Id.*; *Grossman v. State*, 29 So. 3d 1034, 1044 (Fla. 2010). Discussing *Woodward*, the Florida Supreme Court noted that none of the opinions "required any specific procedures or criteria to guide the executive's signing of warrants for death-sentenced inmates." *Marek v. State*, 14 So. 3d 985, 998 (Fla. 2009) (denying a due process challenge to Florida's clemency proceeding where the

Governor reviewed the case without input from the defendant).

Further, the Florida Supreme Court has "rejected the argument that a defendant is entitled to present a full accounting of mitigation evidence as part of the clemency process." *Pardo v. State*, 108 So. 3d 558, 568 (Fla. 2012) (citing *Grossman v. State*, 29 So. 3d 1034, 1044 (Fla.)). Finally, "clemency is an executive function and [therefore], in accordance with the doctrine of separation of powers, [courts] will not generally second-guess the executive's determination that clemency is not warranted." *Id*. (citing *Johnston*, 27 So. 3d at 26). As a result, the court finds that Defendant's instant claim lacks merit. Therefore, **GROUND III IS DENIED**.

Untimely Claim

Additionally, Defendant's instant claim is procedurally barred as untimely. This court incorporates by reference all of the cited precedent utilized in the timeliness claim for "Ground I." Defendant has failed to argue that any exception to the Florida Rule of Criminal Procedure 3.851(d)(1) time bar exists. As a result, this court finds that Defendant's Motion is procedurally barred as untimely. Therefore, **GROUND III REMAINS DENIED** in the alternative.

Failure to Provide Good Cause

Alternatively, the court finds that Defendant's instant ground is successive. Defendant fails to provide good cause as to why he failed to assert the instant ground in any of his prior motions for post-conviction relief. As a result, the court finds that Defendant is procedurally barred from filing this claim. *See* Fla. R. Crim. P. 3.851(e)(2). Therefore, **GROUND III REMAINS DENIED** in the alternative.

(WR. 535-38). The warrant court erred in denying an evidentiary

hearing and relief. Mr. Randolph was entitled to an evidentiary hearing and relief.

a. Mr. Randolph Was Not Given An Opportunity To Provide Information Since His Original Clemency Review In 2014.

Clemency is enshrined in the Florida Constitution, which states in relevant part:

> Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

Clemency is deeply rooted in our history as a Nation and before. "Clemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted." *Herrera v. Collins*, 506 U.S. 390, 411–12 (1993) (footnotes omitted). As the U.S. Supreme Court noted in *Herrera*, "[t]he term 'clemency' refers not only to full or conditional pardons, but also commutations, remissions of fines, and reprieves. See Kobil, The Quality of Mercy Strained: Wresting the Pardoning Power from the King, 69 Texas L.Rev. 569, 575-578

(1991)." *Id.* at 412 n.12. "[T]he heart of executive clemency, which is to grant clemency as a matter of grace, thus allowing the executive to consider a wide range of factors not comprehended by earlier judicial proceedings and sentencing determinations." *Woodard*, 523 U.S. at 280–81. Clemency is a "fail-safe in our criminal justice system." *Harbison v. Bell,* 556 U.S. 180, 192 (2009).

At the time of his trial, Mr. Randolph's jury could not consider the person that he became because the character evidence discussed below, had not developed and only would emerge over time. Since then, because Mr. Randolph's clemency investigation occurred in 2014, the clemency board were denied critical information that shows that clemency is warranted in Mr. Randolph's case. Between 2014 and the signing of the warrant, significant new information has arisen that should be considered in determining whether clemency is granted. As seen in the attached affidavit of clemency counsel, Jeffrey Deen, no further information was presented to the clemency board for the Governor's consideration. (WR. 481-82).

Mr. Randolph is not the same person that was sentenced to death in 1988. Since 2014 substantive material evidence in mitigation has come to light showing that clemency should be

granted, or at the very least, the evidence available in 2025 should have been considered. Mr. Randolph offered the following arguments in support of his claim.

Good Behavior While Incarcerated

Since 2014, Mr. Randolph has obtained the distinction of not having a single Disciplinary Report (DR) brought against him by FDOC. Prior to 2014, Mr. Randolph had very limited DRs, all of which were for minor infractions and none of which involved threats of violence to other inmates or staff. Mr. Randolph identified Raul S. Banasco, MPA, CPM, CJM, CCE, as a witness who could provide the court with an analysis of Mr. Randolph's conduct on death row over the last eleven years. Mr. Banasco is a well-qualified expert in corrections with over 39 years of distinguished service in corrections and public safety and, a senior-level correctional leader with a proven record of executive leadership across city, county, and state government agencies, as well as non-profit community supervision programs. Mr. Banasco would have testified, that Mr. Randolph has been a model inmate since 2014 and was well-adjusted before that as well. It is rare for inmates in general population, let alone on death row, to avoid DRs, but Mr. Randolph has conducted himself

admirably in this regard.

This is material evidence that should be considered in determining whether Mr. Randolph is executed. The U.S. Supreme Court stated as much in *Skipper v. South Carolina*, 476 U.S. 1 (1986). In *Skipper,* the "Petitioner also sought to introduce testimony of two jailers and one 'regular visitor' to the jail to the effect that petitioner had 'made a good adjustment' during his time spent in jail. The trial court, however, ruled that under [state law] such evidence would be irrelevant and hence inadmissible." *Id.* at 3. On appeal, this ruling was affirmed based on state law. *Id.* The U.S. Supreme Court granted certiorari to decide whether the state court's "decision [was] inconsistent with [the] Court's decisions in *Lockett* and *Eddings,* and . . . reverse[d]." *Id.* at 4.

The Court held that the petitioner had the right to present the evidence in question because "evidence that the defendant would not pose a danger if spared (but incarcerated) must be considered potentially mitigating." *Id.* at 5. Mr. Randolph had no such testimony at trial. He had not been incarcerated very long at the time of his trial. There was some discussion of his minor, non-violent DRs at his clemency interview but it would have been impossible for the

Clemency Board to consider and present to the governor that Mr. Randolph has been DR free since 2011.

Mr. Randolph's adjustment to prison is highly mitigating. *Skipper* stands for the principle that adjustment to prison is such. It has also been recognized by the American Bar Association that Counsel should also address concerns of future dangerousness, even when not a statutory factor in aggravation. "Studies show that future dangerousness is on the minds of most capital jurors, and is thus 'at issue' in virtually all capital trials." American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, 10.11 (Commentary, p. 113) (2003). "Evidence that the client has adapted well to prison and has had few disciplinary problems can allay jurors' fears and reinforce other positive mitigating evidence." *Id.* It is well-established that Mr. Randolph's adaption to prison is highly mitigating.

In *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976), the U.S. Supreme Court recognized the "qualitative difference" between life and death sentences and "corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." *See Mills v. Maryland*, 486 U.S. 367,

376-77 (1988) (holding "the risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments) (quoting *Lockett v. Ohio*, 438 U.S. 586, 605 (1978)); *see also*, *Andres v. United States*, 333 U.S. 740, 752 (1948); *Beck v. Alabama*, 447 U.S. 625, 637-38 (1980).

The U.S. Supreme Court made clear in *Eddings v. Oklahoma*, 455 U.S. 104 (1982):

> [T]he rule in *Lockett* followed from the earlier decisions of the Court and from the Court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus "on the characteristics of the person who committed the crime," *Gregg v. Georgia, supra*, at 197, 96 S.Ct., at 2936, the rule in *Lockett* recognizes that "justice . . . requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." *Pennsylvania v. Ashe*, 302 U.S. 51, 55, 58 S.Ct. 59, 60, 82 L.Ed. 43 (1937). By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in *Lockett* recognizes that a consistency produced by ignoring individual differences is a false consistency.

Id. at 112. The mitigating evidence that showed that Mr. Randolph would become a model prisoner was not available at the time of trial because he had not become the person he grew to be. Consideration in clemency is necessary because this is vital information was not

available at trial.

Medical Condition

There is no indication that the clemency process considered Mr. Randolph's medical condition. As noted supra, Mr. Randolph suffers from lupus. This is well-documented in Mr. Randolph's FDOC medical records and the subject of Claim I. Mr. Randolph is in great danger of suffering a torturous death. In Florida it seems that the clemency investigation would have included some sort of medical evaluation. *See Pardo v. State*, 108 So. 3d 558, 568 (Fla. 2012) ("Other documents in the record indicate that Pardo underwent an evaluation by FDOC medical personnel around the same time for clemency purposes."). But Mr. Randolph received no such evaluation and certainly the State has not provided any evidence that it did so. If Mr. Randolph was evaluated medically as part of clemency, which it appears more likely than not that he was not evaluated, he certainly has not received this information from the Clemency Board or any State agency. Moreover, he was not given the opportunity to offer evidence of his own current medical condition. Additionally, as discussed in the report of Dr. Zivot, the FDOC has not provided treatment for Mr. Randolph's lupus. As Dr. Zivot explained:

> After reviewing the medical records and in consultation with Mr. Randolph, I see no evidence that he ever received this treatment. This is a disturbing lack of standard medical care that Mr. Randolph has the right to receive. In place, he was given occasional acetaminophen (Tylenol) and occasional ibuprofen (Motrin).

(WR. 469). Mr. Randolph's lupus has been a challenge. That he has dealt with it with dignity and grace, shows his character and should be considered for clemency. Moreover, consideration of his medical condition obviates the need for his execution. The jury that recommended death could not have considered this at the time they recommended death by an 8 to 4 vote. The Clemency Board should.

Faith

Mr. Randolph has shown rehabilitation as he has matured. His DRs were non-violent, he has consistently shown remorse, and he has developed into a mature, calm, thoughtful 63-year-old. In 1993, influenced by a fellow inmate, Mr. Randolph became a Muslim. Mr. Randolph's religious focus has helped him stay out of trouble and contributes to his personal development. It has helped him to adapt to the prison environment and deal with anger and frustration. Mr. Randolph helps others and helps keep a calm prison wing, evidenced by his selection as a "houseman" by the Department of Corrections.

He has also taken on the role of mentoring younger death row inmates offering guidance to them in adapting to death row. If allowed to live, Mr. Randolph would continue to contribute to the death row community or in the general population. Because his clemency interview was so long ago, none of this was considered.

Recent Relationship With Birth-Mother

Lastly, and as discussed in his last successor, Mr. Randolph has made contact with his birth family and has started building relationships with them. Mr. Randolph had hoped to meet his half-brother in person for the first time before his execution, but this has been denied by the Department of Corrections. All relationships with Mr. Randolph's newly found birth family will cease, along with those of his adoptive family and his biological family, if he is executed. This Court denied Mr. Randolph a hearing on his claim that the newly discovered evidence of his adoptive parents' identity and lives warrants a new trial, but it is certainly material evidence that should be considered in any meaningful clemency proceeding or process. . *See Randolph v. State*, 403 So. 3d 206 (Fla. 2024).

Mr. Randolph retained a well-qualified expert, Raul S. Banasco, MPA, CPM, CJM, CCE, who produced a report after speaking to Mr.

Randolph and reviewing voluminous prison records. His report was attached to Mr. Randolph's motion, and incorporated here by reference. (WR. 473-79). As Mr. Banasco stated:

> Based on my 39 years of correctional experience, a thorough review of the records provided, and my interview with Mr. Richard B. Randolph, it is my professional opinion that he has gained significant insights from his early experiences within the prison system. Mr. Randolph entered the system at the age of 27 and is now 63 years old, having spent over three decades within the prison system, which he has spent on death row. Over this time, it is clear that Mr. Randolph has matured considerably. His behavior and conduct demonstrate this growth, and it is my belief that he now possesses a greater understanding of his circumstances.
>
> Currently, Mr. Randolph does not pose any significant concerns regarding security or safety within a general population setting in a correctional facility. His years of experience and positive adjustments indicate that he can function appropriately within such an environment.

(WR. 478). At an evidentiary hearing, Mr. Banasco would have testified in greater depth about what the Clemency Board never considered.

Mr. Randolph was denied consideration of these factors because clemency was so long ago. Mr. Randolph could not bring this claim sooner because his clemency was denied by the signing of the warrant. Much like his lethal injection claim, his clemency claim was

not ripe until clemency was denied. To fulfill its time-honored function, clemency proceedings must consider the man near the execution, not the man as presented eleven years ago in 2014. It is the man as he is today, with all his human frailties and growth, who deserves consideration for clemency.

The warrant court denied Mr. Randolph an evidentiary hearing and ruled solely on the merits. Mr. Randolph acknowledges the adverse precedent in the warrant court's denial. Moreover, he acknowledges that the trial level mitigation cases cited above, show not a right but the importance of such information in fairly carrying out the death penalty. However, beyond Eighth Amendment bars, Mr. Randolph stands on the clear notion that the minimal due process afforded in clemency proceedings requires a consideration of the man he is today before the executive grants or denies clemency. Each and every day since Mr. Randolph's clemency interview in 2014, Mr. Randolph has worked to better himself and attempt to make amends for his crime. He has grown far beyond the man interviewed in 2014. Fundamental fairness and due process require that this should be considered.

b. Mr. Randolph Was Denied The

Opportunity To Respond To The Clemency Board's Findings Because He Was Not Allowed To Review The Report And Findings That Led To The Decision To Deny Clemency.

In *Simmons v. South Carolina*, 512 U.S. 154 (1994), the U.S. Supreme Court held, "sending a man to his death 'on the basis of information which he had no opportunity to deny or explain' violated fundamental notions of due process." *Id.* at 164 (*quoting Gardner v. Florida*, 430 U.S. 349, 362 (1977)). Mr. Randolph never received the information upon which the Governor based his decision that clemency was not appropriate or that his death warrant should be signed. This total lack of any opportunity to rebut the information used to make penalty decisions violated Mr. Randolph's rights to Due Process and Equal Protection under the Fourteenth Amendment. *Simmons*, 512 U.S. at 164 (citing *Gardner*, 430 U.S. at 362) (finding violation of Due Process Clause where "defendant was sentenced to death on the basis of a presentence report which was not made available to him and which he therefore could not rebut").

Mr. Randolph is now facing execution without ever having reviewed the information that was developed during the clemency investigation. The information that the clemency investigation

produced may have been demonstratively false or misleading. Much like the defendant's death sentence in *Gardner*, Mr. Randolph's death warrant and warrant proceedings are based on "information which he had no opportunity to explain or deny." 430 U.S. at 362. Mr. Randolph was again denied the information upon which execution is based when the warrant court denied his request for any records from the Executive Office of the Governor and the Florida Commission on Offender Review.

Mr. Randolph has a fundamental right to due process. While the right to procedural due process in clemency proceedings is narrow, minimal due process requirements still demand notice, hearing, and an opportunity to explain or deny information used to determine his fate. Mr. Randolph does not challenge the Governor's discretion; he challenges the denial of his right to be heard and influence this discretion through a complete presentation of his case for clemency.

This Court should grant relief.

Argument IV

The Lower Court Abused Its Discretion In Denying Mr. Randolph Access To Public Records In Violation Of The Fifth, Eighth And Fourteenth Amendments To The United States Constitution And The Corresponding Provisions Of The Florida Constitution.

Article I, section 24, of the Florida Constitution codifies the fundamental right of access to public records for "[e]very person"—"regardless of whether that access is sought by a death row inmate, a disinterested citizen or a member of the media." Art. I, § 24(a), Fla. Const; *Sims v. State*, 753 So. 3d 66, 71 (Fla. 2000) (Anstead, J., concurring). While this "'self-executing' right to open records is enforced through the Public Records Law, chapter 119 of the Florida Statutes" for all other citizens, *Rhea v. Dist. Bd. Trs. of Santa Fe College*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013), this Court promulgated Florida Rule of Criminal Procedure 3.852 to govern the production of public records for capital postconviction defendants. Fla. R. Crim. P. 3.852(a).

As noted in Argument II, *supra*, Rule 3.852 was never intended to lesson the rights of a death sentenced defendant to access public records that any other citizen could access. Rather, the rule was designed "[b]ased on the broad public records production

authorized under chapter 119," and meant "to promote the prompt and efficient processing of capital cases in a fair, just, and constitutionally sound manner." *In re Amends. to Fla. R. Crim. P. 3.851, 3.852, et. seq.*, 797 So. 2d 1213, 1216-17 (Fla. 2001).

"[A]ccess to public records is an essential ingredient in any meaningful postconviction review," *Sims*, 753 So. 3d at 71 n.10 (Anstead, J., concurring), and in safeguarding a death-sentenced individual's due process rights under both the federal and state constitutions. *See Evitts*, 469 U.S. at 401. Rule 3.852 was not created to preclude access to records or hinder a capital postconviction litigant from thoroughly investigating their case. The rule was created to eliminate undue delay while still maintaining quality and fairness." *Amendments to Fla. R. Crim. P.*, 797 So. 2d at 1216.

The setting of an execution date does not vitiate these fundamental rights, as "[t]he 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*, 753 So. 3d at 70. "It would be dangerous in the extreme, to infer from extrinsic circumstances, that a case for which the words of an instrument expressly provides shall be exempted from its operation." *Sturges v.*

Crowninshield, 17 U.S. (4 Wheat.) 122, 202 (1819) (per Marshall, C.J.) "[T]he courts must . . . lean in favor of a construction which will render every word operative, rather than one which may make some idle and nugatory." Thomas M. Cooley, A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union 58 (1868). *See also Kungyz v. United States,* 485 U.S. 759, 778 (1988) (Scalia, J. plurality opinion) (calling it a "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant.").

"[E]xecution is the most irremediable and unfathomable of penalties." *Ford*, 477 U.S. at 411. The need for absolute transparency is at its apex when the State "tinker[s] with the machinery of death." *Callins v. Collins*, 510 U.S. 1141, 1130 (1994) (Blackmun, J., dissenting). Mr. Randolph was denied "a fair opportunity to show that the Constitution prohibits his execution." *Hall v. Florida*, 572 U.S. 701, 724 (2014). Precluding client's access to records is antithetical to "[o]ur system of open government [that] is a valued and intrinsic part of the heritage of our state." Florida Office of the Attorney General, Government-in-the-Sunshine Manual, p. xii (2025 ed., Vol 47).

Because of counsel's obligation to seek and obtain every public record in existence in this case, as argued *supra* Argument II, there is also an obligation for the State to furnish the requested materials. *Ventura v. State*, 673 So. 2d 479 (Fla. 1996). This Court has held that when the State's failure to disclose public records results in a capital postconviction litigant's inability to fully plead claims for relief, the State is estopped from claiming that the postconviction motion should be denied or dismissed. *Id.* at 481 ("The State cannot fail to furnish relevant information and then argue that the claim need not be heard on its merits because of an asserted procedural default that was caused by the State's failure to act.").

a. Mr. Randolph's Public Records Litigation Under Warrant

Following the signing of his death warrant, Mr. Randolph timely filed demands for public records to several state agencies pursuant to Florida Rule of Criminal Procedure 3.852(h)(3) and (i). Both are proper vehicles for Mr. Randolph to seek records.

Pursuant to Florida Rule of Criminal Procedure 3.852(h):

> Within 10 days of the signing of a defendant's death warrant, collateral counsel may request in writing the production of public records from a person or agency from which collateral counsel has previously requested public

records. A person or agency shall copy, index, and deliver to the repository any public record:

(A) that was not previously the subject of an objection;

(B) that was received or produced since the previous

request; or

(C) that was, for any reason, not produced previously.

Rule 3.852(i) provides:

(1) In order to obtain public records in addition to those provided under subdivisions (e), (f), (g), and (h) of this rule, collateral counsel shall file an affidavit in the trial court which:

(A) attests that collateral counsel has made a timely and diligent search of the records repository; and

(B) identifies with specificity those public records not at the records repository; and

(C) establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and

D) shall be served in accord with subdivision (c)(1) of this rule.

As Rule 3.852 explains, a capital defendant must file a demand pursuant to subsection (i) for records that are not covered under subsections (g) and (h). Rule 3.852(g) governs the initial production

of records following the mandate after a direct appeal (on cases final after 1998).

Rule 3.852(h)(3) governs cases that were final prior to October 1, 1998, such as Mr. Randolph. In cases final prior to 1998, the initial records requests were done prior to the rule and pursuant to Chapter 119. Subsection (h) was included to assist in the transition of cases from the use of 119 letters to requesting records under Rule 3.852. To assist in this process, subsection (h)(3) includes a provision for handling discovery during warrant litigation, providing that capital defendants can request updated records from agencies the defendant "has previously requested public records." Fla. R. Crim. P. 3.852(h)(3).

b. (h) Demands

In this case, Mr. Randolph requested updated records under 3.852(h)(3)[8] from 1) the prosecuting state attorney's office for the 7th Judicial Circuit, 2) the Putnam County Sherriff's Office and 3) the Office of the Attorney General. Each of these offices had

[8] FDOC had complied with a 3.852(h) demand filed in June 2025 and furnished an update of Mr. Randolph's records under warrant as well.

previously provided records to Mr. Randolph. All that was requested of them was to provide Mr. Randolph with any records **not previously disclosed**, exactly what is contemplated by 3.852(h).

The trial court, in sustaining every objection raised by these offices included finding Mr. Randolph's requests to be overbroad. (WR-307-315). The trial court misunderstood the request before it, as Mr. Randolph never requested a reproduction of documents that had already been turned over. "Defendant was unable to articulate a good faith basis for requesting reproduction of these records." (WR-313). Mr. Randolph simply asked for what had not been previously provided. Once the agencies put on the record there were no additional records, the lower court should have found the objections were moot, and find that the agencies complied. Rather than require the various offices to attest and certify that all records had been previously provided, that were not the basis for an objection, the trial court sustained all objections, denied all record requests, and made a finding that all of the requested public records under 3.852(h) had been previously provided.

c. (i) Demands

Mr. Randolph also filed 3.852(i) demands in addition to the 3.852(h) demands to agencies he had not previously requested records, as he is allowed to do.

Lethal Injection Records

Mr. Randolph's 3.852(i) demands to the Florida Department of Corrections (FDOC), The Florida Department of Law Enforcement (FDLE), the Eighth District Medical Examiner's Office (MEO-8), all centered on Mr. Randolph's as-applied challenge to lethal injection. These demands were limited in scope, seeking public records related to Florida's lethal injection protocol, including, records concerning the review process that led to the current three-drug protocol; the sourcing, manufacturing, storage, and expiration information for each drug; the training, education, licensure, and/or professional experience of the two members of the execution team; and records from the recent executions under the current lethal injection protocol. Each agency objected to Mr. Randolph's demands, asserting, *inter alia*, that the records he sought were unrelated to a colorable claim for postconviction relief and are exempt from disclosure.

The lower court found that Mr. Randolph failed to provide any

colorable claim for postconviction relief in his demands for public records. Rather than reserve ruling to have the benefit of the 3.851 motion and claims raised by Mr. Randolph, the lower court sustained all the objections raised by the agencies and denied all demands. (WR. 307-315).

To obtain public records under 3.852(i), collateral counsel must file an affidavit in the trial court that "attests . . . [he] has made a timely and diligent search of the records repository"; that "identifies with specificity those public records not at the records repository"; and that establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to the lead to the discovery of admissible evidence." Fla. R. Crim. P. 3.852(i)(1).

Mr. Randolph fully complied with these requirements. The lower court abused its discretion in sustaining all DOC, FDLE and MEO-8's objections to Mr. Randolph's demands. As a result, Mr. Randolph is being deprived of his right to a full and fair postconviction proceeding, in contravention of his rights under the Eighth and Fourteenth Amendments and the corresponding provisions of the Florida Constitution.

Timeliness

While Rule 3.852(i) demands may be filed at any time during postconviction proceedings, this Court has held that an individual facing imminent execution must "'show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records request was not made until after the death warrant was signed.'" Dailey, 283 So. 3d at 792 (quoting Asay v. State, 224 So. 3d 695, 700 (Fla. 2017)). Rule 3.852(i) demands for records relating to Florida's lethal injection process satisfy this standard because the issues were not ripe until his execution date was set.

Mr. Randolph could not seek the records and plead a lethal injection claim earlier because it was unknown what the procedure would be and what medical condition Mr. Randolph would present. If thwarted in this effort by this Court and this Court's prior decisions, Mr. Randolph will be denied the most fundamental rights guaranteed by the Eighth Amendment.

Moreover, the court's reasoning requires Mr. Randolph not only to demonstrate a "colorable claim," but to prove his claim before he can obtain the very records necessary to establish it. Rule 3.852 is

foremost a discovery rule intended to ensure that capital defendants have access to records so that they can investigate and plead claims for relief. Sims. The court's reasoning reduces the promises of rule 3.852 to the kind of Faustian reality Justice Anstead warned of in Sims. 753 So. 3d at 71-72 (Anstead, J., concurring).

Colorable Claims

Unlike the demands for lethal injection records in other cases, Mr. Randolph's demands were limited, particularized, and identified with specificity the records being sought. The demands identified the requested records with great specificity and the requests were limited in scope and time to only those records which may lead to the discovery of admissible evidence. Mr. Randolph made limited and particularized demands for records that would allow him to consult with an expert to ensure that his execution will not be unconstitutionally cruel and unusual as applied to him. To plead such a claim, Mr. Randolph needs information regarding the methods, means, and instrumentalities intended to cause his death. He requires historical information about past executions to establish that Florida's etomidate lethal injection procedure has resulted in

adverse consequences that would be repeated when he suffers the same fate as those executed before him.

Undersigned counsel acknowledges this Court's precedent that broad, generalized lethal injection records requests do not relate to a colorable claim for postconviction relief after this Court upheld the constitutionality of the current protocol in Asay, 224 So. 3d 695. Undersigned counsel further acknowledges that this Court has reiterated this stance in Zakrzewski v. State, 415 So. 3d 203, 213 (Fla. 2025) ("all-encompassing requests for records relating to Florida's lethal injection protocol bear no relation to a colorable postconviction claim for relief. See Muhammad v. State, 132 So. 3d 176, 203 (Fla. 2013) ("[R]equests related to actions of lethal injection personnel in past executions do not relate to a colorable claim concerning future executions because there is a presumption that members of the executive branch will perform their duties properly.")); see also Tanzi v. State, 407 So. 3d 385 (Fla. 2025). Notwithstanding the series of cases stemming from Asay, Mr. Randolph urges this Court to reconsider its complete rejection of any subsequent adversarial testing of Florida's lethal injection procedures for an as-applied because denying a capital defendant all

access to the State's lethal injection records, which are available to non-capital defendants under Florida's public records laws, is clearly erroneous because it violates equal protection. Further, it denies Mr. Randolph due process because under this Court's clearly erroneous precedent, he is denied access to and the ability to raise and litigate an as-applied challenge.

While Mr. Randolph acknowledges the precedent the warrant court used to deny him records, he respectfully submits that an as-applied lethal injection claim remains a colorable claim so long as the United States Supreme Court has not overruled, *Glossip*, *Baze*, and their Eighth Amendment progeny. While the standards for proving an Eighth Amendment violation may be high, they are standards that can be met if the defendant is provided with the information on which to base an Eighth Amendment claim.

Florida's limitations on a capital defendant's ability to obtain discovery should not be used to impede Mr. Randolph's fundamental right to prevent cruel and unusual punishment and a torturous death under a veil of secrecy.

Clemency Records

Mr. Randolph filed 3.852(i) demands to the Office of Executive

Clemency, Florida Commission on Offender Review and Executive Office of the Governor related to clemency proceedings and the Governor's decision to sign Mr. Randolph's warrant. The demands were limited in time and scope to the executions over the past three years.

The agencies objected to any production citing to the current caselaw and clemency statutes. The lower court found that the request was irrelevant to the proceedings pending, and sustained the agencies objections.

Even in an active death warrant proceeding, records related to a clemency investigation are not subject to disclosure and are exempt from production. *See* § 14.28, Fla. Stat. (2025); *Muhammad v. State*, 132 So. 3d 176, 203 (Fla. 2013) (citing *King v. State,* 840 So. 2d 1047, 1050 (Fla. 2003)) (holding that "clemency files and records are not subject to chapter 119 disclosure and are exempt from production in a records request filed in a postconviction proceeding").

Mr. Randolph acknowledges this Court's precedents as cited to by the circuit court in its Order, but respectfully submits that the court abused its discretion in denying access to the requested records.

As to the timeliness of the demands for clemency records, Mr. Randolph submits that there is no claim to challenge the denial of clemency and the Governor's decision to sign a warrant until clemency is denied and a warrant is signed. Obtaining such records before a warrant is signed is a legal and factual impossibility.

Moreover, while this Court has repeatedly affirmed the denial of access to such records, Mr. Randolph submits that the facts and circumstances under which he was denied clemency and chosen for execution are unique and troubling. As argued in Argument III, supra, the clemency investigation, ended in 2014. Due to the unique circumstances of his clemency investigation, Mr. Randolph had no opportunity to confront or correct the information that the Governor relied on when deciding to sign his death warrant.

Defendants facing execution are entitled to some measure of due process in clemency proceedings, even if it is "minimal." *Woodard*, 523 U.S. at 289 (O'Connor, J., concurring). Regardless of statutory exemptions and rules limiting postconviction discovery, Mr. Randolph submits that allowing him to be executed based on inaccurate and stale information violates his rights to due process, even the minimal rights vested in clemency proceedings. Clemency

cannot be a wholly meaningless proceeding; and, if it is, then surely that violates minimal due process rights.

CONCLUSION AND RELIEF SOUGHT

This Court should grant all appropriate relief to do justice.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE AND FONT

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Initial Brief of the Appellant has been produced in Bookman Old Style 14-point font. Pursuant to Fla. R. App. P. 9.210(a)(2)(D), this brief complied with the word count (18,249 of 20,000).

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to opposing counsel through the Florida Courts E-Filing Portal on November 6, 2025.

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