No. SC2025-0794

EXECUTION SCHEDULED FOR JUNE 24, 2025 at 6:00 P.M.

IN THE

SUPREME COURT OF FLORIDA

THOMAS GUDINAS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA
Lower Tribunal No.:481994CF007132000AOX

REPLY BRIEF OF THE APPELLANT

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PRELIMINARY STATEMENT

Appellant, Thomas Gudinas ("Gudinas"), offers the following Reply to the Answer Brief of Appellee ("AB"). Gudinas will not reply to every issue and argument raised by the State and will only address the most salient points. Gudinas expressly does not abandon any issue not specifically replied to herein and relies upon his Initial Brief of the Appellant ("IB") in reply to any argument or authority not specifically addressed.

References to the current, post-warrant record on appeal are in the form SC/ [page number].

Page references to the Initial Brief are designated with IB at [page number]. Page references to the Answer Brief are designated with AB at [page number].

All other references will be self-explanatory or otherwise explained.

GENERAL ARGUMENT IN REPLY

This Court must review these claims under the proper lens. Gudinas is not only sentenced to death. His death warrant has been signed, and an execution date has been set. "[E]xecution is the most irremediable and unfathomable of penalties. . . death is different."

Ford v. Wainwright, 477 U.S. 399, 411 (1986) (citing *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (opinion of Stewart, Powell, and Stevens, JJ.)). The instant case is literally a matter of life or death, because once the State has executed Gudinas, he will not have any recourse. Accordingly, this Court must exercise its duty to carefully review this case and prevent an injustice. When post-warrant litigation calls upon this Court to correct past wrongs in circumstances where a death sentence was upheld based on the denial of constitutional rights, this Court can and should intervene.

REPLY REGARDING STAY

Along with the filing of the AB, the State also filed a State's Response in Opposition to Defendant's Motion for Stay of Execution. This Court should grant a stay, and remand to the circuit court. Gudinas has one opportunity to attempt to change the law in this state regarding the "conformity clause." The current record before this Court is incomplete due to the expedited warrant schedule. Dr. Hyman Eisenstein needs more time to conduct collateral interviews and complete his final evaluation of Gudinas and his case. Gudinas needs to make a complete evidentiary record for this Court's review. The expedited warrant period, which includes the death warrant

being signed the Friday before the Memorial Day holiday weekend, further distinguishes Gudinas's circumstances from precedent.

Moreover, Gudinas's Argument IV presents substantial grounds for relief. The State's Answer does not spend much time on the facts of Gudinas's case, which distinguishes his circumstances from the State's cited precedent. A stay is warranted so that this Court can remand to the circuit court, to resolve the abuse of discretion concerning the denial of records from the Executive Office of the Governor ("EOG"). Gudinas's case is concerning, unique, and requires this Court's intervention outside of the confines of the truncated warrant schedule.

A stay of execution is appropriate "when there are 'substantial grounds upon which relief might be granted.'" *Chavez v. State*, 132 So. 3d 826, 832 (Fla. 2014) (quoting *Buenoano v. State*, 708 So. 2d 941, 951 (Fla. 1998)). This Court may enter a limited stay to meaningfully consider complex legal claims even if, on first appearance, the possibility of relief appears remote. *See King v. Moore*, 824 So. 2d 127, 128 (Fla. 2002) (Harding, J., concurring) (agreeing with the issuance of a stay due to the "possibility" of merit, despite prior actions by the United States Supreme Court "seemingly

send[ing] a clear message" that no relief was due). This Reply Brief is due a mere **thirteen days** prior to Gudinas's scheduled execution, which is clearly an insufficient time period to resolve these complex legal issues.

REPLY TO ARGUMENT I

At this stage of his proceedings, Gudinas simply seeks to make a testimonial record at an evidentiary hearing. Gudinas makes this claim based on the facts in his case. He does not seek a broad-based rule that "every death warrant requires a second evidentiary hearing on psychological mitigation." AB at 36. Indeed, every case is different. Gudinas must have a fair opportunity to show that the Constitution prohibits his execution, as the death penalty is the gravest sentence. *Hall v. Florida*, 572 U.S. 701, 724 (Fla. 2014). Argument I is not a mere claim regarding how "newly discovered evidence" would show a reasonable probability for a life sentence. AB at 35. Gudinas's myriad of mental health conditions places him outside of the class of people who should even be subject to the death penalty. Based on United States Supreme Court ("USSC") precedent, a person with a proven intellectual disability cannot be sentenced to death, full stop. *Atkins v. Virginia*, 536 U.S. 304 (2002). Similarly, a person who committed

their capital crime prior to age eighteen cannot be sentenced to death. *Roper v. Simmons*, 543 U.S. 551 (2005). The policy reasons behind those holdings apply to Gudinas's severe mental illnesses and his severe mental impairments.

Besides a modern interpretation of Gudinas's substantial mitigation, Dr. Hyman Eisenstein also found evidence of significant brain impairment and frontal lobe dysfunction. Just because Dr. Upson did not find indications of brain impairment thirty years ago does not necessarily mean he was correct, and nor does it necessarily mean he was wrong. AB at 46. We need an evidentiary hearing for a fact finder to assess the evidence. Dr. Upson's findings are based on thirty-year-old data, and there has been no factual determination regarding whether he did the same testing that Dr. Eisenstein has access to with modern science that has evolved over the past **twenty-five years** into the current twenty-first century.

If the death penalty is to be reserved to those cases that are the "most aggravated and least mitigated," we cannot ignore how science evolves. Scientific understanding does not change overnight. The nature of scientific progress—and what makes such evidence so important and reliable—is inherently incremental. As Justice

Sotomayor recently observed, "because science evolves slowly rather than in conclusive bursts, it can be hard to pinpoint when someone should have discovered [newly-discrediting evidence] through the exercise of reasonable diligence." *McCrory v. Alabama*, 144 S. Ct. 2483, 2486 (2024) (statement of Sotomayor, J., respecting the denial of certiorari) (internal quotation marks omitted; alteration in original). It defies our understanding of science and life experience, to opine that thirty-year-old scientific evidence should not be reconsidered in a modern light.

The federal district court summarized a claim regarding how Gudinas was attacked by the State at trial as follows:

> 1. Mr. Ashton called Gudinas a maniac: "She had time to think what this maniac was going to do to her in this dark and secluded alleyway."
> 2. Mr. Ashton called Gudinas a monster: "I suggest to you ladies and gentlemen, this is not a mental or emotional disturbance. He is not psychotic. He was not under the influence of some schizophrenic disease. He is simply being Thomas Gudinas. And Thomas Gudinas is a monster. Deep into his heart and soul, he is a monster. That's what he was. That's what he is. That's part of him. If you take that away there is no Thomas Gudinas."
> 3. Mr. Ashton called Gudinas "an evil human being."
> 4. Mr. Ashton called Gudinas bad to the bone: "Some people are born bad. They're bad to the bone. Thomas Gudinas is bad to the bone. He has never done a good thing in his life. He has never done a single thing to help himself or help anyone else. All he has brought to our

> society is evil. And he is bad to the bone. There is, unfortunately, as sad as it is to say, such things as a bad boy. And you see one in front of you."
> 5. Mr. Ashton told the jurors Gudinas cannot be cured: "Some people you just don't cure. There's some people you just can't cure."

Gudinas v. McNeil, 2010 WL 3835776 (M.D. Fla. 2010) at 36-37. None of those horrible things said about Gudinas or his character are true. Gudinas is severely mentally ill. The behavior of his parents before he was born is not his fault. His genetics are not his fault. The fact that Gudinas was abused emotionally, physically, and sexually as a child with a developing brain, is not his fault. Gudinas was a victim of that severe abuse and his severe mental illness, which affects him even to this day.

Attached to Gudinas's Initial brief as Appendix B are writings showing how severely mentally disturbed he remains, thirteen days prior to his execution. Reading Appendix B page for page proves that Gudinas's imminent execution is rendered constitutionally impermissible by our society's evolving standards of decency. Deterrence and retribution are not served with Gudinas's execution because:

1. People suffering from the level of mental illness Gudinas did at the time of offense are incapable of being deterred by the death penalty.

2. It is hardly a fair retribution if Gudinas had little capacity at the time of the offense to act rationally and avoid the conduct.

3. Like the intellectually disabled, Gudinas's mental illness affected his ability to rationally make decisions regarding his crime.

In conjunction with Arguments II and III, this Honorable Court, and each individual justice on this Court, has the power to change the law in Florida. Executing a person as mentally ill as Gudinas would be a grave tragedy and serves neither social purpose- deterrence or retribution- enumerated by the USSC as justification for our society's continued implementation of the death penalty. *See Atkins*, 536 U.S. at 319. Relief is proper.

REPLY TO ARGUMENT II

The State incorrectly asserts that Gudinas fails to show how this Court's reliance on Florida's conformity clause violates his federal constitutional rights. AB at 54-55. The State asserts that the conformity clause says nothing about how Florida courts interpret federal constitutional rights such as the Eighth Amendment. AB at

55. However, the provision plainly references the interpretation of the federal Eighth Amendment by stating that Florida courts' construction of the state prohibition against cruel and unusual punishment must be "construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the ***Eighth Amendment to the United States Constitution.***" *See* Art. I, § 17, Fla. Const. (emphasis added).

Further, the in-practice effect of the language of the provision clearly impacts how Florida courts are allowed to interpret defendants' claims raised under the federal Eighth Amendment and has clearly impacted how this Court has interpreted such claims. *See Ford v. State*, 402 So. 3d 973, 978 (Fla. 2025) (relying in part on conformity clause to reject defendant's claim that his death sentence was unconstitutional under *Roper* "and the Eighth and Fourteenth Amendments"); *Covington v. State,* 348 So. 3d 456, 479-480 (Fla. 2022) (relying in part on conformity clause to refuse to consider defendant's claim that "this Court should reconduct its proportionality analysis to ensure accordance with the Eighth Amendment's prohibition against cruel and unusual punishment");

Bowles v. State, 276 So. 3d 791, 796 (Fla. 2019) (citing the conformity clause to reject defendant's claim that his "execution would constitute cruel and unusual punishment" "because the United States Supreme Court has made clear that capital punishment does not constitute cruel and unusual punishment under the Eighth Amendment of the federal constitution"); *Lightbourne v. McCollum*, 969 So. 2d 326, 328, 334-35 (Fla. 2007) (citing the conformity clause when analyzing "[t]he main issue in [Lightbourne's] case [which was] whether Florida's current lethal injection procedures violate the Eighth Amendment to the United States Constitution").

It is obvious that Florida's conformity clause affects how Florida courts interpret capital defendants' federal rights, and the State's assertion that the conformity clause "simply doesn't affect" Gudinas's Eighth Amendment claim is incorrect. *See* AB at 55. Florida's conformity clause violates Gudinas's federal Fourteenth Amendment due process rights and Eighth Amendment right against cruel and unusual punishment by foreclosing him the opportunity to fully litigate his evolving standards of decency claim. *See* IB at 32-37.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful

manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Gudinas and other capital defendants attempting to challenge the state of capital punishment law under evolving standards of decency cannot have their claims heard in a meaningful manner if Florida consistently refuses to conduct any Eighth Amendment analysis beyond what the USSC has previously conducted at the time that a claim is raised.

The State further argues that "nothing in the Eighth Amendment forces state courts to expand the Supreme Court's Eighth Amendment jurisprudence." AB at 55. It is true that the Eighth Amendment does not require that state courts expand the USSC's Eighth Amendment jurisprudence. However, Florida's self-imposed prohibition against any consideration of whether Eighth Amendment protections should be extended beyond the USSC's current precedent clearly violates due process. "The death penalty is the gravest sentence our society may impose" and capital defendants "must have a fair opportunity to show that the Constitution prohibits their execution." *See Hall v. Florida*, 572 U.S. 701, 724 (2014). Florida's conformity clause cannot and should not be used to deny

Gudinas the fair opportunity to show that the Eighth Amendment prohibits his execution.

The conformity clause has also enabled Florida to obstruct important aspects of the USSC's Eighth Amendment analysis, and hinders national progress related to evolving standards of decency. When the USSC is faced with determinations regarding whether societal standards of decency have evolved to the point of warranting additional Eighth Amendment protections, it looks to the actions of individual states, including their judicial practice. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 315-16 (2002); *Roper v. Simmons*, 543 U.S. 551, 559-60, 565-66 (2005) (tallying, as part of evolving standards analysis, the number of states that have embraced or abandoned a particular death penalty practice). Thus, although the federal constitution does not *require* a state court to offer more protection in a particular case than the USSC's jurisprudence has established, a state cannot *prohibit* itself wholesale from independently considering evolving standards of decency. By declaring itself unauthorized to engage in this independent action, Florida has abdicated its "critical role in advancing protections and providing [the USSC] with

information that contributes to an understanding" of how Eighth Amendment protections should be applied. *Hall*, 572 U.S. at 719.

Finally, the State incorrectly asserts that this claim is time-barred because Gudinas could have raised this claim in a successive motion for post-conviction relief after the 2002 voter approval and final addition of the conformity clause to the Florida constitution. AB at 57. However, this claim would have been premature and un-ripe for review if raised before now because it is raised in conjunction with the evolving standards of decency claim in Argument I. Gudinas could not have realistically known in 2002 how the Florida courts would utilize the conformity clause to potentially foreclose an evolving standards of decency claim that he would raise decades later following the signing of his active death warrant in 2025. *See* IB at 31-32. Relief is proper.

REPLY TO ARGUMENT III

The State incorrectly argues that this claim is both time and procedurally barred. AB at 59-60. Gudinas's claim challenging the constitutionality of Florida Rule of Criminal Procedure 3.851(d)(2) would not have been truly ripe for judicial review until after Gudinas's death warrant was signed, as Gudinas is only arguing that

Rule 3.851(d)(2) is unconstitutional when applied in the active death warrant context. Gudinas could not suffer the constitutional violation giving rise to this claim, and the matter could not be truly ripe for consideration, until his death warrant was signed and he was forced to litigate that warrant under the rule's strict dictates. *See State v. Oakley,* 515 So. 2d 1012, 1013 (Fla. 4th DCA 1987) (holding that defendant's pretrial challenge to a burden-shifting statute was not ripe "because prior to actual application of the alleged burden-shifting statute at trial, there can be no constitutional violation"); *see also State v. Newman,* 405 So. 2d 971, 972 (Fla.1981) (holding that a defendant's constitutional challenge to statute criminalizing possession of cocaine was ripe for adjudication "[o]nce defendant was charged under the statute" and explaining the defendant's claim was "not predicated upon unknown facts and hypothetical examples").

The State argues that Gudinas "knew he was under a sentence of death and at some point a warrant could be issued." AB at 60. While Gudinas may have known that at some point a warrant could be issued, it was not a foregone conclusion that Gudinas would ever receive an active death warrant after his 1995 death sentence or be attempting to litigate in the post-warrant context under the strict

dictates of Rule 3.851(d)(2). Like many inmates on death row, Gudinas could have lived the rest of his natural life and died of natural causes without ever facing an imminent execution.[1] It would have been premature for Gudinas to raise a challenge to Rule 3.851(d)(2)'s application in the post-warrant context when there was no way for him to know if he would ever actually have to litigate a warrant under that rule. Capital defendants realistically cannot and should not be expected to anticipate and preemptively litigate every possible future legal or factual issue that may arise in their case. Gudinas could not have known in the **thirty years** from his 1995 death sentence to his 2025 active warrant that he would ever be forced to litigate under the unconstitutionally strict requirements of Rule 3.851(d)(2) in a post-warrant context.

[1] A non-exhaustive list of inmates who have died of natural causes on death row includes: Margaret Allen, DOC #699575; Richard Lynch, DOC #E08942; Franklin Floyd, DOC #R30302; Steven Evans, DOC #330290; Guy Gamble, DOC #123096; Joseph Smith, DOC #899500; Charles Finney, DOC #516349; Donald Dufour, DOC #061222; Anthony Washington, DOC #075465; Lloyd Chase Allen, DOC #890793. Many more inmates that are still living have remained on Florida's death row for years, some even decades, without ever receiving a signed active death warrant.

The State incorrectly argues that Gudinas has failed to establish a violation of his due process rights by the stringent requirements of Rule 3.851(d)(2). Without revision, the stringent requirements of Rule 3.851(d)(2) will continue to prevent post-warrant capital defendants from being heard in a meaningful manner if the continued effect of the rule is to procedurally bar them from raising nearly all claims for relief during their last opportunity to litigate for their very life. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"). Gudinas's fundamental due process right to be heard in a meaningful manner will not be honored if he is denied the opportunity to be heard on his valid Eighth Amendment claim in Argument I based on Florida's unyielding procedural bar.

The State further argues that the victims in this case have the right for these proceedings to be "free from unreasonable delay" and "to a prompt and final conclusion." AB at 62 (citing Art. 1 §16(b)(10), Fla. Const.). The State incorrectly argues that granting additional time to litigate Gudinas's death sentence will violate the victims' rights in this case. AB at 62. Allowing Gudinas his due process right

to meaningfully litigate the current evidence of his severe mental impairments that weigh against his imminent execution violates no rights that the victims could have.

While victims' rights are both important and enshrined in the Florida constitution, they absolutely cannot and should not be invoked to deny Gudinas his last chance to litigate for his very life. Doing so would neither serve the purpose of Florida's constitutional amendment protecting victims nor honor the minimal requirements of our justice system. *See* William A. Buzzett and Deborah K. Kearney, *Commentary* (1988 Amendment), Art. I, § 16, Fla. Const. ("Subsection (b) was added to give constitutional recognition to the rights of crime victims … ***These rights are subordinate to the rights of the accused to the extent they would interfere with the accused's rights.")*** (emphasis added); *see also Armstrong*, 380 U.S. at 552 ("Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.") (internal quotation omitted). The USSC has recognized that "execution is the most

irremediable and unfathomable of penalties; that death is different." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (citing *Woodson v. North Carolina,* 428 U.S. 280, 305 (1976)). Without revision, Rule 3.851(d)(2) fails to make that same important recognition when applied in the post-warrant context.

The State is absolutely correct in asserting that "the signing of a death warrant does not mean that the rules of criminal procedure are no longer applicable." AB at 62. Gudinas is not asking for this Court to completely overhaul the rules of criminal procedure, as he narrows his argument to the application of Rule 3.851(d)(2) in the post-warrant context. The circumstances under which the criminal procedure rules apply are rendered significantly different enough once a warrant is signed to reconsider how those rules are applied in the post-warrant context. This difference in circumstances is at least implicitly acknowledged by the fact that Florida Rule of Criminal Procedure 3.851 includes a separate section specifically for "After Death Warrant Signed." Fla. R. Crim. P. 3.851(h). This section acknowledges that the post-warrant context is different, for example stating that "[p]roceedings after a death warrant has been issued shall take precedence over all other cases" for the purpose of

scheduling. Fla. R. Crim. P. 3.851(h)(2). However, the current procedural rules under which Gudinas must now litigate his final effort to preserve his life do not go far enough in acknowledging how different the post-warrant context is, and they are unconstitutional when applied to Gudinas in his current warrant litigation. IB at 44-51. Relief is proper.

REPLY TO ARGUMENT IV

The State refuses to explicitly engage in the facts for this Argument, beyond vague references. AB at 73. Cases are decided based on facts in evidence. On May 29, 2025 on the record in court and again in his IB at 52-67, Gudinas thoroughly explained the facts in support of this claim. The facts in support of this claim are unique, incredibly concerning, and warrant this Court's intervention. The Governor's office may not choose someone for a death warrant if the reasoning behind that choice violates the United States Constitution. All citizens in this country must abide by the Constitution. No person, not even a president, is above the law. *United States v. Nixon*, 418 U.S. 683 (1974).

The State's AB at 66 argues that precedent controls this claim, citing *Jimenez v. State*, 265 So. 3d 462, 472 (Fla. 2018) and *Chavez*

v. State, 132 So. 3d 826, 830-31 (Fla. 2014). That simply is not true. The *Jimenez* cite regards a rejection of that defendant's public records demand to the Florida Department of Corrections ("FDOC") under Rule of Criminal Procedure 3.852(h)(3). Not only does Gudinas's demand also include Rule of Criminal Procedure 3.852(i), unlike Jimenez, Gudinas has provided a detailed factual basis regarding how his records are relevant to colorable claims for relief. This is not some standard "forms bank," post-warrant request for records. Rather, Gudinas's case is very irregular, and the requested records will further shed light on to what extent his Eighth Amendment and Fourth Amendment rights have been violated.

Chavez, 132 So. 3d at 830-31 is completely unavailing for these proceedings. Gudinas is not challenging the "sufficiency of his clemency proceedings," and nor is he seeking records from the EOG as part of some broad-based inquiry into a lethal injection claim. Therefore, a review of the lower court's reasoning does not comport to the "precedent" set by those cases – at all. Gudinas's case may be one of first impression, because it would otherwise be inconceivable that he would receive a death warrant under the circumstances that led to his May 23, 2025 death warrant.

Gudinas will reiterate here another synopsis of the facts of his case, as those facts relate to his request for records from the EOG. These facts are incredibly concerning, and neither the State nor the lower court spends much time explicitly considering these facts- for example, that Gudinas and his counsel received Gudinas's signed death warrant a mere **forty-nine days** after his clemency interview. As counsel argued at the May 29, 2025 hearing and in the IB at 63, it would be "naïve and irresponsible" not to request more information, in an investigation to protect Gudinas's constitutional rights.

Despite the number of capital postconviction attorneys practicing in Florida, and the amount of post clemency warrant eligible men on death row, one of Gudinas's undersigned counsel under this warrant, Attorney Ali Shakoor, is litigating his fourth separate death warrant since July 29, 2024; that is four separate death warrants for the same specific undersigned counsel, in less than a year.[2] The irregularity is further established by the fact that

[2] *See* Loran Cole, DC #335421 (Executed August 29, 2024); James Ford, DC #763722 (Executed February 13, 2025); Glen Rogers, DC #124400 (Executed May 15, 2025) and Thomas Gudinas, DC #379799 (Warrant Signed May 23, 2025).

Gudinas's counsel of record, Attorney Ali Shakoor, has been served by the executive branch on **three** death warrant cases, of which Attorney Shakoor was never counsel of record.[3] Moreover, the peculiar nature of Gudinas's clemency proceeding and warrant selection is demonstrated by the fact that his clemency interview occurred on April 4, 2025, followed by the death warrant being submitted less than two months later on May 23, 2025. The requested records will establish to what extent these irregular and concerning factors violated Gudinas's rights to a fundamentally fair clemency process.

Attorney Shakoor is one of fourteen attorneys that work for Capital Collateral Regional Counsel-Middle Region. Capital Collateral Regional Counsel-North Region has four lead attorneys and three second chairs. Capital Collateral Regional Counsel-South Region has five lead qualified attorneys. As of August 14, 2024, the Justice Administrative Commission website lists thirty-five attorneys on the Capital Collateral Attorney Registry. Based on this data, Attorney

[3] *See* Michael Tanzi, DC #K04389 (Served on March 10, 2025); Jeffrey Glenn Hutchinson, DC #124849 (Served on March 31, 2025); Anthony Floyd Wainwright, DC #123847 (Served on May 9, 2025).

Shakoor is one of sixty-one attorneys practicing capital postconviction law in this state. The Florida Department of Corrections website currently lists 271 people on Florida's death row. The *specific* number of people who have gone through clemency is unknown and is one of the subjects of Gudinas's records demand. However, considering the number of death eligible inmates and practicing capital collateral attorneys, it defies statistical probability for Thomas Gudinas to be Attorney Shakoor's fourth death warrant in less than one year. Additional scrutiny is required.

The peculiarity of Gudinas's death warrant is further highlighted by the fact that Attorney Shakoor was served on three separate death warrants for clients he does not represent. SC/205-06. Again, Attorney Shakoor is just one of approximately sixty-one lead counsel practicing capital postconviction in Florida; a mere lawyer, Attorney Shakoor is not the appointed head of any CCRC and nor does he have the authority to assign anyone to work on a death warrant. Still, Attorney Shakoor was served by counsel for the Governor, Attorney Zachary Loyed, on the following cases:

Michael Tanzi, DC #K04389 (Served on March 10, 2025); Jeffrey Glenn Hutchinson, DC #124849 (Served on March 31, 2025); Anthony Floyd

Wainwright, DC #123847 (Served on May 9, 2025). Attorney Shakoor further explained at the May 29, 2025 hearing that serving him in error inhibits the already expedited process for the proper attorneys and clients, who should be properly served. SC/206, 209. The information regarding who represents individuals on death row is public accessible on the Internet. The focus on Attorney Shakoor, one of approximately sixty-one practicing postconviction attorneys, is peculiar and concerning.

This fact pattern shows that the lower court abused its discretion in denying Gudinas's demand for records. Gudinas's request was reasonable and reasonably calculated to lead to the discovery of admissible evidence that could support colorable claims for relief. *See* Fla. R. Crim. P. 3.852(i). The defense has repeatedly offered to accept a streamlined demand, and Gudinas's request is not overly broad or unduly burdensome to the EOG. The requested records are imperative to investigating the very concerning facts surrounding the signing of Gudinas's death warrant. Gudinas has also met his pleading requirements for the records under Fla. R. Crim. P. 3.852.

Gudinas cannot know with absolute certainty what the exact

fruit of the records requests will be, but Gudinas need only prove that the requested records are "either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence" in order to be granted access to the records. *See* Fla. R. Crim. P. 3.852(i).

Gudinas has met this burden, and based on the specific and irregular fact pattern provided above, Gudinas intends to discover:

> 1. Whether, and to what extent Gudinas's Eighth Amendment and due process rights pursuant to the Fourteeth Amendment are being violated due to irregular and unique circumstances in which his death warrant was signed.
> 2. Whether and to what extent Gudinas's Eighth Amendment and equal protection rights pursuant to the Fourteeth Amendment are being violated due to irregular and unique circumstances in which his death warrant was signed. SC/206-08.
> 3. Whether Florida's lack of criteria in determining or procedure in determining whom to execute is arbitrary and capricious leading to an absurd result that violates the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

The fact pattern leading to and including the selection of Gudinas for death, supports these colorable claims for relief. Indeed, as argued in the demand:

> The requested information is relevant to the subject matter of a proceeding under Rule 3.851 or appears reasonably

> calculated to lead to the discovery of admissible evidence that Florida's clemency process, and the manner in which the Governor determined that Gudinas should receive a death warrant on May 23, 2025, was arbitrary and capricious in violation of the Eighth and Fourteenth Amendments to the United States Constitution. *Furman v. Georgia*, 408 U.S. 238, 310 (1972). The Governor's choice among available candidates ultimately determines who gets executed and who gets to die in prison. The execution is arbitrarily imposed on only a small subset of those who received a death sentence. Unique factors regarding Gudinas's death warrant require greater scrutiny via the disclosure of the requested records, to make sure Gudinas's Eighth and Fourteenth Amendment rights are not being violated.

SC/142-43.

The State citing *Parole Commission v. Lockett,* 620 So. 2d 153, 157-58 (Fla. 1993), is helpful to Gudinas as it provides him the opportunity to again show how reasonable he is regarding this claim. This Court in *Parole Commission*, granted the State's Writ of Prohibition, in part, because the lower court granted the demand for records without allowing the EOG to be heard, nor was there an option for "in camera review," with counsel for the State. Gudinas, on the other hand, included the EOG in his demand and counsel for the EOG, Zachary Loyed, appeared at the May 29, 2025 hearing on Gudinas's request for records. On remand, Gudinas could discuss the parameters of a possible in camera review with counsel for the

State. Gudinas is being reasonable in protecting his rights under the Eighth and Fourteenth Amendments by requesting the records from the EOG.

Based on a reading of the lower Court's order and the State's AB, one could surmise that a Florida Governor could sign a death warrant on anyone on death row post clemency, **for any reason at all**, irrespective of the United States Constitution. Hypothetically, a Governor could sign a death warrant every month, on the same attorney's clients, **for any reason all**, irrespective of the Constitution. We know that this is not true and would not be constitutional. The time has come for judicial intervention to show that the Governor's discretion in signing death warrants is not "unfettered," and that he is not immune from following the United States Constitution. Relief is proper.

CONCLUSION

Based on the foregoing arguments, Gudinas respectfully requests that this Court: remand his case for an evidentiary hearing; vacate his sentence of death; grant a stay of execution; and/or grant any other relief it deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 11th day of June, 2025, WE electronically filed the foregoing Reply Brief by using the Florida Courts E-Filing Portal which will send a notice of electronic filing to the following: The Honorable John E. Jordan at Division 16, 16orange@ninthcircuit.org; Assistant State Attorneys Kenneth Nunnelley, at knunnelley@sao9.org; William Jay, at WJay@sao9.org; Assistant Attorneys General Leslie Campbell at Leslie.Campbell@myfloridalegal.com, capapp@myfloridalegal.com, Lisa-Marie Lerner, Lisamarie.Lerner@myfloridalegal.com; Julie Meyer, Julie.Meyer@myfloridalegal.com capapp@myfloridalegal.com, and the Florida Supreme Court, at warrant@flcourts.org.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Reply Brief of the Appellant has been produced in Bookman Old Style 14-point font. This brief complies with the requirements of Fla. R. App. P. 9.210(a)(2)(D), as it has approximately 5,456 words of the allowed 6,500.

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