

**IN THE SUPREME COURT OF FLORIDA**

Case No. SC 2025-1722

**DEATH WARRANT SIGNED; EXECUTION SCHEDULED:  
NOVEMBER 20, 2025 at 6:00 P.M.**

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**RICHARD RANDOLPH,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

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ON APPEAL FROM THE SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR PUTNAM COUNTY, FLORIDA

Lower Court Case No. 88-CF-1357

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**REPLY BRIEF OF THE APPELLANT**

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## **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 United States Constitution And The Corresponding Provisions Of The Florida Constitution. The Warrant Court Should Have Granted An Evidentiary Hearing And Should Have Granted Relief.**

Mr. Randolph timely alleged that due to the progression of his lupus and its effect on his lung function within the last year, Florida's three-drug protocol will result in Mr. Randolph experiencing pulmonary edema- which is without dispute incredibly painful - and experience serious illness and an unnecessarily painful death. The warrant court, and this Court, must accept those facts as true unless they are refuted by the record. The facts Mr. Randolph alleged demonstrates that his execution would be in violation of the Eighth Amendment, which prohibits such a death because it is cruel and unusual under a most basic definition of those terms.

The State, in its Answer Brief argues that Mr. Randolph's claim is untimely because he has suffered from lupus all his life and the current protocol has been in effect since 2017, and, that Randolph

failed to identify any specific symptoms of pain he might experience, (AB- 2), and that his identified alternative methods fail under U.S. Supreme Court precedent. The State’s arguments must fail because they are factually and legally incorrect as will be set out more fully below. This Court must intervene and grant Mr. Randolph an evidentiary hearing so that he may establish his claim.

**A. The State Relies On Inaccurate Assertions Of Law And Fact As To Timeliness**

The State’s argument begins with an incorrect statement of fact and law:

Randolph waited until his death warrant was signed to challenge Florida’s lethal injection protocol that has been in effect since 2017—and he based his challenge on a lifelong disease. On top of that, Randolph failed to link that disease to any specific symptom or condition to show how it would allegedly interfere with the lethal injection protocol. Given that the claim was untimely, insufficiently pled, and meritless, the lower court appropriately denied this claim without an evidentiary hearing. The denial of relief requires affirmance.

AB-20-21. <sup>1</sup>

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<sup>1</sup> While this argument by the State is a red-herring, Mr. Randolph did not wait until the warrant was signed to begin investigating concerns that due to his current medical condition he would experience severe pain and suffering, beyond that of an individual without a condition of poor lung function like Mr. Randolph. Mr. Randolph was delayed in raising his claim, although it was still timely, due to State action.

The State's argument that Mr. Randolph's claim is untimely is premised in part on the fact that Mr. Randolph was first diagnosed with lupus in 1990. The warrant court raised this issue based on the court's review of old medical records from the Department of Corrections indicating Mr. Randolph was first diagnosed with lupus in 1990. But to the extent the State and the warrant court suggest this fact is a basis to deny Mr. Randolph's claim, this is wrong and also is the product of a factual determination made without an evidentiary hearing. Mere diagnosis of lupus would have been an insufficient factual and legal basis to plead an as-applied lethal injection claim. Lupus is a progressive disease that damages the body and its organs as time passes. Mr. Randolph could not bring his claim earlier because the disease had not progressed to the point of a constitutional concern at the time of mere diagnosis. What matters for an as-applied lethal injection claim is Mr. Randolph's physical

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Specifically, Mr. Randolph needed to provide updated medical records from the Florida Department of Corrections to provide to his expert. Mr. Randolph requested updated medical records from the Florida Department of Corrections and asked that they be expedited. The Department of Corrections declined to provide the records in an expedited manner, even though they are clearly able to do so as they have provided records in warrant cases in 24 to 48 hours.

condition and whether his condition has progressed to the point where Florida's method of execution will be unconstitutionally painful as-applied to Mr. Randolph. It was only within the last year that his lupus damaged his organs, particularly his lungs, enough to create an Eighth Amendment issue. And because those are the facts that were pleaded, the warrant court and this Court must accept them as true. The State is trying to argue facts which are not supported by the record, e.g. that merely because Mr. Randolph was diagnosed with lupus he should have raised his claim. The State's argument, and the warrant court's determination, flies in the face of the most basic medical knowledge and is unsupported by any record facts.

Mr. Randolph was working to file a fully developed lethal injection claim prior to the Governor signing Mr. Randolph's warrant but was delayed due to State action as noted supra. However, because the Governor signed Mr. Randolph's warrant, Mr. Randolph was given mere days to file a fully pleaded motion sufficient to justify a hearing. He did so, but the warrant court denied him a hearing that would have allowed him to prove his claim and answer the sophistic arguments of the State.

The caselaw the State relies on is inapplicable. By way of example, the State frames the holding of *Cole v. State*, 392 So. 3d 1054 (Fla. 2024) as “rejecting a method-of-execution claim as untimely when Cole ‘failed to raise any argument related to the method of execution until after the Governor signed a death warrant.’” AB 23

The State fails to acknowledge the important fact that Mr. Randolph at least challenged a method execution - - the electric chair. Claim 21 of his initial postconviction motion argued that execution by electrocution violates Mr. Randolph's rights under the Eighth and Fourteenth Amendment rights. *See* WR-400. By the time that Mr. Randolph completed postconviction and appealed, Florida had allowed for lethal injection. This may not be determinative but it shows that Mr. Randolph had been pursuing claims regarding method of execution. More importantly it shows the problem of raising a method of execution claim before a warrant is signed. In Mr. Randolph’s case, he raised the unconstitutionality of electrocution which became moot before he could complete his appeal. This shows the problem with raising a claim such as this too early.

**B. Mr. Randolph Alleged Sufficient New Facts**

The State argued 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.” *Rogers v. State*, 409 So. 3d 1257, 1267 (Fla. 2025). AB 24 Mr. Randolph clearly showed that the new facts are that his lupus had risen to a level of an Eighth Amendment claim when the prior executions are considered. Mr. Randolph specifically asserted that he would experience severe pain, super-added pain, due to his poor lung function. There was no evidence to refute this allegation offered by the State. The warrant court abused its discretion and erred as a matter of law when it denied Mr. Randolph an evidentiary hearing, access to this State’s lethal injection records which demonstrate a grave risk of pulmonary edema for those who are executed under Florida’s archaic three-drug protocol. Moreover, the court erred as a matter of law when it accepted the State’s allegations, which were wholly unsupported by the record, as true, when it was Mr. Randolph’s allegations that the court was required to accept as correct, absent conducting an evidentiary hearing.

**C. Mr. Randolph Identified Readily Available Alternatives In Compliance With *Baze*, *Glossip* And *Bucklew***

The State takes the remarkable position that Mr. Randolph failed to sufficiently plead alternative methods. AB-30-32. *Baze v. Rees*, 535 U.S. 35 (2008), *Glossip v. Gross*, 576 U.S. 863 (2015), and *Bucklew v. Precythe*, 587 U.S. 119 (2019) stand for the proposition that “an inmate must show that his proposed alternative method is not just theoretically feasible but also readily implemented.” *Bucklew* 587 U.S. at 141 (internal citations and quotation marks omitted). In *Bucklew*, the court criticized Bucklew for suggesting execution by nitrogen gas but failing to describe how the gas would be administered, how prison staff would be protected from noxious fumes and how a gas chamber could be readily constructed. *Id.* “Rather than point to a proven alternative method, Mr. Bucklew sought the adoption of an entirely new method—one that had never been used to carry out an execution and had no track record of successful use. *Id.* at 142 (internal quotations omitted). “The Eighth Amendment prohibits States from dredging up archaic cruel punishments or perhaps inventing new ones, but it does not compel a State to adopt untried and untested (and thus unusual in the constitutional sense) methods of execution.” *Id.* (internal quotations omitted). However, a state may not refuse to adopt a readily available

alternative “without a legitimate penological reason.” *Id.* at 134.

Mr. Randolph, pleaded readily available alternative methods, pentobarbital with fentanyl or firing squad with a kill shot to the head or chest. Neither of these methods have been held unconstitutional. Execution by firing squad has been held constitutional by the U.S. Supreme Court as noted in Mr. Randolph’s Initial Brief. IB-42. Mr. Randolph further stated that other states, including the federal government, have been able to obtain pentobarbital within the last decade, and other states have used the firing squad. WR-405. These factual assertions are true, and regardless, the warrant court and this Court must accept them as true absent being refuted by the record or demonstrated unreliable after an evidentiary hearing.

Indeed, the Court, in denying Bucklew’s claim, noted that, the district court “afforded Mr. Bucklew ‘extensive discovery’ to explore the viability” of his proposed alternative, and allowed evidentiary development on his claim. *Id.* at 141. Bucklew’s as-applied challenge was only denied after an evidentiary hearing. “Moreover, to the extent the record is unclear on any of these issues, Mr. Bucklew had ample opportunity to conduct discovery and develop a factual record concerning exactly what procedures the State planned to use.” *Id.* at

142. Mr. Randolph has been denied the ability to present his claim and the warrant court made factual determinations without allowing discovery or factual development.

The State is simply refusing to consider, or allow Mr. Randolph to demonstrate, that a readily available alternative is available. The State is refusing to implement a readily available alternative that would not produce super-added pain to Mr. Randolph, and is doing so without a legitimate penological reason. This is most easily demonstrated by the fact that both methods are allowed pursuant to Florida law. As noted in Mr. Randolph's Initial Brief, the Florida Legislature 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). None of the cases that the State relies on were decided after this law went into effect.

Mr. Randolph pleaded each element of a lethal injection claim and the warrant court's refusal to allow discovery or evidentiary development for his as-applied challenge, based on the State's meritless arguments, violated Mr. Randolph's Fifth, Sixth and Eighth

Amendment rights. Mr. Randolph's lupus has progressed to the point that he will suffer unnecessary illness and substantial and severe pain due to the State's lethal injection protocol; he has identified two constitutional and readily available alternatives, about which the State has refused to even allow evidentiary development, and has refused to implement for no valid penological reason. Mr. Randolph's assertions must be considered as true under Florida law and this Court should allow evidentiary development.

## **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 United States Constitution And Corresponding Provisions Of The Florida Constitution, And The Proceedings Further Ran Afoul Of The Requirement for Heightened Reliability in Capital Cases.**

Considering the stakes of warrant litigation and the current pace of death warrants the State's argument that "the summary denial of Randolph's untimely, procedurally barred, and meritless lethal injection claim should be affirmed" must fail. AB-32. This is especially true in this case because Mr. Randolph has been diligent

in raising his claims.

Prior to the signing of his warrant. Mr. Randolph pursued two claims that he still was not given the time to develop. First, rather than wait for a warrant Mr. Randolph raised a claim regarding his finding of his biological parents. Mr. Randolph investigated and pleaded a significant claim regarding this important mitigation which the sentencing jury never heard. The postconviction court denied relief and this Court affirmed on appeal. *Randolph v. State*, 403 So. 3d 206, 208-209 (Fla. 2024).

Then, after Mr. Randolph's lupus created a constitutional issue with his lethal injection under Florida's February 18, 2025 "Florida Department of Corrections: Execution by lethal injection procedures." WR-467. Mr. Randolph did a record demand to the FDOC for his updated medical records on June 13, 2025, and finally receiving those records on September 15, 2025. Mr. Randolph's attorneys consulted with Dr. Zivot on June 9, 2025, formally retained him on August 1, 2025, but could not send the updated DOC records until they were received. They were sent to Dr. Zivot October 1, 2025. The Governor signed Mr. Randolph's warrant on October 21, 2025, requiring Mr. Randolph to draft his claim in a hurried nature.

Additionally, Mr. Randolph was able to obtain an expert on prison adaptation for his clemency related claim within the five business days he had to file a fully pleaded Rule 3.851 motion. Mr. Randolph's counsel worked continuously on his motion. It is not effect of the warrant on counsel, but the effect on counsel's ability to develop and plead all viable claims for Mr. Randolph. Counsel did everything they could under the time limits. Nevertheless, the State points to hyper-technical pleading requirements that the State alleges Mr. Randolph failed to meet. Mr. Randolph pleaded more than sufficient claims to warrant an evidentiary hearing but the State convinced the warrant court that Mr. Randolph's claims did not require an evidentiary hearing. As argued above, this was especially true regarding Mr. Randolph's lethal injection claim.

If the courts are going to insist upon hyper-detailed pleadings, hyper-detailed public records requests and every fact be established in 25 pages<sup>2</sup>, counsel needs more time. This is especially true if

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<sup>2</sup>Mr. Randolph requested that he be able to comply with the pleading requirements listing the prior claims in postconviction and on appeal by attachment to the motion. The warrant court, based on the State's argument, denied Mr. Randolph additional pages, listing this information in an attachment, or incorporation of the State's Statement of Facts and Procedural History. Mr. Randolph complied

courts will not grant an evidentiary hearing and a mounting body of this Court's case law forecloses relief. Counsel needs more time to adequately plead the claims counsel selects and to fully consider all possible claims.

The same is true with regard to Mr. Randolph's right to public records. Mr. Randolph had less than 24 hours to submit public record requests. This was insufficient to determine what Mr. Randolph needed to request and to supply the detail that approaches a fully pleaded claim under the warrant court and the State's understanding of what is a colorful claim. Mr. Randolph needed public records to plead his claims and ensure his pending execution does not violate the U.S. Constitution. The warrant procedures rendered his right to do so no right at all.

The procedure with which Mr. Randolph was forced to comply, denied Mr. Randolph's rights to substantive and procedural due process under the Fifth and Fourteenth Amendments to the United States Constitution as well as the Eighth Amendment's and Fourteenth Amendment's requirement of reliability.

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with the warrant court's order, but this left Mr. Randolph less room and was laborious.

The State asserts in its brief that:

Randolph's challenge to the warrant period is untimely and procedurally barred. His convictions and sentence became final decades ago, and he has had extensive opportunities to litigate postconviction and habeas matters. Also, a notice of finality was filed in 2013. Randolph's assertion of surprise at the warrant schedule is inconsistent with the lengthy notice afforded by years of litigation and established law.

Florida's warrant schedule does not violate due process. This Court has consistently rejected "under warrant" arguments that a compressed warrant period denies meaningful opportunity to be heard. *See Tanzi*, 407 So. 3d at 390-91; *Barwick*, 361 So. 3d at 789; *Zakrzewski v. State*, 415 So. 3d 203 (Fla. 2025). **Due process is satisfied when a defendant is provided notice and an opportunity to be heard.** *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Randolph received both.

AB-33-34. (Emphasis added). The State fails to acknowledge the difficulty in developing final claims in a matter of days and presenting those claims in full. Of course, the State is also more than willing to capitalize on any perceived inadequacy in the pleadings. The State also fails to acknowledge that the right to be heard must be meaningful. "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)) (emphasis added). “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)). Mr. Randolph faces imminent execution. His right to be heard at a “meaningful time and in a meaningful manner” could not be greater.

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.**

Based on the State’s cited authority, the State argued that:

Randolph’s claim concerning alleged inadequacies in the clemency process fails as a matter of law. Clemency rests entirely within the executive’s constitutional domain, and the judiciary is neither empowered nor obligated to supervise or second-guess that discretion. The postconviction court properly deemed this claim meritless, and this Court should affirm.

AB-40. The State also quoted *Herrea v. Collins*, 506 U.S. 390, 411–12 (1993), as describing “clemency as the “fail-safe” of the criminal justice system, emphasizing that executive mercy is the traditional

means to correct any residual injustices after full judicial review.” AB-40. This was exactly what Mr. Randolph was denied.

Mr. Randolph’s penalty phase took place many years ago in 1988. He is not the same person today that he was then. The evidence of his character that exists today was not available at his trial and had not fully developed by the time there was a clemency investigation. The need for an updated consideration of Mr. Randolph’s character was particularly necessary because his penalty phase presented little to almost no mitigation and failed to adequately allow the sentencers to consider his development and potential for rehabilitation. In other words, Florida’s death penalty system did an inadequate job of determining whether death was the appropriate sentence for Mr. Randolph.

Mr. Randolph should have received a new penalty phase where all of his mitigation could be considered. The courts have denied him this right. When the courts failed him, Mr. Randolph should have had recourse through the clemency process to state his case for life. *See Herrera* at 411–12.

Since the time of Mr. Randolph’s clemency investigation, important evidence has developed. Mr. Randolph was not given an

opportunity to provide information since his original clemency review in 2014. Mr. Randolph offered four types of evidence in the warrant court and his initial brief: 1. Good behavior while incarcerated; 2. medical condition; 3. faith; and, 4. recent relationship with birth-mother. The evidence showed essential information that should be considered in determining whether Mr. Randolph lives or dies. Mr. Randolph, since his clemency interview has improved himself, developed a better understanding of himself and made contributions to the prison community. In short, he is not the same person who committed this crime, nor is he the same person who the clemency board reviewed in 2014.

Mr. Banasco, a prison adjustment expert explained and would have testified:

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 (emphasis added). In other words, incarcerating Mr. Randolph for life poses no threat to correctional officers or the other inmates. There is no need to take his life. Mr. Randolph's good behavior was an accomplishment that should be considered in a

meaningful clemency proceeding. Executing Mr. Randolph will be a gross miscarriage of justice which clemency is meant to remedy.

The other factors likewise show Mr. Randolph's ability to lead a productive life in prison and the contributions he can make if he lives. While Mr. Randolph will have to deal with his untreated lupus, he would also be able to continue to develop a relationship with his birth mother and newly found half-brother. Those family members will also avoid the execution of their recently found half-brother and son.

**A. 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.**

This Court should finally consider that whatever information the Governor used to make his decision to sign Mr. Randolph's warrant and deny clemency, Mr. Randolph has had no opportunity to rebut any untruthful findings or to ensure that the findings accurately encompassed his character and any argument in favor of clemency. Mr. Randolph was not heard at his clemency proceedings in any meaningful way.

A clemency denial which is triggered by the signing of a death warrant suggests that no meaningful clemency review occurred. Mr.

Randolph is now scheduled to die, and he does not know whether it was the result of a careful and complete process or just chance. Mr. Randolph deserves more, and despite the case law denying him this right, the Constitution requires more. This Court should reverse.

#### **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.**

#### **A. Mr. Randolph Public Records Litigation Under Warrant**

The State asserts the warrant court acted within its discretion by sustaining all objections and denying Mr. Randolph any records. AB-40.

Mr. Randolph correctly sought public records when the Governor signed his death warrant and the State proposed a scheduling order that provided 24 hours for records demands. Mr. Randolph's filing of 3.852 (h) (for those whose cases were final prior to 1998) and (i) demands are exactly the types of demands contemplated by the rules for demands under warrant. 3.852(h)(3) provides:

Within 10 days of signing the of a defendant's death warrant,

collateral counsel may request in writing the production of public records from an agency or person for which collateral counsel has previously requested public records.

Furthermore, 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, colleteral counsel shall file an affidavit in the trial court which: . . .

Seeking public records after a warrant for execution is signed is expressly contemplated by the rules. The State in their response brief to this court limited their argument about Mr. Randolph's 3.852(h) demands to a footnote. AB-41. This Court at a minimum should require (h) demands, updates on records from agencies that previously provided records, without sustained objections that are not established by any proof, merely just words, "burdensome" being the most common, overused, and least established. In this case, not one agency even tried to make a showing as to why record production was burdensome on their agency, nor did the warrant court require it.

There is no better proof of this then the prompt responses of the State Attorney's Office, the Office of the Attorney General, and the Putnam County Sherriff's office that they did a diligent search and

there were no additional records. This undermines the warrant court's findings that Mr. Randolph's requests were overly broad, unduly burdensome, or indicative of a fishing expedition. The warrant court erred in sustaining objections to requests that were actually complied with, as urged by the State, in an effort to thwart future attempts by defendants under warrant from seeking or receiving any discovery. "Randolph fails to explain how the court abused its discretion in resolving this claim when the records do not exist." (AB-41, fn. 6.) The warrant court should have simply found that the agencies complied with the demands, and not sustained unsupported objections.

Modern discovery production and record retention technology significantly reduces the burdens of providing public records within the time constraints of a death warrant. The Putnam County Sheriff's Office, the Attorney General and the State Attorney proved this in this case. In most cases, agency personnel might enter a few search terms, download responsive records, and transfer them via email. Redaction may be required. But this, too, is expedited by modern tools.

Either way, agencies bear the burden of showing an undue

burden. This showing should require some consideration for the actual burden imposed in light of the processes and technologies the agency would employ. Mr. Randolph's or any defendant under warrant's access to discovery should not be undermined by unexplained assertions of undue burden. This is particularly true when, as here, the records do not exist.

### **B. Lethal Injection Records**

The State in their response brief to this Court points to the current state of the law in Florida, and the defense has acknowledged that. But public records related to lethal injection are particularly relevant to Mr. Randolph's ability to evaluate the risk of a tortuous death he may face if executed using Florida's lethal injection protocol.

There was nothing wrong with requesting the warrant court reserve ruling for 24 hours (the amount of time remaining for Mr. Randolph to file his 3.851 motion) in order to analyze the demands in conjunction with the Claims alleged in his 3.851 motion. The warrant court issued its ruling the same day as the public records hearing.

The U.S. Supreme Court has required two fact-intensive showings in order to prove a lethal injection challenge: (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 v. Precythe*, 587 U.S. 119, 134 (2019). But Mr. Randolph was precluded from obtaining the records to plead his claim with more factual detail.

As-applied challenges to lethal injection methods *can* violate the United States Constitution and *can* warrant a finding of an Eighth Amendment violation. However, through the State’s rote objection to the production of any records, and the courts’ rote denial of defendants’ requests, inmates like Mr. Randolph have been denied due process and a meaningful ability to plead their lethal injection claims in Florida.

Mr. Randolph cannot make these showings without access to discovery. But, he cannot access discovery without first making these showings. State discovery rules cannot preclude federal constitutional challenges by hiding the relevant facts behind a veil of secrecy. Nor would such a result be consistent with Rule 3.852,

which “was never intended to, and, indeed, [can]not, diminish a citizen’s constitutional right to access to public records.” *In re Amends. to Fla. R. Crim. P.–Cap. Postconviction Recs. Prod.*, 683 So. 2d 475, 477 (Fla. 1996) (Anstead, J., 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.”).

If there is any truth to the State’s position “that records regarding to lethal injection are unlikely to lead to a colorable claim” even when the claim is an as-applied challenge, then Florida has effectively deprived capital defendants of meaningful access to the courts. Medical knowledge and expertise advances with each year that passes; states adopt different methods of execution as the years pass. Society’s standards also continue to evolve. It has been almost ten years since *Asay v. State*, 224 So. 2d. 695 (Fl. 2017), where the court held an evidentiary hearing and took testimony ‘on whether lethal injection as administered in this State comports with the Eighth Amendment. And *Asay* did not involve an as-applied

challenge. Rote denial of records requests precludes inmates from the right to claim an as-applied challenge.

### **C. Colorable Claims**

Mr. Randolph was required to show that under Rule 3.852(i), demands to agencies he had not previously sought records from, that his demands related to colorable claims. His demands were directly tied to the as-applied lethal injection challenge that he brought relying on not just a diagnosis of lupus, but the progression of that illness, and the pain he will suffer through the state's method of execution. He was not required to prove his colorable claim just to access the necessary discovery. The warrant court should have granted Mr. Randolph's requests and this Court should overrule any adverse precedent that kept these records from Mr. Randolph.

### **D. Clemency Records**

The State asserts in their response:

Under section 14.28, of Florida Statutes, all clemency records "shall be confidential and exempt" from production. This Court has determined that "clearly, records relating to the clemency process are confidential and exempt[.]" *Zakrzewski*, 415 So. 3d at 213. There was no abuse of discretion here.

AB-45.

While Mr. Randolph acknowledges this Court's precedents but

respectfully submits that the lower court denied Mr. Randolph due process in denying access to the requested clemency records in this case.

Mr. Randolph submits that the facts and circumstances under which he was denied clemency and chosen for execution are unique and troubling. Mr. Randolph's 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 Reply 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 5310.

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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 10, 2025.

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