Nos. 25-5261; 25A136

In the Supreme Court of the United States

BYRON LEWIS BLACK,
PETITIONER

v.

FRANK STRADA AND KENNETH NELSEN,
RESPONDENTS

ON APPLICATION FOR STAY OF EXECUTION AND ON
PETITION FOR WRIT OF CERTIORARI
TO THE TENNESSEE SUPREME COURT

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTIONS PRESENTED

1. Does this Court have jurisdiction to review the Tennessee Supreme Court's application of Tennessee procedural law in determining a state trial court's jurisdiction?

2. Did the Tennessee Supreme Court ensure due process when it reviewed a method-of-execution claim on the merits from a developed evidentiary record?

3. If the merits of the Eighth Amendment claim are properly before this Court, did the Tennessee Supreme Court correctly apply *Glossip v. Gross*, 576 U.S. 863 (2015) to a method-of-execution challenge, when petitioner has neither established a likely risk of needless suffering, nor carried his burden of identifying a feasible, readily implemented alternative method of execution?

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INTRODUCTION

Almost four decades ago, Byron Lewis Black executed a mother and her two young daughters. He shot six-year-old Lakeisha in the chest and pelvis, then left her to bleed out on the floor of her room as she attempted to crawl for help. Black now asks this Court to stay his execution because his implantable cardioverter-defibrillator (ICD) *might* activate during the execution and that *might* occur before he is unconscious—with expert testimony concluding that neither is likely. This Court should deny Black's stay request and deny the petition for certiorari.

As a threshold matter, this Court lacks jurisdiction to review the Tennessee Supreme Court's July 31 decision. Pet. Appx. 1-7. That decision held that the state trial court exceeded its authority by placing conditions on the Tennessee Supreme Court's execution order. In other words, the decision only resolved the scope of a state trial court's jurisdiction to modify an order of the Tennessee Supreme Court. That is "entirely a question of state procedure [and state jurisdiction], presenting no Federal question for review here." *Rogers v. Peck*, 199 U.S. 425, 435 (1905). So the July 31 decision provides no avenue to review Black's Eighth Amendment challenge.

The Tennessee Supreme Court did address the merits of Black's Eighth Amendment challenge in its August 1 order. Resp. Appx. at 1-10. In doing so, the court pretermitted any due-process argument stemming from the earlier denial of merits review by providing the review sought. *Id*. at 10 n.6. And it properly applied this Court's governing standard from *Glossip v. Gross*, 576 U.S. 863 (2015). *Id*. at 8-10. As the Tennessee Supreme Court recognized, Black neither established a likely

risk of needless suffering, nor carried his burden of identifying a feasible, readily implemented alternative method of execution. *Id.* at 8-10. To this date, Black has not identified a medical provider available and willing to deactivate his ICD. It is the State that has worked (and continues to work) for avenues to resolve Black's disputed defibrillator concerns—despite having no burden or legal obligation to do so. Pet. Appx. at 7 (Tennessee Supreme Court noting, perhaps because of the State's efforts, that "nothing" in its July 31 order "prevents the parties from reaching an agreement regarding deactivation … should it become feasible"). At bottom, *Glossip* places the burden on Black, and he failed to carry that burden. The factbound application of this Court's settled standard does not call for further review.

Nor should this Court condone Black's delay tactics. He waited more than a year after the implantation of his ICD—and almost five months after the setting of his execution—to seek relief. And by demanding a particular method of deactivation immediately before his execution, Black's requests seem more aimed at creating infeasibility rather than obtaining relief. Even when the State offered to deactivate Black's ICD at a local hospital (which has since refused to participate) the day before his execution, Black *opposed* that effort. Resp. Appx. at 3. The State's "strong interest" in finality and the surviving victims' right to closure demand a stop to Black's "abusive delay" tactics through "last-minute attempts to manipulate the judicial process." *Gomez v. U.S. Dist. Court*, 503 U.S. 653, 654 (1992); *see also* Tenn. Const. art. I, § 35.

STATEMENT

A. Legal Background

1. The U.S. Constitution permits capital punishment.

The Eighth Amendment to the U.S. Constitution "allows capital punishment." *Bucklew v. Precythe*, 587 U.S. 119, 129 (2019). That approval reflects the death penalty's status as an "accepted punishment at the time of the adoption of the Constitution and the Bill of Rights." *Glossip*, 576 U.S. at 867-68.

"[B]ecause it is settled that capital punishment is constitutional, it necessarily follows that there must be a constitutional means of carrying it out." *Id.* at 869 (quoting *Baze v. Rees*, 553 U.S. 35, 47 (2008) (plurality op.)). That "recognition" has "animated" this Court's interpretation of the cruel-and-unusual punishment prohibition. *Id.* A few general principles from the precedents are particularly relevant here.

To begin, "the Eighth Amendment does not guarantee a prisoner a painless death—something that, of course, isn't guaranteed to many people, including most victims of capital crimes." *Bucklew*, 587 U.S. at 132-33. After all, "[s]ome risk of pain is inherent in any method of execution—no matter how humane—if only from the prospect of error in following the required procedure." *Baze*, 553 U.S. at 47. If the Eighth Amendment "demand[ed] the elimination of essentially all risk of pain," that "would effectively outlaw the death penalty altogether." *Glossip*, 576 U.S. at 869. So the mere fact that "an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish the sort of 'objectively

intolerable risk of harm' that qualifies as cruel and unusual." *Baze*, 553 U.S. at 50 (quoting *Farmer v. Brennan*, 511 U.S. 825, 842, 846, and n.9 (1994)).

Instead, the cruel-and-unusual-punishment provision prohibits only "long disused (unusual) forms of punishment that intensified the sentence of death with a (cruel) superaddition of terror, pain, or disgrace." *Bucklew*, 587 U.S. at 133 (citation omitted). That emphasis on the State's "malevolence," *Baze*, 553 U.S. at 50, in carrying out a "wanton infliction of pain," *Abdur'Rahman v. Bredesen*, 181 S.W.3d 292, 306 (Tenn. 2005), reflects Founding-era history. As ratified, the cruel-and-unusual-punishment provision draws from the English Bill of Rights "to ensure that the new Nation would never resort" to "certain barbaric punishments" previously practiced. *City of Grants Pass v. Johnson*, 603 U.S. 520, 542 (2024). Among them: "disemboweling, quartering, public dissection, and burning alive," *id.*, as well as "the use of the rack or the stake," "breaking on the wheel, flaying alive, rending asunder with horses, maiming, mutilating, and scourging to death," *Bucklew*, 587 U.S. at 131 (cleaned up). Uniting these off-limits methods is their "unnecessary cruelty"—meaning the method chosen "savored of torture" and reflected the executioners' being "pleased with hurting others." *Id.* at 130-31.

To help draw that line, this Courts looks to the modes of execution the Eighth Amendment was understood to forbid with those it was understood to permit. Hanging was the predominant method of execution at the Founding and for decades thereafter. *Glossip*, 576 U.S. at 867. Yet "[m]any and perhaps most hangings were evidently painful for the condemned person because they caused death slowly."

Bucklew, 587 U.S. at 132 (quoting S. Banner, *The Death Penalty: An American History* 48 (2002) (Banner)). But hanging's use was "virtually never questioned" under the Eighth Amendment. *Id.* (quoting Banner, *supra*, at 48). As this Court observed, hanging's lawful status presumably reflects that it was not "intended to be painful"; instead, the risk of pain involved was considered "unfortunate but inevitable." *Id.* at 131 (quoting Banner, *supra*, at 170). The court has employed similar reasoning to uphold death by firing squad, *Wilkerson v. Utah*, 99 U.S. 130, 134-135 (1879), the electric chair, *In re Kemmler*, 136 U.S. 436 (1890); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463-464 (1947) (plurality opinion) (upholding electrocution of prisoner despite initial failed attempt), and lethal injection, *Bucklew*, 587 U.S. 119; *Glossip*, 576 U.S. 863; *Baze*, 553 U.S. 35.

To sum up: The U.S. Constitution does not "demand the avoidance of all risk of pain in carrying out executions," meaning a method is permissible even if pain occurs by "accident or as an inescapable consequence of death." *Bucklew*, 587 U.S. at 130, 134. Instead, punishments are constitutionally suspect only when the method "'superadds' pain well beyond what's needed to effectuate a death sentence." *Id.* at 137. Any other rule would impermissibly coopt "courts to serve as boards of inquiry charged with determining best practices for executions," "with each ruling supplanted by another round of litigation touting a new and improved methodology." *Id.* at 134 (citation omitted); *Baze*, 553 U.S. at 101.

2. Method-of-execution claims face an "exceedingly high bar" to prevail.

This Court "has yet to hold that a State's method of execution qualifies as cruel and unusual." *Barr v. Lee*, 591 U.S. 979, 980 (2020) (per curiam) (quoting *Bucklew*, 587 U.S. at 133). "[U]nderstandably so." *Bucklew*, 587 U.S. at 133. Tennessee and other States, working "through the initiative of the people and their representatives," have historically endeavored to adopt "less painful modes of execution." *Id.*

Courts facing method-of-execution claims like Black's apply a two-prong test. *See Bucklew*, 587 U.S. at 133-34. Challengers face an "exceedingly high bar" to relief. *Barr*, 591 U.S. at 980. The demanding two-step standard reflects that "the Constitution affords a measure of deference to a State's choice of execution procedures." *Bucklew*, 587 U.S. at 134. It also helps prevent "method-of-execution claims from becoming a backdoor means to abolish the death penalty." *Id.* at 137 (cleaned up).

First, an inmate must establish that a given method "presents a risk that is *sure or very likely* to cause serious illness and needless suffering and give rise to sufficiently imminent dangers." *Glossip*, 576 U.S. at 877 (cleaned up). That means a "wanton exposure to objectively intolerable risk" and "not simply the possibility of pain." *Baze*, 553 U.S. at 61-62 (cleaned up).

Second, the inmate must "show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason." *Bucklew*, 587 U.S. at 134. "A minor reduction in risk is insufficient; the difference

must be clear and considerable." *Id.* at 143. Further, a challenger must establish that the State "could carry . . . out" the alternative method "'relatively easily and reasonably quickly.'" *Id.* at 141 (citation omitted).

3. Tennessee employs a "mainstay" method of execution.

Tennessee adopted lethal injection as a method of execution in 1998, Tenn. Code Ann. § 40-23-114 (Supp. 1998), because it was widely touted as a "more humane" alternative to "electrocution." *State v. Adkins*, 725 S.W.2d 660, 664 (Tenn. 1987); *see State v. Suttles*, 30 S.W.3d 252, 264 (Tenn. 2000) (citing 1998 Tenn. Pub. Acts ch. 982; 2000 Tenn. Pub. Acts ch. 2000). Two years later, it became the State's default method of execution and has remained so ever since. Tenn. Code Ann. § 40-23-114 (Supp. 2000); *State v. Morris*, 24 S.W.3d 788, 797 (Tenn. 2000).

Earlier this year, Tennessee adopted a single-drug protocol that causes sedation and death through the injection of pentobarbital. As used in executions, pentobarbital works to "repress the brain's respiratory impulses, causing the body to become oxygen deficient and resulting in the cessation of cardiac activity." *West v. Schofield*, 519 S.W.3d 550, 556 (Tenn. 2017). But it causes "a quick and complete loss of consciousness" first. *Id.* at 557; *see id.* at 560–61.

Given its efficacy, the "single-dose pentobarbital" protocol has "been repeatedly invoked by prisoners as a *less* painful and risky alternative to the lethal-injection protocols of other jurisdictions." *Barr*, 591 U.S. at 980. That goes for Black too. *See Abdur'Rahman v. Parker*, 558 S.W.3d 606, 612 (Tenn. 2018)**Error! Bookmark not defined.** (*Abdur'Rahman II*) (inmates cited single-dose pentobarbital as

"alternative" preferred method). This Court recognizes that "pentobarbital . . . can reliably induce and maintain a comalike state that renders a person insensate to pain." *Glossip*, 576 U.S. at 870-71.

For that reason, pentobarbital "has become a mainstay of state executions." *Barr*, 591 U.S. at 980. As of 2020, it had "been used to carry out over 100 executions, without incident." *Id.* And its use has been upheld by this Court, federal circuit courts, and several state courts of last resort. *See, e.g., Bucklew*, 587 U.S. at 119; *Whitaker v. Collier*, 862 F.3d 490, 497-99 (5th Cir. 2017); *Jones v. Comm'r*, 811 F.3d 1288, 1296 (11th Cir. 2016); *Zink v. Lombardi*, 783 F.3d 1089, 1098-1101 (8th Cir. 2015); *Gissendaner v. Comm'r*, 779 F.3d 1275, 1283 (11th Cir. 2015); *West*, 519 S.W.3d at 564-65; *State ex rel. Johnson v. Blair*, 628 S.W.3d 375, 388-90 (Mo. 2021) (en banc); *Owens v. Hill*, 758 S.E.2d 794, 802-03 (Ga. 2014); *Valle v. Florida*, 70 So.3d 530, 541 (Fla. 2011).

B. Factual Background

Almost four decades ago, Black brutally murdered his girlfriend, Angela Clay, and her two young daughters, Latoya (age nine) and Lakeisha (age six), amid a jealous lover's quarrel. *State v. Black*, 815 S.W.2d 166, 170-72 (Tenn. 1991). About a year before the murders, Angela separated from her husband, Bennie Clay, and started dating Black. *Id.* at 170. But "at times she was seeing both." *Id.* And in December 1986, "during a dispute over Angela," Black shot Bennie twice, chased him down the street, and "stood over him" with a cocked gun before Angela pushed him away. *Id.* at 170-71. Black pleaded guilty to the non-lethal shooting but received a

workhouse sentence that allowed weekend furloughs. *Id.* at 171.

With Black on furlough, the violence continued. He kicked in the front door of Angela's apartment when she refused to let him enter. *Id.* at 172. He later threatened Angela: "If I can't have you, won't nobody have you." *Id.* Three weeks before the murders, Angela's neighbor heard Black again threaten to kick in Angela's apartment door. *Id.* And days before the killings, Black was seen arguing with her. *Id.*

Tragically, early in the morning on March 28, 1988, Black murdered Angela, Latoya, and Lakeisha in their Nashville home.

Police first found the bodies of Angela and nine-year-old Latoya in the master bedroom. Angela had been shot in the head while asleep in her bed. *Id.* at 171. Latoya was found wedged between the bed and a chest of drawers. *Id.* She had been shot once through the neck and chest while lying in bed. *Id.* But death was not instantaneous; she bled out over the course of three to ten minutes. *Id.*

In the other room, police found the body of six-year-old Lakeisha lying face down on the floor next to her bed. *Id.* She had been shot once in the chest and once in the pelvis while lying in bed. *Id.* at 171-72. "Abrasions on her arm indicated a bullet had grazed her as she sought to protect herself from the attacker." *Id.* at 172. And "bloody finger marks . . . running from the head of the bed to the foot of the bed" showed that the six-year-old struggled before her death. *Id.*

Trial evidence clearly pointed at Black. *Id.* at 175. He was with the victims the evening they were murdered. *Id.* He had been fighting with Angela just days

before, having previously threatened to kill her. *Id*. Inside the victims' house, police found the receiver from the kitchen phone in the master bedroom. *Id*. at 172. And the phone from the master bedroom was lying in the hallway between the two bedrooms. *Id*. Black's fingerprints were recovered from both phones. *Id*.

Ballistics evidence also directly tied Black to the murders. The evidence showed that the same weapon fired the .44 caliber bullet recovered from Latoya's pillow, the .44 caliber bullet removed from Lakeisha's body, a bullet fragment recovered from the automobile driven by Bennie the day Black shot him, and the .44 caliber bullet removed from Bennie's body. *Id*. at 173. So, Black used the same gun to murder Angela and her children that he had previously used to shoot Bennie.

The night the bodies were discovered, the police interviewed Black. *Id*. at 172. When a detective informed Black that his girlfriend was found murdered in her apartment, he initially looked distraught, and he began crying. *Id*. But when two other detectives entered the interview room, Black's demeanor changed, the tears ceased, and he became "dull." *Id*.

Black initially claimed that the last time he saw Angela was about 10 p.m. the previous night, when he dropped her off at her mother's house after picking her up from work. *Id*. But during a later interview, Black admitted returning to Angela's house that night, finding the victims dead inside, and simply leaving because he "didn't want to get involved." *Id*. at 173. After seeing his girlfriend and her children dead, Black said he simply went to his mother's house and "got . . . at least seven or eight hours of sleep." *Id*. He did not report the deaths or tell anyone what he had

seen that night until his third police interview. *Id.*

C. Procedural Background

A jury convicted Black of murdering Angela, Latoya, and Lakeisha, under "six aggravating circumstances." *Id.* at 170. He was sentenced to death. *Id.*

1. Black's death sentence withstands exhaustive review.

The Tennessee Supreme Court affirmed Black's convictions and death sentence on direct appeal in 1991. *Id.* For decades after, Black attempted to overturn his convictions and death sentence in state and federal courts. He unsuccessfully sought relief under the Tennessee Post-Conviction Procedure Act. *Black v. State*, No. 01C01-9709-CR-00422, 1999 WL 195299, at *1 (Tenn. Crim. App. Apr. 8, 1999). He then failed to obtain federal habeas corpus relief. *Black v. Carpenter*, 866 F.3d 734 (6th Cir. 2017), *cert. denied Black v. Mays*, 584 U.S. 1015 (2018). And these were just some of Black's failed attacks on his criminal judgment.

Over the last decade, *Black* also mounted three unsuccessful method-of-execution suits. When Tennessee first began using a single-drug pentobarbital protocol for executions in 2013, Black challenged that protocol and lost. *West*, 519 S.W.3d at 552 n.1. After Tennessee stopped using pentobarbital in executions due to unavailability, Black sued again in state court to force its use for his execution. *Abdur'Rahman II*, 558 S.W.3d at 612 n.6. When that effort failed, Black asked the federal district court to force the use of pentobarbital for his execution. *Smith v. Parker*, No. 3:19-CV-01138, 2020 WL 1853593, at *6 (M.D. Tenn. Apr. 13, 2020). But the district court dismissed that suit as precluded by *Abdur'Rahman II*, and Black

did not appeal. *Id.* at *9.

2. Black attacks Tennessee's mainstay execution method.

On March 3, 2025, the Tennessee Supreme Court set Black's execution for August 5, 2025. *Black v. State*, No. M2000-00641-SC-DPE-CD (Tenn. Mar. 3, 2025) (order). Two weeks later, Black filed a fourth method-of-execution suit, more than two months after Tennessee adopted its second single-drug pentobarbital protocol. Pet. Appx. at 4. His complaint raised seven claims, including an as-applied Eighth Amendment challenge to the protocol's alleged failure to account for his individual medical conditions. *Id.*

On June 30, 2025, Black moved the trial court for an injunction requiring the State to deactivate his ICD via a particular method immediately before, or simultaneously with, the execution. *Id.* at 2. He claimed that his ICD would inflict severe pain by shocking him after the administration of a lethal dose of pentobarbital. *Id.*

The State opposed Black's motion, arguing that the trial court lacked authority to enjoin his execution and that his only avenue for relief from his execution is a motion to the Tennessee Supreme Court. *Id.* The State also argued that Black could show no likelihood of success on the merits of his method-of-execution challenge. *Id.*

The trial court held a hearing on the injunction motion. *Id.* at 5. The proof showed that Black's ICD was implanted on May 24, 2024—more than a year before he sought injunctive relief. *Id.* at 14, 32. The parties' experts agreed that Black's ICD is set to pace his heart if the rate drops below 60 beats per minute and to deliver

a shock when he experiences ventricular fibrillation with a heart rate exceeding 220 beats per minute. Resp. Appx. at 5; Pet. Appx. 14, 32.

But the parties offered competing expert proof about whether a lethal injection dose of pentobarbital would cause any ICD shocks during Black's execution and whether he would be insensate if shocks occurred. Dr. Litsa Lambrakos, the State's cardiology expert, testified that Black was unlikely to experience an arrythmia that would trigger his ICD to deliver a shock during the execution. Resp. Appx. at 8. And Dr. Joseph Antognini, the State's anesthesiology expert, explained that the execution dose of pentobarbital is ten times the clinical dose and would render Black "profoundly unconscious" and unable to feel any shocks from his ICD. *Id*. at 6, 8; Pet. Appx. at 15, 33.

Dr. Gail Van Norman, Black's anesthesiology expert, disagreed. Resp. Appx. at 8; Pet. Appx. at 15, 33. She believed that Black's ICD would likely shock him during the execution based on a study documenting that one-third of one hundred patients with an ICD who died in a hospital experience a shock in the last twenty-four hours of life. Resp. Appx. at 5. But Dr. Van Norman admitted that the study did not distinguish shocks necessitated by ventricular fibrillation and those necessitated by a different arrythmia—ventricular tachycardia. *Id*. She also testified that an execution dose of 5000mg of pentobarbital would not render Black unconscious or unresponsive to stimuli and that he would experience this pain if he received a shock from his ICD during the execution. *Id*. But that opinion was based

on studies of patients who received significantly lower doses of pentobarbital than the lethal dose to be used in Black's execution. *Id*.

Black offered no proof that any medical professional was willing to deactivate his ICD shortly before his execution. *Id*. at 9.

Nonetheless, the trial court granted injunctive relief and directed the State to arrange for the attendance of qualified medical personnel at the execution to deactivate the ICD. Pet. Appx. at 39. The State moved to dissolve or modify the injunction and offered the declaration of TDOC's Assistant Commissioner, who confirmed that TDOC could not comply with the injunction because the medical providers at Nashville General Hospital who manage Black's ICD care were unwilling to deactivate the device at the execution. Resp. Appx. at 3; Pet. Appx. at 24. The trial court denied the State's request to dissolve the injunction but granted a modification authorizing the transport of Black to the hospital for deactivation of the ICD as early as possible on the morning of the execution. Pet. Appx. at 22, 24-25.

The State appealed and supplemented the record with a second declaration stating that the staff from Nashville General Hospital were now declining contact with the State and that public statements indicated the hospital's unwillingness to perform the procedure. Resp. Appx. at 9.

3. The Tennessee Supreme Court vacates the injunction and later denies a stay.

On July 31, the Tennessee Supreme Court vacated the trial court's injunction. Pet. Appx. at 1-7. It held that the trial court "exceeded its authority by effectively modifying and placing conditions upon [the] unconditional execution order." *Id*. at 5.

And it cited Tennessee's established rule that "a trial court has no power to enjoin or stay an appellate court order." *Id.* at 6 n.8.

Black then filed a motion to stay the Tennessee Supreme Court's execution order pursuant to Tenn. Sup. Court R. 12(4)(E). Resp. Appx. at 11-17. Under that rule, the Tennessee Supreme Court "will not grant a stay or delay of an execution date pending resolution of collateral litigation in state court unless the prisoner can prove a likelihood of success on the merits in that litigation." Tenn. Sup. Ct. R. 12(4)(E).

On August 1, the Tennessee Supreme Court denied Black's stay motion, holding that he is "unlikely to succeed on the merits" of his "as-applied constitutional challenge to Tennessee's lethal injection protocol." Resp. Appx. at 1. The court found that Black "has not established a likelihood of success on the first *Glossip* prong" because he "failed to show more than competing expert testimony as to whether the 2025 protocol is sure or very likely to cause needless suffering that would violate the Eighth Amendment if his ICD is not deactivated before pentobarbital is administered." *Id.* at 8. The court also found that Black "failed to establish a likelihood of success as to the second *Glossip* prong" because Black failed to carry his "burden … to identify a medical professional willing to perform the requested medical procedure." *Id.* at 8, 10.

REASONS FOR DENYING A STAY AND THE WRIT

Black's petition brings an unremarkable attack on the Tennessee Supreme Court's enforcement of an established, state jurisdictional rule: Tennessee trial courts

have no authority to modify an order of the Tennessee Supreme Court. This Court lacks jurisdiction to review that decision because it rests on a pure state law issue. That is, the July 31 order in case number M2025-01095-SC-RDO-CV currently before the Court provides no avenue for reviewing the merits of Black's Eighth Amendment claim. The Tennessee Supreme Court addressed the merits of that claim in a separate order from a separate proceeding in case number M2000-00641-SC-DPE-CD that is not pending this Court's review—shockingly, given its pertinence and the current tally of four pending stay applications.

Even setting aside that jurisdictional bar (and to spare this Court yet another filing), nothing about the questions presented warrants this Court's review. This Court grants a writ of certiorari "only for compelling reasons." Sup. Ct. R. 10. But Black's petition tees up no "compelling reason[]"—from Rule 10 or otherwise—to justify this Court's review. The petition does not suggest that the decision below "conflict[s] with the decision of a United States court of appeals on the same important matter" or "conflicts with a decision by a state court of last resort." Sup. Ct. R. 10(a). And it does not claim that the court below "departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court." *Id.* Rather, Black suggests the Tennessee Supreme Court violated due process by failing to engage the merits of his Eighth Amendment argument, without disclosing that the Tennessee Supreme Court's August 1 decision in case number M2000-00641-SC-DPE-CD does just that. And on the Eighth Amendment question, Black seeks error correction for a factbound application of this Court's established

Glossip standard—with no apparent error. There is no reason to grant certiorari or stay the execution, particularly given Black's inexcusable delay.

I. This Court Lacks Jurisdiction to Review the Decision Appealed.

In the decision from which Black seeks certiorari, the Tennessee Supreme Court resolved only the scope of a state trial court's jurisdiction to modify an order of the Tennessee Supreme Court. Pet. Appx. at 6. This Court lacks jurisdiction to review that decision because it rests solely on state-law grounds.

This Court holds "no supervisory power over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension." *Smith v. Phillips*, 455 U.S. 209, 221 (1982). As such, the court has consistently held that it will not address a federal question if the state-court decision rests on a state-law ground that is independent of the federal question and adequate to support the judgment. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). "A state ground of decision is independent only when it does not depend on a federal holding . . . and also is not intertwined with questions of federal law." *Glossip v. Oklahoma*, 145 S. Ct. 612, 624 (2025). "In the context of direct review of a state court judgment," as here, "the independent and adequate state ground doctrine is jurisdictional." *Coleman*, 501 U.S. at 729.

Here, the decision below rests on pure state-law grounds. The decision issued no holding on a federal question. Pet. Appx. at 5-6. And it was in no way "intertwined with questions of federal law." *Oklahoma*, 145 S. Ct. at 624. Just the opposite. The Tennessee Supreme Court cited only state court decisions, relied on a state court

procedural rule, and resolved the authority of a state trial court to modify an order of the state supreme court. Pet. Appx. at 5-6. That is about as state-driven a holding as it gets.

There is also little doubt that the state-law question decided here is adequate to support the judgment. "[A] violation of a state procedural rule that is firmly established and regularly followed will be adequate to foreclose review of a federal claim." *Cruz v. Arizona*, 598 U.S. 17, 25-26 (2023). The state rules that pretermitted a merits ruling on Black's Eighth Amendment argument are firmly established and regularly applied.

Tennessee Supreme Court Rule 12(4)(A) establishes the Tennessee Supreme Court's exclusive authority to order an execution date "[a]fter a death-row prisoner has pursued at least one unsuccessful challenge to the prisoner's conviction and sentence through direct appeal, state post-conviction, and federal habeas corpus proceedings." Tenn. Sup. Ct. R. 12(4)(E). It is also firmly established in Tennessee that "inferior courts must abide the orders, decrees and precedents of higher courts" and that the Tennessee Supreme Court's "adjudications are final and conclusive upon all questions determined by it, subject only to review, in appropriate cases by the Supreme Court of the United States." *Barger v. Brock*, 535 S.W.2d 337, 340-41 (Tenn. 1976).

These principles are routinely enforced. The Tennessee Supreme Court long ago held that "the [Tennessee] Court of Appeals has no authority to overrule or modify Supreme Court's [sic] opinions." *Bloodworth v. Stuart*, 221 Tenn. 567, 572, 428

S.W.2d 786, 789 (1968). Similarly, the court has held that trial courts do not "have jurisdiction to supersede a valid order of the [Tennessee] Supreme Court." *West v. Ray*, No. M2010-02275-SC-R11-CV (Tenn. Nov. 6, 2010) (order). Even in the specific execution context, the court has held repeatedly that no other Tennessee court has the "power to enjoin or stay an order of the Supreme Court of Tennessee." *Coe v. Sundquist*, No. M2000-00897-SC-R9-CV (Tenn. Apr. 19, 2000) (order vacating injunction); *Abdur'Rahman v. Parker*, No. M2018-01385-COA-R3-CV (Tenn. Ct. App. July 30, 2018) (order).

The decision that Black has appealed rests solely on the application of these firmly established and regularly applied state jurisdictional rules. Because the decision rests on state-law grounds that are independent of any federal question and adequate to support the judgment, this Court lacks jurisdiction to grant review. *Coleman*, 501 U.S. at 729. The entire basis of the decision below is "entirely a question of state procedure" and state jurisdiction, "presenting no Federal question for review here." *Rogers*, 199 U.S. at 435.

II. Black's Due-Process Claim Does Not Warrant Review.

With the Tennessee Supreme Court's invocation of state jurisdictional limits, Black claims that the State's highest court "deprives Mr. Black of both" "notice and the right to a hearing"—allegedly leaving him with "*no* apparent mechanism that actually permits Mr. Black to present the evidence necessary for him to assert her rights." Pet. at 14. What Black does not tell this Court is that such a mechanism does exist—a stay motion under Tennessee Supreme Court Rule 12(4)(E)—and that

Black did in fact file such a motion. Resp. Appx. at 11-17. More than that, the Tennessee Supreme Court *ruled on his stay request* in an August 1 order that Black has inexplicably failed to present to this Court. *Id.* at 1-11. Black's omission is telling. And it not only underscores the legal tactics pervading this at-all-costs attempt to delay justice, but it also highlights the utter lack of certworthy issues for review.

Under the U.S. Constitution, due process is satisfied when a claimant has "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)). Satisfying that capacious standard often does not demand the strictures of a judicial hearing. *See Parham v. J. R.*, 442 U.S. 584, 607-08 (1979). Indeed, this Court has long resisted "imposing upon the States . . . any procedural requirements beyond those demanded by rudimentary due process." *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970).

That is why when "full judicial hearings" take place, they are "considered the gold standard of due process." *King v. Marion Cir. Ct.*, 868 F.3d 589, 593 (7th Cir. 2017) (Easterbrook, J.) (citing *Marchant v. Pa. R.R.*, 153 U.S. 380, 387 (1894) and *Mathews*, 424 U.S. at 333). Because if "a full and fair hearing" in court followed by appellate review is "not due process of law, then the words can have no definite meaning as used in the Constitution." *Davidson v. City of New Orleans*, 96 U.S. 97, 105-06 (1877).

That is precisely what happened here—the "gold standard of due process."

King, 868 F.3d at 593. Black had a full and fair hearing at the trial court where he was allowed to "develop[] an evidentiary record." Resp. Appx. at 10 n.6. Full merits appellate review of the trial court's ruling was subsequently undertaken by the Tennessee Supreme Court in its August 1 order. *Davidson*, 96 U.S. at 105-06; *see Marchant*, 153 U.S. at 387. That is all the process he is due. *Id.*

Black's contrary arguments fail to account for his Rule 12(4)(E) stay motion—and the subsequent ruling thereon. Understandably, the subsequent full review by the Tennessee Supreme Court dooms any claim that he received insufficient process. *See Davidson*, 96 U.S. at 105–06; *Marchant*, 153 U.S. at 387. Indeed, the Tennessee Supreme Court made clear that it considered the "evidentiary record" developed by Black and reviewed the merits of his claim once he properly "presented his request to the Court directly under Rule 12(4)(E)." Resp. Appx. at 10 n.6. His due-process claim must fail.

In all events, Black's petition offers no "compelling reason[]" to justify this Court's review. Sup. Ct. R. 10. The petition identifies no split. *Id*. at 10(b). Nor does it point to any case law indicating that the Tennessee Supreme Court "departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court." *Id*. at 10(a). That alone is reason enough to deny Black's meritless due-process claim.

III. Black's Eighth Amendment Claim Does Not Warrant Review.

Similarly, rather than tee up the Tennessee Supreme Court's merits decision for this Court's review, Black hides it—refusing to even acknowledge or direct this

Court to the Tennessee Supreme Court's August 1 order. That is understandable. The Tennessee Supreme Court's factbound application of this Court's established *Glossip* test raises no certworthy issue. And on top of that, the decision is right. Black satisfies neither of *Glossip*'s two requirements. He cannot prove that needless suffering is very likely, and the "competing expert testimony" on that factual issue does not meet the "showing required to justify last-minute intervention." *Barr*, 591 U.S. at 981. Nor did Black bear *his burden* of proving a feasible, readily available alternative because he failed to identify a single medical professional willing to deactivate of his ICD on the morning of the execution using the Interrogator Method (Black's requested alternative).

A. *Glossip* governs Black's as-applied challenge.

Black argues that review is warranted to clarify whether and how the "*Baze*/*Glossip*/*Bucklew* framework" applies to medical-accommodation challenges like his. Pet. at 13. But *Bucklew* already resolved those questions.

Like Black, Bucklew challenged the State's lethal injection protocol by arguing it would cause him severe pain due to his particular medical condition. *Bucklew*, 587 U.S. at 125. He argued that the second *Glossip* prong should not apply when a medical condition renders an execution method manifestly cruel. *Id*. at 135. But this Court rejected that argument and held that "identifying an available alternative is a requirement of all Eighth Amendment method-of-execution claims alleging cruel pain." *Id*. at 136 (cleaned up). The Court "(re)confirmed that anyone bringing a

[method-of-execution claim] alleging the infliction of unconstitutionally cruel pain must meet the *Baze-Glossip* test." *Id*. at 140.

There is no unresolved question for this Court to resolve about the test applicable to Black's as-applied claim of cruel pain due a medical condition. Both *Glossip* prongs apply, including Black's "burden of showing a readily available alternative." *Id*. at 143. Black did not question this in the Tennessee Supreme Court. Resp. Appx. at 11-15. And the Tennessee Supreme Court's faithful application of this Court's test presents no compelling reason for this Court's review.

B. Black failed to prove that his ICD presents a risk that is sure or very likely to cause needless suffering.

The Tennessee Supreme Court correctly held that Black did not establish a likelihood of success on the first *Glossip* prong because he failed to show anything more than "competing expert testimony" as to whether his ICD is sure or very likely to cause needless suffering. Resp. Appx. at 6-8.

Black faces an "exceedingly high bar" to relief on his method-of-execution claim. *Barr*, 591 U.S. at 980. That he challenges the "mainstay" pentobarbital execution method only elevates that bar. *Id*. Pentobarbital "[h]as been used to carry out over 100 executions, without incident" and is "repeatedly invoked by prisoners as a less painful and risky alternative to the lethal injection protocols of other jurisdictions." *Barr*, 591 U.S. at 980. Its use has been upheld by this Court, federal circuit courts, and state courts of last resort. *See, e.g., Bucklew*, 587 U.S. at 119; *Whitaker*, 862 F.3d at 497-99; *Jones*, 811 F.3d at 1296; *Zink*, 783 F.3d at 1098-1101; *Gissendaner*, 779 F.3d at 1283; *West*, 519 S.W.3d at 564-65; *Johnson*, 628 S.W.3d at

388-90; *Owens*, 758 S.E.2d at 802-03; *Valle*, 70 So.3d at 541. That is, in part, because pentobarbital causes "a quick and complete loss of consciousness." *West*, 519 S.W.3d at 557. As this Court recognized, "pentobarbital . . . can reliably induce and maintain a comalike state that renders a person insensate to pain." *Glossip*, 576 U.S. at 870-71.

The State's experts opined consistent with that binding precedent and disproved any "sure or very likely" risk that Black would endure "needless suffering" from his ICD during the execution. *Glossip*, 576 U.S. at 877 (cleaned up); Resp. Appx. at 6, 8; Pet. Appx. at 15, 33. Black's experts disagree. But as the Tennessee Supreme Court recognized, competing expert testimony brings this case in line with the exact scenario—and, indeed, the exact same experts—that this Court confronted in *Barr*.

In *Barr*, this Court "considered expert proof from two of the same experts who testified in this case: Dr. Van Norman and Dr. Antognini." Resp. Appx. at 6. Dr. Van Norman opined that a pentobarbital execution would "render patients 'unresponsive' but still conscious and capable of experiencing the severe pain associated with flash pulmonary edema." *In re Fed. Bureau of Prisons Execution Protocol Cases*, 471 F. Supp. 3d 209, 219 (D.D.C. 2020). Dr. Antognini disputed those findings with a contrary opinion. *Id*. Even though the district court accredited Dr. Van Norman's opinion and granted a preliminary injunction, *id*. at 219, 225, this Court vacated the injunction, finding the "competing expert testimony" insufficient to warrant "last-minute intervention." *Barr*, 591 U.S. at 981.

The Tennessee Supreme Court rightfully held that the "same conclusion"

follows here. Resp. Appx. at 8. As in prior challenges to the federal execution protocol, "Mr. Black has failed to show more than competing expert testimony as to whether the 2025 protocol is sure or very likely to cause needless suffering that would violate the Eighth Amendment if his ICD is not deactivated before pentobarbital is administered." *Id*. The parties offered competing expert proof about whether "Mr. Black's ICD was likely to shock his heart after the administration of pentobarbital." *Id*. They also offered competing expert proof about whether, if such a shock occurred, "Mr. Black would be able to experience pain from the shock." *Id*. This battling of the experts is exactly the sort of proof this Court deemed insufficient to warrant a last-minute stay in *Barr*. The Tennessee Supreme Court's decision that the same conclusion should follow here presents no certworthy issue for this Court's review.

C. Black failed to carry his burden that ICD deactivation on the day of his execution is feasible and readily available.

In the alternative, the Tennessee Supreme Court also held that Black did not establish a likelihood of success on the second *Glossip* prong. Resp. Appx. at 8, 10. That prong requires Black to "identify an alternative method of execution that is feasible, readily implemented, and significantly reduces a substantial risk of severe pain." *Id*. at 8. "This means the inmate's proposal must be sufficiently detailed to permit a finding that the State could carry it out relatively easily and reasonably quickly." *Bucklew*, 587 U.S. at 141 (quotations omitted). The court below rightfully held that Black failed to carry that burden.

Black made zero effort to meet *his burden* of showing that his preferred method of execution—a lethal dose of pentobarbital after ICD deactivation by medical staff

in the execution chamber using the interrogator method—is a feasible and readily available option. *Bucklew*, 587 U.S. at 134. He presented no proof on the issue. And he identified no qualified medical personnel willing to perform his proffered alternative. None.

It is the State that has put in effort—and continues to work—to find avenues to resolve Black's disputed defibrillator concerns. To be clear, the State has no legal burden or legal obligation to find any alternative. That is the whole point of *Glossip*. Nonetheless, when the State was wrongfully enjoined below, it *did* attempt to arrange for deactivation at Nashville General Hospital. Resp. Appx. at 3. Unfortunately, Nashville General Hospital later decided that it "was unwilling to participate in the procedure." *Id.* at 9 n.5. Since then, the State has worked—and continues to work—to find alternatives. Pet. Appx. at 7 (Tennessee Supreme Court noting, perhaps because of the State's efforts, that "nothing" in its July 31 order "prevents the parties from reaching an agreement regarding deactivation … should it become feasible").

Whether the parties reach such an agreement or not, the point is that Black has offered nothing to show that his preferred method of execution is feasible. That dooms his argument, because it is his burden to establish that the State "could carry . . . out" the alternative method "'relatively easily and reasonably quickly.'" *Bucklew*, 587 U.S. at 141. He has not done so. He has not even tried to do so. And, again, a factbound application of the *Glossip* test does not call for this Court's review.

IV. Black's Tactical Delay Justifies the Denial of a Stay.

Finally, Black's tactical delay—requesting a stay a mere four days before his execution—is reason enough to deny review. "[A] stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). It is well known that "capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of a sentence of death." *Rhines v. Weber*, 544 U.S. 269, 277-78 (2005). "[I]t is the same strategy adopted by many death-row inmates with an impending execution: bring last-minute claims that will delay the execution, no matter how groundless." *Price v. Dunn*, 587 U.S. 999, 1008 (2019) (Thomas, J., concurring in denial of certiorari).

But "[l]ast-minute stays should be the extreme exception, not the norm." *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) (cleaned up). The State and victims have a "powerful and legitimate interest in punishing the guilty." *Calderon*, 523 U.S. at 556 (cleaned up). They also "have an important interest in the timely enforcement of a [death] sentence." *Bucklew*, 587 U.S. at 149 (cleaned up). In Tennessee, victims have the constitutional right to "a prompt and final conclusion of the case after the conviction or sentence." Tenn. Const. art. I, § 35. Once post-conviction proceedings "have run their course . . . finality acquires an added moral dimension." *Calderon*, 523 U.S. at 556. "Only with an assurance of real finality can the State execute its moral judgment in a case" and "the victims of crime move forward knowing the moral

judgment will be carried out." *Id.* "To unsettle these expectations is to inflict a profound injury." *Id.*

To avoid such injury, "the last-minute nature of an application that could have been brought earlier, or an applicant's attempt at manipulation, may be grounds for denial of a stay." *Bucklew*, 587 U.S. at 150 (cleaned up). Indeed, this Court applies "a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004).

That equitable presumption should foreclose a stay here. Black waited a mere four days before his execution and more than a year after implantation of his ICD to seek a stay from the Tennessee Supreme Court. He should have immediately alerted the State to his concerns about the ICD's potential interference with any lethal injection protocol. And he should have immediately moved the Tennessee Supreme Court for a stay in March 2025, after that Court set his execution date. *Black v. State*, No. M2000-00641-SC-DPE-CD (Tenn. Mar. 3, 2025) (order). Black was surely aware of that available procedure as shown by his two prior unsuccessful motions to stay in other cases still pending before this Court. Resp. Appx. at 1; *Black v. Tennessee*, Nos. 25-5129; 25A65 (U.S.); *Black v. Tennessee*, Nos. 25-5214; 25A118 (U.S.).

Instead, Black waited two weeks after his execution was set to file a fourth method-of-execution suit. He did not request "a speedy hearing" on that suit or otherwise ask the trial court to "advance it on the calendar," which could have resulted in an expedited final judgment on the merits. *See* Tenn. R. Civ. P. 57. And

he waited until June 30, 2025—another three and a half months—before seeking unauthorized injunctive relief. Pet. Appx. at 5. If Black had not yet thought to move the Tennessee Supreme Court for a stay of execution, the State's response to his injunction motion put him on notice of that sole avenue for relief. *Id*. at 2.

At any of these points, Black could have moved the Tennessee Supreme Court for a stay of execution. But he waited until four days before his execution to finally do so. And now he seeks to weaponize that delay. "The proper response to this maneuvering is to deny [Black's] meritless request[] expeditiously." *Price*, 587 U.S. at 1008.

CONCLUSION

The application for stay of execution and petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing document was emailed to petitioner's counsel, Kelley J. Henry, at kelley_henry@fd.org, on August 3, 2025, and a paper copy will be sent by first class mail to Ms. Henry, at 810 Broadway Ste 200, Nashville, Tennessee 37203-3861, on August 4, 2025.

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