*** CAPITAL CASE ***

No. _____

IN THE

Supreme Court of the United States

RONALD PALMER HEATH,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

EXECUTION SCHEDULED FOR FEBRUARY 10, 2026, AT 6:00 P.M.

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CAPITAL CASE
QUESTIONS PRESENTED

Florida plans to execute Ronald Heath on February 10, 2026. It is Florida's twentieth execution in the last 12 months—shattering all previous records for the State. Shortly before Heath's death warrant was signed, internal Florida Department of Corrections ("FDOC") records were published showing that, over the course of this unprecedented succession of executions, FDOC officials have on numerous occasions carried out lethal injection executions using expired drugs, incorrect dosages of drugs, and drugs not called for in the State's protocol. The records also reflect mishandling of drugs and other deviations calling into question FDOC's ability to properly maintain and transport lethal chemicals. And, during at least one recent execution, the inmate labored for 20 minutes before dying, manifesting outward signs of distress despite Florida's use of a paralytic drug, which generally masks such signs.

Heath proffered these records, as well as a medical expert's opinion that the specific protocol deviations reflected in the FDOC records place Heath, the next inmate Florida intends to execute, at substantial risk of severe pain. Heath claimed below that Florida's documented, repeated maladministration of its lethal injection protocol places him at imminent risk of harm in violation of the Eighth Amendment. The Florida Supreme Court, treating Heath's standalone maladministration claim as a traditional method-of-execution challenge, summarily denied relief, holding that Heath's claim failed under the traditional requirements of *Baze v. Rees*, 553 U.S. 35 (2008), and *Glossip v. Gross*, 576 U.S. 863 (2015), did not warrant discovery, and was

based purely on speculation and conjecture—notwithstanding the undisputed FDOC records and medical opinion that Heath proffered.

The questions presented are:

1. Is a narrowly tailored Eighth Amendment claim based on a State's documented, repeated maladministration of its chosen method of execution subject to the same pleading requirements as a challenge to the constitutionality of the method of execution itself?

2. Does a petitioner sufficiently allege a substantial risk of severe harm for a standalone Eighth Amendment maladministration claim by proffering (1) undisputed records showing a State's pattern of significant deviations from its the execution protocol, such as the repeated use of expired and inaccurately dosed lethal injection drugs, and (2) a medical expert's opinion that such deviations if repeated will likely result in severe pain to the petitioner?

3. May the proposed alternative in an Eighth Amendment maladministration case include review and safeguards to ensure future adherence to the protocol, rather than an entirely new method of execution?

LIST OF DIRECTLY RELATED PROCEEDINGS

Proceedings Below:

Caption: ***Heath v. State***
Court: Circuit Court of the Eighth Judicial Circuit, Alachua County, Florida
Docket: 1989-CF-3026
Decided: January 21, 2026
Published: N/A

Caption: ***Heath v. State***
Court: Supreme Court of Florida
Docket: SC26-0112; SC26-0113
Decided: February 3, 2026
Published: 648 So. 2d 660 (Fla. 2026)

Underlying Criminal and Collateral Proceedings:

Direct Review

Caption: ***Heath v. State***
Court: Supreme Court of Florida
Docket: SC60-77234
Decided: October 10, 1994
Published: 648 So. 2d 660 (Fla. 1994)

State Collateral Review

Caption: ***State v. Heath***
Court: Circuit Court of the Eighth Judicial Circuit, Alachua County, Florida
Docket: 1989-CF-3026
Decided: June 7, 2006 (Initial State Postconviction Motion)
Published: N/A

Caption: ***Heath v. State***
Court: Supreme Court of Florida
Docket: SC07-772
Decided: January 29, 2009
Published: 3 So. 3d 1017 (Fla. 2009)

Caption: ***State v. Heath***
Court: Circuit Court of the Eighth Judicial Circuit, Alachua County, Florida
Docket: 1989-CF-3026
Decided: June 7, 2006 (Motion to Vacate Based on *Hurst v. Florida*)

Published: N/A

Caption: ***Heath v. State***
Court: Supreme Court of Florida
Docket: SC17-1808
Decided: February 28, 2018
Published: 237 So. 3d 931 (Fla. 2018)

Federal Habeas Review

Caption: ***Heath v. Tucker***
Court: United States District Court, Northern District of Florida
Docket: 1:09-cv-148
Decided: August 20, 2012
Published: N/A

Caption: ***Heath v. Sec'y, Fla. Dep't of Corrs.***
Court: United States Court of Appeals, Eleventh Circuit
Docket: 12-14715
Decided: June 11, 2013
Published: 717 F.3d 1202 (11th Cir. 2013)

Certiorari Review

Caption: ***Heath v. Florida***
Court: Supreme Court of the United States
Docket: 94-9009
Decided: June 26, 1995
Published: 515 U.S. 1162 (Cert. Denied)

Caption: ***Heath v. Florida***
Court: Supreme Court of the United States
Docket: 17-9475
Decided: October 1, 2018
Published: 586 U.S. 862 (Cert. Denied)

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Petitioner Ronald Heath, a Florida death-row inmate scheduled for execution on February 10, 2026, respectfully petitions this Court for a writ of certiorari to review the February 3, 2026, decision of the Florida Supreme Court.

DECISION BELOW

The Florida Supreme Court's opinion is reproduced in the Appendix at A1.

JURISDICTION

The Florida Supreme Court's judgment was entered on February 3, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment provides, in relevant part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

I. Introduction

This case is about Florida's attempt to paper over internal FDOC records showing that, over the course of the unprecedented number of lethal injection executions the State has administered in the last 12 months, corrections officials have mishandled drugs and put inmates to death using expired drugs, incorrect dosages of drugs, and drugs not called for in the State's official written protocol. According to a

medical expert retained by Heath, the deviations, if repeated, are likely to cause severe pain during a drawn out, torturous execution.

FDOC itself released the execution records through a public records request, but when the deviations from the protocol were raised, the State stopped providing any further information, refused to explain the disturbing errors, and continued the rapid pace of executions without any pause or review. The Florida Supreme Court approved of this under a newfound interpretation of Florida's secrecy rules, claiming that the statute shields the release of any such information under any circumstances (despite the records having clearly been produced in the past), and that Heath's suggestion, based on the already released records and his medical expert's proffer, that Florida's repeated maladministration of its protocol creates a severe risk of pain amounted to nothing more than speculation and conjecture.

The Florida Supreme Court's decision is belied by the undisputed FDOC records, which rebut any presumption that the State is administering its protocol correctly. And a medical expert has attested not only that the documented deviations place Heath at severe risk of pain if they are repeated during his execution, but that several recently executed Florida inmates likely experienced such pain, despite Florida's practice of administering a paralytic drug, which generally masks outward signs of distress. Heath should have at least been granted a hearing on this evidence. Instead, the Florida Supreme Court held that he failed to even state a claim.

This Court's intervention is necessary not only to prevent the risk of Heath suffering severe pain during his execution, and to require Florida to explain the

documented deviations, but also to clarify the legal elements of the specific type of Eighth Amendment challenge raised here—a challenge not to a method of execution itself, but a standalone challenge to a State's deliberate, reckless, or negligent maladministration of its chosen protocol. For the reasons below, the Court should grant certiorari and reverse.

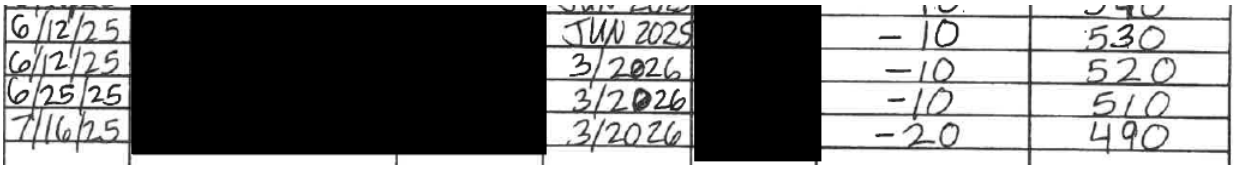
II. Factual background

The FDOC records at issue concern Florida's three-drug lethal injection protocol, an outlier among the other executing states, which entails successive intravenous injections of 200 milligrams of etomidate, a sedative, followed by 1000 milligrams of rocuronium bromide, a paralytic agent, and 240 milliequivalents of potassium acetate, which induces cardiac arrest. App. A3 (Lethal Injection Protocol) at 6-7. On February 18, 2025, Ricky Dixon, the FDOC Secretary, certified that the protocol comports with the Eighth Amendment, and that FDOC has adequate safeguards in place to ensure a "humane and dignified death." App. A3 at 1. But this has not been the case for several of the 19 individuals executed by Florida since the beginning of 2025.

In November 2025, Florida inmate Frank Walls initiated a 42 U.S.C. § 1983 action against FDOC alleging, among other things, that the department's repeated failure to follow its lethal injection protocol exacerbated the substantial risk of a painful death posed by his underlying medical conditions. *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025). Walls presented FDOC's partially redacted internal execution drug logs, provided by FDOC itself through a public records

request, which revealed a pattern of maladministration throughout 2025, including the repeated administration of expired drugs, incorrect dosages of drugs, and drugs not authorized by the protocol at all.[1]

For example, FDOC documented inappropriate dosages of drugs during multiple executions. On June 25, 2025, a date corresponding[2] to the execution of Florida inmate Thomas Gudinas, the inventory logs show 10 x 10ml vials of rocuronium bromide were removed (1000mg), suggesting that FDOC only prepared half of the required second drug, in violation of the protocol, which requires 2000mg arranged in 20 x 10ml vials:



App. A4 at 7.

[1] Although Walls was ultimately denied relief because the courts found that the medical aspect of his particular as-applied challenge was not timely filed, *see Walls v. Sec'y, Dep't of Corrs.*, 161 F.4th 1281, 1285-86 (11th Cir. 2025), the FDOC records Walls published support Heath's distinct Eighth Amendment challenge raised here.

[2] Overall, the FDOC records reveal that the department is unable to maintain its own standards in keeping with the unprecedented pace of executions in this state. FDOC has been documenting the removal of execution drugs at an ad hoc basis, typically not keeping track of the drugs used during an execution until after the process has taken place. This indicates that FDOC's drug supply records are inaccurate—therefore, during an execution, there is no way of knowing the source or quantity of the drug being administered. For example, FDOC executed Michael Bell on July 15, 2025. Yet, the corresponding inventory log shows that FDOC did not document the removal of etomidate for Bell's execution at all. Thus, the source and quantity of that drug is unknown because the removal of it from FDOC's supply was never documented.

And again, on June 12, 2025, a date seemingly corresponding to Anthony Wainwright's June 10, 2025, execution, records show that seven vials of potassium acetate were removed from FDOC's inventory. This suggests that FDOC prepared only 280 milliequivalents of potassium acetate in violation of the protocol, which requires 480 milliequivalents (12 x 20ml vials):

5/1/25	[redacted]		10-2025	-12	277
5/15/25			10-2025	-12	265
6/12/25			10-2025	-7	258

App. A4 at 5.

The logs also indicate that FDOC administered *expired* etomidate—with a January 31, 2025, expiration date—to Kayle Bates executed on August 19, 2025; Curtis Windom executed on August 28, 2025; David Pittman executed on September 17, 2025; and Victor Jones executed on September 30, 2025:

8/19/25	[redacted]	1/31/2025	-10	290
8/29/25		1/31/2025	-10	280
9/17/25		1/31/2025	-10	270
9/30/25		1/31/2025	-10	260

App. A4 at 25.[3] This is in direct violation of Florida's lethal injection protocol:

> (6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

[3] The FDOC records span through September 30, 2025. To date, a complete set of logs for all of the 19 executions in 2025 has been withheld from Heath, based on the ruling below, with FDOC and the state courts claiming the records are subject to total secrecy and an irrebuttable presumption that the protocol is being administered correctly.

App. A3 at 6.

And, at times, FDOC implements a four-drug protocol beyond what is authorized in the current method. The logs show that, during the executions of Edward James and Michael Tanzi, FDOC administered lidocaine, a drug not called for in the protocol. This again indicates a level of improvisation and unpredictability beyond what is authorized, warranting judicial intervention.

DRUG NAME Lidocaine Hcl 1% 10mL PACKAGE SIZE 25 x 10mL

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
1-3-2025	[redacted]		Sep 2026	[redacted]	+25	25
3/20/25			Sep 2026		-2	23
4-08-25			Sep 2026		-2	21

App. A4 at 15.

Florida's execution spree reached a tipping point when, on November 13, 2025, Bryan Jennings was subjected to a "drawn-out, torturous execution"—nearly 20 minutes—and was observed moving well into the execution, when movement is not expected, indicating a problem with the administration of the drugs, and distress. *See* App. A5 (Declaration of Dr. Joel Zivot) at ¶ 2.

Following the maladministered executions reflected in the records, Dr. Joel Zivot, M.D., provided a declaration to Heath's counsel connecting the documented, repeated deviations to a substantial risk that the next Florida inmate—Heath—will suffer severe pain. With respect to the use of lidocaine, a drug not authorized by the protocol, Dr. Zivot opined that it could result in unprecedented complications:

> The FDOC protocol does not allow for ad hoc substitutions, and the lack of transparency creates unreasonable and serious risks. Therefore, the purpose of this drug can only be surmised…. We have no way of knowing how this drug was used. Regardless, lidocaine is a drug with associated

> adverse effects, including allergy and toxicity, and there is a substantial likelihood that, through mistakes and delays, its usage could contribute to a torturous execution.

App. A5 at ¶ 9. Administering expired lethal injection drugs, Dr. Zivot explained, is extremely dangerous because "the expiration date guarantees that a drug will retain its full potency and safety when stored as directed." *Id.* at ¶ 11. According to Dr. Zivot, it is "unknown" whether an expired drug will work as intended by FDOC during a lethal injection execution given the unpredictable chemical properties of those drugs, leaving each execution carried out completely up to chance. *Id.* As Dr. Zivot concludes, "[a]dministering expired drugs to a prisoner during a lethal injection execution could also result in a drawn-out, torturous execution. At the very least, this sloppy practice identifies serious gaps in the lethal injection protocol." *Id.*

III. Procedural background

On January 9, 2026, Governor Ron DeSantis signed a warrant for Heath's execution, scheduling it for Tuesday, February 10, 2026. Based on the execution logs published the previous month, Heath submitted demands to Florida agencies for public records and communications pertaining to FDOC's maladministration of its lethal injection protocol throughout 2025. Heath further requested autopsy reports for Edward James, Michael Tanzi, Anthony Wainwright, Thomas Gudinas, Michael Bell, Curtis Windom, David Pittman, Victor Jones, Bryan Jennings, Mark Geralds, and Frank Walls, whose executions had documented irregularities, as well as the autopsy protocols in effect at the time of each autopsy. Despite Heath noting that the

records clearly show the use of expired and incorrect dosages of drugs, for instance, the circuit court summarily rejected his records demands on January 15, 2026.

Heath subsequently filed a successive motion for postconviction relief in the state court, where he alleged that Florida's documented pattern of maladministering its lethal injection protocol subjects him to a substantial risk of an impermissibly painful execution in violation of the Eighth Amendment. The state court summarily denied relief on January 21, 2026. App. A2 (Eighth Judicial Circuit Order).

The Florida Supreme Court, without questioning the repeated protocol maladministration that is clearly documented in the records, or the medical expert's proffer, held that Heath was entitled to neither a hearing nor the ability to pursue a claim under the Eighth Amendment, as his maladministration claim necessarily failed the requirements for traditional method-of-execution claims under *Baze v. Rees*, 553 U.S. 35, 70 (2008), and *Glossip v. Gross*, 576 U.S. 863, 877 (2015). Without addressing the distinct maladministration issue that Heath raised, the Florida Supreme Court concluded that Heath could establish neither a substantial and imminent risk of severe pain, nor that a feasible alternative existed to Florida's existing practices. As for Heath's specific proposal that Florida briefly pause executions in order to conduct a review of the errors already documented, the Florida Supreme Court held that such an alternative was categorically precluded by the language of *Glossip*.[4] *Heath v. State*, No. SC2026-0112, at *8-9 (Fla. Feb. 3, 2026); App. A1 (Florida Supreme Court Opinion) at 8-9.

[4] The Florida Supreme Court also rejected Heath's second alternative suggestion

REASONS FOR GRANTING THE WRIT

Transparency is necessary in executions, particularly in a state that authorizes any method "not deemed unconstitutional." Fla. Stat. § 922.10. Yet Florida does not practice transparency; its records are highly secret, redacted, and—when obtained—errors and discrepancies in the records are minimized or ignored. Florida courts have, thus far, endorsed this obstruction by denying all records requests and maladministration claims. As a result, Florida has been granted carte blanche to improvise with each execution, regardless of the risks posed to the inmate.

Florida should not be permitted to continue executing without some review of the maladministration documented by FDOC itself, which has never been explained. And this Court should clarify for lower courts whether Eighth Amendment claims based solely on a State's maladministration of its execution protocol are governed by the same *Baze-Glossip* framework as other method-of-execution claims. Contrary to the Florida Supreme Court's decision, requiring a petitioner to propose an entirely new *method* of execution in a case challenging the *implementation* of a State's chosen method is not supported by *Baze* or *Glossip*. Instead, the remedy for a State's recurrent and dangerous errors in administering its chosen method should be a review of that maladministration, and the implementation of safeguards that ensure inmates are not placed at substantial risk of serious harm.

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that, in the event Florida is unable to soundly administer its lethal injection protocol, another method like the firing squad could be readily implemented. App. A1 at 11-12.

This issue is particularly salient in Florida now, where 19 executions were carried out last year, and three have already been scheduled so far in 2026. Since the FDOC records were obtained in October 2025, three prisoners facing execution have raised claims related to FDOC's documented maladministration, none of which have resulted in any explanation or accountability. Because Florida's unprecedented pace of executions shows no signs of slowing, claims related to these records will likely continue to appear before both state and federal courts. This Court should intervene.

I. This Court should clarify the standards governing Eighth Amendment claims based on a State's maladministration of an execution protocol, an issue left open by *Baze* and *Glossip*

In *Baze*, this Court distinguished between isolated accidents and a pattern of maladministration, noting that "an isolated mishap alone does not give rise to an Eighth Amendment violation, precisely because such an event, while regrettable, does not suggest cruelty, or that the procedure at issue gives rise to a 'substantial risk of serious harm.'" 553 U.S. at 50. But *Baze* did not address the precise legal contours of a claim asserting a pattern of repeated maladministration.

In this case, Florida's repeated violations, documented in its own execution logs, are not indicative of an isolated mishap but rather a pattern of maladministration. The recorded deviations involve at least nine recent executions, as demonstrated by the repeated administration of expired drugs, drugs not authorized by the protocol, and incorrect dosages of the drugs. The Florida Supreme Court failed to recognize this. Instead, it incorrectly analyzed Heath's maladministration claim within the traditional method-of-execution framework

created elsewhere in *Baze*, which left open the separate standard for prevailing on challenges to maladministration of an execution protocol based on documented, repeated errors. The Florida Supreme Court's attempt to shoehorn this issue into the traditional *Baze* and *Glossip* methods framework is indicative of the need for clarity on how to resolve Eighth Amendment challenges to a state's repeated deviations from its execution protocol. *See* App. A1 at 9.

Courts before *Baze* and *Glossip*, when faced with similar maladministration-of-protocol challenges, found that a pattern of deviations could violate the Eighth Amendment. For example, in *Taylor v. Crawford*, after significant evidentiary development, a Missouri federal court determined that the sole executioner repeatedly deviated from the execution protocol, including making ad hoc changes to the dosages of drugs administered. No. 05-4173-CV-C-FJG, 2006 WL 1779035, at *7 (W.D. Mo. June 26, 2006). The district court noted, "[i]t is obvious that the protocol as it currently exists is not carried out consistently and is subject to change at a moment's notice." *Id.* This, combined with the sole executioner's admission to making mistakes when documenting the dosages of chemicals administered, and inability to monitor the inmate's consciousness through observation to ensure adequate dosage of the anesthesia administered, led the court to conclude that "Missouri's lethal injection procedure subjects condemned inmates to an unnecessary risk that they will be subject to unconstitutional pain and suffering when the lethal injection drugs are administered." *Id.* at *8. The district court ordered the state's department of corrections to prepare a written protocol incorporating provisions that addressed the

court's concerns, prohibited deviations from the protocol absent prior approval from the court, and allowed the court to retain jurisdiction over the next six executions to ensure consistent administration of the protocol. *Id.* at *9.

A California district court in *Morales v. Tilton* was faced with the same issue. 465 F. Supp. 2d 972, 975 (N.D. Cal. 2006). After extensive evidentiary development, including judicial examination of the execution facilities and equipment, the district court found that while the protocol itself did not raise constitutional concerns, the actual administration suffered from several deficiencies including inconsistent and unreliable record-keeping and the improper mixing, preparation, and administration of drugs. *Id.* at 979 ("Given that the State is taking a human life, the pervasive lack of professionalism in the implementation of [the protocol] at the very least is deeply disturbing."). The court held the state's administration of its protocol unconstitutional because the implementation lacked "both reliability and transparency," resulting "in an undue and unnecessary risk of an Eighth Amendment violation" that is "intolerable under the Constitution." *Id.* at 981.

The logic of these Eighth Amendment maladministration decisions, which would not require that Heath's claim be analyzed in the same manner as if he were challenging Florida's use of lethal injection itself, survives *Baze*. The Florida courts' failure to recognize the distinction resulted in the inappropriate dismissal of the serious allegations and evidence Heath presented, which deserved a hearing. This Court should provide clarity to lower courts regarding the distinction between Eighth Amendment maladministration claims and traditional method-of-execution claims.

II. Florida's continuation of executions without any acknowledgement of the deviations in its own records, and the state courts' disregard of the substantial risk of severe pain, warrants this Court's Eighth Amendment scrutiny

By ignoring the distinction between Heath's maladministration claim and traditional method-of-execution claims, and summarily rejecting Heath's allegations as "speculative," "conclusory," and "insufficiently pleaded," the Florida Supreme Court (1) failed to recognize that, even under the *Baze-Glossip* framework, Dr. Zivot connected the maladministration reflected in the FDOC records to a substantial risk that Heath will suffer severe pain; (2) misapplied the alternative-method-proposal requirement from the *Baze-Glossip* framework to Heath's distinct maladministration claim; and (3) contravened the original meaning of the Eighth Amendment.

A. The Florida Supreme Court failed to recognize that Dr. Zivot connected the maladministration reflected in the FDOC records to a substantial risk that Heath will suffer severe pain

The Florida Supreme Court failed to recognize that Heath proffered a medical declaration connecting the repeated maladministration in recent executions to a substantial risk that Heath will suffer severe pain. This was sufficient for pleading an Eighth Amendment claim, even under the traditional *Baze-Glossip* framework.

Dr. Zivot reviewed the FDOC logs and provided a declaration on behalf of Heath that considered the severe risks posed to inmates by FDOC's documented errors during executions. Based on his 30 years of medical expertise, spanning the treatment of over 50,000 patients, Dr. Zivot stressed that "[i]t is critical to properly monitor the storage of drugs, when they are being dispensed, and in what quantity." App. A5 at ¶ 3. Dr. Zivot concluded that "[FDOC] refuses to adapt to known

pharmacological principles and rejects the lessons drawn from its own successive failures. What is currently concerning me is that FDOC is clearly approaching its execution method in a negligent manner." *Id.* at ¶ 6.

According to Dr. Zivot, "[w]henever pharmaceuticals are being administered, timing, quantity, and quality of the drug matter. These errors are significant and also contribute to the substantial likelihood of a drawn-out, torturous death." *Id.* at ¶ 10. Addressing the specific issues raised in the records, Dr. Zivot opined that the use of expired lethal injection drugs is extremely dangerous because "the expiration date guarantees that a drug will retain its full potency and safety when stored as directed." *Id.* According to Dr. Zivot, it is "unknown" whether an expired drug will work as intended by FDOC during a lethal injection execution given the unpredictable chemical properties of those drugs, leaving each execution carried out with such a dosage completely up to chance. As Dr. Zivot concludes, "[a]dministering expired drugs to a prisoner during a lethal injection execution could also result in a drawn-out, torturous execution." *Id.* at ¶ 11. And, regarding FDOC's unauthorized administration of lidocaine, Dr. Zivot concluded that "the lack of transparency creates unreasonable and serious risks…lidocaine is a drug with associated adverse effects…and there is a substantial likelihood that, through mistakes and delays, its usage could contribute to a torturous execution." *Id.* at ¶ 9. These errors have particular significance to future executions because, according to Dr. Zivot:

> When administering drugs to any person, regardless of the purpose, it is critical to understand the chemical properties of the drug and understand how the drug will work. It is clear to me, upon review of how

> Florida has approached its lethal injection protocol during the recent 2025 executions, that FDOC does not have this understanding.

Id. at ¶ 8. The Florida Supreme Court overlooked the potential disastrous outcomes that await Heath in light of the FDOC's risky maladministration of its protocol.

It is enough that these errors could, and have, caused disastrous results. As discussed above, the drawn-out, torturous execution of Bryan Jennings in November 2025 can be explained by the errors documented in the FDOC records. Indeed, this Court has held that a "remedy for unsafe conditions need not await a tragic event," noting that "[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Helling v. McKinney*, 509 U.S. 25, 33 (1993). To that end, this Court has acknowledged that, in the context of an execution, "subjecting individuals to a risk of future harm – not simply actually inflicting pain – can qualify as cruel and unusual punishment." *Baze*, 553 U.S. at 49. The Florida Supreme Court erred in overlooking the substantial danger that Heath faces. And the fact that FDOC has taken no accountability for the documented errors, and has continued to execute inmates without further scrutiny, violates Heath's constitutional rights.

B. The Florida Supreme Court misapplied the alternative-method-proposal requirement from *Baze-Glossip* to Heath's distinct maladministration claim, the result of an open legal question that will likely repeat and warrants clarification from this Court

In addition to a substantial risk of severe pain, typical method-of-execution challenges require the petitioner to "identify a known and available alternative method of execution that entails a lesser risk of pain" than the challenged method.

Glossip, 576 U.S. at 867. Here, the Florida Supreme Court's finding that Heath failed to satisfy that requirement completely overlooked its purpose, which does not fit with an Eighth Amendment challenge based on maladministration. Requiring Heath to propose an entirely new *method* of execution, when he challenged only the maladministration of the existing method, belies the logic of this Court's precedent. In fact, in *Bucklew*, this Court cautioned that the "*Baze-Glossip* test can be overstated." *Bucklew v. Precythe,* 587 U.S. 119, 139 (2019). Such was the case here.

This Court has explained that the importance of the alternative requirement when a method itself is challenged stems from identifying a boundary between "permissible and impermissible degrees of pain," which this Court has found is a "*necessarily* comparative exercise." *Bucklew,* 587 U.S. at 136 (emphasis in original). As this Court has summarized, when a prisoner alleges that a punishment is "unconstitutionally cruel," courts must inquire "whether the punishment 'superadds' pain," a question that "has always involved a comparison with available alternatives…" *Id.* at 137. The proposed alternative method, therefore, serves to determine whether a State is opting for a more painful method despite the ability to avoid the superaddition of pain with the alternative method.

Heath met this requirement through his proposal that FDOC pause executions, conduct an independent and transparent review of FDOC's lethal injection practices, document and explain the errors in recent administrations of the protocol, and provide additional training and reform as necessary.[5] This is because

[5] Furthermore, it must be noted that Heath was impeded from identifying a more

the nature of a maladministration claim is inherently comparative: the documented discrepancies in the protocol are jarring compared to the stated intent and the instruction of the protocol as written. *See, e.g.,* App. A3 at 1 ("The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering."). Heath's entire evidentiary proffer is therefore a comparison to what Florida has promised it will carry out. Choosing not to remedy the errors at all, or even acknowledge them in the first place, indicates a level of indifference to future pain that establishes an Eighth Amendment violation on its own.

An alternative *method* proposal requirement should not apply to maladministration claims because the issues like those raised herein are not rectified by finding that an entirely new method entails a lower risk of pain. As members of this Court have observed, "[i]t strains credulity" to find that the unconstitutional nature of certain execution methods stems from the fact that "they involved risks of pain that could be eliminated by using alternative methods of execution." *Baze,* 553 U.S. at 101 (Thomas, J., concurring). In other words, the reason a medieval method like beheading would be constitutionally repugnant is not because another method is more suitable. Rather, the obvious "evil the Eighth Amendment targets is intentional infliction of gratuitous pain, and that is the standard our method-of-execution cases have explicitly or implicitly invoked." *Id.* Similarly, where, as here, the heart of the claim is the FDOC's improvisational approach to its adopted protocol, the obvious

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precise remedy to the protocol violations because he was blocked from any further evidentiary development of his claim by the courts below.

harm are the errors themselves, and FDOC's refusal to intervene and rectify them. *See Gissendaner v. Comm'r, Ga. Dept. of Corr.,* 803 F.3d 565, 581 (11th Cir. 2015) (Jordan, J., dissenting) ("If a state merely has to fix a correctable problem to eliminate an as-applied challenge, there is no need for a prisoner to allege (or show) that a different alternative method of execution is available to the state.").

Other jurisdictions have taken similar oversights seriously and have endorsed the approach that Heath proposes. In Oklahoma, after a series of mistakes in drug procurement, storage, and preparation came to light, a grand jury was convened to investigate the state's adherence to its own protocol, particularly its record keeping requirements. The grand jury found that, among other violations, the state had "failed to inventory the execution drugs as mandated by state purchasing requirements," which led to the state's ultimate usage of the wrong drug in the execution of Charles Warner in 2015. Interim Report No. 14 at 2, *In the Matter of the Multicounty Grand Jury, State of Okla.*, Nos. SCAD 2014-70, GJ 2014-1 (May 19, 2016). The grand jury also found that, "[i]t is unacceptable for the Governor's General Counsel to so flippantly and recklessly disregard the written protocol." *Id.* at 100. Following these findings, the state attorney general acknowledged that "a number of individuals responsible for carrying out the execution process were careless, cavalier and in some circumstances dismissive" of the protocol.[6] In light of these discoveries,

[6] Mark Berman, *Oklahoma lethal injection process muddled by 'inexcusable failure,' grand jury finds*, The Washington Post, https://www.washingtonpost.com/news/post nation/wp/2016/05/19/oklahoma-grand-jury-says-lethal-injection-process-muddled-by-inexcusable-failure (May 19, 2016).

the grand jury made several recommendations for changes to be made to how executions were carried out, and executions were paused.

Similarly, in Tennessee, after an independent reviewer found that the state had repeatedly deviated from its protocol, and had no internal system for accountability or "internal policies to ensure the Protocol is followed," *see* Butler Snow LLP, *Tenn. Lethal Injection Protocol Investigation: Rep. and Findings* at 36 (Dec. 13, 2022), Tennessee temporarily paused executions while the state worked on an overhaul of its "tunnel vision, result oriented lens." *Id.* at 39.

The Florida Supreme Court misinterpreted the doctrinal value of the alternative requirement and missed that the purpose of an alternative is to aid a court in identifying the superaddition of pain. It makes little sense how, after identifying multiple errors spanning the course of six months and involving at least nine different executions, providing blueprints for an entirely new method would rectify Heath's concerns. By finding that Heath's proposed alternative was improperly pleaded, the lower court overstepped Eighth Amendment law.

C. The Florida Supreme Court's failure to acknowledge the cognizability of Heath's maladministration claim is inconsistent with this Court's precedent and the original meaning of the Eighth Amendment

Florida's plan to execute Heath, as it continues barreling forward through execution after execution, despite knowing—and doing nothing about—the numerous and repeated documented violations in the administration of its lethal injection protocol, is precisely the level of indifference and cruelty that the Framers sought to

prevent when drafting the Eighth Amendment. Indeed, Heath's maladministration claim is consistent with the Amendment's original meaning.

At the time of the adoption of the Bill of Rights, the death penalty existed in both America and England. Historically, the punishment of death carried with it levels of torture that escalated for certain crimes. 4 W. Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 376 (W. Lewis ed. 1897). These "superadded" circumstances "were carefully handed out to apply terror where it was thought to be most needed," intended "to ensure that death would be slow and painful, and thus all the more frightening to contemplate." Stuart Banner, THE DEATH PENALTY: AN AMERICAN HISTORY 70 (2002). The Framers "had viewed such enhancements to the death penalty as falling within the prohibition of the Cruel and Unusual Punishments Clause." *Baze*, 553 U.S. at 97. And, in 1868, the United States adopted the Fourteenth Amendment, incorporating the protections of the Eighth Amendment to the states.

The view of the Framers permeates this Court's method of execution jurisprudence, which has always maintained that the Eighth Amendment protects prisoners from intentional cruelty during executions. This Court's emphasis on preventing an execution that is purposely torturous applies to Florida's documented culture of indifference surrounding their own executions, and bolsters the argument that FDOC is violating the Eighth Amendment by proceeding with executions at the same relentless pace despite being aware of the documented issues for at least two months. Indeed, since the publication of the records in *Walls*, three new death warrants have been signed, all while FDOC outright denies the wrongdoing that is

proven by their own records. This Court has defined the constitutional boundary as "requiring something inhuman and barbarous,—something more than the mere extinguishment of life." *In re Kemmler*, 136 U.S. 436, 447 (1890). Here, that "something more" is that Florida is adopting a culture of recklessness or indifference to its own protocol to maintain a pace of executions.

These repeated errors are no longer a mere accident. This Court has rejected maladministration claims when prior issues are singular and merely "an accident." *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947). But by continuing to rapidly execute despite being on notice of these problems and the harm that may result, FDOC's actions fit within the very definition of cruel by both historical standards and by today's. *See* 1 N. Webster, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828) (defining cruel as "[d]isposed to give pain to others" and "willing…torment, vex or afflict," and "destitute of pity, compassion or kindness,"); *see also Cruel*, DICTIONARY.COM (defining cruel as "willfully or knowingly causing pain or distress to others"); *Cruel*, MERRIAM-WEBSTER.COM (defining cruel as "disposed to inflict pain or suffering.").

This Court's precedent suggests that FDOC's routine maladministration rises to the level of unconstitutionality because the errors surpass any innocent explanation, such as a simple mistake, and they will continue on, unimpeded, absent this Court's intervention. In line with this Court's cruelty analysis in the context of capital punishment, it is a violation any time a prison official, aware of the severe risk of harm that could result from their actions, continues to act anyway. *See Farmer*

v. Brennan, 511 U.S. 825, 842 (1994) ("[A]n Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.").

This is especially true here because the documented violations—expired drugs, inaccurate dosages of drugs, uncertainty about the source and dosage of given drugs, and unauthorized drugs altogether—are serious and have, in the past, caused severe pain and suffering. In 2018, when the state of Texas began clandestinely administering expired pentobarbital during executions, "five of the 11 inmates executed in Texas [that year] said they felt a burning sensation as they were dying." Talia Roitberg Harmon et al., *Examination of Decision Making and Botched Lethal Injection Executions in Texas*, 64 AM. BEHAVIORAL SCI. 1, 8 (Sept. 13, 2020). And, after Oklahoma accidentally administered the wrong drugs during his 2015 execution, Charles Warner's last words were "my body is on fire."[7] Because of Oklahoma's own issues with internal record keeping, the source of the error was not discovered until Warner's autopsy was completed.[8]

It is enough that the protocol violations described by Heath could, and have, caused disastrous results, and that FDOC officials know of these errors but have so

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[7] Sean Murphy, *Dying Oklahoma Inmate's Last Words Stir Questions,* ASSOC. PRESS. (Jan. 16, 2015); https://apnews.com/article/fbd81caf836e45e9abdbca57381691d6 (emphasis added).

[8] Eyder Peralta, *Oklahoma Used the Wrong Drug to Execute Charles Warner*, NPR (Oct. 8, 2015); https://www.npr.org/sections/thetwoway/2015/10/08/446862121/oklahoma-used-the-wrong-drug-to-execute-charles-warnero.

far done nothing to explain or correct them. Absent this Court's intervention, FDOC will continued to be governed only by its own accountability, despite the facts that it has proven that it should not retain that level of trust, and that it has repeatedly failed to take accountability for its own mistakes. The Florida Supreme Court instead applied an unreasonable pleading standard to Heath's claim, despite Heath making clear that the remedy he sought was internal review and assurance that the errors will not continue. This conclusion is inconsistent with this Court's precedent and the original meaning of the Eighth Amendment. This Court should intervene.

CONCLUSION

This Court should grant the petition for a writ of certiorari and review the decision of the Florida Supreme Court.

Respectfully submitted,

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DATED: FEBRUARY 6, 2026