Capital Case No. 25A892

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 FLORIDA SUPREME COURT

RESPONSE TO APPLICATION FOR STAY OF EXECUTION
EXECUTION SCHEDULED FOR FEBRUARY 10, 2026, AT 6:00 P.M.

Ronald Heath, a Florida prisoner under an active death warrant with an execution scheduled for February 10, 2026, asks this Court to stay his execution for a heinous murder and armed robbery he committed in 1989 while it considers whether to grant certiorari. None of his three questions warrant a stay under *Barefoot v. Estelle,* 463 U.S. 880, 895 (1983) as modified by *Bucklew v. Precythe*, 587 U.S. 119, 149–51 (2019). As thoroughly explained in the accompanying Brief in Opposition to certiorari, Heath's questions do not merit the Court's review. Therefore, this Court should deny the stay.

A stay of execution is not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583–84 (2006). Instead, a stay is "an equitable remedy" and "equity must

be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id.* at 584. There is 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). Equity must also consider "an inmate's attempt at manipulation." *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992).

The People of Florida, as well as the surviving victims, "deserve better" than the "excessive" delays that now typically occur in capital cases, including this one. *Bucklew*, 587 U.S. at 149. "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. And where, as here, federal habeas "proceedings have run their course and a mandate denying relief has issued, finality acquires an added moral dimension." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998).

Courts must "police carefully" against last-minute claims used "to interpose unjustified delay." *Bucklew*, 587 U.S. at 150. Last-minute stays of execution should be "the extreme exception, not the norm." *Barr v. Lee*, 591 U.S. 979, 981 (2020) (quoting *Bucklew*, 587 U.S. at 150 and vacating a stay of execution).

Heath must establish at least three elements to receive a stay of execution on his long-finalized sentence from this Court: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot,* 463 U.S. at 895. This Court's opinion in *Bucklew* effectively modified this test and

requires Heath to show an additional two elements: (4) that he has not pursued relief in dilatory fashion and (5) his underlying claims are not based on a speculative theory and simply designed to stall for time. 587 U.S. at 151 ("Federal courts can and should protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are pursued in a dilatory fashion *or* based on speculative theories.") (cleaned up; emphasis added). Heath must establish all these elements to obtain a stay. *See Hill*, 547 U.S. at 583–84.

Speculative Theory

Heath's allegations of maladministration in prior executions based on heavily redacted records are speculative on multiple levels. First, Heath speculates that protocol deviations occurred in the first place. This is a disputed premise. None of the pages in the heavily redacted Florida Department of Corrections ("DOC") records contain the names of executed inmates or show that any of the drugs listed were used during any execution. As such, the evidence Heath touts as demonstrating protocol deviations is based on speculation, conjecture, and imagination. In fact, not only are the heavily redacted DOC records ambiguous, but also Heath himself admits that if his interpretation of them is correct, they are "inaccurate." (Pet. at 4 n.2.) Moreover, Heath never addressed reasonable alternative interpretations of the heavily redacted records. For instance, one alternative interpretation of the notation about expired etomidate being removed is that it was removed to discard or destroy it.

Additionally, even assuming prior deviations occurred, Heath speculates they are likely to recur in his execution. And setting those two levels of speculation aside,

Heath speculates that any protocol deviations are "*sure or very likely* to cause serious illness and needless suffering. *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (emphasis in original).

Because Heath's manner-of-execution claim in the form of alleged protocol deviations in prior executions is speculative, it is unworthy of a stay. *Bucklew*, 587 U.S. at 151 ("Federal courts can and should protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are … based on speculative theories.") (Cleaned up).

Dilatory

Heath pursued his manner-of-execution claim in dilatory fashion. The questions presented concern Heath's method-of-execution claim based on alleged maladministration of Florida's lethal injection protocol in previous executions. That allegation comes from heavily redacted DOC records his federal counsel received on October 28, 2025. *See Walls v. Sec'y, Dep't of Corr.*, 161 F.4th 1281, 1285 (11th Cir. 2025). Even though CHU-N obtained those records on October 28, 2025, and represented Heath at that time, Heath did not raise any pre-warrant challenge to Florida's execution protocol.

Heath unduly delayed raising his lethal-injection claim until after the Governor signed his death warrant on January 9, 2026. *See Dunn v. Price*, 578 U.S. 929 (2019) (vacating a stay because the capital defendant unduly delayed filing suit); *Dunn v. Ray*, 586 U.S. 1138 (2019) (same). Heath has been on notice of his warrant eligibility since 2013, when the Eleventh Circuit affirmed the denial of his initial

habeas petition. *Heath v. Sec'y, Fla. Dep't of Corr.*, 717 F.3d 1202, 1204–05 (11th Cir. 2013), *cert. not taken*. *See generally Jones v. State*, 419 So. 3d 619, 626 (Fla. 2025) (defining a "warrant-eligible" defendant as one who has completed a direct appeal, initial postconviction proceedings in state court, and federal habeas proceedings with an appeal therefrom). Capital defendants with notice that a death warrant can be signed at any time cannot wait until after the signing of a warrant to pursue their claims. *Cf. Abbott v. League of United Latin American Citizens*, 146 S.Ct. 418, 420 (2025) (invoking the caution that federal courts should not intervene close to an election over a dissent that argued the Texas Legislature bore any fault for altering an election map close to an election).

The Probability of Granting Certiorari Review

Heath fails the first *Barefoot* element because it is unlikely that four justices would vote to grant certiorari review. All three questions presented are based on a disputed factual premise: that DOC deviated from its execution protocol in prior executions. In fact, the questions are premised on heavily redacted records that Heath himself admits are "inaccurate" if his reading of them is correct. (Pet. at 4 n.2.) The existence of this factual dispute makes this case a poor vehicle for certiorari review. A better vehicle is a case in which it is undisputed that protocol deviations occurred. And such cases exist. *See e.g.*, *Jordan v. Mississippi State Executioner*, No. 25-70013, 2025 WL 1752391, at *2 & n.2, *3 (5th Cir. June 24, 2025) (noting that prison officials admitted they "did not strictly follow the execution protocol" regarding consciousness checks in prior executions); *Clemons v. Crawford*, 585 F.3d 1119, 1123 (8th Cir. 2009)

(observing that physician in charge of mixing the lethal chemicals admitted he previously administered less thiopental than the protocol called for and inaccurately documented the amounts given).

Another reason four justices are unlikely to vote to grant certiorari review is the fact that this Court has repeatedly answered Heath's first question, which asks whether Eighth Amendment claims premised on repeated protocol violations must satisfy the *Baze-Glossip*[1] framework. On two different occasions, this Court has confirmed that the *Baze-Glossip* framework governs "*all* Eighth Amendment method-of-execution claims." *Bucklew*, 587 U.S. at 134 (emphasis added). Thus, the question is "little more than an attack on settled precedent" unworthy of this Court's review. *Id*. at 149.

Likewise, this Court has already answered Heath's third question, which asks whether a defendant can satisfy the alternative-method-of-execution prong of *Baze-Glossip* by seeking a pause on executions and review. This Court has observed that "identifying an available alternative is a requirement of *all* Eighth Amendment method-of-execution claims alleging cruel pain." *Bucklew*, 587 U.S. at 136 (cleaned up; emphasis in original). As this Court explained, the alternative-method-of-execution pleading requirement is necessary to "distinguish[ ] between constitutionally permissible and impermissible degrees of pain," which is "a *necessarily* comparative exercise." *Id*. (emphasis in original). Proposing a pause on

[1] *Baze v. Rees*, 553 U.S. 35 (2008) (plurality opinion); *Glossip v. Gross*, 576 U.S. 863 (2015).

executions and review does not provide a court with any way to engage in the required "comparative exercise."

Nor is it likely that four justices would vote to grant certiorari review of Heath's second question, which asks whether he pled sufficient facts to establish the first prong of the *Baze-Glossip* test. This Court is unlikely to grant certiorari review of the second question for at least two reasons. First, it is a fact-intensive question, and fact-intensive issues rarely warrant this Court's certiorari review. A "petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings." Sup. Ct. R. 10. And this Court simply does not "grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925); *See also Cash v. Maxwell*, 565 U.S. 1138 (2012) (statement of Sotomayor, J., respecting the denial of certiorari) ("Mere disagreement with" a "highly factbound conclusion is" an "insufficient basis for granting certiorari.").

Second, relief on this question is contingent on the first and third questions. Because the *Baze-Glossip* test governs "all" manner-of-execution claims, it would not matter whether Heath sufficiently pled the first prong because he indisputably failed to sufficiently plead the second prong. The only real alternative method of execution Heath presented below was his single-sentence footnote about the firing squad. (WPCR:448 n.3.) But this Court has explicitly held "a bare-bones proposal" like that does not meet *Baze-Glossip*'s second prong. *Bucklew*, 587 U.S. at 141. And the Florida Supreme Court below rejected Heath's proposal for that exact reason. (Pet. App. A1 at 11–12) (holding Heath "failed to make even a bare allegation that this method

would be feasible or readily implemented, and he offered only a single unelaborated assertion that a firing squad 'would entail less risk of error and severe pain.'"). None of Heath's questions present a challenge to that holding.

This Court does not need to answer questions it has already answered twice before. Nor does it need to answer a fact-intensive question, let alone do so when answering it in Heath's favor would not entitle him to the relief he seeks. Heath's refusing to call his claim a "traditional" manner of execution claim and instead giving it a different label does not alter that reality.

Significant Possibility of Reversal

Heath also fails on the *Barefoot* element requiring him to demonstrate a significant possibility of reversal. The reason is simple: the Florida Supreme Court applied the correct law and reached the correct result. As explained above, the *Baze-Glossip* framework governs "all Eighth Amendment method-of-execution claims." *Bucklew*, 587 U.S. at 134. That framework requires the condemned to: (1) establish that the method by which he or she will be executed "presents a risk that is sure or very likely to cause serious illness and needless suffering"; and (2) plead an alternative execution method that is "feasible, readily implemented, and in fact significantly reduces a substantial risk of severe pain." *Glossip*, 576 U.S. at 877.

The Florida Supreme Court applied that standard to Heath's claim and concluded that he failed both prongs. (Pet. App. A1 at 6–12.) Regarding the first prong, the Florida Supreme Court correctly concluded that "the question is not whether protocol deviations occurred but whether the defendant's allegations would

demonstrate a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering." (Pet. App. A1 at 9.) That conclusion is consistent with this Court's precedent. As thoroughly addressed in the Brief in Opposition, the Eighth Amendment bars "cruel and unusual punishments" not protocol deviations. It "does not guarantee a prisoner a painless death" but instead prevents the State from "seeking to superadd terror, pain, or disgrace" to their executions. *Bucklew*, 587 U.S. at 132–33.

Even assuming for a moment that protocol deviations have occurred in past executions does not mean the protocol constitutes cruel and unusual punishment. In fact, even the risk of improper future implementation of an execution protocol by itself is insufficient to establish an Eighth Amendment claim. *See Baze*, 553 U.S. at 53–54 (rejecting the argument that risk of improper implementation of a protocol violates the Eighth Amendment). Not all protocol deviations are equal. And such deviations do not necessarily carry an unconstitutional risk of pain and needless suffering. *See Bucklew*, 587 U.S. at 137 (In "determining whether a punishment is unconstitutionally cruel because of the pain involved, the law has always asked whether the punishment 'superadds' pain well beyond what's needed to effectuate a death sentence. And answering that question has always involved a comparison with available alternatives.").

Moreover, Heath has never squared his claim with Florida's consciousness checks, which vitiate the risk of a condemned prisoner suffering an unconstitutional level of pain. *See Glossip*, 576 U.S. at 886–87 (explaining that this Court upheld a

protocol even without a "consciousness check"); *Baze*, 553 U.S. at 120 (Ginsburg, J., dissenting) (praising Florida's consciousness checks). Those consciousness checks ensure that even if an error occurred earlier in the protocol, the condemned is rendered insensate before the injection of the paralytic and drug that stops the heart. *See Long v. State*, 271 So. 3d 938, 945 (Fla. 2019) (noting that Florida's protocol contains safeguards and checks to ensure "the condemned is unconscious throughout the execution.").

Regarding the second prong, the Florida Supreme Court correctly concluded that Heath failed to identify an alternative execution method that is "feasible, readily implemented, and in fact significantly reduces a substantial risk of severe pain." (Pet. App. A1 at 10). The Florida Supreme Court correctly concluded that Heath's single-sentence footnote proposing the firing squad, the only conceivably valid alternative he offered, was insufficiently pled because it contained no facts demonstrating that the firing squad was feasible, easily implemented, and would significantly reduce a risk of severe pain. (Pet. App. A1 at 12); *see Bucklew*, 587 U.S. at 141 (holding that "bare-bones" proposals do not meet *Baze-Glossip*'s second prong).

The Florida Supreme Court's decision below does not warrant review.

Irreparable Injury

Finally, Heath fails on the final *Barefoot* element: irreparable harm. Since Heath has not, and cannot, challenge Florida's right to execute him, the correct focus for irreparable harm is whether he is likely to suffer superadded pain during his execution in violation of the Eighth Amendment. Viewed in that manner, Heath has

not met his burden to show irreparable harm. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (explaining that the mere "possibility" of harm is insufficient to show irreparable harm and instead requiring the party seeking preliminary relief to demonstrate that irreparable harm is "*likely* in the absence of an injunction.") (emphasis added); *Koninklijke Philips N.V. v. Thales DIS AIS USA LLC*, 39 F.4th 1377, 1380 (Fed. Cir. 2022) (explaining that the "mere possibility or speculation of" irreparable "harm is insufficient.").

Heath's claim that he will suffer irreparable harm if this Court does not grant a stay is based on nothing more than the speculation that DOC officials *might* deviate from the protocol by administering incorrect doses of drugs, expired drugs, or drugs not listed in the protocol. But as explained above and more thoroughly in the Brief in Opposition, the heavily redacted records Heath relied on did not prove that any protocol deviations occurred in prior executions. Heath's speculation ignores reality and the mandatory consciousness checks in Florida's lethal injection protocol. He has not shown that he is "likely" to suffer superadded pain during his execution.

Florida has executed over thirty inmates under this protocol, which has worked quickly and efficiently each time. *Cf. Barber v. Ivey*, 143 S. Ct. 2545, 2545–46 (2023) (Sotomayor, J., dissenting) (dissenting from the Court's refusal to stay an execution despite, in two recently preceding executions, Alabama officials "spent multiple hours digging for prisoners' veins in an attempt to set IV lines" and could not carry out the execution); *Smith v. Hamm*, 144 S. Ct. 414, 414 (2024) (Sotomayor, J., dissenting) (dissenting from the Court's refusal to stay an execution despite the fact Alabama

failed to execute this inmate once before and was attempting a novel nitrogen hypoxia method this time). Indeed, this Court has refused to stay an execution based on a much more novel method (nitrogen gas) where the capital defendant alleged he would suffocate for "four minutes" before being rendered unconscious, the execution would likely take "around 20 minutes from start to completion," "violent movements" and convulsions occurred during a prior execution, and a witness described a prior execution as like "watching someone drown without water." *Boyd v. Hamm*, 146 S.Ct. 40, 40–44 (2025) (Sotomayor, J., dissenting from stay denial).

The massive dose of etomidate required by Florida's protocol, combined with the mandatory consciousness checks, will ensure Heath is "fully insensate" before the execution continues. *Cf. Barr*, 591 U.S. at 981; *Baze*, 553 U.S. at 64 (Alito, J., concurring) ("The first step in the lethal injection protocols currently in use is the anesthetization of the prisoner. If this step is carried out properly, it is agreed, the prisoner will not experience pain during the remainder of the procedure."); *Baze*, 553 U.S. at at 120 (Ginsburg, J., dissenting) (praising Florida's consciousness checks). Notably, this Court has upheld lethal-injection protocols even without consciousness checks. *See Glossip*, 576 U.S. at 877, 886. Their presence in Florida's protocol renders Heath's attempt to show irreparable harm little more than speculative.

Heath failed to establish he will be irreparably harmed by superadded pain if the status quo remains in place and Florida carries out his execution tomorrow. He therefore fails the third *Barefoot* element along with the rest.

Accordingly, this Court should deny the application for stay.

Respectfully submitted,

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

/s/ Scott A. Browne
SCOTT A. BROWNE
Chief Assistant Attorney General
Counsel of Record

BENJAMIN L. HOFFMAN
Senior Assistant Attorney General

JASON W. RODRIGUEZ
Senior Assistant Attorney General

NICOLE ROCHELLE SMITH
Senior Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
3507 E. Frontage Rd., Ste. 200
Tampa, Florida 33607
Telephone: (813) 287-7900
Scott.browne@myfloridalegal.com
capapp@myfloridalegal.com

COUNSEL FOR RESPONDENT