No. 25-6746

**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

# BRIEF IN OPPOSITION
## EXECUTION SCHEDULED FOR FEBRUARY 10, 2026, AT 6:00 P.M.


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**CAPITAL CASE**

## QUESTIONS PRESENTED

Ronald Heath stabbed and bludgeoned Michael Green to death as a sixteen-year-old in 1977. In 1989, months after his release from prison for Green's murder, Heath robbed and murdered Michael Sheridan. He stabbed Sheridan in the neck, sawed at Sheridan's throat, and told his brother to shoot him. Heath's death sentence for Sheridan's murder finalized in 1995.

On January 9, 2026, Florida scheduled Heath's execution for February 10, 2026. Heath then challenged Florida's lethal injection protocol, claiming he had definitive proof Florida deviated from its execution protocol in prior executions. Florida's courts rejected those arguments as speculative and insufficient to meet the standards governing method-of-execution claims. In his final bid to stave off a long-coming execution, Heath asks this Court to intervene. But this Court should instead decline to review the following questions:

I. Does the *Baze-Glossip* standard truly govern "all Eighth Amendment method-of-execution claims," *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019), including those asserting protocol deviations in prior executions?

II. Did Heath plead a facially valid Eighth Amendment method-of-execution claim on the first prong of the *Baze-Glossip* test by reading protocol deviations into redacted records that do not support his claims and offering a doctor to speculate that the supposed deviations might contribute to a painful death?

III. Does a capital defendant raising an Eighth Amendment method-of-execution claim satisfy his burden of pleading an alternative execution method that the State could readily use to execute him, *Nance v. Ward*, 597 U.S. 159, 169 (2022), by demanding a state pause all executions until it conducts a review and establishes new safeguards?

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Heath seeks certiorari review of the Florida Supreme Court's decision rejecting his post-warrant challenges to execution. *See Heath v. State*, No. SC2026-0112, 2026 WL 320522 (Fla. February 3, 2026).

## JURISDICTION

This Court has jurisdiction over Heath's questions. *See* 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISIONS INVOLVED

The State accepts Petitioner's statement of the constitutional provisions.

## STATEMENT OF THE CASE AND FACTS

Nearly four decades ago, in 1989, Ronald Heath robbed and murdered Michael Sheridan with his brother. This case has been thoroughly litigated and re-litigated for decades in state and federal courts. *Heath*, 2026 WL 320522, at *2 (collecting cases). That includes two unsuccessful pre-warrant requests for this Court's intervention.[1]

### Murders and Pre-Warrant Litigation

As a sixteen-year-old, Heath murdered Michael Green. *Heath v. State*, 3 So. 3d 1017, 1026 (Fla. 2009) (*Heath II*). Law enforcement found Green's body—riddled with twenty-three stab wounds and a crushed skull—near a severely burned vehicle and a burned tree stump covered in dried blood and matted hair. *Id.* (DARTS11:2193.) Heath confessed to Green's murder in a sworn statement, and, in exchange, the prosecution let him plead guilty to second-degree murder. (DAR3:373–418.)

[1] *Heath v. Florida*, 515 U.S. 1162 (1995); *Heath v. Florida*, 586 U.S. 862 (2018).

Months after his release from prison for Green's murder, Heath and his brother murdered Michael Sheridan. *See Heath II*, 3 So. 3d at 1026; *Heath v. State*, 648 So. 2d 660, 662 (Fla. 1994) (*Heath I*). At Heath's suggestion, they lured Sheridan to a secluded area, robbed him, beat him, stabbed him, sawed at his throat with a knife, shot him three times, concealed his body in the woods, and then went on a shopping spree with Sheridan's credit cards. *Heath I*, 648 So. 2d at 662. The State tied Heath to Sheridan's murder through his use of Sheridan's stolen credit cards, possession of Sheridan's watch, and testimony from his brother, who received a plea deal in exchange for his truthful testimony. *Id*

A jury found Heath guilty of Sheridan's murder and recommended death by a 10-2 vote. *Id.* at 663. The sentencing judge followed that recommendation and imposed a death sentence after finding two aggravators: (1) a prior violent felony based on Heath's conviction for the second-degree murder of Michael Green; and (2) Heath murdered Sheridan during an armed robbery. *Id.* In the decades that followed, state and federal courts rejected several challenges to Heath's convictions and death sentence.[2] Heath became "warrant-eligible," meaning the Governor could sign his death warrant at any time, in 2013. *See Heath v. Sec'y, Fla. Dep't of Corr.*, 717 F.3d 1202, 1203 (11th Cir. 2013), *cert. not taken*; *Jones v. State*, 419 So. 3d 619, 626 (Fla. 2025) (explaining capital defendants are "warrant eligible" after exhaustion of initial

[2] *Heath v. State*, 648 So. 2d 660 (Fla. 1994) (direct appeal); *Heath v. State*, 3 So. 3d 1017 (Fla. 2009) (initial state postconviction); *Heath v. Sec'y, Fla. Dep't of Corr.*, 717 F.3d 1202 (11th Cir. 2013) (initial 28 U.S.C. § 2254 proceeding); *In re: Ronald Heath*, 14-13145 (11th Cir. Jul 14, 2014) (petition to authorize successive § 2254 proceeding); *Heath v. State*, 237 So. 3d 931, 932 (Fla. 2018) (first successive state postconviction).

state and federal postconviction review).

**CHU-N's Representation and Florida's Nineteen 2025 Executions**

The Capital Habeas Unit for the Northern District of Florida ("CHU-N") began representing Heath as his federal counsel on April 3, 2017. *Heath v. Sec'y, Fla. Dep't of Corr.*, 1:09-cv-148, Doc.115 (N.D. Fla. Apr. 3, 2017).

Last year, Florida carried out nineteen death sentences imposed on violent murderers. All nineteen executions occurred on the date set by the Florida Department of Corrections (DOC) when the Governor signed the death warrant. And all nineteen lasted well under an hour. But, on November 26, 2025, the last defendant executed in 2025 filed a 42 U.S.C. § 1983 suit raising a method-of-execution claim. *Walls v. Sec'y, Dep't of Corr.*, 161 F.4th 1281, 1281 (11th Cir. 2025), *cert. denied*, No. 25-6382, 2025 WL 3674296 (U.S. Dec. 18, 2025).

CHU-N, the same entity charged with representing Ronald Heath in federal court now, represented Frank Walls in that suit. *See id.* CHU-N relied, in part, on redacted DOC records it claimed showed DOC failed to follow execution protocol in some of the preceding 2025 executions. *Id.* at 1285. According to CHU-N, it obtained those records on October 28, 2025. *Id.* at 1285.

CHU-N argued to this Court that those "records reflecting Florida's negligent administration of its lethal injection protocol" were the primary basis for Walls' suit. *See, e.g.*, *Walls v. Florida*, 25-6382, Petition at i, 9–11. When the Respondents pointed out that Walls had "morphed" his claim, which primarily relied on his alleged medical ailments below and not Florida's protocol, *Walls v. Florida*, 25-6382, Brief in

Opposition at 9–11, CHU-N accused the Respondents of misleading this Court and claimed Walls had "always relied on the error-riddled execution logs," *Walls v. Florida*, 25-6382, Reply Brief at i, 1–2. CHU-N also claimed it obtained the logs "in response to a public records request." *Id.* at 2.

This Court denied Walls' petition for certiorari and application for stay. Walls' execution took place as scheduled and ended in eleven minutes at 6:11 p.m. on December 18, 2025. Heath, however, did not raise *any* pre-warrant challenge to Florida's execution protocol despite CHU-N's simultaneous representation of both him and Walls.

**Heath's Post-Warrant Litigation**

Florida Governor Ron DeSantis signed Heath's death warrant on January 9, 2026, and the Florida Department of Corrections scheduled his execution for February 10, 2026. On January 18, 2026, using the records from Walls' § 1983 suit, Heath raised an Eighth Amendment method-of-execution claim asserting DOC violated its lethal-injection protocol during prior executions. (WPCR:437–48.) He asserted DOC recorded removing expired etomidate on dates that coincided with four executions, failed to accurately log the use of execution drugs, removed incorrect amounts of the second and third drugs in Florida's execution protocol, did not document using etomidate once despite an autopsy showing etomidate was in fact used, used lidocaine even though it is not in the protocol, and that one execution took twenty minutes instead of the usual fifteen minutes or less. (WPCR:251, 438–41, 445.)

Heath attached the records from Walls' § 1983 suit to his motion as support. (WPCR:489, 490, 492, 510, 512.) None of those records contained any executed inmate's name or show that any of the drugs listed were used during any execution. (*Id.*) Most simply contained lines for "drug name," "package size," and "NDC#," and columns for "date," "invoice name/#," "Lot #," "Exp. Date," "MFR," "Received/Used (+/–)," and "balance." (WPCR:489, 490, 492, 510, 512.) The "Received/Used (+/–)" column contained numbers with either the + or – symbol. (*Id.*)

Heath admitted he did not know whether any prisoner "executed by Florida since the documented errors began felt an unconstitutional level of pain." (WPCR:438.) Nor could he allege expired etomidate would not work. (WPCR:441 (alleging his expert could only testify it was "unknown whether an expired drug will work as intended," which left "each execution carried out with such a dosage completely up to chance").) Heath's expert, Dr. Zivot, generally concluded that DOC's alleged errors contributed to "a substantial likelihood of a drawn-out, torturous death." (WPCR:440.) In a single-sentence footnote, Heath offered firing squad as an alternative method of execution. (WPCR:448 n.3.) But he primarily demanded Florida pause all executions, review its protocol, and make changes. (WPCR:447–48.)

The state post-warrant court summarily denied Heath's method-of-execution claim, and the Florida Supreme Court affirmed. *See Heath v. State*, No. SC2026-0112, 2026 WL 320522, at *2–4 (Fla. Feb. 3, 2026). The Florida Supreme Court noted Heath's alleged DOC records supported approximately five distinct categories of protocol deviations:

> (1) on three occasions, the logs suggest that FDC did not document the removal from inventory of drugs used in the executions until one or two days after the executions; (2) in one execution, there is no corresponding log entry indicating that etomidate was removed from inventory, despite postmortem testing showing the presence of the drug in the decedent's blood; (3) on two occasions, drugs were removed from inventory one or two days after executions in amounts allegedly less than required by the protocol, suggesting incorrect dosing; (4) on two occasions, lidocaine—a drug not called for in the protocol—was administered; (5) the logs indicated that an expired drug was used during four executions.

*Id.* at *3. The court also noted Heath alleged "one execution took twenty minutes, with movement occurring after the paralytic would have purportedly been administered," provided Dr. Zivot's declaration about the risks posed by DOC's alleged deviations, and attached the DOC records. *Id.*

The Florida Supreme Court then dealt with each of Heath's allegations. After individually evaluating them, the court held he had failed to demonstrate a "sure or very likely" risk of needless suffering as required by the *Baze-Glossip*[3] test's first prong. *Id.* Any documentation errors—such as removal of execution drugs on the wrong date or failure to document use of etomidate in one execution when even Heath conceded it was in the decedent's system postmortem—did not meet that standard. *Id.* Nor did the alleged use of lidocaine. *Id.*

The court found Heath's allegations of improper drug dosages and expired etomidate based on the DOC records speculative because his only connection between the drugs and executions was dates that "seemingly correspond" to executions. *Id.* And even if Heath was right, he failed to allege sufficient facts showing that incorrect

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

dosages or expired etomidate present a substantial risk of very likely needless suffering. *Id.* He also provided no allegations showing DOC planned to deviate from protocol in Heath's execution. *Id.* at *4.

Alternatively, the court found Heath's allegations failed to meet the second prong of the *Baze-Glossip* test. *Id.* Heath's first suggestion—a pause on executions and review—was not detailed enough to demonstrate the State could carry it out relatively easily and reasonably quickly. *Id.* And Heath did not sufficiently plead firing squad as an alternative. *Id.* (noting Heath provided only a single-sentence conclusion that omitted any details about feasibility, ready implementation, or substantial reduction in pain).

The Florida Supreme Court therefore rejected Heath's method-of-execution claim because his reliance on the ambiguous DOC records was too speculative to support relief and he failed to meet both prongs of the *Baze-Glossip* test. *Id.* at *3–4.

Four days before his scheduled execution, Heath filed his certiorari petition in this Court seeking review of the following three questions presented:

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. Whether 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. Whether 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?

The State opposes certiorari.

## REASONS FOR DENYING THE PETITION

Heath invokes the Eighth Amendment's prohibition against cruel and unusual punishment while seeking certiorari in his ultimate attempt to escape justice for heinous crimes committed in 1989. But his last-ditch effort to expand and contort that constitutional prohibition beyond recognition provides him no refuge. By its terms, the Eighth Amendment only protects against "cruel and unusual punishments." U.S. Const. amend. VIII.

This Court has repeatedly explained that anyone bringing an Eighth Amendment "method of execution claim alleging the infliction of unconstitutionally cruel pain must meet the *Baze-Glossip* test." *E.g.*, *Bucklew v. Precythe*, 587 U.S. 119, 140 (2019) ("*Glossip* left no doubt that this standard governs *all* Eighth Amendment method-of-execution claims.") (cleaned up; emphasis added). That test requires the condemned to: (1) show the method he will be executed by "presents a risk that is *sure or very likely* to cause serious illness and needless suffering"; and (2) provide an alternative execution method that is "feasible, readily implemented, and in fact significantly reduces a substantial risk of severe pain." *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (cleaned up; emphasis in original); *see also Nance v. Ward*, 597 U.S. 159, 169 (2022) (noting this Court's precedent compels "a prisoner bringing a method-of-execution claim to propose an alternative way for the State to carry out his death

sentence"). Speculation does not demonstrate a "*sure or very likely*" risk of "serious illness and needless suffering." *Brewer v. Landrigan*, 562 U.S. 996 (2010) (emphasis in original).

Courts must also guard against attempts to use method-of-execution challenges "as tools to interpose unjustified delay" in capital cases. *Bucklew*, 587 U.S. at 150. At this late hour, the State and victims are entitled to finality. *See Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (explaining when initial federal review of a state judgment has run its course "and a mandate denying relief has issued, finality acquires an added moral dimension").[4] Setting an execution date does not invite attacks on "settled precedent" or "speculative theories" for relief. *Bucklew*, 587 U.S. at 149 (cleaned up).

The Constitution lets States guard execution-related records. *E.g.*, *Lewis v. Casey*, 518 U.S. 343, 354 (1996) (rejecting the argument that "the State must enable the prisoner to *discover* grievances, and to *litigate effectively* once in court") (emphasis in original).[5] And States usually do because of the proven ways capital defendants

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[4] *See also Coleman v. Balkcom*, 451 U.S. 949, 956 (1981) (Rehnquist, J., dissenting from denial of certiorari) ("When society promises to punish by death certain criminal conduct, and then the courts fail to do so, the courts not only lessen the deterrent effect of the threat of capital punishment, they undermine the integrity of the entire criminal justice system.").

[5] *See also Gray v. Netherland*, 518 U.S. 152, 168 (1996) (noting this Court's repeated admonitions that due process has "little to say regarding the amount of discovery which the parties must be afforded" and that there is "no general constitutional right to discovery"); *Wellons v. Comm'r, Ga. Dep't of Corr.*, 754 F.3d 1260, 1267 (11th Cir. 2014) (relying on *Lewis* to reject a due process right to lethal-injection discovery and collecting cases).

and their advocates misuse those records. *See Glossip*, 576 U.S. at 869–71 (recounting the successful crusade anti-death-penalty advocates launched to make lethal-injection drugs unavailable to Oklahoma). But that does not ease the burden capital defendants must shoulder under *Baze-Glossip*. *See In re Ohio Execution Protocol*, 860 F.3d 881, 887 (6th Cir. 2017).

In defiance of these well-established principles, Heath raises three interrelated questions days before his execution: (1) Does the *Baze-Glossip* test apply to Heath's method-of-execution claim premised on alleged protocol deviations in prior executions? (2) Did Heath plead a facially valid method-of-execution claim on *Baze-Glossip*'s first prong? (3) Does proposing a pause on executions pending a protocol review meet *Baze-Glossip*'s second prong?

There are three threshold reasons to deny certiorari on all these questions presented. **First**, all Heath's questions are premised on a disputed and conclusive factual issue: did DOC deviate from protocol in prior executions the ways Heath alleged? While Heath presents DOC records as definitive proof of protocol deviations, the records do not support Heath's claims without a hefty dose of speculation and conjecture that no court has indulged him in so far. A capital defendant's naked speculation about protocol deviations—which his attached records do *not* support without conjecture and guesswork—does not merit this Court's review just before an execution for a 1989 murder. *See Bucklew*, 587 U.S. at 149–51 (encouraging federal courts to curtail speculative suits).

Heath's own allegations prove the records he relies on do not capture DOC's

adherence or non-adherence to protocol. Heath admits that, if his reading of the records is correct, the records themselves are "inaccurate." (Pet. at 4 n.2.) And he admitted below that, based on his lineup of the record dates with an execution, DOC merely failed to log etomidate's removal while in fact administering it. *See Heath v. State*, No. SC2026-0112, 2026 WL 320522, at *3 (Fla. Feb. 3, 2026).

The Eighth Amendment prohibits "cruel and unusual punishment" not inaccurate bookkeeping. This Court should not intervene in a capital case days before an execution on the exceedingly slim reed of these ambiguous and "inaccurate" records. (*See* Pet. at 4 n.2.) The disputed issues of fact, lack of support for Heath's position, and Heath's concession the records he presents as proof are not accurate, all weigh against certiorari review.

**Second**, Heath should have pursued this method-of-execution claim before Florida set his execution date. Heath had notice of his warrant eligibility in 2013, *see Jones v. State*, 419 So. 3d 619, 626 (Fla. 2025), and his CHU-N counsel received these records on October 28, 2025, *Walls v. Sec'y, Dep't of Corr.*, 161 F.4th 1281, 1281 (11th Cir. 2025). But rather than raise this claim before Florida scheduled his execution, Heath waited until after the Governor signed his death warrant and ultimately filed it eighty-two days after his CHU-N counsel received the records he relied on.

A warrant-eligible capital defendant's choice to wait until after the signing of his death warrant to raise a claim that could have been raised pre-warrant strongly militates against certiorari. *See Dunn v. Ray*, 586 U.S. 1138, 1138 (2019) (vacating a stay of execution when a capital defendant waited 83 days after the claim ripened to

file it); *cf. Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (cautioning federal courts against intervening close to an election over a dissent that argued the Texas Legislature bore any fault for altering an election map close to an election).

**Third**, this case presents a poor vehicle to answer these questions. The factual dispute about whether deviations occurred alone means there are far better vehicles. *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 prison officials admitted they "did not strictly follow the execution protocol" regarding consciousness checks in prior executions); *Cooey v. Strickland*, 589 F.3d 210, 224 (6th Cir. 2009) (holding even proof of past medical negligence insufficient to establish an Eighth Amendment claim and noting the Eighth Circuit has held the same in a case alleging "a series of mistakes in administration of the protocol"). A case with uncontested deviations in prior executions provides a far better vehicle than this post-warrant case with a sharp disagreement about whether deviations occurred at all.

This case also comes to this Court with an execution looming. Capital defendants in Florida can, and have, raised pre-warrant method-of-execution claims challenging Florida's lethal-injection process long before a warrant. *E.g.*, *Douglas v. State*, 141 So. 3d 107, 127 (Fla. 2012) (Fla. 2012) (holding method-of-execution claim raised in an initial postconviction motion should have been raised on direct appeal); *Bates v. State*, 3 So. 3d 1091, 1106 & n.18 (Fla. 2009) (raising a method-of-execution claim in an initial postconviction motion). And both the Florida Supreme Court and

Eleventh Circuit have expressly rejected the argument that method-of-execution challenges only ripen after a death warrant. *See Ferguson v. State*, 101 So. 3d 362, 365 (Fla. 2012); *McNair v. Allen*, 515 F.3d 1168, 1174 (11th Cir. 2008). As a result, there will likely be better vehicles to address similar questions without the exigencies of an active death warrant or an ambiguous record. This Court should deny certiorari for these three threshold reasons.

But the State will also analyze each question individually. Not one of Heath's questions warrants this Court's review. This case would be unworthy of certiorari under normal circumstances, much less days before an execution. The decision below properly stated and applied all governing federal principles, does not implicate an important or unsettled federal question, does not conflict with any state court of last resort or United States Court of Appeals, and does not conflict with any decision of this Court. *See* Sup. Ct. R. 10. This Court should end the litigation in this almost forty-year-old capital case by denying certiorari.

## I. Heath's First Question Asking Whether an Eighth Amendment Claim Alleging Repeated Past Protocol Deviations Must Meet the *Baze-Glossip* Test Does Not Warrant this Court's Review.

Heath's first question asks whether Eighth Amendment claims alleging repeated protocol deviations must meet the *Baze-Glossip* framework. This Court has repeatedly answered this question, Heath provides no evidence other appellate courts are split on it, and the decision below is perfectly consistent with this Court's answer. The People of Florida and surviving victims of Heath's crimes deserve better than a repeat of the protracted litigation and unnecessary delays this Court condemned the last time a capital defendant tried to circumvent clear-cut precedent on method-of-

execution claims. *See Bucklew*, 587 U.S. at 136, 149.

**A. This Court's Current Caselaw Answers this Question.**

Heath's first question presents "little more than an attack on settled precedent" unworthy of review. *See Bucklew*, 587 U.S. at 136, 140, 149. This Court has twice confirmed that the *Baze-Glossip* test governs "*all* Eighth Amendment method-of-execution claims." *Id.* at 134 (emphasis added.) "Having (re)confirmed that anyone bringing a method of execution claim alleging the infliction of unconstitutionally cruel pain must meet the *Baze-Glossip* test" just a few years ago, there is no need to do so for a third time now. *See id.* at 140.

In *Baze* itself, this Court addressed a challenge to an execution protocol based on "the risk that the protocol's terms might not be properly followed, resulting in significant pain." *Baze v. Rees*, 553 U.S. 35, 41 (2008) (plurality opinion). This Court held the capital defendants failed to carry "their burden of showing that the risk of pain from maladministration of a concededly humane lethal injection protocol, and the failure to adopt untried and untested alternatives, constitute cruel and unusual punishment." *Id.* It reached that conclusion after assessing the numerous safeguards in the protocol at issue, risk of error from improper administration, and the legal standard—whether the risk of improper administration was "*sure or very likely* to cause serious illness and needless suffering." *Id.* at 49–51, 54–56 (emphasis in original). Since the risk of suffering unconstitutional levels of pain from the failure to follow protocol was too low, the Eighth Amendment claim failed. *Id.* This Court then cautioned lower courts not to grant a stay on claims like those in *Baze* unless "the

demonstrated risk of severe pain" is "substantial when compared to known and available alternatives." *Id.* at 61–62 (explaining the Eighth Amendment only prohibits "wanton exposure to objectively intolerable risk, not simply the possibility of pain").

So too here. Heath cannot validly distinguish his claim from the one this Court addressed in *Baze* or from *Bucklew*'s broad pronouncement that the *Baze-Glossip* test governs all such claims. *See Gissendaner v. Comm'r, Georgia Dep't of Corr.*, 803 F.3d 565, 567–69, 571–76 (11th Cir. 2015) (applying the *Baze-Glossip* test to a claim dealing with risk of failure to follow protocol). The *Baze-Glossip* test governs Heath's Eighth Amendment challenge to the way he says Florida deviated from protocol. This Court should deny certiorari rather than let Heath attack settled precedent right before his execution. *See Bucklew*, 587 U.S. at 149.

**B. Heath Failed to Establish Conflict.**

Unsurprisingly, given *Baze* and *Bucklew*, Heath does not try to establish conflict with any post-*Baze* court, much less this Court. *See* Sup. Ct. R. 10(a)-(b). He instead offers two pre-*Baze* federal district court cases with zero precedential value, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011), to support his suggestion that a pattern of protocol deviations, without more, violates the Eighth Amendment.[6] Those decisions provide no basis for conflict and Heath offers no others. Indeed, it appears every federal appellate court evaluating Eighth Amendment method-of-execution

[6] *Taylor v. Crawford*, No. 05-4173-CV-C-FJG, 2006 WL 1779035, at *7 (W.D. Mo. June 26, 2006); *Morales v. Tilton,* 465 F. Supp. 2d 972, 975 (N.D. Cal. 2006).

claims based on protocol deviations has analyzed those claims using the *Baze-Glossip* test.[7] *Baze*—which confirmed the constitutional focus for an Eighth Amendment claim alleging risk of protocol deviations is a near certain risk of unconstitutional levels of pain, *not* the mere potential for protocol deviations—compels that analysis.

**C. The Decision Below Is Correct.**

In any event, both common sense and constitutional interpretation require adherence to *Baze-Glossip* when a capital defendant complains about past protocol deviations. The Eighth Amendment only bars "cruel and unusual punishments" not protocol deviations. *See* U.S. Const. amend. VIII. It prohibits the State from "seeking to superadd terror, pain, or disgrace" to an execution but "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. And the Eighth Amendment "does not come into play unless the risk of pain associated with the State's method is substantial when compared to a known and available alternative." *Id.* at 134.

Put simply, even recurring protocol deviations do not automatically make a method-of-execution—risk of deviations and all—cruel and unusual punishment. *See Baze v. Rees*, 553 U.S. 35, 53–54 (2008) (plurality opinion) (holding the risk of improper implementation of a protocol did not violate the Eighth Amendment).

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[7] *Jordan v. Mississippi State Executioner*, No. 25-70013, 2025 WL 1752391, at *2 & n.2, *3 (5th Cir. June 24, 2025); *Cooey v. Strickland*, 589 F.3d 210, 225 (6th Cir. 2009); *Zink v. Lombardi*, 783 F.3d 1089, 1101-03 (8th Cir. 2015); *Clemons v. Crawford*, 585 F.3d 1119, 1125-28 (8th Cir. 2009); *Gissendaner v. Comm'r, Georgia Dep't of Corr.*, 803 F.3d 565, 575 (11th Cir. 2015).

Protocol deviations come in all shapes and sizes, as evidenced by Heath's misguided allegations. They do not inherently involve an unconstitutional risk of pain and needless suffering. *See Glossip*, 576 U.S. at 877 (requiring an imminent risk of sure or very likely serious illness or needless suffering).

A myopic focus on protocol deviations ignores other safeguards (like consciousness checks) that greatly lower the risk of unconstitutional severe pain even if a deviation occurs. *See id.* at 886–87 (explaining this Court upheld a protocol even without a "consciousness check"); *Baze*, 553 U.S. at 120 (Ginsburg, J., dissenting) (praising Florida's consciousness checks). Florida's protocol contains such checks to ensure that—even if an error occurred earlier—the condemned is 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 Florida's protocol contains safeguards and checks to ensure "the condemned is unconscious throughout the execution").[8]

The Florida Supreme Court correctly held the *Baze-Glossip* test applies to Heath's Eighth Amendment method-of-execution claim based on alleged protocol deviations *See Heath v. State*, No. SC2026-0112, 2026 WL 320522, at *3 (Fla. Feb. 3, 2026). This Court need not review that correct decision just before Heath's execution.

[8] DOC only administers the second and third drugs after a determination that the first drug has the desired effect and the inmate is unconscious. *See Howell v. State*, 133 So. 3d 511, 522 (Fla. 2014) (noting that a consciousness check, which included a painful pinch of the trapezius would "ensure that Howell is unable to perceive any noxious stimuli"); *Schwab v. State*, 995 So. 2d 922, 930 (Fla. 2008) (detailing the steps of a consciousness check that included a shake and shout and eyeball tap); *Valle v. Singer*, 655 F.3d 1223, 1233 (11th Cir. 2011) (noting that under Florida's protocol, a consciousness check is required and "the execution cannot proceed until the individual is rendered unconscious").

## II. Heath's Second Question About the Facial Validity of His Eighth Amendment Method-of-Execution Claim Does Not Warrant this Court's Review.

For his second question, Heath asks this Court to engage in a fact-bound inquiry to determine the sufficiency of his specific allegations on *Baze-Glossip*'s first prong. (*See* Pet. at 13–15, 19–23.) That question does not warrant the extraordinary relief of granting certiorari review days before a scheduled execution for five reasons: (A) Heath failed to establish conflict; (B) this fact-bound question has little precedential value; (C) relief on this question hinges on the outcome of Heath's first and final questions, which both fail under this Court's precedent; (D) the decision below correctly determined Heath failed to meet the first prong of the *Baze-Glossip* test; and (E) Heath would not clearly obtain substantive relief even if this Court granted certiorari and reversed.

### A. Heath Failed to Establish Conflict.

Heath does not attempt to establish conflict between the decision below and any court. (*See* Pet. at 13–15.) That makes this question unworthy of this Court's review. *See Braxton v. United States*, 500 U.S. 344, 347 (1991) (explaining certiorari is primarily used to resolve lower-court conflicts on federal law); *Rockford Life Ins. Co. v. Illinois Dep't of Revenue*, 482 U.S. 182, 184 n.3 (1987) (recognizing issues that have "divided neither the federal courts of appeals nor the state courts" rarely merit this Court's review). *See also California v. Carney*, 471 U.S. 386, 400–01 & n.11 (1985) (Stevens, J., dissenting with Brennan and Marshall, JJs.) (explaining deep conflict aids this Court in identifying "rules that will endure" on difficult questions of law).

Nor could Heath establish conflict if he tried. The first prong of the *Baze-*

*Glossip* test places the burden on the capital defendant to show a risk that is "*sure or very likely* to cause serious illness and needless suffering." *See Glossip v. Gross*, 576 U.S. 863, 877 (2015). There "must be a substantial risk of serious harm, an objectively intolerable risk of harm that prevents prison officials from pleading that they were subjectively blameless for purposes of the Eighth Amendment." *Id.* Speculative harm is not enough. *Brewer v. Landrigan*, 562 U.S. 996 (2010). The *Baze-Glossip* test requires capital defendants "to prove their allegations to a high level of certainty," and that burden cannot be shifted onto the State. *In re Ohio Execution Protocol*, 860 F.3d 881, 887 (6th Cir. 2017); *see also Glossip*, 576 U.S. at 882 (holding capital defendants challenging a method of execution bear "the burden to show, based on evidence presented to the court, that there is a substantial risk of severe pain").

The Florida Supreme Court applied *Baze-Glossip* to Heath's claim. It recognized 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." *Heath*, 2026 WL 320522, at *3. The court then analyzed each of the alleged protocol deviations and explained why Heath failed to show a high enough risk of pain to violate the Eighth Amendment. *Id.*

That analysis does not conflict with any decision from this Court. *See, e.g.*, *Glossip*, 576 U.S. at 877; *Brewer*, 562 U.S. at 996. Nor does it conflict with the way federal circuit courts analyze such claims. *See, e.g.*, *Cooey v. Strickland*, 589 F.3d 210, 225 (6th Cir. 2009); *Zink v. Lombardi*, 783 F.3d 1089, 1101–03 (8th Cir. 2015);

*Clemons v. Crawford*, 585 F.3d 1119, 1125–28 (8th Cir. 2009); *Gissendaner v. Comm'r, Georgia Dep't of Corr.*, 803 F.3d 565, 575 (11th Cir. 2015). There is no conflict.

Heath's appeal to the Eighth Amendment's original meaning strains the bounds of credulity. (*See* Pet. at 19–23.) The framers would be astounded to learn the prohibition against cruel and unusual punishment protects against any deviation from a protocol designed to render the condemned unconscious before executing him. After all, at "the time of the Amendment's adoption, the predominant method of execution in this country was hanging." *Bucklew v. Precythe*, 587 U.S. 119, 132 (2019). And hanging was "no guarantee of a quick and painless death. Many and perhaps most hangings were evidently painful for the condemned person because they caused death slowly." *Id.* (cleaned up.) Yet the Eighth Amendment did not prohibit the "unfortunate but inevitable" risk of pain from hanging. *Id.*

Heath's effort to show the decision below conflicts with the original meaning of the Eighth Amendment does not survive a comparison with the "predominate" execution method at the founding. His revisionist effort to contort the Eighth Amendment into a prohibition on any protocol deviations does not warrant review. *See City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 542-43 (2024) ("The Cruel and Unusual Punishments Clause focuses on the question what method or kind of punishment a government may impose after a criminal conviction.") (cleaned up).

### B. Heath Seeks a Fact-bound Decision Inappropriate for Certiorari.

The fact-bound nature of Heath's second question presented also favors denying

certiorari. Heath asks this Court to parse through facts and determine whether his specific allegations met *Baze-Glossip*'s first prong in this specific case. But a "petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings." Sup. Ct. R. 10. 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.").

The Florida Supreme Court applied the *Baze-Glossip* test to Heath's claim. *Heath*, 2026 WL 320522, at *3. Whether it reached the correct result after parsing the specific facts of this case is neither an important question of federal law nor the sort of issue that warrants this Court's review. It is important only to Heath himself and therefore not a "suitable candidate for the exercise" of discretionary jurisdiction. *See Coleman v. Balkcom*, 451 U.S. 949, 956 (1981) (Rehnquist, J., dissenting from denial of certiorari) (arguing this Court should grant certiorari exclusively to head-off more federal delays). It does not merit certiorari.

Heath overstates the breadth of the Florida Supreme Court's holding below. The Florida Supreme Court's opinion below—parsing through Heath's specific asserted facts—does not necessarily foreclose the opportunity for a different decision on better allegations. But even charitably viewing Heath's question as broadly important to Florida capital defendants, that still does not make it important enough for this Court—which sits as the highest in a country—to review a fact-bound

application of correct law to case-specific facts.

### C. Relief on This Question Is Contingent on Heath's Other Two Questions.

The intertwined nature of this question with the others Heath presents weighs against certiorari. Heath's first question challenges the *Baze-Glossip* test's application to claims of protocol deviations while his third asserts that, in any event, he does not need to offer an actual alternative execution method.

Because of the way Heath pleaded his Eighth Amendment claim below, those questions are independently dispositive of Heath's Petition. Heath presented his only valid alternative method of execution (firing squad) in a single-sentence footnote. (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 v. Precythe*, 587 U.S. 119, 141 (2019). And the Florida Supreme Court below rejected Heath's proposed alternative for that exact reason. *Heath*, 2026 WL 320522, at *4 (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 presented challenge that holding.

So, if the *Baze-Glossip* test does apply to Heath's claim, and if he was required to point to an actual alternative method of execution, he cannot obtain any relief even if he prevailed on this second question. As a result, if Heath's first and third questions are not worthy of certiorari, his fact-specific second question is not worthy of review either. *See Bucklew*, 587 U.S. at 141.

The intertwined nature of Heath's questions—coupled with the fact that the first and third fail under this Court's precedent—supports denying certiorari on Heath's second question. *See Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 74 (1955) (Certiorari should not be granted when the issue is only academic.); *Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1945) (Certiorari is the power "to correct wrong judgments, not to revise opinions."). In this case, his second question ends up presenting an academic exercise unworthy of this Court's attention.

**D. The Decision Below Is Correct.**

This Court should also decline review because the Florida Supreme Court correctly rejected Heath's method-of-execution claim on *Baze-Glossip*'s first prong. Far from establishing a "*sure or very likely*" risk any protocol deviations would recur and "cause serious illness and needless suffering," *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (emphasis in original), Heath relied on multiple levels of speculation that has never been enough, *see Brewer v. Landrigan*, 562 U.S. 996 (2010).

Heath tried to overcome the presumption DOC follows protocol by speculating it previously deviated from protocol. But this Court presumes members of the executive branch properly discharge their duties absent "clear evidence to the contrary." *See United States v. Armstrong*, 517 U.S. 456, 464–65 (1996); *see also Baze*, 553 U.S. at 49–51, 53–56. Since the risk officials will not follow protocol does *not* create an Eighth Amendment violation, *Baze*, 553 U.S. at 49–51, 53–56, mere speculation about past failure to follow protocol does not provide the clear evidence needed to overcome that presumption.

Heath failed to provide "clear evidence" to overcome the presumption DOC followed its protocol in past executions. The records he attached do not directly link to any execution. Heath also conceded that, if he is reading the records correctly, they contain inaccuracies. And his reliance on the records runs into the problem that nothing in DOC's protocol requires contemporaneous or exact record keeping for the pharmaceuticals used on condemned inmates. *See Troy v. State*, 57 So. 3d 828, 839 (Fla. 2011) (holding the protocol's failure "to require adequate record-keeping" did not give rise to an Eighth Amendment claim). Heath also failed to rule out innocent explanations for the records he relies on, such as that the allegedly expired etomidate was removed and then destroyed instead of used in an execution.

The fact that, on Heath's reading, DOC failed to log removal of etomidate for one execution but did in fact use etomidate in that execution puts to rest any notion the records provide actual evidence DOC deviated from protocol. (WPCR:439.) And Dr. Zivot does not help Heath overcome that hurdle because he made the same speculative assessment of the records as Heath. (*See* Pet. at 13–15.) Heath failed to overcome the presumption DOC followed protocol in all 2025 executions. His speculation is not enough. *See Brewer*, 562 U.S. at 996.

But even if Heath proved prior protocol deviations, nothing he alleged showed the deviations would recur in his execution. *See, e.g., Clemons v. Crawford*, 585 F.3d 1119, 1127 (8th Cir. 2009) (rejecting prisoners' claim that they faced a substantial risk of severe pain in upcoming executions based on a series of mistakes in administering the protocol in prior executions because they provided no "allegations

suggesting any current or prospective member of Missouri's execution team would intentionally or unintentionally deviate from or ignore the written protocol"); *Cooey v. Strickland*, 589 F.3d 210, 225 (6th Cir. 2009) (observing that "speculations, or even proof, of medical negligence in the past or in the future are not sufficient"). Heath provided only speculation that any alleged deviation from protocol would recur here.

Those two levels of speculation aside, Heath failed to provide a firm factual basis that any protocol deviations were "*sure or very likely* to cause serious illness and needless suffering." *See Glossip*, 576 U.S. at 877 (emphasis in original). To the contrary, he conceded he did not know whether any prisoner "executed by Florida since the documented errors began felt an unconstitutional level of pain." (WPCR:438.) He could only point to some movement in the twenty-minute Jennings execution as evidence to support the idea. But some movement in a twenty-minute execution is hardly probative of an unconstitutional level of pain. *See Baze*, 553 U.S. at 57 (explaining movement can be "misperceived as signs of consciousness or distress").

Quite tellingly, Jennings provides Heath's only "evidence" that the alleged protocol deviations mattered. But speculation that the deviations might have made a difference in *one* out of *nineteen* executions in 2025 does not meet his burden.[9] *See Glossip*, 576 U.S. at 892 (rejecting capital defendants' concerns about prior executions

[9] Notably, Florida has successfully implemented its etomidate protocol more than thirty times since its adoption in 2017. *See* Florida Department of Corrections, https://www.fdc.myflorida.com/institutions/death-row/execution-list-1976-present (last accessed Feb. 9, 2026).

in part because "12 other executions have been conducted using the three-drug protocol at issue here" without any apparent significant issues).

Dr. Zivot does not help Heath meet his burden of showing the risk of a protocol deviation would be "*sure or very likely* to cause serious illness and needless suffering." *See Glossip*, 576 U.S. at 877 (emphasis in original.) Dr. Zivot did not even know whether the allegedly expired etomidate would be effective. (WPCR:441.) Rather than providing evidence to support a sure or very likely risk of an unconstitutional level of pain, Heath inappropriately tried to flip his burden onto the State. *See Glossip*, 576 U.S. at 884 (rejecting expert testimony placing the burden of showing the drugs worked on the State because "the party contending that this method violates the Eighth Amendment bears the burden of showing that the method creates an unacceptable risk of pain" and by shifting the burden the defendants "effectively conceded that they lacked evidence to prove their case beyond dispute"). Dr. Zivot's remaining complaints about Florida's alleged deviations were conclusory and, not for the first time, far afield of what the Eighth Amendment requires. *See, e.g.*, *Bucklew v. Precythe*, 587 U.S. 119, 128, 145–48 (2019) (holding Dr. Zivot's testimony insufficient for a capital defendant's claim to survive summary judgment); *Price v. Dunn*, 587 U.S. 1036 (2019) (denying a stay of execution despite Dr. Zivot's testimony).

The Florida Supreme Court correctly denied relief after properly applying this Court's method-of-execution caselaw to Heath's claim. It thoroughly analyzed each of Heath's allegations and correctly determined he failed to demonstrate any protocol

deviations that occurred in the past presented a "substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering." *Heath v. State*, No. SC2026-0112, 2026 WL 320522, at *3 (Fla. Feb. 3, 2026) (relying on *Glossip*).

Heath's arguments are nothing more than an attempt to exceedingly lower the level of risk he needs to prevail. (*See* Pet. at 15.) This Court has long rejected low standards like Heath's for method-of-execution claims. *See Baze*, 553 U.S. at 50 (holding establishing exposure to risk of pain violates the Eighth Amendment requires that "the risk must be *sure or very likely* to cause serious illness and needless suffering, and give rise to sufficiently *imminent* dangers") (cleaned up; emphasis in original). The Florida Supreme Court correctly determined Heath's allegations failed to meet the level of risk this Court requires under the *Baze-Glossip* test's first prong.

The safeguards in Florida's protocol mitigate any risk Heath will suffer an unconstitutional level of pain. The massive dose of etomidate administered renders the condemned insensate for the execution, and there are checks to ensure "the condemned is unconscious throughout the execution." *Long v. State*, 271 So. 3d 938, 945 (Fla. 2019); *see also Rogers v. State*, 409 So. 3d 1257, 1268 (Fla. 2025) (noting "the well-established fact that the administration of etomidate will render him unconscious likely within one minute"). These safeguards assure condemned inmates the humane deaths they denied their victims.

Heath never explained why these safeguards fail to satisfy the Eighth Amendment even with the protocol deviations he alleged. The consciousness checks would ensure he is either unconscious before the execution proceeds or alert DOC

staff to the need for more etomidate. *See Baze*, 553 U.S. at 64 (Alito, J., concurring) ("The first step in" these "lethal injection protocols" is "the anesthetization of the prisoner. If this step is carried out properly," the "prisoner will not experience pain during the remainder of the procedure."). Etomidate, plus Florida's consciousness checks, vitiate any Eighth Amendment claim on *Baze-Glossip*'s first prong.

This Court should not grant certiorari on speculation about protocol deviations and risks after Florida efficiently executed nineteen condemned inmates last year alone. *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). This Court should deny certiorari.

### E. Heath Would Not Clearly Obtain Substantive Relief Even if this Court Reversed.

Finally, this Court should decline review because even reversal would not clearly provide Heath with substantive relief. "This Court has yet to hold that a State's method of execution qualifies as cruel and unusual" punishment, likely because states have worked hard to do the opposite and adopted more and more humane methods of execution. *Bucklew*, 587 U.S. at 133. Most of these suits fail on the merits but become breeding grounds for unwarranted delay. *See Middlebrooks v. Parker*, 22 F.4th 621, 625 (6th Cir. 2022) (Thapar, J., statement respecting denial of rehearing en banc).

Granting Heath the full relief he seeks from this Court would not assure him

substantive relief on his Eighth Amendment claim. At most, he would receive a remand and, perhaps, evidentiary development. But the only thing he would be assured is a prolonged delay before the State can set another execution date. *See Bucklew*, 587 U.S. at 149 (noting a capital defendant who filed a method-of-execution suit just days before his scheduled execution obtained a stay and litigated that suit for five years and through several other stays and delays). This Court should not use the extraordinary power of certiorari to intervene in an execution when there is little certainty the defendant would obtain substantive relief instead of mere delay. *See Sawyer v. Whitley*, 505 U.S. 333, 341 n.7 (1992) ("A court may resolve against" a last-minute capital litigant "doubts and uncertainties" on "the sufficiency of his submission.").

## III. Heath's Third Question Seeking to Meet the *Baze-Glossip* Test's Alternative-Method-of-Execution Prong by Demanding a Pause on Executions and Review Does Not Require Another Decision from this Court.

Heath's third question asks whether a capital defendant alleging an Eighth Amendment claim based on past protocol deviations can meet *Baze-Glossip*'s second prong by demanding a pause on executions and protocol review. (*See* Pet. at 15–19.) This question does not merit this Court's review for the same overarching reasons as his first. This Court has already answered this question, Heath fails to establish conflict, and the decision below is correct.

### A. This Court Already Answered this Question.

Like Heath's first question, this one is little more than an attack on settled precedent. *See Bucklew*, 587 U.S. at 136, 140, 149. This Court has confirmed and

reconfirmed that anyone bringing an Eighth Amendment method-of-execution claim alleging the infliction of unconstitutionally cruel pain must identify "an alternative method of execution." *Id.* ("*Glossip* expressly held that identifying an available alternative is a requirement of *all* Eighth Amendment method-of-execution claims alleging cruel pain.") (cleaned up; emphasis in original). "The Eighth Amendment does not come into play unless the risk of pain associated with the State's method is substantial when compared to a known and available alternative." *Id.* at 134. And in *Baze* this Court both established, and held the capital defendant failed to meet, the alternative-execution-method requirement despite allegations about the risk the state would not comply with its current protocol. *Baze,* 553 U.S. at 49–62.

There is no relevant difference between Heath's claim and the one addressed in *Baze*. Heath's method-of-execution claim tried to assert the alleged deviations from Florida's protocol would subject him to an unconstitutional risk of superadded pain. But to "determine whether the State is cruelly superadding pain, our precedents and history require asking whether the State had some other feasible and readily available method to carry out its lawful sentence that would have significantly reduced a substantial risk of pain." *Bucklew*, 587 U.S. at 138. And it is no answer to "compare the pain likely to follow from the use of a lethal injection in this case with the pain-free use of lethal injections in mine-run cases." *Id.* at 137. A pause on executions and protocol review is not an alternative execution *method*. *See Nance v. Ward*, 597 U.S. 159, 169 (2022) (explaining a capital defendant who obtains relief on a method-of-execution claim must persuade "a court that the State could readily use

his proposal to execute him").

Heath's decision to assert an execution pause and protocol review instead of an alternative method proves he is more interested in delay than vindicating any Eighth Amendment right. As explained in *Bucklew*, the alternative-execution-method requirement helps weed out claims seeking mere delay instead of constitutional relief. *Bucklew*, 587 U.S. at 139–140. "Unless increasing the delay and cost involved in carrying out executions is the point of the exercise, it's hard to see the benefit" of letting capital defendants meet the alternative-method-of-execution prong by demanding a pause and protocol review. *Cf. id.* at 139.

Requiring capital defendants to propose an alternative execution method helps sift between claims seeking delay and claims trying to vindicate constitutional rights in another way. The requirement prevents capital defendants from turning around and arguing the method they proposed constitutes cruel and unusual punishment if the State takes them up on it. *See Stewart v. LaGrand*, 526 U.S. 115, 118–120 (1999) ("By declaring his method of execution, picking lethal gas over the State's default form of execution—lethal injection—Walter LaGrand has waived any objection he might have to it."). In that way, the alternative-method requirement helps vindicate both a capital defendant's right to an execution free from cruel and unusual punishment and the State's legitimate interest in timely carrying out a death sentence.

Permitting capital defendants to seek a pause and protocol review rather than provide an actual alternative method of execution raises other thorny issues that the

alternative-method-requirement avoids. Who decides whether the pause is long enough? Who decides whether the inquiry is thorough and transparent enough? Who decides whether any modifications and safeguards are enough? Certainly, under this Court's precedents, not the courts. *See Bucklew*, 587 U.S. at 134 (holding the Constitution "does not authorize courts to serve as boards of inquiry charged with determining best practices for executions"); *Baze,* 553 U.S. at 51 (declining to embroil the courts in disputes beyond their expertise or to intrude on decisions committed to other branches of government) (plurality opinion). Heath's novel view of the alternative-execution-method requirement would inject courts into areas where this Court has already held they do not belong. Requiring capital defendants to propose an actual and readily implementable alternative method of execution that would decrease their feared risk of pain more than even a deviated-from protocol keeps courts to their proper sphere.

At bottom, Heath argues this Court did not really mean what it said in *Bucklew*—that capital defendants must provide an alternative execution method in *all* Eighth Amendment method-of-execution claims—because "the obvious harm are the errors themselves, and FDOC's refusal to intervene and rectify them." (Pet. at 17–18.) But his premise is wrong. Heath presupposes the Eighth Amendment cares about protocol deviations in a vacuum. It does not.

The Eighth Amendment prohibits cruel and unusual punishment. When it comes to "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, not some abstract exercise." *Bucklew*, 587 U.S. at 136–37. Heath's attempt to distinguish *Bucklew* evinces both a misunderstanding of the decision and what the Eighth Amendment safeguards him against. The Eighth Amendment does not prohibit lethal-injection protocol deviations in a vacuum. *See Gissendaner v. Comm'r, Georgia Dep't of Corr.*, 803 F.3d 565, 568 (11th Cir. 2015) (relying on *Baze* to explain the requirement capital defendants propose an alternative method of execution requirement applies even when the claim is based on "a risk of improper administration" of the protocol).

*Baze* and *Bucklew's* binding reasoning answers whether a pause and protocol review meets the alternative-method-of-execution requirement for claims based on the risk of protocol deviations. *See Bucklew,* 587 U.S. at 136 (recognizing the reasoning underlying a decision is "just as binding as the" holding). It does not. There is no need to stay an execution to answer this question again.

**B. Heath Failed to Establish Conflict.**

Heath alleges neither conflict nor that any court has adopted his novel method of meeting *Baze-Glossip's* second prong. *See* Sup. Ct. R. 10(a)-(b). That stands to reason. Lower courts cannot decide cases based on what they believe this Court really meant instead of what it held in black and white. *See Schwab v. Crosby*, 451 F.3d 1308, 1325 (11th Cir. 2006). Instead, lower appellate courts have properly concluded that claims alleging a risk of protocol deviations must meet the alternative-method-

of-execution requirement. *See, e.g.*, *Gissendaner*, 803 F.3d at 568.

Heath's failure to point to *any* court adopting his legal position counsels against certiorari. Unless and until a lower court defies this Court's pronouncements in *Baze* and *Bucklew* by adopting Heath's view, the question he presents does not warrant this Court's intervention.

**C. The Decision Below Correctly Denied Relief.**

The Florida Supreme Court correctly adhered to *Baze* and *Bucklew* by refusing to grant Heath relief when he presented his only valid alternative method of execution proposal (firing squad) in less than bare bones fashion. *Heath v. State*, No. SC2026-0112, 2026 WL 320522, at *4 (Fla. Feb. 3, 2026); *Bucklew*, 587 U.S. at 141. Correctly and directly following this Court's precedents on the eve of an execution deserves neither further review nor the delay such review necessitates. *See id.* at 149–50. This Court should deny Heath's Petition.

## CONCLUSION

The petition for a writ of certiorari should be denied.

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