*** CAPITAL CASE ***

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

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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

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I. The State refuses to explain or take any accountability for its own records reflecting the repeated maladministration of its execution protocol, including the use of expired and inadequately dosed drugs

The State repeatedly argues that Heath's maladministration-of-protocol claim—which the State tries to recast as a challenge to the *method* of lethal injection—is based on pure speculation. But Heath's claim is grounded in FDOC's *own* execution records, which plainly reflect, among other things, the use of expired drugs and inappropriately dosed drugs during recent executions. And the State has so far refused to explain those records, or comply with any of Heath's requests for further information about past protocol violations or any steps FDOC has taken to ensure that such violations are not repeated. And the State strangely attempts to cast doubt on the clear violations in the records by pointing out that the records are heavily redacted and therefore subject to some ambiguity, as if the Florida Attorney General does not have access to its own client's unredacted execution logs. If the redactions reflected any ambiguities, the State could have explained that at any time.

Instead, the State engages in its own speculation about the records that it alone controls. It suggests an innocent excuse for its documented administration of expired etomidate, insisting that Heath "failed to rule out" that the expired drugs were "removed and destroyed instead of used in an execution." BIO at 24. But this scenario would imply that, on the same dates that four executions occurred, FDOC coincidentally opted to discard some other expired etomidate—the precise dosage used in executions—and failed to document the withdrawal of the actual execution

drugs. Even if this explanation was plausible, it raises additional concerns, as the records would contain no documentation of the source, quantity, or expiration date for the etomidate actually administered to Bates, Windom, Pittman, or Jones. And, if the State had raised such factual disputes regarding the records below, instead of for the first time in this Court, they should have resulted in an evidentiary hearing.

The State never disputed the accuracy of the records Heath proffered below. Now, faced with documented evidence of their own violations spanning six months and involving, at a minimum, nine different executions, the State opts to discredit their own records to argue that the violations did not occur. This overlooks that FDOC's execution drug logs are under the sole control of FDOC—including how they are redacted. The State attempts to rely on their own redactions to support the idea that they are entitled to a presumption that executions are carried out properly. However, this ignores the fact that the records are quite clear in exposing multiple serious deviations; the State simply opposes what they show. It strains logic to find that any claim regarding a deficient implementation of a lethal injection protocol would be insufficiently proven when it is based on documented evidence of prior errors. *See, e.g, Baze v. Rees*, 553 U.S. 35, 71 (2008) (Stevens, J., concurring) (noting that *Baze* "may well be answered differently in a future case on the basis of a more complete record.").

And, while praising itself for carrying out nineteen executions in 2025, without any outward signs of distress from the inmates, the State leaves out that Florida's protocol includes a paralytic as the second drug—a drug that is banned from

euthanizing dogs because it masks all signs of distress but can lead the excruciating pain. And the State skirts over the fact that despite the paralytic, Bryan Jennings labored for 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. Also for the first time in this Court, the State challenges the credibility of Dr. Joel Zivot, M.D., who not only concluded that Jennings "suffered a drawn-out, but torturous execution that resulted in needless suffering", App. A4 at ¶ 7, but that *any* of the various errors raised in the FDOC drug logs could result in drawn out, torturous execution. App. A4.

The State's reliance on the "safeguards" within the protocol should do little to reassure this Court. For example, the required consciousness checks will do nothing to protect an inmate when the protocol is administered incorrectly. This is because, per the protocol, consciousness checks occur after the first dosage of etomidate, the sedative drug, is administered. App. A3 at 11. And yet, if the inmate is still conscious after the routine consciousness check, the protocol simply instructs executioners to administer a second round of 200mg of etomidate. *Id.* This safeguard would be wholly ineffective in a situation where, as documented multiple times in Heath's proffered records, the etomidate in question is expired, or FDOC did not prepare the required amount, and no safeguard is actually available. Absent a functioning safeguard, Heath has indeed proven that he faces a substantial risk of imminent harm. The State's contention that Heath's claim should fail because Heath proffered a medical

doctor's declaration that expired etomidate has questionable and unpredictable chemical properties invokes circular logic that this Court should disregard.

Florida's protocol provides that a "guiding principle" of executions in Florida is transparency. App. A3 at 1. But the State has done nothing to acknowledge or assuage this Court that it is properly following its procedures when administering lethal chemicals. Instead, it is continuing executions despite knowing that it is exposing inmates to the risk of prolonged suffering in contradiction of the Eighth Amendment's absolute prohibition of "intentional infliction of gratuitous pain." *Baze*, 553 U.S. at 102 (Thomas, J., concurring).

It should not escape this Court that Florida has a proven track record of being an unreliable narrator when it comes to its ability to effectively administer lethal drugs. In the case of Angel Diaz, whose lethal injection resulted in chemical burns nearly a foot in length on each arm, and who was writhing in pain on the gurney, FDOC reported that Diaz was simply stretching to see a clock in the death chamber. Only later was it reported that FDOC officials utterly failed to properly set a vein, sending potent lethal chemicals directly into Diaz's skin. Nathan Crabbe, *Warden: Execution Caused No Pain,* GAINESVILLE SUN (Jan. 29, 2007). In another example, during litigation regarding Florida's usage of the controversial cut-down procedure, prison staff testified that Bennie Demps was joking with executioners as they violently dug for IV access, and that he had "commented that this was the best treatment he had gotten while at DOC." Answer Brief of Appellee at 11, *Provenzano v. State*, SC00-1222 (Fla. Jun. 19, 2000). Yet, media witnesses reported that Demps

exclaimed from the gurney that "they butchered me back there…I was in a lot of pain. They cut me in the groin; they cut me in the leg. I was bleeding profusely." Rick Bragg, *Florida Inmate Claimed Abuse in Execution,* New York Times (Jun. 9, 2000).

This is concerning because Florida's use of a paralytic drug in its protocol means that a prisoner's screams or other signs of distress are less likely to contradict FDOC's account of a flawless execution than in times past. But the Eighth Amendment still provides a mechanism for accountability. Where, as here, a prisoner proffers clear evidence of repeated protocol violations that present a danger of unconstitutional suffering, the State should at least be required to explain the violations and whether any steps have been taken to ensure they do not repeat. Florida has so far sought to evade any accountability for the documented violations.

The consequence of the Florida Supreme Court's decision is that FDOC's practices are completely insulated from judicial review, no matter what serious violations have been documented. Inmates would face a reality in which no intervention into execution practices could occur until a gruesome botch, and the terror of knowing that the next botch could be them. *Cf. Helling v. McKinney*, 509 U.S. 25, 33 (1993) (stating that "remedy for unsafe conditions need not await a tragic event," and 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."); *see also Bucklew*, 587 U.S. 119, 133 (2019) (noting that "what unites the punishments the Eighth Amendment was understood to forbid" includes the "superadd[ition] of *terror*…"); *Baze*, 553 U.S. at 97 (noting that

at the founding, the definition of cruelty involved pain to "body or mind.") (quoting 1 Noah Webster, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 52 (1828)). This Court should reject the State's view that even the use of expired and improperly dosed drugs are not enough to warrant evidentiary development or inquiry from the Courts.

II. The State blurs the distinction between Heath's maladministration-of-protocol claim—which stems from an important issue left open in *Baze*—and a challenge to the lethal injection protocol itself

Contrary to the State's view, Heath's standalone maladministration-of-execution-protocol claim is not a challenge to the underlying constitutionality of the protocol itself, but stems from the numerous and documented errors that are occuring while the State implements it. *See, e.g.,* BIO at 16. Heath's maladministration claim involves an unsettled Eighth Amendment issue beyond what was addressed in *Baze, Glossip,*[1] and *Bucklew*—all cases ultimately considering the underlying constitutionality of a State's particular protocol, or method of execution.

In *Baze*, this Court's language concerning an "isolated mishap," 553 U.S. at 50, left open what would be required in a case where evidence suggested that a State was repeatedly violating its protocol in non-trivial ways, including the use of expired drugs and inadequately dosed drugs. Here, Heath's claim concerns not just an "isolated mishap," but rather a pattern of documented and routine violations spanning at least six months and involving no fewer than nine different executions. As such, Heath's claim does not invoke all of the same underlying constitutional

[1] *Glossip v. Gross,* 576 U.S. 863 (2015)

considerations of *Baze*.[2] It calls attention to an open question of when a mishap is no longer isolated, or when mistakes become emblematic of the entire process.

In contrast to this Court's decision in *Baze*, the instant allegations of misconduct are numerous, documented by FDOC's own records, and supported by the declaration of a medical doctor. This claim merits this Court's intervention because absent clarification, if a maladministration claim alleging past, and even ongoing, violations of the lethal injection protocol is insufficient, then there can be no maladministration allegation sufficient to ever state a claim. This Court should intervene and provide the appropriate framework for a case in this stature—an important question that should be settled by this Court.

FDOC has apparently conducted no internal review or acknowledgement of the clear violations in the records—or has at least kept any such review secret from the inmates it seeks to execute. And given the fact that the State clearly intends to continue the rapid pace of executions from 2025, when the violations were documented, it is reasonable to assume the violations have not been remedied. Courts routinely treat past violations as plausibly suggesting that violations will continue. *See United States v. Oregon Med. Society,* 343 U.S. 326, 333 (1952) (warning courts

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[2] The same can be said about *Glossip,* 576 U.S. 863 (2015) (challenging the constitutionality of a protocol on the basis that the first drug would fail to render a prisoner insensate to pain), and *Bucklew*, 587 U.S. 119 (2019) (challenging the underlying constitutionality of a lethal injection protocol in the context of petitioner's medical diagnosis). The State refers to *Bucklew*'s statement that "*Glossip* left no doubt that this standard governs all Eighth Amendment *method-of-execution* claims." 587 U.S. 119, 140 (2019). But Heath has made clear that he is not challenging Florida's method. Rather, he is seeking assurances that the protocol will be carried out in a manner that does not, as Dr. Zivot described, entail high risk of suffering.

to "beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption"). And because the violations involved here were not isolated, but permeated multiple delicate phases of the execution process, Heath has at least sufficiently pleaded that the State is no longer entitled to the presumption that his execution will be carried out in accordance with the written protocol. The State's attempt to argue that any judicial inquiry of maladministration is precluded by this Court's method-of-execution precedent—or, in the State's words, the Eighth Amendment does not "care" about protocol violations, BIO at 32—should be rejected.

III. Whether a maladministration claim requires proposing an entirely new method of execution—rather than cessation of the ongoing violations—is an important open question that warrants this Court's clarification given Florida's continuing rapid pace of execution

The Court should also reject the State's argument that an Eighth Amendment claim requires proposing an entirely new method of execution, rather than cessation of the violations to the current method. In challenges that concern errors in the implementation of an otherwise constitutional execution protocol, the "readily available" alternative requirement from *Baze* and *Glossip* does not neatly apply. As Heath has established, repeated maladministration of a serious nature—like using expired and inappropriately dosed drugs—rises to the level of an Eighth Amendment violation itself. Thus, providing blueprints for a firing squad or identifying a vendor for a gas mask does not change that the maladministration claim is separately cognizable. *See Baze*, 553 U.S. at 101-02 (Thomas, J., concurring) ("It strains credulity

to suggest that the defining characteristic of [purposely torturous punishments] was that they could be eliminated by using alternative methods of execution.")

Instead, the Court should grant review to clarify that where, as here, a state routinely applies a method of execution that is known to be administered with errors, whether deliberate or negligent, the obvious solution would not be a wholly unrelated method, but rather a remedy to those errors. *Cf. 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 Court explained in *Bucklew* that a primary purpose of the alternative method requirement is to limit "pleading games." *Bucklew*, 587 U.S. at 139. By requiring a prisoner to plead an alternative, this Court has sought to limit method of execution claims that would exempt a prisoner from execution entirely. The State is wholly unable to provide a persuasive argument for why proffering an alternate method like firing squad would change this Court's analysis on the impact of its maladministration on future executions. This Court should provide clarity.

CONCLUSION

The petition for writ of certiorari should be granted.

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