No. 25-6853

IN THE
SUPREME COURT OF THE UNITED STATES

MELVIN TROTTER,

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 24, 2026, AT 6:00 P.M.

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CAPITAL CASE

QUESTION PRESENTED

In 1986, Melvin Trotter entered Virgie Langford's grocery store and brutally stabbed the seventy-year-old woman to death with a large butcher knife he obtained from inside the store. After stealing money and food stamps, Trotter fled the scene and left the disemboweled, conscious victim on the floor. After being transported to the hospital for emergency surgery, Ms. Langford died from cardiac arrest. A jury convicted Trotter of armed robbery with a deadly weapon and first-degree murder, and he was sentenced to death for the murder conviction.

On January 23, 2026, Florida Governor Ron DeSantis signed a death warrant in Trotter's case, and his execution is scheduled for February 24, 2026, at 6:00 p.m. In his post-warrant state court proceedings, Trotter raised an Eighth Amendment method-of-execution challenge based on Florida's alleged failure to follow its lethal injection protocol in prior executions. The Florida courts rejected Trotter's claim, finding it speculative and insufficient to meet the standard governing method-of-execution claims under the Eighth Amendment. Trotter now seeks certiorari review and asks this Court to review the following question:

> Does the *Baze-Glossip* standard governing "*all* Eighth Amendment method-of-execution claims," *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019), including those alleging maladministration of a lethal injection protocol, require inmates to propose an alternative method of execution?

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Trotter seeks certiorari review of the Florida Supreme Court's decision rejecting his Eighth Amendment method-of-execution challenge to his execution. *See Trotter v. State*, No. SC2026-0214, 2026 WL 444544 (Fla. Feb. 17, 2026).

JURISDICTION

This Court has jurisdiction over Trotter'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

On June 16, 1986, Melvin Trotter entered Virgie Langford's grocery store and obtained a sixteen-inch butcher knife that Langford used to cut meat. Trotter put the seventy-year-old woman in a strangle hold and proceeded to stab her seven times. The stab wounds cut into her pancreas, liver and stomach. The large abdominal wound resulted in her disembowelment. *Trotter v. State*, 576 So. 2d 691, 692 (Fla. 1990). Trotter took cash and food stamps from the store. A truck driver subsequently discovered Ms. Langford following the attack and she was still conscious. Ms. Langford informed him that she had been stabbed and robbed. Ms. Langford survived for several hours but died of cardiac arrest following emergency surgery. *Id.* A jury convicted Trotter of armed robbery with a deadly weapon and first-degree murder and recommended the death penalty. *Id.* The trial court followed the jury's recommendation and sentenced Trotter to death.

The Florida Supreme Court affirmed Trotter's convictions but vacated his

death sentence. *Id.* at 694-95. On remand, a jury again recommended the death penalty. The trial court sentenced Trotter to death and found four aggravating circumstances, two statutory mitigating circumstances, and several nonstatutory mitigators. *Trotter v. State*, 690 So. 2d 1234, 1236 (Fla. 1996). The Florida Supreme Court affirmed Trotter's death sentence, *id.*, and on October 6, 1997, this Court denied certiorari review. *Trotter v. Florida*, 522 U.S. 876 (1997).

In the decades that followed, state and federal courts rejected several challenges to Trotter's convictions and death sentence. *See Trotter v. State*, 932 So. 2d 1045 (Fla. 2006) (denying Trotter's petition for writ of habeas corpus and affirming the postconviction court's denial of Trotter's initial motion for postconviction relief and his first successive postconviction motion alleging intellectual disability); *Trotter v. Sec'y, Dep't of Corr.*, No. 8:06-cv-1872, 2007 WL 3326672 (M.D. Fla. Nov. 6, 2007) (denying Trotter's 28 U.S.C. § 2254 petition for writ of habeas corpus); *Trotter v. Sec'y, Dep't of Corr.*, 535 F.3d 1286 (11th Cir. 2008) (affirming the denial Trotter's federal habeas petition), *cert. denied*, 555 U.S. 1087 (2008); *Trotter v. State*, 10 So. 3d 633 (Fla. 2009) (Table) (affirming denial of second successive motion for postconviction relief); *Trotter v. State*, 235 So. 3d 284 (Fla. 2018) (affirming denial of third successive motion for postconviction relief).

On January 23, 2026, Florida Governor Ron DeSantis signed a death warrant in Trotter's case, and his execution is scheduled for February 24, 2026, at 6:00 p.m. On February 2, 2026, Trotter filed his fourth successive motion for postconviction relief and raised two claims: (1) an Eighth Amendment method-of-execution claim

asserting that the Florida Department of Corrections (FDOC) violated its lethal-injection protocol during prior executions, and (2) a claim that his execution would constitute cruel and unusual punishment in violation of the Eighth Amendment given his advanced age of sixty-five and elderly status. In support of his first claim, Trotter attached heavily redacted FDOC documents obtained from the attorneys representing Frank Walls in a 42 U.S.C. § 1983 suit raising a method-of-execution claim. *See Walls v. Sec'y, Dep't of Corr.*, 161 F.4th 1281, 1281 (11th Cir.), *cert. denied*, No. 25-6382, 2025 WL 3674296 (U.S. Dec. 18, 2025).

Following Walls' execution in December 2025, Florida Governor DeSantis signed a death warrant in Ronald Heath's case. *See Heath v. State*, No. SC2026-0112, 2026 WL 320522 (Fla. Feb. 3), *cert. denied*, No. 25-6746 (U.S. Feb. 10, 2026). Heath and Trotter both relied on the same redacted documents and alleged that the documents established that FDOC documented removing expired etomidate on dates which coincided with four executions,[1] 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 at one execution despite an autopsy

[1] Trotter alleged in his postconviction motion that the redacted records indicated that FDOC had "used" expired etomidate in four executions in 2025 (R.228-29), but now claims in his petition, for the first time, that expired etomidate was "used" in seven executions. Petition at 2, 12. As will be discussed in more detail *infra*, and as noted by the Florida courts, Trotter's allegations are based entirely on speculation as the records do not establish that any expired drugs were ever "used" in any execution. As the postconviction court noted when denying this claim, Trotter's speculative allegations fail to account for the reasonable alternative interpretation that the drugs were removed "for the purpose of discarding or destroying it rather than using it for an execution." (R.437).

showing that etomidate was used, and used lidocaine even though it is not in the protocol. Trotter also attached an affidavit from a pharmacologist indicating that, if expired etomidate was used in an execution, it "*may* have a reduced pharmacologic effect or produce unanticipated or unnecessary complications. Such an error or deviation *could* result in unnecessary pain or discomfort or an unexpected termination of the execution procedure prior to the inmate's death." (R.229).

The State argued in the postconviction court that Trotter's method-of-execution claim was meritless as his allegations were speculative and conclusory and did not meet the standard for an Eighth Amendment claim as set forth by this Court in *Baze v. Rees*, 553 U.S. 35 (2008), and *Glossip v. Gross*, 576 U.S. 863 (2015). Notably, none of the records obtained from FDOC contained any executed inmate's name or indicated that any of the drugs listed were used during any execution. Most of the records simply contained lines for "drug name," "package size," and "NDC#," and columns for "date," "invoice name/#," "Lot #," "Exp. Date," "MFR," "Received/Used (+/–)," and "balance." The "Received/Used (+/–)" column contained numbers with either the + or – symbol. Additionally, the State noted that Trotter's claim was meritless as he failed to properly plead his claim by omitting the second prong of the *Baze-Glossip* test requiring that the defendant propose a known and available alternative method of execution that entails a significantly less severe risk of pain.

The postconviction court summarily denied Trotter's successive postconviction motion and found his method-of-execution claim speculative and meritless under the *Baze-Glossip* standard. The Florida Supreme Court affirmed the summary denial of

the claims on appeal. *Trotter v. State*, No. 2026-0214, 2026 WL 444544 (Fla. Feb. 17, 2026).

In addressing Trotter's method-of-execution claim,[2] the Florida Supreme Court noted that Trotter's claim was materially indistinguishable from the claim the court rejected only two weeks earlier in *Heath v. State*, No. SC2026-0112, 2026 WL 320522 (Fla. Feb. 3), *cert. denied*, No. 25-6746 (U.S. Feb. 10, 2026). *Id.* at *2-3. The court observed that Trotter, like Heath before him, alleged several examples of FDOC's maladministration of its lethal injection procedures: "ad hoc recordkeeping regarding the removal of lethal injection drugs from inventory; the administration of incorrect drug doses during certain executions; the use of a fourth drug, lidocaine, during certain executions; the use of expired drugs during certain executions; and the failure to contemporaneously document and accurately record the drugs used in executions." *Id.* at *2. Trotter attempted to distinguish his claim from Heath's claim by presenting an affidavit from Dr. Daniel Buffington, a clinical pharmacologist, but the Florida Supreme Court found that the outcomes suggested by Dr. Buffington were "speculative" and failed to demonstrate "a substantial and imminent risk that is sure or very likely—in other words, a virtual certainty—to cause serious illness and needless suffering." *Id.* at *3 (quoting *Heath*, 2026 WL 320522, at *3).

Finally, the court noted that Trotter "incorrectly maintains that the *Glossip*

[2] Although Trotter claimed that his lethal injection challenge was not a traditional "method-of-execution" claim, the Florida Supreme Court noted that "the gist of his argument remains that executing him by lethal injection—given the allegations he raises—constitutes cruel and unusual punishment." *Trotter*, 2026 WL 444544, at *3.

requirements do not apply to his claim" and found that he was not entitled to any relief because he failed to identify an alternative method of execution. *Id.*

Now, less than a week before his scheduled execution, Trotter petitions this Court and seeks review of the following question:

> Does the *Baze-Glossip* standard governing "*all* Eighth Amendment method-of-execution claims," *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019), including those alleging maladministration of a lethal injection protocol, require inmates to propose an alternative method of execution?

The State opposes certiorari.

REASONS FOR DENYING THE PETITION

This Court has explained that any inmate bringing an Eighth Amendment "method of execution claim alleging the infliction of unconstitutionally cruel pain must meet the *Baze-Glossip* test." *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 Baze v. Rees*, 553 U.S. 35, 41 (2008) (rejecting a challenge to an execution protocol based on "the risk that the protocol's terms might not be properly followed, resulting in significant pain"); *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"). This Court has further made it clear that 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 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").[3] Setting an execution date does not invite attacks on "settled precedent" or "speculative theories" for relief. *Bucklew*, 587 U.S. at 149 (cleaned up).

In defiance of these well-established principles, Trotter seeks to escape justice for the heinous murder he committed in 1986 by claiming that he raised a meritorious Eighth Amendment challenge to his scheduled execution. The Florida courts, however, properly rejected his claim and found that Trotter failed to establish either prong of the *Baze-Glossip* framework. Trotter now argues to this Court that he was not required to satisfy the second prong of the *Baze-Glossip* test because his challenge was not a traditional method-of-execution challenge, but rather, was a challenge to FDOC's alleged maladministration of its current protocol. While this argument is misplaced and unavailing, it further ignores that Trotter's speculative claim also failed the first prong of the *Baze-Glossip* framework. Thus, even if this Court were to answer the question presented and modify the *Baze-Glossip* framework to exclude the second prong, Trotter would still not be entitled to relief given his failure to establish that Florida's method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering.

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[3] *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.").

There are numerous reasons to deny certiorari on the question Trotter presents for review. First, Trotter's question is premised on a disputed and conclusive factual issue: did FDOC deviate from protocol in prior executions the ways Trotter alleged? While Trotter presented heavily redacted FDOC records as definitive proof of protocol deviations, the records do not support Trotter'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 1986 murder. *See Bucklew*, 587 U.S. at 149–51 (encouraging federal courts to curtail speculative suits).

Second, Trotter should have pursued his method-of-execution claim before Florida set his execution date. Trotter had notice of his warrant eligibility in 2008, *see 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), but rather than raise this claim before Florida scheduled his execution, Trotter waited until after the Governor signed his death warrant.

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 the question presented by Trotter. 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 any 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.

Lastly, 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. Trotter's 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.

Trotter's question asks whether Eighth Amendment claims alleging repeated protocol deviations must meet the *Baze-Glossip* framework. This Court has repeatedly answered this question and Trotter provides no evidence other appellate courts are split on it. Additionally, the Florida Supreme Court's decision is entirely consistent with this Court's Eighth Amendment precedent. The People of Florida and surviving victims of Trotter'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.

Trotter's 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 maladministration 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. Trotter 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, Ga. 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 Trotter's Eighth Amendment challenge to the way he says Florida deviated from protocol. This Court should deny certiorari rather than let Trotter attack settled precedent right before his execution. *See Bucklew*, 587 U.S. at 149.

B. Trotter Failed to Establish Conflict.

Unsurprisingly, given *Baze, Glossip,* and *Bucklew*, Trotter does not try to establish conflict with any post-*Baze* court, much less this Court. *See* Sup. Ct. R. 10(a)-(b). That makes his 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). Indeed, it appears that every federal appellate court evaluating an Eighth Amendment method-of-execution claim based on protocol deviations has analyzed

those claims using the *Baze-Glossip* test.[4] *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.

While Trotter vaguely alleges that the *Baze-Glossip* test "creates conflict between the test and this Court's Eighth Amendment jurisprudence," Pet. at 14, he fails to identify any such alleged conflict with any decision from this Court. Because this Court has clearly set forth the requirements for *all* Eighth Amendment method-of-execution challenges, it is no wonder Trotter is unable to point to any conflict. *Bucklew*, 587 U.S. at 140.

C. The Florida Supreme Court's Decision 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

[4] *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, Ga. Dep't of Corr.*, 803 F.3d 565, 575 (11th Cir. 2015).

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). Protocol deviations come in all shapes and sizes, as evidenced by Trotter'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 alleged 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").[5]

[5] FDOC 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

The Florida Supreme Court correctly held the *Baze-Glossip* test applies to Trotter's Eighth Amendment method-of-execution claim based on alleged protocol deviations *See Trotter v. State*, No. SC2026-0214, 2026 WL444544, at *2-3 (Fla. Feb. 17, 2026). In finding that Trotter failed to meet the *Baze-Glossip* test, the Florida Supreme Court correctly determined that Trotter failed to meet the first prong of the *Baze-Glossip* test based on his speculative allegations and further failed the second prong because he did not propose a known and feasible alternative method of execution. *Id.* This Court need not review that correct decision just before Trotter's execution.

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

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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").

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 properly applied *Baze-Glossip* to Trotter's claim. It recognized that, although Trotter attempted to evade this test by claiming that he was not raising a "traditional" method-of-execution claim, "the gist of his argument remains that executing him by lethal injection—given the allegations he raises—constitutes cruel and unusual punishment." *Trotter*, 2026 WL 444544, at *3. Thus, 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." *Id.* (quoting *Heath*, 2026 WL 320522, at *3). The court then analyzed the alleged protocol deviations and explained why Trotter failed to show a high enough risk of pain to violate the Eighth Amendment. *Id.*

Trotter tried to overcome the presumption FDOC follows its protocol by speculating that it had 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.

Trotter failed to provide "clear evidence" to overcome the presumption FDOC

followed its protocol in past executions. The records he attached do not directly link to any execution. Trotter's reliance on the heavily redacted records runs into the problem that nothing in FDOC'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). As the Florida court properly noted, Trotter 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 Trotter's reading, FDOC 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 FDOC deviated from protocol. And Dr. Buffington does not help Trotter overcome that hurdle because he made the same speculative assessment of the records as Trotter. Dr. Buffington could only speculate that, if expired etomidate were used in an execution, it "*may* have a reduced pharmacologic effect or produce unanticipated or unnecessary complications. Such an error or deviation *could* result in unnecessary pain or discomfort or an unexpected termination of the execution procedure prior to the inmate's death." (R.229). Clearly, these allegations failed to overcome the presumption FDOC followed protocol in all 2025 executions,[6] or that Florida's method of execution "presents a substantial and

[6] Notably, FDOC has successfully implemented its etomidate protocol thirty-four times since its adoption in 2017 without any reported problems. *See* https://www.fdc.myflorida.com/institutions/death-row/execution-list-1976-present;

imminent risk that is sure or very likely to cause serious illness and needless suffering." Trotter's speculation is not enough. *See Brewer*, 562 U.S. at 996.

In addition to properly finding that Trotter could not meet the first prong of the *Baze-Glossip* test, the Florida Supreme Court also correctly found that Trotter failed to meet the second prong by failing to identify a known and available alternative method of execution that entails a significantly less severe risk of pain. The court rejected Trotter's erroneous contention that the *Baze-Glossip* requirements did not apply to his claim. *Id.* As previously noted, this Court has made it repeatedly clear that the *Baze-Glossip* test applies to *all* Eighth Amendment method of execution claims. *Bucklew*, 587 U.S. at 140 (reconfirming that the *Baze-Glossip* test controls "*all* Eighth Amendment method-of-execution claims"). 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.

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

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see also Glossip, 576 U.S. at 892 (rejecting capital defendants' concerns about prior executions in part because "12 other executions have been conducted using the three-drug protocol at issue here" without any apparent significant issues).

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.

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. Trotter's attempt to evade the *Baze-Glossip* test evinces both a misunderstanding of those decisions 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, Ga. 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).

Trotter'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, Glossip* and *Bucklew* by adopting Trotter's view, the question he presents does not warrant this Court's intervention. Because the Florida Supreme Court correctly rejected Trotter's method-of-execution challenge based on this Court's

precedent, this Court should deny the instant petition for writ of certiorari.

D. Trotter Would Not Clearly Obtain Substantive Relief Even if this Court Reversed.

Finally, this Court should decline review because even reversal would not clearly provide Trotter 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 have 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 Trotter 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.").

CONCLUSION

The petition for a writ of certiorari should be denied.

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