

No. 25-7018

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL L. KING,
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 MARCH 17, 2026, AT 6:00 P.M.

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CAPITAL CASE
QUESTIONS PRESENTED

1. Whether the Florida courts' complete refusal to provide additional FDOC records to King, although he was willing to engage in additional negotiation regarding the records disclosure in order to protect the concerns of FDOC, resulted in an abuse of discretion in violation of King's due process rights under the Fourteenth Amendment?
2. Whether the Florida courts erred in opining Petitioner failed to raise a "colorable claim for relief," based on Fourteenth Amendment equal protection grounds, without first holding an evidentiary hearing to establish a factual basis pursuant to precedent from the United States Court of Appeals for the Eleventh Circuit?

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OPINION BELOW

The Florida Supreme Court's opinion is reported as *King v. State*, No. SC2026-0336, 2026 WL 672101 (Fla. Mar. 10, 2026).

JURISDICTION

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

CONSTITUTIONAL PROVISIONS INVOLVED

The State accepts the constitutional provision set forth by the Petitioner.

STATEMENT OF THE CASE AND FACTS

The kidnapping, sexual battery, and murder of Denise Lee

Appellant, Michael L. King, is a Florida inmate under a death sentence imposed for the first-degree murder of Denise Lee. The Florida Supreme Court's direct appeal opinion in *King v. State*, 89 So. 3d 209, 212-22 (Fla. 2012), recites the facts of King's convictions for the kidnapping and sexual battery of the victim, Denise Lee.

On the early afternoon of January 17, 2008, King abducted a young mother, Denise Lee, from the home where she was watching her two children, a toddler and a baby. Leaving the two children unattended, King took Mrs. Lee to his house where he bound, raped and sodomized her. After the ordeal at King's residence, King drove his car with Mrs. Lee still bound and alive in the backseat, to his cousin's house to borrow items to dispose of her body including a flashlight, shovel, and gas can. At some point during the drive, Mrs. Lee obtained King's phone and called 911 and begged for help. On the call, Mrs. Lee is heard crying and begging to be saved so that

she could see her husband and children again. As noted by The Florida Supreme Court and the trial court, this was a rare case where a court and jury could hear the terror faced by a murder victim prior to their death. “In this case, anyone who listens to the 911 call placed by Denise Lee will hear the abject terror she was experiencing plus her panicked, frantic pleas to the 911 dispatcher (for help) and King (to be returned home). This murder was unquestionably cold and cruel.” *King*, 89 So. 3d at 232.

After a prolonged and torturous ordeal, King drove Mrs. Lee to a remote area, shot her in the face, and buried her. The State presented an array of eyewitness and forensic testimony establishing King’s guilt. King was apprehended in his car in the vicinity of the burial site with the phone from which the victim called for help. King was still wet and muddy from digging the hole in which Mrs. Lee’s body was ultimately found. DNA and fingerprint evidence established that Mrs. Lee was held in King’s car. The physical evidence included DNA from blood and hair which matched conclusively to Mrs. Lee,¹ and Mrs. Lee’s palm print on the driver’s side window. Mrs. Lee’s ring was also found on the back seat of King’s car. DNA testing

¹ Hair from the back seat of King’s car matched Denise Lee at all 13 loci, or the odds of it coming from anyone other than Denise Lee leaving that hair was one in 110 trillion Caucasians. (V24/2472). A blanket recovered from the back seat of King’s Camaro had a blood stain which matched Denise Lee’s DNA profile to the exclusion of all other people on the planet. (V25/2748). Blood on the hood of King’s car, also matched Denise Lee at 10 of 13 loci, sufficient to conclude that the blood came from Denise Lee. (V24/2472-73). Similarly, a swabbing of material or fluid on the bra of King’s Camaro matched Denise Lee’s profile at 8 of 13 loci, sufficient for the analyst to conclude it came from Denise Lee. (V24/2473-74).

confirmed that sperm cells inside of the Mrs. Lee's vagina and on her shorts found at the burial site matched King at all 13 loci, to the exclusion of all other persons on the planet, or 1 in one quadrillion Caucasians.² (V24/2465-67)³.

The penalty phase

Following a penalty phase proceeding, a unanimous jury recommended that King be put to death for the murder of Mrs. Lee. The trial court agreed. "In pronouncing King's sentence, the trial court determined that the State had proven beyond a reasonable doubt the existence of four statutory aggravating circumstances: (1) the murder was especially heinous, atrocious, or cruel (HAC), *see* § 921.141(5)(h), Fla. Stat. (2007) (great weight) [fn6]; (2) the murder was cold, calculated, and premeditated (CCP), *see* § 921.141(5)(i), Fla. Stat. (2007) (great weight); (3) the murder was committed for the purpose of avoiding lawful arrest, *see* § 921.141(5)(e), Fla. Stat. (2007) (great weight); and (4) the murder was committed while King was engaged in the commission of a sexual battery or kidnapping, *see* § 921.141(5)(d), Fla. Stat. (2007) (moderate weight)." *King*, 89 So. 3d at 221.

In mitigation, "the trial court concluded that King established the existence of two statutory mitigating circumstances: (1) King's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law

² Mrs. Lee's boxer shorts, found a short distance from her burial site, contained a mixture stain, from which King's sperm cells were separated and positively matched to King. The DNA match yielded population statistics of "one person in 3.5 trillion individuals." (V25/2756).

³ "V" references the direct appeal record.

was substantially impaired, *see* § 921.141(6)(f), Fla. Stat. (2008) (moderate weight). [fn7]; and (2) his age at the time of the offense (thirty-six years old), *see* § 921.141(6)(g), Fla. Stat. (little weight).” The trial court also found a number of non-statutory mitigators based upon King’s background and below average IQ. *King*, 89 So. 3d at 221-222. The single statutory mitigator found by the trial court (other than age [36]) was based upon evidence that King had suffered from brain damage. The thrust of Dr. Joseph Wu’s testimony was that frontal lobe damage can render an individual prone to impulsive acts or violent outbursts, especially during periods of stress. (V27/3190-93). Conflicting expert testimony was offered by the State through Dr. Michael Gamache. (V29/3578–V30/3605). Dr. Gamache did not believe that King was substantially impaired at the time of the crime. (V30/3605).

The trial court followed the jury’s unanimous recommendation and sentenced King to death, finding the aggravating factors “substantially” outweighed the mitigation.

Direct Appeal

Following his convictions and sentence of death, King filed his direct appeal to the Florida Supreme Court, challenging the proportionality of his death sentence. The court affirmed King’s convictions and death sentence in an opinion dated February 9, 2012. *King v. State*, 89 So. 3d 209 (Fla. 2012). The court specifically rejected King’s claim that his sentence was not proportionate under Florida’s comparative capital review. The Florida Supreme Court stated:

King abducted a young mother from her home, leaving her two children—an infant and a toddler—unattended. He transported her to his house where she was bound with duct tape, raped, and sodomized. He then acquired a shovel, drove her to an abandoned construction sight, and shot her in the head. Given the angle of the entrance wound, and the fact that a substance appearing to be ocular fluid was found on the car, it is logical to conclude that Lee was not blindfolded at the time of her shooting, and she saw the gun as it was placed against her head. Furthermore, because Lee was abducted from her home between 1 and 2 p.m. on the 17th, and her 911 call was made at 6:14 p.m., it can be deduced that Lee was held captive by King for over four hours. As noted in the sentencing order, rarely is a court able to experience first-hand what a deceased victim encountered. In this case, anyone who listens to the 911 call placed by Denise Lee will hear the abject terror she was experiencing plus her panicked, frantic pleas to the 911 dispatcher (for help) and King (to be returned home). This murder was unquestionably cold and cruel.

We are in complete agreement with the trial court that the death sentence is proportionate in this case.

King, 89 So. 3d at 232. King filed a petition for writ of certiorari in this Court on August 9, 2012, which was denied October 15, 2012. *King v. Florida*, 568 U.S. 964, 133 S. Ct. 478 (2012).

Postconviction Proceedings

On September 4, 2013, King filed a “Motion to Vacate Judgment and Sentence,” pursuant to Fla. R. Crim. P. 3.851, raising six claims. Following an evidentiary hearing on King’s ineffective assistance of counsel claims, the Honorable Deno G. Economou issued his order on August 21, 2014, denying postconviction relief.

Following briefing, including supplemental briefing addressing the application of *Hurst v. Florida*, 577 U.S. 92 (2006), and oral argument, the Florida Supreme Court affirmed the denial of postconviction relief. *King v. State*, 211 So. 3d 866 (Fla. 2017).

Federal Habeas Proceedings

Following the denial of relief in state court, King filed his petition for writ of habeas corpus in United States District Court-Middle District on April 27, 2017. The district court denied King all habeas relief in its comprehensive 91-page order filed February 5, 2018, and judgment was entered on February 6, 2018. King's Motion to Alter or Amend was denied on March 6, 2018, and the district court determined that King was not entitled for a certificate of appealability (COA). *King v. Sec'y, Dep't of Corr.*, 2018 WL 10715468 (M.D. Fla. Feb. 5, 2018) (unpublished).

King's Notice of Appeal to the Eleventh Circuit Court of Appeal was filed on April 5, 2018, and on January 9, 2019, the appellate court granted a certificate of appealability.⁴ Oral argument was held on September 26, 2019, and in an opinion released October 25, 2019, the Eleventh Circuit Court affirmed the denial of habeas relief. *King v. Sec'y, Fla. Dept. of Corr.*, 793 Fed. Appx. 834 (11th Cir. 2019).

King petitioned this Court for a writ of certiorari on June 4, 2020. This Court denied the petition in its order dated October 5, 2020. *King v. Inch*, 141 S. Ct. 303 (2020).

⁴ The court granted a COA on three issues: (1) whether counsel was ineffective for failing to perfect a *Batson* strike of a minority juror; (2) whether trial counsel was ineffective for failing to present evidence of King's toxic chemical exposure in mitigation; and (3) whether the district court abused its discretion in adopting large parts of the state's habeas response in its order denying relief.

Successive Postconviction Proceedings Under Warrant

On February 13, 2026, Governor Ron DeSantis signed a death warrant for the execution of King, and his execution is scheduled to occur on March 17, 2026, at 6:00 p.m.⁵ On February 17, 2026, pursuant to the circuit court's separate scheduling order, King filed a demand for additional public records directed to the Florida Department of Corrections (FDOC). (R. 104). The FDOC filed written objections, and after conducting a hearing, the circuit court sustained the FDOC's objections⁶ (R. 271-72).

King filed his successive motion for postconviction relief on February 22, 2026, raising two claims: a method-of-execution challenge based on alleged maladministration of the lethal injection protocol or improper record keeping and an Eighth Amendment proportionality challenge. (R. 297-318). King also contemporaneously filed a motion to stay his execution. (R. 210-23). The State filed a response to both motions (R. 428-35; 436-461), and after conducting a case management hearing, the circuit court issued an order summarily denying King's successive motion for postconviction relief and an order denying his request for a stay of execution. (R. 516-541).

King appealed to the Florida Supreme Court raising two claims: 1) the denial of his public records request to the Florida Department of Corrections for lethal injection records in furtherance of a potential equal protection claim and 2) that

⁵ "R" citations are to the record from King's active death warrant proceedings in the circuit court.

⁶ The FDOC did provide five years of King's own medical and prison records (R. 172).

newly discovered evidence in the form of prison pen pals and opinion pieces on the death penalty rendered his death sentence violative of the Eighth Amendment on proportionality grounds. The court issued its opinion affirming summary denial of his postconviction claims on March 10, 2026. *King v. State*, No. SC2026-0336, 2026 WL 672101, at *6 (Fla. Mar. 10, 2026)

As to the first claim, the Florida Supreme Court held the trial court did not abuse its discretion under Florida's well-defined rules governing postconviction discovery. King's claim was speculative and ill-defined, and, none of his allegations suggested the records he sought would lead to a colorable claim. The court noted that none of King's threadbare allegations suggested he would be treated differently for equal protection purposes. King is subject to the same protocol and same drugs used on other similarly situated death sentenced prisoners. *King*, No. SC2026-0336, 2026 WL 672101, at 6-8.

On his Eighth Amendment proportionality challenge, the court agreed with the postconviction court that the claim was untimely, procedurally barred, and meritless. The court found no reason to revisit the proportionality of King's death sentence. *King*, No. SC2026-0336, 2026 WL 672101, at *6.

Certiorari Petition

King filed a certiorari petition in this Court on March 11, 2026. 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. No additional delay is warranted in this long final case. It is time for King's sentence to be carried out.

King's questions rest on allegations that Florida's lethal injection protocol has been inconsistent or maladministered in prior executions. But those claims derive from heavily redacted records that do not establish that any protocol deviation occurred. The materials do not identify executed inmates, confirm that the listed drugs were administered, or demonstrate that any irregularities affected executions. At most, King speculates that deviations may have occurred, that they might recur, and that they presumably could cause unconstitutional pain. That layered conjecture is insufficient. This Court has already denied certiorari three times based upon Eighth Amendment challenges citing the same records King relies upon here. *Walls v. Sec'y, Dep't of Corr.*, 161 F.4th 1281, 1285 (11th Cir. 2025), *cert. denied sub nom. Walls v. Dixon*, 223 L. Ed. 2d 437 (2025); *Heath v. State*, No. SC2026-0112, 2026 WL 320522, at *3 (Fla. Feb. 3, 2026), *cert. denied*, No. 25-6746, 2026 WL 363902 (U.S. Feb. 10, 2026); *Trotter v. State*, No. SC2026-0214, 2026 WL 444544, at *3 (Fla. Feb. 17, 2026); *cert. denied sub nom. Trotter v. Florida*, No. 25-6853, 2026 WL 504237 (U.S. Feb. 24, 2026). (All defendants referencing the same heavily redacted records). King's attempt to present this Court with a different legal argument on the same tenuous and disputed factual record does not render this case any more worthy of certiorari review.

REASONS FOR DENYING THE PETITION

- I. **A state can require a defendant to plead a facially plausible lethal-injection claim, and place reasonable limits on postconviction discovery without offending the due process clause of the Fourteenth Amendment. This case presents no significant or unsettled question of constitutional law for this Court's review.**

King asks this Court to decide whether due process provides him an absolute right to demand records related to lethal injection at any time regardless of his dilatory conduct, no matter how broad and regardless of whether he can show a colorable claim for relief first. He does not cite a single case or court suggesting due process goes that far, or cite a conflicting decision from a state or federal court. This issue presents no important or unsettled matter for review. Certiorari should be denied.

Postconviction discovery is primarily a matter of state law

While couched in due process and equal protection terms, this is essentially a state court evidentiary ruling based upon Florida's well-established and routinely followed procedure for postconviction discovery. The ruling below was almost entirely based on application of state rules and law. Accordingly, the constitutional pretensions of this issue are thin to non-existent. That is reason enough to deny the Petition.

Florida Rule of Criminal Procedure 3.852 (the rule King effectively asks this Court to invalidate on due process grounds) provides a lower state court may order production of "additional public records only upon finding each of the following":

- (A) collateral counsel has made a timely and diligent search of the records repository;
- (B) collateral counsel's affidavit identifies, with specificity those additional public records that are not at the records repository;
- (C) the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851, or appear reasonably calculated to lead to the discovery of admissible evidence; and
- (D) the additional public records request is not overly broad or unduly burdensome.

Fla. R. Crim. P. 3.852(i)(2)(A)-(D). Demands made after a warrant is signed must additionally show "good cause as to why the public records request was not made until after the death warrant was signed." *Zakrzewski v. State*, 415 So. 3d 203, 212 (Fla. 2025).

Below, in aggregate, the Florida Department of Corrections (FDOC) objected to King's demand for additional records relating to lethal injection as unduly broad and burdensome, not related to a colorable claim, not timely made, and some of the records he sought were statutorily exempt from disclosure. (R. 196-217). The postconviction court sustained the objection. The Florida Supreme Court found no abuse of the lower court's discretion in denying King's request. The court first recognized that the logs King relied upon did not support his claim of maladministration. The court stated, in part:

It would require speculative inferences to conclude from these logs that the State will fail to administer the capital punishment protocol in King's case. The relevant log lists "drug name," "package size," "date," "expiration date," "received/used," and "balance."

Information about the expiration date of the drugs and amount of drugs in inventory is shown unredacted.

King conjectures that because some of the dates on these logs are “around the date” of previous executions, the balance entries for those dates correspond to the doses actually administered at the contemporaneous executions. Yet that information reflects only the quantity of drugs withdrawn from or deposited in inventory; those amounts need not and likely do not match the amounts administered. *See Heath*, — So.3d at —, 2026 WL 320522, at *3 (addressing the same logs and explaining that the “suggestion that inventory removals on dates that seemingly correspond to executions and reflect amounts less than required by the protocol show that incorrect doses were used is speculative” (citation modified)). The circuit court did not err in denying relief.

King, No. SC2026-0336, 2026 WL 672101, at *4.

The court also rejected King’s related due process claim based upon the denial of his records request.

King's due process challenge fares no better. He claims that “[b]ecause [he] has been denied access to the records he demanded,” he has been hindered in his ability to pursue his equal protection claim; therefore, “his due process rights have been violated.” This Court has previously rejected efforts to morph a challenge to the denial of a public records demand into a constitutional challenge. *Randolph v. State*, 422 So. 3d 166, 172 (Fla.) (collecting cases), *cert. denied*, — U.S. —, — S.Ct. —, 223 L.Ed.2d 239 (2025). King does not allege that he was not afforded notice and an opportunity to be heard. To the contrary, the circuit court held a hearing on the demand, and King's counsel presented argument on the issue. And in denying King's successive motion for postconviction relief, the circuit court gave written reasons for not reconsidering its denial of the demand.

King, No. SC2026-0336, 2026 WL 672101, at *6.

This fact-based and discretionary decision on postconviction discovery does not conflict with any of this Court’s precedent. Nor does it present an unsettled question of law worthy of certiorari review.

There is no conflict or unsettled constitutional question presented

The United States Constitutional right to due process does not afford a defendant the luxury of having unlimited, unfettered time to make whatever challenge they want to their lawfully imposed death sentence. Rather, “[t]he fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). While King suggests an expansive reading of due process that includes extensive postconviction discovery, his complaint does not amount to a violation of federal due process protections.

This Court has repeatedly refused to constitutionalize discovery through due process. *E.g.*, *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”). King asks this Court to establish the extraordinary due process rule that capital defendants should be allowed to wait until an execution is scheduled to demand and receive whatever lethal-injection records they want without establishing a plausible claim for relief first.

This Court should decline certiorari for two overarching reasons. First and foremost, King has failed to establish any conflict with this Court’s precedent. Indeed, this Court has expressly disclaimed the position that “the State must enable the prisoner to *discover* grievances, and to *litigate effectively* once in court.” *Lewis v.*

Casey, 518 U.S. 343, 354 (1996); *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 from the Fifth and Eighth Circuits holding the same). Due process is simply not the generalized discovery tool King tries to contort it into. *E.g.*, *Gray*, 518 U.S. at 168. He cites no court that has adopted the “novel idea that the law will (or should) allow discovery first, and only then require him to meet the standards prescribed by” this Court for lethal-injection claims. *See Jones v. Comm’r, Georgia Dep’t of Corr.*, 812 F.3d 923 (11th Cir. 2016) (Marcus, J., concurring in the denial of initial hearing en banc with Ed Carnes, C.J., and Tjoflat, Hull, William Prior, and Julie Carnes, JJs). The lack of conflict makes this question unworthy of this Court’s review. That is particularly true because Florida’s Rule 3.852’s colorable-claim requirement is in line with the Federal Rules of Civil Procedure. *See id.* (noting “Federal Rule of Civil Procedure 8” requires plaintiffs “allege ‘enough facts to state a claim to relief that is plausible on its face’ before” providing “discovery on his Eighth Amendment claim”); *Whitaker v. Collier*, 862 F.3d 490, 502 (5th Cir. 2017) (holding the plaintiff was not entitled to discovery on a lethal-injection claim without a “properly pleaded complaint”). *Zink v. Lombardi*, 783 F.3d 1089, 1108-09 (8th Cir. 2015) (rejecting an access to courts challenge to Missouri’s nondisclosure of information regarding its lethal injection procedures).

King’s failure to raise the lethal-injection records issue before a warrant counsels against granting certiorari on this question now. That is particularly true given lethal-injection claims are “especially vulnerable” to “gamesmanship”, and this

Court has warned against using method-of-execution “challenges as tools to interpose unjustified delay.” *Middlebrooks v. Parker*, 22 F.4th 621, 625 (6th Cir. 2022) (Thapar, J., statement respecting denial of rehearing en banc) (quoting *Bucklew v. Precythe*, 587 U.S. 119, 149 (2019)).

King attempts to establish conflict by citing district court cases under very different procedural postures and which present more substantial and fact bound allegations. (Petition at 11-13). Moreover, unlike King, those defendants actually raised Eighth Amendment challenges to their states’ execution methods. *King*, No. SC2026-0336, 2026 WL 672101, at *6 fn. 9 (“We take King at his word that, regarding this matter, he “has not raised an Eighth Amendment claim.”)(quoting King’s brief).

For example, in *Taylor v. Crawford*, No. 05-4173-CV-C-FJG, 2006 WL 1779035, at *7 (W.D. Mo. June 26, 2006) there was “no written protocol which describes which drugs will be administered, in what amounts and defines how they will be administered.” Missouri, unlike Florida, had no detailed or even written protocol. And, Missouri acknowledged variation in dosing for the first drug. This is completely distinguishable from Florida which has a published detailed written protocol, specifying the amount, sequence, and drugs employed. (See Appendix G). It is far from the unwritten, *ad hoc* protocol assessed in *Taylor*. *Taylor* presents no conflict with the Florida Supreme Court decision in this case.

King relied upon Attachment B to his state postconviction motion to support the allegation of inconsistent application of the protocol. (R. 331-370). However, none of these pages in the appendix contain any executed defendant’s name or indicate

that the drugs were used during any execution. They simply contain 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 contains numbers with either the + or - symbol. Nothing in the heavily redacted general inventory records cited by King pierces the presumption that the FDOC follows its protocol.⁷ Both this Court and the Florida Supreme Court have held that prison staff are entitled to a strong presumption that they follow their method-of-execution protocol.⁸ See e.g., *Baze v. Rees*, 553 U.S. 35, 53-54 (2008); *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024). As a result, claims asserting that FDOC fails to follow its protocol must also allege legally sufficient facts to pierce that presumption before any evidentiary hearing. *Hannon v. State*, 228 So. 3d 505, 509 (Fla. 2017) (affirming summary denial of a claim that FDOC is “inconsistent with its protocol” because the allegations were insufficient to overcome the presumption that FDOC complies with the protocol). King’s speculative allegations fell far short of the mark.

King had no due process right to demand sensitive lethal injection records in search of a claim. King did not present a colorable method-of-execution claim. See Fla. R. Crim. P. 3.852(k) (limiting the scope of production of public records under any sub-

⁷ As the written response and argument of the FDOC attorney at the public records hearing makes clear, the FDOC denies that it failed to follow its protocol. (R. 211, fn 10).

⁸ Notably, FDOC has successfully implemented its etomidate protocol more than thirty times since its adoption in 2017. See <https://www.fdc.myflorida.com/institutions/death-row/execution-list-1976-present>.

section of rule 3.852 to those that are “either relevant to the subject matter of the proceedings under rule 3.851 or are reasonably calculated to lead to the discovery of admissible evidence”). Therefore, the postconviction court did not abuse its discretion when it denied King’s demand for lethal injection records under established Florida law. *E.g., Tanzi v. State*, 407 So. 3d 385, 391 (Fla 2025) (applying the abuse of discretion standard to the denial of a demand for additional records and concluding that the postconviction court did not abuse its discretion or violate due process in denying a demand for such records because the records did not relate to a colorable claim). This state law evidentiary ruling presents no conflict with this Court’s precedent.

King’s failure to establish conflict and his dilatory conduct in waiting until his warrant was signed to bring this claim is reason enough to deny certiorari. King’s broad incantation of due process as magic words allowing capital defendants to demand whatever lethal-injection records they want after a death warrant is signed no matter how dilatory the defendant has been, and no matter how broad, burdensome, unrelated to a plausible claim for relief, and statutorily exempt the record demands are, cannot be sustained under any coherent view of due process. King’s due process claim is little more than a request to legitimize the unwarranted delays in lethal injection litigation this Court has attempted to curtail. *See Bucklew v. Precythe*, 587 U.S. 119, 149 (2019). This Court should therefore deny certiorari.

II. King failed to plausibly allege, much less establish an equal protection violation in state court and this issue presents no important or unsettled constitutional question for review

To the extent King raises a distinct equal protection claim in this Court, it is plainly meritless and unworthy of certiorari review. King offers no persuasive, much less compelling reasons for this Court to delay his execution on his novel and unsupported equal protection claim.

King's assertion of a potential equal protection violation does not alleviate or cure his failure to establish a risk of substantial harm under the Eighth Amendment. A prisoner lodging a method-of-execution claim "faces an exceedingly high bar." *See Barr v. Lee*, 591 U.S. 979, 980 (2020) (per curiam). His allegations come nowhere near the mark. King's equal protection claim is frivolous.

King asserted vaguely below that two sex offender murderers may have been given inadequate drugs, but he failed to assert why or how he believed this to be true in his motion. (R. 302, 306). King makes an equal protection claim based on an assertion that as a sex-offender murderer, he will be treated differently from other inmates who have been executed in Florida. In support, King suggested that two executions of sex-offender murderers—Gudinas and Wainwright—were "seemingly" given insufficient dosages of "particular drugs" related to their executions. (R. 302, 306). He provided no support for these speculative allegations, failing to identify the dosages or even the drugs in his motion below.⁹ Notably, the logs King relies upon

⁹ In his public records demand King did name Rocuronium and Potassium Acetate.

mention no names of any executed defendant. Only in the case management hearing did collateral counsel even identify the drugs for his class of “two” (sex offender murderers) equal protection claim. (R. 499). Even if this Court were to go down the speculative rabbit hole that King suggests, those drugs, rocuronium and potassium acetate, are only administered after the inmate has been rendered unconscious by etomidate. King fails to even allege how his unsupported allegation, even if true, caused those two inmates’ additional pain or discomfort. King cites no evidence that either of those two executions were unusual or prolonged.

The Florida Supreme Court had little trouble rejecting this speculative and threadbare assertion of an equal protection violation.

Here, in assessing King's Fourteenth Amendment claim, our reasoning is similar: alleged failures in documenting the movement of drugs into and out of inventory does not give rise to a cognizable equal protection or due process injury.

That is because, first, as the circuit court correctly found, even an allegation that there was a difference in the quantity of the specific drugs administered would not constitute disparate treatment for Fourteenth Amendment purposes. *See DeYoung v. Owens*, 646 F.3d 1319, 1327-28 (11th Cir. 2011) (holding equal protection does not “require[] a written execution protocol sufficiently detailed to ensure that every execution is performed in a precisely identical manner”).⁹ King is right that “we have a constitutional responsibility to ensure the death penalty is administered in a fair, consistent and reliable manner ...” *Arbelaez v. Butterworth*, 738 So. 2d 326, 326-27 (Fla. 1999).¹⁰ But he has not asserted a divergence from protocol that would result in a manner of execution that would raise equal protection concerns. *See Ferguson v. Warden*, 493 F. App'x 22, 26 (11th Cir. 2012) (“Under Florida's ... protocol, all death row inmates facing execution will be subject to the same sequence of drugs, the same procedures, and the same safeguards in the execution process.”).

(R. 107).

*6 And second, King has not alleged that the State will treat him disparately from other similarly situated persons in the sense that is relevant to the Fourteenth Amendment. “The Equal Protection Clause requires the government to treat similarly situated persons in a similar manner.” *Leib v. Hillsborough Cnty. Pub. Transp. Comm’n*, 558 F.3d 1301, 1305 (11th Cir. 2009). King has made no substantive allegation that administration of the protocol will amount to disparate treatment from other similarly situated persons. *See Amnesty Int’l, USA v. Battle*, 559 F.3d 1170, 1180 (11th Cir. 2009). Nor can he allege that his execution burdens his fundamental rights or is based on his membership in a suspect class. For these reasons, the circuit court properly concluded that King failed to establish even the first requirement of a viable equal protection claim.

King, No. SC2026-0336, 2026 WL 672101, at *5–6.

Florida’s execution protocol has been successfully implemented more than thirty times and the massive dose of etomidate administered at the outset will render the inmate insensate for the execution. *E.g., 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”). As noted by the Florida Supreme Court below, Florida’s protocol includes safeguards and checks to ensure “the condemned is unconscious throughout the execution.” *Long v. State*, 271 So. 3d 938, 945 (Fla. 2019).¹⁰ *King*, No. SC2026-0336, 2026 WL 672101 at 15 n.9.

¹⁰ The administration of the second and third drugs in Florida is only made 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.”).

King makes no attempt to explain why the consciousness checks would be insufficient to either ensure he is unconscious or to alert FDOC staff of the need for more etomidate. *See Schwab v. State*, 995 So. 2d 922, 929 (Fla. 2008) (“The constitutional focus is unconsciousness, not the duration of the execution following unconsciousness.”); *Baze v. Rees*, 553 U.S. 35, 64 (2008) (Alito, J., concurring) (“The first step in the lethal injection protocols currently in use is the anesthetization of the prisoner. If this step is carried out properly, it is agreed, the prisoner will not experience pain during the remainder of the procedure.”).

King is being treated exactly the same as other death sentenced inmates under the etomidate protocol. He is not subject to a new or changed protocol. In *Ferguson v. Warden, Florida State Prison*, 493 Fed. Appx. 22, 25–26 (11th Cir. 2012) (unpublished) the court rejected a similar equal protection challenge:

Ferguson fails to assert that any of the alleged deficiencies will result in disparate treatment from other death row inmates. Under Florida's 2012 protocol, all death row inmates facing execution will be subject to the same sequence of drugs, the same procedures, and the same safeguards in the execution process. Ferguson has presented no evidence to substantiate his claims of disparate treatment.

Id. King will receive the same drugs, in the same sequence with the same consciousness checks as other inmates. As noted, his allegations fall far short of establishing any deviations in the past, much less one that will be “sure” or “very likely” applicable to him in the future. *See generally DeYoung v. Owens*, 646 F.3d 1319, 1328 (11th Cir. 2011) (rejecting inmate’s equal protection claim based upon the assertion that Georgia deviates from its protocol because inmate failed to show a

substantial likelihood of success in the underlying action to support a stay of execution).

In conclusion, there is no important or unsettled question of law presented by King on the eve of his execution. King cites no remotely analogous case to establish an actual conflict with the Florida Supreme Court’s resolution of this issue below. King’s reliance on Justice Sotomayor’s discussion of a similar issue in *Trotter v. Florida*, Case No. 25-6853 (25A926) (Feb. 24, 2026) does not further his claim here. It has no precedential value. More importantly, Justice Sotomayor agreed that Trotter did not “show that Florida’s administration of its lethal-injection protocol is ‘sure or very likely to cause serious and needless suffering’ as the Court’s Eighth Amendment precedents require.” *Id.* King’s creative incantation of equal protection cannot circumvent this Court’s well established Eighth Amendment precedent. Certiorari should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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