

No. 25-7018

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In the Supreme Court of the United States

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**MICHAEL KING,**  
*Petitioner,*  
v.  
**STATE OF FLORIDA,**  
*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
FLORIDA SUPREME COURT

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**REPLY TO BRIEF IN OPPOSITION**

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**CAPITAL CASE**  
**DEATH WARRANT SIGNED**  
**Execution Scheduled: March 17, 2026, at 6:00 PM ET**

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**CAPITAL CASE**

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## **PRELIMINARY STATEMENT**

Michael King (“King”) or “Petitioner,” interchangeably, offers the following Reply to the Brief in Opposition from the Respondent (“BIO”). King will not reply to every issue and argument raised by Florida and will only address specific points. References to the Respondent’s response to the Application for Stay of Execution will be stated as “Response at \_\_\_\_.” References to the Appendix A-G, are regarding those same attachments to the pending Petition for a Writ of Certiorari (“Petition”). King expressly does not abandon any issue not specifically replied to herein and relies upon his Petition in reply to any argument or authority not specifically addressed.

### **REPLY REGARDING APPLICATION FOR STAY**

King’s execution is currently scheduled for March 17, 2026, only two days from the date of the filing of this Reply. Filed on the same day as the BIO on March 13, 2026, the State also submitted a Response to Application for Stay of Execution. *See Case No. 25A1000*. King begins this Reply by reiterating that this Court should grant him a stay of these proceedings.

Florida’s compressed death warrant litigation schedule is completely insufficient to protect King’s constitutional rights. The standards for granting a stay of execution are well-established. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). There “must be a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; there must be a significant possibility of reversal of the lower court’s decision; and there must be a likelihood that irreparable harm will result if

that decision is not stayed.” *Id.* (internal quotations omitted). “[A] death sentence cannot begin to be carried out by the State while substantial legal issues remain outstanding.” *Barefoot*, 463 U.S. at 888. King submits there is a significant possibility of the lower court’s reversal, should this Court grant the request for a stay and review of the underlying petition. This Court’s intervention is urgently needed to prevent King’s imminent execution.

This Court should enter a stay of execution to allow King to demonstrate how the maladministration of Florida’s lethal injection protocol is a violation of King’s rights under the Fourteenth Amendment to the United States Constitution. King’s case presents important constitutional issues which should be fully addressed by this Court free from the extreme time constraints set by the warrant signed by the governor. There is a reasonable probability that four justices would consider that now is the time to intervene, regarding how Florida forecloses capital defendants from obtaining necessary records while under an active death warrant. King’s claim is narrowly tailored to his factual basis and needs; yet has wide-ranging ramifications for how courts interpret the meaning of “colorable claims for relief.” There is a significant possibility of reversal of the lower courts’ decisions, as the legal precedent regarding King’s equal protection analysis squarely points to the need for a remand to create factual development.

The balance of equities weighs heavily in favor of a stay. King’s clemency hearing was just this past November. He was sentenced to death on December 4, 2009. King’s case is relatively recent. This Court effectively concluded state court

proceedings not extraordinarily long ago as you denied King's petition for writ of certiorari. *King v. Inch*, 141 S. Ct. 303, 2020 WL 5882842 (2020).

This is not a case where a capital defendant has lingered on death row for decades, filing one successive postconviction pleading after another. Equities point toward fairness, justice, and patience. The Respondent's BIO at 5-6 explains the minimal postconviction proceedings that have occurred in Petitioner's case. Expediency and finality do not replace the requirements of Florida following the Constitution.

Florida's interest in the timely enforcement of judgments handed down by its courts must be weighed against King's continued interest in his life. *See Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) ("[I]t is incorrect . . . to say that a prisoner has been deprived of all interest in his life before his execution.") (O'Connor, J., plurality opinion). The irreparable harm to King is clear. *Wainwright v. Booker*, 473 U.S. 935, 937 n.1 (1985) (Powell, J., concurring). King would be put to death before having the opportunity to prove that Florida's lethal injection protocols violate his constitutional rights.

In its Response at 2, the Respondent cites to the Eighth Amendment in a misleading argument regarding King's claims for relief. Clearly, as presented in the lower courts and in the Petition, King has raised claims strictly, and specifically, under the Fourteenth Amendment. Petitioner's equal protection rights are at peril and his due process rights have been violated.

The Respondent's focus on the fact that King raised this issue after his death warrant was signed ignores the fact that King's case is still legally timely, based on newly discovered evidence that came to light within the past twelve months. The state concedes that issues regarding the maladministration of the FDOC protocol have been litigated in two other recent warrants. Response at 2.<sup>1</sup> Therefore, it defies common sense along with legal requirements, to opine that King could rush and litigate this matter before his *own* death warrant would be signed, as these lethal injection issues were just recently addressed in relevant and fluid warrant litigation for Heath and Trotter. The dangerous and rapid pace in which Florida is signing death warrants creates uncertainty, but King still complied with both state and federal requirements by *timely* raising his claims under the Fourteenth Amendment. The Florida Supreme Court addressed his claims on the merits. This Court should grant the writ and review their errors. King will not take the bait to address the Respondent's Eighth Amendment arguments regarding his Questions Presented.

This Honorable Court should grant a stay. Justice Sotomayor concluded her comment regarding the denial of certiorari in *Trotter* as follows:

Going forward, I hope that Florida and its courts will recognize the paramount importance of ensuring that it conducts executions consistently with its approved protocol, and assuring all involved that it is preventing any infliction of needless suffering on those being executed in the State. By continuing to shroud its executions in secrecy, Florida undermines both the integrity of its own execution process and, potentially, this Court's ability to ensure the State's compliance with its constitutional obligations.

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<sup>1</sup> *Trotter v. State*, No. SC2026-0214, 2026 WL 444544, at \*3 (Fla. Feb. 17, 2026)  
*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. Florida*, 607 U.S. \_\_\_, Case No. 25-6853 (25A926) (Feb. 24, 2026) (Sotomayor, J., respecting the denial of the application for stay of execution and denial of certiorari). Distinguished from *Trotter*, King raised and preserved the issue in state court regarding Petitioner’s request for additional records from the Florida Department of Corrections. *See* Justice Sotomayor’s footnote:

“In earlier proceedings in this case, Trotter also challenged the denial of his own public-records request before the Florida courts, arguing that he was entitled to records relating to the administration of executions that have recently taken place in Florida. **He does not raise any claim in this Court relating to the denial of his request for additional records.**”

*Id.* (emphasis added). King has raised the necessary claim for this Court’s review. A stay is required so that a thorough factual basis can be established regarding this issue of great importance. Florida courts are not providing any legitimate oversight for the actions of its state agencies. King’s case provides the proper vehicle and Questions Presented for this Court’s intervention. King respectfully requests that this Court stay his execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f).

### **RESPONSE TO REASONS FOR DENYING THE PETITION**

King is the Petitioner under an active death warrant who is alleging errors at the state level based on his Questions Presented. The BIO takes issue with King filing a demand for additional records after the death warrant was signed. BIO at 13 and 17. King is complying with the law. If the State of Florida did not want to permit capital defendants under warrant to file additional demands for records, it would not permit statutory authority under Fla. R. Crim. P. 3.852 (h) and (i). King is complying

with the law.

King has repeatedly impressed upon the courts how the State improperly tried to turn his Fourteenth Amendment claims into Eighth Amendment arguments, App. B at 8-9 and App C. at 11-15. Again here, the State is trying to change the nature of King's arguments to suit their position. That is improper. Petitioner objects to the Respondent calling King's circuit court claim a "method of execution challenge" BIO at 7. King objects to the Respondent's penultimate sentence in the BIO at 22 that points to this Court's "Eighth Amendment" precedent. King objects to the Respondent's Eighth Amendment arguments in totality and will not be baited into misleading this Court. As the Respondent clearly recognizes, the Florida Supreme Court did a Fourteenth Amendment analysis on King's claims. BIO at 15, citing App. A at 6 fn. 9. Not being an Eighth Amendment issue, this Court should also ignore any references to whether Etomidate will render Petitioner unconscious prior to the inclusion of the chemicals at issue, Rocuronium and Potassium Acetate. BIO at 16, 20-21. Consciousness checks are an Eighth Amendment issue, as they pertain to pain and suffering. Again, King is arguing about basic fairness and uniformity in how the protocols are being administered, which is an equal protection matter. The denial of access to records and hindering the ability to litigate the claim brings in the due process component.

The BIO does seem to understand that the due process and equal protection issues are interrelated, regarding whether King is being permitted access to the Courts based on whether or not he raised a "colorable claim for relief" in state court.

King's equal protection argument is clearly such a claim, irrespective of the Respondent and the state courts misapplying the law. King's equal protection argument is based on records provided by the FDOC. App. D. There has never been any argument submitted by the State challenging the validity of the documents, rather, just the meaning of what looks like legitimate examples of maladministration of the lethal injection protocol. The BIO argues about the redactions of the names in the logs supplied in App. D, but that does not dismiss publicly available records and indisputable facts. Although the names of Gudinas and Wainwright are redacted in the logs, the dates of their executions are a matter of public record. The App. D logs show that Gudinas and Wainwright did not receive the proscribed amounts of the drugs mandated by FDOC's procedures, thereby giving rise to the claims regarding King's equal protection rights. King's claim is based on the violation of his equal protection rights, due to the maladministration of the lethal injection protocols, specifically related to the executions of Gudinas on June 10, 2025 and Wainwright on June 24, 2025<sup>2</sup>.

When the BIO does eventually focus in the equal protection analysis, it unpersuasively relies on the Florida Supreme Court's misapplication of the law. BIO at 19. *DeYoung v. Owens*, 646 F.3d 1319, 1327 (11th Cir. 2011) is clearly distinguishable. Unlike in *DeYoung*, King is not challenging the protocol as written. Instead, King is making his equal protection claim based on deviations in the protocol that have already taken place, based on a reading of the records provided by FDOC.

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<sup>2</sup> <https://deathpenaltyinfo.org/executions/2025>

Also, in *DeYoung*, the deviations found by the court were determined to work to the benefit of the petitioner since they, in theory, provided more protection and safeguards during the execution process. However, the issues at bar relating to improper dosages, particularly, an insufficient amount of the drugs used for lethal injection, would clearly provide *less*, rather than *more* protection. Moreover, the court in *DeYoung* had the benefit of an evidentiary record, which is all King is asking for at this juncture, the right to public records and an evidentiary hearing.

The Florida Supreme Court further held misplaced reliance on *Ferguson v. Warden*, 493 F. App'x 22, 26 (11<sup>th</sup> Cir. 2012), App. A at 16, which was based on Fourteenth Amendment analysis following the review of an evidentiary record. In *Ferguson*, the Court had the benefit of sworn “declarations” submitted by witnesses to the lethal injection procedures, and a sworn counter response from an official with FDOC. Thus, there was a record to support the Fourteenth Amendment analysis in *Ferguson*. That is all King is requesting at this juncture, the opportunity to obtain records and to create evidentiary support for his concerns of equal protection. That is clearly a colorable claim for relief. Therefore, the BIO’s reliance on *Ferguson* is misplaced. BIO at 21. Before any court can make a full equal protection determination, there must be a factual record to review, such as the “declarations” in *Ferguson*; if not a full evidentiary hearing with witnesses. And like in *Ferguson*, if the Respondent disputes the factual assertions made by the plaintiff/petitioner, they need to have an FDOC employee submit a sworn statement.

Petitioner also points this Court to *Pardo v. Palmer*, 500 Fed. Appx 901, 903-04 (11<sup>th</sup> Cir. 2012), which relies on *Ferguson*. However, *Pardo* was also granted an evidentiary hearing prior to the final determination on the merits regarding the equal protection analysis. The Florida courts and Respondent are not following Eleventh Circuit precedent.

The Respondent ignores *Arthur v. Thomas*, 674 F.3d 1257 (11<sup>th</sup> Cir. 2012), where the Eleventh Circuit Court addressed an equal protection claim by an Alabama death row inmate, following its decision in *DeYoung*, and found the petitioner only had to show enough facts to constitute a plausible equal protection claim and had done so by alleging “Alabama has substantially deviated from its execution protocol.” *Id.* at 1263. *Arthur* alleged significant deviations from the established execution protocol and that court found as follows:

In light of Arthur’s other allegations regarding the veil of secrecy that surrounds Alabama’s execution protocol, it is certainly not speculative and indeed plausible that Alabama will disparately treat Arthur because the protocol is not certain and could be unexpectedly changed for his execution. (Footnote omitted.)

*Id.* The Court then remanded the case for further factual development. Petitioner is requesting a remand in this case, which is on point with *Arthur*. What *DeYoung*, *Ferguson*, *Pardo*, and *Arthur* inform, is that some type of factual record must be established before making an ultimate equal protection analysis on the merits. Those cases, decided on sworn testimony, clearly demonstrate that an equal protection claim based on how lethal injection protocols are administered, are indeed “colorable

claims for relief.” Like those litigants, King is merely requesting a stay and the opportunity to make a record.

Besides Florida ignoring Eleventh Circuit precedent regarding equal protection, this Court’s intervention is necessary to resolve disputes in how other jurisdictions are permitting access to lethal injection records, generally. Petition at 11-13. Florida’s veil of secrecy and obstruction in comparison to other jurisdictions, justify this Honorable Court granting the Petition. *See* Supreme Court Rule 10. Considering the rate of death warrants in Florida—a trend that may continue and spread nationwide—this Court should set clear guidelines establishing access to records for capital defendants under warrant. The BIO ignores the powerfully persuasive language in *Cooey v. Kasich*, 801 F. Supp. 2d 623, 654-55 (S.D. Ohio 2011):

This is not to say that the core deviations and underlying policy of failing to adhere to the most fundamental or core written protocol practices rationally relates to the asserted goal of humane executions. Whatever intentions the governmental actors hold, core deviations that bypass protections cannot and do not logically further the goal of humane executions. Sometimes the core deviations do not adversely affect that goal in demonstrable action, and sometimes they can puncture the goal. In both cases, there is no connection between goal and practice. The explanation or asserted goal does not align with the policy of permissible core deviations and the periodic implementation of that policy. Under rational basis scrutiny, **Defendants’ core deviations are revealed to be irrational. They are arbitrary and capricious. They are unconstitutional.**

What the foregoing analyses teach is that Plaintiff is likely to prevail on his Equal Protection claim. Such a conclusion is mandated under the evidence presented when viewed in light of the rights the execution process implicates and the haphazard application of that process in which Ohio engages. A death warrant cannot trump the Constitution. That latter document is not an inconvenience to be worked around or ignored. It is the most fundamental expression of the principles, rights, and obligations that define this country, and no governmental actor

should ever disregard its dictates and prescriptions in this or any other context to fulfill any sense of perceived duty. It is wholly lawful to execute capital inmates. It is wholly unlawful to even attempt to do so in a manner that violates the Constitution.

Defendants' steadfast refusal to recognize core deviations as problematic subverts the purpose of the written protocol and defies the point of the protections that **the Fourteenth Amendment provides to all citizens. Defendants mistake semantics for propriety and in doing so conflate situational dedication to a governmental function with their overarching duty to follow the law. They posit that because their own written protocol is merely a set of guidelines subject to context-dependent variable implementation, any departure is not a deviation but actually continued application of the protocol. This approach misreads the protocol and ignores equal protection. A deviation is a deviation, and to claim otherwise is either delusional or disingenuous. Ohio can and should easily do better.**

*Id.* (emphasis added). Only granting this writ will force Florida to “do better.”

Florida executed nineteen souls in 2025, which is unprecedented; it is a state record. So far in 2026, Florida has executed Ronald Heath (February 10, 2026), Melvin Trotter (February 24, 2026), and Billy Leon Kearse (March 3, 2026). Petitioner King is scheduled for execution in two days, as he sits on Death Watch with James Duckett (Execution set for March 31, 2026) and Chadwick Willacy (Execution set for April 21, 2026). Without this Court's intervention, the FDOC has no oversight regarding whether it is administering the death penalty in a constitutional manner. This Court has the authority to limit the power of a mere state agency, which appears to be shielding itself from constitutional authority by hiding behind a veil of secrecy. King has also offered to further negotiate the parameters of his demand for records, to satisfy the concerns of FDOC. Respectfully, this Honorable Court's intervention is crucial and necessary.

**CONCLUSION**

Considering the arguments raised, the rate in which Florida is signing death warrants, and the relentlessness in which Florida litigants are raising concerns regarding access to lethal injection records, the time has come for this Court to intervene and settle the issue. This Honorable Court should grant the writ.

Respectfully submitted,

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*March 15, 2026*  
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