

No. 25-7255

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**In the Supreme Court of the United States**

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**JAMES E. HITCHCOCK,**  
*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 AND APPLICATION FOR STAY**

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**CAPITAL CASE**  
**DEATH WARRANT SIGNED**  
**Execution Scheduled: April 30, 2026, at 6:00 PM ET**

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FL. BAR NO. 651443

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**CAPITAL CASE**  
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## PRELIMINARY STATEMENT

James E. Hitchcock (“Mr. Hitchcock”), offers the following Reply to the Brief in Opposition from the Respondent as well as the Respondent’s response to Mr. Hitchcock’s Application for Stay of Execution. Mr. Hitchcock will not reply to every issue and argument raised by the State of Florida and will only address specific points. Mr. Hitchcock expressly does not abandon any issue not specifically replied to herein and relies upon his Petition and Application for Stay of Execution filed in reply to any argument or authority not specifically addressed.

### REPLY REGARDING APPLICATION FOR STAY OF EXECUTION

Mr. Hitchcock’s execution is currently scheduled for April 30, 2026, only one day from the date of the filing of this Reply. Filed on the same day as its Brief in Opposition on April 27, 2026, the State of Florida also submitted a Response to Application for Stay of Execution. Mr. Hitchcock begins this Reply by reiterating that this Court should grant him a stay of these proceedings.

“[A] death sentence cannot begin to be carried out by the State while substantial legal issues remain outstanding.” *Barefoot v. Estelle*, 463 U.S. 880, 888 (1983). Mr. Hitchcock has established the standard for granting a stay of execution. Mr. Hitchcock’s case has substantial legal issues that remain outstanding, including the production of records necessary for consideration of a *Baze-Glossip*<sup>1</sup> challenge as well as consideration of his compelling case of actual innocence on its merits. This

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<sup>1</sup> *Baze v. Rees*, 553 U.S. 35 (2008); *Glossip v. Gross*, 576 U.S. 863 (2015)

Court's intervention is urgently needed to prevent Mr. Hitchcock's imminent execution.

This Court should enter a stay of execution to allow Mr. Hitchcock to obtain and review necessary records for consideration of whether Florida is maladministering the official lethal injection protocols. This request comes in the wake of record evidence of errors committed in several of the executions carried out in 2025. There no longer should be a presumption that Florida is conducting its lethal injection executions appropriately. Based on the evidence of the failure to follow the approved lethal injection protocol, the State should be stripped of the presumption that it is carrying out lethal injection executions in a manner that comports with the U.S. Constitution. Mr. Hitchcock's case presents important constitutional issues which should be fully addressed by this Court without the expedited time constraints of the State of Florida's warrant process. There is a reasonable probability that at least four justices would agree that this Court's intervention is needed to address Florida's systematic prevention of *Baze-Glossip* challenges and refusal to consider actual innocence claims on their merits. There is a significant possibility of reversal of the lower courts' decisions and consideration of further factual development on remand.

Without this Court's immediate intervention, Mr. Hitchcock will suffer irreparable and permanent harm: not only will he be executed, but also, his execution will occur under a death penalty scheme that precludes an Eighth Amendment challenge, and before consideration of his compelling case of actual innocence on its

merits. With regard to Mr. Hitchcock's claim related to lethal injection records, his due process and equal protection rights under the Fifth and Fourteenth Amendments of the U.S. Constitution are being violated by Florida's systematic prevention of access to vital and necessary records. As a result, Mr. Hitchcock is being prevented the ability to make an Eighth Amendment challenge related to his execution by lethal injection.

With regard to Mr. Hitchcock's compelling case of actual innocence, his due process rights are being violated under the Fifth and Fourteenth Amendments to the U.S. Constitution because the Florida courts will not consider his actual innocence on its merits. Mr. Hitchcock's execution itself will violate the Eighth Amendment to the U.S. Constitution because the execution of an innocent man is cruel and unusual punishment.

Mr. Hitchcock has raised the necessary claims for this Court's review. Mr. Hitchcock respectfully requests this Court stay his execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f).

### **REPLY TO STATE OF FLORIDA'S BRIEF IN OPPOSITION**

Mr. Hitchcock has repeatedly argued that the State's actions are violating his U.S. Constitutional rights. The State of Florida has consistently tried to reframe Mr. Hitchcock's claims at both the state level and now with before this Court, in order to suit their position of maintaining secrecy in its executions and ignoring claims of actual innocence on their merits. Mr. Hitchcock raises federal questions by asking this Court to consider how Florida's actions/inactions violate his U.S. constitutional

rights. These issues are widespread and applicable to the rights of capital postconviction defendants nationwide.

For over twenty-five years, the Florida Supreme Court has deprived Florida death row inmates, in general, and Mr. Hitchcock, in particular, from the full protections of the Eighth Amendment. The colorable claim requirement, instituted in Florida by *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000), is an entrenched and arbitrary obstacle that frustrates the objectives and purposes of the Eighth Amendment and that is contrary to this Court's holding in *Baze* and *Glossip*. In numerous cases, spanning twenty-six years, and a gambit of burdensome-to-limited discovery requests, the Florida Supreme Court has never found the lethal injection records requested would be related to a colorable claim.<sup>2</sup> Capital postconviction defendants in Florida, including Mr. Hitchcock, are foreclosed from ever making a *Baze-Glossip*

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<sup>2</sup>*Willacy v. State*, --- So. 3d ---, 2026 WL 1021168 (Fla. Apr. 15, 2026); *King v. State*, --- So. 3d -, 2026 WL 672101 (Fla. Mar. 10, 2026); *Trotter v. State*, --- So. 3d ---, 2026 WL 444544 (Fla. Feb. 17, 2026); *Heath v. State*, 426 So. 3d 1253 (Fla. 2026); *Randolph v. State*, 422 So. 3d 166 (Fla. 2025); *Bates v. State*, 416 So. 3d 312 (Fla. 2025); *Zakrzewski v. State*, 415 So. 3d 203 (Fla. 2025); *Rogers v. State*, 409 So. 3d 1257 (Fla. 2025); *Tanzi v. State*, 407 So. 3d 385 (Fla. 2025); *Hutchinson v. State*, 416 So. 3d 273 (Fla. 2025); *Cole v. State*, 392 So. 3d 1054 (Fla. 2024); *Dailey v. State*, 383 So. 3d 782 (Fla. 2019); *Long v. State*, 271 So. 3d 938 (Fla. 2019); *Jimenez v. State*, 265 So. 3d 462 (Fla. 2018); *Branch v. State*, 236 So. 3d 981 (Fla. 2018); *Asay v. State*, 224 So. 3d 695 (Fla. 2017); *Braddy v. State*, 219 So. 3d 803 (Fla. 2017); *Chavez v. State*, 132 So. 3d 826 (Fla. 2014); *Muhammad v. State*, 132 So. 3d 176 (Fla. 2013); *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013); *Prado v. State*, 108 So. 3d 558 (Fla. 2012); *Dennis v. State*, 109 So. 3d 680, 700 (Fla. 2012); *Rimmer v. State*, 59 So. 3d 763, 774 (Fla. 2010); *Valle v. State*, 70 So. 3d 530 (Fla. 2011); *Tompkins v. State*, 994 So. 2d 1072 (Fla. 2008); *Schwab v. State*, 969 So. 2d 318 (Fla. 2007); *Overton v. State*, 976 So. 2d 536, 564 (Fla. 2007); *Rutherford v. State*, 926 So. 2d 1100, 1116 (Fla. 2006); *Diaz v. State*, 945 So. 2d 1136, 1144 (Fla. 2006); *Tompkins v. State*, 872 So. 2d 230, 243 (Fla. 2003), as revised on denial of reh'g (Apr. 22, 2004); *King v. State*, 808 So. 2d 1237, 1240 (Fla. 2002); *Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002); *Glock v. Moore*, 776 So. 2d 243, 254 (Fla. 2001); and *Mills v. State*, 786 So. 2d 547 (Fla. 2001).

challenge to Florida's lethal injection administration, since the state will never provide the limited, relevant, and attainable lethal injection records. There is no hypothetical scenario in which a Florida death row inmate could challenge the lethal injection *administration* and hold it against the constitutionally scrutinized and permissible lethal injection *protocol*.

In addition to preventing the pursuit of Eighth Amendment challenges under *Baze-Glossip*, Florida refuses to consider a person's claim of actual innocence on its merits. As a result, without this Court's intervention, Mr. Hitchcock, an innocent man, will be executed tomorrow at 6:00 P.M. The execution of an innocent man is cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution. There is no greater manifest injustice than the execution of an innocent man; yet Florida has refused to consider the merits of Mr. Hitchcock's compelling case of actual innocence because Florida decided that the state does not consider claims of actual innocence.

### **CONCLUSION**

Florida's executions are conducted behind a veil of secrecy, and because the executions are carried out without consideration of a person's actual innocence, this Honorable Court should intervene and grant the application for stay and writ.

Respectfully submitted,

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Dated: April 29, 2026