

No. 25-7491

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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ANDREW RICHARD LUKEHART,  
*Petitioner,*

v.

STATE OF FLORIDA,  
*Respondent.*

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

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**BRIEF IN OPPOSITION  
EXECUTION SCHEDULED FOR JUNE 2, 2026, AT 6:00 P.M.**

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JAMES UTHMEIER  
ATTORNEY GENERAL OF FLORIDA

Office of the Attorney General  
3507 E. Frontage Rd., Ste. 200  
Tampa, Florida 33607  
Telephone: (813) 287-7900  
scott.browne@myfloridalegal.com  
capapp@myfloridalegal.com

SCOTT A. BROWNE  
Chief Assistant Attorney General  
*Counsel of Record*

JASON W. RODRIGUEZ  
SENIOR ASSISTANT ATTORNEY GENERAL

CHARMAINE M. MILLSAPS  
SPECIAL COUNSEL, ASSISTANT ATTORNEY GENERAL

COUNSEL FOR RESPONDENT

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CAPITAL CASE  
**QUESTIONS PRESENTED**

Andrew Richard Lukehart murdered a five-month-old child in 1996 while on felony probation for abusing an eight-month-old child less than two years earlier. Lukehart's death sentence for the 1996 murder became final in 2001.

On May 1, 2026, Florida scheduled Lukehart's execution for June 2, 2026. Lukehart invoked Florida's successive postconviction procedures by unsuccessfully demanding records and then raising two method-of-execution claims. Florida's courts rejected the method-of-execution claims as time-barred and legally insufficient to meet this Court's settled method-of-execution claim framework.

Now, in his final bid to stave off a long-coming execution, Lukehart asks this Court to intervene by raising three procedural questions completely academic to his case. The state courts rejected his substantive method-of-execution claims as time-barred on state law grounds and no question Lukehart presents challenges that state-law holding. He therefore suffered no Article III injury in fact from the resolution of his proposed questions. This Court lacks jurisdiction over the following questions:

- I. Does due process require evidentiary hearings on all post-warrant method-of-execution claims no matter how untimely or meritless?
- II. Does either the First Amendment's Free Exercise Clause or the Fourteenth Amendment's Due Process Clause exempt a capital defendant from the settled Eighth Amendment method-of-execution claim requirement that he must provide an alternative method of execution?
- III. Does either the Eighth Amendment or the Due Process Clause of the Fourteenth Amendment preclude a state from requiring a capital defendant to plead a facially valid lethal injection claim before granting post-death-warrant demands for records?

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## **OPINION BELOW**

Lukehart seeks certiorari review of the Florida Supreme Court’s decision rejecting his post-warrant challenges to execution. *See Lukehart v. State*, No. SC2026-0736, 2026 WL 1480328 (Fla. May 27, 2026).

## **JURISDICTION**

This Court has statutory jurisdiction over Lukehart’s three questions presented. Certiorari jurisdiction extends to final “judgments” issued by “the highest court of a State” when a federal question is at issue. 28 U.S.C. § 1257(a).

But this Court lacks Article III jurisdiction over Lukehart’s three questions presented because he has no standing to ask them. Standing requires Lukehart to show “three elements”: (1) “injury in fact”; (2) “causation”; and (3) “redressability.” *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 111 (2025). “The first requirement, injury in fact, requires the plaintiff to demonstrate an injury that is concrete, particularized, and actual or imminent, not speculative.” *Id.* Article III “standing is not dispensed in gross.” *Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 439 (2017) (cleaned up). “To the contrary, a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought.” *Id.*

Standing “must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance.” *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013). And standing is a “threshold jurisdictional question” that must be addressed before the merits. *Jones v. Comm’r, Ga. Dep’t of Corr.*, 811 F.3d 1288, 1295–96 (11th Cir. 2016) (*Jones I*).

Lukehart lacks Article III standing to complain about lacking an evidentiary hearing on his post-warrant method-of-execution claims, the *Baze-Glossip*<sup>1</sup> test’s alternative-method requirement, and lacking method-of-execution-related information. He suffered no actual injury related to any of these questions because the Florida Supreme Court rejected his method-of-execution claims as untimely under state law. *Lukehart v. State*, No. SC2026-0736, 2026 WL 1480328, at \*4 (Fla. May 27, 2026) (holding the as-applied “claim is untimely” under state law and “Lukehart has not justified his delay in bringing” the facial challenge given Florida’s protocol “has remained essentially unchanged since 2017”). These time-bars are independent and adequate state law grounds expressly relied on by the Florida Supreme Court to reject Lukehart’s method-of-execution claims. *See Walker v. Martin*, 562 U.S. 307, 315 (2011).

Given his method-of-execution claims were untimely under state law, Lukehart cannot obtain relief even if he had an evidentiary hearing, did not have to provide an alternative method, and received all the records he seeks. The state-law time bar means his method-of-execution claims fail even if this Court agreed with every question he presents. That is not an injury in fact. Lukehart could only be injured for Article III purposes if the records, evidentiary hearing, or alternative-method exemption gave him a chance of prevailing on his claims. But his claims were untimely under state law, vitiating any Article III injury that could otherwise flow

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

from lacking an evidentiary hearing, records, or the alternative-method requirement.

The Florida Supreme Court’s holding that Lukehart failed to timely pursue his claims eliminates any Article III injury in fact related to his questions presented. And on the state-law timeliness issue, the court below is infallible. *See Montana v. Wyoming*, 563 U.S. 368, 377 (2011) (The “highest court of each State, of course, remains the final arbiter of what is state law.”); *Dietz v. Bouldin*, 579 U.S. 40, 53 (2016) (explaining this Court is “not final because we are infallible, but we are infallible only because we are final”). Because the Constitution imposes no obligation on Florida to let capital defendants raise third successive postconviction claims at all after a death warrant issues, *see Jones v. Hendrix*, 599 U.S. 465, 482–87 (2023), and Lukehart’s method-of-execution claims are untimely under Florida law, he cannot show an Article III injury in fact to support his three questions presented.

He also lacks Article III standing to raise his first and third questions presented independently from his second. Capital defendants lack standing to assert right-to-information claims when the information sought cannot help them because of their refusal to provide an alternative method of execution. *See Jones I*, 811 F.3d at 1295–96. Unless this Court grants certiorari on his second question and exempts Lukehart from the requirement that he plead and prove an alternative method of execution, the lack of an evidentiary hearing and records cannot help him succeed on any method-of-execution claim. The lack of either an evidentiary hearing or records to support claims doomed to fail because of the defendant’s refusal to plead and prove an alternative method is not an injury in fact as required for Article III standing. *See*

*id.* As a result, if this Court denies certiorari on Lukehart’s second question presented, it must also decline jurisdiction over the other two.

For both these reasons, this Court lacks Article III jurisdiction over Lukehart’s questions presented.

### **CONSTITUTIONAL PROVISIONS INVOLVED**

The State accepts Petitioner’s statement of the constitutional provisions.

### **BACKGROUND ON FLORIDA’S LETHAL INJECTION PROTOCOL**<sup>2</sup>

“The foremost objective of” Florida’s “lethal injection process is a humane and dignified death.” (WPCR:382.) The execution procedures commence when the Florida Department of Corrections (DOC) receives the death warrant and require the institutional warden to select the execution date and time within the week designated by the Governor. (WPCR:383.)

The protocol requires DOC’s Secretary to designate an execution team warden to oversee the execution. (WPCR:382.) “The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.” (WPCR:383.)

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<sup>2</sup> This background focuses on the provisions with the greatest application to Lukehart’s method-of-execution claims. Lukehart attached the full 14-page protocol below as “Appendix C.” (WPCR:380–95.) The State will cite the current lethal-injection protocol in the warrant record below as WPCR:[page].

The execution team warden must select two executioners (a primary and a backup) and the remaining members of the execution team. (WPCR:383–84.) That includes selecting execution-team members “responsible for examining the inmate prior to execution to determine health issues from” a specified class of trained professionals, and members “responsible for purchasing, maintaining and mixing the lethal chemicals” from a specified class of trained professionals. (WPCR:384.) “Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.” (WPCR:385.) The protocol requires team members to have sufficient experience and training, including execution simulations to ensure the team can address possible contingencies. (WPCR:383–85.) Examples include if the “inmate is not rendered unconscious after the administration of the etomidate injection” and an “unanticipated medical emergency concerning the inmate.” (WPCR:385.)

A week before the execution, an execution team member reviews the inmates medical file and conducts a limited examination to see whether “there are any medical issues that could potentially interfere with the proper administration of the lethal injection process.” (WPCR:386.) The team warden then determines the best access site given the “individual circumstances of the condemned inmate based on all information provided.” (WPCR:386.) The team warden must also resolve any issues “that could potentially interfere with the proper administration of the lethal injection process” after consulting the execution team. (WPCR:387.)

The day of the execution, a team member (watched by another team member

and a Florida Department of Law Enforcement (FDLE) observer) prepares the three lethal injection chemicals—etomidate, rocuronium bromide, potassium acetate. (WPCR:387–88.) These chemicals must not “have reached or surpassed their expiration dates.” (WPCR:386.) The team warden must “ensure the provision of any medical assistance or care deemed appropriate” for the condemned inmate (WPCR:389.) The condemned will be *offered* and, *if accepted, will be administered intramuscular injections of hydroxyzine*, in appropriate dosages relative to weight, to ease anxiety.”<sup>3</sup> (WPCR:389) (emphases added).

When the execution begins, the primary executioner injects 200 milligrams of etomidate into the condemned across two syringes. (WPCR:391–92.) The team warden must then assess the condemned for consciousness and cannot proceed with the execution until he is. (WPCR:392.)

Once the condemned is unconscious, the team warden orders the execution to proceed. (WPCR:392.) The primary executioner then injects 1000 milligrams of

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<sup>3</sup> A hydroxyzine injection would account for the injection sites Lukehart alleges Dr. Zivot noted in the shoulders of seven executed inmates and, since hydroxyzine is optional, also explains why it only appears on some executed inmates but not others. (See WPCR:389.)

Vistaril Hydroxyzine Hydrochloride Intramuscular Solution *for Intramuscular Use Only*; Hydroxyzine Hydrochloride intramuscular solution is intended *only for intramuscular administration* and should not, under any circumstances, be injected subcutaneously, intra-arterially or intravenously, and *as with all intramuscular preparations, VISTARIL Intramuscular Solution should be injected well within the body of a relatively large muscle.*

*Pfizer, Inc. v. Jones*, 221 Va. 681, 683, 272 S.E.2d 43, 44 (Va. 1980) (quoting the drug insert for Vistaril Hydroxyzine Hydrochloride) (cleaned up, emphasis added).

rocuronium bromide across two syringes, followed by 240 milliequivalents of potassium acetate across two syringes. (WPCR:392–93.) After the heart monitors reflect a flat line, a physician examines the inmate and pronounces him dead. (WPCR:394.) An execution team member records the time of death, and another announces the death sentence was carried out. (WPCR:394.)

The execution team must document protocol compliance on checklists the team warden verifies both before proceeding with the execution and after. (WPCR:386.) Two FDLE agents also monitor the execution and keep detailed logs. (WPCR:386.)

The Secretary of the Florida Department of Corrections (DOC) reviewed Florida’s lethal-injection protocol and, in February 2025, determined that “[t]he process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering.” (WPCR:381.) The Secretary also certified that DOC “has the necessary procedures, equipment, facilities, and personnel in place” to perform executions. (WPCR:381.)

Florida adopted etomidate as the first drug in its lethal-injection protocol in January 2017. *Long v. Sec’y, Dep’t of Corr.*, 924 F.3d 1171, 1179 (11th Cir. 2019). The circuit court held a full evidentiary hearing to determine whether “the State’s adoption of etomidate as the first drug in the lethal injection protocol” placed the defendant at “substantial risk of serious harm in violation of the Eighth Amendment.” *See Asay v. State*, 224 So. 3d 695, 699, 701 (Fla. 2017). “Four expert witnesses testified at the evidentiary hearing held on this issue.” *Id.* at 701.

Etomidate is a hypnotic drug without analgesic activity. Intravenous injection of etomidate produces hypnosis characterized by a rapid onset

of action, usually within one minute. *Duration of hypnosis is dose dependent* but relatively brief, *usually three to five minutes when an average dose of 0.3mg/kg is employed.*

*Id.* (quoting drug insert; emphasis added). Florida’s current protocol calls for the condemned to receive *200 milligrams of etomidate* before the team warden assesses the condemned for consciousness. (WPCR:391–92) (Florida’s current protocol as attached by Lukehart) (emphasis added).<sup>4</sup>

The most frequent adverse reactions associated with use of intravenous etomidate are transient venous pain on injection and transient skeletal movements, including myoclonus.

...

Transient venous pain was observed immediately following intravenous injection of etomidate in about 20% of the patients, with considerable difference in the reported incidence (1.2% to 42%). This pain is usually described as mild to moderate in severity but it is occasionally judged disturbing. The observation of venous pain is not associated with a more than usual incidence of thrombosis or thrombophlebitis at the injection site. Pain also appears to be less frequently noted when larger, more proximal arm veins are employed and it appears to be more frequently noted when smaller, more distal, hand or wrist veins are employed.

*Asay*, 224 So. 3d at 701 (quoting drug insert). Both the State and defense anesthesiologists agreed “most patients do not experience pain” from etomidate. *Id.*

Considering this evidence, the Florida Supreme Court upheld the etomidate protocol against facial challenge under the *Baze-Glossip* test. *Id.* at 700–02. The court then affirmed summary denial of two more post-warrant facial challenges to the

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<sup>4</sup> Putting these numbers in perspective and rounding up, a 400-pound individual weighs 182 kilograms. At a rate of 0.3 milligrams per kilogram, this individual requires 55 milligrams of etomidate to cause the three to five minutes of hypnosis discussed in the insert. But Florida’s protocol almost quadruples the dosage discussed in the insert for even this 400-pound individual.

etomidate protocol in 2017 and 2018. *Hannon v. State*, 228 So. 3d 505, 508–09, 511 (Fla. 2017); *Jimenez v. State*, 265 So. 3d 462, 474–75 (Fla. 2018).

Another circuit court granted an evidentiary hearing on an as-applied challenge to the etomidate protocol in 2019. *Long v. State*, 271 So. 3d 938, 943 (Fla. 2019). The defendant there asserted “his traumatic brain injury and temporal lobe epilepsy render the use of etomidate in his execution unconstitutional under the Eighth Amendment.” *Id.* But after the hearing, the court found “the massive dose of 200 milligrams of etomidate would produce such a deep state of burst suppression and unconsciousness that it would eliminate any possible seizure activity and render a person—even someone with traumatic brain injury and/or temporal lobe epilepsy—unaware of noxious stimuli.” *Id.* at 944. Even if the defendant had a seizure, he would be “unconscious and insensate” because “200 milligrams of etomidate would render a person unconscious for at least 30 minutes.” *Id.*

The Florida Supreme Court affirmed the as-applied challenge in *Long*—along with two summarily denied general challenges to the protocol and use of etomidate—and upheld the etomidate protocol once again under the *Baze-Glossip* test. *Id.* at 943–46. This Court denied review. *Long v. Florida*, 587 U.S. 1023 (2019) (18-9358).<sup>5</sup>

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<sup>5</sup> Long’s third question presented asked:

Whether the Florida Supreme Court’s decision upholding Mr. Long’s execution with Etomidate and holding that Mr. Long was not entitled to an evidentiary hearing on the constitutionality of Florida’s lethal injection protocol and denying him the opportunity to present evidence not previously considered by the state courts of Florida resulted in a violation of the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution?

Florida’s current lethal-injection protocol “has remained essentially unchanged since 2017.” *Randolph v. State*, 422 So. 3d 166, 172 (Fla. 2025).

### **STATEMENT OF THE CASE AND FACTS**

Three decades ago, Lukehart murdered five-month-old Gabrielle Hanshaw and discarded her body in a pond. This case has been thoroughly litigated and re-litigated for decades in state and federal courts. *Lukehart v. State*, No. SC2026-0736, 2026 WL 1480328, at \*2–3 (Fla. May 27, 2026) (collecting cases).

#### **Murders and Pre-Warrant Litigation**

On February 25, 1996, Lukehart killed five-month-old Gabrielle Hanshaw in Jacksonville. At the time, Lukehart lived with Gabrielle’s mother, Misty Rhue, who was his girlfriend. After Lukehart took Gabrielle to a room to change her diaper, Rhue saw Lukehart drive away from the house. Rhue searched the house but could not find Gabrielle. Lukehart initially told Rhue and the police that Gabrielle had been abducted, leading to an eighteen-hour search by the Jacksonville and Clay County Sheriff’s Offices. Lukehart eventually told the officers that he had killed Gabrielle and directed them to a pond where they found her body. Lukehart told the police that he had dropped Gabrielle on her head while changing her diaper and then shook her. He said that, realizing Gabrielle had died, he panicked, drove to a rural area, and threw her into the pond, injuring her head on the car door in the process.

Gabrielle’s injuries were inconsistent with Lukehart’s story. She had suffered five separate impacts to her head, two of which caused skull fractures and could have each been fatal. Lukehart testified during the guilt phase of his trial that he had lied when he told the police that he had dropped Gabrielle on her head. He testified that Gabrielle would not lie flat on the floor as he tried to change her diaper. So, he repeatedly and forcefully pushed her head and neck back onto the floor, killing her.

*Lukehart*, 2026 WL 1480328, at \*1.

A jury convicted Lukehart of first-degree murder and aggravated child abuse

and recommended death by a 9-3 vote. *Lukehart v. State*, 776 So. 2d 906, 911 (Fla. 2000). The sentencing judge followed the jury’s recommendation after effectively finding two valid aggravators: (1) Lukehart murdered Gabrielle during the commission of felony aggravated child abuse on a victim under twelve; and (2) Lukehart was on felony probation for abusing another child when he murdered Gabrielle. *See id.* at 911, 924–26. Lukehart’s convictions and death sentence became final in June 2001. *Lukehart v. Florida*, 533 U.S. 934 (2001).

In the decades that followed, state and federal courts rejected several challenges to Lukehart’s convictions and death sentence. *See Lukehart*, 2026 WL 1480328, at \*2–3 (collecting cases). Those failed challenges included three pre-warrant, method-of-execution claims. *Lukehart v. State*, 70 So. 3d 503, 524–25 (Fla. 2011) (discussing a facial postconviction challenge to Florida’s lethal-injection protocol, a habeas claim raising the same facial challenge, and another habeas claim asserting the use of a paralytic would render him “unable to communicate any feeling of pain that may result if the execution is improperly performed”). The Florida Supreme Court rejected the first and third claims on the merits and held the second barred as duplicative. *Id.*

Lukehart became “warrant-eligible,” meaning the Governor could sign his death warrant at any time, in 2022. *See Lukehart v. Sec’y, Fla. Dep’t of Corr.*, 50 F.4th 32, 36 (11th Cir. 2022); *Jones v. State*, 419 So. 3d 619, 626 (Fla. 2025) (explaining capital defendants are “warrant eligible” after exhaustion of initial state and federal postconviction review). He did not raise another method-of-execution challenge until

after his death warrant issued.

### **Lukehart's Post-Warrant Litigation**

Florida Governor Ron DeSantis signed Lukehart's death warrant on May 1, 2026, with the execution scheduled for June 2, 2026. Shortly thereafter, Lukehart unsuccessfully sought method-of-execution-related records from DOC, FDLE, and the District 8 Medical Examiner under Florida Rule of Criminal Procedure 3.852. (WPCR:66–76, 166–301.)

Lukehart then filed a postconviction motion raising three numbered claims in state court: (1) an “as-applied” method-of-execution claim alleging his poor kidney function “may” cause etomidate to remain in his system longer and repeatedly burn his lungs; (2) a facial challenge to Florida's use of etomidate, a hypnotic, and rocuronium bromide, a paralytic, as the first two drugs in its three-drug, lethal-injection protocol; and (3) a due-process challenge to expedited warrant litigation decades after his death sentence finalized. (WPCR:342–364.)

The state post-warrant court denied Lukehart's claims without an evidentiary hearing, and the Florida Supreme Court affirmed. *Lukehart v. State*, No. SC2026-0736, 2026 WL 1480328, at \*3–7 (Fla. May 27, 2026). The Florida Supreme Court held the summary denial proper because Lukehart's method-of-execution claims were untimely under state law and legally insufficient on both prongs of the *Baze-Glossip* test. *Id.* at \*4–5. The court briefly addressed Lukehart's objections to *Baze-Glossip*'s alternative-method requirement and held it still applied. *Id.* at \*5 n.11.

The Florida Supreme Court then rejected Lukehart's constitutional challenges

to Florida Rule of Criminal Procedure 3.852. *Id.* at \*6. It explained Lukehart made no attempt to meet *Baze-Glossip*'s alternative-method prong and there was no need to grant him any records when his method-of-execution claims were so clearly insufficient. *Id.* Denying him records offended no constitutional right. *Id.*

Four days before his scheduled execution, Lukehart filed his certiorari petition in this Court seeking review of the following three questions presented:

1. Whether capital defendants under active death warrants are entitled as a matter of procedural due process to evidentiary hearings on their method-of-execution claims?
2. Whether the requirement under the *Baze-Glossip* test that capital defendants must allege an alternative method of execution violates the right to free expression of religion under the First Amendment and the right to due process under the Fourteenth Amendment?
3. Whether Florida's application of Florida Rule of Criminal Procedure 3.852 violates the Eighth and Fourteenth Amendments by denying capital prisoners access to execution-related records necessary to investigate and litigate method-of-execution claims, while simultaneously requiring prisoners to establish a "colorable" claim before such records may be obtained?

The State opposes certiorari.

### **REASONS FOR DENYING THE PETITION**

Lukehart has litigated and re-litigated his death sentence for decades longer than his five-month-old victim ever lived. Now, on the eve of his execution, he asks this Court to intervene in his ultimate attempt to deprive his victims of justice for heinous crimes committed in 1996. But he does not ask this Court to give him any substantive relief on his Eighth Amendment.

Instead, he seeks an evidentiary hearing, challenges the requirement he

provide an alternative method of execution for his method-of-execution claims, and ask for discovery in three procedural questions. (1) Does due process require evidentiary hearings on all post-warrant method-of-execution claims? (2) Does either the First Amendment’s Free Exercise Clause or the Fourteenth Amendment’s Due Process Clause exempt him from the *Baze-Glossip* test’s alternative-method requirement? (3) Does either the Due Process Clause of the Fourteenth Amendment or Eighth Amendment provide him a right to method-of-execution discovery?

These questions seek nothing more than to add even more years of delay and taxpayer costs to a death sentence that finalized in 2001. *See Bucklew v. Precythe*, 587 U.S. 119, 149 (2019) (explaining the capital defendant raised a method-of-execution claim days before his execution but the suit carried on for five years, “yielded two appeals to the Eighth Circuit, two 11th-hour stays of execution, and plenary consideration in this Court” despite being “little more than an attack on settled precedent”). That alone is reason enough to deny certiorari. *See id.* at 149–51. This Court should not grant certiorari on the eve of an execution when the questions presented vindicate no substantive constitutional right and merely ask for more time, more records, or more proceedings after decades of litigation.

Lukehart’s inexcusable delay in asking these questions also strongly weighs against granting certiorari on any of them. This Court has long faulted capital defendants for waiting to raise method-of-execution claims until an execution looms over them. *See, e.g., Stewart v. LaGrand*, 526 U.S. 115, 119 (1999) (holding a capital defendant procedurally defaulted his method-of-execution claim because he failed to

raise it on direct appeal); *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992) (vacating a stay because the method-of-execution claim “could have been brought more than a decade ago” and there was “no reason for this abusive delay”).

Lukehart could have raised his first question long ago. Florida has long affirmed the summary denial of method-of-execution claims like his. *E.g.*, *Hannon v. State*, 228 So. 3d 505, 508–09, 511 (Fla. 2017); *Jimenez v. State*, 265 So. 3d 462, 474–75 (Fla. 2018). He could therefore have raised, at least, his facial challenge years ago and asked for a per se evidentiary hearing rule then. His attempt to cabin this question to post-warrant method-of-execution claims makes no logical sense. If a procedural due process right to an evidentiary hearing existed for post-warrant method-of-execution claims, that right would apply equally pre-warrant. At the very least, his failure to raise a substantially similar procedural due process question pre-warrant counsels against addressing his post-warrant question.

His second question asking for an exemption from the Eighth Amendment’s alternative-method requirement could have been presented to this Court at the same time. Lukehart describes himself as a “long-time practicing Catholic” so—at least according to him—the alternative-method requirement has long conflicted with his religion. (Pet. at 21.) Florida’s execution protocol has remained essentially unchanged since 2017, *Randolph v. State*, 422 So. 3d 166, 173 (Fla. 2025) and this Court “(re)confirmed” the alternative-method requirement in 2019, *Bucklew*, 587 U.S. at 140. That means every puzzle piece Lukehart needed to challenge the alternative-method requirement was in place around 2019. His 2026 post-warrant certiorari

petition asking this Court to exempt him from an Eighth Amendment requirement is inexcusable and warrants denying certiorari. *See Bucklew*, 587 U.S. at 151 (encouraging federal courts to “dismiss or curtail” dilatory suits).

Likewise, he could have asked whether due process or the Eighth Amendment provides him with a right to method-of-execution-related records long before now. Those questions are nothing new. *E.g., Phillips v. DeWine*, 841 F.3d 405, 420 (6th Cir. 2016) (collecting cases rejecting a due process right to method-of-execution information); *Wellons v. Comm’r, Ga. Dep’t of Corr.*, 754 F.3d 1260, 1263-67 (11th Cir. 2014) (rejecting the argument “the Eighth Amendment entitles” capital defendants to “information required to determine whether” a “lethal injection procedure is cruel and unusual” because there was no valid underlying method-of-execution claim). Indeed, a Florida capital defendant has a pending suit litigating those issues despite the lack of an active death warrant. *See Taylor v. Dixon et. al*, 3:26-cv-469 (M.D. Fla.).

Since facial method-of-execution ripen before a death warrant issues,<sup>6</sup> this Court will have other vehicles to address all Lukehart’s questions with less tardy defendants if it so desires. The fact Lukehart waited until his warrant issued counsels against granting certiorari here.

This Court should thus decline to answer any of his questions. The State and victims are entitled to finality after expending decades of resources defending a long-

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<sup>6</sup> *See, e.g., LaGrand*, 526 U.S. at 119; *Gomez*, 503 U.S. at 654; *Whitaker v. Collier*, 862 F.3d 490, 494–96 (5th Cir. 2017); *Walker v. Epps*, 550 F.3d 407, 414–15 (5th Cir. 2008); *Cooley v. Strickland*, 479 F.3d 412, 416–24 (6th Cir. 2007); *McNair v. Allen*, 515 F.3d 1168, 1174–78 (11th Cir. 2008).

settled judgment and death sentence. *See Calderon v. Thompson*, 523 U.S. 538, 556 (1998). And it is hard to see Lukehart’s three procedural questions as anything more than an attempt to increase “the delay and cost involved in carrying out executions,” which courts must “police carefully against.” *See Bucklew*, 587 U.S. at 139, 150. *Cf. Glossip v. Gross*, 576 U.S. 863, 898 (2015) (Scalia, J., concurring) (“Amplifying the surrealism of his argument, Justice BREYER uses the fact that many States have abandoned capital punishment—have abandoned it precisely because of the costs those suspect decisions have imposed—to conclude that it is now unusual.”).

Those threshold issues aside, the State will deal with each question presented in turn. Not one warrants this Court’s review. This case would be unworthy of certiorari under normal circumstances, much less on the eve of an execution. The decision below properly stated and applied all governing federal principles, does not implicate an unsettled question of federal law, does not conflict with another state court of last resort or a United States Court of Appeals, and does not conflict with any decision of this Court. Review should be denied. *See Sup. Ct. R. 10.*

Lukehart does not noticeably assert any of this Court’s usual certiorari criteria apply. He instead provides a merits’ brief relying on broad, not directly applicable principles of law. But the fact that his questions presented are important to him is not a reason to grant certiorari. *See Coleman v. Balkcom*, 451 U.S. 949, 956 (1981) (Rehnquist, J., dissenting from denial of certiorari) (recognizing the questions presented by a capital defendant were “of importance only to petitioner himself and therefore” were “not suitable candidates for the exercise of our discretionary

jurisdiction” while arguing this Court should grant certiorari to head-off more federal delays). This Court should end the litigation in this almost thirty-year-old capital case by denying certiorari.

### QUESTION PRESENTED 1

#### **I. This Court Need Not Decide Whether Due Process Requires Evidentiary Development on Every Post-Warrant Method-of-Execution Claim.**

Lukehart’s first question asks this Court to decide whether due process requires an evidentiary hearing every time a capital defendant under an active warrant raises a method of execution claim. No matter how untimely. No matter how frivolous. No matter the uselessly increased cost and delay. This question perfectly illustrates why due process cannot be whatever process a defendant believes he is due. *See Dist. Att’y’s Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009).

The People of Florida and surviving victims of Lukehart’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. And this Court should not create more “labyrinthine restrictions on capital punishment” to increase delay and costs. *Glossip v. Gross*, 576 U.S. 863, 898 (2015) (Scalia, J., concurring).

There is no need to exercise certiorari review over this question. This Court’s existing caselaw answers it against Lukehart, there is no conflict, and his entitlement to an evidentiary hearing is thoroughly academic given the court below found his claims untimely and legally insufficient.

**A. This Court Already Answered this Question Consistent with the Decision Below and No Other Conflict Exists.**

There is no need to delay Lukehart’s execution to re-decide this question. This Court answered it forty years ago. *See Ford v. Wainwright*, 477 U.S. 399, 425–26 (1986) (Powell, J., concurring). The decision below does not conflict with that long-settled answer.<sup>7</sup> Unsurprisingly given *Ford*, Lukehart cannot muster a single conflict case adopting his position that due process imposes a per se requirement for evidentiary hearings on method-of-execution claims asserted during active warrants. Since the days before execution provide no window to attack “settled precedent” with “speculative theories,” *Bucklew*, 587 U.S. at 149, 151, certiorari should be denied.

Procedural due process for claims challenging “not *whether*, but *when*” an execution occurs allows the State “to require a substantial threshold showing” before triggering any due process right to a hearing on the claim. *Ford*, 477 U.S. at 425–26 (Powell, J., concurring) (emphasis in original). Method-of-execution claims fit squarely in the boat of claims that challenge not *whether*, but *when* an execution takes place. *Nance v. Ward*, 597 U.S. 159, 169 (2022) (explaining such claims take the validity of the death sentence “as a given”). And “this Court’s decisions imposing heightened procedural requirements on capital trials and sentencing proceedings do not apply in” that context. *Ford*, 477 U.S. at 425–26 (Powell, J., concurring) (cleaned up). *Ford* therefore directly answers whether States must hold evidentiary hearings

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<sup>7</sup> Justice Powell’s concurrence controls *Ford*’s holding. *See Panetti v. Quarterman*, 551 U.S. 930, 949 (2007) (explaining Justice Powell provided the holding for the procedural question under *Marks v. United States*, 430 U.S. 188 (1977) because there was no majority opinion in *Ford*).

every time a defendant raises a method-of-execution claim during an active death warrant. The answer is no.

This Court's caselaw answers this question on a more general level too. Due process does not require States to have postconviction procedures like the one Lukehart invoked below at all. *E.g.*, *Pennsylvania v. Finley*, 481 U.S. 551, 559 (1987). Due process provides no right to a second (much less fourth) round of postconviction review for even the legally innocent. *See Jones v. Hendrix*, 599 U.S. 465, 482–87 (2023) (holding there is no constitutional right to even a second shot at postconviction review). A due process challenge to a State's postconviction procedures must establish the procedure "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental, or transgresses any recognized principle of fundamental fairness in operation." *Osborne*, 557 U.S. at 69.

The decision below comports with both *Ford's* holding and *Osborne's* framework. Florida requires capital defendants raising successive postconviction claims to plead sufficient facts to establish a constitutional violation and show the claims are timely before requiring evidentiary hearings. *See Sparre v. State*, 391 So. 3d 404, 406 (Fla. 2024); *Valentine v. State*, 98 So. 3d 44, 54 (Fla. 2012). That is merely the "substantial threshold showing" explicitly allowed by *Ford* "to control the number of nonmeritorious or repetitive claims." *See* 477 U.S. at 417 (plurality opinion); *id.* at 426 (Powell, J., concurring). And there is no deeply rooted principle of justice or fairness that requires useless evidentiary hearings when the pleadings show the claim fails; quite the opposite in fact. *See Neitzke v. Williams*, 490 U.S. 319, 326 (1989)

(explaining Federal Rule of Civil Procedure 12(b)(6) “streamlines litigation by dispensing with needless discovery and factfinding” when claims fail as a matter of law); *Ashcroft v. Iqbal*, 556 U.S. 662, 680–84 (2009) (explaining pre-discovery dismissal is proper where the facts alleged in the complaint only show a possible, instead of plausible, constitutional violation).

The Florida Supreme Court affirmed the summary denial below because Lukehart’s claims were time-barred under state law and legally insufficient on both prongs of the *Baze-Glossip* test. Except for the second question, which pertains to the Eighth Amendment’s alternative-method requirement, no question Lukehart presents challenges those holdings.<sup>8</sup> Rejecting his claims without evidentiary

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<sup>8</sup> To be sure, Lukehart objects to the Florida Supreme Court’s resolution of these issues at various points in his Petition. But because none of his questions presented attack either the finding his claims were untimely on state-law grounds or the first prong of the *Baze-Glossip* test, those arguments are irrelevant to certiorari. *See* Sup. Ct. R. 14.1(a) (“Only the questions set out in the petition, or fairly included therein, will be considered by the Court.”); *Yee v. City of Escondido*, 503 U.S. 519, 535–38 (1992). Whether Lukehart’s claims were timely is a question of State law over which the Florida Supreme court, rather than this Court, has the final say. *See Montana v. Wyoming*, 563 U.S. 368, 377 (2011); *Walker v. Martin*, 562 U.S. 307, 317–21 (2011). *See also Glossip v. Oklahoma*, 145 S. Ct. 612, 624 (2025) (“In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional.”). In any event, Lukehart would be hard pressed to show due process bars the State from requiring him to timely pursue his claims given the State could eliminate any state avenue for relief. Due process does not entitle him to even a second round of postconviction review, let alone a fourth. *See Jones v. Hendrix*, 599 U.S. 465, 482–87 (2023). And Lukehart could have avoided the one-year time limit in Florida Rule of Criminal Procedure 3.851(d)(2)(A) by litigating his warrant exclusively in federal court. *See Nance v. Ward*, 597 U.S. 159, 169–70 (2022) (holding a 42 U.S.C. § 1983 suit is the proper vehicle to pursue Eighth Amendment method-of-execution challenges in federal court). Doing so would not have changed the outcome, however. *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); *Walls v. Sec’y, Dep’t of Corr.*, 161 F.4th 1281, 1285 (11th Cir. 2025) (finding a

development by finding them both untimely and legally insufficient does not offend due process under *Ford* or *Osborne*.

This Court should not grant certiorari right before an execution to re-answer questions when the decision below adheres to this Court’s jurisprudence and the Petition fails to establish any conflict whatsoever.

**B. This Question Presents an Academic Exercise Unworthy of Certiorari Review.**

This Court does not grant certiorari on academic issues that will not affect the underlying judgment. *See Rice v. Sioux City Mem’l Park Cemetery*, 349 U.S. 70, 74 (1955) (certiorari should not be granted when the issue is only academic); *Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1945) (stating certiorari is the power “to correct wrong judgments, not to revise opinions”). But that is exactly what Lukehart’s Petition requests given no question he presents challenges the Florida Supreme Court’s finding his method-of-execution claims were untimely on state-law grounds.

Granting Lukehart the full relief he seeks is an academic exercise that gives him nothing more than delay. The Florida Supreme Court found his claim untimely on state-law grounds because he has known about his deteriorating kidney disease since at least 2023. *Lukehart v. State*, No. SC2026-0736, 2026 WL 1480328, at \*4 (Fla. May 27, 2026). In other words, the court held that, no matter what an evidentiary hearing reveals, this claim is untimely as a matter of state law. That holding—which no question Lukehart presents challenges—means even reversal and remand for an

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defendant unduly delayed by filing suit four months after he said his as-applied challenge accrued and only after his death warrant issued).

evidentiary hearing cannot afford Lukehart anything more than delay. His claim remains untimely on state-law grounds no federal court can second guess. So, his entitlement to an evidentiary hearing is purely academic.

This question is academic for another reason. Lukehart refused to provide the alternative method of execution required by the Eighth Amendment for method-of-execution claims below. While he challenges that requirement in his second question, the chances this Court grants certiorari to confirm this requirement again are slim to none. If this Court finds Lukehart's second question presented unworthy of certiorari, this one definitionally is too. Remanding for an evidentiary hearing when a litigant refuses to plead, much less prove, a critical element of his claim is an exercise in futility unworthy of this Court's time.

This Court should decline to review Lukehart's first question.

## **QUESTION PRESENTED 2**

### **II. This Court Need Not Decide Whether the First or Fourteenth Amendments Allow Capital Defendants to Opt Out of the Eighth Amendment's Alternative-Method Requirement.**

For his second question, Lukehart asks this Court to analyze whether the First Amendment's Free Exercise Clause or the Fourteenth Amendment's Due Process Clause exempts him from the Eighth Amendment's alternative-method requirement. He also argues the Eighth Amendment gives way to two Acts of Congress.<sup>9</sup>

None of these questions or Lukehart's arguments warrant this Court's review. The Eighth Amendment requires condemned inmates bringing method of execution

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<sup>9</sup> The Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA)

claims 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).

The alternative-method requirement comes from the “original and historical understanding of the Eighth Amendment.” See *Bucklew v. Precythe*, 587 U.S. 119, 136–37 (2019). In other words, the alternative-method-requirement is a substantive part of the Eighth Amendment’s prohibition against cruel and unusual punishment. *Id.* If there is no alternative method to execute a death sentence in a significantly less painful manner, then there is no cruel and unusual punishment. *Id.* That remains true even if the only available method carries with it “an acknowledged and substantial risk of pain.” *Id.* The alternative-method-requirement’s status as a substantive part of the Eighth Amendment should be kept firmly in mind while Lukehart attempts to pit other constitutional provisions or—rather extraordinarily—Acts of Congress against it.

Having settled the alternative-method requirement is part and parcel of the Eighth Amendment’s substantive prohibition, this Court should deny certiorari for two reasons equally applicable to each part of Lukehart’s second question. **First**, this Court does not grant certiorari to answer questions it has answered many times before. Time and time again, this Court has confirmed and reconfirmed the Eighth Amendment requires capital defendants bringing method-of-execution claims to

provide an alternative method. *See Nance v. Ward*, 597 U.S. 159, 162–64 (2022); *Bucklew v. Precythe*, 587 U.S. 119, 136–41 (2019) (citing *Glossip* and *Baze*). There is no need to grant certiorari and reconfirm for a fifth time that the Eighth Amendment’s prohibition against cruel and unusual punishment does not apply unless the capital defendant provides a readily available alternative method that greatly reduces a substantial risk of severe pain. *See Bucklew*, 587 U.S. at 140.

**Second**, the result of any conceivable exemption from the alternative-method requirement would not help Lukehart. Without an alternative method, the only valid Eighth Amendment analysis left on the table is the one advanced by Justices Scalia and Thomas. *See Baze v. Rees*, 553 U.S. 35, 94–107 (2008) (Thomas, J., concurring in the judgment with Scalia, J.); *Glossip v. Gross*, 576 U.S. 863, 899–900 (2015) (Thomas, J., concurring with Scalia, J.) (explaining the Eighth Amendment, properly understood, “prohibits only those methods of execution” that are “deliberately designed to inflict pain”); *Bucklew*, 587 U.S. at 151–52 (Thomas, J., concurring) (“Because there is no evidence that Missouri designed its protocol to inflict pain on anyone, let alone Russell Bucklew, I would end the inquiry there.”). That analysis would require Lukehart to show Florida *intentionally designed* its execution method to cause him unconstitutional levels of pain. *See Bucklew*, 587 U.S. at 135 (finding there was no need to revisit the debate on whether the Eighth Amendment required the capital defendant to show “that the State *intended* its method to inflict” unconstitutional levels of pain because the claim failed even under the “more forgiving *Baze-Glossip* test”) (emphasis in original).

Florida, like other jurisdictions with capital punishment, adopted its current protocol to provide the condemned “a humane and dignified death.” (WPCR:382.) “Far from seeking to superadd terror, pain, or disgrace to their executions,” Florida has done the opposite. *See Bucklew*, 587 U.S. at 133. In the end, under a proper analysis, Lukehart’s Eighth Amendment claim fails just as quickly if he is exempted from the alternative-method requirement. For that reason, too, this Court should not grant certiorari on any part of Lukehart’s second question.

That said, the State will separately analyze each source of law Lukehart presents below and explain why none warrants certiorari review here.

**A. The Free Exercise Question Does Not Warrant Certiorari.**

In his three-for-one second question, Lukehart starts by asking this Court to decide whether the First Amendment’s Free Exercise Clause exempts him from the Eighth Amendment’s alternative-method requirement. This question presents no unsettled or divisive issue of federal law warranting this Court’s intervention.

The decision below adheres to this Court’s jurisprudence and conflicts with no other court. The Eighth Amendment requires capital defendants to provide an alternative method of execution. *E.g., Bucklew*, 587 U.S. at 136–41. The decision below followed this Court’s precedent on that requirement. By contrast, none of this Court’s First Amendment precedent suggests the Free Exercise Clause overcomes a co-equal provision of the Federal Constitution. The decision below therefore cannot conflict with First Amendment precedent either. Indeed, the only appellate court to squarely address the interplay between the Eighth Amendment’s alternative method-

requirement and the First Amendment's Free Exercise Clause upheld the alternative-method requirement. *Jones v. Crow*, No. 21-6139, 2021 WL 5277462, at \*8 (10th Cir. Nov. 12, 2021). The lack of conflict and decisions addressing this issue suggests, at minimum, this question does not warrant this Court's attention now.

Lukehart's alleged conflict between the First and Eighth Amendments is also too easily answered to warrant this Court's intervention. The First Amendment to the United States Constitution provides: "*Congress* shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." U.S. Const. amend. I (emphasis added). Nothing in the First Amendment's text suggests it constrains a co-equal provision in the Federal Constitution. *See Jones*, 2021 WL 5277462, at \*8 (explaining the Eighth Amendment is a neutral law of general applicability that would not offend the First). Instead, the First Amendment safeguards Lukehart against subordinate state or federal action rather than other provisions of the Federal Constitution. The upshot is that the Eighth Amendment governs method-of-execution claims and the First Amendment has nothing to say about the alternative-method requirement.

*Simmons v. United States*, 390 U.S. 377, 379 (1968), illustrates that point. There, this Court precluded *the prosecution* from admitting testimony used to establish Fourth Amendment standing as evidence of guilt because a contrary rule would require the defendant to give up his Fifth Amendment right against self-incrimination to assert his Fourth Amendment rights. *Id.* at 394. This Court did not create an exemption from the Fourth Amendment's standing requirement. Nor did it

alter the Fifth Amendment or have one constitutional right surrender to another. Instead, *Simmons* focused exclusively on the governmental action that pit the constitutional guarantees against each other. *Id.*

There is no intervening governmental action here. There is only the Eighth Amendment’s alternative-method requirement and the First Amendment’s Free Exercise Clause. In that circumstance, *Simmons* has no application whatsoever. See *Wilcox v. State*, No. SC2023-1498, 2026 WL 1424742, at \*15–16 (Fla. May 21, 2026) (discussing this Court’s *Simmons*-related cases and *Simmons*’ limited scope). If the First and Eighth Amendments are constitutionally incompatible with each other in Lukehart’s specific case, he must choose between the two.<sup>10</sup>

But the First and Eighth Amendments do not, in fact, conflict because the First Amendment contains no textual limitation on the scope of the Eighth Amendment. Given the lack of conflict and straightforward answer to this question, it does not merit this Court’s review on the eve of Lukehart’s execution.

### **B. The Due Process Question Does Not Warrant Certiorari.**

The second part of this question asks this Court to decide whether due process invalidates the requirements imposed by the Eighth Amendment to the United States Constitution. This Court has effectively answered this question many times in many forms. Because the Eighth Amendment “provides an explicit textual source of

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<sup>10</sup> That is what always happens when—by virtue of the constitutional right itself—two constitutional rights cannot be exercised simultaneously. There is no logical way for any court to rank constitutional right, and hold one supersedes the other, particularly when both appear in the Bill of Rights.

constitutional protection against” cruel and unusual punishment, “that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.” *See Graham v. Connor*, 490 U.S. 386, 395 (1989).<sup>11</sup> There is no need to say that again.

The decision below adheres to this Court’s established caselaw, which precludes resorting to due process when an express constitutional provision governs. The Florida Supreme Court adhered to the Eighth Amendment’s alternative-method requirement rather than violating this Court’s precedents by adopting a due process escape hatch. Lukehart’s failure to cite a single conflict case suggests—unsurprisingly—that all lower courts correctly analyze method-of-execution claims under the Eighth Amendment instead of due process. There is no conflict, no split, and no unanswered question of any importance here.

The Eighth Amendment’s alternative-method requirement provides Lukehart with all the protection against cruel and unusual punishment that he is due. That requirement is “necessary to conform to the Eighth Amendment. Unless an alternative is feasible and readily implemented,” the State “has a legitimate penological justification for adhering to its current method of execution in order to carry out lawful sentences.” *McGehee v. Hutchinson*, 854 F.3d 488, 493 (8th Cir. 2017). Nothing in the Fourteenth Amendment invalidates the requirements of the

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<sup>11</sup> *See also Sattazahn v. Pennsylvania*, 537 U.S. 101, 116 (2003) (declining the “invitation to hold that the Due Process Clause provides greater double-jeopardy protection than does the Double Jeopardy Clause”); *County of Sacramento v. Lewis*, 523 U.S. 833, 843 (1998) (same idea); *United States v. Lanier*, 520 U.S. 259, 272 n.7 (1997) (same idea).

Eighth Amendment. This sub-question does not merit certiorari.

**C. The RFRA and RLUIPA Arguments Do Not Warrant Certiorari.**

The final aspect of Lukehart’s second question turns our Constitutional Republic on its head. He asks this Court to decide whether two Acts of Congress invalidate the Eighth Amendment’s alternative method requirement. But none of Lukehart’s questions presented ask this Court to decide the interplay between the Eighth Amendment and these Acts. He has therefore forfeited those specific questions. *See* Sup. Ct. R. 14.1(a) (“Only the questions set out in the petition, or fairly included therein, will be considered by the Court.”); *Yee v. City of Escondido*, 503 U.S. 519, 535–38 (1992) (explaining the importance of this rule).

Setting that aside, Lukehart cannot establish conflict. This Court’s Eighth Amendment jurisprudence requires capital defendants to plead an alternative method as part of the original and historical understanding of the Eighth Amendment. The Florida Supreme Court followed this Court’s alternative-method precedent and held Lukehart’s method-of-execution claim could be summarily rejected because, consistent with this Court’s precedent, he failed to plead an alternative method. Express compliance with this Court’s caselaw provides no reason to grant certiorari on the eve of an execution. *See Bucklew v. Precythe*, 587 U.S. 119, 151 (2019). The fact only one federal appellate court has analyzed Lukehart’s arguments and rejected them, *Jones v. Crow*, No. 21-6139, 2021 WL 5277462, at \*8–9 (10th Cir. Nov. 12, 2021), provides even less reason to grant certiorari here.

More fundamentally, this Court should not grant certiorari to tell Lukehart

the Federal Constitution trumps Acts of Congress if the two conflict. “The Eighth Amendment, *Bucklew* explained, is the supreme law of the land, and the comparative assessment it requires can’t be controlled by the State’s choice of which methods to authorize” by statute. *Nance v. Ward*, 597 U.S. 159, 164 (2022). The same logic applies here. If there is any conflict between the Eighth Amendment’s requirements and federal statutes, the statutes yield. *United States v. Wong Kim Ark*, 169 U.S. 649, 701 (1898) (“Statutes enacted by congress . . . must yield to the paramount and supreme law of the constitution.”). The self-evident answer to Lukehart’s attempt to pit statutes against the Constitution does not warrant certiorari. *See Adkins v. Childs. Hosp. of the D.C.*, 261 U.S. 525, 544 (1923) (explaining statutes “that conflict with the Constitution must fall; for that which is not supreme must yield to that which is”), *overruled on other grounds by W. Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

For all these reasons, this Court should decline certiorari jurisdiction over Lukehart’s second question presented. And since Lukehart did not plead an alternative method as required by the Eighth Amendment, his first and third questions present purely academic exercises unworthy of certiorari. Lukehart’s refusal to plead an alternative method means that, no matter what records he could obtain or what happens at the evidentiary hearing he wants, he cannot prevail on a method of execution claim.

This Court should not put off a scheduled execution and grant certiorari when a capital defendant cannot obtain any substantive relief. Because Lukehart’s second question presented does not merit this Court’s attention, his other two do not either.

After all, despite Lukehart’s contrary protestations, delay for delay’s sake alone is not a virtue in capital litigation. It is its chief evil. *See Bucklew*, 587 U.S. at 149–51.

### QUESTION PRESENTED 3

#### III. **This Court Need Not Decide Whether Due Process or the Eighth Amendment Provides Capital Defendants with a Freestanding Right to Method-of-Execution Discovery.**

Lukehart’s final question presented asks this Court to decide whether due process<sup>12</sup> or the Eighth Amendment provides him with a right to demand records related to lethal injection. He does not cite one case adopting his position. None exists.

Florida Rule of Criminal Procedure 3.852 (the rule Lukehart effectively asks this Court to invalidate) 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.

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<sup>12</sup> Lukehart raised an unpreserved claim below that the equal protection clause also gave him a right to these records, but his Petition does not advance an equal protection claim and only references equal protection twice in non-argument sections. The State therefore does not address equal protection. If something in Lukehart’s Petition was supposed to advance that claim, his failure to clearly do so warrants denying certiorari on any equal protection question. *See* Sup. Ct. R. 14.4 (“The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.”).

Fla. R. Crim. P. 3.852(i)(2)(A)-(D). Demands made after a death warrant must also 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 warrant court ruled Lukehart’s lethal-injection demands were unduly broad and burdensome and not related to a colorable claim. (WPCR:295, 299, 343–44.).

Lukehart’s belated question asking this Court to establish novel constitutional rights to discovery does not warrant certiorari review. The decision below followed this Court’s precedent, along with the precedent from every federal appellate court to reach the issue. Lukehart’s proposed entitlement to records presents nothing more than an academic exercise given his refusal to provide the alternative method of execution the Eighth Amendment requires. And his protocol deviation allegations run the gamut from demonstrably false to implausible. This Court should deny review.

**A. This Court’s Caselaw Answers this Question Consistent with the Decision Below and No Other Conflict Exists.**

This Court’s established caselaw already answers the question Lukehart presents, as every federal appellate court to address the issue has long recognized. Litigants do not have a constitutional right to discovery. *Lewis v. Casey*, 518 U.S. 343, 354 (1996) (rejecting the argument that “the State must enable the prisoner to *discover* grievances, and to *litigate effectively* once in court”) (emphasis in original); *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”). This Court has also, at least tacitly, rejected the view that discovery should be allowed before deciding method-of-execution claims on the eve of execution. *See Smith v. Hamm*, 144 S. Ct. 414, 416 (2024) (denying a stay of execution over a dissent arguing the capital defendant “should be allowed to complete discovery and litigate the merits of his claims challenging this new protocol in the ordinary course”).

Aside from a now-defunct foray to the contrary by the Ninth Circuit,<sup>13</sup> every federal appellate court to address the issue has applied those precedents to reject the existence of any due process right to access lethal-injection-related information.<sup>14</sup>

Likewise, every federal appellate court to address such claims under the Eighth Amendment rubric has found no hidden discovery clause in the prohibition against cruel and unusual punishment.<sup>15</sup> Those holdings are hardly surprising given

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<sup>13</sup> *See Jones v. Comm’r, Ga. Dep’t of Corr.*, 811 F.3d 1288, 1293 n.4 (11th Cir. 2016) (*Jones I*) (discussing a Ninth Circuit decision staying an execution based on a denial-of-access-to-execution-related information claim, which the Supreme Court “promptly reversed” and vacated). Since then, the Ninth Circuit has recognized no such claim exists. *First Amend. Coal. of Ariz., Inc. v. Ryan*, 938 F.3d 1069, 1081 (9th Cir. 2019).

<sup>14</sup> *Phillips v. DeWine*, 841 F.3d 405, 420 (6th Cir. 2016) (collecting cases); *Jones I*, 811 F.3d at 1293 (collecting cases).

<sup>15</sup> *See Whitaker v. Collier*, 862 F.3d 490, 500–01 (5th Cir. 2017) (holding “failure to disclose, or concealment of, information about the method of execution” does not “offend the Eighth Amendment” despite the risk secrecy could mask a substantial risk of serious harm); *Zink v. Lombardi*, 783 F.3d 1089, 1109 (8th Cir. 2015) (seeking to discover method-of-execution-related information does not “plead a deprivation of rights under the Eighth Amendment”); *Gissendaner v. Comm’r, Ga. Dep’t of Corr.*, 803 F.3d 565, 575 (11th Cir. 2015) (recognizing the Eleventh Circuit previously rejected the argument that “the Eighth Amendment” entitles capital defendants to obtain “the information required to determine whether” a “lethal injection procedure is cruel and unusual”); *Wellons v. Comm’r, Ga. Dep’t of Corr.*, 754 F.3d 1260, 1263–66 (11th Cir. 2014) (rejecting the argument that the Eighth Amendment provides a right to method-of-execution discovery).

“the Cruel and Unusual Punishments Clause expresses a substantive constraint on” punishments rather than a “freestanding” right to discovery. *Cf. Jones v. Hendrix*, 599 U.S. 465, 488 (2023) (explaining the Eighth Amendment provides no right to a second or successive round of postconviction review).

Neither due process nor the Eighth Amendment are the generalized discovery tool Lukehart tries to contort them into. *E.g., Gray*, 518 U.S. at 168. He cites no case adopting 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 method-of-execution claims after. *See Jones v. Comm’r, Ga. Dep’t of Corr.*, 812 F.3d 923, 925 (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) (*Jones II*).

In contrast with Lukehart’s alleged constitutional entitlement to discovery, Florida’s colorable-claim requirement is hardly novel. It mirrors 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 that the plaintiff was not entitled to discovery on a lethal-injection claim without a “properly pleaded complaint”).

Lukehart seeks “a newly created federal” constitutional right “to pre-litigation discovery, ultimately in the hopes of challenging” Florida’s lethal injection protocol. *See Jones II*, 812 F.3d at 925. But, as this Court settled long ago, nothing in the Constitution gives him that right. The decision below follows this Court’s precedent.

It also does not conflict with any federal appellate court and mirrors the Federal Rules of Civil Procedure. That is reason enough to deny certiorari now.

**B. This Question Presents an Academic Exercise Unworthy of Certiorari Review.**

Given his refusal to provide the alternative execution method required by *Baze-Glossip*, Lukehart's third question presents an academic exercise unworthy of this Court's resources. Unless this Court grants certiorari on his second question, that refusal means Lukehart can never prevail on a method-of-execution claim no matter what records he obtains. As this Court has reaffirmed the alternative-method requirement four times before today, and receding from it would likely give Lukehart the impossible task of showing Florida designed its protocol to inflict unconstitutional levels of pain, that seems unlikely. This Court should deny certiorari on this third question unless it grants certiorari on Lukehart's second question.

**C. Lukehart's Protocol-Deviation Assertions Are Not Plausible.**

Lukehart augments his plea for records by claiming there is evidence Florida recently deviated from its execution protocol. But his list of possible deviations rests on a profound misunderstanding of both Florida's protocol and the records he already has. His allegations fail any recognized pleading standard and provide no reason to grant certiorari. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (If "a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.") (cleaned up).

None of Lukehart's deviation allegations are plausible and one is demonstrably false. Start with his only new accusation. Lukehart says Dr. Zivot found evidence of

“mysterious” “intramuscular injections” and suggests DOC injected some condemned inmates with “an unknown substance.” (Pet. at 29.) He also claims DOC’s “lethal injection protocol makes no mention of any option that permits an intramuscular injection” (Pet. at 29.) Dr. Zivot, who supposedly reviewed Florida’s protocol, came to the conclusions Lukehart now advances, emotionally charged language and all. (WPCR:376.) This accusation would indeed be troubling if true.

But it is demonstrably false. Florida’s current lethal-injection protocol—which Lukehart attached below and Dr. Zivot supposedly reviewed—provides for “*intramuscular injections* of hydroxyzine” if the inmate accepts that optional drug. (WPCR:389 (emphasis added).) Hydroxyzine “should be injected *well within the body of a relatively large muscle.*” *Pfizer, Inc. v. Jones*, 221 Va. 681, 683, 272 S.E.2d 43, 44 (Va. 1980) (quoting the drug insert) (emphasis added). So it is no surprise that the shoulder counts. Nor is it surprising that a fair number, but not all, of the executed inmates availed themselves of this option to “ease anxiety.” (See WPCR:389.) The spurious accusation that DOC injected some condemned inmates with mysterious substances does not survive a cursory reading of Florida’s protocol.

The rest of Lukehart’s claims are nothing new and do not demonstrate a plausible cause of protocol deviations. As the Florida Supreme Court recently explained, the records Lukehart touts as evidence of protocol deviations show nothing of the sort. See *King v. State*, No. SC2026-0336, 2026 WL 672101, at \*4 (Fla. Mar. 10, 2026). Conjecture 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,” does not make a plausible case for protocol deviations. *See id.* Lukehart’s records reflect “only the quantity of drugs withdrawn from or deposited in inventory; those amounts need not and likely do not match the amounts administered.” *See id.*

Indeed, reading the inventory logs Lukehart’s way requires them to be inaccurate. *See Heath v. State*, 426 So. 3d 1253, 1261–62 (Fla. 2026) (explaining reading the logs the way Lukehart does means DOC failed to accurately record the removal of drugs). Records presented as inaccurate hardly provide the clear evidence needed to overcome the presumption DOC follows its protocol or establish a plausible case of deviations. *See United States v. Armstrong*, 517 U.S. 456, 464-65 (1996) (requiring clear evidence to overcome the presumption of regularity); *La. ex rel. Francis v. Resweber*, 329 U.S. 459, 462 (1947) (plurality opinion) (assuming state officials carried out their execution-related duties “in a careful and humane manner”).

Lukehart’s arguments, and the logs he relies on, fail to establish a “plausible” case of protocol deviations because there are “more likely explanations” for those logs than that DOC deviated from protocol. *See Iqbal*, 556 U.S. at 681. The logs are perfectly consistent with the drugs being disposed of, used for non-execution-related purposes, and the possibility of scrivener’s errors to name a few alternatives. Nothing in DOC’s protocol requires contemporaneous or exact record keeping for the pharmaceuticals used on condemned inmates after all. (*See* WPCR:382–95 (current protocol requiring, for instance, “a detailed log” of execution chamber occurrences but not of the drugs used)); *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 a claim).

As such, Lukehart's allegations fail to nudge his protocol-deviation assertions across the line from possible to plausible. *See Iqbal*, 556 U.S. at 681–82 (holding allegations that "taken as true" are "consistent" with unconstitutional conduct do not "plausibly establish" a constitutional violation if there are "more likely explanations"). His allegations provide no reason for this Court to doubt Florida's adherence to protocol, much less to consider granting certiorari here and creating a constitutional right to discovery it has long refused to recognize.

Florida has successfully implemented its etomidate protocol almost forty times since its adoption in 2017. *See* Florida Department of Corrections, <https://www.fdc.myflorida.com/institutions/death-row/execution-list-1976-present> (last accessed Mar. 30, 2026).<sup>16</sup> *See also Barr v. Lee*, 591 U.S. 979, 980 (2020) (denying a stay based on the number of successful executions). The protocol contains numerous checks and safeguards to ensure capital defendants receive the humane and dignified death they denied their victims. The amount of etomidate Florida's protocol calls for, along with the required consciousness checks, ensure the condemned is unconscious and insensate for at least thirty minutes about a minute after the etomidate injections. *See Rogers v. State*, 409 So. 3d 1257, 1268 (Fla. 2025); *Long v. State*, 271 So. 3d 938, 944 (Fla. 2019); *Valle v. Singer*, 655 F.3d 1223, 1233 (11th Cir. 2011).

Given the proven and well-litigated nature of Florida's protocol, Lukehart's

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<sup>16</sup> Contrary to Lukehart's assertion of "a five-year reprieve from 2019 to 2024 with no active death warrants," there were two Florida executions in 2019 and six in 2023.

protocol-deviation claims are not plausible and provide no support for his right-to-information claims. *Cf. Glossip v. Gross*, 576 U.S. 863, 892 (2015) (rejecting concerns about prior executions in part because “12 other executions have been conducted using the three-drug protocol at issue here” with no apparent “significant problems”).

For all these reasons, this Court should deny certiorari on Lukehart’s final question presented and deny his Petition in its entirety.

### **CONCLUSION**

The petition for a writ of certiorari should be denied.

JAMES UTHMEIER  
ATTORNEY GENERAL OF FLORIDA

/s/ SCOTT A. BROWNE  
SCOTT A. BROWNE  
CHIEF ASSISTANT ATTORNEY GENERAL  
*COUNSEL OF RECORD*

JASON W. RODRIGUEZ  
SENIOR ASSISTANT ATTORNEY GENERAL

CHARMAINE M. MILLSAPS  
SPECIAL COUNSEL, ASSISTANT ATTORNEY  
GENERAL

COUNSEL FOR RESPONDENT

OFFICE OF THE ATTORNEY GENERAL  
3507 E. FRONTAGE RD., STE. 200  
TAMPA, FLORIDA 33607  
TELEPHONE: (813) 287-7900  
SCOTT.BROWNE@MYFLORIDALEGAL.COM  
CAPAPP@MYFLORIDALEGAL.COM