

IN THE
SUPREME COURT OF THE UNITED STATES

DUSTY RAY SPENCER,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR JUNE 25, 2026, AT 6:00 P.M.

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CAPITAL CASE
QUESTION PRESENTED

Does the *Baze-Glossip* standard, which this Court has already explained governs “all Eighth Amendment method-of-execution claims,” *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019), apply to a method-of-execution challenge premised on alleged failures to follow the State’s lethal injection protocol?

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OPINION BELOW

Spencer seeks certiorari review of the Florida Supreme Court's decision rejecting his Eighth Amendment challenge. *See Spencer v. State*, No. SC2026-0880, 2026 WL 1757938 (Fla. June 18, 2026).

JURISDICTION

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

CONSTITUTIONAL PROVISIONS INVOLVED

The State accepts the constitutional provision set forth by Spencer.

STATEMENT OF THE CASE AND FACTS

Appellant, Dusty Ray Spencer, received a death sentence for savagely beating and stabbing his wife to death—in front of her teenage son—after he had engaged in an escalating pattern of domestic abuse, including a previous attempt to murder her two weeks prior. Spencer was convicted, sentenced, re-sentenced, and unsuccessfully sought to overturn his conviction three times in state court and once in federal court before the signing of his death warrant.

Facts of the Crime

On December 10, 1991, Spencer was arrested after physically attacking and threatening to kill his wife, Karen Spencer. *Spencer v. State*, 645 So. 2d 377, 379 (Fla. 1994). On January 4, 1992, Spencer returned to Karen's residence in the evening and attacked Karen a second time. *Id.* Timothy Johnson, Karen's teenage son, witnessed Spencer pinning Karen down while repeatedly striking her. *Id.* Timothy tried to pull

Spencer off Karen, but Spencer—who had been using a clothing iron to beat his wife—struck Timothy in the head with the iron. *Id.* Both Karen and Timothy fled the residence then received treatment for their wounds at the hospital. *Id.*

Two weeks later, on January 18, 1992, Spencer returned to Karen's residence. *Id.* Spencer parked his car away from the residence, donned plastic gloves, and armed himself with a steak knife before entering the residence to violently attack Karen for the third time. *Id.* at 381. Timothy again tried to intervene when he came upon Spencer attacking Karen in the backyard. Undeterred by Timothy's attempt to stop the attack, Spencer slammed Karen's head into the concrete wall of the house three times, all while Karen was pleading with Spencer to stop. *Id.* at 380–81. Spencer then threatened Timothy with the steak knife, so Timothy fled the scene. *Id.* at 380.

Sometime during Spencer's brutal attack, Spencer slashed Karen's face and arms multiple times with the steak knife. *Id.* at 380. The medical examiner concluded those injuries could only have been inflicted while Karen was still conscious and trying to defend herself. *Id.* at 380, 384. Spencer also stabbed Karen four to five times in the chest; including two fatal wounds, one to her heart and the other to her lungs. *Id.* at 384. By the time law enforcement arrived, Spencer had fled and Karen was already dead from blood loss. *Id.* at 380–81.

Trial and Direct Appeals

At the conclusion of the guilt phase, the jury convicted Spencer of two counts for the January 18 attack: (Count 1) first-degree murder (against Karen), and (Count 2) aggravated assault (against Timothy); and two counts for the January 4 attack:

(Count 3) attempted second-degree murder (against Karen)¹, and (Count 4) aggravated battery (against Timothy). *Id.* at 380. At the close of the penalty phase, the jury recommended a death sentence, by a seven to five vote. *Id.* The trial court found three aggravating circumstances were proven: (1) previous commission of a violent felony based on the aggravated assault, aggravated battery, and attempted second-degree murder convictions (prior violent felony), (2) the murder was especially heinous, atrocious, or cruel (HAC); and (3) the murder was cold, calculated, and premeditated (CCP). *Id.* The trial court also found no statutory mitigating circumstances were proven but found the defendant's history and background qualified as a non-statutory mitigating circumstance. *Id.* Ultimately, the trial court followed the jury's recommendation and sentenced Spencer to death. *Id.*

On direct appeal, a narrow majority of the Florida Supreme Court found that two of the issues Spencer raised merited a remand to the trial court to conduct a resentencing: (1) the evidence was insufficient to support the trial court's finding that the State had proven CCP, and (2) the trial court improperly rejected the evidence Spencer presented to prove his statutory mitigating circumstances. *Id.* at 380–85. Upon remand, the trial court sentenced Spencer to death a second time finding the two remaining aggravating circumstances (prior violent felony and HAC) significantly outweighed the mitigation presented.² *Spencer v. State*, 691 So. 2d 1062,

¹ Spencer was charged with attempted first-degree murder, but the jury found him guilty of the lesser-included offense. *Id.*

² In compliance with the Florida Supreme Court's ruling, the trial court found that

1063 (Fla. 1996). Spencer appealed, but the Florida Supreme Court affirmed Spencer's renewed death sentence. *Id.* at 1065–55. This Court denied certiorari review on October 6, 1997. *Spencer v. Florida*, 522 U.S. 884 (1997).

Relevant Postconviction Proceedings

Beginning in September 1999, Spencer challenged his conviction and sentence with an initial postconviction motion and a habeas petition alleging a combination of prosecutorial misconduct (including alleged *Brady*³ and *Giglio*⁴ violations), ineffective assistance of trial and appellate counsel, improper pretrial publicity, and an *Apprendi*⁵ violation. *Spencer v. State*, 842 So. 2d 52, 59–60, 72 (Fla. 2003). The Florida Supreme Court found these claims were meritless, procedurally barred, or both. *Id.* at 60–76. Spencer did not file a petition for writ of certiorari to this Court.

From 2003 until 2006, Spencer unsuccessfully challenged his conviction and sentence in the Middle District of Florida. *Spencer v. Crosby*, No. 6:03-CV-991-ORL-28, 2006 WL 7069916, at *1–32 (M.D. Fla. Sep. 7, 2006). The Eleventh Circuit Court of Appeals granted Spencer a Certificate of Appealability (COA) on one claim but

three mitigating circumstances had been proven: (1) the murder was committed under the influence of extreme mental or emotional disturbance, (2) Spencer's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law were substantially impaired, and (3) various non-statutory mitigating circumstances related to Spencer's life circumstances. *Id.*

³ *Brady v. Maryland*, 373 U.S. 83 (1963).

⁴ *Giglio v. United States*, 405 U.S. 150 (1972).

⁵ *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

ultimately concluded the district court correctly denied Spencer's petition. *Spencer v. Sec'y, Dep't of Corr.*, 609 F.3d 1170, 1174 (11th Cir. 2010).⁶ Spencer also unsuccessfully raised successive state postconviction challenges beginning in 2007 and 2017. *Spencer v. State*, 23 So. 3d 712 (Fla. 2009) (table); *Spencer v. State*, 259 So. 3d 712, 713 (Fla. 2018).

Spencer's 2007 successive state postconviction motion raised, among other things, a facial and as-applied Eighth Amendment challenge to Florida's lethal injection protocol. *Spencer v. State*, 23 So. 3d 712 (Fla. 2009) (table). Both the trial court and the Florida Supreme Court rejected the facial constitutional challenges as meritless and foreclosed by precedent. *Id.* As to his as-applied challenge, the Florida Supreme Court found this claim was legally insufficient "because he failed to identify the medical conditions that would contribute to difficulty gaining venous access and he did not allege that such conditions presently exist." *Id.* Spencer did not file a petition for writ of certiorari in this Court.

Death Warrant Proceedings

On May 26, 2026, Governor Ron DeSantis signed a warrant for Spencer's execution, which is scheduled for June 25, 2026, at 6:00 p.m. R:122.⁷ On June 3, 2026, Spencer filed his third successive postconviction motion alleging a method-of-

⁶ This Court denied certiorari review on January 24, 2011. *Spencer v. McNeil*, 562 U.S. 1203 (2011).

⁷ The postconviction court record for the death warrant proceedings will be cited as R:[Page Number].

execution challenge premised on his medical conditions and alleged deviations in the implementation of the Florida Department of Corrections’ (FDC)⁸ lethal injection protocol. R:343–59. Spencer’s motion never identified an alternative method of execution.⁹

On June 09, 2026, the trial court summarily denied Spencer’s third successive postconviction motion. R:560–76. Spencer appealed the summary denial to the Florida Supreme Court. R:600. On June 18, 2026, the Florida Supreme Court affirmed the trial court’s summary denial of Spencer’s claims, finding Spencer’s claims were untimely and meritless. *Spencer*, 2026 WL 1757938, at *4–7 (Fla. June 18, 2026). Specifically, the Florida Supreme Court found Spencer’s lethal injection challenge was untimely because it hinged on his claims about his medical conditions, which he had been aware of for nearly a decade, not any of the protocol deviations that Spencer alleged. *Id.* at *4. Under Florida Rule of Criminal Procedure 3.851(d), then, Spencer’s claim was untimely. *Id.* The Florida Supreme Court also found Spencer’s claim was meritless because (1) as the court had noted with other identical claims, even if his speculative assertions about the inventory logs were true, they did

⁸ Respondent uses FDC to refer to the Florida Department of Correction in this brief because it is the abbreviation the Florida Department of Corrections uses in their agency insignia and in their pleadings. *See* R:271; Florida Department of Corrections, <https://www.fdc.myflorida.com> (last accessed June 22, 2026).

⁹ Spencer also raised a “reverse-*Roper v. Simmons*”, 543 U.S. 551 (2005), claim suggesting Spencer was exempt from execution because he is elderly. R:353–59. He has abandoned that claim in this Court.

not establish that there was an imminent risk that his execution would inflict serious illness or needless suffering, *Id.* at *5. (*citing Heath v. State*, 426 So. 3d 1253, 1262 (Fla.), *cert. denied*, 223 L. Ed. 2d 587 (2026)); (2) Spencer’s complaints about his medical conditions were speculative and conclusory, *id.* at *5, and (3) Spencer failed to identify any alternative method of execution. *Id.* at *6.

REASONS FOR DENYING THE PETITION

Spencer’s method-of-execution challenge does not merit review because the decision below was premised on independent and adequate state law grounds, this Court has already decided the question presented, Spencer has identified no conflict with other courts, and he is unlikely to obtain relief on his underlying claim.

Spencer wishes to excuse himself from this Court’s longstanding precedent that he must identify an alternative method of execution. Pet. at 18–19. Because he was not granted an evidentiary hearing to develop his subclaims about whether FDC was deviating from its protocol, Spencer provides a lengthy recitation of the evidence as he sees it. Pet. at 7–12. Yet, Spencer does not address what the Florida Supreme Court decided about his previous recitations. Spencer ignores the Florida Supreme Court’s finding that his method-of-execution challenge was untimely, and he completely disregards the court’s explanation that, even if his allegations were entirely true, Spencer’s claim did not demonstrate that there was an imminent risk that his execution would result in serious illness or needless suffering. This Court’s existing precedent even answers the question Spencer now wishes this Court to revisit. There is no reason to indulge Spencer’s transparent attempts to forestall his long-deserved execution.

I. This Court lacks jurisdiction to decide the question presented because the decision below rests on independent and adequate state law grounds.

When both state and federal questions are involved in a state court proceeding, this Court has no jurisdiction to review the case if the state court judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the state court's decision. *See Foster v. Chatman*, 578 U.S. 488, 497 (2016). Here, the Florida Supreme Court's decision found that Spencer's entire method-of-execution challenge was untimely under Florida state procedural rules. *See Spencer*, 2026 WL 1757938, at *4. Time bars are independent and adequate state law grounds for rejecting a claim. *See Walker v. Martin*, 562 U.S. 307, 316–17 (2011) (finding California's time bar qualified as an adequate state procedural ground that barred habeas relief in federal courts).

Spencer addresses the issue of timeliness by baldly asserting he “could not have brought” his claim “at an earlier time.” Pet. at 7. He provides no further elucidation on this point. The question of timeliness is a state law issue over which the Florida Supreme Court, rather than this Court, has the final say. *See Montana v. Wyoming*, 563 U.S. 368, 377 n.5 (2011) (explaining that the highest court of each State is the “final arbiter of what is state law”) (*quoting West v. American Telephone & Telegraph Co.*, 311 U.S. 223, 236 (1940)). Thus, the Florida Supreme Court's decision is controlling, and this Court lacks jurisdiction to consider the question presented.

II. This Court has already settled the question presented.

Spencer argues that any Eighth Amendment challenge that includes alleged deviations from a written protocol should be exempt from presenting an alternative method of execution. Pet. at 16–19. But this Court has already decided this question against Spencer’s current position. Because this Court has held, twice now, that anyone “bringing a method of execution claim alleging the infliction of unconstitutionally cruel pain must meet the *Baze-Glossip* test,” there is no need for this Court to say so a third time. See *Bucklew v. Precythe*, 587 U.S. 119, 140 (2019).

This Court has clarified that presenting a known, readily implementable alternative method of execution is a mandatory component of any method-of-execution challenge. In *Glossip*, much the same as Spencer does here, the capital defendants suggested that they did not need to present a known and available method of execution so long as they show there is a risk of harm when the protocol is administered. *Glossip v. Gross*, 576 U.S. 863, 879 (2015). But this Court dismissed that contention outright. *Id.* at 879–81. In *Bucklew*, this Court also rejected an attempt to excuse all as-applied challenge. *Bucklew*, 587 U.S. at 136. In doing so, this Court emphasized that *Glossip* made it clear that “*all* Eighth Amendment method-of-execution claims’ alleging cruel pain” must identify an available alternative. *Id.* (quoting *Glossip*, 576 U.S. at 867) (emphasis in original).

Spencer attempts to differentiate the question he presents by claiming that protocol deviations are a different type of claim. Pet. at 18–19. But this Court has already rejected this argument. In *Baze*, the capital defendants’ central claim was

that their execution would be cruel and unusual punishment “because of the risk that the protocol’s terms might not be properly followed.” *Baze v. Rees*, 553 U.S. 35, 41 (2008) (plurality opinion). This Court determined the defendants failed to meet their burden because they did not “show[] that the risk of pain from maladministration of a concededly humane lethal injection protocol, and the failure to adopt untried and untested alternatives, constitute cruel and unusual punishment.” *Id.* This Court then cautioned lower courts not to grant a stay on similar claims unless “the demonstrated risk of severe pain” is “substantial when compared to known and available alternatives.” *Id.* at 61–62 (explaining the Eighth Amendment only prohibits “wanton exposure to objectively intolerable risk, not simply the possibility of pain”). Spencer does not even try to differentiate his claim; he just ignores *Baze*. Thus, the question he presents to this Court amounts to “little more than an attack on settled precedent” unworthy of this Court’s review. *See Bucklew*, 587 U.S. at 149.

III. Spencer identifies no conflict with other courts.

Given the clear requirements in *Baze*, *Glossip*, and *Bucklew*, it is unsurprising that Spencer has not named any post-*Baze* courts that agree with his position. That alone makes the question presented unworthy of this Court’s review. *See Sup. Ct. R.* 10(a)–(b); *Rockford Life Ins. Co. v. Ill. Dep’t of Revenue*, 482 U.S. 182, 184 n.3 (1987) (recognizing issues that have “divided neither the federal courts of appeals nor the state courts” rarely merit this Court’s review). As far as Respondent can tell, every federal circuit court that has considered claims premised on alleged maladministration of execution protocols has uniformly applied the *Baze-Glossip* test

and required defendants specify an alternative method of execution.¹⁰

While Spencer asserts that applying the *Baze-Glossip* test to his claim “creates conflict” with this Court’s “Eighth Amendment jurisprudence,” he offers little to explain his position other than offering vague platitudes about “prevent[ing] judicial scrutiny.” Pet. at 18. Instead, he bafflingly veers into a suggestion that the Founding Fathers would be appalled by the idea that executions were not public. Pet. at 20. This Court can safely dispense with this risible argument for two reasons. First, it was never raised in the proceedings below. See *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001) (the Court is one of “final review and not first view”) (*quoting Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 399 (1996) (Ginsburg, J., concurring in part and dissenting in part)). Second, it is a non sequitur. The entire

¹⁰ See *Nichols v. Skrmetti*, No. 25-6095, 2025 WL 3523010, at *2 (6th Cir. Dec. 5, 2025) (holding a defendant alleging a history of maladministration of the State’s execution protocol failed, in part, because his proposed alternative method of execution was not feasible and readily implementable), *cert. denied*, 146 S. Ct. 915 (2025); *Gissendaner v. Comm’r, Ga. Dep’t of Corr.*, 803 F.3d 565, 567–69 (11th Cir. 2015) (explaining that a defendant who alleged that there is a significant risk that the State would deviate from its protocol for compounding pentobarbital must state an alternative method of execution); *Cooey v. Strickland*, 589 F.3d 210, 224–25 (6th Cir. 2009) (applying both prongs of *Baze* to claims about the undue risk of “improper implementation of” the execution protocols); *Clemons v. Crawford*, 585 F.3d 1119, 1125 (8th Cir. 2009) (applying both prongs of *Baze* to a claim that “the protocol may be improperly administered by incompetent or unqualified medical personnel”); *see also Creech v. Tewalt*, 94 F.4th 859, 863 (9th Cir. 2024) (noting a method of execution challenge failed because the defendant refused to identify an alternative method of execution), *cert. denied*, 144 S. Ct. 1027 (2024); *Whitaker v. Collier*, 862 F.3d 490, 493, 499 (5th Cir. 2017) (finding an Eighth Amendment challenge premised on the risk of using compounded pentobarbital failed, in part, because the defendants did not sufficiently plead an alternative method of execution).

reasons executions are no longer public is because of the much-vaunted “evolving standards of decency” where States, starting as far back as 1830s, began to shy away from making executions a matter of public spectacle. *See Associated Press v. Neal*, No. 25-2025, 2026 WL 1616000, at *2–4 (7th Cir. June 5, 2026). If Florida had returned to making executions public, Spencer would have come to this Court railing about the barbarity of such a practice. While public executions were common during the Founding Era, this fact has little Constitutional significance. *Id.*, at *2–4 (7th Cir. June 5, 2026) (explaining that the historic justifications for public access to criminal proceedings do not apply to executions). The Founding generation would register no objection to Florida’s lethal injection protocol because it does not seek to superadd terror, pain, or disgrace to Spencer’s execution. *Bucklew v. Precythe*, 587 U.S. 119, 133 (2019) (explaining that the Eighth Amendment only prohibits punishments that are designed to “superadd terror, pain, or disgrace”); *Baze*, 553 U.S. at 94–107 (Thomas, J., concurring) (explaining the historical context of “cruel and unusual punishment” during the Founding Era only included the deliberate infliction of gratuitous pain).

Spencer provides no meaningful analysis of why *Baze*, *Glossip*, and *Bucklew* should be ignored or modified except to claim that it is inconvenient for his claim. Pet. at 19. Because this Court has set forth the requirements for *all* Eighth Amendment method-of-execution challenges, all other courts have followed this Court’s dictates. Spencer can identify no conflict justifying further review.

IV. Spencer’s case is a poor vehicle to review the question presented because he is unlikely to obtain relief on his underlying claim.

Even if this Court were inclined to excuse Spencer from providing an alternative method of execution, Spencer is unlikely to succeed on the merits of his method-of-execution challenge because the Florida Supreme Court correctly found that Spencer’s claim failed to meet the first prong of the *Blaze-Glossip* test for multiple reasons. The Eighth Amendment only bars “cruel and unusual punishments” not protocol deviations. *See* U.S. Const. amend. VIII. Even when there are increased risks due to underlying medical conditions, the Eighth Amendment prohibits the State from “seeking to superadd terror, pain, or disgrace” to an execution but “does not guarantee a prisoner a painless death—something that, of course, isn’t guaranteed to many people, including most victims of capital crimes.” *Bucklew*, 587 U.S. at 132–33. Yet Spencer’s presentation in the proceedings below fell woefully short of stating a sufficient method-of-execution challenge. A decision by this Court on the question presented would be a purely academic exercise that would not affect the underlying judgment that the Florida Supreme Court rendered. *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”).

A. Spencer’s allegations about his medical conditions did not demonstrate that there is an imminent risk of Spencer experiencing serious illness or needless suffering.

This Court has long understood that a valid Eighth Amendment method-of-execution challenge must state “a substantial risk of serious harm, an objectively intolerable risk of harm that prevents prison officials from pleading that they were subjectively blameless for purposes of the Eighth Amendment.” *Glossip*, 576 U.S. at 877. Speculative harm is not enough. *Brewer v. Landrigan*, 562 U.S. 996 (2010) (holding that “speculation cannot substitute for evidence that the use of the drug is *sure or very likely* to cause serious illness and needless suffering”) (citations modified, emphasis in original). The *Baze-Glossip* test requires capital defendants “to prove their allegations to a high level of certainty,” and that burden cannot be shifted onto the State. *See In re Ohio Execution Protocol*, 860 F.3d 881, 887 (6th Cir. 2017); *see also Glossip*, 576 U.S. at 882 (holding capital defendants challenging a method of execution bear “the burden to show, based on evidence presented to the court, that there is a substantial risk of severe pain”). To that end, the Florida Supreme Court rightly recognized that the speculative allegations that Spencer supplied to the lower court did not amount to an Eighth Amendment violation. *Spencer*, 2026 WL 1757938, at *5–6.

Spencer’s almost verbatim regurgitation of the arguments he made below does little to demonstrate why the Florida Supreme Court erred in dismissing those same arguments. Spencer opens by repeating a factually inaccurate claim that FDC’s lethal injection protocol “makes no provisions to account for coexisting medical conditions.”

It does. R:416–17 (requiring that the inmate be screened for medical issues which “could potentially interfere with the proper administration of the lethal injection protocol”). His remaining assertions were all premised on conclusory suppositions and a parade of horribles with no indication that any of those scenarios were likely to occur or that Spencer would even be conscious should they occur. This is not the first time that this Court was not convinced that Dr. Zivot’s averments about the potential pain an inmate could experience demonstrated there was an imminent risk of serious illness or needless suffering. *See Bucklew*, 587 U.S. at 128. Spencer offers no compelling reason why this Court should treat his even more conclusory allegations any differently.

B. Spencer failed to show the alleged protocol deviations created an imminent risk of causing serious illness or needless suffering.

Not every protocol deviation has Constitutional significance. *See Baze*, 553 U.S. at 53–54. The Florida Supreme Court rightly recognized that, even if Spencer’s speculative reading of FDC’s inventory log is correct, the alleged protocol deviations he highlighted hardly rose to the level of an Eighth Amendment violation. *Spencer*, 2026 WL 1757938, at *5. Spencer’s presentation before this Court does little to address the Florida Supreme Court’s assessment. In fact, the argument he presents to this Court is essentially a carbon-copy of the one he presented below.

Spencer offers a potpourri of criticisms, but his most substantial contention here is that FDC is allegedly using expired etomidate during executions. *See Pet.* at 12–16. But, as the State pointed out in the proceedings before the Florida Supreme

Court, just because a drug passes the manufacturer-labeled expiration date does not mean the drug itself has lost all efficacy. *See, e.g., Whitaker v. Collier*, 862 F.3d 490, 493, 499 (5th Cir. 2017) (finding a defendant failed to state a sufficient method-of-execution challenge even though the claim hinged on the risk of using expired pentobarbital). Even if this Court were to assume there is some risk inherent in using expired etomidate, Spencer’s expert presented no averments whatsoever about the efficacy of etomidate once it passes the expiration date.

Much the same as he did in the proceedings below, Spencer argues, *ipse dixit*, that expired etomidate must be dangerous while providing only a perfunctory citation to an article that references patients’ responses to therapeutic doses of (unexpired) etomidate—a citation he did not provide in his initial postconviction motion. *See* Pet. at 13–15. The difference between a therapeutic dose of etomidate and the dose that FDC provides during a lethal injection is not trivial. Therapeutic doses of etomidate typically range from 10–30 mg. *See, e.g.* Ryane Pappal, et al., *The ED-AWARENESS Study: A prospective, observational cohort study of awareness with paralysis in mechanically ventilated patients admitted from the emergency department*, 77 Ann. Emerg. Med. 532 (2021) (See Table 2). FDC’s protocol, however, calls for a massive 200 mg dose of etomidate, rendering an inmate “unconscious and insensate” for “**at least** 30 minutes.” *See Long v. State*, 271 So. 3d 938, 944 (Fla. 2019) (emphasis added). Spencer’s speculation was not sufficient to convince the Florida Supreme Court of the merits of his concerns and Spencer offers no reason why the claims he repeats here should persuade any members of this Court. *Cf. Brewer*, 562 U.S. at 996

(vacating a lower court’s temporary restraining order because there was no evidence in the record that suggested execution drugs obtained from a foreign source were unsafe).

Spencer’s myopic focus on allegedly inadequate documentation practices also ignores other safeguards (like consciousness checks) that greatly lower the risk of unconstitutional severe pain even if a deviation does occur. *See Glossip*, 576 U.S. at 886–87 (explaining this Court upheld a protocol even without a “consciousness check”); *Baze*, 553 U.S. at 120 (Ginsburg, J., dissenting) (praising Florida’s consciousness checks). Florida’s protocol contains such checks to ensure that—even if an error occurred earlier—the condemned is insensate before the injection of the paralytic and drug that stops the heart. *See Long v. State*, 271 So. 3d 938, 945 (Fla. 2019) (noting Florida’s protocol contains safeguards and checks to ensure “the condemned is unconscious throughout the execution”).¹¹ Spencer tells this Court that those safeguards “can no longer stand” but beyond this perfunctory assertion, he provides no explanation for why Florida’s consciousness checks are inadequate. *See* Pet. at 15.

This Court has denied certiorari five times from Florida Petitioners citing the

¹¹ The consciousness checks occur after the etomidate is fully administered and the execution cannot proceed until the execution team has confirmed the inmate is insensate. *See Howell v. State*, 133 So. 3d 511, 522 (Fla. 2014) (noting that a consciousness check, which included a painful pinch of the trapezius would “ensure that Howell is unable to perceive any noxious stimuli”); *Schwab v. State*, 995 So. 2d 922, 930 (Fla. 2008) (detailing the steps of a consciousness check that included a shake and shout and eyeball tap).

same records that Spencer relies upon here. *See Lukehart v. Florida*, 2026 WL 1530138 (Mem.) (2026); *Hitchcock v. Florida*, 2026 WL 1170862 (Mem.) (2026); *Willacy v. Florida*, 2026 WL 1074143 (Mem.) (2026) *King v. Florida*, 2026 WL 730666 (Mem.) (2026); *Trotter v. Florida*, 146 S. Ct. 755 (2026); *Heath v. Florida*, 2026 WL 363902 (Mem.) (2026); *Walls v. Florida*, 2025 WL 3674295 (Mem.) (2025). Spencer’s retreat to tenuous claims premised on unsupported assumptions and disputed facts does not render this case any more worthy of certiorari review than the other cases that this Court has already rejected. Spencer offers no sound reason his case deserves any different treatment.

C. Spencer’s allegations about the alleged protocol deviations are unsupported by the records he references.

This Court presumes that members of the executive branch properly discharge their duties absent “clear evidence to the contrary.” *See United States v. Armstrong*, 517 U.S. 456, 464–65 (1996); *see also Baze*, 553 U.S. at 49–51, 53–56. But the evidence Spencer presented in the proceedings below is murky at best. Spencer’s entire premise about alleged protocol deviations rests on a false assumption. It would perhaps make sense to assume every line-item in FDC’s inventory log was documenting the drugs being used in a particular execution if that was what FDC’s protocol called for, but FDC’s protocol requires no such record keeping. R:417; *see also Troy v. State*, 57 So. 3d 828, 839 (Fla. 2011) (holding the protocol’s absence of specific record-keeping requirements did not give rise to an Eighth Amendment claim). Instead, FDC’s protocol requires the department to purchase the necessary drugs to

carry out a lethal injection, ensure the drugs do not pass their expiration date, and confirm the chemicals are “correct and current.” R:417. Because the protocol does not require the documentation Spencer presumes, his supposition that the inventory logs reveal some maladministration of FDC’s protocol has no sound grounding.

Indeed, a more careful comparison of the records to Spencer’s claims illustrates that his speculation is ill-supported. The inventory logs themselves do not list any defendant’s names or document the purpose for which the drugs are being removed from the inventory. While some of the dates in the inventory logs correspond with days that capital defendants were executed, others do not. R:428, 452.¹² Some days even have multiple entries recording differing quantities of drugs being removed from the inventory. *Id.* Spencer even pointed to one execution where the inventory log had no corresponding line-item documenting etomidate being removed from the inventory on the same or similar date as that inmate’s execution, yet etomidate was present in that inmate’s system during his autopsy. R:344. Given the protocol does not require line-item tracking of drugs broken out by each execution, a sounder reading of FDC’s inventory logs would be that the logs are documenting the supply of drugs available to FDC. Similarly, it is likely that the line-items documenting removal of drugs that

¹² Given the frequency of executions in Florida over the past two years, it should not be surprising that many of the dates reflected in the inventory log correspond closely to dates that capital defendants were executed. *See* Florida Department of Corrections, *Execution List: 1976-Present*, <https://www.fdc.myflorida.com/institutions/death-row/execution-list-1976-present> (last accessed June 22, 2026).

had past their expiration date was just FDC documenting that they were removing the drugs from the inventory for the purpose of disposing of them. Spencer simply ignores these other, more plausible, readings of the records while still insisting that something must be amiss. His suppositions are a far cry from “clear evidence” that FDC has been violating its own protocols. Thus, this Court can be confident that Spencer’s underlying claims lack any merit.

CONCLUSION

Because Spencer fails to establish any compelling reason for this Court to believe he is doing anything other than trying to delay his execution, his petition for a writ of certiorari should be denied.

Respectfully submitted,

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