

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL KING,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

**RESPONSE TO APPLICATION FOR STAY OF EXECUTION
EXECUTION SCHEDULED FOR MARCH 17, 2026, AT 6:00 P.M.**

Michael King, a Florida prisoner under an active death warrant with an execution scheduled for March 17, 2026, asks this Court to stay his execution for a brutal kidnaping, rape and murder he committed in 2008 while it considers whether to grant certiorari. However, the questions King presents do not warrant a stay under *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983), as modified by *Bucklew v. Precythe*, 587 U.S. 119, 149–51 (2019). As thoroughly explained in the accompanying Brief in Opposition to certiorari, King’s questions do not merit this Court’s review. Therefore, this Court should deny the stay.

A stay of execution is not granted as a “matter of course.” It is an equitable remedy, and “equity must remain sensitive to the State’s strong interest in enforcing

its criminal judgments without undue interference from the federal courts.” *Hill v. McDonough*, 547 U.S. 573, 583–84 (2006). To obtain a stay, King must establish a reasonable probability that four Justices would vote to grant certiorari, a significant possibility of reversal, and a likelihood of irreparable harm. *Barefoot*, 463 U.S. at 895. This Court has further emphasized that last-minute litigation, dilatory claims, and speculative theories weigh heavily against equitable relief. *Bucklew*, 587 U.S. at 149-51; *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992). King cannot satisfy these requirements.

King’s question rests on weak allegations that Florida’s lethal injection protocol has been maladministered in prior executions. Strangely, King’s present claim that his execution would violate the Eighth Amendment is at odds with the claim he advanced not only in Florida courts but in his Petition seeking certiorari review. King sought to distance his claim from the unsuccessful Eighth Amendment arguments presented in *Trotter*¹ and *Heath*² and strenuously argued in state court proceedings that his argument is different because he seeks to secure his rights under the Fourteenth Amendment’s Equal Protection clause. The Florida Supreme Court rejected his Fourteenth Amendment claim while also noting that the same outcome would apply under an Eighth Amendment analysis, a conclusion which the Respondent suggests was exactly right. King’s argument fails in any event regardless of the constitutional provision he interposes as a prospective shield. This is because

¹ *Trotter v. State*, No. SC2026-0214, 2026 WL 444544, at *3 (Fla. Feb. 17, 2026)

² *Heath v. State*, No. SC2026-0112, 2026 WL 320522, at *3 (Fla. Feb. 3, 2026), *cert. denied*, No. 25-6746, 2026 WL 363902 (U.S. Feb. 10, 2026)

no matter how we view it, his claim is supported only by conjecture and vague assertions of impropriety.

King's claims derive from heavily redacted records that do not establish that any protocol deviation occurred. First of all, King's so-called "Equal Protection" claim is nothing more than a thinly disguised method-of-execution challenge.³ And the materials he relies upon do not identify any specific executed inmates, confirm that the listed drugs were administered, or demonstrate that any irregularities affected executions. At most, King speculates that deviations may have occurred, that they might recur, and that he is entitled to a stay so he can investigate whether or not the alleged irregularities might cause unconstitutional pain. That layered conjecture is insufficient. A method-of-execution claim requires proof that King's execution using Florida's established protocol is "*sure or very likely* to cause serious illness and needless suffering." *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (emphasis in original). Speculation cannot satisfy that standard, and this Court has cautioned that federal courts must guard against claims based on speculative theories. *Bucklew*, 587 U.S. at 151 ("Federal courts can and should protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are . . . based on speculative theories.") (Cleaned up).

³ King contends that records relating to recent executions of two sex offenders, Gudinas and Wainwright, demonstrate irregularities in following the State's established protocol. King speculates that the alleged irregularities were intentional and that Florida will similarly deviate from the protocol when King is executed because he, like Gudinas and Wainwright, is a convicted sex offender. Florida does not recognize sex offenders as a protected class, and in any event, King fails to establish that as a class of perhaps three, that Florida has and will violate Equal Protection should he be executed in the same manner as previous sex offenders.

The timing of King’s claims independently forecloses equitable relief. He raised his so-called “equal protection” challenge only after the Governor signed his death warrant, even though the records allegedly supporting his claim were available during prior warrant litigation involving other inmates. This Court has repeatedly vacated stays where inmates delayed bringing their execution challenges. *See Dunn v. Price*, 578 U.S. 929 (2019) (vacating a stay because the capital defendant unduly delayed filing suit); *Dunn v. Ray*, 586 U.S. 1138 (2019) (same). Equity does not reward last-minute litigation designed to delay the imposition of lawful sentences. *See Nelson v. Campbell*, 541 U.S. 637, 650 (2004) (holding that there is a “strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.”). The dilatory posture of King’s claims weighs heavily against a stay.

Despite King’s argument to the contrary, the People of Florida, as well as the surviving victims, “deserve better” than the “excessive” delays that now typically occur in capital cases, including this one. *Bucklew*, 587 U.S. at 149. “Both the State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Hill*, 547 U.S. at 584. And where, as here, federal habeas “proceedings have run their course and a mandate denying relief has issued, finality acquires an added moral dimension.” *Calderon v. Thompson*, 523 U.S. 538, 556 (1998).

Courts must “police carefully” against last-minute claims used “to interpose unjustified delay.” *Bucklew*, 587 U.S. at 150. Last-minute stays of execution should be “the extreme exception, not the norm.” *Barr v. Lee*, 591 U.S. 979, 981 (2020)

(quoting *Bucklew*, 587 U.S. at 150 and vacating a stay of execution).

King must establish at least three elements to receive a stay of execution on his long-finalized sentence from this Court: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot*, 463 U.S. at 895.

This Court’s opinion in *Bucklew* effectively modified this test and requires proof of an additional two elements: (4) that he has not pursued relief in dilatory fashion and (5) his underlying claims are not based on a speculative theory and simply designed to stall for time. 587 U.S. at 151 (“Federal courts can and should protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are pursued in a dilatory fashion or based on speculative theories.”) (cleaned up; emphasis added). King must establish all these elements to obtain a stay. See *Hill*, 547 U.S. at 583–84. He is unable to establish any of them.

King cannot demonstrate a reasonable probability that four Justices would grant certiorari. His claims rest on disputed factual premises, making this case a poor vehicle for review. This Court rarely grants certiorari to resolve fact-bound disputes. See Sup. Ct. R. 10; *United States v. Johnston*, 268 U.S. 220, 227 (1925) (“[This Court] do[es] not grant a certiorari to review evidence and discuss specific facts.”); see also *Cash v. Maxwell*, 565 U.S. 1138, 132 S. Ct. 611, 613 (2012) (Sotomayor, J., respecting the denial of certiorari) (stating that mere disagreement with a court’s “highly

factbound conclusion is” an “insufficient basis for granting certiorari”). And, if we view King’s “equal protection” claim as a method-of-execution challenge, his legal theory is also foreclosed by precedent. This Court has repeatedly held that the *Baze-Glossip*⁴ framework governs *all* method-of-execution claims. *Bucklew*, 587 U.S. at 134. Attempts to repackage such claims under alternative labels do not circumvent that governing standard. Nor did King identify a feasible alternative method of execution, an independent pleading requirement for Eighth Amendment claims. *Id.* at 136. These defects make certiorari review unlikely.

For similar reasons, King cannot demonstrate a significant possibility of reversal. The Florida Supreme Court applied the governing framework and correctly rejected his claims. *King v. State*, No. SC2026-0336, 2026 WL 672101, (Fla. Mar. 10, 2026). Under *Baze* and *Glossip*, a prisoner must show both a substantial risk of severe pain and a feasible alternative method that significantly reduces that risk. King satisfied neither prong. Allegations of protocol deviations do not establish that Florida’s protocol itself is unconstitutional. This Court has rejected the argument that risks of improper implementation alone violate the Eighth Amendment. *See Baze*, 553 U.S. at 53–54. Moreover, Florida’s protocol includes consciousness checks designed to ensure inmates are insensate before the administration of additional drugs. *See Long v. State*, 271 So. 3d 938, 945 (Fla. 2019) (noting that Florida’s protocol contains safeguards and checks to ensure “the condemned is unconscious throughout

⁴ *Baze v. Rees*, 553 U.S. 35 (2008) (plurality opinion); *Glossip v. Gross*, 576 U.S. 863 (2015).

the execution.”). This Court has upheld protocols even without such safeguards. *Glossip*, 576 U.S. at 886-87. Given these precedents, reversal is not likely.

Nor can King establish irreparable harm. The relevant inquiry is not whether the execution will occur, but whether the inmate is likely to suffer unconstitutional pain. Speculation about possible protocol deviations does not satisfy that burden. *See Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008) (explaining that a mere “possibility” of harm insufficient and irreparable injury must be “likely in the absence of an injunction”). Florida has carried out thirty-five executions under its current protocol without any reported problems, and the combination of anesthetic dosage and mandatory consciousness checks ensures that inmates are rendered insensate. This Court denied certiorari in both *Heath* and *Trotter* and their executions occurred without any reported complications. Because King has not shown he is “sure or very likely” to suffer superadded pain, he cannot establish irreparable injury.

Finally, the fact that King failed to advance his claim until after the Governor of Florida signed his death warrant militates against granting a stay. King could have challenged Florida’s protocol as violating the Fourteenth or Eighth Amendments but did not do so. And the claim he presently advances is merely speculative and is nothing more than stalling for time. If King’s claim had any merit at all, he would not have waited until now to seek relief.

A warrant-eligible capital defendant’s choice to wait until after the signing of his death warrant to raise a claim that could have been raised pre-warrant strongly militates against certiorari. *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); *cf. Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (cautioning federal courts against intervening close to an election over a dissent that argued the Texas Legislature bore any fault for altering an election map close to an election). Capital defendants in Florida can, and have, raised pre-warrant method-of-execution claims challenging Florida's lethal-injection process long before a warrant. *E.g.*, *Douglas v. State*, 141 So. 3d 107, 127 (Fla. 2012) (Fla. 2012) (holding method-of-execution claim raised in an initial postconviction motion should have been raised on direct appeal); *Bates v. State*, 3 So. 3d 1091, 1106 & n.18 (Fla. 2009) (raising a method-of-execution claim in an initial postconviction motion). And both the Florida Supreme Court and Eleventh Circuit have expressly rejected the argument that method-of-execution challenges only ripen after a death warrant. *See Ferguson v. State*, 101 So. 3d 362, 365 (Fla. 2012); *McNair v. Allen*, 515 F.3d 1168, 1174 (11th Cir. 2008).

A stay of execution is an extraordinary equitable remedy. King's speculative allegations, dilatory litigation, inability to satisfy the *Baze-Glossip* framework and failure to meet the *Barefoot* factors foreclose relief.

Accordingly, this Court should deny King's motion for stay of execution.

Respectfully submitted,

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