

IN THE
SUPREME COURT OF THE UNITED STATES

ANDREW RICHARD LUKEHART,

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 JUNE 2, 2026, AT 6:00 P.M.**

Andrew Richard Lukehart, a Florida prisoner under an active death warrant with an execution scheduled for June 2, 2026, asks this Court to stay his execution for a heinous murder he committed in 1996 while it considers whether to grant certiorari on three non-substantive, 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? (*See Pet. at i.*)

None of these questions 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 laid out in the accompanying Brief in Opposition to certiorari, Lukehart's questions do not merit this Court's review. This Court should deny certiorari and then deny the stay.

A stay of execution is not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Instead, a stay is "an equitable remedy" and "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id.* at 584. 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." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). Equity must also consider "an inmate's attempt at manipulation." *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992).

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." *See 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).

Lukehart 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 Lukehart to show 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; emphases added). Lukehart must establish all these elements to obtain a stay. *See Hill*, 547 U.S. at 583–84.

Dilatory

Constitutional rights pursued in dilatory fashion do not merit an execution stay. *See Bucklew*, 587 U.S. at 151. Lukehart cannot receive a stay because he pursued the questions he presents now in dilatory fashion. He could have asked this Court to establish a per se due process right to an evidentiary hearing nearly a decade ago when Florida switched to etomidate and would have summarily rejected his facial challenge. *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). Florida’s execution protocol has remained essentially unchanged since then, *Randolph v. State*, 422 So. 3d 166, 172 (Fla. 2025),

and this Court has long refused to grant a stay when the capital defendant could have pursued his claim earlier. *Gomez v*, 503 U.S. at 654 (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’s attempt to avoid this obvious problem by cabining his first question to *post-warrant* method-of-execution claims makes no sense. If procedural due process required evidentiary hearings on all *post-warrant* method-of-execution claims, the same would be true *pre-warrant*. This Court should not grant a stay to answer a question *post-warrant* when Lukehart could have asked a substantially similar question *pre-warrant*. His choice to wait until after his warrant issued to ask this first question is nothing less than dilatory and abusive.

The same is true of his second question. 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.) He could and should have argued that the alternative method requirement violated his religion, at the very latest, soon after this Court reconfirmed that Eighth Amendment requirement in 2019. *Bucklew*, 587 U.S. at 140. His failure to challenge the alternative method requirement until seven years later as part of *post-warrant* facial and *as-applied* method-of-execution claims is inexcusable. He should have raised the facial challenge shortly after *Bucklew* at the latest and asserted his religion exempted him from the alternative method requirement then, not seven years later after his warrant issued. His inexcusable delay precludes a stay.

Lukehart’s third question is equally tardy. Capital defendants have long asserted a right to method-of-execution related discovery on due process and Eighth Amendment grounds. *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.). Lukehart’s decision to sit on his supposed rights and spring them only after his death warrant issued does not warrant a stay.

None of Lukehart’s dilatory questions presented deserve a stay on the eve of his execution. This Court should deny the stay based on his undue delay. *See Bucklew*, 587 U.S. at 151 (encouraging federal courts to “dismiss or curtail” dilatory suits).

Speculative

“Speculative” attacks on “settled precedent” do not warrant an execution stay either. *See Bucklew*, 587 U.S. at 149, 151. Each of Lukehart’s questions is controlled by precedent this Court would have to recede from to grant him any relief. That defeats his application for a stay. The days before execution provide no window to challenge this Court’s established precedent. *See id.*

Start with his first question. This Court held states may require a “substantial

threshold showing” to “control the number of nonmeritorious or repetitive claims” before holding an evidentiary hearing. *Ford v. Wainwright*, 477 U.S. 399, 417 (1986) (plurality opinion); *id.* at 426 (Powell, J., concurring).¹ And Justice Powell, who provided the holding in *Ford*, rejected the notion heightened procedural protections apply to claims that challenge “not *whether*, but *when*” an execution occurs. *Id.* at 425–26 (Powell, J., concurring) (emphasis in original). Method-of-execution claims fit squarely in that boat. *Nance v. Ward*, 597 U.S. 159, 169 (2022).

Ford defeats the notion due process provides capital defendants with a per se right to an evidentiary hearing on post-warrant method-of-execution claims. *See Ford*, 477 U.S. at 425–26 (Powell, J., concurring) (holding the states “may require a substantial threshold showing” to “trigger the hearing process”). This Court would have to overrule *Ford* for Lukehart to prevail. That means his first question is merely a “speculative” attack on “settled precedent” rather than a valid ground for an execution stay. *See Bucklew*, 587 U.S. at 149, 151.

Lukehart’s three-part second question fares no better. This Court has

¹ The State’s reliance on *Ford* should not be read in any way as a concession method-of-execution claims are unripe until a death warrant issues. This Court—and every other federal appellate court to address the issue—has long rejected that position. *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*, 503 U.S. at 654 (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”); *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). The salient point is *Ford* defeat’s the per se evidentiary hearing requirement Lukehart’s first question requests. A death warrants issuance has nothing to do with when method-of-execution claims ripen.

confirmed no less than four times before that the Eighth Amendment requires capital defendants to provide an alternative execution method to prevail on method-of-execution claims. 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*). And Lukehart cannot provide a single case from any court suggesting the First Amendment overcomes a substantive requirement in the Eighth. The only court to address the issue has—like the Florida Supreme Court below—adhered to the alternative method requirement. *Jones v. Crow*, No. 21-6139, 2021 WL 5277462, at *8 (10th Cir. Nov. 12, 2021).

The idea that the First Amendment constrains the Eighth Amendment is just a speculative theory attacking four-time reconfirmed precedent. Questions like that do not deserve an execution stay. See *Bucklew*, 587 U.S. at 149, 151.

The due process part attacks settled precedent even more clearly. This Court has long held that when a particularly constitutional provision governs an issue due process has nothing to say about it. *Sattazahn v. Pennsylvania*, 537 U.S. 101, 116 (2003); *County of Sacramento v. Lewis*, 523 U.S. 833, 843 (1998); *United States v. Lanier*, 520 U.S. 259, 272 n.7 (1997); *Graham v. Connor*, 490 U.S. 386, 395 (1989). Lukehart would have to work a vast sea change in the law for a general due process clause to constrain the specific Eighth Amendment analysis required to prove a method-of-execution claim.

And speculative does not begin to describe Lukehart’s reliance on two Acts of Congress² to overcome the Eighth Amendment’s alternative method requirement.

² The Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA)

This Court would have to recede from the Constitution itself to side with him on that issue. “The Eighth Amendment, *Bucklew* explained, is the supreme law of the land,” so “the comparative assessment it requires can’t be controlled by” statutes. *Nance v. Ward*, 597 U.S. 159, 164 (2022). That includes Acts of Congress. See *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.”); *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).

The First Amendment and Due Process aspects of Lukehart’s second question are speculative attacks on settled precedent. The third part relying on RFRA and RLUIPA is frivolous. So, nothing in this question warrants a stay.³

Lukehart’s final question likewise attacks settled precedent. This Court has long held that there is no 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

³ Lukehart profoundly misplaces his reliance on Justice Gorsuch’s dissent in *Hoffman v. Westcott*, 145 S. Ct. 797 (2025). The issue there was whether the *State’s* chosen execution method violated RLUIPA. *Id.* at 797. There is nothing novel about saying state action could violate a federal statute. But it is quite another thing to say a federal statute trumps the Eighth Amendment. The former could be a cognizable claim. The second is absurd.

which the parties must be afforded” and that there is “no general constitutional right to discovery”). Aside from a now-defunct foray to the contrary by the Ninth Circuit,⁴ every federal appellate court to address the issue has applied those precedents and rejected any due process right to access lethal-injection-related information.⁵

No federal appellate court has held the Eighth Amendment contains a hidden discovery clause either. Quite the opposite.⁶ Those holdings are hardly surprising given “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).

Lukehart’s asserted right travels on “novel idea that the law will (or should)

⁴ 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 this 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).

⁵ *Phillips v. DeWine*, 841 F.3d 405, 420 (6th Cir. 2016) (collecting cases); *Jones I*, 811 F.3d at 1293 (collecting cases).

⁶ 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).

allow discovery first, and only then require him to meet the standards prescribed by” this Court for method-of-execution claims later. *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). But that runs counter to this Court’s precedent and 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”).

Questions seeking to establish a constitutional right to discovery this Court has long rejected and no federal appellate court has recognized falls squarely in the speculative bin. Such questions do not deserve a stay. *Bucklew*, 587 U.S. at 149, 151.

Lukehart’s three questions amount to little more than attacks on settled precedent based on, at best, speculative theories. They are unworthy of a stay. *Id.*

The Probability of Granting Certiorari Review

The first *Barefoot* element also weighs against Lukehart. Four justices would probably not vote to grant certiorari on any of Lukehart’s questions presented for the reasons fully laid out in the accompanying Brief in Opposition to certiorari. There is a substantial threshold question of Article III standing since the Florida Supreme Court rejected Lukehart’s method-of-execution claims on independent and adequate state-law timeliness grounds. *Lukehart v. State*, No. SC2026-0736, 2026 WL 1480328,

at *4 (Fla. May 27, 2026) *Walker v. Martin*, 562 U.S. 307, 315 (2011). *Cf. 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.”).

Because no question Lukehart presents challenges the time-bar, it is a given in this case. And 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 enough for an Article III 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.

They do not because of the time bar. 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). Since Lukehart’s method-of-execution claims are untimely under Florida law no matter what procedural relief this Court offers, he cannot show an Article III injury in fact to support his three questions presented. This Court lacks case-and-controversy jurisdiction to grant the Petition. *See Jones v. Comm’r, Ga. Dep’t of Corr.*, 811 F.3d 1288, 1295–96 (11th Cir. 2016).

Lukehart has another Article III standing problem. Unless this Court grants certiorari on his second question challenging the alternative method requirement, he lacks standing to raise the other two. *See id.* (recognizing a capital defendant lacked

standing to raise constitutional right-to-discovery claims when he failed to properly allege an alternative method). That makes his questions less appealing because, to reach his first and third questions, this Court would have to decide his second despite the dearth of reasoned opinions addressing it.

These threshold jurisdictional issues make it unlikely four justices would vote to grant certiorari on any question Lukehart presents.

Jurisdiction aside, his first question is unlikely to receive four votes for certiorari. This Court seldom grants certiorari to re-decide questions it answered before unless the answer has created deep confusion in the courts below. That is not the case here. Justice Powell's controlling opinion in *Ford* provides all the guidance lower courts need on the existence of a per se requirement to hold evidentiary hearings on post-warrant claims that only challenge when, not if, an execution will occur. *Ford*, 477 U.S. at 425–26 (Powell, J., concurring) (holding the State “may require a substantial threshold showing” to “trigger the hearing process”).

That is all Florida does. If a capital defendant pleads a timely and facially valid claim on all critical elements, Florida holds evidentiary hearings. The problem for Lukehart is his pleadings demonstrated his claims were not timely under state law and insufficient under both elements required by this Court's method-of-execution caselaw. Lukehart's questions presented only challenge one of those three holdings.

Since Justice Powell's concurrence in *Ford* allows states to erect substantial thresholds before triggering “the hearing process,” and Lukehart cannot muster a single conflict case adopting his per se rule, this Court would probably not grant

certiorari on his first question.

Nor are four justices likely to take up the Eighth Amendment's alternative method requirement for a fifth time, as Lukehart's second question asks. This Court has confirmed and reconfirmed time and time again that the requirement applies. *E.g., Bucklew*, 587 U.S. 136–41. The decision below adheres to this Court's precedent on the matter and reached the same result as the only federal appellate court to consider Lukehart's First Amendment or statutory arguments. *See Crow*, 2021 WL 5277462, at *8–9. The lack of conflict and reasoned opinions make this question an unlikely candidate for certiorari.

In any event, the answers to Lukehart's arguments on this issue are too straightforward to entice four votes. The First Amendment does not constrain the Eighth Amendment. This Court has never adopted a rule subordinating one constitutional right to another in that way. A cursory textual analysis of the First Amendment—which focuses on governmental action rather than other parts of the Constitution—precludes the result Lukehart needs to prevail here.

Lukehart's due process arguments do not merit review because the Eighth Amendment's specific provisions control over the broad contours of due process when it comes to cruel and unusual punishment. *See, e.g., 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”). The Eighth Amendment provides Lukehart with all the process he is constitutionally due when it comes to method-of-execution claims.

Deciding whether statutes override a requirement embodied in the supreme law of this land will not likely catch any justice's eye, much less four. The answer is too obvious to merit this Court's attention. Lukehart forfeited this question anyway since it is not fairly encompassed in any question he presents. *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). He asked constitutional questions rather than statutory ones while trying to overcome the Eighth Amendment. (Pet. at i.)

Lukehart's third question presents an unlikely candidate for certiorari as well. This Court has long refused to recognize the constitutional right to discovery and would not likely grant certiorari to re-decide that question here. That becomes even clearer because, given Lukehart did not allege an alternative method below, this Court cannot address this question in isolation. The fact that the answer to this question does not matter unless Lukehart prevails on his second question makes it unlikely this Court would view this case as a favorable vehicle to address a constitutional right to discovery.

For all these reasons, four justices would probably not vote to grant certiorari on any question Lukehart presents. He therefore fails the first *Barefoot* element.

Significant Possibility of Reversal

On *Barefoot's* second element, it is even more unlikely Lukehart would obtain reversal on any question he presents. This Court is unlikely to overrule *Ford* and create a per se requirement for evidentiary hearings every time a capital defendant

raises a post-warrant method-of-execution claim, no matter how untimely or frivolous. That would greatly increase “the delay and cost involved in carrying out executions,” something courts must “police carefully against.” See *Bucklew*, 587 U.S. at 139, 150. And it would encourage a litany of frivolous claims every time a warrant issues. It is hard to see how any deeply rooted principle of justice or fundamental fairness requires that outcome. See *Dist. Att’y’s Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009). See also *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). There is no significant possibility of reversal on Lukehart’s first question.

This Court is unlikely to reverse and remand on Lukehart’s second question either. It has reconfirmed the Eighth Amendment’s alternative method requirement four times before today, and no textual reading of the First Amendment allows it to constrain the Eighth. The possibility this Court turns due process into a roving embodiment of judicial will, empowering courts to bend other constitutional provisions to their liking, is not significant either. Nor is this Court likely to turn our Constitutional Republic on its head and hold Acts of Congress trump the Constitution. There is no significant possibility Lukehart prevails on this question.

But even if he somehow did, he would probably not obtain reversal. If this

Court exempted him from the Eighth Amendment’s alternative method requirement, the only sound analysis left requires him to prove Florida designed its execution method with intent to cause him unconstitutional levels of pain. *See Baze v. Rees*, 553 U.S. 35, 94–107 (2008) (Thomas, J., concurring in the judgment with Scalia, J.) That is an impossible task given Florida designed its protocol to render him unconscious and insensate before executing his death sentence. *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). So even if Lukehart obtained an exemption from the alternative method requirement, he would likely run headlong into a less forgiving standard. *See Bucklew*, 587 U.S. at 135 (finding there was no need to revisit the debate on whether the Eighth Amendment required a showing “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).

Lukehart’s clear inability to meet that standard means there is no significant possibility of reversal on his second question even if this Court agreed to exempt him from the alternative method requirement. *See 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.”).

The only two likely resolutions to Lukehart’s second question—upholding the alternative method requirement or heightening the standard as Justice Thomas urged—also eliminate any possibility of reversal on Lukehart’s first and third questions. Evidentiary hearings and records do not matter if this Court upholds the

alternative method requirement because Lukehart refused to give one. Likewise, evidentiary hearings and records do not matter if this Court requires Lukehart to show Florida designed its lethal-injection protocol to cause him unconstitutional levels of pain. It did not. The resolution of this question dispenses with the need for a stay without further inquiry.

In any event, the sheer weight of authority against answering Lukehart's third question his way makes it hard to see a significant possibility of reversal here. This Court has long refused to recognize any constitutional right to discovery and so has every other appellate court to address the issue. The chances this Court recedes from its own due process precedent and rejects the combined weight of appellate authority is not significant. Nor is the possibility this Court finds a hidden discovery provision somewhere in the penumbras of the Eighth Amendment's prohibition against cruel and unusual punishment.

Lukehart fails the second *Barefoot* element.

Irreparable Injury

That brings us to the third *Barefoot* element—irreparable injury. Since Lukehart raises three procedural questions before this Court rather than reasserting his substantive Eighth Amendment claims, this question asks whether Lukehart “will be irreparably injured by the denial of the procedures” he seeks. *Humphreys v. Comm'r, Ga. Dep't of Corr.*, 161 F.4th 1300, 1312 (11th Cir. 2025). The mere fact of a pending execution does not show irreparable harm when the issues the capital defendant presents would not preclude his execution. *Id.* See also *Ferguson v.*

Warden, Fla. State Prison, 493 F. App'x 22, 26 (11th Cir. 2012) (Carnes, J., concurring) (Obviously, executing a defendant who should not be executed inflicts irreparable injury. That is not the claim we have here.”).

Lukehart failed to demonstrate irreparable injury flowing from the denial of procedures he asks this Court to adopt. The Florida Supreme Court's holding his claims are untimely as a matter of state law vitiates any attempt to show the lack of these procedures injured him at all, let alone irreparably so. Lukehart cannot obtain relief no matter how this Court answers his method of execution claims given the state-law timeliness holding. So, the failure to answer his questions before his execution is not an irreparable injury.

Lukehart's speculative allegations of protocol deviations do not establish irreparable injury either. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (mere “possibility” insufficient to show irreparable harm); *Koninklijke Philips N.V. v. Thales DIS AIS USA LLC*, 39 F.4th 1377, 1380 (Fed. Cir. 2022) (explaining “mere possibility or speculation of” irreparable “harm is insufficient”). The logs he relies on do not establish a plausible cause of protocol deviations given the other more likely explanations. *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.”). Lukehart's speculation protocol deviations occurred are just speculation. *See King v. State*, No. SC2026-0336, 2026 WL 672101, at *4 (Fla. Mar. 10, 2026). And his speculations are even less convincing since they rely on records he claims are 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).

Lukehart makes one new, and demonstrably false, allegation though. He claims Dr. Zivot found evidence DOC injected seven condemned inmates with a “mysterious” “unknown substance” delivered via intramuscular injection in their shoulders. (Application at 14.) He then claims this proves his need for records because Florida’s protocol does not mention intramuscular injections. (Id.) But these spurious allegations only prove neither he nor Dr. Zivot have paid close attention to Florida’s protocol.

Florida’s protocol provides for intramuscular injections of hydroxyzine.

The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered *intramuscular injections of hydroxyzine*, in appropriate dosages relative to weight, to ease anxiety.

(WPCR:389 (emphasis added).) Seven condemned inmates with intramuscular injections in the shoulder comes as no surprise since 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). That also explains why a fair number, but not all, of the condemned inmates have an injection site. “Intramuscular injections of hydroxyzine” are—per Florida’s protocol—optional “to ease anxiety” after all. (WPCR:389.) Lukehart’s allegation Florida injected some condemned inmates with mysterious substances is demonstrably false and illustrates why no court should quickly adopt a capital defendant’s speculations.

In the end, Lukehart has no cause for concern about whether he will suffer cruel and unusual punishment during his execution. 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). *See also* *Barr v. Lee*, 591 U.S. 979, 980 (2020) (denying a stay based in part 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).

That defeats any real concern about superadding pain to Lukehart’s long final death sentence. *Baze v. Rees*, 553 U.S. 35, 64 (2008) (Alito, J., concurring) (“The first step in the lethal injection protocols currently in use is the anesthetization of the prisoner. If this step is carried out properly, it is agreed, the prisoner will not experience pain during the remainder of the procedure.”); *id.* at 120 (Ginsburg, J., dissenting) (praising Florida’s consciousness checks). This Court has upheld lethal-injection protocols even without consciousness checks. *See* *Glossip v. Gross*, 576 U.S. 863, 877, 886 (2015). Their presence in Florida’s protocol renders Lukehart’s attempt to show irreparable harm little more than speculative.

Lukehart failed to establish he will be irreparably harmed by superadded pain if the status quo remains in place and Florida carries out his execution tomorrow. He therefore fails the third *Barefoot* element along with the rest.

Accordingly, this Court should deny the application for stay.

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