Capital Case No. 25A1427

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 FLORIDA SUPREME COURT

RESPONSE TO APPLICATION FOR STAY OF EXECUTION
EXECUTION SCHEDULED FOR JUNE 25, 2026, AT 6:00 P.M.

Spencer, a Florida prisoner under an active death warrant with an execution scheduled for June 25, 2026, asks this Court to stay his execution for the brutal murder of his wife committed nearly 40 years ago while it considers whether to grant certiorari. The petition raises one issue[1]: (1) does the *Baze-Glossip* standard apply to a method-of-execution challenge premised on alleged failures to follow the State's lethal injection protocol. As thoroughly explained in the accompanying Brief in Opposition to certiorari, Spencer's question does not merit this Court's review. This Court should deny certiorari and then deny the stay.

[1] Spencer's Application For Stay of Execution erroneously avers to two claims, one of which is a never before raised "time bar on intellectual disability" claim.

A stay of execution is an equitable remedy, not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments. *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (citing *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004). This Court has highlighted the State's and the victims' interests in the timely enforcement of the death sentence. *Bucklew v. Precythe*, 587 U.S. 119, 149-51 (2019). Accordingly, the people of Florida, as well as surviving victims and their families, "deserve better" than the "excessive" delays that now typically occur in capital cases. *Id.* at 149. This Court has stated that courts should "police carefully" against last-minute claims being used "as tools to interpose unjustified delay" in executions. *Id.* at 150. This Court has also repeatedly stated that last-minute stays of execution should be the "extreme exception, not the norm." *Id.* Here, Spencer does not provide any unique or special argument as to why a last-minute stay is warranted in his specific case that outweighs the State of Florida's interest in enforcing the law.

To obtain a stay of execution from this Court on his long-finalized sentence,[2] Spencer must establish a reasonable probability that the Court would vote to grant certiorari, a significant possibility of reversal if review was granted, and irreparable injury to the applicant in the absence of a stay. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). He must establish ***all*** three. This Court has further emphasized that last-minute litigation, dilatory claims, and speculative theories weigh heavily against

[2] *Spencer v. Florida*, 522 U.S. 884 (1997).

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). Spencer cannot satisfy these requirements.

Speculation

Method-of-execution claims require proof of a risk that 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).

Here, Spencer's question rests on allegations that Florida's lethal injection protocol has been maladministered in prior executions. But those claims derive from heavily redacted materials that do not identify executed inmates or confirm that the listed drugs were administered. 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."). 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 Spencer does means DOC failed to accurately record the removal of drugs). At most, Spencer speculates

that deviations may have occurred, that they might recur, and that they would cause unconstitutional pain. That layered conjecture is insufficient for a stay.

Dilatory

The dilatory posture of Spencer's claim weighs heavily against a stay on the eve of his execution. Florida's "current three-drug protocol has remained essentially unchanged since 2017." *Randolph v. State*, 422 So. 3d 166, 172 (Fla.), *cert. denied*, 146 S. Ct. 819 (2025). Yet, Spencer raised his method-of-execution challenge only after the Governor signed his death warrant, even though the underlying records were available during prior warrant litigation involving other inmates. And, as the Florida Supreme Court chastised, Spencer's lawyer acknowledged that the cirrhosis diagnosis "has been in the record since 2012." Yet Spencer did not assert the condition as a basis for challenging Florida's lethal injection protocol until after the signing of his death warrant. *Spencer v. State*, No. 2026-0880, 2026 WL 1757938, at *4 (Fla. June 18, 2026). 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"). This Court has long refused to grant a stay when the capital defendant could have pursued his claim earlier. *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").

Probability of This Court Granting Certiorari Review

As to the first factor, there is little chance that four justices of this Court would

vote to grant certiorari review on the issue raised here. Spencer faces a substantial threshold question of Article III standing since the Florida Supreme Court rejected his claims on independent and adequate state-law timeliness grounds.[3] *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."). Such independent and adequate state procedural grounds[4] are strong indications that certiorari should be denied and thus the stay as well.

Even without reliance on this independent and adequate state ground to deny certiorari, the granting of certiorari is unlikely because the Florida Supreme Court found that Spencer's method of execution claim was also meritless. That determination was based on the fact that Spencer's "speculative and conclusory" allegations failed to "(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless

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[3] The Florida Supreme Court found that because Spencer's "asserted cirrhosis is untethered from the alleged deviations from protocol," the claim did not rest on a new operative factual predicate and remained untimely under rule 3.851. *Spencer,* 2026 WL 1757938 at *5.

[4] Nor has Spencer cited any conflict or unsettled question of law for this Court's review. Spencer does not argue that either of these grounds contained any justiciable legal error, and he wrongly asserts there exists a question of federal law that would warrant review by this Court. This Court's Rule 10 states that certiorari review will be granted "only for compelling reasons," which include the existence of conflicting decisions on important questions of federal law among federal courts of appeals or state courts of last resort; a conflict between the lower court's decision and the relevant decisions of this Court; or an important question of federal law that has not been but should be settled by this Court. Sup. Ct. R. 10. Despite Spencer's assertion that his petition contains an important question of federal law, that is not the case here.

suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain" as required by *Glossip v. Gross*, 576 U.S. 863, 877 (2015). *Spencer*, 2026 WL 1757938 at *4–7.

"Speculative" attacks on "settled precedent" do not warrant an execution stay either. *See Bucklew*, 587 U.S. at 149, 151. Spencer's question is controlled by precedent this Court would have to recede from to grant him any relief. That defeats his application for a stay. This Court has repeatedly held that the *Baze-Glossip* 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 Spencer identify a feasible alternative method of execution, an independent pleading requirement for Eighth Amendment claims. *Id.* at 136.

Thus, Spencer's application fails the first factor, which alone is sufficient to deny the motion for a stay.

Significant Possibility of Reversal

For similar reasons, Spencer cannot demonstrate a significant possibility of reversal. This Court does not grant review where the decision below rests on independent and adequate state law, or one that would not support reversal on the merits.

As noted above, the Florida Supreme Court applied the governing framework and correctly rejected his method of execution claim. 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. Spencer satisfied neither prong.

Irreparable Injury

As to the third factor of irreparable injury, there is none. Finality in a capital case *is* the execution, therefore the relevant inquiry is not whether the execution will occur, but whether the inmate is likely to suffer unconstitutional pain. This Court has rejected the argument that risks of improper implementation alone violate the Eighth Amendment. *See Baze*, 553 U.S. at 53–54. Spencer's speculative allegations of protocol deviations fail to establish irreparable injury. *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").

Ultimately, Spencer has no cause for concern about whether he will suffer cruel and unusual punishment during his execution. Florida has successfully implemented its etomidate protocol over forty times since its adoption in 2017.[5] 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,[6] ensure the

[5] See Florida Department of Corrections, https://www.fdc.myflorida.com/institutions/death-row/execution-list-1976-present (last accessed June 23, 2026). *See also Barr v. Lee*, 591 U.S. 979, 980 (2020) (denying a stay based in part on the number of successful executions).

[6] This Court has upheld lethal injection protocols even without consciousness checks.

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 Spencer's long final death sentence.

Spencer's execution will result in his death; that is the inherent nature of a death sentence. Spencer has identified no irreparable harm that is not a direct consequence of the valid, constitutional, and long-final death sentence that was imposed for his murder of his wife, Karen Spencer. Therefore, he fails in this factor as well.

A stay of execution is an extraordinary equitable remedy. Spencer'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 the application for stay.

Respectfully submitted,

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See Glossip v. Gross, 576 U.S. 863, 877, 886 (2015).

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