*** CAPITAL CASE ***

No. _____

IN THE

Supreme Court of the United States

RONALD PALMER HEATH,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPLICATION FOR STAY OF EXECUTION

EXECUTION SCHEDULED FOR FEBRUARY 10, 2026, AT 6:00 P.M.

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Petitioner Ronald Heath requests a stay of his scheduled February 10, 2026, execution pending this Court's consideration of his concurrently filed petition for a writ of certiorari. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983); 28 U.S.C. § 2101(f); Supreme Court Rule 23.

The standards for granting a stay of execution have been distilled into four factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies."

Nken v. Holder, 556 U.S. 418, 434 (2009) (internal citation omitted).

First, Heath has made a strong showing that he is likely to succeed on the merits as to the substance of his Eighth Amendment maladministration-of-lethal-injection claim, described in more detail in his accompanying certiorari petition. In sum, Heath's claim is based on undisputed Florida Department of Corrections ("FDOC") records showing that, over the course of an unprecedented 19 executions in the last 12 months, FDOC officials have on numerous occasions administered lethal injections using expired drugs, incorrect dosages of drugs, and drugs not called for in the State's protocol. The records also reflect mishandling of drugs and other deviations from the protocol, raising serious concerns about the FDOC's ability to properly store, transport, and maintain its supply of lethal chemicals.

By way of example, on June 25, 2025, a date corresponding to Florida inmate Thomas Gudinas's execution (which actually occurred on June 24), the inventory logs only show 10 x 10ml vials of rocuronium bromide were removed (1000mg), suggesting that FDOC only prepared half of the required paralytic drug, in violation of the

Protocol which requires 2000mg, withdrawn into 20 x 10ml vials:

6/12/25	[redacted]	JUN 2025	[redacted]	-10	530
6/12/25		3/2026		-10	520
6/25/25		3/2026		-10	510
7/16/25		3/2026		-20	490

On June 12, 2025, a date corresponding to Anthony Wainwright's execution (which occurred on June 10, 2025), seven vials of potassium acetate were removed from FDOC's inventory. This suggests that FDOC prepared only 280 milliequivalents of potassium acetate in violation of the protocol, which requires 480 milliequivalents (12 x 20ml vials):

5/1/25	[redacted]	10-2025	[redacted]	-12	277
5/15/25		10-2025		-12	265
6/12/25		10-2025		-7	258

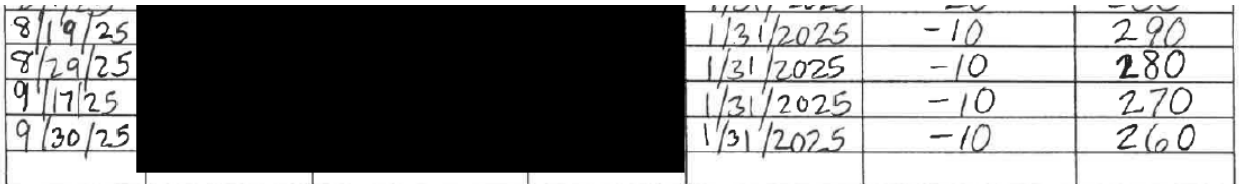
At times, FDOC implements a four-drug protocol beyond what is authorized in the current method. The logs show that during the executions of Edward James and Michael Tanzi, FDOC administered lidocaine, a drug not called for in the protocol. This indicates a level of improvisation and unpredictability beyond what is authorized.

DRUG NAME Lidocaine Hcl 1% 10ml PACKAGE SIZE 25 x 10ml

NDC# [redacted]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
1-3-2025	[redacted]		Sep 2026	[redacted]	+25	25
3/20/25			Sep 2026		-2	23
4-08-25			Sep 2026		-2	21

And finally, the records show that etomidate with an expiration date of January 31, 2025, was used during the executions of Victor Jones on September 30, 2025; David Pittman on September 17, 2025; Curtis Windom on August 28, 2025; and Kayle Bates on August 19, 2025, which is in direct violation of the protocol:



8/19/25	[redacted]		1/31/2025	-10	290
8/29/25			1/31/2025	-10	280
9/17/25			1/31/2025	-10	270
9/30/25			1/31/2025	-10	260

(6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

These errors have already manifested in anomalous executions: during at least one recent execution, the inmate labored for 20 minutes before dying and was observed moving well into the execution when movement is not expected, indicating a problem with the administration of the drugs, and distress.

Heath proffered these records, as well as a medical expert's opinion that the specific protocol deviations reflected in the FDOC logs place Heath, the next inmate Florida intends to execute, at substantial risk of severe pain if they are repeated during his execution, in violation of the Eighth Amendment. The Florida Supreme Court, treating Heath's maladministration-of-protocol claim as a traditional method-of-execution challenge, summarily denied relief, holding that Heath's claim failed under the traditional requirements of *Baze v. Rees*, 553 U.S. 35 (2008), and *Glossip v. Gross*, 576 U.S. 863 (2015), did not warrant discovery, and was based purely on speculation and conjecture—notwithstanding the undisputed FDOC records and medical opinion that Heath proffered.

The Florida Supreme Court wrongly dismissed the importance of the maladministration evidence Heath proffered, which should at least have resulted in

further evidentiary development or some kind of explanation from the State. The Florida Supreme Court also contravened this Court's precedent in analyzing Heath's claim under the traditional *method*-of-execution framework, rather than as a claim based on Florida's *maladministration* of its chosen method. The decision below thus provides an opportunity for this Court to clarify a question left open *Baze*: what are the requirements for an Eighth Amendment pattern-of-maladministration claim?

Under the proper analysis, and consistent with this Court's decision in *Baze* and *Glossip*, Heath properly pleaded and provided strong evidentiary support for his claim that Florida's pattern of maladministration creates a substantial risk of severe pain during his execution, and that Florida should be required to pause its current ad-hoc practices for an independent review and implementation of appropriate safeguards, as has been done in other states where maladministration occurred. Heath has a substantial likelihood of success on his Eighth Amendment argument.

The other stay factors favor Heath as well. It is indisputable that Heath will be irreparably harmed without a stay because he will be executed in a manner that wantonly inflicts pain and suffering, violating the Eighth Amendment. Indeed, as courts have widely suggested, irreparable injury is presumptive under warrant. *See, e.g., Wainwright v. Booker*, 473 U.S. 935, 937 n.1 (1985) (Powell, J., concurring) ("The third requirement that irreparable harm will result if a stay is not granted is necessarily present in capital cases."); *see also In re Holladay*, 331 F.3d 1169, 1177 (11th Cir. 2003) ("We consider the irreparability of the injury that petitioner will suffer in the absence of a stay to be self-evident.").

The irreparable injury in a case challenging the administration of an execution protocol is not only the execution itself, but also the superadded pain that would occur during that execution. *See Powell v. Thomas*, 784 F. Supp. 2d 1270, 1283 (M.D. Ala.), *aff'd*, 641 F.3d 1255 (11th Cir. 2011) (finding "the alleged irreparable injury is not the fact alone that [plaintiff] will die by execution," but that he may experience superadded pain "under present protocols" during that execution) (citing *Baze*, 553 U.S. at 50). This is not only because the pain during execution may be torturous, but also because a violation of constitutional rights is presumed to cause irreparable injury. *See Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996).

A stay would not substantially harm the State. While the State has a legitimate interest in the timely enforcement of valid criminal judgments, it has no legitimate interest in executing Heath in a manner that would risk the wanton infliction of pain of suffering in violation of the Eighth Amendment. *See, e.g., In re Holladay*, 331 F.3d at 1177 (finding "no substantial harm that will flow to the State of Alabama or its citizens from postponing petitioner's execution to determine whether that execution would violate the Eighth Amendment"). In fact, the State has been on notice of its documented maladministration for at least two months, and has had ample opportunity to remedy the repeated maladministration.

Finally, a stay would not be adverse to the public interest. On the contrary, the public always has an interest in the preservation of constitutional rights and, most certainly, in the dignified carrying out of a death sentence. *See Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986) (The Eighth Amendment seeks "to protect the dignity of

society itself from the barbarity of exacting mindless vengeance" when carrying out an execution.) The legitimacy of the penological system turns on its adherence to constitutional bounds. Thus, it is in the public interest to address and resolve the merits of Heath's claim to identify and prevent the unconstitutional risk of causing gratuitous suffering. Allowing the State to execute Heath without meaningful review of whether that execution violates the Constitution is adverse to the public interest.

Florida shows no signs of slowing its pace of executions or correcting the repeated and serious violations in the administration of its lethal injection protocol. It is clear that the State is unable to keep up with this pace while remaining within constitutional bounds, and unwilling to correct its errors, leaving Heath to risk suffering the consequences. The casual indifference that Florida courts have shown to this severe and imminent danger should not result in rewarding Florida with its twentieth execution in a year before a court can at least consider the merits of Heath's maladministration claim. This Court's intervention is imperative.

The Court should stay Heath's execution and grant his petition for a writ of certiorari to address the important constitutional questions raised in this case.

/s/ Sonya Rudenstine
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