*** CAPITAL CASE ***

**No. 25A892**

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*

## REPLY IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION

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

Florida argues that Heath cannot satisfy the requirements for a stay of execution because (1) his claim that the Florida Department of Corrections is maladministering its lethal injection protocol, based on a proffer of FDOC's own records showing their repeated use of expired and inappropriately dosed drugs during executions, is based on "conjecture, speculation, and imagination"; (2) Heath unduly delayed bringing his claim because the FDOC records he proffered were first made public weeks before his warrant was signed; (3) Heath's questions presented are

unlikely to be granted review or resolved in his favor; and (4) Heath will not be irreparably harmed absent a stay of execution. These arguments should be rejected.

First, Heath's claim is not based on speculation. It is based on FDOC's own execution records, which FDOC itself released through a public records request. The records plainly reflect, among other things, the use of expired drugs and inappropriately dosed drugs during recent executions. Heath's claim was also supported by an expert medical opinion on the dangers of, for instance, using expired chemicals in executions. This is not a situation where Heath sought to simply comb through FDOC's records hoping to find the basis for a claim. The basis for the claim was the already released FDOC records. And while Heath sought more information about the records and FDOC's practices, the State has refused to comply with any further requests for information, and the courts below summarily denied any discovery or evidentiary development, simply shrugging off Heath's existing proffer.

Florida's accusations of "speculation" regarding the FDOC records ring particularly hollow because the redacted records Heath proffered *are the State's own records*. At any time, the State could have provided an explanation for why its client's records reflect that prisoners are being executed with expired and inappropriately dosed drugs, but it has refused. Bizarrely, the State even offers "alternative interpretations" of the redacted records, as if it does not have access to its own client's unredacted files. Indeed, Florida could end all further speculation regarding this claim by simply explaining why its records reflect that executions are being conducted in a manner that contravenes its own protocol, and what corrective measures are now

being taken. But so far, the State has expressed no concern with the proffered FDOC records, apparently conducted no internal review, and provided Heath with no assurances that he too will not be executed in an improvisational, dangerous manner.

The closest the State comes to actually addressing the records is when it characterizes the apparent deviations as minor technicalities. *See* Response at 9 ("Not all protocol deviations are created equal."). But the deviations reflected in the State's own records reflect the use of *expired* lethal chemicals. Based on Heath's medical proffer, the state courts were aware of evidence that the use of expired lethal chemicals can produce unpredictable and dangerous results. But the risks inherent in using expired and inappropriately dosed drugs are also obvious to the average layperson, who would certainly be alarmed if, for instance, they knew they were being administered an expired or inadequate dose of anesthetic before surgery. Yet Florida expresses absolutely no concern about putting inmates to death in such a manner.

Second, the State's accusations of undue delay are puzzling. The FDOC records proffered in support of Heath's claim were first made public in November 2025, during litigation over the previous Florida death warrant, which did not resolve until late December 2025. Heath's death warrant was signed shortly thereafter, on January 9, 2026, and undersigned state-appointed counsel filed Heath's claim and proffered the records to the state courts just days later. While the claim was filed after the death warrant was signed, there would have been no meaningful difference if Heath's claim was filed the last week of December instead of the second week of January. And to the extent the State suggests that Heath should have filed his

challenge years ago, when he first became eligible for a warrant, he did not have the records at that time showing the use of expired and improperly dosed execution drugs as the documented errors only began occurring during the 2025 execution spree, and those records were only made public in late November. There was no basis for Heath's claim before the execution records were even created.

Third, the State's arguments regarding the cert-worthiness of Heath's questions presented only buttress the case for certiorari because they demonstrate a fundamental misunderstanding between a *method*-of-execution claim, and a claim that the method—while even if itself not unconstitutional—is being maladministered in violation of the Eighth Amendment. In its decision below, the Florida Supreme Court misapplied *Baze v. Rees*, 553 U.S. 35 (2008), and *Glossip v. Gross*, 576 U.S. 863 (2015), precluding relief because Heath failed to satisfy inapplicable pleading requirements. This is not due to a weakness in Heath's claim, but rather a gap in this Court's Eighth Amendment jurisprudence that warrants intervention.

Despite the State's arguments to the contrary, Heath stated a cognizable Eighth Amendment claim that necessitates this Court's intervention and instruction. This Court has left open whether standalone claims raising routine, unfettered negligence and maladministration is cognizable in the context of lethal injection. *See Baze,* 553 U.S. at 50 (acknowledging only that an "isolated mishap" would be insufficient to establish an Eighth Amendment violation). But this Court's Eighth Amendment jurisprudence favors that the willful continuation of executions despite the knowledge of such errors, which affected multiple executions over the span of at

least six months, is sufficient to support a claim. *See Farmer v. Brennan*, 511 U.S. 825, 842 (1994) ("[A]n Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm."). Furthermore, requiring Heath to fully plead an unrelated alternate execution method to a narrowly tailed challenge to documented maladministration, rather than the constitutionality of the underlying protocol itself, is an absurd application of the *Baze/Glossip* standards.

Absent this Court's clarification regarding the applicable pleading standard for a standalone maladministration claim, Florida has been granted carte blanche to carry out executions in any way it chooses, governed by only internal accountability. This is concerning in light of the proffered records, and the State's utter lack of a reasonable explanation for the errors contained within.

Finally, the State's argument that Heath will not be irreparably harmed absent a stay of execution should be dismissed. The State argues that Heath's irreparable harm argument "is based on nothing more than the speculation that DOC officials *might* deviate from the protocol by administering incorrect doses of drugs, expired drugs, or drugs not listed in the protocol." Response at 11. That is not true—Heath's argument is based on the facts that (1) FDOC's own records show that it has been repeatedly administering incorrect doses of drugs, expired drugs, or drugs not listed in the protocol over the past year; and (2) FDOC's refusal to acknowledge any problem or provide any assurances that the maladministration reflected in the

records will not be repeated during Heath's execution. And while the State repeats again that "the heavily redacted records Heath relied on did not prove that any protocol deviations occurred in prior executions," Response at 11, the State is in full control of those records and could provide an explanation for them at any time. The fact that the State has not done so is especially concerning. Indeed, the State has said nothing that would assure Heath that these violations will not happen once again.

In sum, Florida claims an absolute right to administer its lethal injection protocol in any manner it sees fit, including by improvising through the use of expired drugs, inadequate doses, and new drugs altogether, without accountability to any court of law. Because this view of absolute unaccountability does not comport with the Eighth Amendment, this Court should grant a stay of execution and intervene.

Respectfully submitted,

/s/ Sonya Rudenstine
Sonya Rudenstine
*Counsel of Record*
531 NE Blvd
Gainesville, FL 32601
(352) 359-3972
srudenstine@yahoo.com

*Counsel for Petitioner*

DATED: FEBRUARY 9, 2026