
In the Supreme Court of the United States

DENNIS SOCHOR,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE

DEATH WARRANT SIGNED
Execution Set: July 14, 2026, at 6:00 p.m.

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July 11, 2026

CAPITAL CASE

QUESTION PRESENTED

Mr. Sochor requests that his execution be stayed, and certiorari be granted to address the following questions:

Whether a state court can refuse to consider federal claims under the Eighth Amendment challenging methods of execution on the grounds that it was not brought within one year of a capital defendant's conviction and death sentence becoming final on direct appeal, notwithstanding the fact that such a time bar invariably precludes any opportunity to challenge the method that will actually be used to execute the defendant.

PARTIES TO THE PROCEEDING

Petitioner, Dennis Sochor, was the Defendant-Appellant in the Florida Supreme Court. Respondent, State of Florida, was the Plaintiff-Appellee in the Florida Supreme Court.

RELATED PROCEEDINGS

Sochor v. State, 580 So.2d 595 (Fla. May 2 1991) (affirming convictions and death sentence), *cert. granted*, 502 U.S. 967 (1991).

Sochor v. Florida, 504 U.S. 527 (June 8, 1992) (vacating Florida Supreme Court's judgement affirming death sentence).

Sochor v. State, 619 So.2d 285 (Fla. May 6, 1993) (reaffirming death sentence on remand), *cert. denied*, 510 U.S. 1025 (Dec. 13 1993).

Sochor v. State, 883 So.2d 766 (Fla. July 8, 2004) (finding trial counsel's penalty phase performance deficient but affirming denial of initial postconviction motion and denying state habeas petition).

Sochor v. McNeil, No. 0:05-CV-61534, 2009 WL 9046175 (S.D.Fla. Sept. 23, 2009) (denying federal habeas relief).

Sochor v. State, 22 So.3d 68, 2009 WL 3807964 (Fla. Oct. 30, 2009) (affirming summary denial of first successive postconviction motion).

Sochor v. State, 83 So.3d 709, 2012 WL 521212 (Fla. Feb. 8 2012) (affirming summary denial of second successive postconviction motion).

Sochor v. Sec'y, Fla. Dept. of Corr., 685 F.3d 1016 (11th Cir. June 27, 2012) (affirming denial of federal habeas relief), *cert. denied*, 569 U.S. 948 (2013).

Sochor v. State, 95 So.3d 210 (Fla. July 12, 2012) (affirming summary denial of successive postconviction motion).

State v. Sochor, No. 86-015270, 2016 WL 11975447 (Fla. 17th Cir. Ct. Sept. 19, 2016) (summarily denying third successive motion for postconviction relief).

Sochor v. State, 235 So.3d 304 (Fla. Jan. 30 2018) (affirming summary denial of fourth successive postconviction motion).

Sochor v. State, 246 So.3d 195 (Fla. Mar. 1, 2018) (affirming summary denial of third successive postconviction motion).

State v. Sochor, No. 86-15270CF10A (Fla. 17th Cir. Ct. June 23, 2026) (denying instant successive postconviction motion).

Sochor v. State, No. SC2026-0971 (Fla. July 8, 2026) (affirming denial of instant successive postconviction motion).

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The opinion of the Florida Supreme Court in this cause, is unpublished but available at *Sochor v. State*, No. 2026-0971, 2026 WL 1970441 (Fla. July 8, 2026), and attached at (Pet. App. 1a).

Citations to the record on appeal in *Sochor v. State*, No. 2026-0971, 2026 WL 1970441 (Fla. July 8, 2026), are: (WR. [page #]).

STATEMENT OF JURISDICTION

The order of the Supreme Court of Florida was entered on July 8, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend VIII.

“No State shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend XIV, § 1.

STATEMENT OF THE CASE

On June 10, 2026, Governor Ron DeSantis signed a death warrant authorizing Mr. Sochor’s execution, which the Florida Department of Corrections scheduled for July 14, 2026, at 6:00 p.m.

On June 20, 2026, Mr. Sochor filed a successive motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.851. Therein, he alleged that “newly discovered evidence shows that Florida’s lethal injection protocol consistently

causes flash pulmonary edema, resulting in the conscious perception of severe air hunger until death, in violation of the Eighth Amendment and Due Process Clause of the Fourteenth Amendment.” (WR. 1051).

Mr. Sochor pleaded his claim on plainly federal grounds. He argued that the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment prohibit “execution by a state in a cruel manner.” *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947); see, *Robinson v. California*, 370 U.S. 660, 666 (1962). “State efforts to implement capital punishment must certainly comply with the Eighth Amendment, but what that Amendment prohibits is wanton exposure to objectively intolerable risk, not simply the possibility of pain.” *Baze v. Rees*, 553 U.S. 35, 61-62 (2008) (plurality) (citation modified) (quoting *Farmer v. Brennan*, 511 U.S. 825, 846 n.9 (1994)). Accordingly, an execution procedure violates the Eighth Amendment if (a) it creates a substantial risk of serious harm and (b) an alternative method “is feasible, readily implemented, and in fact significantly reduces a substantial risk of severe pain.” *Glossip v. Gross*, 576 U.S. 863, 877 (2015). (citation modified) (quoting *Baze*, 553 U.S. at 52). If Mr. Sochor makes these showings and Florida refuses to adopt his proposed alternative “without a legitimate penological justification,” then Mr. Sochor’s Eighth Amendment claim succeeds. *See Baze*, 533 U.S. at 52.

On June 8, 2026, the United States Court of Appeals for the Eleventh Circuit found that Alabama’s protocol for execution by nitrogen hypoxia caused “a substantial risk of serious harm.” *Lee v. Comm’r, Ala. Dep’t of Corr.*, No. 26-11864, 2026 WL

1651147 *2 (11th Cir. June 8, 2026). Specifically, this “substantial risk of serious harm” was established where the district court found the person executed would “consciously experience *severe air hunger* and corresponding emotional distress, anxiety, physiological stress, and physical discomfort for *one to three minutes*.” *Id.* at *1 (citation modified) (emphasis added). The district court had previously found: “Four inmates executed under the protocol had flash pulmonary edema, which would have exacerbated their dyspnea. Flash pulmonary edema is a condition triggered by extreme distress in which *the lungs “almost instantaneously” fill with fluid, making it “extremely difficult to breathe.”* *Id.* at 4 (emphasis added).

Mr. Sochor alleged that the Florida Department of Corrections (“DOC”) Execution by Lethal Injection Procedure (“Protocol”), the protocol addressed by the Eleventh Circuit in *Lee*, will cause Mr. Sochor to consciously experience severe air hunger for one to three minutes by causing flash pulmonary edema and failing to keep him unconscious and insensate until death. Thus, the Protocol causes a substantial risk of serious harm. This is because the administration of etomidate under the Protocol is inadequate to render Mr. Sochor unconscious and insensate until death. Etomidate anesthesia is characterized by rapid onset of action, but the duration of anesthetization is relatively brief, usually three to five minutes, insufficient to maintain anesthesia throughout this process.

To support these allegations, Mr. Sochor proffered autopsy reports and associated documents from the post-mortem examinations performed after nearly every execution in Florida since 2017. Those reports indicate that every internal

autopsy of an inmate executed under the Protocol revealed evidence of flash pulmonary edema, including heavy lungs, pulmonary congestion, and the presence of frothy fluid in the lungs, bronchi, or trachea.

Based on the autopsy reports, Mr. Sochor alleged: “There is no question that Florida’s lethal injection Protocol consistently results in the infliction of pulmonary edema. Furthermore, based on the time elapsed between the beginning of the execution and the time of death, etomidate’s short-lasting anesthetic effect is sure or very likely to wear off while the inmate is experiencing pulmonary edema. In other words, the inmate will regain consciousness and experience severe air hunger, akin to drowning, for several minutes, until death. Neither etomidate nor rocuronium bromide will mitigate this sensation.” (WR. 1063). This superaddition of fear and pain will violate the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment, and that he is entitled to an evidentiary hearing on this claim that his execution under the existing lethal injection protocols violates the Eighth Amendment.

The lower court found this claim untimely and procedurally barred. The court reasoned that “Rule 3.851(d) and Rule 3.851(d)(2)(A) require the Defendant to raise this claim within 1 year after the judgment and sentence become final or within 1 year after the Defendant learned of the facts on which this claim is predicated.” (WR. 1471) (citing *Randolph v. State*, 422 So.3d 166 (Fla. 2025)). Accordingly, because the current Protocol is “dated February 18, 2025,” and the etomidate protocol “has been used for many years prior to 2025,” the lower court found this claim untimely because

Mr. Sochor did not raise it within one year of “learn[ing] of the facts on which this claim is predicated.” (WR. 1471-72).

On the merits, the state circuit court found “the current lethal injection procedures do not present a substantial and imminent risk that is sure or very likely to cause serious illness or needless suffering.” (WR. 1472). It did not address Mr. Sochor’s argument related to the Eleventh Circuit’s decision in *Lee*. Nor did the court make any findings related to the autopsy reports upon which Mr. Sochor’s claim was predicated. Most notably, the lower court failed to address Mr. Sochor’s actual allegations regarding etomidate’s inadequate duration of anesthesia.

On appeal, the Florida Supreme Court affirmed the lower court’s findings. As to timeliness, the court reasoned that “the alleged evidence supporting the assertions Sochor now makes has been available for years, including during Sochor’s previous postconviction litigation. Sochor raises these issues long after the evidence became discoverable. As such, his claim is untimely.” *Sochor v. State*, No. SC2026-0971, 2026 WL 1970441, at *3 (Fla. July 8, 2026).

As to the merits of Mr. Sochor’s claims, the Florida Supreme Court merely said, “this Court has repeatedly upheld Florida’s lethal injection protocol, including the etomidate protocol. Accordingly, we affirm the circuit court’s rejection of this claim.” *Id.* at *3 (internal citations omitted). In a footnote, the court dismissed Mr. Sochor’s arguments regarding *Lee* because “there, the defendant challenged Alabama’s use of nitrogen hypoxia as a method of execution. *Id.* at *1, 3.

This Petition follows.

REASONS FOR GRANTING THE WRIT

I. THE FLORIDA SUPREME COURT HAS EFFECTIVELY IMMUNIZED THE FLORIDA DEPARTMENT OF CORRECTIONS FROM STATE COURT ACTIONS RAISING FEDERAL METHOD-OF-EXECUTION CLAIMS.

The Supremacy Clause prohibits state courts from evading federal law and discriminating against federal causes of action. *Howlett by and through Howlett v. Rose*, 496 U.S. 356, 366 (1990). The Constitution, laws, and treaties of the United States are “the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. Art. VI, cl. 2. This provision “reflected the framers’ anxiety to preserve it [the Constitution] in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a State.” *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (quoting *Ableman v. Booth*, 62 U.S. 506, 524 (1858)). Thus, the federal judiciary’s supremacy “in the exposition of the law of the Constitution” is “a permanent and indispensable feature of our constitutional system.” *Cooper*, 358 U.S. at 18.

State courts bear “a coordinate responsibility to enforce [federal] law according to their regular modes of procedure.” *Howlett*, 496 U.S. at 367. Given jurisdiction over federal claims, “[a] state court may not deny a federal right, when the parties and controversy are properly before it, in the absence of ‘valid excuse.’” *Id.* at 369, 369 n.16. Thus, in *Howlett*, this Court admonished Florida, declaring:

A State may adopt neutral procedural rules to discourage frivolous litigation of all kinds, as long as those rules are not pre-empted by a valid federal law. A State may not, however, relieve congestion in its courts by *declaring a*

whole category of federal claims to be frivolous. Until it has been proved that the claim has no merit, that judgement is not up to the States to make.

Id. at 380.

Contrary to this prohibition, the Florida Supreme Court has built a byzantine system of nonfederal procedural rules that preclude meaningful litigation of federal method-of-execution claims in Florida courts. This Court has the authority and “independent obligation to ascertain whether a judgement defeating the enforcement of federal rights rests upon a *valid* nonfederal ground and whether that ground finds ‘*fair or substantial support*’ in state law.” *Howlett*, 496 U.S. at 366 n.14 (emphasis added) (citing *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 234 (1969); *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 454 (1958)); *Staub v. City of Baxley*, 355 U.S. 313, 318-19 (1958); *Ward v. Bd. Cnty. Comm’n of Love Cnty., Okla.*, 253 U.S. 17, 22 (1920). Because Florida has foreclosed any meaningful opportunity for capital defendants enforce their federal rights and shows no sign of self-correction, this Court’s should exercise that authority.

- a. Florida law presumptively time-bars any method-of-execution claim in which a capital defendant can challenge their actual method of execution.**

In Florida a capital defendant’s method-of-execution claim is time-barred if not brought “within one year of his conviction and sentence becoming final.” (Pet. App. 45a) (citing FLA. RULE CRIM. PROC. 3.851(d)(1)). Thereafter, such claims are subject

to summary denial unless they fit within “a narrow exception for claims based on newly discovered evidence.” (Pet. App. 45a (citing FLA. RULE CRIM. PROC. 3.851(d)(2)A)). Even then, claims predicated on newly discovered evidence “must be filed within a year of the date the evidence *could have been discovered*.” (Pet. App. 45a) (emphasis added) (citing *Bates v. State*, 416 So.3d 312, 319 (Fla. 2025)).

These rules bear no relation to the meaningful adjudication of federal method-of-execution claims. In fact, by requiring such claims to be brought within one year of finality, Florida effectively precludes capital defendants from challenging the protocol that FDOC will actually use to kill them. To illustrate, Petitioner’s conviction and sentence became final in 1991, when Florida still used the electric chair. *See generally, Provenzano v. Moore*, 744 So.2d 413 (Fla. 1999) (discussing Florida’s last electric chair execution on July 8, 1999). Plainly, Petitioner could not have challenged Florida’s lethal injection protocol in 1992. Florida did not adopt lethal injection until 2000. *See generally, Sims v. State*, 754 So.2d 657, 665-66 (Fla. 2000) (allowing Florida’s first lethal injection execution to proceed).

Notwithstanding the impossibility of challenging a method-of-execution eight years before it existed, the Florida Supreme Court held that Petitioner should have brought his instant federal claim in 1992. Because he did not, a time-bar applied from that point forward. Any federal method-of-execution claim he brought thereafter, would face summary denial in state court unless it fit the “narrow exception for claims based on newly discovered evidence.” (Pet. App. 45a).

The Florida Supreme Court has consistently affirmed the summary denial of method-of-execution claims on the same timeliness grounds. *Spencer v. State*, No. SC2026-0880, 2026 WL 1757938 *4 (Fla. June 18, 2026) (finding method-of-execution claim untimely because filed “outside the one-year timeframe” and “judgement and sentence became final nearly thirty years ago”); *Lukehart v. State*, 51 Fla. L. Weekly S139, 4 (Fla. May 27, 2026) (finding claim untimely because “sentence became final nearly twenty-five years ago when the United States Supreme Court denied [defendant’s] petition for certiorari review in 2001”); *Knight v. State*, 432 So.3d 509, 518 (Fla. May 15, 2026) (finding claim challenging protocol dated February 2025 untimely because defendant “was required to raise this claim within one year after his judgements and sentences became final”).

Even where capital defendants have raised timely method-of-execution claims within one year of finality, the Florida Supreme Court just holds that fact against them by procedurally barring subsequent claims challenging the method FDOC will actually use to execute them. *See e.g., Knight*, 432 So.3d at 518 (finding post-warrant method-of-execution claim procedurally barred where “defendant had challenged “Florida’s lethal injection procedures in his initial 3.851 proceedings”); *see also, Knight v. State*, 225 So.3d 661, 680 (Fla. 2017) (affirming summary denial of challenge to prior lethal injection protocol “because [Florida Supreme] Court has repeatedly denied such claims”).

The upshot is this: Under Florida law, capital defendants do not have any meaningful opportunity to raise federal claims challenging the method that FDOC

will *actually use to execute them*. Invariably, by the time they know which method FDOC plans to use, any method-of-execution claim will be considered time-barred unless it fits within an inapposite “newly discovered evidence” exception.

b. The Florida Supreme Court’s determination that Mr. Sochor’s federal claim was time-barred lacked fair and substantial support in state law.

Florida law “recognize[s] a narrow exception for claims based on newly discovered evidence” through which a capital defendant could raise a federal method-of-execution claim after the initial one-year limitation period. Here, Mr. Sochor’s claim was predicated on 33 previously unavailable autopsy reports, which were provided to counsel less than two months before the signing of Mr. Sochor’s death warrant. Based on these reports, Mr. Sochor alleged that *every* person executed in Florida since 2017 (when Florida adopted the current protocol) has suffered flash pulmonary edema before death. Each autopsy report contained express findings of pulmonary edema, plain evidence of pulmonary edema, or both. Mr. Sochor made detailed allegations identifying the pertinent findings and evidence in each of the reports, which were all included as attachments to his postconviction motion.

Taking a strictly literal view of when these autopsy reports “could have been discovered,” the Florida Supreme Court found that Petitioner should have raised his claim no later than 2018. *See* (Pet. App. at 3a). According to the court, “the autopsies” (the vast majority of which occurred between 2023 and 2026) “have been discoverable since the first one was conducted in 2017.” (Pet. App. at 3a). This finding is facially absurd as a factual matter. But beyond the literal impossibility of discovering the autopsy reports before they existed, the Florida Supreme Court’s ruling was premised

on a rescission from the rules that have governed postconviction discovery in Florida for 30 years. *See* (Pet. App. at 3).

To conclude that Petitioner “raise[d] these issues long after the evidence became discoverable,” the Florida Supreme Court found: “The earliest autopsies could have been discovered years ago *under the procedures outlined in chapter 119*.” (Pet. App. at 3 n.7) (emphasis added). But, “the procedures outlined in chapter 119” were off-limits for capital defendants and their attorneys until a few months ago.

In 1996, to reduce delays in postconviction discovery litigation under Florida’s general public records statute, FLA. STAT. § 119 (1995), the Florida Supreme Court promulgated FLA. R. CRIM. PROC. 3.852. *See generally, In re Amend. to Fla. R. Crim. Proc.—Cap. Postconviction Pub. Rec. Prod.*, 683 So. 2d 475, 477 (Fla. 1996). From that point forward, FLA. R. CRIM. PROC. 3.852 governed “discovery on behalf of capital postconviction defendants of public records under [FLA. STAT. § 119 (1995)], relating to proceedings for relief pursuant to [FLA. R. CRIM. PROC. 3.850 and 3.851].” *Id.* at 477. Three justices concurred to emphasize that “capital defendants should utilize [FLA. R. CRIM. PROC. 3.852] to conduct *all* discovery, including the discovery that was previously conducted pursuant to [FLA. STAT. § 119].” *Id.* at 477 (Anstead, J., concurring). Following suit, the Florida Legislature amended the relevant statutes to provide: “All requests for records in capital postconviction proceedings must be made in accordance with Florida Rule of Criminal Procedure 3.852.” 1997 FLA. SESS. LAW SERV. CH. 97-313 (West) (amending FLA. STAT. § 27.708(3)).

The rules and statutes governing access to public records for capital defendants and their postconviction attorneys have undergone several modifications. But, since the Florida Supreme Court adopted Fla. R. Crim. Proc. 3.852, it has always been understood as the exclusive means through which public records are discoverable to capital postconviction defendants. That is, until April 2026, when the Florida Supreme Court announced for the first time that the State and defendants had gotten it wrong all along.

In *Hitchcock v. State*, 431 So.3d 514 (Fla. 2026), under an active death warrant, the defendant had raised a due process claim based on the denial of access to records necessary to investigate postconviction claims—records that would have been available to any other persons as a matter of right. In denying this claim, the Florida Supreme Court wrote:

Hitchcock's argument on this point fails because it appears to be based on the inaccurate view that Hitchcock is limited to seeking public records under rule 3.852, to the exclusion of chapter 119. But rule 3.852 and section 27.7081 are there to supplement chapter 119 in the context of postconviction litigation—not to supplant.

Hitchcock v. State, 431 So. 3d 514, 525 (Fla. 2026).¹

¹ The Florida Supreme Court announced this despite neither party having briefed the issue. In fact, both Mr. Hitchcock and the State were operating under the “inaccurate view” that Rule 3.852 and Fla. Stat. 27.701 limited defendant’s ability to obtain discovery by any other method. The State has consistently argued Rule 3.852 and section 27.7081 were intended to “supplant prior methods open to capital defendants, such as Chapter 119, for demanding public records,” and that the rule is “the only sanctioned method of demanding public records in a capital postconviction case.” Lowe Motion for Rehearing Sept. 20, 2024, p. 9 (footnotes omitted).

The Florida Supreme Court relied on *Hitchcock*, which it decided just three months ago, to find that Mr. Sochor could have availed himself of FLA. STAT. § 119 to obtain the autopsy reports at any point during the last nine years, finding:

We further note that the discovery procedures for postconviction defendants found in Florida Rule of Criminal Procedure 3.852 and section 27.7081, Florida Statutes, “supplement”—not “supplant”—the chapter governing public records (chapter 119). We therefore find Sochor's argument, which highlights the limited success of inmates in obtaining public records during warrant litigation, unpersuasive. *The earliest autopsies could have been discovered years ago under the procedures outlined in chapter 119.*

(Pet. App. 47a) (citing *Hitchcock*, 431 So.3d at 525) (emphasis added).

- c. Federal claims challenging Florida’s execution protocol are foreclosed in state court until the Florida Department of Corrections decides to change the protocol.**

Having contorted 30 years of consistent postconviction discovery practice under Fla. R. Crim. Proc. 3.852 to evade Mr. Sochor’s federal claim, the Florida Supreme Court recognizes only one fact as controlling the timeliness of federal method-of-execution claims. FDOC must decide, at its sole discretion, to promulgate a new execution protocol. The Florida Supreme Court has made clear that only then will it consider such claims timely. In effect, FDOC—the agency responsible for executing Florida capital defendants—has complete discretion to determine when, if ever, it will be subject to Eighth Amendment claims.

What is more, the Florida Legislature and the Florida Supreme Court have effectively empowered FDOC to determine the substantive content of the Eighth Amendment. FDOC’s promulgation of the Protocol was detached from any

meaningful judicial, legislative, or public oversight. In juxtaposition with the state legislatures this Court envisioned in *Baze*, which played a role “in implementing their execution procedures . . . with an earnest desire to provide for a progressively more humane manner of death,” 553 U.S. at 51, the Florida Legislature effectively began and ended its involvement with one statement: “A death sentence shall be executed by lethal injection, unless the person sentenced to death affirmatively elects to be executed by electrocution.” FLA. STAT. § 922.105(1) (2005). Having abdicated its own role, the Legislature expressly exempted FDOC’s rulemaking authority as to the “policies and procedures . . . for execution of persons sentenced to death” from the ordinary channels for public input and oversight provided by Florida’s Administrative Procedure Act. FLA. STAT. § 922.105(7) (2005). Accordingly, Florida’s lethal injection protocol is a product of executive fiat, not the deliberative, democratic process contemplated in *Baze*. *See* 533 U.S. at 51; *see also, Bucklew v. Precythe*, 587 U.S. 119, 133 (2019) (noting “all of these innovations [alternate methods of execution] occurred not through this Court’s intervention, but through the initiative of the people and their representatives”).

Although the Florida Supreme Court declined to even mention it, Mr. Sochor’s first argument on appeal challenged the lower court’s summary denial of his claim on the ground that it allowed FDOC to control the scope of the Eighth Amendment, contrary to *Bucklew*. In *Bucklew*, this Court held: “An inmate seeking to identify an alternative method of execution is not limited to choosing among those presently authorized by a particular State’s law.” 587 U.S. at 139-40. The Court reasoned that,

because “the Eighth Amendment is the supreme law of the land, . . . the comparative assessment it requires can’t be controlled by the State’s choice of which methods to authorize in its statutes.” *Id.* at 140.

Nevertheless, the State had argued that Mr. Sochor’s “claim [was] insufficiently pled,” because “execution by firing squad would have to be enacted into law, valid protocols written, review, and approved, and then the qualified personnel found and trained.” (WR. 1440). In rebuttal, counsel for Mr. Sochor specifically apprised the lower court of *Bucklew*’s holding to the contrary. (WR. 1524). Regardless of *Bucklew*’s holding to the contrary, the lower court found:

[T]he Defendant has not identified a known and available alternative method of execution that entails a significantly less severe risk of pain. This Court notes F.S.S. 922.105(1) authorizes lethal injection or electrocution as the only available means of execution *in Florida*. As such this Court finds execution by firing squad is *not authorized by Florida Law and therefore not available*.

(Pet. App. 7a) (emphasis added).

This finding amounted to a complete refusal to give effect to this Court’s binding precedent, resting on grounds that *Bucklew* flatly rejected. But, more insidiously, by treating the non-existence of a Florida statute specifically authorizing firing squad as dispositive of Mr. Sochor’s federal claim, the lower court committed the exact Supremacy Clause violation that *Bucklew* sought to avoid. *See* 587 U.S. at 140. Florida’s Legislature does not and cannot control the content of the Eighth Amendment. Likewise, FDOC cannot control the Eighth Amendment’s scope simply by refusing to promulgate an execution protocol. Rather than address the lower

court's error in granting FDOC this authority, the Florida Supreme Court effectively granted FDOC control over when, if ever, capital defendants might against raise Eighth Amendment method-of-execution claims in state court.

CONCLUSION

FDOC's *de facto* control over the substance and procedural availability of federal method-of-execution claims is contrary to the Supremacy Clause and constitutes a severe defect in Florida's adjudication of federal claims. If the men whom Florida insists on marching to the death chamber every other week are to have opportunity to enforce their federal rights, then this Court must intervene.

Certiorari is warranted.

Respectfully submitted,

/s/ Paul Kalil

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