Capital Case No. 26A634

IN THE
SUPREME COURT OF THE UNITED STATES

JESSE GUARDADO,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET. AL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT

RESPONSE TO APPLICATION FOR STAY OF EXECUTION
EXECUTION SCHEDULED FOR NOVEMBER 5, 2026, AT 6:00 P.M.

On November 3, 2026, Jesse Guardado, represented by Capital Habeas Unit of the Office of the Federal Public Defender of the Northern District of Florida (CHU—N), filed a petition for a writ of certiorari in this Court in this active warrant case. He also filed an application for a stay of the execution for this Court to have additional time to decide his pending petition. This Court, however, should simply deny the petition for the reasons stated in the brief in opposition and then deny the application for a stay of the execution.

Stays of Executions

Stays of executions are not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Rather, 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. Both the State and the victims of crime have an important interest in the timely enforcement of a sentence. *Calderon v. Thompson*, 523 U.S. 538, 556 (1998); *Bucklew v. Precythe*, 587 U.S. 119, 149-151 (2019). 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. *Bucklew*, 587 U.S. at 149.

Moreover, this Court has stated, in the capital context, that "the relative harms to the parties" must still be considered, including "the State's significant interest in enforcing its criminal judgments." *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004) (emphasis added). Without finality, "the criminal law is deprived of much of its deterrent effect." *Calderon*, 523 U.S. at 555-56. And finality in a capital case is the execution. The brutal murder of 75-year-old Jackie Malone occurred over 22 years ago, in September of 2004, and Guardado's convictions and death sentence have been final since this Court denied review in 2008. *Guardado v. State*, 965 So. 2d 108 (Fla. 2007), *cert. denied*, 552 U.S. 1197 (2008) (No. 07–8094).

Guardado's Eighth Amendment challenge to Florida's three-drug protocol is sheer speculation involving a Goldilocks scenario of getting enough etomidate to remain unconscious during the consciousness check but not enough etomidate to remain

unconscious a few minutes later when the other two drugs are administered. *Guardado v. Sec'y, Fla. Dep't of Corr.*, No. 26-14027, slip. op. at 9 (11th Cir. Nov. 2, 2026) (characterizing Guardado's claim that an insufficient dosage of one drug could lead to unnecessary suffering from another drug as "speculation"). This Court has stated that federal courts, when dealing with "speculative" challenges to a state's method of execution, should "curtail" such § 1983 litigation. *Bucklew*, 587 U.S. at 151 (stating, in a § 1983 challenge to Missouri's protocol, that federal courts "can and should protect settled state judgments from undue interference by invoking their equitable powers" to "curtail" § 1983 suits "based on speculative theories"); *see also Hill*, 547 U.S. at 585 (stating that "federal courts can and should protect States from dilatory or speculative suits").

This Court has also repeatedly stated that last minute stays of executions should be the "extreme exception, not the norm." *Barr v. Lee*, 591 U.S. 979, 981 (2020) (vacating a lower court's grant of a stay of a federal execution quoting *Bucklew*, 587 U.S. at 151). This Court should curtail any further litigation by denying a stay.

The Three Factors Required for a Stay

To be granted a stay of execution in this Court, Guardado must establish three factors: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal if review was granted; and (3) a likelihood of 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 *Barefoot* factors.

Probability of this Court granting certiorari

As to the first factor, there is little chance that four justices of this Court would vote to grant certiorari review. As explained in detail in the accompanying brief in opposition, the first question is not worthy of certiorari review.

The federal district court, following an evidentiary hearing, ruled that the maladministration challenge to the protocol was meritless based on numerous findings of fact, including that the etomidate used in the executions was not expired and the Eleventh Circuit concluded that that those factual determinations were not clearly erroneous. *Guardado v. Sec'y, Fla. Dep't of Corr.*, No. 26-14027, slip. op. at 5 (11th Cir. Nov. 2, 2026). This Court does not typically grant review of questions that are fact bound. *See* Sup. Ct. Rule 10 (stating a petition for a writ of certiorari "is rarely granted when the asserted error consists of erroneous factual findings"); *United States v. Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts"); *Cash v. Maxwell*, 565 U.S. 1138 (2012) (statement of Sotomayor, J., respecting the denial of certiorari) (stating that a disagreement with a "highly factbound conclusion" is an "insufficient basis for granting certiorari."). This Court would not grant review merely to decide whether the district court's factual findings were clearly erroneous and certainly not when the determination that the etomidate was not expired was made, in part, based on the judge's in camera review of additional evidence.

And, as explained in detail in the accompanying brief in opposition, the second question is not worthy of certiorari review either. There is a threshold issue regarding state confidentiality law. The disclosure of the pharmacy logs risks disclosing the supplier of the

drugs.

There is a low probability of this Court granting certiorari review. Guardado fails the first *Barefoot* factor, which alone is sufficient reason to deny his request for a stay because he is required to establish all three factors.

Probability of this Court granting relief on the merits

As to the second *Barefoot* factor, there is little possibility of Guardado prevailing on the merits, if this Court were to grant review.

Guardado would not prevail on the merits of his Eighth Amendment challenge to Florida's protocol. He has not established that there were any deviations from the protocol, much less that the deviations presented a "substantial risk" of "serious harm" or "severe pain," as required by this Court's precedent. *Glossip v. Gross*, 576 U.S. 863, 877 (2015). Guardado was granted an evidentiary hearing in the federal district court regarding his allegations about the use of expired etomidate, post-mortem retrograde extrapolations of etomidate levels, the use of lower doses of the other two drugs than the prescribed doses in the protocol, and the use of the unauthorized drug of lidocaine, an analgesic. The district court found that the etomidate used in the six executions at issue was not expired and, in fact, the correct expiration date for that etomidate was 2027.

Nor would Guardado prevail on the issue of whether he should be granted a stay of execution to further litigate his § 1983 challenges to Florida's protocol. The equities of a stay are certainly not on his side, after he failed to carry his heavy burden

of proof at the evidentiary hearing, especially as to his main allegation regarding the use of expired etomidate. This Court has stated that stays "should be the extreme exception, not the norm." *Bucklew*, 587 U.S. at 150. It would be even more extreme to grant an inmate a stay to have a second opportunity to prove a claim after failing to do so the first time.

And he must prevail on the merits of both the Eighth Amendment issue and the stay issue in this case because both the district court and the Eleventh Circuit denied the stay in large part based on their determinations that the Eighth Amendment challenge was meritless.

Guardado would also not prevail on the second question, This Court's precedent holding there is no constitutional right to government information is to the contrary.

As explained in detail in the accompanying brief in opposition, Guardado does not have a "significant" possibility of prevailing in this Court on the merits of either question, if this Court were to grant review. Guardado also fails the second *Barefoot* factor.

Irreparable injury

As to the third *Barefoot* factor of irreparable injury, none is identified in his application for a stay. Although the execution will result in his death, that is the inherent nature of a death sentence. This Court has repeatedly held that a sentence of death is constitutional and has observed that the death penalty was, in fact, "the

standard penalty for all serious crimes at the time of the founding." *Bucklew*, 587 U.S. at 129 (stating that the "Constitution allows capital punishment"); *Glossip,* 576 U.S. at 867 (noting this Court reaffirmed that the death penalty does not violate the Constitution in *Gregg v. Georgia*, 428 U.S. 153 (1976)). And this Court made those observations in the context of § 1983 challenges to states' lethal-injection protocols.

The factors for granting a stay are taken from the standard for granting a stay for normal civil litigation, which is not a natural fit in capital cases. *Barefoot*, 463 U.S. at 895-96 (citing *Times-Picayune Pub. Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974) (Powell, J., in chambers)). In the capital context, more should be required to establish irreparable injury than the execution itself, when this Court's precedent clearly establishes that capital punishment is constitutional. Guardado has identified no irreparable harm that is not a direct consequence of his valid, constitutional, and long-final death sentence.

Guardado fails the third *Barefoot* factor, in addition to failing the other two factors.

Accordingly, this Court should deny the application for a stay.

Respectfully submitted,

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