*** CAPITAL CASE ***

No. 26A634

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2026

JESSE GUARDADO,

Petitioner,

v.

RICHARD COMERFORD, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,

Respondents.

REPLY IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION

EXECUTION SCHEDULED FOR NOVEMBER 5, 2026, AT 6:00 P.M.

Respondents urge this Court to deny a stay of execution, pointing at the outset to the State's interest in avoiding excessive delay in carrying out a death sentence. Response at 2. Far from being delayed, Guardado's § 1983 lawsuit, which raised significant questions regarding Florida's multi-faceted and pervasive maladministration of its own protocol, has been rushed through the court system since the State chose to sign his death warrant one week after he filed this action.

Under Florida law, Guardado only became warrant-eligible upon the completion of his clemency proceedings, which occurred in August 2026. *See Abdool*

v. Bondi, 141 So. 3d 529, 539-40 (Fla. 2014).[1] Guardado then timely filed his § 1983 action in the district court mere weeks later and with the expectation that it would proceed along a typical civil litigation schedule and without an impending death warrant on the horizon. Despite there being dozens of warrant-eligible prisoners in Florida, many of whom have no pending litigation, the State chose to sign Guardado's death warrant.

As Judge Pryor noted in her concurring opinion below, "[Guardado's] case has brought to light concerning facts about the Florida Department of Corrections' failure to maintain accurate records for drugs used in its executions." App. A1 (Eleventh Circuit Order Denying Motion for Stay of Execution), CA11-ECF 13-1 at 18. Respondents now seek to avoid accountability and moot out Guardado's litigation calling into question their ability to carry out a constitutionally tolerable death sentence. These efforts should not be rewarded. Because Guardado's petition presents significant questions worthy of this Court's consideration, the Court should grant a stay.

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[1] Both here and in their brief in opposition, Respondents defend the Eleventh Circuit's erroneous definition of warrant eligibility under Florida law because "[c]lemency is not part of the definition in either the [Florida] statute or the rule of court." BIO at 14 n.1; Response at 2. While clemency is an executive function in Florida, the Florida Legislature has statutorily prescribed that an individual's death sentence cannot be carried out without the undertaking of the clemency process. Specifically, although the legislature has empowered the Governor to initiate, with the signing of a death warrant, the execution of a death-sentenced individual, the Governor is only permitted to issue such a warrant if "the executive clemency process has concluded[.]" *See* Fla. Stat. § 922.052(b), (c).

Respondents call Guardado's Eighth Amendment challenge "sheer speculation." Response at 2-3. On the contrary, Guardado's lawsuit—based on the fraction of Respondents' own records that Guardado was able to obtain—presented concrete evidence of an objectively intolerable risk of harm due to Respondents' documented, routine failure to follow their own lethal-injection protocol in critical respects, including through the improper and insufficient dosing of drugs and the use of drugs unauthorized by the protocol.

Respondents rely on *Bucklew v. Precythe*, 587 U.S. 119, 125-26 (2019), and *Hill v. McDonough*, 547 U.S. 573, 577 (2006), to show why a stay is not warranted. Response at 3. But those cases differ from Guardado's in a critical respect: in both, the individuals initiated their lawsuits shortly before their previously scheduled executions. By contrast, Guardado filed this action shortly after becoming warrant-eligible and prior to a death warrant being signed. The State then opted to set Guardado's execution and Respondents are now calling for this Court to curtail his litigation owing to exigent circumstances that are entirely of their own making and in order to forestall further inquiry into the concerning issues Guardado has alleged regarding Respondents' inability to follow their own protocol.

Respondents also miscast Guardado's Eighth Amendment claim as centered on the use of expired etomidate. Response at 4. But Guardado's complaint alleged that, over the course of an unprecedented number of executions in Florida beginning in 2025, corrections officials deviated from the protocol on numerous occasions and in multiple respects—not just regarding the documentation showing the use of expired

etomidate. The evidentiary hearing held in the district court raised more questions than answers in light of significant new information that was revealed about FDOC's execution and pharmaceutical practices. As just one example, Judge Pryor noted that "[i]t is undisputed that the logs [FDOC] maintained showed that for three [] executions, [there were] no entries showing that it had used any etomidate at all." CA11-ECF 13-1 at 17-18. Such recordkeeping errors implicate the reliability of Respondents' recordkeeping as a whole and call into question their ability to carry out a constitutionally sound execution, particularly given the pre-existing risks inherent to Florida's three-drug protocol.

Regarding Guardado's second certiorari question as to the truncated discovery process afforded to him by the district court, Respondents attempt to minimize the significance of this issue by pointing to "state confidentiality law," because "[t]he disclosure of the pharmacy logs risks disclosing the supplier of the drugs." Response at 4-5. But there were options that the district court could have taken to maintain confidentiality while providing Guardado with an opportunity to review the unredacted pharmacy logs, such as permitting redactions, sealing records, or issuing a protective order. And, indeed, Respondents ultimately filed redacted versions of the pharmacy logs on the public docket in the district court.

More broadly, Respondents' concerns are belied by their past actions. Guardado's litigation is partially based on records produced by Respondents in response to records requests. It was only after a lawsuit initiated by a different death-row prisoner brought the errors in Respondents' records to light that they abruptly

stopped complying with any requests for additional records. In subsequent litigation brought by other prisoners relying on those same records, Respondents dubbed allegations of maladministration based on their own documentation to be speculative, conclusory, vague, and tenuous, refusing to acknowledge that problems were occurring yet simultaneously refusing to share further records to show that to be true. *See, e.g.*, *State v. Trotter*, No. 411986-CF-1225, Doc. 1101 (Manatee Cnty. Cir. Ct. Feb. 3, 2026); *Trotter v. State*, SC2026-0214 (Fla. Feb. 10, 2026); *Heath v. State*, SC2026-0112 (Fla. Jan. 27, 2026); *State v. Heath*, No. 011989-CF-3026A (Alachua Cnty. Cir. Ct. Jan. 20, 2026); *Walls v. Sec'y, Fla. Dep't of Corr.*, Case No: 4:25-cv-588, ECF 14 at 34-36 (N.D. Fla. Dec. 5, 2025). Then, just before the hearing, Guardado learned of new discrepancies in Respondents' records, including the use of Wite-Out to correct the expiration dates for the etomidate used in six executions. *See* CA11-ECF 13-1 at 19 (What is "even more concerning [than the errors in the logs] is Florida's response once it learned during litigation about the errors in its drug log [by using] Wite-Out liquid eraser to alter the logs. It did not make any attempt to document either in the log or elsewhere that a change had been made to the log, when the change was made, who made the change, or why the change had been made."). Respondents' pattern of behavior indicates that their true concern is not that the identity of the drug manufacturers or suppliers will be revealed; it is that, if more documentary evidence comes to light, more evidence of their own maladministration will be revealed.

As Judge Pryor observed, "this case demonstrates [that] a State's failure to maintain accurate records will invariably lead to concerns and questions about

whether the State is adhering to its protocol as well as the efficacy and constitutionality of that protocol." CA11-ECF 13-1 at 20. Here, Respondents have never adequately addressed those concerns and signed Guardado's death warrant rather than answer those questions. The issues Guardado raised are significant and implicate Respondents' ability to constitutionally carry out executions in the midst of an unprecedented execution spree in Florida.

The Court should grant a stay of execution.

Respectfully submitted,

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