IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2026-0112
L.T. No. 1989-CF-3026

RONALD HEATH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR ALACHUA COUNTY, STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

ACTIVE WARRANT CAPITAL CASE
EXECUTION SCHEDULED FOR
FEBRUARY 10, 2026, at 6:00 P.M.

SONYA RUDENSTINE
Florida Bar No. 711950
531NE Blvd.
Gainesville, FL 32601
(352) 359-3972
srudenstine@yahoo.com

Counsel for Appellant

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases:

Statutory Provisions:

Other Authorities:

REPLY ARGUMENT

I. Florida's reckless maladministration of its own lethal injection protocol violates the Florida Constitution and the Eighth Amendment, and the lower court's decision to block any further investigation violated the Fourteenth Amendment

Florida's record-setting year of executions came at the cost of competency and diligence, substantially risking severe harm when carrying them out. But, rather than reasonably addressing these errors, the State continues to deny and deflect from that reality. Despite the State's attempts to cast doubt on Heath's claim, its basis is thoroughly established: the documented negligence and maladministration by FDOC, memorialized by their own records, in carrying out at least nine executions in six months.[1] This negligence has clearly continued and was apparent during the November 13, 2025, execution of Bryan Jennings, which lasted over 20 minutes with observable movement well into the execution. The errors raised in the FDOC execution logs, raised in this Court after an anomalous

[1] These are just the records available to Heath. The State has blocked further requests to determine what, if any, other errors occurred during the 19 executions in 2025.

execution with issues that can be explained by the presence of those errors, merit judicial intervention.

The State has made no effort to explain the discrepancies in the records. Instead, and somewhat puzzlingly, the State opts to deny that any error occurred. To the extent that the State engages with any of the evidence proffered by Heath, it does so by simply referring to the issues as speculation, hiding behind redactions that FDOC itself applied. But the State's failure to provide a legitimate explanation regarding the reason for the repeated maladministration of its protocol or any steps that have been taken to remedy them simply increases the need for intervention by this Court, otherwise the errors will continue with impunity, leaving Heath at imminent risk of unconstitutional pain.

The State's assertions that "the records are not clear" is concerning and demonstrates, at a minimum, the need for further discovery, review, and evidentiary development. AB 17. The State is essentially asking this Court to disregard its own maladministration and errors and grant it permission to handle lethal pharmaceuticals however it sees fit, without oversight and in secret. This lack of scrutiny violates the Constitution. This is because it squarely

contradicts the language of the Eighth Amendment, which, as acknowledged in the lethal injection protocol itself, forbids any execution that will "involve the unnecessary lingering or the unnecessary or wanton infliction of pain and suffering." PC-R3. 465. Indeed, the protocol specifies that the "guiding principles of the lethal injection process are that it should not be of long duration, and that…the entire process of an execution should be transparent." *Id.*

The FDOC records show issues with the application of the protocol that go far beyond conjecture—the administration of inaccurate (and lower) dosages than required, the administration of expired drugs, and the preparation of unauthorized drugs altogether. Throughout its answer brief, the State struggles to explain the errors, likely because it recognizes that it is unable to do so without admitting that it has not been following the protocol. This Court should not be satisfied and should remand in order to safeguard Heath's constitutional rights.

A. The State misconstrues the nature of Heath's Fourteenth Amendment argument in an effort to block any further evidentiary development

Contrary to the protocol's stated goal of transparency, the State has attempted to obstruct the development of this claim at every

turn, and it does so again before this Court by misconstruing the Fourteenth Amendment aspect of Heath's argument as an asserted "constitutional right to discovery." AB 34.

Heath met the required evidentiary standard in the circuit court because he timely presented a colorable claim, supported by law and facts, pursuant to this Court's instruction in *Tompkins v. State*, 872 So. 2d 230, 244 (Fla. 2003) (finding that a defendant is entitled to public records after a death warrant is signed if he "show[s] how the requested records relate to a colorable claim for postconviction relief…"). To be colorable, a claim does not need to be likely to prevail, but rather it must be "plausible" and "reasonably asserted." *Colorable Claim, Black's Law Dictionary* (12th ed. 2024).

Procedural due process concerns arise whenever a state agency tasked with carrying out executions withholds information and "constrain[s] the ability of death-row inmates to challenge the constitutionality of [their states'] execution process." *First Amend. Coal. of Ariz., Inc., v. Ryan*, 938 F.3d 1069, 1072 (9th Cir. 2019). Here, Heath met the requisite legal standard by showing that his allegations were "plausible" because he provided evidence that the errors he fears will repeat have consistently occurred in multiple

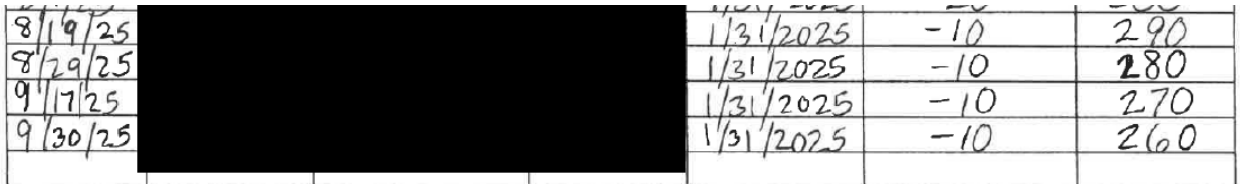
executions, with no scrutiny or remediation by FDOC. The denial of Heath's requests violated due process.

B. The Constitution does not afford the State the presumption that FDOC will follow its own protocol when the logs show that FDOC has repeatedly not followed the protocol

The State first attempts to persuade this Court that the troubling records are insufficient to "overcome the presumption that DOC will follow its own protocol." AB 21. But the records themselves show that FDOC has consistently not followed its protocol. In other words, whatever presumption FDOC may have been entitled to has been rebutted by the proffered logs, making further discovery and evidentiary development appropriate. The Court should flatly reject the State's invitation to overlook its maladministration and errors with the protocol and allow it to continue to enjoy a presumption that they are carrying out the protocol correctly. And while the State attempts to use the redactions to the proffered records as another reason for this Court to disregard them, it does not deny that FDOC itself made the redactions, which do nothing to shield the fact that the State has been executing prisoners using expired drugs, inappropriate dosages of drugs, and drugs not called for the protocol.

The cases the State cites more strongly support Heath's position than its own. *See, e.g.*, *Hannon v. State*, 228 So. 3d 505, 509 (Fla. 2017) ("Hannon presented *no new evidence* that would require us to reconsider our recent approval of the three-drug protocol, therefore, no discussion of that portion of the claim is necessary.") (emphasis added); *Deparvine v. State*, 146 So. 3d 1071, 1104 (Fla. 2014) ("Deparvine does not offer any specific rationale for why the lethal injection procedures are unconstitutional…"). Unlike in those cases, Heath pleaded a narrow claim pertaining to a specific, documented period in which FDOC repeatedly erred in carrying out their execution protocol. Here, Heath's claim was supported by FDOC's own records. There was no speculation involved in Heath's presentation of the maladministration of the protocol.

In the few instances where the State attempts to address the protocol violations directly, the most it can muster is that the records "do not clearly show protocol deviations." AB 22. But such an argument ignores undebatable, repeated protocol violations: for example, the administration of etomidate with an expiration date of January 31, 2025, throughout August and September 2025:



PC-R3. 510.

The State's position essentially provides FDOC full discretion, without oversight, to handle lethal, taxpayer-funded chemicals in any manner, even in violation of state statutes. This entirely contradicts both the protocol's stated goal of transparency and more importantly, the Constitution. PC-R3. 465. For example, the State contends that "[i]t was pure postulation" to assume that the expired drugs or incorrect dosages of drugs were being removed for the purpose of executions. AB 21. Yet the State fails to provide any reasonable explanation for its handling of all three (and sometimes four, when the FDOC opts to implement an unauthorized four-drug protocol) execution drugs on dates corresponding to executions, if not for the purpose of carrying out the protocol. Not only would the State's position be reckless and irresponsible, but it would be patently unconstitutional.

To that end, regarding the usage of lidocaine, the State simply contends that, "[j]ust because DOC either received or used lidocaine

at some point close to when executions were occurring does not in any way show that lidocaine was being used during executions." AB 23.[2] This simply underscores the need for further discovery and evidentiary development of this claim, as the records clearly show the withdrawal of lidocaine from the drug supply on March 20, 2025, and April 8, 2025. PC-R3. 500. These dates correspond with the executions of Edward James on March 20, 2025, and Michael Tanzi on April 8, 2025. *See* DEATH PENALTY INFO. CTR., *Execution Database*, available at https://deathpenaltyinfo.org/facts-and-research/data/executions.

While the State insists that, even if the records indicate that FDOC "either received or used lidocaine at some point close to when executions were occurring," this "does not in any way show that lidocaine was being used during executions." AB 23. The State is apparently offering the explanation that, on the date of an execution, lidocaine may have been withdrawn and administered to the executed inmate for some unknown reason, or potentially to another

[2] Certainly the State knows whether or not the lidocaine was used in these executions. If it was, the State's argument is disingenuous and lacks candor to this Court.

death-watch inmate, and it is purely a coincidence that this happened on the date of an execution and is memorialized in execution drug logs. This explanation is not credible.

Any documented use of an unauthorized drug close in time to an execution should be clarified because, as proffered in the circuit court through Dr. Zivot, "lidocaine is a drug with associated adverse effects, including allergy and toxicity, and there is a substantial likelihood that, through mistakes and delays, its usage could contribute to a torturous execution." PC-R3. 483.

The fact that the documented errors consistently occurred over the span of six months, involving a minimum of nine executions, and have not been sufficiently explained by the State at all, is sufficient to overcome the presumption that FDOC will continue its pattern in not following its own protocol. And the fact that Heath was unable to argue with specificity whether "any current or prospective member of the execution team" is likely to "intentionally or unintentionally" deviate from the protocol, AB 23, is due in large part to the circuit court's perfunctory denial of the requested public records and evidentiary development concerning the training of the same. PC-R3. 407. A remand for discovery and evidentiary development hearing is

necessary to fully and adequately review the reason for the maladministration and errors and to determine how to protect Heath from the substantial likelihood of severe harm.

C. The State misinterprets the requirements of *Baze* in an attempt to evade accountability for its maladministration of the lethal injection protocol

In alleging that there are appropriate safeguards in place, the State conflates this instant challenge with those attacking the constitutionality of the protocol more generally. Such logic is inapplicable here, where Heath is raising a narrow challenge to FDOC's *administration* of the protocol, with documented evidence showing that the process and practice is rife with error.

To the extent that the State repeatedly offers that Heath's claim is speculative and somehow unsupported by the proffered FDOC records, this Court's reasoning that "speculation cannot substitute for evidence," *Valle v. State*, 70 So. 3d 530, 549 (Fla. 2011); *Pardo v. State*, 108 So. 3d 558, 561 (Fla. 2012), appears in cases where there was already evidentiary development that could be relied on. Similarly, in other cases cited by the State, such as *Long v. State*, 271 So. 3d 938, 945 (Fla. 2019), *Valle*, 70 So. 3d at 549, and *Howell v.*

State, 133 So. 3d 511, 522 (Fla. 2014), this Court only rendered an opinion after extensive evidentiary development.

The State's other arguments challenging Heath's pleading regarding substantial and imminent risk are similarly misguided. For example, the State relies on certain provisions of the protocol, like the required consciousness checks, to assure this Court that Heath does not face any harm. Yet the State's reliance on such safeguards is misplaced and is wholly inapplicable in this context. The protocol's required consciousness checks will do nothing to protect an inmate when the protocol is administered incorrectly. This is because, as mandated by the protocol, consciousness checks occur after the first dosage of etomidate, the sedative drug, is administered. PC-R3. 476. And yet, if the inmate is still conscious after the routine consciousness check, the protocol simply instructs executioners to administer a second dose of 200mg of etomidate. *Id.* This safeguard would be wholly ineffective in a situation where, as documented multiple times in Heath's proffered records, the etomidate in question is expired, or FDOC did not prepare the required amount, and no safeguard is actually available. PC-R3. 490, 492, 510.

Absent a functioning safeguard, Heath has indeed proven that he faces a substantial risk of imminent harm. The State's contention that Heath's claim should fail because he "does not know" the effectiveness of expired etomidate, AB 30, again invokes circular logic that this Court should disregard. The questionable chemical properties of an expired drug create a situation wherein state officials are injecting an enormous dosage of a potent, and unpredictable, lethal chemical into an inmate's veins. And as discussed above, the only safeguard in place would be either a *second* dosage of the same unpredictable and potentially weak chemical, or nothing at all. Should something be amiss with the first chemical, Heath will quickly be rendered unable to communicate any pain or suffering because a dosage of a paralytic drug will quickly follow. The State's casual dismissal of a medical professional's basic conclusion that "timing, quantity, and quality of the drugs matter," AB 30, encompasses precisely why this Court must intervene and rectify this potential harm before it is too late.

The State's disregard for the effect these errors have on the inmates who are executed contradicts the stated goals of the protocol itself, which, as noted above, is dictated by the "guiding principle[]"

that a lethal injection "should not be of long duration." PC-R3. 465. To that point, the State casually disregards the real likelihood that Bryan Jennings, executed on November 13, 2025, experienced an unconstitutional level of pain and suffering. As described above, Jennings's execution lasted over 20 minutes, much longer than the average duration of 12 to 15 minutes, and included documented movement well into that period. As Dr. Zivot explained in his declaration, "[t]his movement could be explained by an issue with the drug potency, dosage, or other unexplained issue. Regardless, it is an indicator of distress, and it is my conclusion that Jennings suffered a drawn-out, torturous execution that resulted in needless suffering." PC-R3. 482. And again, rather than offer an explanation, the State merely discards the description of the execution, based solely on the assertion that "[a] twenty-minute execution is hardly cause for concern from an Eighth Amendment perspective." AB 31.

The State's legal analysis is simply inapposite to Heath's instant allegations. For example, in *Rogers*, this Court considered an appellant's as-applied challenge and the speculation that the appellant would suffer an adverse reaction to the lethal injection protocol. 409 So. 3d 1257, 1268 (Fla. 2025). The Court also

addressed similar concerns in *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024). These cases are different because here, Heath proffered records showing that FDOC has repeatedly committed the violations he alleges are likely to occur again during his execution, and tied these errors to the result of a recent execution. *Schwab v. State*, 969 So. 2d 318, 321 (Fla. 2007)

By attempting to claim that Heath's instant evidence showing the history of prior maladministration is not cognizable under *Baze*,[3] the State misleads by relying upon a distinguishable federal case, *Clemons v. Crawford*, 585 F.3d 1119 (8th Cir. 2009). For one, the reason the court there rejected the inmates' lethal injection challenge was because the primary doctor and nurse who had deviated from Missouri's protocol no longer worked at the prison. *Id.* at 1128. Heath does not have the benefit of similar information due to the State's insistence on total secrecy, nor has the State provided any sort of similar assurance in its brief. Moreover, the Eighth Circuit acknowledged, concerning the prisoners' claims of incompetence of executioners, that "the prisoners set forth absolutely no factual

[3] *Baze v. Rees*, 553 U.S. 35, 71 (2008).

allegations suggesting incompetence…" *Id.* at 1127. The court found that, absent that evidence, the prisoners failed to state a claim. Not only is *Clemons* thus distinguishable, but none of the cases the State cites concern a situation where an appellant is able to show months of violations involving, at a minimum, nine executions.

The State takes the Supreme Court out of context, and far too literally, in emphasizing the "abortive attempts" language found in *State of La. ex rel. Francis v. Resweber*, 329 U.S. 459, 471 (1947) (Frankfurter, J., concurring), and insisting that "all of the inmates executed in 2025 were executed on schedule." AB 32. This argument prioritizes the appearance of propriety during executions over the medical reality. Even the other case cited by the State, *Barber v. Ivey*, 143 S. Ct. 2545, 2545-46 (2023) (Sotomayor, J., dissenting), concerned a situation where, when faced with similar allegations of repeated ineptitude during prior executions, the state of Alabama had already paused executions to conduct a "top to bottom" review of its protocol before the execution of Barber was set. *See Barber v. Gov. of Ala.*, 73 F.4th 1306, 1326-27 (11th Cir. 2023) (Pryor, J., dissenting). Citing this case in an attempt to avoid the internal accountability and review Heath seeks therefore rings hollow.

The facts present in this challenge are sufficient to support the first requirement of *Baze,* and the State has failed to prove otherwise. Because the State has provided no assurances that the source of the documented errors has been rectified and are unlikely to be repeated, and there has been no internal review, proves that this claim warrants the judicial intervention sought.

Finally, the State stretches credulity in suggesting that Heath did not sufficiently allege a readily available and reasonable alternative. *See Glossip v. Gross,* 576 U.S. 863, 877 (2015). In a maladministration case, the alternative is for the State to rectify its violations of the protocol and actually follow the protocol correctly with appropriate safeguards to minimize the risk of unconstitutional pain. That is the alternative that Heath has clearly, consistently, and thoroughly proffered throughout this litigation. Because Heath is not challenging the constitutionality of the current protocol in its entirety, a pause for internal review and accountability would be a sufficient solution to the issues posed.

Heath offered a second alternative, in the event that Florida is still unable, even after implementation of appropriate review of safeguards, to carry out lethal injection according to the protocol. In

that event, Heath noted, the State could implement another method altogether, such as the firing squad. The State's complaint that Heath's second alternative was proffered in a footnote—in a pleading that circuit courts refuse to extend beyond 25 pages—should be dismissed. The State's reliance on how these alternatives were plead is simply an effort to evade accountability for its past mistakes with an inapplicable argument.

II. The State wrongly argues that it can shroud its clemency process in total secrecy to avoid federal due process review

The State argues that Florida can shroud its clemency process in total secrecy and avoid any federal due process review, AB 36-45, despite the fact that the highest federal court with jurisdiction over Florida recently reaffirmed that "death-row prisoners have a due-process interest in the context of state clemency proceedings." *Barwick v. Gov. of Fla.*, 66 F.4th 896, 902 (11th Cir. 2023). Binding federal law provides that a "death row prisoner's life interest secured by the Due Process Clause necessitates that some minimal procedural safeguards apply to clemency proceedings." *Id.* (citing *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1988)) (internal quotations and alterations omitted). Yet the State argues

that it can withhold every record relating to Heath's clemency proceedings, while at the same time dismissing any due process concerns as speculative because they are not supported by the records the State keeps secret. These arguments should be rejected.

The State first attempts to avoid the issue entirely by arguing that Heath's claim is untimely and procedurally barred. AB 36-39. This argument makes little sense under the Eleventh Circuit's decision in *Barwick*, which makes clear that federal due process claims regarding clemency do not ripen until a death warrant, provided that the warrant was issued at the same time as the clemency denial, as Heath's was. *See Barwick*, 66 F.4th at 902 (explaining that, until a warrant, a Florida prisoner "ha[s] no reason to challenge the State's executive clemency process."). To the extent the State argues that this Court's state-law precedent regarding clemency supersedes the Eleventh Circuit's holding with respect to federal due process claims, that argument conflicts with the United States Constitution's Supremacy Clause. This Court is obligated to follow *Barwick* on issues of federal law, and Heath's claim is timely and not procedurally barred under the clear language of *Barwick*.

On the merits, the State emphasizes that a clemency process must only meet some *minimal* level of due process. AB 39-41. But by keeping every single record related to Heath's—and every Florida defendant's—clemency proceeding shrouded in total secrecy, there is no way for this Court or the United States Supreme Court to know whether even a minimal level of due process was afforded.

Florida has not granted clemency to a death row prisoner in over 40 years. Federal law provides that Florida's clemency proceedings must meet a minimum standard of due process. Heath is entitled to at least some information to determine whether his denial was simply a coin flip or rubber stamp. With his execution imminent, Heath's interest in access to his clemency records far outweighs any nebulous concerns the State may have about confidentiality. This Court should clarify that, if the Supreme Court has established a federal right exists, a State may not thwart investigation or enforcement of that right on confidentiality grounds.

III. The State's procedural arguments misunderstand and distort Heath's claim based on his youth incarceration

The State first misconstrues Heath's claim by stating that it is "procedurally barred because [it is] a variation[] of his previously

rejected claim that counsel rendered ineffective assistance for failure to present evidence Heath was sexually abused as a juvenile while in prison." AB 49. But Heath's current claim, arising out of new science and Eighth Amendment consensus, is not a variation of his previous claim concerning his Sixth Amendment right to the effective assistance of counsel. Heath could not have discovered the basis for his current claim at the time of his initial postconviction litigation because Dr. Akinsulure-Smith's 2025 report, and the scientific research it relied upon, was not available until recently. Nor was an Eighth Amendment consensus yet developed. IB 46-47.

Moreover, the State inadequately addresses Heath's argument that his claim should not be subject to state-law procedural bars consistent with the Eighth Amendment. The State ignores Heath's argument that his brain development was stunted at the time of the offense, such that he was "categorically less culpable than the average criminal." *Atkins v. Virginia*, 536 U.S. 304, 316 (2002). Heath's evidentiary proffer demonstrates for the first time that his brain development was halted such that his brain was functioning as a youth offenders' brain would. For the same reasons the Supreme Court invalidated the death penalty for youth offenders, *see Roper v.*

Simmons, 543 U.S. 551 (2005), this Court should find Heath ineligible for execution, and address the merits of his claim.

Regarding the merits, the State dismisses the significance of Heath's experiences suffering violence as a youth in an adult prison. AB 50. There, Heath was repeatedly sexually assaulted by adult inmates. To survive in these conditions, Dr. Akinsulure-Smith concluded that Heath's development was stunted, giving rise to "impaired reasoning, and poor decision-making skills leading to poor judgment." PC-R3. 528.

The State does not address the evidence Heath presented showing that psychologists who evaluated him during his first incarceration noted he exhibited immature emotions, impulsivity, and lack of insight. PC-R3. 555, 557. These observations were unrecognized signals that his brain development had been stunted while incarcerated. PC-R3. 528. It is now clear that, beginning at age 16, Heath's brain development was stalled due to his particularly traumatic incarceration, which ultimately slowed his maturation.

Dr. Akinsulure-Smith's findings are directly in line with the findings relied on by the Supreme Court in *Roper*. Finding three general differences between juveniles and adults, the Supreme Court

held that "juvenile offenders cannot with reliability be classified among the worst offenders." *Roper*, 543 U.S. at 569. Dr. Akinsulure-Smith's report establishes that at the time of the offense, Heath exhibited the same underdeveloped sense of responsibility and lack of maturity that *Roper* was concerned about. While the State fails to even address this issue, the Court should conclude that Heath's undeveloped brain rendered him less culpable than adult offenders—and thus, ineligible for a death sentence.

This Court should not apply the Conformity Clause to bar review, as the State suggests. AB 50-51. State courts may not abdicate their duty to engage in independent Eighth Amendment analysis. *See Trop v. Dulles*, 356 U.S. 86, 101 (1958) ("The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."). The Conformity Clause improperly allows Florida to opt out of its "critical role in advancing protections and providing the [United States Supreme Court] with information that contributes to an understanding" of how constitutional protections should be applied.

Hall v. Florida, 572 U.S. 701, 719 (2014). Because the Conformity Clause conflicts with the Eighth Amendment, the Clause must yield.[4]

IV. The State's unanimity arguments are wrong on both procedure and substance

The State, like the circuit court, misunderstands what constitutional violations Heath alleged previously and in this appeal. Both contend that Heath challenged his non-unanimous verdict in

---

[4] Notably, the State routinely ignores the Conformity Clause when seeking the death penalty pursuant to statutes that do not comport with the Eighth Amendment. There are currently four cases in Florida where the State is seeking death for capital sexual battery, despite *Kennedy v. Louisiana*, 554 U.S. 407 (2008), clearly precluding capital punishment for non-homicide offenses, and the Conformity Clause presumably binding Florida to that precedent. *See* Dimeco Henderson, No. 2025-CF-000489, Notice of Intent to Seek Death Penalty (Putnam Cty., June 19, 2025); Josue David Mendez-Sales, No. 2025-CF-006128, Notice of Intent to Seek Death Penalty (Palm Beach Cty., Oct. 3, 2025); Pablo Neftaly Cobon-Mendez, No. 2025-CF-006118, Notice of Intent to Seek Death Penalty (Palm Beach Cty., Oct. 3, 2025); Nathan Holmberg, No. 2025-CF-001645, Notice of Intent to Seek Death Penalty (Hernando Cty., Nov. 10, 2025).

In fact, since Heath's death sentence was imposed, Florida has designated itself as an even greater outlier from the rest of the country by: (1) mandating capital punishment for "an unauthorized alien" who is convicted of a capital felony, *see* Fla. Stat. § 921.1426, in contravention of *Woodson v. North Carolina*, 428 U.S. 280 (1976); (2) authorizing capital punishment for those convicted of sexual battery of a victim under 12, s*ee* Fla. Stat. § 794.011; and (3) authorizing capital punishment for those convicted of human trafficking vulnerable persons, *see* Fla. Stat. § 921.1427, both in contravention of *Kennedy*. This one-sided view of the Conformity Clause highlights the unworkability of this Court's precedent.

his initial postconviction motion, but this is factually incorrect. *See* AB 53. As stated in Heath's initial brief, his 2005 initial postconviction motion challenged the constitutionality of his jury's non-binding sentencing recommendation and failure to specify the aggravating factors. PC-R1. 122-23. It did not speak to Heath's non-unanimous verdict. Attempts to distort and equate Heath's past and present claims serve only to distract from the constitutional violation being alleged—that non-unanimous sentencing verdicts do not comport with evolving standards of decency.

The State's argument that Heath's unanimity claim is untimely is also unpersuasive, and conveniently ignores the crux of Heath's argument: *today's* social consensus and relevant Supreme Court precedent dictate that his 10-2 jury verdict violates the Eighth Amendment. Such consensus was not ripe at the time of Heath's direct appeal. Similar logic undercuts the State's argument that though this claim was raised previously, it is also procedurally barred for being previously raised. Heath's initial *Ring* claim and successive *Hurst* claim were raised pursuant to new precedent, 14 years apart, a significant distinction. *See Sears v. Warden GDCP*, 73 F.4th 1269,

1286 n.10 (11th Cir. 2023) (explaining the distinction between new claims and clarified renditions of previously raised claims).[5]

Finally, the State argues that "the right to a jury comes from the Sixth Amendment," AB 56, but in determining the proper scope of the Eighth Amendment, courts must look to the evolution of juror unanimity. *Ramos v. Louisiana*, 590 U.S. 83 (2020)—the Supreme Court's most recent opinion that chronologized the requirement of juror unanimity—is therefore instructive here. Though focused on the Sixth Amendment, *Ramos* detailed how unanimity has been required to convict defendants of serious offenses since common law. Certainly, there is no more serious offense than murder, and no more serious penalty than death. *See Furman v. Georgia*, 408 U.S. 238, 298 (1972) (Brennan, J., concurring). Heath's death sentence, based on a non-unanimous jury verdict, violates the Eighth Amendment.

CONCLUSION

This Court should stay Heath's execution, reverse the circuit court, and remand for further proceedings.

[5] As argued above, the State's attempts to invoke the Conformity Clause with respect to this claim should also be rejected.

Respectfully submitted,

/s/ Sonya Rudenstine
Sonya Rudenstine
Fla. Bar No. 711950
531 NE Blvd
Gainesville, FL 32601
(352) 359-3972
srudenstine@yahoo.com

Counsel for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been furnished via electronic service to all counsel of record, on this 28th day of January 2026.

/s/ Sonya Rudenstine
Sonya Rudenstine

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was generated in Bookman Old Style 14-point font, is not proportionately spaced, and complies with the requirements of Florida Rule of Appellate Procedure 9.210(a)(2) because it meets the word and page limit requirements.

/s/ Sonya Rudenstine
Sonya Rudenstine