IN THE SUPREME COURT OF FLORIDA
CASE NO: SC2026-0574

JAMES HITCHCOCK,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE _ JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA
Lower Tribunal No. 481976CF001942000AOX

REPLY TO THE STATE'S ANSWER BRIEF ON THE MERITS

CAPITAL CASE - DEATH WARRANT SIGNED

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PRELIMINARY STATEMENT ABOUT THE RECORD

The postconviction record on appeal for the current death warrant litigation consists of one volume and is referenced to as "PCR" followed by the page number.

References to Appellant's Initial Brief filed on April 15, 2026, are cited as "IB/" followed by the page number(s).

References to the Appellee's Answer Brief on the Merits ("Answer Brief") filed on April 16, 2026, are referred to as "AB/" followed by the page number(s).

INTRODUCTION

The Petitioner, James Hitchcock ("Mr. Hitchcock"), relies on arguments presented in his Initial Brief, filed on April 15, 2026; he offers the following Reply to State's Answer Brief on the Merits filed on April 16, 2026. Any arguments not contained herein should not be considered waived, and Mr. Hitchcock relies on the merits raised in his Initial Brief.

ARGUMENT

CLAIM 1:

I. The circuit court abused its discretion in denying Mr. Hitchcock's demands for additional public records from the Florida Department of Corrections ("FDOC") and the Florida Department of Law Enforcement ("FDLE"). The circuit court's abuse of discretion amounted to a violation of Mr. Hitchcock's rights to due process, equal protection, and access to the courts as guaranteed by the U.S. and Florida Constitutions.

Discretion is abused only when judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable person would take the view adopted by the circuit court. *State v. Coney*, 845 So. 2d 120, 137 (Fla. 2003) (*quoting*, *White v. State,* 817 So. 2d 799, 806 (Fla. 2002)).

Mr. Hitchcock relies on the arguments raised in his Initial Brief to support his contention that he met the manufactured burden to connect his demands for additional records to a colorable claim. Despite the absence of any "colorable claim" language in the statute, Mr. Hitchcock maintains that his demands not only fulfilled the requirements of the statute, but also the additional, manufactured burden imposed by the agencies and the courts, in violation of his due process and equal protection rights under the Fifth and

Fourteenth amendments to the U.S. Constitution and corresponding provisions under the Florida Constitution.

Although this Court has found, and the Respondent argue, that demands for additional public records must identify a colorable claim to protect against alleged fishing expeditions, any requirement that forces a capital postconviction inmate to overcome additional obstacles is a violation of Mr. Hitchcock's rights under the U.S. and Florida constitutions. The requirement is to identify a colorable claim, not to prove its merits prior to even a case management conference occurring. This very court recognized this in *Willacy v. State*, providing the definition for the term "colorable claim" "follows from the rule's mandate—that requested records be relevant to a postconviction proceeding or reasonably calculated to lead to admissible evidence. In this context, the relevancy of the requested records, or their ability to be reasonably calculated to lead to admissible evidence, is directly measured by their connection to a colorable claim for relief." No. SC2026-0519, 2026 WL 1021168, at *5 (Fla. Apr. 15, 2026).

The circuit committed an abuse of discretion by denying Mr. Hitchcock access to the requested records through the requirement

that capital postconviction inmates identify a colorable claim, despite said requirement not being enumerated in the Florida statutes or rules of criminal procedure. Additionally, the circuit court erred in concluding that Mr. Hitchcock failed to identify a colorable claim. Mr. Hitchcock presented evidence from the *Walls* case[1] that indicate that FDOC has failed to follow their own lethal injection protocols during several recent executions. The requested records are directly connected to a colorable claim for relief. It cannot be logically argued that lethal injection protocol records would not be directly connected to a challenge to Florida's use of lethal injection execution protocol. This is consistent with this Court's recent holding in *Willacy v. State* decided April 15, 2026.

A plain reading of the *Walls* records supports Mr. Hitchcock's concerns, and neither the State nor any involved agency have offered a reasonable alternative explanation to Mr. Hitchcock's reading of the *Walls* records. Furthermore, the existence of questionable entries in the *Walls* records sufficiently overcome any presumption that the agencies are complying with the requisite lethal injection protocol. If

[1] *Walls v. Dixon,* No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025)

Mr. Hitchcock were misreading/misinterpreting the *Walls* records as the Respondent has alleged, then either the agencies and/or the State should be able to offer an acceptable explanation.

The Respondent's Answer Brief cites to this Court's finding in *Willacy v. State*, No. SC2026- 0519, 2026 WL 1021168, at *6 (Fla. Apr. 15, 2026). Mr. Hitchcock argues that he should be allowed the opportunity to present testimony from Dr. Buffington, an expert in pharmacology, regarding the importance of the information requested in Mr. Hitchcock's public records demands. Dr. Buffington's testimony would allow this Court to assess the error in the circuit court's determination that Mr. Hitchcock failed to show how the requested records relate to a colorable claim. The Respondent's citations to past cases that preceded the revelations contained within the *Walls* records are not relevant to this Court's consideration, because the constitutional claims raised in those cases were not based on the same premise.

The continued denial of access to the requested records violates Mr. Hitchcock's rights to due process and access to the courts, because an affirmation of the circuit court's denial would operate to prevent not only Mr. Hitchcock, but also any other capital

postconviction inmate from raising a maladministration claim at any point in the postconviction litigation, in perpetuity.

Furthermore, unlike capital postconviction inmates in other states, Mr. Hitchcock and other similarly situated capital postconviction inmates in Florida are precluded from raising a challenge under the *Baze-Glossip*[2] framework (or any Eighth Amendment challenge). Therefore, because Florida imposes additional requirements for capital postconviction inmates which operate to prevent them from making a *Baze-Glossip* (or any Eighth Amendment challenge), this Court should find that Florida's death penalty/lethal injection scheme, as a whole, is unconstitutional.

The Respondent's reliance on *Lewis v. Casey*, 518 U.S. 343, 354 (1996) is misplaced. The Respondents incorrectly assert that the United States Supreme Court "has long rejected the notion of a constitutional right to discovery founded on access to the courts or due process." AB/20. The Supreme Courts has consistently held that due process requires certain discoverable material. See generally, *Brady v. Maryland*, 373 U.S. 83 (1963). Nonetheless, due

[2] *Baze v. Rees*, 553 U.S. 35 (2008); *Glossip v. Gross*, 576 U.S. 863 (2015)

process does require that inmates and defendants are given and provided "…with the tools needed to attack sentences directly or collaterally." *Bounds v. Smith*, 430 U.S. 817 (1977). As Mr. Hitchcock argues, meaningful access necessarily includes access to public records.

As the Respondent's Answer Brief states, "[the] requirement [that Mr. Hitchcock's demands be related to a colorable claim] is based on this Court's **interpretation** and application of Rule 3.852 and Section 27.7081, Florida Statutes." (Emphasis added). Unlike other members of the public, the Florida statutes, rules, and case law, require Mr. Hitchcock (and other capital postconviction inmates) to provide a justification for public records requests, thus subjecting him (and other similarly-situated capital postconviction defendants) to a requirement that is not imposed on any other public records seekers, in violation of his right to equal protection.

Florida provides its citizens with the right to access public records. By denying Mr. Hitchcock records via the imposition of requirements for him that other members of the public do not have, he and all other capital postconviction inmates are being treated differently. The requirement that Mr. Hitchcock provide any reason,

under Fla. Stat. § 27.7081, Fla. R. Crim. P. 3.852, or identify a colorable claim, violates his equal protection rights by treating him differently than any other member of the public.

The Respondent argues that Mr. Hitchcock's equal protection rights have not been violated, because although he is treated differently than other members of the public regarding public records, he is provided with an attorney. This position is inapposite and of no moment; it utterly fails to comprehend the totality of the equal protection claim.

A violation of an individual's right to equal protection is not remedied by the mere provision of an attorney. Mr. Hitchcock is provided with an attorney because he is a capital postconviction inmate, not solely for the purpose of remedying violations of his equal protection rights. The remedy for an equal protection violation is not court-appointed and statutorily required counsel – it's similar treatment. The courts do not treat Mr. Hitchcock, as a capital postconviction inmate, similarly to other members of the public when it comes to public records requests. The Respondent cited to *Duncan v. Moore*, 754 So. 2d. 708 (Fla. 2000), which in no way suggests that an equal protections violation is remedied by the provision of counsel.

The Respondent further mischaracterizes Mr. Hitchcock's equal protection claim by arguing that Mr. Hitchcock is treated the same as any other capital postconviction inmate. In fact, Mr. Hitchcock's argument supports the notion that he is being treated the same as other capital postconviction inmates. The problem arises from the disparate treatment of public records requests from ordinary citizens and the public records requests of capital postconviction inmates. Thus, Respondent's reliance on *Ferguson v. Warden, Florida State Prison*, 493 Fed. Appx. 22, 25–26 (11th Cir. 2012) (unpublished) is also misplaced, because Mr. Hitchcock is not arguing he is being improperly treated differently than other capital postconviction inmates.

Mr. Hitchcock's filings have consistently advanced the argument that the violation of his right to equal protection is based on his status as a member of a class that the State and the courts are treating differently than **other members of the public**.

Additionally, the Respondent maintains that Mr. Hitchcock has failed to prove, and will be unable to prove, a "method-of-execution" claim. However, Mr. Hitchcock is not challenging the method of execution but rather the maladministration of the approved methods

in Florida, which is the entire premise of his requests for additional public records and the resulting violation of his constitutional rights. Mr. Hitchcock is not claiming – and has never claimed - that he is currently able to prove a maladministration claim without the records he sought; rather, his claim has always been that because he is being prevented from doing so, he is *unable* to investigate and develop a maladministration claim - despite SCOTUS providing the framework for the claim in the *Baze-Glossip* test.

Mr. Hitchcock cited Justice Sotomayor's published statement on the SCOTUS denial of certiorari in *Trotter v. Florida,*[3] regarding similar public records requests, but he also recognizes that the statement is not binding. Justice Sotomayor's published statement is, however, persuasive and supports Mr. Hitchcock's position that the Florida courts and agencies have placed him in a "Catch-22" regarding access to lethal injection records and the futile attempt to prove a maladministration claim (without records). Although SCOTUS denied certiorari in Mr. Trotter's case, unlike Mr. Hitchcock, Mr. Trotter actually attempted to argue his ability to prove a

[3] *Trotter v. State of Florida, et. al*, 607 U.S. ___ (2026)

maladministration claim, notwithstanding the denial of relevant records. Mr. Hitchcock, to the contrary, argues that the courts and agencies' - through the refusal to provide access to the requested records - are preventing him from raising a maladministration claim.

The Respondent's position that Mr. Hitchcock made no attempt to distinguish the *Trotter* case from his own, is inaccurate. Throughout his warrant litigation through filings and during argument at the hearings on April 2, 2026, and April 9, 2026, Mr. Hitchcock repeatedly distinguished his case from Mr. Trotter's case. The circuit court directly asked postconviction counsel how Mr. Hitchcock's case is distinguishable from *Trotter* during the April 2, 2026, public records hearing, and postconviction counsel stated:

> So, Your Honor, Trotter put forth a claim of an Eighth Amendment violation without having these records to put forth. And so our position is that -- is that we're being deprived access to these records to be able to put forth a claim, Your Honor, an Eighth Amendment claim. And so we are in this Catch-22 position just like Justice Sotomayer mentioned in the Melvin Trotter case, and that was a different claim than what we're making, they made an Eighth Amendment claim. Our position is we're being prevented from making an Eighth Amendment claim. So, ultimately, the cases and claims are different, Your Honor.

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Despite consistently repeating the same explanation regarding the differences between Mr. Hitchcock's and Mr. Trotter's arguments, the Respondent continues to misconstrue and mischaracterize Mr. Hitchcock's claim. Additionally, Mr. Hitchcock has made it clear that his argument is separate and distinct from arguments related to the general unconstitutionality of the lethal injection as a method of execution; rather, Mr. Hitchcock's arguments are narrowly directed at questions over whether the agencies tasked with carrying out the State's executions are following the approved protocol.

The Florida Constitution provides Mr. Hitchcock with a right to access public records; therefore, he is entitled to receive similar treatment as ordinary citizens. There is no rational basis, nor is there a legitimate purpose for subjecting capital postconviction inmates, including Mr. Hitchcock, to disparate treatment. The only possible acceptable explanation for imposing additional requirements on capital postconviction inmates' access to public records would be for the purpose of expediting public records litigation – a purpose which is already served by the requirement that the demands go through postconviction counsel, in combination with the *statutorily specified* timelines related to the public records process. Capital

postconviction attorneys are statutorily prohibited from making public records demands beyond the scope of the representation of their client. Thus, the added requirement that capital postconviction inmates provide a reason for the records they seek, serves no rational or legitimate basis.

II. Reply to the Respondent's position regarding the *Walls* records.

The Respondent argued that Mr. Hitchcock's reliance on the *Walls* records is misplaced, because the *Walls* records do not contain the name of any previously executed defendant or indicate that the drugs were used during execution.

First, if the drugs were not used for executions on dates which correspond with executions, that raises a legitimate inquiry into why FDOC used the drugs on those dates. Secondly, if the State is suggesting that there is no indication that the drugs were removed for the purposes of an execution on dates which correspond with executions, then there exists a legitimate inquiry into what drugs, if any, FDOC used during the execution that occurred on the relevant date. Surely, the State is not suggesting that the drugs were removed for some other purpose than carrying out executions. The State's own

assertions support the need for public record disclosure to resolve questions about FDOC's handling of the drugs and whether the specifically approved drugs were even used.

The State's position completely ignores the reasonable inference that can be drawn from the correlation of the dates and measurements contained within the logs directly with the known dates of executions in Florida (as noted in Mr. Hitchcock's demands for additional public records). The drugs are logged and kept for the purpose of executions; otherwise, the logs are pointless. Neither the State, nor the relevant agencies have offered a "correct" interpretation of the data recorded in the logs; nor have they offered a cogent explanation on the correlation between the data in the records and the dates of the executions that occurred in Florida.

The Respondent's Answer Brief dedicated a full section to the argument that Mr. Hitchcock failed to raise an Eighth Amendment claim under the *Baze-Glossip* test; however, as Mr. Hitchcock repeatedly expressly stated throughout the warrant litigation, without the requested records, Mr. Hitchcock **cannot** meet the requirements for an Eighth Amendment challenge as outlined in *Baze-Glossip*. Based on the arguments Mr. Hitchcock raised

throughout his post-warrant litigation, the only "alternative method of execution" option he could possibly suggest would simply involve the agencies' dedication to following the State's expressly stated and approved lethal injection protocols, using properly stored, non-expired drugs, in the proper amounts. The courts' denial of access to the requested records sets the dangerous precedent that the State of Florida can execute the condemned using unapproved and untested methods, without consequence, check, or balance.

CLAIM 2:

I. The circuit court abused its discretion by denying Mr. Hitchcock's claim of actual innocence without consideration of the compelling case of innocence.

In the Answer Brief, the Respondent explicitly noted that they do not disagree with the notion that the execution of an innocence man is cruel and unusual. It is the Respondent's position, however, that Mr. Hitchcock is not innocent. The only alleged evidence of Mr. Hitchcock's guilt is his recanted confession – a confession offered by a 20-year-old man, who was suffering from depression, guilt-ridden, and operating under a self-imposed, misplaced sense of allegiance to his brother – following days of isolated imprisonment and repeated interrogations. It was an abuse of discretion to deny Mr. Hitchcock's

claim that his execution would violate the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution and corresponding provisions of the Florida Constitution, since the court did not evaluate Mr. Hitchcock's claim on the merits of whether he is actually innocent.

On the merits of this claim, the Respondent argues that, at no point in Mr. Hitchcock's postconviction appellate litigation did the circuit court find Mr. Hitchcock's witnesses credible, which the circuit court largely attributed to the witnesses' delays in coming forward with information of Mr. Hitchcock's innocence. The circuit court's credibility findings related to (the lack of credibility of) Mr. Hitchcock's witnesses are unreasonable for multiple reasons. Although the trial court took issue with the witnesses' familial relationship to Mr. Hitchcock, the trial court ignored the fact that those family members were also related to Richard Hitchcock ("Richard")[4], the man who made multiple confessions to the murder of Cynthia Driggers and was known to abuse female relatives.

[4] It should be noted that Mr. Hitchcock's successive postconviction motion notes Wanda Green ("Ms. Green") is Richard's stepdaughter. This was an error and it should be noted that Ms. Green is Mr. Hitchcock and Richard's sister.

Despite the circuit court's findings, no jury has ever heard the compelling evidence of innocence revealed during Mr. Hitchcock's postconviction proceedings. If faced with the evidence of Mr. Hitchcock's innocence that has been revealed since his conviction, no reasonable juror would have convicted him. No reasonable juror would convict someone when presented with the testimony of multiple witnesses who are willing to state, under oath, that another person confessed to the murder instead. See *Schlup v. Delo*, 513 U.S. 298, 324-327 (1995). Mr. Hitchcock's case meets the threshold for freestanding innocence claims as set by SCOTUS in *Herrera v. Collins*, 506 U.S. 390, 417 (1993).

The circuit court's prior finding regarding the (lack of) credibility of the witnesses ignored the hardship a person faces when deciding to accuse a family member of murder. Additionally, the circuit court failed to consider that all the witnesses testified to facing attacks and threats from Richard. Therefore, it is entirely reasonable that the witnesses were afraid of retribution from Richard if they came forward, and the State failed to take action, or if Mr. Hitchcock's attorneys were unsuccessful in overturning his conviction. Even if Mr. Hitchcock's conviction had been overturned, that would not have

assured the witnesses any safety, because the State has always refused to accept the possibility that it was Richard – not James – who murdered Cynthia Driggers. The witnesses came forward after Richard's death, when they would no longer be forced to fear for their safety. As such, this Court should reconsider.

Understanding that the Respondent's position and the circuit court's determination that Mr. Hitchcock's claims of actual innocence are procedurally barred, Mr. Hitchcock stands firm on the argument advanced in his Initial Brief, that denying consideration of this claim due to a procedural bar, amounts to a manifest injustice. There can be no greater manifest injustice than the execution of an innocent man. The Respondent argues that there is no danger of executing an innocent man in this case, but the State's case relies on a confession that was recanted when Mr. Hitchcock testified under oath and told the jury what happened. Other than Mr. Hitchcock's confession, the State cannot point to any other evidence of his guilt that Mr. Hitchcock's testimony does not explain.

Mr. Hitchcock is innocent. His execution would be a manifest injustice, and this Court should intervene.

CONCLUSION AND RELIEF SOUGHT

Mr. Hitchcock has put forward substantial grounds upon which relief may be granted, and this Court should grant a stay and order the disclosure of public records. Additionally, this Court should grant a stay for the circuit court to consider Mr. Hitchcock's claim of actual innocence on the merits.

For Claim 1, Mr. Hitchcock has established that his demands for additional public records from FDOC and FDLE demonstrated relevance to a colorable claim, are related to the current postconviction proceedings, and are reasonably calculated to lead to the discovery of admissible evidence, rebutting the presumption that FDOC does and will comply with its own protocols. The requested records are specifically listed and are neither overly broad nor unduly burdensome. The agencies should be keeping the records up to date as a matter of their course of business, duties, and the protocol, and should have no issues with obtaining and disclosing the records in this age of technology.

The records sought are necessary for Mr. Hitchcock to support a timely claim that FDOC's failure to follow the lethal injection protocols is unconstitutional. The circuit court should conduct an in-

camera inspection and release records that are exempt and/or confidential according to the statute, redacting any portions necessary to exclude information that would suggest identity of the executioners and the suppliers of the lethal injection drugs.

For Claim 2, Mr. Hitchcock has put forward a compelling case of actual innocence that would render his execution constitutionally intolerable under the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution. Procedural bars should not prevent consideration of the cumulative review of Mr. Hitchcock's innocence and said denial would be a manifest injustice. There is no greater manifest injustice than an innocent man being executed.

WHEREFORE, Mr. Hitchcock asks this Court for an Order directing the lower court to grant Mr. Hitchcock's demands for additional public records from FDOC and FDLE. Additionally, Mr. Hitchcock requests an order allowing an evidentiary hearing for Claims 1 and 2 of his successive postconviction motion filed on April 7, 2026, upon remand.

If this matter cannot be resolved before April 30, 2026, Mr. Hitchcock asks this Court to stay his execution until the requested records have been received; Mr. Hitchcock has a reasonable amount

of time to review the records and consult with an expert; draft and file a successive postconviction motion; and for the circuit court and/or this Court to have a reasonable amount of time to rule on the postconviction motion.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Counsel certifies that this Reply Brief is produced in Bookman Old Style 14-point font in compliance with the requirements of Florida Rules of Appellate Procedure 9.100. The word count is 3,836.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of April, 2026, the foregoing document has been electronically filed with the Clerk of the Circuit Court using the Florida Courts e-portal filing system, which will send a notice of electronic filing to the following: The Honorable Lisa T. Munyon, Chief Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **99orange@ninthcircuit.org**; the Honorable Keith Carsten, Circuit Judge, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, **19orange@ninthcircuit.org**; Timothy A Freeland, Special Counsel, Assistant Attorney General, and Jennifer A. Davis, Senior Assistant Attorney General,

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