(ORDER LIST: 598 U.S.)

MONDAY, MAY 15, 2023

ORDERS IN PENDING CASES

22A896 WO OF IDEAFARM V. SUPERIOR COURT OF CA

The application for stay addressed to Justice Thomas and referred to the Court is denied.

22M102 MARINOS-ARSENIS, CHRYSSOULA V. BLUE CROSS BLUE SHIELD OF NJ

22M103 LAROCHE-ST. FLEUR, MAUDE V. BD. OF BAR OVERSEERS OF MA

The motions for leave to file petitions for writs of certiorari with the supplemental appendices under seal are granted.

22M104 ROLLER, JACKIE R. V. HOLLOWAY, CRYSTAL, ET AL.

The motion for leave to proceed as a veteran is denied.

22-448 CFPB, ET AL. V. COM. FIN. SERVICES ASSN., ET AL.

The motion of petitioners to dispense with printing the joint appendix is granted.

22-631) HIGHLAND CAPITAL MGMT. V. NEXPOINT ADVISORS, ET AL.
)
22-669) NEXPOINT ADVISORS, ET AL. V. HIGHLAND CAPITAL MGMT., ET AL.

The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

22-6496 WELSH, LONNIE K. V. COLLIER, BRYAN, ET AL.

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

22-6950 NEWSOME, BEATRICE V. FESTIVA RESORTS, ET AL.

22-6963 McALEXANDER, ZACHARY J. V. OTSUKA AMERICA PHARMACEUTICAL

22-6971 DINGLER, JOSEPH V. GARRETT, SHERIFF, ET AL.

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22-6996 SEARCY, CANDACE V. ORCHARD NAT. TITLE

22-7004 KHANNA, AMIT, ET UX. V. WESTPORT VILLAGE AT IRONGATE

22-7104 CONTEH, SANFA S. V. DEPT. OF COMMERCE

22-7228 HARDMAN, SHARON V. KIJAKAZI, COMM'R, SOCIAL SEC.

22-7323 GOSSAGE, HENRY E. V. OPM, ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until June 5, 2023, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

APPEAL -- JURISDICTION NOTED

22-807 ALEXANDER, THOMAS C., ET AL. V. SC CONFERENCE OF NAACP, ET AL.

Probable jurisdiction is noted.

CERTIORARI GRANTED

22-425 CARNAHAN, ADM'R, GSA V. MALONEY, CAROLYN, ET AL.

The petition for a writ of certiorari is granted.

22-6389) BROWN, JUSTIN R. V. UNITED STATES
)
22-6640) JACKSON, EUGENE V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* and the petitions for writs of certiorari are granted. The cases are consolidated, and a total of one hour is allotted for oral argument.

CERTIORARI DENIED

22-511 DIXON, THOMAS V. TEXAS

22-554 ST. JOHN, ANNA V. JONES, LISA, ET AL.

22-573 BRFHH SHREVEPORT LLC V. WILLIS-KNIGHTON MEDICAL CENTER

22-708 GRIPUM, LLC V. FDA

22-720 DAKOTA FINANCE LLC, ET AL. V. NATURALAND TRUST, ET AL.

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22-743 NEVADA IRRIGATION DIST., ET AL. V. CA WATER RESOURCES, ET AL.

22-818 ANYIKA, YUSUFU V. FRANCIS-ANYIKA, CECELIA

22-836 PEREZ SOTO, HIRAM I. V. ORONOZ-RODRIGUEZ, MAITE, ET AL.

22-854 ARCHER, DAVID V. WINN DIXIE STORES, INC., ET AL.

22-857 FOSTER, PAULETTE H., ET AL. V. WEARRY, MICHAEL

22-858 FINK, JOHN W. V. BISHOP, JONATHAN L., ET AL.

22-861 MARCHISOTTO, JOHN F. V. CANOVA, DEBRA, ET AL.

22-866 BELL, JOHN F. V. LUMPKIN, DIR., TX DCJ

22-870 TAVERAS, ELIEZER V. USDC SD FL

22-871 LOPEZ LUVIAN, MIGUEL A. V. GARLAND, ATT'Y GEN.

22-877 LUGO, JOHN V. STURM, AVENA L.

22-879 BASILE, CONSTANTINO V. LOS ANGELES FILM SCHOOL, ET AL.

22-881 ZIELINSKI, MARTIN J. V. WI LABOR REVIEW COMM'N, ET AL.

22-882 STEWART, MERRILEE V. RRL HOLDING CO. OF OH, ET AL.

22-889 WOLLNER, RYAN V. PEARPOP INC.

22-902 GONZALEZ FLAVELL, SARA V. MARSHALL, TRACY J., ET AL.

22-916 McMANUS, PRISCILLA V. NBS DEFAULT SERVICES, ET AL.

22-924 FIFE, JOHN M. V. FINANCIAL INDUSTRY AUTHORITY

22-948 PAREMSKY, GENNADY Y. V. INGHAM COUNTY MEDICAL, ET AL.

22-950 SMULLEY, DOROTHY A. V. SAFECO INS. CO. OF IL, ET AL.

22-952 DeMICHAEL, RINA R. V. FL DEPT. OF MANAGEMENT SERV.

22-961 STEEVES, DEAN A. V. UNITED STATES

22-966 McLILLY, CAVANTA V. DOUGLAS, ADAM

22-967 BANKS, DAVID V. UNITED STATES

22-975 WELLMAN, DEBRA-ANN V. HEB GROCERY CO.

22-979 OWENS, NICOLE V. GA GOV.'S OFFICE OF STUDENT

22-981 UDOH, EMEM U. V. MINNESOTA

22-983 WILLIAMS, REMINGTYN A., ET AL. V. DAVIS, SUPT., LA STATE POLICE

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22-985 WALKER, FERRELL V. UNITED STATES

22-988 CREDIT CONSULTING SERVICES, INC. V. PAREDES, MARITZA

22-1002 VAN OVERDAM, AUSTIN V. TEXAS A&M UNIVERSITY, ET AL.

22-1007 JERICHO BAPTIST CHURCH V. BANK OF AMERICA, N.A.

22-1014 ESTATE OF WILSON, ET AL. V. LAS VEGAS POLICE DEPT., ET AL.

22-6489 MORTON, BRIAN M. V. UNITED STATES

22-6665 CORTEZ-NIETO, ORLANDO, ET AL. V. UNITED STATES

22-6690 BIXBY, STEVEN V. V. STIRLING, COMM'R, SC DOC, ET AL.

22-6930 HACKNEY, ROBERT E. V. MICHIGAN

22-6933 HESSMER, JOHN V. BRYAN, SHERIFF

22-6938 GONZALEZ, RAUL V. LUMPKIN, DIR., TX DCJ

22-6939 FLORES, FRANCISCO V. LUMPKIN, DIR., TX DCJ

22-6941 KERR, TERRY V. ALDRIDGE/PITE, LLP, ET AL.

22-6943 THURSTON, TRAVIS V. FLORIDA

22-6948 SPIKER, ROBERT E. V. ERSKINES, ROBERT E., ET AL.

22-6949 McDOWELL, CHRISTOPHER M. V. REEVES, CARLTON W.

22-6952 BROOKINS, BRIAN D. V. GEORGIA

22-6959 DAVIS, THURSTON R. V. LUMPKIN, DIR., TX DCJ

22-6960 MITCHELL, JAMES J. V. FLORIDA

22-6967 GARCIA, ARNOLDO A. V. VALDEZ, AFOD, ET AL.

22-6969 SHETSKIE, CHRISTOPHER A. V. COLORADO

22-6976 HARRIS, GOLDA D. V. CREDIT ACCEPTANCE CORP., ET AL.

22-6977 TALIB, SHARIF V. MARYLAND

22-6979 McCRAY, IVEY V. JONES, WILLIAM D., ET AL.

22-6991 DICKERSON, SAMUEL V. SCARLETT, KEN, ET AL.

22-6992 REAVES, SAMUEL V. LUMPKIN, DIR., TX DCJ, ET AL.

22-6997 FREITAS, JOHN B. V. WISE, JUDGE, ET AL.

22-7003 MELTON, JUSTIN V. PERRY, JARED, ET AL.

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22-7011 WATERS, CHARLES M. V. WATERS, ANITA M.

22-7015 REAVES, TIMOTHY V. VIDAL, SUPT., SOUZA

22-7018 WRIGHT, MICHAEL V. CONTRA COSTA CTY., CA, ET AL.

22-7020 SKIEF, TIWIAN L. V. LUMPKIN, DIR., TX DCJ

22-7021 WILLIAMS, VICTOR T. V. LUMPKIN, DIR., TX DCJ

22-7071 BAKER, ELMER D. V. NEAL, WARDEN

22-7080 JAMES A. V. CONNECTICUT

22-7088 GRZESLO, JAMES D. V. FISHER, WARDEN

22-7125 TORRENCE, CHARLES M. V. PETERSON, WARDEN

22-7127 MEYER, WILLIAM M. V. THORNELL, DIR., AZ DOC, ET AL.

22-7149 HAMMOND, EUGENE V. FORT, WARDEN

22-7153 HARVEY, TAMAR D. V. RUSSELL, ASST. WARDEN

22-7165 WOO, JAMES V. EL PASO CTY. SHERIFF, ET AL.

22-7172 HARMON, HENRY A. V. NOEL-EMSWELLER, KAYLA, ET AL.

22-7178 FRAZIER, DAVID V. TENNESSEE

22-7182 RAKHMATOV, AZIZJON V. UNITED STATES

22-7184 MIDDLEKAUFF, DARRELL K. V. WASHBURN, SUPT., EASTERN OR

22-7194 PAULK, MONQUEL D. V. UNITED STATES

22-7201 BROWN-MALLARD, ADRIENNE V. NEXT DAY TEMPS, ET AL.

22-7221 KUTSCHENREUTER, CARLOTTA S. V. McCLAIN, WARDEN

22-7234 LeBEAU, GERALD W. V. UNITED STATES

22-7239 KNIGHT, EDWARD V. UNITED STATES

22-7241 RAY, ERIC M. V. UTAH

22-7245 DiBIASE, PAUL V. UNITED STATES

22-7247 GUZMAN, CLAUDIA C. V. UNITED STATES

22-7249 GODETTE, DARYL L. V. UNITED STATES

22-7253 SOLIS, ILSE I. V. UNITED STATES

22-7261 PROPHET, SUSAN E. V. UNITED STATES

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22-7263 RAMIREZ, CHRISTOPHER L. V. UNITED STATES

22-7264 McKINNEY, COREY S. V. UNITED STATES

22-7265 FRANKS, ALLEN V. FLORIDA

22-7272 MARTINEZ, CHRISTOPHER E. V. UNITED STATES

22-7273 HERNANDEZ-JIMENEZ, FIDELMAR V. UNITED STATES

22-7278 WARD-MALONE, CHRISTOPHER J. V. UNITED STATES

22-7279 THOMAS, ROBERT J. V. UNITED STATES

22-7282 LINDER, DAVID W. V. LAMMER, WARDEN

22-7284 JOHNSON, HERBERT B. V. UNITED STATES

22-7288 GONZALEZ-ENRIQUEZ, GILBERTO V. UNITED STATES

22-7289 BISHOFF, TERRICK V. UNITED STATES

22-7290 HOWARD, MICHAEL K. V. UNITED STATES

22-7292 SIMPSON, JASON E. V. UNITED STATES

22-7295 WILLIAMS, SALEEM D. V. TOBY, WARDEN

22-7296 THOMAS, NATHAN K. V. UNITED STATES

22-7300 SULLIVAN, JAMES D. V. UNITED STATES

22-7307 LATHAN, DAREK V. UNITED STATES

22-7339 HARVEY, HOLLY V. GEORGIA

The petitions for writs of certiorari are denied.

21-1281 INTERACTIVE WEARABLES, LLC V. POLAR ELECTRO OY, ET AL.

22-22 TROPP, DAVID A. V. TRAVEL SENTRY, INC., ET AL.

22-37 TEVA PHARMACEUTICALS USA, INC. V. GLAXOSMITHKLINE LLC, ET AL.

The petitions for writs of certiorari are denied. Justice Kavanaugh would grant the petitions for writs of certiorari.

22-821 CHEVRON CORP., ET AL. V. HOBOKEN, NJ, ET AL.

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

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22-876 POHLE, DANIEL L. V. PENCE, MICHAEL, ET AL.

The petition for a writ of certiorari is denied. The Chief Justice took no part in the consideration or decision of this petition.

22-974 WEISS, CHARLES J. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Alito and Justice Kavanaugh took no part in the consideration or decision of this petition.

22-999 AMARA, JANICE C., ET AL. V. CIGNA CORP., ET AL.

The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

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22-6958 POWERS, THOMAS V. DOLL, DAVID, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

22-6988 CONERLY, CARINA V. WINN, JUDGE, ET AL.

22-7120 BRESSI, AARON J. V. PA PAROLE BD., ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari are dismissed. See Rule 39.8.

HABEAS CORPUS DENIED

22-993 IN RE KRISHNA MAHARAJ

22-7298 IN RE GABRIEL D. YANKEY

22-7332 IN RE MICHAEL P. MARTIN

22-7362 IN RE IRINA COLLIER

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

22-6931 IN RE DeANN GRAHAM

22-6980 IN RE MICHAEL BLODGETT

The petitions for writs of mandamus are denied.

22-6989 IN RE IRINA COLLIER

The petition for a writ of mandamus and/or prohibition is denied.

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REHEARINGS DENIED

22-619 IN RE LARRY E. KLAYMAN

22-623 HALL, JAMES W. V. G.M.S. MANAGEMENT, ET AL.

22-668 KAMA, NACHAIYA V. MEMORIAL HERMANN HEALTH, ET AL.

22-690 HARRIS-PATTERSON, ACQUANITTA L. V. ARMCO STEEL, ET AL.

22-794 CALIFORRNIAA, EURICA V. VIDAL, KATHERINE K.

22-825 COLLINS, JAMES K. V. D.R. HORTON-TEXAS LTD.

22-6260 WILLIAMS, PAULA V. CONDUENT HUMAN SERVICES LLC

22-6328 TAYLOR, VERSIAH M. V. UNITED STATES

22-6373 HERRIOTT, ALICJA Z. V. HERRIOTT, PAUL B.

22-6382 WARREN, JAMES A. V. FLORIDA

22-6460 DeJEAN, DAVONTE V. UNITED STATES

22-6470 ELLIS, MARY A. V. DEPT. OF LABOR

22-6480 ROHLF, ANTHONY V. LUMPKIN, DIR., TX DCJ

22-6589 IN RE MOSES JACKSON

22-6605 KOMATSU, TOWAKI V. NEW YORK, NY, ET AL.

22-6672 J. M. V. OR DEPT. OF HUMAN SERVICES

The petitions for rehearing are denied.

ATTORNEY DISCIPLINE

D-3119 IN THE MATTER OF DISCIPLINE OF MICHAEL BRANDON COHEN

Michael Brandon Cohen, of Altoona, Pennsylvania, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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SUPREME COURT OF THE UNITED STATES

JOHN Q. HAMM, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS
v. KENNETH EUGENE SMITH

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 22–580. Decided May 15, 2023

The petition for a writ of certiorari is denied.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting from the denial of certiorari.

In 1988, Kenneth Eugene Smith and an accomplice murdered Elizabeth Sennett for $1,000 apiece. The State of Alabama sentenced Smith to death. Last year, it scheduled Smith's execution for November 17, 2022, and Smith brought an Eighth Amendment challenge to the State's plan to execute him by lethal injection. On the afternoon of November 17, a divided Eleventh Circuit panel held that Smith had pleaded a viable method-of-execution claim, reversing the District Court's contrary ruling. Later that evening, the Eleventh Circuit granted Smith a stay of execution. The State applied to this Court to dissolve the Eleventh Circuit's stay, and we granted the application. But, after this last-minute litigation, the State was unable to execute Smith before its death warrant expired. Smith's lawsuit thus remains pending in the District Court.

In this petition, the State now asks this Court to summarily reverse the Eleventh Circuit's holding that Smith pleaded a viable Eighth Amendment claim. I would do so. The judgment below rests on flawed Circuit precedent that is irreconcilable with our method-of-execution case law.

"The Constitution allows capital punishment" and "does not guarantee a prisoner a painless death." *Bucklew* v. *Precythe*, 587 U. S. ___, ___, ___ (2019) (slip op., at 8, 12).

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Nonetheless, in defined circumstances, our cases countenance a claim that "the State's chosen method of execution cruelly superadds pain to the death sentence," thus violating the Eighth Amendment. *Id.*, at ___ (slip op., at 13). To plead and prove such a claim, "a prisoner must show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason." *Ibid.* Only with such a showing can "a State's refusal to change its method . . . be viewed as 'cruel and unusual' under the Eighth Amendment." *Baze* v. *Rees*, 553 U. S. 35, 52 (2008) (plurality opinion).

Our cases further provide guidance on what a prisoner must show to prove that his proposed alternative method is "feasible and readily implemented." In *Bucklew*, we explained that "the inmate's proposal must be sufficiently detailed to permit a finding that the State could carry it out relatively easily and reasonably quickly." 587 U. S., at ___ (slip op., at 21) (internal quotation marks omitted). And, just last Term, the Court underscored that the prisoner "must make the case that the State really can put him to death, though in a different way than it plans," by "providing the State with a veritable blueprint for carrying the death sentence out." *Nance* v. *Ward*, 597 U. S. ___, ___ (2022) (slip op., at 8); see also *ibid.* ("If the inmate obtains his requested relief, it is because he has persuaded a court that the State could readily use his proposal to execute him").

These precedents unmistakably establish two propositions. First, it is *the prisoner's* burden to "plead and prove a known and available alternative." *Glossip* v. *Gross*, 576 U. S. 863, 880 (2015). Second, the focus of the "feasible and readily implemented" element is *practical* availability, which is ultimately a question of fact. See *Nance*, 597 U. S., at ___ (slip op., at 8); *Bucklew*, 587 U. S., at ___ (slip op., at 21).

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Here, Smith challenged the State's chosen method of lethal injection based on the proposed alternative of execution by nitrogen hypoxia. As the plaintiff, Smith was required to "plea[d] factual content" making it plausible that he could establish the availability element of his claim. *Ashcroft* v. *Iqbal*, 556 U. S. 662, 678 (2009); see Fed. Rule Civ. Proc. 8(a). Smith, however, did not even *attempt* to plead facts indicating that Alabama "could readily use [nitrogen hypoxia] to execute him." *Nance*, 597 U. S., at ___ (slip op., at 8). Instead, he alleged only that, "*[a]s a matter of law*, nitrogen hypoxia is an available and feasible alternative method of execution," citing *Price* v. *Commissioner, Ala. Dept. of Corrections*, 920 F. 3d 1317, 1328–1329 (CA11 2019), as support. Motion To Alter or Amend Judgt. in No. 2:22–cv–00497 (MD Ala., Oct. 19, 2022), ECF Doc. 24–1, Exh. A, p. 19, ¶74 (emphasis added). And the Eleventh Circuit considered this threadbare allegation sufficient to satisfy Smith's pleading burden on the availability element.

Understanding the court's reasoning below requires some background about Alabama law and the Eleventh Circuit's *Price* decision. In 2018, Alabama enacted a statute authorizing execution by nitrogen hypoxia for inmates who elected that method within 30 days of their sentences becoming final or, for those whose sentences were already final before June 1, 2018, within 30 days of that date. Ala. Code §15–18–82.1(b)(2). (Smith did not elect nitrogen hypoxia, so lethal injection remains the only method of execution authorized by state law in his case. §15–18–82.1(a).) Nearly five years later, Alabama has yet to carry out any execution by nitrogen hypoxia or to finalize a protocol for implementing that method—which "ha[s] never been used to carry out an execution and ha[s] no track record of successful use" in any jurisdiction. *Bucklew*, 587 U. S., at ___ (slip op., at 22) (internal quotation marks omitted).

Since *Price*, however, the Eleventh Circuit has treated the existence of this Alabama statute as relieving inmates

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like Smith of their burden to plead and prove that nitrogen hypoxia is feasible and readily implemented in fact. "If a State adopts a particular method of execution," *Price* reasoned, "it thereby concedes that the method of execution is available to its inmates." 920 F. 3d, at 1327–1328. Thus, "an inmate may satisfy his burden to demonstrate that [a] method of execution is feasible and readily implemented by" simply "pointing to the executing state's official adoption of that method of execution." *Id.*, at 1328. Here, that is exactly what Smith did, and the Eleventh Circuit, applying *Price*, held that nothing more was required.

However, *Price*'s reasoning rests on a fundamental misunderstanding of the inquiry marked out by *Baze*, *Glossip*, and *Bucklew*. Those cases set forth the circumstances in which a State's use of one method of execution, rather than an identified " 'known and available alternative,' " constitutes cruel and unusual punishment under the Eighth Amendment. *Bucklew*, 587 U. S., at ___ (slip op., at 13) (quoting *Glossip*, 576 U. S., at 878); see *Baze*, 553 U. S., at 52. The gravamen of the constitutional wrong is the State's unjustified "refus[al] to adopt" that proffered alternative despite its "documented advantages," including its ready availability. *Ibid.* Accordingly, whether the State has authorized the proffered alternative as a matter of state statutory law has no relevance to the plaintiff's burden of showing a constitutional violation. *Bucklew* has already explained why: "[T]he Eighth Amendment is the supreme law of the land, and the comparative assessment it requires can't be controlled by the State's choice of which methods to authorize in its statutes." 587 U. S., at ___–___ (slip op., at 19–20).

The *Bucklew* Court made that statement in the context of explaining that "[a]n inmate seeking to identify an alternative method of execution is not limited to choosing among those presently authorized by a particular State's law," *id.*, at ___ (slip op., at 19), but the underlying logic cuts both

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ways. See *Heffernan* v. *City of Paterson*, 578 U. S. 266, 272 (2016) ("[I]n the law, what is sauce for the goose is normally sauce for the gander"). When the question is whether the Eighth Amendment requires a State to replace its chosen method with an alternative method in executing the plaintiff, it is simply irrelevant, without more, that the State's statutes authorize the use of the alternative method in *other* executions that are to take place sometime in the indefinite future. Here, Smith alleged only that, and nothing more. He therefore failed to state a claim, and the Eleventh Circuit erred by holding otherwise.

The Eleventh Circuit's error is not only plain but also serious enough to warrant correction. Even if "'the burden of the alternative-method requirement 'can be overstated,'" *Bucklew*, 587 U. S., at ___ (KAVANAUGH, J., concurring) (slip op., at 1), it remains an essential element of an Eighth Amendment method-of-execution claim, and it must be appropriately policed lest it become an instrument of dilatory litigation tactics. The comparative analysis set forth in *Baze*, *Glossip*, and *Bucklew* contains an inherent risk of incentivizing "an inmate intent on dragging out litigation . . . to identify only a method of execution on the boundary of what's practically available to the state." *Middlebrooks* v. *Parker*, 22 F. 4th 621, 625 (CA6 2022) (Thapar, J., statement respecting denial of rehearing en banc). The Eleventh Circuit's approach of treating any statutorily authorized method as available as a matter of law—even an entirely novel method that may not be readily implementable in reality—only heightens that danger. In turn, and as a result, it "perversely incentivize[s] States to delay or even refrain from approving even the most humane methods of execution" any earlier than the moment they are prepared to put them into practice. *Price* v. *Dunn*, 587 U. S. ___, ___ (2019) (THOMAS, J., concurring in denial of certiorari) (slip op., at 11).

The Eleventh Circuit's flawed logic in *Price* has already

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forced us to intervene in one last-minute capital emergency. This petition offered an opportunity, which may well prove unique, to consider and correct *Price*'s faulty reasoning outside of that posture. Because the Court declines that opportunity, I respectfully dissent.

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