

No. _____

IN THE
Supreme Court of the United States

ANTHONY BOYD,
Petitioner,

v.

COMMISSIONER, ALABAMA DEPARTMENT
OF CORRECTIONS, HOLMAN CF WARDEN,
Respondents.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit**

PETITION FOR WRIT OF CERTIORARI

EXECUTION SCHEDULED FOR OCTOBER 23, 2025

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CAPITAL CASE

QUESTIONS PRESENTED

When performing a comparative analysis to determine whether an alternative means of execution would significantly reduce a substantial risk of severe physical and psychological pain, should the comparison focus only on fear and anxiety experienced after the introduction of the fatal stimulus, such as the years, months, weeks, days, or hours during which an inmate knows that their death will happen?

Does the State of Alabama's nitrogen hypoxia execution protocol, which causes a human to consciously experience symptoms of asphyxiation (air hunger, shortness of breath, aching lungs, elevated heart rate, blood pounding in the ears, the feeling of conscious suffocation or of being trapped deep underwater) for two to seven minutes, constitute cruel and unusual punishment in violation of the Eighth Amendment where a feasible and readily implemented alternative exists and where that alternative causes a rapid death in which the inmate feels an impact, shock, and numbness, but not pain?

**PARTIES TO THE PROCEEDING AND
RULE 29.6 STATEMENT**

Petitioner is Anthony Boyd. Respondents are John Q. Hamm, Commissioner of the Alabama Department of Corrections, and Terry Raybon, Holman CF Warden.

No party is a corporation.

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PETITION FOR A WRIT OF CERTIORARI

Anthony Boyd petitions for a writ of certiorari to review the decision of the Eleventh Circuit, which affirmed the district court's denial of his motion for a preliminary injunction.

OPINIONS BELOW

The Eleventh Circuit's Opinion denying Boyd's motion for stay of execution is not reported and is contemporaneously filed as Appendix A at Pet. App. 1a-13a. The United States District Court for the Middle District of Alabama's decision denying Boyd's motion for preliminary injunction is reported at *Anthony Boyd v. Comm'r, Ala. Dep't of Corr.*, No. 2:25-CV-529-ECM, 2025 WL 2884410 (M.D. Ala. Oct. 9, 2025) and is found at Appendix B at Pet. App. 14a-77a. References to the record appendix as filed with the Eleventh Circuit appear at "App.____" and are found on the Eleventh Circuit's CM/ECF system at *Anthony Boyd v. Commissioner, Alabama Department of Corrections, et al.*, No. 25-13545 (11th Cir.), Docket No. 13.¹

JURISDICTION

The Court of Appeals entered its decision on October 20, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

¹ A separate sealed appendix was also filed with the Eleventh Circuit; however, no portion of the sealed appendix is cited in this filing or any filing Boyd made in this Court.

42 U.S.C. § 1983 provides in pertinent part:

Every person who, under color of any statute . . . subjects, or causes to be subjected any citizens of the United states . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

STATEMENT OF THE CASE

Anthony Boyd is scheduled to be executed on October 23 by a method (nitrogen asphyxiation) that superadds physical pain and psychological terror far beyond the suffering, anxiety and psychological distress inherent in death. This reality is confirmed by the six inmates who were previously executed in Alabama under its nitrogen hypoxia protocol (the “Protocol”), five of whom were executed prior to the evidentiary hearing in this matter and all of those five experienced the intense physiological and psychological effects of asphyxiation for several minutes prior to losing consciousness.

The district court “assume[d] without deciding that . . . an inmate subject to an execution under the Protocol who breathes more normally will become unconscious within approximately two minutes after nitrogen begins to flow.” Pet. App. 54a- 55a. The district court “acknowledge[d] that some inmates may remain conscious—and thus be able to experience emotional pain and distress—for different amounts of time, and potentially longer than two minutes.” Pet. App. 55a. For example, the district court assumed without deciding that one inmate was asphyxiated for four minutes before losing consciousness, but said that even if such consciousness persisted for

seven minutes, it would not change the district court's analysis. Pet. App. 53a n.34, 54a.²

Dr. Philip Bickler, an expert in hypoxia, anesthesiology, and medicine, was the sole expert in human hypoxia to testify at the preliminary injunction hearing. App.1147:25-1148:5. Dr. Bickler testified that the physiological effects of hypoxia are physically painful, which in turn drives the psychological "terror effect." Dr. Bickler explained that "there's the physical part of it, the drive to breathe, the increase in heart rate, the pounding of blood that you feel in your head, but an additional effect is the emotional terror and panic that's elicited to this primal reaction to having your oxygen supply cut off." App. 840:15-19. Notably, the State's sole expert, concurred that inmates experience severe emotional suffering as the primal urge to breathe overcomes their knowledge that breathing will actually result in their death. App. 1134:20-1136:19.

In denying a motion to stay execution, the Eleventh Circuit concluded that the district court did not abuse its discretion in finding that execution by firing squad would not significantly reduce a substantial risk of severe pain, even though the uncontroverted evidence before the district court established that execution by firing squad involves impact, shock, and numbness, but no pain, during an extremely short duration of consciousness prior to death, as opposed to at least two minutes of conscious suffocation with nitrogen hypoxia.

² The district court was comparing the Protocol to execution by firing squad, which the district court found was a feasible and readily implemented alternative. *See* Pet. App. 65a-66a.

I. FACTUAL BACKGROUND

In 1995, a jury convicted Boyd of capital murder. The jury returned a 10-2 recommendation that he be sentenced to death. The Honorable Jerry Fielding, Talladega County Circuit Judge, subsequently sentenced Boyd to death.

A. The Alabama Legislature Authorized Nitrogen Hypoxia as a Method of Execution in 2018.

In 2018, the Alabama Legislature authorized execution by an untested method: nitrogen hypoxia. *See* Ala. Code § 15-18-82.1(b)(2).

In August 2023, Respondents released a heavily redacted version of the Protocol. The Protocol has been used in six executions since then. Those executions – and what has become known about the conscious pain and suffering that they inflict – led Boyd to challenge the Protocol and seek an alternative method of execution.

B. The Five Executions Prior to the Preliminary Injunction Hearing Resulted in Conscious Suffocation.³

For purposes of its analysis, the district court assumed an inmate would be conscious for two, four or even seven minutes while being asphyxiated. Pet. App. 54a. The district court's factual findings support that assumption and were amply supported by the record, which showed that inmates executed under the Protocol remained conscious – and in physical pain – for *at least* two minutes, and likely several more, including up to seven minutes.

³ A sixth execution, of Geoffrey Todd West, occurred on September 25, 2025, which was after the evidentiary hearing and after the evidence was closed. *See* Pet. App. 25a, n.12.

1. The Smith Execution

Respondents executed Kenneth Eugene Smith on January 25, 2024. App.692:11-13. After nitrogen began to flow, Smith began “making violent movements.” App.684:2. As found by the district court,

Smith’s feet and head left the gurney, his arms appeared to strain against his restraints, and he appeared to “gasp[] for ... air.” ([Doc. 83] at 14:2–14). One witness reported that “Smith convulsed for two minutes with seven minutes of heavy breathing as he took large breaths.” (Doc. 83-38 at 2; *see also* doc. 83 at 23:13–20). Others estimated that Smith convulsed for a total of four minutes from 7:57 p.m. until 8:01 p.m. (Doc. 82-37 at 2). Smith, while strapped to the gurney, held up the “I love you” sign (in American Sign Language) with his left hand. (Doc. 83 at 27:24–28:1, 34:18–22; doc. 82-37 at 2). Smith continued to “hold[] on to the ‘I love you’ sign” during his execution. (Doc. 83 at 28:14–15, 29:15–18).

Pet. App. 36a - 37a.

Smith’s wife testified that it was “like watching someone drown without water.” App.684:20-22. A witness for Respondents, Warden Brandon McKenzie, conceded that it “seemed like several minutes or so” that Smith remained conscious following the flow of nitrogen and that “[t]o me it seemed like a while, yes.” App.1043:3-8; App.1920:18-21.

2. The Miller Execution

Respondents executed Alan Eugene Miller on September 26, 2024. App.705:18-20. The district court noted that “[d]uring the execution, Miller’s whole body started to shake very intensely, and Miller’s attorney described him as so obviously awake, conscious. (Doc. 83 at 52:5–13).” Pet. App. 38a. The district court also noted that “[o]ne witness approximated that Miller convulsed and took ‘gasping breaths of air’ for five minutes. (*Id.* at 52:19–53:1). [Statutory media witness Marty] Roney noted that

‘Miller gasped, shook[,] and struggled against his restraints for two minutes after the [nitrogen] gas apparently began to flow. (*Id.* at 36:24–37:1; doc. 82-36 at 1).’ Pet. App. 38a.

Warden McKenzie, who was stationed next to Miller in the execution chamber, confirmed that the time frame from when nitrogen was introduced to the time Miller raised his legs “may have been a few minutes.” App.1045:20-1046:11.

3. The Grayson Execution

The State executed Carey Dale Grayson on November 21, 2024. App.708:14-16. The district court noted that Dr. Brian McAlary, one of Boyd’s expert witnesses, and Grayson’s attorney (Matt Schulz) witnessed Grayson’s execution. *See* doc. 83 at 106:7–10; Pet. App. 39a.

Dr. McAlary sat approximately twelve to fourteen feet away from the gurney. *Id.* at 108:21–22; App.2796. Schulz took notes during Grayson’s execution on Dr. McAlary’s behalf to prevent Dr. McAlary from be[ing] distracted by looking at the clock [and] taking notes.” *Id.* at 106:16–22; App.2796. Schulz’s notes provide the following timeline of Grayson’s execution: (1) at 6:12 p.m., “[Grayson] appeared to breath[e] heavily as it seemed the air flow had changed ... [f]or about two minutes, he made hand gestures, clenched his hands, and struggled, while clearly still breathing”; (2) at 6:14 p.m., “[Grayson’s] legs/feet lifted fairly high up off the table”; (3) from 6:15 p.m. to 6:22 p.m., Grayson continued to breathe, which Schulz described at various points as “light” or “shallow.” Doc. 82-41 at 1–2; App.2797. At 6:33 p.m., the ADOC pronounced Grayson dead. (Doc. 82-8 at 7).

Pet. App. 40a.

Warden McKenzie conceded that it took “probably a few minutes” for Grayson to appear unconscious. App.1048:13-1051:5. Dr. McAlary testified that, in his expert opinion, Grayson was conscious for at least four minutes after nitrogen began to flow. Pet. App. 40a; App.787:19-23; App.782:17-784:6. The

district court assumed, without deciding, that Dr. McAlary's opinion was correct, and Grayson was conscious for four minutes. Pet. App. 55a-56a.

4. The Frazier Execution

Respondents executed Demetrius Terrance Frazier on February 2, 2024. App.703:9-11. As one media witness confirmed, at 6:10 p.m., Frazier "appeared to move his fist in a slow, inward pumping motion, then appeared to open his fists with palms outstretched, followed by moving his hands in what seemed to be circular motions, as if imitating airflow. About thirty seconds later, his hands continued this apparent motion, but appeared to move more rigidly, occasionally off sync." App.1398-1404. The district court similarly noted that Warden McKenzie recalled Frazier "roll[ing] his hands around ... in a circular motion." Pet. App. 42a. Warden McKenzie also confirmed that it took "a few minutes after nitrogen was introduced" for Frazier to become unconscious. App.1052:1-5.

5. The Hunt Execution

Respondents executed Greg Hunt on June 10, 2025. App.871:11-13. As one of the statutory media witnesses observed "[t]he gas began flowing sometime after 5:55 p.m., but it was not clear exactly when." App.1295-1301; App.1412-1413. As the district court noted, the witness further noted that "Hunt briefly shook, gasped[,] and raised his head off the gurney." Pet. App. 42a. The witness concluded that "[t]he shaking movement and gasps were similar to previous nitrogen executions in Alabama." App. 1298; App.1412-1413.

C. There Is a Feasible and Readily Implemented Alternative to Nitrogen Hypoxia.

As discussed further herein, execution by firing squad, already recognized by the district court as a feasible and readily implemented alternative to nitrogen hypoxia, is a demonstrably and substantially safer method of execution that significantly reduces risk of severe pain as compared to the Protocol.

II. PROCEEDINGS BELOW

A. Boyd Files His § 1983 Complaint Seeking Alternative Means of Execution.

On June 11, 2025, the Attorney General moved the Alabama Supreme Court to authorize the Governor to set an execution time frame for Boyd.

On July 16, 2025 – and before his execution date had been set – Boyd filed suit under 42 U.S.C. § 1983, alleging that Alabama’s Protocol violates the Eighth Amendment’s prohibition against cruel and unusual punishment.

Two days later, on July 18, 2025, Boyd’s filed a Motion for Preliminary Injunction. App.58-236. The district court set an evidentiary hearing on that Motion for September 4, 2025. The hearing ultimately lasted 2 days, September 4 and 5.

B. One Month After He Filed His Motion for Preliminary Injunction, the State Sets Boyd’s Execution Date.

On August 18, 2025, the State set Boyd’s execution date for October 23, 2025.

C. The Lower Court Decisions.

On October 9, 2025, the district court issued its Memorandum Opinion and Order (the “Order”) denying Boyd’s Motion for Preliminary Injunction. Pet. App. 14a-77a. Therein, the district court correctly determined that the use of a firing squad is

a feasible and readily implemented alternative to the Protocol. Pet. App. 65a-66a. The district court also concluded that, under the Protocol, “the time to unconsciousness is longer than the mere ‘seconds’ the State previously anticipated.” Pet. App. 55a. n.36. The district court correctly “assume[d] without deciding” that (a) “an inmate subject to an execution under the Protocol who breathes more normally will become unconscious within approximately two minutes after nitrogen begins to flow,” and (b) “Dr. McAlary’s opinion that [a prior inmate] was conscious for four minutes after the nitrogen gas was introduced is correct.” Pet. App. 54a-55a. Notwithstanding the above, however, the district court erred in determining that the use of a firing squad instead of the Protocol would not significantly reduce a substantial risk of severe pain.

On October 20, 2025, the Eleventh Circuit denied Boyd’s motion to stay execution, concluding that it “could not say that the district court abused its discretion in concluding that execution by firing squad would not significantly reduce a substantial risk of severe pain.” Pet. App. 11a.

Boyd filed this petition for certiorari and an application for a stay of execution on October 21, 2025.

REASONS FOR GRANTING THE PETITION

This case presents an opportunity to clarify the proper application of the standards set forth in *Glossip*, *Baze*, and *Bucklew* to (a) how the comparative analysis between a state’s method of execution and an inmate’s proposed alternative should be performed, specifically, whether the comparison should focus only on the fear and

anxiety experienced after the introduction of the fatal stimulus or also include the fear and anxiety leading up to the introduction of the fatal stimulus, such as the years, months, weeks, days, or hours during which an inmate knows that their death will happen; (b) whether the physical pain and psychological torment of nitrogen hypoxia qualifies as severe; and (c) the degree to which this pain must be reduced by an otherwise feasible and readily implemented alternative, such as the firing squad.

I. THIS CASE PRESENTS URGENT QUESTIONS REGARDING NITROGEN HYPOXIA EXECUTIONS.

A. Whether the Comparative Analysis of Terror Required by *Baze*, *Glossip*, and *Bucklew* Is Properly Focused On the Time After the Introduction of the Fatal Stimulus, as Opposed to Pre-Execution Dread Attendant with Any Execution.

Boyd does not dispute that all methods of execution carry with them angst, anxiety, stress, and panic in the period leading up to the introduction of a method's fatal stimulus (e.g. anticipation of firing of gunshots, anticipation of placement of needle in the arm, anticipation of the commencement of the flow of nitrogen, anticipation of the body dropping in a noose). Nor does he dispute that "[t]he Eighth Amendment does not come into play unless the risk of pain associated with the State's method is 'substantial when compared to a known and available alternative.'" *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019). Indeed, *Baze*, *Glossip*, and most recently *Bucklew* mandate that lower courts must engage in a comparative exercise when an inmate argues that the state's method of execution has a substantial risk of pain when compared to the inmate's proposed alternative(s).

But it is improper to include in the comparative analysis the years, weeks, days, or hours of psychological pain and distress leading up to any execution, for its inclusion blurs the stark differences between the *methods* of execution being compared. That is what the lower courts did in comparing nitrogen hypoxia and firing squad and finding that there was no discernible difference because “[o]n death row, a condemned inmate arguably endures psychological pain from the date his sentence is imposed until the moment of his execution”, Pet. App. 62a, and “psychological and emotional pain caused by either nitrogen hypoxia or the firing squad is pain which the inmate would inevitably experience because he knows he will soon die—an experience which attends every execution and cannot be avoided.” Pet. App. 63a-64a.

Boyd has asserted from the outset that it is the prolonged terror (and fighting the primal urge to breathe) an inmate is forced to suffer *after* nitrogen begins to flow into the mask during an execution and the inmate is subjected to conscious suffocation that is relevant.

Baze and its progeny did not instruct future courts how to engage in the comparative analysis, other than to make clear that it is a comparison of the *method*—this means the relevant time period to compare between the nitrogen Protocol and the firing squad protocol is the duration between the introduction of the fatal stimulus and the time that an inmate suffers fear and anxiety after that until becoming unconscious. *Bucklew v. Precythe*, 587 U.S. 119, 133–34 (2019) (“[Baze] teaches that where (as here) the question in dispute is whether the State’s chosen *method* of execution cruelly superadds pain to the death sentence, a prisoner must

show a feasible and readily implemented alternative *method* of execution.”) (emphasis added). Here, specifically, the relevant comparison is (i) the time that nitrogen enters the mask until the time of unconsciousness, and (ii) the time when the bullets first impact the body until the inmate loses consciousness. Any other framework would cause the comparative analysis to collapse on itself and consider factors present in all executions, not unique to the two methods being compared.

B. Whether Conscious Asphyxiation under the Protocol Raises a Substantial Risk of Severe Pain and Suffering.

The Eleventh Circuit wrongly found that the district court “did not err in ruling that Mr. Boyd’s proposed alternative of a firing squad would not significantly reduce a substantial risk of severe pain.” Appendix at 11a. This Court should clarify what level of “superaddition of terror, pain, or disgrace” violates the Eighth Amendment. *Bucklew*, 587 U.S. at 133 (cleaned up) (quoting *Baze v. Rees*, 553 U.S. 35, 48 (2008)).

The district court correctly noted that, “when the Eighth Amendment was adopted the Founders understood ‘cruel’ to include punishments ‘[d]isposed to give pain to others, in body or mind,’” Pet. App. 61a (quoting *Bucklew*, 587 U.S. at 130), and that “[t]he cruelty against which the Constitution protects a convicted man is cruelty inherent in the method of punishment, not the necessary suffering involved in any method employed to extinguish life humanely.” Pet. App. 61a-62a (emphasis added) (quoting *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 646 (1947)). This Court should apply these standards to clarify whether conscious suffocation for two or more minutes “is attributable to some defect in the Protocol and not, instead,

merely an accident or an inescapable consequence of death – which does not violate the Eighth Amendment.” Pet. App. 56a (quoting *Baze v. Rees*, 553 U.S. 35, 50 (2008)).

Here, the Protocol is the defect. The Protocol is unconstitutional because, by its very nature, the Protocol causes needless suffering and superadded pain “well beyond what is needed to effectuate a death sentence” – specifically, the physical and psychological agony of being asphyxiated while conscious for between two and seven minutes. *Bucklew*, 587 U.S. at 136-37. This superadded pain and suffering cannot be deemed an “accident” where the evidence incontrovertibly shows that it has occurred in each prior instance where the Protocol was employed.

The initial physiological symptoms accelerate rapidly to full-blown “air hunger.” Air hunger is “like you’re breathing, but you still can’t get enough air. Your breath feels ineffective. Your drive to breathe is going through the roof. You feel extremely short of breath, but yet you can’t get enough oxygen.” App.841:16-842:1. “It feels physically distressing to breathe that hard. It’s like when you exercise to near exhaustion ... you can feel your lungs aching.” App.846:2-6. “Many patients [] have that same air hunger when they’re having an asthma attack, or they’re having a worsening of their emphysema or pneumonia, other types of lung disease. So it produces this tremendous hunger that is part of the body’s response to ... it’s responding to the oxygen deprivation.” App.842:1-9.

The Protocol ensures that the inmate will remain conscious as the physical symptoms of asphyxiation (air hunger, shortness of breath, aching lungs elevated heart rate, blood pounding in the ears, the feeling of suffocation, of an asthma attack,

of being trapped too deep underwater) feed a “fight or flight” sympathetic nervous response and attendant emotional terror. *See* Pet. App. 50a-51a. The interplay between the inmate’s physiological and psychological symptoms creates an ever-building feedback loop of physical and mental anguish that is wholly distinct from any other method of judicial execution and certainly not an inescapable byproduct of death.

The record below established that the physiological effects of hypoxia are physically painful, which drives the psychological “terror effect.” As Dr. Bickler testified, “there’s the *physical part* of it, the drive to breathe, the increase in heart rate, the pounding of blood that you feel in your head, but *an additional effect is the emotional terror and panic that’s elicited* to this primal reaction to having your oxygen supply cut off.” App. 840:15-19 (emphasis added). The State’s expert conceded that “consciously experiencing the ‘primal urge to breathe’ while knowing that breathing will cause death amounts to severe emotional suffering.” Pet. App. 51a. As the district court “assumed without deciding,” under the Protocol, inmates endure that terror for at least two minutes, and possibly four and up to seven, not “the mere ‘seconds’ the State previously anticipated.” Pet. App. 55a, n.36. In effect, the Protocol is akin to the State holding an inmate’s head under water and drowning them. The nitrogen and mask equate to water and the restrained inmate is forced to consciously endure a prolonged period of suffering until the primal urge to breathe prevails and they ultimately inhale nitrogen that belatedly renders them unconscious and ultimately kills them.

This Court has consistently held that executions are cruel and unusual “when they involved torture or a *lingering death*[.]” *Baze v. Rees*, 553 U.S. 35, 49 (2008) (emphasis added) (citing *In re Kemmler*, 136 U.S. 436, 447 (1890)).⁴ “[A] penalty may be cruel and unusual because it is excessive and serves no valid legislative purpose.” *Furman v. Georgia*, 408 U.S. 238, 331 (1972) (Marshall, J., concurring); see also *id.*, at 332 (“The entire thrust of the Eighth Amendment is, in short, against ‘that which is excessive.’”). Death under the Protocol involves the inmate being subjected to several minutes of an experience comparable to drowning, where the inmate experiences intense pain and distress caused by the natural reflex to combat air hunger; such air hunger having been described as “inducing a sense of drowning and the attendant panic and terror, much as would occur with the torture tactic known as waterboarding.” *In re Ohio Execution Protocol Litig.*, S.D. Ohio, No. 2:11-CV-1016 (Jan. 14, 2019) *aff’d* 946 F.3d 287 (6th Cir. 2019). Death under the Protocol is lingering, torturous, and excessive.

In contrast, execution by firing squad is nearly instantaneous. This method of execution has been upheld by this Court under the Eighth Amendment. See *Wilkerson v. State of Utah*, 99 U.S. 130, 134-35 (1878). The firing squad method of execution is currently approved by the U.S. Army and five states (Mississippi, Oklahoma, Utah, South Carolina, and Idaho). See Miss. Code § 99-19-51; Okla. Stat. tit. 22, § 1014; Utah Code § 77-18-113; S.C. Code § 24-3-530; and, Idaho Code § 19-2716.

⁴ This Court also stated that “torture [and] a lingering death” were the “evils of most immediate concern to the drafters of the [Eighth Amendment].” *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

The district court noted that the evidence at the hearing established that upon impact, the firing squad's volley "causes a rapid and total disruption of blood flow to the brain, and when that blood supply is stopped, loss of consciousness occurs in three to five (possibly six) seconds." Pet. App. 59a. The district court, however, drew clearly erroneous inferences from the testimony of Dr. James Williams, an expert in emergency medicine, firearms and ballistics, App.929:18-23, and the only expert witness to testify about the efficacy of execution by firing squad.⁵

According to the lower courts, even if all of the behaviors from the 5 prior executions summarized above were conscious and took place for two, four, or even seven minutes (App.2810 n.34) it does not matter because "the firing squad carries with it a risk of three to five (possibly six) seconds of physical pain and suffering, and that type of physical pain is absent in an execution under the Protocol—which for some people may decrease the risk of psychological pain." Pet. App. 64a; *see also* Pet. App. 10a. It was clear error to find that Dr. Williams' report "supports ***the inference*** that the inmate *would* experience physical pain during the three to five seconds before he became unconscious. (*See id.* at 7 (explaining that the inmate would become unconscious in three to five seconds and would not feel pain and suffering 'thereafter'))." Pet. App. 60a (first emphasis added, second emphasis in original)).

The overwhelming unrebutted evidence before the district court established that during a firing squad execution, the inmate feels no pain upon impact due to the

⁵ Dr. Williams based his testimony on the State of Utah's Department of Corrections and the United States Military's firing squad protocols. App.930:10-931:12; App.1246-1262; App.1486-1623; App.1624-1645.

resulting “neurological stunning” in the wound area, which persists long past the three to five seconds before consciousness is lost. App.1249-1250. An inmate being shot feels sensation like a severe blunt blow with no sharp or burning sensation. App.1253-1254. Thus, a firing squad is an “efficacious means of execution for causing rapid and relatively painless death,” App.931:18-20, and would substantially reduce the risk of severe pain as compared to the Protocol.

Nevertheless, the district court inexplicably found that, “even if Boyd had clearly shown that an inmate was conscious for *seven minutes* after the nitrogen began to flow, it would not change the [district court’s] conclusion that Boyd has not established a substantial likelihood of success on the merits of his Eighth Amendment facial challenge to the Protocol.” Pet. App. 53a, n.34. There is no scenario where an extra two, four, or seven minutes of physical and psychological pain under the Protocol does not constitute a needless superaddition of terror, pain, or disgrace for Eighth Amendment purposes, especially where a quick and painless alternative exists.

II. THIS CASE IS A STRONG VEHICLE FOR ADDRESSING THESE ISSUES.

Perhaps to suggest that the constitutionality of nitrogen hypoxia executions is well settled, Respondent below cited the litigation involved in three of the six prior executions by nitrogen hypoxia in Alabama. The litigation process of those cases, however, were and are irrelevant. None of those cases involved the “nearly fifteen hours of witness testimony from expert and lay witnesses, including eyewitnesses to earlier executions under the Protocol” combined with the “over one thousand pages

of evidence” that comprised the record in this case. *See* Pet. App. 15a. None of those cases involved extensive firsthand observations by numerous witnesses to prior executions, the only expert who has actually observed an execution (Dr. McAlary, who testified only as a fact witness in the *Frazier* case), or experts on the firing squad.

For its part, the Eleventh Circuit cited *Hoffman v. Westcott*, 131 F.4th 332 (5th Cir. 2025) in concluding that the district court had not abused its discretion. Pet. App. 11a. But that case, too, had an incomplete record. *See Hoffman*, 131 F.4th at 336 (“Hoffman presented no such evidence of superadded terror to the court—let alone evidence of how execution by a firing squad would substantially mitigate that terror.”). Indeed, the dissent in *Hoffman* noted there were “issues that need more time to be resolved and decided.” *Id.* at 337. The dissent also framed the same issue that Boyd raises: “If Hoffman were to be executed by a firing squad, which is his requested and preferred method, the district court found that he would be rendered unconscious in three to four seconds. That is a significant difference that is crucial to the Eighth Amendment analysis.” *Id.*

Unlike in *Hoffman* and the prior Alabama cases, the instant case had copious testimony (lay and expert) about the superadded terror inherent in a nitrogen hypoxia execution. Put simply, the evidentiary record here is ample, and this Court has an opportunity to clarify the applicable standards.

CONCLUSION

For the reasons stated above, this Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2025, I served a true and correct copy of the foregoing document and appendix thereto with the clerk of the court via overnight delivery, postage prepaid, and I served a copy, via email and via overnight delivery, on the following counsel of record:

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