

Nos. 25-5928 and 25A457
CAPITAL CASE

In the
Supreme Court of the United States

◆

ANTHONY BOYD,
Petitioner,
v.
JOHN Q. HAMM,
Commissioner, Alabama Department of Corrections, et al.,
Respondents.

◆

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

**OPPOSITION TO APPLICATION FOR STAY OF EXECUTION
AND PETITION FOR WRIT OF CERTIORARI**

Steve Marshall
Alabama Attorney General

Edmund G. LaCour Jr.
Solicitor General

Robert M. Overing
Deputy Solicitor General

Dylan Mauldin
Assistant Solicitor General

Polly S. Kenny
Assistant Attorney General

Lauren A. Simpson
Deputy Attorney General
*Counsel of Record
OFFICE OF ALA. ATT'Y GENERAL
501 Washington Avenue
Montgomery, AL 36130
(334) 242-7300
Lauren.Simpson@AlabamaAG.gov

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CAPITAL CASE

QUESTIONS PRESENTED

(Restated)

Anthony Boyd was sentenced to death in 1995 for his participation in the brutal murder of Gregory Huguley, who was duct-taped to a bench, doused with gasoline, and burned alive over a \$200 debt.

Boyd timely elected nitrogen hypoxia as his method of execution in June 2018, then proceeded to publicly denounce it, particularly after the first hypoxia execution in January 2024. And yet Boyd waited to initiate a 42 U.S.C. §1983 method-of-execution challenge until July 2025, about a month after the State moved for his execution. Since August 2023 when Alabama's Protocol was announced, six capital murderers in Alabama have been executed by nitrogen hypoxia, and one in Louisiana.

It is "undisputed that [Alabama's] Protocol does not pose a risk of physical pain akin to being cut with a knife," so Boyd's challenge is premised entirely on emotional distress. App'x 45a. After a two-day evidentiary hearing with testimony from five physicians, several ADOC employees, and many lay witnesses to prior executions, and with the benefit of 1,600 pages of evidence and two rounds of post-hearing briefs, the district court declined to issue a preliminary injunction on two grounds. First, Boyd is unlikely to succeed because he did not prove the Eighth Amendment requires the State to adopt a physically painful method of execution (firing squad) over a physically painless but (on his view) more emotionally distressing one (hypoxia). Second, Boyd's years-long delay, all too common in capital cases, disqualified him from equitable relief.

The questions presented are:

1. Whether the district court correctly considered an inmate's high baseline level of emotional distress leading up to an execution (to which Boyd's expert repeatedly testified) when deciding whether nitrogen hypoxia surely or very likely superadds severe pain that an alternative would significantly reduce.
2. Whether the lower courts abused their discretion in denying a preliminary injunction as to Boyd's Eighth Amendment claim when Boyd failed to name an alternative method of execution that is feasible, readily available, **and** significantly safer than nitrogen hypoxia, and that the Alabama Department of Corrections does not have a legitimate penological interest in rejecting.
3. Whether the district court abused its discretion in denying a preliminary injunction where the equities weighed against Boyd, particularly due to his unreasonable delay.

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INTRODUCTION

Anthony Boyd is scheduled to be executed on **October 23, 2025**, for the savage murder of Gregory Huguley thirty-two years ago.

Boyd's claims would require this Court to identify an abuse of discretion in both lower courts' denial of a stay of execution. This Court does not typically grant review in such cases, SUP. CT. R. 10, so no stay should issue.

I. Boyd alleges that the Alabama Department of Corrections' (ADOC) nitrogen hypoxia protocol is facially cruel and unusual. Following a two-day evidentiary hearing with testimony from five physicians, several ADOC employees, and a number of lay witnesses to prior executions, as well as the submission of more than 1,600 pages of evidence and two rounds of post-hearing briefs, the district court held that Boyd failed to demonstrate that either of his two proposed alternatives, the firing squad and medical-aid-in-dying (the latter of which is not before the Court), satisfies the requirement that it be "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." *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019) (citing *Glossip v. Gross*, 576 U.S. 863 (2015), and *Baze v. Rees*, 553 U.S. 35 (2008)). This was not an abuse of discretion. The district court found that the firing squad—a method of execution in which the condemned is restrained and shot multiple times in the chest—was readily available to ADOC but not significantly safer, writing, "At most, Boyd has shown that the firing squad *may* reduce the risk of psychological and emotional pain and physical discomfort caused

by the nitrogen hypoxia protocol. But that is not the standard.” App’x 64a.¹ The district court’s finding that Boyd failed to show a substantial likelihood of success on the merits was not an abuse of discretion.

II. Boyd asks this Court to grant relief on a claim he brought just three months ago despite having known its basis in fact for many years. He elected nitrogen hypoxia in June 2018, then wrote multiple columns in an advocacy publication railing against it, particularly after the execution of Kenneth Smith in January 2024. But Boyd, despite having long ago exhausted his appeals and knowing there was no obstacle to his execution, sat on his hands while other inmates—Alan Miller, Carey Grayson, and Demetrius Frazier in Alabama, and Jessie Hoffman in Louisiana—brought §1983 challenges to hypoxia protocols throughout 2024 and 2025. Only after the State moved for Boyd’s execution in June 2025 did he finally decide to file suit a month later in mid-July. “[B]ecause the record evinces unreasonable delay in seeking relief,” App’x 73a, Boyd’s conduct disqualifies him from equitable relief here.

Other equitable factors favor the State, including the public interest in justice after three decades. Boyd faces no irreparable harm where the State carries out a lawful and just sentence.

1. Boyd has abandoned his claim concerning medical-aid-in-dying (MAID) as an alternative. The district court identified multiple problems with his proposal, including the fact that the inmate would need to participate in his execution by drinking the lethal drugs and that a MAID death by the cocktail Boyd suggested could up to twenty-four hours to kill. App’x 67a.

STATEMENT OF THE CASE

Boyd is scheduled to be executed on Thursday for the kidnapping-murder of Gregory Huguley, which the Alabama Court of Criminal Appeals (ACCA) stated was “especially heinous, atrocious, and cruel, in that it was unnecessarily torturous, pitiless, conscienceless, extremely wicked, and shockingly evil.” *Boyd v. State*, 715 So. 2d 825, 852 (Ala. Crim. App. 1997).

A. Boyd and his friends set a man on fire and watch him burn to death.

In July 1993, Huguley acquired \$200 worth of cocaine from Boyd and two other men, Shawn Ingram and Marcel Ackles. When he failed to pay for the drugs, the sellers went looking for him on July 31, along with a fourth man, Quintay Cox, who brought a pistol. Cruising in a van that Ackles had rented, they located Huguley on 15th Street in Anniston, Alabama, early that evening. Ingram took the pistol and told Huguley to get in the van; when Huguley hesitated, Ingram forced him into the back, and the van took off, followed by Cox’s car.

The men stopped at a gas station, where Ackles purchased gasoline in a plastic container. As they proceeded to Munford, a town about ten miles away, Boyd and Ingram forced Huguley to lie on the floor of the van as Huguley begged them, “Do not kill me. I will get your money.” When they reached a baseball field, Ingram made Huguley lie on a bench, Ackles duct-taped his hands and mouth, Boyd taped his feet, and then Huguley was taped to the bench as well. With Huguley immobilized and helpless, Ingram doused him with gasoline, made a two-foot gas trail to the bench, and lit the fire. Huguley was burned alive, and Boyd and the others watched for ten

to fifteen minutes until the fire went out and Huguley had perished. The men then returned to Anniston. After the murder, Boyd said to Cox, “We are all in this together. If one goes down, all go down.” *Id.* at 832; *Boyd v. Comm’r, Ala. Dep’t of Corr.*, 697 F.3d 1320, 1325 (11th Cir. 2012) (correcting ACCA’s attribution of quotation to Ackles).

The forensic investigation of the scene uncovered duct tape residue on a charred board; the melting point of duct tape is over 400 degrees. Gasoline was found in the soil near Huguley’s body. Huguley’s autopsy revealed that his tongue, throat, and epiglottis were swollen and burned, and there was soot in his trachea, evidence that he was alive and breathing at the time the fire was set. Huguley’s cause of death was determined to be thermal burns. Mem. Op at 5, *Boyd v. Campbell*, 1:05-cv-01215 (M.D. Ala. Sept. 8, 2008), DE66.

B. Boyd is convicted, sentenced to death, and unsuccessful on appeal.

Boyd was convicted of capital murder in 1995. At the conclusion of the penalty phase on March 16, the jury recommended 10–2 that he be sentenced to death, and the trial court followed that recommendation on May 19. *Boyd*, 715 So. 2d at 831-31; Mem. Op. at 1, *Boyd v. Campbell*. ACCA affirmed. *Boyd*, 715 So. 2d at 852.

Boyd’s present counsel, Sherin and Lodgen LLP, began representing him in state postconviction (Rule 32) in 1999.² His conventional appeals concluded in June 2013, when this Court denied certiorari in his federal habeas proceedings. *Boyd v. Thomas*, 570 U.S. 920 (2013) (mem.).

2. Petition for Relief from Conviction and Sentence, *Boyd v. State*, CC-94-00258.60 (Talladega Cnty. Cir. Ct. Oct. 20, 1999).

C. Boyd challenges ADOC's execution protocol.

The State moved for Boyd's execution in September 2014, but before the Alabama Supreme Court could grant the motion, the State asked that the matter be held in abeyance pending the resolution of *Glossip v. Gross*, 576 U.S. 863 (2015).

The following month, Boyd filed a 42 U.S.C. §1983 complaint in the Middle District of Alabama arguing that ADOC's midazolam lethal injection protocol was unconstitutional. Following the release of *Glossip*, the State's motion to dismiss was granted. *Boyd v. Myers*, 2:14-cv-01017 (M.D. Ala. Oct. 7, 2015), DE50. The Eleventh Circuit affirmed in May 2017, *Boyd v. Warden, Holman Corr. Fac.*, 856 F.3d 853 (11th Cir. 2017), and this Court denied cert, *Boyd v. Dunn*, 583 U.S. 1203 (2018) (mem.).

In 2018, the state legislature added nitrogen hypoxia to the statutory methods of execution. Boyd timely elected hypoxia as his method of execution on June 27, 2018.

Continuing to pursue state remedies as well, Boyd filed a successive Rule 32 petition in January 2017, arguing that his death sentence was unconstitutional under *Hurst v. Florida*, 577 U.S. 92 (2016). The circuit court summarily dismissed the petition. *Boyd v. State*, CC-1994-258.61 (Talladega Cnty. Cir. Ct. Dec. 27, 2017).

D. Alabama and Louisiana begin employing nitrogen hypoxia as a method of execution.

In August 2023, ADOC adopted a protocol for carrying out judicial executions by nitrogen hypoxia. The "crux" of the protocol is that it administers "pure nitrogen gas...through an industrial respirator mask" until the inmate dies. *Grayson v. Hamm*, 2:24-cv-00476, 2024 WL 4701875, at *2 (M.D. Ala. Nov. 6, 2024). EKG machines and pulse oximeters monitor the inmate's condition. *Id.*

Alabama has successfully used nitrogen hypoxia to carry out the sentences of Kenneth Smith (Supreme Court denied stay), Alan Miller (settled), Carey Grayson (Supreme Court denied stay), Demetrius Frazier (did not appeal denial of injunctive relief), Gregory Hunt (did not challenge method), and Geoffrey West (did not challenge method). Louisiana used a similar hypoxia protocol to execute Jessie Hoffman (Supreme Court denied stay after Fifth Circuit vacated preliminary injunction).

i. Kenneth Smith

Smith elected hypoxia but challenged the method on two grounds. First, Smith and multiple experts asserted that due to his PTSD, he would vomit in the mask during the execution and then choke to death on his vomit before dying of hypoxia. *See, e.g., Smith v. Hamm*, 2:23-cv-00656, 2024 WL 262867, at *1 (M.D. Ala. Jan. 24, 2024). Second, Smith and one of his experts, Dr. Philip Nitschke, asserted that ADOC's mask would not produce a tight seal. *Smith v. Hamm*, 2:23-cv-00656, 2024 WL 116303, at *18 (M.D. Ala. Jan. 10, 2024). Finding each risk highly speculative, the district court denied a preliminary injunction. *Id.* at *20. The Eleventh Circuit affirmed, and this Court denied cert. *Smith v. Comm'r*, 24-10095, 2024 WL 266027 (11th Cir. Jan. 24, 2024); *Smith v. Hamm*, 144 S. Ct. 414 (2024) (mem.). Smith was executed on January 25, 2024.

ii. Alan Miller

The State sought Miller's execution warrant on February 21, 2024. Miller, too, challenged hypoxia despite having elected it. Among other things, he argued that "a trained medical professional" should place and hold the mask, supervise the flow of

nitrogen, and respond if anything “goes awry.” Complaint ¶193, *Miller v. Marshall*, 2:24-cv-00197 (M.D. Ala. Mar. 9, 2024), DE1. Miller alleged that the mask would not fit his large face, that ADOC should use “medical grade nitrogen,” and that a “tranquilizing medication in pill form” would “reduce thrashing.” *Id.* In an order dismissing two counts but permitting Miller’s Eighth Amendment claim to proceed, the district court found the surviving allegations to be “noticeably lean on factual detail” and “barely...plausible.” *Miller v. Marshall*, 2:24-cv-00197, 2024 WL 2946093, at *7 (M.D. Ala. June 11, 2024).

Miller sought preliminary injunctive relief and received copious discovery. He had a team of two major law firms and Dr. Philip Bickler (also Boyd’s expert). Miller received access to ADOC personnel and documents and deposed many witnesses. He ultimately settled with the State and dismissed his lawsuit. Joint Stipulation of Dismissal, *Miller v. Marshall*, 2:24-cv-00197 (M.D. Ala. Aug. 5, 2024), DE79. Miller was executed on September 26, 2024.

iii. Carey Grayson

After the State moved for Grayson’s execution, he challenged ADOC’s hypoxia protocol in June 2024. *See* Complaint, *Grayson v. Hamm*, 2:24-cv-00376 (M.D. Ala. June 28, 2024), DE1. Grayson alleged that with “proper administration,” nitrogen hypoxia would cause an inmate to “lose consciousness within seconds” and die within “minutes” without any “pain or discomfort.” *Id.* ¶101. But ADOC’s protocol would result in “unconstitutional pain,” he claimed, because (1) the inmate would not be rendered unconscious prior to the administration of nitrogen gas, causing “anguish,” *id.* ¶¶105, 111; (2) excess oxygen might enter the mask and prolong the execution, *id.*

¶119; (3) the protocol does not call for a medical examination to diagnose issues like sleep apnea that could prolong the execution, *id.* ¶125; and (4) the execution team is unqualified to monitor the pulse oximeters and EKGs used during the execution, *id.* ¶¶128-29. Grayson later amended his complaint, alleging that Smith’s autopsy suggested he had experienced negative pressure pulmonary edema. Amended Complaint, *Grayson v. Hamm*, 2:24-cv-00376 (M.D. Ala. Aug. 30, 2024), DE42.

Grayson moved for a preliminary injunction and received limited expedited discovery. The district court held a comprehensive two-day hearing and received over fifty exhibits, including numerous case reports and articles on inert gas asphyxiation and media reports describing the Smith and Miller executions. *Grayson*, 2024 WL 4701875, at *3. The court heard live testimony from ten witnesses, including each side’s expert, the medical examiner who conducted Smith’s autopsy, and multiple State employees who witnessed the Smith and/or Miller executions. *Id.* at *4-5. Ultimately, the court denied a preliminary injunction, finding that Grayson’s claim fell “well short” of the Eighth Amendment standard; Grayson presented “a speculative parade of highly unlikely events,” *id.* at *19, and the State’s expert, Dr. Joseph Antognini, was deemed “more credible and persuasive” than Grayson’s expert Dr. Brian McAlary (also Boyd’s expert), *id.* at *22. The Eleventh Circuit affirmed unanimously in a published opinion, *Grayson v. Comm’r, Ala. Dep’t of Corr.*, 121 F.4th 894 (11th Cir. 2024), this Court denied cert, *Grayson v. Hamm*, 145 S. Ct. 586 (2024) (mem.), and Grayson was executed on November 21, 2024.

iv. Demetrius Frazier

Like Grayson, Frazier waited until the State moved for his execution to

challenge the hypoxia protocol. Complaint, *Frazier v. Hamm*, 2:24-cv-00732 (M.D. Ala. Nov. 15, 2024), DE1. His complaint relied heavily on allegations of what lay witnesses reported about the executions of Smith and Miller. As for alternatives to hypoxia, Frazier’s counsel proposed two: the administration of midazolam prior to nitrogen hypoxia, or else the lethal injection of ketamine and fentanyl (the latter of which he ultimately abandoned). *Id.* at 13-16. Otherwise, his complaint was substantially similar to Grayson’s.

The district court held a hearing on Frazier’s motion for preliminary injunction in January 2025, at which the court heard testimony from Dr. McAlary, Dr. Antognini, and Commissioner Hamm. The court denied a preliminary injunction, finding the lay witness accounts “insufficiently reliable.” *Frazier v. Hamm*, 2:24-cv-00732, 2025 WL 361172, at *11 (M.D. Ala. Jan. 31, 2025) (crediting Dr. Antognini over Dr. McAlary); *see id.* at *11 n.20 (noting that “the State present[ed] credible evidence that Smith held his breath during his execution, thereby prolonging it”). Ultimately, the court found:

On this record, Frazier has not established that the Protocol very likely causes needless psychological suffering, superadds psychological pain, or creates a substantial risk of serious psychological harm. While the Court does not doubt that Frazier likely will experience some psychological pain before and during his execution, the Court finds that Frazier has failed to meet his burden to show that the Protocol creates a substantial risk of serious psychological harm over and above what is inherent in any execution. Consequently, Frazier fails to establish a substantial likelihood of success on the merits of his Eighth Amendment claim.

Id. at *12. As for Frazier’s proposed alternative with midazolam, the court found that “Frazier’s submissions are insufficient to support a finding that rendering him

unconscious sooner through sedation will significantly reduce a substantial risk of severe psychological pain,” *id.* at *13, and credited the State’s legitimate penological reasons for not adding a lethal injection component to a hypoxia execution, *id.* at *13-14.

But the court denied Frazier’s motion on the equities as well, emphasizing his unreasonable delay in initiating his §1983 action. *Id.* at *15-17. As the court set forth:

Frazier’s postconviction litigation timeline reflects that he filed this action over one year after the Protocol was publicly released, and he filed his request for a preliminary injunction (1) over sixteen months after the Protocol was released; (2) almost a year after Smith’s execution; (3) almost four months after Miller’s execution; (4) about three months after the State moved the Alabama Supreme Court to set his execution date; (5) two months after he filed this lawsuit; (6) one month after the Alabama Supreme Court granted the State’s motion to set his execution date; and (7) fewer than four weeks before the beginning of his February 6, 2025 execution timeframe. And Frazier filed his motion for preliminary injunction only after this Court prompted him to do so.

Id. at *15 (footnote omitted). In closing, the court “implored members of the bar to cease the all too common ‘practice of filing lawsuits and requests for stay of execution at the last minute where the facts were known well in advance.’” *Id.* at *17 (quoting *Mills v. Hamm*, 734 F. Supp. 3d 1226, 1248 (M.D. Ala. 2024)).

Frazier did not appeal, and he was executed on February 6, 2025.

v. Jessie Hoffman

Finding that no drug company would sell Louisiana the necessary drugs for lethal injection, Louisiana made nitrogen hypoxia its method of execution in spring 2024. Jessie Hoffman waited until February 2025, after Louisiana issued a death warrant, to bring a new lawsuit, challenging nitrogen hypoxia and—like Boyd—pleading the firing squad and a MAID cocktail, DDMAPh, as alternative methods.

The parties engaged in expedited discovery, and the district court held an evidentiary hearing, featuring testimony from Dr. Antognini and Dr. Bickler.

The district court found that “nitrogen hypoxia does not produce physical pain” and that a person breathing nitrogen would “lose consciousness in less than one minute.” *Hoffman v. Westcott*, 3:25-cv-169, 2025 WL 763945, at *8 (M.D. La. Mar. 11, 2025). The court enjoined Hoffman’s execution, however, on its “common sense [belief] that the deprivation of oxygen to the lungs causes a primal urge to breathe and feelings of intense terror.” *Id.* at *9. That alleged “psychological pain,” which the court never compared to the baseline emotional distress of facing execution or the distress posed by any alternatives, was enough to find that Hoffman had “clearly shown” a “substantial likelihood of success on his Eighth Amendment claim. *Id.* at *10.

The Fifth Circuit swiftly reversed, explaining that the preliminary injunction was “not just wrong” but got “the Constitution backwards, because it’s premised on the odd notion that the Eighth Amendment somehow requires Louisiana to use an admittedly *more* painful method of execution.” *Hoffman v. Westcott*, 131 F.4th 332 (5th Cir. 2025). This Court denied a stay, *Hoffman v. Westcott*, 145 S. Ct. 797 (2025) (mem.), and Hoffman was executed on March 18, 2025.

vi. Gregory Hunt

Gregory Hunt elected nitrogen hypoxia, and the State moved to authorize his execution in March 2025. Hunt never challenged the protocol; he instead filed two successive Rule 32 petitions and a stay application in this Court, which was denied. *Hunt v. Alabama*, No. 24A1192 (U.S. June 10, 2025) (mem.). Hunt was executed on June 10, 2025.

vii. Geoffrey West

Geoffrey West elected nitrogen hypoxia, and the State moved to authorize his execution in April 2025. He engaged in no execution litigation, and he was executed on September 25.

E. The State moves for Boyd’s execution again, and Boyd brings his second method-of-execution challenge.

The State moved for Boyd’s execution for the second time on June 11, 2025. State of Alabama’s Motion to Set an Execution Date, *Ex parte Boyd*, No. 1961321 (Ala. June 11, 2025). A flurry of litigation followed, including a counseled §1983 action (the present matter), and a pro se third Rule 32 petition, state civil action, mandamus petition, and §1983 action.³

i. Boyd initiated the present action in the Middle District of Alabama on July 16, DE13-1:13-57,⁴ and moved for preliminary injunction on July 18, DE13-1:58-236. He raised four claims in his complaint: (1) ADOC’s nitrogen hypoxia protocol was cruel and unusual, in violation of the Eighth Amendment, (2) his right to due process had been violated by ADOC’s failure to give him the unredacted protocol, (3) the protocol was cruel and unusual as applied to him, and (4) a “claim” for injunctive relief. Boyd opted to seek a preliminary injunction only as to the first two claims, and in his post-hearing brief, he abandoned the second. *See* App’x 27a. As for his alternative methods to hypoxia, Boyd, like Frazier, pleaded the firing squad and the

3. Boyd received no relief in his state cases. The district court denied a preliminary injunction in his pro se §1983 on the same day it ruled in the present case, and the Eleventh Circuit likewise denied a stay. That matter is presently before the Court in *Boyd v. Ivey*, Nos. 25-5926 and 25A451.

4. “DE” citations are to the docket entries in the Eleventh Circuit.

DDMAPh MAID cocktail.

The district court held an evidentiary hearing on September 4-5, at which time the court “heard nearly fifteen hours of witness testimony from expert and lay witnesses, including eyewitnesses to earlier executions under the Protocol”; the court also received more than one thousand pages of evidence. App’x 15a. On the first day, Boyd presented testimony from his experts, Dr. Philip Bickler, Dr. Carly Zapata, and Dr. James Williams, plus testimony from witnesses to the previous hypoxia execution, including three attorneys, Dr. McAlary, the wife of one inmate, and three journalists. He also called Cynthia Stewart-Riley, ADOC’s regional coordinator for the southern region and the former warden of Holman Correctional Facility, and introduced affidavits from other journalists. On the second day, Defendants presented ADOC Commissioner John Hamm, Holman Warden Terry Raybon, the former and present captains of the execution team, ADOC’s director of medical services for quality assurance and policy, and Dr. Joseph Antognini, an anesthesiologist who has served as an expert for Defendants in prior hypoxia litigation. *See* DE13-5; 13-6; 13-7:3-199. Thereafter, the parties filed post-hearing briefs and replies. DE13-16:3-73; DE14-4.

ii. The district court denied a preliminary injunction on October 9 on two grounds. ***First***, the court found that Boyd failed to establish a substantial likelihood of success on the merits. App’x 45a. As the court explained, “[i]t is undisputed that the Protocol does not pose a risk of physical pain akin to being cut with a knife.” App’x 45a. Rather, Boyd claimed that the protocol created “‘emotional terror,’ physiological

distress, and physical discomfort because inmates are unable to get sufficient oxygen into their lungs when their bodies are desperate to do so, and because they must participate in their own deaths by breathing in nitrogen.” App’x 48a-49a. But as the court noted, “[p]sychological pain or mental suffering is a likely result of being sentenced to death and anticipating the execution,” App’x 49a (quoting *In re Ohio Execution Protocol Litig.*, 881 F.3d 447, 450 (6th Cir. 2018)), and “[t]he Protocol does not implicate the Eighth Amendment unless it very likely causes ‘needless suffering’...or ‘cruelly *superadds* pain to the death sentence,” *id.* (quoting *Grayson*, 121 F.4th at 897, and *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019)). Therefore, the question was whether Boyd’s alternative methods were feasible, readily available, and “would significantly reduce a substantial risk of severe pain posed by the ADOC’s nitrogen hypoxia protocol,” and if so, whether the State had failed to adopt them without a legitimate penological reason. App’x 49a-50a.

Because one does not feel pain or terror while unconscious, the court considered how long the condemned would remain conscious during a hypoxia execution. App’x 52a. The experts disagreed; Dr. Antognini, relying on scientific literature, including reports of hypoxia suicides, estimated thirty to forty seconds, while Dr. Bickler, relying on his experience in his hypoxia lab (which is very different than the execution conditions), estimated two minutes. App’x 52a-54a. The court declined to resolve the dispute, “assum[ing] without deciding” that Dr. Bickler’s two-minute estimate was accurate and that Dr. McAlary was correct that Grayson remained conscious for four minutes. App’x 54a-55a. Given individual variance, the court supposed that all three

experts might be correct, and further noted that “the record evidence here supports a finding that the differing times to unconsciousness are largely outside of the ADOC’s control and instead depend on the inmate’s behavior—whether voluntary or involuntary.” App’x 55a-56a. And here, “Boyd fails to identify sufficient evidence that this aspect of an execution under the Protocol 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.” App’x 56a (quoting *Baze*, 553 U.S. at 50). The court further found that the hypoxia protocol did not superadd pain “by rapidly exposing the condemned inmate to high levels of nitrogen gas,” disagreeing with Dr. Bickler:

The record evidence establishes that the higher the level of nitrogen, and the deeper the inmate breathes, the sooner the inmate will become unconscious and thus be unable to feel pain or distress. Thus, while the degree of discomfort may be greater compared to the discomfort experienced by Dr. Bickler’s lab subjects, the discomfort is limited in duration to approximately two minutes if the inmate breathes more normally, and certainly less than the ten to fifteen minutes during which Dr. Bickler’s lab subjects experienced hypoxic conditions. And again, the “terror response” from being deprived of oxygen is “activated in an execution environment” because the inmate does not want to die, which is true for virtually all executions and does not implicate the Eighth Amendment[.]

App’x 57a-58a (citing *Baze*, 553 U.S. at 50) (citation omitted).

With that in mind, the district court considered Boyd’s two alternatives; Respondents address only the firing squad here. The court found that the firing squad was feasible and readily available to ADOC. App’x 65a-66a. However, the court found that the firing squad did not significantly reduce a substantial risk of severe pain from hypoxia because the firing squad “carries with it a risk of psychological and

emotional pain, most acutely from the time the inmate is escorted into the execution chamber and restrained in a chair, and continuing when the target is affixed over his heart and the hood is placed over his head.” App’x 63a. Moreover, the firing squad has a real risk of physical pain not present in a hypoxia execution from the inmate being repeatedly shot in the chest. App’x 64a.

Second, the court found that the equities were not in Boyd’s favor, particularly because of his untimeliness in filing. App’x 72a-73a. Boyd waited nearly two years after ADOC introduced the hypoxia protocol to challenge it, which the court found “unreasonable, unnecessary, and inexcusable.” App’x 74a (quoting *Brooks*, 810 F.3d at 824).

F. The Eleventh Circuit denies relief.

On October 20, the Eleventh Circuit entered an unpublished per curiam order denying a stay of execution. The court declined to reach any issue but Boyd’s failure to make a substantial showing of a likelihood of success on the merits. App’x 12a n.2. After setting forth the applicable law and the district court’s findings, the panel found that the district court did not abuse its discretion in denying relief. App’x 10a. The court continued:

In reaching this conclusion we need not and do not address the district court’s factual determinations about whether nitrogen hypoxia causes only discomfort and mental distress or actual physical pain (and if so to what precise degree). Assuming that execution by nitrogen hypoxia contains a physical harm component that induces distress, the 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. Mr. Boyd’s own expert, Dr. Williams, testified that when the four bullets strike the heart, they tear the heart muscles to pieces and blow apart the tissue. *See Boyd*, 2025 WL 2884410, at *19. Moreover, the inmate would not lose consciousness for three to six seconds, during which time

he or she would “feel pain and suffering.” *Id.* On this record, we cannot 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. *Cf. Hoffman v. Westcott*, 131 F.4th 332, 336 (5th Cir.) (“Moreover, experts for both parties agreed that death by firing squad can cause pain—and would therefore necessarily be more painful than execution by nitrogen hypoxia.”), *cert. dismissed*, 145 S. Ct. 1951 (2025).

App’x 11a.

STANDARD OF REVIEW

For Boyd “[t]o obtain a stay pending the filing and disposition of a petition for a writ of certiorari,” he “must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

On this posture, the Court gives “considerable weight” to the decisions below. *Barefoot v. Estelle*, 463 U.S. 880, 896 (1983); *see also Respect Maine PAC v. McKee*, 562 U.S. 996 (2010) (Kennedy, J., in chambers) (requiring significant justification for “judicial intervention that has been withheld by lower courts” (quoting *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers))); *cf. Bateman v. Arizona*, 329 U.S. 1302, 1304 (1976) (“In all cases, the fact weighs heavily ‘that the lower court refused to stay its order pending appeal.’”) (quoting *Graves v. Barnes*, 405 U.S. 1201, 1203 (1972) (Powell, J., in chambers)). Because the district court and appellate panel denied injunctive relief, Boyd has “an especially heavy burden.” *Edwards v. Hope Medical Group for Women*, 512 U.S. 1301

(1994) (Scalia, J., in chambers).

REASONS CERTIORARI AND A STAY OF EXECUTION SHOULD BE DENIED

- I. **The lower courts correctly denied a stay of execution where Boyd failed to show a substantial likelihood of success as to his Eighth Amendment claim.**
 - A. **The district court did not abuse its discretion in choosing the time frame of the execution to consider in its comparative analysis.**

Boyd faults the district court for the scope of its analysis in comparing the relative risks of nitrogen hypoxia and the firing squad, contending that the analysis for *Baze*, *Glossip*, and *Bucklew* purposes should begin at the moment the inmate begins to breathe nitrogen and that bullets strike the inmate's body. Pet. 11-12. This is not a cert-worthy claim because the district court *did* consider the time period Boyd wanted—it simply disagreed with his claims.

In *Bucklew*, the Court wrote:

Still, accepting the possibility that a State might try to carry out an execution in an impermissibly cruel and unusual manner, how can a court determine when a State has crossed the line? THE CHIEF JUSTICE's opinion in *Baze*, which a majority of the Court held to be controlling in *Glossip*, supplies critical guidance. It 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 that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason. See *Glossip*, 135 S.Ct. at 2732-2738; *Baze*, 553 U.S. at 52. *Glossip* left no doubt that this standard governs "all Eighth Amendment method-of-execution claims." 135 S. Ct. at 2731.

In reaching this conclusion, *Baze* and *Glossip* recognized that the Eighth Amendment "does not demand the avoidance of all risk of pain in carrying out executions." *Baze*, 553 U.S. at 47. To the contrary, the Constitution affords a "measure of deference to a State's choice of execution procedures" and does not authorize courts to serve as "boards

of inquiry charged with determining ‘best practices’ for executions.” *Id.* at 51-52 & nn.2-3. The 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.” *Glossip*, 135 S. Ct. at 2738; see *Baze*, 553 U.S. at 61.

587 U.S. at 133-34 (citations edited). The Court has never suggested that the Eighth Amendment contains an arbitrary time limit in the comparative analysis.

Here, the district court “compare[d] the risk of pain caused by the ADOC’s nitrogen hypoxia protocol with the risk of pain caused by Utah’s firing squad protocol—whether the pain be emotional, psychological, physical, or some combination.” App’x 61a. First, the court noted that “a state’s administration of capital punishment...presumes the prospect of some pain, including psychological pain.” App’x 62a (citing *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 464 (1947)). The court considered that all condemned death-row inmates “likely experience[] feelings of angst, anxiety, stress, or panic,” and that the condemned “arguably endures psychological pain from the date his sentence is imposed until the moment of his execution.” *Id.* Thus, “[p]sychological and emotional pain are...unavoidable consequences of capital punishment under any method of execution, past or present.” *Id.*

Having reached that conclusion, the district court next considered the risks of pain inherent in the firing squad and nitrogen hypoxia. While the court acknowledged Dr. Bickler’s claims about a “terror response” and the contention “that a person consciously deprived of oxygen even for two minutes under the Protocol experiences discomfort, panic, and emotional distress,” the court also noted that Dr. Bickler said “this ‘terror response’ is ‘activated in an execution environment’ because the inmate

does not want to die, versus a situation in which a person willingly wants to end his or her life by asphyxiation.”⁵ App’x 63a. The court believed that a person sentenced to die by either method would experience “anxiety and emotional pain,” whether from seeing the chamber and being strapped to the gurney or from being restrained in a chair, hooded, and having a target pinned over his heart. *Id.*; *cf.* DE13-6:225-26 (Boyd’s expert admitting that in past firing-squad execution, medical evidence suggested stress and anxiety). “Much of the 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.” App’x 64a. Boyd says this was improper to consider, but the baseline level of emotional distress of any inmate goes directly to whether the method superadds severe pain that alternatives would significantly reduce.

In any event, the court *also* addressed the time period Boyd believes should be the proper frame: “a risk of three to five (possibly six) seconds of physical pain and suffering” from the impact of the bullets—a risk of physical pain absent in a hypoxia execution—versus a risk of psychological pain from knowingly breathing nitrogen for up to two minutes. App’x 64a; *see also id.* at n.43. Importantly, by this point in its analysis, the court had made findings concerning the expert testimony and “disagree[ed] with Dr. Bickler’s suggestion that the Protocol superadds pain by

5. Notably, published reports of hypoxia suicides, such as those by Ogden and Ogden et al., do not show evidence of this supposed “terror response” despite the fact that the decedents knowingly (and willingly) breathed pure helium until they lost consciousness. *See* DE13-15:159-70.

rapidly exposing the condemned inmate to high levels of nitrogen gas”:

The record evidence establishes that the higher the level of nitrogen, and the deeper the inmate breathes, the sooner the inmate will become unconscious and thus be unable to feel pain or distress. Thus, while the degree of discomfort may be greater compared to the discomfort experienced by Dr. Bickler’s lab subjects, the discomfort is limited in duration to approximately two minutes if the inmate breathes more normally, and certainly less than the ten to fifteen minutes during which Dr. Bickler’s lab subjects experienced hypoxic conditions. And again, the “terror response” from being deprived of oxygen is “activated in an execution environment” because the inmate does not want to die, which is true for virtually all executions and does not implicate the Eighth Amendment, *see Baze*, 553 U.S. at 50.

App’x 57a-58a (citation omitted). Here, the court found that the “psychological pain” from breathing nitrogen “does not amount to superadded pain beyond what is necessary to carry out the execution,” and held that Boyd failed to show that “the firing squad is *substantially likely to significantly* reduce a *substantial* risk of *severe* pain caused by Alabama’s protocol.” *Id.* Even if Boyd had proven everything he alleged about nitrogen hypoxia, there is no authority for the proposition that the Eighth Amendment demands six seconds of great physical pain, rather than (maybe) two minutes of emotional distress. *See Hoffman*, 131 F.4th at 336.

Thus, the district court considered the time period Boyd claims is the only proper point of comparison—the court simply did not accept all of Boyd’s claims of terror and superadded pain as fact, and when it compared hypoxia to the real risk of pain from being shot in the chest, it did not find that Boyd cleared “the high bar.” App’x 65a. This was not an abuse of discretion, and the Court should grant neither cert nor a stay of execution.

B. The lower courts did not abuse their discretion in finding that Boyd failed to satisfy his burden as to his alternative method of execution.

Boyd would also have the Court grant certiorari and a stay of execution so that the Court may “clarify what level of ‘superaddition of terror, pain, or disgrace’ violates the Eighth Amendment.” Pet. 12. Even if the Court were inclined to make such a rule, this case would not be a fitting vehicle for it. As this Court has explained:

The Eighth Amendment “does not demand the avoidance of all risk of pain in carrying out executions.” To the contrary, the Constitution affords a ‘measure of deference to a State’s choice of execution procedures’ and does not authorize courts to serve as “boards of inquiry charged with determining ‘best practices’ for executions.” The 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, 587 U.S. at 134 (citations omitted). Here, the lower courts did not abuse their discretion in holding that Boyd failed to show a substantial likelihood of success as to Eighth Amendment claim.

i. Again, the district court had before it two days of expert and lay testimony and more than 1,600 pages of evidence when it made its factual findings. App’x 33a. The court, without resolving the dispute between the parties’ experts, gave credence to Dr. Bickler’s prediction that an inmate would take approximately two minutes to lose consciousness during a nitrogen hypoxia execution—a thumb on the scale in Boyd’s favor. App’x 54a. And as the Eleventh Circuit noted, the district court “found that Alabama’s nitrogen hypoxia protocol would cause physiological and psychological distress,” App’x 8a, another point for Boyd. But “the district court correctly applied the governing law” in denying relief, App’x 10, when comparing the hypoxia protocol to Boyd’s proposed alternative of the firing squad.

As discussed in the previous section, the district court found that although any method of execution carried with it a risk of psychological pain, being shot in the chest presented a risk of physical pain absent in a hypoxia execution. The court continued:

At most, Boyd has shown that the firing squad *may* reduce the risk of psychological and emotional pain and physical discomfort caused by the nitrogen hypoxia protocol. But that is not the standard. In this preliminary injunction posture, Boyd must show that the firing squad is *substantially likely* to *significantly* reduce a *substantial* risk of *severe* pain caused by Alabama’s protocol. For the reasons discussed above, the Court concludes that the risk of emotional terror, distress, and physical discomfort caused by the Protocol does not rise to the level of superadded pain “well beyond what’s needed to effectuate a death sentence” when compared to the risk of pain caused by Utah’s firing squad protocol. *See Bucklew*, 587 U.S. at 134, 136-37. On this record, the Court concludes that, to the extent he proposes Utah’s firing squad protocol as an alternative method of execution, Boyd has failed to clear the high bar necessary to establish a substantial likelihood of success on his facial Eighth Amendment challenge to the Protocol.

App’x 64a-65a (footnotes and citation omitted). The Eleventh Circuit declined to “address the district court’s factual determinations about whether nitrogen hypoxia causes only discomfort and mental distress or actual physical pain (and if so to what precise degree),” instead “[a]ssuming that execution by nitrogen hypoxia contains a physical harm component that induces distress[.]” App’x 11. Even still, the appellate court correctly found no abuse of discretion:

Mr. Boyd’s own expert, Dr. Williams, testified that when the four bullets strike the heart, they tear the heart muscles to pieces and blow apart the tissue. *See Boyd*, 2025 WL 2884410, at *19. Moreover, the inmate would not lose consciousness for three to six seconds, during which time he or she would “feel pain and suffering.” *Id.* On this record, we cannot 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.

Id. These findings were supported by the record below, and neither court abused its discretion in denying a stay of execution.

ii. Here, Boyd presents to the Court his claims about the physiological effects of nitrogen hypoxia, comparing it to drowning. Pet. 13-15. But the district court did not make those findings of fact, and Respondents vehemently disagree with Boyd’s claim that he will suffer from distressing air hunger once the nitrogen begins to flow. Dr. Bickler’s experience comes from his hypoxia laboratory, in which study participants are slow, gradually, coached down to as low as 70% blood oxygen saturation (and are not taken to the point of passing out). DE13-6:114. A nitrogen hypoxia execution is radically different, as inmates are exposed to a nearly 100% nitrogen environment within seconds; the plunge in blood oxygen saturation is much more drastic and immediate, and inmates quickly lose consciousness. As

Dr. Antognini testified, “it is pretty well accepted” that “the hypoxia in and of itself doesn’t really—in many individuals, at least, doesn’t really drive a sort of breathlessness experience; that people can have really low oxygen content or concentrations, and they don’t sense it, and that’s why they become unconscious. They don’t know—for example, in these studies, they have the mask on, and they don’t know that there’s only nitrogen going through that, and they don’t sense it, and then all of a sudden they pass out.” DE13-7:127.

A useful data point is the existence of many OSHA investigations involving hypoxic injuries or deaths in the workplace. Hudnall et al., for example, DE13-15:150-55, discussed five years’ worth of OSHA investigations in which workers accidentally plugged their respirator into an inert gas line instead of a breathing air line and were fatally asphyxiated—a scenario much more akin to a hypoxia execution than to Dr. Bickler’s pulse oximeter testing studies. The victims lost consciousness before they became aware of the danger and could self-rescue, *id.* at 152, which cuts against Dr. Bickler’s theory that inmates will experience air hunger and a supposed feedback loop of agonizing terror before passing out.

iii. Moreover, while Boyd contends that a firing squad execution would be nearly instantaneous and painless, Pet. 15-17, he ignores the possibility of pain and of a firing squad execution going terribly wrong. The report of Boyd’s expert, Dr. Williams, stated that consciousness would likely be lost within three to five seconds, “and the condemned person would not experience any pain or suffering thereafter.” DE13-8:42. He testified that gunshot victims with (nonfatal) chest wounds, in his

experience, suffer discomfort and sometimes breathing difficulty. DE13-6:201. Previously, he testified in *Hoffman* that being shot in the chest was “harder than any tackle I had ever taken in football,” and that the kinetic energy from a firing squad execution would be akin to “being struck by a three-quarter-ton, fully loaded truck.” *Id.* at 210. Further, Dr. Williams admitted that when he was shot in the chest as a teenager, he was not expecting to be shot, nor did the bullet hit a major organ. The bullet that entered him did not hit a bone until it apparently nicked a vertebra, though “it didn’t fracture or penetrate the bone.” *Id.* at 209.

While Dr. Williams admitted that the Mikal Mahdi firing squad execution in South Carolina went awry because the bullets struck Mahdi’s heart “marginally,” which “did not produce immediate loss of cardiac output from the left ventricle, which, of course, is the mechanism required for unconsciousness, immediate unconsciousness,” *id.* at 204, he disputed the conclusion of forensic pathologist Dr. Jonathan Arden⁶ that Mahdi experienced “excruciating conscious pain and suffering for about 30 to 60 seconds after he was shot,” though he could offer no real evidence to the contrary, *id.* at 211-12. And as Dr. Williams testified when asked about witness reports that Mahdi remained conscious for up to a minute and groaned in pain—much like Boyd’s witness reports of conscious movement and suffering during hypoxia executions—“It was a layman’s interpretation. I think it can’t be

6. Defendants introduced two autopsy reports from the Mahdi execution into evidence. The first was the report of Dr. Bradley Marcus, who autopsied Mahdi on April 12, 2025. DE13-15:197-100. The second was the report of Dr. Jonathan Arden, *id.* at 201-08, a forensic pathologist retained by Mahdi’s attorneys, who spoke with Dr. Marcus as part of his investigation and concluded that Mahdi “did experience excruciating pain and conscious suffering for about 30 to 60 seconds after he was shot,” *id.* at 208.

taken as anything more definitive than that.” DE13-6:213.

In any case, the lower courts did not abuse their discretion in denying a stay of execution. As Boyd has not raised a cert-worthy issue, this Court should likewise deny relief.

II. Boyd’s delay was “unreasonable, unnecessary, and inexcusable,” and he is not entitled to equitable relief.

A. The district court did not abuse its discretion in holding that the equities weighed against a stay of execution, particularly due to Boyd’s delay.

i. Because “[e]quity strongly disfavors inexcusable delay,” *Woods v. Comm’r, Ala. Dep’t of Corr.*, 951 F.3d 1288, 1293 (11th Cir. 2020), “last-minute claims arising from long-known facts” can justify “denying equitable relief,” *Ramirez v. Collier*, 595 U.S. 411, 434 (2022). That “well-worn principle[] of equity” holds true even “in capital cases,” *id.*, and applies equally to preliminary injunctions and stays of executions, *see id.* (preliminary injunction); *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (stay). Undue delay, whether for “a few months,” *Wreal, LLC v. Amazon.com*, 840 F. 3d 1244, 1248 (11th Cir. 2016), or “years,” *Benisek v. Lamone*, 585 U.S. 155, 160 (2018) (*per curiam*), is strongly disfavored. The reason is plain: Failure to act with “urgency” suggests that instead of needing an “extraordinary and drastic remedy,” *Wreal*, 840 F. 3d at 1247-48, a plaintiff is engaged in “manipulation,” *Gomez*, 503 U.S. at 654.

ii. The district court found that Boyd’s untimeliness weighed heavily against him. This is not a novel stance in the Middle District; Chief Judge Emily C. Marks, who presided over Boyd’s case, has warned against dilatory execution litigation, citing precedent from this Court. *Mills*, 734 F. Supp. 3d at 1244-48; *Frazier*, 2025 WL

361172, at *15-17; *see, e.g., Hill*, 547 U.S. at 584 (court must “apply ‘a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay’”); *Bucklew*, 587 U.S. at 150 (“Last-minute stays should be the extreme exception, not the norm, and ‘the last-minute nature of an application’ that ‘could have been brought’ earlier, or ‘an applicant’s attempt at manipulation,’ ‘may be grounds for denial of a stay.’”); *id.* at 151 (“[F]ederal courts ‘can and should’ protect settled state judgments from ‘undue interference’ by invoking their ‘equitable powers’ to dismiss or curtail suits that are pursued in a ‘dilatory’ fashion or based on ‘speculative’ theories.”); *Jones v. Allen*, 485 F.3d 635, 638 (11th Cir. 2007) (“When considering a motion to stay an execution, we must apply ‘a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay,’ given the State’s significant interest in the enforcement of its criminal judgments.”) (quoting *Nelson v. Campbell*, 541 U.S. 637, 650 (2004)); *Woods*, 951 F.3d at 1293 (quoting *Bucklew* and *Jones*).

Boyd elected nitrogen hypoxia as his method of execution on June 27, 2018. DE13-5:49. Thereafter, he began expressing his opposition to hypoxia in his quarterly column in *On Wings of Hope*, *e.g.*, DE13-3:81 (issue 25:2, April-June 2021), and especially after Smith’s execution in January 2024, *id.* at 93-94 (issue 28:1, Jan.-Mar. 2024, calling it “torturous, barbaric, heinous, cruel, atrocious, careless, and reckless”). Yet despite his awareness and evident dislike of the method of execution he chose,

Boyd waited until July 2025—after five hypoxia executions in Alabama and one in Louisiana, and after the State had moved for his own execution—to file his complaint. Asked about the delay, Boyd answered under oath that he waited due to “just solely talking to [his] lawyers.” DE13-15:37. This is pure gamesmanship.

In light of the foregoing, the district court did not abuse its discretion in finding that Boyd’s delay in filing was unreasonable:

[T]he State released its nitrogen hypoxia protocol in August 2023, nearly two years before Boyd brought this lawsuit. Boyd argues that this delay is excusable because he needed data from actual nitrogen hypoxia executions to present his case. But he does not explain what prevented him from filing a lawsuit soon after the Protocol was released and then amending his complaint to add factual allegations of what occurred during nitrogen hypoxia executions as they were carried out. *See* FED. R. CIV. P. 15(a)(2) (“The court should freely give leave [to amend] when justice so requires.”).

But even assuming this explanation supplies a reasonable basis for Boyd to have waited some additional time, Boyd still unreasonably delayed seeking relief from the Court. Boyd did not act until approximately eighteen months after Smith’s execution, ten months after Miller’s, eight months after Grayson’s, and five months after Frazier’s. Boyd acknowledges that Smith’s January 2024 execution provided information about how the Protocol operates in practice, as did Miller’s, Grayson’s, and Frazier’s respective executions. Boyd nevertheless sat idle until July 16, 2025—more than five months after Frazier’s execution and over a month after the State moved to set Boyd’s execution date. The Court concludes that Boyd’s delay in bringing this action and seeking a preliminary injunction was “unreasonable, unnecessary, and inexcusable.” *Brooks v. Warden*, 810 F.3d 812, 824 (11th Cir. 2016) (citation omitted); *see also Frazier*, 2025 WL 361172, at *16 (“[Frazier] argued that he was waiting for other nitrogen hypoxia executions to occur to see how the Protocol operates in practice. Assuming this explanation is reasonable, it does not justify Frazier’s waiting to act until nearly ten months after Smith’s execution and two months after Miller’s execution....”).

App’x 73a (citations omitted).

iii. The district court also considered the other equitable factors and found that they weighed against Boyd. The court considered “the interests of the victims of Boyd’s crime—the State, Gregory Huguley, and Huguley’s friends and family”—in the timely enforcement of his sentence. App’x 75a. As the court explained:

Boyd was convicted and sentenced to death for his participation in Huguley’s gruesome murder over thirty years ago. Balancing his delay against his victims’ interest in the timely enforcement of his sentence, Boyd fails to show that equity favors entry of a preliminary injunction, and these considerations also counsel against granting Boyd’s motion.

Id. Boyd claimed to the Eleventh Circuit there is no harm in delaying his execution a little longer, as he “has been on death row for 32 years.” DE11:75 n.13. But that is precisely the point: Boyd murdered Huguley in 1993, and his appeals were exhausted in 2014. It is long past time for Boyd to receive the punishment he is due for his crime. And while Boyd tries to minimize the harm to the “non-party victims’ [sic] family,” *id.*, this Court has recognized the real interest that the State and the families of victims have in the timely execution of sentences. *E.g., Hill*, 547 U.S. at 584 (“Both the State and the victims of crime have an important interest in the timely enforcement of a sentence.”) (citing *Calderon v. Thompson*, 523 U.S. 538, 556 (1998)).

* * *

Applying precedent, the district court correctly found that Boyd’s delay was inexcusable and that the equities weighed against him, and rejected his “last-minute attempt[] to manipulate the judicial process.” *Nelson*, 541 U.S. at 649. “Last-minute stays should be the extreme exception, not the norm,” *Bucklew* 587 U.S. at 150, and this case is not exceptional.

B. A stay would undermine the public interest in justice.

A stay or any other injunctive relief that might delay Thursday’s execution would undermine the powerful interest—shared by the State, the public, and the victims of Boyd’s crime—in the timely enforcement of his sentence. *Hill*, 547 U.S. at 584. An unpunished murder is an intrinsic and ongoing harm to those interests and to the rule of law. Thirty-two years is decades too long. “Only with real finality” can we “move forward knowing the moral judgment will be carried out.” *Calderon*, 523 U.S. at 556. “To unsettle these expectations,” especially at the eleventh hour, “is to inflict a profound injury to...the State and the victims of crime alike.” *Id.* While the Eleventh Circuit declined to reach the equities, the district court found these equitable factors to be salient in this case. App’x 75a.

C. Boyd faces no threat of irreparable harm.

The district court did not reach the irreparable-harm factor. Boyd claims that the harm he will suffer “is plain, he will remain conscious for several minutes and experience the superadded physical pain and psychological terror of asphyxiation during his execution pursuant to the Protocol, despite being likely to succeed on the merits of his claim that the Protocol violates his Eighth Amendment rights.” Pet. 5. As discussed above, Respondents deny that Boyd will be subjected to superadded pain and terror or that he is likely to succeed on the merits where both lower courts have found no substantial chance of success.

Because the equities weigh against Boyd, the Court should deny a stay of execution.

CONCLUSION

This Court should respect the findings of the lower courts and deny Boyd's cert petition and stay application. And because of Boyd's dilatory tactics, his stay application should be denied on equitable grounds as well.

Respectfully submitted,

Steve Marshall
Alabama Attorney General

Polly S. Kenny
Assistant Attorney General

Edmund G. LaCour Jr.
Solicitor General

/s/Lauren A. Simpson
Deputy Attorney General

Robert M. Overing
Deputy Solicitor General

OFFICE OF ALA. ATT'Y GENERAL
501 Washington Avenue
Montgomery, AL 36130
(334) 242-7300
Lauren.Simpson@AlabamaAG.gov

Dylan Mauldin
Assistant Solicitor General

In the Supreme Court of the United States

—◆—
ANTHONY BOYD,
Petitioner,

v.

JOHN Q. HAMM, Commissioner, Alabama Department of Corrections,
Respondent.
—◆—

PROOF OF SERVICE

I, Lauren Ashley Simpson, do hereby certify that on this date, October 22, 2025, I served a copy of the enclosed BRIEF IN OPPOSITION on counsel for Petitioner Boyd, by United States mail, first-class postage prepaid and addressed as follows:

Hon. Matthew C. Moschella
Hon. John C. La Liberte
Hon. David A. Michel
Sherin and Lodgen LLP
One Lincoln Street, 14th Floor
Boston, MA 02111

I also served counsel electronically at mcmoschella@sherin.com, jclaliberte@sherin.com, and damichel@sherin.com. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Lauren A. Simpson
Lauren A. Simpson
Deputy Attorney General
*Counsel of Record

OFFICE OF ALA. ATT'Y GENERAL
501 Washington Avenue
Montgomery, AL 36130
(334) 242-7300
Lauren.Simpson@AlabamaAG.gov

October 22, 2025