

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD BARRY RANDOLPH,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE

**DEATH WARRANT SIGNED
EXECUTION SET NOVEMBER 20, 2025, AT 6:00 P.M.**

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November 17, 2025

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INDEX TO THE APPENDIX

Appendix A:	Opinion of the Florida Supreme Court <i>Randolph v. State</i> , Nos. SC2025-1722, SC2025-1723 (Fla. November 13, 2025)	A1
Appendix B:	Order of the Circuit Court, in and for the Seventh Circuit, Putnam County, Florida, Final Order Denying Defendant's Fourth Successive Motion to Vacate Judgments and Death Sentence (October 31, 2025)	A18
Appendix C:	Order of the Circuit Court, in and for the Seventh Circuit, Putnam County, Florida, Order Following Case Management Conference and on Objections to Additional Public Records (October 27, 2025)	A33
Appendix D:	Successive Motion To Vacate Judgments And Death Sentence Pursuant To Florida Rule Of Criminal Procedure 3.851 with Exhibits	A42
Appendix E:	3.852(i) Demand for Public Records Composite Concerning Lethal Injection.....	A123

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CAPITAL CASE

**DEATH WARRANT SIGNED
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Opinion of the Florida Supreme Court

Randolph v. State, Nos. SC2025-1722, SC2025-1723 (Fla. November 13, 2025).

Supreme Court of Florida

No. SC2025-1722

RICHARD BARRY RANDOLPH,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

No. SC2025-1723

RICHARD BARRY RANDOLPH,
Petitioner,

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS,
Respondent.

November 13, 2025

PER CURIAM.

Over thirty-five years ago, Richard Barry Randolph murdered Minnie Ruth McCollum. For this crime, he was sentenced to death. Recently, Governor Ron DeSantis signed a warrant directing that

Randolph's death sentence be carried out. The date scheduled for his execution is November 20, 2025.

Following issuance of the death warrant, Randolph filed a motion for postconviction relief, which the circuit court summarily denied. Randolph appeals that ruling as well as the denial of his numerous demands for public records. Aside from asserting circuit court error, Randolph urges us to issue a writ of habeas corpus and thereby vacate his conviction and death sentence. We find that none of Randolph's arguments warrant relief. As such, we affirm the circuit court's orders and deny his habeas petition. In light of those conclusions, we decline to stay Randolph's execution or hold oral argument.¹

I

In 1988, Randolph broke into a convenience store located in Palatka, Florida. Familiar with the store's routine from his past employment there, Randolph hoped to steal money from the safe while the manager was outside checking the gas pumps. However, things did not go according to plan.

1. Our jurisdiction in this case comes from article V, section (3)(b)(1) and (b)(9) of the Florida Constitution.

McCollum, the store manager, saw Randolph inside the store. When confronted by McCollum, Randolph commenced a brutal and prolonged attack on her. He forced her into the back room where he repeatedly bashed her in the head with his bare hands, causing her to “quiet down.” As he was trying to open the safe, McCollum started moving again. In response, Randolph used a drawstring from his sweatshirt to strangle her until she stopped moving.

With Randolph still inside the store, McCollum regained consciousness and started to scream. As he had done before, Randolph beat her until she became quiet. But when she started making noises again, Randolph grabbed a small knife and stabbed her in the neck multiple times. He then removed McCollum’s clothing from the waist down and raped her.

As Randolph was leaving the store, a customer and two custodians asked him about McCollum’s whereabouts. After lying to them, Randolph drove off in McCollum’s car. With Randolph gone from the scene, the customer and custodians looked through a store window, observing physical indicia of what had transpired inside the store. This prompted them to call the police. When law enforcement eventually entered the store, they found McCollum on

the floor—partially unclothed, bleeding from her head and neck, and moaning in pain. She died six days later from the injuries described above.

Meanwhile, after leaving the store, Randolph drove to his girlfriend's home and told her about the incident. He was arrested later that day in Jacksonville. Following his arrest, Randolph gave a detailed confession during an interview with two detectives.

Based on these and other facts, the State charged Randolph with first-degree murder and three other related crimes. A jury found him guilty as charged on all counts and, following a penalty-phase hearing, recommended a sentence of death by a majority vote. Accepting that recommendation, the circuit court sentenced Randolph to death. In reaching this decision, the court found four aggravating circumstances, including that the murder was especially heinous, atrocious, or cruel.

Randolph appealed, raising both guilt- and penalty-phase claims. But we affirmed in all respects. *Randolph v. State*, 562 So. 2d 331, 332, 339 (Fla. 1990). Following the U.S. Supreme Court's denial of discretionary review, *Randolph v. Florida*, 498 U.S. 992 (1990), Randolph began his postconviction challenges. He first

sought relief in Florida state court. After years of litigation, the circuit court ultimately denied Randolph's initial postconviction motion. We affirmed that ruling and denied Randolph's accompanying habeas petition. *Randolph v. State*, 853 So. 2d 1051, 1054 (Fla. 2003). In the years that followed, Randolph mounted additional challenges to his convictions and death sentence—seeking relief in both state and federal court. No court granted him relief. *Randolph v. Crosby*, 861 So. 2d 430 (Fla. 2003) (table decision) (denying habeas petition); *Randolph v. McNeil*, 590 F.3d 1273, 1275 (11th Cir. 2009) (affirming denial of federal habeas petition), *cert. denied*, *Randolph v. McNeil*, 562 U.S. 1006 (2010); *Randolph v. State*, 91 So. 3d 782, 782 (Fla. 2012) (affirming denial of first successive postconviction motion); *Randolph v. State*, 320 So. 3d 629, 631 (Fla. 2021) (affirming denial of second successive postconviction motion); *Randolph v. State*, 403 So. 3d 206, 207 (Fla. 2024) (affirming denial of third successive postconviction motion).

On October 21, 2025, the Governor issued Randolph's death warrant. Randolph then filed the motion at issue in this appeal—his fourth successive postconviction motion, which raised three claims for relief.

For his first claim, he asserted that the three drugs currently used to accomplish lethal injection would result in a torturous death due to his lupus, a chronic autoimmune disease. To support this claim, Randolph attached a report by Dr. Joel Zivot, which opined that Randolph's lupus would cause him severe pain when he is "[p]osition[ed]" for the execution. In addition, Dr. Zivot alleged that when the lethal chemicals are injected, Randolph would essentially drown in his own blood.

The crux of Randolph's second claim was that the shortness of the warrant period—coupled with adverse rulings on his requests for public records—deprived him of a full and fair postconviction proceeding. As his third and final claim, Randolph asserted that the process which led to the denial of clemency in his case did not accord with constitutional norms. Specifically, he was not allowed to respond to certain findings, nor authorized to seek a revised decision that accounts for additional mitigation procured after the clemency investigation ended.

The circuit court, after holding a case management conference, denied the motion without conducting an evidentiary hearing. The court ruled that the method-of-execution claim was

untimely, procedurally barred, and lacked merit. As for the challenges to the warrant period and clemency process, the court determined that these claims lacked merit as a matter of law. Randolph now appeals. He has also separately filed with us a petition for writ of habeas corpus and requested a stay and oral argument.

II

We begin with Randolph's appeal in which he argues that the circuit court abused its discretion in denying his public-records request and erred in summarily denying his three substantive claims. We disagree in all respects.

A

As a threshold issue, Randolph asserts entitlement to a reversal based on the circuit court's denial of his numerous demands for public records. However, applying our deferential abuse-of-discretion standard of review, *see Hutchinson v. State*, 416 So. 3d 273, 279 (Fla.), *cert. denied*, 145 S. Ct. 1980 (2025), we affirm.

The circuit court gave several reasons for rejecting Randolph's records requests, including that some of his requests were overly

broad and constituted impermissible fishing expeditions; some were not reasonably related to a viable claim; and still others sought confidential, non-discoverable records. We conclude that these justifications align with our case law on public records in the post-warrant context. *Bates v. State*, 416 So. 3d 312, 321 (Fla.), *cert. denied*, No. 25-5370, 2025 WL 2396797 (U.S. Aug. 19, 2025); *Zakrzewski v. State*, 415 So. 3d 203, 213 (Fla.), *cert. denied*, No. 25-5194, 2025 WL 2155601 (U.S. July 30, 2025); *Jones v. State*, 50 Fla. L. Weekly S259, S261 (Fla. Sept. 24), *cert. denied*, No. 25-5745, 2025 WL 2775490 (U.S. Sept. 30, 2025). And we further conclude that the rulings were sensible and supported by the facts in the record.

Within this issue, Randolph advances some constitutional challenges to Florida Rule of Criminal Procedure 3.852, which governs the production of public records in capital postconviction proceedings. Randolph's challenges to this rule are not new to us. Capital defendants in Randolph's position have asserted violations of numerous constitutional provisions, including the ones Randolph now invokes. But we have rejected all such challenges, finding them meritless under both state and federal law. *See, e.g.,*

Hutchinson, 416 So. 3d at 279 (due process and equal protection); *Gudinas v. State*, 412 So. 3d 701, 715 (Fla.) (access to courts), *cert. denied*, 145 S. Ct. 2833 (2025); *Lambrix v. State*, 124 So. 3d 890, 895 n.2 (Fla. 2013) (access to public records). Randolph has not advanced any argument giving us reason to doubt our rule 3.852 precedent.

B

We now turn to the denial of Randolph's three substantive claims, which we review de novo. *Hutchinson*, 416 So. 3d at 279. Consistent with that standard, "we will affirm the denial of successive claims that are procedurally barred, untimely, legally insufficient, or refuted by the record." *Bates*, 416 So. 3d at 319 (citing *Hutchinson*, 416 So. 3d at 279). Under this framework, we conclude that the circuit court's summary denial of Randolph's three claims was warranted.

1

As noted above, Randolph asserted a method-of-execution claim. The circuit court found it was untimely, procedurally barred, and legally insufficient. We entirely agree.

Randolph's method-of-execution claim was not timely raised. To be timely, a postconviction claim must be asserted within one year of when the capital defendant's conviction and sentence became final. Fla. R. Crim. P. 3.851(d)(1). Undeterred by this limitation, Randolph relies on an exception which applies to claims predicated on facts "unknown" or those that "could not have been ascertained by the exercise of due diligence." Fla. R. Crim. P. 3.851(d)(2)(A). However, even when based on facts meeting this demanding standard, the claim must still be filed within a year of when those facts became discoverable. *Bates*, 416 So. 3d at 319.

Here, Randolph concedes that he was diagnosed with lupus in 1990 and has had the disease his entire life. Moreover, the current three-drug protocol has remained essentially unchanged since 2017. That being the case, the facts on which this claim is predicated have been available since at least 2017. Randolph's current claim was raised eight years later and is thus untimely. *See Tanzi v. State*, 407 So. 3d 385, 392 (Fla.), *cert. denied*, 145 S. Ct. 1914 (2025); *Rogers v. State*, 409 So. 3d 1257, 1267-68 (Fla.), *cert. denied*, 145 S. Ct. 2695 (2025); *Cole v. State*, 392 So. 3d 1054, 1064 (Fla.), *cert. denied*, 145 S. Ct. 109 (2024).

Also, for the reasons identified above, Randolph's claim is procedurally barred. That is because he could have raised the claim earlier but failed to do so. *See Bates*, 416 So. 3d at 320 (enforcing procedural bar where claims could have been raised in earlier postconviction proceedings).

Lastly, Randolph's claim lacks merit as a matter of law. To succeed on his as-applied method-of-execution claim, Randolph must "(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Cole*, 392 So. 3d at 1065 (quoting *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017)). While we have significant doubts about the legal sufficiency of the first prong, we need not address that here because Randolph fails on the second prong. He asserts that a different combination of drugs or a firing squad are qualifying alternatives. Consistent with our recent death-penalty jurisprudence, we hold that neither of Randolph's proposed methods "could be 'readily implemented,' or in fact significantly reduces the substantial risk of severe pain, given the physical

conditions he describes.” *Tanzi*, 407 So. 3d at 393; *see Rogers*, 409 So. 3d at 1268.

In short, the circuit court did not err in denying this claim.

2

Next, Randolph claims that certain limitations on his post-warrant litigation deprived him of a full and fair postconviction proceeding in contravention of basic constitutional safeguards. In particular, Randolph underscores the compactness of the warrant period (being thirty days), and the circuit court’s adverse rulings on his demands for public records. We have repeatedly rejected arguments of this sort. *Bates*, 416 So. 3d at 321 (rejecting argument that a thirty-day warrant period—coupled with the denial of all demanded public records—deprived the defendant of due process and right to counsel); *Tanzi*, 407 So. 3d at 390 (rejecting due-process challenge despite “the truncated warrant period and the denial of his public records requests”); *Hutchinson*, 416 So. 3d at 279-80 (rejecting due-process challenge where, despite condensed warrant period, defendant had fair opportunity to raise claims and advance argument in support of them). The fact that

Randolph invokes more constitutional provisions (or a different combination of them) does not change our analysis.²

Accordingly, we agree with the circuit court's summary denial of this claim.

3

Randolph also claims that the clemency process in his case violated at least four provisions of the federal and state constitutions. This claim lacks merit. As we understand it, Randolph's claim depends on two core premises. First, that he is entitled to rebut any factual findings by the decision-maker that Randolph deems wrong or unsupported. And second, he is entitled to an updated clemency proceeding due to the amount of time that has passed since his 2014 clemency investigation. But our precedent is inconsistent with both premises.

2. The State also suggests that this claim is untimely and procedurally barred. It is not clear to us how the defendant could possibly litigate the length and circumstances of his future warrant period in advance of the warrant's issuance. To the best of our knowledge, we have never held otherwise. At the very least, the cases cited by the State do not convince us that this claim should be denied on procedural grounds.

In a recent decision, we squarely rejected the argument that a capital defendant has the “right to review and rebut the evidence” underlying the rejection of clemency relief. *Bates*, 416 So. 3d at 320-21. And we have long rejected the argument that a capital defendant has a right to an updated investigation where significant time elapses from the original investigation and the clemency denial. *See Jennings v. State*, 50 Fla. L. Weekly S289, S291 (Fla. Nov. 6) (citing cases decided in 1986, 2010, and 2012 in support of rejection of clemency-based claim), *cert. denied*, No. 25-6061, 2025 WL 3157365 (U.S. Nov. 12, 2025).

Accordingly, we hold that the circuit court correctly denied the claim.

III

We now consider Randolph’s habeas petition, which raises one constitutional claim. Specifically, Randolph asserts that trial counsel violated his Sixth Amendment right to decide the objectives of his defense by repeatedly conceding guilt without expressly obtaining his consent to that strategy. In making this claim, Randolph relies on the U.S. Supreme Court’s decision in *McCoy v. Louisiana*, 584 U.S. 414, 420 (2018) (holding that the Sixth

Amendment is violated when defense counsel concedes guilt over “the defendant’s intransigent and unambiguous objection”). We conclude that this claim does not justify vacating Randolph’s conviction or death sentence.

First, this claim fails on procedural grounds. *McCoy* was decided in 2018. And the trial transcript—which serves as the factual basis for the claim—has been available since Randolph’s direct appeal in 1990. Yet, Randolph waited until 2025 and after the death warrant’s issuance to raise the claim. That was some seven years after the claim could have first been raised. We thus conclude that his habeas claim is both untimely and procedurally barred. *Bates*, 416 So. 3d at 322; *Jones*, 50 Fla. L. Weekly at S262; *see also Thomas v. Payne*, 960 F.3d 465, 478 (8th Cir. 2020) (finding *McCoy* claim procedurally defaulted).

Randolph’s claim also fails on the merits. We have said that a necessary element of a *McCoy* claim is that the defendant *expressly objects* to his attorney’s concession of guilt. *Harvey v. State*, 318 So. 3d 1238, 1239 (Fla. 2021); *Atwater v. State*, 300 So. 3d 589,

591 (Fla. 2020).³ Further, we have declined to interpret *McCoy* as requiring counsel “to obtain the express consent of a defendant prior to conceding guilt.” *Harvey*, 318 So. 3d at 1239.

Here, in his petition, Randolph specifically acknowledges that he never expressed any objection to his counsel’s concessions regarding certain crimes. Pet. at 14 (“Mr. Randolph did not expressly object”). Nor was counsel required under *McCoy* to seek Randolph’s express consent. Consequently, Randolph cannot succeed on his *McCoy* claim.⁴

In sum, Randolph’s sole habeas claim does not support relief.

IV

For the reasons we have given above, we affirm the circuit court’s challenged orders and deny Randolph’s habeas petition.

3. *Accord Commonwealth v. Alemany*, 174 N.E.3d 649, 668 (Mass. 2021); *State v. Chambers*, 955 N.W.2d 144, 149 (Wis. 2021); *Epperson v. Commonwealth*, 645 S.W.3d 405, 408 (Ky. 2021); *People v. Cuevas*, 558 P.3d 1041, 1047 (Colo. App. 2024); *Griffin v. State*, 912 S.E.2d 692, 695 (Ga. 2025); *White v. Comm’r of Corr.*, 236 Conn. App. 66, 82 n.9 (2025) (collecting cases).

4. Our resolution of this claim makes it unnecessary for us to decide whether *McCoy* applies to claims raised by defendants, like Randolph, whose death sentences became final prior to *McCoy*’s issuance.

Having so ruled, we decline to order a stay of execution or hold oral argument. No motion for rehearing will be considered. The mandate shall issue immediately.

It is so ordered.

MUÑIZ, C.J., and LABARGA, COURIEL, GROSSHANS, FRANCIS,
and SASSO, JJ., concur.
CANADY, J., recused.

An Appeal from the Circuit Court in and for Putnam County,
Alicia R. Washington, Judge – Case No. 541988CF001357CFAXMX
And an Original Proceeding – Habeas Corpus

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IN THE SUPREME COURT OF THE UNITED STATES

RICHARD BARRY RANDOLPH,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

APPENDIX B

CAPITAL CASE

**DEATH WARRANT SIGNED
EXECUTION SET NOVEMBER 20, 2025, AT 6:00 P.M.**

Order of the Circuit Court, in and for the Seventh Circuit, Putnam County, Florida,
Final Order Denying Defendant's Fourth Successive Motion to Vacate Judgments
and Death Sentence (October 31, 2025).

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND
FOR PUTNAM COUNTY, FLORIDA**

**STATE OF FLORIDA,
Plaintiff,**

v.

RICHARD BARRY RANDOLPH,

Defendant.

**CASE NO.: 88-1357-CF
ACTIVE DEATH WARRANT
Execution Scheduled For
November 20, 2025 at 6:00 p.m.**

**FINAL ORDER DENYING DEFENDANT'S FOURTH SUCCESSIVE
MOTION TO VACATE JUDGMENTS AND DEATH SENTENCE**

This cause comes before the court on the Defendant's "Fourth Successive Motion to Vacate Judgments and Death Sentence" (hereinafter "Motion") raising three claims and includes a request for an evidentiary hearing pursuant to Florida Rule of Criminal Procedure 3.851. Pursuant to the Florida Supreme Court's Scheduling Order entered October 21, 2025, and this court's own scheduling order of October 22, 2025, this court received the filings from the parties and held a Case Management Conference, a discovery hearing and a *Huff* hearing. The court having considered all the pleadings, heard the arguments of counsel, and read the many transcripts of the proceedings, hereby finds as follows:

PROCEDURAL HISTORY

The facts of this case were summarized by the Florida Supreme Court in *Randolph v. State*, 562 So. 2d 331, 332-333 (Fla. 1990), as follows:

Minnie Ruth McCollum managed a Handy-Way store in Palatka, and Randolph was a former employee of the same store. Shortly after 7 a.m. on August 15, 1988, Terry Sorrell, a regular customer, and Dorothy and Deborah Patilla, custodians of the store, observed Randolph, wearing a Handy-Way smock, locking the front door. When the Patillas inquired about Mrs. McCollum's whereabouts and why the store was locked, Randolph told them that Mrs. McCollum's car had broken down and that she had taken his car. He indicated that he had repaired her car and was leaving to pick her up. Randolph then drove away in Mrs. McCollum's car.

The women tried the door and, finding it locked, peered in through the window. They saw that the security camera in the ceiling was pulled down; wires were coming out of the trash can, which had been tipped over; the area behind the counter was in disarray; and the door to the back room, normally kept open, was almost completely closed. Thinking that something was awry, they called the sheriff's office.

After breaking into the store, a deputy found Mrs. McCollum lying on her back, naked from the waist down, with blood coming out of the back of her head and neck. She was breathing and moaning slightly. The deputy also observed a knife beside her head. Paramedics transported Mrs. McCollum to the hospital. . .

After leaving the Handy-Way, Randolph drove Mrs. McCollum's car to the home of Norma Janene Betts, Randolph's girlfriend and mother of their daughter. She testified that he admitted robbing the Handy-Way store and attacking Mrs. McCollum. He told her that he was going to Jacksonville to borrow money from the manager of a Sav-A-Lot grocery store and cash in lottery tickets. He promised to return to take Betts and their daughter to North Carolina. . . .

Randolph was arrested in Jacksonville at a Sav-A-Lot store, while waiting for the manager to advance him some money. After waiving his rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), Randolph gave a statement to two Putnam County detectives. Detective William Hord testified that Randolph had said he had ridden his bicycle to the Handy-Way store with a toy gun, which he hid behind the store.

He said he knew the routine at the store, having worked there, and knew there should be approximately \$1,000 in the safe. He planned to enter the store unseen, open the safe, remove the money, and leave while the manager was outside checking the gas pumps. However, the manager returned and saw him. He rushed her, she panicked, and a struggle ensued. Randolph indicated that she was “a lot tougher than he had expected,” but that finally he forced her into the back room where he hit her with his hands and fists until she “quieted down.”

Randolph tried unsuccessfully to open the store safe. When Mrs. McCollum started moving again, he approached her. He said that she pulled the draw string out of his hooded sweat shirt, which he then wrapped around her neck until she stopped struggling. Randolph then found a slip of paper with the combination of the safe. Unsuccessful in opening it, he took the store's lottery tickets.

At this point, the victim started screaming. Randolph again struck her until “she hushed.” Because she continued to make noises, Randolph grabbed a small knife and stabbed her. He again grabbed the string and “tried to cut her wind.” To make it appear as if “a maniac” had committed the crime, Randolph said he then raped her. He put on a Handy-Way uniform, grabbed the store video camera out of its mount and put it into the garbage. He took Mrs. McCollum's keys and locked the store before leaving in her car.

A jury found Defendant guilty of Count I, first-degree murder, Count II, armed robbery, Count III, sexual battery with force likely to cause serious personal injury or with a deadly weapon, and Count IV, grand theft of a motor vehicle. The jury recommended the death penalty. On April 5, 1989, Defendant was sentenced to death on Count I. Defendant filed a direct appeal of his judgment and sentence, where Defendant's convictions and sentence of death was affirmed. *See Randolph v. State*, 562 So. 2d 331 (Fla.

1990). Defendant then filed a petition for writ of certiorari at the United States Supreme Court, where the United States Supreme Court denied Defendant's petition. *See Randolph v. Florida*, 498 U.S. 992 (1990).

On January 26, 1998, Defendant filed his Third Amended Initial Motion for Post-Conviction Relief (hereinafter "Third Amended Initial Motion"), which the court fully denied after the conclusion of the April 24, 1998, evidentiary hearing. Defendant appealed the denial of his Third Amended Initial Motion, which was affirmed. *See Randolph v. State*, 853 So. 2d 1051 (Fla. 2003). Defendant next filed a petition for writ of habeas corpus in the United States Middle District Court on November 16, 2004. The Middle District Court denied relief on February 19, 2008. Defendant appealed to the Eleventh Circuit Court of Appeals, which affirmed the Middle District Court's denial of relief. *Randolph v. McNeil*, 590 F.3d 1273 (11th Cir. 2009).

On December 9, 2010, Defendant filed his First Successive Motion for Post-conviction Relief (hereinafter "First Successive Motion"), which was denied by the court on March 3, 2011. Defendant filed an appeal of the denial of his First Successive Motion, which was affirmed. *See Randolph v. State*, 91 So. 3d 782 (Fla. 2012). On January 10, 2017, Defendant filed his Second Successive Motion for Post-Conviction Relief (hereinafter "Second Successive Motion") and an Amended Second Successive Motion for Post-

Conviction Relief (hereinafter “Amended Second Successive Motion”), which were both denied by the court on December 31, 2019. Defendant filed an appeal of the denial of his Second Successive Motion and Amended Second Successive Motion, which was affirmed. See *Randolph v. State*, 320 So. 3d 629 (Fla. 2021). On October 1, 2023, Defendant filed his Third Successive Motion for Post-conviction Relief (hereinafter “Third Successive Motion”), which was denied by the court on December 11, 2023. Defendant filed an appeal of the denial of his Third Successive Motion, which was affirmed. See *Randolph v. State*, 403 So. 3d 206 (Fla. 2024).

On October 21, 2025, Governor Ron DeSantis signed a death warrant for Defendant. On October 21, 2025, the Florida Supreme Court entered an order directing this court to expedite proceedings related to Defendant and outlining the schedule that must be followed. On October 22, 2025, the court held a case management hearing. On October 27, 2025, the court held a discovery hearing. On October 28, 2025, Defendant submitted the instant Motion. On October 30, 2025, the Office of the Attorney General submitted their answer to Defendant’s instant Motion. The Court reviewed both. Then, on October 30, 2025, the Court held the *Huff* hearing.

In the instant Motion, Defendant raises the three grounds discussed below. At the *Huff* hearing on October 30, 2025, the court heard argument

regarding if an evidentiary hearing was required to be held on the three grounds presented by Defendant. On October 30, 2025, this court issued an order denying Defendant's request for an evidentiary hearing on all three grounds finding that Defendant's claims could be decided based on the pleadings, the existing record, and the applicable law.

STATEMENT OF LAW

"If the motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing." Fla. R. Crim. P. 3.851(h). This court may summarily deny a postconviction claim that is conclusively rebutted by the existing record. Fla. R. Crim. P. 3.851(f)(5)(B). Additionally, the court may summarily deny purely legal claims that are meritless under controlling precedent. *Mann v. State*, 112 So. 3d 1158, 1162 (Fla. 2013).

GROUND I

DEFENDANT ASSERTS THAT FLORIDA'S "THREE-DRUG" EXECUTION PROTOCOL WHEN COMBINED WITH HIS DISEASE OF LUPUS PRESENTS A SUBSTANTIAL AND IMMINENT RISK THAT DEFENDANT WILL SUFFER NEEDLESSLY, THUS VIOLATING HIS CONSTITUTIONAL RIGHTS AGAINST CRUEL AND UNUSUAL PUNISHMENT

Defendant supports the instant claim by alleging that Dr. Joel Zivot has

reviewed his medical records and provides the opinion that he “anticipate[s] many severe and painful outcomes during any attempt to execute [Defendant]. As alternatives, Defendant proposes either “a two-drug lethal injection protocol consisting of a pre-dose of fentanyl followed by a dose of noncompounded FDA-approved or properly compounded pentobarbital[, or] execution by firing squad with a pre-execution sedative (valium) with a kill shot to chest or head.”

Untimely Claim

Defendant’s instant claim is procedurally barred as untimely. “Summary denial of a successive rule 3.851 motion is appropriate if ‘the motion, files, and records in the case conclusively show that the movant is entitled to no relief.’” *Rogers v. State*, 409 So. 3d 1257, 1262 (Fla. 2025) (quoting *Zack v. State*, 371 So. 3d 335, 344 (Fla. 2023)). “A postconviction court may also appropriately summarily dismiss untimely or procedurally barred claims under the rule, too.” *Id.*

With limited exceptions, rule 3.851(d)(1) imposes a one-year time limitation on any motion to vacate a final judgment and sentence of death. Relevant here is an exception to this one-year limitation, when “the facts on which the claim is predicated were unknown to the movant or the movant’s attorney and could not have been ascertained by the exercise of due diligence.”

Id. at 1262-1263. The Florida Supreme Court has “generally held that

method-of-execution claims are procedurally barred unless the method itself changes or new facts about the current method arise during a prior execution.” *Id.* at 1267.

In the instant case, Defendant has failed to argue that any exception to the Florida Rule of Criminal Procedure 3.851(d)(1) time bar exists. Importantly, the defense concedes that Defendant has known of his lupus diagnosis for a “long time”. Counsel stated Defendant was born with lupus. The court file contains some of Defendant’s Department of Corrections medical records which were first produced to defense counsel in 1992. Per those records, the lupus diagnosis was made by DOC in 1990. Even if Defendant’s lupus diagnosis has worsened throughout the years, this court finds that Defendant had ample time to gather information regarding the interactions between lupus and Florida’s execution protocol prior to the signing of his death warrant. As a result, this court finds that Defendant’s Motion is procedurally barred as untimely. Therefore, Ground I is **DENIED**.

Meritless Claim

Additionally, this court finds that Defendant’s claim is meritless.

[A successful challenge to] a method of execution requires that a defendant “(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known

and available alternative method of execution that entails a significantly less severe risk of pain.”

Rogers, 409 So. 3d at 1268. “Under the first prong, the question is not merely whether any pain is inflicted, for ‘the Eighth Amendment “does not demand the avoidance of all risk of pain in carrying out executions.”’” *Id.* “Rather, the Eighth Amendment ‘come[s] into play’ when ‘the risk of pain associated with the State’s method is “substantial when compared to a known and available alternative.”’” *Id.*; see also *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024) (quoting *Schwab v. State*, 995 So. 2d 922, 927 (Fla. 2008)) (holding that “[b]eing pricked numerous times in the course of having an IV inserted is not cruel and unusual punishment, however uncomfortable it may be.”).

Defendant speculates that during the administration of his execution pursuant to Florida’s “three-drug” protocol that he will experience “many severe and painful outcomes during[,]” such as: (1) “Positioning [Defendant] will lead to an immediate state of severe pain[;]” and (2) “The sequential injection of the lethal chemicals will cause his lungs to fill with bloody froth as he slowly dies.” Defendant fails to establish how the speculated pain he will receive by being positioned to receive the injection as part of Florida’s “three-drug” protocol rises to the level of cruel and unusual punishment. See *id.* Additionally, Defendant fails to explain how his speculative pain during the injections “overcomes the well-established fact that the administration

of etomidate will render him unconscious likely within one minute.” *Rogers*, 409 So. 3d at 1268. Defendant’s pleadings do not refute this finding. As a result, the court finds that Defendant’s instant claim is meritless as it is speculative and legally insufficient. Therefore, **GROUND I REMAINS DENIED** in the alternative.

Failure to Provide Good Cause

Alternatively, this court finds that Defendant’s instant ground is successive. Defendant fails to provide good cause as to why he failed to assert the instant ground in any of his prior motions for post-conviction relief, the last of which was filed on October 1, 2023. As a result, the court finds that Defendant is procedurally barred from filing this claim. See Fla. R. Crim. P. 3.851(e)(2). Therefore, **GROUND I REMAINS DENIED** in the alternative.

GROUND II

DEFENDANT AVAILS THAT FLORIDA’S WARRANT PROCESS DEPRIVES HIM OF A FULL AND FAIR POSTCONVICTION PROCEEDING IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO SUBSTANTIVE AND PROCEDURAL DUE PROCESS AND ACCESS TO THE COURTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION, AND THE PROCEEDINGS FURTHER RAN AFOUL OF THE REQUIREMENT FOR HEIGHTENED RELIABILITY

IN CAPITAL CASES.

Defendant's instant claim effectively makes the argument that the compressed nature of the warrant litigation schedule violates his due process rights. Defendant's assertion fails as a matter of law. "Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided.'" *Tanzi v. State*, 407 So. 3d 385, 390 (Fla. 2025) (quoting *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016)). The Florida Supreme Court "has previously rejected the argument that a 30-day 'compressed warrant litigation schedule' denies a capital defendant 'his rights to due process.'" *Id.* Similar to the *Tanzi* Court, Defendant "has not shown how the warrant schedule denied him notice or an opportunity to be heard." *Id.* at 390-391. As a result, this court finds that Defendant's instant claim is meritless. Therefore, Ground II is **DENIED**.

GROUND III

DEFENDANT AVERS THAT HE WAS DENIED MEANINGFUL CLEMENCY PROCEEDINGS AND THE OPPORTUNITY TO CONFRONT THE CLEMENCY INVESTIGATION'S FINDING IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT.

Meritless Claim

Defendant asserts a claim that his due process rights regarding

clemency proceedings were violated when he was denied the opportunity to provide additional information to support clemency. Defendant's assertion fails as a matter of law.

The minimal due process rights regarding clemency, established by the United States Supreme Court in *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 280-281 (1998), do not apply to clemency updates. In fact, there is no constitutional right to clemency. *Bowles v. DeSantis*, 934 F.3d 1230, 1242 (11th Cir. 2019) (citing *Herrera v. Collins*, 506 U.S. 390, 414 (1993)) (noting the Constitution "does not require the States to enact a clemency mechanism"). There is no specific procedure mandated in the clemency process. *Johnston v. State*, 27 So. 3d 11, 25-26 (Fla. 2010).

The Florida Supreme Court has rejected arguments that the first clemency hearing was inadequate because it was conducted before the capital defendant's "full life history and mental illness history were developed." *Id.*; *Grossman v. State*, 29 So. 3d 1034, 1044 (Fla. 2010). Discussing *Woodward*, the Florida Supreme Court noted that none of the opinions "required any specific procedures or criteria to guide the executive's signing of warrants for death-sentenced inmates." *Marek v. State*, 14 So. 3d 985, 998 (Fla. 2009) (denying a due process challenge to Florida's clemency proceeding where the Governor reviewed the case without input from the

defendant).

Further, the Florida Supreme Court has “rejected the argument that a defendant is entitled to present a full accounting of mitigation evidence as part of the clemency process.” *Pardo v. State*, 108 So. 3d 558, 568 (Fla. 2012) (citing *Grossman v. State*, 29 So. 3d 1034, 1044 (Fla.)). Finally, “clemency is an executive function and [therefore], in accordance with the doctrine of separation of powers, [courts] will not generally second-guess the executive's determination that clemency is not warranted.” *Id.* (citing *Johnston*, 27 So. 3d at 26). As a result, the court finds that Defendant’s instant claim lacks merit. Therefore, **GROUND III IS DENIED.**

Untimely Claim

Additionally, Defendant’s instant claim is procedurally barred as untimely. This court incorporates by reference all of the cited precedent utilized in the timeliness claim for “Ground I.” Defendant has failed to argue that any exception to the Florida Rule of Criminal Procedure 3.851(d)(1) time bar exists. As a result, this court finds that Defendant’s Motion is procedurally barred as untimely. Therefore, **GROUND III REMAINS DENIED** in the alternative.

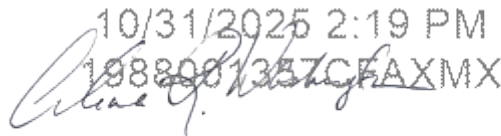
Failure to Provide Good Cause

Alternatively, the court finds that Defendant's instant ground is successive. Defendant fails to provide good cause as to why he failed to assert the instant ground in any of his prior motions for post-conviction relief. As a result, the court finds that Defendant is procedurally barred from filing this claim. See Fla. R. Crim. P. 3.851(e)(2). Therefore, **GROUND III REMAINS DENIED** in the alternative.

Accordingly, it is

ORDERED and ADJUDGED that Defendant's Motion is **DENIED**.

DONE AND ORDERED in chambers, in Putnam County, Florida, on 31 day of October, 2025

10/31/2025 2:19 PM
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e-Signed 10/31/2025 2:19 PM 1988001357CFAXMX

ALICIA R. WASHINGTON
CIRCUIT JUDGE

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD BARRY RANDOLPH,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

APPENDIX C

CAPITAL CASE

**DEATH WARRANT SIGNED
EXECUTION SET NOVEMBER 20, 2025, AT 6:00 P.M.**

Order of the Circuit Court, in and for the Seventh Circuit, Putnam County, Florida,
Order Following Case Management Conference and on Objections to Additional
Public Records (October 27, 2025).

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN
AND FOR PUTNAM COUNTY,
FLORIDA

STATE OF FLORIDA

CASE NO.: 1988 001357 CF

v.

RICHARD BARRY RANDOLPH,

Defendant.

_____ /

**ORDER FOLLOWING CASE MANAGEMENT CONFERENCE AND ON
OBJECTIONS TO ADDITIONAL PUBLIC RECORDS DEMANDS**

This matter came before the Court for a status conference on October 27, 2025. The Court, having reviewed Defendant's demands for public records, reviewed the written objections by the parties, held the status conference, heard arguments from all parties, and reviewed the court file, and being otherwise fully apprised in the premises, finds as follows:

Defendant filed numerous demands for additional public records to the following agencies: Florida Department of Law Enforcement (FDLE), Florida Department of Corrections (FDC), the District Eight Medical Examiner's Office, the Office of the Governor, the Florida Commission on Offender Review (FCOR), the Putnam County Sheriff's Office (PCSO), the State Attorney's Office, and the Office of the Attorney General. Defendant's demands for additional public records to the aforesaid agencies collectively

included the following demands: (1) information related to the execution of prior inmates; (2) information as it relates to the employees used during prior executions and those to be used in his execution; (3) information as it relates to the previous and current lethal injection protocols; (4) any documentation as it relates to Defendant's clemency investigation and the clemency investigations of other capital defendants; (5) reports, memorandum, and communications concerning the decision to sign a death warrant for Defendant and other listed capital defendants, and (6) any "additional written or media (audio, video, and/or images) files, records, reports, letters, memoranda, notes, drafts and/or electronic mail . . . relating to the investigation of [Defendant], and/or the death of [the victim]" that were not previously produced.

The opposing parties collectively raised the following objections: (1) Defendant is not entitled to any additional public records from the agencies that Defendant failed to demand the records from prior to the signing of the death warrant; (2) the Florida Supreme Court has held that Defendant is not entitled to public records as it relates to lethal injection protocols and clemency investigations; (3) the Florida Supreme Court has held that public records demands may be denied if the demand is overly broad and unsupported by any indication of their relevance to a colorable claim; and (4)

Defendant failed to provide good cause for the public records demands. The demands made by Defendant to the agencies and the objections made by the agencies were largely similar.

During the case management conference, the parties viewed numerous objections to Defendant's demands for public records. At the outset of the status conference, the Court informed the parties that a written order would be issued as it related to the claims in adherence with the applicable law.

Pursuant to Florida Rule of Criminal Procedure 3.852(h):

Within 10 days of the signing of a defendant's death warrant, collateral counsel may request in writing the production of public records from a person or agency from which collateral counsel has previously requested public records. A person or agency shall copy, index, and deliver to the repository any public record:

- (A) that was not previously the subject of an objection;
- (B) that was received or produced since the previous request; or
- (C) that was, for any reason, not produced previously.

Also, pursuant to Florida Rule of Criminal Procedure 3.852(i), a defendant is entitled to additional public records if the Court determines that the following criteria have been satisfied:

- (A) Collateral counsel has made a timely and diligent search as provided in this rule.

- (B) Collateral counsel's written demand identifies, with specificity, those additional public records that are not at the records repository.
- (C) The additional public records sought are relevant to the subject matter of a proceeding under rule 3.851, or appear reasonably calculated to lead to the discovery of admissible evidence.
- (D) The additional public records request is not overly broad or unduly burdensome.

Moreover, the Florida Supreme Court has provided the following language regarding Defendant's public records request pursuant to rule 3.852:

Rule 3.852 is "not intended to be a procedure authorizing a fishing expedition for records." For this reason, records requests under Rule 3.852(h) are limited to "persons and agencies who were the recipients of a public records request at the time the defendant began his or her postconviction odyssey," whereas, records requests under Rule 3.852(i) must "show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records request was not made until after the death warrant was signed.

Dailey v. State, 283 So. 3d 782, 793 (Fla. 2019) (quoting *Bowles v. State*, 276 So. 3d 791, 795 (Fla. 2019)) (internal citations removed).

In his demands, Defendant repeatedly acknowledges that the Florida Supreme Court has upheld the constitutionality of Florida's lethal injection protocol and likewise upheld the denial of requests for records pertaining to challenges to the method of lethal injection on the basis that they are not likely to lead to a colorable claim of post-conviction relief under Florida Rule

of Criminal Procedure 3.851. *Id.* The lethal injection protocol has remained unchanged since the Florida Supreme Court's opinion. Accordingly, Defendant's requests relating to prior executions, execution protocols, execution employees, or other related matters are simply not relevant to the issues before the Court. See *Hannon v. State*, 228 So. 3d 505, 512 (Fla. 2017) (holding that the defendant's "'unwritten changes' and related 'veil of secrecy' claims would be more compelling had [the defendant] been actively pursuing these records[,]'" which ultimately led the Florida Supreme Court to affirm the trial court's denial). Further, claims that records might contain relevant information or that a defendant's counsel "can't know what's out there until we see what's out there..." does not satisfy a defendant's burden. *Braddy v. State*, 219 So. 3d 803, 822 (Fla. 2017). The Court finds that Defendant failed to provide any colorable claim for post-conviction relief in his demands for public records. As a result, the Court finds that Defendant's arguments fall short of establishing that the requested records are related to a colorable claim for post-conviction relief. Therefore, the Court will **SUSTAIN** the objections raised by the agencies and **DENY** Defendant's demands for public records as to the agencies that raised the instant objection.

To the extent that Defendant raises a demand for the production of Defendant's clemency hearing documentation, the Court finds that the request is irrelevant to the instant proceedings and will **SUSTAIN** the objections raised and **DENY** Defendant's demands for public records as to the agencies that raised the instant objection. Even in an active death warrant proceeding, records related to a clemency investigation are not subject to disclosure and are exempt from production. See § 14.28, Fla. Stat. (2025); *Muhammad v. State*, 132 So. 3d 176, 203 (Fla. 2013) (citing *King v. State*, 840 So. 2d 1047, 1050 (Fla. 2003)) (holding that "clemency files and records are not subject to chapter 119 disclosure and are exempt from production in a records request filed in a postconviction proceeding").

The Court further finds that Defendant's assertion that he should receive any "additional written or media (audio, video, and/or images) files, records, reports, letters, memoranda, notes, drafts and/or electronic mail . . . relating to the investigation of [Defendant], and/or the death of [the victim]. . . ." that were not previously produced, is overly broad. A defendant's records request for "'any and all' [records are] overly broad and burdensome." *Zakrzewski v. State*, 415 So. 3d 203, 212 (Fla. 2025) (citing *Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002)). Notwithstanding, the Court does note that in viewing the various responses from the agencies, all of the

requested public records in the agency's possession have been previously disclosed in response to Defendant's prior demands. Defendant was unable to articulate a good faith basis for requesting reproduction of these records. Therefore, the Court will **SUSTAIN** the objections raised by the agencies and **DENY** Defendant's demands for public records.

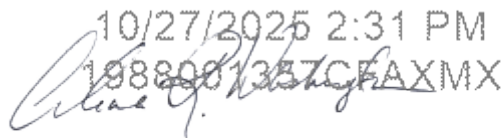
Additionally, to the extent that Defendant failed to make an initial records demand on some of these agencies for the records listed in Defendant's demands before the death warrant was signed, and for further failing to establish good cause as to why the public records requests were not made prior to the signing of the death warrant, the Court finds that Defendant is not entitled to receive those records now and will **SUSTAIN** the objections raised and **DENY** Defendant's demands for public records. See *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000) (affirming the denial of the defendant's requested public records "because he failed to demonstrate that he had 'previously' requested public records from these agencies and individuals").

To the extent that Defendant's demands for public records have not been complied with, it is **ORDERED** and **ADJUDGED** that:

1. Defendant's Demand for Additional Public Records pertaining to FDLE is **DENIED**;

2. Defendant's Demand for Additional Public Records pertaining to FDOC is **DENIED**;
3. Defendant's Demand for Additional Public Records pertaining to the District Eight Medical Examiner's Office is **DENIED**;
4. Defendant's Demand for Additional Public Records pertaining to the Office of the Governor is **DENIED**;
5. Defendant's Demand for Additional Public Records pertaining to the Florida Commission on Offender Review is **DENIED**;
6. Defendant's Demand for Additional Public Records pertaining to the Putnam County Sheriff's Office is **DENIED**;
7. Defendant's Demand for Additional Public Records pertaining to the State Attorney's Office is **DENIED**; and
8. Defendant's Demand for Additional Public Records pertaining to the Office of the Attorney General is **DENIED**.

DONE AND ORDERED in chambers, in Putnam County, Florida, on
27 day of October, 2025

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e-Signed 10/27/2025 2:31 PM 1988001357CFAXMX

ALICIA R. WASHINGTON

CIRCUIT JUDGE

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD BARRY RANDOLPH,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

APPENDIX D

CAPITAL CASE

**DEATH WARRANT SIGNED
EXECUTION SET NOVEMBER 20, 2025, AT 6:00 P.M.**

Successive Motion To Vacate Judgments And Death Sentence Pursuant To Florida
Rule Of Criminal Procedure 3.851 with Exhibits

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT, IN AND FOR
PUTNAM COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

Case No. 1988-1357-CF

v.

RICHARD RANDOLPH,
Defendant.

**EMERGENCY CAPITAL CASE,
DEATH WARRANT SIGNED;
EXECUTION SCHEDULED:
NOVEMBER 20, 2025 at 6:00 P.M**

**SUCCESSIVE MOTION TO VACATE JUDGMENTS AND DEATH SENTENCE
PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.851**

COMES NOW the Defendant, RICHARD RANDOLPH, by and through undersigned counsel, and pursuant to Florida Rule of Criminal Procedure 3.851, and respectfully requests that this Court enter an order vacating his death sentence and judgment of conviction and, as grounds, states the following:

Mr. Randolph is an indigent defendant who suffered extreme abuse and neglect at the hands of his adoptive parents and volunteered to serve his country in the military but fell into a spiral of drug addiction, which led, in part, to the crime for which he was sentenced to death.

While it is common ground that the murder and sexual battery of another human being is a horrific act deserving of punishment, Mr. Randolph is not the worst of the worst. Rather, he is the typical defendant Florida tends to execute: poor, Black, abused, neglected, and represented by appointed counsel who failed to investigate his client's life and present a full and meaningful case to the jury. Instead, counsel conducted a one-day penalty phase proceeding, *presenting a single witness*. Despite this abysmal effort, the jury recommended a death sentence by a mere eight (8) to four (4) vote. In any other state in the country (except for Alabama) or in federal court, this verdict would have resulted in a life sentence. But Florida's death penalty system remains an outlier. Additionally, the jury was not asked to make any factual findings in violation of the Sixth

Amendment.¹

Since being sentenced to death 36 years ago, Mr. Randolph has matured, and is no longer the troubled, drug-addicted young man he was at the time of the crime. He has dedicated himself to his religion, to maintaining ties with his family, including his birth mother, and to being a model prisoner within the Department of Corrections. The Florida Department of Corrections could manage Mr. Randolph, who is now 63 years old, for the rest of his life without any risk to other inmates, staff or the community at large.

A. JUDGMENT AND SENTENCE UNDER ATTACK

The Circuit Court of the Seventh Judicial Circuit, in and for Putnam County, Florida, entered Mr. Randolph's judgments of conviction for first degree murder, armed robbery, sexual battery, and grand theft of a motor vehicle on February 23, 1989. Following an advisory jury recommendation of eight (8) to four (4) for death, the trial court sentenced Mr. Randolph to death on April 5, 1989. (Attachment A).²

B. ISSUES RAISED ON DIRECT APPEAL AND POSTCONVICTION

i. Direct Appeal³

¹ Only two states—Florida and Alabama—permit judges to impose death sentences on the basis of non-unanimous jury recommendations for death. Non-unanimous cases accounted for **more than 20% of all death sentences** in the U.S. from 2010–2015 and disproportionately contributed to death-row exonerations. Death Penalty Information Center, <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/florida> (last visited, October 26, 2025).

² The trial court found four (4) aggravating factors: (1) the crime was committed while engaged in the commission or flight after commission of a sexual battery; (2) the crime was committed for the purpose of avoiding or preventing arrest; (3) the crime was committed for pecuniary gain; and the crime was especially heinous, atrocious, or cruel (HAC). The trial court rejected proposed statutory mitigation of no significant history of criminal activity based on information in the pre-sentence report which had not been presented to the jury and rejected the statutory mitigating factor of extreme mental or emotional disturbance. The court found two (2) non-statutory mitigating factors (1) Mr. Randolph possesses an atypical personality disorder; and (2) Mr. Randolph expressed shame or remorse for his conduct but stated that “said factors even if proven would not outweigh any one of the aggravating factors standing alone.” (R. 645-46).

³ Mr. Randolph also filed a State Habeas, where he raised the following claims of ineffective

1. The trial court violated state and federal due process protections by excusing for cause a prospective juror who expressed repugnance to the death penalty but could still vote to impose it.
2. The trial court erred in denying his motion for individual voir dire.
3. The trial court should have reduced the charge of sexual battery with great force to sexual battery where the victim is physically helpless to resist.
4. The trial court should have granted Mr. Randolph's motion for mistrial made upon the prosecutor's rebuttal at final argument pertaining to whether Mrs. McCollum's medical treatment was the cause of her death.
5. The trial court erred in denying his motion for mistrial after the state improperly elicited testimony during the guilt phase that Mr. Randolph did not exhibit remorse.
6. The trial court improperly admitted irrelevant and prejudicial photographs of Mrs. McCollum's body taken during the autopsy.
7. The state improperly questioned the medical examiner concerning the effects of administering type-O blood to Mrs. McCollum while she was in the hospital.
8. The trial court considered inappropriate aggravating circumstances (HAC).
9. The trial court erred in refusing to instruct the jury separately on specific non-statutory circumstances.
10. The Court's review of cases imposing the death penalty is arbitrary and capricious because the jury was not required to make written findings.
11. The aggravating factor of heinous, atrocious, or cruel is unconstitutionally vague under state and federal constitutions.
12. The trial court improperly found aggravating circumstances and failed to find various mitigating circumstances.
13. Florida's capital sentencing statute is unconstitutional on its face as applied.
14. The Florida Supreme Court rejected all of Mr. Randolph's claims. *Randolph v. State*, 562 So. 2d 331 (Fla. 1990).

ii. Initial Motion for postconviction relief.⁴ The postconviction court denied relief on Claims 1-19 and Claim 21 on February 24, 1998, and denied relief on the remaining claims on May 14, 1998. The Florida Supreme Court affirmed. *Randolph v. State*, 853 So. 2d 1051 (Fla. 2003).

assistance of appellate counsel which the Florida Supreme Court denied: 1) failure to argue that the trial court erred by refusing to give cautionary instructions after the prosecutor elicited testimony that Mr. Randolph felt no remorse; 2) failure to argue Mr. Randolph's death sentence is unconstitutional because the penalty phase jury instructions shifted the burden; 3) failure to argue that Mr. Randolph's absence from a critical stage of the proceedings was unconstitutional; 4) failure to argue the State unconstitutionally commented on sympathy towards Mr. Randolph; 5) failure to argue that improper prosecutorial argument unconstitutionally diluted the jury's responsibility. *Randolph v. Crosby*, 676 So. 2d 369 (Fla. 1996).

⁴ Mr. Randolph's first motion was filed on April 7, 1992. He amended four times: on July 9, 1992, May 1, 1993, and his third Amended Motion for postconviction relief with the Court's permission was filed on January 26, 1998.

1. Mr. Randolph alleged the State denied him the ability to prepare an adequate Rule 3.850 motion because the state failed to comply with public records requests.
2. Mr. Randolph's trial was fraught with procedural and substantive errors which deprived him of a fundamentally fair trial under the Sixth, Eighth, and Fourteenth Amendments.
3. Mr. Randolph was denied the effective assistance of counsel at the penalty phase and sentencing phase of the capital proceedings.
4. The state withheld material and exculpatory evidence from Mr. Randolph and his counsel in violation of the Fifth, Sixth, Eighth and Fourteenth amendments. Further the state used false and/or misleading evidence and/or argument. The postconviction court found that all disclosures had been made, and that none of the information contained *Brady* material.
5. Trial counsel's undisclosed conflict of interest denied Petitioner the effective assistance of counsel. The postconviction court found that there was no conflict of interest and no showing that defense counsel's performance was adversely affected.
6. Mr. Randolph's Eighth Amendment rights were violated when the sentencing court failed to find the unrefuted mitigating circumstances clearly set out in the record.
7. Mr. Randolph's sentence of death violates the Fifth, Sixth, Eighth and Fourteenth amendments because the penalty phase jury instructions shifted the burden.
8. Mr. Randolph's sentencing jury was improperly instructed on the aggravating circumstances, and the aggravators were improperly argued and imposed, in violation of *Espinosa v. Florida*, *Maynard v. Cartwright*, *Hitchcock v. Dugger*.
9. Mr. Randolph's trial was fraught with procedural and substantive errors, which cannot be harmless when viewed as a whole, since the combination of errors deprived him of the fundamentally fair trial guaranteed under the Sixth, Eighth, and Fourteenth amendments.
10. The trial court and defense counsel's failure to assure Mr. Randolph's presence during a critical stage of his capital proceedings, and the prejudice resulting therefrom, violated the Fifth, Sixth, Eighth and Fourteenth amendments to the United States Constitution.
11. Mr. Randolph's death sentence rests upon an unconstitutional automatic aggravating circumstance, in violation of *Maynard v. Cartwright*, *Lowenfield v. Phelps*, *Hitchcock v. Dugger*, and the Eighth Amendment; counsel's failure to object was ineffective assistance of counsel.
12. Mr. Randolph was denied his rights under *Ake v. Oklahoma* at the penalty phase of his capital trial, when counsel failed to obtain an adequate mental health evaluation.
13. Mr. Randolph was deprived of his Eighth and Fourteenth amendment rights to the effective assistance of counsel by his attorney's failure to adequately investigate, develop, and present amply available evidence in support of a voluntary intoxication defense.
14. At sentencing, the court erred in telling the jury that sympathy towards Mr. Randolph was an improper consideration.

15. Mr. Randolph's right to a reliable capital sentence was violated where his sentencing jury did not receive instructions guiding and channeling its sentencing discretion by explaining the limiting constructions of the aggravating circumstances submitted to it.
16. Mr. Randolph's jury was misled and incorrectly informed about its function at capital sentencing, in violation of Eighth and Fourteenth amendments.
17. Mr. Randolph's sentencing jury was misled by argument which unconstitutionally and inaccurately diluted its sense of responsibility for sentencing.
18. Ineffective assistance of counsel and the prosecutor's improper conduct rendered Mr. Randolph's conviction and resultant death sentence fundamentally unfair and reliable in violation of the Sixth, Eighth and Fourteenth amendments.
19. Mr. Randolph was deprived of his due process rights when his trial attorney was a special deputy sheriff.
20. The sentencing court erred by failing to independently weigh aggravating and mitigating circumstances, contrary to Mr. Randolph's Fifth, Sixth, Eighth and Fourteenth amendment rights.
21. Execution by electrocution violates Mr. Randolph's rights under the Eighth and Fourteenth amendment rights.

iii. First Successive Motion For Postconviction Relief. Mr. Randolph's death sentence was unconstitutional because the Florida courts unreasonably reduced and/or failed to give weight to the mitigation presented in postconviction. *Porter v. McCollum*, 558 U.S. 30 (2009).⁵ The postconviction court denied the Motion finding *Porter* was not retroactive. The Florida Supreme Court affirmed. *Randolph v. State*, 91 So. 3d 782 (Fla. 2012).

iv. Second Successive Motion For Postconviction Relief. Mr. Randolph's death sentence was unconstitutionally obtained in violation of his Sixth Amendment rights as set out in *Hurst v. Florida*, 577 U.S. 92 (2016). The postconviction court denied the Motion; the Florida Supreme Court affirmed. *Randolph v. State*, 320 So. 3d 629 (Fla. 2021).

v. Third successive motion for postconviction relief. Newly discovered evidence of the identity of Mr. Randolph's birth parents, both of whom are highly educated and lived stable middle-class lives, establishes that the abuse and neglect he suffered at the hands of his adoptive parents should be given greater weight and there exists a reasonable possibility, in light of the prior 8 to 4 jury recommendation, that Jones would receive a life sentence. The courts denied this claim. *Randolph v. State*, 403 So.3d 206 (Fla. 2024).

⁵ In addition to its opinion in *Porter*, finding the Florida Supreme Court's assessment of mitigation in postconviction claims to be unconstitutional, the U.S. Supreme Court has found Florida's death penalty scheme unconstitutional numerous times in the modern era including: *Enmund v. Florida*, 485 U.S. 782 (1982), *Hitchcock v. Dugger*, 481 U.S. 393(1987), *Hall v. Florida*, 572 U.S. 701, 721 (2014) and *Hurst v. Florida*, 77 U.S. 92 (2016). Mr. Randolph's death sentence violates *Hurst*, but because his sentence was imposed prior to 2003, Mr. Randolph was not deemed eligible for *Hurst* relief in spite of the constitutional infirmity of his death sentence. *Randolph v. State*, 320 So. 3d 629 (Fla. 2021).

C. WHY CLAIMS WERE NOT PREVIOUSLY RAISED

Here, Mr. Randolph raises three claims: 1) Due to Mr. Randolph's diagnosis of lupus and poor medical treatment while incarcerated, he is likely to suffer unnecessary pain and illness under Florida's three-drug execution protocol; 2) the October 21, 2025, denial of clemency failed to consider material facts of Mr. Randolph's development as a person after 2014 when his clemency was heard; and, 3) newly discovered evidence establishes that Florida's warrant selection and litigation process violates Due Process due to the expedited nature of the proceedings and the unreasonably truncated time frame. Florida stands as an outlier in its end-stage warrant litigation process. None of these claims could have been previously raised due to the following:

1. Mr. Randolph could not have previously raised his as-applied method of execution challenge because of the progression of his lupus due to improper medical care only became a constitutional issue as his condition deteriorated within approximately the last year;
2. Mr. Randolph could not have raised his challenge to the gross deficiencies of the clemency process because his clemency was only denied October 21, 2025. Mr. Randolph received **no communications** from the Clemency Board, nor could he have known that the Governor was reviewing Randolph's clemency application; and,
3. Mr. Randolph, likewise could not have anticipated the 2025 execution pace, the never-before-seen rolling warrants and the unrealistically truncated nature of the warrant process which places unnecessary strain on the stakeholders in the criminal justice system, including trial judges and their staff, counsel for State agencies, and capital defense attorneys, who have no advance warning if their client will be selected in the arbitrary selection process.

The witnesses listed below are available to testify under oath to the newly discovered facts alleged in this motion and their reports/affidavits are attached as evidentiary support:

- i. Joel Zivot, M.D., Emory University Hospital, 1364 Clifton Road Northeast, Atlanta, GA 30322, (Attachments B, C);
- ii. Raul Banasco, MPA, CPM, CJM, CCE, RSB & Associates, LLC, PO Box 14762, Tallahassee, FL 32317, (Attachment D); and,
- iii. Jeffrey Deen, Esq., Office of Criminal Conflict and Civil Regional Counsel, 101 Sunnyside Rd., Suite 310, Casselberry, FL 32707. (Attachment E).

Claim I: Florida’s Execution Of Mr. Randolph, Who Suffers From Lupus, Using Its Three-Drug Protocol Presents A Substantial And Imminent Risk That Mr. Randolph Will Suffer Needlessly And Is Thus Cruel And Unusual Punishment Violating The Eighth And Fourteenth Amendments To The United States Constitution And The Corresponding Provisions Of The Florida Constitution.

The Eighth Amendment prohibits the infliction of “cruel and unusual punishments.” *Glossip v. Gross*, 576 U.S. 863, 876 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). Florida’s three-drug protocol, as applied to Mr. Randolph, who suffers from lupus, creates an intolerable risk that Mr. Randolph’s death will be cruel and unusual. Due to the poor medical treatment for lupus that Mr. Randolph has received, his disease has progressed to a point where the lethal injection procedure is sure or very likely to cause serious illness and needless suffering in violation of the Eighth Amendment. Mr. Randolph had been developing this claim before the warrant was signed as seen by CCRC-S’s request for medical records from FDOC filed on June 13, 2025. FDOC sent the records on September 12, 2025.

Requirements To Prove An As-Applied Lethal Injection Challenge

Mr. Randolph raises an as-applied challenge to stop the State from imposing cruel and unusual punishment through his imminent execution. The United States Supreme Court has described the necessary showing to sustain an as-applied Eighth Amendment method-of-execution claim. Mr. Randolph must: (1) “establish that the method presents a risk that is ‘sure or very likely to cause serious illness and needless suffering,’” *Glossip*, 576 U.S. at 877 (quoting *Baze*, 553 U.S. at 50-52); and, (2) “identify a known and available alternative method of execution that entails a significantly less severe risk of pain.” *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip*, 576 U.S. at 877)). If granted an evidentiary hearing, Mr. Randolph will prove both requirements as follows:

1. Florida’s Lethal Injection Protocol Is Sure Or Very Likely To Cause Serious Illness And Needless Suffering In Light Of Mr. Randolph’s Lupus.

Mr. Randolph suffers from lupus. “Lupus is a disease that occurs when your body's immune

system attacks your own tissues and organs (autoimmune disease). Inflammation caused by lupus can affect many different body systems—including your joints, skin, kidneys, blood cells, brain, heart and lungs.” <https://www.mayoclinic.org/diseases-conditions/lupus/symptoms-causes/syc-20365789#overview>. Lupus has had a profound effect on Mr. Randolph’s life. It will also cause him to suffer a tortuous death.

Dr. Joel Zivot, a nationally recognized expert in anesthesiology who has practiced anesthesiology and critical care medicine for 30 years, and personally performed or supervised the care of over 50,000 patients, reviewed Mr. Randolph’s medical records and evaluated him by telephone consultation. *See* (Attachments B and C). Dr. Zivot reviewed Mr. Randolph’s medical records and then spoke with Mr. Randolph by telephone to obtain Mr. Randolph’s medical history and verify various medical reports that had been provided to Dr. Zivot for purposes of his evaluation. The evaluation was done to assess the risks posed to Mr. Randolph if he is executed according to Florida’s lethal injection protocol. Dr. Zivot’s report is attached to this motion and is specifically incorporated herein. (Attachment B). If Mr. Randolph is granted a hearing, Dr. Zivot will testify as stated with a high degree of medical certainty that:

Mr. Richard Randolph is a 63-year-old man who suffers from many medical problems, including discoid lupus erythematosus, systemic lupus erythematosus, hypertension, gastroesophageal reflux disease, leukopenia, chronic pain, 35 pack years of smoking (quit 2011), and possible coronary artery disease disorder . . .

[Mr. Randolph] reports many years of pain that is at times incapacitating and prevents him from performing the simplest tasks of his activities of daily living. He needs to reposition himself frequently during sleep and complains of significant neck pain when he lies on his back. For this pain, he has been prescribed oral ibuprofen (Motrin) and acetaminophen (Tylenol) . . .

Mr. Randolph has been diagnosed with discoid lupus and systemic lupus. Lupus is a chronic autoimmune disease in which the immune system mistakenly attacks the body's own healthy tissues and organs. This condition tends to flare up at various times and can cause severe dysfunction. Discoid lupus describes the condition when it is confined to the skin. Mr. Randolph was initially diagnosed with this form of lupus, but the condition quickly became more generalized.

Lupus can be described in three levels of severity: mild, moderate, and severe. Mild lupus includes a skin rash and joint pains. Mr. Randolph has at least these complaints. Moderate lupus includes a skin rash, joint pain, constitutional symptoms, and blood disorders. Mr. Randolph has a chronically reduced white blood cell count. This is likely the consequence of lupus and now puts him in the moderate category. In the severest form, organ damage to the kidneys, brain, and lungs can be seen. Specific diagnostic blood tests can be done to confirm the presence of lupus . . .

On balance, Mr. Randolph is in marginal health. He has received chronically poor health care while incarcerated. This poor care is a direct contributor to his poor health. I have serious concerns about his lung function. He also gets occasional chest pain and is treated for hypertension. Heart and lung dysfunction significantly raises the risk of profound and painful organ failure and increases the known risk of pulmonary edema, an unnecessarily painful condition, which is often observed in lethal injection executions.

A review of the Florida lethal execution protocol involves the sequential intravenous delivery of three drugs to a person to be executed. The first drug is Etomidate, followed by Rocuronium Bromide, and then Potassium Acetate. Etomidate is a non-barbiturate sedative hypnotic drug used in anesthesiology practice in several different situations. Etomidate is primarily metabolized in the liver, which means it will accumulate rapidly there. Etomidate is not classically considered an analgesic (used for the control of pain). Neither of the subsequent drugs used in the protocol is analgesic. Rocuronium Bromide is a rapidly acting paralyzing drug and will paralyze any individual, in this case, the prisoner, making it impossible to communicate to observers that pain is occurring. Potassium Acetate is a drug that regulates heart contraction. In large doses, Potassium Acetate is painful when injected and will cause the heart to cease functioning.

[Dr. Zivot] anticipate[s] many severe and painful outcomes during any attempt to execute Mr. Randolph. Positioning him will lead to an immediate state of severe pain. The sequential injection of the lethal chemicals will cause his lungs to fill with bloody froth as he slowly dies. Observers may see little of this, as the paralyzing drug will effectively block the outward appearance of his drowning in his blood. All of this is unnecessary as it is the direct consequence of the State of Florida's execution technique. Mr. Randolph will die a needlessly cruel death if Florida insists on trying to kill him with Florida's version of lethal injection.

(Attachment C, 2-6).

2. Mr. Randolph Offers An Alternative To Florida's Lethal Injection Protocol.

Mr. Randolph is required to "identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Asay*, 224 So. 3d at 701. He does so, over objection, to comply with the law for such claims. These methods will result in less suffering.

They are “feasible, readily implemented, and in fact significantly reduce[] substantial risk of severe pain.” *See Glossip*, 576 U.S. at 877 (quoting *Baze*, 533 U.S. at 52). Over their legal, ethical, and moral objection to doing so, undersigned counsel submits that two methods available: a two-drug lethal injection protocol consisting of a pre-dose of fentanyl followed by a dose of non-compounded FDA-approved or properly compounded pentobarbital and execution by firing squad with a pre-execution sedative (valium) with a kill shot to chest or head. Both are feasible and will significantly reduce the substantial risk of severe pain that Mr. Randolph faces from lethal injection.

While these methods are not currently implemented in Florida, “[a]n inmate seeking to identify an alternative method of execution is not limited to choosing among those presently authorized by a particular State's law . . . a prisoner may point to a well-established protocol in another State as a potentially viable option.” *Bucklew v. Precythe*, 587 U.S. 119, 139-40 (2019). (“An inmate seeking to identify an alternative method of execution is not limited to choosing among those presently authorized by a particular State's law . . . So, for example, a prisoner may point to a well-established protocol in another State as a potentially viable option.”). Four states directly authorize by statute execution by firing squad.⁶ Execution by firing squad will significantly reduce the substantial risk of severe pain and needless suffering that Mr. Randolph faces from Florida’s lethal injection protocol because this method does not implicate the same pain and suffering that Florida’s lethal injection protocol will cause.⁷ The Florida Department of Corrections can readily obtain bullets, has employees trained in the use of firearms, and has access

⁶ Mississippi, South Carolina, Utah, and Idaho. Miss. Code § 99-19-51; S.C. Code § 24-3-530; Utah Code § 77-18-5.5; Idaho Code § 19-2716.

⁷ Undersigned counsel acknowledges that Florida statute authorizes execution by electrocution, however that method is not being offered as an alternative because that method has been shown to be tortuous during past executions. Florida’s electric chair has not been used for an execution since 1999, and there is no way for Mr. Randolph to assess if the chair functions properly prior to his execution.

to Valium. Additionally, a two-drug protocol, with an initial dose of 1,500 micrograms of fentanyl to minimize the pain from pulmonary edema caused by the pentobarbital, is a readily feasible alternative. Pentobarbital is readily available to the Florida Department of Corrections. Phenobarbital is one of the most commonly used lethal injection drugs in the nation. Georgia, Texas, Missouri, South Dakota, Arizona, Utah, and the Federal Government have all obtained pentobarbital for use in executions within the last ten years.

3. Mr. Randolph Is Entitled To An Evidentiary Hearing On This Claim.

Mr. Randolph is entitled to an evidentiary hearing because the files and records fail to show conclusively that he is entitled to no relief. *See Lemon v. State*, 498 So. 2d 923 (Fla. 1986) (citing *State v. Crews*, 477 So. 2d 984 (Fla. 1984); *Callaghan v. State*, 461 So. 2d 1354 (Fla. 1984)). Florida Rule of Criminal Procedure 3.851(f)(5)(B) requires that an evidentiary hearing be held on successive postconviction motions where claims require a factual determination.

This claim requires numerous factual determinations. Mr. Randolph is entitled to an evidentiary hearing on this claim that his execution under the February 18, 2025, lethal injection protocol violates the Eighth Amendment. At an evidentiary hearing, Mr. Randolph will prove that Florida's lethal injection protocol, as applied to Mr. Randolph, will cause superadded suffering and a tortuous death. The Eighth Amendment tolerates no such punishment. Accordingly, an evidentiary hearing should be held on Mr. Randolph's claims, after which the relief sought herein should be granted.

Claim II: Florida's Warrant Process Deprives Mr. Randolph Of A Full And Fair Postconviction Proceeding In Violation Of His Constitutional Right To Substantive and Procedural Due Process and Access to the Courts Under The Fifth And Fourteenth Amendments To The United States Constitution And Corresponding Provisions Of The Florida Constitution, And The Proceedings Further Ran Afoul Of The Requirement for Heightened Reliability in Capital Cases.

Florida law vests the Governor with authority over the death warrant process, which falls squarely within the executive branch, but unlike the law of other states provides no structure to

ensure that capital defendants receive due process and a meaningful opportunity to be heard in the final stage of litigation. The reality is that this structure has resulted in a process that fails to conform with the requirements of the Fifth, Sixth, Eighth and Fourteenth Amendments facially and as applied to Mr. Randolph.

1. Warrant Proceedings

Counsel for Mr. Randolph received notice at 4:59 p.m. on Tuesday, October 21, 2025, that the Governor had signed a warrant for Mr. Randolph's execution on November 20, 2025. At 5:30 p.m., the Florida Supreme Court issued a scheduling Order directing "that all further proceedings in this case be expedited." Scheduling Order, *Randolph v. State*, SC1960-74083 (Fla. October 21, 2025). The Court ordered that this Court's proceedings "shall be completed and orders entered . . . by no later than 11:00 a.m. Tuesday, November 4, 2025." *Id.* This Court held a case management conference the next afternoon at 3 p.m. to address scheduling of the circuit court proceedings. In adopting the State's proposed Scheduling Order, without deviation and over objection; this Court ordered Mr. Randolph to file all record demands no later than 3 p.m. the next day—less than 24 hours. The agencies then had to file their objections. This Court held the records hearing at 10 a.m. Monday, October 27, 2025, and issued a ruling the same day. This motion is due Tuesday, October 28, 2025, at 3:00 p.m., giving Mr. Randolph less than less than 5 business days to investigate and file a fully pleaded successive motion.

While counsel can draft pleadings at night and on the weekends, the business days are important because access to Mr. Randolph is limited by FDOC's restrictions on access to clients on death watch. Counsel is not permitted to speak with him on weekends, holidays, or after hours, and only for 30 minutes. Nor are experts permitted to conduct evaluations during these times. Calls, visits, and expert evaluations are limited by overlapping warrants; three capital defendants are on death watch at this time. This process frustrates counsel's ability to meet ethical duties.

Limited phone calls impact counsel's ability to communicate effectively with Mr. Randolph about the proceedings. Counsel cannot effectively represent Mr. Randolph under these circumstances.

The signing of a warrant is a surprise to the Defendant, defense counsel, and the courts (although it appears that the Attorney General's Office has advanced knowledge of forthcoming warrants). The process is needlessly disruptive and unduly burdensome on all parties and the judicial system's limited resources.⁸ Trial level courts must quickly clear schedules and move other cases to accommodate emergency hearings. Although this Court may be able to set the hearings and clear its calendar, it has never heard proceedings in this case and is faced with an impossible task—becoming familiar in a matter of days with a case that spans decades, includes thousands of pages of records throughout which Mr. Randolph has presented detailed and compelling evidence undermining the reliability of his sentence.

The burden on the Court also impacts court staff. The court reporter is tasked with producing transcripts from each hearing in a matter of hours. The Clerk's Office is given just 6 hours to compile the record on appeal to submit to the Florida Supreme Court. Outside agencies are required to respond to records demands in 24 hours or less and appear at emergency court hearings regardless of their availability. Moreover, the process impacts counsel's ability to effectively represent other clients. While Rule 3.851(h)(2) provides that warrant proceedings take precedence over all other cases and courts may be willing to move previously scheduled hearings,

⁸ Mr. Randolph is unaware of any other state which sets such a short warrant period. Several states provide by statute or rule a minimum of 90 days in which to raise challenges under warrant. In Missouri, Texas, and California, when an execution warrant is signed, the execution must be set for no earlier than 90 days. Tex. Code Crim. Proc. Ann. art. 43.141(c) (2015); Mo. Sup. Ct. R. 29.08 (2014); Cal. Penal Code § 1193 (2024). The Missouri Supreme Court Rules provide a window of between 90-120 days for the warrant period. Mo. Sup. Ct. R. 29.08. Oklahoma requires that an execution be set not be less than 60 days from the issuance of a warrant. Okla. Stat. Ann. tit. 22, §1001 (2025). Louisiana also requires a minimum warrant period of 60 days and provides up to 90 days from the warrant being issued. La. Stat. 15:567(B) (2024). In Ohio, the Supreme Court sets the execution date between 2-3 years in advance, thus there is no surprise and adequate time for stakeholders to conduct meaningful review.

counsel is not absolved from their ethical and constitutional obligations to other clients. The very nature of warrant proceedings under this truncated time frame requires around-the-clock representation of just a single client.

2. Mr. Randolph's Rights To Substantive And Procedural Due Process, Access To The Courts, Under The Fifth And Fourteenth Amendments To The United States Constitution And Corresponding Provisions Of The Florida Constitution, As Well As The Eighth Amendments And Fourteenth Amendments Requirement Of Reliability.

"No State shall . . . deprive any person of life, liberty, or property without due process of law." Amend. XIV, U.S. Const. "A fundamental requirement of due process is 'the opportunity to be heard' . . . which must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)); see *Ford v. Wainwright*, 477 U.S. 399 (1986). "It is axiomatic that due process 'is flexible and calls for such procedural protections as the particular situation demands.'" *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 13 (1979) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

Whether the State has provided the required meaningful hearing is evaluated under the *Mathews* balancing framework. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Under *Mathews*, "the process due in any given instance is determined by weighing the private interest that will be affected by the official action against the Government's asserted interest, including the function involved and the burdens the Government would face in providing greater process." *Hamdi*, 542 U.S. at 529 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976))(quotations omitted).

Here, the State seeks to kill Mr. Randolph, who is "a living person and consequently has an interest in his life." *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 288 (1998) (O'Connor, J. concurring). Neither Mr. Randolph's sentence of death nor the impossibility of freedom extinguishes this interest. *Id.* at 291 (Stevens, J. concurring) ("There is no room for legitimate debate about whether a living person has a constitutionally protected interest in life. He

obviously does.”). Thus, the Due Process Clause demands a meaningful procedure, including a fair hearing at which “to substantiate a claim before it is rejected.” *Ford*, 477 U.S. at 411 (1986) (quoting *Solesbee v. Balkcom*, 339 U.S. 9, 23 (1950) (Frankfurter, J. dissenting)).

Mr. Randolph pleads that the truncated warrant period and limitations on relief violate Due Process in light of the interests at stake. *See Boumediene v. Bush*, 553 U.S. 723, 781 (2008) (citing *Mathews*, 424 U.S. at 335) (applying the due process test requiring “assessment of, inter alia, “the risk of an erroneous deprivation of [a liberty interest;] and the probable value, if any, of additional or substitute procedural safeguards” in habeas proceeding). There is no greater threat to a person’s liberty interests than an imminent execution by the State. Thus, the State must afford Mr. Randolph meaningful process. “The basic cornerstones of procedural due process are notice of the case and an opportunity to be heard.” *A&S Entm’t, LLC v. Fla. Dep’t of Revenue*, 282 So. 3d 905, 908 (Fla. 3rd DCA 2019). Under the Fourteenth Amendment, this Court owes Mr. Randolph a full and fair hearing “to substantiate a claim before it is rejected.” *Ford*, 477 U.S. at 411.

The U.S. Supreme Court has held that factual determinations related to the constitutionality of a person’s execution are “properly considered in proximity to the execution.” *Id.* at 406 (noting competency to be executed determination is more reliable near time of execution whereas guilt or innocence determination becomes less reliable). In other words, whether the carrying out of a death sentence violates the Eighth Amendment depends on the facts existing after a death warrant is signed and the determination of these facts requires *increased reliability*. When a claim sufficiently alleges a federal constitutional violation and a factual dispute exists, state courts must allow factual development—they cannot simply deny relief. *See Cash v. Culver*, 358 U.S. 633 (1959); *McNeal v. Culver*, 365 U.S. 109 (1961); *Carnley v. Cochran*, 369 U.S. 506 (1962). The truncated warrant period obliterates Mr. Randolph’s ability to bring such claims.

3. The Rote Denial Of Public Records Denies Mr. Randolph The Same Rights.

The truncated warrant period and rote denial of discovery precluded any meaningful hearing at which Mr. Randolph could substantiate a claim. Mr. Randolph needs public records to enforce *inter alia* his federal right to be free from the infliction of cruel and unusual punishment by raising an as applied method-of-execution challenge. This requires two fact-intensive showings: (1) whether “the method presents a risk that is ‘sure or very likely to cause serious illness and needless suffering,’” *Glossip*, 576 U.S. at 877; and, (2) whether there is “a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain . . . that the State has refused to adopt without a legitimate penological reason.” *Bucklew*, 587 U.S. at 134. Mr. Randolph cannot make these showings without access to discovery. But, cyclically, he cannot access discovery without first making the necessary showings. The obvious result is the complete unavailability of discovery. Undersigned counsel acknowledges that the Florida Supreme Court has rejected much of this argument in recent warrant decisions, finding *inter alia* that lethal injection records are unrelated to a colorable claim. But, if this is so and there can never be an as-applied method of execution challenge in Florida, then the Florida Supreme Court’s decision would operate as a complete deprivation of Mr. Randolph’s Due Process rights.

Additionally, counsel for Mr. Randolph is obligated to seek and obtain every public record in existence in his case, as the failure of collateral counsel to do so will result in a procedural default assessed against his client. *Porter v. State*, 653 So. 2d 375 (Fla. 1995). A concomitant obligation rests with the State to furnish the requested materials. *Ventura v. State*, 673 So. 2d 479 (Fla. 1996). The signing of a death warrant relieves neither party of these obligations.

Florida Rule of Criminal Procedure 3.852 was promulgated to govern the production of public records for capital postconviction defendants. Fla. R. Crim. P. 3.852(a). But it “was never intended to, and, indeed, [can]not, diminish a citizen’s constitutional right to access to public records.” *In re Amendment to Fla. R. Crim. P.—Capital Postconviction Records Production*, 683

So. 2d 475, 477 (Fla. 1996) (Anstead, J., specially concurring); *Sims v. State*, 753 So. 2d 66, 71-72 (Fla. 2000) (Anstead, J., concurring) (“We need to be very careful that we not end up with an outcome where a death-sentenced defendant, whose life may literally be affected, is barred from enforcing his constitutional right as a citizen to access to public records that any other citizen could routinely access.”). “[A]ccess to public records is an essential ingredient in any meaningful postconviction review,” *Sims*, 753 So. 2d at 71 n.10 (Anstead, J., concurring), and in safeguarding a death-sentenced individual’s due process rights under both the federal and state constitutions. See *Evitts v. Lucey*, 469 U.S. 387, 401 (1985). The setting of an execution date does not vitiate these fundamental rights, as “[t]he language of section 119.19 and of rule 3.852 clearly provides for the production of public records after the governor has signed a death warrant.” *Sims*, 753 So. 2d at 70.

The severely limited time that Mr. Randolph was given to seek public records under warrant and the rote denial of discovery effectively precluded any meaningful access to public records in violation of his rights to Due Process under the Florida and United States Constitutions. The truncated warrant period also violated Mr. Randolph’s Equal Protection and Due Process Clause Rights under the Fourteenth Amendment to the United States Constitution and the corresponding provisions of the Florida Constitution. Moreover, it violates his right to access to the courts and seek remedies for the myriad constitutional violations committed throughout these proceedings against him, including his right to petition for a writ of habeas corpus under the Florida and United States Constitutions.

Mr. Randolph faces imminent execution. Fundamental notions of dignity and fairness demand that he be able to challenge his death sentence and the State’s intended method of execution through meaningful collateral proceedings. Mr. Randolph has been denied his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and

corresponding provisions of the Florida Constitution. While Mr. Randolph may not receive relief from any court, the historical record will show that Florida extinguished any meaningful way to challenge imminent execution and refused to recognize the fundamental dignity of every individual.

Claim III: Mr. Randolph Was Denied Meaningful Clemency Proceedings And The Opportunity To Confront The Clemency Investigation's Finding In Violation Of The Due Process and Equal Protection Clauses of the Fourteenth Amendment.

This claim is pleaded with the acknowledgement that the courts have recognized the Governor has almost unfettered discretion regarding clemency. Mr. Randolph challenges his denial of his right to influence this discretion.

A. Mr. Randolph Was Not Given An Opportunity To Provide Information Since His Original Clemency Review In 2014.

Clemency is the last refuge of the condemned; no just society would refuse to consider their pleas. Clemency is enshrined in the Florida Constitution, which states in relevant part:

Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

Clemency is deeply rooted in our history as a Nation and before. “Clemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted.” *Herrera v. Collins*, 506 U.S. 390, 411–12 (1993) (footnotes omitted). As the U.S. Supreme Court noted in *Herrera*, “[t]he term ‘clemency’ refers not only to full or conditional pardons, but also commutations, remissions of fines, and reprieves. See Kobil, The Quality of Mercy Strained: Wresting the Pardoning Power from the King, 69 Texas L.Rev. 569, 575-578 (1991).” *Id.* at 412 n.12. “[T]he heart of executive clemency, which is to grant clemency as a matter of grace, thus allowing the executive to consider

a wide range of factors not comprehended by earlier judicial proceedings and sentencing determinations.” *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 280–81 (1998). Clemency is a “fail-safe in our criminal justice system.” *Harbison v. Bell*, 556 U.S. 180, 192 (2009).

At the time of his trial, Mr. Randolph’s jury could not consider the person that he became because the character evidence discussed below, had not developed and only would emerge over time. Since then, because Mr. Randolph’s clemency investigation occurred in 2014, the clemency board were denied critical information that shows that clemency is warranted in Mr. Randolph’s case. Between 2014 and the signing of the warrant, significant new information has arisen that should be considered in determining whether clemency is granted. As seen in the attached affidavit of clemency counsel, Jeffrey Deen, no further information was presented to the clemency board for the Governor’s consideration. (Attachment E).

Mr. Randolph is not the same person that was sentenced to death in 1988. Since 2014 greater understanding has come to light showing that clemency should be granted. Mr. Randolph offers the following arguments in support.

1. Good Behavior While Incarcerated

Since 2014, Mr. Randolph has obtained the distinction of not having a single Disciplinary Report (DR) brought against him by FDOC. Prior to 2014, Mr. Randolph had very limited DRs and nothing of significance. At an evidentiary hearing, Mr. Randolph anticipates calling Raul S. Banasco, MPA, CPM, CJM, CCE, to discuss how well Mr. Randolph has adapted to life on death row. Mr. Banasco is a well-qualified expert in corrections with over 39 years of distinguished service in corrections and public safety and, a senior-level correctional leader with a proven record of executive leadership across city, county, and state government agencies, as well as non-profit community supervision programs. Mr. Banasco will testify, and Mr. Randolph pleads here, that he has been a model inmate since 2014 and fairly well-adjusted before that as well. It is rare for

inmates on death row to avoid routine DRs, but Mr. Randolph has conducted himself admirably in this regard.

This is very important evidence that should be considered in determining whether Mr. Randolph is executed. The U.S. Supreme Court stated as much in *Skipper v. South Carolina*, 476 U.S. 1 (1986). In *Skipper*, the “Petitioner also sought to introduce testimony of two jailers and one ‘regular visitor’ to the jail to the effect that petitioner had ‘made a good adjustment’ during his time spent in jail. The trial court, however, ruled that under [state law] such evidence would be irrelevant and hence inadmissible.” *Id.* at 3. On appeal, this ruling was affirmed based on state law. *Id.* The U.S. Supreme Court granted certiorari to decide whether the state court’s “decision [was] inconsistent with [the] Court’s decisions in *Lockett* and *Eddings*, and . . . reverse[d].” *Id.* at 4.

The Court held that the petitioner had the right to present the evidence in question because “evidence that the defendant would not pose a danger if spared (but incarcerated) must be considered potentially mitigating.” *Id.* at 5. Mr. Randolph had no such testimony at trial. He had not been incarcerated very long at the time of his trial. There was some discussion of his minor, non-violent DRs at his clemency interview but it would have been impossible for the Clemency Board to consider and present to the Governor that Mr. Randolph has been DR free since 2011.

Mr. Randolph’s adjustment to prison is highly mitigating. *Skipper* stands for the principle that adjustment to prison is such. It has also been recognized by the American Bar Association that Counsel should also address concerns of future dangerousness, even when not a statutory factor in aggravation. “Studies show that future dangerousness is on the minds of most capital jurors, and is thus ‘at issue’ in virtually all capital trials.” American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, 10.11 (Commentary, p. 113) (2003). “Evidence that the client has adapted well to prison and has had few disciplinary problems can allay jurors’ fears and reinforce other positive mitigating evidence.” *Id.* It is well-established

that Mr. Randolph's adaption to prison is highly mitigating.

In *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976), the U.S. Supreme Court recognized the "qualitative difference" between life and death sentences and "corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." See *Mills v. Maryland*, 486 U.S. 367, 376-77 (1988) (holding "the risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments) (quoting *Lockett v. Ohio*, 438 U.S. 586, 605 (1978)); see also, *Andres v. United States*, 333 U.S. 740, 752 (1948); *Beck v. Alabama*, 447 U.S. 625, 637-38 (1980).

The U.S. Supreme Court made clear in *Eddings v. Oklahoma*, 455 U.S. 104 (1982):

[T]he rule in *Lockett* followed from the earlier decisions of the Court and from the Court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus "on the characteristics of the person who committed the crime," *Gregg v. Georgia*, *supra*, at 197, 96 S.Ct., at 2936, the rule in *Lockett* recognizes that "justice . . . requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." *Pennsylvania v. Ashe*, 302 U.S. 51, 55, 58 S.Ct. 59, 60, 82 L.Ed. 43 (1937). By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in *Lockett* recognizes that a consistency produced by ignoring individual differences is a false consistency.

Id. at 112. The mitigating evidence that showed that Mr. Randolph would become a model prisoner was not available at the time of trial because he had not become the person he grew to be. Consideration in clemency is necessary because this is vital information was not available at trial.

2. Medical Condition

There is no indication that the clemency process considered Mr. Randolph's medical condition. Mr. Randolph suffers from lupus. This is well-documented in Mr. Randolph's FDOC medical records and the subject of Claim I. Mr. Randolph is in great danger of suffering a tortuous death. In Florida it seems that the clemency investigation would have included some sort of

medical evaluation. *See Pardo v. State*, 108 So. 3d 558, 568 (Fla. 2012) (“Other documents in the record indicate that Pardo underwent an evaluation by FDOC medical personnel around the same time for clemency purposes.”). If Mr. Randolph was evaluated medically as part of clemency he has not received this information from the Clemency Board. Moreover, he was not given the opportunity to offer evidence of his own current medical condition. Additionally, as discussed in the report of Dr. Zivot, the FDOC has not provided treatment for Mr. Randolph’s lupus. *See* (Attachment C). As Dr. Zivot explained:

After reviewing the medical records and in consultation with Mr. Randolph, I see no evidence that he ever received this treatment. This is a disturbing lack of standard medical care that Mr. Randolph has the right to receive. In place, he was given occasional acetaminophen (Tylenol) and occasional ibuprofen (Motrin).

(Attachment C, 4). Mr. Randolph’s lupus has been a challenge. That he has dealt with it with dignity and grace, shows his character and should be considered for clemency. Moreover, consideration of his medical condition obviates the need for his execution. The jury that recommended death could not have considered this at the time they recommended death by an 8 to 4 vote. The Clemency Board should. But Mr. Randolph was denied consideration of this because clemency was so long ago.

3. Faith

Mr. Randolph has shown rehabilitation as he has matured. His DRs were non-violent and he has put this behind him. In 1993, influenced by a fellow inmate, Mr. Randolph became a Muslim. Mr. Randolph’s religious focus has helped him stay out of trouble and contributes to his personal development. It has helped him to adapt to the prison environment and deal with anger and frustration. Mr. Randolph helps others and helps keep a calm prison wing. He has also taken on the role of mentoring the younger death row inmates offering guidance to them in adapting to death row. If allowed to live, Mr. Randolph would continue to contribute to the death row community or in the general population. Because his clemency interview was so long ago, none

of this was considered.

4. Recent Relationship With Birth-Mother

Lastly, and as discussed in his last successor, Mr. Randolph has made contact with his birth family and has started building relationships with them. Mr. Randolph is hoping to speak with his half-brother for the first time before his execution. All relationships with Mr. Randolph's newly found birth family will cease, along with those of his adoptive family and his biological family, if he is executed. Mr. Randolph was denied a new trial based on newly discovered evidence but it is certainly important to be considered in clemency. *See Randolph v. State*, 403 So. 3d 206 (Fla. 2024).

Mr. Randolph has retained a well-qualified expert, Raul S. Banasco, MPA, CPM, CJM, CCE. Mr. Banasco has produced a report after speaking to Mr. Randolph and reviewing voluminous prison records. His report is attached to this motion, and incorporated here by reference. (Attachment D). As Mr. Banasco states:

Based on my 39 years of correctional experience, a thorough review of the records provided, and my interview with Mr. Richard B. Randolph, it is my professional opinion that he has gained significant insights from his early experiences within the prison system. Mr. Randolph entered the system at the age of 27 and is now 63 years old, having spent over three decades within the prison system, which he has spent on death row. Over this time, it is clear that Mr. Randolph has matured considerably. His behavior and conduct demonstrate this growth, and it is my belief that he now possesses a greater understanding of his circumstances.

Currently, Mr. Randolph does not pose any significant concerns regarding security or safety within a general population setting in a correctional facility. His years of experience and positive adjustments indicate that he can function appropriately within such an environment.

(Attachment D, 6). At an evidentiary hearing, Mr. Banasco will testify in greater depth about what the Clemency Board never considered.

B. Mr. Randolph Was Denied The Opportunity To Respond To The Clemency Board's Findings Because He Was Not Allowed To Review The Report And Findings That Led To The Decision To Deny Clemency.

In *Simmons v. South Carolina*, the U.S. Supreme Court held, “sending a man to his death ‘on the basis of information which he had no opportunity to deny or explain’ violated fundamental notions of due process.” 512 U.S. 154, 164 (1994) (*quoting Gardner v. Florida*, 430 U.S. 349, 362 (1977)). Mr. Randolph never received the information upon which the Governor based his decision that clemency was not appropriate or that his death warrant should be signed. This total lack of any opportunity to rebut the information used to make penalty decisions violated Mr. Randolph’s rights to Due Process and Equal Protection under the Fourteenth Amendment. *Simmons*, 512 U.S. at 164 (citing *Gardner*, 430 U.S. at 362) (finding violation of Due Process Clause where “defendant was sentenced to death on the basis of a presentence report which was not made available to him and which he therefore could not rebut”).

Mr. Randolph is now facing execution without ever having reviewed the information that was developed during the clemency investigation. The information that the clemency investigation produced may have been demonstratively false or misleading. Much like the defendant’s death sentence in *Gardner*, Mr. Randolph’s death warrant and warrant proceedings are based on “information which he had no opportunity to explain or deny.” 430 U.S. at 362. Mr. Randolph was again denied the information upon which execution is based when this Court denied his request for any records from the Executive Office of the Governor and the Florida Commission on Offender Review.

Mr. Randolph has a fundamental right to due process. While the right to procedural due process in clemency proceedings is narrow, minimal due process requirements still demand notice, hearing, and an opportunity to explain or deny information used to determine his fate. Mr. Randolph does not challenge the Governor’s discretion; he challenges the denial of his right to be heard and influence this discretion through a complete presentation of his case for clemency.

This Court should grant relief.

CONCLUSION AND RELIEF SOUGHT

Mr. Randolph requests the following relief: An evidentiary hearing on all claims needing factual development, a stay of his pending execution, a new penalty phase trial, and all other relief necessary to do justice.

CERTIFICATE OF COUNSEL

I HEREBY CERTIFY that I am the attorney for the Defendant in the above-styled cause, that I have discussed the contents of the foregoing **Successive Motion To Vacate Judgement Of Conviction And Death Sentence Under Florida Rule Of Criminal Procedure 3.851** to the greatest extent possible under the circumstances of these truncated death warrant proceedings, that I have complied with Rule 4-1.4 of the Rules of Professional Conduct, and that the foregoing motion is filed in good faith.

/s/James L. Driscoll
JAMES L. DRISCOLL
Assistant CCRC—South
Florida Bar No. 0078840

Respectfully Submitted,

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COUNSEL FOR MR. RANDOLPH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been provided to the following
via the e-filing portal on this 28th Day of October, 2025.

/s/James L. Driscoll
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Assistant CCRC—South
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IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR PUTNAM COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

RICHARD BARRY RANDOLPH,
Defendant.

CASE NO. 1988-1357-CF
**EMERGENCY CAPITAL CASE,
DEATH WARRANT SIGNED;
EXECUTION SCHEDULED FOR
NOVEMBER 20, 2025 AT 6:00 PM**

ATTACHMENTS TO DEFENDANT'S SUCCESSIVE MOTION TO VACATE
JUDGMENTS OF CONVICTION AND SENTENCE WITH REQUEST FOR LEAVE TO
AMEND

List of Attachments

- A. Judgment and Sentence, April 5, 1989.
- B. Curriculum Vitae of Joel Zivot, M.D.
- C. Report by Joel Zivot, M.D.
- D. Report by Raul Banasco, MPA, CPM, CJM
- E. Affidavit of Jeffrey Deen, Esq.

Respectfully submitted,

/s/ James L. Driscoll
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COUNSEL FOR MR. RANDOLPH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been provided to the following
via the e-filing portal on this 28th Day of October, 2025.

/s/ James L. Driscoll
JAMES L. DRISCOLL
Florida Bar No. 78840
Assistant CCRC-South

COUNSEL FOR MR. RANDOLPH

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ATTACHMENT A

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
PUTNAM COUNTY, FLORIDA

CASE NO. 88-1357-CF-M

STATE OF FLORIDA,

vs.

RICHARD BARRY RANDOLPH,

Defendant.

JUDGMENT AND SENTENCE

The Defendant, RICHARD BARRY RANDOLPH, was tried and found guilty by a Jury of the First Degree Murder of Minnie Ruth McCollum. Subsequent to the Verdict of Guilty, a separate hearing was conducted pursuant to Chapter 921.141(2), F.S. The Advisory Sentence was 8 to 4 for Death as to the Murder.

Pursuant to 921.141(3), the Court's findings and Sentence are as follows:

F.S.921.141(5): RELEVANT AND APPLICABLE AGGRAVATING
CIRCUMSTANCES

(d) THE CAPITAL FELONY WAS COMMITTED WHILE ENGAGED IN THE COMMISSION OR FLIGHT AFTER COMMISSION OF A SEXUAL BATTERY.

This aggravating factor has been proven beyond a reasonable doubt by the state.

The facts adduced at trial show conclusively that the Defendant was engaged in and completed the crime of Sexual Battery as to the victim. Upon completion of the extremely brutal beating, the Defendant, by his own admission, masturbated and placed his penis inside of her vagina culminating in sexual orgasm after the victim had been stripped of her lower clothing and while she lay helpless on the convenience store floor. Non-motile sperm was detected by FDLE analysts on a swab that a University of Florida resident

04681

obstetrician-gynecologist prepared from a swabbing deep within her vagina. The jury found the Defendant guilty of sexual battery with force likely to cause serious personal injury or with a deadly weapon as charged in the indictment.

(e) THE CAPITAL FELONY WAS COMMITTED FOR THE PURPOSE OF AVOIDING OR PREVENTING A LAWFUL ARREST.

This aggravating factor has been proven beyond a reasonable doubt by the state.

It was apparent, based on all the facts adduced at trial, that Minnie Ruth McCollum was murdered because she could identify the Defendant, RICHARD BARRY RANDOLPH, as the perpetrator of criminal acts, and thus report such facts to law enforcement which would lead to his lawful arrest for Robbery.

The Defendant knew the victim and had previously worked with her at the Handy Way store until his employment ended by store officials. It is clear that she could have positively identified him to law enforcement personnel. In addition, the Defendant's statement to detectives were to the effect that he had to do it, because she knew him! In addition, her screams and moans, according to the Defendant's statements, were such that the Defendant found it necessary to silence his victim to prevent his detection and arrest.

(f) THE CAPITAL FELONY WAS COMMITTED FOR PECUNIARY GAIN.

This aggravating factor has been proven beyond a reasonable doubt by the state.

The facts adduced at trial show conclusively that the Defendant was interrupted by the victim when in the process of attempting to steal money and/or lottery tickets from the Handy Way store. The jury specifically found that a robbery was committed and that the Defendant took as part of the

robbery, lottery tickets which he cashed the winning ones elsewhere, her car keys and her Buick Automobile which he used as a getaway car.

(g) THE CAPITAL FELONY WAS ESPECIALLY HEINOUS, ATROCIOUS OR CRUEL.

This aggravating factor has been proven beyond a reasonable doubt by the state.

RICHARD BARRY RANDOLPH had been employed at the Handy Way store in East Palatka and was familiar with the layout of the store, the victim's daily routine and the combination to the safe. Apparently the Defendant had a need for money and consequently went to the store on August 15, 1988 to steal money from the store's safe. When Minnie Ruth McCollum interrupted the Defendant in the process of stealing from the store he brutally beat her about the head with his hands and fists, kicked her, strangled her with a ligature and stabbed her with a knife, inflicting wounds which medical evidence showed caused her death on August 21, 1988. The Defendant went back to the victim on four or five separate occasions while attempting to murder her. His statements reflect the fact that she was much tougher than he thought and that he had to repeat the beatings and/or strangulations. From her repeated screams during the beatings, strangulation, and stabbing in the throat it is clear that the victim agonized over her injuries and impending death.

F.S.921.141(6): MITIGATING CIRCUMSTANCES PRESENTED BY
THE DEFENDANT

(a) THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL ACTIVITY.

This mitigating factor has not been proven by a preponderance of the evidence.

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Although not specifically offered by the Defendant, there was discussion and testimony by the defense regarding the Defendant's criminal history. The Court has become aware of multiple convictions in North Carolina and Florida as referenced in the presentence investigation.. Consequently, this Court cannot find this mitigating circumstance appropriate.

(b) THE CAPITAL FELONY WAS COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE.

This mitigating circumstance is not supported by a preponderance of the evidence. According to Dr. Harry Krop, clinical psychologist, the Defendant was diagnosed as having an A-Typical personality disorder, a recognized anti-social disorder, as found in the Diagnostic And Statistical Manual Of Mental Disorders, 3rd Ed., DSM-III, but oddly deleted and placed in a catch-all "all other disorders" category in the most recent DSM-III-R (revised edition). Regardless, it was Dr. Krop's expert opinion that this did not rise to the level of extreme mental or emotional disturbance. The Court finds upon reviewing all of the evidence that this statutory mitigating circumstance has not been proven.

The Court notes that the Defendant has not proven or argued any other statutory mitigating circumstances. The Court, upon reviewing all of the evidence finds that none of the other statutory mitigating circumstances have been proven.

SPECIALLY PROFERRED MITIGATING CIRCUMSTANCES
(NON-STATUTORY)

This Court has considered all the evidence presented with reference to consideration of non-statutory mitigating circumstances including, but not limited to, those hereafter

CASE

set forth and finds said factors even if proven would not outweigh any one of the aggravating factors standing alone.

1. THE DEFENDANT WAS A CRACK COCAINE ADDICT.

This non-statutory mitigating factor taken in its best light does not outweigh the aforementioned statutory aggravating factors. Regardless, testimony was consistent that the Defendant was not under the influence of any intoxicating drug or substance at the time of this offense. This fact is substantiated by friends and relatives who saw and observed the Defendant shortly after the commission of this crime. The purposeful manner in which this offense was committed and all circumstances surrounding this offense undermine the Defendant's self-serving assertion that he was under the influence of crack cocaine at the time of the offense.

2. THE DEFENDANT WAS ADOPTED AND NEVER BONDED WITH HIS MOTHER.

The Defendant, having been adopted, never had a loving relationship with his mother. This testimony adduced through Dr. Harry Krop, shows a young man whose mother had a history of mental problems. Regardless, Dr. Krop testified that the Defendant was loved by both parents. Thus, this factor even if proven does not rise to the level of a mitigating circumstance which would, in conjunction with Paragraph One, outweigh the aggravating circumstances found to exist.

3. THE DEFENDANT POSSESSES AN A-TYPICAL PERSONALITY DISORDER.

This mitigating factor while proven by a preponderance of the evidence is of such a weak nature that it does not rise to the level of a mitigating factor when viewed in conjunction

04685

with the above mitigating factors that would outweigh the statutory aggravating factors.

4. THE DEFENDANT EXPRESSED SHAME OR REMORSE FOR HIS CONDUCT.

This mitigating factor adduced through the testimony of Dr. Harry Krop, and argued to the jury by defense counsel is not a mitigating factor when viewed in conjunction with the other mitigating factors that would rise to the level of such that would outweigh the statutory aggravating factors. This factor is of very little weight given the circumstances of this offense.

THEREFORE, this Court having considered the aggravating factors proven by the state beyond a reasonable doubt and all mitigating factors established by the defense, along with all other relevant testimony and argument as to statutory and non-statutory mitigating factors, this Court does hereby find, by law and evidence, that said mitigating factors do not outweigh the aggravating factors found to exist. In fact, any of the aggravating factors found to exist would outweigh all mitigating factors; statutory and non-statutory.

IT IS ORDERED AND ADJUDGED that having considered all factors, this Court does hereby find that the sentence of death as recommended by the jury is appropriate.

I hereby sentence the Defendant, RICHARD BARRY RANDOLPH, to death. The Defendant is remanded instanter and without bail to the custody of the Sheriff of Putnam County, Florida. The Sheriff of Putnam County, Florida, shall forthwith deliver custody of Defendant to the Department of Corrections of the State of Florida. The Department of Corrections shall keep the Defendant in close confinement in the State Correctional System until a date is set for his execution as provided by

04686

law. On the date set for the Defendant's execution the Defendant shall be put to death in the manner prescribed by law.

The Court does now advise you that it is your right to appeal from this Judgment and Sentence within thirty (30) days from this date. You are entitled to the assistance of counsel in the filing and preparation of your appeal. By separate order you are declared to be indigent for the purposes of appeal and the Public Defender for the Seventh Judicial Circuit has been appointed to represent you on all appellate proceedings.

DONE AND ORDERED in Palatka, Putnam County, Florida, this
5th day of April, 1989.

R.R.P.
ROBERT R. PERRY, CIRCUIT JUDGE

04687

ATTACHMENT B

**EMORY UNIVERSITY SCHOOL OF MEDICINE
STANDARD CURRICULUM VITAE**

Revised: *March 12, 2025*

1. Name: Joel B. Zivot, MD, FRCP(C), MA, JM

2. Office Address: 1364 Clifton Road, Atlanta, Georgia, 30322

Telephone: 404-686-4411

3. E-mail Address: jzivot@emory.edu

4. Current Titles and Affiliations:

a. Academic Appointments:

1. Primary Appointments: Associate Professor, Department of Anesthesiology, Emory University School of Medicine (From September 1, 2015)
2. Joint and Secondary Appointments: Associate Professor, Department of Surgery, Emory University School of Medicine (From September 1, 2015) (secondary appointment)

5. Previous Academic and Professional Appointments:

- 1) Assistant Professor, Department of Anesthesiology and Critical Care Medicine, University of Michigan Medical Center, 1995-1998
- 2) Assistant Professor of Anesthesia, Surgery, and Intensive Care, University Hospitals of Cleveland, Case Western Reserve University School of Medicine, Cleveland, Ohio, USA, 1998-2005
- 3) Assistant Professor, Department of Anesthesiology and Critical Care Medicine, George Washington University Hospital, District of Columbia, USA, 2005-2007
- 4) Associate Professor, Department of Anesthesiology, University of Manitoba, Winnipeg, Manitoba, Canada, 2007-2010
- 5) Assistant Professor, Department of Anesthesiology, Emory University School of Medicine, (July 2010-September 2015)
- 6) Adjunct Professor of Law, Emory University School of Law, (September 2016-August 2018)
- 7) Adjunct Professor, Interdisciplinary Studies, Emory Institute of Liberal Arts (August 2017-May 2021)

6. Previous Administrative and/or Clinical Appointments:

- 1) Director, Post Anesthesia Care Unit, Department of Anesthesiology, University of Michigan Medical Center, Ann Arbor, MI, 1995-1998
- 2) Director Critical Care Medicine Fellowship, Department of Anesthesiology University of Michigan Medical Center, Ann Arbor, Michigan, USA, 1996-1998
- 3) Program Medical Director, Master of Science in Anesthesiology, Case Western Reserve University School of Graduate Studies, Cleveland, Ohio, USA, 2000-2005
- 4) Co-Medical Director, Surgical Intensive Care Unit, University Hospitals of Cleveland, Case Western Reserve University, Cleveland, Ohio, USA, 2002-2005
- 5) Medical Director, CTICU, George Washington University Hospital, Washington, DC, 2005-2007

- 6) Medical Director, Cardio-thoracic ICU, Intensive Care Cardiac Sciences Program, Winnipeg Regional Health Authority, Winnipeg, Manitoba, Canada, 2007-2010
- 7) Medical Director, Critical Care Medicine, Department of Anesthesiology, Emory University School of Medicine 11S, Emory University Hospital Midtown (EUHM), June 2010 - February 2013
- 8) Medical Director, Critical Care Medicine, Department of Anesthesiology, Emory University School of Medicine 4A/5A, EUH, February 2013 - June 2015
- 9) Fellowship Director, Critical Care Medicine, Department of Anesthesiology, Emory University School of Medicine, Jan 2013 - January 2016

7. Licensures:

- 1) License, Controlled Substance, Drug Enforcement Agency: Issued 1995-current
- 2) License, Georgia Composite Medical Board:
Issued 2010-current

8. Boards and Specialty Boards:

- 1) Fellow, Royal College of Physicians of Canada, (Anesthesiology), Ontario, June 30, 1993-Present (designates board certification in Canada)
- 2) Anesthesiology, American Board of Anesthesiology, Ohio, April 28, 1995-Present
- 3) Critical Care Medicine, American Board of Anesthesiology, Ohio, September 8, 1995-Present
- 4) Testamur, National Board of Echocardiography, Basic Perioperative Trans-Esophageal Echocardiography, September 1, Georgia, 2010-2021

9. Education:

- 1) University of Manitoba, Winnipeg, Manitoba, Canada (no degree) September 1980-April 1983
- 2) University of Toronto, Toronto, Ontario, Canada (no degree) September 1983 - April 1984
- 3) Doctor of Medicine, University of Manitoba, Winnipeg, Manitoba, Canada, August 1, 1984 – May 31, 1988
- 4) Master of Arts in Bioethics, Emory Center for Ethics, September 2012 – May 2017, Supervisor: Dr. Toby Schoenfeld,
- 5) Juris Master, Emory School of Law, Spring 2020 - Fall 2022

10. Postgraduate Training:

- 1) Rotating Internship, Mount Sinai Hospital, University of Toronto, Department of Post Graduate Medical Education, Toronto, Canada, 1988-1989 Supervisor: Ms. Miriam Rotman
- 2) Residency, Anesthesiology, University of Toronto, Department of Anesthesiology, Toronto, Canada, 1989-1993, Supervisor: Dr. David McKnight,
- 3) Residency, Anesthesiology, Cleveland Clinic Foundation, Department of Anesthesiology, Cleveland, Ohio, United States, 1993-1994, Supervisor: Dr. Armin Schubert,
- 4) Fellowship, Critical Care Medicine, Cleveland Clinic Foundation, Department of Anesthesiology, Cleveland, Ohio, United States, 1994-1995, Supervisor: Dr. Marc Popovich

11. Continuing Professional Development Activities:

- a. Emory Public Scholars Institute, September 2018 – December 2018
- b. Emory College On-line Teaching Strategies, October, 2020-December, 2020

12. Society Memberships:

- 1) American Society of Anesthesiologists, 1993-present
- 2) Ohio Society of Anesthesiologists, 1993-2005
- 3) Society of Critical Care Anesthesiologists, 1995-2019
- 4) American Medical Association, 1995-present
- 5) Society of Critical Care Medicine, 1995-present
- 6) International Anesthesia Research Society, 1996-2000
- 7) International Extra-Corporeal Life Support Organization, 1997-2005
- 8) American College of Chest Physicians, 2000-2007
- 9) American Academy of Anesthesiologist Assistant, 2005-2017
- 10) District of Columbia Society of Anesthesiologists, 2006-2007 (President-elect)
- 11) Canadian Anesthesiologist Society, 2007-2011
- 12) Manitoba Medical Society, 2007-2010
- 13) Canadian Medical Association, 2008-2012
- 14) Georgia Society of Anesthesiologists, 2010-present
- 15) Society of Cardiovascular Anesthesiologists, 2010-2014
- 16) Society of Academic Anesthesiology Associations, 2013-2015
- 17) Medical Association of Georgia, 2016-present

13. Committee Memberships:

a. National and International:

- 1) American Society of Anesthesiology, Care Team Committee, 2007-2009
- 2) Member, Accreditation Review Committee-Anesthesiologist Assistants, Commission on Accreditation of Allied Health Education Programs (ARC-AA), 2008
- 3) American Society of Anesthesiology, Committee on Ethics, 2011-2018
- 4) Society of Critical Care Medicine, Committee on Ethics, 2011-2019
- 5) Society of Cardiovascular Anesthesiology, Committee on Ethics, 2012-2013
- 6) Society of Critical Care Medicine, Patient and Family Satisfaction Committee, 2013-2019
- 7) Society of Critical Care Anesthesiologists, Graduate Education Committee 2013-2016

b. Regional:

- 1) President, Cleveland Society of Anesthesiology, 2001-2002
- 2) President Elect, DC Society of Anesthesiology, 2006-2007

c. Institutional:

- 1) Member of selection committee, Physician Assistant Program, The University of Manitoba, Winnipeg, Manitoba, Canada, 2008

- 2) Member, Academic Promotions Committee, University of Manitoba, Faculty of Medicine, Winnipeg, Manitoba, Canada, 2009
- 3) EUHM Executive Critical Care Committee 2010-2015
- 4) EUHM CAUTI and CLABSI prevention committee 2010-2015
- 5) EUHM Committee on Ethics, 2011-2018
- 6) EUHM Pharmacy and Therapeutics Committee 2011-2021
- 7) EUH/EUHM CTS Quality Committee, 2012-2015
- 8) EUH Executive Pharmacy Committee 2012-2020
- 9) EUH Antibiotic Utilization Subcommittee 2012-2020
- 10) EUH Resuscitation Committee 2013-2016
- 11) EUH Difficult Airway ad-hoc group 2013-2014
- 12) EUH Executive Critical Care Committee 2013-2015
- 13) Department of Anesthesiology Residency Review Committee, 2013-2020
- 14) Critical Care Medicine Fellowship education committee, 2018-2021
- 15) EHC COVID triage committee, 2020-2022
- 16) Senior Faculty Fellow, Emory Center for Ethics (From July 1, 2021)

14. Peer Review Activities:

a. Grants:

1. Institutional:

- i. Emory-Georgia Tech Healthcare Innovation Program, Georgia CTSA and Emory Synergy Awards, 2017, 2020, 2021

b. Manuscripts:

- 1) Canadian Journal of Anesthesiology, (manuscript reviewer), 2013
- 2) Mayo Clinic Proceedings, (manuscript reviewer), 2015
- 3) Critical Care Medicine, (manuscript reviewer), 2016, 2020, 2021, 2024
- 4) Journal of Bioethical Inquiry, (manuscript reviewer) 2021
- 5) University of California Press, (book reviewer) 2023
- 6) Anesthesiology (manuscript reviewer) 2024
- 7) Israel Journal of Health Policy Research (manuscript reviewer) 2024

c. Conference Abstracts:

1. National and International:

- i. American Society of Anesthesiology Annual Meeting, 2007, 2009
- ii. Society of Critical Care Medicine Annual Meeting 2009

2. Regional:

- i. Midwestern Anesthesia Resident Annual Meeting, 2004

15. Consultantships/Advisory Boards:

- 1) Merck Pharmaceuticals, physician advisory board, 2005-2007
- 2) Consultant for Wireless EKG Monitor, 2004-2005
- 3) Masimo Corporation, product design and physician advisory board, 2013-2107
- 4) Doximity, physician advisory committee, 2014-2017
- 5) Wellons v. State (post-conviction death penalty defense) June 2014
- 6) Boyd v. State (post-conviction death penalty defense) June 2015
- 7) Bucklew v. State (post-conviction death penalty defense) May 2015
- 8) STOPNC & NECC (tainted steroids and meningitis) May 2016
- 9) Goins v. State (negligent medical care while incarcerated) May 2016
- 10) Calmer v. State (post-conviction death penalty defense) July 2016
- 11) Medical Advisor, Southern Center for Human Rights, Atlanta, Georgia (From July 1, 2016)
- 12) Williams v. State (post-conviction death penalty defense) April 2017
- 13) Ledford v. State (post-conviction death penalty defense) May 2017
- 14) Johnson v. State (post-conviction death penalty defense) October 2017
- 15) Saterfield v. State (post-conviction death penalty defense) December 2017
- 16) Miller, Sutton, West v. State (post-conviction death penalty defense) November 2018
- 17) Price v. Dunn (post-conviction death penalty defense) May 2019
- 18) Higgs v. State (post-conviction death penalty defense) December 2020
- 19) Senate of Canada (testimony on Medical Assistance in Dying) February 2021
- 20) Project Hope to Abolish the Death Penalty: Advisory board member (From August 1, 2021)
- 21) Floyd v. State (post-conviction death penalty defense) November 2021
- 22) Bourassa v. State (negligent medical care while incarcerated) September 2021
- 23) Husel v. State (capital murder defense) March – April 2022
- 24) Attwood v. State (post-conviction death penalty defense) May 2022
- 25) Moutin v. State (negligent medical care while incarcerated) May 2022
- 26) Presnell v. State (post-conviction death penalty defense) May 2022
- 27) Lee v. State (post-conviction death penalty defense) August 2022

16. Organization of Conferences:

a. National and International:

1. Administrative Positions:

“On the Ethics of Drug Shortages” June 2012, jointly with the American Society of Anesthesiology and the Emory Center for Ethics. (I was the organizer of this conference).

2. Sessions as Chair:

“Biological Variability” American Society of Anesthesiology Annual Meeting, (session chair) 2008

American Society of Anesthesiology and the Emory Center for Ethics, Conference Chair, 2012

3. Other Conference Activities:

- i. American Society of Anesthesiology poster judge 2007, 2022

b. Regional:

1. Other Conference Activities:

- i. Midwestern Anesthesiology Resident Annual Meeting poster judge 2004

17. Clinical Service Contributions:

- 1) Medical Director of 21 ICU/11S ICU (2010-13): I was the first person to hold this position. During my leadership, I created practice standards, hired physicians and APPs, and established best practices with the cardiac surgery service. I was involved in the design and build of the new 11S ICU that replaced 21 ICU.
- 2) Lead a conflict resolution project (July 2013-June 2014) with Emory Healthcare with a specific target of conflict within the operating room. The model was drawn from collaboration with Dr. Franz de Waal, expert in non-human primate violence. The purpose of the project was to determine the frequency and circumstance that leads to conflict and create an appeasement method that was programmed, rapid and did not require a mediator.
- 3) Medical Director of 4A/5A ICU (2013-15): I developed a multidisciplinary quality metrics program for the ICU. I created many protocols including blood conservation, removal of intra-aortic balloon pumps, DVT and GI prophylaxis, Atrial fibrillation management and a rapid extubation protocol for cardiac surgery patients.
- 4) Helped to develop a protocol for overnight emergency airway coverage as a member of the EUH emergency airway committee.
- 5) Served on the Ethics Committee for EUH and EUHM (July 2010-June 2019) and in that capacity, took ethics consults, saw patients and worked with teams to find bioethical dispute resolution.
- 6) Served on the Executive Pharmacy and Therapeutics Committees at EUHM and EUH (July 2015-June 2019), reviewed applications for additions and deletions to the hospital formulary. Helped to establish protocols dealing with drug shortages and developed an economic model to explain drug shortages based on purchasing contracts.
- 7) Physician member of the Severe Communicable Disease Unit (SCDU) 2014-2022. As a member of this unit, I have been involved in caring for patients with Ebola and took care of the very first COVID-19 patient admitted to Emory that needed mechanical ventilation.
- 8) Physician member of the Emory COVID triage committee. I helped develop and drive policy away from a proposal that would have involuntarily taken mechanical ventilation away from some patients with COVID. The suggested policy was unnecessary and unsupported from both a bioethical and legal perspective.

18. Contributions to Diversity, Equity, and Inclusion:

In collaboration with Dr. Michelle Sumler, vice chair for DEI in the Department of Anesthesiology and Dr. Sheryl Heron, vice chair of equity, engagement and empowerment in the Department of Emergency Medicine, I am assisting in the development of a DEI policy to address the rise of anti-Semitism. I had reached out to the DEI office in the School of Medicine and they indicated that no policy on anti-Semitism was in place and welcomed an opportunity to collaborate with me on this

subject. Meetings are ongoing.

I was the keynote speaker at the American Federation of Medical Research at the Southeastern Regional Meeting in Washington DC, May 2023. My talk was on the subject of health disparities and addressed issues of the barriers against healthcare equity.

21. Community Outreach:

a. General:

- 1) International: St. Petersburg, Russia, 2002, 2004 - Home visits to community members who were unable to travel to see a physician.
- 2) Volunteer physician, The Free Medical Clinic of Greater Cleveland, 2004-2006
- 3) Society of Critical Care Medicine Hurricane Katrina Medical Response Team, 2005
- 4) Emory 500 Atlanta Motor Speedway Health Tent Volunteer, 2010
- 5) The Global Surgical and Medical Support Group, (GSMMSG) 2018-2024

b. Media Appearances:

- 1) **Anesthesiology News**, 2002 "Anesthesiologist Assistants"
- 2) **The Medical Post**, 2009 "Waiting for Cardiac Surgery"
- 3) **The Health Report**, CJOB 68 AM, Winnipeg, Canada, 2010 "Cardiac Critical Care"
- 4) "Baby's status as human is on trial" Op-Ed, Feb. 19, 2010, **Winnipeg Free Press**
- 5) "End of Life in the ICU VIP syndrome" Inside the Black Box, **WREK 91.1 FM**, Atlanta, Georgia, 2011
- 6) "Biting the Bullet: The Technology of Anesthesia", **National Public Radio WABE 90.1 FM Atlanta**, Georgia, 2011
- 7) "Physicians and the Death Penalty Drug shortages" Georgia Public Broadcasting, Atlanta GA, 2012 Drug shortages reaching critical levels,
- 8) "Why I am for a moratorium on lethal injections" Op-Ed, Dec 15, 2013, **USA Today**
- 9) **MedPage Today**, 2013, "No Advantage for Fresh Blood in ICU Transfusions"
- 10) "Meningitis Outbreak: Suspicion needed for nausea complaints Drug Shortages spark use of compounders," **Medscape Medical News**, 2013
- 11) "GPOs to Blame for Drug Shortages, Says Physicians Group", **MedPage Today**, 2014
- 12) "The Slippery Slope from Medicine to Lethal Injection" Op-Ed, May 2, 2014, **TIME**
- 13) "The White Coat: A Veil for State Killing", Op-Ed **MedPage Today** August 2014
- 14) "Cruel and Unusual Punishment, Lethal Injection: A Cruel, Painful, Terrifying Execution", **Miami Herald**, 2014
- 15) "Doctor speaks out on use of untested drugs in capital punishment", **The New York Times**, 2014
- 16) "Timeline describes frantic scene at Oklahoma execution", **The Washington Post**, 2014
- 17) "Florida's Gruesome Execution Theater Another execution gone awry. Now what?" **Washington Post**, 2014
- 18) **CNN** with Sanjay Gupta, 2014, Dr. Zivot: "Lethal injection not humane"
- 19) Amicus on **Slate** with Dahlia Lithwick, "Lethal Injection" 2015
- 20) "Botched protocols", **Huffington Post**, 2015
- 21) "Oklahoma wants to reinstate the gas chamber and experts say it's a bad idea", **TIME**, 2015

- 22) "Executions put physicians in unfair dilemma" January 2017, Op-ed, **CNN**
- 23) "Gorsuch grapples with death: a physician's viewpoint" February 2017, Op-ed, **CNN**
- 24) "Neil Gorsuch and Assisted Suicide" February 2017, Op-ed, **MedPage Today**
- 25) "The harsh reality of execution by firing squad", **BBC World News**, 2017
- 26) "Lethal injection in Arkansas", **BBC Radio Science Unit**, 2017
- 27) "Pain in execution by lethal injection", **CNBC**, 2017
- 28) "Silicon Valley is trumpeting A.I. as the cure for the medical industry, but doctors are skeptical" **AXIOS**, 2017
- 29) "The Human Diagnosis Project: A Skeptical Look at new AI Initiatives", **The Washington Post**, 2017
- 30) "Don't thank me, it's my job" May 2018, Op-ed, **MedPage Today**
- 31) "Inmates as test subjects: can clinical trials in prisons ever be ethical?" Op-ed, **MedPage Today**, September 2018"
- 32) "States to try new ways to execute prisoners" **BBC Three**, 2018
- 33) "Life and Death Row: How the Lethal Injection Kills" **Mother Jones**, 2018
- 34) "Veterinarians won't use This Gas to Kill Animals, but 3 states want to use it on prisoners", **Eye for Pharma**, 2018
- 35) "Artificial Intelligence: The Counterargument, **National Public Radio**", 2018
- 36) "All Things Considered, Lethal Injection", **National Public Radio**, 2018
- 37) "Nebraska's first lethal injection execution will use new cocktail of drug, including fentanyl", **Newsweek**, 2018
- 38) **Good Law/Bad Law** Podcast, October 2018 "Is Lethal Injection Fatally Flawed on Moral and Constitutional Grounds?"
- 39) "Lethal injection: Burning as they die" Op-ed, **MedPage Today**, December 2018
- 40) "Lethal injections are medicine, not poison" Op-ed, **Houston Chronicle**, December 2018
- 41) "In Defense of Telling Patients They're Dying via Robot" Op-ed, **Slate**, March 2019
- 42) "What Kim Kardashian Can Teach Us About Drug Pricing" Op-ed, **MedPage Today**, March 2019
- 43) "Patients love a miracle, but doctors can't be afraid to deliver bad news (even via robot)" Op-ed, **USA Today**, March 2019
- 44) "Buddhist Wisdom and Human Poop" Op-ed, **MedPage Today**, March 2019
- 45) "What if Airlines Worked Like Healthcare?" Op-ed, **MedPage Today**, April 2019
- 46) "Abortion: No Middle Ground on Fetal Heartbeat" Op-ed, **MedPage Today**, May 2019
- 47) "Anamnesis: Medical Storytellers, Higher Power: All I could do" **MedPage Today**, Podcast July 24, 2019
- 48) "Kobe Bryant's Death: What Were the Chances?" Op-ed, **MedPage Today**. Jan 30, 2020
- 49) "Could U.S. ICUs Handle 45,000-Bed Corona Virus Load?" Op-ed, **MedPage Today**, February 12, 2020
- 50) "Doctors Volunteer for Covid-19 Duty: Who Has Their Backs?" Op-ed, **MedPage Today**, March 3, 2020
- 51) "Rationing Ventilators by Age Is Wrong" Op-ed, **MedPage Today**, April 8, 2020
- 52) "Why This Inmate Chose the Electric Chair over Lethal Injection" **National Public Radio**, September 21, 2020
- 53) "Where Coney Barrett Must Stand on Capital Punishment" Op-ed, **MedPage Today**, September 24, 2020
- 54) "What Ronald Reagan Knew about Being a VIP" Op-ed, **CNN**, October 10, 2020
- 55) "How Many Might Die Even with a COVID Vaccine?" Op-ed, **MedPage Today**, November 30, 2020

- 56) "Inmate Autopsies Reveal the Troubling Effects of Lethal Injection" **USA TODAY**, December 6, 2020
- 57) "Don't Vaccinate Healthcare Workers First" Op-ed, **MedPage Today**, December 10, 2020
- 58) "What will 2021 bring? Promising vaccines and 'the darkest days of our war on COVID-19'" **National Public Radio**, December 10, 2020
- 59) "ICU doctor on why health workers shouldn't be prioritized in Coronavirus Vaccination" **STAT**, December 13, 2020
- 60) "It's peace of mind": COVID-19 vaccines can't arrive soon enough for many frontline health workers" **STAT news**, December 2020
- 61) **Death Penalty Information Center**, December 9, 2020 "Podcast: Anesthesiologist Dr. Joel Zivot on What Prisoner Autopsies Tell Us About Lethal Injection"
- 62) "**HD Live!** The State of COVID-19 in the US and its Toll on Healthcare Workers" December 2020
- 63) **ProPublica**, "Inside Trump and Barr's Last-Minute Killing Spree" December 23, 2020
- 64) "Canada's Medical Assistance in Dying = Tortuous Death" Op-ed, **MedPage Today**, February 16, 2021
- 65) **New York Times**, April 15, 2021, "Trump's killing spree continues"
- 66) "The Legal Stakes of a Lab Leak" Op-ed, **MedPage Today**, June 13, 2021
- 67) "Last rights: assisted suicide is neither painless nor dignified" Op-ed, **The Spectator**, September 18, 2021
- 68) "Allowing assisted dying would pander to the privileged" Op-ed, **The Times of Scotland**, September 22, 2021
- 69) "What the death rattle and capital punishment have in common" Op-ed, **STAT**, October 21, 2021 (With Ira Bedzow)
- 70) "What the Film Industry Can Learn from Patient-Safety Protocols" Op-ed, **The Globe Post**, October 29, 2021 (With Ira Bedzow)
- 71) "Oklahoma to Continue Lethal Injections After Man Vomits During Execution", **New York Times**, October 29, 2021
- 72) "The torturous death of John Grant in Oklahoma," **The Atlantic**, November 2, 2021
- 73) "Opinion: Medicine's lessons can make movie sets safer," Op-ed, **Atlanta Journal-Constitution**, November 17, 2021 (With Ira Bedzow)
- 74) "Expert: Drugs for quadruple killer's execution could fill his lungs with fluid," **Las Vegas Review-Journal**, November 17, 2021
- 75) "Lethal injection: can pharma kill the death penalty"? **Pharmaceutical Technology**, December 1, 2021
- 76) "Why is Dr. Oz eyeing Washington? The story of physician burnout may be at play" Op-ed, **MedPage Today**, December 6, 2021
- 77) "Florida has a unique position for executing prisoners. It wants to keep the details secret" **The Miami Herald**, January 19, 2022
- 78) "What the Titanic got wrong about triage" Op-ed, **MedPage Today**, February 7, 2022
- 79) "Does Russia's Invasion of Ukraine Constitute Biological Warfare" Op-ed, **MedPage Today**, March 7, 2022 (with Gavin Harris)
- 80) "Are health Systems Prepared for Chemical Warfare in Ukraine" Op-ed, **MedPage Today**, March 16, 2022 (with Gavin Harris)
- 81) "Jury is deadlocked in murder trial of Ohio doctor accused of overprescribing fentanyl to the dying" **CNN**, April 18, 2022
- 82) 'Euthanasia Pivots on Intent:' Physician Witnesses in Husel Trial Speak Out, **MedPage Today**, April 21, 2022
- 83) "Jury 'right' in Husel verdict, says witness" **NBC4**, April 21, 2022
- 84) "Why I defended William Husel in Court: the law is an ass" Op-ed, **MedPage Today**, May 8, 2022

- 85) "How can doctors be sure a medically assisted death is a peaceful death?" **The National Post**, July 1, 2022
- 86) "Dead to rights: What did the state of Alabama do to Joe Nathan James in the three hours before his execution?" **The Atlantic**, August 14, 2022
- 87) "Death by lethal injection: It is time for more transparency," Op-ed, **Al Jazeera**, August 22, 2022.
- 88) "Nitrogen Hypoxia: what we know." **Montgomery Advertiser**, September 14, 2022
- 89) "Judge blocks Thursday's execution by lethal injection of Alabama death row inmate who says he requested to die by nitrogen hypoxia" **CNN**, September 20th, 2022
- 90) "New Execution Method Touted as More 'Humane' but Evidence is Lacking," **Scientific American**, September 23, 2022
- 91) "On slicing and sticking condemned men in Alabama," **Montgomery Advertiser**, October 31, 2022
- 92) "Not your kidney anymore? What Selena Gomez's fight with Francia Raisa tells us about organ donation." Op-ed, **Slate**, November 12, 2022
- 93) "A new low for lethal injections' cruelty and incompetence" **Slate**, November 21, 2022
- 94) "Alabama's history of violence" **The Atlantic**, November 22, 2022
- 95) "Lethal injections are crueler than most people imagine. I've seen the evidence firsthand." Op-ed, **Slate**, November 30, 2022
- 96) "As Lethal Injection Turns Forty, States Botch a Record Number of Executions." **Death Penalty Information Center**, December 7, 2022
- 97) "South Carolina wants to execute an inmate by firing squad" **The Economist**, December 15, 2022
- 98) "The death penalty in the US remains in decline during 'the year of the botched execution' analysis finds." **CNN**, December 16, 2022
- 99) "Blurred Lines: When Do Physicians Become a Party to Permissive Injury?" Op-ed, **MedPage Today**, January 13, 2023
- 100) "Why Alec Baldwin Could Be Found Guilty" **Slate**, January 27, 2023
- 101) "Alzheimer's Association Hides New Partnership with Lobbying Group for Assisted Suicide." **The Washington Free Beacon**, January 28, 2023
- 102) "Texas Lawyers Violated Legal Ethics Over Expired Execution Drugs." **The Texas Observer**, January 30, 2023
- 103) "Baldwin charged with involuntary manslaughter in 'Rust' set shooting." **The Guilfordian**, February 3, 2023
- 104) "Alabama takes steps towards using nitrogen as a new execution method." **The Guardian**, February 17, 2023.
- 105) "Would you refuse all medical interventions after age 75? – a closer look at the mathematics of aging" Op-ed, **MedPage Today**, March 7, 2023
- 106) "Abortion is not murder in the eyes of the law" Op-ed, **MedPage Today**, March 27, 2023
- 107) "Pharma and Physicians: The Anthropology of Gift Giving" Op-ed, **MedPage Today**, April 18, 2023
- 108) "The mifepristone ruling lacks both standing and merit" Op-ed, **The Hill**, April 21, 2023
- 109) "Nikki Haley's attacks on Biden's age don't change what matters: his health." Op-ed, **The Hill**, May 4, 2023
- 110) "If memory serves: the question of cognitive function in an aging Congress" Op-ed, **The Hill**, May 22, 2023
- 111) "In a Pig's Eye: Xenograft Kidney for the Dead" Op-ed. **MedPage Today**, August 23, 2023
- 112) "Killing convicts with nitrogen is even worse than the lethal injection" Op-ed, **Aljazeera**, September 22, 2023
- 113) "Killing Death Row," **BBC Sounds**, Livvy Haydock investigates, October 13, 2023

- 114) "The Physician in the Israel-Hamas War: A Doctor's Duty" **MedPage Today**, October 23, 2023
- 115) "What are the laws of war when a hospital is a war zone?" **The Hill**, November 2, 2023
- 116) "The nightmare for the freed Israeli hostages is far from over" **The Hill**, November 28, 2023
- 117) "Is rape and sexual assault part of the Hamas tactic of war?" **The Hill**, December 18, 2023.
- 118) "UN experts alarmed by Alabama plan to kill prisoners using untried gas method," **The Guardian**, January 3, 2024
- 119) "Alabama's Nitrogen Gas Execution Will Be Cruel and Unusual Punishment" (with Stephen Cooper) **JURIST**, January 11, 2024
- 120) "Convicted Murderer Seeks Last-Minute Stay to Stop America's First-Ever Execution by Nitrogen Gas" **The New York Sun**, January 16, 2024
- 121) "I'm an anesthesiologist. Kenneth Smith's execution by nitrogen gas was far from textbook" First Opinion, **STAT**, January 29, 2024
- 122) "Even the fog of war does not obscure a doctor's code of ethics." **The Hill**, February 22, 2024
- 123) "Why an Emory Physician Built a Second Career as a Death Penalty Expert," **Atlanta Magazine**, February 22, 2024
- 124) "A new Louisiana capital-punishment bill would fundamentally alter physician licensing," **STAT**, February 26, 2024
- 125) "Embryos, children, and the black letter of the law," **Montgomery Advertiser**, March 3, 2024
- 126) "Blood money: Amid accusations of Hamas payouts in Israeli Prison, the ICRC should be treated as a legal person." **JURIST**, March 25, 2024 (with Ruth Oratz, MD)
- 127) "Charitable misgiving: The modern billionaire philanthropist" **The Hill**, March 29, 2024
- 128) "NGOs Like World Central Kitchen Must Do More to Protect War Zone Aid Workers" **JURIST**, April 11, 2024 (with Ruth Oratz)
- 129) "How a new death penalty method undermines physician authority" First Opinion Podcast, **STAT**, May 1, 2024
- 130) "Colleges are overlooking a simple solution to the Gaza protests: Free speech zones." **The Hill**, May 2, 2024
- 131) "The Last Laugh: The Moral Quandary of Comedy in Capital Punishment Discourse" **JURIST**, May 16, 2024 (with Olivia Zivot)
- 132) "The Doctor's Dilemma: Navigating Ethical Challenges in Treating Prisoners of War" **JURIST**, May 28, 2024
- 133) "Plenty of Food Aid Is Getting to Gaza" **The Wall Street Journal**, June 5, 2024 (With Mathew Rabinowitz)
- 134) "From Gaza to Uvalde: The Complicated Moral Imperative to Rescue Our Own" **JURIST**, June 13, 2024
- 135) "The UN and Proportionality: In War, Shoot First and Ask no Questions" **JURIST**, June 26, 2024
- 136) "From Troy to Sde Teiman: The Cycle of Brutality in War" **JURIST**, August 18, 2024
- 137) "What Really Killed Mathew Perry" (with Brian Malchy) **SLATE**, August 20, 2024
- 138) "The Dilution of 'Genocide': Why We Need a New Term for Mass Atrocities," **JURIST**, September 12, 2024
- 139) "The Weaponization of Medical Misinformation and the War in Gaza" (with Horacio Hojman) **JURIST**, October 21, 2024
- 140) "International Criminal Court Undermines Its Own Legitimacy in Israel Case" **JURIST**, December 4th, 2024

- 141) "Alex Navalny: A New 'Invitation to a Beheading.' (with Ingrid Burke Friedman) **JURIST**, December 20th 2024
- 142) "To Britain on Legalizing Assisted Dying: Proceed With Caution" **MedPage Today**, December 26th, 2024
- 143) "Beyond 'Lucky Ones': Modern Jewish Response to Global Threats" **JURIST**, December 31, 2024.
- 144) "Torture by Any Other Name: The Brutal Reality of Hostage Survival" **JURIST**, January 21, 2025
- 145) "The Science of Remembrance: Forensic Science's Rol in Honoring Lives Lost" **JURIST**, March 12, 2025

22. Honors and Awards:

- 1) Robert B. Sweet Clinical Instructor of the Year, University of Michigan, Department of Anesthesiology, 1997
- 2) Outstanding Clinical Instructor of the Year, Case Western Reserve University, Master of Science in Anesthesiology Program, 1999
- 3) Clinical Instructor of the Year, University Hospitals of Cleveland, Department of Anesthesiology, 2000
- 4) Fellow, American College of Chest Physicians, 2000-2010
- 5) Outstanding Clinical Instructor of the Year, Case Western Reserve University, Master of Science in Anesthesiology Program, 2001
- 6) Meritorious Service Award, American Academy of Anesthesiologist Assistants, 2003: Given for academic work as the Medical Director of the Master of Science of Anesthesiology at Case Western Reserve University, advocacy for scope of practice, and committee work to improve the relationship between the American Society of Anesthesiology and American Academy of Anesthesiologist Assistants.
- 7) Quality and Patient Safety Award, University Health Systems Consortium, 2002: Given by University Health System Consortium for various quality benchmark projects when I was the co-medical director of the Cardio-thoracic Intensive Care Unit at University Hospitals of Cleveland.
- 8) Distinguished service by a Physician Award, American Academy of Anesthesiologist Assistants, 2005: Given for work with the American Academy of Anesthesiology Assistants annual meetings where I served as a speaker on multiple locations and also developed and hosted an annual Jeopardy game competition between all of the Master of Science in Anesthesiology schools around the country.
- 9) District of Columbia Annual Patient Safety Award, District of Columbia Department of Health, 2006: Given by the District of Columbia Department of Health for quality improvement work done when I was the medical director of the cardio-thoracic intensive care unit at George Washington University Hospital. I developed several collaborative quality projects between cardiothoracic surgery and critical care medicine.
- 10) Presidential Citation, Society of Critical Care Medicine, 2013: Given for work done within the Society of Critical Care Medicine that included writing a book chapter, service on 2 society committees, and moderating an online debate about the topic of end-of-life decisions in patients with implanted mechanical cardiac support devices.
- 11) Award for outstanding teaching contribution, Dreprung Monastery, Emory Tibet Science Initiative May 2017

- 12) Excellence in Patient and Family Centered Care, Emory Center for Critical Care, 2018.
- 13) Certificate of Honor for Teaching, Dreprung Gomang Science Center Emory Tibet Science Initiative, June 2019
- 14) Distinguished Alumni Award Master's Program, Laney Graduate School, Emory University, April 2022

23. Formal Teaching: (Geared Toward Trainees)

a. Medical Student Teaching:

- 1) Medical Student teaching in the OR and the ICU. OR teaching was 1 hour 2-3 X per week. ICU teaching is 1- 2 hours per week (OR: 2010-2019, ICU (2010-2022),
- 2) Discovery Project: "Propofol wastage in the ICU" Medical student Mina Tran, 2012-2013 (3-month project with weekly meetings of 1-2 hours)
- 3) Instructor for Fundamental Critical Care Support (FCCS) training course for medical students, 2012-2018
- 4) Forge Medical Student Innovation Group, Mentor, 2012 (6 contact hours)
- 5) Annual Medical School Teaching Competition (MSTC) (August 2021, 2022) Mentor for student presentations, 4 contact hours per session.

b. Graduate Programs:

I. Residency programs

I teach the residents who rotate through the ICU a one-hour class on Bioethics. This is taught about once every 6 weeks.

II. Fellowship Programs

I teach the ICU fellows a one-hour class on bioethics 6 times per year

III. Master's and PhD programs

Masters of Bioethics Program, Laney Graduate School

- 1) Chief Instructor, **Bioethics 506-1(5935) "Independent Study in Bioethics: Public Scholarship"**, 3.0 Credit Hours, fall 2019
- 2) Guest instructor, **Bioethics 504, Public Scholarship**, 6 hours of total instruction. Fall, 2021

c. Other Categories

- 1) **Master of Science in Anesthesiology Program.** (Fall 2014, 2015): Taught a class on Acid-Base disorders. Each class was 3 hours in duration.
- 2) **Emory Tibet Science Initiative:** Taught biology to Buddhist monks at Drepung Loseling Monastery in Southern India in June 2015, June 2017, June 2018 and June 2019. I spent 2 weeks at the monastery on each occasion teaching for 6 hours per day including lab instruction.
- 3) **Emory School of Law:** Co-chief instructor of **LAW 819-002, "Law, Medicine and Human Rights"**, a 2-credit hour seminar taught in the fall 2016 semester, Emory School of Law

- 4) Chief Instructor, **IDS 385-5, "When medicine and the state collide: bioethics and the due process of cruelty"** Emory University, Institute of Liberal Arts, 3.0 credit hours, Fall, 2017
- 5) Chief Instructor, **IDS-385-4 "The Science, Medicine, and Ethics of Killing"** Emory University, Institute of Liberal Arts, 3.0 Credit hours, Spring 2018
- 6) Chief Instructor, **IDS-385-4 "Medicine, the Law and the Ethics of Punishment and Killing"** Emory University, Institute of Liberal Arts, 3.0 Credit hours, fall 2018
- 7) Chief Instructor, **IDS-385 "Medicine, the Law and Bioethics"** Emory University, Institute of Liberal Arts, 3.0 Credit hours, spring 2019
- 8) Co-Instructor, **IDS-290 "Medicine, Literature, Law, Crime, Punishment, Death"** Emory University, Institute of Liberal Arts, 1.0 Credit Hour, spring 2019
- 9) Chief Instructor, **IDS-385 "Medicine, the Law and Bioethics"** Emory University, Institute of Liberal Arts, 3.0 Credit Hours, fall 2019
- 10) **Emory-Addis Ababa Education Innovation Community of Practice Program**, Instructor: Distance Learning, September 2019 (3 hours)
- 11) **Emory Scholars Retreat**, Hilton Head, South Carolina, January 2019 **"Lethal Injection and Capital Punishment"** (6 contact hours)
- 12) Chief Instructor, **IDS-385 "Medicine, the Law and Bioethics"** Emory University, Institute of Liberal Arts, 3.0 Credit Hours, spring 2021
- 13) Chief Instructor, **IDS-385, Law, Medicine, Bioethics and Policy**, Emory University, Institute of Liberal Arts, 3.0 Credit Hours, fall 2024.
- 14) **Nell Hodgson Woodruff School of Nursing: NRS 402, "ECMO for Nursing"** fall 2021, (3 contact hours)
- 15) **University of Akron, Honors Biomedical Ethics** class, (Instructor Chris T Buford) **"Bioethics and the doctor-patient relationship."** Fall 2021, 2022. Each class was 1.5 hours
- 16) Chief Instructor, **IDS-385 "Law, Medicine, Bioethics, and Policy,"** Emory University, Institute of Liberal Arts, 3.0 Credit Hours, fall 2024
- 17) Chief Instructor, **IDS-385 "Law, Medicine and Armed Conflict"** Emory University, Institute of Liberal Arts, 3.0 Credit Hours, Spring 2025

24. Supervisory Teaching:

a. Bedside Teaching/Clinic Precepting

a. Medical Student Teaching:

- 1) Medical Student teaching in the OR and the ICU. OR teaching was 1 hour 2-3 X per week. ICU teaching is 1- 2 hours per week (OR: 2010-2019, ICU (2010-2022),
- 2) Discovery Project: "Propofol wastage in the ICU" Medical student Mina Tran, 2012-2013 (3-month project with weekly meetings of 1-2 hours)
- 3) Instructor for Fundamental Critical Care Support (FCCS) training course for medical students, 2012-2018
- 4) Forge Medical Student Innovation Group, Mentor, 2012 (6 contact hours)
- 5) Annual Medical School Teaching Competition (MSTC) (August 2021, 2022) Mentor for student presentations, 4 contact hours per session.

b. Graduate Programs:

Residency programs

I teach the residents who rotate through the ICU a one-hour class on Bioethics. This is taught about once every six weeks.

Fellowship Programs

I teach the ICU fellows a one-hour class on bioethics six times per year.

b. Mentoring Activities

Postdoctoral or Clinical Fellows

Name	Year(s) supervised	Current position and employer
Dr Bradley Gruastein	2015-2016	Fellowship director, Department of Anesthesiology, University of New Mexico
Dr. Maxwell Hockstein	2021-2022	Departments of Emergency Medicine and Critical Care, MedStar Health, Washington DC

Residents

Name	Year(s) supervised	Current position and employer

Medical Students

Name	Year(s) supervised	Current position and employer
David Kulp	2023-2024	Medical Student, Emory University School of Medicine

Graduate Students (includes master's and doctoral students)

Name	Year(s) supervised	Current position and employer
Mikayla Paolini	2019-2020	Attorney, litigation associate, Jone Day, NYC, New York

Allied Health Students (e.g., physician assistants, physical therapy students, etc.)

Name	Year(s) supervised	Current position and employer

Undergraduate Students

Name	Year(s) supervised	Current position and employer
Nate Gross	2016	Co-Founder, Doximity & Rock Health
Wooseok Kim	2018	Clinical Specialist, Abbott EP, Atlanta, Georgia
Shreeja Patel	Spring 2019	M.D. candidate at the Donald & Barbara Zucker School of Medicine
Isabel Feuer	2019	J.D. candidate, New York University School of Law
Kayoko Fong	2021-2022	Attorney, Gibson Dunn, Dallas Texas
Zoya Virani	2020	Product marketing manager @ Algolia, NYC, New York
David Kulp	2020-2022	M.D. candidate, Emory University School of Medicine
Elizabeth Crusey	2020	Attorney at Latham & Watkins, Arlington, VA

Other (e.g., Visiting Scholars, Junior Faculty)

Name	Year(s) supervised	Current position and employer
Dr. Mark Caridi-Scheible	2014-2015	Department of Anesthesiology, Emory University
Dr. Ofer Sadan	2015	Intensivist, Neuro ICU, Emory University Hospital
Dr. Amit Prabhakar	2016	Section Chief, Department of Anesthesiology, Emory University Hospital Midtown
Dr. Rober Groff	2016	Director, 11 ICU, Emory University Hospital Midtown
Dr. Katheryn Nugent	2016	Director, 5TS, Emory University Hospital
Dr. Deepa Patel	2016	Critical Care Medicine Didactic Co-ordinator, Emory University Hospital
Dr. Christina Creel-Bulos	2021	Director, ECMO program, Emory University Hospital
Dr. Sagar Dave	2022	Co-Director, ECMO program and 5E ICU

c. Thesis or Dissertation Committees:

Graduate Students

Name	Year(s)	Program	Institution
Dr. Michele L. Sumler	2019-2021	MA Bioethics	Laney School of Graduate Studies, Emory University

Undergraduate Students

Name	Year(s)	Program	Institution
Katy Meyerson	2016-2017	IDS/Russian studies	Emory University
Samuel John	2019-2020	NBB Honors	Emory University
Linda Cho	2023-2024	Biology Honors	Emory University

25. Lectureships, Seminar Invitations, and Visiting Professorships:

a. National and international

- 1) "The Case of Samuel Golubchuk: Lessons about end-of-life decision-making?" A debate between Doctors Joel Zivot and Adrian Fine, March 2009, The Center for Professional and Applied Ethics, University of Manitoba, Winnipeg, Manitoba.
- 2) "End of life in the ICU: When the patient and doctor disagree..." Province-wide health care ethics grand rounds, St. Boniface Research Centre, Winnipeg, Manitoba, Canada. January 2010
- 3) "Drug Shortages" Visiting Professor, Rutgers Business School, Newark, New Jersey, November 2012
- 4) "Deactivating a permanent cardiac device is not physician-assisted death," Pro-con debate Webinar, Society of Critical Care Medicine, November 2012
- 5) "Drug shortages: The invisible hand of the Market" New Horizons in Anesthesiology, Vail, Colorado, February 2013
- 6) "Hey Anesthesia, is a compliment, not an insult: the case for protocols." New Horizons in Anesthesiology, Vail, Colorado, February 2013
- 7) "Pro/Con: Death Panels in End-of-Life Care" New Horizons in Anesthesiology, Vail, Colorado, February 2013
- 8) Yale Law School, New Haven CT, March 2015, "Lethal Injection".
- 9) "Hockey Violence and Killer Apes: Conflict Management in the Operating Room" New Horizons in Anesthesiology, Vail, Colorado, February 2013
- 10) "On the Ethics of Drug Pricing" Grand Rounds, Department of Anesthesiology, Case Western Reserve University, May 2018
- 11) AMICUS presents: Moderator Professor Jon Yorke, Birmingham City School of Law, On Death Row – Doctors, July 26, 2022
- 12) Visiting Professor, Depart of Anesthesiology, University of New Mexico. "Hey, anesthesia is a compliment, not an insult." "Intubation in the ICU." August 18-19, 2022
- 13) Case Western Reserve University, Department of Anesthesiology Grand Rounds, "Anesthesiology and the Murderous Mind: The Case of Dr. William Husel", November 9, 2022
- 14) California Western International Law Journal Spring Symposium, San Diego, California "Cruel and Modern Punishment: The Death Penalty under International Law" February 24, 2023
- 15) APACVS annual meeting, St. Louis, Missouri, "ECMO ethics and the law" June 22, 2023

- 16) Brown University Department of Anesthesiology visiting professor/grand rounds, Providence, Rhode Island, August 8-9, 2023 "The Physician in the Execution Chamber: The medicalization of Punishment."
- 17) University of Oxford, Faculty of Law, Oxford, UK January 18, 2024 "OxHRH Capital Punishment Seminar: "Kenneth Smith's Planned Execution by Nitrogen Gas Inhalation."
- 18) AMICUS presents; Clyde & Co, London, England, March 3, 2023, "Death Penalty Expert Testimony and Junk Science."
- 19) University of South Carolina, Department of Criminology, March 18, 2025, "Medical Ethics and the Death Penalty."

b. Regional

- 1) "Sedating the difficult patient" 5th Annual Southeastern Critical Care Summit. Emory University, Atlanta, GA, March 2012
- 2) "Biosimilars, where do we stand?" Georgia Bio and the Georgia Association of Healthcare Executives. September 2012, Atlanta, Georgia
- 3) "Lethal injection in the death penalty", Georgia Law Society and the Southern Center for Human Rights, Atlanta, Georgia, July 2014
- 4) "Identifying and managing futile care in the ICU", 10th Annual South Easter Critical Care Summit, Atlanta, Georgia, May 2016
- 5) "Capital Punishment and Lethal Injection", Georgia State School of Law, Atlanta, Georgia, September 2016
- 6) "The Ethics of Drug Pricing", GEM annual meeting, Georgia Society of Ophthalmology, Atlanta, Georgia, January 2017
- 7) 25th Annual Conference of the Healthcare Ethics Consortium: Panelist, Emory Conference Center, "Remote technologies, telemedicine, artificial intelligence & keeping care for the patient", Atlanta, Georgia, March 2019
- 8) Ethics Grand Rounds, Grady Hospital, Atlanta, Georgia, "Too sick to be executed: the medicalization of capital punishment" March 2020

c. Institutional

- 1) "End of life care in the ICU" Ethics Grand Rounds, Emory University Hospital Midtown, December 2010 (CME*)
- 2) "Mostly dead is slightly alive, the problem with the dying process." Center for Ethics, Emory University, September 2011
- 3) Medical Grand Rounds, Emory University Hospital Midtown, "Healthcare in Canada" September 2012 (CME*)
- 4) "On the ethics of drug shortages: it's not what you think" Emory Department of Anesthesiology Grand Rounds, September 2015 (CME*)
- 5) "Burnout: Don't thank me for normal work, a polemic", Emory Department of Anesthesiology Grand Rounds, September 2016 (CME*)
- 6) "Medical Assistance in Dying: Not as Easy as it Looks," Institute of Liberal Arts and Interdisciplinary Studies, Emory University, October 2017
- 7) "Medical Assistance in Dying: Not as easy as it Looks" TEDx Emory, February 2018
- 8) "Emotive Arts Series Panel Discussion: The Opioid Epidemic" Carlos Museum, Emory University, February 2018
- 9) "Building Transdisciplinary Capacity for Tibetan Medical Research: Methods, Translation and Efficacy Evaluation" Translation needs for Tibetan Medical Research, Emory University, School of Medicine and School of Anthropology, October 2018.
- 10) "Medicine, AI, and the Human Touch" Contemporary Challenges of AI in Healthcare: Verification, Big Data, and Investment. Emory Center for Ethics, Emory University, December 2018.

- 11) Emory University Department of Medicine Grand Rounds, "Procalcitonin: Clinical Gamechanger or Not so Fast- A Debate", February 22, 2022 (CME*)
- 12) Emory University Department of Anesthesiology Grand Rounds, "Anesthesiology and the Murderous Mind: The Case of Dr. William Husel", September 14, 2022 (CME*)
- 13) Emory University Department of Anesthesiology Grand Rounds, "What Kim Kardashian and Selena Gomez taught me about public scholarship", June 14, 2023(CME*)

26. Invitations to National/International, Regional, and Institutional Conferences:

a. National and International:

- 1) "Anesthesiology Jeopardy!" American Academy of Anesthesiologist Assistants Annual Meeting, Florida, April 2006, 2007, 2008, 2009, 2010, 2011
- 2) "Cardiac output after the Pulmonary Artery Catheter" American Academy of Anesthesiologist Assistants Annual Meeting. Clearwater, Florida, April 2009
- 3) "Reductions in wait times for cardiac surgery may be harmful", poster presentation, Canadian Cardiovascular Society Annual Meeting, Edmonton, Alberta, Canada, October 2009
- 4) "End of Life in the ICU", Canadian Hospice Palliative Care Conference Annual Meeting, Winnipeg, Manitoba, Canada. October 2009
- 5) "Biological Variability" American Society of Anesthesiology Annual Meeting, New Orleans, LA, October 2009
- 6) "Queuing Theory: Applications for Anesthesiology" American Academy of Anesthesiologist Assistants Annual Meeting, Destin, Florida, 2011
- 7) "Cardiac Anesthesia: Mostly we have it wrong" American Academy of Anesthesiologist Assistants Annual Meeting, Destin, Florida, 2011
- 8) "End of life in the ICU: When the patient and doctor disagree" American Academy of Anesthesiologist Assistants Annual Meeting, Destin, Florida, 2011
- 9) "End of Life Care" IMPACT 2012 American Academy of Physician Assistants Annual Meeting, Toronto, Canada, June 2012
- 10) "Drug Shortages, a Failed Market" American Society of Anesthesiology Legislative Conference Annual Meeting, April 2013, Washington, DC
- 11) University of Richmond Law Review, Allen Chair Symposium, "The Death Penalty in the United States", 2014
- 12) The Fordham Law Review, Fordham Law School, New York, "Criminal Behavior and the Brain: When Law and Neuroscience Collide", February 2016.
- 13) American College of Correctional Physicians, Fall Educational Conference, Las Vegas, Nevada, "Physician participation in executions: A discussion of the Ethical Challenges and the Pros and Cons, a pro-con debate between Dr. Carlo Muso and Dr. Joel Zivot, October 2016.
- 14) Panelist, "What is life and what are its origin"? The First International Emory Tibet Symposium: Bridging Buddhism & Science for Mutual Enrichment, Drepung Loseling Monastery, Mungod, Karnataka, India, December 18-20, 2016.
- 15) "Fast Track Cardiac ICU in Canada" 37th annual APACVS meeting, Miami, Florida, April 2018
- 16) American Society of Anesthesiology Annual Meeting, "The Patient, Family and Physician: Balancing Autonomy in Perioperative Decision-Making. The Right not to Know", October 4, 2020
- 17) Witness, Senate of Canada: Bill C-7, "Medical Assistance in Dying: peaceful or painful"? Ottawa, Canada, February 8, 2021
- 18) American Society of Anesthesiology Annual Meeting, New Orleans, LA, "Legal issues with automated risk assessment: When is it OK to deviate from the recommendation?" October 25, 2022

- 19) American Federation for Medical Research, Southeastern Regional Meeting, Washington, D.C., "Health Disparities." May 12, 2023
- 20) American Society of Criminology Annual Meeting, Philadelphia, PA. "Action research and capital punishment: Lethal Injection Execution – Death by Drowning" November 16, 2023
- 21) International Academy of Law and Mental Health Congress, July 23, 2024, Barcelona, Spain, "Judge, Jury and Executioner: The Court Wants What it Wants"

b. Regional

- 1) "Prescribing Price: The Ethics, Science, and Business of Drug Development and Pricing." Emory Center for Ethics, October 7, 2016
- 2) Panelist, Emory Conference Center, Emory Center for Ethics, Atlanta, Georgia, "End of life in the ICU" November 2016

c. Institutional

- 1) Emory Center for Ethics: Artificial Intelligence, panelist, "AI and Human Touch" December 14, 2018

27. Abstract Presentations at National/International, Regional, and Institutional Conferences:

- 1) *Voltz D, **Zivot J**, "Changes in the Bispectral Index during Deep Hypothermic Circulatory Arrest." Society of Critical Care Medicine Annual Meeting, San Francisco, California, January 2003 (oral)
- 2) *Ravas R, **Zivot J**, "Blood conservation; Designing a better blood bag", Department of Anesthesiology, University Hospitals of Cleveland, Case Western Reserve University, Cleveland, Ohio, Midwestern Anesthesia Resident Conference (MARC), Chicago, Illinois, March 2003 (oral)
- 3) *Hacker L, **Zivot J** "Local anesthetic spread for skin infiltration", Department of Anesthesiology, University Hospitals of Cleveland, Case Western Reserve University, Cleveland, Ohio, Midwestern Anesthesia Residents Conference, Chicago, Illinois, March 2003 (oral)
- 4) *Falk S, **Zivot J**, "Post-operative Sildenafil for pulmonary hypertension following mitral valve repair" 17th Asia Pacific Conference on Diseases of the Chest, Istanbul, Turkey, August 2003 (oral)
- 5) *Aggarwal S, **Zivot J**, "New onset anterior spinal artery syndrome after lumbar drain removal" Department of Anesthesiology, University Hospitals of Cleveland, Case Western Reserve University, Cleveland, Ohio, Midwestern Anesthesia Residents Conference, Rochester, Minnesota, March 2004 (oral)
- 6) *Stetz J, **Zivot J**, "Dextromethorphan masquerading as phencyclidine" Department of Anesthesiology, University Hospitals of Cleveland, Case Western University (oral)
- 7) *Petelenz K, **Zivot J**, "Bilateral BIS monitoring in unilateral brain injury", Department of Anesthesiology, University Hospitals of Cleveland, Case Western Reserve University, Cleveland, Ohio, Midwestern Anesthesia Residents Conference, Chicago, Illinois, March 2005 (oral)
- 8) Arora RC, Zarychynski R, Bell D, **Zivot J**, Lee J, Kumar K, Zhang L, Menkis A "The Manitoba Model of Post-Operative Cardiac Surgery Intensive Care" The Cardiac Sciences Program, St. Boniface Hospital and the University of Manitoba, Winnipeg, Canada. Toronto Critical Care Meeting, October 2007 (oral)
- 9) K Kumar, R Zarychanski, DD Bell, **J Zivot**, J Lee, R Manji, A Menkis, RC Aurora, "The Impact of the Manitoba Model of 24-hour in-house intensivist on a dedicated

- cardiac surgery ICU” Canadian Cardiovascular Society Annual Meeting, Toronto, Ontario, Canada, October 2008 (oral)
- 10) M Rivet, S Chartrand, G Henry, ICCS Nurses, RC Aurora, DD Bell, A Menkis, **J Zivot**, RA Manji, on the GRACE, GRACE2 Investigators, “Bunk Beds in the ICU - Can Two Cardiac Surgery Patients Occupy One ICU Bed?” Canadian Cardiovascular Society Annual Meeting, Toronto, Ontario, Canada, October 2008 (oral)
 - 11) RA Manji, E Jacobsohn, D Bell, RK Singal, **J Zivot**, A Menkis “Delirium and bed management in the cardiac surgery ICU” Canadian Cardiovascular Society Annual Meeting, Edmonton, Alberta, Canada, October 2009 (oral)
 - 12) RA Manji, D Bell, C Shaw, C Moltzan, P Nickerson, AH Menkis, **J Zivot**, E Jacobsohn, Management Suggestions for Cardiac Surgery Patients with a Positive Heparin Induced Thrombocytopenia (HIT) ELISA, Canadian Cardiovascular Society Annual Meeting, Edmonton, Alberta, Canada, October 2009 (oral)
 - 13) RA Manji, E Jacobsohn, **J Zivot**, H Grocott, Alan Menkis, Prolonged in-hospital wait times does not affect outcomes for urgent coronary artery bypass surgery, Canadian Cardiovascular Society Annual Meeting, Edmonton, Alberta, Canada, October 2009, (oral)
 - 14) ***J Zivot**, RA Manji, E Jacobsohn, H Grocott, A Menkis, Reductions in wait times for cardiac surgery may be harmful, Canadian Cardiovascular Society Annual Meeting, Edmonton, Alberta, Canada, October 2009 (oral)
 - 15) RA Manji MD PhD FRCSC MBA, E Jacobsohn MBChB FRCPC, H Grocott MD FRCPC, **J Zivot** MD FRCPC, AH Menkis DDS MD FRCSC, “Longer in-hospital wait times does not affect outcomes for urgent coronary artery bypass grafting surgery”, American Heart Association Annual Meeting, Orlando, Florida, November 2009 (oral)
 - 16) ***Zivot**, JB, “When the patient and the doctor disagree: end of life in the ICU” (poster presentation) American Society of Anesthesiology Annual Meeting, San Diego, California, October 2010
 - 17) *Mazzeffi, Halkos, **Zivot** “Timing and characterization of post-cardiac surgery in-hospital mortality” Society of Critical Care Annual Meeting Society of Critical Care Annual Meeting, Jan 2013. (oral)
 - 18) Neamu, Halkos, **Zivot** “Right Ventricular Laceration During Closed Chest Compression in a Cardiac Surgical Patient” Society of Critical Care Annual Meeting: Jan 2013 (oral)
 - 19) Caridi-Scheible, **Zivot**, Paciullo, Connor “Successful treatment of pulmonary-renal syndrome secondary to p-ANCA vasculitis using ECMO with Argatroban”, Society of Critical Care Medicine Annual Meeting, San Francisco, CA, Jan 2014 (oral)
 - 20) Lin, Stacey, **Zivot J**, “The Interaction between Opioids and SSRI leading to Serotonin Syndrome” American Society of Anesthesiology Annual Meeting, Boston MA, October 2017 (oral)
 - 21) *Wiepking, Mathew, **Zivot J**, “Eastern Equine Encephalitis: A Dangerous Dark Horse in Organ Transplantation” IARS annual meeting, Chicago, IL, April 2018 (oral)

28. Research Focus:

I published a study on the incidence of depression in Tibetan monastics in South India. The study involved the development of the first English to Tibetan translation of the PHQ-9 depression metric. I have studied and published on the incidence of pulmonary edema in inmates executed by lethal injection.

29. Grant Support:

a. Pending Support:

1. Harry Frank Guggenheim Grant Application: This investigation will examine the scientific and international law implications of methods of execution in the United States and worldwide.

Co-applicant: **Professor Jon York**, Professor of Human Rights, Director for the Center for Human Rights, Birmingham University, UK

Endorsement by;

Professor Carolyn Hoyle, Professor of Criminology, Centre for Criminology, Green Templeton College, University of Oxford, Chair of examiners: MSc in Criminology, Chair of Admissions (Criminology)

Dr Moris Tidbal-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions, United Nations Human Rights Special Procedures, Adjunct Clinical Professor in Forensic Medicine, Monash University, Australia, Visiting Professor, University of Coimbra, Portugal and Visiting Professor, University of Milan, Italy

Grant amount: \$45,000.00

b. Previous Support:

- 1) Co-PI, The Emory Georgia Tech Healthcare Innovation Program (HIP), (HIP-ACTSI-GSU) Seed grant, \$25,000.00, for "Managing Conflict and Error in the Operating Room." Awarded July 2014.
- 2) PI, The American Society of Anesthesiology to investigate the reasons behind national injectable drug shortages. \$20,000.00 grant and planned an invitation-only conference with the Emory Center for Ethics, "On the Ethics of Drug Shortages." June 2012

30. Bibliography:

a. Published and Accepted Research Articles (clinical, basic science, other) in Refereed Journals:

- 1) Perera ER, Vidic DM, **Zivot J**. "Carinal resection with two high-frequency jet ventilation delivery systems". Canadian Journal of Anesthesia. Jan 1993; 40(1):59-63. PMID: 8425245 Zivot JB, Hoffman WD. "Pathological effects of endotoxin". New Horizons. May 1995; 3(2):267-75. PMID:7583168
- 2) Popovich MJ, Lockrem JD, **Zivot JB**. "Nasal bridle revisited: an improvement in the technique to prevent unintentional removal of small-bore naso-enteric feeding tubes". Critical Care Medicine. March 1996; 24(3):429-31. PMID: 8625630
- 3) Kumar K, Zarychanski R, Bell DD, Manji R, **Zivot J**, Menkis AH, Arora RC; Cardiovascular Health Research in Manitoba Investigator Group. "Impact of 24-hour in-house intensivist on a dedicated cardiac surgery intensive care unit". Ann Thorac Surg. 2009 Oct; 88(4):115361.doi: 10.1016/j.athoracsur. 2009.04.070
- 4) Abdul-Razaq A. H. Sokoro, **Joel B. Zivot**, Robert E. Ariano, "Neuroleptic malignant syndrome versus Serotonin syndrome: the search for a diagnostic tool?" Ann Pharmacother. 2011 Sep; 45(9):e50.doi: 10.1345/aph. 1P787
- 5) Mazzeffi, M, **Zivot J**, Buchman T, Halkos M, "In-hospital mortality after cardiac surgery: patient characteristics, timing, and association with postoperative length of intensive care unit and hospital stay". Ann Thorac Surg. 2014 Apr;97(4):1220-5. doi:10.1010/j.athoracsur.2013. 10.040.

- 6) Jones LK, Jennings BM, Goetz RM, Haythorn KW, **Zivot JB**, de Waal FB “An Ethogram to Quantify Operating Room Behavior” 2016 Aug;50(4):487-96. doi: 10.1007/s12160-016-9773-0.
- 7) Moll V, Ward CT, **Zivot JB**, “Antipsychotic-Induced Neuroleptic Malignant Syndrome after Cardiac Surgery” AA Case Rep. 2016 July 1; 7 (1); 5-8 doi: 10.1213/XAA.0000000000000322
- 8) Mascaro JS, Shellman, D, Keaton WA, Wilson M, Brauer E, Samphel T, Chang H, Raison CL, **Zivot J**, Eisen A, “Mixed-method evaluation of the public health questionnaire for estimating depression among Tibetan Buddhist monastics” Front. Commun., 24 November 2021, Volume 6, Article 752820, doi.org/10.3389/fcomm.2021.752820
- 9) David W. Boorman MS,¹ Priyanka H. Nair MPH,² Samuel John MPH,² Joel Zivot MD,³ Sudheer Potru DO, FASA, FASAM⁴ “The effects of physician stigma and hesitancy with opioids on patient pain care in the United States: A Survey Study” Journal of Opioid Management Vol. 20 No. 6 (2024): November/December DOI: <https://doi.org/10.5055/jom.0872>

b. Preprints:

- 1) **Joel B. Zivot**, Mark A. Edgar, David A. Lubarsky “Execution by lethal injection: Autopsy findings of pulmonary edema” August 24, 2022, doi: <https://doi.org/10.1101/2022.08.24.22279183>

c. Symposium Contributions:

- 1) **Zivot J**, “Lethal injection: the states medicalize execution” 49 U. Rich. L. Rev. 711 (2015)
- 2) **Zivot J**, “Too Sick to be Executed: Shocking Punishment and the Brain” November 2016 Vol 85, pp 697-703, Fordham Law Review
- 3) **Zivot J**, “The Physician in the Execution Chamber: No such thing as the normal pain of dying,” Vol 53, Spring 2023, Number 2, California Western International Law Review Journal

d. Editorials and Commentaries:

- 1) **Zivot JB**. “The Case of Samuel Golubchuk”, AJOB Volume 10, Issue 3 March 2010, pages 56 – 57 doi: 10.1080/15265160903681890.
- 2) When the patient and doctor disagree. **Zivot JB**, CMAJ 2012, Jan 10;184 (1):76-6. doi: 10.1503/cmaj. 112-2008
- 3) **Zivot JB**, “Anesthesia does not reduce suffering at the end of life”, Crit Care Med. 2012 Jul; 40(7):2268-9. doi: 10.1097/CCM.0b013e31824fc12b.
- 4) **Zivot JB**, “The absence of cruelty is not the presence of humanness: physicians and the death penalty in the United States”. Philos Ethics Humanit Med. 2012 Dec 3;7(1):13. doi:10.1186/1747-5341-7-13.
- 5) **Zivot JB**, “The withdrawal of treatment is still treatment”. Can J Anesth 2014; Oct;61(10): 895-8
- 6) **Zivot J**, “Elder care in the ICU: Spin bravely?” Crit Care Med 2015 July;43(7):1526-7
- 7) **Zivot J**, Arenson K, “Lessons learned from physician participation in lethal injection: Is Carter v. Canada a death knell for medical self-regulation?” Can J Anaesth 2016 March;63(3):246-251
- 8) **Zivot JB**, “Elderly patients in the ICU: Worth it, or not?” Crit Care Med 2016 April;44(4):8423
- 9) **Zivot J**, “Useful ethics committees: no mandate required” Crit Care Med. 2020 Jun; 48(6):928-929. doi: 10.1097/CCM.00000000000004357.

- 10) **Zivot J**, "Coronavirus Disease 2019 Triage Teams: Death by Numbers" Crit Care Med 2020 May 15. doi: 10.1097/CCM.0000000000004435.
- 11) **Zivot J** "The author replies," Crit Care Med 2021 Jan 1;49(1):e104.doi: 10.1097/CCM.0000000000004720
- 12) Nusslock R, Balgopal M, Hue G, **Zivot J**, Negi LT, Eisen A "The Emory-Tibet Science Initiative: A Historic Collaboration between Modern Science and Tibetan Buddhism – Insights from a Spiritual Leader" Front. Commun., October 14, 2021, Volume 6, Article 765368 doi: 10.3389/fcomm.2021.765368
- 13) **Zivot JB**, Jabaley CS, "American perspectives on vaccine hesitancy and refusal: Time for a new approach?" Journal of Critical Care October 16, 2021 <https://doi.org/10.1016/j.jcrc.2021.09.016>
- 14) Eisen A, **Zivot J**, Nusslock R, Balgopal M, Hue Gillian, Tenzin Negi L, "The Emory-Tibet Science Initiative, a Novel Journey in Cross-Cultural Science Education" Font. Commun., 26 April 2022, <https://doi.org/10.3389/fcomm.2022.899215>
- 15) **Zivot, Joel B**, "Public Good versus Private 'Goods': Ethical Implications of Drug shortages on Anesthesiology Practice" Anesthesiology Clinics, available online 16 December 2023 <https://doi.org/10.1016/j.anclin.2023.12.001>
- 16) **Zivot, Joel B**, Katz, Naomi T, Deckelbaum, Richard J, Lantos, John D, Teitel, Jerome M, "Gaza and the complexity and context of suffering" Lancet 2024 Jan 11:S0140-6736(23)02836-2. doi: 10.1016/S0140-6736(23)02836-2
- 17) **Zivot, Joel B**, "Anesthesiology and the Ethics of Expert Witness Testimony" Anesthesiology Clinics, available online 24 February 2024 <https://doi.org/10.1016/j.anclin.2024.01.008>
- 18) Katz, Naomi, **Zivot, Joel B**, Steinert, Yvonne, "Re: Israel is using starvation as a weapon of war in Gaza" *BMJ* 2024;385:q1018, 21 May, 2024 doi: <https://doi.org/10.1136/bmj.q1018>
- 19) Teitel, Jerome, **Zivot Joel**, "Health-care workers can take the lead in ending the war in Gaza" Lancet 2024, July 13 Volume 404, issue 10448, P122-123, DOI: [https://doi.org/10.1016/S0140-6736\(24\)01251-0](https://doi.org/10.1016/S0140-6736(24)01251-0)

e. Review Articles:

- 1) **J B Zivot**, W D Hoffman, "Pathogenic effects of endotoxin" *New Horiz.* 1995 May; 3(2):267-75

f. Book Chapters:

- 1) Bojan Paunovic MD, FRCPC¹, Rizwan Manji MD, PhD, FRCSC², Rakesh Arora MD, PhD, FRCSC², Johan Strumpher MD, FRCPC³, Rohit Singhal MD, FRCSC², **Joel Zivot MD, FRCPC⁴**, and Eric Jacobsohn MBChB, MHPE, FRCPC⁵ "Diagnosis and Management of Sepsis and Septic Shock in the Cardiac Surgical Patient". Society of Cardiovascular Anesthesiology Monograph, March 2010
- 2) **Zivot, JB**, "What Are Advance Directives?" Critical Care Ethics: A Practice Guide, Third Ed. Copyright 2014 Society of Critical Care Medicine.

g. Published Abstracts:

1. **Zivot J**, Hoffman W, Lockrem J, Esfandiari S, Bedocs N, Vignali C, Popovich M. "Changes in gastric intramucosal pH are not predicted by therapeutic changes in conventional hemodynamic variables for septic surgical patients". Critical Care Medicine. 23(1) Supplement A:107, Jan 1995
2. Webster J, Thomson V, **Zivot J**. "Excessive endotracheal tube cuff pressures are common but are not clinically significant". Anesthesiology 87(3 Suppl) A984, 1997

3. Bloch, MG, **Zivot JB**. "Successful transplantation of liver and kidney allografts from a donor maintained on veno-arterial extracorporeal membrane oxygenation". *Anesthesia and Analgesia*, 94(25 Supplement) S104, Feb 2002
4. **Zivot J**, Polemenakas A, Aggarwal S, Rowbottom J. "Differential lung capnography after single lung transplant." *Critical Care Medicine* 30(12) Supplement: A90 December 2002

h. Other Publications:

- 1) Yorke, Jon, **Zivot, Joel** "Two damnable trilogies: The US Supreme Court's jurisprudence on 'method-of-execution' challenges and resultant botched and failed executions in Alabama" 22 December 2023 Faculty of Law Blogs/ Oxford University
- 2) **Zivot, Joel**, "Execution Methods: Cruelty Behind a Veil of Secrecy," pp 29-34, *Amicus Journal*, Issue 46, Summer 2024

31. Contributions Not Otherwise Noted:

I submitted two separate complaints to the United Nations Section on Human Rights, along with Jon Yorke, a professor of human rights at the Birmingham City University Law School in England. The substance of the complaint concerned the plan by the State of Alabama to execute prisoners Kenneth Smith and Alan Miller with Nitrogen gas. The complaint concluded the State of Alabama stood to violate six critical articles under international law, including the ban on torture and inhumane punishment. In reply, four independent UN experts called for the State of Alabama to halt the planned execution. As of December 2024, I continue to work with Alice Edwards, UN Special Rapporteur on Torture, in an advisory capacity.

ATTACHMENT C

REPORT OF JOEL ZIVOT, M.D., FRCP(C), MA, JM

October 26, 2025 – Richard Randolph

1. I am an associate professor and senior member of the Departments of Anesthesiology and Surgery, Emory University School of Medicine, in Atlanta, Georgia. I am the former Medical Director of the Cardiothoracic Intensive Care Unit at Emory University Hospital. I am also the former fellowship director for training in Critical Care Medicine. I hold board certification in Anesthesiology from the Royal College of Physicians and Surgeons of Canada and the American Board of Anesthesiology. I am board-certified in Critical Care Medicine from the American Board of Anesthesiology. I have an MA in bioethics and a Master of Laws (JM).
2. I have practiced anesthesiology and critical care medicine for 30 years, during which time I have personally performed or supervised the care of over 50,000 patients.
3. I hold an active medical license from the State of Georgia and have held unrestricted medical licenses in Ohio, the District of Columbia, Michigan, and the Canadian provinces of Ontario and Manitoba. I also have a license to prescribe narcotics and other controlled substances from the US Drug Enforcement Administration (DEA).
4. I have been consulting with attorneys for Florida death row prisoner Richard Randolph (Malik Abdul Sajjad) regarding Mr. Randolph's medical conditions and the risks attendant to executing him by lethal injection. I will refer to the prisoner as Richard Randolph, although I am told he has changed his name to Malik Abdul Sajjad.

5. I became involved in Mr. Randolph's case at the request of his attorneys. I agreed to review his medical records and then spoke with Mr. Randolph by telephone on Friday, October 24, 2025, to obtain a direct medical history and verify various medical reports that had been provided to me by his legal team. I spoke to him by phone due to the extreme time constraints in Mr. Randolph's case, given the signing on October 21, 2025, of a warrant for Mr. Randolph's execution on November 20, 2025. The purpose of this evaluation is to provide a report that would explain the risks posed to Mr. Randolph if he is executed according to Florida's lethal injection protocol.
6. My opinion is based on the review of documents supplied to me by Mr. Randolph's attorneys, my telephone conversation with him, and my medical knowledge and experience as a clinician with 30 years of practice. I reviewed two files labeled as DOC medical records, Vol 1 and Vol 2, PDF 2014-2025, updated October 3, 2025. I also reviewed a document entitled "Florida Department of Corrections: Execution by lethal injection procedures." This is accompanied by a letter dated February 18, 2025, and signed by Secretary Ricky Dixon. It attests to the readiness of the Florida Department of Corrections to execute by lethal injection.
7. From the documents I reviewed, I observed that Mr. Richard Randolph is a 63-year-old man who suffers from many medical problems, including discoid lupus erythematosus, systemic lupus erythematosus, hypertension, gastroesophageal reflux disease, leukopenia, chronic pain, 35 pack years of smoking (quit 2011), and possible coronary artery disease disorder. He has been treated for tinea versicolor. He has had mental health issues. He has been incarcerated for 36 years.

8. On October 24, 2025, I spoke with Mr. Randolph by telephone. I would request an opportunity to examine Mr. Randolph in person, but I believe our conversation and a medical records review qualify me to render opinions about Mr. Randolph's medical state and how it will be impacted by the State of Florida execution protocol.
9. In our conversation, he verified many of the medical concerns I had uncovered in my review of his medical records. Notable was his complaint of severe and unremitting joint pain. He reports many years of pain that is at times incapacitating and prevents him from performing the simplest tasks of his activities of daily living. He needs to reposition himself frequently during sleep and complains of significant neck pain when he lies on his back. For this pain, he has been prescribed oral ibuprofen (Motrin) and acetaminophen (Tylenol).
10. He indicated that he is easily short of breath and has a regular, non-productive cough. He gets intermittent chest pain that he believes may be reflux-related, but unstable angina can't be ruled out. He describes periods of transient loss of awareness that may be increasing in frequency. On one recent episode, he discovered he had urinary incontinence after returning to his baseline neurologic state. Loss of consciousness and urinary incontinence can be seen in seizures.
11. Notably, Mr. Randolph has been diagnosed with discoid lupus and systemic lupus. Lupus is a chronic autoimmune disease in which the immune system mistakenly attacks the body's own healthy tissues and organs. This condition tends to flare up at various times and can cause severe dysfunction. Discoid lupus describes the condition when it is

confined to the skin. Mr. Randolph was initially diagnosed with this form of lupus, but the condition quickly became more generalized.

12. Lupus can be described in three levels of severity: mild, moderate, and severe. Mild lupus includes a skin rash and joint pains. Mr. Randolph has at least these complaints.

Moderate lupus includes a skin rash, joint pain, constitutional symptoms, and blood disorders. Mr. Randolph has a chronically reduced white blood cell count. This is likely the consequence of lupus and now puts him in the moderate category. In the severest form, organ damage to the kidneys, brain, and lungs can be seen. Specific diagnostic blood tests can be done to confirm the presence of lupus.

13. In all forms of lupus, the medicine hydroxychloroquine (Plaquenil) is the standard treatment. Patients with lupus who are treated with hydroxychloroquine enjoy many benefits, including a reduction in the frequency of flare events, overall decrease in mortality, reduced constitutional symptoms, reduced incidence of blood clots, and reduced organ damage. The low white blood cell count seen in Mr. Randolph can improve with hydroxychloroquine treatment. After reviewing the medical records and consulting with Mr. Randolph, I see no evidence that he ever received this treatment. This is a disturbing lack of standard medical care that Mr. Randolph has the right to receive. In place, he was given occasional acetaminophen (Tylenol) and occasional ibuprofen (Motrin).

14. Because of his neglected lupus treatment, Mr. Randolph has suffered greatly. He likely has some degree of lung damage, and his transient unconscious episodes with urinary incontinence might be caused by a particular form of cerebritis (brain inflammation)

caused by lupus. His chronic joint pains make positioning him very difficult. The Florida execution protocol will materially worsen all these things.

15. The issue is not whether the Florida execution protocol will cause the death of Mr. Randolph. It most likely will. Owing to chronic organ and tissue dysfunction caused by inadequate health care while incarcerated, Mr. Randolph is sure or very likely to experience serious illness and needless suffering of a prolonged, excruciating pain during his execution from severe pulmonary edema and lung congestion. Florida's execution protocol is also designed as one-size-fits-all. The protocol has no method for altering execution technique based on a prisoner's co-existing medical conditions. In this way, Mr. Randolph has no pathway to demand that his execution not be cruel as applied to him.
16. On balance, Mr. Randolph is in marginal health. He has received chronically poor health care while incarcerated. This poor care is a direct contributor to his poor health. I have serious concerns about his lung function. He also gets occasional chest pain and is treated for hypertension. Heart and lung dysfunction significantly raises the risk of profound and painful organ failure. Such organ failure increases the known risk of pulmonary edema, an unnecessarily painful condition, which is often observed in lethal injection executions.
17. A review of the Florida lethal execution protocol involves the sequential intravenous delivery of three drugs to a person to be executed. The first drug is Etomidate, followed by Rocuronium Bromide, and then Potassium Acetate. Etomidate is a non-barbiturate sedative hypnotic drug used in anesthesiology practice in several different situations.

Etomidate is primarily metabolized in the liver, which means it will accumulate rapidly there. Etomidate is not classically considered an analgesic (used for the control of pain). Neither of the subsequent drugs used in the protocol is analgesic. Rocuronium Bromide is a rapidly acting paralyzing drug and will paralyze any individual, in this case, the prisoner, making it impossible to communicate to observers that pain is occurring. Potassium Acetate is a drug that regulates heart contraction. In large doses, Potassium Acetate is painful when injected and will cause the heart to cease functioning.

18. I anticipate many severe and painful outcomes during any attempt to execute Mr.

Randolph. Positioning him will lead to an immediate state of severe pain. The sequential injection of the lethal chemicals will cause his lungs to fill with bloody froth as he slowly dies. Observers may see little of this, as the paralyzing drug will effectively block the outward appearance of his drowning in his blood. All of this is unnecessary as it is the direct consequence of the State of Florida's execution technique. Mr. Randolph will die a needlessly cruel death if Florida insists on trying to kill him with Florida's version of lethal injection.

19. I hold the opinions in this Report to a reasonable degree of medical certainty. Should additional information become available later, I reserve the opportunity to update or add to the opinions stated in this Report.

Joel B. Zivot, MD, FRCP(C), MA, JM

ATTACHMENT D

Privileged and Confidential
Contains Work Product
Overview Outline
Client Richard B. Randolph, DC# 115769
Case Number 54-8801357

Raul S. Banasco, MPA, CPM, CJM, CCE
RSB & Associates, LLC
Post Office Box 14762
Tallahassee, Florida 32317
407-702-5666
rsbassociatesllc@yahoo.com

REFERRAL:

I was contacted on October 23, 2025, by Marie-Louise Samuels Parmer, Attorney with the Capital Collateral Regional Counsel South. I have been retained to render a professional opinion and/or testify in Richard B. Randolph's case.

QUALIFICATION OF THE EXPERT:

I am an accomplished senior level correctional leader with over 39 years' corrections experience in city, county, and state government agencies as well as community supervision programs in non-profit agencies. I began my career with the Florida State Department of Corrections (FDOC) as a Correctional Officer at the Central Florida Reception Center. Over my 19 years with FDOC (1988-2006), I held several positions, including Correctional Officer, Classification Officer, Probation Officer, Probation Supervisor, Classification Supervisor, and Assistant Warden at Martin Correctional Institution (1995-1998), Tomoka Correctional Institution (1998-2003), and Central Florida Reception Center (2003). I also served as Warden at Hernando Correctional Institution (2003-2004). Additionally, from 2004 to 2006, I was honored to serve as the Director of Staff Development, overseeing the training and development of more than 28,000 employees statewide, across both institutional and probation & parole services.

In October 2006, I was appointed as Major of the Orange County Corrections Department in Orlando, Florida. In September 2008, I was appointed as the Deputy Chief of the Osceola County Corrections Department, where I served until December 2010. I joined the Bridges of America Leadership Team in June 2011 as the Director of The Bradenton Bridge Re Entry Facility and in January 2012 promoted as the Director at The Orlando Bridge Re Entry Facility. In June 2012, I was recognized for my achievements and excellence with the company, and advanced to the Quality Management Team in the Corporate Office as the Q.M. Director of Operations providing statewide oversight. Served as the Jail Administrator for the Bexar County Sheriff's Office from 2013-2016 with over 4,500 inmates and over 950 staff. Selected as the 2016 National American Jail Association's Jail Administrator of the year. In 2017 I served as the Jail Administrator for the Tarrant County Sheriff's Office, Fort Worth, Texas until 2018 and from 2019 until 2020 served as the Director of Justice Services in Clayton, Missouri. I am currently serving as the Jail Administrator (Major) for the Travis County Sheriff's Office in Austin, Texas since 2022.

I earned my Bachelor of Arts Degree in Psychology from Iona University in New Rochelle, New York and continued my education at Florida Atlantic University in Boca Raton, Florida with a Master of Arts Degree in Public Administration. I obtained my professional certification designation as a Certified Public Manager, Certified Jail Manager, Certified Corrections Executive, and Certified National Auditor and international trainer for the American Correctional Association. I am a Criminal Justice Consultant specializing as an Accreditation Auditor of Jails and Correctional Facilities, both domestically and internationally. I also teach as an Adjunct Professor with Barry University, University of Texas at San Antonio (UTSA), Texas A&M University – San Antonio (TAMUSA), and Maryville University.

I am an active member of several national and state professional organizations and boards, including the American Correctional Association (ACA) Disproportionate Minority Confinement Task Force; current chair of the ACA Affirmative Action Committee (2013-2016); North American Association of Wardens

and Superintendents Board of Directors; founding member of the National Organization of Hispanics in Criminal Justice, serving as President from 2006 to 2009. I was elected to serve on the Executive Board for the ACA Board of Governors as the Large Ethnic Minority Board Member (2010–2015) and re-elected to serve on ACA’s Board of Governors as the Detention Board Member (2015-2019).

In 2015, I was appointed to serve as a Commissioner on the ACA Commission on Professional Certification for Corrections for the 2015-2019 term.

SOURCES OF INFORMATION:

On October 27, 2025, I conducted a structured interview via phone with Richard B. Randolph while he is being housed at Florida State Prison Raiford, Florida. The interview lasted half an hour. I would have liked to have met with Mr. Randolph in person, but I spoke to him by phone due to the extreme time constraints in Mr. Randolph’s case as a result of the Governor signing, on October 21, 2025, a warrant for Mr. Randolph’s execution on November 20, 2025.

I have thoroughly reviewed the materials listed below, considering correctional methods, structured interview techniques, and established professional standards.

This assessment is informed by my professional experience in correctional settings, continued professional development, formal academic training, relevant certifications, knowledge of current trends in the field of corrections, evidence-based best practices, and specialized training.

Florida Department of Corrections Inmate Records includes:

- Classification Records
- DC 14 Information
- Institutional Transfer Records
- Disciplinary History Records
- Institutional Work Assignment History Records
- Visitor Screening Matrix
- Transfer of Custody Receipt
- Inmate Telephone Records
- Inmate Visitation Records
- Uniform Commitment to FDOC Custody
- Initial Commitment Audit
- Acknowledgement of Receipt of Grievance Orientation
- Acknowledgement of Receipt of Orientation
- Inmate Posting Sheet
- Inmate Contact Sheet
- Presentence Investigation Report
- Photo Identification Card
- Classification & Admission Summary
- Social History
- Fingerprint Card
- Informal Inmate Grievances
- Educational & Vocational Counselors Report
- Substance Abuse Assessment

- Health Services Profile
- Daily Records of Special Housing
- Inmate Reclassification Scoresheet
- Request for Administrative Remedy or Appeal
- Progress Report
- Inmate Property List
- Mental Health of confinement Inmates Form
- Report of Administrative Review
- Incident Reports
- Structured phone interview.
- Inmate Request

RECORD REVIEW:

FDOC Classification, Transfer, Housing and Disciplinary Records:

Mr. Richard B. Randolph was transferred to three different correctional institutions within the Florida Department of Corrections during his initial prison commitment. He was first processed at the Raiford Medical and Reception Center and subsequently transferred to the Florida State Prison.

Throughout his incarceration, Mr. Randolph has been assigned to the following three correctional institutions within the Florida prison system over the past thirty-six and one-half (36½) years:

1. Raiford Medical & Reception Center
2. Florida State Prison
3. Union Correctional Institution

It is important to note that all three of the prisons to which Mr. Richard B. Randolph has been assigned have had average inmate populations ranging from approximately 1,100 to 1,450 individuals. Violent behavior is a common challenge in maximum-security facilities, making it difficult for correctional administrators, such as wardens, to effectively manage such large populations. One of the primary methods used to regulate inmate behavior is the issuance of disciplinary reports in response to rule infractions.

Florida State Department of Corrections Commitment & Disciplinary Report History

FDOC Prison Commitment: April 5, 1989, to date

FDOC Prison Disciplinary Reports

- Mr. Richard B. Randolph received a total of twelve (12) disciplinary reports between the ages of 28 and 49 in which none of these rule infractions involved violence.
- He has not received any disciplinary reports or been cited for any rule infractions during the past fourteen (14) years and three (3) months, demonstrating a sustained period of positive institutional adjustment and compliance with facility rules and regulations.

FDOC Prison Placements, Programs and Job Assignments

- Due to his Death Row status, Mr. Richard B. Randolph was initially not permitted to participate in inmate betterment programs, which are typically available to inmates in general population. However, in recognition of his positive behavior and adjustment over the years, Mr. Randolph was assigned to a Housemen job assignment on September 26, 2022. This assignment reflects his continued good conduct and the trust placed in him by institutional staff, despite the limitations of his status.

Work Assignment: Houseman

CLIENT INTERVIEW:

Phone Interview Summary:

During my phone interview with Mr. Richard B. Randolph, he shared that he maintains regular communication with his family. He also mentioned that his family provides financial support when possible, highlighting the strong familial bonds that continue to sustain him throughout his incarceration. These connections reflect his enduring ties to the outside world as he navigates the challenges of being incarcerated in the Florida Prison System for the past 36½ years. Furthermore, Mr. Randolph shared that he converted to the Muslim faith in 1993 as he sought to establish a meaningful spiritual path while in prison. This conversion has provided him with additional support and has contributed to his positive institutional adjustment.

Awareness and Contribution to the Institutional Environment:

Mr. Randolph expressed a clear understanding of his living environment and the circumstances he faces as a Death Row inmate. Despite the limitations of his status, he has a desire to be more productive within the prison system. Specifically, Mr. Randolph noted his current role as a Houseman at Union Correctional Institution, which he has held for the past several years. He indicated that he finds purpose and satisfaction in his work and expressed a desire to continue contributing to the facility in meaningful ways.

Proposed Contributions to Sanitation Services and Cost Reduction:

Mr. Randolph suggested that his skills and experience could be applied more broadly to support sanitation services within the institution. By utilizing inmate labor more effectively, he believes the facility could reduce operational costs, which could lead to savings for taxpayers. This idea aligns with broader goals of improving the efficiency of the prison system while providing inmates with more opportunities for productive work.

PROFESSIONAL OPINION

After reviewing Mr. Richard B. Randolph's institutional history within the Florida State Department of Corrections, including his classification records, disciplinary history, work assignments, and inmate housing assignments, it is evident that he performs best in a structured and consistent environment. His ability to function effectively is significantly enhanced when he is provided with clear direction and a stable, organized setting, as demonstrated throughout his time within the Florida prison system.

In addition to the insights gathered during the interview, I reviewed Mr. Randolph's institutional history since his initial commitment on April 5, 1989. This comprehensive review included his classification records, disciplinary history, and housing assignments, all of which were made available to me. Notably, over the past 14 years and 3 months, Mr. Randolph has maintained an exemplary record with no rule infractions, underscoring his maturation and growth over the course of his 36½ years of incarceration.

Upon reviewing Mr. Randolph's housing records from November 16, 2014, to June 18, 2025, it is noted that he was afforded a total of 1,728 opportunities to participate in recreation time and access to the dayroom. During this period, Mr. Randolph utilized 75% of these opportunities, engaging with both other inmates and staff in a supervised setting. Notably, there have been no concerns regarding his behavior during these interactions, further indicating his continued positive adjustment and compliance with institutional rules.

His positive institutional adjustment is evident, particularly in how he has adapted to the demands of prison life and consistently displayed appropriate behavior. As a result of this demonstrated growth, Mr. Randolph has had the opportunity to serve as a Houseman for the past 3 years, further emphasizing his capacity for responsibility and constructive involvement within the facility.

Based on my 39 years of correctional experience, a thorough review of the records provided, and my interview with Mr. Richard B. Randolph, it is my professional opinion that he has gained significant insights from his early experiences within the prison system. Mr. Randolph entered the system at the age of 27 and is now 63 years old, having spent over three decades within the prison system, which he has spent on death row. Over this time, it is clear that Mr. Randolph has matured considerably. His behavior and conduct demonstrate this growth, and it is my belief that he now possesses a greater understanding of his circumstances.

Currently, Mr. Randolph does not pose any significant concerns regarding security or safety within a general population setting in a correctional facility. His years of experience and positive adjustments indicate that he can function appropriately within such an environment.

Over the past 14 years and 3 months, Mr. Randolph has made a deliberate and concerted effort to maintain a positive outlook on his future. His institutional records reflect a strong commitment to adhering to prison rules and regulations, demonstrating that he actively strives to follow these guidelines on a daily basis. This consistent behavior underscores his ongoing personal development and adjustment.

Drawing from my 20 years of prison experience, and after reviewing both Mr. Randolph's interview and the documents provided by the Florida State Department of Corrections, I am confident that he will continue to benefit from the support of his family. This support plays a vital role in reinforcing his efforts to maintain a positive attitude while incarcerated.

In my professional judgment, Mr. Randolph has demonstrated compliant behavior within a correctional environment. His conduct over the past 14 years and 3 months serves as a strong indicator that he has successfully adjusted and will continue to demonstrate a positive attitude if placed in a general population within the Florida prison system.

Given these factors, I strongly recommend that they be considered when determining an appropriate sentence for Mr. Randolph. These opinions are based on the materials I have reviewed to date. I reserve the right to supplement this report should new information become available.

These opinions are based on the material I have reviewed thus far. I reserve the right to supplement this Report should new material becomes available to me.

I hereby declare, under the penalty of perjury, on the 27th day of October 2025, that the foregoing is true and correct to the best of my knowledge and belief.



Raul S. Banasco, MPA, CPM, CJM, CCE

Prison Expert, Business Development, Government, Non-Profit, Strategic Planning & Public Safety
Consultant, National Accreditation Auditor, Expert Witness and Professor

Over 39 Years of experience!

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ATTACHMENT E

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR PUTNAM COUNTY, FLORIDA**

**STATE OF FLORIDA,
Plaintiff,**

v.

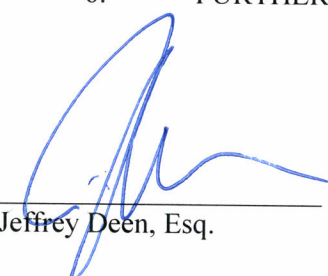
**RICHARD RANDOLPH,
Defendant.**

**CASE NO. 88-1357-CF
EMERGENCY CAPITAL CASE,
DEATH WARRANT SIGNED;
EXECUTION SCHEDULED FOR
NOVEMBER 20, 2025 AT 6:00 PM**

State of Florida
County of Seminole

AFFIDAVIT OF JEFFREY DEEN, Esq.

1. I am a member in good standing of the Florida Bar and the duly appointed Regional Conflict Counsel for the 5th District and have been so appointed since July 1, 2007.
2. My Office was appointed to represent Richard Randolph on February 18, 2014 for his Clemency proceedings related to his sentence of death in Putnam County Circuit Court Case No. 88-1357-CF.
3. I have carefully reviewed my files and can state affirmatively that my office represented Mr. Randolph in clemency proceedings through June 26, 2014.
4. My office has not done any work or been contacted by any representative of the Office of Executive Clemency or the Florida Commission on Offender Review seeking any additional or updated information of any kind since June 26, 2014.
5. The only contact I have received since June 26, 2014 was the letter I received from Ian F. Berry, Coordinator of the Office of Executive Clemency on October 21, 2025, informing me that the Governor had denied clemency and that the Governor's signing of the death warrant "concludes the clemency process."
6. FURTHER AFFIANT SAITH NAUGHT

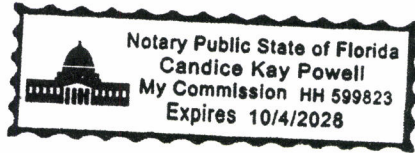


Jeffrey Deen, Esq.

The foregoing affidavit was sworn to and subscribed before me by means of X physical presence, _____
online notarization on this 24th Day of October 2025, by Jeffrey Deen, who is personally known to me
X or produced identification _____ (type of ID) _____.

Notary Public: Candice Kay Powell Date: 10/24/2025

Seal:



No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD BARRY RANDOLPH,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

APPENDIX E

CAPITAL CASE

**DEATH WARRANT SIGNED
EXECUTION SET NOVEMBER 20, 2025, AT 6:00 P.M.**

3.852(i) Demand for Public Records Composite Concerning Lethal Injection

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR PUTNAM COUNTY, FLORIDA**

**STATE OF FLORIDA,
Plaintiff,**

v.

**RICHARD BARRY RANDOLPH,
Defendant.**

**CASE NO. 1988-1357-CF
EMERGENCY CAPITAL CASE,
DEATH WARRANT SIGNED;
EXECUTION SCHEDULED FOR
NOVEMBER 20, 2025 AT 6:00 PM**

**DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS
PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.852(i)**

To: Mark Glass, Commissioner
Florida Department of Law Enforcement
Attn: Lindsey Brigham, Assistant General Counsel
5045 Commerce Park Circle
Pensacola FL 32505

The Defendant, **RICHARD BARRY RANDOLPH**, under imminent threat of execution, by and through undersigned counsel, hereby makes demand of the **FLORIDA DEPARTMENT OF LAW ENFORCEMENT (FDLE)**, pursuant to Article I, Section 24, of the Florida Constitution and Florida Rule of Criminal Procedure 3.852(i), for all public records pertinent to this case.

1. Mr. Randolph is under a sentence of death and subject to execution by lethal injection pursuant to Section 922.10, Florida Statutes. A death warrant was signed in Mr. Randolph's case on October 21, 2025. His execution has been scheduled for November 20, 2025.

2. Undersigned counsel attests that:

- (a) Counsel has made a timely and diligent search of the records repository;
- (b) Counsel has identified with specificity the public records that are not at the records repository; and,
- (c) The records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the

discovery of admissible evidence.

3. Under Rule 3.852, the phrase “public records” is defined as follows: “All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Fla. R. Crim. P. 3.852(b)(1); § 119.011, Fla. Stat. (2018).

4. The requested records are:

- (a) **Current FDLE Monitor Qualifications:** Applications and other documentation reflecting the relevant training, education, or licensure currently possessed by the two designated FDLE monitors who, under Section 7 of the lethal injection protocol, will observe Mr. Randolph’s planned execution.
- (b) **Prior FDLE Monitor Qualifications:** Applications and other documentation reflecting the relevant training, education, or licensure currently possessed by the two designated FDLE monitors who, under Section 7 of the lethal injection protocol, were present during the executions by lethal injection of the following individuals:

Louis Gaskin (DC# 751166) on 04/12/2023;
Darryl Barwick (DC# 092501) on 05/03/2023;
Duane Owen (DC# 101660) on 06/15/2023;
James Barnes (DC# 071551) on 08/03/2023;
Michael Zack III (DC# 124439) on 10/03/2023;
Loran Cole (DC# 335421) on 06/29/2024;
James Ford (DC# 763722) on 02/13/2025;
Edward James (DC# 969121) on 03/20/2025;
Michael Tanzi (DC# K04389) on 04/08/2025;
Jeffrey Hutchinson (DC# 124849) on 05/01/2025;
Glen Rogers (DC# 124400) on 05/15/2025;
Anthony Wainwright (DC# 123847) on 06/10/2025;
Thomas Gudinas (DC# 379799) on 06/24/2025;
Michael Bell (DC# 108426) on 07/15/2025;
Edward Zakrzewski (DC# 554000) on 7/31/2025;
Kayle Bates (DC# 088568) on 8/19/2025;
Curtis Windom (DC# 368527) on 8/ 28/2025;
David Pittman (DC# 351997) on 9/17/2025;
Victor Jones (DC# 420481) on 9/30/2025; and
Samuel Lee Smithers (DC# 124639) 10/14/2025.

- (c) **Prior Execution Logs:** Copies of the log entries required under Sections 7(b) and (c) of the lethal injection protocol to be made by the two designated FDLE monitors who were present during the executions by lethal injection of the individuals listed *supra* in Paragraph 4(b).

5. Pursuant to Rule 3.852(i), this Court may order the production of records if the “additional public records are either relevant to the subject matter of a proceeding under Rule 3.851 or appear are reasonably calculated to lead to the discovery of admissible evidence.” Fla. R. Crim. P. 3.852(i)(2)(C). The requested records are relevant to an as-applied challenge to Florida’s lethal injection protocol under the Eighth Amendment’s prohibition against cruel and unusual punishment. *See Bucklew v. Precythe*, 139 S. Ct. 1112 (2019); *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008).

6. Mr. Randolph can show that “the requested records relate to a colorable claim for postconviction relief.” *See Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017). Specifically, an as-applied method-of-execution claim under the Eighth Amendment provides a valid basis for postconviction relief if “the method presents a risk that is ‘*sure or very likely* to cause serious illness and needless suffering,’ and give rise to ‘sufficiently *imminent* dangers.’” *Glossip*, at 877. Under this standard, Mr. Randolph can prevail if he shows “an ‘objectively intolerable risk of harm’ that prevents prison officials from pleading that they were ‘subjectively blameless for purposes of the Eighth Amendment.’” *Id.*

7. Undersigned counsel acknowledges that the Florida Supreme Court has upheld the constitutionality of Florida’s “etomidate protocol.” *Asay*, 224 So. 3d at 700-702. In subsequent decisions, the Florida Supreme Court has found that requests for lethal injection records filed by other defendants under warrant were unrelated to colorable claims. *Tanzi v. State*, 407 So. 3d 385, 391-92 (Fla. 2025). Mr. Randolph is entitled to a full and fair opportunity to challenge the lethal injection protocol as it applies to him and his current physiological condition. The U.S. Supreme

Court has recognized that such a challenge is inherently fact-intensive because “distinguishing between constitutionally permissible and impermissible degrees of pain . . . is a *necessarily* comparative exercise.” *See Bucklew*, 587 U.S. at 136. This “comparative exercise” cannot be performed “by examining the State’s proposed method in a vacuum.” *See id.* Accordingly, Mr. Randolph must have access to the only records that would allow him to: (a) evaluate the current lethal injection protocol, (b) evaluate potential alternative methods of execution, and (c) perform a meaningful comparative analysis as required under *Bucklew*. Indeed, the Florida Supreme Court recently noted, “[w]e have generally held that method-of-execution claims are procedurally barred unless the method itself changes or *new facts about the current method arise during a prior execution.*” *Rogers v. State*, 409 So. 3d 1257, 1267 (Fla. 2025). Thus, it is clear that facts about prior executions are relevant and, often, dispositive. Having conditioned threshold and merits issues on proof of such facts, the courts cannot wholesale deny Mr. Randolph access to them; else, the availability of relief under the Eighth Amendment is illusory.

8. The requested records are not overly broad or unduly burdensome. Each request is delimited as to time and subject matter to cover only records produced in preparation for Mr. Randolph’s scheduled execution or in close proximity to other executions performed using a materially indistinguishable lethal injection protocol. Further, undersigned counsel has provided the DOC identification numbers and execution dates of the individuals about whom records are requested to facilitate the identification and production of responsive records. In light of the substantial interests at stake and the tailored scope of this request, the burdens imposed are reasonable.

9. Mr. Randolph can show “good cause as to why [this] public records request was not made until after the death warrant was signed.” *See Asay*, 224 So. 3d at 700. Because the

Governor exercises complete control over the timing of execution warrants and provides only 30 days notice of impending executions, Mr. Randolph could not know whether his physical health at the time of his execution would present serious risks. Further, many of the records requested, particularly those related to other executions, were created within the past few months. In fact, records related to the most recent executions are the most probative as to risk factors currently present in the lethal injection protocol.

10. Mr. Randolph asks that the records requested be copied, indexed, and delivered to the records repository by October 28, 2025 at 10:00 a.m. as provided in this Court's scheduling Order with a courtesy copy delivered via email to undersigned counsel.

WHEREFORE, Mr. Randolph respectfully requests this Court to order the **FLORIDA DEPARTMENT OF LAW ENFORCEMENT** to produce the records described above.

Respectfully submitted,

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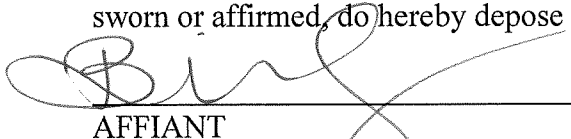
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Tel. (954) 713-1284
COUNSEL FOR MR. RANDOLPH

AFFIDAVIT OF COLLATERAL COUNSEL

I, Brittney N. Lacy, as an Assistant Capital Collateral Counsel-South, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.



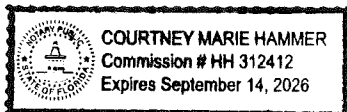
AFFIANT

SWORN TO AND SUBSCRIBED before me, the undersigned authority, by means of ~~/~~ physical presence or ___ electronic signature, by BRITTNEY LACY who is personally known to me or produced the following form of identification:



NOTARY PUBLIC

Seal:



My commission expires:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic service using the State of Florida E-Filing Portal, to the following this 23rd of October , 2025.

/s/ Brittney N. Lacy
BRITTNEY N. LACY
Assistant CCRC-South
Fla. Bar No. 116001

Copies provided to:

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**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR PUTNAM COUNTY, FLORIDA**

STATE OF FLORIDA,
Plaintiff,

v.

RICHARD BARRY RANDOLPH,
Defendant.

CASE NO. 1988-1357-CF
EMERGENCY CAPITAL CASE,
DEATH WARRANT SIGNED;
EXECUTION SCHEDULED FOR
NOVEMBER 20, 2025 AT 6:00 PM

**DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS PURSUANT TO
FLORIDA RULE OF CRIMINAL PROCEDURE 3.852(i)**

To: Ricky D. Dixon, Secretary
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399-2500
Attn: Kristen Lonergan

The Defendant, **RICHARD BARRY RANDOLPH**, under imminent threat of execution, by and through undersigned counsel, hereby makes demand of **FLORIDA DEPARTMENT OF CORRECTIONS (DOC)**, pursuant to Article I, Section 24, Florida Constitution and Florida Rule of Criminal Procedure 3.852(i) for all public records pertinent to this case.

1. Mr. Randolph is under a sentence of death and subject to execution by lethal injection pursuant to Section 922.10, Florida Statutes. A death warrant was signed in Mr. Randolph's case on October 21, 2025. His execution has been scheduled for November 20, 2025.

2. Undersigned counsel attests that:

- (a) Counsel has made a timely and diligent search of the records repository;
- (b) Counsel has identified with specificity the public records that are not at the records repository; and,
- (c) The records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

3. Under Rule 3.852, the phrase “public records” is defined as follows: “All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Fla. R. Crim. P. 3.852(b)(1); § 119.011, Fla. Stat. (2018).

4. The requested records are:

- (a) **Procurement of Lethal Chemicals:** Contracts, purchase orders, invoices, and receipts related to the procurement of etomidate, rocuronium bromide, and potassium acetate between March 10, 2023, and the present.¹
- (b) **Manufacturer Guidelines:** Labels and documentation received from manufacturers or suppliers indicating *inter alia* the manufacturing date and shelf life of etomidate, rocuronium bromide, and potassium acetate obtained or possessed by DOC between March 10, 2023, and the present.
- (c) **Maintenance of Lethal Chemicals:** Logs and record books reflecting the storage, inspection, use, and disposal of the etomidate, rocuronium bromide, and potassium acetate obtained or possessed by DOC between March 10, 2023, and the present.
- (d) **Execution Team Qualifications:** Applications and other documentation reflecting the relevant training, education, or licensure currently possessed by the executioners designated to execute Mr. Randolph.
- (e) **Execution Team Training:** Logs, checklists, sign-in sheets, and educational materials used between March 10, 2023, and the present to train execution team members to carry out the lethal injection protocol.
- (f) **Contemporaneous Execution Logs:** Logs, checklists, and records of communications produced by execution teams and supervisors during the executions of the following individuals:

Louis Gaskin (DC# 751166) on 04/12/2023;
Darryl Barwick (DC# 092501) on 05/03/2023;
Duane Owen (DC# 101660) on 06/15/2023;
James Barnes (DC# 071551) on 08/03/2023;
Michael Zack III (DC# 124439) on 10/03/2023;

¹ Secretary Dixon promulgated new lethal injection procedures on February 18, 2025; however, these protocols are nearly identical to the March 10, 2023 procedures. Therefore, for purposes of this request, Mr. Randolph is utilizing March 10, 2023 as the operative date.

Loran Cole (DC# 335421) on 06/29/2024;
James Ford (DC# 763722) on 02/13/2025;
Edward James (DC# 969121) on 03/20/2025;
Michael Tanzi (DC# K04389) on 04/08/2025;
Jeffrey Hutchinson (DC# 124849) on 05/01/2025;
Glen Rogers (DC# 124400) on 05/15/2025;
Anthony Wainwright (DC# 123847) on 06/10/2025;
Thomas Gudinas (DC# 379799) on 06/24/2025;
Michael Bell (DC# 108426) on 07/15/2025;
Edward Zakrzewski (DC# 554000) on 7/31/2025;
Kayle Bates (DC# 088568) on 8/19/2025;
Curtis Windom (DC# 368527) on 8/28/2025;
David Pittman (DC# 351997) on 9/17/2025;
Victor Jones (DC# 420481) on 9/30/2025; and
Samuel Lee Smithers (DC# 124639) 10/14/2025.

- (g) **Post-Execution Reports:** Reports, memoranda, and records of communications related to the executions of the individuals listed *supra* in Paragraph 4(f) and produced by execution team members or supervisors within one week of said executions.
- (h) **Execution Photographs:** Photographs depicting the executions by lethal injection of the individuals listed *supra* in Paragraph 4(f).
- (i) **Execution Videos:** Video recordings depicting the executions by lethal injection of the individuals listed *supra* in Paragraph 4(f).
- (j) **Execution Audio Recordings:** Audio recordings of sounds and communications occurring during the executions by lethal injection of the individuals listed *supra* in Paragraph 4(f).

5. Pursuant to Rule 3.852(i), this Court may order the production of records if the “additional public records are either relevant to the subject matter of a proceeding under Rule 3.851 or appear are reasonably calculated to lead to the discovery of admissible evidence.” Fla. R. Crim. P. 3.852(i)(2)(C). The requested records are relevant to an as-applied challenge to Florida’s lethal injection protocol under the Eighth Amendment’s prohibition against cruel and unusual punishment. *See Bucklew v. Precythe*, 139 S. Ct. 1112 (2019); *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008).

6. Mr. Randolph can show that “the requested records relate to a colorable claim for postconviction relief.” *See Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017). Specifically, an as-applied method-of-execution claim under the Eighth Amendment provides a valid basis for postconviction relief if “the method presents a risk that is ‘*sure or very likely* to cause serious illness and needless suffering,’ and give rise to ‘sufficiently *imminent* dangers.’” *Glossip*, at 877. Under this standard, Mr. Randolph can prevail if he shows “an ‘objectively intolerable risk of harm’ that prevents prison officials from pleading that they were ‘subjectively blameless for purposes of the Eighth Amendment.’” *Id.*

7. Undersigned counsel acknowledges that the Florida Supreme Court has upheld the constitutionality of Florida’s “etomidate protocol.” *Asay*, 224 So. 3d at 700-702. In subsequent decisions, the Florida Supreme Court has found that requests for lethal injection records filed by other defendants under warrant were unrelated to colorable claims. *Tanzi v. State*, 407 So. 3d 385, 391-92 (Fla. 2025). Mr. Randolph is entitled to a full and fair opportunity to challenge the lethal injection protocol as it applies to him and his current physiological condition. The U.S. Supreme Court has recognized that such a challenge is inherently fact-intensive because “distinguishing between constitutionally permissible and impermissible degrees of pain . . . is a *necessarily* comparative exercise.” *See Bucklew*, 587 U.S. at 136. This “comparative exercise” cannot be performed “by examining the State’s proposed method in a vacuum.” *See id.* Accordingly, Mr. Randolph must have access to the only records that would allow him to: (a) evaluate the current lethal injection protocol, (b) evaluate potential alternative methods of execution, and (c) perform a meaningful comparative analysis as required under *Bucklew*. Indeed, the Florida Supreme Court recently noted, “[w]e have generally held that method-of-execution claims are procedurally barred unless the method itself changes or *new facts about the current method arise during a prior*

execution.” Rogers v. State, 409 So. 3d 1257, 1267 (Fla. 2025). Thus, it is clear that facts about prior executions are relevant and, often, dispositive. Having conditioned threshold and merits issues on proof of such facts, the courts cannot wholesale deny Mr. Randolph access to them; else, the availability of relief under the Eighth Amendment is illusory.

8. The requested records are not overly broad or unduly burdensome. Each request is delimited as to time and subject matter to cover only records produced in preparation for Mr. Randolph’s scheduled execution or in close proximity to other executions performed using a materially indistinguishable lethal injection protocol. Further, undersigned counsel has provided the DOC identification numbers and execution dates of the individuals about whom records are requested to facilitate the identification and production of responsive records. In light of the substantial interests at stake and the tailored scope of this request, the burdens imposed by this request are reasonable.

9. Mr. Randolph can show “good cause as to why [this] public records request was not made until after the death warrant was signed.” *See Asay*, 224 So. 3d at 700. Because the Governor exercises complete control over the timing of execution warrants and provides only 30 days notice of impending executions, Mr. Randolph could not know whether his physical health at the time of his execution would be present serious risks. Further, many of the records requested, particularly those related to other executions, were created within the past few months. In fact, records related to the most recent executions are the most probative as to risk factors currently present in the lethal injection protocol.

10. Mr. Randolph asks that the records requested be copied, indexed, and delivered to the records repository by October 28, 2025 at 10:00 a.m., pursuant to this Court’s scheduling Order, with a courtesy copy delivered via email to undersigned counsel.

WHEREFORE, Mr. Randolph respectfully requests this Court to order the **FLORIDA DEPARTMENT OF CORRECTIONS** to produce the records described above.

Respectfully submitted,

/s/ James L. Driscoll
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BRITTNEY N. LACY
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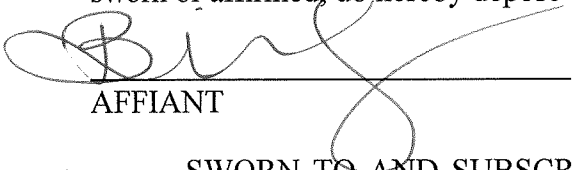
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COUNSEL FOR MR. RANDOLPH

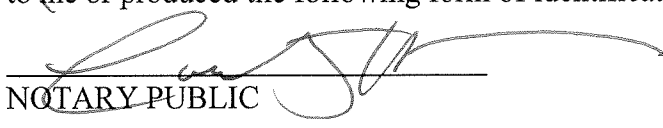
AFFIDAVIT OF COLLATERAL COUNSEL

I, Brittney N. Lacy, as an Assistant Capital Collateral Counsel-South, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.



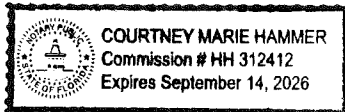
AFFIANT

SWORN TO AND SUBSCRIBED before me, the undersigned authority, by means of ~~/~~ physical presence or ___ electronic signature, by BRITTNEY LACY who is personally known to me or produced the following form of identification:



NOTARY PUBLIC

Seal:



My commission expires:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic service using the State of Florida E-Filing Portal, to the following this 23rd of October , 2025.

/s/ Brittney N. Lacy
BRITTNEY N. LACY
Assistant CCRC-South
Fla. Bar No. 116001

Copies provided to:

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**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR PUTNAM COUNTY, FLORIDA**

STATE OF FLORIDA,
Plaintiff,

v.

RICHARD BARRY RANDOLPH,
Defendant.

CASE NO. 1988-1357-CF
EMERGENCY CAPITAL CASE,
DEATH WARRANT SIGNED;
EXECUTION SCHEDULED FOR
NOVEMBER 20, 2025 AT 6:00 PM

DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS
PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.852(i)

To: Office of the Medical Examiner, District 8
3217 SW 47th Avenue
Gainesville, FL 32608

The Defendant, **RICHARD BARRY RANDOLPH**, under imminent threat of execution, by and through undersigned counsel, hereby makes demand of the **OFFICE OF THE MEDICAL EXAMINER, DISTRICT EIGHT**, pursuant to Article I, Section 24, of the Florida Constitution and Florida Rule of Criminal Procedure 3.852(i) for all public records pertinent to this case.

1. Mr. Randolph is under a sentence of death and subject to execution by lethal injection pursuant to Section 922.10, Florida Statutes. A death warrant was signed in Mr. Randolph's case on October 21, 2025. His execution has been scheduled for November 20, 2025.

2. Undersigned counsel attests that:

- (a) Counsel has made a timely and diligent search of the records repository;
- (b) Counsel has identified with specificity the public records that are not at the records repository; and,
- (c) The records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

3. Under Rule 3.852, the phrase “public records” is defined as follows: “All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Fla. R. Crim. P. 3.852(b)(1); § 119.011, Fla. Stat. (2018).

4. The requested records are:

(a) **Autopsy Reports:**¹ Reports of post-mortem examinations of the following individuals performed by the Office of the Medical Examiner, District 8:

Louis Gaskin (DC# 751166) on 04/12/2023;
Darryl Barwick (DC# 092501) on 05/03/2023;
Duane Owen (DC# 101660) on 06/15/2023;
James Barnes (DC# 071551) on 08/03/2023;
Michael Zack III (DC# 124439) on 10/03/2023;
Loran Cole (DC# 335421) on 06/29/2024;
James Ford (DC# 763722) on 02/13/2025;
Edward James (DC# 969121) on 03/20/2025;
Michael Tanzi (DC# K04389) on 04/08/2025;
Jeffrey Hutchinson (DC# 124849) on 05/01/2025;
Glen Rogers (DC# 124400) on 05/15/2025;
Anthony Wainwright (DC# 123847) on 06/10/2025;
Thomas Gudinas (DC# 379799) on 06/24/2025;
Michael Bell (DC# 108426) on 07/15/2025;
Edward Zakrzewski (DC# 554000) on 7/31/2025;
Kayle Bates (DC# 088568) on 8/19/2025;
Curtis Windom (DC# 368527) on 8/28/2025;
David Pittman (DC# 351997) on 9/17/2025;
Victor Jones (DC# 420481) on 9/30/2025; and
Samuel Lee Smithers (DC# 124639) 10/14/2025.

(b) **Additional Autopsy Records:** Photographs; toxicology reports; laboratory reports; radiological images; and notes taken during the post-mortem examinations of the individuals listed in Paragraph 4(a).

¹ The provisions of Section 406.135, Florida Statutes (2018), providing for the confidentiality of autopsy photographs and video and audio recordings does not apply to criminal proceedings. § 406.135(7), Fla. Stat. (2018).

- (c) **Autopsy Protocols:** The autopsy protocols of the Office of the Medical Examiner, District 8, that were in effect at the time of the autopsies of the individuals listed in paragraph 4(a).

5. Pursuant to Rule 3.852(i), this Court may order the production of records if the “additional public records are either relevant to the subject matter of a proceeding under Rule 3.851 or appear are reasonably calculated to lead to the discovery of admissible evidence.” Fla. R. Crim. P. 3.852(i)(2)(C). The requested records are relevant to an as-applied challenge to Florida’s lethal injection protocol under the Eighth Amendment’s prohibition against cruel and unusual punishment. *See Bucklew v. Precythe*, 139 S. Ct. 1112 (2019); *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008).

6. Mr. Randolph can show that “the requested records relate to a colorable claim for postconviction relief.” *See Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017). Specifically, an as-applied method-of-execution claim under the Eighth Amendment provides a valid basis for postconviction relief if “the method presents a risk that is ‘*sure or very likely* to cause serious illness and needless suffering,’ and give rise to ‘sufficiently *imminent* dangers.’” *Glossip*, at 877. Under this standard, Mr. Randolph can prevail if he shows “an ‘objectively intolerable risk of harm’ that prevents prison officials from pleading that they were ‘subjectively blameless for purposes of the Eighth Amendment.’” *Id.*

7. Undersigned counsel acknowledges that the Florida Supreme Court has upheld the constitutionality of Florida’s “etomidate protocol.” *Asay*, 224 So. 3d at 700-702. In subsequent decisions, the Florida Supreme Court has found that requests for lethal injection records filed by other defendants under warrant were unrelated to colorable claims. *Tanzi v. State*, 407 So. 3d 385, 391-92 (Fla. 2025). Mr. Randolph is entitled to a full and fair opportunity to challenge the lethal injection protocol as it applies to him and his current physiological condition. The U.S. Supreme Court has recognized that such a challenge is inherently fact-intensive because “distinguishing

between constitutionally permissible and impermissible degrees of pain . . . is a *necessarily* comparative exercise.” *See Bucklew*, 587 U.S. at 136. This “comparative exercise” cannot be performed “by examining the State’s proposed method in a vacuum.” *See id.* Accordingly, Mr. Randolph must have access to the only records that would allow him to: (a) evaluate the current lethal injection protocol, (b) evaluate potential alternative methods of execution, and (c) perform a meaningful comparative analysis as required under *Bucklew*. Indeed, the Florida Supreme Court recently noted, “[w]e have generally held that method-of-execution claims are procedurally barred unless the method itself changes or *new facts about the current method arise during a prior execution.*” *Rogers v. State*, 409 So. 3d 1257, 1267 (Fla. 2025). Thus, it is clear that facts about prior executions are relevant and, often, dispositive. Having conditioned threshold and merits issues on proof of such facts, the courts cannot wholesale deny Mr. Randolph access to them; else, the availability of relief under the Eighth Amendment is illusory.

8. The requested records are not overly broad or unduly burdensome. They have been narrowly tailored to include only those records related to the postmortem examinations of the individuals executed under using the current, or a material indistinguishable, lethal injection protocol. Each request is delimited as to time and subject matter to cover only records produced in preparation for Mr. Randolph’s scheduled execution or in close proximity to other executions performed using a materially indistinguishable lethal injection protocol. Further, undersigned counsel has provided the DOC identification numbers and execution dates of the individuals about whom records are requested to facilitate the identification and production of responsive records. In light of the substantial interests at stake and the tailored scope of this request, the burdens imposed are reasonable.

9. Mr. Randolph can show “good cause as to why [this] public records request was not made until after the death warrant was signed.” *See Asay*, 224 So. 3d at 700. Because the Governor exercises complete control over the timing of execution warrants and provides only 30 days notice of impending executions, Mr. Randolph could not know whether his physical health at the time of his execution would present serious risks. Further, many of the records requested, particularly those related to other executions, were created within the past few months. In fact, records related to the most recent executions are the most probative as to risk factors currently present in the lethal injection protocol.

10. Mr. Randolph asks that the records requested be copied, indexed, and delivered to the records repository consistent with the timeline established by the trial court with a courtesy copy delivered via email to undersigned counsel.

WHEREFORE, Mr. Randolph respectfully requests this Court to order the **OFFICE OF THE MEDICAL EXAMINER, DISTRICT 8**, to produce the records described above.

Respectfully submitted,

/s/ James L. Driscoll
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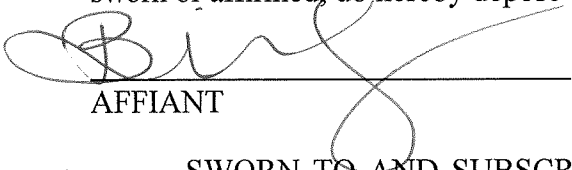
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COUNSEL FOR MR. RANDOLPH

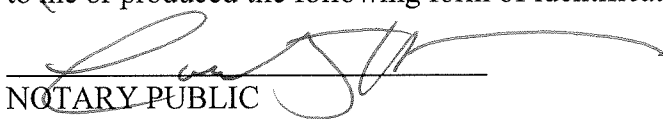
AFFIDAVIT OF COLLATERAL COUNSEL

I, Brittney N. Lacy, as an Assistant Capital Collateral Counsel-South, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.



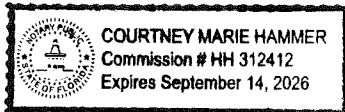
AFFIANT

SWORN TO AND SUBSCRIBED before me, the undersigned authority, by means of ~~/~~ physical presence or ___ electronic signature, by BRITTNEY LACY who is personally known to me or produced the following form of identification:



NOTARY PUBLIC

Seal:



My commission expires:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic service using the State of Florida E-Filing Portal, to the following this 23rd of October , 2025.

/s/ Brittney N. Lacy
BRITTNEY N. LACY
Assistant CCRC-South
Fla. Bar No. 116001

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