*** CAPITAL CASE ***

No. _____

IN THE

Supreme Court of the United States

FRANK A. WALLS,

Petitioner,

v.

RICKY D. DIXON, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

EXECUTION SCHEDULED FOR DECEMBER 18, 2025, AT 6:00 P.M.

Linda McDermott
Chief, Capital Habeas Unit
Sean Gunn
Counsel of Record
Michelle Ward
Bailey Ellicott
Federal Public Defender
Northern District of Florida
227 N. Bronough St., Suite 4200
Tallahassee, FL 32301
(850) 942-8818
Sean_Gunn@fd.org

Counsel for Petitioner

CAPITAL CASE
QUESTIONS PRESENTED

Just 21 days before Governor DeSantis signed Mr. Walls's death warrant, on October 28, 2025, records surfaced implicating Florida's execution process during the last year of eighteen record-setting, breakneck-speed executions. Those records revealed that, over the course of the year, execution officials in Florida increasingly shunned their own lethal injection protocol, instead barreling forward through executions while preparing lower dosages of drugs than required, administering expired drugs, and preparing unauthorized drugs altogether. These records raised grave concerns that Mr. Walls, who is already medically vulnerable and had been diagnosed four months earlier with conditions known to cause complications with lethal injection, could suffer a torturous death in violation of the Eighth Amendment. One week after his death warrant was signed, Mr. Walls filed an as-applied method-of-execution suit requesting an injunction under 42 U.S.C. § 1983. Mr. Walls proffered the recently discovered execution records, combined with the findings regarding his medical conditions as the basis for his challenge.

The district court refused to review the substance of Mr. Walls's claims or his evidentiary proffer, or even hold a hearing on his complaint's request for a preliminary injunction. The district court conceded that "Walls has presented evidence demonstrating that he may well suffer a cruel death by experiencing a feeling akin to drowning." NDFL-ECF 22 at 10-11. But without analyzing any of the four established factors for a stay or injunction, including the likelihood of success on the merits, the district court summarily denied Mr. Walls a stay of execution solely

on the grounds of undue delay. The Eleventh Circuit upheld the stay denial, holding that there was no requirement that any federal court give any consideration to the serious allegations and evidence in Mr. Walls's complaint.

The questions presented are:

1. Whether the Eleventh Circuit erred in denying Mr. Walls review, based solely on undue delay, despite the primary basis for his challenge—records reflecting Florida's negligent administration of its lethal injection protocol—not surfacing until 21 days before his death warrant was signed.

2. Whether the recent disclosure of consistent and consequential maladministration of the lethal injection protocol, which still employs a paralytic as the second drug, combined with a severe decline in Mr. Walls's cardio-pulmonary health, requires scrutiny by the federal courts, particularly where Florida state officials refuse to pause executions or conduct any review of such maladministration's implications for the Eighth Amendment.

LIST OF DIRECTLY RELATED PROCEEDINGS

Proceedings Below Under 42 U.S.C. § 1983:

Caption: *Walls v. Dixon, et al.*
Court: United States District Court, Northern District of Florida
Docket: 4:25-cv-488
Decided: December 9, 2025 (Motion to Stay Denied)
December 10, 2025 (Motion for Expedited Discovery Denied)
Published: N/A

Caption: *Walls v. Secretary, Florida Department of Corrections, et al.*
Court: United States Court of Appeals, Eleventh Circuit
Docket: 25-14302
Decided: December 13, 2025
Published: No. 25-14302 WL 3619640 (11th Cir. Dec. 13, 2025)

Underlying Criminal and Collateral Proceedings:

Direct Review

Caption: *Walls v. State*
Court: Supreme Court of Florida
Docket: SC60-73261
Decided: April 11, 1991
Published: 580 So. 2d 131 (Fla. 1991)

Caption: *Walls v. State*
Court: Supreme Court of Florida
Docket: SC60-80364
Decided: July 7, 1994
Published: 641 So. 2d 381 (Fla. 1994)

State Collateral Review

Caption: *State v. Walls*
Court: Circuit Court of the First Judicial Circuit, Okaloosa County, Florida
Docket: 1987-CF-856
Decided: January 27, 2003 (Initial State Postconviction Motion)
Published: N/A

Caption: *Walls v. State*
Court: Supreme Court of Florida
Docket: SC03-633; SC03-1955

Decided: February 9, 2006
Published: 926 So. 2d 1156 (Fla. 2006)

Caption: *State v. Walls*
Court: Circuit Court of the First Judicial Circuit, Okaloosa County, Florida
Docket: 1987-CF-856
Decided: July 18, 2007 (Motion to Vacate Based on Mental Retardation)
Published: N/A

Court: *Walls v. State*
Docket: SC07-2007
Decided: October 31, 2008
Published: 3 So. 3d 1248 (Fla. 2008)

Caption: *State v. Walls*
Court: Circuit Court of the First Judicial Circuit, Okaloosa County, Florida
Docket: 1987-CF-856
Decided: July 15, 2015 (Motion to Vacate Based on *Hall v. Florida*)
Published: N/A

Caption: *Walls v. State*
Court: Supreme Court of Florida
Docket: SC15-1449
Decided: October 20, 2016
Published: 213 So. 3d 340 (Fla. 2016)

Caption: *State v. Walls*
Court: Circuit Court of the First Judicial Circuit, Okaloosa County, Florida
Docket: 1987-CF-856
Decided: February 20, 2017
Published: N/A

Caption: *Walls v. State*
Court: Supreme Court of Florida
Docket: SC17-959
Decided: January 22, 2018
Published: 238 So. 3d 96 (Fla. 2018)

Caption: *State v. Walls*
Court: Circuit Court of the First Judicial Circuit, Okaloosa County, Florida
Docket: 1987-CF-856
Decided: November 22, 2021 (On Remand for Hearing Under *Hall v. Florida*)
Published: N/A

Caption: *Walls v. State*
Court: Supreme Court of Florida
Docket: SC22-72
Decided: February 16, 2023
Published: 361 So. 3d 231 (Fla. 2023)

Caption: *State v. Walls*
Court: Circuit Court of the First Judicial Circuit, Okaloosa County, Florida
Docket: 1987-CF-856
Decided: December 3, 2025
Published: N/A

Caption: *Walls v. State*
Court: Supreme Court of Florida
Docket: SC25-1915; SC25-1917
Decided: December 11, 2025
Published: __ So. 3d __, 2025 WL 3550358 (Fla. Dec. 11, 2025)

Federal Habeas Review

Caption: *Walls v. McNeil*
Court: United States District Court, Northern District of Florida
Docket: 3:06-cv-237
Decided: September 30, 2009
Published: 2009 WL 3187066 (N.D. Fla. Sep. 30, 2009)

Caption: *Walls v. Buss*
Court: United States Court of Appeals, Eleventh Circuit
Docket: 09-15706
Decided: September 28, 2011
Published: 658 F.3d 1274 (11th Cir. 2011)

Certiorari Review

Caption: *Walls v. Florida*
Court: Supreme Court of the United States
Docket: 94-7005
Decided: January 23, 1995
Published: 513 U.S. 1130 (Cert. Denied)

Caption: *Walls v. Tucker*
Court: Supreme Court of the United States
Docket: 11-8965
Decided: April 30, 2012

Published: 566 U.S. 976 (Cert. Denied)

Caption: *Florida v. Walls*
Court: Supreme Court of the United States
Docket: 16-1518
Decided: October 2, 2017
Published: 138 S. Ct. 165 (Cert. Denied)

Caption: *Walls v. Florida*
Court: Supreme Court of the United States
Docket: 17-9510
Decided: October 1, 2018
Published: 139 S. Ct. 185 (Cert. Denied)

Caption: *Walls v. Florida*
Court: Supreme Court of the United States
Docket: 22-7866
Decided: October 2, 2023
Published: 144 S. Ct. 174 (Cert. Denied)

Caption: *In Re Frank Walls, Petitioner*
Court: Supreme Court of the United States
Docket: 22-7897
Decided: October 2, 2023
Published: 144 S. Ct. 253 (Habeas Denied)

Caption: *Walls v. Florida*
Court: Supreme Court of the United States
Docket: 25-6357
Decided: Pending
Published: Pending

Related Proceedings Under 42 U.S.C. § 1983:

Caption: *Walls v. Dixon, et al.*
Court: United States District Court, Northern District of Florida
Docket: 4:25-cv-504
Decided: December 15, 2025
Published: N/A

TABLE OF CONTENTS

INDEX TO APPENDIX

TABLE OF AUTHORITIES

Cases:

Statutes:

Petitioner Frank A. Walls respectfully requests a writ of certiorari to review the decision of the Eleventh Circuit.

DECISION BELOW

The Eleventh Circuit's order denying Mr. Walls's emergency motion for a stay of execution is published at *Walls v. Sec'y, Fla. Dep't of Corr.,* No. 25-14302, 2025 WL 3619640 (11th Cir. Dec. 13, 2025), and is reproduced in the Appendix (App.) at A1.

JURISDICTION

On December 13, 2025, the Eleventh Circuit denied Mr. Walls's motion for stay of execution. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment provides:

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

42 U.S.C. § 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

STATEMENT OF THE CASE

Frank Walls is scheduled to be executed by the State of Florida on December 18, 2025. Twenty-one days before Governor DeSantis signed his death warrant, on

October 28, 2025, counsel received alarming records showing that, over the course of an unprecedented number of Florida executions in 2025, corrections officials either willfully or negligently deviated from their drug protocol on numerous occasions.

The records were a disturbing addition to an ongoing investigation into Mr. Walls's particularized risks from Florida's anomalous three-drug lethal injection protocol. Five months ago, before his death warrant was signed, Mr. Walls had begun to exhibit troubling physical symptoms, prompting counsel to retain a medical expert to examine him. That examination revealed serious deteriorating medical conditions that, when exposed to Respondents' protocol, will likely result in Mr. Walls suffering a torturous execution akin to drowning. When those conditions are considered in the context of the new records, Mr. Walls is at severe risk of unconstitutional suffering.

Accordingly, one week after the Governor signed his death warrant, Mr. Walls promptly raised these concerns in a § 1983 action in the district court. But the district court refused to consider the merits at all, despite recognizing that "Walls has presented evidence demonstrating that he may well suffer a cruel death by experiencing a feeling akin to drowning as a result of pulmonary edema." NDFL-ECF 22 at 10-11. The Eleventh Circuit followed suit and summarily denied Mr. Walls a stay of execution based exclusively on the concept of undue delay, without considering any of the stay factors or serious allegations and evidence in Mr. Walls's complaint.

I. Factual background

Florida's current method of execution is a three-drug lethal injection protocol employing successive intravenous injections of 200 milligrams of etomidate, a

sedative, followed by 1000 milligrams of rocuronium bromide, a paralytic agent, and 240 milliequivalents of potassium acetate, which stops the heart. NDFL-ECF 1 at ¶ 21. Respondent Ricky Dixon, the Secretary of the Florida Department of Corrections ("DOC"), last certified DOC's ability to carry out the protocol with regard to any prisoner, without contingencies for any varying medical concerns, on February 18, 2025. *Id.* at ¶ 11. Beginning five days later, Florida embarked on what has become a record-setting number and pace of executions in 2025.

Florida's ability to execute at this breakneck speed, while maintaining the standards in its lethal injection protocol, has been severely called into question by the execution records presented by Mr. Walls in this action. And while Respondent has touted that each execution has been without complications, that assurance is impossible to provide in light of Florida's use of a paralytic in its protocol, which masks any internal suffering by the prisoner or other complications occurring during the remainder of the execution.

A. Discovery of execution records

On October 28, 2025, counsel received DOC records demonstrating that, in practice, Respondents' application of the protocol is consistently rife with error. NDFL-ECF 1 at ¶ 78; App. A3. The records, including numerous 2025 execution logs, revealed a wide range of errors such as habitual inaccuracies in documenting when drugs are removed from storage, indicating that their records are inaccurate and being filled out *after* executions take place, the removal and/or preparation of the wrong quantity of certain drugs before past executions, documented improvisation

and usage of drugs not itemized in the protocol, and even documented use of expired etomidate during past executions. NDFL-ECF No. 1 at ¶¶ 77-84; App. A3.

For example, while Michael Bell was executed on July 15, 2025, the DOC log sheets reflect that the rocuronium bromide and potassium acetate were removed the next day. And there is no entry indicating that etomidate was removed for Mr. Bell's execution at all, implicating the source and quantity of drug used. App. A3 at 5, 7. Respondents recorded that they removed all three drugs used in Thomas Gudinas's execution on June 25, 2025, despite the execution taking place on June 24. *Id.* at 4, 5, 7. For Anthony Wainwright's execution, Respondents inexplicably waited two days to record the drugs used. *Id.*

The records also show that Respondents consistently prepare lower dosages of lethal injection drugs than called for in the protocol. On June 25, 2025, a date corresponding to Gudinas's execution, the drug logs only show 10 x 10ml vials of rocuronium bromide were removed (1000mg), suggesting that Respondents only prepared half of the drug, in violation of the protocol. *Id.* at 7. This happened again during the Wainwright execution, where Respondents only removed 7 vials of potassium acetate, despite the protocol calling for 12. *Id.* at 5.

Other deviations include a documented tendency to improvise, as the logs show that during the executions of Edward James and Michael Tanzi, Respondents administered lidocaine, an anesthetic drug not called for in the protocol. *Id.* at 27.

Finally, Respondents indicate on the logs that they used etomidate with an expiration date of January 31, 2025, during the executions of Victor Jones on

September 30, David Pittman on September 17, Curtis Windom on August 28, and Kayle Bates on August 19, 2025. *Id.* at 25.

Prior to counsel receiving the records on October 28, 2025, there was no indication that there were any internal errors in Respondents' ability to carry out the protocol as written. The records of maladministration particularly alarmed Mr. Walls's counsel because of Mr. Walls's recently diagnosed, serious medical issues.

B. Discovery of Mr. Walls's medical issues

The troubling records accelerated counsel's already ongoing investigation into Mr. Walls's particularized risks from Florida's lethal injection protocol, which began in July 2025 when Mr. Walls exhibited serious signs of deteriorating health. *Id.* at ¶¶ 32-33. He began experiencing dizzy spells that caused him to feel as if he was hyperventilating. *Id.* at ¶ 32. He also had observable difficulty speaking without stuttering and struggled to catch his breath after walking only short distances. *Id.* Counsel contacted Dr. Joel Zivot, M.D., and requested that he conduct a physical examination of Mr. Walls. *Id.* at ¶ 33. After reviewing Mr. Walls's medical records, Dr. Zivot examined him on July 23, 2025, and expressed grave concern about his medical vulnerabilities if Respondents execute him with their protocol. *Id.*; App. A4.

Dr. Zivot's evaluation revealed an array of severe medical conditions that indicate poor respiratory and cardiac functioning. Dr. Zivot memorialized Mr. Walls's declining health symptoms and the implications if he were to be executed under the current protocol in a September 15, 2025, affidavit. App. A4. Dr. Zivot reported that Mr. Walls is a 354-pound man with chronic physical ailments consisting of

"hypertension, hyperlipidemia (elevated cholesterol), a thyroid disorder requiring thyroid hormone replacement, gastrointestinal reflux, obesity, obstructive sleep apnea requiring the nightly use of a CPAP machine." App. A4 at 2. Mr. Walls's blood-oxygen saturation—an important measure of his health—also declined sharply from a healthy range, to a dangerous 87-92%. *Id.* at 3. This drop is particularly concerning because Mr. Walls uses a CPAP machine nightly to aid breathing. *Id.* Dr. Zivot noted this significant decrease likely "reflects worsening chronic pulmonary insufficiency related to his long-standing obstructive lung disease over this time." *Id.* Severely low blood oxygen saturation explained Mr. Walls's symptoms of dizziness and confusion. Medical professionals normally advise those with blood oxygen below 88% to seek immediate medical attention. NDFL-ECF 1 at ¶ 36. In this case, Dr. Zivot found that this significant decrease, in light of Mr. Walls's use of a CPAP machine, "represents a severe decline" in Mr. Walls's health. App. A4 at 4.

Dr. Zivot concluded that Mr. Walls's health conditions guarantee a particularized vulnerability to pulmonary edema, a known complication of the etomidate-based protocol. NDFL-ECF 1 at ¶¶ 54-59. Mr. Walls's failing cardiopulmonary health indicates that his organs are incapable of withstanding the potent dose of etomidate, the first drug in Respondents' protocol, and will break down quickly. *Id.* at ¶ 38. Mr. Walls is particularly likely to experience this outcome if the protocol is administered to him because his poor breathing and low oxygen saturation create a chemical climate in his body that is conducive to pulmonary hypertension and heart failure. *Id.* at ¶ 37. This results in a cascade of organ failure resulting in a

near-certain outcome of death by choking on the resultant backed up blood and fluid, meaning Mr. Walls will experience, and die from, pulmonary edema. *Id.*

However, the risk of a torturous execution for Mr. Walls further increased, implicating Eighth Amendment concerns, when his particularized medical conditions were considered alongside the October 2025 discovery of Respondents' documented pattern of negligence with, or disregard for, their own lethal injection protocol. These twin concerns came to a head just weeks before Governor Ron DeSantis signed Mr. Walls's death warrant on November 18, 2025, setting his execution for 30 days later.

II. Procedural background

One week after his death warrant was signed, Mr. Walls filed suit against corrections officials under § 1983 and requested a preliminary injunction, arguing that executing him using the combination of Florida's current lethal injection protocol and faulty practices would violate the Eighth Amendment due to "a demonstrated risk of severe pain" that is "substantial when compared to the known and available alternatives." *Glossip v. Gross*, 576 U.S. 863, 877-78 (2015). In connection with his as-applied challenge, Mr. Walls sought a preliminary injunction preventing Respondents from executing him as scheduled. Mr. Walls proffered his medical expert's written findings, and the recently obtained execution records, and requested an evidentiary hearing on his preliminary injunction request.

The district court acknowledged that "Walls has presented evidence demonstrating that he may well suffer a cruel death by experiencing a feeling akin to drowning." NDFL-ECF 22 at 10-11. But the court refused to review Mr. Walls's

evidence in any way. The district court, without holding a hearing, denied a preliminary injunction and a stay of execution on the sole ground that it found Mr. Walls waited too long to file. The Eleventh Circuit followed suit, denying Mr. Walls a stay without considering the merits of his claim or his request for an injunction hearing. If the decision below is allowed to stand, Mr. Walls will be put to death without ever having an opportunity for review of his allegations, including the dangers posed to him by the numerous, serious errors that are documented in Respondents' own records.

REASONS FOR GRANTING THE WRIT

Mr. Walls diligently filed his suit and evidentiary proffer in the district court just weeks after discovering the alarming DOC execution records. Within one week of his death warrant being signed, Mr. Walls filed his comprehensive § 1983 complaint, arguing that he faces "a demonstrated risk of severe pain" that is "substantial when compared to the known and available alternatives." *Glossip v. Gross*, 576 U.S. 863, 877-78 (2015). This filing was not possible until after October 2025, when the records were received.

Despite meeting all pleading requirements and providing a substantial factual basis for his claim, none of the courts below so much as considered the complaint's likelihood of success on the merits—the key factor for any stay-of-execution motion. Both the district court and the Eleventh Circuit instead arrived at a conclusory determination that Mr. Walls simply waited too long to bring suit (though both courts conspicuously failed to specify when suit *should* have been brought).

This Court should grant a stay of execution and a writ of certiorari to review those decisions. The Eleventh Circuit's finding that Mr. Walls unduly delayed was factually and legally wrong because the primary component of his claim—the execution logs—were uncovered just weeks before his suit was filed. And the Eleventh Circuit wrongly denied a stay based on undue delay alone, without allowing a hearing on disputed facts regarding timing, or conducting even a cursory review of Mr. Walls's substantive claim. This Court's intervention is warranted.

I. The Eleventh Circuit wrongly found undue delay despite the primary component of Mr. Walls's claim—the execution logs—being uncovered in October 2025, just weeks before suit was filed

Even though a court may deny a stay when presented with clearly dilatory, speculative, or meritless grounds, or when there is an obvious attempt at manipulative litigation, that is not Mr. Walls's case.

The Eleventh Circuit's perfunctory denial completely ignores that a substantial factual basis for Mr. Walls's suit occurred in October 2025, less than a month before the signing of his death warrant, and less than six weeks before he filed his complaint and supporting evidence in federal court. Instead, the court of appeals treated Mr. Walls's claim as "presumptively suspect" simply because the Governor signed a death warrant in the intervening days between counsel's discovery of the records and the filing of the § 1983 complaint. *See Bucklew*, 587 U.S. at 172 (Sotomayor, J., dissenting). The court of appeals did not provide any justification for disregarding the relevance of the records when denying Mr. Walls a stay. Because this timing logic strains reason, it should be reviewed by this Court.

In assessing delay, the Eleventh Circuit ignored what Mr. Walls made clear: his Eighth Amendment claim relies on two *combined* factors: (1) Respondents' pattern of maladministration of the protocol, discovered in October 2025, and (2) Mr. Walls's deteriorated health, culminating in a troubling lethal-injection prognosis outlined in Dr. Zivot's September affidavit. Mr. Walls alleged that these two factors, *taken together*, increase the risk of a severely painful outcome during his execution. *See* NDFL-ECF 13 at 3-4; *see also King v. Parker*, 467 F. Supp. 3d 569, 573 (M.D. Tenn. 2020) (coupling claim regarding maladministration of lethal injection protocol with the risk of pain in light of plaintiff's health issues sufficient, taken together, to survive summary judgment). As this Court has held, § 1983 claims accrue when the plaintiff "has a complete and present cause of action," which occurs when the plaintiff can "file suit and obtain relief." *Wallace v. Kato*, 549 U.S. 384, 388 (2007). Inexplicably, the role that the October records play in the timing analysis has never been addressed.

While the Eleventh Circuit noted that "complications arising from drugs used in Florida's protocol have been well-documented for years," CA11-ECF 10-1 at 7, that again demonstrates the court's improper failure to engage with the merits of what Mr. Walls presented, which is a narrow, fact-specific allegation pertaining to issues that were only revealed in October, when Mr. Walls received the records documenting as much.[1] Indeed, the records Mr. Walls references span through September 30, 2025.

[1] Other jurisdictions have responded to similar errors in administration by pausing executions and investigating the source of the negligence. In Oklahoma, after a series of mistakes in drug procurement, storage, and preparation of lethal injection drugs came to light, a grand jury was convened to investigate the state's adherence to its own protocol, particularly its record keeping requirements. These violations

Considering the close proximity of the receipt of the DOC records and the signing of the death warrant, it is nonsensical to accuse Mr. Walls of delay. While Mr. Walls noted sensations of hyperventilation and near-fainting in July and received Dr. Zivot's written opinion in mid-September, due diligence still required counsel to thoroughly investigate the basis of Mr. Walls's complaint before filing one. *See Wallace,* 549 U.S. at 388. In fact, it was due diligence that led to the discovery of the records on October 28. Mr. Walls was still actively investigating his claim when his warrant was signed in November. The nexus between the records and the medical aspect of Mr. Walls's as-applied challenge was not acknowledged by the lower courts.

The Eleventh Circuit refused to consider the near-certain likelihood of maladministration, or the impact of the protocol on Mr. Walls given his rapidly deteriorating lungs and heart. And in their pleadings, Respondents also conspicuously failed to address their own negligence that is apparent in the DOC records, stating that they would not "address the protocol-deviation aspects of Walls's argument to avoid becoming mired in factual issues that cannot be fully resolved at [that stage] of the proceedings." CA11-ECF 8 at 13, n.2. Indeed, aside from the district court's casual notation that "Walls has presented evidence demonstrating he may well suffer a cruel death by experiencing a feeling akin to drowning as the result of

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ultimately led to a six-year hiatus in executions in the state. NDFL-ECF 1 at ¶ 90. And in Tennessee, after a "technical oversight" in its execution protocol was discovered, Governor Bill Lee ordered a pause and "independent review' of all executions in the state in 2022. After these findings, Tennessee did not carry out an execution for three years, while the state worked on an overhaul of its "tunnel vision, result oriented lens." *Id.* at ¶ 91 (citing Butler Snow LLP, *Tenn. Lethal Injection Protocol Investigation: Rep. and Findings* (Dec. 13, 2022)).

pulmonary edema," NDFL-ECF 22 at 10-11, there has been no merits assessment of Mr. Walls's claim.

Respondents even insisted in the Eleventh Circuit that no Justice of this Court has any concerns with Florida's execution protocol, specifically pointing out that some of this Court's Justices have dissented with respect to executions in other states, but not in Florida. *See* CA11-ECF 8 at 30-31 (citing *Barber v. Ivey*, 143 S. Ct. 2545, 2545-46 (2023) (Sotomayor, J., dissenting); *Boyd v. Hamm*, No. 25A457, 2025 WL 2984339 at * 1-5 (2025) (Sotomayor, J., dissenting); and *Baze v. Rees*, 553 U.S. 120 (2008) (Ginsburg, J., dissenting)). This Court should correct Respondents' misimpression that it approves of Florida's negligent lethal injection practices by implication.

At a minimum, the district court could have held a hearing on Mr. Walls's request for a preliminary injunction, given that there are numerous factual disputes still outstanding in this case, including as to delay. For one, the question of when Mr. Walls's medical claims ripened to the level of invoking the Eighth Amendment is an intensive, fact-based question that was hastily disposed of without any evidentiary inquiry. The lower court simply pointed to prior diagnostic labels as evidence of delay, ignoring that medical conditions exist on a spectrum of severity, are never static, and, if they do not resolve, tend to worsen over time. Indeed, as Mr. Walls alleges, prior to July, his health had not yet reached a tipping point that would have implicated a constitutionally unacceptable risk of needless suffering.[2]

[2] Further contributing to the timing of Mr. Walls's medical claim, Dr. Zivot conducted review of over 3,000 pages of medical records from Mr. Walls's DOC file,

The Eleventh Circuit's perfunctory approach to Mr. Walls's timeliness arguments conflicts with the approach of at least one circuit. *See Beardslee v. Woodford*, 395 F. 3d 1064, 1070 (9th Cir. 2005) ("In short, the district court erred in applying a general rule that a claim was dilatory if first filed at the time when the possibility of execution became imminent. Rather, the district court should have conducted a fact-specific inquiry to ascertain whether the claims could have been brought earlier, and whether the petitioner had good cause for delay.").

The decision below has created a catch-22, forcing death row prisoners with as-applied challenges to file as soon as there are adverse medical diagnoses and risk dismissal for filing an undeveloped claim; or wait until it becomes ripe and risk the situation Mr. Walls finds himself in now—facing execution without his claims being heard merely because a death warrant was signed at an unfortunate time. This is the situation that Justice Sotomayor warned against in *Bucklew*.

II. The Eleventh Circuit wrongly interpreted this Court's decision in *Nelson* as allowing the denial of a stay of execution based on undue delay alone—without holding a hearing on disputed facts regarding timing, considering any of the four established stay factors, or conducting even a cursory review of the merits

The Eleventh Circuit insisted that this Court's decision in *Nelson v. Campbell*, 541 U.S. 637 (2004), allowed it to deny Mr. Walls a stay of execution based exclusively on undue delay—without holding a hearing on disputed facts regarding timeliness, considering any of the four standard stay factors, or conducting even a cursory review

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traveled to death row to examine Mr. Walls in person, and documented his findings and conclusions in a written affidavit in mid-September.

of the serious allegations and evidence in the complaint. *Walls,* 2025 WL 3619640, at *3. The Eleventh Circuit's interpretation of *Nelson* is wrong and should be reviewed.

As the Eleventh Circuit acknowledged, this Court "explained in *Nelson* that district courts 'must consider *not only* the likelihood of success on the merits and the relative harm to the parties, *but also* the extent to which the inmate has delayed unnecessarily in bringing the claim.'" *Id.* (quoting *Nelson*, 541 U.S. at 649-50) (emphasis added). By its plain terms, *Nelson* contemplates that courts will consider both. But in rejecting Mr. Walls's argument that it must consider factors other than undue delay, the Eleventh Circuit retorted that *Nelson* must only consider other factors to *grant* a stay, not to *deny* one. *Id.*

Nelson says nothing of the sort. In fact, in the very pages the Eleventh Circuit cites, *Nelson* emphasizes that "we do not here resolve the question of how to treat method-of-execution claims generally," and notes that its "holding is extremely limited." *Nelson*, 541 U.S. at 649. *Nelson* simply provides that "the mere fact that an inmate states a cognizable § 1983 claim does not warrant the entry of a stay as a matter of right," and that undue delay should be *part* of the analysis in appropriate cases. *Nelson* says nothing about the propriety of wholly ignoring a claim based on delay. And the delay contemplated in *Nelson* was 10 years, far longer than the weeks it took Mr. Walls to file his claim after obtaining the DOC records. *Id.* at 649 (citing *Gomez v. United States Dist. Court for Northern Dist. of Cal.*, 503 U.S. 653 (1992)).[3]

[3] *Nelson* also noted a functional equivalence between a request under § 1983 for a preliminary injunction and a motion for a stay of execution, undermining the Eleventh Circuit's notion that Mr. Walls somehow unnecessarily delayed filing a

The Eleventh Circuit also invokes *Bucklew v. Precythe*, 587 U.S. 119 (2019), to justify its exclusive focus on delay, but that case does not support its treatment of Mr. Walls's claim either. *See Walls*, 2025 WL 3619640, at *2-3. By the time Mr. Bucklew's case reached this Court, it had already been stayed for years based on a § 1983 challenge. *Bucklew*, 587 U.S. at 122 ("He received a stay of execution and five years to pursue the argument"). And this Court extensively examined the merits of Mr. Bucklew's underlying claim, rather than discarding it based on delay alone. *Id.* at 129-51. Moreover, the Court's limited discussion of delay in *Bucklew* was merely dicta and has no persuasive value here. *See id.* at 171 (Sotomayor, J., dissenting) ("Given the majority's ominous words about late-arising death penalty litigation, one might assume there is some legal question before us concerning delay. Make no mistake: There is not. The majority's commentary on once and future stay applications is not only inessential but also wholly irrelevant to its resolution of any issue before us.").

Courts' equitable discretion in handling a stay request is governed by well-established principles, *Nken v. Holder*, 556 U.S. 418, 434 (2009), which should be applied in the vast majority of cases, regardless of whether the plaintiff's cause of action accrued close in time to the signing of a death warrant. It is of course true that a court may deny relief on clearly dilatory, speculative, or meritless grounds, or when there is an obvious attempt at manipulative litigation. But "[t]hat is hardly the same

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motion for a stay of execution *in addition to* his original complaint's request for an injunction. *See Walls*, 2025 WL 3619640, at *2 ("Moreover, the district court faulted Walls for waiting an additional week after he filed suit to seek a stay.").

thing as treating late-arising claims as presumptively suspect," as the Eleventh Circuit did in Mr. Walls's case. *Bucklew*, 587 U.S. at 172 (Sotomayor, J., dissenting).

As Justice Sotomayor has emphasized, the "only sound approach is for courts to continue to afford each request for equitable relief a careful hearing on its own merits," and that "responsibility is never graver than when the litigation concerns an impeding execution." *Id.* "Meritorious claims can and do come to light even at the eleventh hour, and the cost of cursory review in such cases" is unacceptably high. *Id.* (citing *Glossip*, 572 U.S. at 927) (collecting examples of inmates who came within hours or days of execution before being later exonerated). Execution methods "have been moving targets subject to considerable secrecy in recent years," and "fortuity or the imminence of execution may shake loose constitutionally significant information when time is short." *Id.* at 173-74. The Eleventh Circuit ignored these principles. This Court should grant review and apply them in Mr. Walls's case.

CONCLUSION

Mr. Walls's execution will be emblematic of a dark year in the history of Florida's death penalty. He is set to be the nineteenth prisoner executed this year—by far the highest number in a single year since this Court restored the death penalty 50 years ago, and more than double the number of all Florida executions between 2019 and 2024. The 2025 Florida executions have proceeded at an unprecedented, breakneck pace of approximately two per month. It is clear that Respondents are unable to keep up with this pace while remaining within constitutional bounds, and Mr. Walls stands to suffer those consequences. The casual indifference that lower

courts have shown to this severe and imminent danger should not result in rewarding Florida with its nineteenth execution of the year before a court can at least consider the merits of Mr. Walls's as-applied challenge. This Court's intervention is necessary.

The Court should grant the petition for a writ of certiorari and review the decision of the Eleventh Circuit Court of Appeals.

Respectfully submitted,

/s/ Linda McDermott
LINDA MCDERMOTT
Chief, Capital Habeas Unit

/s/ Sean Gunn
SEAN GUNN

MICHELLE WARD
BAILEY ELLICOTT
Federal Public Defender
Northern District of Florida
227 N. Bronough St., Suite 4200
Tallahassee, FL 32301-1300
(850) 942-8818
sean_gunn@fd.org

Counsel for Petitioner

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