

*** 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*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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

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Eleventh Circuit Order

Denying Motion for Stay of Execution

December 13, 2025

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-14302

FRANK A. WALLS,

Plaintiff-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
WARDEN, FLORIDA STATE PRISON,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:25-cv-00488-MW-MAF

Before WILLIAM PRYOR, Chief Judge, and ROSENBAUM and JILL
PRYOR, Circuit Judges.

WILLIAM PRYOR, Chief Judge:

In 1987, Frank A. Walls shot and killed Edward Alger and Ann Peterson in Alger's home. A jury found him guilty of murder, and the trial court sentenced him to death. The Florida Supreme Court affirmed his sentence on direct appeal in 1994, and multiple

state and federal courts later declined to disturb it on collateral review after rejecting his claims of ineffective assistance of counsel and mental disability. The Governor of Florida signed Walls's death warrant on November 18, 2025. A warden scheduled him to be executed on December 18, 2025. On November 26, Walls sued in the district court, alleging that his lethal injection would cause severe and unnecessary pain in violation of the Eighth Amendment to the Constitution. *See* 42 U.S.C. § 1983. A week later, he moved the district court to stay his execution. The district court denied his motion. After Walls filed an appeal, he moved this Court for a stay. Because Walls has not established that he is likely to succeed in his appeal, we deny his motion.

I. BACKGROUND

In July 1987, Walls murdered Edward Alger and Ann Peterson during a burglary of Alger's home. *See Walls v. State*, 926 So. 2d 1156, 1161 (Fla. 2006). A Jackson County jury found Walls guilty of two counts each of first-degree murder and kidnapping, as well as burglary and petit theft. *Id.* at 1162. The jury unanimously recommended a sentence of death for Peterson's murder, which the trial court entered. *Id.* The Florida Supreme Court affirmed the convictions and death sentence on direct appeal, *see Walls v. State*, 641 So. 2d 381, 391 (Fla. 1994), and the Supreme Court of the United States denied Walls's petition for a writ of certiorari, *see Walls v. Florida*, 513 U.S. 1130 (1995). Walls later unsuccessfully moved for postconviction relief in Florida courts. *See Walls*, 926 So. 2d at 1163; *Walls v. State*, 3 So. 3d 1248 (Fla. 2008); *Walls v. State*, 361 So. 3d 231 (Fla. 2023). And he unsuccessfully sought

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postconviction relief in federal court. *See* 28 U.S.C. § 2254. *See Walls v. Buss*, 658 F.3d 1274 (11th Cir. 2011); *In re Walls*, No. 23-10982 (11th Cir. Apr. 13, 2023). He has been eligible to be executed since at least 2023.

On November 18, 2025, Governor Ron DeSantis signed Walls's death warrant. The same day, a prison warden scheduled Walls's execution for December 18, 2025, at 6:00 p.m. On November 26, 2025, Walls filed a complaint in the district court against the warden and the Secretary of the Department of Corrections for declaratory and injunctive relief. Walls alleged that Florida's lethal injection protocol created a substantial risk that, in the light of his health conditions, he would experience severe pain and suffering from pulmonary edema in violation of the Eighth Amendment. He also alleged that recent executions have been "rife with error," exposing him to more risk of pain. And he identified execution by firing squad as a readily available alternative.

Walls did not move for a stay of his execution in the district court until December 3. He then argued that he qualified for a stay because his claim "hinge[d] on complex questions concerning [his] cardiopulmonary health, his susceptibility to the torturous condition of pulmonary edema, [Florida's] ability to comply with [its] protocol, and the substantial risk of superadded pain," none of which were resolvable by his execution date. The State responded that Walls sought relief "dilator[ily]." Specifically, it argued that Walls's "medical records . . . prove he could have brought his current lethal injection challenge years ago."

The district court denied Walls's motion on December 9. Based on our decision in *Long v. Secretary, Department of Corrections*, 924 F.3d 1171 (11th Cir. 2019), it ruled that "Walls's delay in seeking a stay of execution until over two weeks after his death warrant was signed [was] fatal to his requested relief." It found that the risks to Walls from the lethal injection protocol were apparent for years. And even if his doctor concluded that his health conditions recently worsened, Walls still "waited several months" after the doctor's report to file suit. Moreover, the district court faulted Walls for waiting an additional week after he filed suit to seek a stay.

Walls appealed the order denying a stay the same day the district court entered it. And he moved this Court to stay his execution pending his appeal.

II. STANDARD OF REVIEW

We review the denial of a stay for abuse of discretion. *Powell v. Thomas*, 641 F.3d 1255, 1257 (11th Cir. 2011). We may grant a stay of execution only if the inmate establishes that he has a substantial likelihood of success on the merits, that he will suffer irreparable injury without a stay, that a stay would not substantially harm the State, and that a stay would not be adverse to the public interest. *Id.* "A district court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous." *United States v. Toll*, 804 F.3d 1344, 1353 (11th Cir. 2015) (citation and internal quotation marks omitted).

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III. DISCUSSION

Walls argues that “[t]he stay factors weigh in favor of granting a stay of execution.” He maintains that the order denying a stay is likely to be reversed on appeal because it “completely ignore[d] . . . serious allegations and evidence in the complaint” and measured his delay from too early a starting point. Walls also asserts that, absent a stay, he will suffer irreparable injury in the form of “superadded” pain and suffering during his execution. And he contends that neither the State nor the public has an interest in executing him with unnecessary pain.

Walls faces a difficult burden in establishing that the district court likely abused its discretion. We examine “not only the likelihood of success on the merits and the relative harms to the parties, but also the extent to which the inmate has delayed unnecessarily in bringing the claim.” *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004). We employ a “strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.” *Id.* at 650. The Supreme Court has explained that “[l]ast-minute stays” of execution “should be the extreme exception, not the norm.” *Bucklew v. Precythe*, 139 S. Ct. 1112, 1134 (2019).

We agree with the district court that our decision in *Long* is instructive. There, a prisoner also filed a complaint alleging that the administration of the Florida lethal injection protocol would violate his Eighth Amendment rights. 924 F.3d at 1174–75. The trial court sentenced the inmate to death in 1985. *Id.* at 1173–74. After a

string of failed challenges to his sentence in state and federal courts, the governor signed his death warrant on April 23, 2019, and the warden set his execution for May 23, 2019. *Id.* at 1174. But the inmate waited until May 8, 2019, to file his complaint in the district court. *Id.* He attached to his complaint emergency motions for a stay, a temporary restraining order, and a preliminary injunction. *Id.* at 1174–75. The district court denied the stay, and the inmate filed an expedited appeal. *Id.* at 1175.

We denied the motion for a stay for “two independently adequate reasons.” *Id.* at 1176. First, we held that the prisoner’s case was “within ‘the norm’ where the ‘strong equitable presumption against the grant of a stay’ applies.” *Id.* at 1177 (quoting *Bucklew*, 139 S. Ct. at 1134). And we rejected his argument that evidence of complications from recent executions excused his delayed challenge. *Id.* Specifically, the prisoner alleged that three recent executions—on November 8, 2017, February 22, 2018, and December 13, 2018—inflicted severe pain on the executed. *Id.* We held that even the “delay of five months” between the last execution and the prisoner’s challenge was “too long.” *Id.* As to the prisoner’s as-applied challenge to the protocol premised on his own “serious medical conditions,” we ruled that the inmate “ha[d] known about his medical conditions for decades.” *Id.* Florida instituted the protocol he (and now Walls) challenged in January 2017. *Id.* We held that “two years and four months” between the new protocol and the inmate’s lawsuit constituted inexcusable delay. *Id.* at 1177–78. Second, we concluded that “[e]ven if” the prisoner had not unduly delayed, his claims were still “barred by the doctrine of res judicata” because

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they “were raised, or could have been raised,” in his rejected petitions for postconviction relief. *Id.* at 1178.

Walls’s suit suffers from similar flaws. As his complaint alleges, complications arising from drugs used in Florida’s protocol have been well-documented for years. For example, Walls alleges that the post-execution autopsies of four Florida inmates in February 2018, May 2023, August 2024, and April 2025, suggested that they suffered from pulmonary edema during their execution. Even viewing the April execution as an acceptable reference point, Walls waited seven months to file his complaint. *See id.* at 1177 (“A delay of five months . . . is too long.”). And since at least 2017, Walls has suffered from several chronic health conditions—obstructive sleep apnea, hypertension, low blood oxygenation, and obesity—that he now alleges put him at risk of painful pulmonary edema. *See id.* (finding undue delay where the inmate had “known about his medical conditions” underlying his method of execution claim for years prior to filing suit). Walls’s case is “not one of the ‘extreme exceptions’ in which a last-minute stay should be entered.” *Id.* (alteration adopted) (quoting *Bucklew*, 139 S. Ct. at 1134).

Walls argues that the district court erred by focusing only on his delay. But his argument misunderstands settled precedent. The Supreme 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.” 541 U.S. at 649–50. It explained that a district court must consider *both* of those issues

“before *granting* a stay,” *not* before denying one. *Id.* at 649 (emphasis added). And we held in *Long* that the motion for a stay failed for “two *independently* adequate reasons”: first, for inexcusable delay, and second, based on *res judicata*. 924 F.3d at 1176 (emphasis added).

Walls also asserts that the district court failed to consider that his claim relies on two recent events. Specifically, he argues that the district court should have measured his delay from either a reference point of late July, when “a significant change in his medical condition [was] uncovered,” or October 28, when he obtained “specific drug log records” establishing Florida’s recent maladministration of its protocol. With those events as a reference point, Walls contends, he filed his complaint about four months after discovering that his execution “would implicate a constitutionally unacceptable risk of needless suffering.” And during that four-month delay, he says, his counsel exercised “due diligence that led to the discovery” of the drug logs.

Like the district court, we doubt Walls’s suit could have been filed only as early as July. The record establishes that Walls has suffered for at least eight years from the same conditions he now alleges will cause him severe pain and suffering. But in any event, Walls’s admission that his suit could have been filed four months earlier dooms his motion. We ordinarily do not grant a motion for a stay when it “could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.” *Nelson*, 541 U.S. at 650. And we cannot say that the district

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court likely abused its discretion by extending *Long* “in an unreasonable or incorrect manner.” *Toll*, 804 F.3d at 1353. (citation and internal quotation marks omitted). We held in *Long* that a five-month delay was “too long.” 924 F.3d at 1177. And Walls admits that he waited nearly four and a half months to move for a stay.

Walls also faults the district court for ruling that he unduly delayed even though he sued before the two-year statute of limitations expired. Yet, Walls’s argument answers the wrong question. Because “a stay of execution is an equitable remedy,” the “rules of equity apply.” *Id.* at 1176. One of those rules is that courts ordinarily do not grant a stay when the movant created the need for it. *See In re Hutcherson*, 468 F.3d 747, 750 (11th Cir. 2006) (denying stay of execution where inmate’s “need for a stay of execution [was] directly attributable to his own failure to bring his claims to court in a timely fashion”). The purpose of that equitable rule would be defeated were we to rule that no undue delay occurs whenever a challenge is not barred by the statute of limitations. Suppose, for example, that Walls could have sued twenty months ago but filed his complaint and motion for a stay the day before his execution. That delay would plainly be inequitable under both Supreme Court and our precedent, even if Walls filed it within the limitations period.

IV. CONCLUSION

We **DENY** Walls’s motion for a stay of his execution.

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District Court Order Denying Stay of
Execution and Preliminary Injunction
December 9, 2025

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

FRANK A. WALLS,

Plaintiff,

v.

Case No.: 4:25cv488-MW/MAF

RICKY DIXON, et al.,

Defendants.

_____ /

**ORDER DENYING MOTION FOR
STAY OF EXECUTION AND PRELIMINARY INJUNCTION**

Plaintiff Frank A. Walls is a Florida prisoner under an active death warrant, and he is scheduled to be executed by lethal injection on December 18, 2025. On November 26, 2025, he filed this § 1983 action against Defendants Ricky Dixon (Secretary of the Florida Department of Corrections) and Randall Polk (Warden of the Florida State Prison) (jointly, the State). ECF No. 1. His complaint presents an as-applied challenge to Florida's lethal injection protocol known as the Etomidate Protocol. He alleges that, in light of his poor health, this lethal three-drug protocol will create a substantial risk of severe pain and suffering in violation of the Eighth Amendment.

Now pending before the Court is Mr. Walls's emergency motion for a stay of execution and preliminary injunction. ECF No. 13. The State has filed a response in opposition, ECF No. 16, and Mr. Walls has filed a reply to the response, ECF No.

20. The Court has considered, without hearing, Mr. Walls’s motion for stay of execution and determined that the motion is due to be denied.¹

I

As relevant to his claims, Mr. Walls has a variety of health conditions. They are described in the Complaint, ECF No. 1 ¶¶ 32-36, and highlighted by his expert, Dr. Joel Zivot, in an attached “affidavit,” *id.* App. B.² Specifically, he suffers from hypertension; hyperlipidemia (elevated cholesterol); a thyroid disorder requiring thyroid hormone replacement; gastrointestinal reflux; obesity; long-standing obstructive sleep apnea; chronic and poorly controlled back pain; and a number of other concerns pertaining to respiratory and cardiac functioning. ECF No. 1 ¶¶ 32-36 (citing App. B). Dr. Zivot contends that administering the Etomidate Protocol to Mr. Walls in his current condition will cause prolonged suffering and “induce a domino-effect of symptoms that culminate in a torturous death from pulmonary edema.” *Id.* ¶¶ 4-5, 37-38 (citing App. B). The risk of a “needlessly cruel death” is purportedly heightened by the fact that the State has been repeatedly negligent and

¹ Because of the swiftly approaching execution date, this Court enters a truncated Order on an expedited basis to afford Mr. Walls a meaningful opportunity to appeal.

² Although the document is titled “Affidavit of Joel Zivot, M.D., FRCP(C), MA, JM”—and will be referred to as an affidavit for purposes of this Order—the Court notes the document is neither notarized nor submitted/sworn under penalty of perjury. *See generally* App. B. It merely states that Dr. Zivot’s opinions are “to a reasonable degree of medical certainty,” and he reserves the right to change those opinions if additional information becomes available later. *Id.* at 6.

non-compliant in administering the Etomidate Protocol in previous executions. *Id.*

¶¶ 75, 77-85. Thus, in arguing for a stay of execution, Mr. Walls asserts:

[This case] hinges on complex questions concerning Mr. Walls’s cardiopulmonary health, his susceptibility to the torturous condition of pulmonary edema, the Defendants’ ability to comply with their protocol, and the substantial risk of superadded pain these combined circumstances would cause if Mr. Walls is executed using the Etomidate Protocol. Such issues cannot be meaningfully addressed before the scheduled execution.

ECF No. 13 at 3-4.

II

A prisoner on death row may challenge the constitutionality of his execution through a civil action, but a stay of execution “is not available as a matter of right,” even if his execution is imminent. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). It is well settled that a stay of execution is a form of equitable relief, and “equity must be sensitive to the State’s strong interest in enforcing its criminal judgments without undue interference from the federal courts.” *Id.* “Both the State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Id.*

A stay of execution is thus available “only if the prisoner ‘establishes that (1) he has a substantial likelihood of success on the merits, (2) he will suffer irreparable injury unless the injunction issues, (3) the injunction would not substantially harm the other litigant, and (4) if issued, the injunction would not be adverse to the public interest.’” *Barwick v. Governor of Fla.*, 66 F.4th 896, 900 (11th Cir. 2023) (quoting

Bowles v. DeSantis, 934 F.3d 1230, 1238 (11th Cir. 2019)). The prisoner must, “by a clear showing,” carry the burden of persuasion on all four requirements. *Hill*, 547 U.S. at 584; *see also Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). The “first and most important” of the four requirements asks if the prisoner has shown a substantial likelihood of success on the merits—if not, the analysis can begin and end there. *Barwick*, 66 F.4th at 902.

III

In its opposition to the motion to stay, the State asks the Court to deny relief on five grounds. Although the State has briefed these alternative grounds, this Court need only consider one—undue delay—as it is clearly dispositive.

To start, Mr. Walls’s complaint and motion describe a long-documented history of states and the federal government abandoning the use of a paralytic in their lethal injection protocols as early as 2016,³ given the risk that a paralytic may mask evidence of torturous effects of the other drugs administered. Mr. Walls also describes several examples of lethal injection protocols causing pulmonary edema in the condemned. Indeed, Mr. Walls includes examples of different courts and states recognizing the risk that pulmonary edema may induce a torturous death as early as

³ *See* ECF No. 1 ¶ 42 (“Arizona pledged in 2016 that ‘the ADC will never again use a paralytic in an execution . . . and the ADC consequently will remove their current three-drug lethal injection protocol from the current and any future version of the ADC’s execution procedures.’”).

2018.⁴ Mr. Walls points out that, despite these examples, Florida continues to utilize a three-drug protocol that includes a paralytic and, according to Mr. Walls, is known to likely “inflict[] intense pain and suffering” from pulmonary edema. ECF No. 1 ¶ 39. In short, Mr. Walls has demonstrated that, for years, some states and federal courts have questioned the continued use of—or completely abandoned—a three-drug protocol like Florida’s to avoid cruel and unusual executions. This history is publicly known, well-documented, and compelling evidence that Mr. Walls could have challenged the Etomidate Protocol, as applied to him, well before his death warrant was signed in November 2025.⁵

Mr. Walls was convicted and sentenced to death in 1992. His medical records indicate a diagnosis of moderate obstructive sleep apnea, along with a provisional diagnosis of hypertension and morbid obesity, in 2017. *See* ECF No. 18 at 6, 9. According to Mr. Walls, it was only due to a downturn in his already poor health in July 2025 that his counsel contacted Dr. Zivot, who reviewed Mr. Walls’s medical records and later examined him on July 23, 2025. ECF No. 1 ¶ 32; *see also* ECF No. 1-1 ¶¶ 5, 8. Dr. Zivot’s affidavit, dated September 15, 2025, opines that the

⁴ *See, e.g.*, ECF No. 1 ¶ 44 (citing Ohio federal court’s finding “that pulmonary edema rose to the level of torture to implicate the Eighth Amendment”); *id.* ¶ 45 (describing autopsy results for federal prisoner executed in 2020 who suffered “such severe pulmonary edema during his execution that the fluid rushed up his trachea and actually exited his mouth”).

⁵ In fact, the Complaint notes that the Etomidate Protocol has been the subject of a facial challenge in the Middle District of Florida that has been pending *since 2013*. ECF No. 1 ¶ 3 (citing *Brant v. Palmer, et al.*, No. 3:13-cv-412-MMH-SJH (M.D. Fla.)).

Etomidate Protocol will cause “many severe and painful outcomes during any attempt to execute Mr. Walls,” in light of his assessed health conditions, including his obstructive sleep apnea. ECF No. 1-1 ¶¶ 10, 16. Notwithstanding Dr. Zivot’s findings, Mr. Walls did not file his claim until November 26, 2025—over a week after Governor DeSantis signed his death warrant and several months after Dr. Zivot evaluated Mr. Walls. What’s more, Mr. Walls did not contemporaneously file a motion for stay of execution with his complaint. Instead, he waited until *after* this Court prompted the parties to confer regarding a schedule given the emergency nature of this litigation—due, in large part, to Mr. Walls’s delay in seeking relief. After conferring about a schedule, Mr. Walls finally filed a motion for stay of execution and preliminary injunction on December 3, 2025—fifteen days before his scheduled execution.

Given the detailed history Mr. Walls sets out, which calls into question the use of a paralytic and the risk associated with pulmonary edema, and his chronic health conditions that preceded this year and have only recently worsened, Mr. Walls’s delay in seeking a stay of execution until over two weeks after his death warrant was signed is fatal to his requested relief. This Court’s conclusion is guided by binding precedent involving similar circumstances. For example, in *Long v. Sec’y Dep’t of Corrs.*, 924 F.3d 1171 (11th Cir. 2019), a death row prisoner filed a § 1983 action days before his scheduled execution. He requested an emergency stay and

alleged, *inter alia*, that the use of etomidate, as applied to him, constituted cruel and unusual punishment in light of his underlying health conditions. The District Court denied the stay, and the prisoner appealed.

In *Long*, the Eleventh Circuit emphasized that “before granting a stay of execution, a court must ‘consider not only the likelihood of success on the merits and the relative harms to the parties, *but also the extent to which the inmate has delayed unnecessarily in bringing the claim.*’” *Id.* at 1176 (quoting *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004)). Indeed, “[t]here is a ‘strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.’” *Id.* (quoting *Nelson*, 541 U.S. at 650).

The Eleventh Circuit also observed that the Supreme Court had “reiterated the importance of these principles three times [that] year” alone. *See id.* at 1176-77 (citing and quoting *Dunn v. Ray*, 586 U.S. 1138 (2019) (“A court may consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief.”); *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) (“Courts should police carefully against attempts to use such challenges as tools to interpose unjustified delay. Last-minute stays should be the extreme exception, not the norm, and the last-minute nature of an application that could have been brought earlier, or an applicant’s attempt at manipulation, may be grounds for denial of a stay.”); and

Dunn v. Price, 587 U.S. 929 (2019) (once again instructing courts to consider “the last-minute nature” of a motion for a stay in determining whether equitable relief is appropriate)).

In holding that Long’s case was not one of the “extreme exceptions” in which a last-minute stay should be granted—but was instead within “the norm” where the “strong presumption against the grant of a stay” should apply—the Eleventh Circuit flatly stated that: “A delay of five months . . . is too long.” *Id.* at 1177. Indeed, “[i]f Long had truly intended to challenge Florida’s lethal injection protocol instead of just seeking to delay his execution, he would not have deliberately waited to file this lawsuit[.]” *Id.* at 1177-78.

The Eleventh Circuit’s delay analysis is applicable here as it appears clear that Mr. Walls could have filed this suit much earlier. Based on his own allegations, the risks, like pulmonary edema, associated with a three-drug protocol like Florida’s were well documented years before Mr. Walls filed his claim. Likewise, Mr. Walls has lived for years with several chronic health conditions that arguably increase his risk of suffering from pulmonary edema during his execution. Nonetheless, it appears that Mr. Walls’s counsel waited to start an investigation into his health conditions until June or July of this year—albeit, prior to the signing of Mr. Walls’s death warrant. And Dr. Zivot reviewed Mr. Walls’s medical records to assess his “medical condition and the risks attendant to executing him by lethal injection” and

then followed up with a medical examination several months ago, in July of 2025. ECF No. 1-1 ¶¶ 4-8. But still, Mr. Walls’s counsel waited several months, until after the Governor signed his death warrant, before filing suit, and then waited an additional week before seeking emergency relief (and only after the Court ordered the parties to confer regarding a schedule given the emergency nature of this case).

This Court is not suggesting that Mr. Walls’s counsel should have instantaneously filed a complaint and motion for stay of execution upon receipt of his medical records.⁶ However, assuming this Court ignores everything that transpired *before* Mr. Walls’s counsel started investigating his health conditions this past summer—including the chronic conditions Mr. Walls lived with for years prior and the concurrent developments in lethal injection protocols across the country⁷—Mr. Walls’s counsel would have known everything they needed to know about Mr. Walls’s medical condition after Dr. Zivot’s physical exam confirmed what he learned upon reviewing Mr. Walls’s records. Nonetheless, Mr. Walls’s counsel inexplicably delayed in obtaining Dr. Zivot’s affidavit until September, and then

⁶ Indeed, this Court recognizes that the Capital Habeas Unit does not have unlimited resources and has also seen an uptick in emergency litigation given the pace at which death warrants have been signed this year. Nonetheless, this Court cannot ignore the Eleventh Circuit’s and Supreme Court’s emphasis on policing delays in filing suit and seeking stays of execution.

⁷ Even so, given the detailed history concerning developments and challenges to three-drug protocols, like Florida’s, which include a paralytic and heightened risk for pulmonary edema, and Mr. Walls’s years-long record of living with chronic conditions, like obstructive sleep apnea and obesity, there is likely a statute of limitations issue given Mr. Walls’s delay in bringing this suit.

again inexplicably delayed in filing Mr. Walls’s claim until over a week after his death warrant was signed. Then Mr. Walls’s counsel further delayed in seeking an emergency stay of execution until a week later. In their reply to the State’s response, counsel for Mr. Walls insists they filed suit “as soon as was practicable.” ECF No. 20 at 12-13. For the reasons already stated, the Court does not agree.⁸

The Supreme Court of the United States has decreed that “[l]ast-minute stays should be the extreme exception,” and that “federal courts can and should protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are pursued in a dilatory fashion.” *Bucklew*, 587 U.S. at 150–51 (cleaned up). This Court acknowledges that Mr. Walls has presented evidence demonstrating that he may well suffer a cruel death by experiencing a

⁸ Mr. Walls further argues in his reply that, at the very least, he is entitled to an evidentiary hearing. Quoting *McDonald’s Corp. v. Robertson*, 147 F.3d 1301, 1321 (11th Cir. 1998)—a trademark infringement case—and citing several lethal-injection suits, he contends that “‘where facts are bitterly contested and credibility determinations must be made to decide whether injunctive relief should issue, an evidentiary hearing must be held.’” See ECF No. 20 at 2-4. The Court disagrees and once again finds *Long* controlling. The prisoner in that case similarly argued in his emergency motion for stay that his claims “require[d] discovery and an evidentiary hearing,” 924 F.3d at 1175, which both the District Court and Court of Appeals rejected in issuing their respective rulings. In an effort to get around this precedent, Mr. Walls argues that any reliance on *Long* in this regard would be “misguided” because, he contends, “[w]hile the district court in *Long* declined to hold an evidentiary hearing on Mr. Long’s motion for preliminary injunction, the Court did so because Mr. Long’s lethal injection challenge had already been developed in state court; thus, the Court found that Mr. Long did not have a substantial likelihood of success on the merits because ‘the claims are barred by the doctrine of res judicata.’” ECF No. 20 at 3-4. In fact, the res judicata ruling was an *alternative ground in addition to* the undue delay ruling. 924 F.3d at 1178 (“Even if Long’s method of execution claims were not barred on equitable [undue delay] grounds, the district court properly concluded that he could not show a likelihood of success on the merits because the claims are barred by the doctrine of res judicata.”).

feeling akin to drowning as the result of pulmonary edema.⁹ But this Court is bound to apply the law, and the law does not permit a last-minute stay in this case when Mr. Walls's claim could have been brought months, if not years, before his death warrant was signed.¹⁰

IV

In light of the above, Mr. Walls's emergency motion for stay of execution and preliminary injunction, ECF No. 13, is **DENIED**.

SO ORDERED on December 9, 2025.

s/Mark E. Walker
United States District Judge

⁹ To be fair, the State disagrees with Mr. Walls's evidence given the dosages involved and Florida's other protocols during the execution.

¹⁰ Similar to the five-month delay the Eleventh Circuit deemed to be too long in *Long*, Mr. Walls sat on new information in the form of Dr. Zivot's evaluation in July of 2025, waited until after his death warrant was signed to file suit, delayed further in seeking a stay of execution after filing suit, and now asks this Court to stay his execution when an evidentiary hearing could have been conducted as early as this summer, if not before. And, of course, this assumes a July 2025 starting point for calculating any delay. But Mr. Walls's own filings suggest his health was rapidly declining even earlier than July of this year. *See* ECF No. 1 ¶ 73. While there was arguably an even lengthier delay based on Mr. Walls's declining health earlier this year, Mr. Walls still waited from July to early December to seek a stay. Assuming *arguendo* that waiting until December 3, 2025, to seek a stay based on Dr. Zivot's evaluation of Mr. Walls in July of this year is the only delay at issue, this is still too great a delay to permit relief under the case law that binds this Court.

A3

Florida Department of Corrections

Execution Drug Logs

NDC#

Etomidate 2mg/mL (20mg/10mL)

PACKAGE SIZE: 10 x 10 mL

[illegible]

DRUG NAME Etomidate 2mg/10ml PACKAGE SIZE 10x10ml
 NDC# [REDACTED]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MER	RECEIVED/USED (+/-)	BALANCE
9-30-19	<div style="background-color: black; width: 100%; height: 100%;"></div>	<div style="background-color: black; width: 100%; height: 100%;"></div>	06-2021	<div style="background-color: black; width: 100%; height: 100%;"></div>	+ 100 X	100
6-14-19			July 2021		+ 100 X	200
8-27-20			06-2021		+ 160 X	
8-27-20			01-2022		+ 40 X	400
9-11-20			06-2021		+ 60 X	460
12-14-20			06-2021		+ 30	490
12-14-20			01-2022		+ 110 ✓	600
6-28-21					- 450	150
8-06-21			07-2022		+ 120 ✓	270
2-3-22			01-2022		- 150	120
12-08-22			07-2022		- 120	-0-
2-20-23			11-2024		+ 40	40
3-02-23			12-2024		+ 50	90
3-06-23			12/2024		+ 50	140
1-3-2024			11-2024		-40	100
1-3-25			12-2024		-50	50
1-3-25			12-2024		-50	0
4/21/25			01-2027		+100	100

✓

DRUG NAME: Etomidate 2mg/mL (40mg/20mL) PACKAGE SIZE: 10 x **20**mL
NDC# [REDACTED]

[illegible]

DRUG NAME [REDACTED]

PACKAGE SIZE

NDC#

[illegible]

DRUG NAME Potassium Acetate 2mEq/mL 20mL PACKAGE SIZE 25x20mL

NDC# [REDACTED]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
6/14/23	Balance					361
6/15/23			6/20/23		-12	349
7/19/23			06/2023		-2	347
8/3/23			12/2024		-12	335
10/3/23			10/2025		-47	288
10-3-23			12/2024		-12	276
8-29-24			12/2024		-12	264
1-3-2025			12-2024		-64	200
2-13-25			10-2025		-12	188
3/20/25			10-2025		-12	176
3/18/25			11/30/26		+25	201
3/18/25			9/30/26		+50	251
4/7/25			9/30/26		+25	276
4/7/25			4/30/27		+50	326
4/8/25			10-2025		-12	314
4/16/25			9/30/26		-25	289
5/1/25			10-2025		-12	277
5/15/25			10-2025		-12	265
6/12/25			10-2025		-7	258
6/25/25			10-2025		-17	241
7/16/25			10-2025		-12	229

NDC#

Potassium Acet. 2mEq/mL

PACKAGE SIZE: 25 x 20mL vials

[illegible]

DRUG NAME ROCURONIUM 100mg/10ml PACKAGE SIZE 10 X 10ml

NDC#

[illegible]

NDC#	[REDACTED]	[REDACTED]
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DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
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[illegible]

[illegible]

NDC#

DRUG NAME SODIUM Cl 0.9%

PACKAGE SIZE 12 x 1000 pk

NDC#

[illegible]

NDC# _____

[illegible]

NDC# _____

[illegible]

INVOICE DATE 05/07/2025

PO

ORDER DATE 03/05/2025

SHIP DATE 05/07/2025 PIECES INVOICED 1

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	UNIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC3	UNIT PRICE	EXTENDED PRICE	NOTE CODE
			1	1	1			SODIUM CLIS 0.9% 12X1000ML LF ✓	12X10	IS			EXP: 1/27	62.83	62.83	
SUMMARY																
TOTAL RX											62.83					
TOTAL OTC											0.00					
NET AMOUNT											62.83					

SUB TOTAL	62.83
GRAND TOTAL	62.83
TOTAL DUE BY	06/06/2025

INVOICE DATE 05/23/2025

PO

ORDER DATE 05/22/2025

SHIP DATE 05/23/2025 PIECES INVOICED 29

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICE QTY	UNIT CODE	UOM	DESCRIPTION	SIZE	FOR W	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
			2	2	2	✓		SODIUM CL IS 0.9% 10X1000ML	10X10 IS			EXP: 2/26		26.82	53.64	
			4	4	4	✓		POTASS ACET SD 2MEO/ML 25X20ML FTV	25X20 SD			EXP: 12/26		123.34	493.36	
			10	10	10	✓		ROCURONIUM MD 10MG/ML 10X10ML	10X10 MC			EXP: 10/26		41.29	412.90	
			10	10	10	✓		ETOMIDATE SD 2MG/ML 10X20ML	10X20 SD			EXP: 1/27		39.35	393.50	
			1	1	1	✓		HYDROXYZ HCL SD 25MG/ML 25X1ML	25X1M SD			EXP: 8/26		441.59	441.59	
			2	2	2	✓		SODIUM CL SF 0.9% 25X20ML	25X20 SF			EXP: 7/31/26		22.24	44.48	
SUMMARY																
TOTAL RX									1,839.47							
TOTAL OTC									0.00							
NET AMOUNT									1,839.47							

SUB TOTAL	1,839.47
GRAND TOTAL	1,839.47
TOTAL DUE BY	06/22/2025

INVOICE DATE 05/29/2025

PO

ORDER DATE 03/05/2025

SHIP DATE 05/29/2025 PIECES INVOICED 1

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
			1	1	1			SODIUM CL IS 0.9% 12X1000ML EXC	12X10	IS			EXP: 7/27	29.99	29.99	
-----SUMMARY-----																
TOTAL RX										29.99						
TOTAL OTC										0.00						
NET AMOUNT										29.99						

SUB TOTAL	29.99
GRAND TOTAL	29.99
TOTAL DUE BY	06/28/2025

INVOICE DATE 06/24/2025

PO

ORDER DATE 04/01/2025

SHIP DATE 06/24/2025 PIECES INVOICED 20

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
			10	10	8	X		ETOMIDATE SD 2MG/ML 10X20ML	10X20	SD			EXP: 3/27	41.96	335.68	
			10	10	8	X		ETOMIDATE SD 2MG/ML 10X10ML	10X10	SD				30.03	240.24	
			10	10	2	X		ETOMIDATE SD 2MG/ML 10X10ML	10X10	SD			> EXP: 3/27	30.03	60.06	
			10	10	2	X		ETOMIDATE SD 2MG/ML 10X20ML	10X20	SD				41.96	83.92	
SUMMARY																
TOTAL RX									719.90		EXP: 3/27					
TOTAL OTC									0.00							
NET AMOUNT									719.90							

SUB TOTAL	719.90
GRAND TOTAL	719.90
TOTAL DUE BY	07/24/2025

INVOICE DATE 06/02/2025

PO

ORDER DATE 04/01/2025

SHIP DATE 06/02/2025 PIECES INVOICED 2

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UO 4	DESCRIPTION	SIZE	FORM	CLAS:	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
			2	2	2			SODIUM CL IS 0.9% 12X1000ML EXC	12X10	IS			EXP 8/27	29.99	59.98	
-----SUMMARY-----																
TOTAL RX									59.98							
TOTAL OTC									0.00							
NET AMOUNT									59.98							

SUB TOTAL	59.98
GRAND TOTAL	59.98
TOTAL DUE BY	07/02/2025

DRUG NAME: Etomidate 2mg/mL Package Size: 10 x 10 mL

Page: 1

PREVIOUS BALANCE: ~~0~~

[illegible]

DRUG NAME: Etomidate 2mg/mL (20mg) Package Size: 10 x 10mL

10 x 10 mL

1

~~0~~[illegible]

DRUG NAME: Etomidate 2mg/mL (40mg/20mL) Package Size: 10 x 20 mL

Page: 1

PREVIOUS BALANCE: 0

[illegible]

DRUG NAME: Hydroxyzine HCL 25mg/mL Package Size: 25 x 1 mL

Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
2/1/2024				03/31/2025	+ 25	25
8/29/2024				2/31/2025	- 2	23
1/3/2025				8/31/2026	+ 25	48
2/13/2025				3/31/2025	- 3	45
3/20/2025				3/31/2025	- 3	42
4/2/2025				8/31/2026	+ 25	67
4/8/2025				8/31/2026	- 4	63
4/16/2025				3/31/2025	- 17	46
5/1/2025				8/31/2026	- 4	42
5/15/2025				8/31/2026	- 3	39
5/23/2025				8/31/2026	+ 25	64
6/12/25				8/31/2026	- 3	61
6/25/25				8/31/2026	- 2	59
7/16/25				8/31/2026	- 2	57
7/28/25				8/31/2026	+ 25	82
7/28/25				8/31/2026	- 2	80
8/19/25				8/31/2026	- 2	78
8/29/25				8/31/2026	- 2	76
9/17/25				8/31/2026	- 2	74
9/30/25				8/31/2026	- 2	72

DRUG NAME:

Lidocaine HCl 1% (10mL) Package Size: 25 x 10mL

Page

PREVIOUS BALANCE:

 \emptyset [illegible]

DRUG NAME:

Package Size:

Page:

PREVIOUS BALANCE:

[illegible]

Page 2

DRUG NAME Potassium Acetate 2mEq/mL 20mL PACKAGE SIZE 25x20mL

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
6/14/23	Balance					361
6/15/23			6/20/23		-12	349
7/19/23			06/2023		-2	347
8/3/23			12/2024		-12	335
10/3/23			10/2025		-47	288
10-3-23			12/2024		-12	276
8-29-24			12/2024		-12	264
1-3-2025			12-2024		-64	200
2-13-25			10-2025		-12	188
3/20/25			10-2025		-12	176
3/18/25			11/30/26		+25	201
3/18/25			9/30/26		+50	251
4/7/25			9/30/26		+25	276
4/7/25			4/30/27		+50	326
4/8/25			10-2025		-12	314
4/16/25			9/30/26		-25	289
5/1/25			10-2025		-12	277
5/15/25			10-2025		-12	265
6/12/25			10-2025		-7	258
6/25/25			10-2025		-17	241
7/16/25			10-2025		-12	229
7/28/25			10-2025		-12	217
8/19/25			10-2025		-12	205
8/29/25			10-2025		-12	193

DRUG NAME: Potassium Acet. 2mEq/mL Package Size: 25 x 20mL

Page: _____

PREVIOUS BALANCE:

[illegible]

DRUG NAME:

Package Size:

50 mL

Page:

PREVIOUS BALANCE:

[illegible]

DRUG NAME Sodium chloride 0.9% PACKAGE SIZE 25 x 20ml

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
8/14/24			Oct-01-2025		+50	+50
2-13-25			Oct-01-2025		-6	44
3-6-25			Jul-31-2025		+25	69 Incorrect Invoice #
3-6-25			Jul-31-2025		+25	69
3/20/25			10-01-2025		-6	63
4/2/25			07-31-2026		+50	113
4/8/25			10-01-2025		-6	107
5/1/25			10-01-2025		-6	101
5/15/25			10-01-2025		-6	95
5/23/25			7-31-2026		+50	145
6/12/25			Jul-31-2026		-6	139
6/25/25			10-01-2025		-6	133
7/16/25			10-01-2025		-7	126
7/28/25			10-31-2026		+50	176
7/28/25			10-01-2025		-6	170
8/19/25			10-01-2025		-1	169
8/19/25			7-31-2026		-5	164
8/28/25			7-31-2026		-6	158
9/17/25			7-31-2026		-6	152
9/30/25			7-31-2026		-6	146

DRUG NAME:

Sodium CL 0.9% (BAG)

Package Size:

$$10 \times 1000 \text{ mL}$$

Page:

PREVIOUS BALANCE:

①

[illegible]

DRUG NAME: Sodium CL 0.9% (BAG) Package Size: 12 x 1000 mL

Page: 1

PREVIOUS BALANCE: 0

[illegible]

DRUG NAME**PACKAGE SIZE**[illegible]

DRUG NAME: Rocuronium 50mg/5mL Package Size: 10 x 5mL

Page: 1

PREVIOUS BALANCE: ~~0~~

[illegible]

DRUG NAME:**DRUG NAME:**

Page:

~~1~~[illegible]

DRUG NAME: Rocuronium 100mg/10mL Package Size: 10 x 10mL (10 per box)

Page: 1

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
3/7/24				06/31/2025	+ 10	10
3/11/24				06/31/2025	+ 80	90
1/3/2025				3/31/2026	+ 30	120
3/6/25				3/31/2026	+ 100	220
3/20/25				6/31/2025	- 20	200
4/2/25				3/31/2025	+ 200	400
4/8/25				6/31/2025	- 20	380
4/16/25				6/31/2025	- 10	370
4/23/25				10/31/2026	+ 30	400
4/23/25				3/31/2026	+ 70	470
5/1/25				6/31/2025	- 20	450
5/23/25				10/31/2026	+ 100	550
6/9/25				6/31/2025	- 10	540
6/12/25				6/31/2025	- 10	530
6/12/25				3/31/2026	- 10	520
6/25/25				3/31/2026	- 10	510
7/16/25				3/31/2026	- 20	490
7/28/25				10/31/2026	+ 240	730
7/28/25				3/31/2026	- 20	710
7/28/25				10/31/2026	- 10	700
9/17/25				3/31/2026	- 15	685
9/30/25				3/31/2026	- 20	665

INVOICE DATE 07/28/2025

PO

ORDER DATE 07/25/2025

SHIP DATE 07/28/2025 PIECES INVOICED 77

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
			5	5	4			POTASS ACET SD 2MEQ/ML25X20ML FTV	25X20	SD				77.38	309.52	
			24	24	21			ROCURONIUM MD 10MG/ML 10X10ML	10X10	MD				21.66	454.86	
			24	24	3			ROCURONIUM MD 10MG/ML 10X10ML	10X10	MD				21.66	64.98	
			36	36	22			ROCURONIUM MD 10MG/ML 10X5ML	10X5M	MD				20.48	450.56	
			36	36	14			ROCURONIUM MD 10MG/ML 10X5ML	10X5M	MD				20.48	286.72	
			5	5	5			ETOMIDATE SD 2MG/ML 10X20ML	10X20	SD				41.73	208.65	
			1	1	1			HYDROXYZ HCL SD 25MG/ML 25X1ML	25X1M	SD				459.02	459.02	
			2	2	2			LIDOCAINE HCL MD 1% 25X10ML	25X10	MD				18.93	37.86	
			5	5	1			POTASS ACET SD 2MEQ/ML25X20ML FTV	25X20	SD				77.38	77.38	
			2	2	2			POTASS ACET SD 2MEQ/ML25X50ML FTV	25X50	SD				254.85	509.30	
			2	2	2			SODIUM CL SF 0.9% 25X20ML	25X20	SF				54.38	108.76	

SUMMARY

TOTAL RX 2,967.61
TOTAL OTC 0.00
NET AMOUNT 2,967.61

EXP:
12/26
10/26
10/26
10/26
10/26
3/27
8/26
4/27
12/26
10/26
10-31-26

SUB TOTAL	2,967.61
GRAND TOTAL	2,967.61
TOTAL DUE BY	08/27/2025

Invoice

Invoice Date: 9/18/2025

Order Date 9/15/2025

Customer P.O. [REDACTED]	Terms: Due Date Net 30: 10/18/2025	Account Manager: [REDACTED]	Ship VIA GROUND	Customer Number: [REDACTED]
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NDC#	Ordered	Shipped	Remaining	Price Each	Amount
[REDACTED]	50.00	50.00	0.00	69.00	3,450.00

ETOMIDATE 20MG SDV 10X10ML

Expiration date: 4/30/2027

Lot Qty: 48.00 ✓

Expiration date: 4/30/2027

Lot Qty: 2.00 ✓



Net Invoice:	3,450.00
Less Discount:	0.00
Freight:	36.49
Sales Tax:	0.00
Invoice Total:	3,486.49

A4

Affidavit of Dr. Joel Zivot, M.D.,

September 15, 2025

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

September 15, 2025

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 a medical license from the states 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 Frank Walls regarding Mr. Walls' medical condition and the risks attendant to executing him by lethal injection.

5. I became involved in Mr. Walls' case at the request of his attorneys. I agreed to review his medical records and then travel to meet Mr. Walls in prison to obtain a direct medical history and perform an appropriate medical examination. The purpose of this evaluation is to provide an affidavit that would explain the risks posed to Mr. Walls if he is executed according to Florida's current lethal injection protocol.
6. My opinion is based on the review of documents supplied to me by attorneys for Mr. Walls. I reviewed a file labeled as "Frank Walls Florida DOC Records" dated June 3, 2025. This file contained 3422 pages. 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. Frank Walls is a 57-year-old man who suffers from many medical problems, including, 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, chronic and poorly controlled back pain, and bipolar psychiatric disorder. He is an ex-smoker with a 14-pack-year history – he smoked one pack per day for 14 years. He has some degree of intellectual disability.
8. On July 23, 2025, I travelled to Florida State Prison in Raiford, Florida, to obtain a history and perform a physical examination on Frank Walls. I was escorted to meet with Mr. Walls in a small room, not designed to perform a proper medical examination. Mr.

Walls informed me that he has been a resident of death row in Florida since 1988. At first, Mr. Walls exhibited some paranoia and believed I was possibly not a physician but instead an FBI agent sent to trick him in some capacity. With time and reassurance, I was able to convince him of my purpose and identity.

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 back discomfort, and he needed to reposition himself frequently during our conversation to reduce his pain. He is unable to lie flat secondary to his severe and chronic back pain. For this pain, he is prescribed oral meloxicam and a topical analgesic. Mr. Walls confirmed his history of long-standing obstructive sleep apnea. He reports an issue with loud snoring, consistent with severe sleep apnea. He uses a CPAP machine to mitigate his sleep apnea condition.
10. In a review of the medical records of Mr. Walls, I found a document entitled “Department of Corrections Office of Health Services Back Pain Protocol” dated 4/1/2018. This document records an examination of Mr. Walls and notes his oxygen saturation to be 98%. On 7/23/2025, I examined Mr. Walls, and his oxygen saturation was 87% to 92%. This likely reflects worsening chronic pulmonary insufficiency related to his long-standing obstructive lung disease over this time. This decline would be linear, representing an ever-worsening clinical course. An oxygen saturation of 98% is normal, while an oxygen saturation of 87-92% is highly abnormal. Mr. Walls confirmed his regular nightly use of his CPAP machine to manage his obstructive sleep apnea. A

decline in oxygen saturation despite CPAP compliance represents a severe decline in his health.

11. On further examination of Mr. Walls, I estimated his weight to be approximately 250-300 pounds. I was not supplied with a scale. Owing to his being shackled, I was unable to obtain a more accurate blood pressure measurement, but I was able to determine his systolic blood pressure was approximately 115 to 120 mmHg. His heart rate was 87 and regular. My examination also found evidence of peripheral neuropathy, likely reflecting poorly controlled diabetes.
12. The conditions at Union Correctional Institution are inadequate for thorough medical testing. In addition to the restrictions mentioned above, I could not take an ultrasound of Mr. Walls' heart as originally planned because my device could not get a Wi-Fi signal in the visiting room. This ultrasound device requires a Wi-Fi signal. While Mr. Walls is visibly declining and in poor health, to fully understand the extent of Mr. Walls' conditions, it is my medical opinion that he would require pulmonary function testing, arterial blood gas testing, a transesophageal echocardiography, a chest x-ray, an inspection of his CPAP machine, and thyroid function testing. Most of these tests and examinations must occur outside a prison setting, but due to the restrictions within the Florida prison system, that is unlikely to occur.
13. Mr. Walls 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 heart and lung function. His thyroid function is likely abnormal, and this will significantly impact his cardiovascular response to execution. Obstructive sleep apnea leads to chronic elevation

of blood carbon dioxide levels. In turn, this leads to rising blood pressure within the lungs – so-called pulmonary hypertension. This causes the right side of the heart to enlarge and lose function. Right heart failure and pulmonary hypertension lead to liver dysfunction. Heart, lung, and liver dysfunction significantly raise the risk of profound and painful organ failure and increase the known risk of pulmonary edema, which is often observed in lethal injection executions.

14. When a prisoner experiences pulmonary edema during an execution, the membranes in their lungs are eroded by the potent injection of a large dosage of drugs (in this case, etomidate). As the lungs break down, holes in the membrane fill with blood. In the context of an execution, this is extremely dangerous as the heart continues to pump. At the same time, the large dose of toxic medicine circulates through the body, filling the lungs with blood and causing pulmonary edema. While a prisoner experiences pulmonary edema, they feel the terror that accompanies drowning and asphyxiation as they choke on their own blood. In my research on this topic, I have reviewed eyewitness accounts of lethal injection executions. On occasion, it can be visibly observed that as the prisoner is dying, the chest heaves. This very likely represents the rapid accumulation of bloody frothy fluid in their lungs – pulmonary edema. They will gasp for air as they suffocate to death.

15. The Florida lethal execution protocol involves the sequential intravenous delivery of three drugs to a person to kill by execution. 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

metabolism is primarily hepatic, which means it will accumulate rapidly in the liver.

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 the contraction of the heart. In large doses, potassium acetate is painful when injected and will cause the heart to cease functioning.

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

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. Mr. Walls will die a needlessly cruel death if Florida insists on trying to kill him with Florida's version of lethal injection.

17. I hold the opinions in this affidavit 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 affidavit.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a horizontal stroke extending to the right.

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