*** CAPITAL CASE ***

No. 25-6382

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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

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I. Respondents mislead in suggesting that Mr. Walls's claim—which has always relied on the error-riddled execution logs—has "morphed"

The assertion that Mr. Walls's instant claim "morphed" from what was raised in his initial § 1983 complaint is simply false. Mr. Walls's core complaint is, and has always been, that the nexus between his failing health *in the context* of DOC's protocol errors creates a substantial risk of serious harm. It was Respondents and the courts below that consistently failed to acknowledge the comprehensive nature of the claim, necessitating increased focus on what Respondents hope this Court too will overlook. In every filing below, Mr. Walls focused on the error-riddled logs, and their implications for any timeliness or undue delay analysis.

Mr. Walls argued in his complaint that "[t]he risks of applying the [lethal injection protocol] to a medically vulnerable prisoner like Mr. Walls are heightened because, while Florida shatters records for the speed and volume of executions in 2025, [Respondents] have demonstrated repeated negligence and noncompliance with respect to their own protocol." NDFL-ECF 1 at ¶ 77. Indeed, Mr. Walls's argument has always been that "he is particularly vulnerable to complications given his troublesome medical conditions. Should there be an issue in the Protocol, [Respondents'] negligent approach renders him more vulnerable to intolerable pain." *Id.* at ¶ 92. And, "[g]iven Mr. Walls's severe health concerns, [Respondents'] actual administration of the [lethal injection protocol] to him is particularly dangerous in light of the numerous documented errors." *Id.* at ¶ 94. And, "Mr. Walls is particularly vulnerable to pulmonary edema given his weakened cardiac and respiratory

functioning. Mr. Walls is at a heightened risk of a disastrous execution in light of [Respondents'] documented negligence in adhering to their own protocol." *Id.* at 118. And, of course, the alarming records themselves were attached to the complaint.

The comprehensive two-part nature of the claim was repeatedly made clear in all of Mr. Walls's subsequent filings in the district court. *See* NDFL-ECF 19 at 1 ("Mr. Walls raised specific factual allegations concerning his particularized medical conditions, coupled with documentation showing [Respondents'] inability to follow their own standards when carrying out executions, that comprise at least a plausible claim for relief under the Eighth Amendment and *Glossip v. Gross*, 576 U.S. 863 (2015))"; *see also* NDFL-ECF 21 at 1-2 ("Mr. Walls has challenged [Respondents'] plan to execute him with the [lethal injection protocol] in light of his numerous and severe health issues, which is especially likely to cause unconstitutional suffering in light of the documented risk that [Respondents] will carry out the execution in a negligent manner.").

The DOC records undergirding Mr. Walls's claim were provided by Respondents in response to a public records request, were redacted by Respondents, and were available to Respondents throughout the entirety of this litigation. While Respondents intimate that the records may not be accurate or reliable, the DOC records *are Respondents' own records*, available to opposing counsel at any time, direct from the source. But neither Respondents nor the Attorney General's Office have investigated the records, paused to reevaluate whether the pace and speed of executions this year has contributed to the cascade of serious errors, including use of

expired drugs, incorrectly dosing drugs, and using drugs that are off-protocol entirely. In fact, had Respondents addressed the errors directly, Mr. Walls may not be seeking relief in this Court today. That Respondents continue to distract, deny, and denigrate Mr. Walls's alarm at the negligence reflected in the Respondents' own records only augments the concern here.

Because Respondents have chosen to cast doubt upon their own DOC records rather than engage with what they show, Mr. Walls's repeats and illustrates some of the most egregious errors that should alarm a medically vulnerable prisoner in Florida.

On June 25, 2025, a date corresponding to Thomas Gudinas's execution (which actually occurred on June 24), the inventory logs only show 10 x 10ml vials of rocuronium bromide were removed (1000mg), suggesting that Respondents only prepared half of the required paralytic drug, in violation of the Protocol which requires 2000mg, administered through 20 x 10ml vials:

6/12/25	[redacted]	JUN 2025	−10	530
6/12/25		3/2026	−10	520
6/25/25		3/2026	−10	510
7/16/25		3/2026	−20	490

On June 12, 2025, a date corresponding to Anthony Wainwright's execution (which occurred on June 10, 2025), 7 vials of potassium acetate were removed from Respondents' inventory. This suggests that Respondents prepared only 280 milliequivalents of potassium acetate in violation of the protocol, which requires 480 milliequivalents (12 x 20ml vials):

5/1/25	[redacted]	10-2025	[redacted]	-12	277
5/15/25		10-2025		-12	265
6/12/25		10-2025		-7	258

In what Respondents acknowledge is the "most serious accusation," BIO at 17-18, the records show that etomidate with an expiration date of January 31, 2025 was used during the executions of Victor Jones[1] on September 30, 2025; David Pittman on September 17, 2025; Curtis Windom on August 28, 2025; and Kayle Bates on August 19, 2025:

8/19/25	[redacted]	1/31/2025	-10	290
8/29/25		1/31/2025	-10	280
9/17/25		1/31/2025	-10	270
9/30/25		1/31/2025	-10	260

These errors are not "entirely benign" as Respondents argue. BIO at 17. And nothing about the harm they could cause Mr. Walls is speculative. In fact, as Ron McAndrew, the former Warden of Florida State Prison who oversaw multiple executions in both Florida and Texas, stated just today, "[t]hese are not minor paperwork issues. Florida's lethal injection protocol relies on precise drug dosing to ensure the first drug renders a person fully unconscious before the remaining drugs cause paralysis and cardiac arrest…If that process breaks down—because of degraded drugs, improper dosages, or sloppy documentation—a person may experience extreme pain while unable to move or communicate." Ron McAndrew, *Florida's Execution Pace Tests the*

[1] Furthermore, this Court should note that this excerpt of the DOC records spans September 30, 2025. To the extent that Respondents' question when these records were obtained, it would not have been possible for counsel to have obtained this information before October 1.

Limits of the Law—and its Workforce, Tampa Bay Times (Dec. 17, 2025), *available at* https://www.tampabay.com/viewpoints/2025/12/17/floridas-execution-pace-tests-limits-law-its-workforce-column/.

The connection between these errors and Mr. Walls's medical vulnerability is obvious. If Respondents cannot manage to correctly fill out a paper form keeping track of vials of controlled substances, it is perfectly reasonable to question their ability to handle a medically vulnerable prisoner who is gasping for air and choking on his own blood right in front of them. Respondents, and the courts below, appear entirely uninterested in addressing that issue, as back-to-back executions continue unabated.

II. Respondents ignore the lower courts' violations of basic equitable principles in denying a stay or injunction

The balance of equities is critical to a court's decision to issue a stay or injunction. *See, e.g, Nken v. Holder*, 556 U.S. 418, 434 (2009). This should be a careful analysis that necessarily includes the merits of an underlying claim. At no time is that more important than now, where Mr. Walls stands to be executed with a protocol that is extremely likely to cause him an unconstitutional level of torture given his ailing health and Respondents' demonstrated inability to follow their own protocol. It is therefore impossible to divorce timing from the underlying substance of Mr. Walls's claim, as Respondents have attempted to do. In continuing to insist that Mr. Walls wrongly delayed because he could have filed suit earlier, Respondents ignore several critical, and fact-based, elements to his claim.

Respondents first challenge the timing of the underlying medical component of Mr. Walls's claim, which relied on the fact that Mr. Walls's symptoms worsened in

July of this year. That is when counsel became aware that Mr. Walls was experiencing symptoms and began an investigation—it was not a deadline for filing a full-blown lawsuit. It is commonly known that health issues are not static. To that end, the 2017 health records relied on by Respondents—and Mr. Walls's own medical expert, in fact—merely show that Mr. Walls was diagnosed with related health issues years ago, which, as his medical expert made clear, is not relevant to Mr. Walls's instant vulnerability to pulmonary edema. BIO at 16. Mr. Walls indeed had *some* health issues that were diagnosed prior, but those conditions only worsened to a degree that ultimately implicated Eighth Amendment concerns in July. As Respondents' own records show, Mr. Walls was diagnosed and placed on a DOC issued treatment plan, including the use of a CPAP machine. Relevant here is that in July, despite his nightly use of the CPAP machine, the treatment was no longer working to adequately aid Mr. Walls's breathing. Dr. Zivot's affidavit says exactly that: "A decline in oxygen saturation despite CPAP compliance represents a severe decline in his health." A4 at 3-4.

Mr. Walls did not "concede" that his claim ripened in July. BIO at 10. This is another of the many examples of Respondents misconstruing or mispresenting Mr. Walls's arguments. In reality, Mr. Walls argued to the district court that "Mr. Walls's claim arose in July 2025, *at the earliest*, when his cardiopulmonary health deteriorated to the point where he began experiencing sensations of hyperventilating and near fainting, implicating his Eighth Amendment protections." NDFL-ECF 19 at

3. This date is when "Mr. Walls's particularized vulnerability to [pulmonary edema] in Florida, among other painful effects…became known." *Id.* at 4.

Therefore, as outlined in Dr. Zivot's findings, which were not received until September, Mr. Walls's rapidly weakening heart and lungs render him at severe risk of complications. These findings prompted the investigation that resulted in the October 28 discovery of the faulty execution logs. Moreover, while Respondents raise the general effectiveness of etomidate—which is still an open question—as a defense to Mr. Walls's particularized medical concerns, it ignores that, even if etomidate works as alleged, Mr. Walls is *still* likely to suffer agonizing pain and terror because pulmonary edema is almost guaranteed for a prisoner with documented health issues like Mr. Walls. NDFL-ECF 1 at ¶¶ 54-59.

Respondents also assert that Mr. Walls will be "unconscious" when pulmonary edema occurs, but this excuse invokes an irrelevant and incorrect distinction between consciousness and anesthesia. BIO at 23. Consciousness, in this context, has no impact on any pain that Mr. Walls will experience. Respondents' contentions about etomidate would only have merit if they proved that Mr. Walls would be anesthetized. Etomidate is not an anesthetic. App. A4 at 5-6. ("Etomidate is a non-barbiturate sedative… not classically considered an analgesic (used for the control of pain.)." Moreover, Respondents ignore that the length of time etomidate is effective is only 3-5 minutes, despite executions taking about 12 to 15, or, in the case of Bryan Jennings, executed last month, 20 minutes. *See* NDFL-ECF 1 at ¶ 87.

Moreover, in defending the protocol as it is written, Respondents provide a warped view of how the protocol operates in practice. For example, the fact that Mr. Walls did not quantify how long he would experience pulmonary edema after being injected with etomidate is due, in large part, to Respondents' intentional masking of visible signs of struggle by using a paralytic drug. And there is no way of knowing whether the examples of the eighteen other "efficient[]" executions were, in fact, humane, given the effect of the paralytic drug. BIO at 26. While Respondents claim that Justice Ginsberg "prais[ed] Florida's consciousness checks" in a dissenting opinion in *Baze v. Rees*, 553 U.S. 35, 120 (2008), Justice Ginsberg also expressed horror at Kentucky's protocol, which used a paralytic "to paralyze the inmate mean[ing] he will not be able to scream after the second drug is injected, no matter how much pain he is experiencing." *Id.* at 122. The same is the case here—the paralytic will mask any signs of searing pain felt by Mr. Walls after it is administered.

Respondents' reliance on prior Florida Supreme Court cases like *Asay v. State*, 224 So. 3d 695 (Fla. 2017) and *Long v. State,* 271 So. 3d 946 (Fla. 2019), is inapposite. Those cases both concerned the effectiveness of etomidate as a sedative in general and raised none of the serious, particularized issues that Mr. Walls has presented in his as-applied claim. The *Asay* litigation is particularly irrelevant because that case concerned Florida's first ever etomidate execution—there were no autopsies, no indication of pulmonary edema to rely on. Nothing was known about etomidate, or pulmonary edema, or the link between the two. Furthermore, a state court determination of a facial lethal injection challenge has very little relevance to Mr.

Walls's as-applied claim, which alleges not only his unique medical concerns, but also Respondents' inability to carry out the protocol, which has only recently surfaced.

Similarly, Respondents' reliance on *Barr v. Lee*, 591 U.S. 979 (2020) is also mistaken. In that case, this Court vacated a stay for a prisoner set to be executed by a one-drug pentobarbital method—justifying that holding by pointing to the numerous jurisdictions employing the method. Such a case is completely inapplicable here, as the method Mr. Walls is about to be subjected to is unique to Florida[2], and has never yet been assessed by a federal court. Here, not only have Mr. Walls's unique and underlying medical issues never been heard, but the records have also never been considered by any federal court, nor has the etomidate protocol itself.

In defending the protocol rather than providing any assurances that the documented errors will not repeat, Respondents are burying their heads in the sand. By doing so, Respondents forfeit the benefit of the doubt. For example, while Respondents contend that Mr. Walls "failed to grapple with" the effect of "at minimum, 200 milligrams of etomidate called for by Florida's protocol," Mr. Walls indeed grappled with not only the likelihood that etomidate will cause him to

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[2] It is telling that since Florida adopted the etomidate protocol in 2017, though other states have reported issues obtaining drugs, none have opted for the experimental etomidate. *See, e.g.,* Casey Smith, Indiana Capital Chronicle (June 4, 2025) https://indianacapitalchronicle.com/2025/06/04/braun-says-indiana-is-out-of-execution-drugs-signals-willingness-to-debate-capital-punishment/ (documenting trouble with lethal injection drug procurement in Indiana); Jeremy Pelzer, *Ohio Continues Long Search for Lethal-Injection Drugs*, Cleveland.Com (Dec. 30, 2015); https://www.cleveland.com/ open/2015/12/ohio_continues_long_search_for_lethal-injection_drugs.html (same in Ohio); Ken Ritter, *Battle Over Drugs for Nevada Execution Ends With No Decision,* Associated Press (Apr. 9, 2020); https://apnews.com/general-news-b7772a529bca614b751fb44483 (same in Nevada).

experience, and die from, pulmonary edema, but also that he would receive an unknown dosage or an expired dosage, as the October 28 records predict. NDFL-ECF 1 at ¶¶ 79, 87.

Given Mr. Walls's size and failing cardiopulmonary health, if Respondents are routinely preparing an amount of chemicals below what is required by the protocol, or administering expired drugs with unpredictable chemical properties, there is an increased risk of a drawn out, torturous execution.

III. Respondents' other procedural arguments were given no credence by the courts below and should be rejected

Respondents' other procedural arguments, like exhaustion or issue preclusion, should not persuade this Court. None were addressed by the courts below or have any merit. For example, Respondents argue that because Mr. Walls could have raised his Eighth Amendment challenge in expedited death warrant litigation in state court, he is precluded from raising it in federal court under § 1983. BIO at 19-20. But that is incorrect. *See Hill v. McDonough*, 547 U.S. 573, 580 (11th Cir. 2006) (holding that a § 1983 suit filed under death warrant by Florida prisoner in federal court was an appropriate vehicle for a challenge to Florida's lethal injection protocol)*; see also Board of Regents of Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 491 (1980) ("This Court has not interpreted § 1983 to require a litigant to pursue state judicial remedies prior to commencing an action under this section.")

Further, no meaningful administrative remedies were available for Mr. Walls to exhaust before filing this suit, and an inmate need exhaust only such administrative remedies as are actually "'available,'" a requirement in the plain

language of the PLRA. *Ross v. Blake*, 578 U.S. 632, 648 (2016) (citing 42 U.S.C. § 1997e(a)). As relevant here, in exigent circumstances like an active death warrant, other federal district courts have pretermitted the exhaustion analysis altogether, focusing on the merits of the underlying claim. *See* Order, *Long v. Inch*, 8:19-cv-1193, ECF No. 21 at 15 n.5 (M.D. Fla. May 19, 2019) (noting that defendants raised exhaustion issue in response to inmate's PLRA suit, but foregoing exhaustion analysis and deciding motion for stay on the merits); *Chavez v. Palmer*, 3:14-cv-110, 2014 WL 521067 at *23 (M.D. Fla. Feb. 10, 2014) (same); *Muhammad v. Crews*, No. 3:13-cv-1587, 2013 WL 6844489 *6 n.9 (M.D. Fla. Dec. 27, 2013) (same).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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