

No. _____

IN THE
Supreme Court of the United States

ANDREW RICHARD LUKEHART,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026, AT 6:00 PM**

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Appendix A

May 27, 2026 Florida Supreme Court Opinion, Case No.: SC2026-0736

Supreme Court of Florida

No. SC2026-0736

ANDREW RICHARD LUKEHART,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

May 27, 2026

PER CURIAM.

Andrew Richard Lukehart was convicted and sentenced to death for the 1996 murder of Gabrielle Hanshaw. On May 1, 2026, Governor DeSantis issued a death warrant scheduling Lukehart's execution for June 2, 2026. Lukehart unsuccessfully sought successive postconviction relief in the circuit court and now appeals. We have jurisdiction. See art. V, § 3(b)(1), (9), Fla. Const.; see also *State v. Fourth Dist. Ct. of Appeal*, 697 So. 2d 70, 71 (Fla. 1997) (holding "that in addition to our appellate jurisdiction over sentences of death, we have exclusive jurisdiction to review all types

of collateral proceedings in death penalty cases”). We affirm. We also deny Lukehart’s motion for a stay of execution.

I

On February 25, 1996, Lukehart killed five-month-old Gabrielle Hanshaw in Jacksonville. At the time, Lukehart lived with Gabrielle’s mother, Misty Rhue, who was his girlfriend. After Lukehart took Gabrielle to a room to change her diaper, Rhue saw Lukehart drive away from the house. Rhue searched the house but could not find Gabrielle. Lukehart initially told Rhue and the police that Gabrielle had been abducted, leading to an eighteen-hour search by the Jacksonville and Clay County Sheriff’s Offices. Lukehart eventually told the officers that he had killed Gabrielle and directed them to a pond where they found her body. Lukehart told the police that he had dropped Gabrielle on her head while changing her diaper and then shook her. He said that, realizing Gabrielle had died, he panicked, drove to a rural area, and threw her into the pond, injuring her head on the car door in the process.

Gabrielle’s injuries were inconsistent with Lukehart’s story. She had suffered five separate impacts to her head, two of which caused skull fractures and could have each been fatal. Lukehart

testified during the guilt phase of his trial that he had lied when he told the police that he had dropped Gabrielle on her head. He testified that Gabrielle would not lie flat on the floor as he tried to change her diaper. So, he repeatedly and forcefully pushed her head and neck back onto the floor, killing her.

A jury convicted Lukehart of first-degree murder and aggravated child abuse. *Lukehart v. State*, 776 So. 2d 906, 911 (Fla. 2000). At the penalty phase, the State established that Lukehart had pleaded guilty to felony child abuse for injuring a previous girlfriend's baby and was on probation for that offense at the time he murdered Gabrielle. *Id.* The jury recommended the death sentence by a nine-to-three vote. *Id.* The trial court agreed and sentenced Lukehart to death for the first-degree murder. *Id.*

In the trial court's sentencing order, it found the State established three statutory aggravators: (1) the murder was committed during the commission of the felony of aggravated child abuse; (2) the victim was under twelve years of age;¹ and

1. We struck this aggravator on direct appeal as improperly doubling the same aspect of the crime as the aggravator about the murder having been committed by a person engaged in aggravated child abuse. But we found that its inclusion was harmless beyond

(3) Lukehart had a prior felony conviction for child abuse and was on felony probation for that offense (two factors merged).² *Id.* at 911. The trial court found two statutory mitigators: (1) Lukehart's age (twenty-two) and (2) his substantially impaired capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. *Id.* The trial court also found four nonstatutory mitigators: (1) Lukehart's alcoholic and abusive father; (2) Lukehart's drug and alcohol abuse; (3) his having been sexually abused and suicidal as a child; and (4) his employment. *Id.*

On direct appeal, we affirmed Lukehart's convictions and death sentence.³ *Id.* at 927. We found that while the State did not

a reasonable doubt, as Gabrielle's age increased the weight of the aggravated child abuse aggravator. *Id.* at 925.

2. We found that applying the probation aggravator to Lukehart violated his ex post facto rights. But we found this error to be harmless beyond a reasonable doubt, as (1) evidence of his probation was relevant to proving the prior violent felony aggravator and (2) the trial court merged the probation aggravator with the prior violent felony aggravator in its weighing decision. *Id.* at 924-25.

3. Lukehart raised the following claims on direct appeal: (1) the trial court erred in refusing to suppress certain statements from Lukehart; (2) the trial court erred by limiting cross-examination; (3) Lukehart's convictions of first-degree murder and aggravated battery were invalid because of insufficient evidence of

prove premeditated murder, the State had proven first-degree felony murder, with aggravated child abuse as the underlying felony. *Id.* at 921-22.⁴ On June 25, 2001, the United States Supreme Court denied Lukehart's petition for writ of certiorari. *Lukehart v. Florida*, 533 U.S. 934 (2001).

Lukehart unsuccessfully sought postconviction relief in state court. *See Lukehart v. State*, 70 So. 3d 503 (Fla. 2011) (affirming the denial of Lukehart's initial motion for postconviction relief filed

premeditation and the lack of a felony independent of the homicide; (4) the trial court erred in instructing the jury on justifiable or excusable homicide; (5) the disproportionality of Lukehart's death sentence; (6) the trial court erred in finding that the murder in the course of a felony aggravator had been established; (7) the trial court erred in applying the new aggravator of a crime committed while on felony probation; (8) the trial court erred in finding both murder in the course of a felony and that the victim was under twelve as aggravators (improperly doubling); (9) the victim-under-twelve aggravator and the standard jury instruction on the aggravator were unconstitutional; (10) the trial court erred in allowing a collateral crime (found to be a prior violent felony) to be a feature of the penalty phase; (11) the prosecutor's closing argument comments during the penalty phase were fundamental error; and (12) the trial court erred regarding the sentence for the noncapital conviction and the restitution orders. *Id.* at 911 n.1.

4. We remanded for the trial court to resentence Lukehart for his aggravated child abuse conviction with instructions for the trial court to fill out a sentencing guidelines scoresheet, which it had failed to do. *Id.* at 927.

under Florida Rule of Criminal Procedure 3.850 and denying his petition for a writ of habeas corpus);⁵ *Lukehart v. State*, 103 So. 3d 134 (Fla. 2012) (affirming the denial of Lukehart's first successive

5. In his initial postconviction proceeding, Lukehart raised the following claims before us: (1) counsel was ineffective for failing to challenge the prior violent felony aggravator during the penalty phase; (2) counsel was ineffective for failing to file a motion to cease Lukehart's medication and a motion for continuance; (3) counsel was ineffective for failing to present Dr. Harry Krop's testimony during the guilt phase; (4) Lukehart's amended postconviction motion should relate back to the filing of his shell motion; (5) counsel was ineffective for failing to include an additional argument in the motion to suppress; (6) counsel was ineffective for failing to properly argue and object to the jury instructions and the State's allegedly improper arguments regarding instructions; (7) counsel was ineffective under *Caldwell v. Mississippi*, 472 U.S. 320 (1985); (8) counsel was ineffective for failing to present live testimony rather than deposition testimony during the penalty phase; (9) counsel was ineffective for failing to object to allegedly improper prosecutorial comments; (10) the rule prohibiting juror interviews was unconstitutional; (11) Florida's lethal injection protocol was unconstitutional; and (12) cumulative error. *Id.* at 511 n.5. For claim (4), we concluded that Lukehart's motion was governed by rule 3.850 and his amended motion related back to the date of his original filing. *Id.* at 517. But we denied relief on all other claims and affirmed the postconviction court's denial of rule 3.850 relief. *Id.* at 525.

Regarding Lukehart's habeas petition, we denied relief on the following claims: (1) this Court should have revisited its prior proportionality review in light of a witness's testimony at the postconviction evidentiary hearing; (2) Florida's lethal injection protocol violates the Eighth Amendment; and (3) the inclusion of pancuronium bromide in Florida's lethal injection protocol violates free speech. *Id.* at 512 n.6, 524-25.

motion for postconviction relief filed under rule 3.851);⁶ *Lukehart v. Jones*, No. SC2016-1225, 2017 WL 1033691 (Fla. Mar. 17, 2017) (denying Lukehart’s successive habeas petition seeking relief under *Hurst v. Florida*, 577 U.S. 92 (2016)⁷).⁸ Lukehart was also one of

6. In Lukehart’s first successive postconviction proceeding, he raised the following claims: (1) counsel was ineffective for failing to (a) learn the effects of the medication Lukehart was taking, (b) inform the court and the jury that Lukehart was on medication and explain its effects, (c) move the court for the medications to cease, and (d) request a continuance; (2) Lukehart was incompetent at trial due to medication; and (3) Lukehart was involuntarily required to take medication. *Id.* at 135. We denied relief on all claims as procedurally barred. *Id.* at 136.

7. In *Hurst*, the United States Supreme Court held that Florida’s capital sentencing scheme, in which the jury’s role was to make a recommendation as to the death sentence, did not satisfy the Sixth Amendment’s requirement that a jury find each fact necessary to impose the death sentence. 577 U.S. at 94. For Lukehart, we held that pursuant to our decision in *Asay v. State*, 210 So. 3d 1 (Fla. 2016), *Hurst* did not retroactively apply to him. *Lukehart v. Jones*, 2017 WL 1033691, at *1.

8. Simultaneously with his successive habeas petition, Lukehart sought *Hurst* relief by filing a second successive rule 3.851 motion in circuit court and requested we hold his successive habeas petition in abeyance or relinquish jurisdiction. See Motion to Hold in Abeyance or Relinquish Jurisdiction to the Circuit Court for Consideration of Successive Rule 3.851 Motion, *Lukehart v. Jones*, SC2016-1225 (Jan. 10, 2017). We denied that motion. See Order Denying Motion to Relinquish Jurisdiction, *Lukehart v. Jones*, SC2016-1225 (Feb. 2, 2017). The circuit court denied Lukehart’s rule 3.851 motion, and Lukehart did not appeal.

the death row petitioners in *Allen v. Butterworth*, 756 So. 2d 52 (Fla. 2000), who sought a judgment that the Death Penalty Reform Act of 2000 was unconstitutional. We held that portions of the Act were unconstitutional and proposed new Florida Rules of Criminal Procedure 3.851 and 3.852. *Id.* at 67.

Lukehart sought habeas relief in federal court, too. On April 28, 2020, the United States District Court for the Middle District of Florida denied Lukehart habeas relief but granted a certificate of appealability on a *Miranda v. Arizona*, 384 U.S. 436 (1966), suppression claim. *Lukehart v. Sec’y, Fla. Dep’t of Corr.*, No. 3:12-CV-585-J-32PDB, 2020 WL 2183150, at *59 (M.D. Fla. Apr. 28, 2020). The United States Court of Appeals for the Eleventh Circuit expanded the certificate to include an ineffective assistance of counsel claim and then ultimately affirmed the denial of federal habeas relief. *See Lukehart v. Sec’y, Fla. Dep’t of Corr.*, 50 F.4th 32, 41 (11th Cir. 2022).

Governor DeSantis signed Lukehart’s death warrant on May 1, 2026. On May 4, 2026, the Circuit Court for the Fourth Judicial Circuit held a status conference, where Lukehart was represented by counsel. On May 5, 2026, Lukehart directed records demands to

the District Eight Medical Examiner's Office, the Florida Department of Law Enforcement (FDLE), and the Department of Corrections (DOC) under Florida Rule of Criminal Procedure 3.852(h) and (i). On May 6, 2026, all three state agencies objected, and the circuit court denied Lukehart's demands after a hearing that same day.

On May 8, 2026, Lukehart filed a third successive postconviction motion and a separate motion seeking to stay his execution. He raised three claims: (1) Florida's lethal injection protocol, as applied to him, constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution; (2) Florida's lethal injection protocol is facially unconstitutional under the Eighth and Fourteenth Amendments; and (3) Lukehart's thirty-two-day warrant period deprives him of a full and fair postconviction proceeding in violation of his due process rights under the Fifth and Fourteenth Amendments. Following a case management conference, the circuit court issued a written order on May 12, 2026, summarily denying Lukehart relief on each of his claims.

This appeal follows. Lukehart raises four claims before us:

(1) the circuit court erred in denying his as-applied Eighth Amendment method-of-execution challenge; (2) the circuit court erred in denying his facial Eighth Amendment method-of-execution challenge; (3) the circuit court erred in denying his warrant timeline challenge; and (4) the circuit court abused its discretion in denying his demands for additional public records. Lukehart asks that we vacate his death sentence or stay his execution and remand his case for an evidentiary hearing.

II

We have consistently said:

Summary denial of a successive postconviction motion is appropriate if the motion, files, and records in the case conclusively show that the movant is entitled to no relief. We review the circuit court's decision to summarily deny a successive rule 3.851 motion de novo, accepting the movant's factual allegations as true to the extent they are not refuted by the record, and affirming the ruling if the record conclusively shows that the movant is entitled to no relief.

Jennings v. State, 422 So. 3d 107, 113 (Fla.) (quoting *Zakrzewski v. State*, 415 So. 3d 203, 208 (Fla. 2025)), *cert. denied*, 146 S. Ct. 402 (2025). Applying this standard, we affirm the circuit court's summary denial of Lukehart's successive postconviction motion.

A

Lukehart argues that Florida’s lethal injection protocol, as applied to him, is cruel and unusual punishment under the Eighth Amendment because of his severe kidney disease. The circuit court summarily denied this claim as untimely and meritless. We agree.

This claim is untimely. A capital defendant must file any postconviction claim within one year after the conviction judgment and sentence becomes final. Fla. R. Crim. P. 3.851(d)(1).

Lukehart’s judgment and sentence became final nearly twenty-five years ago when the United States Supreme Court denied his petition for certiorari review in 2001. *Lukehart*, 533 U.S. 934. An exception exists for newly discovered evidence: “[f]or an otherwise untimely claim to be considered timely as newly discovered evidence, it must be filed within a year of the date the claim became discoverable through due diligence.” *Mungin v. State*, 320 So. 3d 624, 625-26 (Fla. 2020) (citing *Reed v. State*, 116 So. 3d 260, 264 (Fla. 2013)). But the facts on which Lukehart predicates this claim were discoverable more than a year ago. Florida’s “current three-drug protocol has remained essentially unchanged since 2017.” *Randolph v. State*, 422 So. 3d 166, 172 (Fla.), *cert.*

denied, 146 S. Ct. 819 (2025). And Lukehart admits that his medical records show deteriorating kidney values starting in 2023. Lukehart’s assertion that this claim only became discoverable when his kidney disease grew more severe in January 2026 is without merit. We repeatedly reject arguments that method-of-execution claims are ripe during warrant litigation when the worsening medical condition was discovered years earlier. *See Cole v. State*, 392 So. 3d 1054, 1064 (Fla.) (Parkinson’s disease since 2017), *cert. denied*, 145 S. Ct. 109 (2024); *Tanzi v. State*, 407 So. 3d 385, 392 (Fla.) (medical conditions since 2009), *cert. denied*, 145 S. Ct. 1914 (2025); *Rogers v. State*, 409 So. 3d 1257, 1266-67 (Fla.) (porphyria diagnosis), *cert. denied*, 145 S. Ct. 2695 (2025); *Randolph*, 422 So. 3d at 172-73 (lupus diagnosis since 1990).

This claim is also meritless. The Eighth Amendment, made applicable to Florida through the Fourteenth Amendment, prohibits “cruel and unusual punishments.” Amend. VIII, U.S. Const.⁹ To

9. The Florida Constitution also prohibits cruel and unusual punishments and directs that the prohibition “be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution.” Art. I, § 17, Fla. Const.

succeed on an as-applied Eighth Amendment challenge to his method of execution, Lukehart must “(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain.” *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip v. Gross*, 576 U.S. 863, 877 (2015)). Lukehart has done neither.

Lukehart claims that due to his kidney disease, Florida’s lethal injection protocol’s use of etomidate “may” create the “potential” for exaggerated negative consequences in his heart and lungs.¹⁰ These conclusory speculations do not present an imminent risk that Florida’s lethal injection protocol is sure or very likely to cause Lukehart needless suffering. This is especially true given the DOC “is entitled to the presumption that it will comply with the lethal injection protocol,” which includes “safeguards to ensure the

10. Lukehart also claims that his allergy to diphenhydramine, an antihistamine, could result in a severe allergic reaction during his execution. Not so. As Lukehart admits, that drug is not used in Florida’s lethal injection protocol, and, moreover, the antihistamine that DOC allegedly offers the condemned to reduce anxiety before their execution is entirely optional.

condemned is unconscious throughout the execution.” *Cole*, 392 So. 3d at 1065 (first citing *Muhammad v. State*, 132 So. 3d 176, 203 (Fla. 2013); and then citing *Long v. State*, 271 So. 3d 938, 945 (Fla. 2019)). It is also worth repeating that “the Eighth Amendment ‘does not demand the avoidance of all risk of pain in carrying out executions.’” *Tanzi*, 407 So. 3d at 392-93 (quoting *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019)). And Lukehart has not sufficiently pled how his kidney disease would cause him to feel pain over “the well-established fact that the administration of etomidate will render him unconscious likely within one minute,” *Rogers*, 409 So. 3d at 1268 (citing *Asay*, 224 So. 3d at 701), after which “a consciousness check is required and ‘the execution cannot proceed until [he] is rendered unconscious,’” *King v. State*, No. SC2026-0336, 2026 WL 672101, at *5 n.9 (Fla. Mar. 10) (quoting *Valle v. Singer*, 655 F.3d 1223, 1233 (11th Cir. 2011)), *cert. denied*, No. 25-7018, 2026 WL 730666 (U.S. Mar. 16, 2026). Moreover, Florida’s lethal injection protocol does “take into consideration the individual physical attributes of each inmate and provide for individualized procedures in light of any health concerns.” *Tanzi*, 407 So. 3d at 393 (quoting *Grossman v. State*, 5 So. 3d 668 (Fla.

2009)).

Lukehart has also not “establish[ed] the existence of a known and available alternative method of execution that would entail a significantly less severe risk” than Florida’s lethal injection protocol. *Glossip*, 576 U.S. at 878 (quoting *Baze v. Rees*, 553 U.S. 35, 57-60 (2008)). Before us, Lukehart has not offered any alternative method. Instead, he argues that he should not have to provide one because doing so is morally repugnant, against his religion, and impossible to realistically offer.¹¹ Yet “it is settled that capital punishment is constitutional,” and “there must be a [constitutional] means of carrying it out.” *Glossip*, 576 U.S. at 869 (alteration in original) (quoting *Baze*, 553 U.S. at 47). So, because Lukehart chooses to raise a method-of-execution claim, he “must make the

11. Lukehart also argues that *Glossip* wrongly requires that he provide an alternative method because doing so would violate his rights under the First and Fourteenth Amendments. But we have rejected the claim that the test articulated in *Glossip* “incorrectly requires a prisoner scheduled for execution to prove the existence of an available alternative method of execution.” *Correll v. State*, 184 So. 3d 478, 489 (Fla. 2015). That is because we are “bound by the conformity clause of the Florida Constitution to construe the state prohibition against cruel and unusual punishment consistently with pronouncements by the United States Supreme Court.” *Id.* (citing *Valle v. State*, 70 So. 3d 530, 538-39 (Fla. 2011)).

case that the State really can put him to death, though in a different way than it plans.” *Heath v. State*, 426 So. 3d 1253, 1262 (Fla.) (quoting *Nance v. Ward*, 597 U.S. 159, 169 (2022)), *cert. denied*, No. 25-6746, 2026 WL 363902 (U.S. Feb. 10, 2026). He fails to do so.¹² We affirm the circuit court’s denial of this claim.

B

Lukehart next argues that Florida’s lethal injection protocol is facially unconstitutional as a cruel and unusual punishment under the Eighth Amendment. The circuit court summarily denied this claim as untimely and meritless for the same reasons as Lukehart’s first claim. We agree.

As for timeliness, Lukehart has not justified his delay in bringing this claim given that, as we have said, Florida’s lethal injection protocol “has remained essentially unchanged since 2017.”

12. In the circuit court below, Lukehart pointed to other states that begin their lethal injections with analgesics and still others that use electrocution or lethal gas. But he failed to say how any of these methods are “feasible, readily implemented, and [would] in fact significantly reduce[] a substantial risk of severe pain” compared to Florida’s lethal injection protocol. *Tanzi*, 407 So. 3d at 393 (second alteration in original) (quoting *Glossip*, 576 U.S. at 877). And he does not argue for any alternative method on appeal.

Randolph, 422 So. 3d at 172. As for the argument’s merits, “[o]nce we have upheld the constitutionality of a lethal injection protocol, that protocol is facially constitutional as a matter of law.” *Banks v. State*, 150 So. 3d 797, 801 (Fla. 2014). In *Asay*, 224 So. 3d at 702, we approved Florida’s current three-drug protocol against an Eighth Amendment challenge. We have repeatedly rejected invitations to hold otherwise and do so again here. See *Jimenez v. State*, 265 So. 3d 462, 474-75 (Fla. 2018); *Long*, 271 So. 3d at 945-46; *Cole*, 392 So. 3d at 1064-65; *Tanzi*, 407 So. 3d at 392-93; *Rogers*, 409 So. 3d at 1268-69; *Randolph*, 422 So. 3d at 173; *Heath*, 426 So. 3d at 1262-63. We affirm the circuit court’s denial of this claim.

C

Lukehart also argues that his thirty-two-day warrant period deprives him of his due process rights under the United States and Florida Constitutions. The circuit court summarily denied this claim as meritless. We agree.

The Due Process Clause of the Fourteenth Amendment prohibits states from “depriv[ing] any person of life, liberty, or property, without due process of law.” Amend. XIV, U.S. Const. Florida’s Constitution similarly ensures that “[n]o person shall be

deprived of life, liberty or property without due process of law.”

Art. I, § 9, Fla. Const. We have consistently said “[d]ue process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided.” *Asay v. State*, 210 So. 3d 1, 5 (Fla. 2016) (citing *Huff v. State*, 622 So. 2d 982, 982 (Fla. 1993)).

Lukehart has not identified any matter in his warrant litigation about which he was denied notice or an opportunity to be heard before it was decided. Lukehart argues that his expedited warrant litigation schedule nevertheless deprives him of a meaningful opportunity to challenge his execution. We have repeatedly rejected similar claims and have held that “an expedited warrant litigation schedule does not deprive a defendant of his right to due process.” *Windom v. State*, 416 So. 3d 1140, 1150 (Fla.), *cert. denied*, 146 S. Ct. 66 (2025); *see also Knight v. State*, No. SC2026-0718, 2026 WL 1361316, at *7-8 (Fla. May 15), *cert. denied*, No. 25-7415, 2026 WL 1425695 (U.S. May 21, 2026); *Randolph*, 422 So. 3d at 173; *Jennings*, 422 So. 3d at 119; *Jones v. State*, 419 So. 3d 619, 625-26 (Fla.), *cert. denied*, 146 S. Ct. 79 (2025); *Bates v. State*, 416 So. 3d 312, 321 (Fla.) (“A thirty-day warrant period does not, in and of itself, deprive a capital defendant of the rights [to due process and

counsel].”), *cert. denied*, 146 S. Ct. 66 (2025); *Zakrzewski*, 415 So. 3d at 210-11; *Bell v. State*, 415 So. 3d 85, 106-07 (Fla.), *cert. denied*, 145 S. Ct. 2872 (2025); *Hutchinson v. State*, 416 So. 3d 273, 279-80 (Fla.), *cert. denied*, 145 S. Ct. 1980 (2025); *Tanzi*, 407 So. 3d at 390-91; *Barwick v. State*, 361 So. 3d 785, 789-91 (Fla. 2023).¹³

Lukehart has challenged his death sentence numerous times over nearly twenty-five years. *See supra* pp. 5-8 (outlining Lukehart’s postconviction litigation). His current thirty-two-day warrant litigation schedule does not deprive him of due process. We affirm the circuit court’s denial of this claim.

D

Lukehart argues that the circuit court wrongly denied his various demands for additional public records under rule 3.852. We review such claims for abuse of discretion. *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019). We find none.

13. To the extent that Lukehart argues that his warrant schedule deprives him of effective counsel, such a claim is not cognizable because “[u]nder Florida and federal law, a defendant has no constitutional right to effective collateral counsel.” *Zack v. State*, 911 So. 2d 1190, 1203 (Fla. 2005).

Lukehart made demands under rule 3.852(h) and (i), which permits “counsel for a defendant subject to a death warrant to request the production of certain public records.” *Cole*, 392 So. 3d at 1065-66 (citing Fla. R. Crim. P. 3.852(h)(3)). This “discovery tool is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief.” *Id.* at 1066 (quoting *Asay*, 224 So. 3d at 700). Accordingly,

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

Id. (citation modified) (quoting *Dailey*, 283 So. 3d at 792).

Lukehart demanded records related to recent and scheduled administrations of Florida’s lethal injection protocol from the District Eight Medical Examiner’s Office, FDLE, and DOC. The circuit court denied these demands as either not related to a colorable claim or as overly broad and burdensome. These denials were far from being the type of “arbitrary, fanciful, or unreasonable” decision that is an abuse of discretion. *State v. Coney*, 845 So. 2d

120, 137 (Fla. 2003) (quoting *White v. State*, 817 So. 2d 799, 806 (Fla. 2002)). Indeed, we have said that “requests related to actions of lethal injection personnel in past executions do not relate to a colorable claim concerning future executions because there is a presumption that members of the executive branch will perform their duties properly.” *Muhammad*, 132 So. 3d at 203 (citing *Valle*, 70 So. 3d at 549). Moreover, “because we have upheld the constitutionality of the current lethal injection protocol, such records ‘are unlikely to lead to a colorable claim for relief.’” *Dailey*, 283 So. 3d at 792 (citation modified) (quoting *Hannon v. State*, 228 So. 3d 505, 512 (Fla. 2017)).

It bears repeating that in Lukehart’s method-of-execution claim described above, he makes no attempt to allege an alternative to Florida’s lethal injection protocol—making the claim legally insufficient. So, this method-of-execution claim that he argues is related to his records demands cannot proceed. Lukehart acknowledges our precedent against his position but argues that redacted records obtained in a federal lawsuit by Frank Walls, who was recently executed, justify his additional records requests here.

We have rejected this argument. *See Heath*, 426 So. 3d at 1263-64; *King*, 2026 WL 672101, at *5-6.

To the extent that Lukehart contends that rule 3.852 violates his equal protection and due process rights under the Fourteenth Amendment, we have “previously rejected efforts to morph a challenge to the denial of a public records demand into a constitutional challenge.” *King*, 2026 WL 672101, at *6 (citing *Randolph*, 422 So. 3d at 172). The limitations imposed by rule 3.852 are “reasonable in the context of capital postconviction claims.” *Wyatt v. State*, 71 So. 3d 86, 111 (Fla. 2011).

III

We affirm the summary denial of Lukehart’s motion for postconviction relief, along with the circuit court’s denial of his demands for additional public records. Accordingly, we also deny his motion for a stay of execution.

No oral argument is required, no motion for rehearing will be entertained, and the mandate shall issue immediately.

It is so ordered.

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

An Appeal from the Circuit Court in and for Duval County,
Mark Jeffrey Borello, Judge
Case No. 161996CF002645AXXXMA

Dawn B. Macready, Capital Collateral Regional Counsel, Adrienne
Joy Shepherd, Assistant Capital Collateral Regional Counsel, and
Alicia Hampton, Assistant Capital Collateral Regional Counsel,
Northern Region, Tallahassee, Florida,

for Appellant

James Uthmeier, Attorney General, Jason W. Rodriguez, Senior
Assistant Attorney General, and Charmaine M. Millsaps, Special
Counsel, Assistant Attorney General, Tallahassee, Florida,

for Appellee

No. _____

IN THE
Supreme Court of the United States

ANDREW RICHARD LUKEHART,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026, AT 6:00 PM**

Appendix B

May 5, 2026 Defendant's Demand for Additional Public Records [Department of
Corrections] and corresponding Appendix

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

ANDREW RICHARD LUKEHART,
Defendant.

Case No.: 1996-CF-2645
**Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
June 2, 2026 at 6:00 p.m.**

DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS
[DEPARTMENT OF CORRECTIONS]

To: Ricky D. Dixon, Secretary
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500
debra.rescigno@fdc.myflorida.com
kristen.lonergan@fdc.myflorida.com
kelly.forren@fdc.myflorida.com
courtfilings@fdc.myflorida.com

The Defendant, **ANDREW RICHARD LUKEHART**, by and through his undersigned counsel, hereby makes demand of **RICKY D. DIXON, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS (“FDOC”)**, under Florida Rule of Criminal Procedure, 3.852(h) and (i) for public records pertinent to this case.

1. Mr. Lukehart is under a sentence of death and subject to execution by lethal injection under Florida Statute § 922.105. A death warrant was signed by Governor Ron DeSantis on May 1, 2026. Mr. Lukehart’s execution has been scheduled for June 2, 2026.

2. Mr. Lukehart attests that the requested records detailed below are reasonably calculated to lead to the discovery of admissible evidence in that such records may contain, or through further investigation may lead to the discovery of, evidence that execution by Florida’s lethal injection procedures constitutes cruel and unusual punishment in violation of the Eighth and

Fourteenth Amendments to the United States Constitution and corresponding provisions of the Florida Constitution.

3. Undersigned counsel attests that:
 - a. counsel has made a timely and diligent search of the records repository;
 - b. counsel has identified with specificity the public records that are not at the records repository;
 - c. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

4. The public records requested are as follows:
 - (a) The entire, unredacted file of medical records for Andrew Lukehart, DOC# 391485, with all of Mr. Lukehart's mental health and physical medical records included therein. Mr. Lukehart is requesting all of his unredacted medical records from October 1, 2025 to present. Signed releases for Mr. Lukehart's medical records are attached. *See* Appendix A.

 - (b) Records Pertaining to Lethal Injection:
 - (i) Public records, including logs or record books, regarding the storage, maintenance, use, disposal, and expiration dates of the etomidate, rocuronium bromide, and potassium acetate that FDOC has obtained from February 18, 2025 to the present.

 - (ii) Public records, including logs or record books, clearly showing the date of manufacture, the expiration date, the batch number, and the storage conditions of the etomidate, rocuronium bromide, and potassium acetate that FDOC has obtained from February 18, 2025 to present.

 - (iii) Public records, including logs or record books, clearly showing the date of manufacture, the expiration date, the batch number, and the storage conditions of the

etomidate, rocuronium bromide, and potassium acetate that FDOC currently possesses and intends to use for the execution of Andrew Lukehart.

(iv) Public records relating to execution training exercises, including logs, checklists, sign-in sheets, photographs, and videos from February 18, 2025 to present. *See* Appendix B at 4.

(v) Public records detailing the training, education, professional and/or educational licensure, professional and/or educational certification, and professional experience of the two executioners designated by the team warden to carry out the execution of Andrew Lukehart. *See* Appendix B at page 2.

(vi) Public records of the required checklists and logs that FDOC is required to maintain documenting the executions by lethal injection of James E. Hitchcock, DOB 4/5/1956, DC#058293; Chadwick Willacy, DOB 9/23/1967, DC#707742; Michael King, DOB 5/4/1971, DC#132254; Billy Kearse, DOB 10/26/1972, DC#138315; Melvin Trotter, DOB 12/29/1960, DC#573461; Ronald Heath, DOB 7/6/1961, DC#065145; Frank Walls, DOB 10/12/1967, DC#112850; Mark Gerald, DOB 3/29/1967, DC#729185; Richard Randolph, DOB 1/3/1962, DC#115769; and Bryan Jennings, DOB 12/9/1958, DC#073045. *See* Appendix B at pages 4, 5, 10 and 13.

(vii) Public records related to the training and experience of all individuals directly involved with the executions of James E. Hitchcock, DOB 4/5/1956, DC#058293; Chadwick Willacy, DOB 9/23/1967, DC#707742; Michael King, DOB 5/4/1971, DC#132254; Billy Kearse, DOB 10/26/1972, DC#138315; Melvin Trotter, DOB 12/29/1960, DC#573461; Ronald Heath, DOB 7/6/1961, DC#065145; Frank Walls, DOB

10/12/1967, DC#112850; Mark Gerald, DOB 3/29/1967, DC#729185; Richard Randolph, DOB 1/3/1962, DC#115769; and Bryan Jennings; DOB 12/9/1958; DC#073045.

5. A capital postconviction defendant “bears the burden of demonstrating that the records sought [pursuant to Fla. R. Crim. P. 3.852] relate to a colorable claim for postconviction relief.” *Branch v. State*, 236 So. 3d 981, 984 (Fla. 2018) (citing *Chavez v. State*, 132 So. 3d 826, 829 (Fla. 2014) and *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013)). This Court may order the production of records if “the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and ... the additional records request is not overly broad or unduly burdensome.” Fla. R. Crim. P. 3.852(i). The records that undersigned counsel are requesting from FDOC relate to colorable claims for postconviction relief that undersigned counsel is currently investigating. Additionally, the records requests are not overly broad or unduly burdensome.

6. As to section (a) requesting Mr. Lukehart’s own unredacted medical records, Mr. Lukehart is entitled to his own inmate records from FDOC, and should receive his own inmate records in a reasonably unredacted and legible format. *See Muhammad v. State*, 132 So. 3d 176, 201 (Fla. 2013) (concluding that the circuit court abused its discretion in denying defendant his own inmate and medical records requested under Fla. R. Crim. P 3.852). Undersigned counsel has previously communicated with FDOC since Mr. Lukehart’s warrant was signed on May 1, 2026 to request his updated medical records from October 1, 2025 to present and has also provided Mr. Lukehart’s signed releases. *See Appendix A*.

7. As to section (b) requesting records pertaining to lethal injection, the requested records relate to claims that Florida’s method for lethal injection is unconstitutional and are necessary for undersigned counsel to investigate and raise a claim challenging the constitutionality of Florida’s

current method of lethal injection. The requested records specifically relate to FDOC's current procedures for lethal injection. The most recent version of FDOC's lethal injection procedures were promulgated on February 18, 2025. *See* Appendix B. The procedure uses Florida's three-drug "etomidate protocol," which includes etomidate, rocuronium bromide, and potassium acetate. This demand requests records related to the lethal injection drugs and executions that have taken place solely under the February 18, 2025 protocol. The requested records are necessary for Mr. Lukehart to investigate and raise a claim that Florida's lethal injection procedures are facially unconstitutional and also unconstitutional as applied to Mr. Lukehart because the procedures violate the Eighth Amendment's prohibition against cruel and unusual punishment. *See Bucklew v. Precythe*, 139 S. Ct. 1112 (2019); *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). Undersigned counsel acknowledges the Florida Supreme Court's ("FSC") current precedent finding that lethal injection records requests do not relate to a colorable claim for postconviction relief because the FSC has upheld the constitutionality of Florida's "etomidate protocol" in *Asay v. State*, 224 So. 3d 695 (Fla. 2017) and subsequent opinions. However, undersigned counsel respectfully submits that the FSC has not had a full and fair opportunity to judge the constitutionality of Florida's lethal injection procedures, because previous capital defendants, including defendants under an active death warrant like Mr. Lukehart, have never been given access to complete records related to Florida's lethal injection procedures or the executions of individuals under these procedures. Capital defendants in Florida have never been able to thoroughly investigate and present claims challenging the constitutionality of lethal injection because Florida courts have consistently and pervasively denied them access to agency records related to lethal injection. However, undersigned counsel submits that this Court has the authority

to grant the requested lethal injection records under Fla. R. Crim. P. 3.852, and requests that this Court grant the records.

8. The requested records are necessary to prove that the current procedures are “very likely to cause serious illness and needless suffering,” and there is a “substantial risk of serious harm” to Mr. Lukehart if the State of Florida executes him under the current method. *Glossip*, 576 U.S. at 877 (internal citations omitted). The requested records relate to a colorable claim for relief that undersigned counsel is investigating that Florida’s lethal injection procedures are unconstitutional as applied to Mr. Lukehart. Mr. Lukehart suffers from medical conditions that likely will affect the administration of the lethal injection drugs during his execution scheduled for June 2, 2026. Notably, Mr. Lukehart has been told by medical staff employed by FDOC that recent testing indicates Mr. Lukehart has significantly diminished kidney functioning.

9. The requested records are necessary for undersigned counsel to adequately investigate an as-applied challenge to lethal injection based on the interaction between FDOC’s lethal injection protocols and Mr. Lukehart’s medical conditions. The requested records certainly could lead to the discovery of admissible evidence, as the qualified medical expert that undersigned counsel has hired to evaluate Mr. Lukehart’s medical conditions, including his diminished kidney functioning, could rely on them to form the basis of his opinion on whether Florida’s lethal injection procedures will cause Mr. Lukehart needless pain and suffering. The records requests have been specifically tailored to lead to the discovery of admissible evidence related to Florida’s lethal injection procedures, as those procedures are specifically applied to Mr. Lukehart. As an example, the records requests related to the training and education of execution team members could lead to the discovery of evidence supporting the argument that Mr. Lukehart will experience needless pain and suffering during his scheduled execution in the event that the individuals

carrying out that execution do not possess the requisite medical qualifications to manage his unique medical conditions while the lethal injection drugs are administered.

10. In addition to supporting an as-applied challenge to Florida's lethal injection protocols based on Mr. Lukehart's unique medical conditions, the requested records are also reasonably calculated to lead to the discovery of admissible evidence which would support a claim that FDOC has repeatedly deviated from its lethal injection procedures and such deviation from the lethal injection procedures creates unreasonable suffering and cruelty in violation of the Eighth Amendment of the United States Constitution and the corresponding provisions of the Florida Constitution. FDOC frequently argues in response to requests for records related to lethal injection that they are entitled to the presumption that they are acting accordingly with State and federal law when implementing the lethal injection procedures. However, heavily redacted records obtained from FDOC by counsel for the now-deceased Frank Walls in *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025) raise serious questions as to whether FDOC has deviated from the lethal injection procedures, and highlight the need for disclosure of the requested lethal injection records and greater transparency concerning the lethal injection process.

11. The potential risks of applying the etomidate protocol to a medically vulnerable individual like Mr. Lukehart are heightened because, while Florida shatters records for the speed and volume of executions in 2025 and 2026, FDOC have demonstrated repeated negligence and noncompliance with respect to their own protocol. The heavily redacted records received by counsel in *Walls v. Dixon* raise serious concerns about FDOC's administration of its own procedures. For example, Florida executed Michael Bell on July 15, 2025. However, the corresponding inventory log shows that FDOC did not record removing rocuronium bromide or potassium acetate until the next day, July 16, 2025. *See* Appendix C at 005, 007. Even more

concerning, the logs contain no entry indicating that etomidate was removed for Bell's execution at all, so it is not clear what amount of etomidate Michael Bell received during his execution.

12. FDOC noted that they removed all three drugs used during Thomas Gudinas's execution on June 25, 2025, despite the execution taking place on June 24, 2025. *See* Appendix C at 004, 005, 007. For the execution of Anthony Wainwright, FDOC recorded the removal of etomidate, rocuronium bromide, and potassium acetate on June 12, 2025, despite the execution taking place on June 10, 2025. *See* Appendix C at 004, 005, 007. FDOC consistently records that execution drugs are removed from supply after executions take place, indicating that the records are inaccurate and, for some reason, being filled out after the fact. 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 10 ml vials of rocuronium bromide were removed (1000 mg), suggesting that FDOC may have only prepared half of the required paralytic drug, in violation of the etomidate protocol, which requires that 2000 mg, or 20 x 10 ml vials, be prepared. *See* Appendix C at 007; *see also* Appendix B at 7.

13. On June 12, 2025, a date corresponding to Anthony Wainwright's execution (which occurred on June 10, 2025), seven vials of potassium acetate were removed from FDOC's inventory. This suggests that FDOC may have prepared only 280 milliequivalents of potassium acetate in violation of the etomidate protocol, which requires 480 milliequivalents (12 x 20ml vials) be prepared. *See* Appendix C at 005 *see also* Appendix B at 7. The log sheets show that during the executions of Edward James and Michael Tanzi, FDOC administered lidocaine, an anesthetic drug not called for in the etomidate protocol. *See* Appendix C at 027. Lastly, FDOC indicates on the log sheets that they used etomidate with an expiration date of January 31, 2025, during the executions of Victor Jones on September 30, 2025; David Pittman on September 17,

2025; Curtis Windom on August 28, 2025; and Kayle Bates on August 19, 2025. *See* Appendix C at 025. The discrepancies in these records expose the troubling absence of a mechanism to regularly ensure that FDOC are complying with their own etomidate protocol. Given that Mr. Lukehart is very likely already at a heightened risk of severe pain and suffering due to his unique medical conditions, these partial records from FDOC indicating potential deviation from their own etomidate protocol raise grave concerns that Mr. Lukehart may experience needless pain and suffering during his execution currently scheduled for June 2, 2026.

14. Undersigned counsel acknowledges that Florida courts have recently denied requests for lethal injection records based on similar arguments during recent active death warrants.¹ However, these continued denials of records related to lethal injection place Mr. Lukehart and all other Florida capital defendants in an impossible Catch-22 that can only be remedied by granting defendants access to these records. Justice Sonia Sotomayer recently wrote in the Melvin Trotter case “to express concern about Florida's implementation of its execution protocol and the secrecy surrounding it.” *See Trotter v. Fla.*, 146 S. Ct. 755, 755 (2026) (statement respecting the denial of the application for stay and petition for certiorari). Justice Sotomayer further wrote in Trotter’s case that

The record reflects at least the possibility that recent Florida executions have involved—in addition to expired drugs—incorrect drug doses, the use of nonprotocol drugs, and record keeping lapses that could mask yet additional failings. The Florida Supreme Court, moreover, has thus far not allowed further inquiry into these potential problems and has recently denied requests for records that would prove or disprove claims like Trotter's ... In doing so, the Florida Supreme Court appears to be placing prisoners in a Catch-22: It has affirmed the denial of requests for records on these issues, at least in part, because the prisoners

¹ *See State of Florida v. Melvin Trotter*, Manatee County Case No.: 1986-CF-1225; *see also State of Florida v. Michael King*, Sarasota County Case No.: 2008-CF-1087; *see also State of Florida v. James E. Hitchcock*, Orange County Case No.: 1976-CF-1942.

do not yet have enough information to raise a “colorable” Eighth Amendment claim ... The very reason the prisoners are seeking the records, however, is to gather enough information to raise a colorable Eighth Amendment claim.

Individuals seeking to challenge the method of their execution should not have to guess at whether the State is, or is not, following its execution protocol. Nor does the State appear to have any legitimate confidentiality interest in shielding from inspection basic facts about the implementation of its execution protocol, such as whether the State is using expired drugs. If the protocol is in fact being followed, then transparency instills confidence in the protocol for everyone—prisoners, the courts, and the public alike. If it is not, then secrecy is intolerable, and disclosure of the relevant records is indispensable for determining whether the lapses at issue are likely to lead to an Eighth Amendment violation ...

By continuing to shroud its executions in secrecy, Florida undermines both the integrity of its own execution process and, potentially, this Court's ability to ensure the State's compliance with its constitutional obligations.

Trotter v. Fla., 146 S. Ct. 755, 755–56 (2026) (internal citations and footnotes omitted). Mr. Lukehart’s case presents this Court with the opportunity to remedy this Catch-22 situation that Florida capital defendants have been placed under by the persistent denial of records related to lethal injection and also help ensure that the State of Florida is meeting its constitutional obligations related to executions. Mr. Lukehart should not have to guess at whether the State of Florida is, or is not, following its own etomidate protocol. Mr. Lukehart is entitled to information about the reliability and effectiveness of the drugs being used to kill him. Denying him the opportunity to access records that directly relate to how the State of Florida intends to carry out his execution on June 2, 2026 violates his right to due process and access to the courts under the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

15. An affidavit pursuant to Fla. R. Crim. P. 3.852(i) is attached to this demand and hereby incorporated into this demand.

16. Mr. Lukehart demands that the records requested be copied, indexed, and delivered to the Capital Postconviction Records Repository by your agency pursuant to the trial court's scheduling order with a courtesy copy delivered via email to undersigned counsel.

WHEREFORE, Mr. Lukehart respectfully requests this Court to order the Florida Department of Corrections to produce the records described above

Respectfully submitted,

/s/ Adrienne Joy Shepherd

ADRIENNE JOY SHEPHERD

Florida Bar No. 1000532

Assistant CCRC-North

Email: adrienne.shepherd@ccrc-north.org

/s/ Dawn B. Macready

DAWN B. MACREADY

Florida Bar No. 542611

Acting CCRC-North

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Capital Collateral Regional Counsel – Northern
Region

1004 DeSoto Park Drive

Tallahassee, FL 32301

Phone: 850-487-0922

Counsel for Mr. Lukehart

AFFIDAVIT OF COLLATERAL COUNSEL

I, Dawn B. Macready, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.



DAWN B. MACREADY
Acting CCRC – North
Counsel for Mr. Lukehart

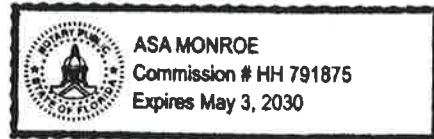
STATE OF FLORIDA
COUNTY OF LEON

Sworn to or affirmed and subscribed before me by means of physical presence or online notarization, this 5th day of May, 2026, by DAWN B. MACREADY who is personally known to me or has shown the following identification: _____.



NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires: May 3, 2030



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic service to all parties of interest and counsel via the Florida Courts E-Portal Filing System on this 5th day of May, 2026.

Respectfully submitted,

/s/ Dawn B. Macready

DAWN B. MACREADY

Florida Bar No. 542611

Acting CCRC-North

Email: dawn.macready@ccrc-north.org

Capital Collateral Regional Counsel –
Northern Region

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Phone: 850-487-0922

Counsel for Mr. Lukehart

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
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Plaintiff,

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APPENDIX TO DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS
[DEPARTMENT OF CORRECTIONS]

Appendix A.....Signed Releases for Andrew Lukehart

Appendix B.....February 18, 2025 Florida Department of Corrections Lethal
Injection Procedures

Appendix C.....Records Provided by Florida Department of Corrections in
Walls v. Dixon, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26,
2025)

Respectfully submitted,

/s/ Adrienne Joy Shepherd

ADRIENNE JOY SHEPHERD

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Assistant CCRC-North

Email: adrienne.shepherd@ccrc-north.org

/s/ Dawn B. Macready

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APPENDIX TO DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS
[DEPARTMENT OF CORRECTIONS]

APPENDIX A

Signed Releases for Andrew Lukehart

**FLORIDA DEPARTMENT OF CORRECTIONS
 CONSENT AND AUTHORIZATION FOR USE AND DISCLOSURE INSPECTION AND RELEASE
 OF CONFIDENTIAL INFORMATION**

I, Andrew Lukehart authorize Florida Department of Corrections
(Name, organization or general designation of program making disclosure)

to disclose to Capital Collateral Regional Counsel- North
(Name of persons (or organizations) and address to which disclosure is to be made)

Purpose of disclosure authorized herein: Legal

The undersigned hereby authorizes the inspection and release of copies of my medical records indicated below by the above-named health care facility medical record custodian only to the above-named entity(ies) or persons or their agents. Indicate all of the records authorized to be inspected released by **initialing** in the appropriate box(es) below:

INITIAL BELOW FOR RELEASE OF INFORMATION	
ARL	A. Release of all medical records <u>except</u> any information relating to HIV testing, AIDS and AIDS-related syndromes, psychiatric and psychological information, or alcohol and substance abuse treatment information related to my condition, care, and confinement (initial box) .
ARL	B. Release of any records regarding HIV testing, AIDS and AIDS-related syndromes relating to my condition, care, and confinement (initial box) .
ARL	C. Release of any records of psychiatric and psychological information (mental health records) <u>other than</u> psychotherapy notes relating to my conditions, care, and confinement (initial box) .
ARL	D. Release of all dental records relating to my condition, care and confinement (initial box) .
ARL	E. Release of any records regarding alcohol and substance abuse treatment relating to my condition, care, and confinement. I understand that my records are protected under the federal regulations governing <i>Confidentiality of Alcohol and Drug Abuse Patient Records</i> , 42 C.F.R. Subchapter A, Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations. As to release of alcohol substance abuse treatment records, please state the specific information to be released as provided by 42 C.F.R. Subchapter A, Part 2 (initial box) .

Name of information -- dates of treatment programs, etc. if possible

NOTE: IF PSYCHOTHERAPY OR SUBSTANCE ABUSE PROGRESS NOTES ARE THE SUBJECT OF THE RELEASE, OTHER RECORDS CANNOT BE THE SUBJECT OF THE SAME AUTHORIZATION. RELEASE OF PSYCHOTHERAPY OR SUBSTANCE ABUSE PROGRESS NOTES IN ADDITION TO THE RECORDS SPECIFIED ABOVE WILL REQUIRE A SEPARATE AUTHORIZATION (SEE BELOW).

I understand that I may refuse to sign this authorization and my refusal to sign will not affect my access to health care treatment, eligibility for benefits or enrollment, or payment for or coverage of services. I also understand that once my protected health information is disclosed pursuant to this authorization, it may be used and/or redisclosed by the recipient unless the recipient is covered by law which prohibits or limits its use and/or disclosure.

I understand that I may revoke this consent and authorization at any time, provided the revocation is in writing, except to the extent that action has been taken in reliance on it, and that in any event, this consent and authorization shall be effective for 90 days unless I specify a different expiration as follows: End of Legal Representation
(Specification of the date, event, or condition upon which this consent expires (for example, "end of incarceration" or "end of supervision," etc.)

In furtherance of this authorization, I (we) do hereby waive all provisions of law and privileges relating to the disclosures hereby authorized. I acknowledge the extent of my authorization of release as to the records and information denoted in paragraphs A, B, C, D and E by **initialing** the appropriate box(es) above.


 SIGNATURE OF PATIENT (Custodian or Statutorily Authorized Representative, when required)

4-12-05
 Date

AUTHORIZATION FOR RELEASE OF PSYCHOTHERAPY OR SUBSTANCE ABUSE PROGRESS NOTES

I, Andrew Lukehart authorize Florida Department of Corrections
(Name, organization or general designation of program making disclosure)

to disclose to Capital Collateral Regional Counsel- North
(Name of persons (or organizations) and address to which disclosure is to be made)

**FLORIDA DEPARTMENT OF CORRECTIONS
 CONSENT AND AUTHORIZATION FOR USE AND DISCLOSURE INSPECTION AND RELEASE
 OF CONFIDENTIAL INFORMATION**

Purpose of disclosure authorized herein: Legal

The undersigned hereby authorizes the inspection and release of copies of my psychotherapy progress notes and or my substance abuse progress notes as indicated below by the above-named health care facility medical record custodian only to the above-named entity(ies) or persons or their agents. Indicate all of the records authorized to be inspected released by **initialing** in the appropriate box(es) below:

INITIAL BELOW FOR RELEASE OF INFORMATION	<div style="border: 1px solid black; padding: 5px;"> <p>A. Release psychotherapy progress notes (initial box)</p> <p><i>ARL</i></p> </div>
	<div style="border: 1px solid black; padding: 5px;"> <p>B. Release substance abuse progress notes (initial box)</p> <p><i>ARL</i></p> </div>

Name of information -- dates of treatment programs, etc. if possible

I understand that I may refuse to sign this authorization and my refusal to sign will not affect my access to health care treatment, eligibility for benefits or enrollment, or payment for or coverage of services. I also understand that once my protected health information is disclosed pursuant to this authorization, it may be used and or redisclosed by the recipient unless the recipient is covered by law which prohibits or limits its use and or disclosure.

I understand that I may revoke this consent and authorization at any time, provided the revocation is in writing, except to the extent that action has been taken in reliance on it, and that in any event, this consent and authorization shall be effective for 90 days unless I specify a different expiration as follows: End of Legal Representation

(Specification of the date, event, or condition upon which this consent expires) (for example "end of incarceration" or "end of supervision," etc.)

In furtherance of this authorization, I (we) do hereby waive all provisions of law and privileges relating to the disclosures hereby authorized. I acknowledge the extent of my authorization of release as to the records and information denoted in paragraphs A and B **initialing** the appropriate box(es) above.

Andrew Lukehart
 SIGNATURE OF PATIENT

* Next of Kin, Guardian, or Authorized Representative, when required

4-1-2025
 (Date)

THIS FORM IS REQUIRED TO BE NOTARIZED UNLESS WITNESSED BY A MEMBER OF THE FDC WORKFORCE.

STATE OF Florida
 COUNTY OF Union

Sworn to (or affirmed) and subscribed before me this day of April 1st, 2025,
 by Andrew Lukehart who is personally known to me or who has produced _____ as
 identification.

Andrew
 Notary Public Signature
 Print, type, or stamp commissioned name of Notary Public
 My Commission Expires _____

SEAL



ACKNOWLEDGEMENT OF RECEIPT OF COPY OF SIGNED AUTHORIZATION(S)

Inmate/Offender Name Andrew Lukehart
 DC# 391485
 R/S White/Male
 Date of Birth 4/10/73
 Institution/Office Union Correctional Institution

Witness Name _____
 Witness Signature _____
 Date: _____

Telephone
(850) 487-0922

Fax
(850) 487-0927



OFFICE OF THE
CAPITAL COLLATERAL REGIONAL COUNSEL
NORTHERN REGION

1004 DeSoto Park Dr.
Tallahassee, FL 32301

AUTHORIZATION FOR RELEASE OF RECORDS

I, Andrew Lukehart (DOB: 4/10/1973, SS#: 186-54-7463) HEREBY AUTHORIZE _____ to communicate with, and release for inspection and photocopying my entire legal file in their possession ANY and ALL records, including, the records on appeal, and those normally considered privileged and confidential, including but not limited to records exempt under state and federal HPPA Legislation, FBI records, medical records (all information) including but not limited to intake assessments, doctors' and nurses' notes, x-ray reports, lab reports, history and physicals, admission and discharge summaries, physical therapy notes/reports, consultation and operative reports, admission sheets, blood alcohol test results, drug and/or alcohol treatment/rehabilitation, histories and profiles, HIV testing, AIDS and any AIDS-related syndromes, drug screening test results, psychiatric records, prescription records, computer data, or compilations or reports, itemized bills, and all other forms of documents pertaining to each and every admission, emergency room, treatment, and clinic visit of the undersigned.), as well as files prepared in connection with any prior civil or criminal litigation and proceedings, psychiatric and psychological evaluations and records (including, but not limited to, alcohol and drug treatment records), social service agency records, school and academic records, adoption, dependency, custody, Foster Care, employment, juvenile court records or any records incidental thereto, any branch of military service records including the National Guard, the Veteran's Administration, Florida Department of Corrections, prison and any other incarceration records (including pre-sentence reports, any testing results or medical evaluations and report), and any records whatsoever to the following persons or to their designated agent:

Capital Collateral Regional
Counsel-North

This shall also include all private individuals, private companies or organizations, and any State, Local or Federal governmental entity whatsoever.

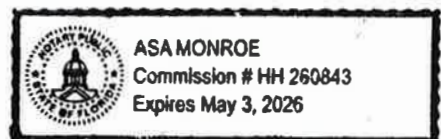
I understand that my records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it. This consent and authorization shall be effective until the conclusion of CCRC-N's representation of the client in Collateral Proceedings. A photocopy of this authorization shall serve as an original.

Signature: Andrew Lukehart Date: 4.1.2025

Sworn to and subscribed to before me this 1st day of April, 2025, by Andrew Lukehart, who is personally known to me or has produced _____ as identification.

ASA

NOTARY PUBLIC SIGNATURE
My Commission Expires:



IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

ANDREW RICHARD LUKEHART,
Defendant.

Case No.: 1996-CF-2645
**Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
June 2, 2026 at 6:00 p.m.**

APPENDIX TO DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS
[DEPARTMENT OF CORRECTIONS]

APPENDIX B

February 18, 2025 Florida Department of Corrections Lethal Injection Procedures



FLORIDA DEPARTMENT OF CORRECTIONS

GOVERNOR
RON DESANTIS

SECRETARY
RICKY DIXON

February 18, 2025

The Honorable Ron DeSantis
Executive Office of Governor Ron DeSantis
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

I have carefully reviewed the Execution by Lethal Injection Procedures issued by my Department. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,

Ricky D. Dixon
Secretary



FLORIDA DEPARTMENT OF CORRECTIONS

GOVERNOR
RON DESANTIS

SECRETARY
RICKY DIXON

EXECUTION BY LETHAL INJECTION PROCEDURES

PURPOSE: To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

APPLICATION: This procedure applies to any execution by lethal injection conducted pursuant to Chapter 922, Florida Statutes. This procedure supersedes the Florida Department of Corrections *Execution by Lethal Injection Procedures* dated March 10, 2023.

DEFINITIONS:

- (1) **Execution team,** where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as “execution team member” or “team member” in these procedures.
- (2) **Executioner,** where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner’s sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden’s direction.
- (3) **Institutional warden,** where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.
- (4) **Minister of religion,** where used herein, refers to a spiritual advisor requested by an inmate to attend an execution as permitted by section 922.11, Florida Statutes. The name of the requested minister of religion must be provided by the inmate to the institutional warden in writing on FDC Form DC6-236 within five days of the issuance of the Governor’s Warrant of Execution. A minister of religion shall be an adult and shall undergo a criminal background check. The institutional warden shall also conduct a review process of the individual as described in Florida Department of Corrections rules and policies applicable to visitor approvals and to spiritual advisor visits. Such a

review will be performed even if the requested minister of religion has been previously approved for regular visitation purposes. Prior to final approval, the institutional warden may also conduct interviews of the requested minister of religion or their associates. The institutional warden may undertake any investigation necessary to verify that the minister of religion is recognized by their organized religious body as qualified to perform religious functions as a representative of the religious organization or group. The institutional warden may waive any component of the review process if the requested minister of religion is a chaplain currently employed by the Florida Department of Corrections. Candidates not employed by the Florida Department of Corrections must also execute a Spiritual Advisor Execution Agreement. The agreement is attached hereto as Appendix A.

- (5) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

SPECIFIC PROCEDURES:

- (1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the Department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement (FDLE), any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.
- (2) **Selection of the Executioners:**
- (a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.
- (b) The team warden will designate one (1) of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.
- (3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved

staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.

- (a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist currently certified by the American Society for Clinical Pathology (ASCP), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes; or, a pharmacist licensed under Chapter 465, Florida Statutes.
- (f) The team warden shall select other execution team members to carry out the following tasks:
 - 1. Showering and preparation of the inmate.
 - 2. Ensuring that the equipment necessary for an execution is in proper working order.
 - 3. Escorting the inmate from his/her cell to the execution chamber.
 - 4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.

5. Maintaining the open telephone line with the Office of the Governor.
6. Reporting the actions inside the executioner's room to the team warden.
7. Maintaining the checklists that detail the events surrounding the execution.
8. Escorting the minister of religion.
9. Opening and closing the window covering to the witness gallery and turning on and off the public address (PA) system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

- (4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted prior to the scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

- (a) Issues related to problems with equipment needed to carry out an execution.
- (b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.
- (c) The inmate is not rendered unconscious after the administration of the etomidate injection.
- (d) Combative inmate.
- (e) Incapacity of any execution team member or executioner.
- (f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.
- (g) Problems related to the order and security at the Florida State Prison, including but not limited to disturbances, unrest or resistance.
- (h) Power failure or other facility problems.

This list is not meant to be exhaustive and only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.

- (5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.
- (6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.
- (7) **FDLE Monitors:**
- (a) Two (2) FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.
 - (b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post execution debriefings.
 - (c) The second FDLE agent shall be located in the execution chamber and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.
- (8) **Approximately One (1) Week Prior to Execution:**
- (a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team members) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.

- (b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.
- (9) **On the Day of Execution:**
- (a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars (\$40) or less, is available at the institution, and is approved by the food service director.
- (b) The inmate will be escorted by one (1) or more team members to the shower area where a team member of the same sex will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.
- (c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.
- (d) A designated execution team member will ensure that the PA system is fully functional.
- (e) The only staff authorized to be in the execution chamber area are members of the execution team and others as approved by the team warden, including two monitors from FDLE.
- (f) A designated execution team member, in the presence of one or more additional team members and an independent observer from FDLE, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:
- (1) **Etomidate injection:** A sterile, disposable sixty cubic centimeter (60cc) syringe and needle will be used to draw fifty milliliters (50mls) of etomidate injection 2mg/ml from one or more vials containing same, for a total of one hundred milligrams (100mg) of etomidate injection. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

- (2) Rocuronium bromide injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw five hundred milligrams (500mg) of rocuronium bromide injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing five hundred milligrams (500mg) of rocuronium bromide injection, for a total of two thousand milligrams (2000mg). Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.
 - (3) Potassium acetate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium acetate injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium acetate injection, for a total of four hundred eighty (480) milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.
 - (4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.
- (g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who

prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.

- (h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."
- (i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered intramuscular injections of hydroxyzine, in appropriate dosages relative to weight, to ease anxiety.
- (j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two (2) designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.
- (k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.

(10) Approximately Thirty (30) Minutes Prior to Execution:

- (a) A designated execution team member will establish telephone communication with the Office of the Governor on behalf of the team warden. The team warden will communicate with the Office of the Governor to determine whether any cause for delay exists. The phone line will remain open to the Office of the Governor during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Office of the Governor.
- (b) When the team warden determines that no cause for delay remains, a designated member of the execution team will escort the two (2) executioners into the executioner's room, where they will remain until the execution process is complete.

- (c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.
- (d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.
- (e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.
- (f) Designated members of the execution team will secure the restraining straps.
- (g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.
- (h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.
- (i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.
- (j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.

(11) Approximately Fifteen (15) Minutes Prior to Execution:

- (a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.
- (b) Authorized media witnesses will be secured in the witness room of the execution chamber.

- (c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the Department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Counsel for the convicted person and a minister of religion requested by the convicted person may also be present. Any exception must be approved by the institutional warden.
- (d) The institutional warden may deny access to the institution to any visitor, official witness or other person he or she deems a risk to the security of the institution. In the event there is reasonable suspicion that an individual may initiate or attempt to initiate a violent or disruptive act prior to, during, or following an execution, that person will not be permitted to witness the execution and will be escorted off the prison grounds immediately.
- (e) The execution chamber will be secured. Only the team warden, one (1) additional execution team member and one (1) FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exceptions or contingencies must be approved by the team warden.
- (f) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.

(12) **Administration of Execution:**

- (a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.
- (b) An execution team member will turn on the PA system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the PA system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the PA system.
- (c) In the presence of the secondary executioner and within sight of one (1) or more execution team members and one (1) of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:
 - (1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

- (2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
- (3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
- (4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (12)(c)(6).
- (5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (12)(c)(4) and assess whether the inmate is unconscious.
- (6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
- (7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension

set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

- (8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the TV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
 - (9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
 - (10) The executioner will remove from the stand on the worktop the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
 - (11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one (1) executioner inject any lethal chemicals to complete the execution.
- (d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (12)(c)(4), as described above.

- (e) Throughout the execution process, one (1) or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.
- (f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.
- (g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.
- (h) A designated execution team member will turn on the PA system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."
- (i) The designated team member will close the window covering to the witness gallery.
- (j) The designated Department of Corrections escort staff will escort all witnesses, all of the media pool and any other individuals who are not members of the execution team from the witness room and the execution chamber.

(13) **Immediate Post-Execution Procedures:**

- (a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.
- (b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.
- (c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.
- (d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.
- (e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.
- (f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) **Follow-Up Procedures:**

- (a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.
- (b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.

- (c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.
- (15) **Periodic Review and Certificate from Secretary;** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum of once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.


RICKY . DIXON
SECRETARY

2/18/2025
DATE

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

ANDREW RICHARD LUKEHART,
Defendant.

Case No.: 1996-CF-2645
**Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
June 2, 2026 at 6:00 p.m.**

APPENDIX TO DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS
[DEPARTMENT OF CORRECTIONS]

APPENDIX C

Records Provided by Florida Department of Corrections in *Walls v. Dixon*, No. 4:25-cv-0488,
ECF 1 (N.D. Fla. Nov. 26, 2025)

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

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
6/24/25	[REDACTED]	[REDACTED]	3/2027	[REDACTED]	+ 100	100 ✓

DRUG NAME Etomidate 20mg/10ml PACKAGE SIZE 10x10ml

NDCH [REDACTED]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MER	RECEIVED/USED (+/-)	BALANCE
9-30-19	[REDACTED]	[REDACTED]	06-2021	[REDACTED]	+ 100 X	100
6-14-19	[REDACTED]	[REDACTED]	JUN 2021	[REDACTED]	+ 100 X	200
8-27-20	[REDACTED]	[REDACTED]	06-2021	[REDACTED]	+ 160 X	
8-27-20	[REDACTED]	[REDACTED]	01-2022	[REDACTED]	+ 40 X	400
9-11-20	[REDACTED]	[REDACTED]	06-2021	[REDACTED]	+ 60 X	460
12-14-20	[REDACTED]	[REDACTED]	06-2021	[REDACTED]	+ 30	490
12-14-20	[REDACTED]	[REDACTED]	01-2022	[REDACTED]	+ 110 ✓	600
6-28-21	[REDACTED]	[REDACTED]		[REDACTED]	- 450	150
8-06-21	[REDACTED]	[REDACTED]	07-2022	[REDACTED]	+ 120 ✓	270
2-3-22	[REDACTED]	[REDACTED]	01-2022	[REDACTED]	- 150	120
12-08-22	[REDACTED]	[REDACTED]	07-2022	[REDACTED]	- 120	-0-
2-20-23	[REDACTED]	[REDACTED]	11-2024	[REDACTED]	+ 40	40
3-02-23	[REDACTED]	[REDACTED]	12-2024	[REDACTED]	+ 50	90
3-06-23	[REDACTED]	[REDACTED]	12/2024	[REDACTED]	+ 50	140
1-3-2025	[REDACTED]	[REDACTED]	11-2024	[REDACTED]	-40	100
1-3-25	[REDACTED]	[REDACTED]	12-2024	[REDACTED]	-50	50
1-3-25	[REDACTED]	[REDACTED]	12-2024	[REDACTED]	-50	0
4/21/25	[REDACTED]	[REDACTED]	01-2027	[REDACTED]	+100	100

✓

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
9/3/23			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			

DRUG NAME: Potassium Acet 2mEq/ml
NDC# [REDACTED]

PACKAGE SIZE: 25 x 20mL vials

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	1 vial = #1 RECEIVED/USED (+/-)	BALANCE
5/23/25	[REDACTED]	[REDACTED]	12/2026	[REDACTED]	+ 100	- 100

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

NDCH# [REDACTED]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
3-07-24	[REDACTED]	[REDACTED]	JAN 2025	[REDACTED]	+ 10	10
3/11/24	[REDACTED]	[REDACTED]	JUN 2025	[REDACTED]	+ 80	90
1-3-2025	[REDACTED]	[REDACTED]	03/2026	[REDACTED]	+ 30	120
3-6-2025	[REDACTED]	[REDACTED]	03/2026	[REDACTED]	+ 100	220
3/20/25	[REDACTED]	[REDACTED]	JUN 2025	[REDACTED]	- 20	200
4-2-25	[REDACTED]	[REDACTED]	Mar 2026	[REDACTED]	+ 200	400
4-8-25	[REDACTED]	[REDACTED]	JUN 2025	[REDACTED]	- 20	380
4-16-25	[REDACTED]	[REDACTED]	JUN 2025	[REDACTED]	- 10	370
5/1/25	[REDACTED]	[REDACTED]	JUN 2025	[REDACTED]	- 20	350
4/23/25	[REDACTED]	[REDACTED]	10/2026	[REDACTED]	+ 30	380
4/23/25	[REDACTED]	[REDACTED]	3/2026	[REDACTED]	+ 70	450
5/23/25	[REDACTED]	[REDACTED]	10/2026	[REDACTED]	+ 100	550
6/9/25	[REDACTED]	[REDACTED]	JUN 2025	[REDACTED]	- 10	540
6/12/25	[REDACTED]	[REDACTED]	JUN 2025	[REDACTED]	- 10	530
6/12/25	[REDACTED]	[REDACTED]	3/2026	[REDACTED]	- 10	520
6/25/25	[REDACTED]	[REDACTED]	3/2026	[REDACTED]	- 10	510
7/16/25	[REDACTED]	[REDACTED]	3/2026	[REDACTED]	- 20	490

DRUG NAME: Sodium Cl 0.9% (BAG) PACKAGE SIZE: 12 x 1000mL
NDC# [REDACTED]

DATE	INVOICE NAME/#	LOT#	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
5/7/25	[REDACTED]	[REDACTED]	01/2027	[REDACTED]	+ 12	12

DRUG NAME SODIUM Cl 0.9% PACKAGE SIZE 12 x 1000 ml

NDC# [REDACTED]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
5-20-2021			9-2023		+ 24	24
3-13-2025			4-2025		+ 12	36
5/3/23			9/2023		- 4	32
10-2-23			9-2023		- 20	12
03-01-24			01-2026		+ 12	24
8-29-24			4-2025		- 2	22
2-13-25			4-2025		- 2	20
3-17-25			2-2027		+ 24	44
3-17-25			2-2027		+ 24	44
3/20/25			1-2026		- 2	42
4/8/25			4-2025		- 8	34
4/8/25			1-2026		- 4	30
5/1/25			1-2026		- 2	28
5/15/25			1-2026		- 2	26
5/29/25			7-2027		+ 12	38 ✓
6/2/25	8-2027	+ 24	62 ✓			
6/12/25	1-2026	- 2	60			

DRUG NAME HYDROXYZINE HCl 25mg/ml PACKAGE SIZE 25 x 1 ml
 NDC# [REDACTED]

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
02-01-2024	[REDACTED]	[REDACTED]	MAR 2025	[REDACTED]	+ 25	25
8-29-2024	[REDACTED]	[REDACTED]	Mar 2025	[REDACTED]	- 2	23
1-3-2025	[REDACTED]	[REDACTED]	08-2026	[REDACTED]	+25	48
2-13-25	[REDACTED]	[REDACTED]	Mar 2025	[REDACTED]	-3	45 45
3/20/25	[REDACTED]	[REDACTED]	Mar 2025	[REDACTED]	-3	42
4-2-25	[REDACTED]	[REDACTED]	Aug 2026	[REDACTED]	+25	67
4/8/25	[REDACTED]	[REDACTED]	Aug 2026	[REDACTED]	-4	63
4/16/25	[REDACTED]	[REDACTED]	MAR 2025	[REDACTED]	-17	46
5/1/25	[REDACTED]	[REDACTED]	Aug 2026	[REDACTED]	-4	42
5/15/25	[REDACTED]	[REDACTED]	Aug 2026	[REDACTED]	-3	39
5/23/25	[REDACTED]	[REDACTED]	Aug 2026	[REDACTED]	+25	64
6/12/25	[REDACTED]	[REDACTED]	Aug 2026	[REDACTED]	-3	61
6/25/25	[REDACTED]	[REDACTED]	Aug 2026	[REDACTED]	-2	59
7/16/25	[REDACTED]	[REDACTED]	Aug 2026	[REDACTED]	-2	57

INVOICE DATE 05/07/2025
 PO
 ORDER DATE 03/05/2025
 SHIP DATE 05/07/2025 PIECES INVOICED 1

LINE	ITEM	NDC/AIN:	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMI CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC3	UNIT PRICE	EXTENDED PRICE	NOTE CODE	
			1	1				SCDIUF (CL IS 0.9% 12X1000ML LF ✓	12X10	IS			EXP: 1/27	62.83	62.83		
								<u>SUMMARY</u>									
									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/APC	ORIG ORDER QTY	ORDI R QTY	INVOICEE QTY	OMIT :DDE	UOM	DESCRIPTION	SIZE	FORW	CLASS	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE
			2	2	2	✓		SODIUM CL IS 0.9% 10X100ML	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	25X1MSD			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

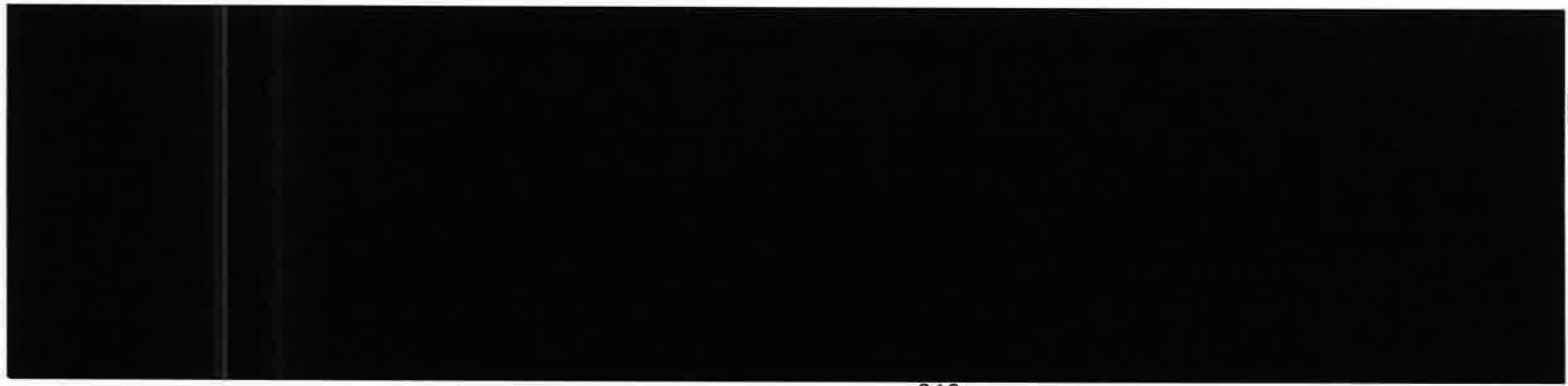
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			1	1	1			SODIUM CL IS 0.9% 12X1000ML EXC	12X10 IS				EXP: 7/27	29.99	29.99		
								-----SUMMARY-----									
								TOTAL RX		29.99							
								TOTAL OTC		0.00							
								NET AMOUNT		29.99							



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		
								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

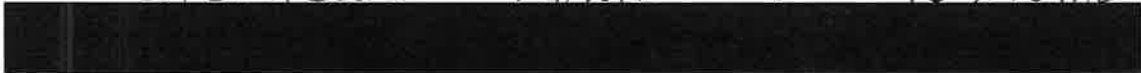
SHIP DATE 06/02/2025 PIECES INVOICED 2

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UQ 4	DESCRIPTION	SIZE	FORM	CLAS:	MSG	DEPT/ACC/CC2	UNIT PRICE	EXTENDED PRICE	NOTE CODE	
			2	2	2			SODIUM CL IS 0.9% 12X100ML 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 20mg/10ml Package Size: 10 x 10 ml

Page: 2



PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
4/21/25				1/31/2027	+ 100	100

DRUG NAME: Etomidate 40mg/20ml Package Size: 10 x 20ml (10 vials)

Page: 2



PREVIOUS BALANCE: 330

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
4/8/25				5/31/2025	-10	320
5/1/25				5/31/2025	-10	310
5/15/25				5/31/25	-10	300
5/23/25				1/31/2027	+100	400
5/29/25				5/31/2025	-10	390
6/12/25				6/30/2025	-10	380
6/25/25				6/30/2025	-50	330
7/28/25				7/31/2025	-10	320
8/1/25				7/31/2025	-20	300
8/19/25				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

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				3/31/2025	- 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

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
9/3/23			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	93

DRUG NAME: Potassium Act. 2 mEq/mL Package Size: 25 x 50 mL

Page: 1



PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
7/28/25				10/31/2026	+ 50	50

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-31-2025		-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			07-31-2025		+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			7-31-2025		+50	145
6/12/25			Jul-31-2025		-6	139
6/25/25			10-01-2025		-6	133
7/16/25			10-01-2025		-7	126
7/28/25			10-31-2025		+50	176
7/28/25			10-01-2025		-6	170
8/19/25			10-01-2025		-1	169
8/19/25			7-31-2025		-5	164
8/28/25			7-31-2025		-6	158
9/17/25			7-31-2025		-6	152
9/30/25			7-31-2025		-6	146

DRUG NAME: Sodium CL 0.9% (BAG) Package Size: 10 x 1000ml

Page: 1

[REDACTED]

PREVIOUS BALANCE: 0

DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)	BALANCE
5/23/25	[REDACTED]	[REDACTED]	[REDACTED]	2/28/2026	+ 20	20

DRUG NAME SODIUM Cl 0.9% PACKAGE SIZE 12 x 1000 ml

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
5-20-2021			9-2023		+ 24	24
3-15-2022			4-2025		+ 12	36
5/3/23			9/2023		- 4	32
10-2-23			9-2023		- 20	12
03-01-24			01-2026		+ 12	24
8-29-24			4-2025		- 2	22
2-13-25			4-2025		- 2	20
3-17-25			2-2029		+ 24	44
3-17-25			2-2029		+ 24	44
3/20/25			1-2026		- 2	42
4/8/25			4-2025		- 8	34
4/8/25			1-2026		- 4	30
5/1/25			1-2026		- 2	28
5/15/25			1-2026		- 2	26
5/29/25			7-2027		+ 12	38
6/2/25			8-2027		+ 24	62
6/12/25			1-2026		- 2	60

DRUG NAME: Rocuronium 100mg/10ml Package Size: 10 x 10mL (10 per box) Page: 1
 [REDACTED] PREVIOUS BALANCE: 0

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

INVOICE DATE 07/28/2025

PO

ORDER DATE 07/25/2025

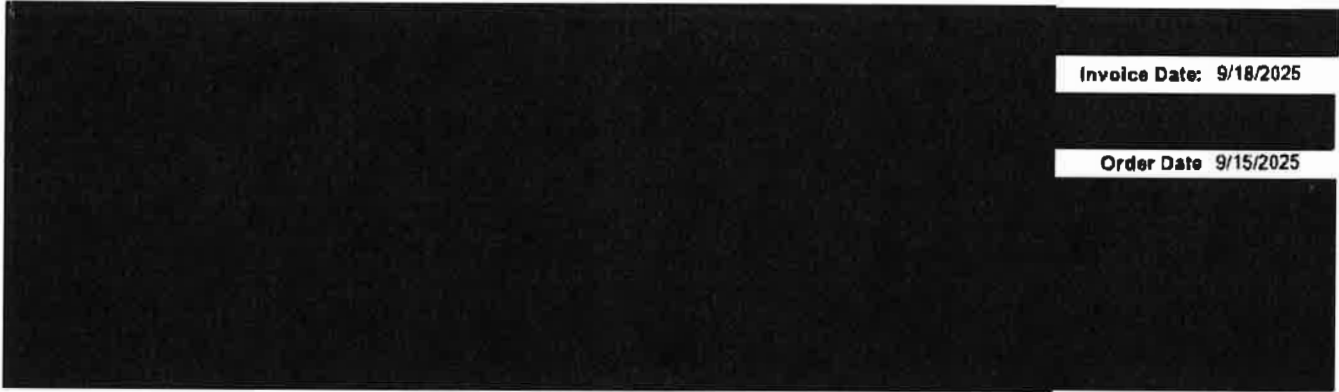
SHIP DATE 07/28/2025 PIECES INVOICED 77

LINE	ITEM	NDC/UPC	ORIG ORDER QTY	ORDER QTY	INVOICED QTY	OMIT CODE	UOM	DESCRIPTION	SIZE	FORM	CLASS	MSG	DEPT/ACC/CC3	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				254.65	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

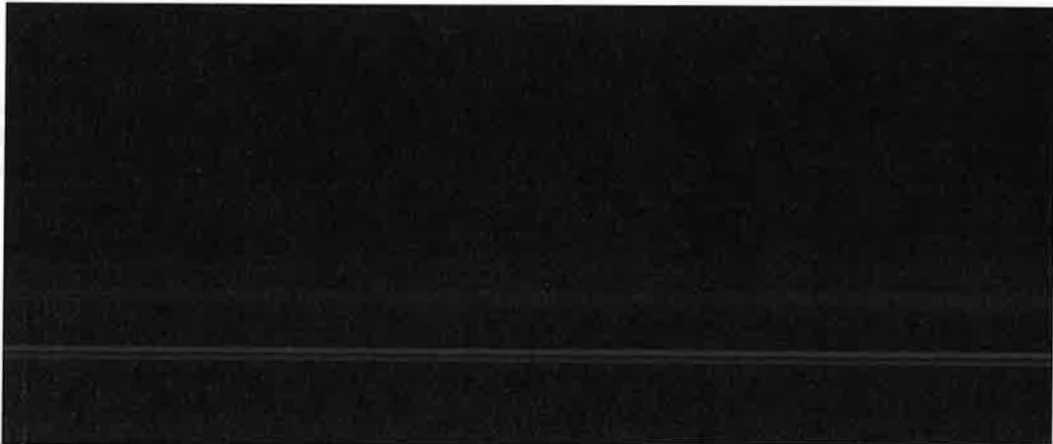
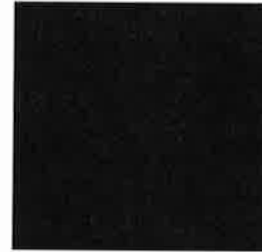


Expiration date: 4/30/2027

Expiration date: 4/30/2027

Lot Qty: 48.00 ✓

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

No. _____

IN THE
Supreme Court of the United States

ANDREW RICHARD LUKEHART,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026, AT 6:00 PM**

Appendix C

May 5, 2026 Defendant's Demand for Additional Public Records [Florida
Department of Law Enforcement]

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

ANDREW RICHARD LUKEHART,
Defendant.

Case No.: 1996-CF-2645
**Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
June 2, 2026 at 6:00 p.m.**

DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS
[FLORIDA DEPARTMENT OF LAW ENFORCEMENT]

To: Mark Glass, Commissioner
Florida Department of Law Enforcement
P.O. Box 1489
Tallahassee, Florida 32302
Email: lindseybrigham@fdle.state.fl.us

The Defendant, **ANDREW RICHARD LUKEHART**, by and through his undersigned counsel, hereby makes demand of the **FLORIDA DEPARTMENT OF LAW ENFORCEMENT ("FDLE")** under Florida Rule of Criminal Procedure, 3.852(h) and (i) for public records pertinent to this case. In support, Mr. Lukehart states as follows:

1. Mr. Lukehart is an indigent Florida inmate under a sentence of death and subject to execution by lethal injection pursuant to Section 922.105, Florida Statutes. A Death Warrant was signed by Governor Ron DeSantis on May 1, 2026. Mr. Lukehart's execution has been scheduled for June 2, 2026 at 6:00 p.m.

2. Mr. Lukehart attests that the requested records detailed below are reasonably calculated to lead to the discovery of admissible evidence in that such records may contain, or through further investigation may lead to the discovery of, evidence that execution by Florida's lethal injection procedures constitutes cruel and unusual punishment in violation of the Eighth and

Fourteenth Amendments to the United States Constitution and corresponding provisions of the Florida Constitution.

3. Undersigned counsel attests that:
 - a. counsel has made a timely and diligent search of the records repository;
 - b. counsel has identified with specificity the public records that are not at the records repository;
 - c. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

4. The public records requested are as follows:

(a) Public records of observations recorded by the FDLE monitor assigned to the executioner's room as designated by the FDOC lethal injection procedures, including any observations of the preparation of the lethal injection drugs and the required log of what occurs in the executioner's room at a minimum of two-minute intervals, as required in subsection (7)(b) of FDOC's procedures, "FDLE Monitors," for the executions by lethal injection of James E. Hitchcock, DOB 4/5/1956, DC#058293; Chadwick Willacy, DOB 9/23/1967, DC#707742; Michael King, DOB 5/4/1971, DC#132254; Billy Kearse, DOB 10/26/1972, DC#138315; Melvin Trotter, DOB 12/29/1960, DC#573461; Ronald Heath, DOB 7/6/1961, DC#065145; Frank Walls, DOB 10/12/1967, DC#112850; Mark Gerald, DOB 3/29/1967, DC#729185; Richard Randolph, DOB 1/3/1962, DC#115769; and Bryan Jennings; DOB 12/9/1958; DC#073045. *See Appendix A at page 5.*

(b) Public records of observations recorded by the FDLE monitor assigned to the execution chamber as designated by the FDOC lethal injection procedures, including the required log of what occurs in the execution chamber at a minimum of two-minute intervals, as required in subsection (7)(c) of FDOC's procedure, "FDLE Monitors," for the executions by lethal

injection of James E. Hitchcock, DOB 4/5/1956, DC#058293; Chadwick Willacy, DOB 9/23/1967, DC#707742; Michael King, DOB 5/4/1971, DC#132254; Billy Kearse, DOB 10/26/1972, DC#138315; Melvin Trotter, DOB 12/29/1960, DC#573461; Ronald Heath, DOB 7/6/1961, DC#065145; Frank Walls, DOB 10/12/1967, DC#112850; Mark Gerald, DOB 3/29/1967, DC#729185; Richard Randolph, DOB 1/3/1962, DC#115769; and Bryan Jennings; DOB 12/9/1958; DC#073045. *See* Appendix A at page 5.

5. A capital postconviction defendant “bears the burden of demonstrating that the records sought [pursuant to Fla. R. Crim. P. 3.852] relate to a colorable claim for postconviction relief.” *Branch v. State*, 236 So. 3d 981, 984 (Fla. 2018) (citing *Chavez v. State*, 132 So. 3d 826, 829 (Fla. 2014) and *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013)). This Court may order the production of records if “the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and ... the additional records request is not overly broad or unduly burdensome.” Fla. R. Crim. P. 3.852(i). The records that undersigned counsel are requesting from FDLE relate to colorable claims for postconviction relief that undersigned counsel is currently investigating. Additionally, the records requests are not overly broad or unduly burdensome.

6. The requested records relate to claims that Florida’s method for lethal injection is unconstitutional and are necessary for undersigned counsel to investigate and raise a claim challenging the constitutionality of Florida’s current method of lethal injection. The requested records specifically relate to the Florida Department of Corrections’ (“FDOC”) current procedures for lethal injection. The most recent version of FDOC’s lethal injection procedures were promulgated on February 18, 2025. *See* Appendix A. The procedure uses Florida’s three-drug “etomidate protocol,” which includes etomidate, rocuronium bromide, and potassium acetate. This

demand requests records related to the lethal injection drugs and executions that have taken place solely under the February 18, 2025 protocol. The requested records are necessary for Mr. Lukehart to investigate and raise a claim that Florida's lethal injection procedures are facially unconstitutional and also unconstitutional as applied to Mr. Lukehart because the procedures violate the Eighth Amendment's prohibition against cruel and unusual punishment. *See Bucklew v. Precythe*, 139 S. Ct. 1112 (2019); *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). Undersigned counsel acknowledges the Florida Supreme Court's ("FSC") current precedent finding that lethal injection records requests do not relate to a colorable claim for postconviction relief because the FSC has upheld the constitutionality of Florida's "etomidate protocol" in *Asay v. State*, 224 So. 3d 695 (Fla. 2017) and subsequent opinions. However, undersigned counsel respectfully submits that the FSC has not had a full and fair opportunity to judge the constitutionality of Florida's lethal injection procedures, because previous capital defendants, including defendants under an active death warrant like Mr. Lukehart, have never been given access to complete records related to Florida's lethal injection procedures or the executions of individuals under these procedures. Capital defendants in Florida have never been able to thoroughly investigate and present claims challenging the constitutionality of lethal injection because Florida courts have consistently and pervasively denied them access to agency records related to lethal injection. However, undersigned counsel submits that this Court has the authority to grant the requested lethal injection records under Fla. R. Crim. P. 3.852, and requests that this Court grant the records.

7. The requested records are necessary to prove that the current procedures are "very likely to cause serious illness and needless suffering," and there is a "substantial risk of serious harm" to Mr. Lukehart if the State of Florida executes him under the current method. *Glossip*, 576 U.S. at

877 (internal citations omitted). The requested records relate to a colorable claim for relief that undersigned counsel is investigating that Florida's lethal injection procedures are unconstitutional as applied to Mr. Lukehart. Mr. Lukehart suffers from medical conditions that likely will affect the administration of the lethal injection drugs during his execution scheduled for June 2, 2026. Notably, Mr. Lukehart has been told by medical staff employed by FDOC that recent testing indicates Mr. Lukehart has significantly diminished kidney functioning.

8. The requested records are necessary for undersigned counsel to adequately investigate an as-applied challenge to lethal injection based on the interaction between FDOC's lethal injection protocols and Mr. Lukehart's medical conditions. The requested records certainly could lead to the discovery of admissible evidence, as the qualified medical expert that undersigned counsel has hired to evaluate Mr. Lukehart's medical conditions, including his diminished kidney functioning, could rely on them to form the basis of his opinion on whether Florida's lethal injection procedures will cause Mr. Lukehart needless pain and suffering. As one example, records of the required two-minute interval logs kept by FDLE monitors during previous executions under the current procedures could indicate if there were any issues that occurred with the preparation of the lethal injection drugs or with the administration of those drugs that could interact with Mr. Lukehart's unique medical conditions.

9. In addition to supporting an as-applied challenge to Florida's lethal injection protocols based on Mr. Lukehart's unique medical conditions, the requested records are also reasonably calculated to lead to the discovery of admissible evidence which would support a claim that FDOC has repeatedly deviated from its lethal injection procedures and such deviation from the lethal injection procedures creates unreasonable suffering and cruelty in violation of the Eighth Amendment of the United States Constitution and the corresponding provisions of the Florida

Constitution. Heavily redacted records obtained from FDOC by counsel for the now-deceased Frank Walls in *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025) raise serious questions as to whether FDOC has deviated from the lethal injection procedures, and highlight the need for disclosure of the requested lethal injection records and greater transparency concerning the lethal injection process.

10. The potential risks of applying the etomidate protocol to a medically vulnerable individual like Mr. Lukehart are heightened because, while Florida shatters records for the speed and volume of executions in 2025 and 2026, FDOC has demonstrated repeated negligence and noncompliance with respect to their own protocol. The heavily redacted records received by counsel in *Walls v. Dixon* raise serious concerns about FDOC's administration of its own procedures. For example, Florida executed Michael Bell on July 15, 2025. However, the corresponding inventory log shows that FDOC did not record removing rocuronium bromide or potassium acetate until the next day, July 16, 2025. *See* Appendix B at 005, 007. Even more concerning, the logs contain no entry indicating that etomidate was removed for Bell's execution at all, so it is not clear what amount of etomidate Michael Bell received during his execution.

11. FDOC noted that they removed all three drugs used during Thomas Gudinas's execution on June 25, 2025, despite the execution taking place on June 24, 2025. *See* Appendix B at 004, 005, 007. For the execution of Anthony Wainwright, FDOC recorded the removal of etomidate, rocuronium bromide, and potassium acetate on June 12, 2025, despite the execution taking place on June 10, 2025. *See* Appendix B at 004, 005, 007. FDOC consistently records that execution drugs are removed from supply after executions take place, indicating that the records are inaccurate and, for some reason, being filled out after the fact. 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 10 ml vials of rocuronium bromide were removed (1000 mg), suggesting that FDOC may have only prepared half of the required paralytic drug, in violation of the etomidate protocol, which requires that 2000 mg, or 20 x 10 ml vials, be prepared. *See* Appendix B at 007; *see also* Appendix A at 7.

12. On June 12, 2025, a date corresponding to Anthony Wainwright's execution (which occurred on June 10, 2025), seven vials of potassium acetate were removed from FDOC's inventory. This suggests that FDOC may have prepared only 280 milliequivalents of potassium acetate in violation of the etomidate protocol, which requires 480 milliequivalents (12 x 20ml vials) be prepared. *See* Appendix B at 005 *see also* Appendix A at 7. The log sheets show that during the executions of Edward James and Michael Tanzi, FDOC administered lidocaine, an anesthetic drug not called for in the etomidate protocol. *See* Appendix B at 027. Lastly, FDOC indicates on the log sheets that they used etomidate with an expiration date of January 31, 2025, during the executions of Victor Jones on September 30, 2025; David Pittman on September 17, 2025; Curtis Windom on August 28, 2025; and Kayle Bates on August 19, 2025. *See* Appendix B at 025. The discrepancies in these records expose the troubling absence of a mechanism to regularly ensure that FDOC are complying with their own etomidate protocol. Given that Mr. Lukehart is very likely already at a heightened risk of severe pain and suffering due to his unique medical conditions, these partial records from FDOC indicating potential deviation from their own etomidate protocol raise grave concerns that Mr. Lukehart may experience needless pain and suffering during his execution currently scheduled for June 2, 2026. The requested records from FDLE, including the required logs of what occurs in the executioner's room and execution chamber, could certainly indicate whether there have been other instances of FDOC deviating from its own lethal injection procedures during recent executions.

13. Undersigned counsel acknowledges that Florida courts have recently denied requests for lethal injection records based on similar arguments during recent active death warrants.¹ However, these continued denials of records related to lethal injection place Mr. Lukehart and all other Florida capital defendants in an impossible Catch-22 that can only be remedied by granting defendants access to these records. Justice Sonia Sotomayer recently wrote in the Melvin Trotter case “to express concern about Florida's implementation of its execution protocol and the secrecy surrounding it.” *See Trotter v. Fla.*, 146 S. Ct. 755, 755 (2026) (statement respecting the denial of the application for stay and petition for certiorari). Justice Sotomayer further wrote in Trotter’s case that

The record reflects at least the possibility that recent Florida executions have involved—in addition to expired drugs—incorrect drug doses, the use of nonprotocol drugs, and record keeping lapses that could mask yet additional failings. The Florida Supreme Court, moreover, has thus far not allowed further inquiry into these potential problems and has recently denied requests for records that would prove or disprove claims like Trotter's ... In doing so, the Florida Supreme Court appears to be placing prisoners in a Catch-22: It has affirmed the denial of requests for records on these issues, at least in part, because the prisoners do not yet have enough information to raise a “colorable” Eighth Amendment claim ... The very reason the prisoners are seeking the records, however, is to gather enough information to raise a colorable Eighth Amendment claim.

Individuals seeking to challenge the method of their execution should not have to guess at whether the State is, or is not, following its execution protocol. Nor does the State appear to have any legitimate confidentiality interest in shielding from inspection basic facts about the implementation of its execution protocol, such as whether the State is using expired drugs. If the protocol is in fact being followed, then transparency instills confidence in the protocol for everyone—prisoners, the courts, and the public alike. If it is not, then secrecy is intolerable, and disclosure of the relevant records is indispensable for determining whether the lapses at issue are likely to lead to an Eighth Amendment violation ...

¹ *See State of Florida v. Melvin Trotter*, Manatee County Case No.: 1986-CF-1225; *see also State of Florida v. Michael King*, Sarasota County Case No.: 2008-CF-1087; *see also State of Florida v. James E. Hitchcock*, Orange County Case No.: 1976-CF-1942.

By continuing to shroud its executions in secrecy, Florida undermines both the integrity of its own execution process and, potentially, this Court's ability to ensure the State's compliance with its constitutional obligations.

Trotter v. Fla., 146 S. Ct. 755, 755–56 (2026) (internal citations and footnotes omitted). Mr. Lukehart's case presents this Court with the opportunity to remedy this Catch-22 situation that Florida capital defendants have been placed under by the persistent denial of records related to lethal injection and also help ensure that the State of Florida is meeting its constitutional obligations related to executions. Mr. Lukehart should not have to guess at whether the State of Florida is, or is not, following its own etomidate protocol. Mr. Lukehart is entitled to information about the reliability and effectiveness of the drugs being used to kill him. Denying him the opportunity to access records that directly relate to how the State of Florida intends to carry out his execution on June 2, 2026 violates his right to due process and access to the courts under the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

14. An affidavit pursuant to Fla. R. Crim. P. 3.852(i) is attached to this demand and hereby incorporated into this demand.

15. Mr. Lukehart demands that the records requested be copied, indexed, and delivered to the Capital Postconviction Records Repository by your agency pursuant to the trial court's scheduling order with a courtesy copy delivered via email to undersigned counsel.

WHEREFORE, Mr. Lukehart respectfully requests this Court to order the Florida Department of Law Enforcement to produce the records described above

Respectfully submitted,

/s/ Adrienne Joy Shepherd

ADRIENNE JOY SHEPHERD

Florida Bar No. 1000532

Assistant CCRC-North

Email: adrienne.shepherd@ccrc-north.org

/s/ Dawn B. Macready

DAWN B. MACREADY

Florida Bar No. 542611

Acting CCRC-North

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Capital Collateral Regional Counsel – Northern
Region

1004 DeSoto Park Drive

Tallahassee, FL 32301

Phone: 850-487-0922

Counsel for Mr. Lukehart

AFFIDAVIT OF COLLATERAL COUNSEL

I, Dawn B. Macready, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.



DAWN B. MACREADY
Acting CCRC-North
Counsel for Mr. Lukehart

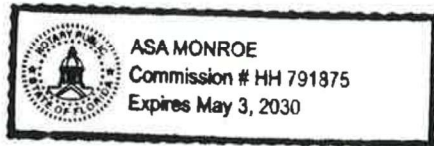
STATE OF FLORIDA
COUNTY OF LEON

Sworn to or affirmed and subscribed before me by means of physical presence or online notarization, this 5th day of May, 2026, by DAWN B. MACREADY who is personally known to me or has shown the following identification: _____.



NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires: May 3, 2030



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic service to all parties of interest and counsel via the Florida Courts E-Portal Filing System on this 5th day of May, 2026.

Respectfully submitted,

/s/ Dawn B. Macready
DAWN B. MACREADY
Florida Bar No. 542611
Acting CCRC-North
Email: dawn.macready@ccrc-north.org

Capital Collateral Regional Counsel –
Northern Region

1004 DeSoto Park Drive
Tallahassee, FL 32301
Phone: 850-487-0922

Counsel for Mr. Lukehart

No. _____

IN THE
Supreme Court of the United States

ANDREW RICHARD LUKEHART,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026, AT 6:00 PM**

Appendix D

May 5, 2026 Defendant's Demand for Additional Public Records [District Eight
Medical Examiner's Office]

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

ANDREW RICHARD LUKEHART,
Defendant.

Case No.: 1996-CF-2645
**Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
June 2, 2026 at 6:00 p.m.**

DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS
[DISTRICT EIGHT MEDICAL EXAMINER'S OFFICE]

To: Office of the Medical Examiner, District Eight
3217 SW 47th Avenue
Gainesville, Florida 32608
Email: medistrict8@alachuacounty.us

The Defendant, **ANDREW RICHARD LUKEHART**, by and through his undersigned counsel, hereby makes demand of the **OFFICE OF THE MEDICAL EXAMINER, DISTRICT EIGHT ("MEO")** under Florida Rule of Criminal Procedure, 3.852(h) and (i) for public records pertinent to this case. In support, Mr. Lukehart states as follows:

1. Mr. Lukehart is an indigent Florida inmate under a sentence of death and subject to execution by lethal injection pursuant to Section 922.105, Florida Statutes. A Death Warrant was signed by Governor Ron DeSantis on May 1, 2026. Mr. Lukehart's execution has been scheduled for June 2, 2026 at 6:00 p.m.

2. Undersigned counsel attests that the requested records detailed below are reasonably calculated to lead to the discovery of admissible evidence in that such records may contain, or through further investigation may lead to the discovery of, evidence that execution by Florida's lethal injection procedures constitutes cruel and unusual punishment in violation of the Eighth and

Fourteenth Amendments to the United States Constitution and corresponding provisions of the Florida Constitution.

3. Undersigned counsel attests that:

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

4. The requested records are:

(a) The complete files of the post mortem examinations performed by the Medical Examiner's Office, District Eight on James E. Hitchcock, DOB 4/5/1956, DC#058293; Chadwick Willacy, DOB 9/23/1967, DC#707742; Michael King, DOB 5/4/1971, DC#132254; Billy Kearse, DOB 10/26/1972, DC#138315; Melvin Trotter, DOB 12/29/1960, DC#573461; Ronald Heath, DOB 7/6/1961, DC#065145; Frank Walls, DOB 10/12/1967, DC#112850; Mark Gerald, DOB 3/29/1967, DC#729185; Richard Randolph, DOB 1/3/1962, DC#115769; and Bryan Jennings; DOB 12/9/1958; DC#073045, following their executions by lethal injection.¹

5. A capital postconviction defendant "bears the burden of demonstrating that the records sought [pursuant to Fla. R. Crim. P. 3.852] relate to a colorable claim for postconviction relief." *Branch v. State*, 236 So. 3d 981, 984 (Fla. 2018) (citing *Chavez v. State*, 132 So. 3d 826, 829 (Fla. 2014) and *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013)). This Court may order the production

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

of records if “the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and ... the additional records request is not overly broad or unduly burdensome.” Fla. R. Crim. P. 3.852(i). The records that undersigned counsel are requesting from the MEO relate to colorable claims for postconviction relief that undersigned counsel is currently investigating. Additionally, the records requests are not overly broad or unduly burdensome.

6. The requested records relate to claims that Florida’s method for lethal injection is unconstitutional and are necessary for undersigned counsel to investigate and raise a claim challenging the constitutionality of Florida’s current method of lethal injection. The requested records are necessary for Mr. Lukehart to investigate and raise a claim that Florida’s lethal injection procedures are facially unconstitutional and also unconstitutional as applied to Mr. Lukehart because the procedures violate the Eighth Amendment’s prohibition against cruel and unusual punishment. *See Bucklew v. Precythe*, 139 S. Ct. 1112 (2019); *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). Undersigned counsel acknowledges the Florida Supreme Court’s (“FSC”) current precedent finding that lethal injection records requests do not relate to a colorable claim for postconviction relief because the FSC has upheld the constitutionality of Florida’s “etomidate protocol” in *Asay v. State*, 224 So. 3d 695 (Fla. 2017) and subsequent opinions. However, undersigned counsel respectfully submits that the FSC has not had a full and fair opportunity to judge the constitutionality of Florida’s lethal injection procedures, because previous capital defendants, including defendants under an active death warrant like Mr. Lukehart, have never been given access to complete records related to Florida’s lethal injection procedures or the executions of individuals under these procedures. Capital defendants in Florida have never been able to thoroughly investigate and present claims challenging the constitutionality

of lethal injection because Florida courts have consistently and pervasively denied them access to agency records related to lethal injection. However, undersigned counsel submits that this Court has the authority to grant the requested lethal injection records under Fla. R. Crim. P. 3.852, and requests that this Court grant the records.

7. The requested records are necessary to prove that the current procedures are “very likely to cause serious illness and needless suffering,” and there is a “substantial risk of serious harm” to Mr. Lukehart if the State of Florida executes him under the current method. *Glossip*, 576 U.S. at 877 (internal citations omitted). The requested records relate to a colorable claim for relief that undersigned counsel is investigating that Florida’s lethal injection procedures are unconstitutional as applied to Mr. Lukehart. Mr. Lukehart suffers from medical conditions that likely will affect the administration of the lethal injection drugs during his execution scheduled for June 2, 2026. Notably, Mr. Lukehart has been told by medical staff employed by the Florida Department of Corrections (“FDOC”) that recent testing indicates Mr. Lukehart has significantly diminished kidney functioning.

8. The requested records are necessary for undersigned counsel to adequately investigate an as-applied challenge to lethal injection based on the interaction between FDOC’s lethal injection protocols and Mr. Lukehart’s medical conditions. The requested records certainly could lead to the discovery of admissible evidence, as the qualified medical expert that undersigned counsel has hired to evaluate Mr. Lukehart’s medical conditions, including his diminished kidney functioning, could rely on them to form the basis of his opinion on whether Florida’s lethal injection procedures will cause Mr. Lukehart needless pain and suffering. As an example, findings from the autopsies of previous inmates executed under the current procedures could indicate if the inmates experienced conditions associated with increased physical pain or suffering. The records

requests are also not overly broad or unduly burdensome. The requests have been narrowly tailored to records of the autopsies of the ten most recent Florida capital defendants executed under the current FDOC lethal injection procedures. Denying Mr. Lukehart the opportunity to access records that directly relate to how the State of Florida intends to carry out his execution on June 2, 2026 violates his right to due process and access to the courts under the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

9. An affidavit pursuant to Fla. R. Crim. P. 3.852(i) is attached to this demand and hereby incorporated into this demand.

10. Mr. Lukehart demands that the records requested be copied, indexed, and delivered to the Capital Postconviction Records Repository by your agency pursuant to the trial court's scheduling order with a courtesy copy delivered via email to undersigned counsel.

WHEREFORE, Mr. Lukehart respectfully requests this Court to order the District Eight Medical Examiner's Office to produce the records described above

Respectfully submitted,

/s/ Adrienne Joy Shepherd

ADRIENNE JOY SHEPHERD

Florida Bar No. 1000532

Assistant CCRC-North

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/s/ Dawn B. Macready

DAWN B. MACREADY

Florida Bar No. 542611

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Region

1004 DeSoto Park Drive

Tallahassee, FL 32301

Phone: 850-487-0922

Counsel for Mr. Lukehart

AFFIDAVIT OF COLLATERAL COUNSEL

I, Dawn B. Macready, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.



DAWN B. MACREADY
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Counsel for Mr. Lukehart

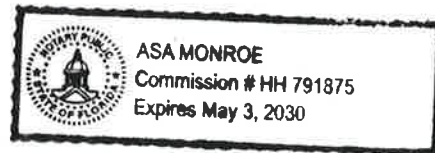
STATE OF FLORIDA
COUNTY OF LEON

Sworn to or affirmed and subscribed before me by means of physical presence or online notarization, this 5th day of May, 2026, by DAWN B. MACREADY who is personally known to me or has shown the following identification: _____.



NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires: May 3, 2030



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic service to all parties of interest and counsel via the Florida Courts E-Portal Filing System on this 5th day of May, 2026.

Respectfully submitted,

/s/ Dawn B. Macready

DAWN B. MACREADY

Florida Bar No. 542611

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Phone: 850-487-0922

Counsel for Mr. Lukehart

No. _____

IN THE
Supreme Court of the United States

ANDREW RICHARD LUKEHART,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026, AT 6:00 PM**

Appendix E

May 6, 2026 Order Denying Defendant's Post-Warrant Demand for Additional
Public Records from the Florida Department of Corrections
Under Rule 3.852(h) and (i)

IN THE CIRCUIT COURT, FOURTH JUDICIAL
CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-1996-CF-002645-AXXX

DIVISION: CR-D

STATE OF FLORIDA

v.

**DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026**

ANDREW RICHARD LUKEHART,
Defendant.

_____ /

**ORDER DENYING DEFENDANT’S POST-WARRANT DEMAND FOR ADDITIONAL
PUBLIC RECORDS FROM THE FLORIDA DEPARTMENT
OF CORRECTIONS UNDER RULE 3.852(h) AND (i)**

This matter came before this Court on “Defendant’s Demand for Additional Public Records [Department of Corrections] [(DOC)],” filed on May 5, 2026. DOC objected on May 6, 2026, and this Court held a hearing that same day.

Defendant demands DOC produce various records, including: (i) Defendant’s unredacted medical file; (ii) lethal injection records related to the manufacture, batch number, storage, maintenance, and expiration dates of the lethal injection drugs obtained since February 2025 generally as well as the drugs to be used on Defendant; (iii) executioner and execution team training materials and credentials; and (iv) checklists and logs documenting previous executions.

Rule 3.852 is “not intended to be a procedure authorizing a fishing expedition for records.” Sims v. State, 753 So. 2d 66, 70 (Fla. 2000). Rule 3.852(i)(2) allows for the post-warrant production of additional public records if: (A) collateral counsel made a timely and diligent search of the repository; (B) collateral counsel identifies the records with specificity; (C)

the sought records are relevant or reasonably calculated to lead to the discovery of admissible evidence; and (D) the request is not overly broad or unduly burdensome. This rule generally requires the requested records relate to a colorable claim and good cause for why the request was not made until after the death warrant was already signed. See Jones v. State, 419 So. 3d 619, 628 (Fla. 2025). The requirement that a subsection (i) request be related to a colorable claim “is particularly important in post-warrant proceedings to ensure that records requests are not used as a delay tactic but reflect a focused investigation into a legitimate area of inquiry.” Willacy v. State, No. SC2026-0519/-0526, 2026 WL 1021168, at *5 (Fla. April 15, 2026).

At the hearing, the parties confirmed DOC has already produced Defendant’s medical records; that demand is therefore dismissed as moot. He is not entitled to the other records.

As Defendant acknowledges, Florida Supreme Court precedent holds that requests for lethal injection protocols are unlikely to lead to a colorable claim for relief because those protocols have already been found to pass constitutional muster. See Cole v. State, 392 So. 3d 1054, 1066 (Fla. 2024) (citing Dailey v. State, 283 So. 3d 782, 792 (Fla. 2019)); Long v. State, 271 So. 3d 938, 948 (Fla. 2019); Jimenez v. State, 265 So. 3d 462, 473 (Fla. 2018); Hannon v. State, 228 So. 3d 505, 511–12 (Fla. 2017). In fact, the Florida Supreme Court recently found a similar—if not identical—request was unrelated to a colorable claim. See Heath v. State, 426 So. 3d 1253, 1263–64 (Fla. 2026) (affirming denial of DOC demand for “records relating to more than ten executions that occurred in 2025, with which he alleged there were errors in the drug logs, problems with the preparation of the drugs, or problems with the drugs themselves”).

The allegations underlying this demand confirm it lacks any nexus to a colorable claim. Defendant endeavors to justify this demand by explaining the request “could lead to the discovery” of evidence that his retained expert “could rely on” in deciding whether Florida’s

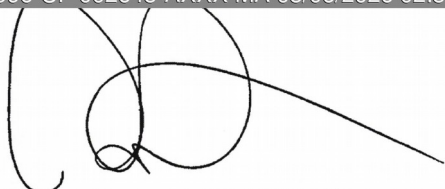
execution protocols may—or may not—be very likely to cause serious needless suffering “in the event” that DOC executioners are medically unqualified or might deviate from published procedures. See Asay v. State, 224 So. 3d 695, 701 (Fla. 2017) (citing Glossip v. Gross, 576 U.S. 863, 877 (2015)). Moreover, Defendant has not shown or suggested any reason to think any execution team member or executioner is unqualified, and DOC’s protocols require those individuals to possess the requisite training and qualifications to perform their execution-related roles. These contingency-laden requests are fishing expeditions, in which Defendant is merely trawling “to discover if possible claims exist, rather than records to support a colorable claim for postconviction relief.” Damas v. State, 423 So. 3d 811, 823 (Fla. 2025).

This Court grants Defendant’s post-warrant demand for his own medical records from DOC but denies his other DOC demands as unrelated to any colorable claim and, therefore, neither relevant nor reasonably calculated to lead to the discovery of admissible evidence under rule 3.852(i)(2)(C)¹. It further denies this demand as overly broad and burdensome because it casts too wide a net that is sure to return too much irrelevant by-catch under rule 3.852(i)(2)(D).

Accordingly, it is **ORDERED** that “Defendant’s Demand for Additional Public Records [Department of Corrections],” filed on May 5, 2026, is **DENIED** to the extent DOC has not already provided Defendant with his medical records; it is otherwise **DISMISSED AS MOOT**.

DONE AND ORDERED in in Jacksonville, Duval County, Florida, on May 6, 2026.

16-1996-CF-002645-AXXX-MA 05/06/2026 02:51:03 PM



MARK J. BORELLO, CIRCUIT JUDGE

Mark Borello, Judge

16-1996-CF-002645-AXXX-MA 05/06/2026 02:51:03 PM

¹ To the extent Defendant seeks records under subsection (h), that demand is denied because his conviction and death sentence became final after subsection (h)’s cut-off date. See Tanzi v. State, 407 So. 3d 385, 391 (Fla. 2025).

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Case No.: 16-1996-CF-002645-AXXX
Division: CR-D
/tbc&aw

No. _____

IN THE
Supreme Court of the United States

ANDREW RICHARD LUKEHART,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026, AT 6:00 PM**

Appendix F

May 6, 2026 Order Denying Defendant's Post-Warrant Demand for Additional
Public Records from Florida Department of Law Enforcement
Under Rule 3.852(h) and (i)

IN THE CIRCUIT COURT, FOURTH JUDICIAL
CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-1996-CF-002645-AXXX

DIVISION: CR-D

STATE OF FLORIDA

v.

**DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026**

ANDREW RICHARD LUKEHART,
Defendant.

**ORDER DENYING DEFENDANT’S POST-WARRANT DEMAND FOR
ADDITIONAL PUBLIC RECORDS FROM FLORIDA DEPARTMENT
OF LAW ENFORCEMENT UNDER RULE 3.852(h) AND (i)**

This matter came before this Court on “Defendant’s Demand for Additional Public Records [Florida Department of Law Enforcement] [(FDLE)],” filed on May 5, 2026. FDLE objected on May 6, 2026, and this Court held a hearing that same day.

Defendant demands FDLE to produce records of the FDLE monitors assigned to the executioner’s room and execution chamber, per the Florida Department of Corrections’ lethal injection execution procedures.

Rule 3.852 is “not intended to be a procedure authorizing a fishing expedition for records.” Sims v. State, 753 So. 2d 66, 70 (Fla. 2000). Rule 3.852(i)(2) allows for the post-warrant production of additional public records if: (A) collateral counsel made a timely and diligent search of the repository; (B) collateral counsel identifies the records with specificity; (C) the sought records are relevant or reasonably calculated to lead to the discovery of admissible evidence; and (D) the request is not overly broad or unduly burdensome. This rule generally

requires the requested records relate to a colorable claim and good cause for why the request was not made until after the death warrant was already signed. See Jones v. State, 419 So. 3d 619, 628 (Fla. 2025). The requirement that a subsection (i) request be related to a colorable claim “is particularly important in post-warrant proceedings to ensure that records requests are not used as a delay tactic but reflect a focused investigation into a legitimate area of inquiry.” Willacy v. State, No. SC2026-0519/-0526, 2026 WL 1021168, at *5 (Fla. April 15, 2026).

As Defendant acknowledges, Florida Supreme Court precedent holds that requests for lethal injection protocols are unlikely to lead to a colorable claim for relief because those protocols have already been found to pass constitutional muster. See Cole v. State, 392 So. 3d 1054, 1066 (Fla. 2024) (citing Dailey v. State, 283 So. 3d 782, 792 (Fla. 2019)); Long v. State, 271 So. 3d 938, 948 (Fla. 2019); Jimenez v. State, 265 So. 3d 462, 473 (Fla. 2018); Hannon v. State, 228 So. 3d 505, 511–12 (Fla. 2017). In fact, the Florida Supreme Court recently found a similar—if not identical—request was unrelated to a colorable claim. See Heath v. State, 426 So. 3d 1253, 1263–64 (Fla. 2026) (affirming denial of FDLE demand for “records relating to more than ten executions that occurred in 2025, with which he alleged there were errors in the drug logs, problems with the preparation of the drugs, or problems with the drugs themselves”).

The allegations underlying this demand confirm it lacks any nexus to a colorable claim. Defendant endeavors to justify this demand by explaining the request “could lead to the discovery” of evidence that his retained expert “could rely on” in deciding whether the three lethal injection drugs “could interact with [Defendant’s] unique medical conditions” in a way that may—or may not—be very likely to cause serious needless suffering. See Asay v. State, 224 So. 3d 695, 701 (Fla. 2017) (citing Glossip v. Gross, 576 U.S. 863, 877 (2015)). This contingency-laden request is a fishing expedition, in which Defendant is merely trawling “to

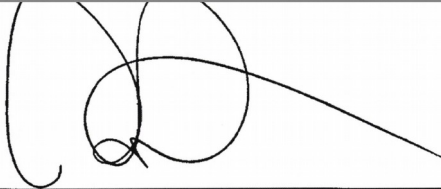
discover if possible claims exist, rather than records to support a colorable claim for postconviction relief.” Damas v. State, 423 So. 3d 811, 823 (Fla. 2025). Moreover, there is no suggestion that any of the previously executed individuals suffered from the same medical conditions as Defendant, rendering their experiences inapposite to Defendant’s condition-specific, as-applied challenge.

This Court denies Defendant’s post-warrant demand for records from FDLE because it is unrelated to any colorable claim and, therefore, neither relevant nor reasonably calculated to lead to the discovery of admissible evidence under rule 3.852(i)(2)(C)¹.

Accordingly, it is **ORDERED** that “Defendant’s Demand for Additional Public Records [Florida Department of Law Enforcement],” filed on May 5, 2026, is **DENIED**.

DONE AND ORDERED in in Jacksonville, Duval County, Florida, on May 6, 2026.

16-1996-CF-002645-AXXX-MA 05/06/2026 02:51:03 PM



MARK J. BORELLO, CIRCUIT JUDGE

Mark Borello, Judge

16-1996-CF-002645-AXXX-MA 05/06/2026 02:51:03 PM

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¹ To the extent Defendant seeks records under subsection (h), that demand is denied because his conviction and death sentence became final after subsection (h)’s cut-off date. See Tanzi v. State, 407 So. 3d 385, 391 (Fla. 2025).

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Case No.: 16-1996-CF-002645-AXXX
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/tbc&aw

No. _____

IN THE
Supreme Court of the United States

ANDREW RICHARD LUKEHART,

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On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
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TUESDAY, JUNE 2, 2026, AT 6:00 PM**

Appendix G

May 6, 2026 Order Denying Defendant's Post-Warrant Demand for Additional
Public Records from the District Eight Medical Examiner
Under Rule 3.852(h) and (i)

IN THE CIRCUIT COURT, FOURTH JUDICIAL
CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-1996-CF-002645-AXXX

DIVISION: CR-D

STATE OF FLORIDA

v.

**DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026**

ANDREW RICHARD LUKEHART,
Defendant.

**ORDER DENYING DEFENDANT’S POST-WARRANT DEMAND FOR
ADDITIONAL PUBLIC RECORDS FROM THE DISTRICT EIGHT
MEDICAL EXAMINER UNDER RULE 3.852(h) AND (i)**

This matter came before this Court on “Defendant’s Demand for Additional Public Records [District Eight Medical Examiner’s Office] [(MEO)],” filed on May 5, 2026. MEO objected on May 6, 2026, and this Court held a hearing that same day.

Defendant demands MEO to produce its complete autopsy files for the last ten individuals executed by lethal injection in Florida.

Rule 3.852 is “not intended to be a procedure authorizing a fishing expedition for records.” Sims v. State, 753 So. 2d 66, 70 (Fla. 2000). Rule 3.852(i)(2) allows for the post-warrant production of additional public records if: (A) collateral counsel made a timely and diligent search of the repository; (B) collateral counsel identifies the records with specificity; (C) the sought records are relevant or reasonably calculated to lead to the discovery of admissible evidence; and (D) the request is not overly broad or unduly burdensome. This rule generally requires the requested records relate to a colorable claim and good cause for why the request was

not made until after the death warrant was already signed. See Jones v. State, 419 So. 3d 619, 628 (Fla. 2025). The requirement that a subsection (i) request be related to a colorable claim “is particularly important in post-warrant proceedings to ensure that records requests are not used as a delay tactic but reflect a focused investigation into a legitimate area of inquiry.” Willacy v. State, No. SC2026-0519/-0526, 2026 WL 1021168, at *5 (Fla. April 15, 2026).

As Defendant acknowledges, Florida Supreme Court precedent holds that requests for lethal injection protocols are unlikely to lead to a colorable claim for relief because those protocols have already been found to pass constitutional muster. See Cole v. State, 392 So. 3d 1054, 1066 (Fla. 2024) (citing Dailey v. State, 283 So. 3d 782, 792 (Fla. 2019)); Long v. State, 271 So. 3d 938, 948 (Fla. 2019); Jimenez v. State, 265 So. 3d 462, 473 (Fla. 2018); Hannon v. State, 228 So. 3d 505, 511–12 (Fla. 2017). In fact, the Florida Supreme Court recently found a similar—if not identical—request was unrelated to a colorable claim. See Heath v. State, 426 So. 3d 1253, 1263–64 (Fla. 2026) (affirming denial of an MEO demand for records relating to previous executions).

The allegations underlying this demand confirm it lacks any nexus to a colorable claim. Defendant endeavors to justify this demand by explaining the request “could lead to the discovery” of documents that his retained expert “could rely on” in deciding whether Florida’s execution protocols may—or may not—be very likely to cause serious needless suffering. See Asay v. State, 224 So. 3d 695, 701 (Fla. 2017) (citing Glossip v. Gross, 576 U.S. 863, 877 (2015)). This contingency-laden request is a fishing expedition, in which Defendant is merely trawling “to discover if possible claims exist, rather than records to support a colorable claim for postconviction relief.” Damas v. State, 423 So. 3d 811, 823 (Fla. 2025). Moreover, the fact that previously executed persons might have experienced “increased physical pain or suffering” is not

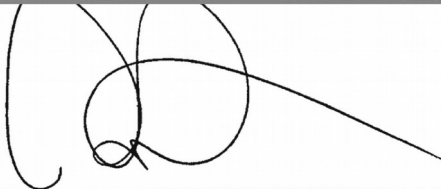
enough to show an Eighth Amendment violation—the suffering must be serious and needless. See Glossip, 576 U.S. at 2733 (explaining that “the Constitution does not require the avoidance of all risk of pain” “because some risk of pain is inherent in any method of execution”). Indeed, “autopsy reports are not likely to lead to a colorable claim because they ‘would not establish when the inmates became unconscious or whether they experienced pain during their executions.’” Branch v. State, 236 So. 3d 981, 985 (Fla. 2018) (quoting Chavez v. State, 132 So. 3d 826, 830 (Fla. 2014)).

This Court denies Defendant’s post-warrant demand for records from MEO because it is unrelated to any colorable claim and, therefore, neither relevant nor reasonably calculated to lead to the discovery of admissible evidence under rule 3.852(i)(2)(C)¹. It further denies this demand as overly broad and burdensome because it casts too wide a net that is sure to return too much irrelevant by-catch under rule 3.852(i)(2)(D).

Accordingly, it is **ORDERED** that “Defendant’s Demand for Additional Public Records [District Eight Medical Examiner’s Office],” filed on May 5, 2026, is **DENIED**.

DONE AND ORDERED in in Jacksonville, Duval County, Florida, on May 6, 2026.

16-1996-CF-002645-AXXX-MA 05/06/2026 02:51:03 PM



MARK J. BORELLO, CIRCUIT JUDGE
Mark Borello, Judge
16-1996-CF-002645-AXXX-MA 05/06/2026 02:51:03 PM

Copies to:

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¹ To the extent Defendant seeks records under subsection (h), that demand is denied because his conviction and death sentence became final after subsection (h)’s cut-off date, see Tanzi v. State, 407 So. 3d 385, 391 (Fla. 2025), and because he did not seek records from MEO when he began his postconviction odyssey, see Sims, 753 So. 2d at 70.

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Case No.: 16-1996-CF-002645-AXXX
Division: CR-D

No. _____

IN THE
Supreme Court of the United States

ANDREW RICHARD LUKEHART,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026, AT 6:00 PM**

Appendix H

May 8, 2026 Defendant's Successive Motion to Vacate Judgments of Conviction and
Sentence of Death with Leave to Amend

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

ANDREW RICHARD LUKEHART,
Defendant.

Case No.: 1996-CF-2645
**Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
June 2, 2026, at 6:00 p.m.**

DEFENDANT’S SUCCESSIVE MOTION TO VACATE JUDGMENTS OF
CONVICTION AND SENTENCE OF DEATH WITH LEAVE TO AMEND

Defendant, Andrew Richard Lukehart (“Lukehart”), by and through undersigned counsel, files this successive motion to vacate his judgments of conviction and sentence of death with leave to amend under Florida Rule of Criminal Procedure 3.851.

(A) JUDGMENT AND SENTENCE UNDER ATTACK

Lukehart was convicted of first-degree felony murder and aggravated child abuse and was sentenced to death. The Honorable William A. Wilkes, Judge for the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, entered the judgments of conviction and sentence at issue. *See* Appendix A. Lukehart’s trial for first-degree murder and aggravated child abuse commenced on February 24, 1997. R/330.¹ On February 27, 1997, the jury found Lukehart guilty as charged (R/1324), and recommended death by a vote of nine to three. R/1639. On April 4, 1997, the trial court imposed a death sentence.

(B) DISPOSITION OF PREVIOUS APPELLATE AND POSTCONVICTION CLAIMS

Lukehart appealed his conviction and death sentence. The Florida Supreme Court (“FSC”) affirmed his capital conviction and death sentence, but remanded for a re-sentencing on his

¹ Citations to the record are of the form: R / [page number(s)].

aggravated child abuse conviction. *Lukehart v. State*, 776 So. 2d 906 (Fla. 2000).² The United States Supreme Court denied Lukehart's petition for writ of certiorari on June 25, 2001. *Lukehart v. Florida*, 533 U.S. 934 (2001). On September 27, 2001, Lukehart filed a "shell" motion for postconviction relief. The trial court struck this as improper, but allowed Lukehart until June 25, 2002 to file an amended motion for postconviction relief. On June 20, 2002, Lukehart filed his amended motion for postconviction relief, raising seventeen claims.³ The trial court granted an

² The following issues were raised on direct appeal: 1) the trial court erred in refusing to suppress Lukehart's statements; 2) the trial court erred by limiting cross-examination; 3) Lukehart's convictions of first-degree murder and aggravated battery are invalid because of insufficient evidence of premeditation and the lack of a felony independent of the homicide; 4) the trial court erred in instructing the jury on justifiable or excusable homicide; 5) Lukehart's death sentence is disproportionate; 6) the trial court erred in finding that the aggravator of murder in the course of a felony cannot be based on a felony that constitutes the homicidal act; 7) the trial court erred in giving instruction on the aggravator of a crime committed while on felony probation and trial court erred in finding it in violation of ex post facto provisions; 8) the trial court erred in finding both murder in the course of a felony and that the victim was under twelve as aggravators; 9) the victim-under-twelve aggravator and the standard jury instruction on the aggravator are unconstitutional; 10) the trial court erred in allowing a collateral crime to be a feature of the penalty phase; 11) the prosecutor's comments during penalty phase closing argument were fundamental error; and 12) the trial court erred regarding the sentence for the noncapital conviction and the restitution orders. *Lukehart v. State*, 776 So. 2d 906, 911, n.1 (Fla. 2000)

³ 1) the trial court erred in striking his shell motion; 2) Florida's death penalty statute is unconstitutional and violates *Ring v. Arizona*, 536 U.S. 584 (2002), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000); 3) trial counsel was ineffective during the guilt phase and the penalty phase; 4) trial counsel was ineffective for failing to object to jury instructions on the ground that they shifted the burden to the defendant to prove that a life sentence was appropriate; 5) the "victim under twelve" aggravator is unconstitutional; 6) the trial court violated the mandates of *Caldwell v. Mississippi*, 472 U.S. 320 (1985), by informing the jury that their sentencing recommendation was advisory; 7) a Florida rule of professional conduct prohibiting juror interviews is unconstitutional; 8) Florida's lethal injection protocol constitutes cruel and unusual punishment and violates the ex post facto clause; 9) Lukehart's execution would violate the dictates of *Ford v. Wainwright*, 477 U.S. 399 (1986); 10) Lukehart's death sentence violates *Furman v. Georgia*, 408 U.S. 238 (1972), and its progeny; 11) Lukehart's mental health expert was ineffective under *Ake v. Oklahoma*, 470 U.S. 68 (1985); 12) the prosecutor's comments violated Lukehart's right to a fair trial; 13) Florida's statute prohibiting the imposition of a sentence of death to be imposed on a mentally retarded defendant, section 921.137, Florida Statutes (2001), violates substantive due process because the statute does not apply retroactively; 14) the imposition of the death penalty on a mentally retarded defendant violates equal protection and due process; 15) Lukehart's death

evidentiary hearing on claim three, which involved multiple grounds of ineffective assistance of counsel. The remaining claims were summarily denied by the court. An evidentiary hearing was held on May 9-10, 2007. Subsequently, Lukehart moved to amend the postconviction motion to include new claims based on testimony elicited at the hearing.⁴ On March 27, 2009, the trial court entered an order denying the ineffective assistance of counsel claims for which a hearing had been held, summarily denying the remaining claims, and declining to consider the newly raised ineffective assistance of counsel claims. *Lukehart v. State*, 70 So. 3d 503 (Fla. 2011). Lukehart appealed this denial to the Florida Supreme Court.⁵ In addition, Lukehart filed a state habeas petition to the Florida Supreme Court.⁶ On June 23, 2011, the Florida Supreme Court affirmed the circuit court's denial of the postconviction motion and denied habeas relief. *Id.* at 525.

sentence constitutes cruel and unusual punishment in violation of *Atkins v. Virginia*, 536 U.S. 304 (2002); 16) the trial court failed to consider mitigating evidence in violation of the Eighth Amendment and *Campbell v. State*, 571 So. 2d 415, 419 (Fla. 1990); and 17) cumulative error. *Lukehart v. State*, 70 So. 3d 503, 510 n.3 (Fla. 2011)

⁴ Lukehart attempted to add claims that trial counsel was ineffective for not investigating or moving to cease his medications and that trial counsel was ineffective for not moving to continue the trial.

⁵ Lukehart raised the following issues in his postconviction appeal: 1) counsel was ineffective for failing to challenge the prior violent felony aggravator during the penalty phase, 2) counsel was ineffective for failing to file a motion to cease Lukehart's medication and a motion for continuance, 3) counsel was ineffective for failing to present Dr. Harry Krop during the guilt phase, 4) Lukehart's amended postconviction motion should relate back to the filing of his shell motion, 5) counsel was ineffective for failing to include an additional argument in the motion to suppress, 6) counsel was ineffective for failing to properly argue and object to the jury instructions and the State's allegedly improper arguments regarding the instructions, (7) counsel was ineffective pursuant to *Caldwell v. Mississippi*, 472 U.S. 320 (1985), 8) counsel was ineffective for failing to present live testimony rather than deposition testimony during the penalty phase, 9) counsel was ineffective for failing to object to allegedly improper prosecutorial comments, 10) the rule prohibiting juror interviews is unconstitutional, 11) Florida's lethal injection protocols are unconstitutional, and 12) cumulative error is present.

⁶ Lukehart's state habeas petition included three claims: 1) the FSC should revisit its prior proportionality review in light of Page's uncontroverted testimony at the evidentiary hearing, 2)

On December 19, 2011, Lukehart filed a successive motion for postconviction relief raising three claims that he had previously attempted to include in an amended motion following the evidentiary hearing.⁷ The circuit court summarily denied this motion and Lukehart appealed. On November 8, 2012, the Florida Supreme Court affirmed the summary denial by the circuit court, finding that the claims were procedurally time-barred, without reaching the merits of his claims. *Lukehart v. State*, 103 So. 3d 134 (Fla. 2012).

Lukehart filed a petition for writ of habeas corpus in the Middle District of Florida. *Lukehart v. Sec. Dept. of Corr.*, Case No. 3:12-cv-585-J-32PDB, 2020 WL 2183150 (M.D. Fla. April 28, 2020). The petition and supplemental claims were denied and the case was dismissed with prejudice. *Id.* However, the court granted a certificate of appealability as to Ground Seven - Whether the Florida Supreme Court unreasonably applied clearly established federal law in denying Petitioner's claims under *Miranda v. Arizona*, 384 U.S. 436 (1966), and *Edwards v. Arizona*, 451 U.S. 477 (1981), as alleged in Ground Seven of the federal habeas petition. *Id.* Subsequently, the United States Court of Appeals for the Eleventh Circuit affirmed the denial of Lukehart's federal habeas petition. *Lukehart v. Sec. Dept. of Corr.*, 50 F. 4th 32 (11th Cir. 2022).

(C) REASON THE CLAIMS RAISED IN THIS PRESENT MOTION WERE NOT PREVIOUSLY RAISED

Facts in support of these claims could not have been raised in a prior motion. Claim One was not ripe until the signing of the death warrant and until anesthesiologist Dr. Joel Zivot opined

Florida's lethal injection protocol violates the Eighth Amendment, and 3) the inclusion of pancuronium bromide in Florida's lethal injection protocol violates free speech.

⁷ Lukehart raised the following claims in his successive motion for postconviction relief: 1) counsel was ineffective for failing to (a) learn the effects of the medication Lukehart was taking, (b) inform the court and the jury that Lukehart was on medication and explain its effects, (c) move the court for the medications to cease, and (d) request a continuance; 2) Lukehart was incompetent at trial due to medication; and 3) Lukehart was involuntarily required to take medication.

that based on the most recent lethal injection protocols issued by the Florida Department of Corrections and based on Lukehart's recent medical records and his recently diagnosed severe kidney disease, Lukehart will suffer unconstitutional pain and suffering at the time of his execution. Claim Two was not ripe until a death warrant was actually signed and Lukehart knew which lethal injection protocols would be used. Claim Three was likewise not ripe until Lukehart's death warrant was signed because until that time, counsel was not operating under the truncated timeframe of a 32-day warrant period.

(D) NATURE OF RELIEF SOUGHT

Lukehart requests relief as follows: 1) that he be granted leave to amend, as necessary; 2) that this Court grant an evidentiary hearing; 3) that this Court grant a stay of execution; and 4) that this Court vacate his conviction and death sentence.

(E) CLAIMS FOR WHICH AN EVIDENTIARY HEARING IS SOUGHT

CLAIM ONE

FLORIDA'S LETHAL INJECTION PROCEDURES AS APPLIED TO LUKEHART ARE UNCONSTITUTIONAL AND CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT, IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION. FLORIDA'S LETHAL INJECTION PROCEDURES PRESENT A SUBSTANTIAL AND IMMINENT RISK THAT IS VERY LIKELY TO CAUSE LUKEHART NEEDLESS SUFFERING UNDER *GLOSSIP v. GROSS*, 576 U.S. 863 (2015) AND *BAZE v. REES*, 553 U.S. 35 (2008).

Florida's current lethal injection procedures are unconstitutional as specifically applied to Lukehart because there is a substantial and imminent risk that executing Lukehart under those procedures will very likely cause him needless pain and suffering due to his severe kidney disease. *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). Florida's use of the drug etomidate in the three-drug lethal injection protocol will likely cause Lukehart needless pain and suffering when administered.

The Eighth Amendment, which is made applicable to the States through the Fourteenth Amendment, prohibits the infliction of “cruel and unusual punishments.” *Glossip v. Gross*, 576 U.S. 863, 876 (2015). To succeed on an Eighth Amendment method-of-execution claim, Lukehart must: (1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering, and also (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain. *See Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (*citing Glossip*, 576 U.S. at 877 and *Baze*, 553 U.S. at 50, 61).

Immediately following the issuance of Lukehart’s warrant, defense counsel emailed counsel for DOC and requested his most recent medical records – from October 1, 2025 through present. Since counsel had recently obtained updated medical records, the request was narrowed to this timeframe. However, they were not received until 9:28 a.m. on Wednesday, May 6, 2026, just less than 48 hours from Lukehart’s Rule 3.851 deadline as ordered by this Court.

According to Lukehart’s medical records, he is a 53-year-old man with a long list of medical problems, including poor mental health, recurrent polymicrobial urinary tract infections, epididymitis-orchitis, obesity, being a former smoker, elevated cholesterol, hypothyroidism, gastrointestinal reflux, hypertension, type II diabetes, and chronic kidney disease stage III-IV. He takes medication for hypertension, reflux, diabetes, and elevated cholesterol. Although hypothyroidism is a listed illness, he is not currently being treated for this issue. Lukehart also has a moderate allergy to diphenhydramine, a first-generation antihistamine. *See Appendix B.*

Undersigned counsel has retained anesthesiologist Dr. Joel Zivot, who is available and willing to testify to the substantial risk of needless pain and suffering that Lukehart faces if executed by lethal injection due to his medical conditions. Dr. Zivot is an associate professor and

senior member of the Departments of Anesthesiology and Surgery at Emory University School of Medicine in Atlanta, Georgia. Dr. Zivot holds board certification in Anesthesiology from the Royal College of Physicians and Surgeons of Canada and the American Board of Anesthesiology. He is board-certified in Critical Care Medicine from the American Board of Anesthesiology. Dr. Zivot has practiced anesthesiology and critical care medicine for over thirty years, during which time he has personally performed or supervised the care of over 50,000 patients. *See* Appendix B.

Dr. Zivot reviewed Lukehart's medical records and Florida's lethal injection procedures, and he can opine generally to the following.⁸ Based on his review of records, Dr. Zivot observed that Lukehart is a man in poor health. His kidney function has declined to the point of nearing a need for hemodialysis. His obesity, along with hypertension, diabetes, elevated cholesterol, and a smoking history, makes him very high risk for significant heart disease. There do not appear to be records of any examination of his cardiac function, but based on his risk factors, he is likely on a path to suffering a heart attack. Recurrent bacterial urinary tract infections suggest poor immune health or anatomical abnormalities of his genitourinary system, including prostatitis. Infections of this nature, if not treated in a timely fashion, can lead to septic shock and death.

Dr. Zivot is available to opine that kidney functioning decreases naturally over time with age, and this can be accelerated by medical conditions like uncontrolled high blood pressure or diabetes. Therefore, kidney disease is a progressive condition that deteriorates over time. This gives support to the argument that even had this claim been raised before the signing of the warrant, counsel would not have known where Lukehart's kidney functioning would be in May of 2026.

⁸ Due to the extreme time constraints and expedited filing schedule caused by the Governor's signing of a 32-day death warrant, Dr. Zivot has been able to conduct a preliminary evaluation by reviewing Lukehart's medical records prior to the filing of this motion. A stay of execution must be granted so that Dr. Zivot can conduct a complete in-person evaluation of Lukehart.

This issue did not truly become ripe until the warrant was signed and counsel could be sure of what his kidney functioning would be at the time of execution. Although Lukehart's medical records show some diminished kidney values starting in 2023, his numbers became severe in January of 2026. Around January 24, 2026, Lukehart collapsed as a result of a medical emergency caused by his severe kidney disease.

Florida's lethal injection procedures involve the sequential intravenous delivery of three drugs. *See* Appendix C. The first drug is etomidate, followed by rocuronium bromide, and then potassium acetate. Etomidate is a non-barbiturate sedative hypnotic drug used in anesthesiology practice in several different situations. Etomidate is not classically considered an analgesic, which is a medicine used for the control of pain. Further, neither of the subsequent drugs used in Florida's lethal injection procedures are 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.

As a consequence of Lukehart's severe kidney disease, injected drugs as used in the DOC lethal injection protocol may rise higher in his bloodstream because of a reduction in urinary excretion. The effect of this is the potential for an exaggerated negative consequence on his heart and lungs, making his own death more painful and cruel. When etomidate is injected, the beating heart rapidly delivers the strong acid solution to the lungs, where it burns them from the inside. Since Lukehart has reduced kidney function, etomidate may not be eliminated as quickly. The effect is a longer time for etomidate to repeatedly pass through the lungs, burning them with each pass. Dr. Zivot further opined that "[s]hould Mr. Lukehart be executed by DOC's current lethal

injection protocol, *he has an extremely high likelihood of suffering a needless, cruel, and painful death.*”

Additionally, Mr. Lukehart is allergic to diphenhydramine, a first-generation antihistamine, which likely means he is also allergic to hydroxyzine. DOC is known to offer prisoners the option of hydroxyzine prior to the establishment of intravenous access to reduce anxiety. However, it is unknown whether this drug is effective in reducing the anxiety of anticipating one’s own death. Should DOC give Lukehart hydroxyzine, it would result in a significant and dangerous risk of a severe allergic reaction, for which DOC has no protocols to handle should intervention be necessary.

It is clear from Dr. Zivot’s preliminary evaluation of Lukehart’s medical history that Florida’s lethal injection procedures place Lukehart at a substantial risk of needless pain and suffering in response to the administration of an extremely high dose of etomidate. Even more troubling is the fact that because Lukehart will be administered the paralytic rocuronium bromide directly after etomidate, the ensuing paralysis of his body will likely prevent him from exhibiting any external signs of his physical anguish. Florida therefore cannot constitutionally execute Lukehart.

To succeed on his Eighth Amendment method-of-execution claim, Lukehart is also required to identify a method of execution other than lethal injection that is “feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain.” *Glossip*, 576 U.S. at 877 (quoting *Baze*, 533 U.S. at 52). The requirement under current federal jurisprudence that Lukehart choose another less-painful method of execution is morally repugnant, impossible to realistically meet, and violates Lukehart’s First, Fifth, Sixth, Eighth, and Fourteenth Amendment rights under the United States Constitution.

This alternative method requirement violates Lukehart's right to religious freedom under the First Amendment to the United States Constitution. Lukehart is a long-time practicing Catholic. Having to choose an alternative method for his own execution runs afoul of church doctrine which views both murder and suicide as grave violations of the Fifth Commandment – "Thou shalt not kill." This stems from the belief that human life is sacred, belonging to God, who is the sole author of life and death. Forcing Lukehart to make such a choice prohibits his free exercise of religion, which the First Amendment sought to protect.

Furthermore, the alternative method requirement of the *Baze-Glossip* test violates Lukehart's Fifth and Fourteenth Amendment due process rights because there is no guaranteed or scientific way to prove that any alternative method will cause significantly less pain than other methods available in the United States. There exists no way to legally, humanely, or ethically test any alternative method of execution to determine if it will cause less pain compared to another.

Specific to Lukehart, there exists no legal or scientific way to test any alternative method of execution on an individual with severe kidney disease prior to Lukehart's execution to determine what level of pain they may suffer. Lukehart, and all capital defendants facing execution, are therefore forced to choose an alternative method without actually knowing if it will cause less pain and suffering. The United States Supreme Court has promulgated a standard that cannot actually be met.

While Lukehart believes that he should not have the burden of presenting an alternative method of execution, a review of other states that have modified their lethal injection process post-*Baze*, demonstrate the existence of feasible, readily-implemented alternative procedures that would significantly reduce the substantial risk of excruciating pain created by Florida's deficient

protocol. Essentially, these alternative procedures utilize analgesic drugs rather than paralytic agents like etomidate.

Since 2012, many death penalty states have affirmatively abandoned the use of paralytic drugs and potassium without an analgesic drug. Since 2015, there have been 198 executions in 14 states and the federal government. Two-thirds of these executions (132) used no paralytic in their lethal injections, instead using a single dose of pentobarbital. Of the 64 executions using a paralytic, Florida accounted for 25% of them (16 executions). One state that executed 3 inmates using a paralytic protocol has abolished the death penalty altogether (Virginia). One execution included diazepam and fentanyl for sedation and pain relief in its paralytic protocol (Nebraska). Two states using a paralytic protocol that accounted for 5 of the paralytic executions now have moratoria on execution (Tennessee and Ohio). Six of the 198 executions were carried out by methods other than lethal injection, namely electrocution (Tennessee) and lethal gas (Alabama).

Lukehart's execution by Florida's lethal injection protocol is scheduled to take place on Tuesday, June 2, 2026. The risk that Lukehart will experience needless pain and suffering could not be more imminent or substantial. Undersigned counsel respectfully submits that this Court should grant an evidentiary hearing on this claim. Undersigned counsel also respectfully requests that this Court grant Lukehart a stay of execution because his Eighth Amendment method-of-execution claim is a substantial ground upon which relief might be granted and deserves to be fully addressed by this Court free from the constraints of an accelerated death warrant schedule. *See Chavez v. State*, 132 So. 3d 826, 832 (Fla. 2014) (internal citations omitted) (explaining that a stay of execution pending the disposition of a successive motion for postconviction relief is warranted when there are substantial grounds upon which relief might be granted).

CLAIM TWO

BY UTILIZING A PARALYTIC DRUG THAT SUFFOCATES THE CONDEMNED AND MASKS THE EXTREME PAIN CAUSED BY ALL THREE DRUGS, FLORIDA'S LETHAL INJECTION PROCEDURES CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Florida's current lethal injection procedures are facially unconstitutional because the procedures create a risk of needless pain and suffering. *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). The Eighth Amendment, which is made applicable to the States through the Fourteenth Amendment, prohibits the infliction of "cruel and unusual punishments." *Glossip v. Gross*, 576 U.S. 863, 876 (2015). To succeed on an Eighth Amendment method-of-execution claim, Lukehart must: (1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering, and also (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain. *See Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip*, 576 U.S. at 877 and *Baze*, 553 U.S. at 50, 61).

Under Florida law, "[a] death sentence shall be executed by lethal injection ... under the direction of the Secretary of Corrections or the secretary's designee." Fla. Stat. § 922.105(1). The State seeks to execute Lukehart pursuant to DOC's protocols that call for the intravenous injection of the following drugs: 1) 200 milligrams of etomidate, 2) 1000 milligrams of rocuronium bromide, and 3) 240 milliequivalents of potassium acetate. *See* Appendix C. These drugs must be given in this specific order, as outlined in DOC's lethal injection protocols.

The objective of the first drug, etomidate, is to induce a level of unconsciousness that achieves and maintains a surgical plan of anesthesia, *i.e.*, one that renders a person insensate to the pain of the second and third drugs.

The objective of the second drug, rocuronium bromide, is to give the appearance of a serene death. It paralyzes all voluntary muscles, preventing the inmate from manifesting pain. It also prevents the inmate from breathing by paralyzing the diaphragm, which prevents air from being moved in and out of the lungs. Rocuronium bromide is not an anesthetic and does not affect consciousness or the perception of pain. A conscious person under the influence of rocuronium bromide would experience the sensation of death by drowning but be unable to communicate this. An inmate not fully anesthetized before the rocuronium bromide takes effect would suffer a lingering and torturous death.

The objective of the third and final drug, potassium acetate, is to kill the inmate. This is done by interfering with the heart's electrical activity which induces cardiac arrest. Potassium acetate causes excruciating pain and suffering if administered to a condemned prisoner who is not sufficiently anesthetized. As potassium acetate travels through the bloodstream from the injection site towards the heart, the chemical activates sensory nerve fibers inside the veins, causing a prolonged and intense burning sensation.

Notably, DOC's lethal injection protocol does not provide for an individualized assessment of an inmate's specific medical conditions and how these might affect the lethal injection process. The dosage of drugs remains the same regardless of the age, height, and weight of the inmate.

Dr. Zivot reviewed DOC's lethal injection protocols and opined that the protocol, as designed, creates an objectively intolerable risk of needless pain and suffering. *See Appendix B.* Etomidate is the first injected chemical in the DOC execution protocol. In as little as 3 minutes after etomidate injection, rapid redistribution of the drug within the circulation will allow a return to consciousness. As etomidate is rarely fatal and short-acting, death is more likely to be caused by the chemical suffocation induced by the injection of rocuronium. It is particularly concerning

that three recent executions have been flagged as potentially involving expired etomidate, which loses potency over time. The awareness of death by suffocation is not a rare event. In the 19 executions carried out by the State of Florida in 2025, awareness of dying by suffocation occurred more than 20% of the time. *See Appendix B.*

Florida's lethal injection protocol kills human beings using a technique rejected by even the American Veterinary Medical Association. Veterinary guidelines strongly condemn using paralytics alone for euthanasia because they can paralyze a conscious animal and cause suffering without a way to show their distress. It is clear that Florida's methods create superadded pain and suffering. This finding is not merely theoretical but is found unambiguously in toxicology evidence. *See Appendix B.*

A common post-mortem finding in lethal injection executions is pulmonary edema. In Dr. Zivot's review of over 250 post-lethal injection execution autopsies, he found pulmonary edema or bloody frothy fluid in the lungs in approximately 80% of cases. His review of the 19 post-execution autopsies from 2025 found the presence of heavy, blood-filled lungs with frothy bloody fluid in 15 of the 19 cases. Fluid in the lung airways is a highly dangerous and extremely uncomfortable sensation. It is akin to the sensation of drowning. In comparison, waterboarding is a technique used to extract information from captured individuals, made notorious in the global war on terror. Also known as enhanced interrogation, waterboarding is widely classified as torture by international human rights organizations, legal experts, and the United Nations. To the person subjected to waterboarding, the experience feels like drowning. The individual suffers from an uncontrollable sensation of panic, terror, and slow-motion suffocation. Florida's execution protocol creates death akin to waterboarding, except the fluid rises from within the lungs, rather than into the nose and mouth. Death occurs not in seconds but may take minutes. The sensation of

torture is evident in seconds, and the paralysis creates the outward appearance of calm while hiding the inward sensation of panic, terror, and suffocation. This is not a theoretical concern but an actual event that has been documented in past autopsies.

Dr. Zivot further stated in his declaration that the use of etomidate as the first injected chemical virtually guarantees the common experience of death by cruel and terrifying suffocation. After reviewing multiple lethal injection protocols in other death penalty states, Dr. Zivot is of the opinion that Florida currently has the worst of the worst lethal injection protocol.

As to alleging an alternative method of execution that will entail a significantly less severe risk of pain, Lukehart relies on his arguments raised in Claim One. Lukehart respectfully requests this Court grant him an evidentiary hearing on this claim.

CLAIM THREE

FLORIDA’S WARRANT PROCESS DEPRIVES LUKEHART OF A FULL AND FAIR POSTCONVICTION PROCEEDING IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO SUBSTANTIVE AND PROCEDURAL DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION, AND THE PROCEEDINGS FURTHER RUN AFOUL OF THE REQUIREMENT FOR HEIGHTENED RELIABILITY IN CAPITAL CASES.

The absence of a reasonable warrant schedule denies Lukehart of full, fair, and meaningful postconviction proceedings in violation of the Due Process Clause of the Fifth and Fourteenth Amendments and Article I, Section 9, of the Florida Constitution. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (noting “an essential principle of due process is that a deprivation of life . . . ‘be preceded by notice and opportunity for hearing *appropriate to the nature of the case.*’”) (quoting *Mullane v. Cent. Hannover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)) (emphasis added).

Governor DeSantis signed a death warrant for Lukehart on Friday, May 1, 2026. This was received by counsel for Lukehart at 5:12 p.m. on that same day. His execution is scheduled for Tuesday, June 2, 2026, at 6:00 p.m. This Court held a case management conference at 8:30 a.m. on Monday, May 4, 2026. At this conference, this Court determined the scheduling order for the warrant proceedings in the circuit court as follows:

- Tues., May 5, 2026 (11:00 a.m.): Defendant must complete all requests for public records.
- Wed., May 6, 2026 (11:00 a.m.): The State and any agencies must file all objections to Defendant's requests for public records.
- Wed., May 6, 2026 (1:00 p.m.): The Court will conduct a hearing on Defendant's requests for public records and any objections from the State or agencies, if necessary.
- Wed., May 6, 2026 (5:00 p.m.): This Court will issue orders on all contested public records request.
- Thurs., May 7, 2026 (9:00 a.m.): The State and any agencies must comply with any court-ordered production of public records.
- Fri., May 8, 2026 (9:00 a.m.): Defendant shall file a final Successive Rule 3.851 Motion.
- Sat., May 9, 2026 (9:00 a.m.) The State shall file its response to Defendant's final Successive Rule 3.851 Motion.
- Sat., May 9, 2026 (11:00 a.m.) The Court will conduct a Case Management Conference on Defendant's postconviction motion and determine if an evidentiary hearing is necessary.
- Mon., May 11, 2026 (9:00 a.m.) If necessary, the Court will conduct an Evidentiary Hearing on Defendant's final Amended Rule 3.851 Motion.
- Thurs., May 14, 2026 (11:00 a.m.) The Court will issue a final order on Defendant's Successive Rule 3.851 Motion.

This scheduling order from the circuit court was in addition to the one set by the Florida Supreme Court, wherein all circuit court proceedings must be concluded by 11:00 a.m. on Thursday, May 14, 2026. These scheduling orders not only give Lukehart a 32-day warrant period in total, but give him less than 7 days to investigate warrant-related issues, review additional records provided by State agencies, consult with experts, and file his final 3.851 motion in the circuit court.

The warrant procedure in Florida and its constituent proceedings are so truncated that they preclude a meaningful hearing on *any* of Lukehart’s claims, preclude counsel’s meaningful and effective representation, and causes unnecessary strain and chaos on the judicial system, particularly at the circuit court level. The Due Process Clause of the Fourteenth Amendment guarantees that “no State shall . . . deprive any person of life, liberty, or property without due process of law.” Amend. XIV, U.S. Const. Likewise, “one of the basic tenets of Florida law is the requirement that all proceedings affecting life, liberty, or property must be conducted according to due process.” *Scull v. State*, 569 So. 2d 1251, 1252 (Fla. 1990) (citing Art. 1, § 9, Fla. Const.).

“Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him *some real opportunity to protect it.*” *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 682 (1930) (emphasis added). “At a minimum,” due process “require[s] that deprivation[s] of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.” *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) (quoting *Mullane*, 339 U.S at 313).

As the United States Supreme Court held in *Mathews v. Eldridge*, “the fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and *in a meaningful*

manner.” 424 U.S. 319, 333 (1976) (quoting *Armstrong*, 380 U.S. at 553) (emphasis added). Nowhere can these principles be more important than in a capital case, where the Supreme Court has repeatedly emphasized that the Eighth Amendment requires a heightened degree of reliability in the process. *See, e.g., Herrera v. Collins*, 506 U.S. 390 (1993); *McKoy v. North Carolina*, 494 U.S. 433 (1990); *Loudermill*, 470 U.S. at 542 (quoting *Mullane*, 339 U.S. at 313) (reiterating that the due process requirements of notice and opportunity must be “appropriate to the nature of the case”); *Eddings v. Oklahoma*, 455 U.S. 104 (1982); *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976).

Contrary to the Florida Supreme Court’s finding in *Hannon v. State*, 228 So. 3d 505, 509 (Fla. 2017), the “function” of the Eighth Amendment is not fulfilled “by the time that a defendant is warrant eligible.” Indeed, both the imposition of a death sentence *and* the process of carrying out an execution must withstand constitutional scrutiny.

If the Constitution renders the fact *or timing* of his execution contingent upon establishment of a further fact . . . “then that fact must be determined with the high regard for truth that befits a decision affecting the life or death of a human being.”

Herrera, 506 U.S. at 405-06 (quoting *Ford*, 477 U.S. at 411).

The Supreme Court has held that factual determinations related to the constitutionality of a person’s execution are “properly considered in proximity to the execution.” *Id.* at 406 (noting competency to be executed determination is more reliable near time of execution whereas guilt or innocence determination becomes less reliable). In other words, whether the carrying out of a death sentence violates the Eighth Amendment depends on the facts existing after a death warrant is signed and the determination of these facts requires *increased reliability*.

Despite this requirement, warrant proceedings in Florida are unnecessarily truncated and fail to provide capital defendants a meaningful time or manner to challenge their convictions and

sentences. This is particularly abhorrent when the end result is the ultimate penalty—actual death. The Eighth Amendment requires a principled way to distinguish between who is executed by a state government *and* how much time they are afforded to investigate and present their claims under warrant.

Other active death penalty states, including Texas and Missouri, provide by statute or rule a minimum of 90 days in which to raise challenges under warrant. Tex. Code Crim. Proc. Ann. art. 43.141(c) (2015); Mo. Sup. Ct. R. 29.08 (2014). The Missouri Supreme Court Rules provide a window of between 90-120 days for the warrant period. Mo. Sup. Ct. R. 29.08. Oklahoma requires that an execution be set not less than 60 days from the issuance of a warrant. Okla. Stat. Ann. tit. 22, §1001 (2025). Louisiana also requires a minimum warrant period of 60 days and provides up to 90 days from the warrant being issued. La. Stat. 15:567(B) (2024). In Ohio, the Supreme Court sets the execution date between 2-3 years in advance, thus there is no element of surprise on the parties and adequate time for stakeholders to conduct meaningful review.

Section 922.052, Florida Statutes, sets a maximum 180-day warrant period, but fails to provide a reasonable, minimum time to ensure meaningful process. Unlike other death penalty states, Florida’s warrant stage litigation structure fails to ensure that capital defendants receive due process and a meaningful opportunity to be heard in the final stages of a capital case. The reality is that this structure has resulted in practice to provide an essentially meaningless process that fails to conform with the requirements of the Fifth, Sixth, Eighth, and Fourteenth Amendments facially and as applied to Lukehart.

Counsel for Lukehart received notice at 5:12 p.m. on Friday, May 1, 2026, that a warrant had been signed. Lukehart’s execution was scheduled for June 2, 2026. Less than 15 minutes later, the Florida Supreme Court issued a scheduling order directing “that all further proceedings in this

case be expedited.” Scheduling Order, *Lukehart v. State*, SC1960-90507 (Fla. May 1, 2026). The Court ordered that all circuit court proceedings be completed by 11:00 a.m. on Thursday, May 14, 2026.

Although the warrant period is 32 days in Lukehart’s case, the Florida Supreme Court’s scheduling order provided approximately nine business days for circuit court proceedings. Pursuant to this Court’s scheduling order, Lukehart had just one business day to file all public records demands and four business days to file any claims challenging his conviction and sentence. This extremely expedited schedule prevented Lukehart from having any meaningful process or opportunity to fully investigate and present his claims, hindered counsel in providing effective representation, and caused unnecessary strain and chaos for the courts and all parties involved.

As indicated by the scheduling order, the Court expects counsel to work around the clock in order to meet the rigorous deadlines imposed. While counsel for Lukehart accept that obligation, neither counsel nor experts have unfettered ability to meet with or speak with capital defendants under death watch in Florida State Prison (“FSP”). Even under warrant, FSP allows counsel and experts to meet with clients only on weekdays during specific hours, and calls are limited to 30 minutes. Calls, visits, and expert evaluations are approved subject to availability due to the overlapping warrants, which means at least two capital defendants are on death watch at a time. The process frustrates counsel’s ability to meet ethical duties and ensure Florida’s death penalty is administered consistent with basic notions of fundamental fairness and process which are the cornerstone of our system of justice.

Lukehart suffers from severe kidney disease, and this truncated warrant period makes it impossible to meet with him as often as is necessary *while also investigating and presenting his claims*. Counsel cannot effectively represent Lukehart under these circumstances.

The unnecessarily truncated process coupled with the surprise nature of the signing of a warrant creates an untenable and impossible situation. While Judges and counsel for all parties must cancel necessary medical appointments, scheduled travel, or attend hearings notwithstanding any illness, regardless of severity, it is unreasonable to assume that experts, witnesses, and family of the client and the parties (including outside agencies and court staff) are able to do the same.

Moreover, the process impacts counsel's ability to effectively represent other clients. While Rule 3.851(h)(2) provides that warrant proceedings take precedence over all other cases and courts may be willing to move previously scheduled hearings, counsel is not absolved from their ethical and constitutional obligations to other clients. The very nature of warrant proceedings under this truncated period requires around the clock representation of *a single client*. Lukehart's expedited warrant time frame of only thirty-two days and the resulting extreme demands on counsel's time and resources has forced lead counsel for Lukehart, Assistant CCRC-North Adrienne Shepherd, to file motions to continue *four separate matters* scheduled or due in her clients' cases in May alone. (*Deviney v. Sec'y, Dept. of Corr.*, SC2026-0043; *Deviney v. State of Florida*, SC2025-0906; *State of Florida v. Deviney*, Duval Co. Case No.: 2008-CF-12641; *State of Florida v. Hector Sanchez-Torres*, Duval Co. Case No.: 2009-CF-671). Co-counsel for Lukehart, Assistant CCRC-North Alicia Hampton, has been involved in a two-week evidentiary hearing on another case (*State of Florida v. Bevel*, Duval Co. Case No.: 2004-CF-4525) before this Court, and has not been able to assist until that evidentiary hearing concluded. Acting CCRC-North, Dawn Macready, has also been assisting with Lukehart's warrant proceedings, in addition to performing her administrative duties for the agency.

This truncated time period has posed a significant hardship to Lukehart's counsel, and in turn, has violated Lukehart's rights to a full, fair, and meaningful postconviction proceeding in

violation of the Due Process Clause of the Fifth and Fourteenth Amendments and Article I, Section 9, of the Florida Constitution. Lukehart respectfully requests that this Court grant an evidentiary hearing on this claim.

CONCLUSION AND RELIEF SOUGHT

1. Lukehart requests that he be granted leave to amend, as necessary.
2. Lukehart requests that this Court grant an evidentiary hearing.
3. Lukehart requests that this Court grant a stay of execution.
4. Lukehart requests that this Court vacate his conviction and death sentence.

Respectfully submitted,

/s/ Dawn B. Macready
Dawn B. Macready
FL Bar No. 0542611
Acting CCRC-North
Dawn.Macready@ccrc-north.org

/s/ Adrienne Joy Shepherd
Adrienne Joy Shepherd
FL Bar No. 1000532
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Adrienne.Shepherd@ccrc-north.org

Office of the Capital Collateral Regional
Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
Phone: (850) 487-0922

CERTIFICATION PURSUANT TO FLA. R. CRIM. P. 3.851 (e)

Pursuant to Fla. R. Crim P. 3.851(e)(2)(A) and (e)(1)(F), undersigned counsel hereby certifies that counsel has endeavored to fully discuss and explain the contents of this motion with Lukehart, and that counsel to the best of his ability has complied with Rule 4-1.4 of the Rules of Professional Conduct, and that this motion is filed in good faith.

Respectfully submitted,

/s/ Dawn B. Macready
Dawn B. Macready
FL Bar No. 0542611
Acting CCRC-North
Dawn.Macready@ccrc-north.org

/s/ Adrienne Joy Shepherd
Adrienne Joy Shepherd
FL Bar No. 1000532
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Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
Phone: (850) 487-0922

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 8th day of May, 2026, we electronically filed the foregoing with the Clerk of the Circuit Court using the Florida Courts e-portal filing system and have served all counsel of record, and the Florida Supreme Court, Kendall Canova at warrant@flcourts.org.

/s/ Dawn B. Macready
Dawn B. Macready
FL Bar No. 0542611
Acting CCRC-North
Dawn.Macready@ccrc-north.org

/s/ Adrienne Joy Shepherd
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Appendix A

Book 8589 Pg 1015

____ Probation Violator
____ Community Control Violator
____ Retrial
____ Resentence

In the Circuit Court, Fourth Judicial Circuit,
in and for Duval County, Florida
Division CR-F

Case Number 96- 2645-CF-A

State of Florida

ANDREW RICHARD LUKEHART

Defendant

FILED
APR - 4 1997
Henry W. Cook
CLERK CIRCUIT COURT

JUDGMENT

The defendant, ANDREW RICHARD LUKEHART, being personally before this court represented by Michael Edwards the attorney of record, and the state represented by Jon Phillips & Angela Corey-Hee, and having
 been tried and found guilty by jury/by court of the following crime(s)
____ entered a plea of guilty to the following crime(s)
____ entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number	OBTS Number
-1-	Murder in the 1st degree	827.04(1)(A)	Capital Felony		
-2-	Aggravated Child Abuse	827.03	2° F		

Bk: 8589
Pg: 1015 - 1026
Doc# 97074974
Filed & Recorded
04/09/97
03:32:51 P.M.
HENRY W. COOK
CLERK CIRCUIT COURT
DUVAL COUNTY, FL
REC. .00

and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED that the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

____ and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch. 794) or lewd and lascivious conduct (ch. 800) the defendant shall be required to submit blood specimens.

____ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

(2)

State of Florida

v.

Case Number 96- 2645-CF-A

ANDREW RICHARD LUKEHART











Defendant

Imposition of Sentence _____
Stayed and Withheld
(Check if Applicable)

The Court hereby stays and withholds the imposition of sentence as to count(s) _____ and places the Defendant on probation/community control for a period of _____ under the supervision of the Department of Corrections (conditions of probation/community control set forth in separate order.)

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FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by: D.H. Crisp Name Police Bailiff Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, ANDREW RICHARD LUKEHART, and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in Jacksonville, Duval County, Florida, this 4th day of April, 1997.

Wilborn Q. Wilkes
Judge

DOC# 97074974

000412

STATE OF FLORIDA

In the Circuit Court, Fourth Judicial Circuit,
in and for Duval County, Florida
Division CR-F
Case Number 96- 2645-CF-A

ANDREW RICHARD LUKEHART

Defendant

1017
Pg
Book 8589

CHARGES/COSTS/FEEES

The defendant is hereby ordered to pay the following sums if checked:

- \$50.00 pursuant to section 960.20, Florida Statutes (Crimes Compensation Trust Fund).
- \$3.00 as a court cost pursuant to section 943.25(3), Florida Statutes (Criminal Justice Trust Fund).
- \$2.00 as a court cost pursuant to section 943.25(13), Florida Statutes (Criminal Justice Education by Municipalities and Counties).
- A fine in the sum of \$ _____ pursuant to section 775.0835, Florida Statutes. (This provision refers to the optional fine for the Crimes Compensation Trust Fund and is not applicable unless checked and completed. Fines imposed as a part of a sentence to section 775.083, Florida Statutes are to be recorded on the sentence page(s).)
- \$20.00 pursuant to section 939.015, Florida Statutes (Handicapped and Elderly Security Assistance Trust Fund).
- A 10% surcharge in the sum of \$ _____ pursuant to section 775.0836, Florida Statutes (Handicapped and Elderly Security Assistance Trust Fund).
- A sum of \$ 200.00 pursuant to section 27.3455, Florida Statutes (Local Government Criminal Justice Trust Fund).
- A sum of \$ _____ pursuant to section 939.01, Florida Statutes (Prosecution/Investigative Costs).
- A sum of \$ _____ pursuant to section 27.56, Florida Statutes (Public Defender Fees).
- Restitution in accordance with attached order.
- Other _____

DONE AND ORDERED in open court in Jacksonville, Duval County, Florida, this 4th day of April, 1997.

William A. Wilkes
Judge

000413

SENTENCE

(As to Count 1)

1018 M. Edwards

Book 8589 Pg

The defendant, being personally before this court, accompanied by the defendant's attorney of record, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown.

(Check one if applicable.)

- and the court having on (date) deferred imposition of sentence until this date.
and the court having previously entered a judgment in this case on (date) now resentsences the defendant
and the court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

It Is The Sentence Of The Court That:

- The defendant pay a fine of \$, pursuant to section 775.083, Florida Statutes plus \$ as the 5% surcharge required by 960.25, Florida Statutes.
The defendant is hereby committed to the custody of the Department of Corrections.
The defendant is hereby committed to the custody of the Sheriff of Duval County, Florida.
The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To be Imprisoned (Check one; unmarked sections are inapplicable):

- For a term of natural life.
For a term of DEATH BY ELECTROCUTION
Said SENTENCE SUSPENDED for a period of subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

- Followed by a period of on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.
However, after serving a period of imprisonment in , the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

OTHER PROVISIONS

Retention of Jurisdiction

The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).

Jail Credit

It is further ordered that the defendant shall be allowed a total of 1 year 37 days as credit for time incarcerated before imposition of this sentence.

Prison Credit

It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

Consecutive/ Concurrent As To Other Counts

It is further ordered that the sentence imposed for this count shall run (check one) consecutive to concurrent with the sentence set forth in count of this case.

SENTENCE

(As to Count 2)

The defendant, being personally before this court, accompanied by the defendant's attorney of record M Edwards, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown.

(Check one if applicable.)

___ and the court having on _____ (date) deferred imposition of sentence until this date.

___ and the court having previously entered a judgment in this case on _____ (date) now resentsences the defendant

___ and the court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

It Is The Sentence Of The Court That:

___ The defendant pay a fine of \$ _____, pursuant to section 775.083, Florida Statutes plus \$ _____ as the 5% surcharge required by 960.25, Florida Statutes.

___ The defendant is hereby committed to the custody of the Department of Corrections.

___ The defendant is hereby committed to the custody of the Sheriff of Duval County, Florida.

___ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To be Imprisoned (Check one; unmarked sections are inapplicable):

___ For a term of natural life.

✓ For a term of 15 years.

___ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

___ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

___ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

OTHER PROVISIONS

Retention of Jurisdiction ___ The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).

Jail Credit ✓ It is further ordered that the defendant shall be allowed a total of 158 + 37 days as credit for time incarcerated before imposition of this sentence.

Prison Credit ___ It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

Consecutive/ Concurrent As To Other Counts ✓ It is further ordered that the sentence imposed for this count shall run (check one) ___ consecutive to ___ concurrent with the sentence set forth in count 1 of this case.

1019 Pg 8589 Book

Defendant ANDREW RICHARD LUKEHART Case Number 96- 2645-CF-A

OTHER PROVISIONS

Book 8589 Pg 1020

Consecutive/
Concurrent
As To Other
Convictions

___ It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run
(check one) ___ consecutive to ___ concurrent
with the following:
(check one)
___ any active sentence being served.
___ specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Duval County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends _____

DONE AND ORDERED in open court at Jacksonville, Duval County, Florida, this 4th
day of April, 19 97.

Wilburn A. Wilkes

Judge

Appendix B

DECLARATION OF JOEL ZIVOT, M.D.

COMES NOW the declarant, Joel Zivot, M.D., and declares under the penalty of perjury all as follows:

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 the Critical Care Medicine training program. 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 been in continuous practice of anesthesiology and critical care medicine for the last 31 years, during which time I have personally performed or supervised the care of over 50,000 patients. I have been retained as a medical expert in death penalty cases. In this capacity, I have been to death row to examine prisoners in 8 states, including Tennessee, Georgia, Florida, Ohio, Arkansas, Missouri, Nevada, and Arizona. I have also consulted on death penalty cases in South Carolina, Texas, California, and executions carried out by the Federal Government.

3. I hold a medical license in 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 Mr. Andrew Lukehart regarding the risks to Mr. Lukehart as he faces potential execution as outlined in the Florida Department of Corrections

(FDOC) Execution by Lethal Injection Procedures document dated February 18, 2025. In preparation for this report, I reviewed a document entitled “Andrew Lukehart Medical Records 2021-2025,” “Lukehart Medical Records 2025-present,” “FDOC Lethal Injection Protocol,” and “FDOC Walls vs. Dixon Document.” I am familiar with the evolving situation regarding FDOC’s lethal injection protocol, including multiple instances of complications that have attended to these executions.

5. Mr. Andrew Lukehart is a 53-year-old man. He has a long list of medical problems, including poor mental health, recurrent polymicrobial urinary tract infections, epididymitis-orchitis, obesity, being a former smoker, elevated cholesterol, hypothyroidism, gastrointestinal reflux, hypertension, type II diabetes, and chronic kidney disease stage III-IV. He takes medication for hypertension, reflux, diabetes, and elevated cholesterol. Although hypothyroidism is a listed illness, I see no medical treatment for this problem. Mr. Lukehart also has a moderate allergy to diphenhydramine, a first-generation antihistamine.
6. Mr. Lukehart is a man in poor health. His kidney function has declined to the point of nearing a need for hemodialysis. His obesity, along with hypertension, diabetes, elevated cholesterol, and a smoking history, makes him very high risk for significant heart disease. I find no records of any examination of his cardiac function, but based on his risk factors, he is likely on a path to suffering a heart attack. Recurrent bacterial urinary tract infections suggest poor immune health or anatomical abnormalities of his genitourinary system, including prostatitis. Infections of this nature, if not treated in a timely fashion, can lead to septic shock and death.
7. It is known that FDOC will offer prisoners the option of hydroxyzine at a period prior to the attempted establishment of intravenous access. This drug is used clinically to treat anxiety and is a first-generation antihistamine. This drug appears to be administered haphazardly but regularly. It remains unknown if this drug is effective in reducing the anxiety of anticipating one’s own death. Mr. Lukehart is allergic to diphenhydramine, also a first-generation antihistamine. This diphenhydramine allergy raises the serious likelihood that Mr. Lukehart is allergic to hydroxyzine. Should FDOC give him hydroxyzine, this results in a significant and dangerous risk of a severe allergic reaction.

8. Mr. Lukehart suffers from severe kidney disease. As a consequence, injected drugs as used in the FDOC lethal injection protocol may rise higher in his bloodstream because of a reduction in urinary excretion. The effect of this is the potential for an exaggerated negative consequence on his heart and lungs, making his own death more painful and cruel. FDOC makes no modification of its protocol based on co-existing illnesses of prisoners. This “one size fits all” strategy is a recipe for cruelty. To date, no amount of negative evidence from autopsy or toxicology reports or harrowing eyewitness accounts has motivated FDOC to make any changes.
9. Etomidate solution is prepared in 35% propylene glycol and has a pH of approximately 6. The value might be much lower or slightly higher. pH is a logarithmic scale and describes whether a compound is acidic or alkaline. Normal blood pH is 7.35-7.45. If the blood pH drops to 7, the individual is experiencing a severe, life-threatening event and will die if no intervention occurs. Owing to the mathematics of a log scale, at a pH of 6, the etomidate solution is a 10-15-fold stronger acid than blood. When etomidate is injected, the beating heart rapidly delivers the strong acid solution to the lungs, where it burns them from the inside. As Mr. Lukehart has reduced kidney function, etomidate may not be eliminated as quickly. The effect is a longer time for etomidate to repeatedly pass through the lungs, burning them with each pass.
10. I reviewed all 19 autopsies and toxicology reports for every prisoner executed by Florida in 2025. Strikingly, on top of the faulty drug logs publicized in Frank Walls’s case, the autopsy and toxicology reports of the 19 executions show a high prevalence of additional concerning irregularities. I am convinced that the protocol, as designed, creates an objectively intolerable risk of needless pain and suffering.
11. In the autopsies of James Ford, Jeffrey Hutchinson, Glen Rogers, Anthony Wainwright, Thomas Gudinas, Samuel Smithers, and Richard Randolph, the physical evidence—notations of intramuscular injections in the shoulder of each inmate—points to a high likelihood that all these men received a mysterious dosage of an unknown substance. The FDOC lethal injection protocol makes no mention of any option that permits an intramuscular injection. Ad hoc polypharmacy as an adjunct

- to lethal injection raises the serious and likely risk of needless pain and suffering.
12. Owing to its favorable minimal impact on blood pressure, etomidate is used as an induction agent in critically ill individuals with unstable blood pressure in a medical setting. Although etomidate is known to affect plasma cortisol concentrations, this effect would be of no consequence in an execution. Etomidate is the first injected chemical in the FDOC execution protocol. As etomidate is rarely lethal, it is unclear if FDOC intended to use etomidate as the cause of death. In as little as 3 minutes after etomidate injection, rapid redistribution of the drug within the circulation will allow a return to consciousness. As etomidate is rarely fatal and short-acting, death is more likely to be caused by the chemical suffocation induced by the injection of rocuronium.
 13. Though “fatal” etomidate blood levels are generally considered to be 0.4-3.6 mcg/mL in the blood. In the cases of Kayle Bates, David Pittman, Richard Randolph, and Frank Walls, the toxicology report found etomidate blood levels below 0.4 mcg/mL. It is noteworthy that of these 4 executions, 3 have previously been flagged as potentially involving expired etomidate. This could prove that concern, as expired etomidate may lose potency over time. The awareness of death by suffocation is not a rare event. In the 19 executions of 2025, awareness of dying by suffocation occurred more than 20% of the time.
 14. Veterinary guidelines strongly condemn using paralytics alone for euthanasia as they can paralyze a conscious animal, causing suffering without allowing them to show distress. The FDOC execution protocol kills human beings by a technique rejected by the American Veterinary Medical Association. FDOC execution treats prisoners as of lower value than animals. The FDOC technique creates superadded pain and suffering, and this finding is not merely theoretical but is found unambiguously in toxicology evidence.
 15. Pulmonary edema is a very common post-mortem finding in lethal injection executions. In my own review of over 250 post-lethal injection execution autopsies, pulmonary edema or bloody frothy fluid in the lungs was found as often as 80% of cases. A review of the 19 post-execution autopsies from 2025 found the presence of heavy, blood-filled lungs with

frothy bloody fluid in 15 of 19 cases. In two cases, no comment is made, which may have been a reporting oversight. This corresponds to an incidence of 79% at the low estimate end.

16. The airways with normal lungs are always free of fluid, and only pathological states result in pulmonary edema. Fluid in the lung airways is a highly dangerous and extremely uncomfortable sensation. It is akin to the sensation of drowning. Waterboarding is a technique used to extract information from captured individuals, made notorious in the global war on terror. Also known as enhanced interrogation, waterboarding is widely classified as torture by international human rights organizations, legal experts, and the United Nations.
17. To the person subjected to waterboarding, the experience feels like drowning. The individual suffers from an uncontrollable sensation of panic, terror, and slow-motion suffocation. As water pours onto a cloth covering the nose and mouth, it overwhelms the gag reflex, fills the throat and sinuses, and forces the feeling of dying. Victims experience intense pain, broken willpower, and involuntary convulsions. In 2008, seasoned journalist and author Christopher Hitchens underwent waterboarding to test the technique. His harrowing account concluded that the experience was torture. Despite being a skeptic and believing he could withstand the experience, Hitchens could only last a few seconds before signaling to stop.
18. The FDOC execution protocol creates death akin to waterboarding, but the fluid rises from within the lungs. Unlike in the case of Hitchens, prisoners have no option to signal the executioner to stop. Death occurs not in seconds but may take minutes. The sensation of torture is evident in seconds, and the paralysis creates the outward appearance of calm while hiding the inward sensation of panic, terror, and suffocation. This is not a theoretical concern but an actual event.
19. Should Mr. Lukehart be executed by the FDOC's lethal injection protocol, he has an extremely high likelihood of suffering a needless, cruel, and painful death. The reasons for this are based on the current health of Mr. Lukehart, as he dies by the highly flawed FDOC protocol. Separate from Mr. Lukehart, the autopsy and toxicology evidence point to a deeply flawed and cruel protocol. The use of etomidate as the first

injected chemical virtually guarantees the common experience of death by cruel and terrifying suffocation. After reviewing multiple lethal injection protocols in other death penalty states, I am of the opinion that FDOC currently has the worst of the worst lethal injection protocol.

I declare under penalty of perjury that the foregoing is true and correct.

Signed:

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a loop.

Joel Zivot, M.D., F.R.C.P.C., M.A., J.M.

May 7, 2026

Appendix C



FLORIDA DEPARTMENT OF CORRECTIONS

GOVERNOR
RON DESANTIS

SECRETARY
RICKY DIXON

February 18, 2025

The Honorable Ron DeSantis
Executive Office of Governor Ron DeSantis
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

I have carefully reviewed the Execution by Lethal Injection Procedures issued by my Department. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,

Ricky D. Dixon
Secretary



FLORIDA DEPARTMENT OF CORRECTIONS

GOVERNOR
RON DESANTIS

SECRETARY
RICKY DIXON

EXECUTION BY LETHAL INJECTION PROCEDURES

PURPOSE: To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

APPLICATION: This procedure applies to any execution by lethal injection conducted pursuant to Chapter 922, Florida Statutes. This procedure supersedes the Florida Department of Corrections *Execution by Lethal Injection Procedures* dated March 10, 2023.

DEFINITIONS:

- (1) **Execution team,** where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as “execution team member” or “team member” in these procedures.
- (2) **Executioner,** where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner’s sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden’s direction.
- (3) **Institutional warden,** where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.
- (4) **Minister of religion,** where used herein, refers to a spiritual advisor requested by an inmate to attend an execution as permitted by section 922.11, Florida Statutes. The name of the requested minister of religion must be provided by the inmate to the institutional warden in writing on FDC Form DC6-236 within five days of the issuance of the Governor’s Warrant of Execution. A minister of religion shall be an adult and shall undergo a criminal background check. The institutional warden shall also conduct a review process of the individual as described in Florida Department of Corrections rules and policies applicable to visitor approvals and to spiritual advisor visits. Such a

review will be performed even if the requested minister of religion has been previously approved for regular visitation purposes. Prior to final approval, the institutional warden may also conduct interviews of the requested minister of religion or their associates. The institutional warden may undertake any investigation necessary to verify that the minister of religion is recognized by their organized religious body as qualified to perform religious functions as a representative of the religious organization or group. The institutional warden may waive any component of the review process if the requested minister of religion is a chaplain currently employed by the Florida Department of Corrections. Candidates not employed by the Florida Department of Corrections must also execute a Spiritual Advisor Execution Agreement. The agreement is attached hereto as Appendix A.

- (5) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

SPECIFIC PROCEDURES:

- (1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the Department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement (FDLE), any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.
- (2) **Selection of the Executioners:**
- (a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.
- (b) The team warden will designate one (1) of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.
- (3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved

staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.

- (a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist currently certified by the American Society for Clinical Pathology (ASCP), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes; or, a pharmacist licensed under Chapter 465, Florida Statutes.
- (f) The team warden shall select other execution team members to carry out the following tasks:
 - 1. Showering and preparation of the inmate.
 - 2. Ensuring that the equipment necessary for an execution is in proper working order.
 - 3. Escorting the inmate from his/her cell to the execution chamber.
 - 4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.

5. Maintaining the open telephone line with the Office of the Governor.
6. Reporting the actions inside the executioner's room to the team warden.
7. Maintaining the checklists that detail the events surrounding the execution.
8. Escorting the minister of religion.
9. Opening and closing the window covering to the witness gallery and turning on and off the public address (PA) system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

- (4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted prior to the scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

- (a) Issues related to problems with equipment needed to carry out an execution.
- (b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.
- (c) The inmate is not rendered unconscious after the administration of the etomidate injection.
- (d) Combative inmate.
- (e) Incapacity of any execution team member or executioner.
- (f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.
- (g) Problems related to the order and security at the Florida State Prison, including but not limited to disturbances, unrest or resistance.
- (h) Power failure or other facility problems.

This list is not meant to be exhaustive and only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.

- (5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.
- (6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.
- (7) **FDLE Monitors:**
- (a) Two (2) FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.
- (b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post execution debriefings.
- (c) The second FDLE agent shall be located in the execution chamber and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.
- (8) **Approximately One (1) Week Prior to Execution:**
- (a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team members) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.

- (b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.
- (9) **On the Day of Execution:**
- (a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars (\$40) or less, is available at the institution, and is approved by the food service director.
- (b) The inmate will be escorted by one (1) or more team members to the shower area where a team member of the same sex will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.
- (c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.
- (d) A designated execution team member will ensure that the PA system is fully functional.
- (e) The only staff authorized to be in the execution chamber area are members of the execution team and others as approved by the team warden, including two monitors from FDLE.
- (f) A designated execution team member, in the presence of one or more additional team members and an independent observer from FDLE, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:
- (1) **Etomidate injection:** A sterile, disposable sixty cubic centimeter (60cc) syringe and needle will be used to draw fifty milliliters (50mls) of etomidate injection 2mg/ml from one or more vials containing same, for a total of one hundred milligrams (100mg) of etomidate injection. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

- (2) Rocuronium bromide injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw five hundred milligrams (500mg) of rocuronium bromide injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing five hundred milligrams (500mg) of rocuronium bromide injection, for a total of two thousand milligrams (2000mg). Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.
 - (3) Potassium acetate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium acetate injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium acetate injection, for a total of four hundred eighty (480) milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.
 - (4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.
- (g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who

prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.

- (h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."
- (i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered intramuscular injections of hydroxyzine, in appropriate dosages relative to weight, to ease anxiety.
- (j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two (2) designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.
- (k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.

(10) Approximately Thirty (30) Minutes Prior to Execution:

- (a) A designated execution team member will establish telephone communication with the Office of the Governor on behalf of the team warden. The team warden will communicate with the Office of the Governor to determine whether any cause for delay exists. The phone line will remain open to the Office of the Governor during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Office of the Governor.
- (b) When the team warden determines that no cause for delay remains, a designated member of the execution team will escort the two (2) executioners into the executioner's room, where they will remain until the execution process is complete.

- (c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.
- (d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.
- (e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.
- (f) Designated members of the execution team will secure the restraining straps.
- (g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.
- (h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.
- (i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.
- (j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.

(11) Approximately Fifteen (15) Minutes Prior to Execution:

- (a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.
- (b) Authorized media witnesses will be secured in the witness room of the execution chamber.

- (c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the Department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Counsel for the convicted person and a minister of religion requested by the convicted person may also be present. Any exception must be approved by the institutional warden.
- (d) The institutional warden may deny access to the institution to any visitor, official witness or other person he or she deems a risk to the security of the institution. In the event there is reasonable suspicion that an individual may initiate or attempt to initiate a violent or disruptive act prior to, during, or following an execution, that person will not be permitted to witness the execution and will be escorted off the prison grounds immediately.
- (e) The execution chamber will be secured. Only the team warden, one (1) additional execution team member and one (1) FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exceptions or contingencies must be approved by the team warden.
- (f) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.

(12) **Administration of Execution:**

- (a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.
- (b) An execution team member will turn on the PA system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the PA system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the PA system.
- (c) In the presence of the secondary executioner and within sight of one (1) or more execution team members and one (1) of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:
 - (1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

- (2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
- (3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
- (4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (12)(c)(6).
- (5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (12)(c)(4) and assess whether the inmate is unconscious.
- (6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
- (7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension

set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

- (8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the TV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
 - (9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
 - (10) The executioner will remove from the stand on the worktop the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
 - (11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one (1) executioner inject any lethal chemicals to complete the execution.
- (d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (12)(c)(4), as described above.

- (e) Throughout the execution process, one (1) or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.
- (f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.
- (g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.
- (h) A designated execution team member will turn on the PA system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."
- (i) The designated team member will close the window covering to the witness gallery.
- (j) The designated Department of Corrections escort staff will escort all witnesses, all of the media pool and any other individuals who are not members of the execution team from the witness room and the execution chamber.

(13) **Immediate Post-Execution Procedures:**

- (a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.
- (b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.
- (c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.
- (d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.
- (e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.
- (f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) **Follow-Up Procedures:**

- (a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.
- (b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.

- (c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.
- (15) **Periodic Review and Certificate from Secretary;** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum of once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.



RICKY . DIXON
SECRETARY

2/18/2025

DATE

No. _____

IN THE
Supreme Court of the United States

ANDREW RICHARD LUKEHART,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026, AT 6:00 PM**

Appendix I

May 12, 2026 Order Summarily Denying Defendant's Successive 3.851 Motion for
Vacation of Death Sentence and Stay of Execution

IN THE CIRCUIT COURT, FOURTH JUDICIAL
CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-1996-CF-002645-AXXX

DIVISION: CR-D

STATE OF FLORIDA

v.

**DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026**

ANDREW RICHARD LUKEHART,
Defendant.

**ORDER SUMMARILY DENYING DEFENDANT’S SUCCESSIVE 3.851 MOTION
FOR VACATION OF DEATH SENTENCE AND STAY OF EXECUTION**

This matter came before this Court on “Defendant’s Successive Motion to Vacate Judgments of Conviction and Sentence of Death with Leave to Amend,” and “Defendant’s Motion for Stay of Execution, Postponement of all Proceedings, and Leave to Amend Motion for Postconviction Relief,” filed on May 8, 2026.

PROCEDURAL HISTORY

On February 27, 1997, a jury found Defendant guilty of first-degree murder and aggravated child abuse. The facts detailed by the Florida Supreme Court are as follows:

The victim in this case, five-month-old Gabrielle Hanshaw, was killed by Lukehart, who lived in Jacksonville with Gabrielle’s mother, Misty Rhue, along with Rhue’s other daughter, Ashley, and Rhue’s father and uncle. On February 25, 1996, Lukehart and Rhue spent Sunday afternoon running errands in Rhue’s car with the two children. When the four returned to their house on Epson Lane, Rhue took two-year-old Ashley, who had been ill, to her bedroom for a nap, and Lukehart cared for Gabrielle, the baby, in another room. At one point, Lukehart entered the bedroom and took a clean diaper for the baby. At approximately 5 p.m., Rhue heard her car starting in the driveway, looked out the window, and saw Lukehart driving away in her white Oldsmobile. Rhue searched the house for the baby and did not find her. Thirty minutes later, Lukehart called from a

convenience store and told Rhue to call the 911 emergency number because someone in a blue Chevrolet Blazer had kidnapped the baby from the house. After Rhue called 911, Jacksonville Sheriff's Detectives Tim Reddish and Phil Kearney went to the Epsom Lane house.

Shortly thereafter, Lukehart appeared without shirt or shoes in the front yard of the residence of a Florida Highway Patrol trooper in rural Clay County. At about that same time, the car that Lukehart had been driving was discovered about a block away from the trooper's house. The car was off the road and had been abandoned with its engine running. Law enforcement officers from the Clay County Sheriff's Office and the Jacksonville Sheriff's Office interviewed Lukehart and searched in Clay County for the baby during the ensuing eighteen hours. At about noon on Monday, February 26, Lukehart told a lieutenant with the Clay County Sheriff's Office that he had dropped the baby on her head and then shook the baby and that the baby had died at Misty Rhue's residence. Lukehart said that when the baby died, he panicked, left Rhue's residence, and threw the baby in a pond near Normandy Boulevard in Jacksonville. Law enforcement officers searched that area and found the baby's body in a pond.

Lukehart v. State, 776 So. 2d 906, 910 (Fla. 2000). In the penalty phase, the jury recommended a death sentence by a nine-to-three vote, and this Court sentenced Defendant to death in a written order entered on April 4, 1997. Defendant's conviction on Count One¹ and death sentence were affirmed by the Florida Supreme Court on February 26, 2001. See id. His convictions and sentences became final when the Court denied his petition for writ of certiorari on June 25, 2001. See Lukehart v. Florida, 533 U.S. 934 (2001).

Defendant's first motion for postconviction relief was denied on March 27, 2009. The Florida Supreme Court affirmed this Court's denial of postconviction relief and denied his petition for writ of habeas corpus. Lukehart v. State, 70 So. 3d 503, 511 (Fla. 2011).

Defendant subsequently filed a 28 U.S.C. § 2254 habeas petition in federal district court, which was denied on April 28, 2020. Lukehart v. Sec'y, Fla. Dep't of Corr., Case No. 3:12-cf-585-J-32PDB, 2020 WL 2183150 (M.D. Fla. Apr. 28, 2020). On September 26, 2022, the

¹ The Florida Supreme Court remanded for resentencing regarding Count Two, the aggravated child abuse conviction. On January 30, 2001, this Court resentenced Defendant on Count Two from fifteen to nine years imprisonment.

Eleventh Circuit affirmed the denial. Lukehart v. Sec’y, Fla. Dep’t of Corr., 50 F.4th 32 (11th Cir. 2022). Defendant did not file a petition for writ of certiorari in the United States Supreme Court.

This Court denied Defendant’s successive motion for postconviction relief on February 28, 2012. That order was affirmed by the Florida Supreme Court on December 20, 2012. Lukehart v. State, 103 So. 3d 134 (Fla. 2012). Defendant’s second successive motion for postconviction relief was denied on February 24, 2017; he did not appeal.

Defendant’s successive state habeas petition was denied by the Florida Supreme Court on March 17, 2017. Lukehart v. Jones, No. SC16-1225, 2017 WL 1033691 (Fla. Mar. 17, 2017).

On May 1, 2026, Governor DeSantis signed Defendant’s death warrant, scheduling his execution for Tuesday, June 2, 2026, at 6:00 p.m. The Florida Supreme Court has since ordered all proceedings in this Court to be concluded by Thursday, May 14, 2026, at 11:00 a.m.

On May 8, 2026, Defendant filed the two instant Motions for vacation of death sentence and stay of execution. The State filed its response on May 9, 2026, and this Court held a case management conference that same day, finding no evidentiary hearing was warranted.

STANDARD FOR SUMMARILY DENYING SUCCESSIVE 3.851 MOTIONS

The summary denial of a successive, post-warrant rule 3.851 motion is appropriate if the motion, files, and records conclusively show the defendant is not entitled to relief. Hitchcock v. State, SC2026-0574, 2026 WL 1101539, *6 (Fla. April 23, 2026); Fla. R. Crim. P. 3.851(h)(6). All allegations must be accepted as true to the extent they are not conclusively refuted by the record; mere conclusory allegations, however, are insufficient. See id.

GROUND FOR POSTCONVICTION RELIEF

Defendant asserts three reasons for why his execution should be stayed and his death sentence vacated. All three claims are infirm as a matter of law.

GROUND ONE

Defendant claims Florida's lethal injection procedures are unconstitutional as applied to him because they constitute cruel and unusual punishment in violation of the Eighth Amendment under Glossip v. Gross, 576 U.S. 863 (2015), and Baze v. Rees, 553 U.S. 35 (2008).

This claim is procedurally barred as untimely. The Florida Supreme Court has squarely rejected arguments that method-of-execution challenges only become ripe when a death warrant is signed. Rogers v. State, 409 So. 3d 1257, 1267–68 (Fla. 2025); Cole v. State, 392 So. 3d 1054, 1064 (Fla. 2024); Tanzi v. State, 407 So. 3d 385 (2025). The current three-drug protocol has remained essentially unchanged since 2017. See Asay v. State, 224 So. 3d 695, 701 (Fla. 2017). The facts on which this claim is predicated have been available since at least 2023 by Defendant's own admission. Defendant argues that the progressive nature of his kidney disease makes his claim timely, but this Court is not persuaded. The Florida Supreme Court has found claims untimely even in cases where the disease has a progressive nature. See, e.g., Randolph v. State, 422 So. 3d 166 (2025) (lupus); Cole, 392 So. 3d 1054 (Parkinson's disease). Moreover, Defendant has not shown that his kidney condition has recently deteriorated past the theoretical threshold that would render Florida's lethal injection protocol unconstitutional as applied to him, just that his condition "became severe" in 2026. (Mot. at 8.) That is not enough to rise to the level of a cognizable claim.

However, even if timely, Defendant's claim is meritless. To succeed on an Eighth Amendment method-of-execution claim, Defendant must: (1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious

illness and needless suffering, and also (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain. See Asay, 224 So. 3d at 701 (citing Glossip, 576 U.S. at 877 and Baze, 553 U.S. at 61). The Eighth Amendment “does not demand the avoidance of all risk of pain in carrying out executions.” Baze, 553 U.S. at 47. “Simply because an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish the sort of ‘objectively intolerable risk of harm’ that qualifies as cruel and unusual.” Id. at 50. Rather, the pain associated must be “substantial when compared to a known and available alternative.” Glossip, 576 U.S. at 878.

In this case, Defendant has not established that he is “sure or very likely” to experience serious illness or needless suffering. Defendant alleges that drug concentrations “may rise higher in the bloodstream” due to his kidney disease, creating the “potential” for a scenario in which it “may” take a “longer time for etomidate to repeatedly pass through the lungs, burning them with each pass.” (Mot. at 8).² This is contingent, speculative, and conclusory; it does not warrant relief. See Trotter v. State, 428 So. 3d 68, 73 (Fla. 2026) (finding that an affidavit of a clinical pharmacologist was speculative and, therefore, did “not demonstrate ‘a substantial and imminent risk that is sure or very likely—in other words, a virtual certainty—to cause serious illness and needless suffering’” (quoting Heath v. State, 426 So. 3d 1253, 1262 (Fla. 2026))); Cole, 392 So. 3d at 1065 (holding that “allegations of potential problems” with injection protocol was “both speculative and legally insufficient”); Chavez v. State, 132 So. 3d 826, 831 (Fla. 2014)

² Defendant also claims he is allergic to diphenhydramine which “likely means” he is also allergic to hydroxyzine which the Department of Corrections (DOC) offers prisoners “the option” to take to “reduce anxiety.” (Mot. at 9). Defendant argues it is “unknown” whether this drug is effective in reducing the anxiety of anticipating one’s own death and that he could suffer an adverse reaction to the medicine. Defendant’s arguments are pure speculation. Further, Defendant’s potential anxiety about his death is not the type of harm the Eighth Amendment was designed to prevent. Finally, DOC is familiar with Defendant’s medical conditions and medical records as Defendant has been under its custody for the past 29 years. See Howell v. State, 109 So. 3d 763, 777–78 (Fla. 2013). This Court’s “role is not to micromanage the executive branch in fulfilling its own duties relating to executions.” Lightbourne v. McCollum, 969 So.2d 326, 351 (Fla. 2007).

(“Summary denial of a lethal injection challenge is proper where the asserted reasons for holding an evidentiary hearing are based upon conjecture or speculation.” (citing Foster v. State, 132 So. 3d 40 (Fla. 2013))); Lightbourne, 969 So. 2d at 350 (“[A]n inmate’s speculative list of horrors that could happen is insufficient to demonstrate more than a negligible risk.” (citing Sims v. State, 754 So. 2d 657, 670 (Fla. 2000))).

Moreover, the Florida Supreme Court has repeatedly upheld Florida’s lethal injection protocol, including the etomidate protocol. See Tanzi, 407 So. 3d at 393; Long v. State, 271 So. 3d 938, 945–46 (Fla. 2019); Asay, 224 So. 3d at 700–02. Moreover, Defendant’s speculations do not overcome the well-established fact that the administration of etomidate will render him unconscious throughout the execution. See Cole, 392 So. 3d at 1065 (noting that the “etomidate protocol . . . includes safeguards to ensure the condemned is unconscious throughout the execution”); Long, 271 So. 3d at 944 (finding credible a trial court’s finding that “the massive dose of 200 milligrams of etomidate would produce such a deep state of burst suppression and unconsciousness that it would render a person . . . unaware of noxious stimuli.”); Asay, 224 So. 3d at 701 (“Intravenous injection of etomidate produces hypnosis characterized by a rapid onset of action, usually within one minute.”); see also Davis v. State, 142 So. 3d 867, 872 (Fla. 2014) (affirming the denial of an as-applied lethal injection claim “because Dr. Zivot failed to demonstrate that the injection of midazolam, as the first drug in the lethal injection protocol, would not render Davis unconscious and insensate prior to him experiencing any possible symptoms of a porphyria attack”). Defendant has also failed to show that the risk of an inadequate dose³ of etomidate is substantial, especially considering the presumption that DOC

³ Nor has Defendant shown that he is “sure or very likely” to experience serious illness or needless suffering given an inadequate dose of etomidate. See Heath, 426 So. 3d at 1262 (“The question is not whether protocol deviations occurred but whether the defendant’s allegations would demonstrate a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering.”)

will comply with its lethal injection protocols. See Long, 271 So. 3d at 45. Defendant has therefore failed to establish his entitlement to relief under the first prong of the Baze-Glossip test.

Defendant endeavors to meet his burden under the second prong by pointing out that some states use analgesics, instead of paralytic drugs, to initiate lethal injection, while still others employ death by electrocution and toxic gas. It is insufficient to point out the fact that other states carry out executions differently; Defendant must further establish that some alternative method is readily capable of implementation and carries a significant reduction in the risk of severe pain. See Heath, 426 So. 3d at 1262–63. He has not even attempted to do so and, therefore, fails to establish an entitlement to relief under Baze-Glossip's second prong as well.

Accordingly, this claim is denied as untimely and legally insufficient.

GROUND TWO

Defendant next raises a facial Eighth Amendment challenge to Florida's lethal injection protocol, alleging etomidate "virtually guarantees" death by cruel and terrifying suffocation.

The claim is denied for all the reasons the first claim was denied. The only allegation requiring additional analysis is a single sentence purporting "that three recent executions have been flagged as involving potentially expired etomidate, which loses potency over time." (Mot. at 14.) This sentence stands alone and contains no follow-up suggestion that expired drugs might be used to execute Defendant.

DOC is presumed to comply with its lethal injection protocols. See Long, 271 So. 3d at 45. The possibility that expired etomidate may have been used in prior executions is insufficient to overcome this presumption. See Hannon v. State, 228 So. 3d 505, 509 (Fla. 2017). The mere possibility that expired etomidate may have been used in previous executions is also

substantively insufficient to establish a substantial and imminent risk that is very likely to cause serious illness and needless suffering. See Heath, 426 So. 3d at 1262.

Accordingly, this claim is denied for the same reasons the first claim was denied, with the additional finding that Defendant's stand-alone allegation that expired etomidate may have been used in some earlier executions is likewise legally insufficient to warrant relief.

GROUND THREE

Defendant argues the thirty-two-day warrant period deprives him of a full and fair capital postconviction proceeding in violation of substantive and procedural due process.

"Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." Asay v. State, 210 So. 3d 1, 27 (Fla. 2016) (citing Huff v. State, 622 So. 2d 982, 983 (Fla. 1993)). Defendant has been noticed and heard, but complains the thirty-two-day warrant period is simply too short to provide him a meaningful opportunity to challenge his execution. This claim has been raised, and summarily denied, many times before. See, e.g., Jennings v. State, 422 So. 3d 107, 119 (Fla. 2025); Bates v. State, 416 So. 3d 312, 321 (Fla. 2025); Tanzi, 407 So. 3d at 390–91; Barwick v. State, 361 So. 3d 785, 790 (Fla. 2023). Defendant has not alleged any fact that would warrant a different disposition here. And to the extent Defendant's fleeting citation to the Sixth Amendment might be interpreted to argue that the truncated warrant period erodes his right to counsel, that right does not apply in the postconviction context. See Zack v. State, 911 So. 2d 1190, 1203 (Fla. 2005). This claim is therefore denied.

REQUEST FOR STAY OF EXECUTION

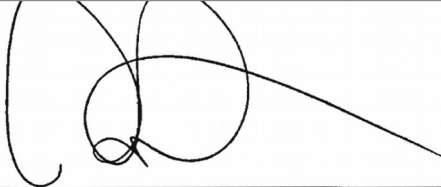
Implicit within this Court's summary denial of Defendant's successive 3.851 motion is the finding that Defendant has not raised a substantial ground on which relief might be granted.

This Court must therefore deny Defendant's separately filed motion to stay execution. See Walls v. State, 423 So. 3d 865, 877 (Fla. 2025) (citing Dillbeck v. State, 357 So. 3d 94, 103 (Fla. 2023)).

Accordingly, it is **ORDERED** that "Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence of Death with Leave to Amend," and "Defendant's Motion for Stay of Execution, Postponement of all Proceedings, and Leave to Amend Motion for Postconviction Relief," filed on May 8, 2026, are **DENIED**. This is a final order, and Defendant must file a notice of appeal by 1:00 p.m., Thursday, May 14, 2026, by order of the Florida Supreme Court.

DONE AND ORDERED in Jacksonville, Duval County, Florida, on Tuesday, May 12, 2026.

16-1996-CF-002645-AXXX-MA 05/12/2026 08:24:56 AM



MARK J. BORELLO, CIRCUIT JUDGE

Mark Borello, Judge
16-1996-CF-002645-AXXX-MA 05/12/2026 08:24:56 AM

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Division: CR-D
/tbc&aw

No. _____

IN THE
Supreme Court of the United States

ANDREW RICHARD LUKEHART,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JUNE 2, 2026, AT 6:00 PM**

Appendix J

May 17, 2026 Initial Brief of the Appellant

Case No.: SC2026-0736

EXECUTION SCHEDULED FOR JUNE 2, 2026, at 6:00 P.M.

IN THE SUPREME COURT OF FLORIDA

**ANDREW RICHARD LUKEHART,
Appellant,**

v.

**STATE OF FLORIDA,
Appellee.**

***On Appeal from the Circuit Court for the Fourth Judicial
Circuit, in and for Duval County, Florida
Lower Tribunal Case No.: 1996-CF-2645***

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REQUEST FOR ORAL ARGUMENT

Andrew Lukehart (“Lukehart”) respectfully requests oral argument pursuant to Florida Rule of Appellate Procedure 9.320. The resolution of the issues involved in this action will determine whether Lukehart lives or dies. This Court has not hesitated to allow argument in other capital cases in a similar procedural posture. See *Asay v. State*, 224 So. 3d 695, 699 (Fla. 2017) (where this Court stayed Asay’s execution after holding an oral argument). A full opportunity to air the issues through oral argument is appropriate in this case because of the seriousness of the claims at issue and the ultimate penalty that the State seeks to impose on Lukehart.

PRELIMINARY STATEMENT REGARDING REFERENCES

References to the current record on appeal before this Court in Florida Supreme Court Case No.: SC2026-0736 are of the form: PC/[page number[s]]. All other record references will be self-explanatory.

STATEMENT OF THE CASE AND FACTS¹

Lukehart was charged with first-degree murder and aggravated child abuse. His trial commenced on February 24, 1997. On February 27, 1997, the jury found Lukehart guilty as charged, and recommended death by a vote of nine to three. On April 4, 1997, the trial court imposed a death sentence. Lukehart appealed his conviction and death sentence. This Court affirmed his capital conviction and death sentence, but remanded for a re-sentencing on his aggravated child abuse conviction. *Lukehart v. State*, 776 So. 2d 906 (Fla. 2000).² The United States Supreme Court denied Lukehart's

¹ More specific and relevant facts for each of Lukehart's arguments for relief will be included under each argument where necessary.

² The following issues were raised on direct appeal: 1) the trial court erred in refusing to suppress Lukehart's statements; 2) the trial court erred by limiting cross-examination; 3) Lukehart's convictions of first-degree murder and aggravated battery are invalid because of insufficient evidence of premeditation and the lack of a felony independent of the homicide; 4) the trial court erred in instructing the jury on justifiable or excusable homicide; 5) Lukehart's death sentence is disproportionate; 6) the trial court erred in finding that the aggravator of murder in the course of a felony cannot be based on a felony that constitutes the homicidal act; 7) the trial court erred in giving instruction on the aggravator of a crime committed while on felony probation and trial court erred in finding it in violation of ex post facto provisions; 8) the trial court erred in finding both murder in the course of a felony and that the victim was under twelve as aggravators; 9) the victim-under-twelve aggravator and the standard

petition for writ of certiorari on June 25, 2001. *Lukehart v. Florida*, 533 U.S. 934 (2001). On September 27, 2001, Lukehart filed a "shell" motion for postconviction relief. The trial court struck this as improper, but allowed Lukehart until June 25, 2002 to file an amended motion for postconviction relief. On June 20, 2002, Lukehart filed his amended motion for postconviction relief, raising seventeen claims.³ The trial court granted an evidentiary hearing on

jury instruction on the aggravator are unconstitutional; 10) the trial court erred in allowing a collateral crime to be a feature of the penalty phase; 11) the prosecutor's comments during penalty phase closing argument were fundamental error; and 12) the trial court erred regarding the sentence for the noncapital conviction and the restitution orders. *Lukehart v. State*, 776 So. 2d 906, 911, n.1 (Fla. 2000).

³ 1) the trial court erred in striking his shell motion; 2) Florida's death penalty statute is unconstitutional and violates *Ring v. Arizona*, 536 U.S. 584 (2002), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000); 3) trial counsel was ineffective during the guilt phase and the penalty phase; 4) trial counsel was ineffective for failing to object to jury instructions on the ground that they shifted the burden to the defendant to prove that a life sentence was appropriate; 5) the "victim under twelve" aggravator is unconstitutional; 6) the trial court violated the mandates of *Caldwell v. Mississippi*, 472 U.S. 320 (1985), by informing the jury that their sentencing recommendation was advisory; 7) Florida rule of professional conduct prohibiting juror interviews is unconstitutional; 8) Florida's lethal injection protocol constitutes cruel and unusual punishment and violates the ex post facto clause; 9) Lukehart's execution would violate the dictates of *Ford v. Wainwright*, 477 U.S. 399 (1986); 10) Lukehart's death sentence violates *Furman v. Georgia*, 408 U.S. 238 (1972), and its

claim three, which involved multiple grounds of ineffective assistance of counsel. The remaining claims were summarily denied by the court. An evidentiary hearing was held on May 9-10, 2007. Subsequently, Lukehart moved to amend the postconviction motion to include new claims based on testimony elicited at the hearing.⁴ On March 27, 2009, the trial court entered an order denying the ineffective assistance of counsel claims for which a hearing had been held, summarily denying the remaining claims, and declining to consider the newly raised ineffective assistance of counsel claims.

progeny; 11) Lukehart's mental health expert was ineffective under *Ake v. Oklahoma*, 470 U.S. 68 (1985); 12) the prosecutor's comments violated Lukehart's right to a fair trial; 13) Florida's statute prohibiting the imposition of a sentence of death to be imposed on a mentally retarded defendant, section 921.137, Florida Statutes (2001), violates substantive due process because the statute does not apply retroactively; 14) the imposition of the death penalty on a mentally retarded defendant violates equal protection and due process; 15) Lukehart's death sentence constitutes cruel and unusual punishment in violation of *Atkins v. Virginia*, 536 U.S. 304 (2002); 16) the trial court failed to consider mitigating evidence in violation of the Eighth Amendment and *Campbell v. State*, 571 So. 2d 415, 419 (Fla. 1990); and 17) cumulative error. *Lukehart v. State*, 70 So. 3d 503, 510 n.3 (Fla. 2011).

⁴ Lukehart attempted to add claims that trial counsel was ineffective for not investigating or moving to cease his medications and that trial counsel was ineffective for not moving to continue the trial.

Lukehart appealed this denial to this Court⁵ and also filed a state habeas petition.⁶ *Lukehart v. State*, 70 So. 3d 503 (Fla. 2011). On June 23, 2011, this Court affirmed the circuit court's denial of the postconviction motion and denied habeas relief. *Id.* at 525.

⁵ Lukehart raised the following issues in his postconviction appeal: 1) counsel was ineffective for failing to challenge the prior violent felony aggravator during the penalty phase, 2) counsel was ineffective for failing to file a motion to cease Lukehart's medication and a motion for continuance, 3) counsel was ineffective for failing to present Dr. Harry Krop during the guilt phase, 4) Lukehart's amended postconviction motion should relate back to the filing of his shell motion, 5) counsel was ineffective for failing to include an additional argument in the motion to suppress, 6) counsel was ineffective for failing to properly argue and object to the jury instructions and the State's allegedly improper arguments regarding the instructions, (7) counsel was ineffective pursuant to *Caldwell v. Mississippi*, 472 U.S. 320 (1985), 8) counsel was ineffective for failing to present live testimony rather than deposition testimony during the penalty phase, 9) counsel was ineffective for failing to object to allegedly improper prosecutorial comments, 10) the rule prohibiting juror interviews is unconstitutional, 11) Florida's lethal injection protocols are unconstitutional, and 12) cumulative error is present. *Lukehart v. State*, 70 So. 3d 503, 510 n.5 (Fla. 2011).

⁶ Lukehart's state habeas petition included three claims: 1) this Court should revisit its prior proportionality review in light of Page's uncontroverted testimony at the evidentiary hearing, 2) Florida's lethal injection protocol violates the Eighth Amendment, and 3) the inclusion of pancuronium bromide in Florida's lethal injection protocol violates free speech. *Lukehart v. State*, 70 So. 3d 503, 510 n.6 (Fla. 2011).

On December 19, 2011, Lukehart filed a successive motion for postconviction relief raising three claims that he had previously attempted to include in an amended motion following the evidentiary hearing.⁷ The circuit court summarily denied this motion and Lukehart appealed. On November 8, 2012, this Court affirmed the summary denial by the circuit court, finding that the claims were procedurally time-barred, without reaching the merits of his claims. *Lukehart v. State*, 103 So. 3d 134 (Fla. 2012).

Lukehart filed a petition for writ of habeas corpus in the Middle District of Florida. *Lukehart v. Sec. Dept. of Corr.*, Case No. 3:12-cv-585-J-32PDB, 2020 WL 2183150 (M.D. Fla. April 28, 2020). The petition and supplemental claims were denied and the case was dismissed with prejudice. *Id.* However, the court granted a certificate of appealability as to Ground Seven - Whether the Florida Supreme Court unreasonably applied clearly established federal law in

⁷ Lukehart raised the following claims in his successive motion for postconviction relief: 1) counsel was ineffective for failing to (a) learn the effects of the medication Lukehart was taking, (b) inform the court and the jury that Lukehart was on medication and explain its effects, (c) move the court for the medications to cease, and (d) request a continuance; 2) Lukehart was incompetent at trial due to medication; and 3) Lukehart was involuntarily required to take medication.

denying Petitioner's claims under *Miranda v. Arizona*, 384 U.S. 436 (1966), and *Edwards v. Arizona*, 451 U.S. 477 (1981), as alleged in the federal habeas petition. *Id.* Subsequently, the United States Court of Appeals for the Eleventh Circuit affirmed the denial of Lukehart's federal habeas petition. *Lukehart v. Sec. Dept. of Corr.*, 50 F. 4th 32 (11th Cir. 2022).

Governor Ron DeSantis signed Lukehart's active death warrant on Friday, May 1, 2026. The warrant set Lukehart's execution date thirty-two days later on June 2, 2026. This Court issued a briefing schedule the same day, ordering that "the proceedings pending in the trial court, if any, shall be completed and orders entered as expeditiously as possible, but by no later than 11:00 a.m., Thursday, May 14, 2026." The lower court subsequently issued a scheduling order, stating that Lukehart must file all requests for public records by Tuesday, May 5, 2026, at 11:00 a.m. PC/37. The order further stated that Lukehart's final successive motion for postconviction relief under Florida Rule of Criminal Procedure 3.851 must be filed by Friday, May 8, 2026, at 9:00 a.m. PC/38.

Lukehart timely filed three records demands pursuant to Florida Rule of Criminal Procedure 3.852 requesting records related

to lethal injection from the Florida Department of Corrections, Florida Department of Law Enforcement, and District Eight Medical Examiner's Office. See PC/66-140; 166-243. The lower court denied all three demands in three separate orders issued on May 6, 2026. PC/293-304. Lukehart timely filed his Successive Motion to Vacate Judgments of Conviction and Sentence of Death With Leave to Amend and simultaneously filed a Motion for Stay of Execution, Postponement of All Proceedings and Leave to Amend Motion for Postconviction Relief on May 8, 2026. PC/337-395. The State filed its Answer to the Third Successive Postconviction Motion and State's Response to Motion to Stay the Execution on May 9, 2026. PC/396-430.

A *Huff*⁸ hearing was held on Lukehart's successive Fla. R. Crim. P. 3.851 motion on May 9, 2026, at 11:00 a.m., where defense counsel argued that Lukehart should receive an evidentiary hearing on his claims for postconviction relief. See PC/38; 434-448. The lower court orally denied an evidentiary hearing at the conclusion of the *Huff* hearing, and issued a written order only approximately fifteen

⁸ *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

minutes after the conclusion of the hearing. See PC/431-33, 446. The lower court subsequently issued its Order Summarily Denying Defendant's Successive 3.851 Motion for Vacation of Death Sentence and Stay of Execution on May 12, 2026. PC/449-458. This timely appeal follows. Lukehart's execution is scheduled for June 2, 2026, at 6:00 p.m.

SUMMARY OF ARGUMENT

ARGUMENT I: Florida's current lethal injection procedures are unconstitutional as specifically applied to Lukehart because there is a substantial and imminent risk that executing Lukehart under those procedures will very likely cause him needless pain and suffering due to the interaction of Florida's lethal injection procedures with Lukehart's severe kidney disease. *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). The lower court erred in summarily denying relief on this claim.

ARGUMENT II: Florida's current lethal injection procedures are facially unconstitutional because the procedures create a risk of needless pain and suffering. *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). The lower court erred in summarily denying relief on this claim.

ARGUMENT III: Florida’s truncated warrant process and Lukehart’s resulting thirty-two-day warrant period foreclose him from receiving a full and fair postconviction proceeding during his active death warrant and violate his due process rights. The circuit court erred when summarily denying relief on this claim.

ARGUMENT IV: The lower court abused its discretion when denying Lukehart’s timely requests for records related to lethal injection from the Florida Department of Corrections, the Florida Department of Law Enforcement, and the District Eight Medical Examiner’s Office filed pursuant to Florida Rule of Criminal Procedure 3.852.

STANDARD OF REVIEW

Because the lower court denied postconviction relief without an evidentiary hearing, this Court must accept the factual allegations presented in Lukehart’s motion and in this appeal as true to the extent they are not conclusively refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). Further, this Court “review[s] the trial court’s application of the law to the facts *de novo*.” *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008). A postconviction court’s decision whether to grant an evidentiary hearing is likewise subject to *de novo* review. *Rose v. State*, 985 So. 2d 500, 505 (Fla. 2008).

ARGUMENT I

THE LOWER COURT ERRED IN SUMMARILY DENYING LUKEHART'S CLAIM THAT FLORIDA'S LETHAL INJECTION PROCEDURES AS APPLIED TO LUKEHART ARE UNCONSTITUTIONAL AND CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT, IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION. FLORIDA'S LETHAL INJECTION PROCEDURES PRESENT A SUBSTANTIAL AND IMMINENT RISK THAT IS VERY LIKELY TO CAUSE LUKEHART NEEDLESS SUFFERING UNDER *GLOSSIP v. GROSS*, 576 U.S. 863 (2015) AND *BAZE v. REES*, 553 U.S. 35 (2008).

Florida's current lethal injection procedures are unconstitutional as specifically applied to Lukehart because there is a substantial and imminent risk that executing Lukehart under those procedures will very likely cause him needless pain and suffering due to the interaction of Florida's lethal injection procedures with Lukehart's severe kidney disease. *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). The lower court erred in summarily denying relief on this claim. PC/452-455.

As an initial matter, undersigned counsel submits that this Court must relinquish jurisdiction to the lower court with instructions to hold an evidentiary hearing on Lukehart's as-applied challenge and must also grant a stay of execution so that there is

enough time to hold a full and fair evidentiary hearing. This Court's prior precedent proves that as-applied challenges to the constitutionality of Florida's execution procedures should be decided after a full and fair evidentiary hearing in the lower court. The lower court erred when summarily denying Lukehart's as-applied claim without first holding an evidentiary hearing.

In 2019, while under an active death warrant, Bobby Joe Long filed an as-applied constitutional challenge to Florida's lethal injection procedures. *See Long v. State*, 271 So. 3d 938 (Fla. 2019). Long argued that his traumatic brain injury and temporal lobe epilepsy rendered Florida's use of etomidate in his execution unconstitutional under the Eighth Amendment. *Id.* at 943. The lower court held an evidentiary hearing on the claim without the need for this Court to relinquish jurisdiction. *See id.* at 944. This Court affirmed the lower court's rejection of Long's as-applied challenge. *See id.* at 945. However, this Court was able to make that determination based on the testimony of competing expert witnesses since Long was granted an evidentiary hearing. Lukehart should be afforded the same opportunity.

This Court has previously relinquished jurisdiction to the lower court in at least **four separate cases** under active death warrants so that evidentiary hearings could be held on those defendants' as-applied challenges to Florida's execution procedures. See *Correll v. State*, 184 So. 3d 478, 483 (Fla. 2015); *Howell v. State*, 133 So. 3d 511, 515 (Fla. 2014); *Henry v. State*, 134 So. 3d 938, 943 (Fla. 2014); *Davis v. State*, 142 So. 3d 867, 870 (Fla. 2014). When relinquishing jurisdiction in 2014 to consider Eddie Wayne Davis's as-applied challenge to Florida's execution procedures based on his diagnosis of Porphyria, this Court explained that this Court relinquished jurisdiction based, in part, on the "constitutional obligation to ensure that the method of lethal injection in this state comports with the Eighth Amendment." *Davis*, 142 So. 3d at 870.

As discussed in greater detail below, Lukehart has retained anesthesiologist Dr. Joel Zivot to opine on the interaction of Florida's lethal injection procedures with Lukehart's severe kidney disease and other unique medical conditions. Dr. Zivot's general opinions and expected testimony following a preliminary evaluation of Lukehart's case were presented to the lower court in Lukehart's May 8, 2026 Fla. R. Crim. P. 3.851 Motion and also in Dr. Zivot's affidavit attached

to the motion. See PC/346-352; 374-379. The lower court erred in summarily denying Lukehart's as-applied challenge, and further erred in failing to hold an evidentiary hearing so Dr. Zivot's full testimony and an explanation of his findings could be presented. See PC/452-455.

Undersigned counsel acknowledges this Court's recent precedent holding that lower courts did not err in summarily denying similar as-applied challenges to lethal injection raised by prior defendants under an active death warrant. See *Randolph v. State*, 422 So. 3d 166 (Fla. 2025); *Tanzi v. State*, 407 So. 3d 385 (2025); *Rogers v. State*, 409 So. 3d 1257 (Fla. 2025); *Cole v. State*, 392 So. 3d 1054 (Fla. 2024). Undersigned counsel respectfully submits that these recent opinions evidence a concerning departure from this Court's prior precedent and acknowledgement of this Court's "constitutional obligation to ensure that the method of lethal injection in this state comports with the Eighth Amendment." See *Davis*, 142 So. 3d at 870.

While Florida courts appear to be abdicating this constitutional obligation by consistently and pervasively denying evidentiary hearings on such claims, other jurisdictions are holding hearings. In

2017, Arkansas capital defendant Marcel Williams, who was under an active death warrant, filed a 42 U.S.C. § 1983 action in the United States District Court for the Eastern District of Arkansas raising an as-applied challenge to Arkansas's lethal injection protocol. *See Williams v. Kelley*, No. 5:17-CV-00103-KGB (E.D. Ark. 2017). On April 21, 2017, the district court held an evidentiary hearing on Williams's motion for a preliminary injunction where Williams's qualified medical expert provided testimony concerning the interaction of Arkansas' lethal injection protocols and Williams's unique medical conditions. *See Williams v. Kelley*, 854 F.3d 998, 1000-1001 (8th Cir. 2017).

In 2019, Ohio capital defendant Warren Keith Hennes, who was under an active death warrant, filed a suit under 42 U.S.C. § 1983 raising an Eighth Amendment challenge to Ohio's lethal injection protocols. *See In re Ohio Execution Protocol Litig.*, 946 F.3d 287 (6th Cir. 2019). The district court denied relief after Hennes presented expert testimony in support of his claim at an evidentiary hearing. *See id.* at 289.

In 2022, Arizona capital defendant Frank Atwood, who was under an active death warrant, filed a 42 U.S.C. § 1983 action and a

motion for preliminary injection raising an Eighth Amendment as-applied challenge to Arizona's lethal injection protocol. *See Atwood v. Shinn*, No. CV-22-00860-PHX-MTL (JZB), 2022 WL 1970017 (D. Ariz. June 4, 2022). The district court held an evidentiary hearing on the motion where Atwood's qualified medical expert offered expert testimony regarding his unique medical conditions. *See id.* at *4.

In 2023, Alabama capital defendant James Edward Barber filed a 42 U.S.C. § 1983 action and a motion for preliminary injection while under an active death warrant asserting that the manner in which Alabama executed its lethal injection protocol violated the Eighth Amendment's prohibition against cruel and unusual punishment. *See Barber v. Governor of Alabama*, 73 F.4th 1306 (11th Cir. 2023). The motion was denied after the United States District Court for the Middle District of Alabama held an evidentiary hearing on the motion. *See id.* at 1314-1316.⁹ In 2025, Tennessee capital defendant Byron

⁹ Capital defendants in Alabama under recent active death warrants have also received evidentiary hearings in 2025 on their Eighth Amendment constitutional challenges to Alabama's protocol for carrying out executions by nitrogen hypoxia. *See Frazier v. Hamm*, No. 2:24-CV-732-ECM [WO], 2025 WL 361172 (M.D. Ala. Jan. 31, 2025) (district court conducted an evidentiary hearing on Alabama capital defendant's 42 U.S.C. § 1983 action challenging nitrogen hypoxia protocols under the Eighth Amendment while under an

Black, who was under an active death warrant, sought a temporary injunction in the trial court arguing an as-applied Eighth Amendment challenge to Tennessee’s lethal injection protocols. *See Black v. Strada*, 721 S.W.3d 223 (Tenn. 2025). The trial court heard evidence from competing experts at an evidentiary hearing regarding Black's as-applied challenge to the lethal injection protocols. *See id.* at 227.

Despite the constitutional obligation that this Court has previously acknowledged and other jurisdictions allowing evidentiary hearings on similar claims, this Court continues to affirm Florida trial courts’ summary denials of Eighth Amendment claims challenging Florida’s lethal injection procedures during active death warrants. Undersigned counsel acknowledges this current precedent, but respectfully submits that the only way to ensure Lukehart receives the due process he is entitled to during his active

active death warrant); *see also Boyd v. Hamm*, No. 2:25-CV-529-ECM, 2025 WL 2884410 (M.D. Ala. Oct. 9, 2025) (same).

death warrant is to grant a stay¹⁰, relinquish jurisdiction, and remand to the lower court to hold an evidentiary hearing where Lukehart’s Eighth Amendment challenges to lethal injection can be heard “at a meaningful time and in a meaningful manner.” See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).¹¹

Before reaching the merits of Lukehart’s as-applied claim, the lower court erroneously found the claim is procedurally barred as untimely. PC/452. The court highlighted that “[t]he facts on which this claim is predicated have been available since at least 2023 by [Lukehart’s] own admission,” referring to Lukehart’s assertion in his Rule 3.851 motion that “[a]lthough Lukehart’s medical records show some diminished kidney values starting in 2023, his numbers became severe in January of 2026. Around January 24, 2026,

¹⁰ An Appellant’s Motion for Stay of Execution and Relinquishment of Jurisdiction to the State Circuit Court is being filed simultaneously with this Initial Brief.

¹¹ If this Court chooses not to relinquish jurisdiction for an evidentiary hearing, then this Court must accept the factual allegations presented in Lukehart’s motion and in this appeal as true to the extent that they are not conclusively refuted by the record. See *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009).

Lukehart collapsed as a result of a medical emergency caused by his severe kidney disease.” PC/349; 452. The lower court further found that Lukehart “has not shown that his kidney condition has recently deteriorated past the theoretical threshold that would render Florida’s lethal injection protocol unconstitutional as applied to him, just that his condition “became severe” in 2026 ... That is not enough to rise to the level of a cognizable claim.” PC/452.

It is difficult to know how Lukehart could reasonably prove a cognizable claim for relief based on his kidney disease without having an evidentiary hearing where a qualified medical expert like Dr. Zivot could thoroughly explain how Lukehart’s kidney disease would interact with Florida’s lethal injection protocol to cause needless pain and suffering. Regardless, because the lower court denied an evidentiary hearing, this Court must accept the factual allegations presented in Lukehart’s motion and this appeal as true. Lukehart’s motion alleged that “[a]round January 24, 2026, Lukehart collapsed as a result of a medical emergency caused by his severe kidney disease.” PC/349. January 24, 2026 is a date clearly less than one year prior to the May 8, 2026 filing date of Lukehart’s successive Rule 3.851 motion, meaning that the facts underlying Lukehart’s as-

applied claim based on his severe kidney disease qualify as newly discovered evidence that is not procedurally barred as untimely under Fla. R. Crim. P. 3.851(d)(2).

Further, Lukehart alleged and Dr. Zivot opined that Lukehart's "kidney function has declined to the point of nearing a need for hemodialysis." PC/348, 375. If Dr. Zivot had been allowed to testify at an evidentiary hearing on this claim, he could have explained that Lukehart's kidney condition *has* recently deteriorated past the theoretical threshold that would render Florida's lethal injection protocols unconstitutional as applied to him. Dr. Zivot could have explained that a January 24, 2026 blood test around the time of Lukehart's collapse shows an e-GFR value of 18 mL/min, which is in the severely decreased range and only three points above the 15 mL/min threshold for kidney failure. Dr. Zivot and Lukehart were not afforded that opportunity.

Further still, the facts underlying Lukehart's as-applied challenge to lethal injection based on his severe kidney disease could not fully be known until after his active death warrant was signed, because there was no way for Lukehart to know which execution procedures would be in place when and if his death warrant was

signed. Lukehart was sentenced to death on April 4, 1997, and the mandate was issued in his case on February 26, 2001. Lukehart has sat on death row for twenty-nine years since his 1997 death sentence facing the possibility of an eventual death warrant and execution. At the time that Lukehart was originally sentenced to death in 1997, lethal injection was not even an option for execution in Florida, as the first execution by lethal injection in the state would not take place until 2000. *See Florida's First Lethal Injection*, CBS NEWS (originally published February 23, 2000), <https://www.cbsnews.com/news/floridas-first-lethal-injection/>.

Since then, Florida's lethal injection protocols have changed, including a switch from midazolam to etomidate as the first drug in the three-drug cocktail in 2017. The Florida Department of Corrections has also regularly issued updated lethal injection procedures every two years since at least 2019- issuing them on February 27, 2019, May 6, 2021, March 10, 2023, and February 18, 2025 respectively. It was impossible for Lukehart to know if these procedures would show a change to the lethal injection protocols until they were issued and also impossible for him to know which protocols would apply to his own execution until his death warrant

was signed. The lower court states that “[t]he current three-drug protocol has remained essentially unchanged since 2017.” PC/452. Regardless, it was still impossible for Lukehart to know which procedures he would actually be executed under or when or how those procedures would be changed. If Lukehart had raised his as-applied challenge prior to the signing of his active death warrant, the claim could have been premature and not fully ripe for consideration.

Lukehart also could not have known what his kidney functioning would be at the time of execution until his death warrant was signed because kidney disease is a progressive condition that deteriorates over time. The lower court points to this Court’s precedent finding such claims untimely even in cases where the disease has a progressive nature. *See* PC/452 (citing *Randolph v. State*, 422 So. 3d 166 (Fla. 2025) and *Cole v. State*, 392 So. 3d 1054 (Fla. 2024)). Undersigned counsel acknowledges this precedent, but submits that it is at odds with federal jurisprudence concerning other execution-related claims for relief.

In 2007, the United States Supreme Court found, in part, that a capital defendant's *Ford*¹²-based claim of incompetency to be executed was not barred by the Antiterrorism and Effective Death Penalty Act's prohibition against "second or successive" applications, because the claim was not ripe until the defendant's date of execution was set. *See Panetti v. Quarterman*, 551 U.S. 930, 943-947 (2007). The State argued in *Panetti* that a "federal court is permitted to review a prisoner's *Ford* claim once it becomes ripe if the prisoner preserved the claim by filing it in his first federal habeas application." *Panetti*, 551 U.S. at 943.

Rejecting this argument, the *Panetti* court explained that if the State's "interpretation of 'second or successive' were correct, the implications for habeas practice would be far reaching and seemingly perverse." *Panetti*, 551 U.S. at 943 (quoting *Stewart v. Martinez-Villareal*, 523 U.S. 637, 644 (1998)). The *Panetti* court further explained that

A prisoner would be faced with two options: forgo the opportunity to raise a *Ford* claim in federal court; or raise the claim in a first federal habeas application (which generally must be filed within one year of the relevant

¹² *Ford v. Wainwright*, 477 U.S. 399 (1986).

state-court ruling), even though it is premature. The dilemma would apply not only to prisoners with mental conditions indicative of incompetency but also to those with no early sign of mental illness. **All prisoners are at risk of deteriorations in their mental state. As a result, conscientious defense attorneys would be obliged to file unripe (and, in many cases, meritless) Ford claims in each and every § 2254 application.**

551 U.S. 930, 943 (2007) (emphasis added). The *Panetti* court understood that prisoners' mental state can vary and deteriorate over time when considering the appropriate timing of incompetency to be executed claims, and the same logic should apply to physical conditions that would prevent executions in accordance with Eighth Amendment principles.¹³ Similar to the dilemma identified by the Supreme Court in *Panetti*, Florida capital defendants may be forced

¹³ Undersigned counsel is not arguing that capital defendants should only be allowed to raise as-applied challenges to Florida's execution procedures after their death warrant is signed. However, this Court should consider the fact that some medical conditions that could interact with lethal injection are progressive in nature, and defendants with these conditions should not be required to raise such claims until they deteriorate to the point of supporting an Eighth Amendment challenge. Further, such challenges could be premature when raised prior to the signing of an active death warrant, considering that the Florida Department of Corrections promulgates new execution procedures every two years and there is no way to know what changes may be made or which procedures an inmate will actually be executed under until a warrant is signed.

to raise premature as-applied challenges to Florida’s execution protocols, if they are forced to file those claims the minute that there is some evidence of a physical condition that may interact with lethal injection at the time of some potential future execution. Having addressed the lower court’s findings on timeliness, this brief will now turn to the merits of Lukehart’s as-applied challenge.

The Eighth Amendment, which is made applicable to the States through the Fourteenth Amendment, prohibits the infliction of “cruel and unusual punishments.” *Glossip v. Gross*, 576 U.S. 863, 876 (2015). To succeed on an Eighth Amendment method-of-execution claim, Lukehart must: (1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering, and also (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain. *See Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (*citing Glossip*, 576 U.S. at 877 and *Baze*, 553 U.S. at 50, 61).

Immediately following the issuance of Lukehart’s warrant, defense counsel emailed counsel for FDOC and requested his most recent medical records – from October 1, 2025 through present. Since

counsel had recently obtained updated medical records, the request was narrowed to this timeframe. However, the records were not received until 9:28 a.m. on Wednesday, May 6, 2026, just less than forty-eight hours from Lukehart's Rule 3.851 deadline as ordered by the lower court.

Undersigned counsel retained anesthesiologist Dr. Joel Zivot, who is available and willing to testify to the substantial risk of needless pain and suffering that Lukehart faces if executed by lethal injection due to his medical conditions. Dr. Zivot is an associate professor and senior member of the Departments of Anesthesiology and Surgery at Emory University School of Medicine in Atlanta, Georgia. Dr. Zivot holds board certification in Anesthesiology from the Royal College of Physicians and Surgeons of Canada and the American Board of Anesthesiology. He is board-certified in Critical Care Medicine from the American Board of Anesthesiology. Dr. Zivot has practiced anesthesiology and critical care medicine for over thirty years, during which time he has personally performed or supervised the care of over 50,000 patients.

Dr. Zivot reviewed Lukehart's medical records and Florida's lethal injection procedures, and he can opine generally to the

following.¹⁴ According to Lukehart's medical records, he is a 53-year-old man with a long list of medical problems, including poor mental health, recurrent polymicrobial urinary tract infections, epididymitis-orchitis, obesity, being a former smoker, elevated cholesterol, hypothyroidism, gastrointestinal reflux, hypertension, type II diabetes, and chronic kidney disease stage III-IV. He takes medication for hypertension, reflux, diabetes, and elevated cholesterol. Although hypothyroidism is a listed illness, he is not currently being treated for this issue. Lukehart also has a moderate allergy to diphenhydramine, a first-generation antihistamine.

Based on his review of records, Dr. Zivot observed that Lukehart is a man in poor health. His kidney function has declined to the point of nearing a need for hemodialysis. His obesity, along with hypertension, diabetes, elevated cholesterol, and a smoking history, makes him very high risk for significant heart disease. There do not appear to be records of any examination of his cardiac function, but

¹⁴ Due to the extreme time constraints and expedited filing schedule caused by the Governor's signing of a 32-day death warrant, Dr. Zivot has been able to conduct a preliminary evaluation by reviewing Lukehart's medical records prior to the filing of the Rule 3.851 motion. A stay of execution must be granted so that Dr. Zivot can conduct a complete in-person evaluation of Lukehart.

based on his risk factors, he is likely on a path to suffering a heart attack. Recurrent bacterial urinary tract infections suggest poor immune health or anatomical abnormalities of his genitourinary system, including prostatitis. Infections of this nature, if not treated in a timely fashion, can lead to septic shock and death.

Florida's lethal injection procedures involve the sequential intravenous delivery of three drugs. The first drug is etomidate, followed by rocuronium bromide, and then potassium acetate. Etomidate is a non-barbiturate sedative hypnotic drug used in anesthesiology practice in several different situations. Etomidate is not classically considered an analgesic, which is a medicine used for the control of pain. Further, neither of the subsequent drugs used in Florida's lethal injection procedures are 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.

As a consequence of Lukehart's severe kidney disease, injected drugs as used in the FDOC lethal injection protocol may rise higher in his bloodstream because of a reduction in urinary excretion. The effect of this is the potential for an exaggerated negative consequence on his heart and lungs, making his own death more painful and cruel. When etomidate is injected, the beating heart rapidly delivers the strong acid solution to the lungs, where it burns them from the inside. As Lukehart has reduced kidney function, etomidate may not be eliminated as quickly. The effect is a longer time for etomidate to repeatedly pass through the lungs, burning them with each pass. Dr. Zivot further opined that "[s]hould Mr. Lukehart be executed by DOC's current lethal injection protocol, *he has an extremely high likelihood of suffering a needless, cruel, and painful death.*"

Additionally, Lukehart is allergic to diphenhydramine, a first-generation antihistamine, which likely means he is also allergic to hydroxyzine. FDOC is known to offer prisoners the option of hydroxyzine prior to the establishment of intravenous access to reduce anxiety. However, it is unknown whether this drug is effective in reducing the anxiety of anticipating one's own death. Should FDOC give Lukehart hydroxyzine, it would result in a significant and

dangerous risk of a severe allergic reaction, for which FDOC has no protocols to handle should intervention be necessary.

It is clear from Dr. Zivot's preliminary evaluation of Lukehart's medical history that Florida's lethal injection procedures place Lukehart at a substantial risk of needless pain and suffering. Even more troubling is the fact that because Lukehart will be administered the paralytic rocuronium bromide, the ensuing paralysis of his body will likely prevent him from exhibiting any external signs of his physical anguish. Florida therefore cannot constitutionally execute Lukehart.

To succeed on his Eighth Amendment method-of-execution claim, Lukehart is also required to identify a method of execution other than lethal injection that is "feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain." *Glossip*, 576 U.S. at 877 (quoting *Baze*, 533 U.S. at 52). The requirement under current federal jurisprudence that Lukehart choose another less-painful method of execution is morally repugnant, impossible to realistically meet, and violates Lukehart's First, Fifth, Sixth, Eighth, and Fourteenth Amendment rights under the United States Constitution.

The alternative method requirement of the *Baze-Glossip* test violates Lukehart’s right to religious freedom under the First Amendment to the United States Constitution. Lukehart has a First Amendment right to the free exercise of his religion, even as an incarcerated prisoner facing an imminent execution. *See Ramirez v. Collier*, 595 U.S. 411, 424–25 (2022) (citing 42 U.S.C. § 2000cc–1(a)) (explaining the Religious Land Use and Institutionalized Persons Act provides that no government shall impose a substantial burden on the religious exercise of a person confined to an institution, including state prisoners); *see also Murphy v. Collier*, 587 U.S. 901 (2019) (granting defendant’s application for stay of execution and finding the State could not carry out the execution unless the State permitted a Buddhist spiritual advisor to accompany the defendant in the execution chamber).

Lukehart is a long-time practicing Catholic. Having to choose an alternative method for his own execution runs afoul of church doctrine which views both murder and suicide as grave violations of the Fifth Commandment – “Thou shalt not kill.” This stems from the belief that human life is sacred, belonging to God, who is the sole author of life and death. Forcing Lukehart to make such a choice in

order to succeed on his Eighth Amendment challenge to lethal injection prohibits his free exercise of religion, which the First Amendment sought to protect.

Furthermore, the alternative method requirement of the *Baze-Glossip* test violates Lukehart's Fifth and Fourteenth Amendment due process rights because there is no guaranteed or scientific way to prove that any alternative method will cause significantly less pain than other methods available in the United States. There exists no way to legally, humanely, or ethically test any alternative method of execution to determine if it will cause less pain compared to another. Specific to Lukehart, there exists no legal or scientific way to test any alternative method of execution on an individual with severe kidney disease prior to Lukehart's execution to determine what level of pain they may suffer. Lukehart, and all capital defendants facing execution, are therefore forced to choose an alternative method without actually knowing if it will cause less pain and suffering. The United States Supreme Court has promulgated a standard that is unconstitutional and cannot actually be met, and undersigned counsel maintains that Lukehart should not be subject to execution in the first place.

Lukehart's unconstitutional execution by lethal injection is currently scheduled for Tuesday, June 2, 2026, at 6:00 p.m., only sixteen days from the filing date of this appellate brief. The risk that Lukehart will experience needless pain and suffering could not be more imminent or substantial. Undersigned counsel respectfully submits that this Court must relinquish jurisdiction so an evidentiary hearing can be held on Lukehart's Eighth Amendment method-of-execution claim, allowing the claim to be decided based on complete expert testimony detailing the risks that Lukehart faces.

Undersigned counsel also respectfully submits that this Court must grant Lukehart a stay of execution because his Eighth Amendment method-of-execution claim is a substantial ground upon which relief might be granted and deserves to be fully addressed at an evidentiary hearing that is free from the constraints of an accelerated death warrant schedule. *See Chavez v. State*, 132 So. 3d 826, 832 (Fla. 2014) (internal citations omitted) (explaining that a stay of execution pending the disposition of a successive motion for postconviction relief is warranted when there are substantial grounds upon which relief might be granted); *see also Correll v. State*, 184 So. 3d 478, 482 (Fla. 2015) (granting a stay of execution prior to

evidentiary hearing on capital defendant's as-applied challenge to Florida's execution procedures). Relief is proper.

ARGUMENT II

THE LOWER COURT ERRED IN SUMMARILY DENYING LUKEHART'S CLAIM THAT BY UTILIZING A PARALYTIC DRUG THAT SUFFOCATES THE CONDEMNED AND MASKS THE EXTREME PAIN CAUSED BY ALL THREE DRUGS, FLORIDA'S LETHAL INJECTION PROCEDURES CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Florida's current lethal injection procedures are facially unconstitutional because the procedures create a risk of needless pain and suffering. *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008). The lower court erred in summarily denying relief on this claim. PC/455-456.

The lower court held that Lukehart's facial challenge to Florida's lethal injection procedures under the Eighth Amendment is denied for all the reasons that his as-applied challenge in Argument One is denied. PC/455. As an initial matter, undersigned counsel submits that this Court must relinquish jurisdiction to the lower court with instructions to hold an evidentiary hearing on Lukehart's facial challenge and must also grant a stay of execution to ensure there is

sufficient time to hold a full and fair evidentiary hearing. The lower court erred in summarily denying relief on this claim without first holding an evidentiary hearing. PC/455-456. Lukehart relies on his legal arguments articulated at pages 10-17 of Argument One to support the need for an evidentiary hearing on his facial challenge to lethal injection, and those arguments are fully incorporated herein in support of Argument Two. This brief will now turn to the merits of Lukehart's facial challenge.

The Eighth Amendment, which is made applicable to the States through the Fourteenth Amendment, prohibits the infliction of "cruel and unusual punishments." *Glossip v. Gross*, 576 U.S. 863, 876 (2015). To succeed on an Eighth Amendment method-of-execution claim, Lukehart must: (1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering, and also (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain. *See Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (*citing Glossip*, 576 U.S. at 877 and *Baze*, 553 U.S. at 50, 61).

Under Florida law, “[a] death sentence shall be executed by lethal injection ... under the direction of the Secretary of Corrections or the secretary’s designee.” Fla. Stat. § 922.105(1). The State seeks to execute Lukehart pursuant to FDOC’s protocols that call for the intravenous injection of the following drugs: 1) 200 milligrams of etomidate, 2) 1000 milligrams of rocuronium bromide, and 3) 240 milliequivalents of potassium acetate. These drugs must be given in this specific order, as outlined in FDOC’s lethal injection protocols. *See* PC/391-393.

The objective of the first drug, etomidate, is to induce a level of unconsciousness that achieves and maintains a surgical plane of anesthesia, *i.e.*, one that renders a person insensate to the pain of the second and third drugs. The objective of the second drug, rocuronium bromide, is to give the appearance of a serene death. It paralyzes all voluntary muscles, preventing the inmate from manifesting pain. It also prevents the inmate from breathing by paralyzing the diaphragm, which prevents air from being moved in and out of the lungs.

Rocuronium bromide is not an anesthetic and does not affect consciousness or the perception of pain. A conscious person under

the influence of rocuronium bromide would experience the sensation of death by drowning but be unable to communicate this. An inmate not fully anesthetized before the rocuronium bromide takes effect would suffer a lingering and torturous death. The objective of the third and final drug, potassium acetate, is to kill the inmate. This is done by interfering with the heart's electrical activity which induces cardiac arrest. Potassium acetate causes excruciating pain and suffering if administered to a condemned prisoner who is not sufficiently anesthetized. As potassium acetate travels through the bloodstream from the injection site towards the heart, the chemical activates sensory nerve fibers inside the veins, causing a prolonged and intense burning sensation. Notably, FDOC's lethal injection protocol does not provide for an individualized assessment of an inmate's specific medical conditions and how these might affect the lethal injection process. The dosage of drugs remains the same regardless of the age, height, and weight of the inmate.

Defense expert Dr. Zivot reviewed FDOC's lethal injection protocols and opined that the protocol, as designed, creates an objectively intolerable risk of needless pain and suffering. See PC/376-379. Dr. Zivot was available to opine generally to the

following at an evidentiary hearing in the lower court, had one been granted. Dr. Zivot has reviewed the autopsy records and toxicology reports of all nineteen prisoners executed by Florida in 2025. Strikingly, on top of the faulty FDOC drug logs publicized in now-deceased inmate Frank Walls's case, the autopsy and toxicology reports of the nineteen executions Dr. Zivot reviewed show a high prevalence of additional concerning irregularities. Dr. Zivot opines that Florida's lethal injection protocol creates an objectively intolerable risk of needless pain and suffering.

In the autopsies of now-deceased inmates James Ford, Jeffrey Hutchinson, Glen Rogers, Anthony Wainwright, Thomas Gudinas, Samuel Smithers, and Richard Randolph¹⁵, the physical evidence-notations of intramuscular injections in the shoulder of each inmate-points to a high likelihood that all these men received a mysterious dosage of an unknown substance. The FDOC lethal injection protocol makes no mention of any option that permits an intramuscular

¹⁵ James Ford was executed on February 13, 2025. Jeffrey Hutchinson was executed on May 1, 2025. Glen Rogers was executed on May 15, 2025. Anthony Wainwright was executed on June 10, 2025. Thomas Gudinas was executed on June 24, 2025. Samuel Smithers was executed on October 14, 2025. Richard Randolph was executed on November 20, 2025.

injection. Ad hoc polypharmacy as an adjunct to lethal injection raises the serious and likely risk of needless pain and suffering.

Owing to its favorable minimal impact on blood pressure, etomidate is used as an induction agent in critically ill individuals with unstable blood pressure in a medical setting. Although etomidate is known to affect plasma cortisol concentrations, this effect would be of no consequence in an execution. Etomidate is the first injected chemical in the FDOC execution protocol. As etomidate is rarely lethal, it is unclear if FDOC intended to use etomidate as the cause of death. In as little as three minutes after an etomidate injection, rapid redistribution of the drug within the circulation will allow a return to consciousness. As etomidate is rarely fatal and short-acting, death is more likely to be caused by the chemical suffocation induced by the injection of the second drug in the protocol - the paralytic rocuronium bromide.

“Fatal” etomidate blood levels are generally considered to be 0.4-3.6 mcg/mL in the blood. In the cases of now-deceased inmates Kayle Bates, David Pittman, Richard Randolph, and Frank Walls, the toxicology reports in their autopsy records found etomidate blood

levels below 0.4 mcg/mL.¹⁶ It is noteworthy that of these four executions, three have previously been flagged as potentially involving expired etomidate. These toxicology results from prior executions could prove that concern, as expired etomidate may lose potency over time.

The awareness of death by suffocation is not a rare event. In the nineteen executions of 2025, awareness of dying by suffocation occurred more than 20% of the time. Veterinary guidelines strongly condemn using paralytics alone for euthanasia as they can paralyze a conscious animal, causing suffering without allowing them to show distress. Thus, the FDOC execution protocol kills human beings by a technique rejected by the American Veterinary Medical Association. Florida's lethal injection procedures essentially treat prisoners as of lower value than animals. Florida's lethal injection procedures create superadded pain and suffering, and this finding is not merely theoretical but is found unambiguously in the toxicology evidence.

¹⁶ Kayle Bates was executed on August 19, 2025. David Pittman was executed on September 17, 2025. Richard Randolph was executed on November 20, 2025. Frank Walls was executed on December 18, 2025.

Pulmonary edema is a very common post-mortem finding in lethal injection executions. In Dr. Zivot's review of over 250 post-lethal injection execution autopsies, pulmonary edema or bloody frothy fluid in the lungs was found as often as 80% of cases. A review of the nineteen post-execution autopsies in Florida from 2025 found the presence of heavy, blood-filled lungs with frothy bloody fluid in **fifteen of nineteen cases.** This corresponds to an incidence of 79% at the low estimate end.

The airways with normal lungs are always free of fluid, and only pathological states result in pulmonary edema. Fluid in the lung airways is a highly dangerous and extremely uncomfortable sensation. It is akin to the sensation of drowning. Waterboarding is a technique used to extract information from captured individuals, made notorious in the global war on terror. Also known as enhanced interrogation, waterboarding is widely classified as torture by international human rights organizations, legal experts, and the United Nations. To the person subjected to waterboarding, the experience feels like drowning. The individual suffers from an uncontrollable sensation of panic, terror, and slow-motion

suffocation. Victims experience intense pain, broken willpower, and involuntary convulsions.

Florida's lethal injection protocol creates death akin to waterboarding, but the fluid rises from within the lungs. Death occurs not in seconds but may take minutes. The sensation of torture is evident in seconds, but the paralysis created by the second drug rocuronium bromide creates the outward appearance of calmness while hiding the inmate's inward sensation of panic, terror, and suffocation. This is not a theoretical concern but an actual event.

Should Lukehart, or any other inmate, be executed by FDOC's current lethal injection protocol, they have an extremely high likelihood of suffering a needless, cruel, and painful death. The use of etomidate as the first injected chemical in the three-drug protocol virtually guarantees the common experience of death by cruel and terrifying suffocation. After reviewing multiple lethal injection protocols in other death penalty states, Dr. Zivot opines that Florida currently has the worst of the worst lethal injection protocol.

Regarding Lukehart's assertion that three recent executions have been flagged as involving potentially expired etomidate, the lower court held that FDOC is presumed to comply with its lethal

injection protocols. See PC/455. The lower court further found that the possibility that expired etomidate may have been used in prior executions is insufficient to overcome this presumption. PC/455. The court overlooks the other evidence that Dr. Zivot found from his review of the autopsy records indicating that FDOC is not following its own lethal injection procedures, surely creating the risk of needless suffering. Dr. Zivot found evidence in at least seven post-execution autopsies - James Ford, Jeffrey Hutchinson, Glen Rogers, Anthony Wainwright, Thomas Gudinas, Samuel Smithers, and Richard Randolph - of intramuscular injections in the shoulder of each inmate, which points to a high likelihood that all these men received a mysterious dosage of an unknown substance. However, the FDOC lethal injection protocol makes no mention of any option that permits an intramuscular injection. This startling evidence, along with other deviations indicated by the FDOC drug logs obtained in the *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025) litigation and argued in Lukehart's demand for FDOC records (PC/66-140), pierces the presumption that FDOC will follow its own lethal injection procedures and increases the likelihood of needless pain and suffering.

To succeed on his Eighth Amendment method-of-execution claim, Lukehart is also required to identify a method of execution other than lethal injection that is “feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain.” *Glossip*, 576 U.S. at 877 (quoting *Baze*, 533 U.S. at 52). The requirement under current federal jurisprudence that Lukehart choose another less-painful method of execution is morally repugnant, impossible to realistically meet, and violates Lukehart’s First, Fifth, Sixth, Eighth, and Fourteenth Amendment rights under the United States Constitution. Lukehart relies on his legal arguments articulated at pages 29-31 of Argument One to support his argument that the alternative method pleading requirement of the *Baze-Glossip* test is unconstitutional, and those arguments are fully incorporated herein in support of Argument Two.

Lukehart’s unconstitutional execution by lethal injection is currently scheduled for Tuesday, June 2, 2026, at 6:00 p.m., only sixteen days from the filing date of this appellate brief. The risk that Lukehart will experience needless pain and suffering could not be more imminent or substantial. Undersigned counsel respectfully submits that this Court must relinquish jurisdiction so an

evidentiary hearing can be held on Lukehart's Eighth Amendment method-of-execution claim, and this claim may be decided based on complete expert testimony detailing the risks that Lukehart faces.

Undersigned counsel also respectfully submits that this Court must grant Lukehart a stay of execution because his Eighth Amendment method-of-execution claim is a substantial ground upon which relief might be granted and deserves to be fully addressed at an evidentiary hearing that is free from the constraints of an accelerated death warrant schedule. *See Chavez v. State*, 132 So. 3d 826, 832 (Fla. 2014) (internal citations omitted) *see also Correll v. State*, 184 So. 3d 478, 482 (Fla. 2015). The United States Supreme Court explained in *Glossip v. Gross* that “[b]ecause capital punishment is constitutional, there must be a constitutional means of carrying it out.” 576 U.S. at 863. There is no constitutional way for Florida to carry out Lukehart's execution under the current lethal injection protocols. Relief is proper.

ARGUMENT III

THE CIRCUIT COURT ERRED IN SUMMARILY DENYING LUKEHART'S CLAIM THAT FLORIDA'S WARRANT PROCESS DEPRIVES LUKEHART OF A FULL AND FAIR POSTCONVICTION PROCEEDING IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO SUBSTANTIVE AND PROCEDURAL DUE PROCESS UNDER

THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Florida's truncated warrant process and Lukehart's resulting thirty-two-day warrant period foreclose him from receiving a full and fair postconviction proceeding during his active death warrant and violate his due process rights. The circuit court erred when summarily denying relief on this claim. PC/456.

A. Legal Authority.

The absence of a reasonable warrant schedule denies Lukehart of full, fair, and meaningful postconviction proceedings in violation of the Due Process Clause of the Fifth and Fourteenth Amendments and Article I, Section 9, of the Florida Constitution. The right to due process entails "notice and opportunity for hearing appropriate to the nature of the case." *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). "[F]undamental fairness is the hallmark of the procedural protections afforded by the Due Process Clause." *Ford v. Wainwright*, 477 U.S. 399, 424 (1986) (Powell, J., concurring in part and in the judgment).

Undersigned counsel acknowledges this Court's prior adverse precedent summarily denying similar claims raised during active death warrants. See PC/456 (citing *Jennings v. State*, 422 So. 3d 107 (Fla. 2025); *Bates v. State*, 416 So. 3d 312 (Fla. 2025); *Tanzi v. State*, 407 So. 3d 385 (2025); *Barwick v. State*, 361 So. 3d 785 (Fla. 2023)). Undersigned counsel respectfully submits that defense counsel litigating active death warrants continue to raise such claims based on the good-faith belief and first-hand experience that active death warrants cannot reasonably be litigated on approximately thirty-day time frames. Further, undersigned counsel submits that in one of those cases - *Barwick v. State* - this Court itself recognized the extraordinary pace imposed by active death warrant litigation and expressed concern regarding the compressed timeframes under which such proceedings are required to be litigated. In his concurrence, Justice Labarga expressed his concerns during the active death warrant litigation of Darryl Barwick:

As the majority observes, "post-warrant litigation is arduous," see majority op. at 7, and a death warrant by its very nature requires expedited proceedings. However, these solemn proceedings ultimately involve carrying out a sentence of death for the most aggravated and least mitigated of murders and must still ensure due process of law. I am extremely concerned by the recent pace of death

warrants and the speed with which the parties and involved entities must carry out their respective duties ...

I nonetheless caution that even in this final stage of capital proceedings, a meaningful process must be ensured.

Barwick, 361 So. 3d at 796 (Labarga, J., concurring) (emphasis added).

Lukehart submits that he has been deprived of the critical component of due process—fundamental fairness and meaningful or real opportunity to be heard. Importantly, as this Court explained in *Key Citizens for Gov., Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001) (emphasis added):

The basic due process guarantee of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law.” Art. I, § 9, Fla. Const. The Fifth Amendment to the United States Constitution guarantees the same. As the Florida Supreme Court explained in *Department of Law Enforcement v. Real Property*, 588 So. 2d 957, 960 (Fla. 1991), “[p]rocedural due process serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue.” Procedural due process requires both fair notice and a real opportunity to be heard. *See id.* As the United States Supreme Court explained, the notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable

time for those interested to make their appearance.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950) (citations omitted). **Further the opportunity to be heard must be “at a meaningful time and in a meaningful manner.”** *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); accord *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972) (stating that procedural due process under the Fourteenth Amendment of the United States Constitution guarantees notice and an opportunity to be heard at a meaningful time and in a meaningful manner).

The specific parameters of the notice and the opportunity to be heard required by procedural due process are not evaluated by fixed rules of law, but rather by the requirements of the particular proceeding. See *Gilbert v. Homar*, 520 U.S. 924, 117 S. Ct. 1807, 138 L. Ed. 2d 120 (1997); see also *Mullane*, 339 U.S. at 313, 70 S. Ct. 652 (stating that notice and opportunity for hearing need only be appropriate to the nature of the case). As the Supreme Court has explained, due process, “unlike some legal rules, is not a technical concept with a fixed content unrelated to time, place and circumstances.” *Cafeteria & Restaurant Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 895, 81 S. Ct. 1743, 6 L. Ed. 2d 1230 (1961). Instead, “due process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Lukehart does not simply assert that a particular number of days from the warrant signing to the execution violates due process. Rather, he has been denied the meaningfulness and fundamental fairness required due to the circumstances present in his case. See *Abdool v. Bondi*, 141 So. 3d 529, 544 (Fla. 2014) (“there is no single

test which applies to determine whether the requirements of procedural due process have been met. Courts instead consider the individualized facts of each case to determine whether the defendant has been accorded the process which the state and federal constitutions demand.”).

B. Florida’s Truncated Warrant Process.

The warrant procedure in Florida and its constituent proceedings are so truncated that they preclude a meaningful hearing on any of Lukehart’s claims, preclude counsel’s meaningful and effective representation, and cause unnecessary strain and chaos on the judicial system, particularly at the circuit court level. The Due Process Clause of the Fourteenth Amendment guarantees that “no State shall . . . deprive any person of life, liberty, or property without due process of law.” Amend. XIV, U.S. Const. Likewise, “one of the basic tenets of Florida law is the requirement that all proceedings affecting life, liberty, or property must be conducted according to due process.” *Scull v. State*, 569 So. 2d 1251, 1252 (Fla. 1990) (citing Art. 1, § 9, Fla. Const.).

“Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the

enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.” *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 682 (1930) (emphasis added). “At a minimum,” due process “require[s] that deprivation[s] of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.” *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) (quoting *Mullane*, 339 U.S. at 313).

As the United States Supreme Court held in *Mathews v. Eldridge*, “the fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” 424 U.S. 319, 333 (1976) (quoting *Armstrong*, 380 U.S. at 553). Nowhere can these principles be more important than in a capital case, where the Supreme Court has repeatedly emphasized that the Eighth Amendment requires a heightened degree of reliability in the process. *See, e.g., Herrera v. Collins*, 506 U.S. 390 (1993); *McKoy v. North Carolina*, 494 U.S. 433 (1990); *Loudermill*, 470 U.S. at 542 (quoting *Mullane*, 339 U.S. at 313) (reiterating that the due process requirements of notice and opportunity must be “appropriate to the nature of the case”); *Eddings v. Oklahoma*, 455

U.S. 104 (1982); *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976).

Contrary to this Court’s finding in *Hannon v. State*, 228 So. 3d 505, 509 (Fla. 2017), the “function” of the Eighth Amendment is not fulfilled “by the time that a defendant is warrant eligible.” Indeed, both the imposition of a death sentence and the process of carrying out an execution must withstand constitutional scrutiny:

If the Constitution renders the fact or timing of his execution contingent upon establishment of a further fact . . . “then that fact must be determined with the high regard for truth that befits a decision affecting the life or death of a human being.”

Herrera, 506 U.S. at 406 (quoting *Ford*, 477 U.S. at 411).

The Supreme Court has held that factual determinations related to the constitutionality of a person’s execution are “properly considered in proximity to the execution.” *Id.* at 406 (noting competency to be executed determination is more reliable near time of execution whereas guilt or innocence determination becomes less reliable). In other words, whether the carrying out of a death sentence violates the Eighth Amendment depends on the facts existing after a

death warrant is signed and the determination of these facts requires *increased reliability*.

Despite this requirement, warrant proceedings in Florida are unnecessarily truncated and fail to provide capital defendants a meaningful time or manner to challenge their convictions and sentences. This is particularly abhorrent when the end result is the ultimate penalty—actual death. Section 922.052, Florida Statutes, sets a maximum 180-day warrant period, but fails to provide a reasonable, minimum time to ensure meaningful process. Unlike other death penalty states, Florida’s warrant stage litigation structure fails to ensure that capital defendants receive due process and a meaningful opportunity to be heard in the final stages of a capital case.

Other active death penalty states, including Texas and Missouri, provide by statute or rule a minimum of 90 days in which to raise challenges under warrant. Tex. Code Crim. Proc. Ann. art. 43.141(c) (2015); Mo. Sup. Ct. R. 29.08 (2014). Oklahoma requires that an execution be set not less than 60 days from the issuance of a warrant. Okla. Stat. Ann. tit. 22, §1001 (2025). Louisiana also requires a minimum warrant period of 60 days and provides up to 90

days from the warrant being issued. La. Stat. 15:567(B) (2024). In Ohio, the Supreme Court sets the execution date between 2-3 years in advance, thus there is no element of surprise on the parties and adequate time for stakeholders to conduct meaningful review.

The reality of Florida's truncated warrant process and failure to statutorily set a minimum time-frame for active death warrants has resulted in practice to provide an essentially meaningless process that fails to conform with the requirements of the Fifth, Sixth, Eighth, and Fourteenth Amendments facially and as applied to Lukehart.

C. Truncated Warrant Period Resulted in an Inadequate Investigation or Review of Lukehart's Claims.

Counsel for Lukehart received notice at 5:12 p.m. on Friday, May 1, 2026, that a warrant had been signed. Lukehart's execution was scheduled for June 2, 2026. Less than 15 minutes later, this Court issued a scheduling order directing "that all further proceedings in this case be expedited." Scheduling Order, *Lukehart v. State*, SC1960-90507 (Fla. May 1, 2026). This Court ordered that all circuit court proceedings be completed by 11:00 a.m. on Thursday, May 14, 2026.

Although the warrant period is thirty-two days in Lukehart's case, this Court's scheduling order provided approximately nine business days for circuit court proceedings to be completed. PC/37-39. The circuit court's scheduling order gave Lukehart less than seven days to investigate warrant-related issues, review additional records provided by State agencies, consult with experts, and file his final Rule 3.851 motion in the circuit court. *Id.* Accordingly, Lukehart had just one business day to file all public records demands and four business days to file any claims challenging his conviction and sentence. *Id.* This extremely expedited schedule prevented Lukehart from having any meaningful process or opportunity to fully investigate and present his claims, hindered counsel in providing effective representation, and caused unnecessary strain and chaos for the courts and all parties involved.

As indicated by the scheduling order, the Court expects counsel to work around the clock in order to meet the rigorous deadlines imposed. While counsel for Lukehart accepts that obligation, neither counsel nor experts have unfettered ability to meet with or speak with capital defendants on death watch at Florida State Prison ("FSP"). Even under warrant, FSP allows counsel and experts to meet with

clients only on weekdays during specific hours, and calls are limited to thirty minutes. Calls, visits, and expert evaluations are approved subject to availability due to the overlapping warrants, as at least two capital defendants are usually on death watch at a time. This process frustrates counsel's ability to meet ethical duties and ensure Florida's death penalty is administered consistent with basic notions of fundamental fairness and process which are the cornerstone of our system of justice.

Furthermore, Lukehart suffers from severe kidney disease, and this truncated warrant period makes it impossible to meet with him as often as is necessary while also investigating and presenting his claims. Counsel cannot effectively represent Lukehart under these circumstances.

The unnecessarily truncated process coupled with the surprise nature of the signing of a warrant creates an untenable and impossible situation. Judges and counsel for all parties must cancel all previously scheduled matters, including necessary medical appointments, and must attend hearings notwithstanding any illness, regardless of its severity. However, it is unreasonable to assume that experts, witnesses, and family of the client and the

parties (including outside agencies and court staff) are able to do the same.

Moreover, the process impacts counsel's ability to effectively represent other clients. While Rule 3.851(h)(2) provides that warrant proceedings take precedence over all other cases and courts may be willing to move previously scheduled hearings, counsel is not absolved from their ethical and constitutional obligations to other clients. The very nature of warrant proceedings under this truncated period requires around the clock representation of a single client. Lukehart's expedited warrant period of only thirty-two days and the resulting extreme demands on counsel's time and resources forced lead counsel for Lukehart, Assistant CCRC-North Adrienne Shepherd, to file motions to continue four separate matters scheduled in her other clients' cases in May alone. (*Deviney v. Sec'y, Dept. of Corr.*, SC2026-0043; *Deviney v. State of Florida*, SC2025-0906; *State of Florida v. Deviney*, Duval Co. Case No.: 2008-CF-12641; *State of Florida v. Hector Sanchez-Torres*, Duval Co. Case No.: 2009-CF-671). Co-counsel for Lukehart, Assistant CCRC-North Alicia Hampton, was involved in a two-week evidentiary hearing on another case (*State of Florida v. Bevel*, Duval Co. Case No.: 2004-CF-

4525), and was not able to assist on Lukehart's warrant until that evidentiary hearing concluded. Thus, acting CCRC-North, Dawn Macready, was assisting with Lukehart's warrant proceedings, in addition to performing her administrative duties for the agency.

This truncated time period posed a significant hardship to Lukehart's counsel, and in turn, violated Lukehart's rights to a full, fair, and meaningful postconviction proceeding in violation of the Due Process Clause of the Fifth and Fourteenth Amendments and Article I, Section 9, of the Florida Constitution. Postconviction counsel simply cannot adequately represent Lukehart under these circumstances. *See Wilson v. Wainwright*, 474 So. 2d 1162, 1164 (Fla. 1985) (holding the basic requirement of due process in an adversarial system is that an accused be zealously represented at "every level"; in a death penalty case such representation is the "very foundation of justice").

The circuit court found that Lukehart "has been noticed and heard, but complains the thirty-two-day warrant period is simply too short to provide him a meaningful opportunity to challenge his execution." PC/456. However, the record of Lukehart's active warrant proceedings indicate he was not heard in a way that truly comports

with his right to due process. As only one example, a *Huff* hearing was held on Lukehart's successive Rule 3.851 motion on May 9, 2026 at 11:00 a.m., where defense counsel argued that Lukehart should receive an evidentiary hearing on his claims for postconviction relief. *See* PC/38; 434-448. The circuit court orally denied an evidentiary hearing at the conclusion of the *Huff* hearing, and issued a written order only approximately **fifteen minutes after** the hearing had ended. *See* PC/431-33, 446.

The denial of an evidentiary hearing, and therefore an opportunity to be heard in a truly meaningful way, appears to have been a forgone conclusion based on the timing of the circuit court's ruling and order. However, the circuit court was adhering to this Court's scheduling order, which was based on the thirty-two-day warrant period signed by Governor Ron DeSantis. Capital defendants litigating active death warrants in Florida will continue to be denied due process as long as such short timeframes are set for warrants.

This Court has recognized that: "[h]aste has no place in proceedings in which a person may be sentenced to death." *Scull v. State*, 569 So. 2d 1251, 1252 (Fla. 1990). Indeed, in Lukehart's case, the stakes are even greater as the stakes at issue relate to his

imminent execution. The hasty and inadequate review of Lukehart's pending motion, resulting in the summary denial of his claims, violated his constitutional right to due process. Relief is proper.

ARGUMENT IV

THE CIRCUIT COURT ABUSED ITS DISCRETION IN DENYING LUKEHART'S REQUEST FOR PUBLIC RECORDS UNDER FLORIDA RULE OF CRIMINAL PROCEDURE 3.852, DENYING HIM HIS DUE PROCESS AND EQUAL PROTECTION RIGHTS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

This Court reviews lower court rulings based on public records requests pursuant to Florida Rule of Criminal Procedure 3.852 for abuse of discretion. *See Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019). Lukehart timely requested public records related to lethal injection from three state agencies - the Florida Department of Corrections, Florida Department of Law Enforcement, and District Eight Medical Examiner's Office¹⁷ - pursuant to Florida Rule of Criminal Procedure 3.852 (h) and (i) ("the Rule") on May 5, 2026. In denying **every single records request** to which the three agencies

¹⁷ The full text of the specific records requested from each agency and Lukehart's arguments in support of receiving the requested records can be found at PC/66-140 (FDOC); PC/166-173 (ME8); PC/174-243 (FDLE).

objected, the circuit court held that Lukehart's demands were unrelated to any colorable claim, and were not relevant nor reasonably calculated to lead to the discovery of admissible evidence under Rule 3.852(i). *See* PC/295, 299, 303, Orders Denying Defendant's Post-Warrant Demand for Additional Public Records, dated May 6, 2025. The circuit court indicated that Rule 3.852 "generally requires the requested records relate to a colorable claim and good cause for why the request was not made until after the death warrant was already signed." *See* PC/293-94, 298, 301-02, *citing Jones v. State*, 419 So. 3d 619, 628 (Fla. 2025).

Lukehart maintains that the lethal injection records requested from FDOC, FDLE, and ME8 are related to colorable claims for postconviction relief in that they would further support his investigation into his Eighth Amendment as-applied and facial challenges to Florida's lethal injection procedures. *See* PC/69-72; 168-170; 176-178. Lukehart also maintains that the lethal injection records requested from FDOC and FDLE are related to a colorable claim for postconviction relief in that they are reasonably calculated to lead to the discovery of admissible evidence which would support a claim that FDOC has repeatedly deviated from its lethal injection

procedures and such deviation from the procedures creates unreasonable suffering and cruelty in violation of the Eighth Amendment. *See* PC/72-75; 178-182.

A capital postconviction defendant “bears the burden of demonstrating that the records sought [pursuant to Fla. R. Crim. P. 3.852] relate to a colorable claim for postconviction relief.” *Branch v. State*, 236 So. 3d 981, 984 (Fla. 2018) (citing *Chavez v. State*, 132 So. 3d 826, 829 (Fla. 2014) and *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013)). A court may order the production of records if “the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and ... the additional records request is not overly broad or unduly burdensome.” Fla. R. Crim. P. 3.852(i).

The requested lethal injection records from the three agencies relate to claims that Florida’s method for lethal injection is unconstitutional and are necessary for undersigned counsel to continue to investigate Lukehart’s Eighth Amendment challenges to the constitutionality of Florida’s current method of lethal injection. The requested records specifically relate to FDOC’s current

procedures for lethal injection. The most recent version of FDOC's lethal injection procedures were promulgated on February 18, 2025. See PC/85-99. The procedure uses Florida's three-drug "etomidate protocol," which includes etomidate, rocuronium bromide, and potassium acetate. Lukehart only requested records related to the lethal injection drugs and executions that have taken place solely under the February 18, 2025 protocol. The requested records are still necessary for Lukehart to continue his investigation into his claims that Florida's lethal injection procedures are facially unconstitutional and also unconstitutional as applied to him because the procedures violate the Eighth Amendment's prohibition against cruel and unusual punishment. *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008).

Undersigned counsel acknowledges this Court's current precedent finding that lethal injection records requests do not relate to a colorable claim for postconviction relief because this Court has upheld the constitutionality of Florida's "etomidate protocol" in *Asay v. State*, 224 So. 3d 695 (Fla. 2017) and subsequent opinions. However, undersigned counsel respectfully submits that this Court has not had a full and fair opportunity to judge the constitutionality

of Florida's lethal injection procedures, because previous capital defendants, including defendants under an active death warrant like Lukehart, have never been given access to complete records related to Florida's lethal injection procedures or the executions of individuals under these procedures. Capital defendants in Florida have never been able to thoroughly investigate and present claims challenging the constitutionality of lethal injection because Florida courts have consistently and pervasively denied them access to agency records related to lethal injection.

The requested records are necessary to prove that the current procedures are "very likely to cause serious illness and needless suffering," and there is a "substantial risk of serious harm" to Lukehart if the State of Florida executes him under the current method. *Glossip*, 576 U.S. at 877 (internal citations omitted). The requested records are necessary for undersigned counsel to adequately investigate Lukehart's as-applied and facial challenges to lethal injection based on the interaction between FDOC's lethal injection protocols and Lukehart's medical conditions. In addition to supporting Eighth Amendment challenges to Florida's lethal injection protocols, the requested records are also reasonably calculated to

lead to the discovery of admissible evidence which would support a claim that FDOC has repeatedly deviated from its lethal injection procedures and such deviation from the lethal injection procedures creates unreasonable suffering and cruelty in violation of the Eighth Amendment of the United States Constitution and the corresponding provisions of the Florida Constitution.

Heavily redacted records obtained from FDOC by counsel for the now-deceased Frank Walls in *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025) raise serious questions as to whether FDOC has deviated from the lethal injection procedures, and highlight the need for disclosure of the requested lethal injection records and greater transparency concerning the lethal injection process. The potential risks of applying the etomidate protocol to a medically vulnerable individual like Lukehart are heightened because, while Florida shatters records for the speed and volume of executions in 2025 and 2026, FDOC have demonstrated repeated negligence and noncompliance with respect to their own protocol. The heavily redacted records received by counsel in *Walls v. Dixon* raise serious concerns about FDOC's administration of its own procedures. For example, Florida executed Michael Bell on July 15,

2025. However, the corresponding inventory log shows that FDOC did not record removing rocuronium bromide or potassium acetate until the next day, July 16, 2025. *See* PC/105, 107. Even more concerning, the logs contain no entry indicating that etomidate was removed for Bell's execution at all, so it is not clear what amount of etomidate Michael Bell received during his execution.

FDOC noted that they removed all three drugs used during Thomas Gudinas's execution on June 25, 2025, despite the execution taking place on June 24, 2025. *See* PC/104, 105, 107. For the execution of Anthony Wainwright, FDOC recorded the removal of etomidate, rocuronium bromide, and potassium acetate on June 12, 2025, despite the execution taking place on June 10, 2025. *See* PC/104, 105, 107. FDOC consistently records that execution drugs are removed from supply after executions take place, indicating that the records are inaccurate and, for some reason, being filled out after the fact. 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 10 ml vials of rocuronium bromide were removed (1000 mg), suggesting that FDOC may have only prepared half of the required paralytic drug, in violation of the etomidate

protocol, which requires that 2000 mg, or 20 x 10 ml vials, be prepared. *See* PC/107; *see also* PC/92.

On June 12, 2025, a date corresponding to Anthony Wainwright's execution (which occurred on June 10, 2025), seven vials of potassium acetate were removed from FDOC's inventory. This suggests that FDOC may have prepared only 280 milliequivalents of potassium acetate in violation of the etomidate protocol, which requires 480 milliequivalents (12 x 20ml vials) be prepared. *See* PC/105; *see also* PC/92. The log sheets show that during the executions of Edward James and Michael Tanzi, FDOC administered lidocaine, an anesthetic drug not called for in the etomidate protocol. *See* PC/127.

Lastly, FDOC indicates on the log sheets that they used etomidate with an expiration date of January 31, 2025, during the executions of Victor Jones on September 30, 2025; David Pittman on September 17, 2025; Curtis Windom on August 28, 2025; and Kayle Bates on August 19, 2025. *See* PC/125. The discrepancies in these records expose the troubling absence of a mechanism to regularly ensure that FDOC are complying with their own etomidate protocol. Given that Lukehart is very likely already at a heightened risk of

severe pain and suffering due to his unique medical conditions, these partial records from FDOC indicating potential deviation from their own etomidate protocol raise grave concerns that Lukehart may experience needless pain and suffering during his execution currently scheduled for June 2, 2026.

Notably, in Dr. Zivot's evaluation of the autopsies of now-deceased inmates James Ford, Jeffrey Hutchinson, Glen Rogers, Anthony Wainwright, Thomas Gudinas, Samuel Smithers, and Richard Randolph¹⁸, the physical evidence- notations of intramuscular injections in the shoulder of each inmate- points to a high likelihood that all these men received a mysterious dosage of an unknown substance. The FDOC lethal injection protocol makes no mention of any option that permits an intramuscular injection. This finding from Dr. Zivot's evaluation provides further support for the argument that FDOC is deviating from its lethal injection protocols, and Dr. Zivot has opined that ad hoc polypharmacy as an adjunct to

¹⁸ James Ford was executed on February 13, 2025. Jeffrey Hutchinson was executed on May 1, 2025. Glen Rogers was executed on May 15, 2025. Anthony Wainwright was executed on June 10, 2025. Thomas Gudinas was executed on June 24, 2025. Samuel Smithers was executed on October 14, 2025. Richard Randolph was executed on November 20, 2025.

lethal injection raises the serious and likely risk of needless pain and suffering.

Undersigned counsel acknowledges that Florida courts have recently denied requests for lethal injection records based on similar arguments during recent active death warrants.¹⁹ However, these continued denials of records related to lethal injection place Lukehart and all other Florida capital defendants in an impossible Catch-22 that can only be remedied by granting defendants access to these records. Justice Sonia Sotomayer recently wrote in the Melvin Trotter case “to express concern about Florida's implementation of its execution protocol and the secrecy surrounding it.” *See Trotter v. Fla.*, 146 S. Ct. 755, 755 (2026) (statement respecting the denial of the application for stay and petition for certiorari). Justice Sotomayer further wrote in Trotter’s case that

The record reflects at least the possibility that recent Florida executions have involved—in addition to expired drugs—incorrect drug doses, the use of nonprotocol drugs, and record keeping lapses that could mask yet additional

¹⁹ *See State of Florida v. Melvin Trotter*, Manatee County Case No.: 1986-CF-1225; *see also State of Florida v. Michael King*, Sarasota County Case No.: 2008-CF-1087; *see also State of Florida v. James E. Hitchcock*, Orange County Case No.: 1976-CF-1942.

failings. The Florida Supreme Court, moreover, has thus far not allowed further inquiry into these potential problems and has recently denied requests for records that would prove or disprove claims like Trotter's ... In doing so, the Florida Supreme Court appears to be placing prisoners in a Catch-22: It has affirmed the denial of requests for records on these issues, at least in part, because the prisoners do not yet have enough information to raise a “colorable” Eighth Amendment claim ... The very reason the prisoners are seeking the records, however, is to gather enough information to raise a colorable Eighth Amendment claim.

Individuals seeking to challenge the method of their execution should not have to guess at whether the State is, or is not, following its execution protocol. Nor does the State appear to have any legitimate confidentiality interest in shielding from inspection basic facts about the implementation of its execution protocol, such as whether the State is using expired drugs. If the protocol is in fact being followed, then transparency instills confidence in the protocol for everyone—prisoners, the courts, and the public alike. If it is not, then secrecy is intolerable, and disclosure of the relevant records is indispensable for determining whether the lapses at issue are likely to lead to an Eighth Amendment violation ...

By continuing to shroud its executions in secrecy, Florida undermines both the integrity of its own execution process and, potentially, this Court's ability to ensure the State's compliance with its constitutional obligations.

Trotter v. Fla., 146 S. Ct. 755, 755–56 (2026) (internal citations and footnotes omitted). Lukehart’s case presents this Court with the opportunity to remedy this Catch-22 situation that Florida capital defendants have been placed under by the persistent denial of

records related to lethal injection and also help ensure that the State of Florida is meeting its constitutional obligations related to executions. Lukehart should not have to guess at whether the State of Florida is, or is not, following its own etomidate protocol. Lukehart is entitled to information about the reliability and effectiveness of the drugs being used to kill him. Denying him the opportunity to access records that directly relate to how the State of Florida intends to carry out his execution on June 2, 2026 violates his right to due process and access to the courts under the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

The records that Lukehart requested in each of his demands relate to the subject matter of his postconviction claims and/or are reasonably calculated to lead to the discovery of admissible evidence corroborating claims raised therein. The circuit court abused its discretion in holding otherwise. Lukehart clearly explained in each records demand, and again at the records hearing held on May 6, 2026, the precise reason for each request and articulated clearly to the court what the anticipated nature of admissible evidence to be discovered was. PC/66-140; 166-173; 174-243; 314-320.

Nevertheless, the circuit court abused its discretion when it denied each of the three records demands filed on May 5, 2026. PC/293-304.

Notably, Lukehart argued to the circuit court that the requested records certainly could lead to the discovery of admissible evidence, as the qualified medical expert that undersigned counsel has hired to evaluate Lukehart's medical conditions, including his diminished kidney functioning, could rely on them to form the basis of his opinion on whether Florida's lethal injection procedures will cause Lukehart needless pain and suffering. This has proven to be true, as the very records that Lukehart requested from the District Eight Medical Examiner's Office have been shown in Lukehart's case to support a colorable claim for postconviction relief, rendering the circuit court's findings as to these records incorrect and directly challenging this Court's precedent holding that records related to lethal injection are not discoverable under Rule 3.852 because they do not relate to a colorable claim.²⁰

²⁰ See *Jones v. State*, 415 So. 3d 113, 120 (Fla. 2025); *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019); *Long v. State*, 271 So. 3d 938, 943-36 (Fla. 2019); *Jimenez v. State*, 265 So. 3d 462 (Fla. 2018); *Walton v. State*, 3 So. 3d 1000, 1014 (Fla. 2009).

Lukehart's qualified medical expert, Dr. Zivot, relied on some of the very same records that Lukehart requested and was denied from the District Eight Medical Examiner's Office when reaching his expert opinion supporting Lukehart's claim that Florida's lethal injection procedures are facially unconstitutional under the Eighth Amendment. Lukehart requested, but was denied, the autopsy files from the last ten executions that have occurred under FDOC's current lethal injection procedures. PC/166-173. Dr. Zivot was able to review the files of some of these post-execution autopsies when forming his opinions in Lukehart's case, and they support his expert opinion that Florida's lethal injection procedures create an objectively intolerable risk of needless pain and suffering. *See supra* at pp. 36-41.

The circuit court also abused its discretion in finding that Lukehart's records demands to the agencies should have been filed prior to the signing of his death warrant. Lukehart clearly explained to the circuit court at the records hearing precisely why the demands were not made until the warrant was signed. Specifically, under Fla.

R. Crim. P. 3.852(i), the subsection that governs requests for additional public records from an agency in a capital postconviction case, the Defendant must assert that the public records sought are “relevant to the subject matter of a proceeding under rule 3.851, or appear reasonably calculated to lead to the discovery of admissible evidence.” See Fla. R. Crim. P. 3.852 (i)(1)(C). Accordingly, any requests for information regarding lethal injection records, executioner and execution team training materials and credentials, autopsy files for the last ten individuals executed by lethal injection in Florida, or checklists and logs documenting previous executions could be denied as not relevant to a pending proceeding, as any related claim by an individual not under an active death warrant may not truly be ripe.²¹

Additionally, unlike every other natural person or corporation in the world, Lukehart belongs to a unique class of individuals²²

²¹ Lukehart does not assert that capital defendants are prohibited from filing public records demands for these types of records prior to the signing of a death warrant where the records are necessary to investigate and litigate potential method-of-execution claims.

²² That is, all death-sentenced individuals in the State of Florida. See Fla. R. Crim. P. 3.852(a)(1) (“This rule is applicable only to the

prohibited from obtaining public records pursuant to the broad “Sunshine laws” Florida has enacted under Chapter 119, Florida Statutes. Instead, as a death-sentenced individual, Lukehart is required to engage in an impossible endeavor of requesting records from various state agencies at precisely the correct time, and his requests are subject to the objections of the agencies, unlike requests made pursuant to Chapter 119. *See Fla. R. Crim. P. 3.852 (c)(1); (g)(3).*

To the extent that Rule 3.852 prohibits Lukehart from obtaining public records to which he would otherwise be entitled, Lukehart asserts that the Rule violates his Equal Protection and Due Process Rights under the Fourteenth Amendment of the United States Constitution and the corresponding provisions of the Florida Constitution.

Further, as Justice Sotomayor recently recognized, this Court has constantly rejected capital defendants access to execution-related records on the basis that the defendants cannot yet establish a colorable Eighth Amendment claim, while withholding the very

production of public records for capital postconviction defendants ...”).

records necessary to uncover and prove such a claim. *Trotter v. Florida*, 146 S. Ct. 755, 755-56 (2026) (statement respecting the denial of the application for stay and petition for certiorari). That inequity is even more apparent here, where individuals outside the capital litigation process were nevertheless able to obtain the execution-related records that Lukehart was forced to request under Rule 3.852. Capital defendants are therefore placed at a substantial disadvantage and forced to litigate constitutional violations blindly, while the State maintains exclusive control over the evidence necessary to prove them. Florida's continued reliance on secrecy not only frustrates meaningful constitutional review, but effectively insulates potential misconduct from scrutiny altogether.

Postconviction litigation is governed by principles of due process. *Easter v. Endell*, 37 F.3d 1343 (8th Cir. 1994); *Holland v. State*, 503 So. 2d 1250 (Fla. 1987). Lukehart has been denied due process and access to public records, *i.e.* records that any other natural person or corporation in the world is entitled to view. Lukehart has a need for these records that the rest of the public does not have: they are relevant to and necessary for the presentation of his constitutional challenge to his conviction and sentence, as well

as to Florida's lethal injection protocol. *See e.g. Glossip v. Gross*, 576 U.S. 863 (2015).

Lukehart must be given a fair opportunity to show that his execution will violate the Eighth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Florida Constitution. *Hall v. Florida*, 134 S. Ct. 1986, 2001 (2014) (“The death penalty is the gravest sentence our society may impose. Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution.”). For Lukehart to have that fair opportunity, he must be provided the complete records requested from the Florida Department of Law Enforcement, the Florida Department of Corrections, and the District Eight Medical Examiner's Office. Relief is proper.

CONCLUSION AND RELIEF SOUGHT

Based on the foregoing arguments, Lukehart respectfully requests that this Court grant a stay of execution; remand his case for an evidentiary hearing on all claims; vacate his sentence of death; and/or grant any other relief this Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed with the Florida Supreme Court by using the Florida Courts e-portal filing system and has been served on all counsel of record, on this 17th day of May, 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Initial Brief of the Appellant has been produced in Bookman Old Style 14-point font. This brief complies with the requirements of Fla. R. App. P. 9.210(a)(2)(D), as it contains approximately 15, 606 words.

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