*** CAPITAL CASE ***

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2025

FRANK A. WALLS,

Petitioner,

v.

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

Respondents.

APPLICATION FOR STAY OF EXECUTION

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

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Petitioner Frank A. Walls requests a stay of his scheduled December 18, 2025, execution pending this Court's consideration of his concurrently filed petition for a writ of certiorari. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983); 28 U.S.C. § 2101(f); Supreme Court Rule 23.

The standards for granting a stay of execution have been distilled into four factors—none of which were addressed by the Eleventh Circuit's stay denial below:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will

> substantially injure the other parties interested in the proceeding; and (4) where the public interest lies."

Nken v. Holder, 556 U.S. 418, 434 (2009) (internal citation omitted).

First, Mr. Walls has made a strong showing that he is likely to succeed on the merits, both as to his appeal of the Eleventh Circuit's ruling, and as to his substantive as-applied lethal injection claim.

Just days before Governor DeSantis signed Mr. Walls's death warrant, on October 28, 2025, counsel received alarming records showing that, over the course of an unprecedented number of Florida executions in 2025, corrections officials either willfully or negligently deviated from their drug protocol on numerous occasions, including preparing lower dosages of drugs than required, administering expired drugs, and preparing unauthorized drugs altogether.

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

Accordingly, just one week after the Governor signed his death warrant, Mr. Walls promptly raised these concerns in a 42 U.S.C. § 1983 action in the district court,

arguing that he faces "a demonstrated risk of severe pain" that is "substantial when compared to the known and available alternatives." *Glossip v. Gross*, 576 U.S. 863, 877-78 (2015). Mr. Walls's as-applied challenge relied on the confluence of both (1) the execution records; and (2) Mr. Walls's medical vulnerability. But the district court refused to consider the merits at all, despite recognizing that "Walls has presented evidence demonstrating that he may well suffer a cruel death by experiencing a feeling akin to drowning as a result of pulmonary edema." NDFL-ECF 22 at 10-11. But without analyzing any of the four established factors for a stay or injunction, including the likelihood of success on the merits, the district court summarily denied Mr. Walls a stay of execution solely on the grounds of undue delay in filing his complaint. The Eleventh Circuit upheld the stay denial, agreeing with the undue delay analysis and holding that there was no requirement that any federal court give any consideration to the serious allegations and evidence in Mr. Walls's complaint.

None of the courts below so much as considered the complaint's likelihood of success on the merits—the key factor for any stay-of-execution motion. Instead they myopically focused on the idea that Mr. Walls simply waited too long to bring suit (though both courts conspicuously failed to specify when suit *should* have been brought). The undue-delay analysis was factually and legally wrong because the primary component of Mr. Walls's claim—the execution logs—were uncovered just weeks before his suit was filed. And the Eleventh Circuit also wrongly denied a stay based on undue delay *alone*, without analyzing any of the stay factors, or allowing a

hearing on disputed facts regarding timing, or conducting even a cursory review of Mr. Walls's substantive claim. This Court's intervention is warranted.

The other stay factors favor Mr. Walls as well. Mr. Walls will suffer an irreparable injury without a stay because he will be executed in a manner that wantonly inflicts pain and suffering, violating the Eighth Amendment. Indeed, as courts have widely suggested, irreparable injury is presumptive under warrant. *See, e.g., Wainwright v. Booker*, 473 U.S. 935, 937 n.1 (1985) (Powell, J., concurring) ("The third requirement that irreparable harm will result if a stay is not granted is necessarily present in capital cases."); *see also In re Holladay*, 331 F.3d 1169, 1177 (11th Cir. 2003) ("We consider the irreparability of the injury that petitioner will suffer in the absence of a stay to be self-evident.").

The irreparable injury in a case challenging a method of execution is not only the execution itself, but also the superadded pain that would occur during that execution. *Powell v. Thomas*, 784 F. Supp. 2d 1270, 1283 (M.D. Ala.), *aff'd*, 641 F.3d 1255 (11th Cir. 2011) (finding "the alleged irreparable injury is not the fact alone that [plaintiff] will die by execution," but that he may experience superadded pain "under present protocols" during that execution) (citing *Baze v. Rees*, 553 U.S. 35, 50 (2008)). This is not only because the pain during execution may be torturous, but also because a violation of constitutional rights is presumed to cause irreparable injury. See *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996).

Likewise, a stay would not substantially harm the State. While the State has a legitimate interest in the timely enforcement of valid criminal judgments, it has no

legitimate interest in executing Mr. Walls via a method that would risk the wanton infliction of pain of suffering in violation of the Eighth and Fourteenth Amendments. *See, e.g.*, *In re Holladay*, 331 F.3d at 1177 (finding "no substantial harm that will flow to the State of Alabama or its citizens from postponing petitioner's execution to determine whether that execution would violate the Eighth Amendment").

Finally, granting a stay would not be adverse to the public interest. On the contrary, the public always has an interest in the preservation of constitutional rights and, most certainly, in the humane and dignified carrying out of a death sentence. *See Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986) (The Eighth Amendment seeks "to protect the dignity of society itself from the barbarity of exacting mindless vengeance" when carrying out an execution.). The legitimacy of the penological system turns on its adherence to constitutional bounds. Thus, it is in the public interest to address and resolve the merits of Mr. Walls's claim to identify and prevent the unconstitutional risk of causing gratuitous suffering. Allowing the State to execute Mr. Walls without meaningful review of whether that execution violates the Constitution is adverse to the public interest—more than any minimal delay that may result from a brief stay.

Mr. Walls's execution will be emblematic of a dark year in the history of Florida's death penalty. He is set to be the nineteenth prisoner executed this year—by far the highest number in a single year since this Court restored the death penalty 50 years ago, and more than double the number of all Florida executions between 2019 and 2024. The 2025 Florida executions have proceeded at an unprecedented,

breakneck pace of approximately two per month. It is clear that Respondents are unable to keep up with this pace while remaining within constitutional bounds, and Mr. Walls stands to suffer those consequences. The casual indifference that lower courts have shown to this severe and imminent danger should not result in rewarding Florida with its nineteenth execution of the year before a court can at least consider the merits of Mr. Walls's as-applied challenge. This Court's intervention is necessary.

The Court should stay Mr. Walls's execution and grant his petition for a writ of certiorari to address the important constitutional questions raised in this case.

Respectfully submitted,

/s/ Linda McDermott
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