*** CAPITAL CASE ***

No. 25A698

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.

REPLY IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION

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

Respondents' arguments in opposition to Mr. Walls's application for a stay of execution are largely rehashed from their brief in opposition to Mr. Walls's certiorari petition. But a few points warrant a separate response here.

First, Respondents argue that there is no reasonable probability that four Justices of this Court would vote to grant certiorari to review the Eleventh Circuit's tenuous undue-delay-based rejection of his lethal injection challenge. Response at 6-8. But that argument is belied by precedent cited in Respondent's own brief. *See, e.g.*, *Dunn v. Price*, 587 U.S. 929, 929-33 (2019) (four Justices voting for relief and rejecting allegations of delay); *see also Dunn v. Ray*, 586 U.S. 1138, 1138-40 (2019) (same). There is at least a reasonable probability that four Justices would vote to grant review

of the Eleventh Circuit's exclusive reliance on a dubious undue-delay analysis to ignore and discard the serious allegations and evidence proffered by Mr. Walls.

Second, Respondents argue that Mr. Walls would not be irreparably harmed if he were to be executed because it is only a "possibility" that he would suffer pain that rises to the level of an Eighth Amendment violation. Response at 10. But it is Respondents who are speculating about the absence of any such pain. For his part, Mr. Walls proffered unrebutted medical findings and Respondents' own execution logs in the lower courts, which were never afforded any review or development at the insistence of Respondents. *See Dunn*, 587 U.S. at 930 (Breyer, Ginsburg, Sotomayor, and Kagan, JJ., dissenting) ("Price submitted an expert declaration . . . and the State submitted nothing to rebut his expert's assertions.") (internal quotations omitted).

Respondents tout that "Florida has executed over thirty inmates under this protocol, which has worked quickly and efficiently each time." Response at 10. But Respondents conspicuously ignore that Florida's use of a paralytic in its protocol will mask any torturous sensations of drowning as the result of pulmonary edema. *Cf. Baze v. Rees*, 553 U.S. 35, 122 (2008) (Ginsburg, J., dissenting) (explaining that use of a drug "to paralyze the inmate means he will not be able to scream after the second drug is injected, no matter how much pain he is experiencing."). Florida should be gravely concerned about this possibility, especially where the prisoner is medically vulnerable like Mr. Walls, and where the prison's own execution records show repeated violations of critical procedures. Florida has done nothing to slow down the relentless pace of executions or conduct any review.

Third, Respondents make no attempt to argue that the public interest favors executing Mr. Walls without any review of the unrebutted evidence supporting his challenge. Indeed, the former Warden of Florida State Prison, who spent years inside the execution chamber and personally oversaw executions, has warned that Mr. Walls's claims "should concern every Floridian," particularly because the execution records Mr. Walls proffered "are not minor paperwork issues," but an indication of serious problems with Florida's ability to execute prisoners at record pace. The former Warden noted how "easily such failures can occur when executions are scheduled back-to-back. . . . When warrants pile up, staff have less time to review procedures, double-check documentation, or recover from the last execution before being asked to carry out the next one." Ron McAndrew, *Florida's Execution Pace Tests the Limits of the Law—and its Workforce*, Tampa Bay Times (Dec. 17, 2025), *available at* https://www.tampabay.com/viewpoints/2025/12/17/floridas-execution-pace-tests-limits-law-its-workforce-column/. Yet Respondents continue to dismiss the troubling logs.

Fourth, Respondents argue that Mr. Walls's as-applied challenge is necessarily speculative because Florida's lethal injection protocol has previously been found constitutional by the Florida Supreme Court. Response 4-5. But the constitutionality of Florida's anomalous, etomidate-based lethal injection process is far from a settled question. In fact, a recent facial challenge to Florida's current protocol in *Brant v. Palmer, et al.*, No. 3:13-cv-412-MMH-SHJ, ECF 194 (M.D. Fla. Jul. 17, 2025), has survived summary judgment and is set for trial in federal district court in 2027.

Fifth, Respondents suggest that *any* litigation initiated after a death warrant is signed is automatically dilatory. But the disturbing practical implication of Respondent's approach would mean that any claim, no matter how meritorious, would be automatically rejected under warrant. Equitable discretion can and should be applied, *Nken v. Holder*, 556 U.S. 418, 434 (2009), even when the cause of action accrues close in time to the death warrant. Denying relief on clearly dilatory, speculative, or meritless grounds, or when there is an obvious attempt at manipulation, is "hardly the same thing as treating late-arising claims as presumptively suspect[.]" *Bucklew v. Precythe*, 587 U.S. 119, 172 (2019) (Sotomayor, J., dissenting). The "only sound approach is for courts to continue to afford each request for equitable relief a careful hearing on its own merits," and that "responsibility is never graver than when the litigation concerns an impeding execution." *Id.* at 173. "Meritorious claims can and do come to light even at the eleventh hour," as they did here, "and the cost of cursory review in such cases" is unacceptably high. *Id.* (citing *Glossip v. Gross*, 576 U.S. at 927).

Finally, Respondents mislead in stating that Mr. Walls's case "has been thoroughly litigated for decades with numerous unsuccessful attempts at relief," while the State has "expend[ed] decades worth of resources defending a long-settled judgment and sentence of death." BIO at 8. Respondents omit that much of this time was the result of the State's own malfeasance in this case. For instance, the Florida Supreme Court was forced to reverse Walls's conviction on direct appeal based on the State's "illegal subterfuge" and "gross deception" in sending a state agent posing as a

psychiatrist to elicit damaging statements from him in the jail. *Walls v. State*, 580 So. 2d 131, 133 (Fla. 1991). And in 2016, the Florida Supreme Court was forced to remand Mr. Walls's case for an evidentiary hearing on his intellectual disability after the State had advocated for an improper bright-line IQ-score cutoff that was struck down by this Court in *Hall*. *Walls v. State*, 213 So. 3d 340, 346-47 (Fla. 2016). And just two years ago, the Florida Supreme Court upended Mr. Walls's case again by reneging on the long-final 2016 mandate and refusing to even review the results of the evidentiary hearing. *Walls v. State*, 361 So. 3d 231, 233-34 (Fla. 2023). The State fails to accept any responsibility for its significant role in any delays in this case. While the State attempts to distract from the Eighth Amendment issue by focusing on the facts of the crime, or the timing of the death warrant, the real issue before this Court is whether Mr. Walls faces a serious risk of superadded pain during execution.

The Court should grant a stay of execution.

Respectfully submitted,

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