

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

**FRANK A. WALLS**

Plaintiff,

Case No. 4:25-cv-00488

v.

**CAPITAL CASE**

**RICKY D. DIXON**, Secretary,  
Department of Corrections,  
in his official capacity;

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

and

**RANDALL POLK**, Warden,  
Florida State Prison,  
in his official capacity,

Defendants.

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**42 U.S.C. § 1983 COMPLAINT**  
**FOR DECLARATORY AND INJUNCTIVE RELIEF**

**I. NATURE OF ACTION**

1. Plaintiff Frank A. Walls is a death-sentenced Florida prisoner with an execution date of December 18, 2025, at 6:00 p.m.

2. This is a civil action seeking to enjoin the state-official Defendants, Secretary Ricky Dixon and Warden Randall Polk, from executing Mr. Walls pursuant

to Florida's current execution policies and procedures, and to enforce Mr. Walls's rights under 42 U.S.C. § 1983 and the Eighth Amendment.

3. Defendants intend to execute Mr. Walls using Florida's anomalous three-drug lethal injection protocol (hereinafter "the Etomidate Protocol"). The Etomidate Protocol was last reviewed and adopted on February 18, 2025. App. A. The Protocol is the subject of a facial legal challenge in the Middle District of Florida. *See* Third Amended Complaint, *Brant v. Palmer, et al.*, No. 3:13-cv-412-MMH-SHJ (M.D. Fla. Sept. 13, 2024).

4. In this as-applied challenge to the administration of the Etomidate Protocol to him specifically, Mr. Walls asserts that his numerous and severe medical issues render him likely to experience prolonged suffering if the Protocol is applied to him. Those conditions are indicated in the attached affidavit of Dr. Joel Zivot, who examined Mr. Walls and his medical records. App. B (Affidavit of Dr. Joel Zivot).

5. Further factual development in this Court would provide additional support for the conclusion that the Etomidate Protocol, when administered to a medically vulnerable prisoner like Mr. Walls, will induce a domino-effect of symptoms that culminate in a torturous death from pulmonary edema.

6. The risk of Mr. Walls suffering such a death is constitutionally impermissible. There are feasible and easily implemented alternative execution methods that would entail a significantly less severe risk of pain to Mr. Walls.

7. Mr. Walls requests temporary, preliminary, and permanent injunctive relief to prevent Defendants from executing him using the Etomidate Protocol.

## II. PARTIES TO THE COMPLAINT

### A. Plaintiff

8. Mr. Walls is a prisoner on Florida's death row pursuant to a 1992 death sentence originating from Okaloosa County. *Walls v. State*, 641 So. 2d 381 (Fla. 1994). He is a citizen of the United States and a resident of the State of Florida.

9. Mr. Walls is currently incarcerated on death watch at Florida State Prison in Raiford, Florida. Mr. Walls has been sentenced to death by means of lethal injection, set to occur on December 18, 2025, under the direction of Defendants.

### B. Defendants

10. Defendant Dixon is the Secretary of the Florida Department of Corrections ("DOC") which is headquartered in Tallahassee, Florida. As Secretary, Defendant Dixon is responsible for the promulgation and enforcement of policies and procedures generally applicable to all Florida prisons and prisoners, and in particular the procedures and protocols related to executions by lethal injection. App. A. He is sued in his official capacity.

11. Defendant Dixon is required to review Florida's lethal injection procedure every two years, at a minimum, and certify to the Governor that the DOC

is “adequately prepared to carry out executions by lethal injection.” *Id.* at 14. Defendant Dixon’s last review and certification was February 18, 2025. App. A.

12. Defendant Polk is the Warden of Florida State Prison in Raiford. His facility is the location for all executions and for the administration of lethal injection by DOC. He is sued in his official capacity.

13. As noted in the Etomidate Protocol, both Defendants have a duty to ensure that executions are carried out in a manner consistent with “evolving standards of decency” and not in violation of the Eighth Amendment. *Id.* at 1.

### **III. JURISDICTION AND VENUE**

#### **A. Jurisdiction**

14. This action arises under federal statute and presents a federal question within this Court’s jurisdiction under Article III and 28 U.S.C. §§ 1331 and 1343(a)(3). This action is brought pursuant to 42 U.S.C. § 1983. This Court has the authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201(a) and 2202, and Federal Rule of Civil Procedure 65.

#### **B. Venue**

15. Pursuant to 28 U.S.C. § 1391(b), venue is appropriate in the Northern District of Florida because “a substantial part of the events or omissions giving rise to the claim” occurred here. Defendant Dixon is headquartered and resides in the District, and the Etomidate Protocol is certified and mandated from the District.

#### IV. FACTUAL BACKGROUND

##### A. The Etomidate Protocol

16. Under Florida law, a death sentence is to be carried out pursuant to the requirements of Fla. Stat. § 922.105. The statute does not prescribe the specific drugs, dosages, drug combinations, or manner of intravenous access employed during an execution. Furthermore, the statute is silent on certification, licensure, experience, or competence of those who participate in an execution. All decisions regarding the Etomidate Protocol are determined by Defendant Dixon, who retains the unfettered ability to revise the Protocol whenever DOC is inclined to do so.

17. The Etomidate Protocol is specifically exempt from Florida's Administrative Procedures Act. *See* Fla. Stat. § 922.105(7).

18. Defendant Dixon certified DOC's ability to adequately carry out the Etomidate Protocol with regard to any prisoner, without contingencies for any varying medical concerns. App. A. In so doing, Defendant Dixon assured that the Protocol "has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society . . . . The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering." *Id.* at 14.

19. Each execution involves a "team warden," who is a DOC staff member appointed by Defendant Dixon to oversee the procedure. *Id.* at 2. The "execution

team” consists of other staff who are either designated by the team warden or Defendant Dixon. *Id.* at 1. The qualifications and licensure of the execution staff are not expressly outlined in the Etomidate Protocol.

20. The lethal chemicals are administered by a designated executioner whose qualifications are equally unknown. The executioner is chosen by the team warden if that person can sufficiently “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.” *Id.* at 1.

21. The Etomidate Protocol calls for successive intravenous injections of 200 milligrams of etomidate, a sedative, followed by 1000 milligrams of rocuronium bromide, a paralytic agent, and 240 milliequivalents of potassium acetate, which stops the heart. *Id.* at 6-7.

22. On the day of an execution, a designated executioner will prepare syringes with the required dosages to dispense during the lethal injection. *Id.* That executioner is also instructed to prepare a second set that is not administered unless expressly ordered by the team warden. *Id.* at 7.

23. The source of the drugs used in the Etomidate Protocol is unknown, and the identity of the pharmacy that manufactures the chemicals used by Defendants in executions is confidential. Fla. Stat. § 945.10. Little is known about Defendants’

standards for storing or testing of the drugs, or how much the Defendants spend on each execution.

24. Thirty minutes before the execution is set to begin, a designated staff member will gain venous access to the prisoner through each arm. App. A at 9. One arm will be connected to a primary IV line, and the second arm will be connected to a secondary line. *Id.* If the staff member cannot obtain IV access through the prisoner's arms, the Protocol authorizes that person to seek peripheral venous access by trying "other appropriate sites." *Id.* If peripheral venous access cannot be achieved, the Protocol authorizes the staff member to gain access to the prisoner's veins through a cut-down method, wherein executioners cut directly into the prisoner's skin to insert the IV cannula. *Id.*

25. Multiple parts of the prisoner's body will be strapped down to the gurney, and their fingers will be taped down with a bandage binding his or her hands to the gurney to hide observable movement. Two heart monitors will be strapped to the prisoner's chest, to be monitored in a smaller room adjacent to the execution chamber, out of sight from witnesses. App. A at 9.

26. When the execution begins, a curtain will open, allowing witnesses to view the prisoner. *Id.* at 11. The executioner will administer the drugs from the smaller room. *Id.* at 10. The drugs will travel through a long stretch of IV tubing to reach the prisoner's veins.

27. The Etomidate Protocol begins with the injection of etomidate from two syringes containing 100mg of etomidate each. *Id.* at 10-11. After that dosage is administered, the team warden will assess whether the prisoner appears sufficiently unconscious. *Id.* at 11.

28. If the team warden determines that the prisoner is still conscious, the execution team will assess the viability of the secondary IV line and perform a cutdown procedure if that access point is compromised. *Id.* This will occur out of view from the witnesses. *Id.* Once an IV is again set, the process will continue, and etomidate will be injected a second time. *Id.*

29. If at that point the team warden is satisfied with the prisoner's appearance of unconsciousness, the execution will proceed. From the adjacent small room that is out of sight from the witnesses, the executioners will continue and administer 1000mg of rocuronium bromide and 240 milliequivalents of potassium acetate with syringes of saline solution in between. *Id.* at 11-12.

30. When the heart monitors reflect a flat line reading, a physician will then inspect the prisoner to determine if he or she is still breathing and if there is a heartbeat. *Id.* at 13. That physician will pronounce the prisoner dead, concluding the execution. *Id.* at 13.

31. Florida has executed thirty-one (31) prisoners with the Etomidate Protocol. Seventeen (17) of those executions occurred in 2025. *Execution Database,*

Death Penalty Information Center, available at <https://deathpenaltyinfo.org/facts-and-research/data/executions> (last accessed Nov. 20, 2025).

**B. Mr. Walls’s Rapidly Declining Health**

32. In July 2025, Mr. Walls began experiencing dizzy spells that worsen until he feels as if he is hyperventilating. At that time, Mr. Walls had an observable difficulty speaking without stuttering and was visibly struggling to catch his breath. Counsel contacted Dr. Zivot and requested that he perform a physical evaluation of Mr. Walls.

33. Dr. Zivot examined Mr. Walls on July 23, 2025, at Union Correctional Institution in Raiford, Florida. App. B. The examination revealed an array of conditions including “hypertension, hyperlipidemia (elevated cholesterol), a thyroid disorder requiring thyroid hormone replacement, gastrointestinal reflux, obesity, long-standing obstructive sleep apnea requiring the nightly use of a CPAP (Continuous Positive Airway Pressure) machine, and chronic and poorly controlled back pain” that prevents him from lying flat. *Id.* at 2-3.

34. Dr. Zivot also uncovered several other concerns pertaining to his respiratory and cardiac functioning.<sup>1</sup> *Id.* at 3. Namely, Dr. Zivot observed that Mr.

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<sup>1</sup> Several details in Dr. Zivot’s affidavit also demonstrate Defendant Dixon’s failure to provide an adequate forum for thorough medical testing to support Mr. Walls’s claim. Dr. Zivot was unable to take an ultrasound of Mr. Walls’s heart because there was no Wi-Fi in the visiting room, was limited in obtaining an accurate

Walls's blood oxygen saturation was declining at a rapid rate despite the treatment plan prescribed by medical staff in DOC, indicating poor respiratory and cardiac health. *Id.*

35. Dr. Zivot reviewed Mr. Walls's recent medical records. *Id.* at 2. Among those records were notes from an examination of Mr. Walls on April 1, 2018. *Id.* at 3. On that date, Mr. Walls's oxygen saturation was noted to be at a healthy level—98%. *Id.* When Dr. Zivot assessed Mr. Walls in July 2025, his oxygen saturation level had significantly declined to 87-92%. *Id.* Dr. Zivot noted this significant decrease likely “reflects worsening chronic pulmonary insufficiency related to his long-standing obstructive lung disease over this time.” *Id.* “An oxygen saturation of 98% is normal, while an oxygen saturation of 87-92% is highly abnormal.” *Id.* Dr. Zivot found that this significant decrease, in light of Mr. Walls's compliance with recommended treatment plans like nightly usage of a CPAP machine, “represents a severe decline” in Mr. Walls's health. *Id.* at 4.

36. Mr. Walls's oxygen saturation levels, 87-92%, are dangerously low and explain the deterioration in his health that was observed in July 2025. *Blood Oxygen Level*, Cleveland Clinic (Feb. 18, 2022), <https://my.clevelandclinic.org/health/diagnostics/22447-blood-oxygen-level>. Low blood oxygen levels are

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blood pressure reading due to Mr. Walls's shackles, and could not even determine an accurate weight for Mr. Walls. App. B at 4.

indicative of poor heart and lung functioning and are comorbid with other conditions that affect healthy breathing like Chronic obstructive pulmonary disease (COPD) and asthma. *Id.* Severe low blood oxygen levels explain Mr. Walls’s reported symptoms, including confusion, dizziness or fainting, and even difficulty speaking. *Id.* Medical professionals normally advise that those with blood oxygen below 88% seek immediate medical attention. *Id.* Furthermore, because blood oxygen measures the amount of oxygen circulating the entire body, low oxygen saturation affects the performance of nearly all of Mr. Walls’s vital organs.

37. Given Mr. Walls’s deterioration, Dr. Zivot concluded “to a reasonable degree of medical certainty” that there is a high risk of severe and painful outcomes should Defendants attempt to execute Mr. Walls by lethal injection:

I have serious concerns about [Mr. Walls’s] heart and lung function. His thyroid function is likely abnormal, and this will significantly impact his cardiovascular response to execution. Obstructive sleep apnea leads to chronic elevation of blood carbon dioxide levels. In turn, this leads to rising blood pressure within the lungs – so-called pulmonary hypertension. This causes the right side of the heart to enlarge and lose function. Right heart failure and pulmonary hypertension lead to liver dysfunction. Heart, lung, and liver dysfunction significantly raise the risk of profound and painful organ failure and increase the known risk of pulmonary edema, which is often observed in lethal injection executions.

App. B at 4-5.

38. What Dr. Zivot predicts is essentially a domino effect from one ailment to the next that would result in an extremely painful execution. Mr. Walls's sleep apnea and resultant low oxygen will level cause an increase of carbon dioxide in his blood, which will increase blood pressure in the lungs, causing his heart to enlarge and eventually fail. The combination of heart failure and pulmonary hypertension will induce liver dysfunction. When the heart, lungs, and liver are all experiencing dysfunction, this will substantially increase the risk of profound and painful organ failure, increasing the known risk of pulmonary edema. There is a greater risk of this happening if Mr. Walls is executed by lethal injection because his organs are more likely to fail, increasing the probability of blood accumulating in his already weakened lungs.

**C. Pulmonary Edema**

39. Pulmonary edema is a known risk of several lethal injection protocols, including the Etomidate Protocol, and has come under scrutiny for the likelihood that it inflicts intense pain and suffering in violation of the Eighth Amendment.

40. Pulmonary edema is the result of when a large dosage of a potent drug (here, etomidate) burns through the body and breaks down the membranes in the lungs. App. B at 5. The holes in the lungs then fill with blood, causing severe shortness of breath. It is this effort to breathe as the lungs perforate and slowly fill

with blood and fluid that induces the terrorizing feeling of panic associated with drowning. *Id.*

41. While Defendants have carried out dozens of executions that they allege have occurred without incident, in reality most outward signs of complications are simply masked by the Etomidate Protocol, which calls for the injection of rocuronium bromide as the second drug. Rocuronium, a paralytic, makes it impossible for the prisoner to move or communicate and, consequently, for any witnesses to the execution to detect the torturous effects of the first drug.<sup>2</sup>

42. Given the likelihood of these dangerous side effects, other jurisdictions have abandoned paralytic drugs entirely. Arizona pledged in 2016 that “the ADC will never again use a paralytic in an execution...and the ADC consequently will remove their current three-drug lethal injection protocol from the current and any future version of the ADC’s execution procedures.” Ex. 23, Stipulated Settlement Agreement and [Proposed] Order for Dismissal of Claims Six and Seven in *First Amendment Coalition v. Ryan*, No. 2:14-cv-1447-NVW-JFM, ECF No. 186 (D. Ariz. Dec. 19, 2016).

43. When the first Trump administration resumed federal executions in 2019, it elected a one-drug lethal injection protocol that omitted the usage of a

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<sup>2</sup> Florida’s practice of strapping and taping prisoners to the gurney attempts to further obscure any movements that may occur.

paralytic. See Bureau of Prisons, *Addendum to BOP Execution Protocol: Federal Death Sentence Implementation Procedures* (July 25, 2019).

44. In 2018, after the discovery that the sedative midazolam was known to cause pulmonary edema, a federal judge in the Southern District of Ohio found that pulmonary edema rose to the level of torture to implicate the Eighth Amendment, noting that during an evidentiary hearing on the issue, “all medical witnesses to describe pulmonary edema agreed it was painful, both physically and emotionally, inducing a sense of drowning and the attendant panic and terror, much as would occur with the torture tactic known as waterboarding.” *In re Ohio Execution Protocol Litigation*, No. 2:11-cv-1016, 2019 WL 244488, at \*63 (S.D. Ohio Jan. 14, 2019).

45. The autopsy of Corey Johnson, one of the thirteen federal prisoners executed in 2020, revealed that Mr. Johnson suffered such severe pulmonary edema during his execution that the fluid rushed up his trachea and actually exited his mouth. See Michael Tarn, Associated Press, <https://apnews.com/article/trump-executions-biden-death-penalty-brandon-bernard-c1b26807c5c40b337d14485c3d6df2de> (Oct. 2, 2023).

46. Similarly, the autopsy of another federal prisoner executed at that time, Wesley Purkey, revealed that fluid had also rushed up Mr. Purkey’s trachea. This reflects that Mr. Purkey experienced pulmonary edema and a “near drowning” experience as he died. Michael Tarn, Associated Press,

<https://apnews.com/article/in-state-wire-ar-state-wire-az-state-wire-ks-state-wire-us-news-3df6980ccbcd7505e035b8bee4c6f2a9> (Aug. 21, 2020).

47. On January 15, 2025, after a thorough, three-year investigation, Attorney General Merrick Garland determined that the risk of pulmonary edema left “significant uncertainty” about whether the federal lethal injection protocol “affords the rights guaranteed by the Constitution and the laws of the United States but also treats individuals being executed fairly and humanely.” Merrick Garland, Determination Following Review of the Federal Execution Protocol Addendum and the Manner of Execution Regulations, at 2 (Jan. 15, 2025). Attorney General Garland then rescinded the federal protocol “until that certainty is resolved.” *Id.*

48. As recently as August 5, 2025, the State of Tennessee executed Byron Black by lethal injection via pentobarbital, a method known to induce pulmonary edema. During Mr. Black’s execution, he “groaned for several minutes, and told his spiritual advisor he was in pain.” Catherine Sweeney, 90.3 WPLN News, <https://wpln.org/post/autopsy-sheds-light-on-byron-blacks-painful-execution/> (Sept. 11, 2025). Mr. Black lifted his head off the gurney and said, “it’s hurting so bad.” *Id.* Mr. Black’s autopsy revealed that he suffered pulmonary edema during the execution. *Id.* Because Tennessee does not employ a paralytic drug, Mr. Black was able to communicate the pain he was experiencing. Mr. Walls, who is at a severe risk of intolerable pain, will not be able to do so because of the Etomidate Protocol.

49. Eyewitness accounts of prior executions by the Etomidate Protocol consistently observe heaving chests and heavy breathing, key indicators of pulmonary edema. The paralytic drug in the Etomidate Protocol likely masks even clearer signs of pulmonary edema.

50. During the 2024 execution of Loran Cole, Mr. Cole began taking deep breaths three minutes after the process began. Witnesses noted that his cheeks filled with air and his entire body trembled. *See* Brendan Farrington, Associated Press, <https://apnews.com/article/florida-execution-loran-cole-death-penalty-b1f94798d3f6adf86f21fc611dd4c341> (Aug. 29, 2024).

51. In the execution of Thomas Gudinas in June 2025, media accounts describe that Mr. Gudinas's eyes rolled back as his chest heaved before he lost color in his face. *See* David Fischer and Freida Frisaro, Associated Press, <https://apnews.com/article/florida-execution-thomas-lee-gudinas-f90c9b20ca78a95551e45b3db044c25d> (Jun. 24, 2025).

52. In April of 2025, Michael Tanzi's chest heaved for three straight minutes before he was declared dead. Curt Anderson, Associated Press, <https://apnews.com/article/michael-tanzi-execution-janet-acosta-miami-herald-1a7dc19703a57df9a48b1e5ebd391ecb> (Apr. 8, 2025).

53. The November 13, 2025, execution of Bryan Jennings was highly abnormal, lasting over twenty minutes with an uncommon amount of documented movement. *See* Jim Saunders, ABC 7 News, <https://www.mysuncoast.com/2025/11/14/florida-executes-brevard-county-killer-46-years-after-crime/> (Nov. 13, 2025).

54. These observations comport with the medical conclusion that gasping and heaving during an execution “represents the rapid accumulation of bloody frothy fluid in their lungs...they will gasp for air as they suffocate to death.” App. B at 5. Because prisoners’ lungs are known to fill with this frothy fluid when they experience pulmonary edema, it is conclusive that it occurs when they are still alive. This is because froth can only form if air is still passing through the lungs, as it would while a prisoner struggles to breathe. *See* Noah Caldwell, “Gasping for Air: Autopsies Reveal Troubling Effects of Lethal Injection,” National Public Radio (Sept. 21, 2020).

55. The average human lung weighs between 400-450 grams. *Id.* In a review of available autopsies from Florida executions, the measured lung weights of some prisoners far surpassed that average.<sup>3</sup>

56. By way of example, the autopsy of Eric Branch, who was executed with the Etomidate Protocol on February 22, 2018, showed pulmonary edema and heavy

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<sup>3</sup> Because of the sensitive nature of these reports, Mr. Walls’s counsel has attached them with only the lung weights unredacted.

lungs, weighing 770g on the right and 660g on the left. His lungs were so full of liquid that froth was present all the way up his windpipe. App. C (Autopsies) at 2. Heavy lungs with congestion and edema is listed as a cause of death. *Id.* at 4.

57. The autopsy of Darryl Barwick, who was executed on May 3, 2023, noted that his right lung weighed 830g while his left lung weighed 590g. App. C at 7. Mild pulmonary edema and congestion is listed as a cause of death. *Id.* at 8.

58. Loran Cole's autopsy, prepared after his August 29, 2024, execution, documented lung weights of 820g on the right and 730g on the left. *Id.* at 10. Pulmonary congestion and edema is listed as a cause of death. *Id.* at 9.

59. The autopsy of Michael Tanzi, who was executed on April 8, 2025, noted that his right lung weighed 660g and his left lung weighed 720g. *Id.* at 14. Pulmonary congestion is listed as a cause of death. *Id.* at 12.

## V. CAUSE OF ACTION:

### **Defendants' Plan to Execute Mr. Walls Using the Etomidate Protocol Creates a Substantial Risk of Severe Pain and Suffering, in Violation of the Eighth Amendment**

61. To establish that Defendants' elected method of execution is unconstitutional as applied to him, Mr. Walls must show that the Etomidate Protocol is "sure or very likely to cause serious illness and needless suffering" and "give rise to sufficiently imminent dangers." *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (quoting *Baze v. Rees*, 553 U.S. 35, 50 (2008)).

62. Specifically, Mr. Walls must demonstrate that the method of execution poses a “‘substantial risk of serious harm,’ an ‘objectively intolerable risk of harm’ that prevents prison officials from pleading that they were ‘subjectively blameless for purposes of the Eighth Amendment.’” *Price v. Commissioner*, 920 F.3d 1317, 1326 (11th Cir. 2019) (quoting *Glossip*, 576 U.S. at 877).

63. Mr. Walls must also show that the risk of harm is “substantial when compared to the known and available alternatives.” *Glossip*, 576 U.S. at 878. This inquiry is comparative. In *Bucklew v. Precythe*, the Court advised that “[t]he Eighth Amendment does not come into play unless the risk of pain associated with the State’s method is ‘substantial when compared to a known and available alternative’” 587 U.S. 119, 134 (2019) (quoting *Glossip*, 576 U.S. at 878, and *Baze*, 553 U.S. at 61). It is therefore necessary to identify when the pain caused by a method is “gratuitous” when compared to other methods. *Id.* at 136.

64. If Mr. Walls makes that showing, Defendants must implement the suggested alternative absent a legitimate penological reason. *Id.* at 134.

**A. Mr. Walls’s Substantial Risk of Serious Harm**

65. Mr. Walls satisfies *Glossip*’s first requirement by having alleged sufficient facts regarding his vulnerability to the intolerable pain of pulmonary edema that will result from the administration of the Etomidate Protocol to him.

66. The Supreme Court has suggested that a lethal injection protocol that causes the lungs to fill with fluid creates a “constitutionally unacceptable risk of suffocation.” *See Baze*, 553 U.S. at 53.

67. Other federal courts have grappled with the issue of whether pulmonary edema induces a torturous death that implicates the Eighth Amendment. *See, e.g., In re Ohio Execution Protocol*, 2019 WL 244488, at \*70 (finding after an evidentiary hearing that a prisoner satisfied the first prong of *Glossip* after extensive testimony regarding the risk of pulmonary edema from Ohio’s then-existing three-drug protocol); *but see* 946 F.3d 287 (6th Cir. 2019) (disagreeing with the district court’s factfinding on the ground that “sensations of drowning and suffocation” are constitutionally permissible in light of the nation’s history of hanging).<sup>4</sup>

68. Simulated drowning, which pulmonary edema induces, has been widely recognized as torture. On April 29, 2009, Former President Obama unequivocally recognized that waterboarding is torture. Jeff Mason, Reuters (Apr. 29, 2009), <https://www.reuters.com/article/economy/obama-says-bush-approved-waterboardi>

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<sup>4</sup> The district court’s findings were nonetheless adhered to by the Governor of Ohio, with Republican Governor Mike DeWine stating that “Ohio is not going to execute someone under my watch when a federal judge has found it to be cruel and unusual punishment.” Laura A. Bischoff, Dayton Daily News (Feb. 19, 2019), <https://www.daytondailynews.com/news/state--regional-govt--politics/gov-mike-de-wine-stops-all-executions-ohio/1CvQOUD9itSaRYz1FiTBsN/>. The last execution in Ohio was in 2018. *See* Death Penalty Information Center, *Execution Database*, available at <https://deathpenaltyinfo.org/facts-and-research/data/executions?state=Ohio&federal=No>.

ng-was-torture-idUSN29465634/ (“Waterboarding violates our ideals and values. I do believe that it is torture.”)

69. Another district court reached the same conclusion during the series of federal executions in 2020. *See In re Federal Bureau of Prisons’ Execution Protocol Cases*, 471 F. Supp. 3d 209, 218–219 (D. DC 2020). There, the district court noted of expert declarations regarding the 2019 federal execution protocol,

[T]he majority of inmates executed via pentobarbital injection suffered flash pulmonary edema during the procedure . . . . Eyewitness accounts of executions using pentobarbital describe inmates repeatedly gasping for breath or showing other signs of respiratory distress, and indicate that flash pulmonary edema is common and extremely painful.

*Id.* at 218.

70. The court there relied on one expert’s conclusion that it was a “virtual medical certainty that most, if not all, prisoners will experience excruciating suffering, including sensations of drowning and suffocation’ during an execution conducted in accordance with the 2019 Protocol.” *Id.* at 218. These medical findings led the district court to find that plaintiffs had met the first prong of *Glossip*. *Id.* at 219. Although the Supreme Court ultimately vacated the district court’s stay, it did so on narrow grounds pertaining to the frequent usage of pentobarbital in other jurisdictions. *Barr v. Lee*, 591 U.S. 979, 981 (2020). The same cannot be said for the Etomidate Protocol.

71. In an as-applied context, a member of the Supreme Court has commented on the medical circumstance of a then-to-be executed federal prisoner, Dustin Higgs, due to his specific vulnerability to pulmonary edema. *See United States v. Higgs*, 141 S. Ct. 645 (2021). Higgs had tested positive for COVID-19, and that diagnosis, coupled with asthma and a heart condition, rendered him more susceptible to pulmonary edema. *Matter of Federal Bureau of Prisons' Execution Protocol Cases*, 514 F. Supp. 3d 136, 143 (2021). On the day before his execution, dissenting from the opinion that permitted the federal government to carry out the execution, Justice Breyer noted that:

The present case concerns an inmate infected with COVID-19 at the Federal Correctional Institution in Terre Haute, Indiana. He argues, and the District Court agreed, that COVID-19 caused him significant lung damage and that, as a result, executing him by injection of pentobarbital will “subject [him] to a sensation akin to waterboarding.”

*Higgs*, 141 S. Ct. at 645 (Breyer, J., dissenting). Justice Breyer expressed concern over the issue of pulmonary edema, questioning “[t]o what extent does the Government’s use of pentobarbital for executions risk extreme pain and needless suffering?” *Id.*

72. Dr. Joel Zivot concluded that Mr. Walls’s medical conditions make him extremely vulnerable to suffering extreme pain if Defendants administer the Etomidate Protocol to kill him.

73. Mr. Walls's health has been declining rapidly this year and reached a breaking point in July when he began experiencing dizzy spells and feeling as if he was hyperventilating. Mr. Walls was frequently short of breath, even when walking short distances, and noted that he relied on his CPAP machine nearly constantly to breathe. As a result of this decline, Dr. Zivot was retained to review Mr. Walls's medical file and conduct an in-person examination.

74. After evaluating Mr. Walls on July 23, 2025, Dr. Zivot expressed serious concern about Mr. Walls's respiratory and cardiac functioning. App. B. at 3. Primarily, Dr. Zivot noticed a steep decline in Mr. Walls's blood-oxygen levels, despite his compliance with recommended treatment like the daily use of his CPAP machine. *Id.* This indicates that Mr. Walls's body is not providing itself with enough oxygen for his organs to carry out their essential functions. *Id.* In light of Mr. Walls's ailing health, Dr. Zivot predicts a cascade of organ failure starting with his lungs, heart, and liver, which substantially increases the probability of blood accumulating in Mr. Walls's lungs. *Id.* at 4-5. Mr. Walls will choke to death on this blood.

75. Mr. Walls's poor respiratory and cardiac functioning place him at dangerous risk of the torturous effects of pulmonary edema. In light of these observations, Dr. Zivot concluded that "Mr. Walls will die a needlessly cruel death" if the Etomidate Protocol is administered to him. *Id.* at 6.

76. This Court should take note that any impediment for Mr. Walls providing further evidence of his claim lies in the control of the Defendants. *See Hamm v. Comm., Ala. Dept. of Corr.*, CA11, No. 18-10473 (ECF No. 20-1) (finding that an as-applied challenge required an independent examiner to be appointed by the court due to the limitations put in place by the defendant Alabama Department of Corrections).

77. The risks of applying the Etomidate Protocol to a medically vulnerable prisoner like Mr. Walls are heightened because, while Florida shatters records for the speed and volume of executions in 2025, Defendants have demonstrated repeated negligence and noncompliance with respect to their own protocol.

78. On October 28, 2025, counsel for Mr. Walls received public records produced by Florida Department of Corrections demonstrating that Defendants' ability to carry out the Etomidate Protocol is rife with error.

79. For example, Defendants executed Michael Bell on July 15, 2025. However, the corresponding inventory log shows that Defendants did not record removing rocuronium bromide or potassium acetate until the next day, July 16, 2025. App. D (DOC Drug Logs) at 5, 7. More concerning, the logs contain no entry indicating that etomidate was removed for Bell's execution at all.<sup>5</sup> Defendants noted

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<sup>5</sup> Counsel has received the autopsy of Mr. Bell, which indicates that etomidate was present in his blood, but given the fact that there is no record of it being taken from Defendants' supply, the source and quantity of the drug used is unknown.

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. *Id.* at 4, 5, 7. For the execution of Anthony Wainwright, Defendants recorded the removal of etomidate, rocuronium bromide, and potassium acetate on June 12, 2025, despite the execution taking place on June 10, 2025. *Id.* at 4, 5, 7.

80. Defendants consistently record 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.

81. On June 25, 2025, a date corresponding to Thomas Gudinas's execution (which actually occurred on June 24), the inventory logs only show 10 x 10ml vials of rocuronium bromide were removed (1000mg), suggesting that Defendants only prepared half of the required paralytic drug, in violation of the Protocol which requires 2000mg, administered through 20 x 10ml vials. *Id.* at 7.

82. On June 12, 2025, a date corresponding to Anthony Wainwright's execution (which occurred on June 10, 2025), 7 vials of potassium acetate were removed from Defendants' inventory. This suggests that Defendants prepared only 280 milliequivalents of potassium acetate in violation of the Protocol, which requires 480 milliequivalents (12 x 20ml vials). *Id.* at 5.

83. The log sheets show that during the executions of Edward James and Michael Tanzi, Defendants administered lidocaine, an anesthetic drug not called for

in the Etomidate Protocol. This again indicates a level of improvisation and unpredictability that has not been reviewed or specified in the current Protocol and should require explanation. *Id.* at 27.

84. Lastly, Defendants indicate 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. *Id.* at 25.

85. The discrepancies in these records expose the troubling absence of a mechanism to regularly ensure that Defendants are complying with their own Etomidate Protocol. Given that Mr. Walls is already at a heightened risk of severe pain and suffering due to his poor health, Defendants' reckless approach to their own Protocol further warrants this Court's grave concern.

86. There is a particular danger here because, at Mr. Walls's obese weight, he would be exposed to further suffering if given a lower dosage of lethal chemicals. While executions work by injecting a prisoner with a large bolus dose of drugs, that dose is calculated with the average human weight in mind. *See, e.g.,* Teresa Zimmers, *Lethal Injection for Execution: Chemical Asphyxiation?* 4 Plos. Med 1 (2007).<sup>6</sup>

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<sup>6</sup> Due to restrictions imposed by Defendants during the medical visit, Dr. Zivot was unable to take an accurate weight for Mr. Walls during his July 2025 evaluation. App. B at 4. However, Mr. Walls's most recent medical records show that he weighs over 350 lbs., which corresponds to a BMI in the severely obese range. App. E (Medical Records Excerpt). Further illustrating the health concerns, on November

87. Etomidate is a weak anesthetic on its own, with a duration of three to five minutes.<sup>7</sup> In medical settings, it is used for quick procedures like resetting a joint. *See* FDA-Approved Etomidate Injection Label, *available at* [https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2017/018227s032lbl.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2017/018227s032lbl.pdf). If Defendants are routinely preparing an amount of chemicals below what is required by the Etomidate Protocol, there is an increased possibility that Mr. Walls will experience a drawn out, torturous execution after receiving an incorrect dosage of any of the three drugs in the Protocol.

88. Defendants' prioritization of speed and volume of executions over compliance with their own rules makes the already heightened risk of a disastrous execution even more likely for a medically vulnerable person like Mr. Walls.

89. Defendants are not the first to fail to adhere to their own execution Protocol, and similarly situated states have taken such oversights seriously. This

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18, 2025, Mr. Walls was injured while being put into the van that transported him from Union Correctional Institution to death watch at Florida State Prison. Due to his size, Mr. Walls had difficulty fitting inside the van and fell while trying to enter in his seat. Mr. Walls sustained a two-inch laceration on the top of his head accompanied by a bruise and swelling. Mr. Walls was seen by medical personnel before being brought to his death-watch cell, but his laceration was only bandaged. The full implications of this head injury for his health are still unknown.

<sup>7</sup> The average duration of an execution under the Etomidate Protocol is about 12-15 minutes.

Court should intervene to ensure that Defendants do not execute Mr. Walls with a carelessly implemented version of an already risky Protocol as applied to him.

90. In Oklahoma, after a series of mistakes in drug procurement, storage, and preparation came to light, a grand jury was convened to investigate the state's adherence to its own protocol, particularly its record keeping requirements. There, the grand jury found that, among other violations, the state had "failed to inventory the execution drugs as mandated by state purchasing requirements," which led to the state's ultimate usage of the wrong drug in the lethal injection of Charles Warner in 2014. Interim Report No. 14 at 2, *In the Matter of the Multicounty Grand Jury, State of Okla.*, Nos. SCAD 2014-70, GJ 2014-1 (May 19, 2016). The grand jury also found that "[i]t is unacceptable for the Governor's General Counsel to so flippantly and recklessly disregard the written protocol." *Id.* at 100. Following these findings, the state attorney general issued a statement acknowledging that "a number of individuals responsible for carrying out the execution process were careless, cavalier and in some circumstances dismissive" of the protocol. Mark Berman, *The Washington Post*, <https://www.washingtonpost.com/news/post-nation/wp/2016/05/19/oklahoma-grand-jury-says-lethal-injection-process-muddled-by-inexcusable-failure> (May 19, 2016). In light of these discoveries, the grand jury made several recommendations for changes to be made to how executions were carried out. This ultimately led to a six-year hiatus in executions in the state.

91. Similarly, after Tennessee discovered a “technical oversight” in its execution protocol, Governor Bill Lee ordered a pause and an “independent review” of all executions in the state in May 2022. *See* Rachel Wegner et al., *The Tennessean*, <https://tinyurl.com/f3v48fwa> (May 2, 2022). The independent third-party reviewer found that Tennessee, like Defendants, had deviated from its own protocol on multiple occasions, and that Tennessee, also like Defendants, had no internal system for accountability or “internal policies to ensure the Protocol is followed.” *See* Butler Snow LLP, *Tenn. Lethal Injection Protocol Investigation: Rep. and Findings* at 36 (Dec. 13, 2022). After these findings, Tennessee did not carry out an execution for three years, while the state worked on an overhaul of its “tunnel vision, result oriented lens.” Butler Snow LLP at 39.

92. These examples show a consensus that anomalies like those presented by Mr. Walls warrant intervention. He is particularly vulnerable to complications given his troublesome medical conditions. Should there be an issue in the Protocol, Defendants’ negligent approach renders him more vulnerable to intolerable pain.

93. Mr. Walls’s claim is therefore distinguishable from cases that cast doubt upon the viability of pulmonary edema risk, standing alone, to satisfy *Glossip*’s first prong because his argument is supplemented by the serious risk of Defendants’ maladministration of the Etomidate Protocol. *See, e.g., King v. Parker*, 467 F. Supp. 3d 569, 573 (M.D. Tenn. 2020) (coupling claim of risk of maladministration of lethal

injection protocol with the risk of pain from administration of midazolam and finding the claim sufficient, taken together, to deny defendants' motion for summary judgment).

94. Given Mr. Walls's severe health concerns, Defendants' actual administration of the Etomidate Protocol to him is particularly dangerous in light of the numerous documented errors. Courts have commented on the dangers of prisons' ineptitude in carrying out their lethal injection protocols in the past, and this Court should consider that here.

95. For example, when presented with numerous issues in the implementation of California's lethal injection protocol, including inconsistent and unreliable record keeping, one federal court found such issues were "likely to recur with considerable frequency," *Morales v. Tilton*, 465 F. Supp. 2d 972, 975 (N.D. Cal. 2006), warranting judicial intervention. That court concluded that "[i]n light of the substantial questions raised by the records of previous executions, Defendants' actions and failures to act have resulted in undue and unnecessary risk of an Eighth Amendment violation." *Id.* at 981.

96. Mr. Walls has shown a likelihood of prevailing on the merits of this claim given the known, acknowledged dangers of pulmonary edema, the severity of his health conditions, and the proven history of Defendants not following their own

Protocol. These allegations are supported by sufficient evidence at this stage in the proceedings and merit further development.

**B. Readily Available Alternative**

97. Mr. Walls must “identify a known and available alternative method of execution that entails a lesser risk of pain.” *Glossip*, 576 U.S. at 867. Mr. Walls submits that the firing squad is a reasonable, readily available alternative to the Etomidate Protocol.

98. Execution by firing squad does not involve “unnecessary lingering or the unnecessary or wanton infliction of pain and suffering,” in conformity with Florida’s stated objective in its Etomidate Protocol. App. A at 1. When performed properly, the firing squad will eliminate the substantial risk of severe pain that Defendants’ Etomidate Protocol presents to Mr. Walls.

99. Since 1976, there have been six executions by firing squad, three of which occurred this year. *See* Death Penalty Information Center, *Execution Database*, available at <https://deathpenaltyinfo.org/facts-and-research/data/executions?method=Firing+Squad&sort=method/asc>. The firing squad is currently authorized in five states. Kevin Fixler, Idaho Statesman, <https://www.idahostatesman.com/news/local/crime/article311893632.html> (Sept. 2, 2025). Effective July 2026, firing squad will be the primary method in the state of Idaho. *Id.*

100. Defendants could identify qualified personnel to carry out an execution by firing squad. Defendant Dixon regularly contracts with vendors to purchase firearms, ammunition, and fund appropriate training. *See* Florida Department of Financial Services, Florida Accountability Contract Tracking System (FACTS).

101. Effective July 1, 2025, the State of Florida modified its methods of execution statute, permitting a sentence of death to be carried out by “[any] method not deemed unconstitutional.” Fla. Stat. 922. 105(3). This allows Florida to implement a firing squad, a method which has not been deemed unconstitutional by the United States Supreme Court.

102. This method would avoid the superaddition of pain that would accompany the Etomidate Protocol as Mr. Walls would lose consciousness immediately and would not be reliant on his heart or lungs to be functioning properly during the procedure.

103. A plaintiff in a method-of-execution case “may point to a well-established protocol in another State as a potentially viable option.” *Bucklew*, 587 U.S. at 140. Even where an alternative requires a change in state law which “may require some more time and effort than changing any agency protocol,” the “incidental delay” required to make the change does not render the alternative “unavailable” for purposes of the Eighth Amendment standard.” *Nance v. Ward*, 597 U.S. 159, 170 (2022).

104. Importantly, the Eleventh Circuit has found that the ability of other state corrections agencies and the Federal government to carry out a particular method is sufficient, standing alone, to preclude summary judgment or 12(b)(6) dismissal on the availability of a prisoner's proposed alternative method-of-execution under *Baze*, *Glossip*, and *Bucklew*. See *Grayson v. Warden*, 869 F.3d 1204, 1226 (11th Cir. 2017); *West v. Warden*, 869 F.3d 1289, 1297-98 (11th Cir. 2017).

**C. Further Evidentiary Development is Appropriate**

105. In his affidavit, Dr. Zivot attested with a reasonable degree of medical certainty that there will be “many severe and painful outcomes during any attempt to execute Mr. Walls.” App. B at 6. This is sufficient to allow Mr. Walls's claim to proceed in this Court. See *United States v. Stein*, 881 F.3d 853, 854 (11th Cir. 2018) (en banc) (“[A]n affidavit which satisfies Rule 56 of the Federal Rules of Civil Procedure may create an issue of material fact and preclude summary judgment even if it is self-serving and uncorroborated.”) This Court should also order discovery and an evidentiary hearing to allow further development of Mr. Walls's claim.

106. Dr. Zivot noted that “while Mr. Walls is visibly declining and in poor health, to fully understand the extent of Mr. Walls' conditions, it is my medical opinion that he would require pulmonary function testing, arterial blood gas testing, a transesophageal echocardiography, a chest x-ray, an inspection of his CPAP machine, and thyroid function testing.” App. B at 4. These tests could all be carried

out at a local hospital, but due to restrictions put in place by Defendants, Mr. Walls was unable to obtain this information in support of this complaint.

107. Because Mr. Walls lacks full access to his own medical information and because Defendants exercise complete control over it, a hearing would be necessary to resolve any disputes of material fact regarding Mr. Walls's health.

108. Mr. Walls is similarly restricted in providing additional information in support of Defendants' negligence in implementing their own Protocol. *See Fla. Stat. Ann. § 945.10.* Under Florida law, Mr. Walls is unable to access any information about the source, administration, preparation, equipment, or participants in the process that will take his life and likely result in a torturous death. *Id.*

109. If the next execution occurs as scheduled, Mr. Walls's execution will be the nineteenth execution in 2025—a new record for Florida in the modern era of the death penalty. The records provided in App. D demonstrate that Defendants may not be equipped to keep up with this pace in a careful manner, resulting in a disaster waiting to happen with a medically vulnerable prisoner like Mr. Walls. This issue also warrants this Court ordering further evidentiary development.

110. With the benefit of discovery and a hearing, even more information can be presented to aid this Court in determining not only the severity of Mr. Walls's health conditions, but the documented pattern of negligence during executions that has been occurring on Defendants' watch.

#### **D. Merits Review is Warranted**

111. Section 1983 is the appropriate vehicle for this claim because it is not a challenge to Mr. Walls's underlying conviction, but rather to the manner in which Defendants intend to carry it out. *See Glossip*, 576 U.S. at 879 (noting that because a challenge to a State's planned method of execution "does not attack the validity of the prisoner's conviction or death sentence," it "must be brought under § 1983.>").

112. Constitutional claims brought under § 1983 are tort actions subject to the state statute of limitations governing personal injury actions of the state in which the complaint is filed. *McNair v. Allen*, 515 F.3d 1168, 1173 (11th Cir. 2008). Under Florida law, the statute of limitations for this claim is two years. Fla. Stat. § 95.11(5). A federal claim accrues when the prospective plaintiff "knows or has reason to know of the injury which is the basis of the action." *Corn v. City of Lauderdale Lakes*, 904 F.2d 585, 588 (11th Cir. 1990).

113. In § 1983 actions "the statute of limitations does not begin to run until the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights." *Mullinax v. McElhenney*, 817 F.2d 711, 716 (11th Cir. 1987) (internal quotations omitted).

114. Though Mr. Walls's medical condition has been deteriorating over a period of years, it reached a tipping point this year wherein it poses a significant risk of serious harm from the Etomidate Protocol. Mr. Walls's blood oxygen levels

significantly decreased this year, leading Mr. Walls to report dizziness and trouble breathing and rely on his CPAP machine nearly constantly. This prompted Dr. Zivot's evaluation in July 2025.

115. Mr. Walls's claim therefore ripened in July 2025 when his health noticeably worsened and his oxygen levels began to rapidly deplete to a degree that implicated his Eighth Amendment protections.

116. Furthermore, Mr. Walls received the DOC Drug Logs in App. D on October 28, 2025. These records show negligence in Defendants' implementation of the Protocol primarily within the last six months. Mr. Walls could not have been aware of the significant risk that Defendants' may administer expired drugs, or the incorrect dosage of drugs, until last month.

117. This action is therefore timely and procedurally proper. The Court should review Mr. Walls's claim on the merits.

## **VI. CONCLUSION**

118. Defendants' plan to execute Mr. Walls with the Etomidate Protocol is constitutionally repugnant in light of the added pain the first drug will cause due to his complex health issues. Readily available information confirms that pulmonary edema inflicts unnecessary pain, terror, and suffering as prisoners experience the sensation of being waterboarded to death. Mr. Walls is particularly vulnerable to pulmonary edema given his weakened cardiac and respiratory functioning. Mr. Walls

is at heightened risk of a disastrous execution in light of Defendants' documented negligence in adhering to their own protocol. Given the combination of Mr. Walls's vulnerabilities, the torturous effects of pulmonary edema, and the likelihood of the maladministration of the protocol itself, this Court's intervention is warranted.

## **VII. REQUEST FOR RELIEF**

WHEREFORE, Mr. Walls respectfully requests that this Court grant the following relief:

- a) Enter a declaratory judgment under 42 U.S.C. § 1983 finding that applying the Etomidate Protocol to execute Mr. Walls would violate his rights under the Eighth Amendment;
- b) Enter injunctive relief to prevent Defendants from executing Mr. Walls using the Etomidate Protocol;
- c) Order discovery and an evidentiary hearing; and
- d) Any other relief the Court finds just and proper.

## **VIII. CERTIFICATION**

Sean Gunn, attorney for Mr. Walls, certifies that to the best of his knowledge and belief, the facts set forth in this complaint are true and correct.

Respectfully submitted,

/s/ Linda McDermott  
LINDA MCDERMOTT  
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/s/ Sean Gunn  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been immediately furnished by electronic mail to counsel for the Defendants, Jason Rodriguez (jason.rodriguez@myfloridalegal.com); Charmaine Millsaps (charmaine.millsaps@myfloridalegal.com); the Office of the Attorney General (capapp@myfloridalegal.com). Service on the Defendants will be completed as soon as possible upon issuance of the summons.

/s/ Sean Gunn  
SEAN GUNN