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IN THE SUPREME COURT OF FLORIDA
CASE NO: SC2026-0336
EXECUTION SCHEDULED FOR MARCH 17, 2026 at 6:00 PM

MICHAEL KING,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA
Lower Tribunal No. 08-CF-001087

INITIAL BRIEF OF THE APPELLANT

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REQUEST FOR ORAL ARGUMENT

Undersigned counsels for the Appellant respectfully requests the opportunity to present oral argument pursuant to Fla. R. App. P. 9.320. This is a capital case, which presents novel issues of constitutional significance and the resolution of the issues presented will determine whether Michael King (King) will live or die, and a complete understanding of the complex factual, legal and procedural history and the arguments presented are critical to the proper disposition of this appeal.

JURISDICTIONAL STATEMENT

This is a timely appeal from the trial court's final order denying a successive motion for postconviction relief from a sentence of death. This Court has plenary jurisdiction over death penalty cases. Fla. Const. art. V, § 3(b)(1); *Orange County v. Williams*, 702 So.2d 1245 (Fla. 1997).

PRELIMINARY STATEMENT ABOUT THE RECORD

The postconviction record on appeal for the current successive 3.851 motion consists of one volume and is referenced to as "PCROA" followed by the page number.

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JUDGEMENT AND SENTENCE UNDER APPEAL

King was charged by consolidated indictment and information in Sarasota County with the first-degree murder, kidnapping, and sexual battery of Denise Amber Lee. The case was tried before the Honorable Deno G. Economou. King was represented by Assistant Public Defenders Carolyn Schlemmer, John Scotese, and Jerry Meisner. Assistant State Attorneys Lon Arend, Suzanne O'Donnell, and Karen Frauvillig represented the State of Florida. Jury selection took place on August 17-21, 2009. The guilt/innocence phase of the trial took place on August 24-28, 2009. On August 28, 2009, the jury returned guilty verdicts for all three counts. The penalty phase trial took place on May 23-24, 2006. On September 4, 2009, the jury unanimously recommended death. A *Spencer*[1] hearing was held on October 28, 2009. The Court imposed a death sentence on December 4, 2009. The judgment and sentence are attached. App. A.

The Court found the following statutory aggravating circumstances:

1. The murder was especially heinous, atrocious, or cruel. (HAC) (great weight)
2. The murder was especially cold, calculated, and premeditated (CCP). (great weight)

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[1] *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

3. The murder was committed for the purpose of avoiding an unlawful arrest. (great weight)
4. The murder was committed while King was engaged in the commission of a sexual battery or kidnapping. (moderate weight)
5. The judge found the following mitigating factors:

Statutory Mitigating Circumstances

1. King's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired. (moderate weight)
2. His age at the time of the offense (36 years old) (little weight)

Non-Statutory Mitigating Circumstances

1. A head injury in 1978 (moderate weight)
2. A PET scan with abnormal findings in the frontal lobe demonstrating a brain injury (moderate weight)
3. An IQ in the borderline range between low average and mentally retarded (moderate weight)
4. Repeating grades in school and being placed in special education classes (little weight)
5. Being despondent and depressed and attempting to address his bankruptcy, unemployment, a failed marriage, an impending foreclosure on his home, and breaking up with his girlfriend (little weight)
6. A history of nonviolence (moderate weight)
7. Being a cooperative inmate (some weight)
8. Never abusing drugs or alcohol (some weight)
9. Having a 13-year-old son whom he helped raise and for whom he cares (little weight)
10. Being a good father (little weight)
11. Being a devoted boyfriend (little weight)
12. Being a good worker (little weight)
13. Having a close relationship with family and friends (little weight)

ISSUES RAISED IN STATE COURT AND THEIR DISPOSITION

The following issues were raised on direct appeal:

1. Whether King's State and Federal Constitutional Rights to present his defense and to fully cross-examine a key prosecution witness were violated by a series of trial court rulings regarding Robert Salvador.
2. Whether the trial court erred in allowing the State to introduce into evidence 47 fired cartridge cases from the gun range, none of which were shown to be connected to Michael King; and whether the trial court further erred in allowing the introduction of the FDLE firearms examiner's opinion three of those shell casings were fired from the same unknown firearm as the single fired cartridge case found in the grass near the crime scene.
3. Whether the trial court erred in allowing the State to introduce FDLE firearms examiner Romeo's opinion he was 100 percent certain three of the 47 cartridge cases from the gun range were fired from the same unknown nine-millimeter firearm as the cartridge case found near the crime scene; where (1) Romeo did not examine or test-fire any specific firearm; (2) Romeo's method were too subjective and insufficiently reliable to enable him to claim 100 percent certainty before the jury; and (3) the judge refused to hold a *Frye* hearing before allowing the State to introduce Romeo's opinion.
4. Whether the trial court erred in accepting as genuine the prosecutor's proffered reason for his peremptory strike of a minority juror (111) based on her questionnaire response, where the claimed reason was equally applicable or more applicable to other jurors whom the prosecutor did not challenge, and who served on the jury.
5. Whether King's death sentence should be reduced to life imprisonment without possibility of parole on proportionality grounds, based on the mitigation prong of the applicable test.

The Florida Supreme Court ("FSC") denied each of the above claims. *King v. State*, 89 So. 3d 209, 212-18 (Fla. 2012). The FSC

denied rehearing on May 21, 2012. *King v. State*, 2012 Fla. LEXIS 1193 (Fla. 2012). The United States Supreme Court denied certiorari on October 15, 2012. *King v. Florida*, 133 S.Ct. 478 (2012). The initial Motion to Vacate Judgment and Sentence was timely filed on October 15, 2013. This court denied all relief. After supplemental briefing based on the holding of *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), the FSC affirmed the denial of relief as follows:

1. trial counsel's performance during penalty phase was not deficient;
2. trial counsel's purported failures to preserve *Batson* challenge and to conduct comparative juror analysis did not amount to deficient performance;
3. defendant did not demonstrate prejudice arising from trial counsel's alleged failure to preserve *Batson* challenge;
4. defendant's challenge to the use of midazolam as a sedative in lethal injection protocol was meritless; and
5. defendant's death sentence was contrary to rule of *Hurst v. Florida*, 202 So.3d 40; but
6. imposition of death sentence in violation of requirements of *Hurst v. State*, 202 So.3d 40, was harmless beyond a reasonable doubt.

King v. State, 211 So. 3d 866 (Fla. 2017). King's 28 U.S.C. §2254 petition for writ of habeas corpus was denied by the District Court on February 5, 2018. Judgment was entered on February 6, 2018. Following oral argument, the United States Court of Appeals for the 11th Circuit affirmed the denial of relief as follows:

1. Florida Supreme Court's determination that trial counsel made strategic decision to allow State to strike juror was not unreasonable application of clearly established law or unreasonable determination of the facts;
2. trial counsel's failure to present evidence showing petitioner was exposed to harmful toxins throughout his life during penalty phase of capital murder trial was not deficient performance, and thus was not ineffective assistance; and
3. District Court's adoption of portions of State's response brief in its order denying petition for writ of habeas corpus did not deprive petitioner of fair and impartial tribunal and thus did not violate petitioner's due process rights.

King v. Sec'y, Dep't of Corr., 793 Fed. App'x 834 (11th Cir. 2019). The United States Supreme Court ("USSC") denied King's petition of certiorari. *King v. Inch*, 141 S. Ct. 303 (2020). On February 13, 2026, the Governor signed King's death warrant scheduling his execution

WARRANT PROCEEDINGS

King timely filed a demand for additional public records pursuant Rule 3.852(i) to FDOC. PCROA 104-171. FDOC filed an objection. PCROA 196-279. The lower court conducted a public records hearing on February 19, 2026 at 10:00 a.m. PCROA 273-91 and shortly afterward issued an order denying King's demand. PCROA 271-72. King filed his Successive Motion to Vacate Judgment and Sentence, PCROA 297-320 on February 22, 2026 raising two claims and simultaneously filed a Motion for Stay of Execution.

PCROA 292-96. The State filed its responses to King's motions, PCROA 436-61. The State asserted both claims he raised should be summarily denied as untimely, procedurally barred, and/or meritless.

The circuit court conducted a case management conference on February 25, 2026, and heard argument on King's Successive Motion to Vacate Judgment and Sentence and his Motion for a Stay of Execution, PCROA 485-514. Shortly after the hearing the circuit court issued an Order Denying an Evidentiary Hearing PCROA482-483 and on February 27 issued an Order (1) Denying Defendant's 'Successive Motion to Vacate Judgment and Sentence' after a signed Death Warrant and (2) Denying 'Defendant's Motion for a Stay of Execution.' PCROA 516-542. King timely filed a Notice of Appeal. PCROA 543-45.

STANDARD OF REVIEW

This is an appeal from a Successive Motion under Fla. R. Crim. P. 3.851. The Court reviews the summary denial of a successive Rule 3.851 motion *de novo*. *See Davis v. State*, 417 So. 3d 242, 247 (Fla. 2025). A summary denial will be upheld only "if the motion is legally insufficient or procedurally barred, or if its allegations are

conclusively refuted by the record." *Sparre v. State*, 391 So. 3d 404, 405 (Fla. 2024). If a court determines that a claim is conclusively refuted by the record, it must attach the portion(s) of the record, or at least reference those parts of the record, that justify summary disposition. *See* Fla. R. Crim. P. 3.851(f)(5)(F).

Because the circuit court denied postconviction relief without an evidentiary hearing, this Court must accept the factual allegations presented in King'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).

SUMMARY OF ARGUMENTS

Arguments IA and IB are based on the circuit court abusing its discretion in denying King's demand for additional records from the Florida Department of Corrections ("FDOC"). In denying King's narrowly tailored demand for additional records based on FDOC's failure to properly and consistently follow its lethal injection

protocol, the lower court violated King's due process rights pursuant to the Fourteenth Amendment of the United States Constitution. The demand was based on King's colorable claim for relief concerning equal protection violations in the implementation of the protocol, particularly as it relates to King's similarly situated qualities with condemned inmates Thomas Gudinas ("Gudinas") and Anthony Wainright ("Wainwright"). This issue is based on King's due process and equal protection rights under the United States Constitution, and the corresponding provisions of Florida's constitution. King does not raise this issue for Eighth Amendment considerations.

Argument II involves newly discovered evidence regarding King's humanity and the value of his life to others. King is entitled to an individualized sentencing determination that considers the newly discovered information, along with the mitigation previously considered by the jury and courts. King's case is not among the most aggravated and least mitigated, considering the evolving standards of decency that mark a civilized society based on western values.

ARGUMENT I

THE TRIAL COURT VIOLATED KING'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION

King filed his Successive Motion to Vacate Judgment and Sentence raising violations of his Fourteenth Amendment rights in Claim 1. The State and lower court continue to frame their responses as if King raised Eighth Amendment claims, which he did not. King's claim is for violation of his equal protection rights based on the maladministration of the lethal injection protocols specifically related to the executions of Gudinas on June 10, 2025 and Wainwright on June 24, 2025[2]. The FDOC records surrounding these dates indicate lower amounts of the required drugs were used. Based on this Court's prior rulings, King has not raised an Eighth Amendment claim regarding cruel and unusual punishment.

The State of Florida embarked on an unprecedented spree of executions in 2025. Based on the rate the governor has signed death warrants and scheduled executions in early 2026, the state is on pace

[2] https://deathpenaltyinfo.org/executions/2025

to vastly exceed the record number of executions which occurred in 2025. In November 2025, records obtained from FDOC regarding their compliance with their own lethal injection protocols[3] as set forth in their Execution by Lethal Injection Procedures were presented in federal legal proceedings. *Walls v. Dixon,* No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025). Regardless of the outcome of Walls' claims, these records raise substantial questions regarding FDOC's compliance with their protocols and ability to carry out future executions by lethal injection. Although the state has been on notice of this serious maladministration of the lethal injection protocols, neither FDOC, the Attorney General, nor the governor have shown any indication there has been any action taken to correct these errors or to implement new procedures to avoid the continuation of these errors in future executions.

In the lower court proceedings, the court and state consistently refer to the redacted nature of the *Walls* records and King's failure to respond to the state's speculated rationales for the errors and concerns raised by King. These redactions, although some of which

[3] Hereafter referred to as the procedure(s) or protocol(s) interchangeably.

are required by Section 945.10(j)(1), Florida Statutes, are the very reason King filed his demand for additional records. Because King is the individual being faced with the loss of his life, he is the one guaranteed due process and equal protection rights, which are being foreclosed by the state's objections and denials by the court to receiving the additional limited records he demanded. King's demand was narrowly tailored to avoid asking for any identifying information regarding any individual or entity who is, has been, or will participate in any execution.

1A -THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING KING'S DEMAND FOR PUBLIC RECORDS FROM THE FLORIDA DEPARTMENT OF CORRECTIONS PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.852

This Court reviews rulings based on public record requests pursuant to Florida Rule of Criminal Procedure 3.852 for abuse of discretion. *Hannon v. State*, 228 So. 3d 505, 511 (Fla. 2017). Due to the numerous apparent errors showing maladministration by FDOC of their protocols, King filed a demand for public records pursuant to Fla.R.Crim.P. 3.852(h)&(i) for the following records from FDOC:

The public records from February 18, 2025, to present, are requested are as follows:

a. Written records/checklists, logs, and/or memorandums documenting "completion of each step in the process," specifically including any references to the removal and disposal of any of the drugs used during the lethal injection process, as required in subsection (5) of FDOC's procedure, "Use of Checklists;"

b. Written records/checklists, logs, and/or memorandums documenting and tracking whether the "pharmaceutical agents (lethal injection chemicals)" are within their "date range" for use, have reached, or surpassed their expiration dates" and documenting the maintenance and proper storage of the "pharmaceutical agents (lethal injection chemicals)" as required in subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;"

c. Written records/checklists, logs, and/or memorandums documenting the need for refrigeration, proper temperature range for storage, and/or monitoring for compliance of temperature and handling of the lethal chemicals, as required in subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;"

d. Internal policies and procedures for the handling and maintenance of the "pharmaceutical agents (lethal injection chemicals)" should there be power loss or other circumstances (such as water, temperature, humidity, etc.) which may compromise the "pharmaceutical agents (lethal injection chemicals)," as required in subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;"

e. Polices/procedures, written logs, and/or memorandums documenting the disposal of expired and otherwise compromised "pharmaceutical agents (lethal injection chemicals)," as required in subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;"

f. Copies of the "logs provided to the team warden and available at the post execution debriefings" documenting the first FDLE agent charged with monitoring and who is responsible for observing the preparation of the "pharmaceutical agents (lethal injection chemicals)," as required in subsection (7)(b) of FDOC's procedure, "FDLE Monitors;"

g. Memorandums, records, checklists, and/or logs from the execution team member and independent observer from FDLE documenting their observations and compliance with the preparation of each "pharmaceutical agent (lethal injection chemical)" used in the lethal injection process as found in subsection (9)(f) of FDOC's procedure, "On the Day of Execution;"

h. Forms and documentation of the methodologies and medical instrumentation utilized by Execution Team Members to assess and monitor the inmate's depth and sustained level of consciousness ("consciousness checks") including the training, level of competency, and proficiency;

i. Documentation, checklists, and memorandum of the team warden's "debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution, as required by as

required in subsection (13)(f) of FDOC's procedure, "Immediate Post-Execution Procedures;"

j. Protocols, procedures, directives, and checklists regarding:
   i. Mixing of the "pharmaceutical agents (lethal injection chemicals)" and their respective sterile IV solutions ("diluent fluids");
   ii. flushing the syringe if same syringe is used;
   iii. when and how syringes are organized, staged, and labeled; and
   iv. insertion of venous access and how the site is secured.

PCROA 104-171. Additionally, King indicated he was open to negotiating a fair process of access to the FDOC records in a manner that protects his Fourteenth Amendments rights, and corresponding rights under the Florida Constitution, as well as maintaining the statutorily established confidentiality of the members of the execution team and manufacturer of the pharmaceutical agents (lethal injection chemicals). For the reasons below, King asserts the lower court's denial was error and an abuse of discretion.

A capital post-conviction defendant "bears the burden of demonstrating 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 records undersigned counsel requested from FDOC relate to colorable claims for postconviction relief undersigned counsel was investigating at the time and is now currently litigating. Additionally, the records request is not overly broad or unduly burdensome, as undersigned counsel specified exactly what records were needed to properly investigate and litigate King's equal protection claims.

The requested records relate to a colorable claim for relief regarding the State's disparate treatment of individuals facing execution for first degree murder as well as sex offenses being a violation of King's equal protection rights guaranteed by the Fourteenth Amendment to the Constitution of the United States and applicable provisions of the Florida Constitution. They are related as they are reasonably calculated to lead to the discovery of admissible

evidence because they may contain, or, through further investigation may lead to the discovery of, additional evidence FDOC is not complying with their protocols, specifically the indicated dosage of the chemicals used during lethal injection. These protocols have been held to be constitutional by this Court based in part on evidence provided by Dr. Daniel Buffington, who previously testified on behalf of the State regarding the efficacy of the lethal injection protocols. *Asay v. State*, 224 So.3d 695 (Fla. 2017) Now faced with the evidence of maladministration of those protocols, Dr. Buffington has expressed the need for additional records to confirm those protocols are being properly followed to avoid any unnecessary risks of complications during an execution. App. D

In V*entura v. State*, 673 So. 2d 479 (Fla. 1996), this Court held when a capital postconviction litigant's inability to fully plead claims for relief is due to the State's failure to disclose public records, the State is estopped from claiming the postconviction motion should be denied or dismissed. *Id.* at 481 ("The State cannot fail to furnish relevant information and then argue that the claim need not be heard on its merits because of an asserted procedural default that was caused by the State's failure to act."). Because FDOC is a state

agency, King argues the rationale used by this Court in *Ventura* is applicable to the State's argument, and therefore the lower court's findings, King failed to state a colorable claim for relief.

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, have never been given access to 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. Recently Justice Sotomayer issued a statement connected to the United States' Supreme Court's denial of

certiorari in *Trotter v. Florida*, 607 U.S. ___, Case No. 25-6853 (25A926) (Feb. 24, 2026) (Sotomayor, J., respecting the denial of the application for stay of execution and denial of certiorari), regarding the concerns raised by the limited records by Walls, saying:

> 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 recordkeeping 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. See, e.g. *Heath* ___ S.3d. at ____. 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. *Ibid*. the very reason the prisoners are seeking the records, however, is to gather enough information to raise a colorable Eighth Amendment claim. (footnote excluded).

When other states have experienced similar documented errors in their administration of lethal injection protocols with a substantial difference – they paused further lethal injection executions until the errors were investigated and resolved.[4]

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[4] In 2022 Tennessee Governor Bill Lee and in 2023 Arizona Governor Katheen Hobbs each suspended executions pending independent review after concerns were raised about compliance with lethal injection protocols. Governor Bill Lee, Statement on Oscar Smith Temporary Reprieve, Governor of Tennessee (April 21,

This Court has long recognized the Department of Corrections is entitled to a rebuttable presumption it will comply with the lethal injection protocol. *Long v. State, 271 So. 3d 938 (Fla. 2019*). However, in the February 18, 2025 letter transmitting the FDOC protocols to the governor, Ricky D. Dixon, the Secretary of FDOC, says "the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed." App. C. Their purpose as set forth in those procedures is:

> "[t]o 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."

App. C. Because this is a rebuttable presumption, King is entitled to be given the opportunity to rebut the presumption by a preponderance of the evidence. This Court has previously held in criminal cases only permissive presumptions are allowable, not

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2022), Statement on Oscar Smith Temporary Reprieve; Arizona Exec. Order No. 5 (January 30, 2023). In Missouri and California courts stepped in either suspending executions or encouraging the governor to take action over similar concerns. *Taylor v. Crawford*, No. 05-4173-CV-C-FJG, 2006 WL 1779035, at *4 (W.D. Mo. June 26, 2006); *Morales v. Tilton*, 465 F. Supp. 2d 972, 973 (N.D. Cal. 2006).

mandatory or conclusive presumptions. *Fitzgerald v. State*, 339 So.2d 209 (Fla. 1976). An example of how a defendant can overcome a rebuttable presumption can be found in *Lawson v. State*, 231 So.2d 205 (Fla. 1970) where this Court was faced with a defendant trying to overcome the presumption of the validity of a judgment and sentence found the defendant had to prove it was not by a preponderance of the evidence. Additionally, in Section 907.041(6)(c), Florida Statutes, dealing with pre-trial detention regarding an unauthorized alien charged with committing a forcible felony facing a presumption for pre-trial detention, the Legislature mandated a defendant can "rebut the presumption by demonstrating, by a preponderance of the evidence" there are conditions of release which would guarantee appearance at future court dates.

This Court has repeatedly found Florida's lethal injection protocol to be constitutional. (See *Asay v. State*, 224 So. 3d 695, 699 (Fla. 2017), *Chavez v. State*, 132 So. 3d 826, 830 (Fla. 2014), and *Muhammad v. State*, 132 So. 3d 176, 207 (Fla. 2013)). The records obtained in *Walls v. Dixon* No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov 26, 2025) show multiple deviations from that constitutionally protected protocol. App. B. These errors and deviation show FDOC has violated the

constitutionally accepted means of execution and is no longer entitled to their presumption of correctness. The State continues to rely on a history of "successfully implent[ing]" of their protocols, (State's Answer to King's Successive Motion for Postconviction Relief, PCROA at 436-461), however they appear to be claiming success based only on the death of the individual and not whether the protocols were specifically followed. Undersigned counsel acknowledges this Court's recent opinions in *Heath*, *Trotter*, and *Kearse*, are adverse to the arguments now raised by King regarding the denial of his Demand for Public Records. Undersigned counsel raises these arguments with the good faith belief the continued reliance on the presumption of corrections afforded to FDOC creates serious constitutional concerns.

Again, the lethal injection records requests are not overly broad or unduly burdensome. The records requests have been specifically tailored to support a constitutional challenge to Florida's lethal injection procedures, as those procedures are specifically applied to King. Denying King access to these records violates his right to due process and access to the courts under the Fourteenth Amendments to the United States Constitution and the corresponding provisions

of the Florida Constitution. Based the inaccuracies in the logs showing repeatedly maladministration of the procedures by FDOC, especially the ones related to Gudinas and Wainwright giving rise to an equal protection violation, the lower court should have determined King rebutted the presumption of correctness relied on by FDOC and should have at a minimum granted his demand for additional records, if not have vacated his sentence of death.

1B – SUMMARY DENIAL OF KING'S SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE VIOLATED HIS DUE PROCESS AND EQUAL PROTECTION RIGHTS PURSUANT TO THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION

King is entitled to due process of law, as established by the Fourteenth Amendment to the United States Constitution. "Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." *Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023) (quoting *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016)). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)(quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Because King has been denied access to the records he demanded, his ability to present additional evidence of the State's violation of equal protection, based on the variations of dosages shown in the Walls' records regarding Gudinas and Wainwright, his due process rights have been violated.

King is not merely speculating about the maladministration of the lethal injection procedures by DOC he has met his pleading requirement for the records that are the subject of his demand, based on the specific factual basis argued on February 19, 2026. PCROA 273-291.

As it relates to Gudinas, the following portions of the FDOC records show the logs regarding Rocuronium 100mg/10m vials.

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DRUG NAME: Rocuronium 100mg/10mL Package Size: 10 x 10mL (10 per box) Page: 1

PREVIOUS BALANCE: 0

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

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

NDC#

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

App. B. The protocols require 4 syringes, each containing 500mg to be used during a single execution by lethal injection for a total of 2,000mg. Based on these records none was "received/used" on June 10, 2025. Assuming FDOC simply employs sloppy record keeping

and factoring in the amounts “received/used” on June 9, 2025 and June 12, 2025, there was a total of 600mg “received/used” around the date of Gudinas’ execution, well below the proscribed amounts in the protocols.

As it relates to Wainwright the following portions of the FDOC records show the logs regarding Potassium Acetate 2mEq/20mL vials.

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			6/2023		-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

DRUG NAME Potassium Acetate 2mEq/mL 20mL PACKAGE SIZE 25x20mL

NDC#

DATE	INVOICE NAME/#	LOT #	EXP. DATE	MFR	RECEIVED/USED (+/-)	BALANCE
6/14/23	Balance					361
6/15/23			6/2023		-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

App. B. The protocols require 4 syringes, each containing 120mEq to be used during a single execution by lethal injection for a total of 4800mEq. Based on these records none was “received/used” on June 24, 2025. Assuming FDOC simply employs sloppy record keeping and factoring in the amounts “received/used” on June 25, 2025, there was a total of 34mEq around the date of Wainwright’s execution, well below the proscribed amounts in the protocols.

These logs show Gudinas and Wainwright did not receive the proscribed amounts of the drugs mandated by FDOC’s procedures giving rise to this claim regarding King’s equal protection rights.

Though the names of Gudinas and Wainwright are redacted in the logs. The dates of their executions are a matter of public record.

King has a right to substantive and procedural due process related to the death penalty being administered in a fair, consistent, and reliable manner. *Arbelaez v. Butterworth*, 738 So. 2d 326 (Fla. 1999). King's constitutional rights are being violated by virtue of being treated differently from similarly situated capital litigants subject to Florida's lethal injection protocol. The unequal treatment King would receive if he were executed would further violate his rights to equal protection and fundamental fairness, specifically since he was denied the right to full and fair evidentiary hearing on these claims. This Court has held when there is "any question" whether a claim is sufficient for an evidentiary hearing, "the Court will presume" one is required. *Jackson v. State*, 147 So.3d 469, 485 (2014)(Quoting *Walker v. State*, 88 So.3d 128, 135 (Fla. 2012).

Regarding the status of a class of one, this Court has stated:

> The Equal Protection Clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike. *Plyler v. Doe,* 457 U.S. 202, 216, 102 S. Ct. 2382, 2394, 72 L.Ed.2d 786 (1982)."

City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). And also:

> Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 340 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336, 109 S. Ct. 633, 102 L.Ed.2d 688 (1989). In so doing, we have explained that "'[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.'" *Sioux City Bridge Co.*, supra, at 445, 43 S. Ct. 190 (quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352, 38 S. Ct. 495, 62 L. Ed. 1154 (1918)).

Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). *See also Clubside, Inc. v. Valentin*, 468 F.3d 144, 159 (2d Cir. 2006) (requiring an "extremely high degree of similarity" between the plaintiff and those similarly situated).

In denying relief on equal protection grounds, the lower court relied on *DeYoung v. Owens,* 646 F.3d 1319, 1327 (11th Cir. 2011). PCROA 516-582. *DeYoung* is distinguishable in many aspects.

> DeYoung's equal protection claim asserts, essentially, that Georgia's written lethal injection protocol is insufficiently specific and thus the GDOC deviates from it on an *ad hoc* basis, leading to disparate treatment for different inmates. DeYoung has not shown a substantial likelihood of success on the merits of this claim.
>
> First, as the district court correctly noted, there is no support for DeYoung's "novel proposition" that the Equal Protection Clause requires a written execution protocol sufficiently detailed to ensure that every execution is performed in a precisely identical manner. Moreover, our review of the Georgia lethal injection protocol reveals it to be highly detailed as to nearly every aspect of the execution process.
>
> Second, the "deviations" DeYoung cites that lead to the disparate treatment of which he complains are all ways by which the GDOC provides *more* protection for an inmate and the execution process than the written protocol provides.[7] The State has a legitimate interest in ensuring that its executions occur in a thorough manner with maximum inmate safeguards, and the alleged deviations from the written protocol are rationally related to that interest. DeYoung has not shown a substantial likelihood of success on his equal protection claim.

Id. at 1328. Unlike in *Deyoung*, King is making his equal protection claim based on deviations in the protocol that have already taken place, based on a reading of the records provided by the FDOC. King is not challenging the protocol as written. Also, in *Deyoung*, the

deviations found by the court proved to be helpful to the petitioner. However, the issues at bar relating to improper dosages, particularly, an insufficient amount of drugs used for lethal injection, would clearly be *less*, rather than *more* protection. The lower court further erred in its application of *DeYoung*, by missing the fact King has a fundamental right to his life and liberty, which necessitates strict scrutiny analysis for King. That said, Florida does not have even a "rational basis" for giving different drugs to different inmates or for giving improper dosages of lethal injection drugs to Gudinas, Wainwright, or any death row inmate. Similarly, as detailed in the *Walls/Trotter/Heath* litigation, and in the attached FDOC logs, App. B, Florida does not have a "rational basis" for using expired Etomidate, nor adding a drug such as Lidocaine, which otherwise has no place in the protocol. Even under a rational basis analysis, Florida has no legitimate interest in improperly administering the lethal injection protocol. Moreover, the court in *DeYoung* had the benefit of an evidentiary record; which is all King is asking for at this juncture, the right to an evidentiary hearing and public records.

In *Arthur v. Thomas*, 674 F.3d 1257 (11th Cir. 2012), the Eleventh Circuit Court addressed an equal protection claim by an

Alabama death row inmate, following its decision in *DeYoung*, and found the petitioner only had to show enough facts to constitute a plausible equal protection claim and had done so by alleging "Alabama has substantially deviated from is execution protocol." *Id.* at 1263. *Arthur* alleged significant deviations from the established execution protocol and that court found as follows:

> In light of Arthur's other allegations regarding the veil of secrecy that surrounds Alabama's execution protocol, it is certainly not speculative and indeed plausible that Alabama will disparately treat Arthur because the protocol is not certain and could be unexpectedly changed for his execution. (Footnote omitted.)

Id. The Court then remanded the case for further factual development. That is what needs to happen in this case, which is on point with *Arthur*. Summarily denying King's claims violates his right to due process and access to the courts under the Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

ARGUMENT II

NEWLY DISCOVERED EVIDENCE SHOWS EXECUTION WOULD VIOLATE KING'S EIGHTH AMENDMENT RIGHTS BECAUSE KING IS A MAN WITH HUMANITY AND HIS LIFE HAS GREAT VALUE. HIS CASE IS NOT

AMONG THE MOST AGGRAVATED AND LEAST MITIGATED

<u>Lower Court's Order</u>

The appellant understands the circuit court is bound by precedent from this Court and the USSC, when it comes to granting King a life sentence. That said, the circuit court erred in denying an evidentiary hearing for King to establish evidentiary support for this claim. King simply requests an evidentiary hearing at this juncture. *See Booker v. State*, 969 So. 2d 186, 195 (Fla. 2007).

A. <u>King is Man of Faith</u>

Executing King would be a tragedy. His life has value to others. His close relationships include family and friends, friends as far away as Europe. Not every death row inmate has regular contact with family and friends who cherish their humanity. Unlike some other death row inmates, who may have struggled to strive towards redemption, and perhaps extensively used drugs or became chronic disciplinary problem, none of that applies to King. King is a model inmate. Because of King's unique circumstances of having people in his life who care about him and who value his humanity and their relationships, his case is not among the most aggravated and least

mitigated. King's case does not warrant a death sentence, considering what King has accomplished while incarcerated and the value and support he provides to others.

King is a man of deep faith. Among the witnesses offering support for King's humanity include his spiritual advisor, Sr. Deacon Lowell "Corky" Hecht. Deacon Hecht opined in part via an email dated Wednesday, February 18, 2026 3:41 PM:

> One of my primary duties and responsibilities was carrying for our incarcerated brothers in Christ on Death Row. I visited Michael almost every week until August 2021 due to retirement. Since then I have continued to meet with him less regularly but each time he continued to profess a strong faith and as a Catholic went regularly to confession, as often as it has been available, and has received the Eucharist faithfully. Back between 2017 & 2021 he always told me to wake him if he was sleeping so I could Minister the Eucharist to him and so we could pray together and just visit.
> Michael was always "other centered" in his prayer requests including prayers for the team of volunteers that have made regular weekly rounds to bring spiritual reading materials, subscriptions and news about our Catholic Diocese of St. Augustine and most importantly the Eucharist for any Catholic Inmate who wished to receive Holy Communion. He also included prayers for his brothers on death row, and some specifically due to concerns about their health and well being.

Mr. Hecht, "Deacon Corky," is also willing to be a witness on King's behalf at an evidentiary hearing following a remand back to the

circuit court. King is a devout Catholic, and his faith has gotten more profound during his incarceration. Faith leaders in Florida are concerned about the rate of executions in this state over the past year. *See* A Joint Letter from Florida Faith Leaders on the Expansion of Florida's Death Penalty and Pace of Executions, addressed to the Governor dated July 8, 2025, and correspondence titled RE: Request to Pause Signing of Death Warrants and Engage in Further Dialogue, from the Florida Conference of Catholic Bishops, also dated July 8, 2025. The letter from the Bishops concludes with a reference to *"the teachings of our Church on the sanctity of human life and the common good."* See App. F.

Considering King's devout Catholic faith, the words of Pope Leo IV, who on September 30, 2025 stated: "Someone who says, 'I'm against abortion' but says, 'I'm in favor of the death penalty,' is not really pro-life," should carry great weight.[5] Preserving King from execution promotes the sanctity of all human life. As argued at the

[5] Pope Leo XIV Calls Support for the Death Penalty 'Not Really Pro-Life', Death Penalty Information Center, https://deathpenaltyinfo.org/pope-leo-xiv-calls-support-for-the-death-penalty-not-really-pro-life

case management conference, PCROA 484-525, King's religious faith forbids him from "choosing" any method of execution, on top of the fact that no choice is necessary for King's pleaded claims. King respects the sanctity of his own life. King is a living, breathing, deeply spiritual human being, whose faith teaches him Christ died for his sins so he could be redeemed. King's religious convictions are valid mitigation for this Court to consider. *See*, *generally*, *Farina v. Secretary, Florida Department of Corrections*, 536 Fed. Appx. 966, 982 (11th Cir. 2013); and *Franklin v. Lynaugh*, 487 U.S. 164, 186 (1988).

B. <u>King Has Support from Friends in Europe</u>

King has supportive friends all the way in the United Kingdom, with whom he regularly corresponds via email. For brevity's sake, King will focus on two women whose lives he has touched in a positive way: Dilys Chapman and Fae Krakowski. These two women have Internet access to be aware of King's convictions and death sentence. These women are not mere "pen pals." They are remarkably close friends, who have been positively impacted by the value King brings to their lives. They have the ability to evaluate the horrific details of the crimes King was convicted of and they still regularly correspond with him. These beloved friends of King understand he is more than

his worse actions; he is a man worthy of redemption. The communications between King and his overseas friends are completely positive and supportive. Despite the crimes, King is seen as worthy of love and care for his wellbeing.

Dilys Chapman is an older woman residing in the UK who loves nature. She and King have developed a special friendship over Jpay messaging:

Date: 2/11/2025 9:40:33 AM to Dilys Chapman

Just wanted to say Hi and see how your doing all on and Bible group too all on it too as well on you all on that too as well !
All going OK as can be here on and Bible group too as well on it !
I have not been up to , To much just taking it day by day on and in Bible on reading God word so much blessing to me for sure and us on it for sure ! Well I was thinking about you and like hear back from you when you can and when can I'd like you to read this on I was reading too on in my Bible on and when I was thinking of you I could not wait to write you on not only to hear from you on and all you been up to on and on your Bible group on but on what I was reading on in Bible on this too on that I like you to read too on as well only when you can that I know you like it too as well , Anyways its : 1 Corinthians 13 , " The Way Of Love ".
Anyways love to hear back from you when you can on ! You take care Dilys and God bless you always and all you at/on at Bible group too on as well ! God bless you all always ! Michael Lee King !

Date: 4/19/2025 7:02:29 PM to Dilys Chapman

A Happy Easter Dilys !!
Yes indeed Jesus Christ has risen !!!
What a blessing to us all , He is for sure !!! Blessing to you too Dilys :-)) !
Easter Sunday , What a blessing to us all , He is and forever life on that He died for us on the cross and risen so we could have forever life when its our time as well the only way so one's can from God to us on our Lord and Saviour Jesus Christ wow that He is the only way it could ever be done on from our Lord and Saviour Jesus Christ , wow , what a true blessing indeed Jesus Christ is for sure Dilys !! * I like writing and saying this on New Testament on/in Bible to ones and on together and I'm reading with you too on now when you read this on as well , I'm with you as well my sister Dilys !!

That if thou shalt confess with thy mouth the Lord Jesus , and shalt believe in thine heart that God hath raised Him from the dead , thou shalt be saved .
Romans 10:9
If you wish to accept Him as Saviour and Lord of your life , you can pray the following prayer , believing He will come into your life .

Dear Lord Jesus , I need you to come into my life and change me . I know that I am a sinner . I need your forgiveness. I believe you died on Calvary for my sins . I now invite you to come into my heart and life . Help me to accept your forgiveness and to follow you as Lord of my life . Help me to give every area of my life to you . In Jesus name I pray , Amen.

Christ has now forgiven you !

But as many as received Him , to them gave He power to become the sons of God , ever to them that believe on His name :

John 1:12
These things have I written unto you that believe on the name of the Son of God that ye may know that ye have eternal life , and that ye may believe on the name of the Son of God .
1 John 5:13
*Anyways , My dear sister Dilys , A Happy Easter Sunday to you !!!
Love ya and blessing to you on always , from your brother Michael always !!
*PS : Thank you for the email and email card and too on the email stamp back on with the blessing on too from you to me !!!

King's giving nature is established by his friendship with Ms. Chapman.

Date: 9/25/2025 2:27:18 PM From Dilys Chapman

Thank you!

Hi Mike,
The postman has been! Thank you so much for the vase of flowers. They are really lovely & I will treasure them. I've put them on the window sill so that I can see them. They have travelled well & were very well packed.
I've attached
a photo for
you to see.
Bless

youDilys x

Ms. Chapman is deeply saddened by King's death warrant and provided a separate letter of support on his behalf. App. E/See Letter from Dilys Chapman.

Fae Krakowski is another friend of King's who resides in the UK. She provided two letters of support on his behalf. App. E/Letters from Fae Krakowski. King and Ms. Krakowski have developed a close friendship online:

> **Date: 10/18/2025 7:16:05 AM To Fae Krakowska**
>
> All is going OK as can be here too on as well and is cooler weather on now here too on as well and being I'm in Florida

> the sun shine state that makes it nice as ever being how hot it most time all year it is and gets on all year long most time and no snow because of it like that here on most time on all year long !
> Anyways I been going outside on as much as I can and still working out on too , To keep fit on as much as can too on that as well but I'm at like 185 to like 195 or so on that I'm just not going down any more on then that but I think because I'm putting on little more muscle ?
> Anyways all going OK and I thank God always on and for that and always keeping positive on and always trying to be like Jesus on and to ones too as much as can on and passing on Gods word / Bible on too as much as can and keep peace on and to ones too always on !!
> I'm so happy to get your email on like all them on you send me on too as well !!
> You truly are and gift / blessing Fae and I always keep and think about you on keeping you in my prayers on too always and that you'll get feeling better too on and move up on good things on too for sure and you and your boyfriend on too always for sure !!!
> Well Fae you keep well and always know I do think about you and always know you really are a true friend and that I care and love you always !!
> I'll write back soon , your friend always Michael from USA , in Florida.

Residing in the UK, the idea of the government executing one of its own citizens, for any reason, is a remarkably “foreign” concept. For Ms. Chapman and Ms. Krakowski, they have to look back to the 1960s to find evidence of government sanctioned execution of a criminal defendant. In the UK, irrespective of the heinous crimes which have occurred over the past decades, the last execution in

Britain occurred on August 13, 1964.[6] Executing King would be out of step with global sentiment among allies of the United States. Ban Ki-moon, Secretary-General, United Nations, has said "The death penalty has no place in the 21st century. Leaders across the globe must boldly step forward in favour of abolition."[7] The 2024 U.N. Vote to Abolish the Death Penalty had 130 votes in favor of the abolishment, 22 abstention votes, and only 32 against.[8] On February 14, 2026, Secretary of State, Marco Rubio, stated the following at the Munich Security Conference[9]:

> For the United States and Europe, we belong together. America was founded 250 years ago, but the roots began here on this continent long before. The man who settled and built the nation of my birth arrived on our shores carrying the memories and the traditions and the Christian faith of their ancestors as a sacred inheritance, an unbreakable link between the old world and the new.
> We are part of one civilization – Western civilization. We

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[6] The Guardian - Britain's last executions: hanging of two jobless criminals a 'low key' affair | Capital punishment | The Guardian, August 13, 2014, Caroline Davis.

[7] U.N. Office of the High Comm'r for Human Rights, Moving Away from the Death Penalty: Arguments, Trends, and Perspectives, U.N. Sales No. E.15.XIV.6 (2015).

[8] G.A. Res. 79/179, Moratorium on the use of the death penalty, U.N. Doc. A/RES/79/179 (Dec. 17, 2024).

[9] Official Release – U.S. Department of State. https://www.state.gov/releases/office-of-the-spokesperson/2026/02/secretary-of-state-marco-rubio-at-the-munich-security-conference.

> are bound to one another by the deepest bonds that nations could share, forged by centuries of shared history, Christian faith, culture, heritage, language, ancestry, and the sacrifices our forefathers made together for the common civilization to which we have fallen heir.

The movement towards abolishment of the death penalty has been shown throughout Europe. As of August 7, 2020, the European Union statement of the death penalty shows all European Union and Council of Europe Member States had abolished the death penalty. The United Nations has expressed concern about the recent increase of execution in certain counties, as the increase of executions in American last year is mentioned behind Iran and Saudia Arabia.[10] Capital punishment is out of step with western values on a global scale. King's deep personal friendships with friends in Europe should be considered as to why this case is not among the most aggravated and least mitigated. The United States Supreme Court has indeed looked to European law for persuasive authority regarding application to America's death penalty jurisprudence:

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[10] Alarming trends in executions in 2025 raise serious human rights concerns – UN Human Rights, United Nations Human Rights, Office of the High Commissioner. https://www.ohchr.org/en/press-releases/2026/01/alarming-trends-executions-2025-raise-serious-human-rights-concerns-un-human

> In *Thompson v. Oklahoma,* 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988), a plurality of the Court determined that our standards of decency do not permit the execution of any offender under the age of 16 at the time of the crime. *Id.,* at 818–838, 108 S.Ct. 2687 (opinion of STEVENS, J., joined by Brennan, Marshall, and Blackmun, JJ.). The plurality opinion explained that no death penalty State that had given express consideration to a minimum age for the death penalty had set the age lower than 16. *Id.,* at 826–829, 108 S.Ct. 2687. The plurality also observed that "[t]he conclusion that it would offend civilized standards of decency to execute a person who was less than 16 years old at the time of his or her offense is consistent with the views that have been expressed by respected professional organizations, **by other nations that share our Anglo–American heritage, and by the leading members of the Western European community."** *Id.,* at 830, 108 S.Ct. 2687. The opinion further noted that juries imposed the death penalty on offenders under 16 with exceeding rarity; the last execution of an offender for a crime committed under the age of 16 had been carried out in 1948, 40 years prior. *Id.,* at 832–833, 108 S.Ct. 2687.

Roper v. Simmons, 543 U.S. 551, 561 (2005). (emphasis added). King's case is not among the most aggravated and least mitigated and executing him would be contrary to shared "Anglo-American heritage" around the world. *Id.* Despite the tragic nature of King's charged crimes, his humanity spread across the sea. His life has great value.

C. Eighth Amendment and Individualized Sentencing

Execution violates King's Eighth Amendment right to narrowly

tailored individualized sentencing. King's case is not among the most aggravated and least mitigated. *State v. Dixon*, 283 So. 2d 1, 7 (Fla. 1973). The newly discovered evidence of King's religious convictions and deep personal friendships warrant an evidentiary hearing.

The USSC has made it clear the consideration of mitigation by the sentencer is at the heart of the constitutionality of the death penalty. In *Proffitt v. Florida*, 428 U.S. 242 (1976), the USSC considered whether the imposition of the sentence of death for the crime of murder under Florida law violated the Eighth and Fourteenth Amendments. *Id.* at 244. The USSC found Florida's new death penalty law passed constitutional scrutiny because "the sentencing judge must focus on the individual circumstances of each homicide and each defendant. *Id.* at 252. King's redemptive progress on death row was not heard and considered by the jury and trial court.

The USSC developed even more principles to ensure the death penalty was not exacted on those who did not meet the requirements of the Constitution. *Woodson v. North Carolina*, 428 U.S. 280 (1976), required a death penalty scheme "allow the particularized consideration of relevant aspects of the character and record of each

convicted defendant before the imposition upon him of a sentence of death." *Id.* at 303. This did not occur in King's case, as he currently has weighty mitigation, but the time limitations of warrant litigation, along with the procedural bar, are preventing the final factfinder from evaluating King's mitigation before lethal injection is "imposed upon him." Following *Woodson* there came a litany of cases which required consideration of mitigation. In *Lockett v. Ohio*, 438 U.S. 586 (1978) the USSC "conclude[d] that the Eighth and Fourteenth Amendments require that the sentencer … not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Id.* at 604. In *Eddings v. Oklahoma*, 455 U.S. 104 (1982) the USSC applied *Lockett*, stating:

> the rule in *Lockett* followed from the earlier decisions of the Court and from the Court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus "on the characteristics of the person who committed the crime," *Gregg v. Georgia, supra*, at 197, 96 S.Ct., at 2936, the rule in *Lockett* recognizes that "justice … requires … that there be taken into account the circumstances of the offense together with the character and propensities of the offender." *Pennsylvania v. Ashe*, 302 U.S. 51, 55, 58 S.Ct. 59, 60, 82 L.Ed. 43 (1937). By

> holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in *Lockett* recognizes that a consistency produced by ignoring individual differences is a false consistency.

Id. at 112. A clear understanding of these cases demonstrates the USSC has long recognized the need for individualized sentencing which carefully considers *all* mitigation. King should not be denied his one last opportunity to provide the state court a complete understanding of all the mitigation that informs us why King should live the rest of his life in prison.

D. <u>King's Mental Illnesses and Disorders are Mitigating</u>

King was an innocent midwestern American boy with an unlimited future until a tragic sledding accident negatively impacted his life. The accident resulted in brain damage and drastically changed King's personality. King's mental health mitigation is part of his case history. On direct appeal, this Court described some of the mitigation presented on King's behalf at trial:

> Dr. Joseph Chong Sang Wu, who conducted a PET scan on King. According to Wu, the PET scan demonstrated abnormal activity within his frontal lobe. Wu concluded that this abnormal activity was consistent with a traumatic brain injury. The PET scan also revealed an abnormal notch or divot in King's frontal lobe at the top of his head. Wu testified that when King was six years old, he suffered a head injury in a sledding accident, and his

> siblings reported that his behavior changed significantly after that incident. Wu testified that individuals who suffer frontal lobe injuries are more likely to have poor judgment, exhibit blunted affect, take excessive risks, have difficulty regulating impulses such as aggression, and have difficulty separating fantasy from reality. With regard to the latter, Wu was provided with statements from family members reporting that when King was seventeen, after watching the movie *The Texas Chainsaw Massacre,* he obtained a chainsaw and started chasing family members with it, while exhibiting no expression on his face. At the age of thirteen, while acting out a cartoon, King nearly killed his brother with a bow and arrow. After the sledding injury, King required special education services. According to Wu, King's most recent verbal IQ score placed him in the borderline retarded range.

King v. State, 89 So. 3d 209, 219 (Fla. 2012). King was a sick child who never received the help he deserved. A horribly tragic accident had a severe, detrimental effect on King's life. Considering the newly discovered information about King's personal redemption through religious transformation, this Court should also reassess King's life with the mitigation already found by the trial court:

> (1) King's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired, *see* § 921.141(6)(f), Fla. Stat. (2008) (moderate weight)[7]; and (2) his age at the time of the offense (thirty-six years old), *see* § 921.141(6)(g), Fla. Stat. (little weight).[8] The trial court found thirteen nonstatutory mitigating circumstances, which included: (1) a head injury in 1978 (moderate weight); (2) a PET scan with abnormal findings in the frontal lobe demonstrating a brain injury (moderate

> weight); (3) an IQ in the borderline range between low average and mentally retarded (moderate weight); (4) repeating grades in school and being placed in special education classes (little weight); (5) being despondent and depressed and attempting to address his bankruptcy, unemployment, a failed marriage, an impending foreclosure on his home, and breaking up with his girlfriend (little weight); (6) a history of nonviolence (moderate weight); (7) being a cooperative inmate (some weight); (8) never abusing drugs or alcohol (some weight); (9) having a thirteen-year-old son whom he helped raise and for whom he cares (little weight); (10) being a good father (little weight); (11) being a devoted boyfriend (little weight); (12) being a good worker (little weight); and (13) having a close relationship with family and friends (little weight).

Id. at 221-22. This Court should also reconsider King's low IQ scores and the toxic chemicals he was exposed to growing up, and during his time as a plumber. *King v. Secretary, Department of Corrections*, 793 Fed. Appx 834, 840 (11th Cir. 2019). Most of King's life is tragic and mitigating, but his transformation into a devout human in prison is truly inspiring.

King should not be executed, because his case is not among the most aggravated and least mitigated after considering the old and newly discovered information together. This Court is not being asked to create a whole new class of exemptions to capital punishment. Art. I, §17 of the Florida State Constitution, otherwise known as "the

conformity clause," states:

> The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall 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.…This Section shall apply retroactively.

To be clear, King is not asking this Court to create a class based on any type of extension of established Eighth Amendment precedent. *Ford v. State*, 402 So. 3d 973, 979 (Fla. 2025). Rather, King is asking this Court to decide King's fate based on his unique, individualized, qualities which point toward life.

E. <u>This Court May Change the Law</u>

To the extent there are any barriers to relief based on any interpretation of precedent, King urges reconsideration of such caselaw. Indeed, this Court has not been reluctant to reconsider prior opinions when necessary. Stare decisis does not prevent this Court from granting King relief. In recent years, this Court has been more than willing to set aside long-standing precedent to apply what this Court found to be a correct standard of law. To the extent there is case law that would seem to prevent relief, including King's own case, this Court should overrule such precedent. Reaching the correct

application of the law has been of paramount importance for this Court. It is no less important here based on the life King has led. This Court has been more than willing to set aside precedent, to instead apply what this Court found was a correct standard of law. Reaching the correct application of the law has been of paramount importance for this Court. It is no less important here based on the injustice King has suffered.

In *State v. Maisonet-Maldonado*, 308 So. 3d 63 (Fla. 2020), this Court receded from cases which had held that double jeopardy principles preclude more than one conviction that is predicated on a victim's death per victim. In *Roughton v. State*, 185 So. 3d 1207 (Fla. 2016), this Court receded from precedent which had set out principles for double jeopardy analysis.

In *State v. Poole*, 297 So. 3d 487 (Fla. 2020), this Court receded from *Hurst v. State,* 220 So. 3d 304 (Fla. 2016), except to the extent it held that a jury must unanimously find the existence of a statutory aggravating circumstance beyond a reasonable doubt and reversed the portion of the trial court's order setting aside Poole's sentence. *Id.* at 491.

In *Bush v. State*, 295 So. 3d 179 (Fla. 2020) this Court abandoned the "circumstantial evidence rule" *Id.* at 201. "For more than one hundred years, this Court . . . applied a more stringent standard of review in reviewing convictions supported only by circumstantial evidence." *Id.* at 216, (Labarga, J concurring in part and dissenting in part). In *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020) this Court receded from *Walls v. State*, 213 So. 3d 340 (Fla. 2016). *Id.* at 1022. This Court relied on the language from *Poole*. *Id.* 1023–24.

In *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), this Court overruled years of precedent and its own Rule of Appellate Procedure 9.142(a)(5) to hold that comparative proportionality is no longer required to be conducted by this Court. *Id.* at 549. This Court explained that "[the] precedent is erroneous and must yield to our constitution." *Id.* at 548. If overcoming stare decisis was correct in those cases to reach a just outcome, it should be no less available to King.

Particularly in *Phillips*, by receding from *Walls*, this Court rejected the finding of *Hall v. Florida*, 572 U.S. 701 (2014) retroactive to Florida's capital litigants. This Court can be unbound by precedent

and achieve justice in King's case. Precedent has been no hinderance to this Court receding from controlling authority. This Court has the power and authority to interpret the law in a way that protects King's humanity. If overcoming stare decisis was correct in these cases to reach a just outcome, it should be no less available to King.

Any decision regarding whether King, or any capital defendant, shall live or die, comes down to constitutional and factual determinations of individual officials (judges, justices, and politicians). But what informs those determinations are individual feelings about capital punishment as applied to vulnerable citizens. Officials who have reconsidered their prior feelings in favor of capital punishment, include the following: Former Supreme Court Justices Harry A. Blackmun and Lewis F. Powell Jr; Former Head of the California Department of Corrections and Rehabilitation, Jeanine Woodford; Former Governors of Alabama, Don Siegelman and Robert Bentley. NEW VOICES: Former Death Row Warden Changes His Views | Death Penalty Information Center[11]; former Senior Justice of

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[11] Death Penalty Information Center NEW VOICES: Former Death Row Warden Changes His Views | Death Penalty Information Center. *Posted on Nov 27, 2006|Updated on Mar 14, 2025*

the Ohio Supreme Court, Paul E. Pfeifer, former Ohio Attorney General, Jim Petro, and retired Texas Court of Criminal Appeals Justice Elsa Alcala.

A compelling NPR article provides the powerful testimony of former wardens: *"It does no more than increase the number of victims while producing no positive outcomes."* Says Frank Thompson, Former superintendent, Oregon State Penitentiary. Catarino Escobar, a former correctional officer on the execution team at the Nevada State Prison, asks, "But what happens to your spirit? What happens when your spirit connects with him that you just executed?"[12] A telling quote to the Equal Justice Initiative states: *After serving as the warden of Parchman Farm, where he oversaw six executions, Don Cabana became an outspoken critic of the death penalty. "There is a part of the warden that dies with his prisoner," he said. Mr. Cabana spent the rest of his life campaigning for abolition.*[13] King prays for the victims his execution may leave behind at the Florida State Prison. His prayers and humanity go out to the

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[12] NPR: How working on prison executions harms people and changes their views : NPR, November 16, 2022, 4:01PM ET by Chiara Eisner
[13] Equal Justice Initiative: The Death Penalty and Regret, May 30, 2023.

entire staff that is caring for him on death watch, and those who may take part in his execution. He raises this important issue as a component of his Eighth Amendment rights, because he has standing as a fellow citizen, sharing in the human condition with people taking part in his tragic execution. Florida executed nineteen men in 2025 and is on pace to shatter that record this year. There are collateral effects beyond King.

F. <u>All the Victims</u>

King grieves for the family of Mrs. Lee. The crime was horrific. King's family are also victims. They tragically witnessed several decades of erratic behavior following the tragic sledding accident, so they lost the loved one that "could have been." When King was arrested, convicted, and sentenced to death, they lost him, as he lost his freedom. King's beloved brother, Gary King can be called to testify on remand, regarding King's importance to the current family dynamic, as one of three brothers for an aging and grieving mother. App. E/14-page Letter from Gary King. King has carried on a relationship with his mother via weekly phone calls during his time on death row. He is close with his brothers and cousin, Darlene, who are able to testify on his behalf. King is the proud of father of a

teacher residing in California. He has a legacy; King has more to offer this world. King is more than what he has been convicted of and executing him would have ripple effects, creating more victims and despair. Looking at his life in totality, his case is not among the most aggravated and least mitigated. He is a good and loving man of deep faith. He is a proud and talented plumber who can serve the FDOC. King will also lead men to Christ. Relief is proper.

APPELLANT'S REQUEST FOR STAY OF EXECUTION

King respectfully asks this Court to enter a stay of proceedings regarding his scheduled execution, currently set for March 17, 2026. This case presents important constitutional issues which deserve to be fully addressed by this Court free from the constraints of the expediated warrant schedule, considering the rate of death warrants signed and litigated in Florida.

King's case presents important constitutional issues which deserve to be fully addressed by this Court free from the constraints of an accelerated schedule under a death warrant. King is requesting certain records from the FDOC which relate to the uniformity and fairness of the lethal injection protocol King is being subjected to. Far from being a "fishing expedition," based on "speculative" or

"conclusory" concerns, King is merely requesting records to indicate that the lethal injection protocol is being administered pursuant to its own policy, and pursuant to King's 14th Amendment rights.

Daniel Buffington, PharmD, MBA, President and CEO of the American Institute of Pharmaceutical Sciences, can testify about his affidavit (App. D) on remand regarding how maladministration of lethal injection protocols affects King's ability to be treated equally under the law. King's right to due process under a non-expedited merits-based litigation is of the most importance. The Court may also enter a stay, so that further compromise can be negotiated regarding King's right to certain FDOC records and the agency's concerns of secrecy regarding certain records. King is being reasonable and seeking basic fairness under the law. This Court should enter a stay to facilitate a negotiated compromise on remand, for King's records demand to FDOC. A stay is particularly warranted considering a Justice from the United State Supreme Court's concerns regarding the secrecy of Florida's lethal injection process. *Trotter v. Florida*, 607 U.S. ___, Case No. 25-6853 (25A926) (Feb. 24, 2026) (Sotomayor, J., respecting the denial of the application for stay of execution and denial of certiorari).

King's Argument II necessitates a stay of these proceedings so witnesses can be coordinated for the evidentiary hearing. Some witnesses will need to be called overseas. Deacon Corky is an order gentleman and has health-related concerns that need to be considered. Arrangements will need to be made for the out-of-state testimony of King's brother, Gary. If King elects to testify, counsel needs time to meet with him for preparation, considering his mental health issues and low IQ.

There are two other men on death watch besides King, Billy Leon Kearse and James Aren Ducket. Based on the rate of death warrants signed, a third inmate will likely soon join those two condemned men. The rapid rate of executions in Florida is likely what led to the problems in maladministration of Florida's lethal injection protocol. Pausing, and issuing a stay, may make maladministration of the FDOC protocol less likely as FDOC officials are under less acute duress. But most relevant to King, a stay is necessary so that his issues are properly litigated.

A stay of execution is appropriate "when there are 'substantial grounds upon which relief might be granted.'" *Chavez v. State*, 132 So. 3d 826, 832 (Fla. 2014) (quoting *Buenoano v. State*, 708 So. 2d

941, 951 (Fla. 1998)). This Court may enter a limited stay to meaningfully consider complex legal claims even if, on first appearance, the possibility of relief appears remote. *See King v. Moore*, 824 So. 2d 127, 128 (Fla. 2002) (Harding, J., concurring) (agreeing with the issuance of a stay due to the "possibility" of merit, despite prior actions by the United States Supreme Court "seemingly send[ing] a clear message" that no relief was due). A stay of execution is particularly appropriate where, as in King's case, a warrant is set on a short timeframe. *See Jimenez v. State*, 265 So. 3d 462, 471 (Fla. 2018) (granting stay of execution on a 27-day warrant and modifying *nunc pro tunc* the expedited post-warrant scheduling order, without making any findings of substantiality on any issue); *see also id.* at 493 (Pariente, J., concurring) (explaining that the "extremely short warrant period" meant that "[t]he postconviction court and Jimenez's attorneys were forced to race against the clock in reviewing and presenting all of Jimenez's claims, respectively" and that without a stay there would be "inadequate time to thoroughly review his claims.").

This Court has expressed concern about the impossibly fast pace imposed on active warrant litigation by the timeframes that are

being set in warrants. Justice Labarga recently expressed his concerns in his concurrence 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 v. State, 361 So. 3d 785, 796 (Fla. 2023) (Labarga, J., concurring) (emphasis added). The only way to ensure that King's active warrant litigation is a meaningful process that comports with his Fourteenth Amendment right to due process, is to grant a stay of execution so that a full and fair evidentiary hearing can be held. "Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." *Barwick v. State*, at 790 (quoting *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016)). "The fundamental requirement of due process is the opportunity to be

heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)(quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

King's meritorious issues cannot possibly be heard in a meaningful manner with only **fifteen days** left until his execution. The issues in this case require litigation and review that is not truncated by the exigencies of an imminent execution. A stay of execution should be granted in this case.

CONCLUSION AND RELIEF SOUGHT

In light of the facts and legal arguments presented above, King contends his constitutional rights for equal protection and due process under the Fourteenth Amendment of the Constitution of the United States, and corresponding provisions of the Florida Constitution, has been violated. King respectfully requests his death sentence be vacated, alternatively for this case to be remanded to the circuit court to conduct an evidentiary hearing, as well as for the entry of a stay of his execution so these issues can be fully litigated.

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.045, we hereby certify that the Initial Brief of the Appellant has been produced in Bookman Old Style14-point font. This brief complies with the requirements of Fla. R. App. P. 9.210(a)(2)(D), as it has less than 75 pages.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY on this 2nd day of March, 2026, the foregoing document has been electronically filed with the Clerk of the Circuit Court using the Florida Courts e-portal filing system which will send a notice of electronic filing to the following: the Honorable Thomas Krug, 2002 Ringling Boulevard, Sarasota, Florida 34237, through Judicial Assistant Jenn Peters, jpeters@jud12.flcourts.org, General Counsel Mary Ann Floyd, mfloyd@jud12.flcourts.org; State Attorney's Office, Twelfth Judicial Circuit, 1112 Manatee Avenue West, Bradenton, Florida 34205, State Attorney Ed Brodsky, ebrodsky@sao12.org, and Assistant State Attorney Suzanne O'Donnell, sodonnell@sao12.org; the Office of the Attorney General, 3507 East Frontage Road, Suite 200, Tampa, Florida 33607-7013, Scott Brown, scott.browne@myfloridalegal.com, Timothy A. Freeland,

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WE HEREBY FURTHER CERTIFY that a copy has also been furnished via U.S. mail, this 2nd day of March 2026, to Michael King, DOC #132245, at Florida State Prison, P.O. Box 800, Raiford, Florida 32083.

/s/ Ali A. Shakoor
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