

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

LOUIS BERNARD GASKIN,

Defendant.

**Case No. 1990-CF-1
Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
April 12, 2023 at 6:00 p.m.**

**DEFENDANT'S DEMAND FOR PRODUCTION OF ADDITIONAL PUBLIC RECORDS
[FLORIDA DEPARTMENT OF CORRECTIONS- MEDICAL RECORDS
AND LETHAL INJECTION PROTOCOLS]**

To: **Ricky D. Dixon, Secretary**
Florida Department of Corrections
Attn: Philp A. Fowler, Chief Legal Counsel
501 South Calhoun Street,
Tallahassee, FL 32399-2500
E-mail: **philip.fowler@fdc.myflorida.com**

The Defendant, **LOUIS BERNARD GASKIN**, by and through undersigned counsel, hereby makes the following demands of **Secretary Ricky D. Dixon** of **FLORIDA DEPARTMENT OF CORRECTIONS** ("FDOC"), pursuant to Florida Rule of Criminal Procedure 3.852(h), for additional public records pertinent to this capital case under a truncated schedule. In support, Mr. Gaskin states as follows:

1. Mr. Gaskin is an indigent Florida inmate under a sentence of death and subject to execution by lethal injection pursuant to Section 922.105, Florida Statutes (2019). A Death Warrant was signed by Governor Ron DeSantis on Monday, March 13, 2023. This warrant was accompanied by a letter dated March 13, 2023, to the Governor from the Attorney General Ashley Moody. Mr. Gaskin's execution has been scheduled for Wednesday, April 12, 2023.

2. On March 10, 2023, Ricky D. Dixon, the Secretary for the Florida Department of Corrections, signed into effect the current three-drug protocol. The lists etomidate as the first drug to be administered. Etomidate, which is marketed as “Amidate”, is a short-acting drug that induces anesthesia, but is severely painful upon injection, producing a burning feeling. Etomidate wears off quickly because the liver quickly breaks down the drug which is why it is characterized as a drug to induce anesthesia. Etomidate has **no analgesic** properties.
3. In 2016, an evidentiary hearing occurred in Jacksonville, Florida, in *Asay v. State*, Duval County Case No. 87-6876-CF, as to the efficacy of etomidate as the first drug. Mr. Asay’s execution was the first to be scheduled after the adoption of the new protocol. At his hearing, Mr. Asay presented evidence that the injection of etomidate was painful and because the etomidate is the first drug administered in the sequence, the inmate will be fully conscious and will experience severe pain. Testimony was presented that Mr. Asay might vocalize his reaction to the pain.
4. The Florida Supreme Court ultimately affirmed the denial of relief as to Mr. Asay’s contention that etomidate was not an effective first drug in an execution protocol and held that the current protocol did not violate the Eighth Amendment. *See Asay v. State*, 224 So. 3d 695, 702 (Fla. 2017).
5. However, the unheeded warnings in *Asay* about the pain and suffering caused by etomidate were shown to be prescient in the February 22, 2018, execution of Eric Branch. Mr. Branch suffered serious pain in violation of the Eighth Amendment. Witness and media accounts detailed how Mr. Branch **screamed and thrashed** on the gurney. One media account indicated: “Just as officials were administering the lethal drugs that included a powerful

sedative, [Mr.] Branch let out a **blood-curdling scream, thrashed on the gurney, then yelled ‘Murderers! Murderers! Murderers!’** before falling silent after a guttural groan.” Associated Press, *Eric Branch Yells ‘Murderers!’ During His Execution for Killing College Student in 1993* (February 22, 2018) <http://www.orlandosentinel.com/news/os-florida-execution-eric-scott-branch-0222-story.html>.

6. Attorney Robert Friedman, who witnessed the execution on behalf of Mr. Branch’s counsel stated that a minute after being told that the execution phase was about to begin, “Mr. Branch’s legs were **moving**, his head was **moving**, and his chest was **heaving**. At 6:49 he **screamed at the top of his lungs**, then he **yelled out ‘murderers.’** His body was **shaking**. For **about a minute after he yelled out, his legs were moving**. He appeared to be in **obvious distress**.”
7. Following Mr. Branch’s execution, when asked whether Mr. Branch’s scream could have been caused by the execution drugs, FDOC spokesperson, Michelle Gladly stated that “‘there was no indication’ that the inmate’s last actions were a result of the injection procedure. She said that conclusion had been confirmed by the Florida Department of Law Enforcement.” Sky News, *Killer Eric Scott Branch shouts ‘murderers!’ as he is executed in Florida* (February 23, 2018) <https://news.sky.com/story/killer-eric-scott-branch-shouts-murderers-as-hes-executed-in-florida-11262985>. However, to date, neither FDOC nor the Florida Department of Law Enforcement (“FDLE”) have disclosed any further information about how that conclusion was reached.
8. Despite documented evidence that the Etomidate Protocol creates a substantial risk of serious pain, Florida nevertheless continued setting Etomidate Protocol executions. It was used in the

execution of Jose Jimenez, who also suffered obvious pain under in violation of the Eighth Amendment. After the execution of Mr. Jimenez on December 13, 2018, it was reported that “Local 10 News investigative reporter Jeff Weinsier, who witnessed the execution, said Jimenez was **blinking profusely, twitching and breathing heavily**. Then it all stopped.” Jeff Weisner, Associated Press, *Man executed for North Miami Woman’s 1992 Murder* (updated December 19, 2018) <https://www.local10.com/news/florida/north-miami/jose-antonio-jimenez-execution>.

9. In her dissent in *Jimenez v. State*, 265 So. 3d 462, 492 (Fla. 2018), Justice Pariente described the Branch execution as follows:

As to the administration of the first drug in the lethal injection protocol, etomidate, the postconviction court wrote in its order denying Jimenez’s motion: “As the administration of the etomidate commenced, Branch released a guttural yell or scream... Branch’s legs were moving, his head moved, and his body was shaking.” Order, at 4. His body “continued to shake and his chest was heaving for another four minutes.” Initial Br., at 38. The postconviction court noted and the majority accepts that all of this took place “before the consciousness check was performed before the subsequent administration of the second and third drugs.” Order, at 4; majority op. at – Dr. Lubarsky, “an experienced anesthesiologist,” Initial Br., at 29, opined that this was “indicative of insufficient anesthetic depth prior to the administration of the second and third drugs.” *Id.* at 38.

As to the second and third drugs, Jimenez alleges that – according to Dr. Lubarsky’s review of Florida’s lethal injection protocol and records from Branch’s execution – Branch had only “1/10th of the clinical dose of etomidate... in his bloodstream” by the end of the execution process, an amount that is “insufficient to ensure that” he did “not feel the excruciating pain of the second and third drugs.” *Id.* at 31. In Dr. Lubarsky’s opinion, Branch’s scream was “objective evidence” of his “experiencing significant pain during [the] execution,” *id.* at 35 – not “in protest of his execution or a reaction to etomidate.” Majority op. at 475. Of course, this information was unknown when this Court rejected Asay’s challenge to the new lethal injection protocol.

In my view, this new information makes it impossible to allow another execution to proceed without thoroughly reviewing whether Florida’s lethal

injection protocol subjects defendants to a substantial risk of pain, in violation of the Eighth Amendment. Thus, I would reverse and remand for an evidentiary hearing.

10. Despite the call from a member of the Florida Supreme Court for further inquiry, the State of Florida proceeded undaunted, all the while refusing to turn over basic public records, such as autopsy reports and the agency checklists and logs required to be kept by the protocol. In the execution of Bobby Joe Long on May 23, 2019, it was reported that, soon after the administration of the three execution drugs, “[Mr. Long’s] breathing became **disjointed**. His mouth appeared to **start twisting and his breathing grew more labored**. A state official pressed on his shoulders at 6:47 p.m. A minute later, [Mr.] Long appeared to stop breathing.” Kathryn Varn, Tampa Bay Times, *Tampa serial killer Bobby Joe Long is executed in silence* (updated May 24, 2019) <https://www.tampabay.com/tampa/tampa-serial-killer-bobby-joe-long-is-executed-in-silence-20190523/>.
11. Reporter Evan Donovan, who witnessed the execution, provided a detailed timeline of Mr. Long’s movements. See Evan Donovan, News Channel 8 WFLA, *Execution of Bobby Joe Long: Death sentence carried out* (updated May 24, 2019) <https://www.wfla.com/news/local-news/execution-of-bobby-joe-long-death-sentence-carried-out/>. At 6:44 p.m. he reported that “[w]hether in anticipation of something happening or as a reaction to the first drug, etomidate, being delivered into his system, **Long’s breathing begins to pick up. His mouth opens. He’s taking deliberate, deep breaths as his chest begins to rise and fall more noticeably. He’s exhaling through his mouth, and his jaw begins to move slightly side-to-side.**” *Id.* Then, at 6:45 pm, he reported that “[m]ore heavy **breathing. Long’s body begins to move slightly. There’s an occasional, very slight twitch**

as his shoulder pushes up under the sheet.” *Id.* Then at 6:46 p.m., “Long is showing **very little movement now.** His body is calm. **His breathing is very slow and regular.**” *Id.* Then at 6:48 p.m. “[t]he only movement you can see from Long now is the **very slow rise and fall of his chest as he takes breathes** (sic).” *Id.* It is clear that Mr. Long was suffering.

12. Despite the report after report by objective lay witnesses, FDOC employed the same torturous and unaltered protocol in the execution of Mr. Gary Ray Bowles. A reporter there provided a detailed timeline of Mr. Bowles’ movements during the execution. See Tarik Minor – Anchor, I-Team reporter, News4JAX, *Tarik Minor: Eyewitness to the Execution of Gary Ray Bowles* (updated August 24, 2019) <https://www.news4jax.com/news/florida/i-witnessing-the-execution-of-gary-ray-bowles>. He reported that at 10:44 p.m., “[a]s the first injection is administered into the IV connected to Bowles’ arm, it appears Gary Bowles was praying. I could see **his mouth was moving but it’s impossible to read his lips and know what he was saying or murmuring under his breath.**” *Id.* Then, at 10:46 p.m., “Bowles begins to take **exaggerated deep breaths.** I see his **chest moving up and down and it’s clear his heart is still beating** in the final minutes of his life. One minute later Bowles’ mouth stops moving altogether but **his chest continues to rise and fall dramatically.**” *Id.* Then, at 10:48 p.m., “There is **still movement in Bowles’ upper torso and chest.** He appears to still be alive and then suddenly, **some slight movement in his neck** and then his body seemingly goes limp. There was no movement in his body for the next several minutes.” *Id.* Once again, it is clear that Mr. Bowles suffered.

13. For decades, Florida has experimented with various execution procedures and protocols. The Florida Supreme Court has recognized that when new facts arise from problems or unusual

occurrences, like those that occurred in the executions of Mr. Branch, Mr. Jimenez, Mr. Long, and Mr. Bowles, disclosure of records is warranted. *See Lightbourne v. McCollum*, 969 So. 2d 326 (Fla. 2007); *see Muhammad v. State*, 132 So. 3d 176 (Fla. 2013). It should be noted that substantial litigation is pending regarding the constitutionality of the current lethal injection protocol before the Middle District Court of Florida. FDOC and Secretary Inch are the respondents in these civil lawsuits brought pursuant to 42 U.S.C. §1983. *See Davis v. Reddish et al.*, Case Number 3:18-cv-00353-MMH-PDB (Middle District of Florida); *Anderson v. Palmer et al.* Case Number 3:14-cv-01148-MMH-JBT (Middle District of Florida); *Brant v. Reddish et al.*, Case number 3:13-cv-412-K-32MCR (Middle District of Florida); *Jackson v. Palmer et al.*, Case Number 3:14-cv-01149-MMH-JBT (Middle District of Florida) (the District Court has denied the Respondents' Motion to Dismiss the lawsuit and has ordered discovery to proceed). While the denial of the State's motions to dismiss in those cases is not in itself a finding that the Etomidate Protocol is unconstitutional, the Court clearly rejected the State's argument that the lawsuit was meritless on its face. The Court further recognized that the Etomidate Protocol must be subjected to reliable testing and investigation through the discovery process. Mr. Gaskin is seeking the disclosure of public records for that very reason.

14. Ricky D. Dixon in his capacity as Secretary of FDOC ("Secretary Inch"), states without any evidence or support that Florida's lethal injection protocol "has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society,"¹

¹ Secretary Dixon is not a licensed attorney. Further, no attorney has been assigned or designated to make these legal statements regarding the constitutional burden under the Eighth Amendment.

the concepts of dignity of man, and advances in science, research, pharmacology, and technology.”² (footnotes added). This is sweeping conclusory statement – particularly when juxtaposed with the harrowing reports from actual executions involving this protocol – obviously requires further investigation to determine the veracity of these assertions in light of the foregoing displays of movements and pain in the executions under this protocol. The records requested include a request for the *bases* for these legal and medical/scientific assertions. *See infra* p.11-14.

15. Further, Secretary Dixon’s representation that the protocol “will not involve unnecessary lingering or the unnecessary wanton infliction of pain and suffering” is no substitute for meaningful investigation in light of the harrowing, contemporaneous observations of executions under this protocol. To dismiss or ignore these signs of unnecessary infliction of pain and suffering in each execution is a violation of the Eighth Amendment and Florida law. Secretary Dixon has a constitutional and statutory duty to assure that there is no unnecessary lingering or the unnecessary wanton infliction of pain and suffering under this protocol. Therefore, records requested regarding the drugs and relating to the efforts of FDOC to meet this burden must be disclosed. *See infra* p.11-14.
16. Despite its unsupported assertions to the contrary, FDOC has blatantly disobeyed its protocol and Florida law under Fla. Stat. § 922.11(2) by allowing more than twelve citizens to witness

² It must also be noted that Secretary Dixon is not a medical doctor, scientist, licensed psychologist, licensed pharmacist, or licensed pharmacologist equipped to make these general medical or scientific assertions. Further, no medical doctor, scientist, licensed psychologist, licensed pharmacist, licensed pharmacologist or medical personnel has signed off on this statement regarding advances in science, research, pharmacology, and technology.

the executions of both Mr. Long and Mr. Bowles, while rejecting both defendants' requests for an additional attorney witness, claiming that an additional attorney witness would be a violation of the statute and policy. *See* Evan Donovan, News Channel 8 WFLA, *Execution of Bobby Joe Long: Death sentence carried out* (updated May 24, 2019) <https://www.wfla.com/news/local-news/execution-of-bobby-joe-long-death-sentence-carried-out/> (“There are **26 witnesses** in the front three rows including a spiritual advisor and one of Long’s attorneys. **Several corrections officials are also seated.** The **nine media witnesses** are seated in the back row.”); *see also* Tarik Minor – Anchor, I-Team reporter, News4JAX, *Tarik Minor: Eyewitness to the Execution of Gary Ray Bowles* (updated August 24, 2019) <https://www.news4jax.com/news/florida/i-witnessing-the-execution-of-gary-ray-bowles/> (“Inside, there were four rows of seats. In the front row -- 5 feet from a glass window through which we would watch Bowles' last minutes of life -- state attorneys were already seated along with law enforcement officials. I counted **19 men and eight women.**”). This disregard of Florida law regarding the witnesses also occurred under the prior protocol during the execution of Oscar Ray Bolin Jr, where **there were 36 witnesses.** *See* Tim Nudd, People, *Serial Killer Oscar Ray Bolin Jr., Who Married His Defense Attorney, Is Executed in Florida* (Updated January 8, 2016) (citing Tampa Bay Times) <https://people.com/crime/police-arrest-alleged-serial-killer-in-florida-after-dna-links-him-to-4-murders/>. Records requests related to these executions must be disclosed. *See infra* p.14.

17. Mr. Gaskin has a constitutional right to public records. Article I, Section 24 of the Constitution for State of Florida, provides that “every person has the right to inspect or copy any public record made or received in connection with the official business of any public

body, officer, or employee of the state.” FLA. CONST. art. I, § 24; *see also Town of Gulf Stream v. O’Boyle*, No. 15-80182-CIV, 2015 WL 3970612, at *4 (S.D. Fla. June 30, 2015), *aff’d*, 654 F. App’x 439 (11th Cir. 2016). The Florida Supreme Court promulgated Florida Rule of Criminal Procedure 3.852 to streamline the process for capital defendants in the pursuit of postconviction relief. *See In re Amendment to Florida Rules of Criminal Procedure-Capital Postconviction Pub. Records Prod.*, 683 So. 2d 475, 475 (Fla. 1996). At the time the new rule was put into place, former Justice Harry Lee Anstead emphasized in his concurring opinion that **“this rule in no way diminishes the right of an individual Florida citizen, including a capital defendant, to access to public records”** and that **“the State and its agencies have indicated they will essentially follow an ‘open file’ policy.”** *In re Amendment to Florida Rules of Criminal Procedure-Capital Postconviction Pub. Records Prod.*, 683 So. 2d at 477 (emphasis added).

18. In light of the foregoing objective and contemporaneous documented witness statements, Mr. Gaskin seeks to challenge the method of execution. He has satisfied the minimal requirement of establishing that the records sought are relevant and pertinent to the subject matter of whether Florida’s three-drug lethal injection protocol would violate Mr. Gaskin’s constitutional rights afforded to him by U.S. CONST. amend. VIII and FLA. CONST. art. I, § 17. *See infra* p.11-14.
19. Furthermore, Secretary Dixon has made clear that the “entire process of execution **should be transparent.**” (emphasis added). Mr. Gaskin agrees with Secretary Dixon that it *should* be transparent and if the Secretary’s “foremost objective of the lethal injection process is a humane and dignified death,” then FDOC must disclose the requested records to Mr. Gaskin

forthwith.

20. The public records requested are as follows:

****Note: Responsive email communications related to public business contained in private email accounts are public records and must be produced.***

A. Those Medical/Psychological/Psychiatric/Mental Health Dental/Surgical Records³ for Florida Department of Corrections inmate Louis Bernard Gaskin, DOC# 751166, from Florida State Prison and Union Correctional Institution, not yet provided;

B. Those Classification Records for Florida Department of Corrections inmate Louis Bernard Gaskin, DOC# 751166, from Florida State Prison and Union Correctional Institution, including but not limited to: records pertaining to any disciplinary proceedings; movement and housing logs; and visitation logs for attorneys and visitors including friends, family and clergy designated by Mr. Gaskin from January 1, 1997, through the present;

C. Those Central Records for Florida Department of Corrections inmate Louis Bernard Gaskin, DOC# 751166, from Florida State Prison and Union Correctional Institution from January 1, 1997, through the present.

D. Public records concerning the review process which led to the promulgation of the March 10, 2023, lethal injection procedures, including but not limited to computer print-outs or copies of research or literature reviewed, emails, faxes, letters, minutes or notes of meetings, telephone call records or notes, including any communications with FDOC, Office of the Attorney General, the Office of the Governor, any other outside agencies, experts (medical or other), other states or state departments of corrections, and/or the federal government;

E. Public records relating to any research and/or experiments done by FDOC, or on behalf of FDOC, regarding the use of etomidate and rocuronium bromide from January 4, 2017 to the re-certification of the protocol on March 10, 2023;

F. Public records relating to any correspondence, from January 4, 2017, to the present, with any federal agency including the Drug Enforcement Administration, the U.S. Food & Drug Administration, the Federal Bureau of Prisons, or the Department of Justice relating to Florida's execution procedures or the drugs used for lethal injection. This would include, but is not limited to, application or registration for permits and/or licenses, or permits and/or

³ Mr. Gaskin will execute and provide medical releases to FDOC in accordance with Fla. R. Crim. P. 3.852. *See also* United States Department of Health and Human Services, Office of the Secretary, Office of Civil Rights Complaint Transaction Number 01-19-343108 (Resolution of complaint informally through provision of technical assistance to Centurion of Florida in reference to the medical records for inmate Bobby Joe Long).

licenses required by any federal agency in connection with the purchase, storage, use, research, and disposal of rocuronium bromide, potassium acetate and etomidate;

G. Public records relating to any consultation with experts (medical or otherwise) with respect to etomidate and its use and efficacy in Florida's three-drug lethal injection protocol. This includes but is not limited to facsimiles, letters, memoranda, minutes, hand-written or typed notes, telephone calls records or notes, internal communications with staff of FDOC from January 4, 2017, to the re-certification of the protocol on March 10, 2023;

H. Public records disclosing specifically the batch numbers of the etomidate, rocuronium bromide, and potassium acetate to determine whether U.S. Food & Drug Administration has recalled or designated the batch unsafe.⁴ In the alternative, a statement from FDOC assuring that the batch numbers of the drugs have not been recalled or designated as unsafe by the U.S. Food & Drug Administration;

I. Public records relating to execution training exercises, including logs, checklists, sign-in sheets, photographs, and videos from January 4, 2017, to present;

J. Public records relating to any correspondence with any Florida state agency including the Florida Department of Health, from January 4, 2017, through the present, relating to the acquisition of rocuronium bromide, potassium acetate and etomidate;

K. Public records, including logs or record books regarding the purchase, storage, maintenance, use, distribution, disposal, and expiration dates of etomidate that show compliance (or non-compliance) with the Federal Controlled Substances Act and Florida Statutes, Chapters 828, 893, and 465 from January 4, 2017, to the present;

L. Public records relating to how FDOC or associated personnel obtained rocuronium bromide, potassium acetate, and etomidate including purchase orders, prescriptions, contracts, invoices, bills, payments, e-mails, letters, approval from the U.S. Drug & Food Administration of the specific drugs procured, or any other communication relating to the procurement from September 9, 2013, to present;⁵

M. Public records related to FDOC's solicitation of bids for rocuronium bromide, potassium

⁴ In 2014, vials of etomidate were recalled for the presence of particulate matter. See *U.S. Food & Drug Administration Human Drug Product Recalls Pending Classification* available at <https://www.fda.gov/Safety/Recalls/EnforcementReports/ucm310739.htm> (last visited April 25, 2019).

⁵ The U.S. Department of Food & Drug Administration approved manufacturers of all these drugs has placed **strict controls** (legitimate medical use) regarding the prohibited use of their drugs for lethal injection executions. See *Lethal Injection Information Center, Controlled Medicines* available at <https://lethalinjectioninfo.org/controlled-medicines/> (last visited April 25, 2019).

acetate, and etomidate from January 4, 2017, to the present;⁶

N. Public records clearly showing the date of manufacture of the three drugs, the half-life of the three drugs, the expiration date of the three drugs, and the batch number of the three drugs to be used by FDOC to carry out the execution of Mr. Gaskin (*see supra* subsection C; *see supra* footnote 1). Using expired drugs created a substantial risk of serious harm that the drugs will not produce the intended result;

O. Public records showing the name of the manufacturer and distributor of the lethal injection drugs, including the package insert information and/or manufacturer's instructions.⁷ Drugs from non-approved manufactures create a substantial risk of serious harm that the drugs will not produce the intended result;

P. Public records that include the logs or records of the refrigeration, the containment conditions, and physical descriptions of the three drugs in the FDOC lethal injection protocol from January 4, 2017, to the present. Lack of refrigeration creates a substantial risk of serious harm that the drugs will not produce the intended result;⁸

Q. Public records consisting of photographs or videos of the execution chamber, including close-up photographs of all connections and tubing;

R. Public records, including the **required logs**, notes, memoranda, letters, electronic mail, and facsimiles, relating to the executions by lethal injection of Mark J. Asay (DC# 078387), Michael R. Lambrix (DC# 482053), Patrick C. Hannon (DC# 500914), Eric S. Branch (DC# 313067), Jose A. Jimenez (DC# 406677), Bobby Joe Long (DC # 494041), and Gary Ray Bowles (DC # 086158). Included in this request are detailed logs of the timing and delivery of the chemicals used in the foregoing executions and the FDLE monitors' detailed logs as described in the FDOC lethal injection protocol;⁹

S. Public records consisting of photographs and videos of the actual executions by lethal injection of Mark J. Asay (DC# 078387), Michael R. Lambrix (DC# 482053), Patrick C. Hannon (DC# 500914), Eric S. Branch (DC# 313067), Jose A. Jimenez (DC# 406677),

⁶ *See id.*

⁷ *See id.*

⁸ In Georgia, executions were cancelled because the lethal injection pentobarbital was found to be "cloudy." Rhonda Cook, *The Atlanta Journal-Constitution*, *GA. Postpones Executions so Execution Drugs can be Analyzed* (March 3, 2015) <https://www.ajc.com/news/breaking-news/postpones-executions-execution-drugs-can-analyzed/Gul2X4heJ5rpXY859UvSsJ/>.

⁹ This is critically important in light of the botched execution of Eric Branch, where he screamed and thrashed on the gurney as the execution drugs were being delivered. A clear understanding of the timing of the delivery of the drugs is relevant and likely to lead to discoverable evidence.

Bobby Joe Long (DC # 494041), and Gary Ray Bowles (DC # 086158);

T. Public records related to the training and experience of all individuals directly involved with the executions of Mark J. Asay (DC# 078387), Michael R. Lambrix (DC# 482053), Patrick C. Hannon (DC# 500914), Eric S. Branch (DC# 313067), Jose A. Jimenez (DC# 406677), Bobby Joe Long (DC # 494041), and Gary Ray Bowles (DC # 086158);

U. Public records related to the investigation and/or review of the execution of Eric S. Branch (DC# 313067), Jose A. Jimenez (DC# 406677), Bobby Joe Long (DC # 494041), and/or Gary Ray Bowles (DC # 086158);

V. A list/log of all persons present during the May 23, 2019, execution of inmate Bobby Joe Long (DC # 494041) or at a minimum the number of people present and a description of their status/relationship to the case (e.g. attorney, prosecutor, correctional guard, media, spiritual advisor, or victim's family);

W. Any and all written communications to or from any employee of the department of corrections regarding the selection of witnesses to be present during the May 23, 2019, execution of inmate Bobby Joe Long (DC # 494041);

X. The names of all persons present during the August 22, 2019 execution of inmate Gary Ray Bowles (DC # 086158) or at a minimum the number of people present and a description of their status/relationship to the case (e.g. attorney, prosecutor, correctional guard, media, spiritual advisor, or victim's family);

Y. Any and all written communications to or from any employee of the department of corrections regarding the selection of witnesses to be present during the August 22, 2019, execution of inmate Gary Ray Bowles (DC # 086158);

Z. A list/log of all persons present during the executions of inmate Mark J. Asay (DC# 078387), and/or Michael R. Lambrix (DC# 482053), and/or Patrick C. Hannon (DC# 500914), and/or Eric S. Branch (DC# 313067), and/or Jose A. Jimenez (DC# 406677) or at a minimum the number of people present at each of these executions and a description of their status/relationship to the case (e.g. attorney, prosecutor, correctional guard, media, spiritual advisor, or victim's family); and

AA. Any and all lists or other records maintained by FDOC regarding the population of death row, including at Union Correctional Institution, Florida State Prison, and/or Lowell Correctional Institution, including but not limited to, the age of each inmate when initially sentenced to death; the present age of each inmate sentenced to death; the initial reception date of each individual sentenced to death; the number of years each inmate on death row has been sentenced to death; the number of new inmates housed on death row each year for each facility; the total number of inmates housed on death row since 1976, both overall and divided into each year; and the total number of inmates presently sentenced to death.

21. Undersigned counsel attest that the aforementioned requests:

- (A) Are relevant to a pending death warrant proceeding;
- (B) Are not the subject of a previous objection; and
- (C) Have not been previously produced.

22. Based on the foregoing, Mr. Gaskin attests that the requested records detailed below are reasonably calculated to lead to the discovery of admissible evidence in that such records may contain, or through further investigation may lead to the discovery of, evidence that execution by Florida's lethal injection procedures constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution. *See* U.S. CONST. amends. VIII; XIV; FLA. CONST. arts. I, § 9; 17; 24. Furthermore, these records are necessary for the disclosure of evidence that would need to be presented at an evidentiary hearing to support an as-applied challenge in light of the procedures created by the Supreme Court of the United States in their divided opinions in *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019) and *Glossip v. Gross*, 135 S. Ct. 2726 (2015). *See infra* p.11-14.

23. Mr Gaskin's medical records are relevant to Mr. Gaskin's current medical condition as it relates to the State of Florida's lethal injection procedures, the requests for Mr. Gaskin's medical and psychological records are also reasonably calculated to lead to the discovery of admissible evidence in that such records relate to the physical and mental health of Mr. Gaskin, and will assist in the determination of whether the death penalty, as applied to Mr. Gaskin in particular, is a violation of the Eighth Amendment prohibition against cruel and unusual punishment and the Fourteenth Amendment right to equal protection under the law. Further, Mr. Gaskin's own medical, psychological, etc. records are also discoverable by Mr.

Gaskin under *Muhammad v. State*, 132 So. 3d 176, 201 (Fla. 2013), in which the Florida Supreme Court found that the circuit court abused its discretion in denying Muhammad his own inmate and medical records.


24. The request is not overly broad or unduly burdensome. A mere inconvenience to the agency cannot outweigh Mr. Gaskin's due process rights to gather evidence to avoid the ultimate sanction.

25. Mr. Gaskin demands that the records requested be copied, indexed and delivered to the records repository by your agency pursuant to this Court's scheduling order with a courtesy copy delivered via e-mail to undersigned counsel.

WHEREFORE, Mr. Gaskin requests an order for the records described above.

AFFIDAVIT OF COLLATERAL COUNSEL

I, Tracy Martinell Henry, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.



Tracy Martinell Henry
ASSISTANT CAPITAL COLLATERAL REGIONAL COUNSEL
- MIDDLE
Counsel for Mr. Gaskin

Sworn to or affirmed and subscribed before me this 14th day of March, 2023, by TRACY MARTINELL HENRY who is personally known to me or has shown the following identification:



NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires:



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of March, 2023, I electronically filed the foregoing Notice of Substitution of Counsel with the Clerk of Circuit Court by using the Florida Courts e-portal filing system which will send a notice of electronic filing to the following: Assistant State Attorney Rosemary Calhoun, at CalhounR@sao7.org and PaughN@sao7.org; Assistant Attorney General Doris Meacham, at Doris.Meacham@myfloridalegal.com and Assistant Attorney General Patrick Bobek at Patrick.Bobek@myfloridalegal.com and capapp@myfloridalegal.com; and the Florida Supreme Court, at warrant@flcourts.org.

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