

CAPITAL CASE

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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**JAMES HITCHCOCK,**

*Petitioner,*

**v.**

**SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,**

*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
FLORIDA SUPREME COURT

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**APPLICATION FOR STAY OF EXECUTION**

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**DEATH WARRANT SIGNED**  
**Execution Scheduled: April 30, 2026, at 6:00 PM ET**

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To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of  
the United States:

The State of Florida has scheduled the execution of Petitioner James Hitchcock  
("Mr. Hitchcock") for Tuesday, April 30, 2026, at 6:00 PM ET. Pursuant to the  
Supreme Court Rule 23 and 28 U.S.C. § 2101(f), Mr. Hitchcock respectfully requests

a stay of execution pending the disposition of his Petition for a Writ of Certiorari accompanying this application.

### **STANDARDS FOR A STAY OF EXECUTION**

The standards for granting a stay of execution are well established. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). There ““must be a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; there must be a significant possibility of reversal of the lower court’s decision; and there must be a likelihood that irreparable harm will result if that decision is not stayed.”” *Id.* (quoting *White v. Florida*, 458 U.S. 1301, 1302 (1982) (Powell, J., in chambers)).

### **PETITIONER SHOULD BE GRANTED A STAY OF EXECUTION**

The judiciary’s role is to ensure that challenges to lawfully issued sentences are resolved “fairly and expeditiously.” *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019). “Courts should police carefully against attempt to use such challenges as tools to interpose unjustified delay.” *Id.* Mr. Hitchcock seeks to justly delay his execution so that he may enjoy the full protection of the Eighth Amendment. Hitchcock presents two questions of constitutional significance that only this Court can resolve. Hitchcock has been denied his rights to due process, equal protection of the law, and – as an innocent man set to be executed – to be free from cruel and unusual punishment. Hitchcock has exhausted all remedies in state court to no avail.

When evaluating whether to grant Mr. Hitchcock’s Petition for Certiorari, this Court should equally examine the four factors of a “traditional standard for a stay”

including: (1) whether there is a strong showing of success on the merits; (2) whether there will be irreparable injury; (3) whether there will be substantial injury to other interested parties; and (4) public interest. See, *Bucklew v. Precythe*, 587 U.S. at 171-172 (Sotomayor, J. dissenting); *Nken v. Holder*, 556 U.S. 418, 425-426 (2009); *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987).

*a. Strong showing of success on the merits.*

For Hitchcock’s first question presented to this Court, Hitchcock is being denied access to public records and, based on the nature of the records sought, denied the ability to assert that FDOC is maladministering the drugs used in lethal injection executions. The records filed in Frank Walls's post-warrant proceedings supply direct evidence that FDOC carried out executions in a manner that violates the agency's own protocols. Regardless of whether FDOC's actions are attributable to negligence or deliberate choice, the agency's failure to follow the specified lethal injection protocol subjects capital postconviction defendants in Florida to a substantial risk of unnecessary pain and suffering.

FDOC carried out 19 executions in 2025. The FDOC drug logs filed in *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025) provide insight into the executions which occurred between January 1, 2025, and September 30, 2025, in which the following 13 people were executed<sup>1</sup>:

James Ford executed February 13, 2025  
Edward James executed March 20, 2025

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<sup>1</sup> “Death Penalty Information Center,” Execution Database, <https://deathpenaltyinfo.org/facts-and-research/data/executions?year=2025&state=Florida&federal=No> (filtered for year 2025, state: Florida) (Last Accessed February 5, 2026).

Michael Tanzi executed April 8, 2025  
Jeffrey Hutchinson executed May 1, 2025  
Glen Rogers executed May 15, 2025  
Anthony Wainwright executed June 10, 2025  
Thomas Gudina executed June 24, 2025  
Michel Bell executed July 15, 2025  
Edward Zakrzewski executed July 31, 2025  
Kayle Bates executed August 19, 2025  
Curtis Windom executed August 28, 2025  
David Pittman executed September 17, 2025  
Victor Jones executed September 30, 2025.

The entries in the date columns correspond with dates in which FDOC carried out executions as outlined above. See Appendix to Petition for Writ of Certiorari, App. R; S.

For example, Appendix R, “FDOC Log Part 1,” the record reflects entries for: “4-8-25;” “5-1-25;” and “5-15-25.” This corresponds with the dates FDOC executed Michael Tanzi, Jeffrey Hutchinson, and Glen Rogers. It can also be deduced from this particular page of the record that FDOC did not use expired etomidate 40 mg/20mL during the execution of Michael Tanzi but did “use” etomidate which had reached its expiration of “5-25” during the executions of Jeffrey Hutchinson and Glen Rodgers. Also the records reflects that FDOC “used” lidocaine on dates which correspond with the executions of Edward James and Michael Tanzi. Lidocaine is not approved for use or included in the lethal injection protocol.

As seen in Appendix S, “FDOC Log Records Part 2,” of the record shows etomidate 40mg/20mL was “used” during additional dates which correspond with the dates of additional executions. For instance, the dates which correspond to the executions of

Kayle Bates, David Pitman, and Victor Jones reflect the etomidate expired “1/31/2025.”

It can also be seen on the log that etomidate was “used” on “7/28/25” and “8/29/25.” It is a reasonable conclusion from the record that these two dates correspond with the executions of Edward Zakrzewski and Curtis Windom because there are no entries for etomidate on the dates of their executions other than the entries near the time of their executions. Additionally, the entries suggest that etomidate “used” on July 28, 2025, had reached its expiration at the time of the July 31, 2025, execution. The etomidate used August 29, 2025, expired “1/31/2025.” This suggests that expired etomidate was used during the executions of Edward Zakrzewski and Curtis Windom.

The significance of using expired lethal chemicals was attested to by Dr. Daniel Buffington in his affidavit filed along with Hitchcock’s demand for public records in the warrant court. He affirmed that “[f]ailure to properly monitor and remove expired substances could result in the use of substances with *reduced pharmacologic effect* or produce unnecessary complications for the inmate or the abrupt and early termination of an execution.” (emphasis added).

The FDOC logs support that ***7 of the 13 men*** executed between January 2025, and September 30, 2025, appear to have received expired etomidate. Etomidate is the first drug of the protocol used to “sedate” the person being executed so that they do not feel the pain or torture of the second and third drug killing them. This suggests that of the people executed between January 2025, and September 30, 2025, ***that more than 50% of the executed men*** received doses of etomidate that could have

had the *reduced pharmacologic effect*. Witnesses to the execution would not know that the sedative had reduced pharmacologic effect because the second drug, rocuronium, is the paralytic causing muscle paralysis and the men experiencing pain would be prevented from indicating the cruel suffering they are experiencing.

The Walls records indicate that FDOC violated their own protocol based on the following:

FDOC recorded the removal of three drugs from supply use during executions, on an ad hoc basis, in violation of the specified lethal injection protocol. Thomas Gudinas was executed on June 24, 2025; yet FDOC did not record the removal of all three drugs used until June 25, 2025. Anthony Wainwright was executed on June 10, 2025, but FDOC waited until June 12, 2025, to record the removal from supply of all three drugs allegedly used in the June 10, 2025, execution. These failures are not simply “sloppy” record keeping, these failures to properly log the drugs used would not have occurred had FDOC followed the lethal injection protocol which requires contemporaneous record keeping from multiple individuals to ensure the drugs are administered properly.

According to the FDOC records, the agency also gave incorrect dosages of drugs to Gudinas and Wainwright. The June 25, 2025, log, which corresponds with Gudinas’ execution (despite the execution occurring on June 24, 2025), shows that only 10 x 10 ml vials of rocuronium were removed (1000 mg). The removal and use of 1000 mg of rocuronium (paralytic drug) is only half of the amount that should have been used and removed according to the lethal injection protocol, which requires 2000 mg of

rocuronium, administered through 20 x 10 ml vials. Failing to administer the required dosage of rocuronium is a clear violation of the official lethal injection protocol.

As for the drugs administered to Wainwright, based on FDOC's own records, on June 12, 2025, the logs show the removal of seven vials of potassium acetate from FDOC's inventory. The removal of seven vials of potassium acetate suggests that FDOC only prepared 280 milliequivalents rather than the 480 milliequivalents (12 x 20 ml vials) that the lethal injection protocol requires. Failing to administer the required dosage of potassium acetate is a clear violation of the lethal injection protocol.

The execution of Michael Bell occurred on July 15, 2025, and FDOC did not record the removal of rocuronium bromide or potassium acetate until July 16, 2025. Additionally, the logs did not contain an entry for the removal of etomidate for Bell's execution, rendering the source and quantity of the drug used in Bell's execution undeterminable.

The errors and omissions noted in the Walls records constitutes an admission, by FDOC, to negligent or deliberate violations of the official lethal injection protocol during executions in 2025. The agency's admission (via business records) far overcomes - and certainly outweighs - any presumption that the FDOC, in fact, carried out the 2025 executions in compliance with both the official protocol, the relevant rules, and the laws of Florida and the United States. Based on the agency's admissions, the presumption should now be that the agency is not following the

protocol, and it should remain until transparency exists. Rather than assuring Mr. Hitchcock and the public that the protocol violations and potentially unlawful executions that occurred in 2025 will not occur with future executions, the agency and the State of Florida continue to insist on opacity. As noted by Justice Sotomayor:

Individuals seeking to challenge the method of their execution should not have to guess at whether the State is, or is not, following its execution protocol. Nor does the State appear to have any legitimate confidentiality interest in shielding from inspection basic facts about the implementation of its execution protocol, such as whether the State is using expired drugs. If the protocol is in fact being followed, then transparency instills confidence in the protocol for everyone—prisoners, the courts, and the public alike. If it is not, then secrecy is intolerable, and disclosure of the relevant records is indispensable for determining whether the lapses at issue are likely to lead to an Eighth Amendment violation.

*Trotter v. State of Florida, et al*, 607 U.S. \_\_\_(2026) (statement from Justice Sotomayor respecting the denial of the application for stay and petition for certiorari).

The State of Florida and its agencies are utilizing Florida Statute § 945.10, to deny Mr. Hitchcock and other capital postconviction inmates in Florida access to records which reasonably lead to a claim for relief based on an Eighth Amendment violation caused by FDOC's failure to follow its own rules. In addition to his strong showing of success on the merits, the mere possibility Mr. Hitchcock's imminent execution will be carried out in a manner that creates a substantial risk of needless pain and cruelty amounts to irreparable harm. All inmates that will be executed by the FDOC are also at risk of irreparable These concerns spark at a time when Florida is continuing its historical surge of executions, with a rate that far surpasses that of any other (active death penalty) state in the country. Florida, alone, accounted for

40% of all executions in the United States in 2025. In 2026, Florida has accounted for five out of the eight (nearly 63%) executions that have occurred across the country at the time of this writing. This year, as of the time of this writing, Florida's governor has signed seven death warrants.

In Mr. Hitchcock's second question presented to this Court, Mr. Hitchcock argues that the Florida courts have denied any consideration of his innocence based on a cumulative review of his case, in violation of the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution. Mr. Hitchcock's clemency proceedings occurred in 1983, roughly two decades prior to the discovery of evidence which supported his 1977 testimonial assertion of innocence; thus, his clemency proceedings would not have included a consideration of the innocence-related evidence. Although Mr. Hitchcock does not presently raise a newly discovered evidence argument, he previously advanced additional testimonial evidence of innocence during various postconviction proceedings; however, the State of Florida and the Florida Supreme Court either ignored or disregarded the evidence. The credibility findings related to Mr. Hitchcock's witnesses were wholly unreasonable, especially in the context of a cumulative review of Mr. Hitchcock's case. Mr. Hitchcock's compelling case of innocence is provided in the accompanying petition.

*b. Irreparable injury.*

If this Court does not intervene, Mr. Hitchcock is at risk of being executed in a manner that presents an unnecessary risk of unreasonable pain and suffering during the execution process. Additionally, there is an obvious irreparable injury that a man

innocent of murder, will be executed for a murder that he did not commit. This violates the very fabric of justice.

*c. No substantial injury to other interested parties.*

The State of Florida cannot reasonably claim that the disclosure of public records kept in compliance with the lethal injection protocol would cause a substantial injury to Florida's interests. There are no substantial injury results from the consideration of Mr. Hitchcock's claim of actual innocence, either on the merits or including the presentation of testimony from witnesses who, under oath, want to tell the courts that another person confessed to the murder.

*d. Public interest*

Lastly, the public has an interest in accessing records that would ensure the State is executing inmates in accordance with the official protocols and the Eighth Amendment of the U.S. Constitution. The citizens of Florida have an interest in ensuring that Mr. Hitchcock will be executed humanely, without needless pain and suffering, and that Florida's executions do not violate the U.S. Constitution. Executions have moved from public "spectacle to hidden ordeal" while the "appearance of violence" has been purposefully removed from executions with paralytic narcotics. John F. Stinneford, *The Original Meaning of "Cruel"*, 105 *Geo. L.J.* 441, 504 (2017) (detailing how an originalist view of 'cruel' precipitates greater public access to the modern, secrecy execution regime). Historically, executions were in the public square exposing the due and undue violence of execution; however, over time, the state has moved executions behind closed doors. *Id.* The people of Florida

and the rest of the country also have a great interest in ensuring that no state is executing innocent people on their behalf.

This Court's presumption against petitions in the eleventh hour before an inmate is executed is inapplicable to claims that assert the imminent execution will violate the Constitution, and claims predicated upon a pattern of failures during executions by a state's department of corrections. The accompanying Petition is not a matter of the interpretation of state laws, rules, and case law, but rather how those laws, rules, and case law, when applied, violate Mr. Hitchcock's U.S. Constitutional rights.

### **CONCLUSION**

"The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Mr. Hitchcock's meritorious issues cannot possibly be heard in a meaningful manner with just days left until his execution. The important constitutional issues presented by Mr. Hitchcock's case require a full appellate review that is not truncated by his imminent execution.

For the foregoing reasons, Mr. Hitchcock respectfully requests that this Court grant his application for a stay of execution scheduled for April 30, 2026, to address the compelling constitutional questions in his case on the merits.

Respectfully submitted,

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Dated: April 25, 2026