

IN THE
SUPREME COURT OF THE UNITED STATES

DOMINICK OCCHICONE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

RESPONSE TO APPLICATION FOR STAY OF EXECUTION
EXECUTION SCHEDULED FOR JULY 28, 2026, AT 6:00 P.M.

Dominick Occhicone, a Florida prisoner under an active death warrant with an execution scheduled for July 28, 2026, asks this Court to stay his execution for the brutal murder of his girlfriend's mother, committed nearly 40 years ago, while it considers whether to grant certiorari review. The petition raises two issues: (1) Whether the Fourteenth Amendment requires a State to provide postconviction public records discovery to a defendant who seeks the requested materials not to litigate an existing constitutional claim, but to determine whether one might exist; and (2) Whether Occhicone's age plus his personal health conditions entitle him to an as-applied exemption from execution despite well-established state and federal law holding otherwise.

As explained in the accompanying Brief in Opposition, Occhicone’s questions do not meet the threshold for certiorari review, and this Court should deny both his petition and application for stay.

Standard for Stay of Execution

To obtain a stay of execution for his long-finalized sentence,¹ Occhicone must establish a reasonable probability that four members of the Court would vote to grant certiorari; a significant possibility of reversal if review was granted; and irreparable injury to the applicant in the absence of a stay. *See Barefoot v. Estelle*, 463 U.S. 880, 895 (1983) (quoting *White v. Florida*, 458 U.S. 1301, 1302 (1982)). All three factors must be present. *Id.* Last-minute litigation, dilatory claims, and speculative theories weigh heavily against a prisoner’s request for equitable relief. *See Bucklew v. Precythe*, 587 U.S. 119, 149-51 (2019); *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992).

A stay of execution is an equitable remedy, not available as a matter of right, and equity must be sensitive to the State’s strong interest in enforcing its criminal judgments. *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (citing *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004)). This Court has recognized its “responsibility ‘to ensure that method-of-execution challenges to lawfully issued sentences are resolved fairly and expeditiously,’ so that ‘the question of capital punishment’ can remain with ‘the people and their representatives, not the courts, to resolve.’” *Barr v. Lee*, 591 U.S. 979, 981 (2020) (quoting *Bucklew*, 587 U.S. at 150). “Last-minute stays of execution

¹ *Occhicone v. Florida*, 500 U.S. 938 (1991).

should be the extreme exception, not the norm.” *Bucklew*, 587 U.S. at 150. The people of Florida, the families of victims, and surviving victims, “deserve better” than the “excessive” delays that typically occur in capital cases. *Id.* at 149. Occhicone’s arguments presented in his petition for certiorari review do not present a compelling reason why a last-minute stay outweighs Florida’s interest in enforcing its laws.

Occhicone’s method-of-execution claims are speculative

Occhicone claims that his execution will cause cruel and unusual punishment and put undue pressure on prison staff because the execution of prisoner James Duckett is scheduled for the same day as Occhicone’s. He also alleges that a shortage of commercial etomidate will cause his execution to be improperly administered. But method-of-execution claims require proof of a risk that is “*sure or very likely* to cause serious illness and needless suffering.” *Glossip v. Gross*, 576 U.S. 863, 877 (2015). Speculation cannot satisfy that standard, and this Court has cautioned that federal courts must guard against claims based on speculative theories. *Bucklew*, 587 U.S. at 151 (“Federal courts ‘can and should’ protect settled state judgments from ‘undue interference’ by invoking their ‘equitable powers’ to dismiss or curtail suits that are . . . based on ‘speculative’ theories.”) (quoting *Hill*, 547 U.S. at 584-85).

Occhicone’s claim that his constitutional rights will be violated if execution is to proceed is entirely speculative and rely on the presumption that Florida’s lethal injection protocol has been improperly administered in past executions. That presumption is based in part on heavily redacted materials that do not identify

executed inmates or confirm that the listed drugs were administered.² The Florida Department of Corrections (FDOC) logs he relies on do not indicate the deviation from protocol any more than other plausible explanations for deviation. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility’ of ‘entitlement to relief.’”) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 557 (2007)). Further, the persuasive value of the FDOC logs Occhicone relies on is questionable because he claims they are inaccurate. *See Heath v. State*, 426 So. 3d 1253, 1261–62 (Fla. 2026) (explaining that Heath’s “maladministration” claims included FDOC’s alleged failure to document removal of etomidate from inventory despite presence of the drug in inmate’s system, delay in documenting removal of etomidate from inventory for several days after execution, and other record-keeping discrepancies).

Occhicone’s claim that the execution of James Duckett at noon on July 28, 2026, will cause such psychological and emotional damage to prison staff that they will botch his execution is also wholly speculative. Occhicone advanced his argument of prison staff psychological damage even before Duckett’s stay was lifted and his execution was re-scheduled. In the courts below, Occhicone claimed that prison staff would be traumatized by having to watch an eighty-year-old man with health problems be executed. After Duckett’s execution was scheduled for July 28, Occhicone fine-tuned this argument to leap inferences that any alleged psychological damage

² The redacted logs Occhicone relies on are from *Walls v. Dixon*, No.4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025).

will lead to prison staff making protocol errors. But no prison or death watch staff member has claimed any indicia of psychological or emotional damage. There has been no evidence presented from anyone withstanding to support Occhicone's allegations. So, to conclude that prison staff *will* be so psychologically damaged as to maladminister Occhicone's execution is without foundation.

Finally, to the extent Occhicone claims any alleged shortage of commercial etomidate will cause FDOC to deviate from its execution protocol—whether due to administration of expired etomidate, substitution of etomidate, or any other change in procedure—that too is speculation. Occhicone alleges that FDOC will deviate from its own protocol by administering the injections in an “arbitrary” and “capricious” manner when there has been no evidence of FDOC has ever done so. And it is well-established that to prevail on an Eighth Amendment violation claim, a prisoner must show that the method of execution is “*sure or very likely* to cause serious illness and needless suffering.” *Baze v. Rees*, 553 U.S. 35, 50 (2008). At most, Occhicone hypothesizes that protocol deviations may have occurred, that they may occur again, and that such deviations would cause unconstitutional pain and result in him being treated differently than other death row inmates. The stacking of inferences is insufficient for a stay.

United States Supreme Court Certiorari Review

“A stay application addressed to . . . [this] Court will be granted only if there exists ‘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.’ ” *Maggio v. Williams*, 464 U.S. 46, 48 (1983) (quoting *White*, 458 U.S. at 1302).

I. Probability of this Court granting certiorari

As to the first factor, there is little chance that four justices of this Court would vote to grant certiorari review on the issue raised here. The Florida Supreme Court found that Occhicone’s method of execution claim was meritless. The court held that Occhicone’s claim that FDOC would deviate from its protocols was “speculative and foreclosed by [Florida Supreme Court’s] recent decisions addressing materially similar claims.” *Occhicone v. State*, No. SC2026-1042, 2026 WL 2097359 at *4 (July 21, 2026). The court rejected Occhicone’s argument that executing a prisoner of his age and health condition would psychologically damage prison staff, noting that “Occhicone has identified no authority recognizing an Eighth Amendment injury premised on a prisoner’s exposure to the suffering of others.” *Id.*

“Speculative” attacks on “settled precedent” do not warrant an execution stay. *See Bucklew*, 587 U.S. at 149, 151. Instead, as noted, it must be certain or “very likely” that the method of execution will cause cruel or unusual pain. *See Glossip*, 576 U.S. at 877. In addition, “where . . . the question in dispute is whether the State’s chosen method of execution cruelly superadds pain to the death sentence, a prisoner must show a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain and that the State has refused to adopt without a legitimate penological reason. *Id.* at 134. This two-part test applies to *all* method-of-execution claims. *Id.* To grant Occhicone relief, this Court would

have to recede from its own precedent because he has failed to satisfy the requirements of *Glossip* and *Baze*.

Occhicone further argues that his Fourteenth Amendment violation claim rests not on his age, but the totality of his age plus his personal health status, thereby entitling him to an as-applied exemption from execution. This is because the Florida Supreme Court has expressly held that Eighth Amendment jurisprudence and the Conformity Clause prohibit creation of an exemption for prisoners of advanced age. But repackaging or relabeling a method-of-execution claim does not allow a litigant to circumvent governing law. *Cf. Louisiana v. Callais*, 146 S. Ct. 1131, 1158 (2026) (holding that litigants “cannot circumvent [the] rule” that partisan gerrymandering claims are not justiciable in federal court by “repack[aging]” them as racial gerrymandering claims).³ Characterizing Occhicone’s request for an as-applied exemption based on the fact that he is eighty years old and reportedly suffering from the effects of past “substance abuse; sleep deprivation on death row; poor hearing and vision; cardiac issues; kidney disease; an enlarged prostate; and the general physical deterioration associated with advanced age” cannot circumvent controlling federal and Florida law. *See Occhicone v. State*, No. SC2026-1042, 2026 WL 2097359 at *4 (July 21, 2026).

Occhicone’s application for stay fails on the first factor, which by itself is sufficient for this Court to deny his request.

³ It should also be noted that Occhicone has offered only anecdotal evidence of his health conditions that amplify his chronological age by listing said conditions in court filings.

II. Significant Possibility of Reversal

Occhicone cannot demonstrate a significant possibility of reversal if this Court grants his petition. The Florida Supreme Court applied its governing law and correctly rejected Occhicone's method of execution claims. Under *Baze* and *Glossip*, a prisoner must show both a substantial risk of severe pain and a feasible alternative method that significantly reduces that risk. Occhicone satisfied neither factor. He has not provided any legitimate evidence supporting his claim that administering two executions in one day will certainly or very likely lead to prison staff improperly administering his execution. He cannot provide the evidence required to establish an Eighth Amendment violation based on the psychological and emotional damage to prison staff.

III. Irreparable Injury

As to the third factor of irreparable injury, there is none. Finality in a capital case *is* the execution; therefore, the relevant inquiry is not whether the execution will occur but whether the inmate is likely to suffer unconstitutional pain. This Court has rejected the argument that risks of improper implementation alone violate the Eighth Amendment. *See Baze*, 553 U.S. at 53–54. Occhicone's speculative allegations of protocol deviations fail to establish irreparable injury. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (holding that the mere “possibility” of irreparable harm is insufficient to obtain injunctive relief); *Koninklijke Philips N.V. v. Thales DIS AIS USA LLC*, 39 F.4th 1377, 1380 (Fed. Cir. 2022) (explaining “mere possibility or speculation of” irreparable “harm is insufficient”).

Occhicone about whether he will suffer cruel and unusual punishment during his execution. Florida has successfully implemented its etomidate protocol over forty times since its adoption in 2017.⁴ The protocol contains numerous checks and safeguards to ensure capital defendants receive the humane and dignified death they denied their victims. The amount of etomidate Florida's protocol calls for, along with the required consciousness checks,⁵ ensure the condemned is unconscious and insensate for at least thirty minutes about a minute after the etomidate injections. *See Rogers v. State*, 409 So. 3d 1257, 1268 (Fla. 2025); *Long v. State*, 271 So. 3d 938, 944 (Fla. 2019); *Valle v. Singer*, 655 F.3d 1223, 1233 (11th Cir. 2011). That defeats any real concern about superadding pain to Occhicone's death sentence.

Occhicone's execution will result in his death, which is the inherent nature of a death sentence. He has identified no irreparable harm that is not a direct consequence of the valid, constitutional, and long-final death sentence that was imposed for his murder of Martha Artzner.

A stay of execution is an extraordinary equitable remedy. Occhicone's speculative allegations and inability to satisfy the *Baze-Glossip* framework, and failure to meet the *Barefoot* factors foreclose relief on certiorari review. Accordingly, this Court should deny his application for stay.

⁴ See Florida Department of Corrections, <https://www.fdc.myflorida.com/institutions/death-row/execution-list-1976-present> (last accessed June 23, 2026). *See also Barr v. Lee*, 591 U.S. 979, 980 (2020) (denying a stay based in part on the number of successful executions).

⁵ This Court has upheld lethal injection protocols even without consciousness checks. *See Glossip v. Gross*, 576 U.S. 863, 877, 886 (2015).

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