

No. 26-5158

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

REPLY TO BRIEF IN OPPOSITION

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: July 28, 2026, at 6:00 PM ET

*ALI A. SHAKOOR
DEBRA R. BELL
MAHHAM SYED
CAPITAL COLLATERAL REGIONAL
COUNSEL - MIDDLE REGION
12973 N. Telecom Parkway
Temple Terrace, Florida 33637
813-558-1600
shakoor@ccmr.state.fl.us
bell@ccmr.state.fl.us
syed@ccmr.state.fl.us
support@ccmr.state.fl.us
Counsels of Record for Petitioner
**Member of the Bar of the Supreme Court*

CAPITAL CASE

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT	1
REPLY REGARDING APPLICATION FOR STAY	1
RESPONSE TO REASONS FOR DENYING THE PETITION	3
CLAIM I	3
CLAIM II	6
CONCLUSION	10

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Barefoot v. Estelle</i> , 463 U.S. 880, 895 (1983)	2
<i>Church of Scientology Flag Service Org., Inc. v. Wood</i> , No. 97-688CI-07 (Fla. 6 th Cir. Ct. February 27, 1997).....	5
<i>James Aren Duckett & Dominick Occhicone v. Ron DeSantis, Governor of Florida, et.al</i> , 4:26-cv-00355-TKW-MAF (N.D. Fla. 2026)	1
<i>Johnson v. Lee</i> , 578 U.S. 605, 608 (2016)	7
<i>Occhicone v. State</i> , 2026WL2097359 (Fla. 2026).....	6
<i>Ohio Adult Parole Auth. v. Woodard</i> , 523 U.S. 272, 289 (1998)	3
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	7
<i>Spencer v. Fla.</i> , No. 25-7648, 2026 WL 1827690 (U.S. June 25, 2026).....	8
<i>Spencer v. State</i> , No. SC2026-0880, 2026 WL 1757938, at *6 (Fla. June 18, 2026) ...	8
<i>Wainwright v. Booker</i> , 473 U.S. 935, 937 n.1 (1985).....	3
<i>Wainwright v. Goode</i> , 464 U.S. 78, 86, 104 S. Ct. 378, 383, 78 L. Ed. 2d 187 (1983) .	6
 Statutes	
28 U.S.C. § 2101(f)	3
§ 921.141, Fla. Statue	5
 Rules	
Fla. R. Crim. P. 3.851(d)(1)(C).....	7
 Constitutional Provisions	
article I, section 17 of the Florida Constitution.....	6
§ 825.101(4), Fla. Statue.....	8
Fla. Const. art. I, § 17. (BIO at 18)	6
Fla. Const. art. I, § 24.....	4
 <u>Other Authorities</u>	
ASHP, <i>Etomidate Injection</i> (April 7, 2026) https://www.ashp.org/drug-shortages/current-shortages/drug-shortage-detail.aspx?id=873&loginreturnUrl=SSOCheckOnly (Last accessed July 24, 2026) .	4

<i>Bureau of Emergency Medical Services; Utah Department of Public Safety, Utah EMS Medication Shortage Procedure, (July 1, 2026) https://ems.utah.gov/utah-ems-education-shortage-information/ (Last accessed July 24, 2026).....</i>	4
Florida Office of the Attorney General, <i>GOVERNMENT-IN-THE-SUNSHINE MANUAL, A Reference For Compliance with Florida’s Public Records and Open Meetings Laws</i> , (2025 ed.) p. 179-80. Downloadable PDF version is available at: Office of Attorney General, James Uthmeier, Sunshine Manual, myfloridalegal.com, https://www.myfloridalegal.com/sites/default/files/government-in-the-sunshine-manual.pdf	5
Fresenius Kabi (December 20, 2022) https://www.fda.gov/media/164122/download (Last accessed July 24, 2026)	4
Joseph Choi, <i>Pharmaceutical Supply Chains Get Tangled in War with Iran</i> , (March 29, 2026) https://thehill.com/policy/healthcare/5805149-iran-war-pharmaceutical-supply-chain/ (Last accessed July 24, 2026).....	4
Maya C. Wai, <i>Drug Shortage and Ethical Issues: Integrating Multidisciplinary Perspectives with a Shared Ethical Framework</i> (September 2024).....	4
Nicholas Jacobus, <i>Top Drugs at Risk of Supply Shortages: Report</i> , (April 22, 2026) https://www.pharmexec.com/view/top-drugs-risk-supply-shortages-report (Last accessed July 24, 2026).....	4
Rachel Tyndale, <i>Etomidate Mechanism of Action, Clinical Uses and Side Effects</i> , (August, 02, 2023) https://www.longdom.org/open-access/etomidate-mechanism-of-action-clinical-uses-and-side-effects-101923.html (Last accessed July 24, 2026).....	4
<i>Report on the Department of Defense Pharmaceutical Supply Chain Risks</i> , (November 2023), https://www.warren.senate.gov/wp-content/uploads/media/doc/FY23%20NDAA%20sec%20860%20Risk%20management%20for%20DoD%20Pharmceuticals1.pdf (Last accessed July 24, 2026);	3
SCIENCEINSIGHTS, <i>What is the Standard Etomidate Dose for Intubation?</i> (November 26, 2025) https://scienceinsights.org/what-is-the-standard-etomidate-dose-for-intubation/ (Last accessed July 24, 2026).....	4
Sofia Quaglia, <i>'An urgent public health crisis': Why so many people are struggling to get medicine</i> (October 22, 2025) https://www.bbc.com/future/article/20251021-why-youre-having-trouble-getting-your-meds (Last accessed July 24, 2026).....	4

Synapse, *What is Etomidate Used For?*, (June 14, 2024) <https://synapse.patsnap.com/article/what-is-etomidate-used-for> (Last accessed July 24, 2026)..... 4

USP, *Addressing Strategic Constraints to Strengthen the US Medicine Supply Chain* (Apr. 7, 2026), <https://www.usp.org/sites/default/files/usp/document/public-policy/vulnerable-medicines-list-2025.pdf> (Last accessed July, 24, 2026); 4

PRELIMINARY STATEMENT

Dominick Occhicone (“Occhicone”) or “Petitioner,” interchangeably, offers the following Reply to the Brief in Opposition from the Respondent (“BIO”). References to it will be as (“BIO at ____”). Occhicone will not reply to every issue and argument raised by Florida and will only address specific points. References to the Appendix A-G, are regarding those same attachments to the pending Petition for a Writ of Certiorari (“Petition”). Occhicone expressly does not abandon any issue not specifically replied to herein and relies upon his Petition in reply to any argument or authority not specifically addressed.

REPLY REGARDING APPLICATION FOR STAY

Petitioner’s execution is currently scheduled for July 28, 2026, only one day after the date of the filing of this Reply. Filed on the same day as the BIO on July 26, 2026, the Respondent also submitted a Response to Application for Stay of Execution. *See Case No. 26A121*. Occhicone begins this Reply by reiterating this Court should grant him a stay of these proceedings.

Occhicone’s immediate need for a stay is also based on concurrent litigation being pursued in joint pleadings on a parallel track, potentially headed towards this Court: *See, James Aren Duckett & Dominick Occhicone v. Ron DeSantis, Governor or Florida, et.al*, 4:26-cv-00355-TKW-MAF (N.D. Fla. 2026); 11th Circuit Appeal docketed as 26-12595. Only one day after he filed his Initial Brief to the Florida Supreme Court (“FSC”) raising concerns about the psychological effects the 2025-26 executions have on the correctional staff at Florida State Prison (“FSP”), as well as

citing to the concerns of religious leaders, the State of Florida scheduled the execution for James Aren Duckett, Florida Department of Corrections DC#112232, also on July 28, 2026, to take place a mere six hours before the execution of Mr. Occhicone. Two executions, six hours apart, are detrimental to the constitutional rights of Occhicone, and psychologically and emotionally damaging for the staff on death-watch, as two executions in one day is unprecedented in modern Florida history. This Court must intervene upon the egregious actions by the State of Florida, articulated in the aforementioned parallel litigation.

Florida's compressed death warrant litigation schedule is completely insufficient to protect Occhicone's constitutional rights. 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 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.* (internal quotations omitted). "[A] death sentence cannot begin to be carried out by the State while substantial legal issues remain outstanding." *Barefoot*, 463 U.S. at 888. Occhicone submits there is a significant possibility of the lower court's reversal, should this Court grant the request for a stay and review of the underlying petition. This Court's intervention is urgently needed to prevent Occhicone's imminent execution.

Florida’s interest in the timely enforcement of judgments handed down by its courts must be weighed against Occhicone’s continued interest in his life. *See Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (“[I]t is incorrect . . . to say that a prisoner has been deprived of all interest in his life before his execution.”) (O’Connor, J., plurality opinion). The irreparable harm to Occhicone is clear. *Wainwright v. Booker*, 473 U.S. 935, 937 n.1 (1985) (Powell, J., concurring). Occhicone would be put to death before having the opportunity to prove Florida’s denial of FDOC records and the opportunity to make a testimonial record, violate his constitutional rights. Moreover, the FSC’s interpretation that there is no difference between categorical and as-applied challenges violates Petitioners’ rights under the Eighth and Fourteenth Amendments. Occhicone respectfully requests this Court stay his execution, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f).

RESPONSE TO REASONS FOR DENYING THE PETITION

CLAIM I

The State’s Brief in Opposition focuses its arguments regarding Claim One on a misreading of Occhicone’s actual claim and a failure to recognize the facts of the claim. Although Occhicone asked for 13 categories of documents in his public records demand it was by no means a “sweeping” request. Occhicone’s Fla. R. Crim. Proc. 3.852 demands were narrowly tailored to information regarding the worldwide shortage of etomidate. The State refuses to acknowledge the well-documented shortage.¹

¹*Report on the Department of Defense Pharmaceutical Supply Chain Risks*, (November 2023), <https://www.warren.senate.gov/wp->

The State of Florida, circuit court, and FSC continually rely on the standard for receiving records claiming they must relate to a colorable claim. Unfortunately for their argument, this is a judicially created standard which violates the public records mandate from the Florida Constitution² as well as the separation of powers between the judicial and legislative branches. When this broad public records right was placed into the Florida Constitution it left the adjustment for any exemptions to the Florida Legislature not the judiciary. However, the FSC has limited this right in a manner which violates Occhicone's due process and equal protections rights guaranteed by the United States Constitution solely based on his membership in the class of people comprised only of convicted capital defendants. Occhicone has clearly set forth an equal protection claim based on the failure of the FSC and lower courts

content/uploads/media/doc/FY23%20NDAA%20sec%20860%20Risk%20management%20for%20DoD%20Pharmaceuticals1.pdf (Last accessed July 24, 2026); USP, *Addressing Strategic Constraints to Strengthen the US Medicine Supply Chain* (Apr. 7, 2026), <https://www.usp.org/sites/default/files/usp/document/public-policy/vulnerable-medicines-list-2025.pdf> (Last accessed July 24, 2026); Joseph Choi, *Pharmaceutical Supply Chains Get Tangled in War with Iran*, (March 29, 2026) <https://thehill.com/policy/healthcare/5805149-iran-war-pharmaceutical-supply-chain/> (Last accessed July 24, 2026); Synapse, *What is Etomidate Used For?*, (June 14, 2024) <https://synapse.patsnap.com/article/what-is-etomidate-used-for> (Last accessed July 24, 2026) Rachel Tyndale, *Etomidate Mechanism of Action, Clinical Uses and Side Effects*, (August, 02, 2023) <https://www.longdom.org/open-access/etomidate-mechanism-of-action-clinical-uses-and-side-effects-101923.html> (Last accessed July 24, 2026); ASHP, *Etomidate Injection* (April 7, 2026) <https://www.ashp.org/drug-shortages/current-shortages/drug-shortage-detail.aspx?id=873&loginreturnUrl=SSOCheckOnly> (Last accessed July 24, 2026); Nicholas Jacobus, *Top Drugs at Risk of Supply Shortages: Report*, (April 22, 2026) <https://www.pharmexec.com/view/top-drugs-risk-supply-shortages-report> (Last accessed July 24, 2026); Maya C. Wai, *Drug Shortage and Ethical Issues: Integrating Multidisciplinary Perspectives with a Shared Ethical Framework* (September 2024); Sofia Quaglia, *'An urgent public health crisis': Why so many people are struggling to get medicine* (October 22, 2025) <https://www.bbc.com/future/article/20251021-why-youre-having-trouble-getting-your-meds> (Last accessed July 24, 2026); Bureau of Emergency Medical Services; Utah Department of Public Safety, *Utah EMS Medication Shortage Procedure*, (July 1, 2026) <https://ems.utah.gov/utah-ems-education-shortage-information/> (Last accessed July 24, 2026); SCIENCEINSIGHTS, *What is the Standard Etomidate Dose for Intubation?* (November 26, 2025) <https://scienceinsights.org/what-is-the-standard-etomidate-dose-for-intubation/> (Last accessed July 24, 2026); Fresenius Kabi (December 20, 2022) <https://www.fda.gov/media/164122/download> (Last accessed July 24, 2026)

² Fla. Const. art. I, § 24

to properly apply the United States Constitutional guarantees of the Fourteenth Amendment to his demand for records based on a violation of the separation of powers created in the United States Constitution.

The State misunderstands Occhicone's entire argument as asking this Court to create a broad discovery procedure when it simply asks this Court to require the State of Florida to abide by the constitutionally created broad access to public records and stop discriminating against a small class of individually convicted capital defendants based on a judicially created standard. Even the Florida Attorney General has acknowledged, by quoting the Sixth Judicial Circuit in *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) in his Government in the Sunshine Manual, A Reference for Compliance with Florida's Public Records and Open Meetings Laws,³ that "Florida law provides any member of the public access to public records, whether he or she be the most outstanding civic citizen or the most heinous criminal." The State's assertion Occhicone's claim regarding these records is untimely under § 921.141, Fla. Stat., also fails because there was no way he could know the ongoing worldwide shortage of etomidate would be relevant to his execution until Governor DeSantis signed the death warrant on June 26, 2026.

³Florida Office of the Attorney General, *GOVERNMENT-IN-THE-SUNSHINE MANUAL, A Reference For Compliance with Florida's Public Records and Open Meetings Laws*, (2025 ed.) p. 179-80. Downloadable PDF version is available at: Office of Attorney General, James Uthmeier, Sunshine Manual, myfloridalegal.com, <https://www.myfloridalegal.com/sites/default/files/government-in-the-sunshine-manual.pdf>

Occhicone's case is not a poor vehicle for review because it would not only result in additional state collateral proceedings but would guarantee those proceedings would be held with the safeguards provided by the Fourteenth Amendment, not only for Occhicone, but also for all other members of the class of convicted capital defendants. The State relies on *Wainwright v. Goode*, 464 U.S. 78, 86, 104 S. Ct. 378, 383, 78 L. Ed. 2d 187 (1983), but overlooks this Court's holding that when the misapplication of a Florida statute so infects its analysis of a Florida statute it is constitutionally impermissible for the Florida Supreme Court to let [it] stand.

CLAIM II

The State's reply to Claim II focuses on the idea that the constitutionality of Florida's Conformity Clause was never raised before a state court. Fla. Const. art. I, § 17. (BIO at 18). To clarify the record, the question was first raised on page 57 of Occhicone's Initial Brief to the FSC (See Appendix B), after discussing the application of the conformity clause for 3 pages – a fact the State understood at the time as they addressed it thoroughly in their Answer Brief on the Merits on page 16, 39, 47, and 48. Occhicone further discussed the constitutionality of the Conformity Clause in the Reply Brief of the Appellant from page 23-24. *Occhicone v. State*, 2026WL2097359 (Fla. 2026). The reason the petition is “silent” on the FSC's failure to address the constitutional challenge to the use of the Conformity Clause (BIO at 27) is because the FSC did address the question on page 16 of their opinion: “Whether Occhicone seeks a categorical or as-applied exemption based on his advanced age is a distinction without a difference... The conformity clause of article I, section 17 of the Florida

Constitution precludes that.” It is exactly that language, saying the Conformity Clause “precludes” a determination of all Eighth Amendment claims in the State of Florida on their merits is what is at issue before this Honorable Court.

The BIO’s next argument is the State court’s decision was made on adequate and independent state law. At best, the state law in question is independent, but not constitutionally adequate. To use the State’s quote, to “qualify as an adequate procedural ground, capable of barring federal habeas review, a state rule must be firmly established and regularly followed.” *Johnson v. Lee*, 578 U.S. 605, 608 (2016). The Conformity Clause is indeed firmly established and has been regularly followed in evaluating categorical challenges to the Eighth Amendment. Application to Occhicone’s individual claim is a departure. The FSC’s erasure of the distinction between categorical and as-applied applications of the Eighth Amendment, goes against this Court’s individualized capital sentencing doctrine. Additionally, as presented in the Petition, Florida’s current contention that this Court’s interpretation of the Eighth Amendment prevents and precludes them of ever hearing an Eighth Amendment challenge not “expressly recognized” (BIO at 34) by this Court, denies the citizens of Florida access to their Eighth Amendment rights, as well as access to the courts, thereby implicating the Fourteenth Amendment’s guarantees. The State’s portrayal of Occhicone’s claim as simply an argument to expand *Roper v. Simmons*, 543 U.S. 551 (2005), is a myopic and misguided view.

The State relies incessantly and incorrectly on the idea that Occhicone’s claim is untimely under Fla. R. Crim. P. 3.851(d)(1)(C). That misstatement certainly

benefits the State. The State, relying on *Spencer v. State*, has proposed a scheme in which all matters regarding age become ripe when the appellant begins aging, regardless of condition, and proposes no age at which that begins. *Spencer v. State*, No. SC2026-0880, 2026 WL 1757938, at *6 (Fla. June 18, 2026), *cert. denied sub nom. Spencer v. Fla.*, No. 25-7648, 2026 WL 1827690 (U.S. June 25, 2026). This could work if what were at issue was a categorical bar to execution that would provide a point of entry. If elderliness began at 65, an appellant filing at 80 would be untimely. However, that is not what is at issue here. Here we are discussing an individual and his individual circumstances: those circumstances can only logically be judged at the time of injury, which in this case is the signing of an execution warrant. Occhicone's claim is not time barred because it did not become ripe until the signing of his warrant.

In order to defend their position, the State only offers a semantic "gotcha." They contend defense's use of the words "the elderly" is some sort of admission Occhicone was arguing for a class all along. (BIO at 33). To that we simply reprint Petitioner's full statement here and allow the court to make their own determination:

Occhicone argues that the execution of the elderly defies the evolving standards of decency of the Eighth Amendment and seeks exemption based on a totality of the circumstances manifest at the time of execution, arguing the determination of age is not based on class, but is a fact specific analysis of the vulnerability of the individual at the time of injury.

Appendix B at 27. (Emphasis added). They also offer an incorrect reading of § 825.101(4), Fla. Stat. as if it cannot be read as one who is 60 years of age AND infirm. Otherwise, the statute could simply read "one who is 60 years or older."

The State also argues this Court should not grant Certiorari because this case is a poor vehicle for a question of federal law. As such, they argue the FSC's decision is not in conflict with any decisions of this court. That is not relevant here. What is relevant is the question as to whether this Court's interpretations preclude the FSC from even hearing Occhicone's question: In other words, is the Conformity Clause, as applied, constitutional?

Lastly, the State argues Occhicone's claims would fail on its merits because he has not demonstrated a national consensus. While Occhicone did present a robust argument on the evolving standards of decency, neither the circuit court nor the FSC addressed it which is why this case deserves to be remanded for further inquiry. Similarly, the State argues Occhicone's age and infirmity are simply an allegation. However, Occhicone was not given an evidentiary hearing in which he could present his medical evidence and personal testimony, nor the testimony of the prison guards who must help him with many of the tasks of daily life including walking or showering. If the State feels his age and infirmity are in dispute, then Occhicone should be given the opportunity to provide proof.

CONCLUSION

Considering the arguments raised, and the pace and frequency in which Florida is signing death warrants, the time has come for this Court to intervene and settle the issue. This Honorable Court should grant the writ.

Respectfully submitted,

/s/ **Ali A. Shakoor**
Florida Bar No. 0669830
Assistant CCRC-M

/s/ **Debra R. Bell**
DEBRA R. BELL
Florida Bar No. 0973068
Assistant CCRC-M

/s/ **Mahham Syed**
MAHHAM SYED
Florida Bar No. 1049535
Asssistant CCRC-M

Counsels of Record for Petitioner
**Member of the Bar of the Supreme*
Court

July 27, 2026
Dated