

No. 26-5162

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES AREN DUCKETT, ET AL.,

Petitioners,

v.

RON DESANTIS, GOVERNOR, STATE OF FLORIDA, ET AL.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR JULY 28, 2026, AT 12:00 P.M.
EXECUTION SCHEDULED FOR JULY 28, 2026, AT 6:00 P.M.

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

Office of the Attorney General
3507 E. Frontage Rd., Ste. 200
Tampa, Florida 33607
Telephone: (813) 287-7900
scott.browne@myfloridalegal.com
capapp@myfloridalegal.com

SCOTT A. BROWNE
Chief Assistant Attorney General
Counsel of Record

RICK A. BUCHWALTER
SENIOR ASSISTANT ATTORNEY GENERAL

MICHAEL W. MERVINE
SPECIAL COUNSEL, ASSISTANT ATTORNEY GENERAL

SUZANNE GLICKMAN
SENIOR ASSISTANT ATTORNEY GENERAL

COUNSEL FOR RESPONDENT

CAPITAL CASE
QUESTION PRESENTED

Given the presence of harm in *all* prior double executions in the last 25 years, have Mr. Duckett and Mr. Occhicone shown that Florida’s proposed “method presents a risk that is sure or very likely to cause . . . needless suffering[.]” *Glossip v. Gross*, 576 U.S. 863, 877 (2015)(citing *Baze v. Rees*, 553 U.S. 35, 50 (2008)).

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OPINION BELOW

Duckett, et al. v. Gov'r of Fla., No. 26-12595, slip op., at ____ (11th Cir. July 26, 2026) (per curiam) (unpublished).

JURISDICTION

This Court has jurisdiction over Duckett's and Occhicone's questions. *See* 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Respondents accept Petitioners' statement of the constitutional and statutory provisions involved.

STATEMENT OF THE CASE AND FACTS

The Governor signed a death warrant on February 27, 2026, directing that Petitioner James Aren Duckett be executed between March 31, 2026 and April 7, 2026. But on March 26, 2026, the Florida Supreme Court entered an Order granting Mr. Duckett's motion to stay his execution to permit DNA testing on evidence. This stay remained in effect until the Florida Supreme Court disposed of Duckett's successive 3.851 appeal and habeas petition filed under warrant and vacated the stay on July 8, 2026. *Duckett v. State*, SC2026-0449 & SC2026-0450, 2026 WL 1970442, at *1 (Fla. July 8, 2026). During the lapse in time between the stay being entered in Duckett's case and the stay being lifted, the Governor signed a death warrant on June 26, 2026, scheduling Petitioner Dominick Occhicone's execution for July 28, 2026, at 6:00 p.m. On July 14, 2026, Governor DeSantis was advised that the stay of execution

in Mr. Duckett's case had been lifted. That same day, Governor DeSantis reset Duckett's execution for Tuesday, July 28, 2026, at 12:00 p.m.

Petitioners thereafter filed an action on July 23, 2026, five days before their scheduled executions, under 42 U.S.C. § 1983 seeking declaratory and injunctive relief prohibiting Defendants from carrying out those executions as scheduled. Petitioners do not challenge the constitutionality of Florida's lethal-injection protocol itself. Rather, they contend that conducting two executions on the same day allegedly creates an increased risk that execution personnel will become fatigued and deviate from established execution procedures, resulting in violations of the Eighth Amendment, the Due Process Clause, and the Equal Protection Clause. Additionally, they argue that the period of time available to challenge the warrant for setting two executions in one day denies them their constitutional right to access to the courts. After having been denied a stay by both the district court and Eleventh Circuit due to the claim's lack of merit, they now seek an emergency stay of *both* executions from this Court while those claims are litigated.

REASONS FOR DENYING THE PETITION

Duckett and Occhicone seek certiorari on the eve of their executions for murders committed approximately forty years ago, in 1987 and 1986, respectively. This Court should deny the petition and bring actual finality to these cases that have been unsuccessfully litigated for decades; each Petitioner had the opportunity to thoroughly litigate his claims for postconviction relief. Indeed, each Petitioner has

pending before this Court a petition for certiorari.¹The State is entitled to finality after expending decades worth of resources defending long-settled judgments and sentences of death, and victims' families deserve respite from decades of delays of Petitioners' executions. *See Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (explaining when initial federal review of a state judgment has run its course "and a mandate denying relief has issued, finality acquires an added moral dimension").

But on the eve of their executions, Petitioners file a motion to stay their executions raising a question that does not warrant this Court's consideration, let alone justify a stay of execution so that this Court can review a question that raises no compelling issue.

The decision below properly stated and applied all governing federal principles, does not implicate an important or unsettled question of federal law, does not conflict with another state court of last resort or a United States Court of Appeals, and does not conflict with any decision of this Court. Review should be denied on that basis alone. *See Sup. Ct. R. 10*.

This Court should deny certiorari and bring an end to the protracted litigation in both capital cases.

I. The lower courts' conclusions that executing two individuals in one day is not cruel and unusual punishment, does not violate their rights to due process, equal protection, or access to the courts, and does not conflict with any decision of this Court, any circuit court of appeals, or any state court of last resort.

¹ *James Aren Duckett v. State of Florida*, Case No. 26-5156 and *Dominick Occhicone v. State of Florida*, Case No. 26-5158.

Petitioners have failed to cite a single federal court which has held that a state executing two individuals on one day violates *any* constitutional right. Although they contend that this Court's precedent supports finding that the execution of both Petitioners on one day is cruel and unusual punishment, they do not claim that the decision conflicts with any holding of this Court. Nor do they claim that the lower courts' decisions conflict with the holding of any federal court of appeals.

Similarly, Petitioners have failed to identify any state court of last resort which has held that executing two people on the same day constitutes cruel and unusual punishment, or any other violation of constitutional rights. Because Petitioners cannot claim that the courts' decisions conflict with any of this Court's decisions, or those of any circuit courts of appeal, or a state court of last resort, the petition does not merit this Court's attention.

II. The Eleventh Circuit correctly found that the district court did not abuse its discretion in denying Petitioners' motions to stay their executions because all the factors that courts are required to consider in determining whether to stay an execution weighed in favor of the State and against Petitioners.

Petitioners contend that executing the two of them in one day violates their constitutional rights. They argue that these rights include those against cruel and unusual punishment, their right to due process, equal protection, and access to the courts. But they fail to cite a single case that supports their argument. The district court and Eleventh Circuit both found the argument meritless. Additionally, the Eleventh Circuit found that *no* factor courts review in determining whether to enter a stay favored Petitioners. As a result, the Eleventh Circuit correctly found that the

district court did not abuse its discretion in denying the stay because Petitioners' claim is meritless.

A. Petitioners cannot demonstrate that there is a substantial likelihood that executing two prisoners in one day is cruel and unusual punishment.

A court may grant a stay of execution only if the condemned prisoner establishes that “(1) he has a substantial likelihood of success on the merits of his appeal[;] (2) he will suffer irreparable injury unless the [stay] issues; (3) the stay would not substantially harm the [state]; and (4) if issued, the [stay] would not be adverse to the public interest.” *Humphreys v. Comm’r, Ga. Dep’t of Corr.*, 161 F.4th 1300, 1306 (11th Cir. 2025) (citation modified). Here, the lower courts correctly found that the Petitioners are unable to establish any of these factors. *Duckett, et al. v. Gov’r of Fla.*, No. 26-12595, slip op. at *3 (11th Cir. July 26, 2026) (per curiam) (unpublished).

1. Petitioners are unlikely to establish that executing two people in one day presents a risk that is sure or very likely to cause serious illness and needless suffering and give rise to sufficiently imminent dangers.

This Court, in *Glossip v. Gross*, 576 U.S. 863, 877 (2015), determined that “[P]risoners cannot successfully challenge a method of execution unless they establish that the method presents a risk that is ‘sure or very likely to cause serious illness and needless suffering,’ and give rise to ‘sufficiently imminent dangers.’” (quoting *Baze v. Rees*, 553 U.S. 35, 50 (2008)). Therefore, in order for Petitioners to prevail on their stay motion, they need to establish that there is a substantial likelihood that executing two prisoners in one day “presents a risk that is sure or very likely to cause serious illness and needless suffering, and give rise to sufficiently imminent dangers.”

Id. They have failed to do so.

Petitioners contend that scheduling their executions on the same day constitutes cruel and unusual punishment because it could result in their needless suffering because of the alleged additional stress placed on the execution team, which may increase the likelihood that the execution team will make a mistake. But as the Eleventh Circuit correctly concluded:

This claim rests on pure conjecture that the execution team will fail to perform Florida’s lethal-injection procedures correctly—for instance, the complaint alleges, by neglecting to properly ‘maintain[] and stor[e] execution drugs’ or to pay proper attention to each inmate’s ‘vein viability.’ Compl. ¶¶ 78–79, Dkt. 1. If a mistake is made, the theory goes, there is a risk that the mistake will ‘result in objectively intolerable pain and suffering.’ *Id.* ¶ 82. The inmates’ speculation does not establish that the state’s act of scheduling two executions in one day ‘presents a risk that is sure or very likely to cause serious illness and needless suffering, and give rise to sufficiently imminent dangers.’ *Glossip*, 576 U.S. at 877 (citation modified).

Duckett, et al. v. Gov’r of Fla., No. 26-12595, slip op., at 4 (11th Cir. July 26, 2026) (per curiam) (unpublished) (alterations in original). The court acknowledged that Petitioners alleged that an investigation of an allegedly “botched” execution in another state found that the lines were mishandled for several reasons, including the extra stress that the execution team experienced as a result of having to conduct multiple executions on the same day, but distinguished this case from those, agreeing with the district court’s determination that Petitioners have not provided a “meaningful factual basis to compare the circumstances of those executions to Florida’s execution protocol.” *Id.* *4-5. As a result, Petitioners have failed to establish that their same-day execution amounts to cruel and unusual punishment in violation

of the Eighth Amendment.

B. Petitioners are unlikely to establish that executing two people in one day violates their right to due process and to equal protection.

Petitioners also allege that the state's decision to schedule their executions on the same day violates both their due process and equal protection rights. But to establish a procedural due process claim, a party must show: (1) deprivation of a constitutionally protected liberty or property interest; (2) state action; and (3) constitutionally inadequate process. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Yet Petitioners have failed to cite *any* case that demonstrates or remotely suggests that the state's scheduling of two executions on the same day deprives them of a constitutionally protected liberty interest. As a result, the circuit court concluded that their due process claim is unlikely to succeed. *Duckett et al.* *at 5 (11th Cir. July 26, 2026) (per curiam) (unpublished).

Similarly, Petitioners have failed to sufficiently allege an equal protection claim. To do so, a plaintiff "must show that the State will treat him disparately from other similarly situated persons." *DeYoung v. Owens*, 646 F.3d 1319, 1327 (11th Cir. 2011). And when a plaintiff fails to do that, then he "must show that the disparate treatment is not rationally related to a legitimate government interest." *Id.* at 1327–28. Here, Petitioners contend that their execution on the same day treats them differently than "all other men who have been executed by the State of Florida during the modern day." They then argue that their claim triggers heightened constitutional scrutiny because the state's method of execution burdens their fundamental right to life. But the Eleventh Circuit correctly noted they have not "advanced a carefully defined,

fundamental right.” *Duckett*, slip op., at 6 (citing *Humphreys*, 161 F.4th at 1309). As a result, “they have not demonstrated entitlement to heightened scrutiny.” *Duckett*, slip op., at 5. Thus, Petitioners must demonstrate that disparate treatment is not rationally related to a legitimate government interest. Even if this Court assumes that Petitioners are similarly situated to all other Florida death-row inmates in the modern era, as the Eleventh Circuit assumed, their claim is unlikely to succeed because, as the district court determined, “it is not irrational for the state to conduct two executions on the same day, even if only, as the district court noted, ‘for the sake of convenience or efficiency.’” Ord. Denying Stay of Execution, July 24, 2026, at 4–5.

C. Petitioners are unlikely to establish that the limited time permitted for them to litigate their complaint violates their right to access to courts.

Petitioners are also unlikely to succeed on the merits of their access-to-courts claim. They assert that the “compressed scheduling” of their executions deprives them of their right of access to the courts because their time to litigate their case denies them a “meaningful hearing.” But again, they fail to cite any authority that entitles them to a particular period of time to bring and litigate their case. In *Lewis v. Casey*, 518 U.S. 343, 354-56 (1996), this Court explained that the constitutional right of access to courts guarantees prisoners only the capability of presenting nonfrivolous claims to a court of competent jurisdiction. Rather, the Constitution requires only a reasonably adequate opportunity to present existing claims. *Id.* at 351.

Petitioners had more than a reasonably adequate opportunity to present their claims. As the Eleventh Circuit explained, they have now been heard both by the

district court and by the circuit court.” *Duckett*, at 7. And now, they have obtained preliminary review by this Court, as well. Because Petitioners have had their complaint reviewed at every level of the federal judiciary, they cannot be heard to complain about failing to obtain access to the courts. As a result, Petitioners are not substantially likely to succeed on the merits of this claim.

D. The circuit court determined that all other factors also weigh in favor of the State.

Additionally, the Eleventh Circuit found that every factor it was required to consider in making its decision also failed to support Petitioners’ argument. *Id.*

1. They are unable to show that they will likely be irreparably injured by being executed on the same day.

Petitioners allege that they will be irreparably harmed if their motion is denied. The irreparable harm they contend they will suffer is death. But as the Eleventh Circuit pointed out, this is not correct. The claim they raise does not challenge the imposition of the death penalty, itself. Their claim challenges only the propriety of executing two individuals on the same day. As a result, the only potential harm each actually risks suffering is being executed on the same day as another individual, assuming for the moment that doing so would be improper. Thus, the Eleventh Circuit correctly concluded that Petitioners are unlikely to demonstrate they will suffer irreparable harm “because they have not shown that they will suffer any *actual injury*” resulting from scheduling two executions on one day, they are unable to establish that they will be irreparably injured by it.” *Duckett*, at 7 (emphasis added).

2. The balance of the potential irreparable harm favors the State.

Petitioners assert that the State would not be harmed if required to refrain from executing them the same day. But as the Eleventh Circuit explained, “that argument relies on the strength of [their] merits arguments which, as we have explained, are weak.” *Id.* (internal quotations omitted; alteration in the original.) The Eleventh Circuit recognized that “the state has the weightier interest in timely enforcement of its criminal sentences.” *Duckett*, at 7 (internal quotations omitted). The State’s interest in imposition of their sentences after decades of unsuccessful litigation by both Petitioners outweighs either’s alleged unlawful execution when the only fact that Petitioners can establish in support of their claim is that they will be executed on the same day. Everything else they allege is speculative.

3. The public interest does not favor a stay.

Both men’s convictions became final 35 years ago. *See Duckett v. State*, 568 So. 2d 891 (Fla. 1990); *Occhicone v. State*, 570 So. 2d 902 (Fla. 1990). As the Eleventh Circuit recognized, “the victims of crime have an important interest in the timely enforcement of a sentence.” *Hill v. McDonough*, 547 U.S. 573, 584 (2006). The families of the victims in the Petitioners’ cases have literally waited decades for the sentences imposed to be brought to fruition. They should no longer have to suffer another extension of time, when the claim Petitioners seek to litigate is as meritless as the Eleventh Circuit found this one to be. Not one factor the Eleventh Circuit considered by law weighed in Petitioners’ favor, including, most importantly, whether there is a substantial likelihood of either Petitioner prevailing on his claim. Thus, the Eleventh

Circuit correctly found that the public interest weighs against a stay.

III. This case is a poor vehicle for determining whether Petitioners' constitutional rights were violated because its review of the order denying a stay will not resolve any constitutional question.

Several reasons weigh against the grant of certiorari review under these circumstances: (1) none of the considerations established by Rule 10 are met; (2) stay decisions are largely fact specific and discretionary and this Court seldom grants certiorari when the asserted error consists of either erroneous factual findings or the misapplication of a properly stated rule of law; (3) this Court gives substantial deference to lower courts' equitable judgments; and (4) the nature of the claim is nothing more than a last ditch effort to prevent their immediate execution. Though Petitioners raise a constitutional issue on the merits of their § 1983 claim, the stay motion raises none. The only purpose for reviewing the stay is to determine if two executions should be suspended temporarily so that a court may consider the § 1983 claim. But as the lower courts have already determined during their review, the claim is meritless. Petitioners are unable to cite *any* court decision that supports their argument—not a state court, federal district court, federal circuit court, and certainly not this Court.

Petitioners cite no authority, much less constitutional authority for the proposition that it is improper for a state to carry out two executions in one day. And this Court is *unlikely* to reverse the Eleventh Circuit's decision considering the motion's lack of merit and the discretion provided to the district court conducting the review.

Finally, the lack of any meritorious argument and the delay in immediately moving for a stay suggests that the purpose is nothing more than an attempt at further delay. As such, this Court should deny review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

/s/ SCOTT A. BROWNE
SCOTT A. BROWNE
Chief Assistant Attorney General
Counsel of Record

Office of the Attorney General
3507 E. Frontage Rd., Ste. 200
Tampa, Florida 33607
Telephone: (813) 287-7900
scott.browne@myfloridalegal.com
capapp@myfloridalegal.com

Rick A. Buchwalter
Senior Assistant Attorney General

Michael W. Mervine
Special Counsel, Assistant Attorney General

Suzanne Glickman
Senior Assistant Attorney General

COUNSEL FOR RESPONDENT