

*** CAPITAL CASE ***

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES AREN DUCKETT,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

APPLICATION FOR A STAY OF EXECUTION
AND EXPEDITED CONSIDERATION OF PETITION FOR WRIT OF
CERTIORARI

DEATH WARRANT SIGNED
EXECUTION SET MARCH JULY 28, 2026, AT 12:00 P.M.

**To the Honorable Clarence Thomas, Associate Justice of the Supreme Court
of the United States and Circuit Justice for the Eleventh Circuit:**

James Duckett is scheduled to be executed July 28, 2026, at 12:00 PM EDT.

This Court is Mr. Duckett's last opportunity to access Florida's statutory procedures for testing available and untested DNA evidence that could provide Mr. Duckett's long maintained innocence, undermine his death sentence, and/or identify an alternative suspect. Mr. Duckett sought a stay of execution from the Florida Supreme Court. On July 24, 2026, the Florida Supreme Court affirmed the Lake County Circuit Court's denial of his request for DNA testing pursuant to Fl. R. Crim. P. 3.853. *Duckett v. State*, SC2026-1083 & SC2026-1084, 2026 WL 2137081 (Fla. July 24, 2026).

Mr. Duckett respectfully requests a stay of execution pending this Court's disposition of his Petition for a Writ of Certiorari ("Petition"), filed simultaneously with this Application, and expedited consideration of the Petition.

JURISDICTION

This Court has jurisdiction to entertain Mr. Duckett's Petition and this Application for a Stay of Execution under 28 U.S.C. §§ 1257(a) and 1651(a).

BACKGROUND

Mr. Duckett was convicted of one count of murder and one count of sexual battery of 11-year-old Teresa McAbee and sentenced to death based only on circumstantial evidence. There were no eyewitnesses linking Mr. Duckett to the crime and no direct evidence has ever linked Mr. Duckett to the crime. Mr. Duckett has steadfastly maintained his innocence for nearly 40 years and should be allowed to test material items of evidence that were collected as part of the criminal investigation that led to his wrongful conviction and sentence of death. Absent immediate intervention from this Court, a wrongful execution will occur on July 28.

In 1987, at the time of the crime, several items were collected including the victim's underwear, her jeans, vaginal swabs, and fingernail clippings from each hand. The initial analyst on the case made some extracts of the items and created slides containing the extracts. These items were assessed but, at the time, forensic DNA analysis was incredibly limited. However, the initial analyst did note the presence of blood and semen on several of these listed items and the presence of biological material on some of the slides. Due to the state of the science, no DNA

testing or comparison could be completed at the time.

In 2003, the Florida Supreme Court remanded Mr. Duckett's postconviction proceedings to determine whether DNA testing could be done on the victim's clothes. Upon agreement of the parties, the items listed above were submitted for analysis. A new analyst processed the items. However, due to the limitations in technology at the time, she was unable to gain a useable profile from any of the items. This is notable because it shows the issue is the sensitivity and capability of the testing at the time. The analyst could not even detect the victim's profile from the evidence.

The analyst opted not to test a few of the slides - several were broken and she was concerned about a slide identified as Q6(3) because she did not have a procedure to process the slide and she was concerned that the testing would fail. As a result, the postconviction court in 2003 entered an order requiring that "*any* biological evidence . . . be stored in a manner to insure the quality of the evidence is maintained . . . until this case is closed, either by acquittal of [Mr. Duckett] . . . or by execution" (PC-R1-SV. 2206) (emphasis added).

On February 27, 2026, Governor DeSantis signed a death warrant for Mr. Duckett, initially setting his execution for March 31. At the outset of his proceedings, the lower court found that identity was an issue at Mr. Duckett's trial and that DNA testing would exonerate Mr. Duckett, granting his request for DNA testing of slide Q6(3) containing sperm extracted from the victim's underwear (WR1. 748). In other words, the State and court agreed that technology had come far enough that a degraded sample processed using modern techniques could obtain a result that

testing capabilities in 2003 could not and that Mr. Duckett has established that probative results could lead to an exoneration.

The State, however, “was permitted to exercise complete control over the location, timing, and method of [that] testing,” *Duckett v. State*, 431 So. 3d 990, 992 (Fla. 2026). As is outlined more fully in the petition for certiorari, the slide was sent to an agency that used a method that did not have the capability to produce a definitive result: the results were inconclusive and the evidence was consumed in the testing. After losing what was the best evidence capable of exonerating him, Mr. Duckett sought DNA testing of similar items that would provide a comparable means of identifying the true perpetrator (WR3. 36). He also filed a 3.851 motion alleging that the State’s actions during the prior DNA testing resulted in the destruction of key exculpatory evidence central to establishing his innocence and violated his right to due process (WR3. 1). In response to his motions, the Governor reset Mr. Duckett’s execution for two weeks later on July 28. It was not until then that the lower court acknowledged Mr. Duckett’s filings and, after hearing brief argument, denied any additional testing and postconviction relief (WR3. 212).

The State’s position is that Mr. Duckett’s successive motion for postconviction DNA testing is procedurally barred because the items he sought to have tested could have been included in his March 5 request for testing and that the record conclusively establishes no biological material exists on the additional items. The circuit court and Florida Supreme Court agreed.

This analysis ignores that Florida jurisprudence is devoid of any support for

the court's rulings. Rule 3.853 does not include a temporal limitation nor does it preclude successive motions. The state court adopted the state's reliance on *Reynolds v. State*, 373 So. 3d 1124 (Fla. 2023), wherein the court determined that a capital postconviction litigant was procedurally barred from DNA testing because the court had already determined years earlier that he did not meet the requirements of Rule 3.853. Finding the evidence of guilt overwhelming, the court determined DNA testing would not lead to an acquittal or lesser sentence. *Id.* In that appeal, the court determined that the extra items Mr. Reynolds requested be tested in his successive motion could have been included in his initial motion. Mr. Reynolds offered no reason for why he was testing the items years later, but more importantly, the state court denied his motion as procedurally barred because his motion simply sought to relitigate claims the court conclusively determined were meritless.

What's more, the record does not conclusively establish that the items contain no remaining biological evidence. To the contrary, several items did indicate biological material. And several items were not examined at all in 2003. As to the remaining items, Mr. Duckett asserted, which the court was required to accept as true, that new technology suited to detect a fraction of the amount of biological material that was required for processing 23 years ago and designed to process degraded samples will yield exonerative results from these items. Technology has advanced beyond measure, and now preliminary screening can detect the presence of DNA where earlier technology would not have. It is so sensitive that even packaging that once held an item containing biological material can yield results.

REASONS FOR GRANT THE STAY

An application for stay of execution is evaluated under the familiar four factor test that analyzes:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) whether the applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009). For the reasons discussed below, a stay is appropriate here.

A. Mr. Duckett has shown a reasonable likelihood of success on the merits of his claims.

The arbitrary hurdles erected by the Florida state courts to Mr. Duckett's access to Florida statutory procedures for obtaining DNA testing run afoul of the Due Process Clause of the Fourteenth Amendment as set forth in this Court's precedents, as summarized in the Question Presented in the Petition:

Whether the Florida Supreme Court's imposition of arbitrary procedural barriers, contrary to its own rules and state statutes, violated Petitioner's right under Florida law to DNA testing that would demonstrate his innocence or warrant a reduction of his sentence thereby depriving Petitioner of due process and rendering illusory his state-created right to prove his innocence through newly discovered evidence.

The Question Presented in Mr. Duckett's Petition is cert-worthy and he is likely to prevail on the merits. This Court has recognized the critical importance of

DNA in cases like Mr. Duckett’s: “DNA testing has an unparalleled ability to both exonerate the wrongly convicted and to identify the guilty.” *Dist. Attorney’s Office for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 55 (2009). Likewise, as detailed in the Petition, this Court has explicitly recognized that capital prisoners have a liberty interest in obtaining DNA testing (*see Gutierrez v. Saenz*, 606 U.S. 305 (2025); *Skinner v. Switzer*, 562 U.S. 521 (2011); *Osborne*, 557 U.S. 52) and a property interest in not being arbitrarily denied access to state-created investigatory procedures. *See Logan v. Zimmerman Brush*, 455 U.S. 422 (1982).

A majority of this Court has agreed that capital defendants have a liberty interest in obtaining DNA testing. *See Gutierrez*, 606 U.S. 305 (2025). More recently, at least three members of this Court have expressed concern with procedural obstacles to DNA testing when a prisoner faces imminent execution. *See Reed v. Goertz*, 146 S. Ct. 936, 939 (2026) (Sotomayor, J., dissenting from the denial of certiorari). This case is arguably even more straightforward than *Gutierrez* and *Reed* because it is before this Court on a petition for certiorari from a state supreme court rather than to a federal district court on a § 1983 action. As in *Reed*, it is “inexplicable” why the State of Florida “refuses to allow DNA testing” of evidence that is directly related to the underlying crimes “despite the very real substantial possibility that such testing could exculpate” Mr. Duckett “and identify the real killer.” *Id.*

In light of these expressions of concern by several Justices, and to ensure that the Court gives the Petition due consideration, Mr. Duckett also respectfully requests that these papers be treated as a motion for expedited consideration of the Petition.

See Eric M. Freedman, *No Execution if Four Justices Object*, 43 Hofstra L. Rev 639, 655 n. 67 (2015).

The denials of due process to Mr. Duckett ahead of his scheduled execution are blatant and apparent. Under these circumstances, there is a reasonable likelihood that four members of this Court would vote to grant certiorari.

B. There can be no dispute that Mr. Duckett will suffer irreparable harm absent a stay.

Mr. Duckett faces the ultimate deprivation. See *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (An “execution is the most irremediable and unfathomable of penalties.”); see also *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). There can be no dispute that Mr. Duckett will suffer irreparable harm unless this Court stays his execution pending disposition of his Petition.

As this Court has recognized for years, “the penalty of death is different in kind from any other punishment imposed under our system of criminal justice.” *Gregg v. Georgia*, 428 U.S. 153, 187 (1976). As a result, this Court has also established a need for heightened reliability in death sentences. See *Caldwell v. Mississippi*, 472 U.S. 320, 340 (1985) (quoting *Woodson*, 472 U.S. at 305).

Unfortunately, our system gets it wrong sometimes. Richard Glossip had nine death warrants and three final meals before being granted relief by this Court last year. See generally *Glossip v. Oklahoma*, 604 U.S. 226 (2025) (remanding for vacatur of conviction and new trial). After almost thirty years on death row and being just hours from death several times, Mr. Glossip was released from prison on bail pending retrial. Jim Vertuno, Former Oklahoma death row prisoner freed from jail as he

awaits retrial in 1997 killing, Associated Press (May 14, 2026), <https://apnews.com/article/oklahoma-richard-glossip-death-sentence-overturned-execution-93cb95674a05161d219b2a54139d531f>.

Mr. Duckett's case has many similarities to Mr. Glossip's. Both Mr. Duckett and Mr. Glossip continuously maintained their innocence. *See Glossip*, 604 U.S. at 236. And in both cases, the reliability of the underlying convictions and death sentences eroded after trial. Also in both cases, prosecutors failed to disclose evidence about its main witness at trial (*see id.* at 237-28); here, the State failed to disclose for decades that its primary witness, Gwen Gurley, was given a deal to get out of jail early (PC-R1, D. Ech. 4, p. 19).

Mr. Duckett does not ask to be declared innocent. Nor does he ask to be released from prison. All he asks is for this Court to stay his execution so that this Court can review his meritorious claims, in which he seeks fair access to Florida's statutory procedures for testing available DNA evidence.

C. The public interest lies in ensuring that the State does not end a life without adequate due process.

It is a "fundamental legal principle that executing the innocent is inconsistent with the Constitution." *Herrera v. Collins*, 506 U.S. 390, 419 (1993) (O'Connor, J., concurring). It is equally unconstitutional to execute a person whose sentence is unreliable.

When assessing the traditional equitable factors of the harm to the opposing party and the public interest, "[t]hese factors merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. Undoubtedly, the State of Florida has an

interest in the enforcement of criminal judgments. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). But Mr. Duckett seeks a stay of execution so that he can obtain potentially exculpatory DNA testing which will take only weeks to complete. To proceed with an execution without giving him that opportunity, guaranteed under state law, would be contrary to the public interest. The State's interest in executing Mr. Duckett is premised upon the enforcement of the judgment and death sentence being lawful. When, as here, a litigant demonstrates that the enforcement of such a judgment would be unconstitutional, the public interest weighs in favor of the party whose constitutional rights will be violated. *United States v. Raines*, 362 U.S. 17, 27 (1960) (“[T]here is the highest public interest in the due observance of all the constitutional guarantees”). And any harm to the State in delaying Mr. Duckett's execution is minimal. *Hartman v. Bobby*, 319 F. App'x 370, 371-72 (6th Cir. 2009).

The public has a strong interest in ensuring that the State does not end a life without adequate due process—as it seeks to do here by denying Mr. Duckett adequate access to statutory procedures that could ultimately demonstrate his innocence.

D. Mr. Duckett has not delayed in bringing his claim.

Finally, Mr. Duckett's litigation timeline was dictated not by dilatory conduct on his part, but by the State's actions and the court's improper handling of his proceedings. Mr. Duckett only sought testing of the items at issue *after* the State, which was “permitted to exercise complete control over the location, timing, and method of the testing” of slide Q6(3), *Duckett*, 431 So. 3d at 992, destroyed the best evidence in the case when it deliberately choose a technology not meant for the type

of analysis the evidence required and not likely to produce a definitive result, in violation of the Rule. Because the parties agree that identity is an issue here and agreed testing should occur, promptly following the conclusion of his litigation concerning the initial testing, Mr. Duckett moved for the additional testing at issue in this case.

It likewise cannot go unmentioned that at the outset of his warrant proceedings, Mr. Duckett outlined the precise testing method that was necessary in this case, SNP testing using WGS. Mr. Duckett further alerted the court that he had already contacted the leading lab in SNP and confirmed the lab was available to conduct the testing right away and within the warrant period. Because the State objected and insisted that FDLE conduct the testing, the proceedings were delayed. Ultimately, seven days later, FDLE agreed that SNP was necessary and that FDLE does not offer SNP. The testing was again delayed as the State would not agree that the leading lab in SNP should do the testing. Because of the State's insistence that they alone determine the where, when, and how of the testing, the testing did not begin until Monday March 16, 11 days after Mr. Duckett requested.

After results were returned that FDLE opined required further analysis of the data, again, the State objected and delayed the proceedings. The circuit court agreed with the state and denied further analysis. Mr. Duckett appealed to the Florida Supreme Court. The state court reversed the circuit court and remanded "for the underlying testing data to be provided for a statistical analysis, as directed by the Florida Department of Law Enforcement (FDLE)." *Duckett v. State*, 431 So. at 992.

Once it became clear that no probative results could be obtained from the initial DNA testing, Mr. Duckett sought testing of the remaining similar nature items of evidence in his case. Notably, at the time, no execution date was set.

The DNA Motion could not be filed for the purpose of delay where the requested relief was made with no active execution date scheduled and the date was only set *after* Mr. Duckett filed his request for testing. Any delay cannot be held against Mr. Duckett.

CONCLUSION

Accordingly, Mr. Duckett respectfully requests that the Court grant this Application, stay his execution, expedite consideration of his Petition, and grant any other relief that the Court may find just.

Respectfully submitted this the 25th day of July 2026.

Respectfully submitted,

/s/ Mary E. Wells
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