

No. _____

In the Supreme Court of the United States

DOMINICK OCCHICONE,

Petitioner

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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

APPLICATION FOR STAY OF EXECUTION

CAPITAL CASE

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

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, Dominick Occhicone, for Tuesday, July 28, 2026 at 6:00 PM ET. Pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), Mr. Occhicone 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 questions raised in Mr. Occhicone’s Petition for a Writ of Certiorari are sufficiently meritorious for a grant of a writ of certiorari. The underlying issue presents a significant, compelling question of constitutional law and a stay is necessary to avoid Mr. Occhicone being executed in violation of the United States Constitution before the questions are resolved. *Madison v. Alabama*, 586 U.S. 265 (2019); *Panetti v. Quarterman*, 551 U.S. 930 (2007); *Ford v. Wainwright*, 477 U.S. 399 (1986).

It is indisputable that Mr. Occhicone will be irreparably harmed if his execution is allowed to go forward. The balance of equities weighs heavily in favor of a stay. Florida’s interest in the timely enforcement of judgments handed down by its courts must be weighed against Mr. 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). Florida has a minimal interest in finality and efficient enforcement of judgments, while Mr. Occhicone has a right and significant interest in ensuring that his execution comports with the Constitution. In addition, the irreversible nature of the death penalty supports granting a stay. "[A] death sentence cannot begin to be carried out by the State while substantial legal issues remain outstanding." *Barefoot*, 463 U.S. at 888. Mr. Occhicone submits there is a significant possibility of the lower court's reversal, should this Court grant his request for a stay and review of the underlying petition. This Court's intervention is urgently needed to prevent Mr. Occhicone's imminent execution.

Executing Dominick Occhicone on July 28, 2026, would be a shock to the conscience. His sentence should not proceed. This Honorable Court must intervene, as we are entering truly dangerous territory. It is not lost on Appellant, that one day after he filed his Initial Brief to the Florida Supreme Court raising concerns about the psychological effects that 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 Mr. 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. A stay of Mr. Occhicone's case is necessary to put a

halt to escalating attacks on the humanity of FSP's inmates and staff. It is time for legitimate intervention, as Florida plans to use two massive doses of etomidate within six hours, while there is a scarcity for this potentially lifesaving medication.

On April 7, 2026, less than 13 weeks before Governor DeSantis signed the execution warrant for Mr. Occhicone, the American Society of Health-System Pharmacists reported an ongoing shortage of etomidate.¹ Pharmaceutical Executive also reported this shortage in its April 2026 issue.² The results of pharmaceutical shortages have wide-reaching impacts across society, not just for Mr. Occhicone. This shortage of a critical and beneficial drug creates ethical issues based on overall human rights forcing physicians to allocate resources to the individuals who will benefit most of the use of the available drugs.³ “Doctors and pharmaceutical experts have raised growing concerns about the shortages in recent months. The American Medical Association has reiterated its concern that drug shortages are an “urgent public health crisis” and a threat to national security.”⁴ As recently as July 1, 2026, the Utah Bureau of Emergency Medical Services also reported on the shortage of this

¹ASHP, *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)

² 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)

³Maya C. Wai, *Drug Shortage and Ethical Issues: Integrating Multidisciplinary Perspectives with a Shared Ethical Framework* (September 2024) <https://pmc.ncbi.nlm.nih.gov/articles/PMC11417769/> (Last accessed July 24, 2026)

⁴ 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)

critical medication.⁵ All of these concerns are public record. This Court should remand back to Florida, so the trial court can set an evidentiary hearing to resolve the factual dispute regarding: (1) whether the FDOC acknowledges the nationwide etomidate shortage; (2) whether the FDOC has a policy in place for providing etomidate to those institutions which are experiencing the lifesaving etomidate shortage for their patients; and (3) whether the FDOC can prove the etomidate being used for Mr. Occhicone is not expired, considering the current active etomidate shortage. Additionally, this Court should enter a stay until there is no longer an active, nationwide, shortage of etomidate. Florida should not be hoarding drugs which are intended to save the life of the innocent and vulnerable. Considering the ongoing shortage, and the massive dosage utilized in Florida executions, 200mg, it is unconscionable for FDOC to proceed with the execution of Mr. Occhicone, a mere **six hours** after the execution of Mr. Duckett.

This Court should grant a stay and remand back for Florida to hold an evidentiary hearing regarding Mr. Occhicone's unique issue pertaining to his being an infirmed 81-year-old man. This Court should remand for an evidentiary hearing, so Mr. Occhicone's testimony may be recorded regarding his own condition, and witnesses can testify about what it is like to care for the everyday needs of the elderly and infirmed nearly 81-year-old Mr. Occhicone at FSP. The Court needs the benefit of a more established factual record, to address the specific factors related to

⁵Bureau 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)

Petitioner’s advanced age, to better determine his right to individualized sentencing pursuant to the Eighth Amendment. The issues in this litigation require appellate review that is not truncated by the exigencies of an imminent execution. A stay of execution should be granted. Relief is necessary and proper.

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. Occhicone’s meritorious issue cannot possibly be heard in a meaningful manner with just days left until his execution. The important constitutional issues presented by Mr. Occhicone’s case require a full appellate review that is not truncated by his imminent execution.

For the foregoing reasons, Mr. Occhicone respectfully requests this Court grant his application for a stay of execution scheduled for July 28, 2026, to address the compelling constitutional question in his case on the merits.

Respectfully submitted,

DATED this 24th day of July, 2026.

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