***** CAPITAL CASE *****

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES AREN DUCKETT, et. al.,
Petitioners,

vs.

RON DESANTIS,
***Governor, State of Florida,* et al.,**
Respondents.

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

DEATH WARRANTS SIGNED
EXECUTIONS SET JULY 28, 2026, AT 12:00 P.M. AND 6:00 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 and Dominick Occhicone is scheduled to be executed six hours later on July 28, 2026 at 12:00 PM EDT. Petitioners sought stays of execution from the Eleventh Circuit. On July 26, 2026, the Eleventh Circuit affirmed the District Court's denial of Petitioner's Emergency Motion for Stays of Execution. *James Aren Duckett, et al. v. Ron DeSantis, et al.,* No. 26-12595 (Fla. July 26, 2026).

Petitioners respectfully request a stay of both executions pending this Court's disposition of the 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 Petitioners' Petition and this Application for a Stay of Execution under 28 U.S.C. §§ 1254 and 1201(f).

BACKGROUND

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 warrant proceedings, the state circuit court granted DNA, finding that identity was an issue at Mr. Duckett's trial and that results excluding Mr. Duckett would lead to an acquittal (WR1. 748). Mr. Duckett litigated his access to DNA testing over the next several months.

In the meantime, on June 26, 2026, the Governor signed an execution warrant for Mr. Occhicone, scheduling his execution for July 28, 2026 at 6:00 p.m. Mr. Occhicone promptly raised challenges to Florida's lethal injection execution protocols, drawing attention to Florida's deviation from its established protocols by using expired drugs. He further alerted the courts to his declining health and advanced age that put him at risk of needless suffering.

Following the State's knowing selection of a destructive testing methodology that was unable to produce a definitive result, independent testing of the best evidence in Mr. Duckett's case was eliminated. He then sought DNA testing of similar items that would provide a comparable means of identifying the true perpetrator (WR3. 36). In response to his motions, the Governor reset Mr. Duckett's execution for two weeks later on July 28 at 12:00 p.m., just six hours before Mr. Occhicone's.

After the execution was reset, a staff member of the prison met with Mr. Duckett and analyzed his veins in anticipation of his execution. Upon learning that Mr. Duckett had received chemotherapy treatments for cancer, the person conducting the examination informed Mr. Duckett that chemotherapy "really messes up the veins." Mr. Duckett also then asserted challenges to the scheduled execution, emphasizing the concerns that he will also suffer a substantial risk of a torturous and botched execution.

Neither Petitioner was on notice that a dual execution was a possibility. Florida's lethal injection protocols are silent as to any considerations for same-day procedures, and Florida has not attempted to execute two people on the same day since 1964 when the state's executions were done by electrocution. Never has Florida attempted two executions on the same day using lethal injection.

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. Petitioners have shown a reasonable likelihood of success on the merits of their claims.

Petitioners allege that, given the State of Florida's intention to execute two capital defendants on the same day, Respondents create a substantial risk that the Petitioners will experience pain and suffering in violation of the Eighth Amendment and in violation of their rights to Equal Protection under the Fourteenth Amendment.

The Eighth Amendment's guarantee of protection from cruel and unusual punishment applies both at sentencing and in the carrying out of the sentence. *Glossip v. Gross*, 576 U.S. 863, 877 (2015). By combining Mr. Duckett's execution day with Mr. Occhicone's, the risk of a botched execution is exponentially increased due to factors including the impact of the prison and execution teams not being prepared to conduct two executions on the same day and the risk of errors with the lethal injection drugs. Additionally, by creating two separate classes of individuals who are treated differently in their execution proceedings, Respondents have violated Petitioners' right to equal protection. This arbitrary treatment burdens the Petitioners' right to be free of cruel and unusual punishment.

In the last two instances where states have tried to execute two people at once, the executions were botched. These are the only attempts at dual executions made in the United States in 25 years. During the execution of Clayton Lockett in Oklahoma, multiple failures in the intravenous line and execution protocol resulted in a prolonged and visibly distressing execution that lasted approximately 43 minutes before Mr. Lockett died of a heart attack, prompting the State to halt scheduled executions pending an investigation. Likewise, in 2017, Kenneth Williams was

executed as the fourth prisoner in an unprecedented eight-day execution schedule in Arkansas. Witnesses reported repeated convulsive movements, coughing, and prolonged physical distress during the execution, leading numerous observers and experts to question whether the compressed execution schedule contributed to procedural failures and an unconstitutional risk of unnecessary pain. These incidents demonstrate that accelerated execution schedules place extraordinary strain on personnel and procedures, increasing the likelihood of constitutional violations.

Where a State elects to conduct multiple executions in rapid succession, it knowingly heightens the risk that errors in preparation, administration, or monitoring will inflict gratuitous suffering, precisely the type of risk the Eighth Amendment prohibits. *See Baze v. Rees*, 553 U.S. 35, 50 (2008) (plurality opinion) (recognizing that the Eighth Amendment forbids execution methods presenting a "substantial risk of serious harm"); *Glossip*, 576 U.S. at 877-78. Contrary to the lower court's finding, the showing need not be an absolute certainty, indeed, such a standard would be impossible to meet, thus failing to meet constitutional scrutiny.

Petitioner Duckett has similar vein issues to Mr. Lockett, the defendant in Oklahoma who lived through a botched execution in 2014. Mr. Duckett learned earlier *this week* that chemotherapy treatments "really mess up the veins" after a prison staff member examined Mr. Duckett and had difficulty finding a vein.

As a result, venal access will likely require multiple painful needle insertions and blind attempts by the IV Team to locate the two required suitable veins. (Pet. App. F, 73a) (10)(h) (execution team members to designate two separate IV lines)).

Even if the IV Team eventually does obtain intravenous access on Mr. Duckett to administer the lethal drugs, Mr. Duckett's vein will likely lose structural integrity during the execution, leading to extravasation—the leakage of etomidate, rocuronium bromide, and potassium acetate into the soft tissue surrounding the vein. Extravasation can have two severely painful results: (1) an inadequate and/or inconsistent drug delivery, which can cause a prolonged and only partially anesthetized execution; and (2) an intense burning of the tissues surrounding the vein.

Assuming the IV Team is even able to find and enter the necessary two veins, the risk of extravasation means that Mr. Duckett will then be at substantial risk to experience even more intense pain as a result of a prolonged and only partially anesthetized execution as his soft tissue burns within his body. Given the fact that the executioner will not be in the same room as Mr. Duckett, it is unlikely they will even be aware of the fact that extravasation has occurred.

Mr. Occhicone is set to be executed just one month shy of his 81st birthday. He has a history of substance abuse, drinking alcohol since the age of 16 and smoking marijuana daily from the age of 24 until the time of his arrest around the age of 40. Mr. Occhicone has limited function of his kidneys—varying between 40-60% function—and his most recent MRI shows multiple cysts on his right kidney. Mr. Occhicone also has heart issues including an irregular heartbeat, sometimes skipping a beat and sometimes speeding up, and a blockage of the aorta. There is no question that Mr. Occhicone's advanced age and significant health issues put him at a greater

risk of complications during the execution procedures.

Both Petitioners have identified health concerns that heighten the risk of complications when the protocol is applied specifically to them, and rushing the process only elevates the risk of complications in a process already identified to cause needless suffering. For example, the protocols require the administration of a 200mg dose of etomidate without regard to the weight of the individual involved, which has been referred to as a "massive dose" by the Florida Supreme Court in *Long v. State*, 271 So. 3d 938, 944 (Fla. 2019). Autopsies of 33 individuals executed in Florida since 2017 show that every inmate executed under the protocol has suffered flash pulmonary edema. Characterized by rapid flooding of fluid into the lungs, flash pulmonary edema causes severe air hunger akin to the dyspnea that the Eleventh Circuit found violative of the Eighth Amendment. *See Lee v. Lovelace*, No. 26-11864, 2026 WL 1651147 *2 (11th Cir. June 8, 2026) (citation modified) (remanding for consideration of firing squad as alternative to nitrogen hypoxia), *cert. denied*, *Lovelace v. Lee*, No. 25A1381, 2026 WL 1694504 (U.S. June 11, 2026).

These concerns are not hypothetical when there is evidence that Florida has deviated from the established protocols resulting in routine maladministration of critical phases of the process. Florida used expired etomidate in at least four executions that have occurred in the previous 11 months.

What is more, Florida's lethal injection protocols are silent on procedures for conducting multiple executions in quick succession. There can be no confidence in the

process where a process does not exist.[1]

The facts in the Petition as asserted by Mr. Duckett and Mr. Occhicone warrant a grant of relief.

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

If this Court does not issue a stay, Petitioners will be executed in a manner that needlessly inflicts pain and suffering. Petitioners will suffer irreparable injury by being executed on the same day that they would not otherwise suffer were there executions conducted on separate days. The Eleventh Circuit's finding to the contrary is belied by the facts in the record and established law. The threat of an imminent execution is a presumptive injury. *See, e.g.*, *In re Holladay*, 331 F.3d 1169, 1177 (11th Cir. 2003) ("We consider the irreparability of the injury that petitioner will suffer in the absence of a stay to be self-evident."); *Ferguson v. Warden, Fla. State Prison*, 493 F. App'x 22, 26 (11th Cir. 2012) (Wilson, J., concurring) ("As a general rule, in the circumstance of an imminent execution, this court presumes the existence of irreparable injury.").

[1] Notwithstanding the allegations Petitioners have asserted based on information that is known, both were denied public records requests for additional information about the process and the execution team. This places capital defendants in a "[c]atch-22," wherein they are faulted for "not yet hav[ing] enough information to raise a 'colorable' Eighth Amendment claim" when "[t]he very reason the prisoners are seeking the records" is to do just that. *Trotter v. Florida*, 146 S. Ct. 755, 756 (2026) (Sotomayor, J., statement respecting denial of stay and certiorari).

C. The public interest lies in ensuring that the State does not end a life without adequate due process and the assurance that the State will not carry out an execution that will result in a torturous execution.

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). When, as here, the Petitioners demonstrate 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 Petitioners' executions is minimal. *Hartman v. Bobby*, 319 F. App'x 370, 371-72 (6th Cir. 2009).

The public has an interest in the prevention of constitutional violations, particularly those carried out in the name of the People. *See Woodson v. North Carolina*, 428 U.S. 280, 303-04 (1976) ("[D]eath is a punishment different from all other sanctions in kind rather than degree."). In the context of the death penalty, where the punishment is "the most irremediable and unfathomable of penalties," *Ford v. Wainwright*, 477 U.S. 399, 411 (1986), the public interest is best served by ensuring that no man is subjected to unconstitutionally cruel and unusual punishment when the movant has met the pleading requirements.

The public interest is best served by ensuring that all death-sentenced individuals have meaningful access to federal constitutional rights, especially the

humane and dignified carrying out of a death sentence. *See Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986) (The Eighth Amendment seeks "to protect the dignity of society itself from the barbarity of exacting mindless vengeance" when carrying out an execution.). Thus, it is in the public interest to address and resolve the merits of Petitioners' claims to identify and prevent the unconstitutional risk of causing gratuitous suffering. *See Cooey v. Taft*, No. 2:04-cv-1156, 2007 WL 2607583, at *5 (S.D. Ohio 2007) (granting emergency motion for preliminary injunction and stating "the public interest is served only by enforcing constitutional rights and by the prompt and accurate resolution of disputes concerning those constitutional rights. By comparison, the public interest has never been and could never be served by rushing to judgment at the expense of a condemned inmate's constitutional rights."). Allowing the State to execute a defendant without meaningful review of whether that execution will violate the Eighth Amendment is adverse to the public interest—more than any minimal delay that may result from granting Petitioners' request for a stay and injunctive relief.

D. Petitioners have not delayed in bringing their claim.

Finally, Petitioners' litigation timeline was dictated not by dilatory conduct on their part. Petitioners learned of the Governor scheduling Mr. Duckett's execution on the same day as Mr. Occhicone just after 3:00 p.m. on Tuesday July 24.

Any delay cannot be held against Petitioners.

CONCLUSION

Accordingly, Petitioners respectfully request that the Court grant this Application, stay the executions, expedite consideration of their Petition, and grant

any other relief that the Court may find just.

Respectfully submitted this the 27th day of July 2026.

Respectfully Submitted,

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