

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES AREN DUCKETT ET AL.,
Petitioners,

v.

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

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

**RESPONSE TO APPLICATION FOR STAY OF EXECUTION
EXECUTIONS SCHEDULED FOR JULY 28, 2026, AT 12:00 PM AND 6:00 P.M.**

James Aren Duckett and Dominick Occhicone, Florida prisoners under active death warrants with executions scheduled for July 28, 2026, ask this Court to stay their executions for brutal murders they each committed forty years ago while it considers whether to grant certiorari. Duckett and Occhicone present the following question in their petition: 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)).

As explained in the accompanying Brief in Opposition, Duckett's and

Occhicone's questions do not meet the threshold for certiorari review, and this Court should deny both their petition and application for stay.

Standard for Stay of Execution

To obtain stays of execution for their long-finalized sentences,¹ Duckett and Occhicone must establish a reasonable probability that four members of the Court would vote to grant certiorari; a significant possibility of reversal if review was granted; and irreparable injury to the applicant in the absence of a stay. *See Barefoot v. Estelle*, 463 U.S. 880, 895 (1983) (quoting *White v. Florida*, 458 U.S. 1301, 1302 (1982)). All three factors must be present. *Id.* Last-minute litigation, dilatory claims, and speculative theories weigh heavily against a prisoner's request for equitable relief. *See Bucklew v. Precythe*, 587 U.S. 119, 149-51 (2019). Equity must also consider "an inmate's attempt at manipulation." *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992).

A stay of execution is an equitable remedy, not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments. *Hill v. McDonough*, 547 U.S. 573, 584 (2006) (citing *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004)). This Court has recognized its "responsibility 'to ensure that method-of-execution challenges to lawfully issued sentences are resolved fairly and expeditiously,' so that 'the question of capital punishment' can remain with 'the people and their representatives, not the courts, to resolve.'" *Barr v. Lee*, 591 U.S.

¹ *Duckett v. State*, 568 So. 2d 891 (Fla. 1990); *Occhicone v. State*, 570 So. 2d 902 (Fla. 1990).

979, 981 (2020) (quoting *Bucklew*, 587 U.S. at 150). “Last-minute stays of execution should be the extreme exception, not the norm.” *Bucklew*, 587 U.S. at 150. The people of Florida, the families of victims, and surviving victims, “deserve better” than the “excessive” delays that typically occur in capital cases. *Id.* at 149. Duckett and Occhicone’s arguments presented in their petition for certiorari review do not present a compelling reason why a last-minute stay outweighs Florida’s interest in enforcing its laws and delivering finality to the victims’ families and the people of the State of Florida.

United States Supreme Court Certiorari Review

Duckett and Occhicone must establish at least three elements to receive a stay from this Court: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). In addition to those three elements, this Court has added two other considerations: (4) a petitioner may not have acted in dilatory fashion, and (5) the petitioner’s underlying claims are not based on a speculative theory and simply designed to stall for time. *Bucklew*, 587 U.S. at 151 (“Federal courts can and should protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are pursued in a dilatory fashion or based on speculative theories.”). Duckett and Occhicone must establish all of these elements before this Court may grant a stay. *See Hill v. McDonough*, 547 U.S. 573, 583–84 (2006).

I. Probability of Certiorari Review

Duckett and Occhicone cannot meet the first element of the *Barefoot* test. Four justices would most likely not vote to grant certiorari on their questions presented for the reasons fully explained in the accompanying Brief in Opposition to certiorari.

A. *Duckett and Occhicone’s § 1983 Claim is Speculative and Unsupporte.*

Duckett and Occhicone’s claim that their same-day executions will cause prison staff to “botch” their executions is speculative and unsupported by any evidence. Petitioners have not presented *any* authority that prohibits States from executing more than one inmate in a day. Indeed, Petitioners’ main argument on this issue has been the discontinued practice of States doing so.² Nor have they presented any support for their allegation that the same-day executions will lead to errors in their executions.

Duckett and Occhicone direct this Court to the execution of Clayton Lockett in Oklahoma in 2014, in which Lockett experienced unintended effects from lethal injection that led to the execution being halted, as evidence that their same-day executions will go awry. But as the district court found and the Eleventh Circuit affirmed, there is no meaningful factual connection between Lockett’s execution and the Petitioners’ scheduled executions. The Oklahoma Public Safety report filed by Petitioners contains a great deal of information about the events leading up to and occurring during Lockett’s execution. Oklahoma’s investigation led to the conclusion

² In making this argument, Duckett and Occhicone essentially acknowledge that their due process and equal protection claim is based upon the States’ evolving death penalty practices, not any rule or law prohibiting same-day executions.

that Lockett’s “difficulties were due primarily to the execution team’s inability to obtain an IV access site.” *Glossip v. Gross*, 576 U.S. 863, 892 (2015). A number of possibilities for the difficulty in accessing an IV site are listed in the report, including Lockett’s intentional withholding of fluids in the days leading up to his execution in efforts to dehydrate himself and inadequate training *specifically* of lethal injection protocol of the paramedic and physician who administered intravenous sedation (though both individuals had more than twenty years of medical experience outside of lethal injection administration). Notably, the report also concluded that there were no reported deviations from the lethal injection protocol itself. The link between Lockett’s execution and the scheduled ones here are far too attenuated to meet the required burden of proof.

Method-of-execution claims require proof of a risk that is “*sure or very likely* to cause serious illness and needless suffering.” *Glossip*, 576 U.S. at 877 (emphasis added). Speculation cannot satisfy that standard, and this Court has cautioned that federal courts must guard against claims based on speculative theories. *Bucklew*, 587 U.S. at 151 (“Federal courts ‘can and should’ protect settled state judgments from ‘undue interference’ by invoking their ‘equitable powers’ to dismiss or curtail suits that are . . . based on ‘speculative’ theories.”) (quoting *Hill*, 547 U.S. at 584-85). In this case, no prison official or staff member has claimed he or she has or will be unduly stressed by the scheduling of two executions on the same day. There has been no evidence that prison staff has ever deviated from protocol suggesting they would on July 28 by repeating the same procedure twice in one day. And Petitioners’ own

arguments support that unintended effects during execution may occur even when the State does not deviate from protocol.

Similarly, Duckett and Occhicone's argument that their same-day executions will psychologically traumatize prison staff is also pure speculation. They have provided a nearly ten-year-old news article quoting a former prison warden as their primary support for this allegation. And it is notable that Occhicone presented a similar argument in his state court appeal even before Duckett's stay was lifted and his execution was re-scheduled to July 28. In the courts below, Occhicone claimed that prison staff would be traumatized by having to watch an eighty-year-old man with health problems be executed. After Duckett's execution was scheduled for July 28, the Petitioners repackaged this argument to leap inferences that any alleged psychological damage will lead to prison staff suffering from lasting trauma.

No prison or death watch official has claimed any indicia of psychological or emotional damage. There has been no evidence presented from anyone with standing to support Duckett and Occhicone's allegations. So, to conclude that prison staff *will* be so psychologically damaged as to maladminister their executions or suffer extreme psychological trauma is without foundation.

Finally, Duckett and Occhicone argue that their constitutional right to access the courts for relief has been violated by the compressed execution schedule. This claim, too, is unsupported. The district and Eleventh Circuit were correct in concluding that no specific time frame exists for post-warrant litigation, and their

claim of inability to effectively litigate their claims is belied by the fact that their claims have now been reviewed in each of those courts.

For the foregoing reasons, four justices would probably not vote to grant certiorari on either question Duckett and Occhicone present. The first *Barefoot* element therefore weighs against granting a stay.

II. Reversal is unlikely even if this Court grants certiorari

On *Barefoot*'s second element, it is even more unlikely Duckett and Occhicone would obtain reversal from the Eleventh Circuit's ruling. In both state and federal courts, both Duckett and Occhicone have claimed violations of their First, Fifth, Eighth, and Fourteenth constitutional rights, and each court has rejected their arguments because they are based on speculation and stacking of inferences.

III. There is no irreparable harm absent a stay

Duckett and Occhicone cannot establish the third element required for issuance of a stay, irreparable harm. They do not challenge the legality or validity of their sentence, nor can they considering the extensive state and federal court review each has received. Therefore, the correct analysis of irreparable harm is whether they will *likely* suffer superadded pain in violation of the Eighth Amendment during the execution. Neither Duckett nor Occhicone can meet this burden because the threat of irreparable harm cannot be merely a possibility. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) ("Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing

that the plaintiff is entitled to such relief.”); *Koninklijke Philips N.V. v. Thales DIS AIS USA LLC*, 39 F.4th 1377, 1380 (Fed. Cir. 2022) (explaining “mere possibility or speculation of” irreparable “harm is insufficient”).

Florida has executed over forty inmates under its current lethal injection protocol, and it has worked quickly and efficiently each time. The massive dose of etomidate required by Florida’s protocol, combined with mandatory consciousness checks, will ensure Duckett and Occhicone are “fully insensate” before the execution continues and any effects incident to, for example, compromised veins or kidney disease occurs. *Cf. Barr v. Lee*, 591 U.S. 979, 981 (2020); *Baze v. Rees*, 553 U.S. 35, 120 (2008) (Ginsburg, J., dissenting) (discussing Florida’s consciousness checks during administration of injections as safeguards to ensure inmate is fully unconscious).

Conclusion

Duckett and Occhicone cannot meet their burden entitling them to a stay under *Barefoot*. The district court did not abuse its discretion in denying Petitioners relief and staying their execution, and the Eleventh Circuit correctly denied their requests for relief as well. There is little likelihood this Court would grant certiorari review to their section 1983 claims because they are entirely speculative, without foundation, and have been unsuccessful through several layers of judicial scrutiny. Finally, Duckett and Occhicone will not suffer irreparable harm because there is no evidence that their same-day executions will likely lead to Eighth Amendment violations.

This Court should deny the Petitioners' application for stay.

Respectfully submitted,

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