

IN THE  
SUPREME COURT OF THE UNITED STATES

DANIEL O. CONAHAN, JR.,

*Petitioner,*

*v.*

STATE OF FLORIDA,

*Respondent.*

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

**RESPONSE TO APPLICATION FOR STAY OF EXECUTION  
EXECUTION SCHEDULED FOR SEPTEMBER 10, 2026, AT 6:00 P.M.**

Daniel Conohan, Jr., a Florida prisoner under an active death warrant with an execution scheduled for September 10, 2026, asks this Court to stay his execution for the sadistic murder of Richard Montgomery while it considers whether to grant certiorari review. The petition raises a single issue: Whether Conahan's Fourteenth Amendment due process right entitles him to additional DNA testing of evidence that was tested prior to trial and shown not to contain any of Conahan's DNA, for the purpose of *possibly* identifying DNA of a third party. As fully explained in the accompanying Brief in Opposition, the issue presented in Conahan's petition does not meet the threshold for certiorari review, and this Court should deny both the petition and application for stay.

### **Standard for Stay of Execution**

To obtain a stay of execution for his long-finalized sentence,<sup>1</sup> Conahan 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)). “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. Conahan’s arguments presented in his petition for certiorari review do not present a compelling reason why a last-minute stay outweighs Florida’s interest in enforcing its laws.

#### ***I. Probability of this Court granting certiorari***

There is little chance that four justices of this Court would vote to grant

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<sup>1</sup> *Conahan v. Florida*, 540 U.S. 895 (2003).

certiorari review on the issue raised here. The Florida Supreme Court found Conahan's due process claim arising from the denial of additional DNA testing to be meritless. As the court noted, "[t]he items were all tested before trial, none were found to contain Conahan's DNA, some were found to contain DNA from a contributor other than Conahan or Montgomery, and these facts were presented at trial." Even if additional DNA was found on the items for which Conahan requested additional testing, "[t]here is no reasonable probability that knowing the identity of the third-party contributor would have changed any aspect of the outcome" of Conahan's conviction and sentence. This is true because the cigarette butts Conahan seeks to have tested again were found in an open field known for being a trash site and thus a repository for others' DNA. Further, additional testing of victim Richard Montgomery's fingernails, which contained only his own DNA, *might* show the DNA of an unknown third party, but that is only based on Conahan's speculative allegation that Montgomery "clawed" at his attacker while he was tied to a tree prior to being killed. The Florida Supreme Court's application of the facts to the well-settled procedural rules governing postconviction DNA testing do not present a colorable constitutional claim.

"Speculative" attacks on "settled precedent" do not warrant an execution stay. *See Bucklew*, 587 U.S. at 149, 151. In this case, Conahan's claim that additional DNA testing of the cigarette butts and fingernail clippings will exonerate him is entirely speculative. The cigarette butts were tested prior to Conahan's trial and were found to contain neither the DNA of Conahan nor Montgomery, but they did contain a third

party's DNA. But the location where the cigarette butts were collected played a key part in the lower courts' conclusion that additional testing was unlikely to lead to Conahan's exoneration: the area was known as a "dump site," and it was open and accessible to anyone who cared to walk through. Likewise, only Montgomery's DNA was found underneath his fingernails, and there was no factual basis to assume Montgomery "clawed" at his killer prior to his death, only Conahan's assertion. Conahan's claims are precisely the speculative attacks on settled precedent that this Court has warned against.

## ***II. Significant Possibility of Reversal***

Conahan cannot demonstrate a significant possibility of reversal if this Court grants his petition. The Florida Supreme Court applied its governing law and correctly rejected Conahan's claim that he was entitled to additional DNA testing of evidence that never implicated him in the first place. Under the relevant postconviction rule applied,<sup>2</sup> Conahan did not meet his burden that additional testing would either exonerate him or lessen his sentence. Indeed, Conahan's conviction and sentence were based on evidence and testimony that conclusively connected him to Montgomery's killing.

## ***III. Irreparable Injury***

As to the third factor of irreparable injury, there is none. Finality in a capital case *is* the execution. While the execution will result in Conahan's death, that is the inherent nature of a death sentence. The factors for granting a stay are taken from

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<sup>2</sup> Florida Rule of Criminal Procedure 3.853 (2025).

the standard for granting a stay as applied to normal civil litigation, which is not a natural fit in capital cases. In the capital context, more should be required for irreparable injury rather than the execution itself. Otherwise, this factor would automatically be satisfied in every capital case.

In other contexts, this Court has clarified that the “purpose of such a stay is to prevent the execution date from ‘interfer[ing] with the orderly processing of a petition on direct review by this Court.’” *Rodriguez v. Texas*, 515 U.S. 1307 (1995). And in *Williams v. Missouri*, 463 U.S. 1301, 1301-02 (1983), this Court explained that a stay would be warranted to prevent a defendant from being executed before having the opportunity to fully present his claim that his death sentence was unconstitutionally imposed. But those situations do not exist here. Likewise, this is not a case in which denying his stay would result in the execution of a defendant who should not be executed. Conahan faces no actual identifiable harm by the denial of his motion for stay under these circumstances.

Conahan’s speculative allegation that more DNA testing will identify the “real” killer fails to establish irreparable injury. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (holding that the mere “possibility” of irreparable harm is insufficient to obtain injunctive 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”).

Conahan’s execution will result in his death, which is the inherent nature of a death sentence. He has identified no irreparable harm that is not a direct

consequence of the valid, constitutional, and long-final death sentence that was imposed for his murder of Richard Montgomery. Having failed to meet the required factors, this Court should deny Conahan's application for stay.

Respectfully submitted,

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