No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL A. TANZI,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

APPLICATION FOR STAY OF EXECUTION

CAPITAL CASE

DEATH WARRANT SIGNED
EXECUTION SET APRIL 8, 2025 AT 6:00 PM

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

The State of Florida has scheduled the execution of Petitioner Michael A. Tanzi on April 8, at 6:00 p.m. The Florida Supreme Court denied state court relief, as well as Mr. Tanzi's' request for a stay of execution on April 1, 2025. Mr. Tanzi respectfully requests that this Court stay his execution pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f) pending consideration of his concurrently filed Petition for Writ of Certiorari.

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. Tanzi's petition are sufficiently meritorious for a grant of certiorari, present significant questions of constitutional law, and are not subject to any legitimate procedural impediments.

As demonstrated in his underlying petition, Mr. Tanzi's death sentence is unreliable and violative of this Court's Sixth Amendment jurisprudence because a judge, not a jury, made the findings of fact necessary to impose a death sentence. *See Hurst v. Florida*, 577 U.S. 92 (2016). This Court's decision in *Erlinger v. United States*, 602 U.S. 821 (2024), establishes that the state court's definition of the Sixth Amendment and Due Process Clause error underlying Mr. Tanzi's death sentence was fundamentally wrong. The Florida Supreme Court's habitual diminution of fundamental Sixth and Fourteenth Amendment protections flouts clearly established federal law and runs afoul of "the historic role of the jury as an intermediary between the State and criminal defendants." *Alleyne v. United States*, 570 U.S. 99, 114 (2013).

Mr. Tanzi's claims in his petition are not subject to any legitimate procedural impediments. This Court's precedent is clear that if "the State has made application of the procedural bar depend on an antecedent ruling on federal law," then it does not rest on "independent" grounds. *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985). In denying Mr. Tanzi's habeas petition on the merits, the Florida Supreme Court suggested that a procedural bar applied because "while presented as an *Erlinger* claim, what Tanzi really raises are repackaged versions of his Apprendi, Ring, and Hurst arguments." *Tanzi v. Sec'y, Fla. Dep't of Corr.*, SC2025-0372, 2025 WL 971568, *5 (Fla. Apr. 1, 2025). This procedural bar, thus, depended on the Florida Supreme Court's antecedent conflation of two distinct federal constitutional commands: *Hurst*'s command that a unanimous jury must find every fact necessary to impose death and *Erlinger*'s command that juries be preserved as "checks on governmental power." *Erlinger*, 602 U.S. at 832. Although this Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), implements both commands, they are distinct.

As outlined in the underlying Petition, the issue relates to the latter, the judge-checking command, which the Florida Supreme Court has not addressed. In contrast, Mr. Tanzi's state postconviction claim in the wake of *Hurst v. Florida* related exclusively to the former: the jury factfinding command. Because the Florida Supreme Court's procedural bar rested on the antecedent—and incorrect—ruling that these commands are synonymous, the purported procedural bar is not an "independent" state law ground that would preclude this Court's review. See *Ake*, 470 U.S. at 75 (noting antecedent rulings may be explicit or implicit).

Absent this Court's intervention, the irreparable harm to Mr. Tanzi is clear. *Wainwright v. Booker*, 473 U.S. 935, 937 n.1 (1985) (Powell, J., concurring) (finding the requirement of irreparable harm as "necessarily present in capital cases"). Given the final nature of the death penalty there should be no point at which these considerations are foreclosed. "[E]xecution is the most irremediable and unfathomable of penalties; . . . death is different." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (citing *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (opinion of Stewart, Powell, and Stevens, J.J.)).

This Petition presents questions of great importance regarding the analysis of a state court's duty to give full effect to a federal constitutional holding. It is an ideal vehicle for addressing the Florida Supreme Court's error, and the questions at issue are of life-or-death importance for Mr. Tanzi and for the other death-row inmates in Florida whose claims have been denied based on the same incorrect application of the Sixth Amendment right to a jury's finding of all facts necessary to impose death. Should this Court grant Mr. Tanzi's request for a stay and review of the underlying petition, there is a significant possibility of lower court reversal.

CONCLUSION

For the foregoing reasons, Mr. Tanzi respectfully requests that this Court grant his application for a stay of execution to address the important constitutional questions in this case.

Respectfully submitted,

/s/ Paul Kalil
PAUL KALIL*
Assistant CCRC-South
Florida Bar No. 174114
kalilP@ccsr.state.fl.us
*Counsel of Record

/s/ Todd Scher
TODD SCHER
Assistant CCRC-South
Florida Bar No. 0899641
TScher@msn.com

MICHAEL T. COOKSON
Staff Attorney
Florida Bar No. 1057838
cooksonM@ccsr.state.fl.us

Capital Collateral Regional Counsel-South
110 SE 6th Street, Suite 701
Fort Lauderdale, FL 33301
Tel. (954) 713-1284

COUNSEL FOR MR. TANZI