No. 24A948

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL A. TANZI,

*Petitioner,*

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

*Respondent.*

**REPLY TO RESPONSE TO 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:

Respondent's response in opposition to Mr. Tanzi's Application for Stay of Execution is premised upon a mischaracterization of his claims, a distortion of the facts supporting those claims, and a misapprehension of the applicable law. Mr. Tanzi submits that he has shown a stay of execution is appropriate under this Court's three-factor test in *Barefoot v. Estelle*, 463 U.S. 880 (1983).

## I. There is a reasonable probability that this Court will find the underlying issues in Mr. Tanzi's petition worthy of certiorari.

Respondent first contends "there is little chance that four justices of this Court

[will] vote to grant certiorari review" because Mr. "Tanzi has cited no conflict or unsettled question of law" in his petition. Resp. at 3. To support this assertion, Respondent avers that Mr. "Tanzi [is just] repeat[ing] well-worn and repeatedly rejected claims of *Hurst v. Florida*, 577 U.S. 92 (2016) error" and that "there was no underlying error in this case where Tanzi's own guilty pleas to contemporaneous felonies rendered him eligible for the death penalty." Resp. at 3. Respondent's arguments here are founded on a misunderstanding of—or deliberate indifference to—Mr. Tanzi claims and this Court's capital sentencing jurisprudence.

As explained in his Application for Stay of Execution, Mr. Tanzi's petition presents compelling questions regarding the impact of this Court's decision in *Erlinger v. United States*, 602 U.S. 821 (2024), and a state court's duty to give full effect to federal constitutional holdings. *Erlinger*'s implication—that even unanimous jury recommendations for the death penalty are void under the Sixth Amendment because they cannot substantively limit executive and judicial power—is a "sufficiently meritorious" issue this Court has yet to address. *Barefoot*, 463 U.S. at 895. The Florida Supreme Court acknowledged below that "[i]f Tanzi is correct [about *Erlinger*], then a unanimous, non-advisory jury would be necessary to impose a death sentence." *Tanzi v. Sec'y, Fla. Dep't of Corr.*, SC2025-0372, 2025 WL 971568, at *6 (Fla. Apr. 1, 2025). Thus, in light of *Erlinger*, a clear conflict exists between this Court's command in *Hurst v. Florida*, 577 U.S. 92 (2016), that a jury's "mere recommendation is not enough" under the Sixth Amendment and the Florida Supreme Court's selective application of *Spaziano v. Florida*, 468 U.S. 447 (1984), to

limit a penalty phase jury's role on Eighth Amendment grounds. It is disingenuous for Respondent to assert that no such conflict exists and to further state "there was no underlying error in this case." Resp. at 3.

The lower courts found that *Hurst v. Florida* applied to Mr. Tanzi's case but deemed the constitutional defect in his sentence harmless based on his advisory jury's unanimous recommendation for death. *See Tanzi v. State*, 251 So. 3d 805, 806 (Fla. 2018) (citing *Davis v. State*, 207 So. 3d 142, 175 (Fla. 2016) (holding that "the State can sustain its burden of demonstrating that any *Hurst v. Florida* error was harmless beyond a reasonable doubt" where the jury rendered a unanimous recommendation of death because "unanimous recommendations . . . are precisely what we determined in *Hurst* to be constitutionally necessary to impose a sentence of death")). *Erlinger* establishes that the Florida Supreme Court's decision in *Davis v. State*, and later in *State v. Poole*, 297 So. 3d 487 (Fla. 2020), its progeny were based on a fundamentally flawed conception of "*Hurst* error" because the court cannot infer from a unanimous recommendation that an advisory jury made any findings of fact.

Based on the foregoing, there is a reasonable probability that four members of this Court, when evaluating Mr. Tanzi's claims as he properly presented them, will find the issues worthy of certiorari and a stay of execution.

## II. There is a significant possibility of reversal of the Florida Supreme Court's decision.

Respondent next asserts that "there is not a significant possibility of reversal on either of the issues raised by Tanzi" because "this is the third time Tanzi has sought review in this Court for a jury fact-finding error under *Ring v. Arizona*, 536

U.S. 584 (2002) or *Hurst*" and his "claims do not gain strength from repetition." Resp. at 3-4. While Mr. Tanzi's state postconviction claim in the wake of *Hurst v. Florida* related to a jury's fact-finding role in capital sentencing, his petition now before this Court concerns *Erlinger*'s separate command that juries are a fundamental "check[] on governmental power." *Erlinger*, 602 U.S. at 832. Contrary to Respondent's assertion, Mr. Tanzi is not attempting to re-litigate prior rejections of his *Hurst* claim through a different vehicle.

According to Respondent, "there is [also] demonstrably less reason to accept review of this case now as it was found procedurally barred below under well-established state law." Resp. at 4. Respondent's arguments here once again misconstrue Mr. Tanzi's constitutional claims regarding *Erlinger* and the Sixth and Fourteenth Amendment errors in his case, and overlook that any purported procedural bar is dependent on the Florida Supreme Court's antecedent interpretations of federal constitutional rulings—not "independent and adequate state law." Resp. at 4.

As this Court recently addressed in *Glossip v. Oklahoma*:

> A state ground of decision is independent only when it does not depend on a federal holding, *Foster v. Chatman*, 578 U.S. 488, 498, (2016), and also is not intertwined with questions of federal law, *Michigan v. Long*, 463 U.S. 1032, 1040–1041 (1983). "[W]hen the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." *Ibid.*

*Glossip v. Oklahoma*, 145 S. Ct. 612, 625 (2025) (internal parallel citations omitted).

Here, the purportedly "well-established state law" the Florida Supreme Court relied upon to deny Mr. Tanzi's claims was predicated on, and interwoven with, federal law, as the court relied upon its antecedent decisions concerning what principles *Apprendi*, *Ring*, and *Hurst* stand for to decide whether *Erlinger* stands for precisely the same principles.

The most reasonable explanation for why the Florida Supreme Court decided Mr. Tanzi's claim the way it did was because it believed that federal law, namely *Erlinger* and this Court's other *Apprendi* cases, required it to do so. *See Glossip*, 145 S. Ct. at 625. The Florida Supreme Court's opinion explicitly relied on its prior decisions interpreting this Court's *Apprendi* caselaw, including *Hurst v. Florida*, which the court has previously found retroactively applicable to, and violated by, Mr. Tanzi's death sentence. It further relied on this Court's decision in *Spaziano v. Florida*, 468 U.S. 447 (1984), to dismiss Mr. Tanzi's claims as barred. Simply put, the Florida Supreme Court's decision cannot be considered "independent" in the loosest sense of the word.

As noted above, the Florida Supreme Court conceded that "[i]f Tanzi is correct [about *Erlinger*], then a unanimous, non-advisory jury would be necessary to impose a death sentence." *Tanzi*, 2025 WL 971568, at *6. By doing so, the court acknowledged a dual reading of *Erlinger*—one of which is premised on an incorrect understanding or direct violation of clearly established federal law governing capital sentencing. Based on the reasons outlined in his petition and accompanying reply, there is a significant possibility of reversal of the Florida Supreme Court's decision if this Court

grants certiorari in this case.

## III. Mr. Tanzi will suffer irreparable injury if this Court denies a stay of execution.

Respondent finally contends that "[a]s to the third factor of irreparable injury, there is none" because Mr. Tanzi's execution is the "inherent" result of his death sentence. Resp. at 4. In this vein, Respondent complains that this factor is "not a natural fit in capital cases" and that "more should be required for irreparable injury rather than the execution itself." Resp. at 4. This argument ignores the fact that the application at issue in *Barefoot v. Estelle* was for a stay of execution where this Court acknowledged that "unlike a term of years, a death sentence cannot begin to be carried out by the State while substantial legal issues remain outstanding." 463 U.S. at 888. To accept Respondent's unsubstantiated allegation that death-sentenced individuals must satisfy a more onerous standard would pervert his Court's longstanding recognition that "death is different" and weaponize the penalty at issue. *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (citing *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (opinion of Stewart, Powell, Stevens, J.J.)); *see also 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").

Absent intervention from this Court, Mr. Tanzi will be the first post-*Ring*, *Hurst*-eligible capital defendant to be executed by the State of Florida.[1] Mr. Tanzi's

[1] The only other capital defendant with a post-*Ring* finality date who has been executed by the State of Florida is James Barnes. *See Barnes v. State*, 29 So. 3d 1010 (Fla. 2010), *cert. denied* 562 U.S. 901 (2010). *Hurst v. Florida* did not apply to Mr. Barnes because he waived a jury for his penalty phase proceedings.

death sentence is—and always has been—constitutional at its core, and the consequence of error here is too severe to leave the questions presented in his underlying petition unanswered. Contrary to Respondent's assertion, Mr. Tanzi does face "actual identifiable harm by the denial of his motion for stay under these circumstances." Resp. at 4; *see also* Joseph Margulies et al., *Dead Right: A Cautionary Capital Punishment Tale*, 53 Colum. Hum. Rts. L. Rev. 59, 89-96 (2021) (discussing the number of capital defendants who rightfully challenged the constitutionality of their death sentences based on "Florida's use of judges, not juries, to make the death eligibility determination" in violation of the Sixth Amendment but were executed while "the Florida Supreme Court petulantly resisted *Ring* and *Apprendi*").

## CONCLUSION

For the foregoing reasons, Mr. Tanzi respectfully requests that this Court grant his application to consider the compelling constitutional questions at issue in his petition.

Respectfully submitted,

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