No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

JEFFREY GLENN HUTCHINSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

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APPLICATION FOR STAY OF EXECUTION

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, MAY 1, 2025, AT 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:

The State of Florida has scheduled the execution of Petitioner Jeffrey Glenn Hutchinson for Thursday, May 1, 2025, at 6:00 p.m. The Florida Supreme Court denied state court relief on Monday, April 21, 2025. Pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), Mr. Hutchinson requests a stay of execution pending the disposition of the petition for a writ of certiorari accompanying this application. The petition concerns the Florida courts' truncated adjudication of Mr. Hutchinson's postconviction claim that his execution would violate the Eighth Amendment because

his personal moral culpability was diminished by the profound impact of physical and psychological wounds he sustained on the front lines of the Gulf War. Not only does the petition raise issues worthy of certiorari, but this Court should not tolerate the State's attempt to evade constitutional review of a death sentence by interrupting active and likely meritorious litigation with an execution date.

I. Background[1]

On January 15, 2025, Mr. Hutchinson filed a successive motion for state postconviction relief from his 2001 Florida death sentences. Mr. Hutchinson alleged that newly discovered evidence demonstrated that his death sentences violated the Eighth Amendment, due to his diminished moral culpability attributable to the cumulative neurocognitive impact of injuries he suffered on the front lines of the Gulf War. PCR4 152-309. Although Mr. Hutchinson had attempted to present Gulf War Illness as a mitigating factor at the time of trial, the lack of scientific understanding regarding the condition led to misconceptions about its impact and an improper weighing process at sentencing. PCR4 299-300. Additionally, Mr. Hutchinson presented evidence that his personal culpability was further lessened due to profound

[1] Citations are as follows: "R." refers to the first eighteen volumes of the record on direct appeal to the Florida Supreme Court (SC01-500). "T." refers to the separately paginated trial transcript in volumes nineteen through thirty-two of the record on appeal. "PCR1" refers to the record on appeal to the Florida Supreme Court from the initial state postconviction appeal (SC08-99); "PCR2" to the record on appeal from the successive state postconviction appeal (SC17-1229); "PCR3" to the record on appeal from the second successive postconviction appeal (SC21-18); and "PCR4" to the record on appeal from this appeal (SC25-0497). Other references are self-explanatory.

brain damage from a newly recognized form of traumatic brain injury related to his military service. PCR 227-30.

At a March 6, 2025, case management conference related to Mr. Hutchinson's motion, Judge Oberliesen indicated he needed additional time to review the underlying record and evaluate the need for an evidentiary hearing. PCR4 346-47, 646, 853. On March 31, 2025, before Judge Oberliesen had time to conduct the necessary review, Governor Ron DeSantis signed Mr. Hutchinson's death warrant. PCR4 671-72. The next day, the case was reassigned to the Honorable Lacey Powell Clark. PCR4 711. Three days later—a full week before the deadline imposed by the Florida Supreme Court's expedited warrant schedule—the pending motion was summarily denied on timeliness grounds. PCR4 1080-1116. Mr. Hutchinson's motion for rehearing was denied on April 8, 2025. PCR4 1164-79, 1185-91.

Mr. Hutchinson appealed to the Florida Supreme Court on April 9, 2025, and was given a single day in which to file his initial brief. On April 21, 2025, the Florida Supreme Court affirmed the lower court's order. Pet. App. A1. Although the summary nature of the circuit court's denial meant the Florida Supreme Court had a duty to construe in Mr. Hutchinson's favor all disputed factual issues, the court instead made unfavorable factual assumptions against him. Pet. App. A1 at 8-9.

Concurrently with this stay application, Mr. Hutchinson has filed a petition for a writ of certiorari.

II. The stay factors weigh in favor of granting a stay

This Court is empowered to stay an execution pending consideration and disposition of a petition for a writ of certiorari because "[a]pproving the execution of a defendant before his appeal is decided on the merits would clearly be improper." *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983). The standards for granting a stay are well established. *See id.* at 895; *Hill v. McDonough*, 547 U.S. 573, 584 (2006). While Mr. Hutchinson recognizes that a stay of execution is "an equitable remedy" and is "not available as a matter of right," *Hill*, 547 U.S. at 584, the relevant factors—likelihood of success on the merits, undue delay, relative harm to the parties, and the public interest—weigh in favor of granting one here.

A. Mr. Hutchinson is likely to succeed on the merits

The questions raised in Mr. Hutchinson's petition are sufficiently meritorious for a grant of certiorari review, and it is likely that at least four Justices will agree. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). And, should this Court grant a stay and review of the underlying petition, there is a significant possibility that it will reverse the lower court for the reasons explained in the accompanying petition. In short, **t**he Florida Supreme Court's rationale in denying relief runs afoul of this Court's well-espoused principles regarding the Eighth Amendment generally, and in the specific context of death-sentenced veterans.

After Mr. Hutchinson's death warrant was signed, the circuit court insisted on an unrealistically truncated litigation schedule and summarily denied Mr. Hutchinson's postconviction motion a mere three days after Judge Clark was

assigned to the case. PCR4 711, 1080. The denial rested solely on the court's ruling that the motion was untimely, even though timeliness was a disputed factual issue and no evidentiary hearing had been held to resolve that dispute. PCR4 1086-88. The court failed entirely to address the constitutional merits underlying the claim.

Given the circumstances of the circuit court's denial, the Florida Supreme Court had a duty to construe in Mr. Hutchinson's favor all allegations as to the impact of the newly presented evidence on his sentencing outcome. *See, e.g.*, *Hunter v. State*, 29 So. 3d 256, 261 (Fla. 2008). But instead, in upholding the lower court's denial of relief, the Florida Supreme Court "disagree[d] with [Mr. Hutchinson's] assertion that this evidence would be 'powerful' in its mitigating effect." App. A1 at 8-9. This reductive analysis flies in the face of decades of this Court's precedent.

As in *Porter*, "[t]his is not a case in which the new evidence 'would barely have altered the sentencing profile presented to the sentencing judge.'" 558 U.S. at 41 (quoting *Strickland v. Washington*, 466 U.S. 668, 700 (1984)). Because of the lack of medical consensus at the time of Mr. Hutchinson's trial, the court gave minimal weight to his diagnosis of Gulf War Illness and incorrectly found it had no relation to any mental or emotional disorder at the time of the crimes. R. 2710-11.

Had the trial court been fully aware of the psychological impact of Gulf War Illness and Mr. Hutchinson's other service-related brain traumas, it would have been "able to place [Mr. Hutchinson's] excruciating life history on the mitigating side of the scale[,]" *Wiggins*, 539 U.S. at 536, and the balance of aggravators and mitigators would have been profoundly different. The aggravated nature of the murders

themselves does not diminish the importance of the changed picture; rather, it underscores it. The new evidence "might not have made [Mr. Hutchinson] any more likable…but it might well have helped the [factfinder] understand [him], and his horrendous acts—especially in light of his purportedly stable upbringing." *Sears v. Upton*, 561 U.S. 945, 951 (2010); *see also id*. (explaining the importance of contextualizing otherwise adverse facts such as a capital defendant's "grandiose self-conception and evidence of his magical thinking"). Instead of finding that Mr. Hutchinson had acted "without pity, without conscience[,]" R. 2706, the court would have seen the tragic events leading to Mr. Hutchinson's convictions as "so foreign to his nature," and "to a large extent determined by the long-term effects of GWI on his brain sustained during his courageous, honorable and decorated service in combat during the 1991 Gulf War." PCR4 298. In other words, had science progressed sooner, the trial court would have been in a position to continue our Nation's "long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines[.]" *Porter*, 558 U.S. at 43.

Thus, the state courts "fail[ed] to engage with what [Mr. Hutchinson] actually went through" during his Gulf War service. *Porter*, 558 U.S. at 44. This failure conflicts with this Court's longstanding caselaw regarding the need for proportional sentencing and individualized culpability assessments.

The particular circumstances presented by Mr. Hutchinson's petition clearly demonstrate that he is deserving of the protections from the death penalty provided by the Eighth and Fourteenth Amendments. But without this Court's intervention,

the Florida Supreme Court will continue to foreclose relief not just in Mr. Hutchinson's case but in other similar cases by ossifying the Eighth Amendment.

Furthermore, Mr. Hutchinson's claims are not subject to any legitimate procedural impediments. The state courts have foreclosed substantive review, but Eighth Amendment exemptions from the ultimate punishment cannot be nullified by any state-law waiver provision. And, even if such a state provision could trump this Court's constitutional prerogatives, the state courts' procedural impediments were not adequate and independent. From the time of his trial, Mr. Hutchinson has attempted to demonstrate that he possesses a lessened moral culpability due to the catastrophic physical and psychological wounds he suffered during his service on the front lines of the Gulf War. But due to a lack of scientific understanding—which was partially attributable to the government's campaign of disinformation—he was sentenced to death based on misconceptions about his condition. When new scientific evidence emerged that dispelled those misconceptions, Mr. Hutchinson promptly raised the appropriate claim. Thus, to deny review would penalize him for being right too soon.

B. There is no undue delay

Mr. Hutchinson timely and diligently filed his state postconviction motion after gaining access to the new evidence for the first time. As described in his petition for a writ of certiorari and above, Mr. Hutchinson promptly raised his Eighth Amendment claim once the requisite evidence to establish it became available to him. This was not a motion "filed too late in the day." *Hill*, 547 U.S. at 584.

To the extent the Court's consideration of this application is rushed, this is not due to any delay by Mr. Hutchinson. Rather, the State of Florida set an execution date while postconviction litigation was ongoing in the state circuit court and the then-presiding judge had determined further time was required to make the necessary determinations for evaluating the claim. Without a death warrant, this claim would have been decided in the normal course where—if relief was not granted in the state courts—this Court's certiorari decisions could occur within the usual timeframe.

C. Harm to parties

Irreparable injury to the petitioner "is necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985); *see also 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) ("[I]n the circumstances of an imminent execution, this Court presumes the existence of irreparable injury."); *Hutchinson v. Sec'y, Fla. Dep't of Corr.*, No. 3:13-cv-128-MW, ECF No. 98 at 17 (11th Cir. Apr. 16, 2025) ("[T]his Court agrees with Mr. Hutchinson that he would suffer irreparable injury if he was executed without being afforded an opportunity to be heard" on the underlying merits if procedural requirements were satisfied).

A stay will not substantially harm the State. While the State has a legitimate interest in the timely enforcement of valid criminal judgments, it does not have a

legitimate interest in executing a petitioner midway through active litigation regarding the constitutionality of his death sentence—particularly where that litigation was pending prior to the death warrant and the presiding judge had indicated further time was required to make necessary determinations. *Cf. Holladay*, 331 F.3d at 1177 ("Moreover, contrary to the State's contention that its interest in executing Holladay outweighs his interest in further proceedings, we perceive no substantial harm that will flow to the State of Alabama or its citizens from postponing petitioner's execution to determine whether that execution would violate the Eighth Amendment."). Moreover, the State chose not to pursue a death warrant for years after the conclusion of Mr. Hutchinson's initial round of state and federal appellate litigation. The State will suffer no substantial harm from waiting at least until this Court completes certiorari review of a vital constitutional issue that was being litigated at the time Mr. Hutchinson's death warrant was signed. A stay of execution pending certiorari review is appropriate.

D. Public interest

Granting a stay of execution would not be detrimental to the public interest. Mr. Hutchinson, a decorated military veteran, was exposed to a myriad of hazards during his advanced training and deployment to the Gulf War. His experience on the front lines of a combat zone is so unique that leaving his case unheard in service of an expedited execution date would call into question the promise of *Porter*, 558 U.S. at 43 ("Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines.").

Like the State, the public has a legitimate interest in enforcing criminal judgments. However, the public also has an interest in a legal system that opts for deliberate rather than hasty resolutions of criminal cases, especially cases where the consequence for foregoing justice is a petitioner's death. It would undermine rather than serve the public's confidence in a just system to execute a veteran who honorably served his country on the front lines of the Gulf War; has been frustrated in his past attempts to raise the issue of his catastrophic war wounds, in part due to government-perpetuated ignorance about his condition; and—now that a scientific understanding of his condition has emerged—has again been obstructed from meaningfully litigating the issue by an arbitrarily-signed death warrant midway through his current litigation. A stay of execution should be granted.

III. Conclusion

The Court should grant a stay of execution.

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