No. _____

IN THE

Supreme Court of the United States

JEFFREY GLENN HUTCHINSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, MAY 1, 2025, AT 6:00 P.M.

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CAPITAL CASE

QUESTIONS PRESENTED

1. Given that "[o]ur Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines," *Porter v. McCollum*, 558 U.S. 30, 43 (2009) (per curiam), is it unconstitutional to execute a Gulf War veteran without considering the impact of new scientific evidence demonstrating that he possesses a diminished moral culpability due to a trifecta of mental and cognitive impairments caused by his combat service?

2. Must a death-sentenced individual, in order to avoid application of a procedural bar, advance a claim based on medical evidence that: (a) has yet to be generally accepted by the scientific community; and (b) contradicts previously accepted medical conclusions?

LIST OF DIRECTLY RELATED PROCEEDINGS

Per Supreme Court Rule 14.1(b)(iii), the following cases relate to this petition:

Underlying Criminal Trial
First Judicial Circuit Court, Okaloosa County, Florida
State of Florida v. Jeffrey Glenn Hutchinson, Case No. 1998 CF 1382
Judgment Entered: February 6, 2001

Direct Appeal
Supreme Court of Florida (Case No. SC01-500)
Hutchinson v. State, 882 So. 2d 943 (Fla. 2004)
Judgment Entered: July 1, 2004 (affirming convictions and sentences)

Initial State Postconviction Review
First Judicial Circuit Court, Okaloosa County, Florida
State v. Hutchinson, Case No. 1998 CF 1382
Judgment Entered: January 3, 2008 (denying motion for postconviction relief)

Supreme Court of Florida (Case No. SC08-99)
Hutchinson v. State, 17 So. 3d 696 (Fla. 2008)
Judgment Entered: July 9, 2009 (affirming denial of postconviction relief)
Rehearing Denied: September 11, 2009

Motion for DNA Testing
First Judicial Circuit Court, Okaloosa County, Florida
State v. Hutchinson, Case No. 1998 CF 1382
Judgment Entered: November 11, 2011 (denying motion for DNA testing)

Supreme Court of Florida (Case No. SC11-2301)
Hutchinson v. State, 2012 WL 521209 (Fla. 2012)
Judgment Entered: February 8, 2012 (dismissing pro se appeal)

Initial Federal Habeas Proceedings
District Court for the Northern District of Florida (Case No. 5:09-cv-261-RS)
Hutchinson v. Florida, 2010 WL 3833921 (N.D. Fla. Sept. 28, 2010)
Judgment Entered: September 28, 2010 (dismissing petition as untimely)

Eleventh Circuit Court of Appeals (Case No. 10-14978)
Hutchinson v. Florida, 677 F.3d 1097 (11th Cir. 2012)
Judgment entered: April 19, 2012 (affirming)

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (Case No. 12-5582)

Hutchinson v. Florida, 568 U.S. 947 (2012)
Judgment Entered: October 9, 2012

Second Federal Habeas Petition
District Court for the Northern District of Florida (Case No. 3:13-cv-128-MW)
Hutchinson v. Crews, 2013 WL 1765201 (N.D. Fla. Apr. 24, 2013)
Judgment Entered: April 24, 2013 (dismissing as unauthorized successor)
Reconsideration Denied: 2013 WL 2903530 (N.D. Fla. June 12, 2013)

Eleventh Circuit Court of Appeals (Case No. 13-12296)
Hutchinson v. Secretary, Fla. Dep't of Corr.
Judgment entered: August 15, 2013 (denying COA)

First Successive Postconviction Proceedings
First Judicial Circuit Court, Okaloosa County, Florida
State v. Hutchinson, Case No. 1998 CF 1382
Judgment Entered: November 19, 2013 (denying postconviction motion)

Supreme Court of Florida (Case No. SC13-1005)
Hutchinson v. State, 133 So. 3d 526 (Fla. 2014)
Judgment Entered: January 19, 2014 (affirming postconviction denial)

Second Successive Postconviction Proceedings
First Judicial Circuit Court, Okaloosa County, Florida
State v. Hutchinson, Case No. 1998 CF 1382
Judgment Entered: May 30, 2017 (denying postconviction motion)

Supreme Court of Florida (Case No. SC17-1229)
Hutchinson v. State, 243 So. 3d 880 (Fla. 2018)
Judgment Entered: March 15, 2018 (affirming postconviction denial)
Rehearing Denied: April 26, 2018

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (Case No. 18-5377)
Hutchinson v. Florida,139 S. Ct. 261 (2018)
Judgment Entered: October 1, 2018

Fed. R. Civ. P. 60(b) Proceedings
District Court for the Northern District of Florida (Case No. 3:13-cv-128-MW)
Hutchinson v. Inch, 2021 WL 6335753 (Jan. 15, 2021)
Judgment Entered: January 15, 2021 (denying Rule 60(b) motion)

Eleventh Circuit Court of Appeals (Case No. 21-10508)
Hutchinson v. Florida, 2021 WL 6340256 (11th Cir. 2021)

Judgment entered: March 24, 2021 (affirming Rule 60(b) denial)

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (Case No. 21-5778)
Hutchinson v. Dixon, 142 S. Ct. 787 (2022)
Judgment Entered: January 10, 2022

Third Successive Postconviction Proceedings
First Judicial Circuit Court, Okaloosa County, Florida
State v. Hutchinson, Case No. 1998 CF 1382
Judgment Entered: December 4, 2020 (denying postconviction motion)

Supreme Court of Florida (Case No. SC21-18)
Hutchinson v. State, 2022 WL 2167292 (Fla. June 16, 2022)
Judgment Entered: June 16, 2022 (affirming postconviction denial)
Rehearing Denied: August 4, 2022

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (Case No. 22-6015)
Hutchinson v. Florida, 143 S. Ct. 601 (2023)
Judgment Entered: January 9, 2023

Fourth Successive Postconviction Proceedings
First Judicial Circuit Court, Okaloosa County, Florida
State v. Hutchinson, Case No. 1998 CF 1382
Judgment Entered: April 4, 2025 (denying postconviction motion)

Supreme Court of Florida (Case No. SC25-0497)
Hutchinson v. State, 2025 WL 1155717 (Fla. Apr. 21, 2025)
Judgment Entered: April 21, 2025 (affirming postconviction denial)

Fifth Successive Postconviction Proceedings (under warrant)
First Judicial Circuit Court, Okaloosa County, Florida
State v. Hutchinson, Case No. 1998 CF 1382
Judgment Entered: April 11, 2025 (denying postconviction motion)

Supreme Court of Florida (Case Nos. SC25-0497; SC25-0518)
Hutchinson v. State, 2025 Fla. LEXIS 671 (Fla. Apr. 25, 2025)
Judgment Entered: April 25, 2025 (affirming postconviction denial and denying state habeas petition)

Second Fed. R. Civ. P. 60(b) Proceedings (under warrant)
District Court for the Northern District of Florida
Hutchinson v. Cannon, Case No. 3:13-cv-128-MW

Judgment Entered: April 16, 2025 (denying 60(b) relief)
Eleventh Circuit Court of Appeals (Case No. 25-11271-P)
Hutchinson v. Sec'y, Fla. Dep't of Corr., 2025 U.S. App. LEXIS 9796
Judgment entered: April 23, 2025 (denying COA)

Proceedings Regarding Competency to be Executed (under warrant)
Eighth Judicial Circuit Court, Bradford County, Florida
State v. Hutchinson, Case No. 04-2025-CA-163-CAAXMX
Judgment Entered: [Pending]

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CASES

CONSTITUTIONAL AND STATUTORY PROVISIONS

Petitioner Jeffrey Glenn Hutchinson respectfully urges this Honorable Court to issue its writ of certiorari to review the decision of the Florida Supreme Court.

DECISION BELOW

The decision of the Florida Supreme Court denying Mr. Hutchinson's motion for postconviction relief appears as *Hutchinson v. State*, 2025 WL 1155717 (Fla. Apr. 21, 2025), and is reproduced in the Appendix at A1.

JURISDICTION

The judgment of the Florida Supreme Court was entered on April 21, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Article VI provides in relevant part:

> The Constitution, and the laws of the United States which shall be made in pursuance thereof…shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Eighth Amendment provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment provides in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE[1]

I. Introduction

"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[.]" *Porter v. McCollum*, 558 U.S. 30, 43 (2009) (per curiam). Yet, the State of Florida, which proclaims its commitment "to remaining the most military- and veteran-friendly state in the nation[,]"[2] plans to execute Jeffrey Glenn Hutchinson without ever having provided him a fair opportunity to demonstrate the full picture of "his heroic military service and the trauma he suffered because of it[.]" *Porter*, 558 U.S. at 33.

Mr. Hutchinson provided the Florida courts with a detailed, unrebutted evidentiary proffer that his execution would violate the Eighth Amendment due to the profound impact of physical and psychological "wounds [he] sustained in combat," which diminished his personal moral culpability. *Id*. at 40. In particular, he proffered

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[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.

[2] FLORIDA DEPARTMENT OF VETERANS' AFFAIRS, Florida Veterans' Benefits Guide (2025) at 3, available at https://floridavets.org/wp-content/uploads/2012/08/FDVA-Benefits-Guide.pdf?v=2025b (last accessed Apr. 16, 2025); *see also* FLORIDA DEPARTMENT OF VETERANS' AFFAIRS, *Governor Ron DeSantis Highlights Florida's Commitment to Being the Most Veteran and Military Friendly State in the Nation* (Nov. 10, 2023), https://floridavets.org/governor-ron-desantis-highlights-floridas-commitment-to-being-the-most-veteran-and-military-friendly-state-in-the-nation/.

that—contrary to what was known by prior factfinders or available under then-current medical knowledge—the crimes for which he is sentenced to die were the direct result of "chronic brain defects…sustained during heroic, meritorious military service behind enemy lines in the Gulf War[.]" PCR4 300.

But because Florida arbitrarily issued an execution warrant midway through that litigation, the state courts curtailed all pending review to accommodate the expedited timeframe created by the execution date. The lower court reassigned the case to a new judge unfamiliar with the case and denied the constitutional claim without ever conducting the factual review Mr. Hutchinson's prior judge had deemed necessary to evaluating it. And, the Florida Supreme Court relied upon inadequate and unconstitutionally applied standards to justify upholding the denial. This truncation and evasion deprived Mr. Hutchinson of the fundamental rights he dedicated himself to protecting through his military service. For the sake of preventing an unconstitutional execution and reaffirming this Nation's commitment to honoring those who have greatly sacrificed for our freedoms, this Court's intervention is necessary.

II. Procedural history

In 2001, Mr. Hutchinson was convicted by a jury of four counts of first-degree murder related to the deaths of his partner, Renee Flaherty, and her three children. R. 24-27, 2296-99. He waived his right to a penalty-phase jury and presented mitigation directly to the court, which imposed three death sentences and one life sentence. R. 2307-16, 2632-33. The Florida Supreme Court affirmed. *Hutchinson v.*

State, 882 So. 2d 943 (Fla. 2004). Counsel did not seek certiorari review.

After learning his attorneys missed the 28 U.S.C. § 2254 statute of limitations by filing his state postconviction motion outside the one-year deadline, Mr. Hutchinson requested to proceed pro se and filed several pleadings that were stricken by the circuit court. PCR1 1-71, 256-335, 344-427, 430-574. The court permitted postconviction counsel to withdraw and appointed new counsel, who filed an amended postconviction motion that was denied after an evidentiary hearing. PCR1 672-74, 677-750, 1077-1105; *Hutchinson v. State*, 17 So. 3d 696 (Fla. 2009) (affirming).

Mr. Hutchinson then promptly filed a pro se § 2254 petition. *Hutchinson v. Florida*, Case No. 5:09-cv-261-RS, ECF No. 1 (N.D. Fla. July 24, 2009).[3] Although the federal district court appointed counsel who filed an amended petition, the court ultimately dismissed the petition as untimely. *Hutchinson v. Florida*, 677 F.3d 1097 (11th Cir. 2012), *cert. denied Hutchinson v. Florida*, 568 U.S. 947 (2012).

For the next several years, Mr. Hutchinson attempted to preserve issues pro se, but was disallowed due to his purported representation by an attorney who later attested he had "not undertaken any substantive representation of Mr. Hutchinson since December 2, 2009…[and his] state court representation was completed before that."[4] After Mr. Hutchinson obtained new counsel, the courts denied all further

[3] A duplicate docket entry was inadvertently created under Case No. 5:09-cv-253-MCR-EMT, then terminated.

[4] *State v. Hutchinson*, Case No. 1998 CF 1382, Docket No. 1645 at 2 (Okaloosa Cir. Ct. Apr. 15, 2016); *see also id.*, Docket No. 1631 (Okaloosa Cir. Ct. Nov. 19, 2013) (denying request for new counsel). In 2011, the circuit court denied his pro se motion for DNA testing, and the Florida Supreme Court dismissed his appeal as an

motions.[5]

On January 15, 2025, Mr. Hutchinson moved for state postconviction relief based on newly discovered evidence related to the cumulative neurocognitive impact of his blast overpressure injuries and Gulf War Illness, which implicated the Eighth and Fourteenth Amendments. PCR4 152-309. The State filed an answer and on February 12, 2025, the Honorable David Oberliesen was reassigned to adjudicate the case. PCR4 313-36, 338. At a March 6, 2025, case management conference, 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. On April 1, 2025, the Honorable Lacey Powell Clark was assigned to the case in place of Judge Oberliesen. PCR4 711. Three days later—and a full week before the deadline imposed by the Florida Supreme Court's expedited warrant schedule—the

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unauthorized pro se filing. *Hutchinson v. State*, 2012 WL 521209 (Fla. 2012). In 2013, his pro se successive postconviction motion and appeal were similarly dismissed and stricken by the state courts. *Hutchinson v. State*, 133 So. 3d 526 (Fla. 2014). The same year, Mr. Hutchinson filed a pro se § 2254 petition in the federal district court relying on *Martinez v. Ryan*, 566 U.S. 1 (2012), but it was dismissed as an unauthorized successor. *Hutchinson v. Crews*, 2013 WL 1765201 (N.D. Fla. Apr. 25, 2013).

[5] *See Hutchinson v. State*, 2018 WL 1975448 (Fla. Apr. 26, 2018), (denying postconviction motion related to *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016)), *cert. denied*, *Hutchinson v. Florida*, 139 S. Ct. 261 (2018); *Hutchinson v. Florida*, 2021 WL 6340256 (11th Cir. 2021) (affirming federal district court's denial of Rule 60(b) relief), *cert. denied*, *Hutchinson v. Dixon*, 142 S. Ct. 787 (2022); *Hutchinson v. State*, 343 So. 3d 50 (Fla. 2022) (denying postconviction motion related to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (2012)), *cert. denied*, *Hutchinson v. Florida*, 143 S. Ct. 601 (2022).

pending motion was summarily denied on timeliness grounds without any opportunity for Mr. Hutchinson to address Judge Clark's concerns regarding the allegations within. PCR4 1080-1116. Mr. Hutchinson filed a motion for rehearing on April 5, 2025, which the circuit court denied on April 8, 2025. PCR4 1164-79, 1185-91.

Mr. Hutchinson appealed to the Florida Supreme Court and filed his initial brief on April 10, 2025. The State filed its Answer Brief on April 11, 2025, and Mr. Hutchinson replied on April 14, 2025. On April 21, 2025, the Florida Supreme Court affirmed. App. A1. As to timeliness, the court stated:

> [Mr. Hutchinson] alleged facts that were known at or before his trial – that he was exposed to sarin gas and numerous explosions while serving in the Middle East as well as his various post-war symptoms. As for the diagnoses or conditions on which Hutchinson relies, we acknowledge that the scientific understanding of Gulf War Illness has evolved over time. However, the illness was a well-known diagnosable condition at the time of Hutchinson's trial. Indeed, even at that time, experts recognized that the illness encompassed mental health and cognitive effects.

App. A1 at 6. As to the merits of Mr. Hutchinson's claim, the Florida Supreme Court ruled that he could not show that the evidence "would likely lead to an acquittal or a reduced sentence at a subsequent proceeding." App. A1 at 7.

As to Mr. Hutchinson's Eighth Amendment claim, the court "agree[d] with the State that the claim was not properly presented below. Indeed, the paragraph discussing the Eighth Amendment is conclusory." App. A1 at 9. In a footnote, the Florida Supreme Court added: "Even if Hutchinson had properly presented this claim, we think it is meritless under our case law." App. A1 at 9 n.5.

III. Additional Relevant Facts

Mr. Hutchinson's prior legal proceedings were conducted at a time of nascent scientific understanding regarding Gulf War Illness and the effects of associated combat injuries. Thus, few meaningful details of his front-line military service and its cognitive impact were known to previous factfinders.

A. Information known to the trial court

After Mr. Hutchinson's prone body was located near his deceased partner and her children, he was so limp he had to be assisted to the police car and remained slumped over. R. 3304-08. He appeared "hazy…maybe not real coherent." T. 777. While in police custody, he repeatedly asked if his family was alright and was adamant that two masked intruders from Quantico had come to harm his family and silence him because he knew information about chemical weapons used in the Gulf War. R. 3313, 3318-19, 3380, 3385-86. He urged police to intercept them at the local Tuskegee Airport. R. 3386.

Prior to trial, Mr. Hutchinson's distrust and paranoia led counsel to unsuccessfully move to withdraw. R. 768-69, 1838-58. He would not meet with the State's mental health experts, forcing defense counsel to revoke their Notice of Intent to Rely on Insanity Defense. R. 699-700, 711-13. He repeatedly tried to fire his attorneys and moved to recuse the trial court. R. 740, 745-46, 857-58, 869-70, 1118, 1279-81, 1837-64, 1897-1934. Counsel raised competency concerns, citing Mr.

Hutchinson's "unabated paranoia[,]" "apparently delusional statements, behavior, and actions…[and] belief in a government conspiracy against him." R. 1792-95.

During pretrial competency proceedings, two court-appointed experts came to different conclusions, although "some of the same symptoms [they were] looking at are not mutually exclusive[.]" R. 3199. Dr. Vincent Dillon diagnosed Mr. Hutchinson with bipolar disorder, reported that he had "grandiosity, paranoia, delusions[,]" was "illogical, pressured, mistrustful, expansive[,]" displayed "memory deficits about his actions on the night in question" and voiced conspiracy theories. R. 2316-18, 3172. Dr. Dillon "wondered about his reality testing" and found him not competent to proceed. R. 3141, 3147. Dr. James Larson, qualifying that "it's simply a matter of opinion, and I could be wrong[,]" testified to a contrary opinion. R. 3190-92. The court ultimately found Mr. Hutchinson competent to proceed. R. 3247.

After his conviction, Mr. Hutchinson's penalty phase defense highlighted his lack of prior criminal history, decorated service in Desert Storm, and "possible" diagnosis of Gulf War Illness (GWI).[6] Mr. Hutchinson's loving family testified that he had a relatively normal childhood, despite some head injuries that included loss of consciousness. T. 2402, 2421-28, 2434-42, 2452-58, 2459-63. Growing up, he took Ritalin to treat concentration difficulty and hyperactivity resulting from Attention Deficit Hyperactivity Disorder. T. 2405, 2410, 2422. After graduating from high school, he worked successfully as a security guard before joining the Army. T. 2382, 2404. As a paratrooper and Army Ranger, he fought in Desert Storm near an enemy

[6] "Gulf War Illness" was previously known as "Gulf War Syndrome."

ammunition/chemical site at Nasiriya and Khamisiyah that was destroyed. T. 2382, 2423, 2451. He was discharged under honorable conditions. T. 2383-84.

After Mr. Hutchinson returned from the war, his family noticed a change. R. 1252. He became depressed, had memory problems, was physically ill, vomited blood, had blood in his excrement, and lost his hair. T. 2423, 2434, 2436, 2456; R. 1196, 1252. He professed secret knowledge related to distribution of chemical and biological weapons. R. 1256. He grew paranoid and became so convinced he was being surveilled that on one occasion, he refused to let his family return to their home for three days. R. 1258-59. He moved to Florida and struggled to hold a steady job. T. 2442.

Three mental health experts testified. Dr. Dillon maintained that Mr. Hutchinson had bipolar disorder exacerbated by alcohol consumption, and genuinely believed intruders killed his loved ones. T. 2374-77, 2395. Dr. Dillon testified that two statutory mitigators—extreme mental or emotional disturbance, and substantially impaired ability to conform conduct—possibly applied. T. 2387, 2392, 2398. Drs. Larson and Harry McClaren disagreed, finding no major mental illness and attributing Mr. Hutchinson's symptoms to a personality disorder not otherwise specified with anti-social and narcissistic characteristics. T. 2484, 2486, 2503, 2508-09, 2515-17, 2522. Dr. McClaren further stated that any brain dysfunction Mr. Hutchinson might have would be "minimal[.]" T. 2507-08.

The trial court expressed that it was "particularly concerned" about Gulf War Illness, which the defense listed as a mitigating circumstance. T. 2536. Having been informed that diagnosing physician Dr. William Baumzweiger's report "indicates in

some way that this is a brain stem injury[,]" the court specifically asked counsel if the report indicated GWI "as a mental or emotional condition or a physical condition?" T. 2536. To address this, the parties introduced Dr. Baumzweiger's report and deposition testimony, T. 2535-36, 2550-51, and the court questioned Dr. Larson.

Dr. Larson testified that "given my understanding of Gulf War [I]llness as it is right now[,]" the condition manifested in physical symptoms, as opposed to psychological or psychiatric symptoms. T. 2535. The trial court asked: "Is it a recognized disorder or mental or emotional condition in the mental health community?" T. 2534. In response, Dr. Larson testified:

> [T]here isn't sufficient research and sufficient body of knowledge so that I would characterize it as a controversial topic, and I don't think that there's a consensus of opinion, and I think most experts in psychology would say there's just very little research, very little knowledge base on which to formulate a nosology or the usual signs and symptoms that are associated with a mental disorder.

T. 2534.

Dr. Baumzweiger, a neurologist and psychiatrist, had diagnosed Mr. Hutchinson with GWI at a Veterans Affairs clinic in 1996 before the criminal charges, and he performed further evaluations in 1998 and 1999. 1/2/01 Deposition at 13-15, 27.[7] At the time, Dr. Baumzweiger had testified before Congress in an attempt to convince the public that Gulf War Illness was a legitimate medical condition, and

[7] Although Dr. Baumzweiger noted significant concerns related to Mr. Hutchinson's competency to stand trial in 1998 and 1999, as well as his sanity at the time of the offense, he was unable to opine on these factors based on the limitations of his referral question and the trial court's unwillingness to expend funds for further travel and evaluation. 1/2/01 Deposition at 32-37, 71-73.

that veterans describing symptoms were not simply suffering from some other "known conventional standard psychiatric illness" (such as anxiety or a somatoform disorder) that caused them to believe they were ill. 1/2/01 Deposition at 17-19, 22. Dr. Baumzweiger testified that the controversy was still ongoing and "there's no consensus" about the existence of such an illness. 1/2/01 Deposition at 25. Thus, although Dr. Baumzweiger testified that he had a "feeling" that GWI involved a "neurobehavioral problem" and noted general neuropsychiatric symptoms in Mr. Hutchinson during the pretrial evaluations, he could not connect Mr. Hutchinson's mental health symptoms to GWI or opine about whether GWI may relate to the charged offense. 1/2/01 Deposition at 31-32, 55-59, 63-66, 69.

Based on this context, the trial court rejected both the extreme emotional disturbance and substantial impairment statutory mitigators. R. 2709-10. "Some weight" was given to Mr. Hutchinson's alcohol consumption on the night of the murders. R. 2714. Although the court gave significant weight to the non-statutory mitigator that "Defendant is a decorated military veteran of the Gulf War," it gave only minimal weight to the fact that he "has been diagnosed with Gulf War Illness[.]" R. 2710-11. The Court explained that this weighing determination was because "Dr. Baumzweiger did not relate said illness to any mental or emotional disorder at the time of the murders. There has been no correlation between the murders of these victims and the Defendant's diagnosis with Gulf War Illness[.]" R. 2711.

B. New scientific evidence regarding Gulf War Illness, blast overpressure injuries, and their exacerbating effect on other vulnerabilities

Recent scientific advances have established Gulf War Illness as a legitimate medical diagnosis and reveal that Mr. Hutchinson's exposure to poisonous sarin gas and "the signature wound" of Gulf War deployment (blast-related traumatic brain injuries) catastrophically impacted his brain and body.

1. A breakthrough in the cause and effects of Gulf War Illness

Mr. Hutchinson's 2025 postconviction motion proffered a report from Dr. Robert Haley, a leading expert on Gulf War Illness who directs cutting-edge research on the relationship between GWI and sarin gas. PCR4 287-303.

Sarin is an odorless, colorless, and tasteless nerve gas. PCR4 298. It enters the body rapidly through the skin, or through breathing and ingestion. PCR4 298. Intermittent exposure causes sarin to enter the brain and organs, overwhelming the body's defenses. PCR4 298. At low concentrations, sarin does not present immediate symptoms, but after days and weeks of exposure, it damages vital biochemical mechanisms in the body's cells. PCR4 298. This results in a gradually unfolding, chronic, and often disabling condition known as Gulf War Illness. PCR4 298.

In the 1990s and 2000s, GWI was not widely recognized as a legitimate diagnosis. But between 2022 and the present, researchers like Dr. Haley led a breakthrough and identified sarin as the cause of myriad harmful conditions manifesting in those who served in the Gulf War. PCR4 299. Recent medical advances "have now enumerated the main symptoms, developed case definitions for diagnosing

the condition for research purposes, and defined the main environmental cause, how the disease affects key organs such as the brain and nervous system, and the basic disease processes at the cellular level that underly the symptom-causing tissue dysfunctions." PCR4 287. Although the presentation of GWI varies among patients, it is characterized by interference with "the function of virtually every organ of the body", including the brain, nervous system, skin, and muscles. PCR4 290.

As a result of this new scientific understanding, GWI is now known to cause "symptoms related to mood change, including mood swings, aggression, unusual irritability, unusual anger, outbursts of anger and frequent rage." PCR4 296-97. This is due to the mechanism of GWI on the amygdala and prefrontal cortex, which can lead to the development of aggressive tendencies and increased risk of violent crime. PCR4 297-98. These vulnerabilities may further be exacerbated by alcohol. PCR4 298.

2. The "signature wound" of the Gulf War

Blast related traumatic brain injury (bTBI) has been called "the signature wound of military members from the Gulf Wars[.]" PCR4 235. Although there are four ways in which bTBI can occur, "primary blast injury" occurs when an explosion or discharge of heavy artillery creates an instantaneous increase in atmospheric pressure (shockwave) that travels faster than the speed of sound and interacts with the head and brain. PCR4 236. As with other forms of traumatic brain injury, repeated occurrences manifest in worse outcomes. PCR4 236. "While a single low-level Blast may not lead to deficits, an increasing number of repeated low-level exposures" correlates to the development of long-term cognitive deficits. PCR4 237.

Whereas "the long history of civilian TBI research relates to non-shockwave TBI…bTBI is a relatively new area of research." PCR4 237. In particular, "there has been very little repetitive blast exposure research." PCR4 238. "[S]ignificant funding and convincing scientific research reports" have only occurred within the past five years and a concrete understanding of "blast TBI research will take many more years[.]" PCR4 274. But it is now known that the mode and degree of injury from blast trauma differs from that of other forms of TBI. PCR4 237. And, the Department of Defense "has shown clear acceptance that service members in occupations with repetitive blast exposure from heavy artillery are at high risk for TBI and declining neurological health." PCR4 274.

C. Abridged history of traumatic exposures during Mr. Hutchinson's military service

Mr. Hutchinson served in the Army National Guard from 1982 to 1986 and active-duty Army from 1986 to 1994. PCR4 191. His service was rife with exposure to explosives, blast pressure, and other traumatic brain assaults. As "[t]he various ammunitions used by the military will produce a wide range of shockwaves[,]" PCR4 237, a brief technical overview of Mr. Hutchinson's service is necessary to understanding his condition.

During Mr. Hutchinson's basic training in 1982, he launched approximately 100 rounds of 81-millimeter mortars, threw hand grenades from a protective pit, and was hit by the blast waves of claymore mines less than 50 meters away. PCR4 191. After basic training he attended two weeks of mortar school at Fort Benning, Georgia, including a week of live fire training with 81-millimeter mortars. PCR4 191. He

trained as a gunner and assistant gunner, and in these roles, outfitted with orange rubber earplugs, was "within inches of the gun tube when it goes off." PCR4 191.

Between 1984 and 1986, Mr. Hutchinson attended Officer Candidate School, during which he had two days of familiarization with C4 demolition followed by Fire Direction Center training. PCR4 191. He attended a basic demolition course and used TNT, C4, and detonation cord. PCR4 192. During drill weekends, he attended exercises with pistols, as well as a two-week drill involving live fire exercises with 117-millimeter mortars. PCR4 191-92. His team fired about 800 rounds in one day for 10 days, and they were the "number one mortar team in the state." PCR4 192. Use of ear protection was "never a real big priority" so they were "pretty lax" about it. PCR4 192. During a drill one evening in which Mr. Hutchinson was the assistant gunner, the gunner dropped the mortar prematurely, leaving Mr. Hutchinson without adequate time to protect himself from the blast. PCR4 192. Immediately afterwards, he felt dazed and confused, and for the next week he had intermittent nausea and dizziness. PCR4 192. He began to experience tinnitus. PCR4 192.

After enlisting in active duty in 1986, Mr. Hutchinson received Forward Observer training at Fort Sill, Oklahoma, and attended Airborne School. PCR4 192. On his first static line jump exercise, his feet hit the ground and then his head hit the ground. PCR4 192. He was subsequently assigned to the 197th Infantry Brigade as a Forward Observer, where he typically was exposed to indirect fire, but also participated in live fire exercises. PCR4 192. Mr. Hutchinson was involved in an exercise where he was in a concrete bunker and experienced progressively larger and

nearer explosions, with the closest being 30 meters away. PCR4 192. He felt shock waves through the concrete. PCR4 192. He attended an advanced demolitions course focused on dismantling and breeching charges, during which he had "a couple" ear-ringing experiences but did not have other concussion symptoms. PCR4 192.

While in the Pre-Ranger and Ranger Indoctrination Program (RIP), Mr. Hutchinson was exposed to "uncomfortably close" range blasts from C4, claymores, detonating cords, and artillery and grenade simulators—as well as further advanced demolition trainings while in the Rangers, where he experienced live grenades less than 20 meters away without ear protection. PCR4 192. He felt blast waves "like a heat wave" with the air moving in his nostrils and again experienced tinnitus in the wake of the explosions. PCR4 192.

During his time in the Rangers, he had live fire exercises with C4, claymore, and TNT. PCR4 193. Although these exercises were typically conducted at a "safe distance" a notable exception occurred in 1987, when Mr. Hutchinson was behind a log and the explosions moved progressively closer, leaving shrapnel in his helmet. PCR4 193. He was not wearing ear protection and he felt tinnitus afterward, without other symptoms. PCR4 193. On another occasion, Mr. Hutchinson was approximately 1000 meters from two almost-simultaneous detonations of 2000-pound aerial bombs, and a shock wave forced him a "step or two back." PCR4 193. He was not wearing a helmet and did not remember if he was wearing ear protection. PCR4 193. He felt dizzy for five minutes afterward. PCR4 193.

Before and after his training and service in the Rangers, Mr. Hutchinson was in the 4th Battalion, 41st Field Artillery (4-41 FA). PCR4 193. He deployed to Saudi Arabia with the 4-41 FA, where the battalion spent September-December 1990 in a defensive posture before beginning live fire exercises. PCR4 193, 195. Prior to the coalition attack into Iraq, the 4-41 FA provided fire support to the 197th Infantry Brigade. PCR4 195. In February 1991 they fired a copperhead round at an active enemy guard tower. PCR4 195. The ground war began February 24, 1991, and the 4-41 FA entered into the Euphrates River Valley, where they assisted in preventing the escape of 500,000 Iraqi soldiers in Kuwait. PCR4 195. Between February 26-27 the battalion fired over 100 rounds in support of Delta Company (18th Infantry's) advance, killing 76 Iraqi soldiers and destroying 10 vehicles. PCR4 195. On February 27, the 4-41 FA supported an attack on Tallil Air Base (south of An Nasiriyah), firing over 100 rounds. PCR4 195. The 4-41 FA had a reinforcing role for the 3rd Battalion, 41st Field Artillery and "witnessed the complete destruction of what was left of the once mighty republican guard force." PCR4 195-96. "The road to Basrah was littered with enemy equipment and bodies. Many soldiers of the Iraqi army were walking the opposite direction, waving white flags or sleeping on the side of the road." PCR4 196. The battalion watched rockets "rain down on the enemy soldiers." PCR4 196. Charlie Battery (Mr. Hutchinson's military unit) "came under an enemy mortar attack and was forced to displace to its alternate location." PCR4 196. The cease fire occurred on March 3, 1990. PCR4 196. The 4-41 FA had no casualties. PCR4 196. Most of the battalion returned home between March 28-30, 1991. PCR4 196. Mr. Hutchinson

received an award recommendation for "exceptionally meritorious service while serving as fire support NCO" during Operation Desert Shield. PCR4 196.

For much of his time "in the center of the conflict zone[,]" Mr. Hutchinson was repeatedly exposed to "low-level sarin from the fallout produced by U.S. and Coalition bombing of Iraqi production and storage facilities, which hit his position first." PCR4 296. The sensitivity settings were intentionally set to be low on nerve gas alarms to prevent false detection; however, the alarms sounded so frequently that the batteries were constantly drained. PCR4 296. Although Mr. Hutchinson was provided a rubber suit to purportedly protect from nerve gas exposure, the suits needed to be changed daily to be effective—and the soldiers in Mr. Hutchinson's unit were forced to wear their suits for 64 days. PCR4 296.

In an incident near Khamisiyah, Mr. Hutchinson witnessed the deaths of friendly troops. PCR4 193. After troops were ordered to burn trash, flaming debris landed in an ammunition trailer and a claymore exploded. PCR4 193. Mr. Hutchinson was 130-140 yards away and ran toward the trailer because he thought their side was taking fire. PCR4 193. The ammunition trailer exploded when he was 20 yards away and running toward it. PCR4 193. He was not wearing a helmet or ear protection. PCR4 193. He felt disoriented and dizzy. PCR4 193. Subsequently, Mr. Hutchinson felt another blast wave from a detonation at Khamisiyah. PCR4 193. He yelled at his team to get in their vehicle. PCR4 193. While sitting in the vehicle, he had dizziness, blurry vision, tinnitus, and nausea. PCR4 193. He and two other team members began crying as they sat waiting in the vehicle for hours. PCR4 193. He and his

teammates later learned they had been exposed to nerve gas. PCR4 193.While Mr. Hutchinson's emotional reaction felt "almost nonexistent" after a day, he had a "splitting" headache for the next three days, and his dizziness, blurry vision, and nausea lasted five or six days. PCR4 193. During this time the team returned to Saudi Arabia. PCR4 193.

After returning from deployment in 1991, and particularly between 1992 and 1997, Mr. Hutchinson had intrusive memories of traumatic experiences from deployment, flashbacks and nightmares, sleep disturbance, hypervigilance, irritability, angry outbursts, and he felt more socially reserved. PCR4 209. He avoided crowds and violent movies. PCR4 209. He had paranoia, tactile and olfactory hallucinations, continued tinnitus, decreased concentration and focus, balance problems, migraines, muscle twitches, nausea and vomiting, rashes, and alopecia. PCR4 209. Between 1991 and 1994 he repeatedly sought medical treatment for musculoskeletal problems, diarrhea, skin problems, and hearing loss. PCR4 209. He self-medicated with tobacco to feel more mellow, focused, and able to concentrate. PCR4 209.

D. The changed picture of Mr. Hutchinson's personal culpability

In light of the vastly altered scientific landscape pertaining to his service-related wounds, Drs. Cynthia He and Dr. Mikel Matto met with Mr. Hutchinson on four occasions. Both are psychiatrists who specialize in issues impacting veterans. Additionally, Dr. Haley provided conclusions about the impact of Mr. Hutchinson's GWI. All three doctors exhaustively reviewed collateral sources, including prior

mental health evaluations, medical records, military records, and summaries of witness interviews with former U.S. servicemembers who served with Mr. Hutchinson. Their findings—that his heroic military service resulted in deep-rooted physical and psychological damage—reveal a remarkably altered picture of Mr. Hutchinson's personal moral culpability than that which was available during the trial court's decision-making process.

Dr. Haley found that Mr. Hutchinson met the diagnostic criteria for GWI due to his sarin gas exposure. PCR4 296. Prior to his military service, Mr. Hutchinson "was a healthy and high-performing soldier…and specifically had no prewar history of depression, irritability, or anger management problems." PCR4 297. His military service included deployment to "the Four Corners area, bounded by Kuwait, Saudi Arabia, and Iraq, . . . in the center of the conflict zone." PCR4 296. There, Mr. Hutchinson was repeatedly exposed to low-level sarin gas from the fallout produced by U.S. and Coalition bombing of Iraqi production and storage facilities. PCR4 296. Consequently, "[w]hen he returned from the war…he clearly had undergone a change in personality, verified by [those] who had substantial contact with him both before and after the war." PCR4 297. Where Mr. Hutchinson had been "enthusiastic" and "benign" before the war, he now suffered from daily headaches, severe irritability, multiple body pains, attacks of loss of control of temper, self-medication with alcohol, belligerence, aggression, and outbursts of rage that were "entirely out of character of his prewar personality." PCR4 297.

Dr. Haley explained that the crimes for which Mr. Hutchinson is sentenced to die were directly linked to "[h]is courageous and honorable service to his country in combat…[via] a series of events to which the rest of us in civilian life would not be susceptible." PCR4 299. As Mr. Hutchinson's postconviction motion explained to the state courts: "This information directly contradicts what the factfinder heard during the penalty phase and is vital information in assessing the appropriate penalty in the case." PCR4 158-59.

Yet, this information was not available for consideration at Mr. Hutchinson's sentencing. Not only did the trial predate scientific understanding of the disease by decades, GWI's "causation by low-level sarin nerve gas [was] widely discounted in public discourse." PCR4 299. In fact, the Department of Defense and Veterans Affairs were actively "waging a public relations campaign against the intense public outcry of the approximately 150,000 impaired or disabled Gulf War veterans" who were being denied care and compensation for the condition. PCR4 299. The Department of Defense even established the Office of the Special Assistant for Gulf War Illness to the Secretary of Defense (OSAGWI), "whose primary purpose was to counter research advances with disinformation to remove them from news coverage and public consciousness, and VA doctors were formally trained to believe that GWI was not real[.]" PCR4 299.

> Consequently, no one involved in the 2001 trial—not the judge, jury, attorneys, or witnesses—could have known that Mr. Hutchinson was suffering from a war-caused chemical brain injury that rendered him unable to control the rage that led him to commit the heinous crime, so foreign to his nature described by all who knew him and in complete

> disregard for the deep love he had for the victims. As a result, it wrongly received minimal weight in sentencing.
>
> [That weight] was insufficient to offset the gravity of the crime. With the benefit of two subsequent decades of scientific research, however, it is now clear that the chronic brain effects of sarin nerve gas sustained during heroic, meritorious military service behind enemy lines in the Gulf War supervised on an inborn predisposition from ADHD and the chronic and acute effects of alcohol rendered Mr. Hutchinson's brain incapable of [controlling his behavior]. **These newly mitigating factors are not only directly responsible for the crime but were also largely the direct result of his patriotic service to country. It is difficult to imagine mitigation of greater weight**.

PCR4 299-300 (emphasis added).

Drs. He and Matto found that, as a result of the numerous blast overpressure injuries during his military service, Mr. Hutchinson suffers from Mild Neurocognitive Disorder due to Traumatic Brain Injury. PCR4 227. This disorder is defined as:

> a disruption of brain structure and/or function resulting from the application of biomechanical forces (including acceleration/deceleration forces and blast-related forces), as manifested immediately by one or more of the following clinical signs: loss of consciousness, loss of memory for events immediately before or after the injury (posttraumatic amnesia), alteration in mental state (e.g., confusion, disorientation, slowed thinking), or focal neurological signs (e.g., hemiparesis, hemisensory loss, cortical blindness, aphasia, apraxia, weakness, loss of balance, other sensory loss that cannot be accounted for by peripheral or other causes).

PCR4 227. Though Mr. Hutchinson experienced other known injuries from direct head impact, his repeated exposures to blast overpressure injuries during his military service "were the most significant cause of his subsequent neurocognitive disorder." PCR4 229. "Even without a penetrating injury, blast exposure can cause lasting brain injury with psychological and neurocognitive symptoms. Repeated blast exposures during the Middle East conflicts have been associated with memory and balance

impairments, headaches, irritability, poor sleep, depression, mood swings, anxiety, and paranoia." PCR4 229. Mr. Hutchinson's blast injuries left him sensitive to the effects of subsequent traumas, as well as the effects of additional types of exposures such as chemical agents—which on their own contribute to neurocognitive impairment. PCR4 230.

In addition, Dr. He and Dr. Matto found Mr. Hutchinson's ideas of persecution and statements to police regarding being surveilled and targeted were classic "avoidance behaviors" common in individuals with PTSD. PCR4 230. His words and actions were cognitive and emotional strategies to avoid experiencing distress. They were not symptoms of bipolar disorder or a personality disorder, as the misdiagnoses of the trial experts suggested. Instead, the confluence of Mr. Hutchinson's brain damage and PTSD manifested itself in his rigidly held beliefs, regardless of whether those narratives aligned with reality. PCR4 230.

All of Mr. Hutchinson's preexisting and comorbid vulnerabilities were exacerbated by his war-related injuries:

> [His] "mild neurocognitive disorder" due to multiple traumatic brain injuries, including numerous instances of blast overpressure injuries from his time in the military…exacerbated his Post Traumatic Stress Disorder ("PTSD") symptoms. *See* Att. A. This diagnosis not only cancels out the prior experts' findings of bipolar and personality disorder, but also explains Mr. Hutchinson's actions before, during, and after the crime. For the first time, there is a medical explanation regarding Mr. Hutchinson's beliefs about being surveilled and targeted, which he believed were related to his GWI advocacy. It also explains his behavior post-arrest where Mr. Hutchinson expressed ideas of persecution. Finally, it provides the missing connection between the low amount of alcohol he consumed and his behavior.

PCR4 158.

Just as the bTBI compounded Mr. Hutchinson's toxic chemical exposures overseas to wreak havoc on his brain and body, so too did it work in tandem with his attempts to self-medicate. Individuals with a history of TBI have an "increased sensitivity to intoxicants, including alcohol, and they are more vulnerable to intoxicant effects including diminished executive processing, disinhibition, impulsivity, aggressive behavior, balance problems, and memory impairment." PCR4 230. Put simply, without engaging in objectively reckless alcohol consumption, Mr. Hutchinson's then-misunderstood organic impairments made him vulnerable to the disinhibition and loss of control that is normally associated with binge-drinking.

REASONS FOR GRANTING THE WRIT

I. This Court should enforce its longstanding precedent recognizing the need for individualized sentencing determinations generally, and for veterans in particular.

The Eighth Amendment applies with special force in capital cases. *See Roper v. Simmons*, 543 U.S. 551, 568 (2005) (citing *Thompson v. Oklahoma*, 487 U.S. 815, 856 (1988) (O'Connor, J., concurring in judgment)). This Court "insists upon confining the instances in which the punishment can be imposed," *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008); otherwise, the law "risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint." *Id*. Thus, states must administer the death penalty "in a way that can rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not." *Spaziano v. Florida*, 468 U.S. 447, 460 (1984) (overruled on other grounds by *Hurst*, 577 U.S. at 101; *see also Godfrey v. Georgia*, 446 U.S. 420, 428, 433

(1980) (setting death sentence aside in order to avoid "arbitrary and capricious infliction of the death penalty" because the situation did not reflect "a consciousness materially more 'depraved' than that of any person guilty of murder.").

"With respect to retribution—the interest in seeing that the offender gets his 'just deserts'—the severity of the appropriate punishment necessarily depends on the culpability of the offender." *Atkins v. Virginia*, 536 U.S. 304, 319 (2002), For this reason, the death penalty is reserved not only for "a narrow category of the most serious crimes[,]" but must be limited even further to those "whose extreme culpability makes them 'the most deserving of execution.'" *Roper*, 543 U.S. at 568 (citing *Atkins*, 536 U.S. at 319); *see also Miller v. Alabama*, 567 U.S. 460 (2012). Thus, under this Court's longstanding precedent, a capital defendant's "punishment must be tailored to [his] personal responsibility and moral guilt." *Enmund v. Florida*, 458 U.S. 782, 800 (1982).

Over the years, this Court's "narrowing jurisprudence, which seeks to ensure that only the most deserving of execution are put to death," has enumerated classes of individuals whose "lesser culpability" does not merit imposition of the death penalty as retribution. *Atkins*, 536 U.S. at 314-15, 319. *See id.* (categorically exempting individuals with intellectual disability from execution); *Roper*, 543 U.S. at 571 ("Retribution is not proportional if the law's most severe penalty is imposed on one whose blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.").

And, in addition to categorical exemptions, this Court has repeatedly

emphasized the need for individualized sentencing that evaluates a particular defendant's culpability by "focus[ing] on 'relevant facets of the character and record of the individual offender.'" *Enmund*, 458 U.S. at 798 (citing *Lockett v. Ohio*, 438 U.S. 586 (1978) and *Woodson v. North Carolina*, 428 U.S. 280 (1976)); *see also Abdul-Kabir v. Quarterman*, 550 U.S. 233, 264 (2007) (a sentencer faced with the "grave task of imposing a death sentence" must "decide whether death is an appropriate punishment for that individual in light of his personal history"); *Tennard v. Dretke*, 542 U.S. 274, 285-87 (2004) (rejecting requirement that "an individual must establish a nexus between [their] mental capacity and the crime" in order for such mitigating evidence to be considered).

In *Porter*, this Court reaffirmed that "[e]vidence about [a] defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background…may be less culpable." 558 U.S. at 41 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989) (quotations omitted). And, in particular, wartime combat injuries are precisely the "kind of troubled history [this Court has] declared relevant to assessing a defendant's moral culpability." *Id*. (quoting *Wiggins v. Smith*, 539 U.S. 510, 535 (2003)). "[T]he relevance of [Mr. Hutchinson]'s extensive combat experience is not only that he served honorably under extreme hardship and gruesome conditions, but also [the mitigating effect of] the intense stress and mental and emotional toll that combat took on [him]." *Id*. at 43-44.

Like Porter, Mr. Hutchinson has provided the state courts with significant new

scientific and contextual evidence regarding his "heroic military service in [some] of the most critical—and horrific—[aspects of the Gulf War]…his struggles to regain normality upon his return from war…[and] his brain abnormality[.]" *Id*. at 41. Specifically, Mr. Hutchinson's postconviction motion included allegations—supported by the conclusion of preeminent experts in the relevant fields—that in light of new scientific understanding regarding his significant brain damage from blast overpressure injuries and Gulf War Illness, his personal culpability is lessened such that his execution would violate the federal prohibition against cruel and unusual punishment.

But contrary to this Court's well-espoused principles regarding the Eighth Amendment generally and specifically in the context of death-sentenced veterans, the circuit court never engaged with the merits of Mr. Hutchinson's allegations. 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 a new judge 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. The court's only justifications were that Mr. Hutchinson had shot and killed four individuals, including children, and that:

> [T]he trial court heard evidence regarding (1) Hutchinson's admirable military service, (2) Gulf War Illness and how that illness potentially affected Hutchinson (and others like him), and (3) cognitive and mental-health issues that affected Hutchinson. In light of this, the additional mitigation concerning brain injury and cognitive issues would only have a marginal effect at a new penalty phase.

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; it risks the unconstitutional execution of a veteran who put his life on the line to serve this Nation; and it necessitates this Court's review.

II. Without this Court's intervention, Florida will unjustly foreclose any meaningful opportunity for a condemned individual to demonstrate that his unique vulnerabilities render his execution unconstitutional.

A. Florida's application of an inadequate procedural bar

The Eighth Amendment prohibits cruel and unusual punishment as a categorical imperative. *See, e.g.*, *Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986) (Eighth Amendment-based exemptions from execution not only protect death-sentenced individuals but also protect "the dignity of society itself from the barbarity of exacting mindless vengeance[.]"). Thus, no state-law waiver provision may trump this Court's mandate that death-sentenced individuals "must have a fair opportunity to show that the Constitution prohibits their execution[,]" *Hall v. Florida*, 572 U.S. 701, 724 (2014). Just as it would be unconstitutional for Florida to invoke timeliness or res judicata as justification to execute individuals subject to categorical exemptions or exclusions, so too would it be unconstitutional to execute Mr. Hutchinson on the grounds that he failed to raise his claim at the "appropriate" procedural time or was "right too soon" by attempting to present evidence of his Gulf War Illness before a medical consensus of its effects had been reached.

But this Court need not make such a finding to provide unencumbered review of the constitutionality of Mr. Hutchinson's death sentence, because the lower courts' imposition of a procedural and time bar was incorrect. Perhaps because of its "fire drill approach to the review" of Mr. Hutchinson's claims once his warrant was signed, *Jimenez v. Bondi*, 259 So. 3d 722, 726-27 (Fla. 2018) (Pariente, J., concurring), the untimeliness ruling misrepresented critical aspects of the record.

For instance, the Florida Supreme Court inaccurately ruled that the trial court knew of Mr. Hutchinson's exposure to sarin gas during the Gulf War. App. A1 at 6. But the court did not know this. At the time of trial, GWI was viewed as a "real phenomenon" without a clear origin, and speculation related to fumes, heavy metal ions, infections, organo-phosphate neurotoxins, and/or bad experimental vaccines. R. 806. Sarin would not be identified as the cause of GWI until decades later. The Florida Supreme Court also ruled that at the time of trial, GWI was "a well-known diagnosable condition" and "experts recognized that the illness encompassed mental-health and cognitive effects." App. A1 at 6. This is directly contradicted by the expert trial testimony stating that it was a physical phenomenon only. T. 2534-35; 1/2/01 Deposition at 17-19, 22, 25.

The Florida state courts' asserted procedural bars would, paradoxically, punish Mr. Hutchinson for his past diligence. Beginning well before the time of his trial, Mr. Hutchinson has been attempting to tell the story of the impairments he suffered as a result of his military service. But at that time Gulf War Illness and its causation by sarin nerve gas were widely discounted in public discourse—in part because the government was actively disseminating false information regarding the condition:

> Because the scientific evidence had not yet appeared, the Department of Defense (DoD) and Veterans Affairs (VA) were waging a public relations campaign against the intense public outcry of the approximately 150,000 impaired or disabled Gulf War veterans who were being denied VA healthcare and disability compensation for the condition.

PCR4 299. Because scientific understanding of Gulf War Illness was in its nascency and owing to the government's own disinformation practices, the expert testimony at

Mr. Hutchinson's trial was incorrect. For instance, Dr. Larson testified that the disease does not result in psychological symptoms, which is now known to be false. T. 2533-35. Even Dr. Baumzweiger, a neurologist with special expertise related to Gulf War Illness, "did not yet have sufficient scientific information of the nature of the brain injury to inform the court of its role." PCR4 299. Thus, despite Mr. Hutchinson's diligence in attempting to raise this claim at trial, the trial court relied on its mistaken belief that Mr. Hutchinson's war wounds were limited to physical maladies with no significant cognitive or psychological impact.[8]

At the time of Mr. Hutchinson's trial, no one knew that he "was suffering from a war-caused chemical brain injury" with a direct link to the crime. As a result and as the sentencing order bears out, the trial court did not have the information available to assign accurate weight to Mr. Hutchinson's life-altering afflictions. This faulty finding has unjustly bound the litigation ever since. Now that new scientific understanding casts Mr. Hutchinson's combat-related brain damage and Gulf War Illness in a completely new light, he has promptly raised the claim. But the message of the Florida courts is that because Mr. Hutchinson was ahead of the curve in litigating the mitigating effect of his condition at trial, he must bear the punishment

[8] This is not, as the Florida Supreme Court suggests, a situation in which this Court's intervention would render "any expansion of scientific knowledge regarding a particular diagnosable condition or subject" as giving rise to new claims for relief. App. A1 at 6 n.4. Indeed, the cases the lower court cited for that proposition were attempts to extend longstanding categorical exemptions to the death penalty based on youth and intellectual disability. *See Sliney v. State*, 362 So. 3d 186 (Fla. 2023) and *Zack v. State*, 371 So. 3d 335 (Fla. 2023). Here, there was no scientific consensus to expand upon, because at the time of trial there was not even a scientific consensus that GWI was a legitimate illness as opposed to hypochondria.

of the government's past disinformation and the medical field's prior limitations. This cannot be.

B. Florida's continued abdication of its responsibilities under the Eighth Amendment

Finally, without this Court's intervention, Florida will continue its shameful practice of refusing to analyze Eighth Amendment violations. In its order upholding the lower court's denial of relief, the Florida Supreme Court's twin justifications were: (1) an assertion that Mr. Hutchinson's Eighth Amendment argument was "conclusory" and thus "not properly presented below"; and (2) a sweeping statement that even if the claim was properly presented, "it is meritless under our case law." App. A1 at 9.

The first of these contentions is a flagrant violation of this Court's fair presentation precedent, which requires only that a postconviction movant state the factual and legal bases for the claim, such that the nature of the claim was likely to alert the state's highest court to the claim's federal nature. *See Baldwin v. Reese*, 541 U.S. 27, 29 (2004); *see also Dye v. Hofbauer*, 546 U.S. 1, 3 (2005). Here, Mr. Hutchinson's postconviction motion contained a separately headed section entitled "The Eighth Amendment[,]" which cited four of this Court's seminal Eighth Amendment cases in support of its argument. PCR4 176. The claim was properly presented.

The latter contention is more insidious. The "caselaw" that purportedly renders the Eighth Amendment claim meritless relies upon Florida's unique conformity clause, which states that Florida will construe the Eighth Amendment "in conformity

with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution." Fla. Const. art. I, § 17.

Although innocuously worded, the conformity clause's express purpose is to prohibit all Florida courts "from treating the state constitutional prohibition against cruel or unusual punishment as being more expansive than the federal constitutional prohibition against cruel and unusual punishment or United States Supreme Court interpretations thereof." Fla. HJR 951 (2001) at 2-3. Indeed, the Florida Supreme Court has explicitly stated that the conformity clause "means that the [United States] Supreme Court's interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida[.]" *Barwick v. State*, 361 So. 3d 785, 794 (Fla. 2023). Increasingly over the past several years, Florida has cited its self-imposed restriction and relied upon it to opt out of critical Eighth Amendment analyses, including judicial determinations of evolving standards of decency,[9] even as it enacts legislation that is clearly out of conformity with this

[9] *See, e.g.*, *Bowles v. State*, 276 So. 3d 791, 796 (Fla. 2019) (Florida Supreme Court relying on the conformity clause to refuse any consideration of whether national death penalty trends warranted exemption from execution under the Eighth Amendment); *Lawrence v. State*, 308 So. 3d 544, 545 (Fla. 2020) (Florida Supreme Court relying on the conformity clause to eliminate Eighth Amendment proportionality review); *Hart v. State*, 246 So. 3d 417, 420-21 (Fla. 4th DCA 2018) (Florida appellate court relying on the conformity clause in a non-capital context to refuse to consider whether a juvenile sentence violated *Graham v. Florida*, 560 U.S. 48 (2010)); *see also Covington v. State,* 348 So. 3d 456, 479-80 (Fla. 2022) (relying in part on conformity clause to refuse to consider whether defendant's alleged insanity at the time of the crime rendered his death sentence cruel and unusual); *Allen v. State*, 322 So. 3d 589, 602 (Fla. 2021) (seemingly implying that the conformity clause may justify limiting a mitigation presentation in certain cases involving waiver);

Court's Eighth Amendment precedent.[10]

The Florida Supreme Court's purported state-law basis for denying relief is not adequate and independent to bar this Court's intervention. Rather, it is inextricable from the federal question, because it is specifically relying on this Court's explicit Eighth Amendment holdings. *See Foster v. Chatman*, 578 U.S. 488, 499 n.4 (2016) ("[W]hether a state law determination is characterized as entirely dependent on, resting primarily on, or influenced by a question of federal law, the result is the same: the state law determination is not independent of federal law and thus poses no bar to our jurisdiction.") (cleaned up); *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983) (even when adequacy and independence of possible state law grounds are not clear from the opinion, "this Court 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.").

Moreover, by declaring itself unauthorized to engage in any independent consideration of evolving standards of decency, Florida actually obstructs important aspects of this Court's judicial function pertaining to Eighth Amendment determinations. *See, e.g.*, *Atkins*, 536 U.S. at 315-16 (looking to individual state

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Zack, 371 So. 3d at 350 (relying on conformity clause to refuse to consider extending *Atkins* protection to an individual diagnosed with intellectual disability with IQ scores over 70); *Barwick*, 361 So. 3d at 794 (relying on the conformity clause to refuse to consider whether individual's low mental age and other deficits warranted protection under *Roper*).

[10] *See* Fla. Stat. § 921.1425 (2023) (authorizing death penalty for sexual battery not involving death where victim is less than 12 years of age).

practice in determining whether additional Eighth Amendment protections are warranted); *Roper*, 543 U.S. at 559-60, 565-66 (same). Thus, although the federal constitution does not require a state court to offer more protection in a particular case than this Court's jurisprudence has established, a state cannot prohibit itself wholesale from making independent Eighth Amendment considerations on a case-by-case basis. By doing so, Florida has abdicated its "critical role in advancing protections and providing [this] Court with information that contributes to an understanding" of how Eighth Amendment protections should be applied. *Hall*, 572 U.S. at 719.

Florida's continued refusal to engage in any Eighth Amendment determinations not expressly required by this Court is all the more reason for certiorari review in Mr. Hutchinson's case. It undermines bedrock principles of federalism dating as far back as the Founding. *See, e.g.*, *Alden v. Maine*, 527 U.S. 706, 748 (1999) (referring back to "the founding generation" in declaring that "our federalism" recognizes states as "joint participants in the governance of the Nation"). Put simply, without this Court's intervention Florida will—without any independent process related to his Eighth Amendment claim—execute an honorable veteran who fought on the front lines of the Gulf War to protect the very values Florida places at risk.

CONCLUSION

Based on the foregoing, this Court should grant a writ of certiorari to review the decision of the Florida Supreme Court in this case.

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DATED: APRIL 27, 2025