

No. 24-7079

IN THE SUPREME COURT OF THE UNITED STATES

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JEFFREY GLENN HUTCHINSON,

Petitioner,

-v-

STATE OF FLORIDA,

Respondent.

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

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**BRIEF OF VETERANS' ADVOCACY GROUPS AS *AMICI CURIAE* IN  
SUPPORT OF PETITIONER**

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JOHN R. MILLS  
*Counsel of Record*  
PHILLIPS BLACK, INC.  
1721 Broadway, Suite 201  
Oakland, CA 94612  
888-532-0897  
j.mills@phillipsblack.org

RAISA ELHADI  
NATHALIE GREENFIELD  
PHILLIPS BLACK, INC.  
P.O. Box 3547  
New York, NY 10008

MELANIE C. KALMANSON  
NICOLE PERKINS  
QUARLES & BRADY LLP  
101 East Kennedy Blvd.,  
Suite 3400  
Tampa, FL 33602

COUNSEL FOR AMICI

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## BRIEF OF AMICI CURIAE<sup>1</sup>

### INTEREST OF AMICI

The **Center for Veteran Criminal Advocacy** (the “Center”) raises awareness in the justice system about the unique battles that veterans face when they return from war. The Center advocates on behalf of veterans to ensure they receive access to legal representation and fair sentencing in criminal matters.

**Disability Rights Florida** is the State’s designated protection and advocacy system created to ensure the safety, well-being, and success of people with disabilities. Disability Rights Florida demands accountability in the criminal justice process for people with disabilities. Likewise, Disability Rights Florida is interested in ensuring veterans suffering from disabilities receive fair sentencing.

The **Cornell Law School Veterans Law Practicum** connects veterans, who may not otherwise have access to legal assistance, with students to represent them on a variety of claims. The Veterans Law Practicum aims to improve veterans’ lives by preventing homelessness, improving a veteran’s economic security and wellbeing, and providing access to medical care. As such, the Veterans Law Practicum has an interest in ensuring veterans receive fair sentencing.

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<sup>1</sup> Pursuant to Rules 37.2(a) and 37.6, Amici certify that no party or party’s counsel authored this brief in whole or in part and that no party or party’s counsel made a monetary contribution intended to fund the preparation or submission of this brief. All counsel of record received timely notice of Amici’s intent to file this brief more than ten days prior to its due date.

## SUMMARY OF ARGUMENT

Sergeant Jeffrey Hutchinson began his military service as part of the U.S. National Guard. He went on to honorably serve in the active U.S. Army for eight years and was deployed to Saudi Arabia. As a combat veteran of the 1990 Gulf War, he—like many veterans of the conflict—experienced brutal violence, multiple artillery explosions, and exposure to sarin nerve gas and other toxic substances from chemical weapons in the conflict. The experiences that Gulf War veterans faced, and their lasting effects today, mean that these veterans must be regarded not only with the utmost honor and respect, but with deep compassion and understanding for the burdens they bore, and continue to bear, on our behalf.

Service in the Gulf War came at the cost of health for many soldiers, including Sgt. Hutchinson. The ubiquitous use of burn pits near U.S. military bases exposed soldiers to toxic chemicals and caused, among other issues, significant organ damage. From 2022, scientific research began to conclusively establish that the use of nerve gas throughout the conflict introduced further lifelong physical complications. In fact, the particular symptoms that result from exposure to the various toxic agents used during the Gulf War are so prevalent and so particularized that Gulf War Illness has become a medically- and congressionally-recognized condition suffered by veterans of the conflict.

Congress and courts alike have continually recognized the importance of acknowledging the effects of the Gulf War on those who served. Congress has

passed legislation such as the Promise to Address Comprehensive Toxics Act (the “PACT Act”), and this Court has acknowledged the importance of a capital defendant’s military history in the sentencing process.

Sgt. Hutchinson’s sacrifice for our nation during the Gulf War has left him with mental and physical scars shared by many who served with him—he suffers from PTSD, traumatic brain injury, and Gulf War Illness, among other healthcare issues. Recent discoveries about Gulf War Illness shed new light on Sgt. Hutchinson’s cognitive defects as a result of the conflict, information that likely would have changed the outcome of his case had it been discovered before his trial.

The failure to consider the effects of Sgt. Hutchinson military service in contemplation of his capital sentence is not only a failure to honor Sgt. Hutchinson’s and other veterans’ sacrifices to this nation, but an affront to the founding charter of the nation they so bravely defend. Veterans who served in the Gulf War deserve proper consideration of their battle scars, visible or not. To execute Sgt. Hutchinson without due consideration of his service—and its effects—is a violation of our constitution and of our patriotic duty to honor our veterans.



## ARGUMENT

### I. VETERANS DESERVE OUR GRATITUDE AND RESPECT

#### A. Gulf War Veterans Have Made Immense Sacrifices for this Country

Combat veterans make immense sacrifices to serve their country. Veterans have been exposed to the world of war—a “world that is alien to the common experience.” Richard Dieter, *Battle Scars: Military Veterans and the Death Penalty*, DEATH PENALTY INFO. CTR. 10 (2015). In combat zones, death and injury are daily and brutal occurrences. Combat servicemen and women see people blown apart before their eyes, have to kill and injure others, and endure the loss of friends, superiors, and fellow soldiers. *Id.* Combat veterans know all of this before their deployment, and nevertheless volunteer for service to protect our country.

Veterans who served in the Gulf War have made vital contributions to national and international security, often at a heavy cost to their lives. A study of the traumatic experiences of veterans in Iraq found that 88.5% of veterans witnessed dead bodies or human remains during their tour of duty, 83.8% witnessed the death or serious injury of an American soldier, and 31.2% directly caused the death of an enemy combatant. William Brown, *Spinning the Bottle: A Comparative Analysis of Veteran-Defendants and Veterans Not Entangled in Criminal Justice*, in BROCKTON HUNTER AND RYAN ELSE (EDS.) *THE ATTORNEYS GUIDE TO DEFENDING VETERANS IN CRIMINAL COURT* 128–30 (2014).

Combat soldiers are highly skilled professionals. The U.S. military trains soldiers to “react to perceived threats automatically and with overwhelming force” and to have the mental fortitude to withstand the bloodshed of war. *See* Joshua London, *Why Are We Killing Veterans? The Repugnance and Incongruity of the U.S. Government Executing Psychologically Wounded Veterans*, 11 U. ST. THOMAS L.J. 274, 274 (2014). As a result, the returning combat veteran is different from the civilian enlisted. *See* BESSEL VAN DER KOLK, *THE BODY KEEPS THE SCORE* 223 (2014) (American soldiers “perform[] very well in combat” but “cannot tolerate being home.”). Military culture and training values courage, strength, easy manipulation of weapons, and quick, aggressive responses to perceived threats—all of which are life-saving amid armed conflict, but can be dangerous, and even fatal, for the returning veteran in a civilian environment.

### **B. Gulf War Veterans’ Service Comes at Great Cost to their Health**

The horrors of war leave psychological and physiological wounds. Returning veterans “[bring] with them indelible experiences of the battlefield [and are] left to traverse as best they [can] the immense divide between knowing and not knowing, between military and civilian life.” JUDITH HERMAN, *TRAUMA AND RECOVERY* 347–48 (1992). These wounds manifest in the form of damaged bodies and scarred psyches, and can result in behavior that is unfit for civilian communities.

The environmental conditions of the Gulf War were particularly hazardous. The U.S. military made frequent use of burn pits.<sup>2</sup> These pits exposed soldiers to airborne hazards so dangerous that the U.S. Department of Veterans Affairs (“the VA”) has since designated a broad range of “presumptive conditions” resulting from burn pit exposure, including multiple cancer forms, pulmonary fibrosis, and bronchitis. *See* U.S. Dep’t Veterans Affairs, *Airborne Hazards and Burn Pit Exposures*, <https://www.publichealth.va.gov/exposures/burnpits/index.asp> (last accessed Apr. 12, 2024). Likewise, the adverse health impact of burn pits was so ubiquitous that the VA now advises *all* veterans who served in the Gulf to seek medical care. *See id.*

In addition to these environmental hazards, Gulf War veterans carry physical and psychological scars, including Traumatic Brain Injury (TBI), Post-Traumatic Stress Disorder (PTSD), and Gulf War Illness (GWI). Gulf War veterans experience high rates of “severe or moderate TBI” due to the conditions of their service. Committee on Gulf War and Health, *Gulf War and Health: Volume 9: Long-Term Effects of Blast Exposures*, NAT’L ACADS. OF SCIS., ENG’G, AND MED. (2014) at 6. The proximity of soldiers to bomb blasts and IEDs during the Gulf War, including the Khamisiyah blast,<sup>3</sup> left many with permanent damage. Soldiers faced blast debris,

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<sup>2</sup> Burn pits are “large areas where tons of waste products . . . are burned in the open air.” *Military Burn Pits and Cancer Risk*, AM. CANCER SOC’Y (Aug. 25, 2022), <https://www.cancer.org/cancer/risk-prevention/chemicals/burn-pits.html>.

<sup>3</sup> In March 1991, U.S. troops detonated an Iraqi army ammunition depot located in Khamisiyah, Iraq. The weapons, at the time thought to contain only ammunition, were destroyed using open air

blast waves, and blast winds that exposed them to burns, toxic substances, and psychological trauma. *Id.* at 1–2. Returning veterans also experience “permanent neurologic disability, including cognitive dysfunction” as a result of exposure to blasts. *Id.* at 6, 7.

Gulf War veterans often suffer from a range of long-term conditions resulting from blasts that require ongoing treatment. Such conditions include acute injury to multiple organ systems such as the genitourinary organs, olfactory organs, and the endocrine system. *Id.* Gulf War TBI is also linked to psychological disorders such as depression, PTSD, and aggressive behaviors—the ramifications of which can occur up to 15 years after injury. Committee on Gulf War and Health, *Gulf War and Health: Volume 7: Long-Term Consequences of Traumatic Brain Injury*, NAT’L ACADS. OF SCIS., ENG’G, AND MED. (2009) at 6–7.

The devastating conditions of service in the Gulf War have also led to widespread PTSD among surviving veterans. Multiple studies of returning soldiers have found that the experiences common to those serving in the Gulf—such as being shot at, handling dead bodies, witnessing their comrades being killed, knowing someone who was killed, or killing enemy combatants—correlate with long-term psychological consequences like PTSD. See Charles Hoge et al., *Combat Duty in Iraq and Afghanistan, Mental Health Problems, and Barriers to Care*, 351 N.

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methods. Later, a United Nations Special Commission found the depot held rockets containing the nerve agents sarin and cyclosarin. Chemical & Biological Weapons during Gulf War, U.S. DEP’T VETERANS AFFS., <https://www.publichealth.va.gov/exposures/gulfwar/sources/chem-bio-weapons.asp> (last visited Apr. 11, 2025).

ENGLAND J. MED. 13, 16 (2004). Such exposure also creates moral injuries—a “distressing psychological, behavioral, social, and sometimes spiritual aftermath of exposure to . . . traumatic or unusually stressful circumstances, [where a person] may perpetrate, fail to prevent, or witness events that contradict deeply held moral beliefs and expectations.” Sonya B. Norman, et al., *Moral Injury*, NATIONAL CENTER FOR PTSD, [https://www.ptsd.va.gov/professional/treat/cooccurring/moral\\_injury.asp](https://www.ptsd.va.gov/professional/treat/cooccurring/moral_injury.asp). Examples in the context of war include having to harm others, making decisions that affect the survival of others, and engaging in or witnessing acts of disproportionate violence. *Id.* Moral injury is particularly difficult to treat and recover from, which adds to the isolation that many veterans experience. The VA has recognized that when moral injury is present alongside PTSD, it is predictive of more severe post-traumatic and depressive symptoms, as well as a greater likelihood of substance use disorder and functional impairment. *Id.*

PTSD can have fatal consequences when left untreated. Indeed, “reliving trauma reactivates the brain’s alarm system and knocks out critical brain areas necessary for reintegrating the past, making it likely that patients will relive rather than resolve the trauma.” VAN DER KOLK, *supra* at 223. For veterans, PTSD typically manifests itself by forcing the former soldier to “repeatedly relive traumatic combat situations” and to “remain in a hyper-vigilant, ready-for-battle state of mind. [Veterans’] military training and skills, once necessary and honorable when in the service of our country overseas, are troubling upon their return

stateside.” American Bar Association (ABA), Report 105A, (adopted by the House of Delegates Feb. 8-9, 2010) at 3.

GWI adds further to the prolonged harm from which veterans suffer. Early government research on the health effects of Gulf War service found that GWI “is a serious physical disease, affecting at least 175,000 veterans of the 1990-91 Gulf War, that resulted from hazardous exposures in the Gulf War theater.” James Binns et al., *Gulf War Illness and the Health of Gulf War Veterans: Research Update and Recommendations, 2009-2013*, RSCH. ADVISORY COMM. ON GULF WAR VETERANS’ ILLNESSES 1 (2014), <https://www.va.gov/RAC-GWVI/RACReport2014Final.pdf>.

Not until recent years has scientific research has begun to truly understand GWI. A 2022 study by Dr. Robert Haley found, for the first time, a causal link between exposure to nerve agents in the conflict, such as sarin and cycosarin, and GWI. Robert W. Haley et al., *Environmental Health Perspectives*, Vol. 130. *Evaluation of a Gene-Environment Interaction of PON1 and Low-Level Nerve Agent Exposure with Gulf War Illness: A Prevalence Case-Control Study Drawn from the U.S. Military Health Survey’s National Population Sample* (2022). This study began to establish the cognitive effects of exposure to toxins used during the Gulf War.

The risk of exposure to GWI-related toxins was especially high for veterans who were exposed to the release of nerve gas by the Khamisiyah blast. Soldiers within 25 kilometers (approximately 15 miles) of Khamisiyah were likely exposed to varying levels of sarin. Carolyn E. Fulco, et al., *Gulf War and Health Volume 1*.

*Depleted Uranium, Sarin, Pyridostigmine Bromide, and Vaccines*, 196 (2000). Sarin and cyclosarin are both highly toxic nerve agents. “Exposure to sarin can be fatal within minutes to hours,” and “many health effects . . . persist after sarin exposure: fatigue, headache, visual disturbances, . . . asthenia, shoulder stiffness, and symptoms of posttraumatic stress disorder[.]” *Id.* at 169. The toxic effects of cyclosarin similarly occur within minutes. Kristen Willis, et al., *Cyclosarin* (GF), ENCYC. OF TOXICOLOGY 726–30 (3rd ed. 2014).

Service members exposed to sarin and cyclosarin in Khamisiyah were initially informed that there were “no long-term health effects from low level, short-term exposure to nerve agents[s] . . ., even when doses are large enough to produce some immediate symptoms.” Deputy Sec’y of Def., Memorandum for Persian Gulf War Veterans Concerning Khamisiyah, Iraq (Oct. 1996), <https://www.ncbi.nlm.nih.gov/books/NBK233462/>. Later findings, including the 2022 Haley study, have conclusively established that this assessment was incorrect. Rather, exposure to sarin is a “neurological hazard to humans” and sarin gas exposure is the cause of GWI. *See* Haley et al., *supra*; NAT’L TOXICOLOGY PROGRAM, PUB. HEATH SERV., U.S. DEP’T OF HEALTH & HUM. SERVS., *NTP Monograph on the Systematic Review of Long-term Neurological Effects Following Acute Exposure to Sarin* at G-15 (2019).

New scientific findings have shed light on further adverse effects of GWI. A 2023 study revealed that veterans with GWI exhibit impaired mitochondrial

function in their white blood cells, significantly reducing cellular energy production—pointing to a measurable biochemical dysfunction. See Joel N. Meyer et al., *Bioenergetic Function is Decreased in Peripheral Blood Mononuclear Cells of Veterans with Gulf War Illness*, PLOS ONE, 21 (Nov. 1, 2023). GWI can also lead to significant neuropsychological effects, including increased aggression. Veterans with GWI frequently report mood disturbances—including increased depression, irritability, and angry outbursts. See Lea Steele et al., *Brain–Immune Interactions as the Basis of Gulf War Illness: Clinical Assessment and Deployment Profile of 1990–1991 Gulf War Veterans in the Gulf War Illness Consortium (GWIC) Multisite Case-Control Study*, 11 BRAIN SCI. 1132 (2021); Sean X. Naughton et al., *Permethrin Exposure Primes Neuroinflammatory Stress Response to Drive Depression-like Behavior Through Microglial Activation in a Mouse Model of Gulf War Illness*, 21 J. NEUROINFLAMMATION 222 (2024).

Overall, the data underscores how little was known about the long-term effects of sarin exposure during the Gulf War until recent years. These effects are only now coming to light through research pioneered by the government and scientific community alike. For these reasons, veterans’ ability to seek treatment for GWI has been difficult. Indeed, a 2014 report by the VA recommended that “the first priority of federal Gulf War illness research must be the identification of effective treatments to improve the health of Gulf War veterans,” indicating the paucity of treatments available prior to that point. Binns et al., *supra* at 3.



Moreover, the accumulation of all conditions suffered by veterans of the Gulf War—TBI, PTSD, GWI, and exposure to burn pits—have an especially harmful effect. Many of those who served in this conflict, like Sgt. Hutchinson, suffer a noxious amalgam of maladies that leave them with lifelong physical and mental defects. As a result of their bravery, skill, and endurance in combat, many Gulf War veterans returned home with debilitating medical conditions, many of which were not even recognized or treated for decades. Gulf War veterans' tours of duty came at great sacrifice and must be understood in the proper context.

### **C. Veterans Often Need Support When Returning Home from Service**

Returning veterans' physical and psychological wounds of battle do not—and cannot—heal on their own. Treatment can be difficult to complete, though. One study found that of almost 50,000 veterans diagnosed with PTSD from tours of duty in Iraq, fewer than one in ten completed their treatment. Karen H. Seal et al., *VA Mental Health Services Utilization in Iraq and Afghanistan Veterans in the First Year of Receiving New Mental Health Diagnoses*, 23 *J. TRAUMATIC STRESS* 5 (2010). Sometimes treatments are ill-suited to veterans' needs, and sometimes stigma is difficult for veterans to overcome. See VAN DER KOLK, *supra* at 225; Hoge, *supra* at 20. At other times, there are simply no treatments available—as in the case of GWI in the years following the war.

Without consistent medical support and care, veterans face “major obstacles” to their “efforts to reclaim normalcy and return to their families as healthful contributing members.” ABA, *supra* at 4. When forced to manage the effects of trauma and hazardous exposure alone, some veterans may engage in criminal behavior—especially when that trauma is compounded by the lethal skills instilled during their military training. The effects of veterans’ “unprecedented levels” of PTSD and TBI “creat[es] behaviors that, if left untreated, can . . . trigger involvement with the criminal justice system.” *Id.* at 4.

All sectors of American society have a responsibility to support returning combat veterans. This includes supporting veterans whose battle scars have led them to behaviors that involve them in the criminal justice system. As the ABA explains, with respect to legal system actors: “The time has never been more critical to provide a safety net for veterans who have put themselves in harm’s way to protect our liberty in avoiding the predictable poor outcomes that [a lack of support] pose[s].” *Id.* For example, Veterans Court Programs provide a structured, effective way to support vulnerable veterans facing criminal charges. These programs offer both accountability and assistance, helping reduce recidivism while ensuring that a veteran’s service is meaningfully considered in the criminal justice process. *Id.* at 4–6.

These principles apply in the death penalty context with particular force. Respecting the courage and sacrifice of veterans requires accounting for how their

physical and psychological wounds can manifest, especially by the government that the veteran has served and suffered for.

## **II. ALL BRANCHES OF THE STATE AND FEDERAL GOVERNMENT HAVE RECOGNIZED THE VALUE OF VETERANS' SERVICE**

Courts, Congress, and state legislatures alike have recognized the importance of considering veterans' service in criminal proceedings. In the death penalty context, this Court has recognized the importance of considering combat service as mitigation evidence at the penalty phase of capital trials. *See infra*. Given the unique burdens of military service, including its severe physical and psychological toll, these factors must be considered as mitigating evidence. Congress has recognized the specific illnesses and traumas affecting Gulf War veterans—underscoring both their seriousness and prevalence, and the critical need to account for them when evaluating a potential death sentence.

### **A. The Eighth Amendment Requires that Combat Experience Be Considered as Mitigating Evidence**

Under the Eighth Amendment, a defendant's status as a veteran must be afforded due consideration in the capital sentencing process as part of the defendant's character. *See Gregg v. Georgia*, 428 U.S. 153, 198 (1976) (“[T]he circumstances of the crime or the character of the defendant” must be weighed in the capital sentencing process.). Specifically, this Court held in *Porter v. McCollum*, 558 U.S. 30 (2009), that a defendant's status as a veteran, including his “heroic

military service” in significant battles, as well as his “struggles to regain normality upon his return from war,” is important mitigating evidence relevant to jurors’ assessment of the defendant’s culpability. *Id.* at 41. The Court highlighted “our nation[’s] long history of according leniency to veterans in recognition of their service, especially for those who fought on the front lines,” *id.* at 43, explaining that the importance of a veteran defendant’s “extensive combat experience is not only that he served honorably under extreme hardship and gruesome conditions, but also that the jury might find mitigating the intense stress and mental and emotional toll that combat took on [him].” *Id.*

Circuit courts have also acknowledged that a capital defendant’s military service is an important consideration, particularly in the penalty phase. *See United States v. Tatum*, 515 F. App’x 857, 859 (11th Cir. 2013) (stating that defendant’s “courageous sacrifice is undoubtedly worthy of consideration”); *Pope v. Sec’y for Dep’t of Corr.*, 680 F.3d 1271, 1293 (11th Cir. 2012) (acknowledging that “courts have placed great importance on the impact of military service as mitigation”); *Andrews v. Davis*, 798 F.3d 759, 776 (9th Cir. 2015), *opinion withdrawn and superseded*, 866 F.3d 994 (9th Cir. 2017), *on reh’g en banc*, 944 F.3d 1092 (9th Cir. 2019) (“[E]vidence of a defendant’s mental or emotional difficulties” such as “severe PTSD from military combat” “may lead a jury to conclude that a defendant is less culpable than defendants without such difficulties”).

## **B. Congress Has Recognized the Particular Psychological Illnesses Suffered by Veterans of the Gulf War**

The legislative branch has also recognized the importance of acknowledging the impact of military service. Until Congress passed the PACT Act in 2022, veterans struggled for over two decades to connect their unexplained symptoms to their service. After the Gulf conflict, and in response to growing reports of unexplained symptoms among veterans of the Gulf War, Congress began addressing concerns about GWI. In 1992, Congress passed the Persian Gulf War Veterans' Health Status Act, which required the VA to collect and analyze data on the health of Gulf War veterans. *See Persian Gulf War Veterans' Health Status Act*, Pub. L. No. 102-585, §§ 701–703, 106 Stat. 4943, 4975–79 (1992). Subsequently, Congress enacted the Veterans' Health Care Eligibility Reform Act of 1996, which expanded the VA's authority to provide treatment to Gulf War veterans with undiagnosed illnesses. *See Veterans' Health Care Eligibility Reform Act of 1996*, Pub. L. No. 104-262, § 105, 110 Stat. 3177, 3182 (1996). In 1998, Congress further advanced the legislative framework with the Persian Gulf War Veterans Act of 1998, mandating presumptive service connection for certain chronic disabilities resulting from undiagnosed illnesses. *See Persian Gulf War Veterans Act of 1998*, Pub. L. No. 105-277, §§ 1601–1604, 112 Stat. 2681, 2681–742 to –745 (1998).

Congressional action evolved alongside scientific research in recent years to recognize the effect of toxin exposure on veterans' development of GWI. In 2022, Congress passed the Sergeant First Class (SFC) PACT Act, recognizing the harms

endured by veterans of the Gulf War. Honoring our PACT Act of 2022, Pub. L. 117-168 Stat. 1759 (2022) (PACT Act). The PACT Act expands VA health care and benefits for veterans exposed to burn pits and other toxic substances during that conflict.

At the heart of the PACT Act are the effects of sustained, long-term exposure to burn pits and war-time chemicals. Initially, the effects of burn pit exposure were unknown. Between 2004 and 2020, the VA denied almost 80% percent of veteran disability claims related to chemical exposure in the Gulf War, under the belief that medical conditions could not be service-related when occurring so long after military members had been discharged. This demonstrates the fundamental and widespread misunderstanding of the correlation between burn pits and long term, chronic illness. Timothy Olsen, et al., *Iraq/Afghanistan War Lung Injury Reflects Burn Pits Exposure*, SCI. REP., (Dec. 2022) at 2.

It is only recently that the full impact of burn pit exposure has come to light. A study published in 2024 found that “for every 100 days of burn pit exposure . . . there is a 1% increased risk for asthma, a 4% increased risk of chronic obstructive pulmonary disease (COPD), and a 5% increased risk of ischemic stroke[.]” Erica Sprey, *VA Study Documents Health Risk for Burn Pit Exposures*, U.S. DEP’T OF VETERANS AFFS. (May 31, 2024), <https://www.research.va.gov/currents/0524-VA-Study-Documents-Health-Risks-for-Burn-Pit-Exposures.cfm>. This study

demonstrates that the collective, overall rate of health problems as a result of burn pits is high, even when the individual risk appears to be low.

A crucial portion of the PACT Act is its addition of more than twenty “presumptive conditions” for burn pits and other toxic exposures. Typically, to receive a VA disability rating, a veteran must demonstrate a connection between their military service and their disability. With presumptive conditions, however, the VA automatically assumes that the veteran’s military service is the cause of the veteran’s disability. Conditions are presumptive when established by law or regulation. PACT Act 136.

The PACT Act recognizes multiple forms of cancer, and several illnesses, as presumptive conditions.<sup>4</sup> Further, if a veteran served in a recognized location, then the veteran’s undiagnosed illness is considered presumptive. Recognized locations include Saudi Arabia, Iraq and Kuwait—all of which are Gulf War locations.<sup>5</sup> If a

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<sup>4</sup> Brain cancer; gastrointestinal cancer; glioblastoma; head cancer of any type; kidney cancer; lymphatic cancer; lymphoma; melanoma; neck cancer; pancreatic cancer; reproductive cancer of any type; respiratory cancer; asthma; chronic bronchitis; chronic obstructive pulmonary disease (COPD); rhinitis; sinusitis; constrictive bronchiolitis or obliterative bronchiolitis; emphysema; granulomatous disease; interstitial lung disease (ILD); pleuritis; pulmonary fibrosis and sarcoidosis. Additionally, medically unexplained chronic multi-symptom illness may be covered. *PACT Act and Toxic Exposure Information*, VETERANS OF FOREIGN WARS, <https://www.vfw.org/advocacy/pact-act-and-toxic-exposure-information> (last visited Apr. 11, 2025).

<sup>5</sup> If an individual has served in any of the following locations after August 2, 1990, the VA presumes an undiagnosed illness is associated with military service: Afghanistan (airspace not included), Bahrain, Egypt (airspace not included), Iraq, Israel (airspace not included), Jordan (airspace not included), Kuwait, Neutral zone between Iraq and Saudi Arabia, Oman, Qatar, Saudi Arabia, Syria (airspace not included), Turkey (airspace not included), The United Arab Emirates (UAE), and the waters of the Arabian Sea, Gulf of Aden, Gulf of Oman, Persian Gulf, and Red Sea. *Gulf War Illness Linked to Afghanistan Service*, U.S. DEPT OF VETERANS AFFS., <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/gulf-war-illness-afghanistan/> (last visited Apr. 11, 2025).

service member served in these countries in 1990 or later, it is assumed that their qualifying health conditions are the direct result of their military service. Until the passage of the PACT Act, most veterans had their claims denied, leaving them with no proof of GWI.

The U.S. military uses burn pits to dispose of solid waste. Traditionally, jet fuel is used as an accelerant, adding to the significant amount of air pollution created by the pits. Amid growing concern and emerging research linking burn pits to serious health issues, the Department of Defense discontinued their use. In response, Congress enacted legislation to provide ongoing support for veterans exposed to burn pits. This includes the burn pit registry created by the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 and the PACT Act.

As part of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012, the Secretary of Veterans Affairs ordered the creation and maintenance of the "Airborne Hazards and Open Burn Pit Registry" (the "Burn Pit Registry"). Dignified Burial and Other Veterans' Benefits Improvement Act of 2012, Pub. L. No. 112-260 § 201, 126 Stat. 2422–23 (2013). The Burn Pit registry is operated by the Veterans Association and uses data provided by veterans to conduct studies to determine the health impacts of burn pit exposure. Enrollment in the Burn Pit Registry is optional.

The long-term goal of the Burn Pit Registry is to use the information provided to "fuel advancements in treatments, more precise predictive medicine,



inform decisions related to presumptive conditions, and deliver targeted proactive and preventative care.” *Airborne Hazards and Open Burn Pit Registry*, U.S. DEPT OF VETERANS AFFS.

The existence of the studies conducted and laws enacted by the U.S. government in pursuit of greater understanding and treatment of adverse effects of the Gulf War demonstrates not only the severity of symptoms suffered by veterans of the conflict, but the developing understanding of those symptoms that, until recent years, was denied or ignored. As Congress continues to unveil the harmful effects suffered by Gulf War veterans, courts must adopt this evolved understanding of veterans’ experiences, especially in a context as grave as the death penalty.

### **C. Florida’s Legislature Recognizes the Need to Acknowledge Veterans’ Service**

Several bills related to veterans and military service members—including providing additional rights to veterans and support for veterans—are currently pending in the Florida Legislature this session. For example, proposed legislation would authorize courts to impose a modified sentence for veterans in certain circumstances (HB 783/SB 474), require the State to give veterans a preference in certain state contracts and employment (HB 821/SB 1172), and create an exemption from certain sales taxes for veterans (HB 111/SB 990).

Moreover, Florida has recognized the importance of Veteran Courts. Such courts recognize that veterans have been through different experiences than

civilians and deserve specialized consideration on the basis of war-injuries. Florida has thirty-two Veteran Courts in operation. They are designed to “assist justice-involved defendants with the complex treatment needs associated with substance abuse, mental health, and other issues unique to the traumatic experience of war.” VETERANS COURTS, <https://www.flcourts.gov/Resources-Services/Office-of-Problem-Solving-Courts/Veterans-Courts> (last visited April 24, 2025). Veteran Courts distinguish that “veterans returning home from war find it difficult to integrate back into the community. Veterans with untreated substance abuse or mental health illnesses, including those with [PTSD] and TBI, may find it even harder to return home, which can sometimes lead to criminal activity.” *Id.* The opportunity to address veterans in a criminal-justice setting tailored to their needs is necessary to prevent future violations and to promote societal integration through peer assisted programs.

Florida’s efforts to recognize veterans’ service, particularly within the criminal legal system, reflect its commitment to honoring those who risk their lives in service to the nation. That recognition must extend to capital sentencing, reinforcing the state’s obligation to treat veterans with the respect and consideration their sacrifices deserve. Otherwise, the State fails to fully honor those who have risked everything to protect our nation.

### **III. EXECUTING COMBAT VETERANS LIKE SGT. HUTCHINSON BEFORE A JURY HAS HEARD ABOUT THE EFFECTS OF THEIR SERVICE WILL NOT ADVANCE THESE VALUES**

Sergeant Jeffrey Hutchinson served bravely in the U.S. military. During his Gulf War service, Sgt. Hutchinson faced chemical, environmental, and physical hazards, exposure to which the government has since shielded soldiers from. As a result of his service to the nation, Sgt. Hutchinson has lasting physical and psychological scars that his capital jury and sentencing judge never heard about—in part because Congress itself had not yet recognized those scars—rendering his death sentence constitutionally impermissible. Executing Sgt. Hutchinson would fail to honor his service and the horrors that combat veterans suffer for our nation.

Sgt. Hutchinson's longstanding military service should not be ignored. He enlisted in the active U.S. Army after serving four years in the Washington State National Guard and was then selected to be a Forward Observer. Sgt. Hutchinson subsequently volunteered for and was accepted into the 75th Ranger Regiment, an elite unit, in Fort Benning, GA. As a member of this unit, he completed one of the Army's most grueling experiences—Ranger School. To prepare for Ranger School, Sgt. Hutchinson underwent a four-week training program requiring him to sleep an average of four hours per night, ration his food, and train to his physical limits. Sgt. Hutchinson was one of the few who successfully completed the program; 88% of his class did not. Sgt. Hutchinson's Army training also exposed him to artillery and concussive simulators, smoke grenades, and flash bangs from as close as twenty

yards. Sgt. Hutchinson was in the top 10% of his class and became an Army Ranger in 1988.

Sgt. Hutchinson was later promoted to Sergeant after completing further training. He received deployment orders on August 28, 1990 and arrived in Saudi Arabia for the Liberation of Kuwait. Sgt. Hutchinson's unit was attached to the 1/18th Infantry Regiment and completed reconnaissance missions behind enemy lines. Sgt. Hutchinson duties involved stealthily locating enemy weapons and equipment and calling in airstrikes.

Sgt. Hutchinson was repeatedly exposed to chemical attacks. He prepared for such attacks by ingesting pyridostigmine bromide pills and wearing a MOPP chemical suit. Unbeknownst to Sgt. Hutchinson, and contrary to what he was told, the pills did not protect against sarin nerve gas. Further, the chemical suits were meant to be changed daily but Sgt. Hutchinson and his unit wore the same suit for the duration of the deployment. Even the air in the encampment was toxic. The encampment had two large burn pits where soldiers would discard plastic rubbish, human waste, and equipment. The pits burned day and night, contributing to the harmful biochemical environment.

Sgt. Hutchinson fought during both the air war and ground war phases of Operation Desert Storm. Sgt. Hutchinson's unit heard nerve gas alarms blaring constantly, indicating his continuous exposure to nerve gas and all of its attendant

health hazards. In one mission, Sgt. Hutchinson called in a strike to destroy an enemy ammunition cache, which left a green cloud covering his unit.

On multiple occasions, Sgt. Hutchinson was in close proximity to explosions, putting him at severe risk of brain injury and trauma. Sgt. Hutchinson was about 1,500 meters away from the Nasiriyah ammunition bunker explosion. He was not wearing protective gear and felt a blast wave move through his body. On another occasion, Sgt. Hutchinson was about 130 yards away from an ammunition trailer explosion. Sgt. Hutchinson was also in close proximity to the Khamisiyah blast. Multiple chemical alarms blared after the blast and mushroom clouds rose into the air, exposing all in the bunker's proximity—including Sgt. Hutchinson—to chemical damage. For a week, Sgt. Hutchinson was dizzy, nauseous, his ears rang, and he had a splitting headache.

Sgt. Hutchinson witnessed harrowing scenes in the Gulf. After an artillery strike on enemy soldiers, Sgt. Hutchinson was called in to do a battle damage assessment. During this process he witnessed dozens of blown-apart bodies. Sgt. Hutchinson had to count the bodies and carry them into trucks. Later on, this macabre scene was echoed when Sgt. Hutchinson had to drive down the Baghdad Highway—the “highway of death”—which was littered with eviscerated bodies. Sgt. Hutchinson returned to Fort Benning, GA, at the end of March 1991. He was reassigned to the 320 Field Artillery Combat Support Battalion in Berlin, Germany, where he remained until his honorable discharge at the rank of Sergeant in 1994.

The effects of Sgt. Hutchinson’s service, and of the specific traumatic events he experienced during combat, were profound. Like many other Gulf War veterans, Sgt. Hutchinson was diagnosed with PTSD, GWI, and TBI. These conditions are a direct result of the sacrifices he made in service of our nation, and doubtless have affected his mental state in the time since his return from service. Indeed, Sgt. Hutchinson experiences cognitive impairments that have affected his memory, impulse control, and anger management abilities, thus providing a medical explanation for the crimes that underlie his sentence of death. These considerations constitute compelling mitigation evidence that was not given due consideration at his sentencing—conducted at a time before science and the medical community fully understood the effects of service during the Gulf War.

To execute Sgt. Hutchinson in spite of this evolution of science and medicine that jurors never heard about would be to ignore the mental and physical health struggles that he has faced as a result of his combat experience. Further, his execution would disrespect the experiences of many Gulf War veterans enduring similar struggles. At the least, courts should consider the full extent of Sgt. Hutchinson’s service to our nation as he faces execution by the same country he fought so bravely to protect.

## **CONCLUSION**

*Amici* respectfully submit that the Court should rule for Petitioner.

JOHN R. MILLS  
*Counsel of Record*  
PHILLIPS BLACK, INC.  
1721 Broadway, Suite 201  
Oakland, CA 94612  
888-532-0897  
j.mills@phillipsblack.org

RAISA ELHADI  
NATHALIE GREENFIELD  
PHILLIPS BLACK, INC.  
P.O. Box 3547  
New York, NY 10008

MELANIE C. KALMANSON  
NICOLE PERKINS  
QUARLES & BRADY LLP  
101 East Kennedy Blvd.,  
Suite 3400  
Tampa, FL 33602

COUNSEL FOR AMICI

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