*** CAPITAL CASE ***

No. _____

IN THE

Supreme Court of the United States

JEFFREY GLENN HUTCHINSON,

Petitioner,

v.

RICKY D. DIXON, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

EXECUTION SCHEDULED FOR MAY 1, 2025, AT 6:00 P.M.

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*** CAPITAL CASE ***

QUESTIONS PRESENTED

1. Did the Eleventh Circuit invert the certificate of appealability standard by basing its denial on disagreements with other reasonable jurists?

2. Could reasonable jurists debate whether Petitioner's expert proffer created an issue of fact for a hearing on the connection between his combat-related impairments and the denial of equitable tolling based on his lack of diligence?

3. Should this Court reconsider "the continued application to death row inmates of the agency theory of the lawyer-client relationship," *Hutchinson v. Florida*, 677 F.3d 1097, 1103 (11th Cir. 2012) (Barkett, J., concurring), in the context of missed AEDPA deadlines caused by attorney negligence?

LIST OF DIRECTLY RELATED PROCEEDINGS

Direct Review

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC01-500
Decided: July 1, 2004
Published: 882 So. 2d 943 (Fla. 2004)

State Collateral Review

Caption: *State v. Hutchinson*
Court: Circuit Court of the First Judicial Circuit, Okaloosa County, Florida
Docket: 1998 CF 001382 AC
Decided: January 3, 2008 (Initial State Postconviction Motion)
Published: 2008 WL 8948638 (Fla. Cir. Ct. Jan. 3, 2008)

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC08-99
Decided: July 9, 2009 (Initial State Postconviction Appeal)
Published: 17 So. 3d 696 (Fla. 2008)

Caption: *State v. Hutchinson*
Court: Circuit Court of the First Judicial Circuit, Okaloosa County, Florida
Docket: 1998 CF 001382 AC
Decided: November 11, 2011 (Motion for DNA Testing)
November 19, 2013 (First Successive Postconviction Motion)
May 30, 2017 (Second Successive Postconviction Motion)
December 4, 2020 (Third Successive Postconviction Motion)
April 4, 2025 (Fourth Successive Postconviction Motion)
April 11, 2025 (Fifth Successive Postconviction Motion)
April 27, 2025 (Motion to Determine Competency to be Executed)
Published: N/A

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC11-2301 (Appeal re Motion for DNA Testing)
Decided: February 8, 2012
Published: N/A

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida

Docket: SC13-1005 (Appeal re First Successive Postconviction Motion)
Decided: January 19, 2014
Published: N/A

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC17-1229 (Appeal re Second Successive Postconviction Motion)
Decided: March 15, 2018
Published: 243 So. 3d 880 (Fla. 2018)

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC21-18 (Appeal re Third Successive Postconviction Motion)
Decided: June 16, 2022
Published: 343 So. 3d 50 (Fla. 2022)

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC25-497 (Appeal re Fourth Successive Postconviction Motion)
Decided: April 21, 2025
Published: 2025 WL 1155717 (Fla. Apr. 21, 2025)

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC25-517 (Appeal re Fifth Successive Postconviction Motion)
Decided: April 25, 2025
Published: 2025 WL 1198037

Federal Habeas Review

Caption: *Hutchinson v. Florida*
Court: United States District Court for the Northern District of Florida
Docket: 5:09-cv-261-RS
Decided: September 28, 2010 (Initial Federal Habeas Petition)
Published: 2010 WL 3833921 (N.D. Fla. Sep. 28, 2010)

Caption: *Hutchinson v. Florida*
Court: United States Court of Appeals for the Eleventh Circuit
Docket: 10-14978 (Initial Federal Habeas Appeal)
Decided: April 19, 2012
Published: 677 F.3d 1097 (11th Cir. 2012)

Caption: *Hutchinson v. Crews*
Court: United States District Court for the Northern District of Florida

Docket: 3:13-cv-128-MW
Decided: April 24, 2013 (Second Federal Habeas Petition)
June 12, 2013 (Rule 59(e) Motion)
January 15, 2021 (Rule 60(b) Motion)
April 16, 2025 (2d Rule 60(b) Motion)
Published: 2013 WL 1765201 (N.D. Fla. Apr. 24, 2013)
2013 WL 2903530 (N.D. Fla. June 12, 2013)
[Rule 60(b) Decision Not Published]
[2d Rule 60(b) Decision Not Published]

Caption: *Hutchinson v. Sec'y, Fla. Dep't of Corr.*
Court: United States Court of Appeals for the Eleventh Circuit
Docket: 13-12296 (Appeal re 2nd Federal Habeas Petition, Rule 59(e) Motion)
Decided: August 15, 2013
Published: N/A

Caption: *Hutchinson v. Sec'y, Fla. Dep't of Corr.*
Court: United States Court of Appeals for the Eleventh Circuit
Docket: 21-10508 (Appeal re Rule 60(b) Motion)
Decided: March 24, 2021
Published: N/A

Caption: *Hutchinson v. Sec'y, Fla. Dep't of Corr.*
Court: United States Court of Appeals for the Eleventh Circuit
Docket: 25-11271 (Appeal re 2d Rule 60(b) Motion)
Decided: April 23, 2025
Published: N/A

Certiorari Review

Caption: *Hutchinson v. Florida*
Court: Supreme Court of the United States
Docket: 12-5582 (Appeal re Initial Federal Habeas Petition)
Decided: October 9, 2012
Published: 568 U.S. 947 (2012)

Caption: *Hutchinson v. Florida*
Court: Supreme Court of the United States
Docket: 18-5377 (Appeal re Third Successive State Postconviction Motion)
Decided: October 1, 2018
Published: 139 S. Ct. 261 (2018)

Caption: *Hutchinson v. Florida*

Court:	Supreme Court of the United States
Docket:	22-6015 (Appeal re 2d Rule 60(b) Motion)
Decided:	January 9, 2023
Published:	139 S. Ct. 261 (2018)

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Petitioner Jeffrey Hutchinson, a death-sentenced Florida prisoner scheduled for execution on May 1, 2025, respectfully requests that the Court grant this petition for a writ of certiorari and stay his execution. A separate application for a stay of execution accompanies this request.

DECISION BELOW

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The Eleventh Circuit's April 23, 2025, order denying a certificate of appealability is unpublished but is included in the Appendix (App.) at 1a.

JURISDICTION

The Eleventh Circuit's order was entered on April 23, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2253(c) provides, in relevant part:

> (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from–
>
> > (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of the process issued by a State court . . .
>
> (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

Like dozens of other capital petitioners in Florida since the enactment of AEDPA,[1] Mr. Hutchinson never received merits review of his federal habeas claims

[1] *See Lugo v. Sec'y, Fla. Dep't of Corr.*, 750 F.3d 1198, 1212-13, 1222-26 (11th Cir. 2014) ("As the data our colleague has assembled shows, at least 34 death-row

because his attorneys egregiously missed the one-year filing deadline, despite Mr. Hutchinson's repeated reminders to them from death row to timely file. The district court dismissed Mr. Hutchinson's petition as untimely and not subject to equitable tolling in 2010. *Hutchinson v. Florida*, No. 5:09-cv-261, 2010 WL 3833921, at *2 (N.D. Fla. Sept. 28, 2010). A divided Eleventh Circuit panel affirmed in 2012, on the sole ground that Mr. Hutchinson was diligent for some, but not all, of the equitable tolling period. *Hutchinson v. Florida*, 677 F.3d 1097, 1103 (11th Cir. 2012) ("We need not decide whether Hutchinson has established that an extraordinary circumstance stood in the way of his meeting the § 2244(d) filing deadline, because he has not carried his burden of showing that he pursued his rights diligently.").

The Eleventh Circuit found that Mr. Hutchinson was diligent in imploring his attorneys to file his state motion before the AEDPA deadline, so that it would trigger statutory tolling. *Id.* at 1102. However, a majority of the panel ruled that Mr. Hutchinson was not diligent from when he learned the federal deadline had been missed, about three weeks after it passed, to when he filed his request for equitable tolling, which was years later, when the Florida Supreme Court upheld the denial of postconviction relief. *Id.* at 1102-03. The majority held that diligence required Mr. Hutchinson to race to federal court to request equitable tolling as soon as he discovered that the deadline had been missed, rather than waiting for the ongoing state proceedings to conclude. *Id.* at 1103 ("Although Hutchinson's affidavit

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inmates in Florida . . . have failed to meet the federal filing deadline in the eighteen years since AEDPA became effective . . . . which accounts for roughly 8% of Florida's current death row population . . . . the problem is largely a Florida one.").

may show that he diligently attempted to have his state collateral motion filed in time to give him the benefit of § 2244(d) statutory tolling, it does not show that once that opportunity was missed he pursued his federal rights diligently.").

Judge Barkett did not join the panel's diligence holding. She found that Mr. Hutchinson "did everything any reasonable client would do to assure that his lawyers protected his interests, including imploring his lawyers to file his post-conviction pleadings in a timely matter." *Id.* at 1103 (Barkett, J., concurring in result). But she concurred in the result because she concluded that, regrettably, prevailing agency principles required holding Mr. Hutchinson, a death row inmate, responsible for his attorneys' negligence in miscalculating the deadline. *Id.* at 1103-04. Judge Barkett called for overruling "the continued application to death row inmates of the agency theory of the lawyer-client relationship in this context." *Id.* at 104; *see also id.* at 1110 ("[T]o grant equitable tolling only in cases of complete lawyer abandonment or something akin to gross negligence does not go far enough.") (citing *Holland v. Florida*, 560 U.S. 631, 657-58 (2010) (Alito, J., concurring in the judgment)).

In January 2025, two months before Governor DeSantis signed Mr. Hutchinson's death warrant, significant new information came to light regarding Mr. Hutchinson's brain damage and mental functioning that impacted the period relevant to the Eleventh Circuit's diligence-based equitable tolling ruling. Evidence filed in a state-court proceeding indicated that, at the time the Eleventh Circuit

held that Mr. Hutchinson was not diligent, he was suffering from unknown brain injuries and illnesses resulting from his service on the front lines of the Gulf War.

On March 31, 2025, before the state-court judge could decide whether to grant an evidentiary hearing on three expert reports and other records accompanying the postconviction motion, the Governor signed Mr. Hutchinson's death warrant, setting the execution for May 1, 2025. The next day, the state-court judge, who had only recently been assigned to the case for purposes of the recently filed postconviction motion, was replaced with another judge who also had no prior experience on the case. Three days later, the new judge denied relief. The Florida Supreme Court affirmed. *Hutchinson v. State*, No. SC2025-497, 2025 WL 115717 (11th Cir. Apr. 21, 2025).

Based on the recent brain damage and mental-health revelations in state court, as well as other factors, including the death warrant's constriction of the pending state-court proceedings, Mr. Hutchinson moved in the district court for relief from judgment and reopening of the equitable tolling issue under Federal Rule of Civil Procedure 60(b)(6). Based on the expert proffer and other records, Mr. Hutchinson argued that he could establish at an evidentiary hearing that the denial of equitable tolling on diligence grounds should be reconsidered, and that merits review should be conducted for the first time in his case. NDFL-ECF 91.[2]

[2] Citations in the form "NDFL-ECF" refer to filings on the district court's electronic docket. "CA11-ECF" refers to filings on the Eleventh Circuit's electronic docket. Parallel citations to the Appendix (App.) are also provided where applicable.

The district court ruled that Mr. Hutchinson's motion was properly brought under Rule 60(b)(6), and was filed within a reasonable time under the rule, but denied relief on the ground that Mr. Hutchinson's motion did not establish an issue of fact regarding a connection between his physical and cognitive impairments and his diligence during the equitable tolling period. App. 27a-30a; NDFL-ECF 98 at 12-15. Mr. Hutchinson moved for a certificate of appealability (COA) and a stay of execution in the Eleventh Circuit, arguing that, at a minimum, reasonable jurists could debate the district court's decision to deny his Rule 60(b)(6) motion without an evidentiary hearing, given that his multiple-expert proffer created an issue of fact going directly to the reason for the prior equitable tolling denial. CA11-ECFs 4, 5.

The Eleventh Circuit denied a COA, giving four reasons. First, the panel disagreed with the district court that Mr. Hutchinson's motion was filed within a reasonable time under Rule 60(b)(6), instead proclaiming that the district court should have construed the motion under Rule 60(b)(2) and denied it as untimely. Second, the Eleventh Circuit ruled that, even if the motion was properly brought under Rule 60(b)(6), it was not made within a reasonable time under the rule. Third, the Eleventh Circuit found that Mr. Hutchinson did not establish a connection between his physical and cognitive impairments and his diligence during the equitable tolling period. Fourth, the Eleventh Circuit ruled that Mr. Hutchinson could not obtain a COA on his Rule 60(b) motion because did not identify any debatable claims in his underlying federal habeas petition. App. 5a-11a; CA11-ECF

11-1 at 4-10. Judge Jordan concurred only with the order's insufficient-connection reasoning. App. 13a-14a; CA11-ECF 11-1 at 12-13 (Jordan, J., concurring).

REASONS FOR GRANTING THE WRIT

I. The Eleventh Circuit inverted the COA standard by basing its denial on disputes with other reasonable jurists

This Court's articulation of the COA standard is familiar: a COA should be granted if reasonable jurists could debate the district court's decision. *Slack v. McDaniel*, 529 U.S. 473 (2000); *see also Miller-El v. Cockrell*, 537 U.S. 322 (2003). The Eleventh Circuit majority inverted that standard here by substantially basing its denial of a COA on disagreements with both the district judge and prior Eleventh Circuit panel members. If anything, such multi-faceted disagreement with other reasonable jurists in this case should have resulted in a granted COA and a full appeal. This Court should grant certiorari to correct the Eleventh Circuit's misapprehension of the COA standard, which has been of particular concern compared to other circuits.[3]

A claim can be debatable "even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Miller-El*, 537 U.S. at 338. Violations of this low bar should be strictly enforced because when a court "inverts the statutory order of operations and first decides the merits of an appeal, then justifies its denial of a COA based on its adjudication of the actual merits, it has placed too heavy a burden

[3] *See, e.g.*, Z. Payvand Ahdout, *Direct Collateral Review*, 121 Colum. L. Rev. 159, 213 & n.198 (2021) (citing empirical research on Eleventh Circuit COA grants).

on the prisoner at the COA stage." *Buck v. Davis*, 580 U.S. 100, 116-17 (2017) (internal quote omitted). A court that "justif[ies] its denial of a COA based on its adjudication of the actual merits . . . is in essence deciding an appeal without jurisdiction." *Id.* at 115 (internal quote omitted).

Here, the district court ruled that Mr. Hutchinson's motion was properly brought within a reasonable time under Rule 60(b)(6), explicitly rejecting Respondent's argument that the motion should have been deemed untimely under Rule 60(b)(2). App. 25a; NDFL-ECF 98 at 10. In rationalizing the denial of a COA, the Eleventh Circuit majority disagreed with the district court, ruling that Mr. Hutchinson's motion should have been deemed untimely under Rule 60(b)(2), meaning that the district court had no authority to grant relief. App. 6a; CA11-ECF 11-1 at 5. This amounted to the inverse of a proper COA inquiry. The Eleventh Circuit was supposed to determine whether a COA should be granted in light of the debatability of the district court's order. Instead, it denied a COA by disagreeing with the district judge, who is presumptively a reasonable jurist for COA purposes.

The Eleventh Circuit majority also based its COA denial on its disagreement with the district court over whether, assuming the motion had been proper under Rule 60(b)(6), it was made within a reasonable time. The district court ruled that Mr. Hutchinson's Rule 60(b)(6) motion was timely. App. 25a; NDFL-ECF 98 at 10. The Eleventh Circuit's order denying a COA emphasized the reverse, explaining that, "even if the district court had the authority under Rule 60(b)(6) to relieve Hutchinson from the judgment dismissing his habeas petition, his motion was

untimely because it was not made 'within a reasonable time.'" App. 7a; CA11-ECF 11-1 at 6. Again, the Eleventh Circuit was supposed to grant a COA if the district court's decision was reasonably debatable, not base its denial of a COA on disagreements with the district judge, who is a presumptively reasonable jurist.

The Eleventh Circuit majority's disagreements were not limited to the district court—it also disagreed with an earlier panel's decision to grant a COA to allow the original equitable tolling appeal in the first place. The newly composed panel this time ruled that "Hutchinson has not shown that his underlying habeas petition stated a debatable claim of the denial of a constitutional right." App. 11a; CA11-ECF 11-1 at 10. But this was factually wrong—Mr. Hutchinson's COA motion explicitly acknowledged that, "[i]n the context of a Rule 60(b) motion, this Court also looks to whether there are some debatable underlying constitutional claims." CA11-ECF 4 at 25 n.10. And he explained that he necessarily satisfied that requirement "because this Court previously determined that the same underlying constitutional claims were sufficient when it granted a COA in 2011" to review the equitable tolling issue initially. *Id.* Mr. Hutchinson then identified specific debatable claims in his 2009 petition, including "ineffective assistance, prosecutorial misconduct, and violations of due process." *Id.* Mr. Hutchinson emphasized his debatable-underlying-claim argument again in his reply. CA11-ECF 10 at 4-6.

Yet, the Eleventh Circuit stated that Mr. Hutchinson's "motions—here and below—do not identify a single debatable claim from his federal habeas petition." App. 11a; CA11-ECF 11-1 at 10. Beyond just the factual inaccuracy, the new

Eleventh Circuit panel implicitly disagreed with the prior panel's grant of a COA to allow the original equitable tolling appeal. *Id.* (citing *Griffin v. Sec'y, Fla. Dep't of Corr.*, 787 F.3d 1086, 1095 (11th Cir. 2015) ("[T]he fact that one or two judges believed an issue has merit would not compel us to grant a COA when we believe it does not.")). And this was an issue that was not even raised by the district court's ruling. As with its disputes with the district court, the Eleventh Circuit's reliance on disputes with prior panel members in the same case inverted the COA standard.

The Eleventh Circuit should have evaluated whether the district court's decision was debatable enough for appeal, not premised its COA denial on its belief that Mr. Hutchinson was never entitled to an equitable-tolling appeal in the first place. If the Eleventh Circuit had disagreements with the district court, it should have aired them in an opinion following regular briefing and argument. It was inappropriate for the court of appeals to use Mr. Hutchinson's request for a COA to expound on the merits of issues that Mr. Hutchinson did not even seek to appeal.

When presented with such a clear violation of the COA standard, particularly in a rush to deny further litigation during an already truncated death-warrant period, this Court should take the opportunity to "remind lower courts not to unduly restrict this pathway to appellate review." *McGee v. McFadden*, 139 S. Ct. 2608, 2611 (2019) (Sotomayor, J., dissenting from the denial of certiorari). The Court has vacated COA denials under similar circumstances. *See, e.g.*, *Tharpe v. Sellers*, 583 U.S. 545 (2018); *Buck*, 580 U.S. 100; *Tennard v. Dretke*, 542 U.S. 274 (2004). This Court should grant certiorari and review the Eleventh Circuit's faulty COA order.

II. Reasonable jurists could debate whether Mr. Hutchinson's expert proffer created an issue of fact for a hearing on the connection between his combat-related impairments and the denial of equitable tolling based on his lack of diligence

The Eleventh Circuit's decision should also be reviewed because, under the COA standard, reasonable jurists could debate whether Mr. Hutchinson's expert proffer created an issue of fact for a hearing on the connection between his recently uncovered combat-related impairments and the Eleventh Circuit's prior denial of equitable tolling based on his purported lack of diligence. *See Holland*, 560 U.S. at 654. The Eleventh Circuit ruled that, even if it agreed with the district court that Mr. Hutchinson's Rule 60(b)(6) motion was timely, there could be no reasonable debate that Mr. Hutchinson's motion failed to establish a connection between his impairments and equitable-tolling diligence. App. 8a-10a; CA11-ECF 11-1 at 7-9. But Mr. Hutchinson never asserted that his motion established the connection—he argued that, based on the strength of his proffer, he was entitled an evidentiary hearing to present further evidence. The Eleventh Circuit entirely bypassed Mr. Hutchinson's request for a hearing, which was central to his filings. *See, e.g.*, NDFL-ECF 91 at 24, 26-28; CA11-ECFs 4 at 2, 7-8, 29-32, 10 at 10-12. The Eleventh Circuit's instead engaged in an impermissible merits analysis to deny a COA.

Mr. Hutchinson consistently pleaded that, at a hearing, he could establish that his combat-related impairments, only recently diagnosed, made the Eleventh Circuit's diligence-based denial no longer just under Rule 60(b)(6)'s safety valve. NDFL-ECF 91 at 24. Mr. Hutchinson sought the opportunity, granted by Florida's federal courts in numerous other cases, to demonstrate that he "meets the standard

of reasonable diligence as [his] mental illness combined with his brain defect yields a very low bar for what level of diligence is reasonable." *Gill v. Sec'y, Florida Dep't of Corr.*, No. 3:18-cv-725, 2022 WL 9348538, at *1 (M.D. Fla. Oct. 14, 2022); *see also Brown v. Sec'y, Fla. Dep't of Corr.*, 750 F. App'x 915, 937-38 (11th Cir. 2018) ("Mr. Brown has pled enough facts to show he is entitled to an evidentiary hearing on both statutory and equitable tolling."); *Miller v. Sec'y, Fla. Dep't of Corrs.*, No. 3:17-cv-932, ECF 35 (M.D. Fla. Apr. 16, 2021) (ordering limited evidentiary hearing where the petitioner presented "significant allegations" regarding equitable tolling).

The Eleventh Circuit's own precedent provides that a district court abuses its discretion in denying an evidentiary hearing when the facts alleged would make the petition timely. *See Lugo*, 750 F.3d at 1206-07. Here, Mr. Hutchinson specifically alleged that cognitive impairments, newly documented in three separate expert reports filed in state court, hindered his ability to navigate complex issues of procedure and federalism. Beyond just reading a statute or calculating a deadline, the Eleventh Circuit's diligence ruling required Mr. Hutchinson to know that he must race to federal court with a pro se equitable tolling request while his state postconviction proceedings were ongoing, and while he was still represented in those proceedings by the same attorneys who missed his AEDPA deadline. Yet, Mr. Hutchinson's proffer indicated that he was suffering at that time from Gulf War Illness (affecting the amygdala and prefrontal cortex), PTSD, and blast injuries that impaired his judgment, insight, and problem-solving skills. NDFL-ECF No. 91-1 at 144. The reports indicate that Mr. Hutchinson was suffering from a disease that

"interferes with the function of virtually every organ of the body," including the brain, nervous system, skin, and muscles." NDFL-ECF 91-1 at 18, 141. This was unknown when the Eleventh Circuit denied all federal review on diligence grounds.

Particularly in light of the recent revelations about his injuries, continuing to fault Mr. Hutchinson for failing to understand the nuances of state-federal interplay and stay-and-abeyance is unjust. After all, this Court had decided the stay-and-abeyance case *Rhines v. Weber*, 544 U.S. 269 (2005), only months before Mr. Hutchinson's AEDPA deadline. *Holland* was not decided until 2010, and did not adopt the dissent's view that the petitioner should have filed a protective federal petition. *See Holland*, 560 U.S. at 672 (Scalia, J., dissenting). And a short time after Mr. Hutchinson's appeal, the Eleventh Circuit cast doubt on the role of placeholder or "shell" federal petitions as a solution to blown AEDPA deadlines—the same procedure Mr. Hutchinson was faulted for failing to follow. *Lugo*, 750 F.3d at 1214-15 ("We are also skeptical that filings of anticipatory, shell, or placeholder § 2254 petitions while state prisoners exhaust their collateral remedies will significantly mitigate the problem of missed AEDPA deadlines among Florida inmates. District courts are not required to accept such filings and stay the federal habeas proceedings, possibly for years, while the state prisoner completes his state collateral proceedings."). Now, given what is known about Mr. Hutchinson's serious impairments, continuing to block federal review on these grounds would be wrong.

Mr. Hutchinson acknowledged in the Eleventh Circuit that, while the reports filed with the state-court motion may not speak directly to the timeframe relevant

to equitable tolling—as they were prepared for a state-court action focusing exclusively on the time of trial—it is at least reasonably debatable whether an evidentiary hearing should have been granted so that Mr. Hutchinson had the opportunity to present evidence focusing more directly on the relevant period. *See* CA11-ECF 4 at 31. This request was in line with other orders in the Eleventh Circuit allowing a hearing on factual issues related to equitable tolling. *Id.* at 31-32.

Indeed, all indications are that Mr. Hutchinson's mental conditions have worsened over time, meaning that he would have been more impaired between 2005 and 2009, when the Eleventh Circuit said he was not diligent, than he was at trial. *See* NDFL-ECF 91-1 at 77 (neurocognitive disorder is marked by evidence of a cognitive decline from a previous level of performance). The proffer indicates that Mr. Hutchinson suffers from a permanent mental impairment—brain damage that impacts reasoning, judgment, language-based critical thinking, and memory functions. NDFL-ECF No. 91-1 at 158. Thus, his proffer detailing his poor mental condition before 2005 and after 2009 provides evidence of his mental functioning in the interim. *See, e.g.*, *Justus v. Clarke*, 78 F.4th 97, 114 (4th Cir. 2023) (finding the petitioner entitled to equitable tolling because earlier and later records sufficiently establish a lifelong mental illness during the tolling period). Contrary to the Eleventh Circuit's ruling, reasonable judges could at least debate whether, under the totality of circumstances, the extensive proffered evidence of Mr. Hutchinson's chemical and blast-related injuries sufficiently raised a factual issue over the connection between his mental impairments and the timing of his federal filing.

The Eleventh Circuit overstepped the COA standard in failing to grant an appeal on Mr. Hutchinson's request for an evidentiary hearing regarding his Rule 60(b)(6) motion. The Court instead impermissibly skipped to a merits-based analysis of the causal-connection issue. But as this Court has often reminded, the COA inquiry is "threshold" and "not coextensive with a merits analysis." *Buck*, 580 U.S. at 115. It does not "require a showing that the appeal will succeed." *Miller-El*, 537 U.S. at 337. While COA analysis involves an "overview" of the claims and a "general assessment of their merits," it "does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it." *Id.* at 336. In other words, the COA inquiry is not and cannot be outcome-focused. "Meritorious appeals are a subset of those in which a certificate should issue, not the full universe of such cases." *Jordan v. Fisher*, 576 U.S. 1071 (2015) (Sotomayor, J., dissenting from the denial of certiorari) (internal quotation omitted).

Here, Mr. Hutchinson's proffer raised sufficient factual issues for an evidentiary hearing on his Rule 60(b) motion. This Court should not allow a situation where a wounded combat veteran is still being blamed for failing to navigate the minutiae of highly technical issues of tolling and federalism from death row that have vexed the bench and bar for decades. Now that new information about Mr. Hutchinson's service-related injuries has come to light that casts the Eleventh Circuit's prior equitable tolling ruling in a whole new light, reasonable jurists could debate whether the district court abused its discretion in declining to reopen the equitable tolling issue under Rule 60(b)(6) so that an

evidentiary hearing could be conducted on the impact of the new revelations. This Court should grant certiorari to review the Eleventh Circuit's faulty COA denial.

III. This Court should reconsider "the continued application to death row inmates of the agency theory of the lawyer-client relationship" in the context of missed AEDPA deadlines due to attorney negligence

Although it was ignored by both the Eleventh Circuit and the district court, Mr. Hutchinson's Rule 60(b)(6) motion argued that the equities in this case have now shifted towards Judge Barkett's diligence analysis, as well as her criticism of the continued application of agency principles to death row inmates in the context of attorney negligence. *See* NDFL-ECF 91 at 18, 25-26; CA11-ECF 4 at 24-26, 35 (addressing *Hutchinson*, 677 F.3d at 1103 (Barkett, J., concurring in the result)). In evaluating this petition, the Court should take the opportunity to address this important issue, which has become one of basic fairness in Mr. Hutchinson's case.

In 2012, Judge Barkett did not join the panel's diligence holding, finding that Mr. Hutchinson "did everything any reasonable client would do to assure that his lawyers protected his interests, including imploring his lawyers to file his post-conviction pleadings in a timely matter." *Id.* at 1103. But as to the remaining analysis, she supported overruling agency principles that hold death row inmates responsible for their attorneys' negligence in missed deadline cases. *Id.* at 1103-04. Judge Barkett called for ending "the continued application to death row inmates of the agency theory of the lawyer-client relationship in this context." *Id.* at 104; *see also id.* at 1110 ("[T]o grant equitable tolling only in cases of complete lawyer

abandonment or something akin to gross negligence does not go far enough.") (citing *Holland*, 560 U.S. at 657-58 (Alito, J., concurring in the judgment)).

As another Eleventh Circuit judge has explained, in a case surveying the many missed AEDPA deadlines in Florida's capital cases, "state prisoners on death row have a right to federal habeas review, and this right should not depend upon whether their court-appointed counsel is competent enough to comply with AEDPA's statute of limitations" *Lugo*, 750 F.3d at 1217 (Martin, J., concurring in judgment). That is especially so given "the reality is that death row inmates' access to competent post-conviction legal representation is at best inconsistent and at worst non-existent and their ability to communicate freely and actively participate in their litigation is seriously compromised." *Hutchinson*, 677 F.3d at 1111.

Like Judge Barkett, this Court should "question whether strict adherence to the principle that a death row inmate must bear the consequences for his lawyer's negligence is fair or just." *Id.* The Court should not permit Mr. Hutchinson to be executed without any federal review based solely on the negligence of his lawyer and an unjust expectation of his own capabilities, particularly given the new information about his injuries. The Court should grant review to ensure that other capital petitioners like Mr. Hutchinson, particularly those with significant cognitive impairments, are not denied all federal habeas review due to no fault of their own.

Mr. Hutchinson, a decorated military combat veteran, was exposed to a myriad of hazards during his advanced training and deployment to the Gulf War. His experience on the front lines of a combat zone is so unique that leaving his case

unheard calls into question the promise of *Porter v. McCollum*, 558 U.S. 30, 43 (2009) ("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.").

CONCLUSION

The Court should grant the petition for a writ of certiorari, grant a stay of execution, and review the decision of the Eleventh Circuit.

Respectfully submitted,

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