*** 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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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

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INDEX TO APPENDIX

Eleventh Circuit Opinion
(April 23, 2025)

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-11271

JEFFREY GLENN HUTCHINSON,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 3:13-cv-00128-MW

Before JORDAN, BRANCH, and LUCK, Circuit Judges.

PER CURIAM:

Jeffrey Glenn Hutchinson moves for a certificate of appealability and for a stay of his execution scheduled for May 1, 2025. After careful review, we deny both motions.

I.

Hutchinson was convicted of first-degree murder, and sentenced to death, for "shotgunning to death" his girlfriend's three young children—Geoffrey, Amanda, and Logan. *Hutchinson v. Florida*, 677 F.3d 1097, 1098 (11th Cir. 2012). (He also shot his girlfriend, but he was not sentenced to death for this fourth murder. *Id.*) After his convictions and sentences were affirmed on direct appeal, *Hutchinson v. State*, 882 So. 2d 943, 948 (Fla. 2004), Hutchinson petitioned the district court for a writ of habeas corpus under 28 U.S.C. section 2254. *Hutchinson*, 677 F.3d at 1098. The district court dismissed the petition because it was untimely, *Hutchinson v. Florida*, No. 5:09-CV-261-RS, 2010 WL 3833921, at *1 (N.D. Fla. Sept. 28, 2010), and Hutchinson had not met his burden to show that the one-year statute of limitations was equitably tolled, *id.* at *1–2.

We affirmed. *Hutchinson*, 677 F.3d at 1103. Hutchinson's habeas petition, we explained, was filed almost four years after the one-year statute of limitations had run. *Id.* at 1098–99. And while he would be entitled to equitable tolling if he showed "(1) that he ha[d] been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way," *id.* at 1100 (quoting *Holland*

v. Florida, 560 U.S. 631, 649 (2010)), Hutchinson "ha[d] not carried his burden of showing that he pursued his rights diligently," *id.* at 1103. "[H]is affidavit and the other materials" showed "that he had in hand a petition that he could have re-labeled and filed *pro se* in federal court within three weeks after the one-year limitations period ran, but he waited" almost four years "before he filed a *pro se* federal habeas petition. That [was] not reasonable diligence." *Id.*

Thirteen years have gone by, and on the eve of his execution, Hutchinson moved under Federal Rule of Civil Procedure 60(b)(6) for relief from the district court's judgment dismissing his federal habeas petition.[1] His motion was based on "new revelations" that he was suffering from mild neurocognitive disorder and Gulf War illness. These new revelations, Hutchinson wrote, were "extraordinary circumstances" that cast doubt on the equitable tolling ruling. The district court denied the motion and denied a certificate of appealability.

II.

Hutchinson appealed the denial of his rule 60(b)(6) motion, and he has now moved for a certificate of appealability (COA) in our court. We "may issue" one "only if" he "ma[kes] a substantial

[1] This is Hutchinson's second rule 60(b)(6) motion. The district court denied the first one, we denied his motion for a certificate of appealability, and the United States Supreme Court denied his petition for writ of certiorari. *Hutchinson v. Dixon*, 142 S. Ct. 787 (2022).

showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

"[T]o grant a COA on a procedural question . . . we must evaluate not only the merit of the procedural arguments, but also the merit of the underlying claims." *Franklin v. Hightower*, 215 F.3d 1196, 1199 (11th Cir. 2000). "If 'jurists of reason' would not find it debatable both whether 'the petition states a valid claim of the denial of a constitutional right' and whether 'the district court was correct in its procedural ruling,' then we may not grant a COA on a procedural issue." *Id.* (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)); *see also Gonzalez v. Sec'y for Dep't of Corr.*, 366 F.3d 1253, 1267 (11th Cir. 2004) (en banc) (applying the *Slack* framework to cases that "involve[d r]ule 60(b) procedural issues in addition to merits issues"), *aff'd*, 545 U.S. 524 (2005). "Because [r]ule 60 'vests wide discretion in [district] courts,' we ask whether a reasonable jurist could conclude that the district court abused its discretion." *Mills v. Comm'r, Ala. Dep't of Corrs.*, 102 F.4th 1235, 1239 (11th Cir. 2024) (second alteration in original) (quoting *Buck v. Davis*, 580 U.S. 100, 123 (2017)).

For three reasons, reasonable jurists could not conclude that the district court abused its discretion in denying Hutchinson's rule 60(b)(6) motion.

A.

First, "[r]ule 60(b)(6) states that a court may grant relief only 'for . . . any *other* reasons' than those listed in clauses (b)(1) through (b)(5)." *Id.* at 1240 (quoting Fed. R. Civ. P. 60(b)(6)). "Rule 60(b)(6)

provides a catchall for 'any other reason that justifies relief.' This last option is available only when [r]ules 60(b)(1) through (b)(5) are inapplicable." *Kemp v. United States*, 596 U.S. 528, 533 (2022). Rule 60(b)(6) "grants federal courts broad authority to relieve a party from a final judgment . . . provided that the motion . . . is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988).

Hutchinson's rule 60(b)(6) motion was premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)—specifically, clause (b)(2), which allows the district court to relieve a party from a judgment based on "newly discovered evidence." Hutchinson's "motion focuse[d] entirely on 'new evidence,' 'new revelations,' and 'new information,' pertaining to [his] brain damage and Gulf War [i]llness." Because Hutchinson's rule 60(b)(6) motion was premised on the "newly discovered evidence" ground for relief in clause (b)(2), the district court did not have "authority to relieve" him from the judgment dismissing his habeas petition. *See id.*

This is true even though Hutchinson's motion sought relief from a judgment entered not as a result of a trial or penalty phase, but because of "some later post-conviction matter." Although "[s]uch circumstances will rarely occur in the habeas context," "[r]ule 60(b) has an unquestionably valid role to play in habeas cases," and "function[s] as legitimate in habeas cases as in run-of-the-mine civil cases." *Gonzalez*, 545 U.S. at 534–35; *see also James v.*

Sec'y, Dep't of Corr., 130 F.4th 1291, 1295 (11th Cir. 2025) (explaining that rule 60(b)(2) may afford relief when "consideration of the new evidence would probably produce a new result—*i.e.*, would warrant the application of equitable tolling or the actual innocence gateway").

B.

Second, 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." *See* Fed. R. Civ. P. 60(c)(1). "What constitutes reasonable time necessarily depends on the facts in each individual case." 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2866, at 536 (3d ed. 2012) (footnote omitted).

Here, Hutchinson's motion depended on his mild neurocognitive disorder and Gulf War illness. But, as one of his experts explained, the neurocognitive impacts of exposure to "repetitive low-level blasts" had "broad public awareness . . . within the past five years." Yet, Hutchinson did not see a doctor about these impacts until October 2024. And even then, once he had his expert's November 2024 report, he waited five months—only after his death warrant was signed—to file his rule 60(b)(6) motion.

The delay is even less reasonable for his Gulf War illness. At Hutchinson's sentencing, in 2001, multiple experts testified about the effects of Gulf War illness. *See Hutchinson*, 882 So. 2d at 949 ("The defense presented evidence of mitigation, including but not limited to evidence involving Hutchinson's diagnosis of Gulf War

Syndrome . . . ."). For example, Dr. William Baumzweiger, who saw Hutchinson in 1996, 1998, and 1999, diagnosed him "with Gulf War Disorder with neurological damage." The neurological damage, Dr. Baumzweiger reported, caused: a personality change including obsessions and compulsions; a decline in cognitive skills; concentration problems; and irritability. Hutchinson, in other words, has known about the neurological damage caused by his illness for more than twenty years and, yet, he did not move for relief from the judgment based on it until April 2025.

Even if new science came along giving greater insights into the impacts of Gulf War illness, those insights were known by 2021—at the latest. Still, Hutchinson waited four more years, on the eve of his execution, to make his motion based on these insights. That delay was not reasonable.

C.

Third, even if Hutchinson made his rule 60(b)(6) motion within a reasonable time, he did not "show 'extraordinary circumstances' justifying the reopening of" the judgment dismissing his habeas petition as untimely. *See Gonzalez*, 545 U.S. at 535. He has not shown extraordinary circumstances because the new evidence about his mild neurocognitive disorder and Gulf War illness was not connected to his ability to file a timely petition. *See Lawrence v. Florida*, 421 F.3d 1221, 1226 (11th Cir. 2005), *aff'd*, 549 U.S. 327 (2007) (finding no "extraordinary circumstances present in his case to warrant the application of equitable tolling" partly because

"Lawrence cannot establish a causal connection between his alleged mental incapacity and his ability to file a timely petition").

In 2012, we held that Hutchinson was not entitled to equitable tolling because he did not pursue his rights diligently. *Hutchinson*, 677 F.3d at 1103. We reached that conclusion based on "his affidavit and the other materials." *Id.* Those materials showed that Hutchinson repeatedly expressed concerns to his counsel about missing the one-year limitations period for filing a habeas petition. *Id.* at 1111–12 (attaching his affidavit). As the one-year deadline approached, Hutchinson, "in no uncertain terms," directed his counsel to file his postconviction motion, and that if they didn't, he would file the motion himself. *Id.* at 1112–13. Hutchinson already had a postconviction motion drafted before the one-year deadline had expired. *Id.* at 1113. But instead of filing it, even though he knew the limitations period had lapsed and even though he already had a draft petition "in hand," Hutchinson waited almost four years to file his federal habeas petition. *Id.* at 1103.

Nothing in Hutchinson's rule 60(b)(6) motion impacted these facts, which supported the conclusion that he did not pursue his habeas rights diligently. As the district court found, the expert reports he included with his motion "say nothing about how [his] mental impairments and brain injuries have impacted his ability to communicate with counsel, navigate the legal system, or comply with filing deadlines." According to his experts, Hutchinson had mental impairments as early as the late 1990s. Even so, Hutchinson "was (1) able to communicate with his attorneys, (2) aware that his

federal habeas petition had an imminent statute of limitations deadline, and (3) aware of the significance of that deadline," and "he had prepared his own complete petition setting out all of the claims that he wanted to raise." While we now know more about the diagnosis for his mental health disorder, and we know more about the scope of his illness, this knowledge doesn't change the facts from Hutchinson's affidavit or connect his disorder and illness to his ability to file a timely habeas petition.

Hutchinson responds that his mental condition has worsened over time, "meaning that he would have been more impaired between 2005 and 2009, when [we] said he was not diligent." But his expert explained that his mental condition has not worsened. His post-traumatic stress disorder "symptoms" have "improved" and are "in remission." And because Hutchinson has been in a "highly structured environment," "his cognitive deficits may appear less impactful in his current day-to-day activities than they would be if he were in the civilian world."[2]

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[2] Hutchinson also responds that the district court failed to address two "other factors supporting [his] motion." First, he writes, the district court "did not address [his] assertion that the equities in his case have now shifted." But it did. After reviewing the new evidence, the district court found that "the evidence [] Hutchinson has proffered does not change anything with respect to . . . the equitable tolling issue," and Hutchinson "failed to demonstrate extraordinary circumstances based on new evidence concerning underlying brain injuries and Gulf War [i]llness sustained while serving in the military."

Second, Hutchinson contends that the district court "failed to address the context of what has occurred in state court since [he] attempted to present new information on his war injuries there." But this factor runs into the same

D.

There's one other reason why we must deny Hutchinson's motion for a certificate of appealability. Even if the district court's procedural ruling denying Hutchinson's rule 60(b)(6) motion was debatable, Hutchinson has not shown that his underlying federal habeas petition stated a debatable claim of the denial of a constitutional right. Although vaguely referring to prior COAs, *see Griffin v. Sec'y, Fla. Dep't of Corr.*, 787 F.3d 1086, 1094–96 (11th Cir. 2015), his motions—here and below—do not identify a single debatable claim from his federal habeas petition. The Florida Supreme Court rejected each of his constitutional claims, *Hutchinson*, 882 So. 2d at 950–59; *Hutchinson v. State*, 17 So. 3d 696, 701–02 (Fla. 2009), and we have not seen anything that indicates these determinations resulted in "extreme malfunctions in the state criminal justice systems" that would entitle him to federal habeas relief under the Anti-Terrorism and Effective Death Penalty Act. *See Greene v. Fisher*, 565 U.S. 34, 43 (2011) (quotation omitted).

III.

For these reasons, we deny Hutchinson's motion for a certificate of appealability. Because his COA motion is denied, we

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problem as his new evidence. The state court proceedings in 2025 are not extraordinary circumstances authorizing the district court to revisit the equitable tolling ruling because they are not causally connected to Hutchinson's ability to file a timely petition twenty years earlier. Quite simply, the state court litigation over vacating Hutchinson's conviction and sentence does not bear on whether Hutchinson was diligent in pursuing his federal habeas petition in 2005.

deny as moot his motion to stay his execution. *See Mills*, 102 F.4th at 1237 ("Because no reasonable jurist could conclude that the district court abused its discretion, we deny Mills's application and deny as moot his motion to stay his execution."); *id.* at 1241 ("We DENY Mills's application for a certificate of appealability and DENY AS MOOT his motion to stay his execution.").

MOTION FOR CERTIFICATE OF APPEALABILITY DENIED; MOTION FOR STAY OF EXECUTION DENIED AS MOOT.

JORDAN, Circuit Judge, Concurring:

I concur in Parts I, II.C, and III of the majority's order. I agree that reasonable jurists would not debate Mr. Hutchinson's failure to demonstrate the extraordinary circumstances necessary for Rule 60(b)(6) relief. Understanding that our COA analysis is not a merits determination, *see Buck v. Davis*, 580 U.S. 100, 115 (2017), Mr. Hutchinson has not explained why there is a causal connection between the newly discovered evidence concerning his mental health problems and brain injuries and his failure to timely file a federal habeas corpus petition. As a result, the district court's denial of his Rule 60(b) motion is not debatable. Having resolved this dispositive issue against Mr. Hutchison, I would stop there and go no further.

The majority provides three additional reasons why it believes that a certificate of appealability is not warranted, but I share Judge Newsom's view that, "[a]t least in appellate courts, issuing alternative holdings is often just a bad idea." *United States v. Files*, 63 F.4th 920, 933 (11th Cir. 2023) (Newsom and Tjoflat, J.J., concurring). *See also United States v. Horn*, 129 F.4th 1275, 1306 (11th Cir. 2025) (Jordan, J., concurring in part and concurring in the judgment) (agreeing with Judge Newsom); *Gose v. Native Am. Services Corp.*, 109 F.4th 1297, 1313 n.20 (11th Cir. 2024) (setting out the problems that can result from issuing alternative holdings). The better practice in most cases is to "decide no more than is necessary to resolve" the matter at hand, *Harbourside Place, LLC v. Town of*

Jupiter, 958 F.3d 1308, 1322 (11th Cir. 2020), and I would follow that course of action here.

District Court Order
(April 16, 2025)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

JEFFREY GLENN HUTCHINSON,

***Petitioner*,**

v.

Case No.: 3:13cv128-MW
CAPITAL CASE

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

_____/

ORDER DENYING RULE 60(b) MOTION
AND EMERGENCY MOTION FOR STAY OF EXECUTION[1]

In 2001, Petitioner Jeffrey Hutchinson was convicted in Florida state court for the murders of his girlfriend, Renee Flaherty, and her three children, Geoffrey, Amanda, and Logan. He was sentenced to life in prison for the murder of Renee and to death for each of the murders of the children. The Governor has signed a death warrant and Mr. Hutchinson's execution is scheduled for May 1, 2025.

Mr. Hutchinson is also a combat veteran, having served his country as an active-duty soldier from 1986 to 1994. Before the events giving rise to his convictions and death sentences, he was exposed to poisonous sarin gas and blast overpressure injuries while deployed to Saudi Arabia as part of Operations Desert

[1] Given Mr. Hutchinson's scheduled execution on May 1, 2025, this Court is issuing a truncated order on an expedited basis to allow for time for a meaningful opportunity to appeal.

Shield and Desert Storm. Expert reports indicate that Mr. Hutchinson has suffered from PTSD, sarin-gas-induced Gulf War Illness, and traumatic brain injuries from being near blasts during his military service.

Before this Court are Petitioner Jeffrey Hutchinson's counseled motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b), ECF No. 91, and emergency motion for stay of execution, ECF No. 92. Mr. Hutchinson asserts that relief is available under Rule 60(b)(6) for reopening of the equitable tolling issue with respect to his 2009 petition for writ of habeas corpus filed under 28 U.S.C. § 2254, which this Court's predecessor, Judge Smoak, dismissed as untimely. Mr. Hutchinson contends extraordinary circumstances exist based on new information concerning his brain injuries and Gulf War Illness, alleging risk of injustice to the parties and unfairness in the prior § 2254 proceedings. Based on these asserted grounds, he contends that his first § 2254 petition filed in 2009, which this Court previously dismissed as untimely, should be reopened.[2] He asks this Court to stay his execution in light of his pending Rule 60(b) motion. For the reasons that follow, Mr. Hutchinson's amended Rule 60(b) motion and motion for stay of execution are due to be denied.

[2] *See Hutchinson v. Florida*, Case No.: 5:09cv261/RS, ECF No. 39 (N.D. Fla. Sept. 28, 2010) (Smoak, J.), *aff'd* 677 F.3d 1097 (11th Cir. 2012).

Background

After a jury trial in 2001, Mr. Hutchinson was convicted of murdering his girlfriend, Renee Flaherty, and her three children, Geoffrey, Amanda, and Logan. He was sentenced to life in prison for the murder of Renee and to death for each of the murders of the children. The Florida Supreme Court affirmed his convictions and sentences in *Hutchinson v. State*, 882 So. 2d 943 (Fla. 2004). He filed a motion for postconviction relief in state court, which was denied, and he appealed. The Florida Supreme Court affirmed denial of his claims. *Hutchinson v. State*, 17 So. 3d 696 (Fla. 2009). The state postconviction motion was filed in 2005 after the one-year limitations period for filing a § 2254 petition for writ of habeas corpus expired and therefore did not toll the running of the limitations period.

Almost four years later, in 2009, Mr. Hutchinson filed his first federal habeas petition, pro se, in *Hutchinson v. State of Florida*, Case No.: 5:09cv261-RS. Counsel was appointed and filed an amended § 2254 petition, which Judge Smoak dismissed as time barred. The one-year statute of limitations set forth in the Antiterrorism and Effective Death Penalty Act (AEDPA) expired in 2005 before Mr. Hutchinson filed his pro se postconviction motion in State court, and Judge Smoak found no basis to apply equitable tolling. ECF No. 39. The Eleventh Circuit Court of Appeals affirmed, concluding that the limitations period was not equitably tolled by counsel's

miscalculation in the timing of filing the state postconviction motion. *Hutchinson v. Florida*, 677 F.3d 1097 (11th Cir. 2012).

The Eleventh Circuit also found that Mr. Hutchinson had not acted with due diligence in filing his § 2254 petition even though he knew shortly after his postconviction motion was filed in 2005 that the motion would not toll the running of the federal limitations period. *Id.* at 1102. In so ruling, the Eleventh Circuit discussed an affidavit that Mr. Hutchinson filed with this Court, and which set out his concerns about the statute of limitations and the great lengths he went to have his attorneys file a timely Rule 3.851 motion in state court. Id. at 1101–03. The Eleventh Circuit determined that Mr. Hutchinson diligently attempted to have his state collateral motion filed in time to give him the benefit of § 2244(d) statutory tolling, but his almost four-year delay in filing a federal habeas petition after he learned his attorneys filed an untimely Rule 3.851 motion did not demonstrate "reasonable diligence." *Id*. at 1103.

On March 21, 2013, Mr. Hutchinson, pro se, filed another § 2254 petition for writ of habeas corpus challenging the legality of the same state court judgment that was the subject of the first § 2254 petition he filed in 2009. *See* 3:13cv128-MW, ECF No. 1. This time, the § 2254 petition was assigned to the undersigned judge. On April 24, 2013, this Court granted Respondent's motion to dismiss the petition as a successive petition not authorized by the Eleventh Circuit Court of Appeals, as

required by 28 U.S.C. § 2244(b)(3)(A). ECF No. 7. Mr. Hutchinson's pro se motion to reconsider and to appoint counsel filed on May 10, 2013, ECF No. 8, construed as a motion to alter or amend under Rule 59(e), was denied without prejudice. ECF No. 13.

Mr. Hutchinson then filed a pro se motion for relief from judgment pursuant to Rule 60(b) seeking to reopen the first habeas petition and requested appointment of counsel. ECF No. 17. Respondent agreed that counsel should be appointed, and, on December 11, 2014, the Court appointed the Capital Habeas Unit of the Federal Public Defender to investigate and determine if any legally sufficient grounds could be presented to require the first habeas petition to be reopened under Rule 60(b). ECF Nos. 18, 23. Although the pro se motion for relief under Rule 60(b) was denied by order on December 18, 2014, the denial was without prejudice to appointed counsel filing another Rule 60(b) motion or other pleading alleging any legal bases for relief. ECF No. 24.

On motion of appointed counsel, ECF No. 25, the order denying the Rule 60(b) motion was vacated on January 14, 2015, and Mr. Hutchinson's Rule 60(b) motion was reinstated and held in abeyance pending evaluation by counsel. ECF No. 26. In that order, the case was stayed, and Mr. Hutchinson's counsel was directed to file status reports setting forth the status of the evaluation and the intent to amend, supplement, or withdraw the pending Rule 60(b) motion. Mr. Hutchinson's Capital

Habeas Unit counsel was also granted leave to exhaust a claim for state court relief under *Hurst v. Florida*. ECF No. 69. *Hurst* relief was denied in state court on March 15, 2018. *Hutchinson v. State*, 243 So. 3d 880 (Fla.), *cert. denied*, *Hutchinson v. Florida*, 139 S. Ct. 261 (2018). After conclusion of discovery for purposes of evaluation and amendment of the Rule 60(b) motion, the stay was lifted on February 25, 2020. ECF No. 77.

On May 26, 2020, Mr. Hutchinson's appointed counsel filed an amended Rule 60(b) motion. ECF No. 78. The motion sought relief from the dismissal of his 2009 petition for writ of habeas corpus. This Court denied the amended Rule 60(b) motion on January 15, 2021. ECF No. 82. Mr. Hutchinson appealed, and the Eleventh Circuit denied a certificate of appealability for the same reasons this Court denied both his amended Rule 60(b) motion and motion for a certificate of appealability. ECF Nos. 84 and 88.

On March 31, 2025, Governor DeSantis signed a death warrant for Mr. Hutchinson, and his execution is now scheduled for May 1, 2025. ECF No. 91 at 1. On April 11, 2025, Mr. Hutchinson filed another motion for relief from judgment under Rule 60(b), asserting new evidence concerning Mr. Hutchinson's brain damage and mental health has come to light that, had it been known at the time of the Eleventh Circuit's prior equitable tolling rulings, would have "severely undermined the Eleventh Circuit's exclusive reliance on Mr. Hutchinson's purported

lack of diligence in navigating the complex rulings of tolling." ECF No. 91 at 1–2. Respondent filed an expedited response to the motion on April 14, 2025. ECF No. 96. Mr. Hutchinson filed a reply in support of his motion on April 16, 2025. ECF No. 97.

Rule 60(b)

Federal Rule of Civil Procedure 60(b) allows a party to seek relief or reopen his civil case under these circumstances: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that with due diligence could not have been discovered in time for a new trial; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; and (6) "any other reason that justifies relief." Fed. R. Civ. P. 60(b). "A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment." Fed. R. Civ. P. 60(c)(1). Thus, a motion filed under the catchall provision of Rule 60(b)(6) must be filed within a "reasonable time . . . after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1).

Rule 60(b)(6) requires the movant to "show 'extraordinary circumstances' justifying the reopening of a final judgment." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (quoting *Ackermann v. United States,* 340 U.S. 193, 199 (1950)). Extraordinary circumstances that warrant the reopening of a judgment "will rarely

occur in the habeas context." *Id.* Even then, whether to grant the requested relief "is a matter for the district court's sound discretion." *Lugo v. Sec'y, Fla. Dep't of Corr.*, 750 F.3d 1198, 1210 (11th Cir. 2014).

Grounds Presented for Relief

Mr. Hutchinson requests the Court to revisit Judge Smoak's equitable tolling analysis based on "new revelations about Mr. Hutchinson's mental impairment . . . which alters the equitable tolling landscape and calls into question the courts' prior time-bar rulings." ECF No. 91 at 7. In other words, Mr. Hutchinson asserts extraordinary circumstances warrant relief from Judge Smoak's prior time-bar ruling and that this Court should reopen the § 2254 habeas petition he filed in 2009 and consider it, in the first instance, on the merits.

Mr. Hutchinson asserts that new expert reports accompanying a postconviction motion filed in state court in January 2025 demonstrate that Mr. Hutchinson has a mild neurocognitive disorder due to multiple traumatic brain injuries, many of which were suffered during his time in the military. *Id*. at 16. This neurocognitive disorder exacerbated Mr. Hutchinson's PTSD symptoms and offers a medical explanation for his actions "before, during, and after the crime." *Id*. In addition, his new expert reports also provide evidence that Gulf War Illness, which Mr. Hutchinson also suffers from, interferes with his cognitive and brain functions. *Id*. at 17.

Mr. Hutchinson contends that these new expert reports suggest Mr. Hutchinson's mental impairments may have affected his ability to "navigate the minutiae of highly technical issues of tolling and federalism from death row, particularly given that the federal courts themselves have struggled with these issues."[3] ECF No. 91 at 26.

In response, Respondent asserts the pending Rule 60(b)(6) motion is really an untimely motion for relief from judgment based on newly discovered evidence. ECF No. 96 at 3. In the alternative, Respondent asserts that Mr. Hutchinson's allegations are facially insufficient to warrant Rule 60(b)(6) relief or equitable tolling. *Id*. This Court disagrees with Respondent as to the first point. However, this Court agrees with Respondent as to the second, as set out in more detail below.

Rule 60(b)(2) allows for relief from judgment based on newly discovered evidence that, with reasonable diligence, could not have been discovered at the time judgment was entered. Fed. R. Civ. P. 60(b)(2). A motion under Rule 60(b)(2) must be made within a year after the entry of the judgment, order, or date of the proceeding. Fed. R. Civ. P. 60(c)(1). Here, Mr. Hutchinson's motion focuses entirely on "new evidence," ECF No. 91 at 5, "new revelations," *id*. at 7, and "new

[3] To be clear, the question here is whether Mr. Hutchinson can establish that his mental impairment prevented him from filing a timely § 2254 petition, *see Echemendia v. United States*, 710 F. App'x 823, 827 (11th Cir. 2017), not whether confusion about deadlines amounts to extraordinary circumstances warranting relief from judgment.

information," *id*. at 16, pertaining to Mr. Hutchinson's brain damage and Gulf War Illness. But Mr. Hutchinson points out that Rule 60(b)(2) relief is directed at seeking a new trial—not for reconsidering some other post-conviction issue, such as entitlement to equitable tolling. Mr. Hutchinson points to the Eleventh Circuit's decision in *Waddell v. Hendry Cnty. Sheriff's Office*, 329 F.3d 1300, 1309 (11th Cir. 2003), which sets out the five-factor test governing relief under Rule 60(b)(2) to support the argument that Respondent is misconstruing their motion as arising under Rule 60(b)(2). In *Waddell*, the Eleventh Circuit notes that a movant must demonstrate, among other things, that the new evidence "must not be merely cumulative or impeaching," that it "must be material," and that "the evidence must be such that a new trial would probably produce a new result." *Id*. (citing *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1316 (11th Cir. 2000)). These factors suggest that Rule 60(b)(2) provides relief solely for relief from judgment when a petitioner believes newly discovered evidence would have materially affected the outcome of a trial or penalty phase, not some later post-conviction matter. Accordingly, this Court agrees with Mr. Hutchinson that his Rule 60(b) motion is properly brought under Rule 60(b)(6), and not Rule 60(b)(2), and is therefore not untimely.

Nonetheless, this Court agrees with Respondent that Mr. Hutchinson's allegations are facially insufficient to demonstrate extraordinary circumstances for

Rule 60(b)(6) relief or entitlement to equitable tolling. Mr. Hutchinson contends that the new revelations regarding his brain injuries and cognitive impairment casts the Eleventh Circuit's original equitable tolling ruling into doubt, and thus, present extraordinary circumstances for relief from judgment and entitlement to equitable tolling. This Court disagrees because, as explained in more detail below, Mr. Hutchinson's new evidence fails to present a factual question as to whether his mental health and brain injury is causally connected to his failure to file a timely federal habeas petition.

To start, this Court recognizes that "under the appropriate circumstances," "mental illness can equitably toll the AEDPA statute of limitations," *Bolarinwa v. Williams*, 593 F.3d 226, 231 (2d Cir. 2010), but it "does not toll a filing deadline *per se*," *id*. at 232. *See also Hunter v. Ferrell*, 587 F.3d 1304, 1308 (11th Cir. 2009). Instead, determining equitable tolling is a highly case-specific inquiry. *Compare Lawrence v. Florida*, 421 F.3d 1221, 1226–27 (11th Cir. 2005) (rejecting argument that petitioner who had an IQ of 81 and suffered from mental impairments his entire life warranted equitable tolling where petitioner failed to establish a causal connection between alleged mental incapacity and ability to file timely petition) *and Hunter*, 587 F.3d at 1309–10 (holding that unrebutted evidence that petitioner suffered from "chronic, irreversible mental retardation," was "illiterate," suffered from "severe expressive speech aphasia which makes it difficult for him to

communicate intelligibly," and was "borderline competent to stand trial" based on the assumption that he would have access to an attorney, was sufficient to raise a factual issue as to whether a causal connection existed between petitioner's mental impairment and his ability to file a timely § 2254 petition). A petitioner has the burden to demonstrate a causal connection between an alleged mental impairment and his ability to file a timely petition. *Lawrence*, 421 F.3d at 1226.

Here, Mr. Hutchinson points to new reports from recent evaluations demonstrating his mild[4] neurocognitive disorder and Gulf War Illness both have affected his cognitive function. Mr. Hutchinson argues that these effects "caused a range of symptoms that would have impeded his ability to fully grasp arcane rules of procedure and federalism." ECF No. 91 at 21. However, these reports fail to provide a causal connection to his failure to file a timely federal habeas petition twenty years ago, such that he should be entitled to reconsideration of the equitable tolling issue.[5]

[4] By referring to Mr. Hutchinson's neurocognitive disorder as "mild," this Court is in no way trying to minimize the nature of the condition. Instead, this Court recognizes that the term "mild" is a diagnostic term.

[5] Moreover, the record belies the argument that there is a causal connection, given Mr. Hutchinson's demonstrated understanding, in 2005, of the impending statute of limitations and the lengths to which he went to have his attorneys protect his rights. *See* ECF No. 36-1 in Case No.: 5:09cv261-RS (Mr. Hutchinson's affidavit setting out the discussions he had with his attorneys in 2004 and 2005 regarding his federal habeas filing deadline); *see also Hutchinson*, 677 F.3d at 1101–02. In addition, Mr. Hutchinson's pending motion outlines Mr. Hutchinson's "reasonable assumption," in 2005, about filing deadlines, ECF No. 91 at 25, his conditioning to follow rules and regular order, *id*. at 25 n.7, and his diligence in urging his attorneys to file a state motion that would have tolled his federal habeas deadline, *id*. at 24. But these arguments only undermine the

The reports at issue suggest that Mr. Hutchinson's previously undiagnosed mental impairments affected his memory, impulse control, and anger management abilities, thus providing a medical explanation for the crimes and compelling mitigation evidence when it comes to the penalty phase. But Mr. Hutchinson's new evidence does not tie his neurocognitive disorder to his ability to comply with a filing deadline.[6] Indeed, the reports say nothing about how Mr. Hutchinson's mental impairments and brain injuries have impacted his ability to communicate with counsel, navigate the legal system, or comply with filing deadlines. At most, Mr. Hutchinson's attorneys extrapolate that the adverse effects he experienced before he was convicted of murder in 2001 would have worsened by 2005 such that they prevented him from filing a timely federal habeas petition. But supposition, absent

assertion that his mental condition would have so deteriorated by 2005 that it prevented him from filing a timely federal habeas petition. In short, the evidence Mr. Hutchinson has proffered does not change anything with respect to the Eleventh Circuit's prior consideration of the equitable tolling issue, because it offers no factual basis to question the Eleventh Circuit's finding that despite Mr. Hutchinson's demonstrated diligence in urging his attorneys to file a timely 3.851 motion to toll his federal habeas deadline, Mr. Hutchinson chose to pursue his state court litigation and wait to pursue federal habeas relief almost four years after his deadline expired.

[6] The reports were submitted to a Florida state court with Mr. Hutchinson's successive motion to vacate judgment and sentence in support of his claim that "newly discovered evidence of Mr. Hutchinson's brain damage would have affected the jury's consideration of his voluntary intoxication defense and affected the balance of aggravating and mitigating circumstances," ECF No. 91-1 at 8. The suggestion that because these reports provide a medical explanation for Mr. Hutchinson's actions "before, during, and after the crime," ECF No. 91 at 16 (quoting *id*. at 9), they may serve as a basis to find his mental impairments prevented him from filing a timely habeas petition years later is plainly insufficient absent any evidence demonstrating such a connection.

evidence to support the claim, is not a basis for relief, nor does such speculation create an issue of fact requiring an evidentiary hearing.[7]

Moreover, the evidence submitted in no way changes anything with respect to the prior equitable tolling ruling. Judge Smoak and the Eleventh Circuit relied upon Mr. Hutchinson's own affidavit, which demonstrated that prior to the statute of limitations running on Mr. Hutchinson's § 2254 petition, he was (1) able to communicate with his attorneys, (2) aware that his federal habeas petition had an imminent statute of limitations deadline, and (3) aware of the significance of that deadline. *See Hutchinson*, 677 F.3d at 1101. Mr. Hutchinson's affidavit also demonstrates that he had prepared his own complete petition setting out all of the claims that he wanted to raise in 2005, but he chose to finish litigating his remaining state claims in state court before filing a pro se federal habeas petition almost four years later. *Id*. at 1102.

In short, Mr. Hutchinson's circumstances stand in stark contrast to other cases where petitioners were able to demonstrate a causal connection between a mental impairment and an untimely habeas petition. *See, e.g., Hunter*, 587 F.3d at 1309–10

[7] Indeed, one of the new reports indicates that Mr. Hutchinson was competent to decide whether to proceed with an evaluation as late as November 2024 and that, while he continues to have neurocognitive impairment, his PTSD symptoms have improved over time and his cognitive deficits may appear less impactful in his current day-to-day activities than they would if he were in the civilian world. *See* ECF No. 91-1 at 37–38, 83. In other words, Mr. Hutchinson's own expert reports conflict with Mr. Hutchinson's attorneys' suggestion that his mental state must have deteriorated over time such that he could not have timely filed a federal habeas petition in 2005.

(petitioner raised factual issue regarding causal connection where petitioner suffered from "chronic, irreversible mental retardation," was "illiterate," suffered from "severe expressive speech aphasia which makes it difficult for him to communicate intelligibly," and was "borderline competent to stand trial" based on the assumption that he would have access to an attorney). Unlike the petitioner in *Hunter*, Mr. Hutchinson has made no showing that his mild neurocognitive disorder and Gulf War Illness prevented him from filing a timely § 2254 petition. Instead, his circumstances are more like petitioners, like Anthony Whiting, who failed to demonstrate a causal connection between an asserted mental impairment and an untimely petition. *See Whiting v. McNeil*, Case No.: 4:08cv301-RH/WCS, 2009 WL 2460753, at *5 (N.D. Fla. Aug. 7, 2009) (holding that petitioner had failed to show that his "full scale IQ of 78, between borderline and low average, in any way made him unable to timely file").

Accordingly, Mr. Hutchinson has failed to demonstrate extraordinary circumstances based on new evidence concerning underlying brain injuries and Gulf War Illness sustained while serving in the military. His motion, ECF No. 91, is **DENIED**.

Certificate of Appealability

An appeal of the denial of a Rule 60(b) motion requires a certificate of appealability (COA). *Williams v. Chatman*, 510 F.3d 1290, 1294 (11th Cir. 2007);

Gonzalez v. Sec'y for Dept. of Corrections, 366 F.3d 1253, 1263 (11th Cir. 2004). A COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Further, a COA should not issue in the appeal from the denial of a Rule 60(b) motion unless the Petitioner shows, at a minimum, that it is debatable among jurists of reason whether the district court abused its discretion in denying the motion. *See, e.g.*, *Lambrix v. Sec'y, Fla. Dep't of Corr.*, 851 F.3d 1158, 1169 (11th Cir. 2017). Relief under Rule 60(b)(6) is available only in extraordinary circumstances. *Lambrix*, 851 F.3d at 1170. Mr. Hutchinson has failed to show an abuse of discretion in denial of the Rule 60(b) motion and has failed to make a substantial showing of the denial of a constitutional right. Issuance of a COA is therefore not warranted.

Standard for Stay of Execution

Finally, Mr. Hutchinson moves for a stay of execution to allow time for this Court to conduct an evidentiary hearing and rule on his Rule 60(b) motion. ECF No. 92. This Court may grant a stay of execution if Mr. Hutchinson establishes that (1) he has a substantial likelihood of success on the merits of his Rule 60(b) motion, (2) he will suffer irreparable injury unless the injunction issues, (3) the injunction would not substantially harm the other litigant, and (4) if issued, the injunction would not be adverse to the public interest. *Barwick v. Governor of Florida*, 66 F.4th 896, 900

(11th Cir. 2023) (quoting *Bowles v. Desantis*, 934 F.3d 1230, 1238 (11th Cir. 2019)). Mr. Hutchinson "must satisfy all of the requirements for a stay, including a showing of a significant possibility of success on the merits." *Barwick*, 66 F.4th at 900 (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)).

Here, Mr. Hutchinson has not demonstrated that he has a substantial likelihood of success on the merits of his Rule 60(b) motion given this Court's denial of the Rule 60(b)(6) motion. Because Mr. Hutchinson has not established a substantial likelihood of success on the merits of his Rule 60(b) motion, this Court need not consider the other stay factors. *See Barwick*, 66 F.4th at 902. However, for the sake of completeness, this Court agrees with Mr. Hutchinson that he would suffer irreparable injury if he was executed without being afforded an opportunity to be heard on the underlying federal habeas petition if he was entitled to equitable tolling. However, the balance of the stay factors weigh in the State's favor given Mr. Hutchinson's failure to demonstrate a substantial likelihood of success on the merits.

For the foregoing reasons,

IT IS ORDERED:

1. Mr. Hutchinson's counseled motion for relief from judgment under Federal Rule of Civil Procedure 60(b), ECF No. 91, is **DENIED**.

2. Mr. Hutchinson's emergency motion for stay of execution, premised on the need for additional time to consider the Rule 60(b) motion, ECF No. 92, is **DENIED**.
3. A certificate of appealability is **DENIED**.
4. The Clerk shall enter judgment stating, "Jeffrey Glenn Hutchinson's motion for relief from judgment under Federal Rule of Civil Procedure 60(b), ECF No. 91, is **DENIED**."
5. The Clerk shall close the file.

SO ORDERED on April 16, 2025.

s/Mark E. Walker
Chief United States District Judge