*** CAPITAL CASE ***

No. 24-7084

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

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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

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REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Respondent sides with the Eleventh Circuit in its extensive debate with the district judge over whether Mr. Hutchinson's Rule 60(b)(6) motion should have been construed as a Rule 60(b)(2) motion, BIO at 14-17, 19-20, but fails to explain how that debate itself did not require granting a COA. Under the COA standard, "a substantial showing of the denial of a right includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Here, the Eleventh Circuit was clear that it would have resolved Mr. Hutchinson's motion in a different manner, which should have led to a COA being granted, not denied.

Respondent also joins the Eleventh Circuit in a separate debate with both the district court and the prior Eleventh Circuit panel in this case over whether Mr. Hutchinson made a showing that one of his underlying substantive claims is debatable. BIO at 17-18. The district court rejected that argument, meaning that the issue could be debated by reasonable jurists. And Respondent fails to explain how the Eleventh Circuit itself could have granted a COA in 2011 to review the equitable tolling issue in the first place if it had not found at least one of Mr. Hutchinson's underlying claims debatable. *See* Pet. at 8. In effect, both Respondent and the Eleventh Circuit now dispute the prior panel's evaluation of the underlying petition, which should have been another reason to grant a COA, not deny one. Respondent also repeats the Eleventh Circuit's factual error that Mr. Hutchinson failed to identify any specific debatable claims in his petition, BIO at 17, then acknowledges that he actually did, and finally alleges that he was not specific

enough, BIO at 18. But the bottom line is that Respondent's and the Eleventh Circuit's views are reasonably debatable—meaning a COA was appropriate.

Respondent also stakes out the extreme position that equitable-tolling diligence can never be reviewed through Rule 60(b)(6), emphasizing that Mr. Hutchinson did not cite any precedent mirroring his circumstances. BIO at 18-19. But the nature of "extraordinary circumstances," as to both Rule 60(b)(6) and equitable tolling, is that the dynamics of the individual case are critical. As the Eleventh Circuit itself has held, there is "no exhaustive list of what qualifies as an extraordinary circumstance," and the context of each case must be evaluated individually. *Brown v. Sec'y, Fla. Dep't of Corr.*, 750 F. App'x 915, 929 (11th Cir. 2018). This Court too has emphasized that courts must conduct a holistic inquiry and consider a wide range of factors in determining whether extraordinary circumstances are present in a particular case. *Buck v. Davis*, 580 U.S. 100, 122-23 (2017). "These may include, in an appropriate case, the risk of injustice to the parties and the risk of undermining the public's confidence in the judicial process." *Id.* at 123 (internal quotations omitted). Here, Mr. Hutchinson's case presents the extraordinary circumstance of a combat veteran suffering from serious unknown impairments who was denied all federal habeas review based on a diligence analysis that has been totally undermined by intervening information and events.

Respondent does not address the serious concerns raised in Judge Barkett's concurrence regarding 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. *See* Pet. at 15-17. The most Respondent musters is a footnote stating that reconsidering the doctrine in that context would contravene *Maples v. Thomas*, 565 U.S. 266 (2012). BIO at 21 n.3. But this misses the point about Mr. Hutchinson's case—*Maples* was a case about whether attorney abandonment constituted extraordinary circumstances to justify equitable tolling. Here, the Eleventh Circuit extended equitable tolling to Mr. Hutchinson based on the negligence of his attorneys for blowing his AEDPA deadline. The violation of fundamental fairness occurred when the court then turned around and denied equitable tolling as to the period when, it said, Mr. Hutchinson should have known he must race to federal court with a pro se equitable tolling request immediately, rather than wait for the state postconviction proceedings to conclude. Respondent continues to defend that reasoning, *see* BIO at 9, despite now knowing that Mr. Hutchinson was suffering at the time from unknown combat-related impairments.

Respondent points out that Mr. Hutchinson previously filed a Rule 60(b) motion in the district court, supposedly exemplifying how such motions can be abused by counsel representing capital defendants. BIO at 16 n.1. But Respondent badly misleads on this point. First, Mr. Hutchinson's prior Rule 60(b) motion was filed in the district court pro se, before he had counsel appointed. After the district court appointed counsel for Mr. Hutchinson, it ordered newly appointed counsel to review the case and amend Mr. Hutchinson's Rule 60(b) motion. And the temporary stay of the Rule 60(b) litigation was not the result of any delay tactic, it was based on the recently decided *Hurst v. Florida*, 577 U.S. 92 (2016), which resulted in stays

for dozens of individuals in Florida to pursue potential remedies in state court. *Cf. Kemp v. United States*, 596 U.S. 528, 538 (2022) (finding in Rule 60(b) case that "the alleged specter of litigation gamesmanship and strategic delay is overstated.").

Finally, Respondent suggests that certiorari is not warranted because the Eleventh Circuit's order denying a COA is unpublished. BIO at 22. But this Court has often granted certiorari to review unpublished decisions, including in capital litigation involving Rule 60(b)(6). *See Buck*, 580 at 128 (granting certiorari and reversing the Fifth Circuit's unpublished denial of a COA in a Rule 60(b)(6) case). Because the Eleventh Circuit repeatedly overstepped the COA standard in its unpublished analysis, this Court should do the same here.

CONCLUSION

The Court should grant a stay of Mr. Hutchinson's execution and grant the petition for a writ of certiorari to review the decision below.

Respectfully submitted,

/s/ Sean Gunn
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