No. _____

IN THE

Supreme Court of the United States

JEFFREY GLENN HUTCHINSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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

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CAPITAL CASE

QUESTIONS PRESENTED

1. As the dissent below highlights, does "due process require[] more" than what has occurred in this death warrant case, including the unnoticed truncation of pending substantive review to accommodate an expedited schedule created by the arbitrary signing of a death warrant midway through active constitutional litigation?

2. Where a state's death penalty scheme vests in the Governor sole and absolute discretion for the timing, selection, and signing of a death warrant, does it violate fundamental fairness for the prosecution and victims' family to receive at least 10 days' advance notice of a 31-day death warrant, where the defense is not notified until hours after the warrant is issued?

3. Can a state opt out of any and all consideration of whether a particular death sentence violates the Eighth Amendment due to the aggregate facets of that individual's character and record, including catastrophic mental impairments resulting from his heroic military service?

LIST OF DIRECTLY RELATED PROCEEDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proceedings Regarding Competency to be Executed (under warrant)
Eighth Judicial Circuit Court, Bradford County, Florida
State v. Hutchinson, Case No. 04-2025-CA-163-CAAXMX
Judgment Entered: April 27, 2025 (finding competence to be executed)

Supreme Court of Florida (Case No. SC25-0590)
Hutchinson v. State
Judgment Entered: Pending

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CASES

STATUTES AND RULES

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

DECISION BELOW

The decision of the Florida Supreme Court denying Mr. Hutchinson's motion for postconviction relief and petition for a writ of certiorari is printed at 2025 WL 1198037 (Fla. Apr. 25, 2025), and is reproduced in the Appendix at A1.

JURISDICTION

The judgment of the Florida Supreme Court was entered on April 25, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Article VI provides in relevant part:

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

The Eighth Amendment provides:

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

The Fourteenth Amendment provides in relevant part:

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

STATEMENT OF THE CASE[1]

I. Introduction

Justice Labarga dissented from the Florida Supreme Court's decision below, emphasizing that "due process requires more" than what Florida has provided in this death warrant case. *Hutchinson v. State*, Nos. SC2025-517, SC2025-518, 2025 WL 1198037, at *7 (Fla. Apr. 25, 2025) (Labarga, J., dissenting). Throughout Jeffrey Hutchinson's death warrant proceedings, the State of Florida has denied him due process by truncating his pending constitutional claim; hamstringing his ability to meaningfully prepare an under-warrant defense; and refusing to engage in constitutionally mandatory considerations regarding his individual culpability. As Justice Labarga recognized, "the recent procedural history of this case has been affected by [the fact that] Hutchinson's third successive postconviction motion was still pending in the circuit court at the time that the death warrant was signed" *id.*, and Governor Ron DeSantis has exercised his unfettered executive discretion in this case without providing adequate notice. *Id*.

These due process violations are particularly egregious when they serve to frustrate the constitutional rights of a decorated soldier whose brain and body were

[1] Citations are as follows: "R." refers to the first eighteen volumes of the record on direct appeal to the Florida Supreme Court (SC01-500). "T." refers to the separately paginated trial transcript in volumes nineteen through thirty-two of the record on appeal. "PCR1" refers to the record on appeal to the Florida Supreme Court from the initial state postconviction appeal (SC08-99); "PCR2" to the record on appeal from the successive state postconviction appeal (SC17-1229); "PCR3" to the record on appeal from the second successive postconviction appeal (SC21-18); and "PCR4" to the record on appeal from this appeal (SC25-0497). Other references are self-explanatory.

damaged by his heroic service on the front lines of the Gulf War. Despite many desperate attempts both predating and postdating his death sentences, Mr. Hutchinson was unable to obtain an explanation for myriad disabling symptoms he experienced, including nightmares, vomiting blood, memory loss, behavioral outbursts, and paranoia. Now, however, there is a three-pronged answer for Mr. Hutchinson's barrage of symptoms: Gulf War Illness (GWI); traumatic blast pressure brain injury (bTBI); and post-traumatic stress disorder (PTSD). His conditions, particularly when viewed in the context of his valiant service, lessen his personal moral culpability such that regardless of the crimes for which he is convicted, his death sentence is unconstitutional under the Eighth Amendment.

But although "the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense[,]" *Crane v. Kentucky*, 476 U.S. 683, 690 (1986), no court has meaningfully engaged with Mr. Hutchinson's Eighth Amendment argument. In years past, this was because the scientific discoveries necessary to understanding Mr. Hutchinson's conditions did not exist; thus, he could not present the claim. Now, however, the reason is not so innocuous: it is because Mr. Hutchinson's pending litigation has been rushed through the state courts "without ensuring a meaningful period for [the state court] to conduct a full review." 2025 WL 1198037 at *7 (Labarga, J., dissenting). "Because due process requires more," this Court should intervene. *Id.*

II. Procedural history

On January 15, 2025, Mr. Hutchinson moved for state postconviction relief based on the Eighth and Fourteenth Amendments and newly discovered evidence related to the cumulative neurocognitive impact of Gulf War Illness and the traumatic blast overpressure brain injuries he suffered during his front-line combat service. PCR4 152-309. The Honorable David Oberliesen was assigned to the case on February 12, 2025. PCR4 313-36, 338. At a March 6, 2025, case management conference, Judge Oberliesen indicated he needed additional time to review the record and evaluate the need for an evidentiary hearing. PCR4 346-47, 646, 853.

On March 31, 2025, before Judge Oberliesen had time to conduct the necessary review, Governor Ron DeSantis signed Mr. Hutchinson's death warrant. PCR4 671-72. No notice was given to Mr. Hutchinson or his counsel prior to the signing of the warrant—indeed, even after the warrant was signed, it was served upon attorneys who have never been on Mr. Hutchinson's case, delaying notice to his actual state and federal counsel by hours. PCR5 97-98. However, at least 10 days' notice was given to other individuals, including the victims' family, who posted about the upcoming warrant on social media; and the Attorney General's Office, who filed a 22-page unauthorized brief in the circuit court urging denial of the pending motion more than 30 minutes before Mr. Hutchinson's counsel was even notified of the warrant. PCR4 647-70, PCR5 95.

The next day, the case was reassigned to the Honorable Lacey Powell Clark, who had no prior familiarity with Mr. Hutchinson's case. PCR4 711. Three days

later—a full week before the deadline imposed by the Florida Supreme Court's expedited warrant schedule—the pending motion was summarily denied without any opportunity for Mr. Hutchinson to address Judge Clark's concerns regarding the allegations within. PCR4 1080-1116. Mr. Hutchinson's motion for rehearing was denied on April 8, 2025.

When Mr. Hutchinson appealed to the Florida Supreme Court on April 9, 2025, he was given a single day in which to file his initial brief. On April 21, 2025, the Florida Supreme Court affirmed the lower court's order.

Meanwhile, Petitioner's under-warrant postconviction proceedings in the circuit court were mired in a similar truncation as his previously pending motion. After the issuance of the execution warrant, the circuit court adopted the State's proposition that Mr. Hutchinson's postconviction motion be filed by April 7, 2025. PCR4 699-710, 746-50. In the context of due process and the Eighth Amendment, Mr. Hutchinson challenged the context of his death warrant proceedings, including the arbitrary warrant selection process (including choosing Mr. Hutchinson for a warrant despite evidence of his severe mental impairments) and the curtailed review of his claims. PCR5 60-71. The circuit court summarily denied that motion on April 11, 2025. PCR5 241-55, App. A2.

The Florida Supreme Court directed that any state habeas petition be filed by the morning of April 14, 2025, alongside the postconviction notice of appeal. Mr. Hutchinson filed a petition, which included an Eighth Amendment challenge to his execution based on the particulars of his severe mental illness. On April 15, less than

24 hours after the record on appeal was filed, Mr. Hutchinson's initial appellate brief was due. On April 25, the Florida Supreme Court denied the state habeas petition and affirmed the denial of postconviction relief.

Regarding the arbitrary warrant implementation, the Florida Supreme Court ruled:

> We have repeatedly held that the Governor's broad discretion does not contravene constitutional norms. In doing so, we have emphasized not only the executive's authority to exercise discretion, but also the breadth of that discretion. For instance, in [a prior case] we said that the "absolute discretion" reposed in the Governor did not violate the constitution.

Hutchinson, 2025 WL 1198037 at *5.

In addressing the due process concerns in Mr. Hutchinson's state circuit court proceedings, the Florida Supreme Court ruled that "although the warrant period in this case was admittedly short and the record lengthy, Hutchinson has been able to raise numerous postconviction claims and advance arguments to support them." *Id.* at *4. Without explanation, the court "reject[ed] Hutchinson's premise that he 'was not afforded any opportunity to address the specific concerns or issues raised by the judge who ultimately issued the order denying him relief.'" *Id.* at *4 n.6. The court also found that the new judge offered "record- and rules-based reasons for rejecting" the claims and that Mr. Hutchinson had not alleged the judge had a bias. *Id.* at *4.

As to Mr. Hutchinson's mental health-related arguments, the Florida Supreme Court ruled that he "ha[d] not cited any authority holding that the Eighth Amendment provides an absolute right to presenting mitigation at any time," and "[i]f anything, our recent case law would be inconsistent with such a right." *Id.* at *5.

As to Mr. Hutchinson's state habeas argument that his execution would violate the Eighth Amendment based on his particular confluence of mental illness and impairment, the court found the claim untimely and procedurally barred, and "on the merits, our precedent squarely forecloses Hutchinson's argument." *Id*. at *6.

Justice Labarga dissenting, emphasizing that "due process requires more" and relying on the specific context of Mr. Hutchinson's death warrant proceedings:

> [T]he recent procedural history of this case has been affected by the following: (1) Hutchinson's third successive motion was still pending in the circuit court at the time that the death warrant was signed on March 31, 2025, and (2) on April 17, 2025, the Governor temporarily stayed Hutchinson's execution so that Hutchinson could be evaluated for competency. At the time the stay was entered, this Court was actively considering the merits of Hutchinson's current postconviction appeal, habeas petition, and other motions. However, this Court was only notified of the stay days later, after the competency evaluation was completed and the stay lifted.
>
> Given these circumstances, I cannot concur in the majority's decision to permit this execution to proceed at this time, without ensuring a reasonable period for this Court to conduct a full review.

Id. at *7.

III. Additional relevant facts

Sergeant Jeffrey Glenn Hutchinson is a decorated soldier who heroically served his country during the Gulf War. After his return for the war, he and his family were unable to obtain an explanation for the myriad disabling symptoms he experienced, including nightmares, vomiting blood, memory loss, behavioral outbursts, and paranoia. Now, however, there is a three-pronged answer for Mr. Hutchinson's barrage of symptoms: Gulf War Illness (GWI); traumatic blast pressure brain injury (bTBI); and post-traumatic stress disorder (PTSD).

Mr. Hutchinson served in the Gulf War in the "Four Corners" area of Iraq. There, he was repeatedly exposed to low-level sarin gas from the fallout produced by U.S. and Coalition bombing of Iraqi production and storage facilities.

Mr. Hutchinson suffers from a mild neurocognitive disorder caused by traumatic brain injury from repeated blast pressure exposures during his military service. Although the method of injury differs from penetrating and blunt force injuries, blast exposure can similarly cause psychological and neurocognitive symptoms such as memory and balance impairments; headaches; irritability; sleep dysfunction; depression; mood swings; anxiety; hearing problems; delirium/dementia; post-concussive syndrome; tinnitus; and paranoia. PCR4 186-232.

Compounding these injuries is the effect of Mr. Hutchinson's PTSD and further organic brain damage from exposure to toxic chemicals (including sarin) during his overseas deployment. PCR4 287-303. Consistent with the conditions with which he was diagnosed, Mr. Hutchinson began to experience intrusive thoughts; memories of traumatic experiences from the Highway of Death in the Gulf War; flashbacks to witnessing a large loss of life; nightmares; sleep disturbances; hypervigilance; unusual irritability and anger; mood changes and swings; outbursts of frequent rage; paranoia; fatigue; tactile and olfactory hallucinations related to his experience in deployment. He suffered from migraines; muscle twitches; nausea and vomiting blood; rashes; and hair loss.

As a result of this confluence, Mr. Hutchinson has ongoing cognitive and communication problems. Although for years Mr. Hutchinson was provided with

disinformation by the government regarding his conditions, there is now an established causation between these symptoms and Mr. Hutchinson's military service. For instance, "veterans with GWI from low-level sarin exposure have brain dysfunction in the prefrontal cortex areas of the brain[,]" which affects executive functioning; and significant changes to the amygdala, which is known to cause aggressive tendencies. PCR4 265, 269. Mr. Hutchinson's family confirmed that prior to his exposure to sarin gas and bTBIs, aggression was entirely out of character for him. But when he came home from the war, he had changed. Now, after decades of Mr. Hutchinson seeking answers about what had happened to him overseas, science has evolved to where those answers are available.

REASONS FOR GRANTING THE WRIT

I. Where due process is not enforced, constitutional rights are rendered meaningless

The modern capital punishment system is premised upon a guarantee that the death penalty will "not be imposed under sentencing procedures that create [] a substantial risk that it [will]…be inflicted in an arbitrary and capricious manner." *Gregg v. Georgia*, 428 U.S. 153, 188 (1976); *Godfrey v. Georgia*, 446 U.S. 420, 428 (1980); *Zant v. Stephens*, 456 U.S. 410, 413 (1982) (per curiam). To embody that guarantee, the Eighth and Fourteenth Amendments must work in tandem—one providing a substantive protection against excessive punishment, and the other providing a mechanism (due process) by which to enforce it. *See, e.g.*, *Hall v. Florida*, 572 U.S. 701, 724 (2014) ("The death penalty is the gravest sentence our society may

impose. Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution.").

"[F]undamental fairness is the hallmark of the procedural protections afforded by the Due Process Clause." *Ford v. Wainwright*, 477 U.S. 399, 424 (1986) (Powell, J., concurring in part and in the judgment). The right to due process entails "notice and opportunity for hearing appropriate to the nature of the case." *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). The opportunity to be heard must be "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *see also Fuentes v. Shevin*, 407 U.S. 67, 80 (1972).

The Florida Supreme Court, in word, acknowledges this important right. *See Dep't of Law Enforcement v. Real Property*, 588 So. 2d 957, 960 (Fla. 1991) ("Procedural due process serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue. Procedural due process requires both fair notice and a real opportunity to be heard."). And, it purports to be guided by this Court's instructive precedent:

> The specific parameters of the notice and the opportunity to be heard required by procedural due process are not evaluated by fixed rules of law, but rather by the requirements of the particular proceeding. *See Gilbert v. Homar*, 520 U.S. 924, 117 S. Ct. 1807, 138 L. Ed. 2d 120 (1997)….As the Supreme Court has explained, due process, "unlike some legal rules, is not a technical concept with a fixed content unrelated to time, place and circumstances." *Cafeteria & Restaurant Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 895, 81 S. Ct. 1743, 6 L. Ed. 2d 1230 (1961). Instead, "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Key Citizens for Gov., Inc. v. Florida Keys Aqueduct Auth., 795 So. 2d 940, 948 (Fla. 2001). Furthermore, the Florida Supreme Court recently reaffirmed that capital defendants in postconviction proceeding retain a right to due process. *Tanzi v. State*, -- So. 3d – 2025 WL 971568 *2 (Fla. 2025); *see also Roberts v. State*, 840 So. 2d 962, 971 (Fla. 2002) ("postconviction proceedings must comport with due process"); *Steele v. Kehoe*, 747 So. 2d 931, 934 (Fla. 1999) (recognizing that "postconviction remedies are subject to the more flexible standards of due process announced in the Fifth Amendment").

But although the Florida courts may acknowledge due process in word and proclaim that "[h]aste has no place in proceedings in which a person may be sentenced to death[,]" *Scull v. State*, 569 So. 2d 1251, 1252 (Fla. 1990), in deed they did not enforce the right in Mr. Hutchinson's case. Rather, Mr. Hutchinson was denied the meaningfulness and fundamental fairness required by the circumstances of his case. As Justice Labarga warned approximately two years prior to his dissent in this case, Florida has been progressing down a dangerous constitutional path:

> [T]hese solemn proceedings ultimately involve carrying out a sentence of death for the most aggravated and least mitigated of murders and must still ensure due process of law. I am extremely concerned by the recent pace of death warrants and the speed with which the parties and involved entities must carry out their respective duties.…[E]ven in this final stage of capital proceedings, a meaningful process must be ensured.

Barwick v. State, 361 So. 3d 785, 796 (Fla. 2023) (Labarga, J., concurring in result). Now, two years later, Florida has further increased the pace of execution and speed

at which defense litigation must occur.[2] And, in Mr. Hutchinson's case, unlike other recent warrants, the State has not simply curtailed future review but has smothered already pending litigation that was still in the early stages of review.

"[D]enial of due process is the failure to observe that fundamental fairness essential to the very concept of justice." *Lisenba v. People of State of California*, 314 U.S. 219, 236 (1941). Without this Court's intervention, Florida will continue to espouse on paper its dedication to upholding constitutional rights, and all the while perpetuate a Kafkaesque warrant litigation scheme that makes it impossible to vindicate those rights in practice.

A. Florida's opaque system of unfettered gubernatorial discretion regarding execution warrants created an unlevel playing field

In contrast to states with an orderly process for determining who will be the next death-sentenced prisoner executed, the determination of who lives or dies in Florida is made by a single person—the Governor—for any reason or for no reason at all. Within the framework of his absolute discretion, Governor DeSantis provided an unfair litigation advantage by informing nonparties of Mr. Hutchinson's upcoming

[2] For instance, at the time of Barwick's warrant period in 2023, the Florida Supreme Court required state habeas petitions to be filed concurrently with the initial brief. Since that time, the court has begun requiring state habeas petitions to be filed concurrently with the notice of appeal from the circuit court's denial—typically speeding up the deadline by approximately two days. In recent months, the state circuit court during Edward James' execution warrant period set a scheduling order, then subsequently amended it at the State's request, requiring defense counsel to file their postconviction motion a day earlier than had been scheduled, on a Sunday. And, in Mr. Hutchinson's own case, defense counsel was given only a single day to file the initial brief related to a postconviction motion that had been pending for months prior to the warrant, and despite the fact that counsel was concurrently preparing Mr. Hutchinson's under-warrant postconviction motion.

warrant in advance while keeping it a secret from Mr. Hutchinson and his counsel. On Friday, March 21, 2025, the day after another Florida execution, an apparent member of the victims' family posted on Facebook that Mr. Hutchinson's warrant would be signed next and that "nothing absolutely nothing will stop it." *See* PCR5 95. Although the information was clearly accurate as to the timing of the warrant, no notice was provided to Mr. Hutchinson or his counsel. And, when a death warrant was officially signed 10 days later, the Governor's Office failed to appropriately serve it on Mr. Hutchinson's counsel, delaying their notice by hours. PCR5 97-98. The State has never denied receiving advance notice of the warrant, and before Mr. Hutchinson's counsel even knew of the execution warrant, the Attorney General's Office had already filed a lengthy brief in the state circuit court urging immediate denial of his pending postconviction motion.

While Governor DeSantis, the Attorney General, and members of the victims' family clearly knew that Mr. Hutchinson's death warrant was imminent, Mr. Hutchinson was kept completely in the dark. Thus, in the critical initial period of warrant litigation, defense counsel was forced to confront the head start the State received by simultaneously formulating an argument in response to its unauthorized brief; attempting to fully investigate and prepare expedited pleadings in which the defense bears the burden of persuasion and proof, including another postconviction motion; and facilitating access to Mr. Hutchinson, who was moved to a different prison for death watch. This surprise and gamesmanship created an unlevel playing field. *See Berger v. United States*, 295 U.S. 78, 88 (1935) (A government attorney "is

the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all"); *Dillbeck v. State*, 643 So. 2d 1027, 1030 (Fla. 1994) ("No truly objective tribunal can compel one side in a legal bout to abide by the Marquis of Queensberry's rules, while the other fights ungloved.").

Further, unlike any other individual or corporation, Mr. Hutchinson is bound by stringent limitations on his ability to obtain public records pursuant to Florida's broad "Sunshine laws." *See* Chapter 119, Fla. Stat. This means that—when faced with obstruction and gamesmanship from the State during the exigencies of a short death warrant—Mr. Hutchinson navigate complicated timing determinations and request records from various state agencies and defeat numerous objections from those agencies in order to obtain what anyone else is provided upon request. See Fla. R. Crim. P. 3.852(c)(1); (g)(3).

Compounding the unlevel the playing field, Mr. Hutchinson's near-Herculean efforts to mount a defense in the oppressive climate of his death warrant were perversely held against him when the Florida Supreme Court referenced them as a reason for denying his due process claim: "In sum, although the warrant period in this case was admittedly short and the record lengthy, Hutchinson has been able to raise numerous postconviction claims and advance arguments to support them." *Hutchinson*, 2025 WL 1198037 at *4. This is the very epitome of a lack of fundamental fairness. With such a truncated warrant period and no advance notice, defendants and counsel—no matter how diligent—are forced to submit the very sorts of last-

minute pleadings that are discouraged by courts. As former Florida Supreme Justice Pariente observed:

> Th[e] extremely short warrant period create[s] a fire drill approach to the review of [the defendant's] claims….The postconviction court and [defense] attorneys were forced to race around the clock in reviewing and presenting all of [the] claims, respectively. But for this Court entering a stay of execution…this Court would have also had inadequate time to thoroughly review his claims.

Jimenez v. Bondi, 259 So. 3d 722, 726 (Fla. 2018) (Pariente, J., concurring). That Mr. Hutchinson's defense team worked around the clock to cobble together some pleadings does not equate to due process. And for Florida to use the product of these zealous efforts to justify endorsing an oppressive warrant framework is to weaponize counsel's duty of loyalty to their client. Warrant litigation may always be arduous and may always entail a level of triage, but this Court should not permit Florida to continue its "fire drill approach[.]" *Id*.

B. The hasty and inadequate review of Mr. Hutchinson's pending motion deprived him of a meaningful opportunity to demonstrate that his myriad mental impairments would render his execution unconstitutional

Mr. Hutchinson's death warrant—signed with full knowledge of the pending litigation related to his mental impairments resulting from honorable military service—constricted meaningful consideration of the allegations because the period set by the warrant was inadequate for review of the issues presented. Where one judge indicated that further time was necessary to evaluate the need for an evidentiary hearing *prior to* the warrant signing, *after* the warrant was signed another judge denied Mr. Hutchinson's motion within three days of being assigned

and with no previous familiarity with the facts and issues in Mr. Hutchinson's case. Although at the pleading stage, a reviewing court has a duty to construe all factual allegations in Mr. Hutchinson's favor, denial of the pending motion neither took Mr. Hutchinson's allegations as true nor permitted him an opportunity to address any concerns the court had.

Though Mr. Hutchinson may not have a right to one particular judge, any manipulation by the State to remove and replace an assigned judge who has heard arguments violates due process. "[J]udges are not fungible." *Laird v. Tatum*, 409 U.S. 824, 834 (1972) (Rehnquist, J.). Judges' temperaments and decisions are shaped by their individual background and experiences, and they may place emphasis on different legal issues or pieces of evidence. This "may make a world of difference" to a case. *Id*. But after Judge Oberliesen was replaced a day after Mr. Hutchinson's execution warrant was signed, he received no opportunity to address the specific concerns or issues contemplated by the judge who ultimately issued the dispositive order. This lack of notice and opportunity to be heard as to the court's concerns violated due process.

The Court's deliberation should not have been suffocated by the Governor's knowing decision to sign a death warrant despite the pendency of unresolved litigation, which the Attorney General himself acknowledged in his letter recounting the procedural history of the case. PCR5 92 ("The third successive postconviction motion remains pending in the state postconviction court as of this date."). In Mr. Hutchinson's case, where the pending motion asserted mental health claims,

truncating the process and placing restrictive timeframes undermines the judiciary's independent function. *See Jiminez v. State*, 265 So. 3d 462, 493 (Fla. 2018) (Pariente, J., concurring) (explaining that the "extremely short warrant period" meant that "[t]he postconviction court and Jimenez's attorneys were forced to race against the clock in reviewing and presenting all of Jimenez's claims, respectively" and that without a stay there would be "inadequate time to thoroughly review his claims.").

In the Florida Supreme Court's own words, due process:

> envisions a court that 'hears before it condemns, proceeds upon inquiry, and renders judgment only after proper consideration of issues advanced by adversarial parties. In this respect the term 'due process' embodies a fundamental conception of fairness that derives ultimately from the natural rights of all individuals.

Scull, 569 So. 2d at 1252.

Further, despite counsel's best efforts, much was lost by the breakneck speed of the proceedings. For instance, Mr. Hutchinson suffers from a myriad of mental health issues largely related to his front-line military service. Upon receiving notice of the execution warrant, counsel made efforts to secure two experts to assist with litigation related to his mental impairments. However, the earliest any mental health expert could evaluate Mr. Hutchinson was Monday, April 7—the same day his postconviction motion was due. Then, due to a "supercharged" storm set to hit the expert's path of travel, PCR5 100-03, and the Florida State Prison being on 'lockdown' on April 8 due to another expedited execution, the earliest the first of the two experts could meet with Mr. Hutchinson was Thursday, April 10, 2025—several days after the deadline for his postconviction motion; the day before the circuit court's resolution

of the claims was due; and the day *after* Mr. Hutchinson's request for an evidentiary hearing was denied. The second expert could not get in to see Mr. Hutchinson until April 11, 2025. Had Mr. Hutchinson been afforded the same notice as various nonparties or the State, he could have arranged for timelier expert assistance.

The deprivation of access to mental health experts at a critical juncture of Mr. Hutchinson's proceedings, in and of itself, deprived him of a fundamentally fair proceeding under this Court's precedent. *See McWilliams v. Dunn*, 582 U.S. 183, 186 (2017) ("Our decision in *Ake v. Oklahoma*, 470 U.S. 68 (1985), clearly established that…the State must provide an indigent defendant with access to a mental health expert who is sufficiently available to the defense and independent from the prosecution to effectively 'assist in evaluation, preparation, and presentation of the defense.'").

Moreover, the deprivation frustrated Mr. Hutchinson's ability to present significant and compelling mental health evidence in his subsequent under-warrant proceedings, including his 3.851, appeal, and state habeas petition. Indeed, both experts who evaluated Mr. Hutchinson found not only that he had profound mental illness and neurocognitive impairment, but also that he did not meet the threshold standard for sanity to be executed under the Eighth Amendment. Thus, Mr. Hutchinson was deprived of the opportunity to raise the level of his mental health impairments in his postconviction proceedings.

Indeed, the due process violations raised in Mr. Hutchinson's proceeding below have bled into his ongoing competency litigation. As Justice Labarga explained:

> [O]n April 17, 2025, the Governor temporarily stayed Hutchinson's execution so that Hutchinson could be evaluated for competency. At the time the stay was entered, this Court was actively considering the merits of Hutchinson's current postconviction appeal, habeas petition, and other motions. However, this Court was only notified of the stay days later, after the competency evaluation was completed and the stay lifted.

Hutchinson, 2025 WL 1198037 at *7. Thus, the due process violations "failed to ensur[e] a reasonable period for [the Florida Supreme Court] to conduct a full review." *Id.* "Given these circumstances, [Justice Labarga] cannot concur in the majorities decision to permit this execution to proceed at this time…[D]ue process requires more." *Id.* This Court should grant certiorari review to enforce the right.

II. Without this Court's intervention, Florida will continue to violate due process and vitiate Eighth Amendment protections for vulnerable capital defendants like Mr. Hutchinson

The Eighth Amendment, which applies with special force in capital cases, prohibits imposition of the death penalty against all except those who have *both* engaged in a narrow category of the most aggravated crimes and possess the most extreme personal culpability. *See, e.g.*, *Roper v. Simmons*, 543 U.S. 551, 568 (2005); *Atkins v. Virginia*, 536 U.S. 304, 319 (2002). Thus, the constitutionality of an individual's death sentence turns on their "personal responsibility and moral guilt." *Enmund v. Florida*, 458 U.S. 782, 800 (1982). But Florida has failed to engage in such an analysis for three flawed reasons.

First, although Mr. Hutchinson made clear below that the exemption he seeks is based on his individual circumstances, the Florida Supreme Court has willfully misconstrued the claim as one seeking a categorical exemption for all individuals with

"certain neurocognitive disorders." *Hutchinson*, 2025 WL 1198037 at *6. This is far from accurate. Rather, Mr. Hutchinson's exemption claim is specific to his individual confluence of vulnerabilities. Mr. Hutchinson represents a small percentage of the death row population—a veteran deployed to an active combat zone. His contribution to the safety of our country, impending death during the Gulf War, and catastrophic physical and mental damage stemming from his service mean he is possessed of a lessened culpability and his execution would thus be unconstitutional under the Eighth and Fourteenth Amendments.

Next, the Florida Supreme Court skirted constitutional review by imposing an inadequate procedural bar. *Id.* at *6. The Eighth Amendment prohibits cruel and unusual punishment as a categorical imperative. *See, e.g.*, *Ford*, 477 U.S. at 409-10 (Eighth Amendment-based exemptions from execution not only protect death-sentenced individuals but also protect "the dignity of society itself from the barbarity of exacting mindless vengeance[.]"). Thus, no state-law waiver provision may trump this Court's mandate that death-sentenced individuals "must have a fair opportunity to show that the Constitution prohibits their execution[,]" *Hall*, 572 U.S. at 724. Just as it would be unconstitutional for Florida to invoke timeliness as justification to execute individuals subject to categorical exemptions or exclusions, so too would it be unconstitutional to rely on state procedural bars to execute an individual whose personal culpability is so diminished by a confluence of circumstances that they cannot be included among the narrow category of individuals for whom the death penalty is reserved.

But this Court need not make such a finding to provide unencumbered review of the constitutionality of Mr. Hutchinson's death sentence, because the lower courts' imposition of a procedural and time bar was incorrect. The "fire drill approach to the review" of Mr. Hutchinson's Eighth Amendment claims once his warrant was signed deprived him of a meaningful opportunity to be heard—including on the issue of why the evidence he seeks to have considered is timely and not barred. This Court's review must not be constrained by the very malady this petition seeks to correct.

Finally, the Florida Supreme Court ossified the Eighth Amendment through its unique state constitutional conformity clause. "[A] punishment is cruel and unusual if it is incompatible with "the evolving standards of decency that mark the progress of a maturing society." *Estelle v. Gamble*, 429 U.S. 97, 103 (1976) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)). Standards of decency continue to evolve in the United States, and the evolution of standards regarding lenience for veterans is especially prominent in Florida, which claims to be and vows to remain the most veteran-friendly state in the nation. But, nevertheless, the Florida Supreme Court staunchly proclaims that any request for consideration of whether Mr. Hutchinson's aggregate individual circumstances would render his execution unconstitutional "is inconsistent with our precedent." *Hutchinson*, 2025 WL 1198037 at *6; *see id.* ("[O]n the merits, our precedent squarely forecloses Hutchinson's argument.").

As Mr. Hutchinson detailed in his April 27, 2025, petition for a writ of certiorari, the "precedent" that purportedly renders his Eighth Amendment claims meritless relies upon Florida's unique conformity clause, which prohibits all Florida

courts "from treating the state constitutional prohibition against cruel or unusual punishment as being more expansive than the federal constitutional prohibition against cruel and unusual punishment or United States Supreme Court interpretations thereof." Fla. HJR 951 (2001) at 2-3 (discussing Fla. Const. art. I, § 17). Indeed, the Florida Supreme Court has explicitly held that the conformity clause "means that the [United States] Supreme Court's interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida[.]" *Barwick*, 361 So. 3d at 794.

Increasingly over the past several years, Florida has cited its self-imposed restriction and relied upon it to opt out of critical Eighth Amendment analyses, including judicial determinations of evolving standards of decency,[3] even as it enacts legislation that is clearly out of conformity with this Court's Eighth Amendment

[3] *See, e.g.*, *Bowles v. State*, 276 So. 3d 791, 796 (Fla. 2019) (Florida Supreme Court relying on the conformity clause to refuse any consideration of whether national death penalty trends warranted exemption from execution under the Eighth Amendment); *Lawrence v. State*, 308 So. 3d 544, 545 (Fla. 2020) (Florida Supreme Court relying on the conformity clause to eliminate Eighth Amendment proportionality review); *Hart v. State*, 246 So. 3d 417, 420-21 (Fla. 4th DCA 2018) (Florida appellate court relying on the conformity clause in a non-capital context to refuse to consider whether a juvenile sentence violated *Graham v. Florida*, 560 U.S. 48 (2010)); *see also Covington v. State,* 348 So. 3d 456, 479-80 (Fla. 2022) (relying in part on conformity clause to refuse to consider whether defendant's alleged insanity at the time of the crime rendered his death sentence cruel and unusual); *Allen v. State*, 322 So. 3d 589, 602 (Fla. 2021) (seemingly implying that the conformity clause may justify limiting a mitigation presentation in certain cases involving waiver); *Zack v. State*, 371 So. 3d 335 (Fla. 2023) (relying on conformity clause to refuse to consider extending *Atkins* protection to an individual diagnosed with intellectual disability with IQ scores over 70); *Barwick*, 361 So. 3d at 794 (relying on the conformity clause to refuse to consider whether individual's low mental age and other deficits warranted protection under *Roper*).

precedent.[4] Thus, this purported state-law basis for denying relief is not adequate and independent to bar this Court's intervention.

Rather, Florida determinations that rely upon the conformity clause are inextricable from the federal question, because they specifically interpret this Court's Eighth Amendment holdings. *See Foster v. Chatman*, 578 U.S. 488, 499 n.4 (2016) ("[W]hether a state law determination is characterized as entirely dependent on, resting primarily on, or influenced by a question of federal law, the result is the same: the state law determination is not independent of federal law and thus poses no bar to our jurisdiction.") (cleaned up); *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983) (even when adequacy and independence of possible state law grounds are not clear from the opinion, "this Court will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.").

By refusing to engage in any independent consideration of evolving standards of decency, Florida obstructs important aspects of this Court's judicial function pertaining to Eighth Amendment determinations. *See, e.g.*, *Atkins*, 536 U.S. at 315-16 (looking to individual state practice in determining whether additional Eighth Amendment protections are warranted); *Roper*, 543 U.S. at 559-60, 565-66 (same). Although the federal constitution does not require a state court to offer more protection in a particular case than this Court's jurisprudence has established, a

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

State that refuses to make independent Eighth Amendment determinations abdicates its "critical role in advancing protections and providing [this] Court with information that contributes to an understanding" of how Eighth Amendment protections should be applied. *Hall*, 572 U.S. at 719.

Florida's continued refusal to engage in any Eighth Amendment determinations not expressly required by this Court is all the more reason for certiorari review in Mr. Hutchinson's case. Without this Court's intervention, Florida will execute a vulnerable, cognitively impaired veteran without any independent process related to his Eighth Amendment claim. This would be cruel and unusual, and does not comport with due process.

CONCLUSION

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

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