No. 24-7087

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

REPLY BRIEF IN SUPPORT OF 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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REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I. Respondent mischaracterizes Mr. Hutchinson's due process claim

At the outset, Respondent's restated question presented describes this claim as an "unsupported contention that due process demands more than what [Mr. Hutchinson" received in state court collateral proceedings once his death warrant was signed[.]" BIO at ii. However, this contention is not at all unsupported; rather, it was the substance of Justice Labarga's dissent in the Florida Supreme Court below:

> [T]he recent procedural history of this case has been affected by the following: (1) Hutchinson's third successive postconviction 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 that 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.
>
> **Because due process requires more, I dissent.**

Hutchinson v. State, 2025 WL 1198037 *7 (Apr. 25, 2025) (Labarga, J., dissenting) (bolded emphasis added).

A few other points of clarification are in order. For instance, Respondent defines Mr. Hutchinson's contentions of insufficient time to resolve his claims as "speculat[ion]" and "asking this Court…to find that the state courts had inadequate

time to promptly resolve the proceedings, despite [sic][1] having any indication to the contrary." BIO at 9, 10. But there is nothing speculative about it—two judges in separate courts gave that indication. Judge Oberliesen, who was assigned to Mr. Hutchinson's postconviction case on February 12, 2025, stated at a case management conference in March that he needed additional time to review the record and evaluate the need for an evidentiary hearing. PCR4 313-36, 338, 346-47, 646, 853. On March 31, 2025, before Judge Oberliesen was able to conclude that review, the death warrant was signed. PCR4 671-72. The following day the case was reassigned to Judge Clark, who had no familiarity with Mr. Hutchinson's case but ruled three days later amidst the expedited warrant proceedings. PCR4 711, 1080-1116. It is not speculation to say that three days' time was insufficient for review when a month and a half had already been deemed insufficient by Judge Oberliesen. And, Justice Labarga dissented due to inadequate time. *Hutchinson*, 2025 WL 1198037 at *7.

Respondent repeatedly characterizes Mr. Hutchinson's argument as suggesting he should have received advance notice of the warrant, or that the warrant period should have been longer. *See* BIO at 6, 7. To be sure, Mr. Hutchinson maintains that each of these deficiencies in his process, standing alone, is problematic. But by myopically focusing on discrete aspects of Mr. Hutchinson's due process claim and arguing that they are not constitutionally violative, Respondent misses the point of the claim—which is that the confluence of these individual factors

[1] Mr. Hutchinson presumes Respondent intended to say "not having any indication to the contrary."

deprived him of an opportunity to be meaningfully heard on the underlying Eighth Amendment claim that was pending when the execution warrant issued.

Further, Respondent suggests that Mr. Hutchinson is arguing he should have received advance notice of the warrant. This is not the issue at all. Mr. Hutchinson's due process complaint regarding "advance notice" is the profoundly unlevel playing field that was created by the Governor's provision of *at least ten days' advance notice* to members of the victims' family, as well as advance notice to the Attorney General's Office—while keeping Mr. Hutchinson in the dark until hours after the warrant issued. Given the short timeframe, this means Respondent appears to have received at least approximately 30% more time to prepare than Mr. Hutchinson's counsel. And, that disparity in notice resulted in Mr. Hutchinson being unable to include the results of his mental health evaluations in his under-warrant postconviction motion pursuant to Fla. R. Crim. P. 3.851. This does not comport with fundamental fairness.

Finally, Mr. Hutchinson's right to due process in his state postconviction proceedings is not as limited as Respondent suggests. *See, e.g.*, *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 288 (1998) (O'Connor, J., concurring) ("A prisoner under a death sentence remains a living person and consequently has an interest in his life."); *id*. at 293 n.3 (Stevens, J., concurring) ("While it is true that the constitutional protections in state postconviction proceedings are less stringent than at trial or on direct review…we have never held or suggested that the Due Process Clause does not apply to these proceedings."); *Skinner v. Switzer*, 562, U.S. 521, 540 (Thomas., J., dissenting) ("[F]or the purposes of the Due Process Clause, the process

of law for the deprivation of liberty comprises all procedures—including collateral review procedures—that establish and review the validity of a conviction….[W]hen state collateral review procedures are provided for, they too are part of the 'process of law under which [a prisoner] is held in custody by the State.").

II. Respondent misconstrues Mr. Hutchinson's conformity clause arguments

Respondent also distorts Mr. Hutchinson's claim that Florida's reliance on its state conformity clause unconstitutionally abdicates its Eighth Amendment obligations. Mr. Hutchinson has never argued that this Court's Eighth Amendment precedent categorically "required" the lower courts to extend *Atkins* protections to him. BIO at 16. Rather, Mr. Hutchinson presented the lower courts with an opportunity to find that his execution—given the particularities of his case and character—would constitute a cruel, unusual, and excessive punishment. The constitutional defect Mr. Hutchinson raises here is not that the state court declined to extend an Eighth Amendment exemption to him, but rather the court's refusal to independently consider the claim at all due to Florida's conformity clause. *See Hutchinson*, 2025 WL 1198037 at *6 (relying on cases citing the conformity clause to find Mr. Hutchinson's Eighth Amendment claim meritless under its precedent).

Similarly, Respondent suggests Mr. Hutchinson is attempting to "force[] state courts to…expand this Court's Eighth Amendment jurisprudence into areas where this Court has not." BIO at 17. But this is untrue. Mr. Hutchinson made clear that the issue before this Court is not whether Florida must extend protections that this

Court has not, but whether Florida can blanketly opt out of any and all consideration of evolving standards of decency. Petition at 22-24.

Lastly, Respondent portrays the conformity clause issue as being unworthy of certiorari review because there is no conflict with other states or appellate circuits. BIO at 16. However, this is because Florida is the only state with a sweeping Eighth Amendment limitation provision of this kind. There can be no conflict with other state supreme court decisions or federal appellate courts where Florida is the only jurisdiction in which this issue will arise. It would be Kafkaesque for Florida to evade this Court's review by virtue of the unique harm it effectuates. Florida's outlier status should not insulate it from federal review.

CONCLUSION

This Court should grant a writ of certiorari to review the decision of the Florida Supreme Court.

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