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.

Chelsea Shirley
Counsel of Record
Lisa Fusaro
Alicia Hampton
Office of the Capital Collateral Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-0922
Chelsea.Shirley@ccrc-north.org

Counsel for Petitioner

CAPITAL CASE

QUESTIONS PRESENTED

In *Ford v. Wainwright*, Justice Powell's controlling holding instructed that upon a substantial threshold showing of insanity, due process entitles a death-sentenced individual to a fundamentally fair hearing at which he is accorded an "opportunity to be heard" on the issue of his incompetency to be executed. 477 U.S. 399, 424, 426 (1986). Fairness required an opportunity for the prisoner's counsel to provide to an "impartial" officer "evidence and argument…including expert psychiatric evidence that may differ from the State's own psychiatric examination." *Id*. at 427.

Justice Powell did not set forth "the precise limits that due process imposes in this area." *Id*. However, he equated fundamental fairness in the competency-to-be-executed context with a factfinding procedure that is "adequate for reaching reasonably correct results" and "ascertainment of the truth[.]" *Id*. at 424.

This Court's subsequent precedent left open the question of "whether other procedures, such as the opportunity for discovery or for the cross-examination of witnesses, would in some cases be required under the Due Process Clause." *Panetti v. Quarterman*, 551 U.S. 930, 952 (2007).

The questions presented in this petition are:

1. Where this Court's precedent is clear that procedural due process is flexible and its protections are dependent upon time and circumstances, and where *Panetti* clarifies that competency-to-be-executed claims do not ripen until the signing of a warrant, does *Panetti* create a heightened standard of due process as compared to Justice Powell's controlling holding in *Ford*?

2. Does due process ever require additional opportunities or procedures in competency-to-be-executed proceedings than those specified in *Ford* and *Panetti*?

3. When cross-examination of witnesses is functionally foreclosed by non-disclosure of materials—including supporting documents upon which State experts relied in forming an opinion about the death-sentenced individual's competency to be executed, notes reflecting discrepancies in the experts' testimony, and the foreclosure of presenting testimony related to bias of one of the experts who jointly evaluated, formed, and submitted evidence to the court, and an adverse opinion due to non-appearance—has due process and fundamental fairness been denied pursuant to *Ford* and *Panetti*?

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: April 30, 2025 (affirming circuit court)

Second-in-Time Federal Habeas Petition (under warrant)
District Court for the Northern District of Florida
Hutchinson v. Sec'y, Fla. Dep't of Corr., Case No. 4:25-cv-205
Judgment Entered: May 1, 2025 (denying petition)

Eleventh Circuit Court of Appeals
Hutchinson v. Florida, Case No. 25-11485
Judgment entered: May 1, 2025

TABLE OF CONTENTS

INDEX TO APPENDIX

TABLE OF AUTHORITIES

CASES

In re Commitment of Reilly, 970 So. 2d 453 (Fla. 2d DCA 2007) 20

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 slip opinion of the Florida Supreme Court's decision is provided in the Appendix at A1.

JURISDICTION

The judgment of the Florida Supreme Court was entered on April 30, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

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

Throughout Sergeant Jeffrey Glenn Hutchinson's death warrant proceedings, the State of Florida has consistently denied him due process. As Justice Labarga of the Florida Supreme Court noted, Mr. Hutchinson's warrant period "has had a procedural path unlike any in recent history[,]" *Hutchinson v. State*, No. SC2025-0590, slip op. at 16 (Apr. 30, 2025) (Labarga, J., dissenting), and "due process requires more[.]" *Hutchinson v. State*, 2025 WL 1198037, at *7 (Fla. Apr. 25, 2025) (Labarga, J., dissenting).

Now, Florida is faced with compelling evidence that Mr. Hutchinson is not competent to be executed due to a longstanding and disabling collection of fixed persecutory delusions, which render him unable to rationally understand why he is about to die. But in making competency determinations, Florida has not only refused to change course from its pattern of constitutional violations, it has instead doubled

[1] Citations are as follows: Citations shall be as follows: The abbreviation "R." refers to the first eighteen (18) volumes of the record on direct appeal to the Florida Supreme Court (SC01-0500). "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 from the initial state postconviction appeal to the Florida Supreme Court (SC08-0099). "PCR2." refers to the record on appeal from the successive state postconviction appeal to the Florida Supreme Court (SC17-1229). "PCR3." refers to the record on appeal from the successive state postconviction appeal to the Florida Supreme Court (SC21-0018). "PCR4." refers to the record on appeal from the successive state postconviction appeal to the Florida Supreme Court (SC25-0497). "PCR5." refers to the record on appeal from the successive state postconviction appeal to the Florida Supreme Court (SC25-0517). "PCR6." refers to the current record on appeal. "Supp-PCR6." refers to the current supplemental record on appeal. "ST." refers to the 3.811 status hearing held on April 24, 2025. "CT." refers to the transcript of the 3.811 motion hearing held on April 25, 2025.

down on its disregard for due process. As a result, Florida is prepared to kill an honorable combat veteran who fervently believes that his death sentences are attributable to a government conspiracy to silence him because he knows unsavory military secrets. This Court's intervention is necessary.

II. Relevant factual and procedural history

After returning home from serving on the front lines of the Gulf War, a deeply paranoid and damaged Mr. Hutchinson was convicted by a Florida jury of murdering his girlfriend, Renee Flaherty, and her three children, Geoffrey, Amanda, and Logan. R. 2296-99, 2632-33.

Since well before the crimes for which he stands to die, Mr. Hutchinson's beliefs about a government conspiracy to silence him due to his advocacy surrounding Gulf War Illness have been a persistent part of his delusional thought processes. After his arrest, Mr. Hutchinson told investigators that government operatives may have been dispatched from Quantico to commit the murders. R. 2. Mr. Hutchinson wrote a number of letters while awaiting trial addressed to "whom it may concern," seeking to bring the truth of the government's attempts at trying to silence him and murder his family. PCR6. 639, 641, 643-44. In one letter, Mr. Hutchinson stated his belief that he was being railroaded for something he did not do. PCR6. 639; *see also* PCR6. 647-54. Those beliefs persist to this day.

On March 31, 2025, while Mr. Hutchinson had pending state-court litigation regarding mental health impairments that had plagued him since his front-line service in the Gulf War, Governor Ron DeSantis signed his death warrant. PCR4 671-

72. The warrant was signed at the close of business, announcing a May 1, 2025, execution date—a thirty-one day warrant period. PCR5. 671. None of Mr. Hutchinson's current counsel were immediately notified until later that evening. *See* PCR5. 671-72. And, around that time, the State filed a twenty-two-page unauthorized brief urging immediate denial of Mr. Hutchinson's pending motion.

Having known Mr. Hutchinson's history of delusional beliefs affecting his rational understanding of the State's reason for his execution, counsel immediately sought to retain mental health experts to evaluate his present competency. Meanwhile, the Florida Supreme Court ordered an expedited litigation schedule for other matters related to Mr. Hutchinson's challenges to his convictions and sentences of death on April 1, 2025. PCR5. 697-87. Undersigned counsel secured the assistance of two mental health experts, but due to the delayed notice and compressed schedule, along with a "supercharged" storm that interfered with travel and a lockdown at the prison due to another expedited execution, the doctors could not evaluate Mr. Hutchinson until April 10 and 11, 2025, respectively. PCR5 100-04.

Dr. Bhushan Agharkar, a board-certified psychiatrist, evaluated Mr. Hutchinson on April 10th. PCR6 920. During Dr. Agharkar's evaluation, Mr. Hutchinson explained why the State was seeking to execute him:

> Essentially, they were hastening or essentially covering up for the government. There's a vast conspiracy against him, that he is being persecuted, that the government wants to kill him for his knowledge of Gulf War illness, and that's the reason why these murders occurred. That's the reason he was being executed as a frame-up so to make sure that he would be silenced, and the State was complicit in that.

CT. 184.

Based on his interview and evaluation of Mr. Hutchinson, and review of records, Dr. Agharkar concluded that Mr. Hutchinson lacks the mental capacity to rationally understand the fact of the pending execution and the reason for it. PCR6 932. Dr. Agharkar reported: "Mr. Hutchinson does not have the ability to rationally understand why the government is seeking to execute him, nor the causal relationship between the crime and punishment to be imposed." PCR6 616-17.

The following day, on Friday, April 11, 2025, Dr. Barry Crown, a board-certified neuropsychologist, evaluated Mr. Hutchinson. PCR6 620. He performed a battery of neuropsychological testing. PCR6 621. Dr. Crown found that Mr. Hutchinson's results showed significant impairment, "indicative of a neuropsychological disturbance—organic brain damage. The impairments are consistent with primarily bilateral frontal-temporal impairment and further consistent with earlier findings of Gulf War Syndrome." PCR6 623. Mr. Hutchinson provided the same delusion to Dr. Crown as Dr. Agharkar. CT. 143. Dr. Crown found Mr. Hutchinson was not malingering. PCR6 623. Dr. Crown concluded Mr. Hutchinson does not rationally understand the nature and effect of the death penalty and the reason he is to be executed; thus, he is not competent to be executed. PCR6 624-25. Mr. Hutchinson's counsel received Dr. Agharkar and Dr. Crown's final reports on Saturday, April 12, 2025, and Sunday, April 13, 2025, respectively.

Fla. Stat § 922.07, operating in conjunction with Fla. R. Crim. P. 3.811 and 3.812, outline the procedure for proceedings when an individual under warrant appears to be insane. The statute has remained largely unchanged since *Ford v.*

Wainwright, 447 U.S. 399 (1986). After the Supreme Court found the statute unconstitutional and devoid of due process in *Ford*, the Florida Supreme Court promulgated Rules 3.811 and 3.812. These rules provide basic elements of due process that the *Ford* Court found previously lacking in Florida: importantly, the right to a judicial determination of competency *de novo*. *See* Fla. R. Crim. P 3.812(a).

On April 14, 2025, in accordance with Fla. Stat. § 922.07, Mr. Hutchinson's counsel timely notified Governor DeSantis that they believed him to be incompetent to be executed. Under Florida law, that notice was supposed to trigger an automatic stay of execution to allow a full and fair process to unfold. *See* Fla. Stat. § 922.07. It did not. The Governor granted a stay, but still left in place the May 1, 2025, execution date. The Governor did not submit Executive Order 25-83 appointing the Commission to Determine the Mental Competency of Jeffrey Glenn Hutchinson[2] for three days, on April 17, 2025 (the day before Good Friday and Easter weekend).

The examination was set for four days later, on April 21, 2025. The Commission's report was not due until the end of the next day, April 22, 2025. Following the evaluation, Mr. Hutchinson's counsel received no further communication until the end of the day on April 23, 2025, when the Governor issued Executive Order 25-92, adopting the Commission's finding that Mr. Hutchinson "has no current mental illness," and "fully understands the nature and effect of the death penalty and why it is to be imposed upon him." PCR6 19-20; *id.* at 17-18. The Governor did not promptly notify the courts. *See Hutchinson v. State*, __ So. 3d __

[2] The Commission consisted of Drs. Wade Myers, Tonia Werner, and Emily Lazarou.

(Fla.), 2025 WL 1198037 (Apr. 25, 2025), (Labarga J. dissenting) ("this Court was only notified of the stay days later, *after* the competency evaluation was completed *and the stay lifted*.") (emphasis in original). Thus, the process outlined in Fla. Stat. 922.07 took ten days to complete, leaving a mere eight days before Mr. Hutchinson's scheduled execution to litigate his competency to be executed.

Though the state circuit court did not yet have any jurisdiction over the matter, it held an April 24 status conference, at which counsel for the State suggested that "we skip the formalities and just hold [a hearing] either tomorrow or Saturday to not interfere with the pending execution date." ST. 5. Mr. Hutchinson's counsel proposed a Monday start date "in order to preserve Mr. Hutchinson's due process rights," and reminded the court that a stay was mandatory under the rules. ST 7. Nevertheless, the court set the hearing to start in less than twenty-four hours, with no information aside from the Governor's order and the State's belief about the merits of Mr. Hutchinson's claim. ST. 6. The court ordered counsel to file the Rule 3.811 motion that same day. The court did not provide any opportunity for Mr. Hutchinson's counsel to seek discovery as to the Commission members and other witnesses, or any documents upon which they relied.

As counsel prepared to move for a determination of sanity pursuant to Fla. R. Crim. P. 3.811—a process that requires review of voluminous records—they were required to simultaneously prepare for an evidentiary hearing requiring immense preparation of exhibits and witness files, coordination with the mental health experts' schedules, including travel, preparation, and attending to personal responsibilities.

Several hours after the hearing, the court reiterated, via e-mail, that Zoom testimony was permissible and "makes zero difference to the court" but not mentioning Mr. Hutchinson's right to due process and fundamental fairness. Supp-PCR6. 2. Shortly thereafter, counsel filed four motions, including a motion to continue, citing Mr. Hutchinson's due process concerns, PCR6. 570-74; a motion for discovery, including records and documents relied upon by Commission members, as well as their evaluation notes, PCR6. 567-68; and the substantive motion for determination of sanity. The court quickly denied the motions for continuance and a stay without discussion. PCR6. 790-93.

Mr. Hutchinson's competency hearing began as scheduled at 9:00 AM on April 25. No discovery had been exchanged, and no witness or exhibit lists were filed.[3] Mr. Hutchinson presented multiple lay witnesses from prior defense teams who had known him over the course of decades and could speak to the longstanding nature of his delusions. In addition, Drs. Agharkar and Crown testified.

Both experts concluded that Mr. Hutchinson's delusional belief prevents him from having a rational reason for his execution. CT. 146-47, 189. Dr. Agharkar elaborated:

> Because the causal connection between the crime and the punishment is lacking, in his mind. It is not just that he's being executed

[3] Mr. Hutchinson's motion to compel discovery remained pending before the court. The Attorney General's office emailed counsel at 3:31 PM on April 24, 2025, informing that they would be calling two of the three doctors from the Governor's Commission—Drs. Werner and Myers—as well as three correctional officers, two of whom were different than the ones interviewed and referenced in the Commission's letter, but no explanation or information about these recently disclosed officers was provided. PCR6. 810.

> for the charges of capital murder with which he was convicted of. He understands that. He knows that, but he says that is not the true story.
>
> The true story[,] this is persecution. They're trying to kill me because of what I did with Gulf War illness. This is retribution for the government. They have set me up. They have framed me. I'm an innocent man. And they're going to—that's really what's going on here. And that is not a rational understanding of the crime and punishment.

CT. 189. Dr. Agharkar also explained the difference between factual and rational understanding of something:

> [T]he fact can be he says, I know I was convicted. I know I was convicted of capital murder. I know the State wants to execute me for a capital murder. So that's a factual understanding.
>
> But the real reason I'm being executed is a government coverup. I was framed for these murders. I'm innocent. They want to kill me because of all the trouble I've cause them regarding the Gulf War Syndrome and illness and all this and because of what I know. And also chemical weapons I think used in the Gulf War. He knows something about that. And so that's the real reason as to why this is happening.
>
> That's the rational understanding, and that's where he fails.

CT. 198. Based on a reasonable degree of medical certainty, Dr. Agharkar and Dr. Crown concluded that Mr. Hutchinson is not competent to be executed. CT. 145, 158, 199. While Mr. Hutchinson understands he is going to be executed, and he understands the nature and effect of the death penalty, he does not have a rational understanding of the reasons he's about to be executed. CT. 156, CT. 198-99. He believes that it is part of the ongoing conspiracy. CT. 156.

In rebuttal, the State presented three correctional officers who knew Mr. Hutchinson in passing and the report of the three Commission members' findings. However, only Dr. Myers and Dr. Werner testified at the competency hearing.

The Governor's Office has hired Drs. Werner and Myers between five and ten other times to determine competency for execution. CT. 213, 232-33, 271-72. Neither has ever found somebody incompetent to be executed, CT. 232-33.[4] As Dr. Myers put it, he denied finding anyone ever incompetent to be executed because "by this point, they should have already been found incompetent." CT. at 294.

The Commission's procedure in determining competency is the same every time. Dr. Myers explained the forensic evaluation process includes reviewing materials given to them by the State and speaking with people who know the prisoner. CT. at 214, 293. Dr. Werner described that, prior to the evaluation, the Commission received "volumes of records," including Mr. Hutchinson's FDOC medical file, counsel's letter to the Governor, 3,747 e-mails and videograms sent and received by Mr. Hutchinson, various pleadings and orders, prior testimony, "numerous old reports," the 911 call, and law enforcement interviews. CT. 214-15, 234. Despite the volume of records, Dr. Werner admitted to conducting a "very limited review." CT. 235.

Dr. Myers stated he reviewed most documents before he evaluated Mr. Hutchinson, CT. at 272-73, but did not have time to review every document, like the

[4] Dr. Werner testified that she *had* found an individual competent for execution. T. 232. However, Dr. Werner could not recall the case name or any other information aside from it being a capital case in Florida. CT. 232-33. Because Mr. Hutchinson's counsel did not know which witnesses the State would be calling until less than eighteen hours before the hearing began, counsel researched Dr. Werner's prior competency cases after the hearing. Only then was counsel aware that the case Dr. Werner referenced in her testimony did not concern competency for execution, but competency to proceed. *See Boatman v. State*, 402 So. 3d 900, 912 (Fla. 2024).

post-arrest police questioning that details the Quantico conspiracy, CT. at 300. Dr. Myers also did not review depositions by Mr. Hutchinson's family members or trial transcripts. CT. at 301. He had not reviewed the attachments to the motion for sanity determination where Mr. Hutchinson detailed his twenty-year conspiracy. CT. at 317-23, Exhs. 14, 15, 16, 17, 18, 19. While he was familiar with the general information contained in affidavits of Mr. Hutchinson's loved ones, Dr. Myers gave them no weight. CT. at 325.

Both experts also did not interview Mr. Hutchinson's family, his fellow inmates, or any other lay witnesses aside from the correctional officers. CT. at 302, 308, 235.[5] Immediately after the interview, still in sight of Mr. Hutchinson and with documents left unreviewed, the Commission deemed him competent. CT. at 242-43.

Multiple procedural defects were evident with regard to Mr. Hutchinson's ability to counter the State's presentation. First, the State waited until the hearing was well underway before correcting an important misrepresentation regarding documents that the Commission members requested and relied upon in forming their conclusions, *i.e.*, Florida Department of Corrections (FDOC) e-mails to and from Mr. Hutchinson, ranging an unknown time period. Counsel had requested these e-mails from FDOC prior to the hearing, but FDOC refused to disclose them. PCR6. 805. Counsel also included a request for the e-mails in their discovery motion. PCR6. 567-

[5] Before meeting with Mr. Hutchinson, the Commission interviewed two correctional officers: Officers Hare and Hamm, together for "approximately ten to fifteen minutes[,]" CT. 241, plus Lieutenant Philbert, who "had very minimal contact" with Mr. Hutchinson, for approximately ten minutes. CT. 241.

68. In arguing against disclosure of the e-mails, the State argued that Mr. Hutchinson could provide the e-mails to counsel himself. However, Mr. Hutchinson lost access to his e-mail account upon notification of the death warrant. Thus, it was not until mid-hearing that counsel received 3,747 e-mails, along with dozens of video messages that had previously been turned over to the Commission members. Mr. Hutchinson's counsel had only the duration of the lunch break to review the e-mails and consult with the experts about them.[6] CT. 64-66. The review could not be completed in an hour. Nevertheless, counsel attempted to review a few hundred emails before the court proceedings recommenced.[7]

Second, Dr. Werner, the principal author of the Commission's report, relied on her notes taken during the evaluation to refresh her recollection while testifying. CT 216, 218. Mr. Hutchinson's counsel requested an opportunity to review the notes—which counsel had sought in the then-pending discovery motion. The court permitted a brief review of the notes but prohibited counsel from making a copy. CT 228. Ultimately, the court called for the review to cease mid-hearing and did not reconsider

---

[6] Oddly, though the court had not ruled on the discovery motion or addressed the issue of the e-mails prior to the hearing, when the issue arose, the court commented: "You should have access to [the e-mails], obviously[.]" CT. 56. But Mr. Hutchinson and his experts had not.

[7] Upon review of the e-mails, several themes discussed by the witnesses were reinforced by the e-mails, including Mr. Hutchinson's concern with surveillance and that his communications were monitored. In addition, Mr. Hutchinson often conveyed dissatisfaction and distrust with his attorneys, even at one point of accusing an attorney of hiding evidence. Counsel and their experts should have had the opportunity review and present the e-mails to support Mr. Hutchinson's claim, including undermining the Dr. Myers testimony. *See* CT 316.

his order even after later acknowledging that Fla. Stat. § 90.613 (2025) governed *and allowed for access* to notes upon which an expert relies during testimony. CT 228-29, 260. However, counsel indicated that in her limited review, there appeared to be discrepancies between Dr. Werner's testimony and notes. CT 261. Even then, counsel was not allowed to further review the notes or question Dr. Werner about the discrepancies.

Dr. Werner also testified that there was some dissension among the Commission about Mr. Hutchinson's diagnosis and some edits made to her draft of the report. CT 252-53. While she and Dr. Myers attempted to dismiss them as insignificant, Mr. Hutchinson had no opportunity to question the Commission members about the edits.[8]

Third, Mr. Hutchinson was forced to proceed with a hearing where both lay and expert witnesses appeared by Zoom. *See* ST. 9-10. The videoconference platform was not sufficient for Dr. Myers' cross-examination.[9] This was so because: (a) Dr.

---

[8] Potential dissension as to the standard for competency and its application to Mr. Hutchinson based upon the records provided to the Commission was particularly important in light of the fact that Dr. Werner's recent opinion relating to a capital defendant's incompetence to proceed had been discredited because the trial court recognized that her "opinion was wholly detached from her report and testimony." *Boatman*, 402 So. 3d at 912. In affirming, the Florida Supreme Court noted that "Dr. Werner seemingly conflated the 'competence' standard with the 'heightened' standard for pleading guilty." *Id*.

[9] Likewise, the Zoom appearance of one of Mr. Hutchinson's laywitnesses, Terri Backhus', which was required due to her being out-of-state and unable to reschedule a previous medical appointment due to the short notice, allowed the State the opportunity to misrepresent the record as to Mr. Hutchinson's prior 60(b) litigation. The State questioned Ms. Backhus about the pleadings, including the application for certificate of appealability and petition for writ of certiorari. However, those

Myers refreshed his recollection during his testimony, but because of his remote appearance, counsel was precluded from reviewing the documents he was referencing, *see* Fla. Stat. 90.613 (2025); (b) counsel was thwarted in attempting to impeach Dr. Myers with prior testimony in other incompetency-to-be-executed hearings; and (c) while documents and exhibits contained in the record conflicted with Dr. Myers' testimony, counsel was unable to demonstrate his unreliable and flawed opinions with evidence contradicting his testimony.

On cross-examination, counsel could not challenge Dr. Myers with his previous testimony. He refused to acknowledge his testimony against the last Florida prisoner to bring a *Ford* claim, Duane Owen, and repeated that he could not recall the case. This was so despite the fact that the hearing was just two years ago. In fact, here, Dr. Myers testified inconsistently with testimony he had provided in other Florida competency-to-be-executed hearings, *Owen v. State*, 363 So. 3d 1035, 1038 (Fla. 2023), and *Ferguson v. State*, 112 So. 3d 1154 (Fla. 2012). Specifically, his testimony about whether Mr. Hutchinson's functioning or behavior comported with a Delusional Disorder diagnosis contradicted his testimony in *Ferguson*. *Compare Ferguson v. State*, Florida Supreme Court Case No. SC12-2115 (Competency Hearing Transcript, p. 327) *with* CT. 309. Dr. Myers' testimony was inconsistent with previous testimony

---

pleadings clearly indicate that she made procedural arguments. *See Hutchinson*, N.D. Fla. No. 3:13-cv-128, ECF No. 78; *Hutchinson v. Florida*, No. 21-10508 (2021); *Hutchinson v. Secretary*, No. 21-5778 (2021). Importantly, the petition for writ of certiorari was only based upon the standard for issuing a certificate of appealability and contrary to the State's representation it did not contain any argument concerning using actual innocence to open the gateway for review of Mr. Hutchinson's petition for writ of habeas corpus.

related to how he assessed prior statements at the time of the crime in forming his opinion about the diagnosis of Delusional Disorder. *Compare Owen v. State*, Florida Supreme Court Case No. SC23-0819 (Competency Hearing Transcript, p. 262-63) *with* CT. 334. Yet, Dr. Myers was insulated from being confronted with contradictory testimony due to the fact that he appeared by Zoom rather than in person and asserted a faulty memory when asked about prior cases and testimony.

Likewise, when Dr. Myers was asked about an affidavit from Mr. Hutchinson's ex-wife, Alison Brown, in which she described his paranoid behavior after his return from the Gulf War, he questioned counsel as to whether she ever sought help for Mr. Hutchinson. Dr. Myers' testimony was clear: to the extent that he was even familiar with Brown's affidavit, he did not credit her observations and did not consider them in his conclusions about Mr. Hutchinson because he determined she failed to provide him with mental health care. However, Brown and Mr. Hutchinson's family did seek help for him. Dr. Baumzweiger treated Mr. Hutchinson in 1996. *See* R. 791-810. Mr. Hutchinson's physical, mental, and emotional impairments were apparent to his family, including his ex-wife, after he returned from the Gulf War and *before* the crime. *See id*. Dr. Myers had access to the report which specifically stated: "After he was discharged from the Army, he noticed continued problems with decreased physical agility, and stamina, obsessions and compulsions *with constant checking, fears of crowds and fears of small spaces*." R. 796 (emphasis added). In fact, Dr. Baumzweiger diagnosed Mr. Hutchinson with Delusional Disorder. State Trial Exhibit 138.

And, Mr. Hutchinson had no opportunity to question Dr. Emily Lazarou. Dr. Lazarou, a prolific Facebook user, is vocal about her disdain for the individuals she evaluates, particularly when their charged offenses involve children. Because the State declined to call Dr. Lazarou, and because there was no time to depose her or compel her presence, Mr. Hutchinson's counsel attempted to question Dr. Myers about Dr. Lazarou's anti-defendant advocacy. CT. 295-96. Mr. Hutchinson sought to explore whether her bias influenced the report or the edits she had made. The State objected to the questioning. CT. 297-300.

On April 27, 2025, the circuit court issued an order finding Mr. Hutchinson sane to be executed. PCR6 958-76. The order was solely based on the State's presented experts (including Dr. Lazarou, who did not testify) and did not engage with the testimony of Mr. Hutchinson's experts or the longstandingness of his delusional and persecutory beliefs.[10] On April 28, 2025, the Florida Supreme Court set deadlines for Mr. Hutchinson's appellate briefing. The initial and answer briefs were filed on April 29, 2025, and Mr. Hutchinson's reply brief was filed early on April 30, 2025. On the evening of April 30, 2025, the Florida Supreme Court affirmed the circuit court's finding of competency to be executed. *Hutchinson v. State*, No. SC2025-0590, slip op. (Fla. Apr. 30, 2025) (App. A1).

[10] Inexplicably, the court order stated that "This Court finds that Mr. Hutchinson is presenting his story of a government conspiracy in order to avoid responsibility for the murders and, ultimately, in this instance, the death penalty." The order did not explain how this could be reconciled with the documented evidence from multiple sources that Mr. Hutchinson's paranoid delusions about persecution by the government due to knowledge of military secrets and Gulf War advocacy—all well predating the crimes for which he was convicted.

Concurrently with this petition for a writ of certiorari, Mr. Hutchinson has filed an application for a stay of execution.

REASONS FOR GRANTING THE WRIT

Individuals facing the death penalty "must have a fair opportunity to show that the Constitution prohibits their execution." *Hall v. Florida*, 572 U.S. 701, 724 (2014). *Panetti v. Quarterman*, 551 U.S. 930, 949 (2007) (quoting *Ford v. Wainwright*, 477 U.S. 399, 424 (1986) (Powell, J., concurring in part and in the judgment).[11]. Although Justice Powell did not set forth "the precise limits that due process imposes in this area [of competency determinations,]" *Ford*, 477 U.S. at 424, this Court's other precedent is clear that due process entails notice and the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *see also Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985).

Mr. Hutchinson's insanity places him outside of the class of individuals eligible to be executed because the United States Supreme Court has held that the Eighth Amendment "prohibits the execution of a prisoner whose mental illness prevents him from 'rationally understanding' why the State seeks to impose that punishment." *Madison v. Alabama*, 586 U.S. 265, 267 (2019) (quoting *Panetti*, 551 U.S. at 959); *see also Ford*, 477 U.S. at 410. However, he has been denied relief due to Florida's failure to provide the level of due process necessary for the "truth ascertaining" function of competency-to-be-executed hearings. *Panetti*, 551 U.S. at 954.

[11] Justice Powell's concurrence is the narrowest holding of the *Ford* plurality and therefore controlling.

I. This Court should resolve the due process question left open in *Panetti*

When the Supreme Court decided *Panetti*, it made two core constitutional rulings—one substantive, and one procedural. Substantively, the *Panetti* Court rejected as unconstitutional a competency inquiry that asked only whether a prisoner is "aware that he [is] going to be executed and why[.]" 551 U.S. at 956 (quotations omitted). This is because a prisoner's "awareness of the State's rationale for an execution is not the same as a rational understanding of it." *Id*. at 959. The rational understanding, more than any other particular condition, is what matters under the Eighth Amendment. *See Madison*, 586 U.S. at 275 (citing *Panetti*).

Procedurally, *Panetti* held that after a prisoner has made a threshold showing of potential incompetency, the state competency proceeding must provide a condemned prisoner "with a constitutionally adequate opportunity to be heard," including "the opportunity to make an adequate response to evidence solicited by the state court." 551 U.S. at 953. The competency process must be "adequate for reaching a reasonably correct result"; it will not comport with the Constitution if it is "seriously inadequate for the ascertainment of truth." *Id.* at 954.

Mr. Hutchinson's case presents a pristine vehicle to resolve the question left open in *Panetti*, regarding whether additional procedures such as discovery and cross-examination of witnesses may be necessary in particular cases to satisfy due process.

A. The limitations placed on Mr. Hutchinson during his competency proceedings deprived him of a meaningful opportunity to be heard on his claim that he is not competent to be executed

Although the Florida courts 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 1252 (Fla. 1990), in deed they denied Mr. Hutchinson the meaningfulness and fundamental fairness required by the circumstances of his case. This offends "the very concept of justice." *Lisenba v. People of State of California*, 314 U.S. 219, 236 (1941).

For instance, due to the truncated warrant period and lack of advance notice, Mr. Hutchinson has been forced to submit the very type of last-minute pleadings that are disfavored by courts. As former Florida Supreme Court Justice Pariente observed:

> Th[e] extremely short warrant period created 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 [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). This unfairness has been present throughout Mr. Hutchinson's warrant period but for two reasons is especially pronounced in relation to his competency claim. First, competency to be executed claims do not ripen until an execution warrant is signed. And, caselaw from this Court and the Florida courts instruct that competency is fluid,

and evaluations conducted even months before a critical juncture can go stale.[12] As Mr. Hutchinson has previously detailed, Florida's secretive warrant process provides no notice that a warrant is forthcoming, nor who will be selected of the approximately 100 warrant-eligible individuals on death row. Thus, until his warrant was signed on the evening of March 31, 2025, Mr. Hutchinson had no viable mechanism by which to challenge his competency to be executed.

Second, the particular circumstances of Mr. Hutchinson's case created even more of a rush than the truncated warrant period standing alone. Mr. Hutchinson was given a thirty-one day warrant period. Although Mr. Hutchinson's legal team retained Drs. Agharkar and Crown immediately after the warrant issued, the experts could not access him to perform any evaluations until April 10 and 11, 2025. Yet, his pending litigation, the late notice of his warrant, and the prison's lack of availability due to another scheduled execution on an expedited schedule, his mental health experts could not access him for the first ten days of the warrant period. Then, due to restrictive scheduling at the prison, they could not see him on the same day. Although the doctors immediately prepared their reports, this meant Mr. Hutchinson was not

[12] *See Drope v. Missouri*, 420 U.S. 162, 171, 181 (1975) (competency is not an immutable characteristic); *Bishop v. United States*, 350 U.S. 961 (1956) (remanding for a hearing on sanity where defendant had no indications of a mental disorder one month prior to the relevant legal event) (vacating *Bishop v. United States*, 223 F.2d 582 (D.C. 1955); *Brockman v. State*, 852 So. 2d 330, 333-34 (Fla. 2d DCA 2003) (assessments from four and eleven months prior to relevant legal event "were simply too old to be relevant to a determination of…competency"); *In re Commitment of Reilly*, 970 So. 2d 453, 454 (Fla. 2d DCA 2007) (six month old competency assessment was "stale" and could not speak to present competency); *LeWinter v. Guardianship of LeWinter*, 606 So. 2d 387, 388 (Fla. 3d DCA 1992) (report filed six weeks before competency proceeding did not accurately reflect present mental state and abilities).

able to initiate Florida's statutory *Ford* procedure for the first two weeks of his warrant period—a highly significant time in the context of a 31-day warrant period.

Further, Florida's state procedures for determining competency to be executed, Fla. Stat. 922.07 and Fla. R. Crim. P. 3.811, require a determination by the governor before litigation can commence in the state circuit court. Thus, although Mr. Hutchinson's legal team made the requisite notification to Governor DeSantis on April 14, 2025, counsel could not access the state-court process until the triggering event of Governor DeSantis' Executive Order 25-92, which counsel received after 3:00 p.m. on April 23, 2025. This left just over one week before Mr. Hutchinson's scheduled execution.

The Governor's Order began with a pre-determined outcome. Governor DeSantis wrote:

> [C]ounsel for Jeffrey Glenn Hutchinson asserts that "his rational thinking has been impaired by Delusional Disorder" evidenced by his belief in his innocence that "other individuals broke into his house and shot the victims, despite evidence conflicting with his position," [this assertion] does not demonstrate that Jeffrey Glenn Hutchinson currently lacks the mental capacity to understand the nature of the death penalty and the reasons why it was imposed.
>
> ***
>
> [T]he allegations … are insufficient assertions of insanity under section 922.07; and [] because the Governor's solemn duty to execute a duly imposed sentence of death requires the exercise of utmost caution, I will nonetheless implement the requirements of section 922.07.

PCR6. 595-96.

Mr. Hutchinson had no opportunity to meaningfully view the doctors' notes taken during the evaluation, nor the documents they relied upon, and did not receive the Commission's report until less than forty-eight hours before the court set the

matter for hearing—at the Office of the Attorney General's urging—before Mr. Hutchinson's counsel could properly invoke the procedure outlined in the Florida rules.

Once Mr. Hutchinson's competency inquiry was ripe for judicial review, the Bradford County circuit court prematurely asserted jurisdiction and ordered a hearing before reviewing any evidence. Counsel was notified at approximately 5:00 p.m. on April 23, 2025, that a "status conference" on the death warrant would be held the following morning at 9:00 a.m. before the circuit court. At the status conference on April 24, 2025, the State requested "that we skip the formalities" and hold a hearing the following day. ST. 5. The circuit court agreed, setting a hearing on the sole basis of the Governor's Executive Order and the State's opinions on the merits of the claim. The court ordered the parties and their witnesses to appear at 9:00 a.m. on April 25th for an evidentiary hearing. Counsel alerted that the court they would not be prepared, they had numerous out of state witnesses, nor did they know who the State intended to call at the hearing. The court replied "[w]ell, you have the rest of the day to work on it."

Mr. Hutchinson was given twenty-three hours to prepare for an evidentiary hearing on his competency for execution *before* moving for a hearing and *before* the judge reviewed the Commission's report. And, the circuit court denied Mr. Hutchinson's stay motion despite Rule 3.811(e)'s clear mandate that upon reviewing Mr. Hutchinson's Rule 3.811(d) motion, the judge "*shall grant a stay*" if the court had

"reasonable grounds to believe that the prisoner is insane to be executed," such that a hearing would be necessary. Fla. R. Crim. P. 3.811(e) (emphasis added).[13]

Twenty-three hours' notice to prepare for an evidentiary hearing concerning a categorial bar to execution that did not ripen until the signing of the warrant a few weeks prior does not amount to "the opportunity to make an adequate response." Around 3:30 p.m. that day, the State disclosed to counsel they would only call two of the three Commission members and three prison employees as witnesses. Counsel was afforded no time to depose or investigate the laywitnesses. Counsel had no time to review records related to the officers, evaluate their background or biases, determine the extent of their exposure to Mr. Hutchinson, review their personnel files, or perform any of the other basic due diligence that any lawyer in even the most pedestrian civil hearing would conduct before a hearing.

Counsel was afforded no opportunity to prepare for the witnesses' testimony; prepare to cross-examine the State's witnesses; review and mastering the relevant medical and psychological treatises; or prepare for the hearing. This also does not mention the personal responsibilities counsel had to account for. Similarly, counsel's experts were also burdened as they had to arrange last minute travel to a rural Florida courthouse and did not have adequate time to review the Commission's report.

---

[13] This mandatory language is further evidenced in Fla. R. Crim. P. 3.812(e): "If, at the conclusion of the hearing, the court shall find, by clear and convincing evidence, that the prisoner is insane to be executed, the court *shall* enter its order continuing the stay of the death warrant; otherwise, the court *shall* deny the motion and enter its order dissolving the stay of execution." (emphasis added).

Additionally, though counsel had attempted to secure copies of the documents and other materials provided to the State's experts, counsel was unable to receive them prior to the hearing. Counsel had diligently requested copies of all records that the Florida Department of Corrections ("FDOC") had provided to the State's experts on April 18, 2025, but FDOC refused to turn over the material to counsel. The State incorrectly represented that counsel already had access to this material and only corrected their false representations in the middle of the evidentiary hearing. Though these documents were disclosed during the evidentiary hearing, that did not cure the problem as it was impossible for counsel to review the over 3,700 emails during the one-hour long lunch break. The review that occurred after the hearing produced e-mails that would have countered the State's expert's opinion specifically and characterization about what had been communicated in the e-mails.

In addition, by permitting remote testimony, counsel was deprived of adequately countering the State's cross-examination of his lay witnesses and adequately cross-examining the State's expert because counsel was unable to show the witnesses documents and exhibits to refresh their recollection, and in Dr. Myers' case, his previous sworn testimony in other cases that was in direct conflict with his testimony in Mr. Hutchinson's case. Likewise, the truncated schedule caused counsel to be unable to secure the testimony of Dr. Emily Lazarou. The circuit court credited her opinion as a Commission member, but counsel's attempts to impeach her credibility and show her extreme prosecutorial bias was cut off.

Finally, Dr. Tonia Werner's notes were relevant and necessary to adequately cross-examine her. Her notes contained discrepancies with her testimony and they should have been disclosed to counsel as Dr. Werner's credibility and candor was central to the issue before the circuit court. In addition, counsel should have had the opportunity to probe the modifications that Dr. Lazarou made to the report. However, because her attendance could not be secured in less that twenty-four hours and the early drafts of the report were not disclosed, counsel was unable to demonstrate the bias of the examiners and the process.

B. To effectuate the adequacy requirements articulated by *Ford* and *Panetti*, due process may require additional procedures such as cross-examination and discovery

"[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Various opportunities that may not be necessary for due process in every competency proceeding may be necessary to ensure the case specific adequacy of a proceeding.

Other areas of the law are instructive on this point. For instance, although the Confrontation Clause has not been held to apply in competency-to-be-executed proceedings, in many ways its underlying principles mirror *Panetti* and *Ford*'s concern with ensuring procedures that are "adequate for reaching reasonably correct results" and the "ascertainment of truth[.]" *Panetti*, 551 U.S. at 954 (quoting *Ford*, 477 U.S. at 423-424 (Powell, J., concurring)). *Compare United States v. Yates*, 438 F.3d 1307, 1314 (11th Cir. 2006); *Maryland v. Craig*, 497 U.S. 836, 856-54 (1990) (together establishing that courts considering a criminal defendant's right to confront

adverse witnesses are largely concerned with ensuring reliable testimony and balancing the State's and defendant's interests).

Mr. Hutchinson's case is worthy of certiorari review because the circumstances presented by his petition clearly demonstrate that he is deserving of the procedural protections contemplated in *Ford* and *Panetti*, which left open the question of "whether other procedures, such as the opportunity for discovery or for the cross-examination of witnesses, would in some cases be required under the Due Process Clause." *Panetti*, 551 U.S. at 952. And, the two specific additional opportunities discussed in *Panetti* were central to Mr. Hutchinson's competency-to-be-executed hearing.

As noted in *Ford*, Florida's competency procedure in Mr. Hutchinson's case was flawed because of "the denial of any opportunity to challenge or impeach state-appointed psychiatrists' opinions." 477 U.S. at 415. The Governor's mandate was to appoint three psychiatrists to evaluate Mr. Hutchinson's competency for execution. PCR6. 595-96. However, despite Dr. Werner's testimony that the Commission jointly found Mr. Hutchinson competent to be executed, Dr. Lazarou clearly had more extreme opinions than the others. The court rejected counsel's attempt at impeaching her through Dr. Myers. Since there was no time for Mr. Hutchinson to compel Dr. Lazarou's presence or depose her, he was deprived of the opportunity to impeach her nakedly biased beliefs. Precluding counsel from calling and impeaching critical witnesses does not amount to "the opportunity to make an adequate response." *Panetti*, 551 U.S. at 952.

This Court should grant certiorari review to revisit the question left open in *Panetti* and use Mr. Hutchinson's case to examine whether certain unenumerated procedures may be constitutionally necessary in the circumstances of an individual case.

II. Without this Court's intervention, Florida competency proceedings will remain "seriously inadequate for the ascertainment of the truth"

"Ford-based incompetency claims, as a general matter, are not ripe until after" a death warrant has been signed. *Panetti*, 551 U.S. at 943. The Florida Supreme Court maintains that a "thirty-day compressed warrant litigation schedule" does not deny a capital defendant his due process rights. *Tanzi v. State*, 2025 WL 971568 (Fla. 2025) (citing *Barwick v. State*, 361 So. 3d 785, 789) (Fla. 2023)). But by the very nature of a Ford claim, preparations for a competency inquiry cannot begin before the triggering event of a death warrant. Preparations are immense, and the stakes monumental. No other constitutional claim brought by a death-sentenced individual is subject to such a frenetic schedule. Further, the due process stakes are far higher. Outside of the warrant period, the typical direct and collateral appeal process affords the opportunity to be heard on other issues. But *Ford* claims necessarily must be brought for the first time in the eleventh hour. Thus, the consequence of each process limitation is more severe.

In Mr. Hutchinson's case, the entire process was flawed from the start because it proceeded at warp-speed with no consideration for the principles of due process and fundamental fairness. And, with Florida's procedures, this will be the case for any

death-sentenced individual in Florida who seeks a determination of competency to be executed. This Court's intervention is necessary.

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.

/s/ Chelsea Shirley
Chelsea Shirley
Counsel of Record
Lisa Fusaro
Alicia Hampton
Office of the Capital Collateral Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-0922
Chelsea.Shirley@ccrc-north.org

Counsel for Petitioner

DATED: MAY 1, 2025