No. 24-7111

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

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

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Capital Case

QUESTIONS PRESENTED

I. Whether this Court should grant review of a decision of the Florida Supreme Court holding the claim of incompetency-to-be-executed under *Ford v. Wainwright*, 477 U.S. 399 (1986), following a full evidentiary hearing on the claim?

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The Florida Supreme Court's opinion is available at *Hutchinson v. State*, SC2025-0590 (Fla. April 30, 2025).

JURISDICTION

On April 30, 2025, the Florida Supreme Court affirmed the state postconviction court's rejection of the competency-to-be-executed claim. The Florida Supreme Court also denied a stay and issued the mandate immediately, due to the active warrant.

On May 1, 2025, Hutchinson, represented by Capital Collateral Regional Counsel – North (CCRC-N), filed a petition for a writ of certiorari in this Court. The petition is timely. *See* Sup. Ct. R. 13.3; 28 U.S.C. § 2101(d). Jurisdiction exists pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

The Fourteenth Amendment to the United States Constitution, states: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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. U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Hutchinson murdered his live-in girlfriend, Renee Flaherty, and her three young children: Logan, Amanda, and Geoffrey on September 11, 1998. *See Hutchinson v. State*, 882 So. 2d 943, 948-49 (Fla. 2004). Hutchinson shot the four victims with his pistol-grip Mossberg shotgun, which was found inside the home on the kitchen counter. *Id.* at 948.

Hutchinson had been living with Renee and her three children prior to the murders, and she and Hutchinson had a fight. *Hutchinson*, 882 So. 2d at 948. Hutchinson, who had been drinking, loaded his clothes and guns into his truck and drove to a local bar. He told the bartender that Renee was "pissed off" at him, while drinking more beer. *Id.* at 948. Renee called a friend after Hutchinson left and she told her friend that Hutchinson had left for good. *Hutchinson*, 882 So. 2d at 948. But Hutchinson returned to the house after leaving the bar and broke down the front door, which had been locked with a dead bolt. *Id.* at 949. In a drunken rage at Renee, he shot her and her three small children. Renee was on the bed in the master bedroom with her two youngest children.

Hutchinson shot her once in the head. *Id.* at 948. Hutchinson also shot Amanda once in the head. The deputies found the seven-year-old girl's body on the floor near the bed. Hutchinson shot Logan once in the head as well. The deputies found the four-year-old boy's body at the foot of the bed. Hutchinson shot Geoffrey twice–once in the head and once in the chest. The deputies found the nine-year-old boy's body in the living room between the couch and the coffee table.

A 911 call from the victims' home, was received at 8:41p.m. (T. XXII 728,750). The 911 caller stated: "I just shot my family." (T. XXII 701). Deputies arrived at the home within ten minutes of the 911 call and found Hutchinson on the ground in the garage with the cordless phone nearby. *Hutchinson*, 882 So. 2d at 948. The caller

identified one of the victims as his girlfriend. (T. XXII 706).

One of the child victim's tissue, caused from the blowback of shooting the child with a shotgun, was on Hutchinson's pants. *Hutchinson*, 17 So. 3d at 698. Hutchinson also had gunshot residue on his hands. (T. XXV 1250). Hutchinson's shotgun was positively identified as the murder weapon. The murder weapon was located on the kitchen counter in the house. (T. XXII 621; XXVI 1547, 1552, 1557; XXVII 1710); *Hutchinson*, 882 So. 2d at 948. All eight expended shells—the five involved in the murders and the three located in the closet of the house—were from this shotgun. (T. XXVI 1557).

Procedural history of the *Ford* claim

On March 31, 2025, the Governor signed a warrant scheduling the execution on May 1, 2025.

On April 14, 2025, Hutchinson's attorney sent a letter to the Governor DeSantis in accordance with the statute governing proceedings when person under sentence of death appears to be insane. § 922.07, Fla. Stat. (2024). The Governor following the statute, appointed three psychiatrists, Dr. Tonia Werner, Dr. Wade Myers, and Dr. Emily Lazarou, to be on the Commission to determine Hutchinson's competency to be executed. Based on the Commission's report finding that Hutchinson had no mental illness, the Governor entered an executive order and lifted the stay.

Hutchinson then, on April 24, 2025, filed a motion in the state trial court raising a claim of incompetency to be executed under *Ford v. Wainwright*, 477 U.S. 399 (1986), pursuant to Florida Rule of Criminal Procedure 3.811 and 3.812. ((No. SC2025-0590

ROA at 592-786). On April 25, 2025, the state trial court held a hearing on the *Ford* claim at which 14 witnesses testified including four mental health experts. Hutchinson's experts opined that his Delusional Disorder rendered him unable to rationally understand the State's reasons for executing him. Both Dr. Werner and Dr. Myers, however, testified that Hutchinson did not suffer from Delusional Disorder or any other mental illness for that matter.

The state trial court credited the testimony of Dr. Werner and Dr. Meyers and the opinions of Drs. Werner, Meyers, and Lazarou. (Florida Supreme Court No. SC2025-0590 ROA at 974). The trial court concluded that Dr. Werner's and Dr. Meyers' testimony at the state evidentiary hearing on the *Ford* claim was "credible and compelling." *Id.* at 974.

Dr. Tonia Werner testified that Delusional Disorder is a "rare" disorder. *Hutchinson v. State of Florida,* SC2025-0590 (April 30, 2025) (ROA at 968-970; 970). She thought that Hutchinson's story about three masked men committing these murders was an attempted defense rather than a true delusion. *Id.* at 970. She noted that Hutchinson's story of the night of the murders had changed over time. *Id.* She recounted that Hutchinson, while in prison, was classified as an S1, which is the lowest mental health ranking. *Id.* She diagnosed him as having narcissistic and antisocial traits but he did not suffer from Delusional Disorder. *Id.* Dr. Werner testified that Hutchinson understands that he is going to be executed and he had explained it was because a jury had found him guilty of the murders. *Id.* But he stated "he did not want to die" and believes he was wrongfully convicted. *Id.* at 971. Dr. Werner testified that Hutchinson

has "no current mental illness" and fully understands the nature and effect of the death penalty and why it has been imposed on him." *Id.*

Dr. Wade Myers testified that he had treated patients with Delusional Disorder for over 30 years. *Hutchinson v. State of Florida,* SC2025-0590 (April 30, 2025) (ROA at 971-73; 971) Dr. Myers did not believe that Hutchinson suffered from Delusional Disorder. *Id.* at 972. Dr. Myers saw no evidence that Hutchinson ever suffered from that "very persistent and stubborn illness." *Id.* Rather, the evidence pointed to Hutchinson simply "avoiding responsibility." *Id.* He noted that the original story was that there were two robbers that night and that it was an "elaborate story with great detail" was inconsistent with Delusional Disorder. *Id.* Hutchinson has created a story of his innocence and stuck with it throughout the years but that does not amount to a delusion. *Id.* Dr. Myers testified that Hutchinson was not suffering from "any mental illness at all." *Id.* (emphasis added). Rather, Hutchinson had narcissistic and antisocial traits and one of the features was "not accepting responsibility for your actions." *Id.* at 973. Dr. Myers testified that Hutchinson "understands exactly what he is facing regarding the death penalty." *Id.*

The trial court found there "was no credible evidence" that Hutchinson "does not understand what is taking place and why it is taking place." *Hutchinson v. State,* SC2025-0590 (Fla. April 30, 2025) (ROA at 975). The trial court found that Hutchinson "does not have any current mental illness." *Id.* at 975. The trial court concluded that Hutchinson's purported delusion was "demonstrative false." *Id.* The trial court found that Hutchinson has "Antisocial and Narcissistic traits" *Id.* The lower

court found that Hutchinson was presenting the story of a Government conspiracy "to avoid responsibility for the murders." *Id.*

Alternatively, the trial court concluded that, even if Hutchinson suffered from a Delusional Disorder, there was no evidence that the disorder interfered "in any way with his rational understanding" of "his pending execution and the reason for it." *Id.* at 975. The state trial court concluded that there was "no credible evidence" that Hutchinson believes himself to be "unable to die or that he is being executed for any reason other than the murders he was convicted of by a jury of his peers." *Id.* The trial court found that Hutchinson "did not meet the criteria for incompetency" and he did "not lack the mental capacity to understand the fact of the pending execution." *Id.*

REASONS FOR DENYING THE WRIT

ISSUE I

Whether this Court should grant review of a decision of the Florida Supreme Court rejecting a claim of incompetency to be executed under *Ford v. Wainwright*, 477 U.S. 399 (1986), following a full evidentiary hearing on the claim?

Petitioner Hutchinson seeks review of the Florida Supreme Court's decision affirming the postconviction court's rejection of a claim of incompetency to be executed under *Ford v. Wainwright*, 477 U.S. 399 (1986), following a full evidentiary hearing on the claim in the state postconviction court. Hutchinson cannot establish a substantial threshold showing of incompetency, as required by this Court's precedent because he has no mental illness "at all." Following a full evidentiary hearing, the state postconviction court made factual findings and credibility determinations regarding the *Ford* claim. Hutchinson takes issue with many of those findings, but this Court

does not grant review of cases to review factual findings and credibility determinations. There is no conflict between this Court's *Ford* jurisprudence and the Florida Supreme Court's decision in this case. There is also no conflict with either the federal circuit courts or the state courts of last resort regarding the *Ford* claim. Because the issue involves factual matters and because there is no conflict with this Court or other appellate courts and the Florida Supreme Court's decision finding the claim to be untimely, this Court should deny review of the question.

The Florida Supreme Court's decision in this case

The Florida Supreme Court affirmed the lower court's denial of the *Ford* claim. *Hutchinson v. State*, SC2025-0590 (Fla. April 30, 2025). The Florida Supreme Court noted that Hutchinson's story of innocence had changed throughout the years. slip op. at 6. The Florida Supreme Court noted that the trial court credited the State's witnesses and found Hutchinson competent to be executed. *Id.* at 7.

The Florida Supreme Court explained that the Eighth Amendment prohibits the execution of a defendant whose mental illness makes him unable to rationally understand the reason for his execution. Slip. op. at 7-8 (citing *Madison v. Alabama*, 586 U.S. 265, 274 (2019), and *Panetti v. Quarterman*, 551 U.S. 930, 958 (2007)). The state may not execute a prisoner whose "concept of reality is so impaired that he cannot grasp the execution's meaning and purpose or the link between his crime and its punishment." *Id.* at 8 (quoting *Madison*, 586 U.S. at 269). The focus is on the prisoner's understanding and courts should look beyond any given diagnosis to the

downstream consequences of the mental illness. *Id.* at 8 (quoting *Madison*, 586 U.S. at 276, 279).

The Florida Supreme Court agreed with the lower court that Hutchinson was competent to be executed. Slip. op. at 9. The Court stated that he had "failed to demonstrate any legal error" in the lower court's order which had both stated and applied "the correct legal standards," relying on principles from the Supreme Court's decisions in *Panetti* and *Madison*. *Id.* at 9. The lower court did not treat Hutchinson's claimed delusions regarding his innocence as irrelevant.

The Florida Supreme Court then found that there was competent, substantial evidence in the record to support the lower's court findings and credibility determination. Slip. op. at 10. The Court listed the five main findings made by the lower court: (1) Hutchinson understands that he is to be executed for the children's murders and that he will die if the execution is successfully carried out; (2) Hutchinson does not have any current mental health issues, including Delusional Disorder; (3) Hutchinson provided no evidence that even if he did have Delusional Disorder, he could not understand the link between the murders and the impending execution; (4) Hutchinson has anti-social and narcissistic traits; and (5) Hutchinson has raised his government-conspiracy theory in an effort to avoid responsibility for the murders and the death penalty. *Id.* at 10. The Florida Supreme Court then concluded that the "record supports these findings." *Id.* at 11. The State's experts, which the lower court had credited, testified that while Hutchinson had certain anti-social and narcissistic traits, they saw no indications of current mental illness or signs of Delusional Disorder.

The Florida Supreme Court noted that testimony was consistent with the Department of Corrections' records. The Florida Supreme Court observed that, according to the State's two experts, his commitment to the government-conspiracy theory was "nothing more than an 'alibi' that he 'stuck with' despite overwhelming evidence to the contrary." *Id.* at 12.

The Florida Supreme Court refused to credit the defense evidence that the lower court had rejected because it is not an appellate court's "job" to "reassess the credibility of witnesses or reweigh the evidence." slip. op. at 12. Rather, the Florida Supreme Court's job was to determine whether the lower court's findings "were supported by legally sufficient evidence." *Id.* at 12-13.

The Florida Supreme Court concluded that it was "clear from the record that Hutchinson understands and fully comprehends the following: Renee and her three children were brutally murdered; the evidence against him was great; a jury of his peers found him guilty; he was sentenced to death in a court of law; the sentence of death will be executed upon him for those crimes; and he will die as a result of the execution." slip. op. at 13.

The Florida Supreme Court, like the lower court, ruled in the alternative, that even if Hutchinson had legitimate delusions, it did not interfere with his ability to rationally understand the reasons for his execution. *Id.* at 12.

No substantial threshold showing made

This Court mandates that a capital defendant establish a "substantial threshold showing" to raise a *Ford* claim. *Panetti v. Quarterman*, 551 U.S. 930, 950 (2007). The

"beginning of doubt about competence" to be executed is having "a psychotic disorder." *Panetti*, 551 U.S. at 960. A capital defendant without any psychotic disorder cannot make any showing of insanity, much less the required "substantial" one.

While Florida caselaw and rules of court allow for a lower threshold showing, constitutionally, Hutchinson must make a "substantial" threshold showing but he did not. At the 2001 penalty phase, two mental health experts testified that Hutchinson had no major mental illness and the defense expert only diagnosed with having a mood disorder. And then at the 2025 *Ford* hearing, two psychiatrists testified that he had no mental illness "at all." Hutchinson does not have now, and has never had, a major mental illness.

Factual findings and credibility determinations

Hutchinson's general complaints about the process of determining his competency in state court below do not raise a serious or meritorious constitutional claim for review. A capital defendant raising a *Ford* claim is not entitled to the same due process as a defendant who has yet to be convicted or sentenced but he is still entitled to some measure of due process regarding his Ford claim. *Panetti v. Quarterman*, 551 U.S. 930, 948-49 (2007) (quoting *Ford*, 477 U.S. at 411-12). A *Ford* hearing "may be far less formal than a trial" and still comport with due process. *Panetti*, 551 U.S. at 949 (noting that Justice Powell's concurring opinion in *Ford* constitutes "clearly established" law for purposes of § 2254 and citing *Ford*, 477 U.S. at 427 (Powell, J. concurring). States have substantial leeway in their procedures regarding *Ford* hearings provided their hearings comport with the fundamentals of late-stage due process. *Panetti*, 551 U.S. at 949-50. A capital defendant, who has

made a substantial showing of insanity, is entitled under due process to a "fair hearing" on his *Ford* claim. *Panetti*, 551 U.S. at 949 (citing *Ford*, 477 U.S. at 426 (Powell, J. concurring)). He is entitled to an opportunity to be heard, an opportunity for his counsel to argue the matter, and to present his own mental health experts. *Panetti*, 551 U.S. at 949. Hutchinson had an opportunity to be heard both in writing and at the evidentiary hearing; he was given an opportunity for his counsel to argue the matter both in the trial court and in the Florida Supreme Court; and he presented his own mental health experts at the evidentiary hearing. He was given all the process he was due.

The state postconviction court held an evidentiary hearing on the *Ford* claim involving the testimony of 14 witnesses, including four mental experts. The state court made factual findings and credibility determinations, following the hearing, including finding that Hutchinson did "not have any current mental illness" and his "purported delusion" regarding his guilt of the four first-degree murder convictions was "demonstrably false." The state lower court concluded that Hutchinson told the story of a government conspiracy "to avoid responsibility for the murders." The state court's findings are fully supported by the record.

Ford claims involve fact-intensive inquiries regarding the defendant's mental condition. This Court does not normally grant review of a case to review the findings of fact and credibility determinations regarding the experts' testimony. Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous fact findings"); *United States v. Johnston*, 268 U.S. 220, 227 (1925)

(stating the Court does "not grant a certiorari to review evidence and discuss specific facts."); *Cash v. Maxwell*, 565 U.S. 1138 (2012) (statement of Sotomayer, J., respecting the denial of certiorari) ("Mere disagreement with" a "highly fact bound conclusion is, in my opinion, an insufficient basis for granting certiorari"). There is no reason to grant review.

No conflict with this Court's jurisprudence

There is no conflict between this Court's *Ford* jurisprudence and the Florida Supreme Court's decision in this case. Sup. Ct. R. 10(c) (listing conflict with this Court as a consideration in the decision to grant review). The Florida Supreme Court's decision complies with both *Panetti v. Quarterman*, 551 U.S. 930 (2007), and *Madison v. Alabama*, 586 U.S. 265 (2019).

No conflict with the federal appellate courts or state supreme courts

There is also no conflict with either the federal circuit courts or the state courts of last resort and the Florida Supreme Court's decision. As this Court has observed, a principal purpose for certiorari jurisdiction "is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991); *see also* Sup. Ct. R. 10(b) (listing conflict among federal appellate courts and state supreme courts as a consideration in the decision to grant review). Issues that have not divided courts or are not important questions of federal law do not merit this Court's attention. *Rockford Life Ins. Co. v. Ill. Dep't of Revenue*, 482 U.S. 182, 184, n.3 (1987).

There is no conflict between the Florida Supreme Court's decision in this case and any decision of any federal circuit court of appeal. The Florida Supreme Court's

decision rejecting the *Ford* claim certainly does not conflict with similar a *Ford* claim, based on "delusions" regarding guilt, rejected by the Ninth Circuit in *Dixon v. Shinn*, 33 F.4th 1050 (9th Cir. 2022). Hutchinson cites no decision from any federal circuit court holding to the contrary.

There is also no conflict between any decision of any other state court of last resort and the Florida Supreme Court's decision. The Florida Supreme Court decision is in accord with the Missouri Supreme Court's decision in *State ex rel. Barton v. Stange*, 597 S.W.3d 661, 666 (Mo. 2020), concluding that a *Ford* claim, based on a diagnosis of "Major Neurocognitive Disorder," did not establish the "substantial threshold showing of insanity required by *Panetti* and *Ford*." Petitioner cites no decision from any state supreme court holding otherwise. There is no conflict between the other state supreme courts and the Florida Supreme Court's decision rejecting the *Ford* claim.

Because the issue involves mainly factual disputes that this Court does not review and because there is no conflict with this Court or other appellate courts and the Florida Supreme Court's decision rejecting the Ford claim and affirming the state lower court's finding that Hutchinson was competent to be executed, this Court should deny review of the question.

Accordingly, this Court should deny the petition.

CONCLUSION

Accordingly, the petition for writ of certiorari should be denied.

Respectfully submitted,

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