No. 24-7117

IN THE SUPREME COURT OF THE UNITED STATES

JEFFREY GLENN HUTCHINSON,

Petitioner,

-v-

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

On Petition for a Writ of Certiorari to the Eleventh Circuit Court of Appeals

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BRIEF OF MENTAL HEALTH ADVOCACY GROUPS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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BRIEF OF AMICI CURIAE[1]

INTEREST OF AMICI

Collectively, *amici* possess a deep knowledge of the operation of legal practices affecting the administration of criminal law and capital punishment in the United States. In particular, they are familiar with the intersection of severe mental health concerns and competency to be executed. They offer this brief to explicate their concerns that Jefferey Hutchinson may be executed despite lacking a rational understanding of why the State of Florida seeks to kill him.

Advancing Real Change Inc.: Advancing Real Change, Inc. ("ARC") is a national not-for-profit organization that seeks to create a more just world through advancing empathy, dignity, and equity within and beyond the legal system. It provides mitigation investigation in criminal cases, with a focus on capital cases in Florida and throughout the country. A significant part of the organization's programming involves training and education of over 2,000 criminal defense practitioners annually regarding the effective collection and presentation of mitigating evidence through a trauma-informed lens. ARC has focused trainings on understanding the experiences of veterans and the impacts military service has on those who face capital and other criminal charges especially as it relates to mental health concerns.

[1] Pursuant to Rules 37.2(a) and 37.6, Amici certify that no party or party's counsel authored this brief in whole or in part and that no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief. All counsel of record received timely notice of Amici's intent to file this brief more than ten days prior to its due date.

Conservatives Concerned: Conservatives Concerned is a network of political and social conservatives who question the alignment of capital punishment with conservative principles and values. Their programs include educating conservatives about the failed death penalty system.

Dr. Joseph Thornton, MD: Dr. Thornton is a board-certified psychiatrist and a Distinguished Fellow of the American Psychiatric Association, who teaches patient safety and ethical practice. Dr. Thornton is interested in maintaining the integrity of ethical practice in circumstances of clinical uncertainty, including a decision that preserves life.

Florida Justice Institute: Florida Justice Institute is a non-profit public interest law firm that uses impact litigation to improve the lives of Florida's poor and disenfranchised residents, while focusing on criminal justice reform, homelessness and poverty, disability access, and other civil rights issues.

Revolution Therapy: Revolution Therapy is a clinical and forensic mental health organization providing specialization in trauma therapy and relational health as well as the provision of capital and non-capital sentencing mitigation and assessments. Revolution Therapy has an interest in promoting an informed and accurate understanding between the legal system and the field of clinical mental health practice and research, with the goal of supporting the healthy functioning and overall well-being of individuals with mental illness who come into contact with the legal system in any capacity.

SUMMARY OF ARGUMENT

This Court has made very clear that the Eighth Amendment to the U.S. Constitution prohibits executing a prisoner who does not rationally understand the reason for his execution. Yet its current caselaw is too ambiguous, allowing for the severely mentally ill to be wrongly executed. Jeffrey Hutchinson does not rationally understand why Florida seeks to execute him, and his execution should not be allowed to proceed based on the current record.

Mr. Hutchinson served our country in the U.S. military, first in the U.S. National Guard and then in the U.S. Army, where he saw combat duty as an Army Ranger. He served in the 1990 Gulf War, where he experienced brutal violence, exposure to chemical weapons and toxic substances, and multiple artillery explosions in combat. His service to our nation resulted in long-term physical and mental disabilities, including post-traumatic stress disorder, Gulf War Illness, and traumatic brain injury, all of which left him with significant cognitive defects.

Additionally, since returning from war, Mr. Hutchinson has suffered from delusions related to his military service. For over 20 years—his entire time on Florida's death row—Mr. Hutchinson has believed that the crimes underlying his conviction and death sentence were part of a government conspiracy meant to silence him from speaking about the horrors he experienced during the Gulf War.

The lower court's decision that Mr. Hutchinson is competent for execution is based on a flawed and medically deficient examination by the Governor's

Commission—the fastest on record and contrary to years of evidence in the record that Mr. Hutchinson does not rationally understand the reason for his imminent execution. Allowing Mr. Hutchinson's execution to proceed would result in the most extreme and irreversible Eighth Amendment violation and a blatant disregard for persons suffering from mental illness across the country, including those with illnesses caused by their service to our country.

ARGUMENT

I. PROPERLY UNDERSTANDING A PRISONER'S MENTAL HEALTH IS CRITICAL FOR DETERMINING THE CONSTITUTIONALITY OF AN EXECUTION

A. The Eighth Amendment Prohibits Executing a Prisoner Who Does Not Rationally Understand the Reason for His Execution

In response to Alvin Bernard Ford's challenge to Florida's attempt to execute him, another case from Florida, this Court established that it violates the Eighth Amendment to execute a person who is insane at the time of execution. *Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986); *see also* U.S. CONST. amend. VIII. The Court reasoned that when a prisoner "has no comprehension of why he has been singled out and stripped of his fundamental right to life," the execution serves no legitimate retributive purpose. *Ford*, 477 U.S. at 409. Recognizing the severity and finality of capital punishment, the Court emphasized that procedures used to determine a prisoner's competency for execution must meet heightened standards of fairness and reliability. *Id.* at 411.

While the *Ford* majority declined to define the precise standard for competency, Justice Powell's concurring opinion articulated that the Eighth Amendment forbids the execution of those "who are unaware of the punishment they are about to suffer and why they are to suffer it." *Id.* at 422 (Powell, J., concurring). More than two decades later, the Court revisited the *Ford* standard in *Panetti v. Quarterman*, 551 U.S. 930 (2007). There, the Court clarified that the Eighth Amendment protects not only prisoners who are unaware of their punishment, but also those whose mental illness distorts their understanding of the reason for their execution. Specifically, the Court held that the Eighth Amendment bars the execution of a prisoner whose mental illness prevents him from having a "rational understanding of the reason for the execution." *Id.* at 958–59. The Court rejected the Fifth Circuit's narrower test, which had focused only on factual awareness, explaining that delusions may "put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose." *Id.* at 960.

The Court further clarified this standard in *Madison v. Alabama*, 586 U.S. 265 (2019), where it considered whether the protections of *Ford* and *Panetti* extend to prisoners whose mental incompetency stems not from psychotic delusions but from other conditions, such as dementia. *See id.* at 274-78. The Court determined that it does, holding that the relevant inquiry is whether the prisoner has a rational

understanding of the reason for his execution—not whether he suffers from a particular mental illness. *Id.* at 267–68.

Together, *Ford*, *Panetti*, and *Madison* establish that the Eighth Amendment forbids executing individuals who, due to serious mental illness or cognitive decline, lack a rational understanding of the reason the State seeks to carry out their death sentence. If a prisoner's mental illness—whether psychosis, delusions, schizophrenia, or dementia—prevents him from comprehending the link between his crime and the punishment, the execution violates the Constitution.

B. Military Service Like Mr. Hutchinson's Has a Profound Impact on Veterans' Mental Health

Combat veterans make immense sacrifices to serve their country. In combat zones, death and injury are daily and brutal occurrences. Combat servicemen and women see people blown apart before their eyes, have to kill and injure others, and endure the loss of friends, superiors, and fellow soldiers. Richard Dieter, *Battle Scars: Military Veterans and the Death Penalty*, DEATH PENALTY INFO. CTR. 10 (2015). A study of the traumatic experiences of veterans in Iraq found that 88.5% of veterans witnessed dead bodies or human remains during their tour of duty, 83.8% witnessed the death or serious injury of an American soldier, and 31.2% directly caused the death of an enemy combatant. William Brown, *Spinning the Bottle: A Comparative Analysis of Veteran-Defendants and Veterans Not Entangled in*

Criminal Justice, in BROCKTON HUNTER AND RYAN ELSE (EDS.) THE ATTORNEYS GUIDE TO DEFENDING VETERANS IN CRIMINAL COURT 128–30 (2014).

Added to these horrors are the dangerous environmental conditions endured by Gulf War veterans. Those deployed during the Gulf War were frequently exposed to burn pits, which create airborne hazards so dangerous that the Department of Defense has since closed all burn pits. *See* U.S. Dep't Veterans Affairs, *Airborne Hazards and Burn Pit Exposures*, https://www.publichealth.va.gov/exposures/burnpits/index.asp (last accessed Apr. 12, 2024). The health risks of exposure to these burn pits were sufficiently direct and expansive that the U.S. Department of Veterans Affairs ("the VA") designated a broad range of "presumptive conditions" resulting from a veteran's exposure to burn pits, including multiple cancer forms—among them glioblastoma, genitourinary cancers, and respiratory cancers—pulmonary fibrosis, and bronchitis. *See id.* Likewise, the adverse health impact was so ubiquitous that the VA advises *all* veterans who served in the Gulf to seek medical care and apply for compensation. *See id.*

Veterans who served in the Gulf War, as Mr. Hutchinson did, have made vital contributions to national and international security, often at a heavy cost to their lives and livelihoods. The returning veteran is different from the soldier who left home. *See* BESSEL VAN DER KOLK, THE BODY KEEPS THE SCORE 223 (2014)

(American soldiers "perform[] very well in combat" but "cannot tolerate being home.").

That cost includes a toll on their mental health. Returning veterans "[bring] with them indelible experiences of the battlefield [and are] left to traverse as best they [can] the immense divide between knowing and not knowing, between military and civilian life." JUDITH HERMAN, TRAUMA AND RECOVERY 347–48 (1992). These wounds manifest in the form of damaged bodies and scarred psyches.[2] Indeed, the record in this case is replete with statements from Mr. Hutchinson's family members stating that he came back from war a different person—that the difference was "like night and day." Aff. of Alison Brown (Apr. 14, 2025) (attached to Hutchinson's motion filed in Bradford County on April 24, 2025 ("Hutchinson's Motion"), as Exhibit G); *accord* Aff. of Jennifer Short (attached to Hutchinson's Motion as Exhibit H), at 1.

Veterans carry both physical and psychological scars, including Traumatic Brain Injury (TBI), Post-Traumatic Stress Disorder (PTSD), and Gulf War Illness (GWI). Gulf War veterans experience high rates of "severe or moderate TBI" due to the conditions of their service. Committee on Gulf War and Health, *Gulf War and Health: Volume 9: Long-Term Effects of Blast Exposures*, NAT'L ACADS. OF SCIS.,

[2] The U.S. Army has concluded that the likelihood of combat-induced psychological trauma increases with each deployment. Mental Health Advisory Team (MHAT) V, *Operation Iraqi Freedom 06-08*, OFFICE OF THE SURGEON, MULTI-NATIONAL FORCE-IRAQ & OFFICE OF THE SURGEON GENERAL, 34, 42 (Feb. 14, 2008).

ENG'G, AND MED. (2014) at 6. Incidence of TBI can be linked to the development of other psychiatric disorders such as Delusional Disorder (DD), dementia, and personality syndromes. Salla Koponen et al, *MRI findings and Axis I and II psychiatric disorders after traumatic brain injury: A 30-year retrospective follow-up study*, 146 PSYCHIATRY RSCH: NEUROIMAGING 263 (2006).

Soldiers' proximity to roadside bomb blasts and IEDs during the Gulf War, including the Khamisiyah blast[3] left many with permanent damage. Soldiers risked injury caused by exposure blast debris, blast waves, and blast winds that exposed soldiers to burns, toxic substances, and psychological trauma. *Id.* at 1–2. Returning veterans also experience "permanent neurologic disability, including cognitive dysfunction, unprovoked seizures, and headache," and, in cases of recurrent exposure to blasts, can experience "chronic traumatic encephalopathy with progressive cognitive and behavioral decline." *Id.* at 6, 7.

Because of the exposure to blasts, Gulf War veterans often suffer from a range of long-term conditions that require ongoing treatment. The VA has found links between Gulf War TBI and multiple adverse psychiatric disorders, including

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[3] In March 1991, U.S. troops detonated an Iraqi army ammunition depot located in Khamisiyah, Iraq, approximately fifteen miles southeast of An Nasiriyah (the site of a separate ammunition bunker explosion). The weapons, at the time thought to contain only ammunition, were destroyed using open air methods. Later, a United Nations Special Commission found the depot held rockets containing the nerve agents sarin and cyclosarin. Chemical & Biological Weapons during Gulf War, U.S. DEP'T OF VETERANS AFFS., https://www.publichealth.va.gov/exposures/gulfwar/sources/chem-bio-weapons.asp (last visited Apr. 11, 2025).

depression, PTSD, and aggressive behaviors—the ramifications of which can occur up to 15 years after injury. Committee on Gulf War and Health, *Gulf War and Health: Volume 7: Long-Term Consequences of Traumatic Brain Injury*, NAT'L ACADS. OF SCIS., ENG'G, AND MED. (2009), at 6–7.

The devastating conditions of service in the Gulf War have also led to widespread PTSD among surviving veterans. Multiple studies have found that the experiences common to those serving in the Gulf War—such as being shot at, handling dead bodies, witnessing their comrades being killed, knowing someone who was killed, or killing enemy combatants—correlate with long-term psychological consequences like PTSD. *See* Charles Hoge et al., *Combat Duty in Iraq and Afghanistan, Mental Health Problems, and Barriers to Care*, 351 N. ENGLAND J. MED. 13, 16 (2004). The "severity of combat exposure [is] the single most important factor in determining whether a soldier would develop symptoms of PTSD." HERMAN, *supra* at 350.

When left untreated, PTSD can have fatal consequences. As one of the nation's leading trauma experts explains, "reliving trauma reactivates the brain's alarm system and knocks out critical brain areas necessary for reintegrating the past, making it likely that patients will relive rather than resolve the trauma." VAN DER KOLK, *supra* at 223. For veterans, PTSD typically manifests itself by forcing the former soldier to "repeatedly relive traumatic combat situations" and to "remain in a hyper-vigilant, ready-for-battle state of mind. [Veterans'] military training and

skills, once necessary and honorable when in the service of our country overseas, are troubling upon their return stateside." American Bar Association (ABA), Report 105A, (adopted by the House of Delegates Feb. 8-9, 2010) at 3. PTSD can be a lifelong condition that requires ongoing treatment. *See* HERMAN, *supra* at 352.

PTSD can also be accompanied by secondary psychiatric features, and the likelihood of developing psychosis increases with lifetime PTSD. Ebele Compean & Mark Hamner, *Posttraumatic Stress Disorder with Secondary Psychotic Features (PTSD-SP): Diagnostic and Treatment Challenges*, 88 PROGRESS IN NEURO-PSYCHOPHARMACOLOGY & BIOLOGICAL PSY. 265 at 267 (2019).

GWI adds to the prolonged harm from Gulf War veterans suffer. As the Government has recognized, GWI "is a serious physical disease, affecting at least 175,000 veterans of the 1990-91 Gulf War, that resulted from hazardous exposures in the Gulf War. James Binns et al., *Gulf War Illness and the Health of Gulf War Veterans: Research Update and Recommendations, 2009-2013*, RSCH. ADVISORY COMM. ON GULF WAR VETERANS' ILLNESSES 1 (2014) https://www.va.gov/RAC-GWVI/RACReport2014Final.pdf. Symptoms of GWI "typically include some combination of widespread pain, headache, *persistent problems with memory and thinking*, fatigue, breathing problems, stomach and intestinal symptoms, and skin abnormalities." *Id.* at 2 (emphasis added). These symptoms are particularly severe for veterans who were exposed to the release of nerve gas by the Khamisiyah blast (which Mr. Hutchinson was), and veterans who had high levels of exposure to

contaminants from oil well fires. *Id.* For many veterans, these symptoms persist for decades, with little to no spontaneous recovery or effective treatment identified to date. *See* U.S. Dep't of Veterans Affs., *Gulf War Veterans' Medically Unexplained Illnesses – Public Health* 36-37 (Jan. 31, 2025). The VA recognizes several presumptive conditions, such as chronic fatigue syndrome, fibromyalgia, and functional gastrointestinal disorders for veterans with qualifying Gulf War service.

Scientific findings increasingly support a physiological basis for GWI. A 2023 study revealed that veterans with GWI exhibit impaired mitochondrial function in their white blood cells, significantly reducing cellular energy production—pointing to a measurable biochemical dysfunction. *See* Joel N. Meyer et al., *Bioenergetic Function is Decreased in Peripheral Blood Mononuclear Cells of Veterans with Gulf War Illness*, PLOS ONE, 21 (Nov. 1, 2023). While the exact cause remains under investigation, strong evidence links GWI to neurotoxic exposures during the war, particularly the use of pyridostigmine bromide (a nerve agent pretreatment) and pesticides. *See Gulf War Illness and the Health of Gulf War Veterans*, *supra*, at 7–9. These exposures show consistent dose-response relationships with GWI prevalence and are considered likely causal factors. *Id*. at 40–48.

GWI can lead to significant neuropsychological effects, including increased aggression. Veterans with GWI frequently report mood disturbances, irritability, and angry outbursts. These symptoms may be linked to neuroinflammatory processes and central nervous system dysfunction resulting from deployment-

related exposures, including pesticides and pyridostigmine bromide. *See* Lea Steele et al., *Brain–Immune Interactions as the Basis of Gulf War Illness: Clinical Assessment and Deployment Profile of 1990–1991 Gulf War Veterans in the Gulf War Illness Consortium (GWIC) Multisite Case-Control Study*, 11 BRAIN SCI. 1132 (2021). Animal studies modeling Gulf War-toxicant exposure have found that chronic exposure to permethrin, followed by stress, primes neuroinflammatory responses in the hippocampus through microglial activation and leads to depression-like behaviors. *See* Sean X. Naughton et al., *Permethrin Exposure Primes Neuroinflammatory Stress Response to Drive Depression-like Behavior Through Microglial Activation in a Mouse Model of Gulf War Illness*, 21 J. NEUROINFLAMMATION 222 (2024).

Human-based studies conducted in the 1980s and 1990s found that low-level exposure to organophosphate ("OP") insecticides used in Khamisiyah—which are chemically similar to sarin—resulted in an increased prevalence of "neurological and psychiatric symptom reporting." Carolyn E. Fulco, et al., Gulf War and Health Volume 1. *Depleted Uranium, Sarin, Pyridostigmine Bromide, and Vaccines* 199, 366 (2000). Animal-based studies have shown that there is a positive correlation between exposure to OP insecticides and adverse health effects. *Id.* Using human and animal data, a June 2019 study found that exposure to sarin was "suspected to be a neurological hazard to humans" over intermediate and extended time periods. NAT'L TOXICOLOGY PROGRAM, PUB. HEATH SERV., U.S. DEP'T OF HEALTH & HUM.

SERVS., *NTP Monograph on the Systematic Review of Long-term Neurological Effects Following Acute Exposure to Sarin* at G-15 (2019), https://ntp.niehs.nih.gov/sites/default/files/ntp/ohat/sarin/sarin_508.pdf.

As a result of their bravery, skill, and endurance in combat, many Gulf War veterans (including Mr. Hutchinson) returned home with debilitating medical conditions, many of which were not even recognized or treated for decades. And returning veterans' physical and psychological wounds of battle do not—and cannot—heal on their own. Many veterans do not seek support when they return home. Veterans who do seek help often cannot complete treatment. One study found that of almost 50,000 veterans diagnosed with PTSD from tours of duty in Iraq, fewer that one in ten completed their treatment. Karen H. Seal et al., *VA Mental Health Services Utilization in Iraq and Afghanistan Veterans in the First Year of Receiving New Mental Health Diagnoses*, 23 J. TRAUMATIC STRESS 5 (2010). Complicating this issue, treatments are often ill-suited to veterans' needs. VAN DER KOLK, *supra* at 225. Sometimes stigma is difficult for veterans to overcome. Hoge, *supra* at 20. At other times, there are simply no treatments available—as in the case of GWI in the years following the war.

C. Delusional Disorder Can Be Difficult to Diagnose Without an Adequate Examination

Delusional Disorder is a very rare psychiatric disorder, affecting only .02% of the population. AM. PSYCHIATRIC ASS'N, THE DIAGNOSTIC AND STATISTICAL MANUAL

OF MENTAL DISORDERS (5th ed. 2013). Consequently, the disorder is under-researched and poorly understood. Accordingly, DD is often misdiagnosed. The only diagnostic criterion for DD is the presence of a non-bizarre delusional thought for at least one month. Nagesh Pai & Shae-Leigh Vella, *Delusional Disorder: A Comprehensive Narrative Review*, 24 INT'L J. OF CLINICAL STUDIES & MED. CASE REP. 1 (2023). Non-bizarre means that the delusional thought is not impossible but also is not a reality. *Id.* For example, someone believes they are being followed, conspired against, or drugged. All of these scenarios are possible, but they are not actually happening to the individual.

Those with DD will rigidly adhere to the delusion, often misinterpreting the facts to fit the delusion rather than morphing the delusion to fit the facts. Raymond R. Crowe & Marc-Andre Roy*, Delusional Disorders*, *in* S.H. FATEMI & P.J. CLAYTON, EDS., THE MEDICAL BASIS OF PSYCHIATRY 127 (2008). The delusion remains the same and those with DD are unwavering in its existence.

Because the delusions are "non-bizarre," those suffering from DD can still function normally and have an understanding that others find their delusions unreasonable, but they cannot accept this reality. Pai & Vella, *supra*, at 1. Further, because of this partial rational understanding, those with DD can appear completely normal when not discussing their delusions. Shawn M. Joseph & Waquar Siddiqui, *Delusional Disorder*, NIH (Mar. 27, 2023), https://www.ncbi.nlm.nih.gov/sites/books/NBK539855/. The areas of life outside of

the delusional system are unaffected and individuals with DD can maintain housework, occupational performance, and social relationships. Crowe, et al., *supra* at 127. There are various subtypes of DD based on the contents of the delusion. One subtype is persecutory, which pertains to the individual being fixated on the delusion that they are being conspired against. Raymond R. Crowe, et al.*, supra*, at 128. These delusions can originate out of a situation where some degree of suspicion is warranted, but the delusion develops to expand "beyond the bounds of reason." *Id.* Importantly, those with DD are capable of understanding that others find their beliefs to be delusional, but they are unable to accept that reality themselves. *Id.* This contributes to why those with DD do not seek help.

While much about the cause of DD is unknown,[4] those who have experienced TBI (as Mr. Hutchinson has) have a higher prevalence of DD. Salla Konopen et al., *MRI findings and Axis I and II psychiatricdisorders after traumatic brain injury: A 30-year retrospective follow-up study*, 146 PSYCHIATRY: NEUROIMAGING RSCH. 263 (2006).

Diagnosing DD can be difficult. Those with DD do not believe they are ill, and therefore are not forthcoming with details about their illness. There are no set labs to establish a DD diagnosis; therefore, it is crucial to carefully conduct a clinical evaluation. *Id.* Those with persecutory DD are especially difficult because they are

[4] Like GWI, research on DD is scarce and the disorder is poorly understood; it was only classified as its own disorder in 1987. Pai & Vella, *supra*, at 1.

predisposed to being distrusting and can hide their thoughts about their delusions. Crowe, at al., *supra*, at 127; Howard E. LeWine, MD, *Delusional Disorder*, HARVARD HEALTH PUBLISHING (Jan. 27, 2025). Therefore, in addition to a thorough clinical exam, conversation with friends and family is also helpful. *Id.*

II. THE PROCEEDINGS BELOW FAILED TO ADEQUATELY CONSIDER MR. HUTCHINSON'S MENTAL ILLNESS

The determination below that Mr. Hutchinson is competent can be characterized as nothing but part of the State of Florida's race to execution. The proceedings below were the fastest in the State of Florida for determining a prisoner's competency for execution. *See* Hutchinson v. State, No. SC2025-0590, slip op. at 16 (Labarga, J., dissenting) ("[T]his death warrant case has had a procedural path unlike any in recent history. It is because of this that I continue to believe that a stay would be beneficial to the consideration of the issues raised.").

A. The Governor's Commission's Examination of Mr. Hutchinson Was Insufficient

The lower court's determination that Mr. Hutchinson is competent for execution stems from the report of a three-doctor Commission that spent a mere 90 minutes with Mr. Hutchinson just days before his scheduled execution.[5] Science

[5] The doctors on the Governor's Commission were Dr. Wade C. Myers, Dr. Emily Lazarou, and Dr. Tonia Werner. Only Drs. Myers and Werner testified at the hearing in Bradford County on April 25, 2025.

It is important to note that this format of evaluation is specific to this context. "[T]here is no clinical setting outside of this legal context where three

indicates that the Commission's "examination" of Mr. Hutchinson is insufficient to adequately assess his mental health for purposes of determining whether his execution comports with the Eighth Amendment.

i. The Commission spent only 90 minutes with Mr. Hutchinson before rendering its opinion

The American Psychiatric Association Practice ("APA") Guidelines for the Psychiatric Evaluation recommend that a sufficient psychiatric evaluation includes review of psychiatric symptoms, trauma history, and treatment history; a substance abuse assessment; assessment for suicide risk; assessment of risk for aggressive behaviors; assessment of cultural factors; assessment of medical health; qualitative assessment; involvement of the patient in treatment decision making; and documenting the evaluation. Joel J. Silverman, *The American Psychiatric Association Practice Guidelines for the Psychiatric Evaluation of Adults*, 172 AM. J. PSYCHIATRY 798, 800 (2015). The APA also recognizes the importance of understanding the patient's background, relationships, life circumstances, strengths and vulnerabilities. *Id.* at 798. It can be difficult to obtain this information in one session, and multiple sessions may be necessary. *Id.* The amount of time required to obtain the necessary information can differ between patients depending on the circumstances. *Id.*

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psychiatrists would evaluate one patient at the same time." Melanie Kalmanson & Bridget Maloney, *Repairing the "Sea of Disorganized" Procedures Used for Determining Competency for Execution*, 49 L. & PSY. REV. (forthcoming 2025).

As discussed *supra*, DD is difficult to diagnose, especially in a short amount of time. The Commission failed to take this into account when examining Mr. Hutchinson and rendering its opinion.

The Commission spent only 90 minutes evaluating Mr. Hutchinson before rendering its opinion that he is competent to be executed. Report, at 1.[6] The experts hired by Mr. Hutchinson's attorneys—who opined that Mr. Hutchinson has PTSD, DD, and other mental illnesses that render him incompetent for execution—spent *much* longer with Mr. Hutchinson before rendering their decision. Dr. Agharkar spent almost 4 hours with Mr. Hutchinson. Letter from Agharkar and Associates to Chelsea Shirley, Esq. (Apr. 12, 2025), at 1 ("I spent approximately 3.65 hours with Mr. Hutchinson.") (attached to Hutchinson's Motion as Exhibit D). Dr. Barry Crown examined Mr. Hutchinson twice. Report of Barry M. Crown, PhD and Associates, P.A. (Apr. 12, 2025), at 2-3 (attached to Hutchinson's Motion as Exhibit E) [hereinafter Crown Report].

The Commission's 90 minutes was insufficient to adequately assess Mr. Hutchinson. In fact, testimony at the evidentiary hearing in Bradford County revealed (consistent with medical research on DD) that Mr. Hutchinson only began speaking about his delusions halfway through the exam. Hearing Tr. (Apr. 25, 2025), at 218. Mr. Hutchinson's delusion is that he believes the government is "after

[6] The Commission's report dated April 22, 2025, is in the record attached to Mr. Hutchinson's Motion as Exhibit B. It is cited herein as "Report."

him." Aff. of Alison Brown (Apr. 14, 2025) (attached to Hutchinson's Motion as Exhibit G). Multiple letters written by Mr. Hutchinson throughout the life of his case show that he is distrusting of the court system, the government, and even his own lawyers. *E.g.*, Undated Letter (attached to Hutchinson's Motion as Exhibit K). Thus, it follows that Mr. Hutchinson would also be distrusting of the Commission's doctors who are working with the government and *appointed by* the Governor who signed his death warrant.

Further, Mr. Hutchinson and those with DD do not believe that they are ill, so they are not forthcoming with their delusions. Therefore, the Commission's mere 90 minutes with Mr. Hutchinson just days before the State of Florida intends to execute him was woefully insufficient to adequately conduct an examination and determine Mr. Hutchinson's competency.

ii. The Commission did not perform any testing before rendering its opinion that Mr. Hutchinson is competent to be executed

The APA has also explained that information necessary for conducting a proper evaluation may be gathered through diagnostic testing. Silverman, *The American Psychiatric Association Practice Guidelines for the Psychiatric Evaluation of Adults*, 172 AM. J. PSYCHIATRY at 800. Standardized diagnostic tests provide helpful information in the clinical setting. *See, e.g.*, Amanda Jensen-Doss & Kristin M. Hawley, *Understanding Clinicians' Diagnostic Practices: Attitudes Toward the Utility of Diagnosis and Standardized Diagnostic Tools*, 38 ADMIN. & POL'Y IN

MENTAL HEALTH & MENTAL HEALTH SERVS. RSCH. 476, 477 (2011); *see also* Kalmanson & Maloney, *supra* note 5.

Indeed, Dr. Werner and Dr. Myers testified that the Commission usually conducts testing in these circumstances. Hearing Tr. (Apr. 25, 2025), at 239, 293. However, in Mr. Hutchinson's examination, the Commission was not able to because the prison warden stopped Dr. Myers from bringing his laptop used for the testing. *Id.*

This further prevented the Commission from conducting a thorough exam. In fact, Dr. Werner testified that she may have been able to diagnose Mr. Hutchinson with PTSD if she had more information. Hearing Tr. (Apr. 25, 2025), at 253 ("I don't know that I had enough information. "We didn't include it [in the Report.").

Dr. Crown, an expert hired by the defense, conducted a battery of tests on Mr. Hutchinson in 2024, which showed that Mr. Hutchinson "has a significant neuropsychological impairment (organic brain damage) as well as a complex Post Traumatic Stress Disorder (PTSD) as a result of multiple etiologies." Crown Report, at 3. Dr. Crown then performed further testing in 2025, but "a number of neuropsychological tests could not be administered" because Mr. Hutchinson's hands were restrained. *Id.*

The Commission's examination was rushed due to the short warrant period assigned by the Governor and stunted by prison personnel. As a result, the Commission's report is inaccurate, or at best incomplete. Therefore, the lower

court's determination that Mr. Hutchinson is competent for execution is based on unreliable information (as discussed further *infra*).

B. The Lower Court's Determination that Mr. Hutchinson Is Competent to Be Executed Does Not Comport with the Record or Science

The Eleventh Circuit's determination that Mr. Hutchinson's incompetence is no barrier to his execution arises from the Bradford County circuit court's ruling, which relied on the Commission's report. But the Commission's report and, therefore, the opinions flowing from it do not comport with the record or science.

At the outset, the Commission's report indicates that the Commission emphasized irrelevant factors in assessing Mr. Hutchinson and ignored many of the symptom presentations associated with DD. For example, in making its determination, the Commission relied on Mr. Hutchinson's appearance (that he is well-groomed) and that he keeps a tidy cell. Report, at 1-2. But research shows that persons with DD can present normally and maintain daily functions. Part I.C *supra*. Their daily lives are not affected outside the delusion. Part I.C *supra*. For the same reason, the Commission's emphasis on Mr. Hutchinson's good prison record is also irrelevant. *See* Report, at 2.

Further, the Commission reasoned that Mr. Hutchinson's delusion is not genuine because it has changed over the years. This is inconsistent with medical research on DD. At the core of DD is a fixed delusion, which will not change, but those with DD will morph the facts around them to fit the delusion. Part I.C *supra*.

Mr. Hutchinson's fixed delusion is that the government is conspiring against him—that the government is trying to silence him from speaking about what he witnessed during the Gulf War. Mr. Hutchinson has maintained this delusion since his arrest, claiming that the government is framing him for the murders. The testimony at the hearing was clear that Mr. Hutchinson's delusion has not changed for over 20 years. Hearing Tr. (Apr. 25, 2025), at 31-32, 42-43. Other evidence—including Mr. Hutchinson's letters to friends and family throughout the entirety of this case—confirms he has been consistent in his delusion. *E.g.*, Undated Letter (attached to Hutchinson's Motion as Exhibit K) ("I am a Gulf War Veteran that is being railroaded straight to Death Row for a crime that I did not commit."); *see also* Aff. of Alison Brown, *supra*; Aff. of Jennifer Short, *supra*. He maintains this delusion today, as reflected in the Commission's report. *See* Report, at 1-2.

While Mr. Hutchinson understands that he has been convicted of murder, and if sentenced to death it will be because he was convicted of murder, he does not (and cannot) understand that he committed the murders. The Commission's failure to diagnose Mr. Hutchinson with DD illustrates the difficulty with diagnosing this condition, discussed *supra*.

Ultimately, the lower court's determination contradicts medical research that proves the increased prevalence of psychiatric disorders in Gulf War veterans. Part I.B *supra*. While the Commission recognized Mr. Hutchinson was diagnosed with GWI, the Commission dismissed this significant fact because he stopped taking his

medications. Report, at 1. The Commission's determination that Mr. Hutchinson does not suffer from any "mental illness" belies scientific research on the effects of serving in the Gulf War, as Mr. Hutchinson did. Part I.B *supra*. Science has recognized the severe, chronic, and often unexplained effects of GWI on veterans.

III. EXECUTING MR. HUTCHINSON NOT ONLY VIOLATES THE CONSTITUTION BUT DISCOUNTS THE SIGNIFICANCE OF MENTAL ILLNESS

Mr. Hutchinson served bravely in the U.S. military. As a result of his service to the nation, Mr. Hutchinson has lasting physical and psychological scars. Like many other Gulf War veterans, Mr. Hutchinson was diagnosed with PTSD, GWI, DD and TBI. These conditions are a direct result of the sacrifices he made in serving our nation. They have also rendered him unable to rationally understand the reason for his execution. The lasting psychological effects of Mr. Hutchinson's military service should not be ignored—or dismissed.

Many scholars agree that DD is not well understood and difficult to diagnose. Given the limited scope of the research on DD, it can be easily misunderstood. To continue with executing Mr. Hutchinson despite his symptoms of DD would not only violate his Eighth Amendment rights but also disregard the importance of DD and further perpetuate the lack of understanding of DD. Moreover, PTSD itself can cause psychosis and delusions. Regardless of the medical source of Mr. Hutchinson's delusions, execution on the current record threatens a grave injustice that cannot be undone.

CONCLUSION

Amici respectfully submit that the Court should grant the petition and application for stay of execution.

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