

Nos. 24-7117 and 24A1057
EXECUTION SCHEDULED FOR MAY 1, 2025, at 6:00 P.M.

*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*

BRIEF IN OPPOSITION AND
RESPONSE TO APPLICATION FOR A STAY OF THE EXECUTION

On May 1, 2025, Hutchinson, represented by the Capital Habeas Unit of the Office of the Federal Public Defender of the Northern District of Florida (CHU-N), filed a petition for writ of certiorari in this Court seeking review of the Eleventh Circuit's denial of a certificate of appealability (COA) regarding a claim of incompetency to be executed under *Ford v. Wainwright*, 477 U.S. 399 (1986). *Hutchinson v. Sec'y, Fla. Dep't of Corr.*, No. 25-11481-P (11th Cir. May 1, 2025). On May 1, 2025, CHU-N also filed an application for a stay of the execution. Hutchinson seeks a stay of the execution for this Court to decide his pending petition for certiorari. This Court should deny the stay.

Stays of executions

Stays of executions are not granted as "a matter of course." *Hill v. McDonough*, 547 U.S. 573, 583-84 (2006). Rather, a stay is "an equitable remedy" and "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id.* at 584. There is a "strong equitable

presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.” *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). Equity must also consider “an inmate’s attempt at manipulation.” *Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992). “Both the State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). This Court has highlighted the State’s and the victims’ interests in the timely enforcement of the death sentence. *Bucklew v. Precythe*, 587 U.S. 119, 149-151 (2019). The people of Florida, as well as surviving victims and their families, “deserve better” than the “excessive” delays that now typically occur in capital cases. *Id.* at 149. The Court has stated that courts should “police carefully” against last minute claims being used “as tools to interpose unjustified delay” in executions. *Id.* at 150. This Court has also repeatedly stated that last minute stays of execution should be the “extreme exception, not the norm.” *Barr v. Lee*, 591 U.S. 979, 981 (2020) (vacating a lower court’s grant of a stay of a federal execution quoting *Bucklew*, 587 U.S. at 151).

Three factors required for a stay

To be granted a stay of execution in this Court, Hutchinson must establish three factors: (1) a reasonable probability that the Court would vote to grant certiorari; (2) a significant possibility of reversal if review was granted; and (3) a likelihood of irreparable injury to the applicant in the absence of a stay. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). He must establish all three factors.

Probability of this Court granting certiorari

As to the first factor, there is little chance that four justices of this Court would vote to grant certiorari review of the issue raised in the petition regarding the denial

of a certificate of appealability (COA). The Eleventh Circuit's denial of a COA does not warrant review because it is not debatable that the claim is not even a valid *Ford* claim. Hutchinson did not, and cannot, meet the threshold showing required as the first step to a valid *Ford* claim. Hutchinson must make a "substantial" threshold showing of incompetency to be executed to be entitled to an evidentiary hearing on his *Ford* claim. *Panetti v. Quarterman*, 551 U.S. 930, 950 (2007). As this Court has explained, the "beginning of doubt about competence" to be executed "is not a misanthropic personality or an amoral character;" rather, it "is a psychotic disorder." *Panetti*, 551 U.S. at 960. A capital defendant without any mental illness cannot make any showing of insanity, much less the required "substantial" one. Hutchinson does not have even the "beginnings" of a valid *Ford* claim. *Panetti*, 551 U.S. at 960.

At the 2001 penalty phase, both experts, that were originally appointed by the trial court for purposes of an insanity determination, testified that Hutchinson did not have a major mental illness. (T. XXXI 2490; 2516). Both Drs. McClaren and Larson diagnosed him as narcissistic with antisocial features. (T. XXXI 2503; 2517). The defense mental health expert, Dr. Dillon, diagnosed him with a mood disorder that was manageable with medication (which Hutchinson stopped taking years ago). (T. XXX 2374-75; 2379). The Department of Corrections' records classified him as S1 for mental health purposes during the past decades. And recently, on April 21, 2025, as part of the Governor's statutory obligation when a *Ford* claim arises during a warrant under section 922.07, Florida Statutes (2024), three psychiatrists, Drs. Werner, Meyers and Lazarou, all concluded in their joint report that Hutchinson had no current mental illness. All three experts diagnosed him as having narcissistic and antisocial traits. Thus, the issue of his having a "substantial" threshold showing of incompetency is not debatable, just as the Eleventh Circuit properly determined.

There is also no conflict between the Florida Supreme Court's decision rejecting

a *Ford* claim based on delusions and similar Ford claims raised in the federal courts. *Dixon v. Shinn*, 33 F.4th 1050 (9th Cir. 2022). Nor is there any conflict with the other state supreme courts. *State ex rel. Barton v. Stange*, 597 S.W.3d 661, 666 (Mo. 2020) (concluding 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*.”). Opposing counsel points to no conflict in the lower courts in the petition.

The petition argues that there was a “misapplication” of this Court’s *Ford* jurisprudence. Pet. at 2,15. But this Court does not grant review of misapplication of correct statements of the law. 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 a low probability of this Court granting certiorari to insist the Eleventh Circuit grant review of a *Ford* claim that is not “substantial” raised in the federal district court on the eve of the scheduled execution.

Hutchinson fails the first factor which alone is sufficient reason to deny his request for a stay because he is required to establish all three factors.

Probability of this Court granting relief on the merits

As to the second factor, there is little possibility of Hutchinson being found incompetent to be executed, if this Court were to grant review. Under the AEDPA, a federal habeas court would have to defer to the state court’s findings of fact and credibility determinations. The state trial court, following an evidentiary hearing on

the *Ford* claim, found Hutchinson “does not have any current mental illness” and his “purported delusion” was “demonstrably false.” Hutchinson would have to rebut the state court’s factual findings and credibility determinations by clear and convincing evidence under 28 U.S.C. § 2254(e)(1).

And the Florida Supreme Court’s decision rejecting the *Ford* claim was not contrary to, or an unreasonable application of, either *Madison v. Alabama*, 586 U.S. 265 (2019), or *Panetti v. Quarterman*, 551 U.S. 930 (2007). To the contrary, the Florida Supreme Court repeatedly quoted from this Court’s decisions, including *Madison*, in its opinion. *Hutchinson v. State*, 2025 WL 1248732, at *2-*3 (Fla. Apr. 30, 2025) (No. SC2025-0590).

Hutchinson does not have a “significant” possibility of prevailing on the *Ford* claim, if this Court were to grant review. So, Hutchinson also fails the second factor.

Irreparable injury

As to the third factor of irreparable injury, none is identified. While the execution will result in Hutchinson’s death, that is the inherent nature of a death sentence. The factors for granting a stay are taken from the standard for granting a stay for normal civil litigation, which is not a natural fit in capital cases. *Barefoot*, 463 U.S. at 895-96 (citing *Times-Picayune Pub. Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974) (Powell, J., in chambers)). In the capital context, more should be required to establish irreparable injury than the execution itself. Hutchinson has identified no irreparable harm that is not a direct consequence of his valid, constitutional, and long-final death sentences for the mass murder of three young children.

Moreover, this Court has stated in the capital context that “the relative harms to the parties” must still be considered, including “the State’s significant interest in enforcing its criminal judgments.” *Nelson*, 541 U.S. at 649-50 (emphasis added).

Without finality, “the criminal law is deprived of much of its deterrent effect.” *Calderon v. Thompson*, 523 U.S. 538, 555-56 (1998). And finality in a capital case is the execution. These murders occurred in 1998 and his three death sentences have been final since 2004. Hutchinson fails the third factor as well.

Accordingly, this Court should deny the motion to stay regarding a successive habeas petition raising a *Ford* claim that is not “substantial” in a petition filed the afternoon of the scheduled execution.

Respectfully submitted,

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