No. 24A1037

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

JEFFREY GLENN HUTCHINSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

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REPLY IN SUPPORT OF
APPLICATION FOR STAY OF EXECUTION

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, MAY 1, 2025, AT 6:00 P.M.

I. Mr. Hutchinson satisfies the formal stay factors

At the outset, Respondent's contention that no irreparable injury was identified must not be credited. Contrary to Respondent's assertion, and regardless of whether this factor is "a natural fit[,]" Response at 4, it "is necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985); *see also Hutchinson v. Sec'y, Fla. Dep't of Corr.*, No. 3:13-cv-128-MW, ECF No. 98 at 17 (N.D. Fla. Apr. 16, 2025) ("[T]his Court agrees with Mr. Hutchinson that he would suffer irreparable injury if he was executed without being afforded an opportunity to be

heard" on the underlying merits if procedural requirements were satisfied). That Mr. Hutchinson "automatically…satisfied" this factor is hardly a reason to discount it.

Respondent's entire argument regarding the "[p]robability of this Court granting certiorari" is premised on the contention that Mr. Hutchinson's claim is a matter of state law. Response at 3. But, as Mr. Hutchinson explains in his petition and reply in support of certiorari, Respondent misunderstands the constitutional contours of this issue, which goes not to "mitigation" but to whether Mr. Hutchinson's death sentence would violate the prohibition against cruel, unusual, and excessive punishments based on his diminished "personal responsibility and moral guilt." *See* PCR4 176 (citing *Enmund v. Florida*, 458 U.S. 782, 800 (1982)). The issues before this Court are constitutional in nature. Further, as the petition and supporting reply explain, Mr. Hutchinson fairly presented that claim. Thus, for the reasons laid out in his application for a stay, this factor is satisfied.

Finally, Respondent's argument regarding the probability of this Court granting relief on the merits is not persuasive. The contention that *Lockett* and *Eddings* do not apply at this juncture is without support. Response at 4. And "actual innocence of the death penalty" in the federal habeas 'miscarriage of justice gateway' context is inapposite to the Eighth Amendment issue Mr. Hutchinson's case presents. Thus, Respondent's citations to *Sawyer* and *Irick* are not relevant.

II. Equity supports a stay

Respondent's preliminary discussion of equitable factors and policing against delay do not apply in Mr. Hutchinson's case. As Mr. Hutchinson's petition details, his

postconviction claim was in the midst of active litigation when Governor DeSantis signed his death warrant. As such, his litigation was certainly not a "last minute claim[] being used 'as [a] tool[] to interpose unjustified delay' in executions." BIO at 2 (citation omitted). And, if not for Florida's own actions in signing the death warrant—thereby cutting off his litigation midstream—the normal course of Mr. Hutchinson's then-pending postconviction litigation would have "allow[ed] consideration of the merits without requiring entry of a stay." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). The State is the cause of the exigency. A stay would be equitable.

III. Conclusion

The Court should grant a stay of execution.

/s/ Chelsea Shirley
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