*** CAPITAL CASE ***

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

JEFFREY GLENN HUTCHINSON,

Petitioner,

v.

RICKY D. DIXON, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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

APPLICATION FOR STAY OF EXECUTION

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

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Petitioner Jeffrey Hutchinson requests a stay of his scheduled May 1, 2025, execution pending this Court's consideration of his concurrently filed petition for a writ of certiorari. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983); 28 U.S.C. § 2101(f); Supreme Court Rule 23.

Mr. Hutchinson's petition has a substantial likelihood of success. As explained in the petition, the Eleventh Circuit (1) inverted the certificate of appealability (COA)

standard by basing its denial on disagreements with other reasonable jurists; (2) impermissibly skipped to the merits and failed to address Mr. Hutchinson's argument that he was entitled to an evidentiary hearing based on his multiple-expert proffer on the connection between his combat-related injuries and equitable tolling; and (3) failed to address Mr. Hutchinson's argument that the Court should reconsider "the continued application to death row inmates of the agency theory of the lawyer-client relationship" in the context of missed AEDPA deadlines due to attorney negligence. *Hutchinson v. Florida*, 677 F.3d 1097, 1103 (11th Cir. 2012) (Barkett, J., concurring).

This Court should not allow a situation where a wounded combat veteran is still being blamed for failing to navigate the minutiae of highly technical issues of tolling and federalism from death row that have vexed the bench and bar for decades. Now that new information about Mr. Hutchinson's service-related injuries has been uncovered that casts the Eleventh Circuit's prior equitable tolling ruling in a new light, reasonable jurists could debate whether the district court abused its discretion in declining to reopen the equitable tolling issue under Rule 60(b)(6) so that an evidentiary hearing could be conducted to assess the impact of the new revelations.

The other stay factors favor Mr. Hutchinson as well. First, as the district court found, Mr. Hutchinson brought his Rule 60(b)(6) within a reasonable time. The motion was filed shortly after Governor DeSantis signed his death warrant and expedited his already pending state-court proceedings, which truncated meaningful review of the evidence regarding his traumatic brain injury and Gulf War Illness.

Second, as the district court found, Mr. Hutchinson faces irreparable injury. *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 habeas petition if he was entitled to equitable tolling."). Irreparable injury "is necessarily present in capital cases." *Wainwright v. Booker*, 473 U.S. 935, 935 n.1 (1985); *see also In re Holladay*, 331 F.3d 1169, 1177 (11th Cir. 2003) ("We consider the irreparability of the injury that petitioner will suffer in the absence of a stay to be self-evident."); *Ferguson v. Warden, Fla. State Prison*, 493 F. App'x 22, 26 (11th Cir. 2012) (Wilson, J., concurring) ("[I]n the circumstances of an imminent execution, this Court presumes the existence of irreparable injury.").

Third, a stay will not substantially harm the State. While the State has a legitimate interest in the timely enforcement of valid criminal judgments, it does not have a legitimate interest in truncating review of serious new information that came to light before the warrant was signed. Rather than allow Mr. Hutchinson's state-court litigation to proceed, the State rushed to sign a death warrant and preclude any meaningful review of the new information about his impairments, necessitating these federal proceedings soon after the warrant was signed. Florida has so far made clear that, because a death warrant has been signed, the litigation and evidence that Mr. Hutchinson filed prior to the warrant should be treated the same as if they were frivolous, last-ditch filings on the eve of an execution. This Court should not allow the State to achieve the same result in federal court by denying Mr. Hutchinson a

meaningful appeal of his Rule 60(b)(6) motion. The new revelations of Mr. Hutchinson's cognitive defects resulting from his Gulf War injuries deserve a stay for meaningful consideration in relation to the Eleventh Circuit's outmoded and unjust lack-of-diligence ruling. The State's determination to sweep powerful evidence of a combat veteran's service-related mental and physical injuries under the rug in order to expedite his execution makes it appropriate for this Court to grant a stay.

Finally, granting a stay of execution would not be adverse to the public interest. The public has a legitimate interest in the timely enforcement of valid criminal judgments. However, the public and the judiciary also have a heightened interest in ensuring that combat veterans are not executed without meaningful judicial review, particularly where they have brought forth previously unavailable information related to the impact of their service on their mental functioning. *Cf. Woodson v. North Carolina*, 428 U.S. 280, 303-04 (1976) ("[D]eath is a punishment different from all other sanctions in kind rather than degree."); *Porter v. McCollum*, 558 U.S. 30, 41 (2009) (characterizing the petitioner's heroic military service and struggles to regain normalcy upon his return from war as the kind of evidence relevant to assessing a just outcome of a capital proceeding). The public interest is served by a stay to allow for meaningful consideration of the pending COA motion. *See McGee v. McFadden*, 139 S. Ct. 2608, 2611-12 (2019) (Sotomayor, J., dissenting from denial of certiorari) (even where petitioner may not ultimately prevail on the merits, COA determinations should not be given "short shrift" and are "ill suited to snap judgment" due to what "can be lost when COA review becomes hasty.").

Mr. Hutchinson, a decorated military combat veteran, was exposed to a myriad of hazards during his advanced training and deployment to the Gulf War. His experience on the front lines of a combat zone is so unique that leaving his case unheard calls into question the promise of *Porter v. McCollum*, 558 U.S. 30, 43 (2009) ("Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines.").

The Court should grant a stay of execution and grant the petition for a writ of certiorari to review the decision of the Eleventh Circuit.

Respectfully submitted,

/s/ Sean T. Gunn
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