Capital Case No. 24A1043

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

RESPONSE TO APPLICATION FOR STAY OF EXECUTION
EXECUTION SCHEDULED FOR MAY 1, 2025, AT 6:00 P.M.

On April 28, 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 Rule 60(b) motion to reopen in this active warrant case. *Hutchinson v. Sec'y, Fla. Dep't of Corr.*, No. 25-11271 (11th Cir. April 23, 2025). On April 28, 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, however, should simply deny the petition and then 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. As explained in detail in the accompanying brief in opposition, the issue raised in the petition regarding the denial of a COA does not warrant review, especially because, as the Eleventh Circuit noted, Hutchinson never identified any underlying debatable and substantial habeas claim, as required by the COA statute. 28 U.S.C. § 2253(c)(2); *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Hutchinson sought a COA regarding an untimely and baseless Rule 60(b)(2) motion to reopen a § 2254 petition that was dismissed as untimely over a decade ago (and the motion to reopen was the second Rule 60(b) motion filed seeking to reopen the untimely habeas petition). Additionally, the Eleventh Circuit's decision is an unpublished opinion which is not binding precedent, even in the Eleventh Circuit. There is a low probability of this Court granting certiorari.

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 permitted to reopen his untimely habeas petition, that was closed in 2010, based on this Court's decision in *Kemp v. United States*, 596 U.S. 528, 533 (2022), as well as the concerns

expressed by this Court in *Banister v. Davis*, 590 U.S. 504, 518 (2020), regarding the dangers that Rule 60(b) motions pose to finality in habeas litigation. There is an even lower probability that Hutchinson will ultimately prevail regarding his lack of diligence related to his equitable tolling claim.

Hutchinson seeks to excuse his lack of diligence required for equitable tolling based on two "new" diagnoses that are not new. Both of the diagnoses were known at the time of the 2001 penalty phase, as well as at the time his habeas petition was due in 2005 and at the time of the original equitable tolling litigation. *Hutchinson v. Florida*, 677 F.3d 1097, 1099 & n.1 (11th Cir. 2012) (affirming the denial of equitable tolling due to lack of diligence and noting the habeas petition was due in 2005). Neither diagnosis is new and neither is significant enough to excuse his lack of diligence. A "mild" neurological disorder in a defendant with a normal IQ does not excuse his lack of diligence. If this Court were to grant review, it would most likely hold the motion to reopen was an untimely and baseless Rule 60(b)(2) motion that may not be used to reopen the dismissal of his untimely habeas petition entered over a decade ago. Hutchinson does not have a "significant" possibility of being able to reopen his untimely habeas petition and being granted equitable tolling, 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. Otherwise, this factor would automatically be satisfied in every capital case. 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.

Respectfully submitted,

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

CARLA SUZANNE BECHARD
Associate Deputy Attorney General
Counsel of Record

Charmaine Millsaps
Senior Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
3507 E. Frontage Rd., Ste. 200
Tampa, Florida 33607

Telephone: (813) 287-7900
Charmaine.Millsaps@myfloridalegal.com
capapp@myfloridalegal.com

COUNSEL FOR RESPONDENT