*** CAPITAL CASE ***

No. 24A1043

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

REPLY IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION

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

In opposing Mr. Hutchinson's application for a stay of execution, Respondent primarily argues that his certiorari petition is not meritorious. Respondent asserts that the Eleventh Circuit's denial of a COA was "especially" justified because Mr. Hutchinson "never identified any underlying debatable and substantial habeas claim." Response at 3. Respondent joins the Eleventh Circuit in debating the district court's rejection of that issue, but a debate among reasonable jurists on a question of law requires granting a COA, not denying one. *Slack v. McDaniel*, 529 U.S. 473, 484

(2000) (Under the COA standard, "a substantial showing of the denial of a right includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner."). Moreover, Respondent ignores that the Eleventh Circuit itself previously granted a COA in Mr. Hutchinson's case to review the equitable tolling issue—meaning it must have found at least one debatable claim in his underlying petition. *See* Pet. at 8. Respondent fails to explain how the current Eleventh Circuit's disagreement with the district judge and the prior panel militates against a COA, rather than supports granting one.

The same is true with respect to Respondent's and the Eleventh Circuit's disagreement with the district judge as to whether Mr. Hutchinson's Rule 60(b)(6) motion should have been construed as a Rule 60(b)(2) motion. Response at 3-4. The Eleventh Circuit's extensive debate with the district judge over the correct provision under which to analyze Mr. Hutchinson's motion should have been the basis for allowing a full appeal, not denying any further review. And Respondent's argument that the fact that the Eleventh Circuit's COA denial was unpublished somehow makes this Court less likely to grant review is belied by cases like *Buck v. Davis*, 580 U.S. 100 (2017), where this Court granted certiorari and reversed the Fifth Circuit's unpublished denial of a COA in a Rule 60(b)(6) case like Mr. Hutchinson's. In sum, Respondent's arguments as to merits of the certiorari petition only support Mr. Hutchinson's points that a COA should have been granted and review is warranted.

Next, Respondent advances the bizarre argument that being executed is not an irreparable injury. Response at 4-5. Respondent complains that if an execution

were considered irreparable, "this factor would automatically be satisfied in every capital case." Response 5. But that is the state of the law, and any rule to the contrary would imply that executed individuals could somehow seek redress for legal wrongs after they are no longer living. The Court should adhere to the plain meaning of irreparable injury, which certainly includes death. *See, e.g.*, *Wainwright v. Booker*, 473 U.S. 935, 937 n.1 (1985) (Powell, J., concurring) (stating irreparable harm "is necessarily present in capital cases"); *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.").

Finally, Respondent complains that a stay will harm the State. But it was the State that rushed to sign Mr. Hutchinson' death warrant and preclude any meaningful review of the new information about his impairments, necessitating these federal proceedings soon after the warrant was signed. 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 careful 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.

The Court should grant a stay of execution.

Respectfully submitted,

/s/ Sean T. Gunn
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