No. _____

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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APPLICATION FOR STAY OF EXECUTION

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, 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:

The State of Florida has scheduled the execution of Petitioner Jeffrey Glenn Hutchinson for Thursday, May 1, 2025, at 6:00 p.m. The Florida Supreme Court denied state court relief on Monday, April 21, 2025. Pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101(f), Mr. Hutchinson requests a stay of execution pending the disposition of the petition for a writ of certiorari accompanying this application.

The petition concerns a pattern of due process violations related to the unnoticed issuance of Mr. Hutchinson's death warrant; truncated adjudication of his

Eighth Amendment litigation that was ongoing at the time the death warrant was signed; and oppressive warrant litigation scheme, all of which failed to provide Mr. Hutchinson, an impaired combat veteran, a meaningful opportunity for his constitutional claims to be heard. The petition raises issues worthy of certiorari, and this Court should not allow the State to proceed with Mr. Hutchinson's scheduled execution "without ensuring a meaningful period for [the state courts] to conduct a full review." *Hutchinson v. State*, 2025 WL 1198037 at *7 (Labarga, J., dissenting).

I. Background[1]

On March 31, 2025, while Mr. Hutchinson's pending state-court Eighth Amendment litigation was still in the early stages, Governor Ron DeSantis signed his death warrant. PCR4 671-72. Although at least 10 days' notice of the 31-day warrant was given to other individuals, including the victims' family and Attorney General's Office, Mr. Hutchinson's counsel was not notified until hours after the warrant had issued—and 30 minutes after the Attorney General's Office had filed their first pleading. PCR4 647-70, PCR5 95.

The next day, the case was reassigned to a new judge with no familiarity with Mr. Hutchinson's case. PCR4 711. Within three days, the court had denied the

[1] Citations are as follows: "R." refers to the first eighteen volumes of the record on direct appeal to the Florida Supreme Court (SC01-500). "T." refers to the separately paginated trial transcript in volumes nineteen through thirty-two of the record on appeal. "PCR1" refers to the record on appeal to the Florida Supreme Court from the initial state postconviction appeal (SC08-99); "PCR2" to the record on appeal from the successive state postconviction appeal (SC17-1229); "PCR3" to the record on appeal from the second successive postconviction appeal (SC21-18); and "PCR4" to the record on appeal from this appeal (SC25-0497). Other references are self-explanatory.

pending postconviction motion without providing any notice or opportunity for Mr. Hutchinson to address the new judge's concerns about the claims. PCR4 1080-1116. Within a day of filing the notice of appeal in the Florida Supreme Court, Mr. Hutchinson's initial brief was due. This was not a case of last-minute death-warrant litigation—Mr. Hutchinson filed his claims *before* the death warrant was signed.

Meanwhile, Mr. Hutchinson's April 7, 2025, postconviction motion, which in the Eighth Amendment and due process context challenged the manner of his warrant proceedings, was denied on April 11, 2025. PCR4 699-710, 746-50, PCR5 241-55, App. A2. The state habeas petition was due three days later alongside the notice of appeal, and the initial appellate brief was due less than 24 hours after the record was filed. Over dissent, the Florida Supreme Court denied relief in both actions on April 25, 2025. *Hutchinson v. State*, 2025 WL 1198037 at *1 (Apr. 25, 2025).

Concurrently with this stay application, Mr. Hutchinson has filed a petition for a writ of certiorari.

II. The stay factors weigh in favor of granting a stay

This Court is empowered to stay an execution pending consideration and disposition of a petition for a writ of certiorari because "[a]pproving the execution of a defendant before his appeal is decided on the merits would clearly be improper." *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983). The standards for granting a stay are well established. *See id.* at 895; *Hill v. McDonough*, 547 U.S. 573, 584 (2006). While Mr. Hutchinson recognizes that a stay of execution is "an equitable remedy" and is "not available as a matter of right," *Hill*, 547 U.S. at 584, the relevant factors—

likelihood of success on the merits, undue delay, relative harm to the parties, and the public interest—weigh in favor of granting one here.

A. Mr. Hutchinson is likely to succeed on the merits

The questions raised in Mr. Hutchinson's petition are sufficiently meritorious for a grant of certiorari review, and it is likely that at least four Justices will agree. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). And, should this Court grant a stay and review of the underlying petition, there is a significant possibility that it will reverse the lower court for the reasons explained in the accompanying petition.

Briefly, the Florida Supreme Court's justifications for denying Mr. Hutchinson's under-warrant due process and mental health claims are at odds with this Court's precedent. Indeed, in dissenting from the Florida Supreme Court's majority opinion, Justice Labarga emphasized that "due process requires more" and referenced the Florida Supreme Court's lack of notice that Governor DeSantis had temporarily stayed the proceedings: "Given these circumstances, I cannot concur in the majority's decision to permit this execution to proceed at this time, without ensuring a reasonable period for this Court to conduct a full review." *Hutchinson*, 2025 WL 1198037 at *7 (Labarga, J., dissenting).

Individuals facing the death penalty "must have a fair opportunity to show that the Constitution prohibits their execution." *Hall v. Florida*, 572 U.S. 701, 724 (2014). "[F]undamental fairness is the hallmark of the procedural protections afforded by the Due Process Clause." *Ford v. Wainwright*, 477 U.S. 399, 424 (1986) (Powell, J., concurring in part and in the judgment). Due process entails notice and

the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *see also Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985).

Although the Florida courts acknowledge due process in word and proclaim that "[h]aste has no place in proceedings in which a person may be sentenced to death[,]" *Scull v. State*, 569 So. 2d 1252 (Fla. 1990), in deed they denied Mr. Hutchinson the meaningfulness and fundamental fairness required by the circumstances of his case. This offends "the very concept of justice." *Lisenba v. People of State of California*, 314 U.S. 219, 236 (1941).

For instance, Mr. Hutchinson's efforts to mount a defense in the oppressive climate of his death warrant were perversely held against him when the Florida Supreme Court referenced them as a reason for denying his due process claim: "In sum, although the warrant period in this case was admittedly short and the record lengthy, Hutchinson has been able to raise numerous postconviction claims and advance arguments to support them." *Hutchinson*, 2025 WL 1198037 at *4. This is the epitome of a lack of fundamental fairness. With such a truncated warrant period and no advance notice, defendants and counsel—no matter how diligent—are forced to submit the very sorts of last-minute pleadings that are discouraged by courts. As former Florida Supreme Justice Pariente observed:

> Th[e] extremely short warrant period create[s] a fire drill approach to the review of [the defendant's] claims….The postconviction court and [defense] attorneys were forced to race around the clock in reviewing and presenting all of [the] claims, respectively. But for this Court entering a stay of execution…this Court would have also had inadequate time to thoroughly review his claims.

Jimenez v. Bondi, 259 So. 3d 722, 726 (Fla. 2018) (Pariente, J., concurring). Warrant litigation may always be arduous and may always entail a level of triage, but this Court should not permit Florida to continue its "fire drill approach[.]" *Id.*

The particular circumstances presented by Mr. Hutchinson's petition clearly demonstrate that he is deserving of the protections from the death penalty provided by the Eighth and Fourteenth Amendments. But without this Court's intervention, Florida will continue to perpetuate a Kafkaesque warrant litigation scheme that makes it impossible to vindicate those rights.

Furthermore, Mr. Hutchinson's claims are not subject to any legitimate procedural impediments. The state courts have foreclosed substantive review, but Eighth Amendment exemptions from the ultimate punishment cannot be nullified by any state-law waiver provision. And, even if such a state provision could trump this Court's constitutional prerogatives, the state courts' procedural impediments were not adequate and independent. The "fire drill approach to the review" of Mr. Hutchinson's Eighth Amendment claims once his warrant was signed deprived him of a meaningful opportunity to be heard—including on the issue of why the evidence he seeks to have considered is timely and not barred. *Id.* This Court's review must not be constrained by the very malady this petition seeks to correct.

B. There is no undue delay

Mr. Hutchinson's state postconviction motion was filed within eight days of his death warrant being signed. It was not until after the warrant was signed that Mr. Hutchinson's due process claim—which necessarily impacted his ability to vindicate

his Eighth Amendment rights—ripened. As described in his petition for a writ of certiorari and above, the due process claim centers around the confluence of such factors as the truncated review of his pending constitutional claim after the warrant was signed; the lack of notice and hearing regarding the presiding judge's reassignment; the uneven playing field regarding notice of the warrant's issuance; and the rushed warrant schedule and inability to obtain expert assistance prior to filing his under-warrant postconviction motion. Mr. Hutchinson filed promptly—this was not a motion "filed too late in the day." *Hill*, 547 U.S. at 584.

The State of Florida arbitrarily set a rushed execution date that truncated Mr. Hutchinson's pending review and obstructed a meaningful opportunity for under-warrant claims. To the extent the Court's consideration of this application is rushed, this is not due to any delay by Mr. Hutchinson.

C. Harm to parties

Irreparable injury to the petitioner "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."); *Hutchinson v. Sec'y, Fla. Dep't of Corr.*, No. 3:13-cv-128-MW, ECF No. 98 at 17 (11th Cir. 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).

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 depriving a death-sentenced individual due process and arbitrarily executing him without any meaningful opportunity to hear constitutional claims that had been pending prior to the warrant or those he was unable to fully bring due to the oppressive warrant litigation schedule. *Cf. Holladay*, 331 F.3d at 1177 ("Moreover, contrary to the State's contention that its interest in executing Holladay outweighs his interest in further proceedings, we perceive no substantial harm that will flow to the State of Alabama or its citizens from postponing petitioner's execution to determine whether that execution would violate the Eighth Amendment."). Moreover, the State chose not to pursue a death warrant for years after the conclusion of Mr. Hutchinson's initial round of state and federal appellate litigation. The State will suffer no substantial harm from waiting at least until this Court completes certiorari review of a vital constitutional issue that was being litigated at the time Mr. Hutchinson's death warrant was signed. A stay of execution pending certiorari review is appropriate.

D. Public interest

Granting a stay of execution would not be detrimental to the public interest. Like the State, the public has a legitimate interest in enforcing criminal judgments. However, the public also has an interest in a legal system that opts for deliberate

rather than hasty resolutions of criminal cases, especially cases where the consequence for foregoing justice is a petitioner's death. It would undermine rather than serve the public's confidence in a just system to execute a veteran who honorably served his country on the front lines of the Gulf War; was frustrated in an attempt to demonstrate that he is entitled to exemption from execution—by the signing of a death warrant; and now has further been obstructed from meaningfully presenting constitutional claims under warrant due to an oppressive litigation schedule and the uneven footing caused by the Governor's arbitrary notice practices in this case. A stay of execution should be granted. "[D]ue process requires more." *Hutchinson*, 2025 WL 1198037 at *7 (Labarga, J., dissenting).

III. Conclusion

The Court should grant a stay of execution.

/s/ Chelsea Shirley
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