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 April 30, 2025, just over 24 hours before his scheduled execution. 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 that occurred during Florida's proceedings to determine Mr. Hutchinson's competency to be executed. 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); *see also Hutchinson v. State*, No. SC2025-0590, slip op. at 16 (Apr. 30, 2025) (Labarga, J., dissenting) ("[T]his death warrant has had a procedural path unlike any in recent history. It is because of this that I continue to believe that a stay would be beneficial to the consideration of the issues raised.").

I. Background[1]

On March 31, 2025, while Mr. Hutchinson had pending state-court litigation regarding mental health impairments that had plagued him since his front-line service in the Gulf War, Governor Ron DeSantis signed his death warrant. PCR4 671-72. Counsel promptly secured the assistance of Drs. Bhushan Agharkar and Barry Crown, who found that Mr. Hutchinson could not rationally understand the reason for his upcoming execution or the causal relationship between the crime and punishment to be imposed. PCR6 605, 616-17, 620, 623-25, 627-31.

[1] Citations are as follows: "PCR4" refers to the record on appeal from the postconviction proceedings pending when Mr. Hutchinson's warrant was signed (SC25-0497). "PCR5" refers to the record on appeal from Mr. Hutchinson's post-warrant proceedings pursuant to Fla. R. Crim. P. 3.851 (SC25-0497). "PCR6" refers to the state-court record on appeal from the instant proceedings (SC25-0590). Other references are self-explanatory.

Following Florida's procedural rules, undersigned counsel notified Governor DeSantis that Mr. Hutchinson was insane and not competent to be executed. PCR6 542-45. After appointing a three-doctor "Commission to Determine the Mental Competency of Jeffrey Glenn Hutchinson" in Executive Order 25-83, which noted his disagreement with counsel, Governor DeSantis issued Executive Order 25-92 determining that Mr. Hutchinson was competent to be executed. PCR6 17-20, 553-55. Less than 24 hours later, Mr. Hutchinson filed a motion to determine competency in the state circuit court, and a hearing was set for less than 24 hours after that. PCR6 567-786. On April 27, 2025, the circuit court issued an order finding Mr. Hutchinson sane to be executed. PCR6 958-76. The Florida Supreme Court upheld the circuit court's order on the evening of April 30, 2025. App. A1.

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.

In short, the Florida Supreme Court's justifications for upholding the circuit court's competency ruling are at odds with this Court's precedent. As Justice Labarga explained in a recent dissent in this case, "due process requires more" and referenced the Florida Supreme Court's lack of notice that Governor DeSantis had temporarily stayed the proceedings due to ongoing competency determinations: "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); Hutchinson, No. SC2025-0590, slip. op. 16 (Apr. 30, 2025) (reaffirming that "a stay would be beneficial to the consideration of the issues raised.").

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). *Panetti v. Quarterman*, 551 U.S. 930, 949 (2007) (quoting *Ford v. Wainwright*,

477 U.S. 399, 424 (1986) (Powell, J., concurring in part and in the judgment).[2] Although Justice Powell did not set forth "the precise limits that due process imposes in this area[of competency determinations,]" *Ford*, 477 U.S. at 424, this Court's other precedent is clear that 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, due to the truncated warrant period and lack of advance notice, Mr. Hutchinson has been forced to submit the very type of last-minute pleadings that are disfavored by courts. As former Florida Supreme Court Justice Pariente observed:

> Th[e] extremely short warrant period created 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 [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). This unfairness has been present throughout Mr. Hutchinson's warrant period but for two

[2] Justice Powell's concurrence is the narrowest holding of the *Ford* plurality and therefore controlling.

reasons is especially pronounced in relation to his competency claim. First, competency to be executed claims do not ripen until an execution warrant is signed. And, caselaw from this Court and the Florida courts instruct that competency is fluid, and evaluations conducted even months before a critical juncture can go stale.[3] As Mr. Hutchinson has previously detailed, Florida's secretive warrant process provides no notice that a warrant is forthcoming, nor who will be selected of the approximately 100 warrant-eligible individuals on death row. Thus, until his warrant was signed on the evening of March 31, 2025, Mr. Hutchinson had no viable mechanism by which to challenge his competency to be executed.

The particular circumstances of Mr. Hutchinson's case created even more of a rush than the truncated warrant period standing alone. Although Mr. Hutchinson's legal team retained Drs. Agharkar and Crown immediately after the warrant issued, the experts could not access him to perform any evaluations until April 10 and 11, 2025. Although their reports were promptly prepared on April 12 and 13, 2025, respectively, this necessarily meant that Mr. Hutchinson could not even begin the competency challenge process until two and a half weeks prior to his execution.

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[3] *See Drope v. Missouri*, 420 U.S. 162, 171, 181 (1975) (competency is not an immutable characteristic); *Bishop v. United States*, 350 U.S. 961 (1956) (remanding for a hearing on sanity where defendant had no indications of a mental disorder one month prior to the relevant legal event) (vacating *Bishop v. United States*, 223 F.2d 582 (D.C. 1955); *Brockman v. State*, 852 So. 2d 330, 333-34 (Fla. 2d DCA 2003) (assessments from four and eleven months prior to relevant legal event "were simply too old to be relevant to a determination of…competency"); *In re Commitment of Reilly*, 970 So. 2d 453, 454 (Fla. 2d DCA 2007) (six month old competency assessment was "stale" and could not speak to present competency); *LeWinter v. Guardianship of LeWinter*, 606 So. 2d 387, 388 (Fla. 3d DCA 1992) (report filed six weeks before competency proceeding did not accurately reflect present mental state and abilities).

Further, Florida's state procedures for determining competency to be executed, Fla. Stat. 922.07 and Fla. R. Crim. P. 3.811, require a determination by the governor before litigation can commence in the state circuit court. Thus, although Mr. Hutchinson's legal team made the requisite notification to Governor DeSantis on April 14, 2025, counsel could not access the state-court process until the triggering event of Governor DeSantis' Executive Order 25-92, which counsel received after 3:00 p.m. on April 23, 2025. This left just over one week before Mr. Hutchinson's scheduled execution.

Counsel was notified at approximately 5:00 p.m. on April 23, 2025, that a "status conference" on the death warrant would be held the following morning at 9:00 a.m. before the circuit court. At the status conference on April 24, 2025, the State requested "that we skip the formalities" and hold a hearing the following day. The circuit court agreed and ordered the parties and their witnesses to appear at 9:00 a.m. on April 25th for an evidentiary hearing. Counsel alerted that the court they would not be prepared, they had numerous out of state witnesses, nor did they know who the State intended to call at the hearing. The court replied "[w]ell, you have the rest of the day to work on it." Around 3:30 p.m. that day, the State disclosed to counsel they would only call two of the three Commission members and three prison employees as witnesses.

Counsel was afforded no time to depose or investigate these officers. Counsel had no time to review records related to the officers, evaluate their background or biases, determine the extent of their exposure to Mr. Hutchinson, review their

personnel files, or perform any of the other basic due diligence that any lawyer in even the most pedestrian civil hearing would conduct before a hearing.

Counsel was afforded no opportunity to prepare for the witnesses' testimony; prepare to cross-examine the State's witnesses; review and mastering the relevant medical and psychological treatises; or prepare for the hearing. This also does not mention the personal responsibilities counsel had to account for, including childcare arrangements. Similarly, counsel's experts were also burdened as they had to arrange last minute travel to a rural Florida courthouse and did not have adequate time to review the commission's report.

Additionally, though counsel had attempted to secure copies of the documents and other materials provided to the State's experts, counsel was unable to receive them prior to the hearing. Counsel had diligently requested copies of all records that the Florida Department of Corrections ("FDOC") had provided to the State's experts on April 18, 2025, but FDOC refused to turn over the material to counsel. The State incorrectly represented that counsel already had access to this material and only corrected their false representations in the middle of the evidentiary hearing. Though these documents were disclosed during the evidentiary hearing, that did not cure the problem as it was impossible for counsel to review the over 3,700 emails during the one-hour long lunch break. The review that occurred after the hearing produced e-mails that would have countered the State's expert's opinion specifically and characterization about what had been communicated in the e-mails.

In addition, by permitting remote testimony, counsel was deprived of adequately countering the State's cross-examination of his lay witnesses and adequately cross-examining the State's expert because counsel was unable to show the witnesses documents and exhibits to refresh their recollection, and in Dr. Myers' case, his previous sworn testimony in other cases that was in direct conflict with his testimony in Mr. Hutchinson's case. Likewise, the truncated schedule caused counsel to be unable to secure the testimony of Dr. Emily Lazarou. The circuit court credited her opinion as a Commission member, but counsel's attempts to impeach her credibility and show her extreme prosecutorial bias was cut off.

And, Dr. Tonia Werner's notes were relevant and necessary to adequately cross-examine her. Her notes contained discrepancies with her testimony and they should have been disclosed to counsel as Dr. Werner's credibility and candor was central to the issue before the circuit court. In addition, counsel should have had the opportunity to probe the modifications that Dr. Lazarou made to the report. However, because her attendance could not be secured in less that twenty-four hours and the early drafts of the report were not disclosed, counsel was unable to demonstrate the bias of the examiners and the process.

The particular circumstances presented by Mr. Hutchinson's petition clearly demonstrate that he is deserving of the procedural protections contemplated in *Ford* and *Panetti*, which left open the question of "whether other procedures, such as the opportunity for discovery or for the cross-examination of witnesses, would in some cases be required under the Due Process Clause." *Panetti*, 551 U.S. at 952. Thus, it is

likely that at least four Justices will agree that the questions presented in this procedurally unencumbered petition are sufficiently meritorious for a grant of certiorari review. 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 because the process it afforded Mr. Hutchinson does not meet the requisite due process envisioned by this Court's precedent.

B. There is no undue delay

As explained above, Mr. Hutchinson's ability to challenge his competency to be executed only ripened upon the signing of his death warrant on March 31, 2025. Expert competency evaluations could be performed until April 10 and 11, 2025, and with conclusions reported on April 12 and 13, 2025. Less than 24 hours later, Mr. Hutchinson's counsel complied with Florida's procedural rules, as articulated in Fla. Stat. 922.07 and Fla. R. Crim. P. 3.811, by notifying Governor DeSantis of a good faith basis for believing Mr. Hutchinson was incompetent to be executed. Within 24 hours of the prerequisite determination by Governor DeSantis, Mr. Hutchinson filed his state-court motion. Now, less than 24 hours after the Florida Supreme Court's Order upholding the imminent execution, he has sought relief in this Court.

To the extent this Court's consideration is rushed, the fault does not lie with 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 of a procedurally unencumbered claim). In addition to the self-evident harm of an imminent execution, the injury to Mr. Hutchinson would be particularly egregious, as he is incompetent and thus his execution would serve no retributive or deterrent purpose. *Cf. Panetti*, 551 U.S. at 958.

Conversely, a stay will not substantially harm the State because its interest in timely enforcement of valid criminal judgments does not extend to executing an incompetent combat veteran without providing the due process contemplated in *Ford* and *Panetti*. *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."). As the need for a stay is attributable to Florida's denial of an adequate process, the State will suffer no harm

from waiting for this Court to complete certiorari review of a pristine constitutional challenge that only ripened with the signing of Mr. Hutchinson's death warrant.

D. Public interest

Granting a stay of execution would not be detrimental to the public interest; it will serve it. The public's interest in enforcing criminal judgments is outweighed by its interest in ensuring that one of its own—particularly a veteran who repeatedly risked his life in combat to protect our rights and freedoms—is not subject to a rushed execution that serves no retributive or deterrent purpose. "[Mr. Hutchinson's] death warrant case has had a procedural path unlike any in recent history." Hutchinson, No. SC2025-0590, slip op. at 16 (Apr. 30, 2025). "[D]ue process requires more." *Hutchinson*, 2025 WL 1198037 at *7 (Labarga, J., dissenting).

III. Conclusion

The Court should grant a stay of execution.

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DATED: MAY 1, 2025