No. 24A1054
EXECUTION SCHEDULED FOR MAY 1, 2025, at 6:00 P.M.

In the
Supreme Court of the United States

JEFFREY GLENN HUTCHINSON, *Petitioner*,

v.

STATE OF FLORIDA, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

RESPONSE TO APPLICATION FOR A STAY OF THE EXECUTION

On May 1, 2025, Hutchinson, represented by the Capital Collateral Regional Counsel - North (CCCR-N), filed a petition for writ of certiorari in this Court seeking review of the Florida Supreme Court's rejection of a claim of incompetency to be executed under *Ford v. Wainwright*, 477 U.S. 399 (1986), in this active warrant case. *Hutchinson v. State*, 2025 WL 1248732 (Fla. April 30, 2025) (No. SC2025-0590). On May 1, 2025, CCCR-N also filed an application for a stay of the execution. Petitioner 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) (quoting *Bucklew*, 587 U.S. at 151 and vacating a lower court's grant of a stay of a federal execution) (emphasis added).

Hutchinson complains about the hasty litigation schedule and asserts there has been no undue delay in bringing this claim. The State disagrees. As Hutchinson's lead state counsel testified during the state court competency hearing, Hutchinson had long professed an implausible theory of innocence, which is the alleged delusion (and only delusion) his competency challenge is based upon. Therefore, counsel could have moved immediately to challenge Hutchinson's competency following the signing of the warrant on March 31, 2025. Yet he waited a full two weeks before asking the Governor to appoint a commission to evaluate competency. Hutchinson's complaints regarding the exigencies of the instant litigation are therefore largely a matter of his own creation.

Hutchinson has no chance of winning on the merits and he is clearly hoping that his last-minute filings are sufficient to generate a stay of his execution. In determining whether to grant a stay, this Court should consider the eleventh-hour nature of Hutchinson's filing. Lonchar v. Thomas, 517 U.S. 314, 337 (1996) (Rehnquist, C.J., concurring); Gomez v. United States Dist. Court, 503 U.S. 653, 654 (1992). In an earlier case, Justice Rehnquist also noted:

> There may be very good reasons for the delay, but there is also undoubtedly what Mr. Justice Holmes referred to in another context as a "hydraulic pressure" which is brought to bear upon any judge or group of judges and inclines them to grant last-minute stays in matters of this sort just because no mortal can be totally satisfied that within the extremely short period of time allowed by such a late filing he has fully grasped the contentions of the parties and correctly resolved them. To use the technique of a last-minute filing as a sort of insurance to get at least a temporary stay when an adequate application might have been presented earlier, is, in my opinion, a tactic unworthy of our profession.

Evans v. Bennett, 440 U.S. 1301, 1307 (1979).

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 *Ford* claim raised in the petition. As explained in greater detail in the accompanying brief in opposition, the *Ford* issue raised in the petition is totally devoid of any merit both legally and factually. A capital defendant

with no major mental illness cannot establish the "substantial threshold showing" that is constitutionally required to bring a *Ford* claim. *Panetti v. Quarterman*, 551 U.S. 930, 950 (2007). The "beginning of doubt about competence" to be executed is having "a psychotic disorder." *Panetti*, 551 U.S. at 960. A capital defendant without any psychotic disorder cannot make any showing of insanity, much less the required "substantial" one. *State ex rel. Barton v. Stange*, 597 S.W.3d 661, 666 (Mo. 2020) (concluding that a *Ford* claim, based on a diagnosis of "Major Neurocognitive Disorder," did not establish the "substantial threshold showing of insanity required by *Panetti* and *Ford*.").

The Florida Supreme Court's decision rejecting the *Ford* claim certainly does not conflict with similar *Ford* claims based on "delusions" regarding guilt rejected by the federal circuit courts, which is one consideration for granting review. *Dixon v. Shinn*, 33 F.4th 1050 (9th Cir. 2022).

On April 25, 2025, the state postconviction court held an evidentiary hearing on the *Ford* claim involving the testimony of 14 witnesses, including four mental health experts. The state court, made factual and credibility determinations, including finding that Hutchinson did "not have any current mental illness" and his "purported delusions" regarding his guilt of the four first-degree murder convictions was "demonstrably false." The state lower court concluded that Hutchinson told the story of a government conspiracy "to avoid responsibility for the murders." SC2025-0590 at 975.

Ford claims involve fact-intensive inquiries regarding the defendant's mental condition. This Court does not normally grant review findings of fact based on experts' testimony. Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous fact findings"); *United States v. Johnston*, 268 U.S.

220, 227 (1925) (stating the Court does "not grant a certiorari to review evidence and discuss specific facts."); *Cash v. Maxwell*, 565 U.S. 1138 (2012) (statement of Sotomayer, J., respecting the denial of certiorari) ("Mere disagreement with" a "highly factbound conclusion is, in my opinion, an insufficient basis for granting certiorari"). 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 vanishingly slim possibility of Hutchinson being granted relief on his *Ford* claim. First, this is not a valid *Ford* claim. A capital defendant, who is narcissistic and antisocial, but otherwise not mentally ill, simply refusing to accept responsibility for his actions of murdering three young children is not a legitimate *Ford* claim.

Moreover, even if this Court were to conclude that his "delusion" of innocence was sufficient to establish a *Ford* claim, this Court would not reverse the factual findings and credibility determinations made by the state postconviction court after a full hearing. The state court's findings and credibility determinations were fully supported by the testimony of Drs. Werner and Myers at the evidentiary hearing. The state court made a credibility determination finding the testimony of those two psychiatrists "to be credible" and then found that his "purported delusion" was "demonstrably false." The clearly erroneous standard of review for factual findings and credibility determinations requires that the lower court's findings strike the appellate court as "wrong with the force of a five-week-old, unrefrigerated dead fish." *United States v. Choulat*, 75 F.4th 489, 493 (5th Cir. 2023) (quoting *Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228, 233 (7th Cir. 1988)), *cert. denied*, 144 S. Ct. 829

(2024); *United States v. Miller*, 35 F.4th 807, 817 (D.C. Cir. 2022) (same quoting *Parts & Elec. Motors, Inc.*, 866 F.2d at 233). This Court would not reverse the findings and determinations made by the state postconviction court based on this record under that standard of review. Either legally or factually, or on both grounds, at least five justices of this Court would reject the *Ford* claim, if it granted review.

Hutchinson does not have a "significant" possibility of prevailing on his totally meritless *Ford* claim. 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)). Finality in a capital case is the execution, so some additional showing should be required in a capital case to satisfy this factor. 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). Again, 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,

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