*** CAPITAL CASE ***

No. _____

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

APPLICATION FOR STAY OF EXECUTION

EXECUTION SCHEDULED FOR 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: Petitioner Jeffrey Hutchinson requests a stay of execution, scheduled for today, May 1, 2025, at 6:00 p.m., pending this Court's consideration of his concurrently filed petition for a writ of certiorari. *See Hill v. McDonough*, 547 U.S. 573, 584 (2006); *Barefoot v. Estelle*, 463 U.S. 880, 889 (1983); 28 U.S.C. § 2101(f); Supreme Court Rule 23.

This is an appeal from the lower federal courts' denial, in a single day, of Mr. Hutchinson's recently ripened federal habeas claim that he is not competent to be

executed under the Eighth Amendment, which was filed hours after the Florida Supreme Court upheld, just before 6:00 p.m. on April 30, 2025, the denial of relief on the issue. Mr. Hutchinson filed his claim in the district court the same night, and a few hours later, the district court denied a stay, habeas relief, and a certificate of appealability (COA). Mr. Hutchinson appealed, and minutes after the appellate docket opened, the Eleventh Circuit rejected a COA and a stay of execution.

The district court stated that it would "not stay [the] execution simply because a habeas petition was filed mere hours before his execution." NDFL-ECF 5 at 2. But that completely misses the point. Mr. Hutchinson's Eighth Amendment claim only ripened with the signing of his death warrant one month ago, and due to Florida's state procedural rules for competency-to-be-executed determinations, he could not access the state-court process until one week prior to his scheduled execution. The Florida Supreme Court then waited to rule until less than 24 hours remained before the scheduled execution, effectively cutting off access to related federal proceedings.

This should not occur for what is essentially an initial-posture federal habeas claim, which Mr. Hutchinson could not have brought any earlier, and which the State of Florida has sought to suffocate with an oppressive warrant timeline and process.

As noted by Justice Labarga of the Florida Supreme Court, "this death warrant case has had a procedural path unlike any in recent history. It is because of this that I continue to believe a stay would be beneficial to the consideration of the issues raised." *Hutchinson v. State*, No. SC2025-0590, 2025 WL 1248732, at *5 (Fla. Apr. 30, 2025); *see also Hutchinson v. State*, Nos. SC2025-517, SC2025-518, 2025 WL 1198037

at *7 (Labarga, J., dissenting) (emphasizing that "due process requires more" than "permit[ting Mr. Hutchinson's] execution to proceed at this time, without ensuring a reasonable period for this Court to conduct a full review.").

Because Mr. Hutchinson's execution is now just hours away, his Eighth Amendment claim and appeal of the district court's and Eleventh Circuit's hasty orders cannot receive meaningful review without a stay of execution. This Court should grant a stay to allow the opportunity to review the Eleventh Circuit's order.

I. Background

On March 31, 2025, Governor DeSantis signed Mr. Hutchinson's death warrant, setting the execution for 31 days later. After a series of interferences beyond Mr. Hutchinson's control, he was evaluated by two mental health experts on April 10 and 11, 2025. The experts provided their reported findings to Mr. Hutchinson's counsel on April 12 and 13, 2025, respectively. On April 14, 2025, Mr. Hutchinson's state-appointed counsel sent a letter to Governor DeSantis stating that counsel had a reasonable basis to believe that Mr. Hutchinson is incompetent to be executed, and invoking the procedures of Fla. Stat. § 922.07(1). PCR6. 542-45. Three days went by with no response from the Governor. On April 17, 2025, the Governor issued Executive Order 25-83, which temporarily stayed Mr. Hutchinson's execution and appointed three state-funded psychiatrists to the Commission to Determine the Mental Competency of Jeffrey Hutchinson ("the Commission"). PCR6. 526-28. The order specified the Commission would examine Mr. Hutchinson four days later, on

April 21, 2025. PCR6. 527. The Commission was given a deadline of April 22, 2025, at the close of business, in which to submit its findings to the Governor. PCR6. 527.

The Commission's April 22, 2025, deadline came and went, with Mr. Hutchinson's counsel hearing nothing from the Governor. The following day, April 23, 2025, the Governor's Office transmitted to Mr. Hutchinson's counsel Executive Order 25-92, which adopted the Commission's conclusion that Mr. Hutchinson is competent to be executed and dissolved the temporary stay. PCR6. 17-18. Mr. Hutchinson's counsel was not initially provided a copy of the Commission's report, only receiving it upon request, in the late afternoon of April 23, 2025. The next day, April 24, 2025, Mr. Hutchinson's counsel initiated proceedings in state court for a judicial determination of his competency to be executed pursuant to Florida Rule of Criminal Procedure 3.811(d). The state court set an evidentiary hearing for the following day, April 25, 2025, and denied Mr. Hutchinson's pre-hearing motions for a brief continuance to allow for meaningful preparation, and for discovery as to the Commission's work and report. *See* PCR6. 567-69 (Motion to Compel Discovery); 570-73 (Motion for Continuance to Comply with Minimum Due Process).

The state-court evidentiary hearing took place on April 25, 2025. CT. 1-348. Two of the Commission members testified to their competency findings, while two defense experts testified that Mr. Hutchinson is not competent to be executed. On April 27, 2025, the circuit court ruled that Mr. Hutchinson was competent to be executed. PCR6. 958-77. The next day, April 28, 2025, the Florida Supreme Court

ordered Mr. Hutchinson's appellate brief to be filed by April 29, 2025, with all briefing to be completed by the next day, April 30, 2025. PCR6. 987.

On April 30, 2025, just before 6:00 p.m., the Florida Supreme Court affirmed the circuit court's finding that Mr. Hutchinson is competent to be executed. *Hutchinson v. State*, No. SC2025-0590, slip op. (Fla. April 30, 2025). At 11:21 p.m. on the same day, Mr. Hutchinson filed a federal habeas claim in the district court, asserting Mr. Hutchinson is incompetent to be executed under the federal standard, and that the Florida Supreme Court's decision is not entitled to deference under 28 U.S.C. § 2254(d). ECF No. 1. As the filing explains, Mr. Hutchinson's claim is not subject to the successive gatekeeping provisions of § 2244(b), as it falls within the parameters of *Panetti v. Quarterman*, 551 U.S. 930, 945 (2007) ("Congress did not intend the provisions of AEDPA addressing "second or successive" petitions to govern a filing in the unusual posture presented here: a § 2254 application raising a *Ford*-based incompetency claim filed as soon as that claim is ripe.").

Because the state-court process on Mr. Hutchinson's competency-to-be-executed claim concluded only last night, and the district court and Eleventh Circuit denied relief this morning, this Court is left with insufficient time to review the claim and consider the weighty issues and voluminous record on appeal. Mr. Hutchinson requests a stay of execution to allow this Court to meaningfully review the issue.

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

In light of clearly established precedent of this Court and the facts detailed in Mr. Hutchinson's 28 U.S.C. § 2254 petition, there is a substantial likelihood that his claim of incompetence to be executed will succeed on the merits because his longstanding delusional beliefs prevent him from being able to grasp the rational reason for his execution.

This Court has long forbidden the execution of the insane. *Ford v. Wainwright*, 477 U.S. 399, 401, 410 (1986). In subsequent holdings, the Court has refined the general holding of *Ford* and elucidated a sanity standard in this context: "The Eighth Amendment…prohibits the execution of a prisoner whose mental illness prevents him from 'rational[ly] understanding' why the State seeks to impose that punishment." *Madison v. Alabama*, 586 U.S. 265, 267 (2019) (quoting *Panetti*, 551 U.S. at 959). This Court has also instructed that states must provide a competency process that is "adequate for reaching reasonably correct results" when determining whether a prisoner is sane to be executed. *Panetti*, 551 U.S. at 954.

As Mr. Hutchinson's § 2254 petition details, the state courts' adjudication of his competency-to-be-executed claim was based on a cascade of flaws, which culminated in state court adjudications that are not owed deference by this Court. Because the issues presented by the accompanying petition are complex and fact-intensive, a stay is crucial to proper analysis of the issue. As highlighted below and described in the petition, Mr. Hutchinson can establish a substantial likelihood of success on the merits. Thus, a stay is appropriate to allow this Court to conduct its review unconstrained by the exigencies of his looming execution.

Although *Panetti* recognized that "a concept like rational understanding is difficult to define[,]" 551 U.S. at 959, it requires more than a prisoner's "aware[ness] that he [is] going to be executed and why[.]" *Id*. at 956 (quotation marks omitted). A prisoner's "awareness of the State's rationale for an execution is not the same as [himself having] a rational understanding of it." *Id*. at 959. Likewise, rational understanding does not turn on "any particular memory or any particular mental illness." *Madison*, 586 at 269. What matters is whether the individual's "'concept of reality' is 'so impair[ed]' that he cannot grasp the execution's 'meaning and purpose' or the 'link between [his] crime and its punishment.'" *Id*. (quoting *Panetti*, 551 U.S. at 958, 960). In evaluating whether a prisoner possesses the requisite understanding for competency to be executed, the factfinder must consider whether he "suffers from a severe, documented mental illness that is the source of gross delusions preventing him from comprehending the meaning and purpose of the punishment to which he has been sentenced[.]" *Panetti*, 551 U.S. at 960.

The Florida Supreme Court's adjudication affirming the circuit court's competency determination was based on an unreasonable application of *Panetti*. Although the court cited *Panetti* and *Madison* in describing the applicable constitutional standard and quoted snippets of its seminal language regarding what constitutes a rational understanding, *Hutchinson v. State*, 2025 WL 1248732, at *2-3 (Fla. Apr. 30, 2025), in actuality the court—like the circuit court and State's experts before it—applied the "factual awareness" standard that *Panetti* found constitutionally deficient. *See id.* at 8 (stating that Florida's statutory competency standard—which was laid out in *Ford* and found to be insufficiently constitutionally protective in *Panetti*—was "in line with" *Panetti* and *Madison*); *id.* at 9 (finding the circuit court "applied the correct legal standards" because it "indirectly quoted principles discussed above from this Court's decisions in *Panetti* and *Madison*"); *id.* at 13 (citing *Madison*, yet premising its determination of competency on Mr. Hutchinson's factual awareness); *see also Williams v. Taylor*, 529 U.S. 362, 407 (2000) (a state court can unreasonably apply clearly established federal law where, even where it articulates the correct governing legal rule).

Because the Florida Supreme Court's competency determination resulted from its unreasonable conception of the standard, it is owed no deference. *See Panetti*, 551 U.S. at 953. In conducting de novo review, it is substantially likely that Mr. Hutchinson will be found incompetent to be executed. As his § 2254 petition lays out, ever since Mr. Hutchinson returned from the Gulf War, his behavior has been driven by extreme paranoia and delusional thought processes related to his belief in a

government conspiracy to silence him due to his advocacy surrounding Gulf War Illness. He fervently believes he is being framed by the government for the murder of his family, and that it was the government who directed the murders as part of a conspiracy to silence Mr. Hutchinson's Gulf War advocacy. Put simply:

> [T]he causal connection between the crime and the punishment is lacking, in his mind. It is not just that he's being executed for the charges of capital murder with which he was convicted of. He understands that. He knows that, but he says that is not the true story.
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> The true story [is] this is persecution. They're trying to kill me because of what I did with Gulf War illness. This is retribution for the government. They have set me up. They have framed me. I'm an innocent man. And they're going to—that's what's really going on here. And that is not a rational understanding of the crime and punishment.

CT. 189 (testimony of Dr. Agharkar). His pervasive delusions so impair his concept of reality that he is unable to rationally understand the reason for his execution. Thus, pursuant to the Eighth and Fourteenth Amendment protections articulated in *Ford*, *Panetti*, and *Madison*, Mr. Hutchinson is incompetent to be executed.

B. The remaining factors favor granting a stay of execution

Mr. Hutchinson also satisfies the remaining stay factors. First, no undue delay may be attributed to him. The § 2254 claim regarding Mr. Hutchinson's competency to be executed did not ripen until the signing of his death warrant on March 31, 2025. Mr. Hutchinson fully complied with Florida's procedural rules, which were not built for a 30-day warrant period and resulted in his claim not being fully exhausted until the Florida Supreme Court denied relief the night of April 30, 2025, resulting in the entirety of Mr. Hutchinson's § 2254 review having taken place in the past 24 hours. This is not a claim that has been "filed too late in the day." *Hill*, 547 U.S. at 584.

Second, Mr. Hutchinson faces irreparable injury, which "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); *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) ("execution is the most irremediable and unfathomable of penalties").

A stay would 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 executing an individual before the federal courts have meaningfully considered whether he is competent to be executed under the Eighth Amendment. *See, e.g., In re 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 played a substantial role in creating a situation where there is insufficient time for federal proceedings, including (1) setting a warrant period of only 31 days in a case it knew had a voluminous record, substantial pending litigation, and a circuit court judge who was brand new to the case; and (2) after receiving counsel's letter regarding competency concerns, taking ten days—nearly a third of the warrant period—before issuing Executive Order 25-92, which was a prerequisite to Mr. Hutchinson initiating competency litigation in the state courts. Not only did this leave insufficient time for federal review, it also hampered the Florida Supreme Court's ability to conduct meaningful review. After Executive Order 25-83 imposed a temporary stay, the Florida Supreme Court, which was then considering another appeal in the case, "was only notified of the stay days later, *after* the competency evaluation was completed *and the stay lifted*." *Hutchinson*, 2025 WL 1198037, at *7 (Labarga, J., dissenting) ("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.").

Finally, granting a stay to allow for meaningful review of Mr. Hutchinson's competency claim would not be averse to the public interest. The public has an interest in the enforcement of valid criminal judgments. However, as the Supreme Court has made clear, society has no interest in executing an individual like Mr. Hutchinson who does not have a rational understanding of the reasons for it. *Ford*, 477 U.S. at 399-400 ("The reasons at common law for not condoning the execution of the insane—that such an execution has questionable retributive value, presents no

example to others and thus has no deterrence value, and simply offends humanity—have no less logical, moral, and practical force at present."); *Panetti*, 551 U.S. at 960 ("Gross delusions stemming from a severe mental disorder may put awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose."). Rushing to execute Mr. Hutchinson, a decorated combat veteran, before meaningful federal review of his present competency would be averse to the public interest, not the other way around.

The Court should grant a stay of execution and grant the petition for a writ of certiorari to review the decision of the Eleventh Circuit.

Respectfully submitted,

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