"Insane in the Membrane, Insane in the Brain":1 The Case of Panetti v. Quarterman

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I. INTRODUCTION

In *Panetti v. Quarterman,* the United States Supreme Court held that the incompetence standard used by the United States Court of Appeals for the Fifth Circuit was overly restrictive and failed to afford proper Eighth Amendment protection to a prisoner convicted of murder. While *Ford v. Wainwright* established that a prisoner is competent for execution if he or she knows of his or her impending execution and the reason for it, the Court expanded the competency standard in *Panetti* by holding that a prisoner's awareness of the rationale for an execution is not the same as a rational understanding of its basis. Hence, a trial court should consider if the gross delusions

3. U.S. CONST. amend. VIII.
of a death row inmate preclude the inmate’s awareness of his execution.7

II. FACTUAL BACKGROUND: "PLENTY INSANE, GOT NO BRAIN"8

Jane Panetti knew for some time that her husband, Scott Louis Panetti, was not well. After becoming alarmed by Panetti’s increasingly abnormal behavior, she filed a petition seeking extraordinary relief from the Texas state courts in May 1986. Her petition stated that Panetti was experiencing hallucinations and suffering from extreme paranoia. Panetti, convinced that the devil was in his family’s home, gathered many of the family’s valuables and buried them in the backyard. He would stay awake throughout the night and perform various cleansing rituals, such as washing the furniture with water. Ultimately, Panetti’s obsession with Satan caused Jane to fear he would harm her and their children.9

Although Jane divorced Panetti, her worst fears about her former husband were realized by his second wife, Sonja. Tired of Panetti’s alcoholism and abusive behavior, Sonja obtained a protective order and left Panetti in 1992. She took their three-year-old daughter and moved into the home of her parents, Joe and Amanda Alvarado. Unfortunately, her actions would prove futile. On the fateful morning of September 8, 1992, Panetti awoke before dawn, shaved his head, and dressed in camouflage. After sawing off the barrel of his shotgun, he placed the shotgun and a rifle into his vehicle and drove to the Alvarado home. Panetti approached the house, busted the locked front door, and entered the residence. He cornered Joe and Amanda Alvarado in the kitchen and screamed at them. Despite his estranged wife’s pleadings, he shot both of her parents in the chest, killing them in front of his wife and daughter. Panetti then took his wife and daughter as hostages and returned to his home where he held them overnight. Finally, after enduring a stand-off with the local police, Panetti released his captive family and surrendered to the local authorities.10

After his surrender, Panetti was arrested and charged with capital murder. Panetti sought to represent himself in the trial proceedings, but the trial judge, Judge Stephen Ables, ordered a psychiatric evaluation after questioning Panetti’s competency. The evaluation indicated that

7. See id.
8. CYPRESS HILL, supra note 1.
Panetti suffered from a fragmented personality, delusions, and hallucinations. Although Panetti was treated previously in various Veterans Administration hospitals for psychotic disorders, the evaluation revealed that Panetti was competent to represent himself at trial.

At trial, Panetti pleaded not guilty by reason of insanity. Throughout the course of the trial proceedings, Panetti engaged in behavior that his standby counsel regarded as bizarre. He dressed in a costume that appeared to be from an old Western, including a cowboy hat, suede pants tucked into cowboy boots, and a bandana. He asked strange questions of his witnesses. When he testified about the shooting, he recalled the details in a trance-like state. He described the shooting in the third person, referring to "Sarge" as the perpetrator. He acted out Sarge's shooting at the Alvarado home and referred to another person named "Birdie." This behavior led his standby counsel to conclude that Panetti was mentally incompetent. Additionally, Panetti's decision to stop taking his antipsychotic medicine only exacerbated his strange behavior during the trial. Ultimately, the jury found Panetti guilty of capital murder and sentenced him to death.

Although the court determined Panetti was competent to represent himself during the trial, the State found Panetti incompetent to waive habeas counsel after his sentencing. Consequently, the State appointed habeas counsel to represent Panetti, and he appealed his conviction on direct appeal and through state habeas proceedings.

The Texas state courts twice denied Panetti's request for relief on direct appeal. Likewise, the United States Supreme Court denied a petition for certiorari on two separate occasions. After these denials, Panetti filed a petition for a federal writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Western District of Texas. The district court rejected Panetti's petition, and the Fifth Circuit issued an order denying Panetti's petition on appeal. The United States Supreme Court denied Panetti's petition for certiorari

12. Joint Appendix, supra note 9, at *11, 14.
15. Panetti, 127 S. Ct. at 2849.
16. Id.
17. Id.
Although Panetti raised issues regarding his competency to stand trial and to waive counsel in this petition, he failed to argue that insanity rendered him unfit for execution. While Panetti's petition for certiorari was pending before the Supreme Court in 2003, Judge Ables set Panetti's execution date for February 5, 2004. Shortly after the Supreme Court's denial of certiorari, Panetti's counsel filed a motion under Article 46.05 of Vernon's Texas Code of Criminal Procedure Annotated, claiming that Panetti was incompetent for execution by reason of insanity. Judge Ables denied Panetti's motion without a hearing. Panetti appealed Judge Ables's decision to the Texas Court of Criminal Appeals, but that court dismissed his challenge on the basis that it lacked jurisdiction.

After exhausting his remedies in state court, Panetti then returned to federal court and filed another writ of habeas corpus with the district court pursuant to 28 U.S.C. § 2254. Unlike the previous writ of habeas corpus he brought before the federal court, in this writ, Panetti raised the issue of his competency for execution.

During the evidentiary hearing, experts for both sides testified that while Panetti did suffer from some form of mental illness, he also retained his cognitive ability. The State's experts testified that while Panetti's illness did not prevent him from understanding that he faced execution, they were unable to assess the level of his comprehension for the reason behind it. In contrast, Panetti's experts believed that Panetti did not have a rational understanding of the reason for his execution. Rather, they testified that Panetti suffered from the delusion that he was being executed for "preaching the Gospel." From Panetti's perspective, his execution was another battle in his ongoing spiritual war with Satan. Recognizing this new issue, the district court ordered a sixty-day stay on February 4, 2004, to provide the state court

22. Panetti, 127 S. Ct. at 2849.
23. Id.
24. TEX. CODE CRIM. PROC. ANN. art. 46.05 (Vernon 2007).
26. Id.
31. Id. at 708.
32. Id.
33. Id.
with reasonable time to consider the evidence of Panetti's mental state.  

Subsequently, the state court examined Panetti's renewed motion to determine his competency for execution and ordered a telephone conference between all parties on February 9, 2004. After consulting with counsel during the phone conference, Judge Ables directed both parties to submit the names of mental health experts for the court to consider by February 20, 2004. Additionally, the court gave each party until that same day to submit any motions related to the proceedings. The phone conference ended after all parties agreed to participate in another telephone conference on the deadline date.

Following the initial phone conference, Panetti's counsel, Michael Gross, filed ten motions related to the proceeding. Gross also prepared for the scheduled phone conference, which unbeknownst to Gross, had been cancelled. Gross called Judge Ables's office and was informed that the judge was out of the office. Gross then contacted the district attorney who explained that Judge Ables had cancelled the conference call and would appoint the mental health experts without input from the parties.

Panetti received an order from the court on February 23, 2004, which confirmed the district attorney's assertion. The order, which was dated February 20, 2004, appointed two mental health experts. The court later denied two of Panetti's motions in a telephone conference. Panetti filed a motion to reconsider on March 4, 2004, but the court never responded to the motion.

The court-appointed experts issued a report on April 28, 2004, that concluded Panetti had the ability to know and understand he was about to die. Even though the experts believed that Panetti was uncooperative during the evaluation, they determined that he understood the reason for his execution. After receiving the evaluation, Judge Ables found Panetti competent for execution and notified Panetti's counsel in a letter. Although Panetti filed another motion for an evidentiary hearing to

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34. Id. at 712. The district court denied Panetti's first motion to stay the execution on January 28, 2004, because of a failure to include both a copy of the Article 46.05 motion from state court and evidence of Panetti's mental state. Subsequently, Panetti filed a motion to reconsider on January 30 with a copy of the Article 46.05 motion. However, the court denied this motion as well because of the lack of evidence regarding Panetti's mental state. Finally, the court granted a stay on February 4 after Panetti's counsel filed a second motion to reconsider with evidence of Panetti's mental state. Joint Appendix, supra note 9, at *12-13.

35. Panetti, 127 S. Ct. at 2850.

36. Id.

37. Id. at 2850-51.
consider his expert’s opinion, Judge Ables closed the case on May 26, 2004.\textsuperscript{38}

After the state court closed Panetti’s case, he again returned to the federal district court seeking resolution of the previously filed habeas petition.\textsuperscript{39} Although the court found the state’s proceedings to be constitutionally inadequate in light of \textit{Ford v. Wainwright},\textsuperscript{40} it denied Panetti’s application for habeas relief on the basis that he satisfied the competency requirement as defined by circuit precedent.\textsuperscript{41}

Following the district court’s decision, Panetti appealed to the Fifth Circuit. Panetti argued that the district court applied an erroneous standard in evaluating his competency.\textsuperscript{42} Panetti contended that his understanding of the execution was lacking because he believed that the State was punishing him for “preaching the Gospel.”\textsuperscript{43} The Fifth Circuit affirmed the district court’s finding that Panetti was competent for execution based on his understanding of “the nature, pendency, and purpose of his execution.”\textsuperscript{44} The Supreme Court granted certiorari on January 5, 2007, to consider whether the competency standard in \textit{Ford} requires a death-row prisoner to have a rational understanding of the reasoning behind his or her execution.\textsuperscript{45}

\section*{III. LEGAL BACKGROUND: “DON’T YOU KNOW I’M LOCO?”\textsuperscript{46}}

\subsection*{A. Origins of the Prohibition Against Executing the Insane}

Like many aspects of American criminal law, the prohibition against executing the insane is likely a derivative of English common law.\textsuperscript{47} As early as the eighteenth century, Sir William Blackstone wrote that a lunatic was excused from the guilt of his crime because of the “deficiency in will” that “arises . . . from a defective or vitiated understanding.”\textsuperscript{48} Moreover, this same protection extended to any man that committed a capital offense but became “mad” at any time before his execution,

\begin{footnotesize}
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\item[38.] Id. at 2851.
\item[39.] Id.
\item[40.] 477 U.S. 399 (1986).
\item[41.] \textit{Panetti}, 401 F. Supp. 2d at 712.
\item[42.] \textit{Panetti} v. Dretke, 448 F.3d 815, 816-17 (5th Cir. 2006).
\item[43.] Id. at 818.
\item[44.] Id. at 819, 821 (emphasis omitted).
\item[45.] \textit{Panetti}, 127 S. Ct. at 2848; \textit{Panetti} v. Quarterman, 127 S. Ct. 852 (January 5, 2007).
\item[46.] CYPRESS HILL, supra note 1.
\item[47.] See, e.g., 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND (1769).
\item[48.] Id. at 24.
\end{itemize}
\end{footnotesize}
including arraignment, trial, pleading, and judgment.\textsuperscript{49} According to Sir Blackstone, an insane criminal was spared from execution because he was not competent to plead his case with the "advice and caution" that was required.\textsuperscript{50}

Similarly, Sir Edwardo Coke also noted the prohibition against executing the insane.\textsuperscript{51} However, Sir Coke believed that the prohibition existed because the execution of a madman "can be no example to others."\textsuperscript{52} This understanding is premised on the belief that the execution of a lunatic provides little deterrence.\textsuperscript{53} Although Sir Coke and Sir Blackstone disagreed about the reason behind the law, both commentators recognized this restriction on executions.\textsuperscript{54}

The common law basis for not executing the insane remained unchallenged until Ford \textit{v.} Wainwright\textsuperscript{55} in 1986. In that case, the Supreme Court held that the Eighth Amendment\textsuperscript{56} barred the execution of an insane prisoner after the state of Florida deemed the prisoner competent for execution despite his manifested severe paranoia.\textsuperscript{57} The Court reached this decision with a four-justice plurality.\textsuperscript{58}

Justice Powell, concurring with the plurality, also crafted his own opinion.\textsuperscript{59} In his opinion, which is the controlling opinion according to canons of judicial construction,\textsuperscript{60} he outlined the minimum standards for competency.\textsuperscript{61} According to Justice Powell, the Eighth Amendment is not violated if a defendant knows of his or her impending execution and understands the connection between his or her crime and the punishment.\textsuperscript{62} In crafting this standard, Justice Powell rejected Sir

\textsuperscript{49} \textit{Id.}
\textsuperscript{50} \textit{Id.}
\textsuperscript{51} 	extsc{Edwardo Coke, The Third Part of the Institutes of the Laws of England} 6 (1797).
\textsuperscript{52} \textit{Id.}
\textsuperscript{53} \textit{See id.}
\textsuperscript{54} \textit{See id.; Blackstone, supra} note 47.
\textsuperscript{55} 477 U.S. 399 (1986).
\textsuperscript{56} U.S. \textsc{Const.} amend. VIII.
\textsuperscript{57} \textit{Ford, 477 U.S.} at 404, 419.
\textsuperscript{58} \textit{Id.} at 401.
\textsuperscript{59} \textit{Id.} at 418-31 (Powell, J., concurring).
\textsuperscript{60} In \textit{Marks v. United States}, the Court stated: "When a fragmented court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.'" 430 U.S. 188, 193 (1977) (quoting \textit{Gregg v. Georgia}, 428 U.S. 153, 169 n.15 (1976)).
\textsuperscript{61} \textit{Ford, 477 U.S.} at 427.
\textsuperscript{62} \textit{Id.} at 422.
Blackstone's reasoning. He reasoned that the many procedural safeguards involved in recent death penalty cases rendered Sir Blackstone's concerns obsolete. Instead, Justice Powell relied upon Sir Coke's explanation and grounded his competency standard in the deterrent nature of capital punishment.

The competency standard outlined in *Ford* had legal implications beyond the area of insanity. In *Atkins v. Virginia*, the Court relied on the rationale in *Ford* when it examined the degree of mental disability required for an Eighth Amendment prohibition against a prisoner's execution. While the Court acknowledged that there was little disagreement regarding the prohibition against executing the mentally disabled, there was a lack of "national consensus" about the prerequisite level of mental disability required to invoke Eighth Amendment protection. Ultimately, the Court adopted the minimalist approach from *Ford* and concluded that individual states are more apt at adopting "appropriate ways to enforce the constitutional restriction upon [their] execution of sentences."

*Ford* provided a uniform competency standard, yet the standard's criteria failed to translate into a coherent application among the many circuit courts due to the imprecise nature of many mental illnesses and the evolution of society's understanding of insanity. Frequently, lower state and federal courts grappled with determining the boundaries of an insane prisoner's "knowledge" of the causal connection between his or her impending execution and his or her crime. Counsel for death row prisoners, recognizing this dissonance, continued to petition the Supreme Court for habeas relief. Often, the Court denied certiorari to the petitioners as it did in *Rector v. Bryant*. However, in that denial of certiorari, Justice Marshall wrote an unusual dissenting opinion that captured many of the concerns surrounding the *Ford* competency standard. After disagreeing with

63. Id. at 422 n.3.
64. Id. at 420.
65. Id. at 421-22.
67. Id. at 317.
68. Id.
69. Id. (alteration in original)
71. See id.
72. See id.
74. Id. at 1239-43 (Marshall, J., dissenting).
Justice Powell’s rejection of Sir Blackstone’s justification in *Ford*, Justice Marshall argued it was unreasonable to assume that collateral review in a particular case “has rooted out all trial errors,” especially when the defendant is insane and incapable of communicating facts to those conducting the review process. Therefore, “it is inhumane to put a man to death when he has been rendered incapable of appealing to the mercy of the society that has condemned him.” According to Justice Marshall, *Ford* did not settle this issue, and the mental acuities of many death-row inmates continued to decline as they awaited execution. Although Justice Marshall believed the death penalty was cruel and unusual punishment in all circumstances, his dissent served as a premonition of challenges that would later unfold before the Supreme Court.

B. AEDPA and Its Role in Changing the Habeas Petition Process

While the lower courts continued to wrestle with the application of *Ford* to death penalty cases, the consideration of habeas applications became more complicated when Congress passed the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). This lengthy congressional act, which was passed with broad support, amended many of the federal laws involving criminal proceedings, including 28 U.S.C. § 2244(b). AEDPA modified § 2244(b) by requiring federal courts to dismiss any second or successive habeas corpus application that includes a new claim not present in a prior habeas application under § 2254. However, this requirement does not apply if the petitioner relies upon a new rule of constitutional law or a factual predicate that the petitioner could not have discovered before the prior habeas application. Section 2244 also requires the dismissal of any subsequent claim that brings forth a previously ruled-upon issue. Consequently, as a practical implication of the statutory language of § 2244(b)(1)-(2), the federal courts were precluded from hearing many second or successive habeas claims from death-row inmates.

75. Id. at 1243.
76. Id. (emphasis added).
77. See id.
78. Id.
Unfortunately, in crafting the gatekeeping mechanism of 28 U.S.C. § 2244(b), Congress did not consider the evolving nature of many Ford claims. If the language of § 2244(b)(1) is applied strictly, then it bars an inmate from submitting a second Ford claim when the court has already ruled on the issue, even if his or her level of mental insanity grows into a ripe claim after the submission of the first Ford claim. Likewise, an inmate that becomes insane after filing an initial habeas claim—not addressing insanity because it was not a ripe issue at the time of filing—is also barred by § 2244(b)(2) from filing a subsequent claim. Thus, Congress’s effort to increase judicial efficiency by enacting § 2244(b) presented a potential conflict with a prisoner’s right to due process.

In Stewart v. Martinez-Villareal, the Supreme Court addressed the issue of second or successive habeas applications by insane death-row inmates. After the defendant, Martinez-Villareal, was convicted of murder, he filed several claims in federal district court, including a claim of insanity. The district court dismissed those claims because the defendant had not yet exhausted state remedies. After exhausting his appeal in the state court, the defendant filed another habeas petition with the district court when the State obtained a warrant for his execution. The district court concluded it lacked jurisdiction to hear this subsequent habeas claim under § 2244(b)(1) because it had already ruled on his Ford claim in the prior petition. The defendant then appealed to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit stayed the defendant’s execution but later denied the defendant’s habeas petition. The Supreme Court granted certiorari to resolve an apparent circuit split on this issue.

The Supreme Court’s decision hinged on its interpretation of the language “second or successive” in § 2244(b)(1). According to the Court, Martinez-Villareal’s second petition was not barred by the

84. A Ford claim, which takes its name from Ford v. Wainwright, is a habeas corpus petition in which the petitioner alleges mental insanity. See 477 U.S. 399. An allegation of mental insanity entitles the petitioner to an evidentiary hearing, and if the petitioner is found to be legally insane, his or her execution is prohibited by the Eighth Amendment. See id. at 410.
85. Id.
86. 28 U.S.C. § 2244(b)(2).
88. Id. at 639.
89. Id. at 640-41.
90. Id. at 641.
91. 28 U.S.C. § 2244(b)(1)-(2); Stewart, 523 U.S. at 644.
gatekeeping provision of § 2244(b)(1).\textsuperscript{92} Even though the defendant asked the district court to provide relief on a second occasion, this second petition was not a separate application.\textsuperscript{93} Rather, it was a continuation of his previous Ford claim, which was dismissed as unripe.\textsuperscript{94} The district court should have ruled on the second petition because the claim was finally ripe.\textsuperscript{95} In this nuanced holding, the Court challenged the lower courts to balance the policy aspirations of AEDPA with the legal considerations of due process afforded to prisoners awaiting execution.\textsuperscript{96} Unfortunately, the majority opinion failed to address whether a Ford claim that appears for the first time in a second petition was barred by § 2244(b)(2) as a second or subsequent claim.

While AEDPA was arguably a poorly written law as applied to the habeas petitions of insane prisoners, it was not solely responsible for the confusion among legal practitioners. Indeed, the mandates of AEDPA only muddled the already confused realm of Ford claims. The minimalist approach of Ford's competency standard failed to address many of the complexities surrounding insanity. Prisoners, such as Scott Panetti, remained trapped in those crevices where proper adjudication ran afool of both case law and statutory language. These issues remained unresolved until the Supreme Court decided in Panetti.

IV. COURT'S RATIONALE: "IT'S BECAUSE I'M LOCO"\textsuperscript{97}

In Panetti v. Quarterman,\textsuperscript{98} the Supreme Court granted certiorari to determine whether the Eighth Amendment\textsuperscript{99} prohibits the execution of a prisoner who knows of his or her execution and the State's reason behind it yet manifests insane delusions about the reason for his or her execution.\textsuperscript{100} The Court concluded that gross delusions stemming from a severe psychotic disorder can prevent a defendant from rationally understanding the reason for his or her execution.\textsuperscript{101} Thus, the Eighth Amendment prohibits the execution of a defendant in this circumstance.\textsuperscript{102}

\textsuperscript{92} Stewart, 523 U.S. at 644.
\textsuperscript{93} Id.
\textsuperscript{94} Id.
\textsuperscript{95} Id.
\textsuperscript{96} See id. at 643-45.
\textsuperscript{97} CYPRESS HILL, supra note 1.
\textsuperscript{98} 127 S. Ct. 2842 (2007).
\textsuperscript{99} U.S. CONST. amend. VIII.
\textsuperscript{100} Panetti, 127 S. Ct. at 2859.
\textsuperscript{101} Id. at 2862.
\textsuperscript{102} Id.
A. The Majority Opinion: "Going Insane, Got No Brain"103

In this case, Justice Kennedy provided the crucial fifth vote to the majority with Justices Ginsburg, Souter, Breyer, and Stevens joining his opinion.104 The majority addressed three main points in support of its holding.105 First, the Court had the statutory authority to consider Panetti's claim because it was not barred under 28 U.S.C. § 2244(b)(2).106 Second, the state courts failed to provide the proper procedural due process as required by the Constitution.107 Third, when the Fifth Circuit analyzed Panetti's condition, it utilized an overly restrictive application of the competency standard laid out in Ford v. Wainwright.108

The Court began its analysis with the consideration of jurisdiction.109 The State argued that § 2244(b)(2) precluded the Court from considering this habeas petition because Panetti failed to mention insanity in a prior petition. The State recognized that many Ford claims are generally not ripe until after a petitioner files his or her first writ of habeas corpus; nevertheless, it maintained that a prisoner should mention insanity in his or her first petition, regardless of the claim's ripeness. The federal court could then revisit the claim when it became ripe. According to the State, this suggested approach would best provide adjudication to a defendant without compromising the procedural requirements of § 2244(b)(2).110

The majority, however, rejected the State's suggested approach.111 The Court recognized that this counter-intuitive approach would require all defense attorneys to file unripe habeas claims of insanity to protect the future possibility of an insanity claim.112 Because the appeals process for a death-row defendant is quite lengthy, it is possible that a defendant's sanity may deteriorate during this period.113 Consequently, the State's approach would undermine the efficiency rationale behind § 2244(b)(2) by necessitating an unknown number of unripe claims.114

103. CYPRESS HILL, supra note 1.
104. Panetti, 127 S. Ct. at 2847.
105. Id. at 2848.
110. Id.
111. Id.
112. Id.
113. Id.
114. Id. at 2852-53.
In prior cases, such as *Stewart v. Martinez-Villareal*, the Court declined to interpret "second or successive" as referring to all § 2254 claims. Although the Court in *Stewart* did not address the applicability of § 2244(b)(2), the Court in *Panetti* noted that the majority's approach in that case illustrated the need to look at the intentions of Congress when considering implications for habeas practice.

After examining the legislative history of AEDPA, the majority in *Panetti* first held that Congress did not intend for AEDPA's provisions to govern a habeas application that raises a *Ford* claim when it becomes ripe. Second, requiring defendants to comply with the empty formality of filing unripe habeas claims compromises the judicial efficiency impetus behind AEDPA. Third, even though waiving the application of AEDPA to habeas claims of insanity may provide defendants with the possibility of filing last-minute, frivolous claims, *Ford*'s preliminary threshold requirement precludes the possibility of abuse. Thus, the statutory bar on second or successive applications does not apply to a *Ford* claim when the claim is filed after becoming ripe.

Following its disposal of the jurisdictional issue, the Court turned its attention to the procedures of the lower state court. In a stinging rebuke, the majority concluded that the State failed to provide *Panetti* with the minimum due process requirements laid out in *Ford*. In reaching this determination, the Court cited several instances from the record when the trial court failed to adhere to established procedures. The trial court refused to transcribe proceedings, conveyed false information to *Panetti*'s counsel, ignored motions by *Panetti*, and failed to provide *Panetti* with an adequate opportunity to submit expert evidence in response to the court-appointed experts. According to the Court, the most egregious denial of due process was the trial court's failure to hold an evidentiary hearing on the testimony of *Panetti*'s experts. Although *Ford* left the procedural particulars of competency findings to the state's discretion, the Court noted that the trial court

117. *Id.*
118. *Id.*
119. *Id.* at 2854.
120. *Id.* at 2855.
121. *Id.* at 2856.
122. *Id.* at 2856-57.
123. *Id.* at 2857.
failed to adhere to the Texas requirement of a final competency hearing.\textsuperscript{125} This omission by the trial court resulted in a failure to provide minimum due process and was inadequate for reasonably resolving Panetti's competency claim.\textsuperscript{126}

Finally, the Court addressed the primary issue of whether the Eighth Amendment allows the execution of a defendant when the defendant's personality disorder deprives him or her of a rational understanding of the reasons he or she is being executed.\textsuperscript{127} After reviewing various expert testimonies regarding the nature of schizophrenic disorders, particularly the ability of these disorders to afflict a person without diminishing cognitive ability, the Court held that the Fifth Circuit applied a flawed interpretation of the \textit{Ford} competency standard.\textsuperscript{128} Contrary to the Fifth Circuit's holding, a proper application of the \textit{Ford} competency standard does not preclude a defendant from showing that his psychotic disorder obstructs a rational understanding of the State's reason for his execution.\textsuperscript{129} A prisoner's delusional beliefs are not "irrelevant" to a finding of competency.\textsuperscript{130} Rather, the minimalist approach of \textit{Ford} allows for consideration of these beliefs.\textsuperscript{131} By ignoring Panetti's delusions, the Fifth Circuit prevented the death penalty from fulfilling its deterrent purpose because Panetti lacked the awareness necessary to understand the relationship between his execution and its reason.\textsuperscript{132}

After distinguishing between a prisoner's awareness of his or her execution and a rational understanding of it, the Court concluded that \textit{Ford} does not foreclose inquiry into the latter.\textsuperscript{133} The majority recognized that the concept of rational understanding is difficult to define.\textsuperscript{134} Many convicted prisoners awaiting execution are not "normal" or "rational" within the layperson's understanding of those words.\textsuperscript{135} However, the threshold of a competency inquiry is not based

\begin{itemize}
\item \textsuperscript{125} Id.
\item \textsuperscript{126} Id. at 2859.
\item \textsuperscript{127} Id.
\item \textsuperscript{128} Id. at 2860.
\item \textsuperscript{129} Id.
\item \textsuperscript{130} Id. at 2861.
\item \textsuperscript{131} Id.
\item \textsuperscript{132} Id.
\item \textsuperscript{133} Id. at 2862.
\item \textsuperscript{134} Id.
\item \textsuperscript{135} Id.
\end{itemize}
upon a prisoner’s “misanthropic personality or an amoral character.” Rather, it considers only a “psychotic disorder.”

While this holding reversed the restrictive approach taken by the Fifth Circuit, the Court specifically chose not to set down a more precise rule governing all competency determinations; instead, it continued the minimalist approach adopted in Ford. As to the merits of Panetti's habeas claim, the Court declined to rule. It noted that the district court failed to include findings of fact in its opinion. As a result of this deficiency, the Court found it difficult to rule on such a complex issue without allowing the lower courts to address the nature and severity of Panetti's alleged mental problems. Hence, the Court remanded the petition back to the lower courts for development of the evidentiary record.

B. The Dissenting Opinion: "Next to the Chair, Got Me Goin' Like General Electric"

Justice Thomas dissented from the majority and was joined by Chief Justice Roberts and Justices Scalia and Alito. Justice Thomas's dissent attacked all three points in the majority's holding. First, Justice Thomas argued that the Court lacked the statutory jurisdiction to consider Panetti's claim. Although Panetti presented a sympathetic figure, Justice Thomas opined that the majority ignored a clear statutory mandate by allowing a second or successive habeas application. According to Justice Thomas, "[t]he Court reache[d] a contrary conclusion by reasoning that ... second or successive takes its full meaning from our case law." The judicial discretion used by the majority in interpreting "second or successive" epitomizes the type of judiciary "discretion" that Congress sought to eliminate with the passage of AEDPA. Justice Thomas also disagreed with the majority's

136. Id.
137. Id.
138. Id.
139. Id. at 2863.
140. Id. at 2862-63.
141. Id. at 2863.
142. Id.
143. CYPRESS HILL, supra note 1.
144. Panetti, 127 S. Ct. at 2863 (Thomas, J., dissenting).
145. Id. at 2864-74.
146. Id. at 2864.
147. Id.
148. Id. (internal quotation marks omitted).
149. Id. at 2865.
reliance on Stewart to determine whether Congress intended to treat habeas claims differently than other claims.\textsuperscript{150} From his perspective, Stewart allows for the continuation of a claim that later ripened, but it does not "suggest[] that it is . . . appropriate . . . for a prisoner to wait before seeking resolution of his incompetency claim."\textsuperscript{151} Instead, Justice Thomas contended that the Court's holding in Burton v. Stewart\textsuperscript{152} was analogous to the issues presented in Panetti's case.\textsuperscript{153} In Burton the Court rejected a prisoner's second habeas petition even though the challenge to his sentencing was not ripe at the time of his first petition's filing.\textsuperscript{154} Likewise, Justice Thomas asserted that § 2244(b)(2) applies to a prisoner's subsequent insanity claim, even if the insanity claim was unripe at the time the first habeas petition was filed.\textsuperscript{155} Thus, a Ford claim does not deserve a "special . . . exemption from the statute's plain import."\textsuperscript{156}

Moreover, Justice Thomas questioned the judicial economy considerations of the majority opinion.\textsuperscript{157} Like the State, Justice Thomas believed all initial habeas petitions should include Ford claims.\textsuperscript{158} Even if this requirement caused the federal courts to experience an influx of unripe habeas petitions, the district courts could handily dismiss the unripe claims while simultaneously preserving the option for defendants to raise the claims again after they ripened.\textsuperscript{159} This approach also has the advantage of providing notice to a state that a prisoner intends to challenge his competency.\textsuperscript{160}

Second, after questioning the majority's rationale regarding the statutory authority for the Court to rule in this case, Justice Thomas then argued the State's procedures met the minimum due process as required by the Constitution.\textsuperscript{161} Panetti only filed two exhibits in state court with his renewed motion for competency determination, and these exhibits simply outlined his mental history from 1981 to 1997.\textsuperscript{162} Because these exhibits were merely "preliminary observations" and

\begin{itemize}
\item \textsuperscript{150} Id. at 2865-66.
\item \textsuperscript{151} Id. at 2866 n.4 (second alteration in original) (internal quotation marks omitted).
\item \textsuperscript{152} 127 S. Ct. 793 (2007).
\item \textsuperscript{153} Panetti, 127 S. Ct. at 2866 (Thomas, J., dissenting).
\item \textsuperscript{154} Burton, 127 S. Ct. at 796.
\item \textsuperscript{155} Panetti, 127 S. Ct. at 2866 (Thomas, J., dissenting).
\item \textsuperscript{156} Id. at 2867.
\item \textsuperscript{157} Id.
\item \textsuperscript{158} Id.
\item \textsuperscript{159} Id.
\item \textsuperscript{160} Id.
\item \textsuperscript{161} Id.
\item \textsuperscript{162} Id. at 2867-68.
\end{itemize}
failed to address Panetti's competency at the time of his scheduled execution in 2004, Justice Thomas contended that Panetti's claim met the preliminary threshold showing of insanity that is required by a *Ford* claim.\(^{163}\) Even if Panetti met this threshold as the majority claimed, Justice Thomas maintained that the State met minimum due process requirements by considering Panetti's insanity claim.\(^{164}\) Texas required a competency hearing, not an evidentiary hearing.\(^{165}\) Hence, the state court operated within the substantial leeway granted by *Ford*.\(^{166}\)

Finally, Justice Thomas rejected the majority's holding that *Ford* required any consideration of a prisoner's rational understanding of the reasons for his execution.\(^{167}\) Without discussing the merits of Panetti's claims, Justice Thomas argued *Ford* never addressed rational understanding.\(^{168}\) Because *Ford* only addressed actual knowledge, the majority's assertion that the Fifth Circuit was overly restrictive was inconsistent with *Ford*.\(^{169}\) Instead, Justice Thomas concluded the majority wrongly expanded the Eighth Amendment to require rational understanding.\(^{170}\)

V. IMPLICATIONS: "LOOK, BUT DON'T MAKE YOUR EYES STRAIN"\(^ {171}\)

*Panetti v. Quarterman*\(^ {172}\) maintained the minimalist approach regarding competency standards from *Ford*. Although the Court could have built upon the four-justice plurality of *Ford*, it declined to propose a rule for determining competency.\(^ {173}\) The indefinite nature of many psychotic disorders likely will continue to test *Ford'*s requirement that a prisoner have knowledge of the reason for his execution. Thus, the Court's failure to lay down a rule in this case, referred to as the Panetti "Punt" by critics, only sullied the already murky waters of habeas petitions.\(^ {174}\) Confusion is likely to continue to abound regarding the

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163. *Id.* at 2868.
164. *Id.* at 2869.
165. *Id.*
166. *Id.* at 2869-70.
137. *Id.* at 2873.
168. *Id.*
169. *Id.* at 2873-74.
170. *Id.* at 2874.
171. CYPRESS HILL, *supra* note 1.
173. *Id.* at 2862.
application of a competency standard for death-row prisoners suffering from psychotic disorders.

The Court also failed to examine the relationship between personality disorders and criminal culpability. For example, when does mental illness that is not on the level of a schizophrenic psychotic disorder mitigate culpability? While the Court recognized the deterrent purpose of punishment is not served when a prisoner fails to understand the gravity of his crime, *Panetti* only applies this consideration to prisoners suffering from psychotic disorders. The Court's delineation fails to consider the culpability of criminals suffering from other disorders, such as personality disorders. Criminals suffering from personality disorders can also lack an acute understanding of their crimes. However, *Panetti's* distinction between rational awareness and understanding does not extend to them. Consequently, it is likely that death-row prisoners suffering from personality disorders will challenge the Court's distinction in future habeas proceedings using the majority's rationale from *Panetti*.

Additionally, critics of *Panetti* contend that the majority's decision will lead to a substantial increase in the number of habeas proceedings. This increase will originate specifically from two points in the majority opinion. First, the Court's interpretation of "second or successive" claims in 28 U.S.C. § 2244(b)(2) will allow death-row inmates to file additional habeas petitions that were previously barred. Second, the Court's interpretation of rational understanding creates a new line of defense for prisoners suffering from psychotic disorders. Although the possibility of an increase in habeas claims seems reasonable, the true impact of *Panetti* on the number of claims remains largely unknown. However, it is unlikely that prisoners will be able to fake the psychotic disorders the majority opinion considered. Because it is difficult to impersonate a psychotic disorder, any expansion of potential defenses by *Panetti* is limited to a small section of the death-row population. As a result, the concerns of these critics appear to be unwarranted.

The Supreme Court also appears to be signaling to the State of Texas that its capital punishment procedures are under close watch. Texas, long known for its liberal use of the death penalty, was reversed on procedural grounds in several habeas cases during this term, including

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178. U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS BULLETIN, CAPITAL PUNISHMENT (2005), http://www.ojp.usdoj.gov/bjs/pub/pdf/cp05.pdf. During the period from 1930 to 2005, Texas led the nation in the number of executions with 652. There were a total of 4,863 executions throughout the nation during this same period. *Id.* at 9.
Abdul-Kabir v. Quarterman,\textsuperscript{179} Brewer v. Quarterman,\textsuperscript{180} and Smith v. Texas.\textsuperscript{181} Like Panetti, those cases also questioned the procedural due process afforded to prisoners.\textsuperscript{182} The Court's message to Texas appears clear: the state must meet the minimum standards of due process in death penalty cases even though states are traditionally afforded wide latitude in fashioning sentencing procedures.

Furthermore, Panetti may cause other states to reexamine their habeas procedures. In light of the majority's criticism of Texas's procedures, states should consider whether their procedures support the substantive purpose of a habeas proceeding. The incorporation of formal requirements, such as the mandatory transcription of all proceedings and mandatory evidentiary hearings for competency claims, could safeguard states against later due process challenges. At a minimum, the Court has provided all states with fair warning that it is concerned with the sufficiency of their habeas proceedings.

Finally, the judicial soothsayers of capital jurisprudence believe Panetti may represent a larger shift in the direction of affording increased protection to capital offenders by a majority of the Supreme Court.\textsuperscript{183} Although the Court is unlikely to completely revoke capital punishment, it may attempt to limit its application by striking many of the procedures and the techniques for administering the death penalty. The granting of certiorari by the Court in Baze v. Rees\textsuperscript{184} furthers this assertion. In Baze the Court will determine if the Eighth Amendment's ban on cruel and unusual punishment excludes the current methods of administering lethal injections.\textsuperscript{185} This case is a continuation of the growing trend to examine death penalty issues by the Court.\textsuperscript{186} While

\textsuperscript{179} 127 S. Ct. 1654 (2007). The Supreme Court remanded the case after reversing the Fifth Circuit. \textit{Id.} at 1675. The Court held that the Fifth Circuit denial of Abdul-Kabir's claim—that the sentencing jury was improperly precluded from considering and giving effect to mitigating evidence—was an unreasonable application of clearly established federal law. \textit{Id.}

\textsuperscript{180} 127 S. Ct. 1706 (2007). The Court reversed and remanded the case after holding the trial court's instructions articulating Texas "special issues" did not adequately provide the jury with an opportunity to decide if relevant mitigating evidence could support a punishment other than death. \textit{Id.} at 1713-14.

\textsuperscript{181} 127 S. Ct. 1686 (2007). The Court reversed and remanded the case after determining that Smith was entitled to relief under the State's "harmless error framework." \textit{Id.} at 1699.

\textsuperscript{182} \textit{See} Brewer, 127 S. Ct. 1706; Smith, 127 S. Ct. 1886; Abdul-Kabir, 127 S. Ct. 1654.

\textsuperscript{183} \textit{See}, e.g., Press Release, Criminal Justice Legal Foundation, \textit{supra} note 10.

\textsuperscript{184} 128 S. Ct. 372 (2007).

\textsuperscript{185} \textit{Id.} at 372; Petition for Writ of Certiorari, Baze v. Rees, 128 S. Ct. 372 (No. 07-5439), 2007 WL 2781088 at *2-3.

\textsuperscript{186} Petition for Writ of Certiorari, \textit{supra} note 185.
the direction of the Court’s capital jurisprudence remains both unknown and uncharted, the parties in Baze will certainly study cases such as Panetti for any favorable hints from the Court.

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