No. _____

In the Supreme Court of the United States

TERRY TIBBALS, Warden,

Petitioner,

v.

SEAN CARTER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE—NO EXECUTION DATE SET

QUESTIONS PRESENTED

1. Do capital prisoners possess a "right to competence" in federal habeas proceedings under *Rees v. Peyton*, 384 U.S. 312 (1966)?

2. Can a federal district court order an indefinite stay of a federal habeas proceeding under *Rees*?

LIST OF PARTIES

The Petitioner is Terry Tibbals, the Warden of the Mansfield Correctional Institution. Tibbals is substituted for his predecessor, Margaret Bradshaw. See Fed. R. Civ. P. 25(d).

The Respondent is Sean Carter, an inmate at the Mansfield Correctional Institution.

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PETITION FOR WRIT OF CERTIORARI

The Attorney General of Ohio, on behalf of Terry Tibbals, Warden, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's opinion, *Carter v. Bradshaw*, 644 F.3d 329 (6th Cir. 2011), is reproduced at App. 1a. The district court's opinion, *Carter v. Bradshaw*, 583 F. Supp. 2d 872 (N.D. Ohio 2008), is reproduced at App. 27a.

JURISDICTIONAL STATEMENT

The Sixth Circuit issued its opinion on May 26, 2011. The Warden files this petition and invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 4241(a) of Title 18 provides:

> At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

The Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Section 2254(d) of Title 28 of the United States Code, provides:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.
> >
> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

INTRODUCTION

Alleging ineffective assistance of counsel, Sean Carter seeks to overturn his conviction and death sentence for the rape and murder of his adoptive grandmother. The Ohio courts rejected the claim eleven years ago, but the district court and the Sixth Circuit refuse to act on Carter's habeas petition.

The reason: The Sixth Circuit maintains that capital prisoners have a "right to competence" in federal habeas proceedings under *Rees v. Peyton*, 384 U.S. 312 (1966). Because Carter's mental illness "affect[s] his abilities to relay facts to his counsel and communicate in detail," App. 8a, the court ordered an *indefinite stay* of his proceeding under *Rees*.

To this day, the *Rees* case is shrouded in mystery. A capital prisoner attempted to withdraw his petition for certiorari. After the district court deemed him incompetent, this Court refused to act. Without explanation, it let the petition sit on the docket for three decades until the prisoner died.

The Court should grant review and resolve two contradictory visions of *Rees* in the lower courts. Most circuits adopt a narrow view of the case, invoking it to evaluate the validity of a capital prisoner's request to withdraw his habeas petition. But the Sixth Circuit divined a broad "right to competence" from *Rees*: Courts should stay habeas proceedings indefinitely whenever a capital prisoner's mental condition renders him "unable to communicate with his habeas attorneys." App. 12a.

Certiorari is warranted for two other reasons. First, the Sixth Circuit disregarded established limits on its habeas authority. To justify its stay

order, the court explained that Carter is unable to "provide . . . evidence in support of his claims" while incompetent. App. 12a. But no new evidence can be considered at this stage; AEDPA limits the prisoner and his counsel to "the record that was before the state court." *Cullen v. Pinholster*, 131 S. Ct. 1388, 1398 (2011). The Sixth Circuit also disregarded this Court's carefully tailored framework for evaluating claims of post-conviction incompetence—and its requirements for exhaustion and state-court deference. See *Ford v. Wainwright*, 477 U.S. 399 (1986).

Second, the Sixth Circuit's decision is "an anomalous monkey wrench thrown into the capital-litigation process." App. 26a (Rogers, J., dissenting). The decision invites every capital prisoner to raise similar claims of incompetence; it opens the door to decades of collateral litigation; and it unnecessarily (and in many cases, eternally) forestalls the State's ability to carry out its criminal judgments.

This case more than satisfies the well-worn criteria for certiorari—lack of guidance from this Court, manifest disagreement in the lower courts, and a paramount State interest at risk. The Court should grant review and reverse the judgment below.

STATEMENT OF THE CASE

A. Carter raped and murdered his adoptive grandmother.

On September 13, 1997, Sean Carter snuck into the home of his adoptive grandmother Veader Prince. *State v. Carter*, 734 N.E.2d 345, 347 (Ohio 2000). Prince discovered Carter, asked him to leave her house, and gave him a set of car keys. *Id.* at 348.

Carter departed, but returned later that day. Finding the front door to Prince's house locked, he climbed in through a bedroom window. *Id*. at 349-50.

Carter encountered Prince, who again instructed him to leave. When Prince "tried to push him out the door," Carter "started to beat her." *Id*. at 350. He then raped Prince anally and stabbed her with a kitchen knife. A later autopsy indicated that Prince suffered eighteen stab wounds and blunt force trauma to the face. *Id*. at 349.

To cover up the murder, Carter piled clothes over Prince's body, moved furniture to hide blood stains, turned on the water in the bathroom, and placed a chicken on a stove. He then changed his bloody clothes, took $150 from Prince's purse, and stole a car from the driveway. *Id*. at 350.

On September 14, Prince's daughter and son visited the home, but could not find their mother. Returning that evening, they located Prince's dead body in the basement and called police. *Id*. at 348.

On September 15, officers in Pennsylvania located Carter sleeping in the stolen car. The officers contacted Ohio authorities, who indicated that they wanted Carter for questioning. *Id*. at 349. After waiving his *Miranda* rights, Carter confessed to murdering Prince. He waived extradition and returned to Ohio. *Id*. at 349-50.

B. A jury convicted Carter of murder and the trial court imposed a death sentence.

A grand jury indicted Carter for aggravated murder, aggravated burglary, aggravated robbery, and rape. See *Carter*, 734 N.E.2d at 350.

The trial court appointed an expert, Dr. Stanley Palumbo, to examine Carter's mental state. "With reasonable scientific certainty," Dr. Palumbo concluded that "Carter [was] competent to stand trial." *Id.* at 355. He testified that "Carter underst[ood] the nature of the proceedings against him and d[id] not suffer any gross mental disorder that would interfere with his ability to participate in his defense." *Id.* In light of this report, the trial court deemed Carter competent to stand trial. *Id.*

Carter entered a plea of not guilty by reason of insanity, and three experts examined his mental state. The first, Dr. Stephen King, concluded that Carter "exhibited bizarre behavior" and "was not able to assist in his own defense" (although he admitted that his diagnosis "was a close call"). *Id.* The second expert, Dr. Palumbo, reaffirmed his earlier diagnosis: Carter was competent and "express[ing] anger and irritability with his attorneys." *Id.* at 356. A third expert, Dr. Robert Alcorn, agreed with Dr. Palumbo's conclusions. *Id.*

After examining the reports, the trial court found Carter competent. *Id.* The case proceeded to trial and Carter absented himself from most of the proceedings. *Id.* at 350. The jury convicted Carter of aggravated murder with death specifications, aggravated robbery, rape, and criminal trespass. After the penalty phase, the jury recommended a death sentence, which the trial court imposed. *Id.*

C. The Ohio Supreme Court affirmed the convictions and sentence, and the Ohio courts denied post-conviction relief.

On direct appeal, Carter challenged the trial court's competency finding. The Ohio Supreme Court rejected the claim: "The trial court's findings of fact fail to support Carter's claim that the court's decision was unreasonable, arbitrary, or unconscionable." *Carter*, 734 N.E.2d at 356. The court dismissed Carter's other objections and affirmed his convictions and death sentence.

Carter next sought post-conviction relief in the Ohio courts, attacking the performance of his trial counsel. He claimed that "his attorneys failed to develop a complete record to show that he was incompetent to stand trial because his paranoid personality did not permit him to trust, or therefore consult with and aid, his lawyers." *State v. Carter*, No. 99-T-133, 2000 Ohio App. Lexis 5935, at *10 (Ohio Ct. App. Dec. 15, 2000).

Carter submitted an affidavit by trial counsel, who confirmed that Carter "would not cooperate" or "discuss any aspects of the case or his personal life." *Id.* The affidavit also indicated that Carter "wanted to kill his attorney," that Carter's "mother and uncle were paranoid schizophrenics," and that Carter would appear in court only "if his attorneys bribed him with candy." *Id.* at *11.

The trial court denied relief, and the Ohio court of appeals affirmed. The appellate court concluded that "[n]either [Carter's] petition for postconviction relief nor his brief raise new grounds or point to anything outside the record to

demonstrate that he is entitled to relief" on his ineffective assistance claim. *Id.* at *13. The court further observed that Carter's "inability or unwillingness to aid his attorneys in the defense of his case [was] well-documented." *Id.*

The Ohio Supreme Court denied review. See *State v. Carter*, 746 N.E.2d 612 (Ohio 2001).

D. The federal district court found Carter incompetent and dismissed his habeas petition without prejudice.

In 2002, Carter sought habeas relief. He submitted a series of pleadings, culminating in 2005 with his third amended habeas petition. Also in 2005, Carter filed a "motion for competency determination and to stay proceedings." App. 28a.

The district court ordered a competency hearing. Carter's expert, Dr. Robert Stinson, testified that Carter had "schizophrenia," a "depressive disorder," and "a personality disorder." App. 30a. The condition, Dr. Stinson said, "distorts his inferential thinking," "affect[s] . . . his language and communication abilities," and prevents him from developing "a factual understanding of the proceedings." App. 30a-31a. Dr. Stinson agreed that "Carter could communicate with his attorneys, but indicated that "his schizophrenia renders him an 'unreliable historian.'"[1] App. 32a.

Carter's second expert, Dr. Michael Gelbort, agreed that Carter's "thinking skills are fragmented and distracted": Although Carter can provide "basic

[1] Dr. Stinson filed an updated report two years later, indicating that "Carter's mental condition ha[d] deteriorated." App. 35a.

assistance . . . it's not worth a whole lot of time or effort on his attorneys' part because his cognitive capabilities are so limited." App. 33a.

The Warden's expert, Dr. Phillip Resnick, agreed that Carter has "chronic undifferentiated schizophrenia." App. 34a. But Dr. Resnick testified that Carter understood the nature of the murder conviction and the punishment: "[I]n my view, he meets the minimum standard because he can speak rationally and convey information." App. 35a. Dr. Resnick further indicated that Carter "can convey basic information, but . . . his illness does not permit him to give a rich description." *Id*.

After reviewing this testimony, the district court invoked *Rohan ex rel. Gates v. Woodford*, 334 F.3d 803 (9th Cir. 2003). App. 36a. In *Rohan*, the Ninth Circuit indicated that capital prisoners possess a "right to competence" in habeas proceedings, rooted in their statutory right to appointed counsel under 18 U.S.C. § 3599(a)(2).

Applying *Rohan*, the district court concluded that several of Carter's habeas claims—that he was incompetent at his trial, and that his attorneys were ineffective in pursuing the claim—"potentially could benefit from Carter's assistance." App. 42a-43a. The court then evaluated Carter's mental state: Although Carter's capacity to understand his position and the proceedings was "debatable" and "a difficult decision," his "diminished . . . ability to communicate with counsel" was "clear-cut." App. 45a. Under the *Rohan* standard, the district court determined "that Carter [was] incompetent to proceed with this federal habeas litigation." App.47a.

In light of that finding, the district court "dismisse[d] without prejudice" the habeas petition and "prospectively toll[ed] the one-year statute of limitations set forth in 28 U.S.C. § 2244(d) . . . until such time as . . . Carter is competent to proceed with his federal habeas litigation." App 53a.

E. The Sixth Circuit directed the district court to stay Carter's petition indefinitely due to incompetency.

On appeal, the Sixth Circuit agreed with the district court's bottom-line ruling, but not its specific analysis or remedy. The court did not find a "right to competence" under *Rohan* or 18 U.S.C. § 3599. Instead, the Sixth Circuit held that Carter enjoyed a right to competence under *Rees v. Peyton*, 384 U.S. 312 (1966) and 18 U.S.C. § 4241—the federal statute discussing a criminal defendant's competence at trial. App.4a-5a.

In this case, Carter "refused to meet with his attorneys to discuss collateral attacks on his conviction" and he "suffered from multiple psychological disorders affecting his abilities to relay facts to his counsel." App. 8a. Given those findings, the Sixth Circuit affirmed the district court's competency determination. *Id*.

But the Sixth Circuit said "it was improper for the district court to dismiss Carter's petition and prospectively toll the AEDPA statute of limitations indefinitely." App. 11a. Instead, the Sixth Circuit said the district court should have followed the Ninth Circuit's remedy in *Rohan*—"habeas proceedings should be stayed until the petitioner is found to be competent." App. 14a.

The Sixth Circuit instructed the district court to stay indefinitely its consideration of Carter's ineffective assistance claim. App. 15a. As to the remaining habeas claims, the Sixth Circuit directed the district court "to determine whether Carter's assistance is essential to their full and fair adjudication." *Id.* If "Carter's other claims might possibly be litigated without his assistance," App. 13a, the Sixth Circuit instructed the district court to appoint a next friend to litigate on Carter's behalf.

Judge Rogers dissented. He argued that the majority's decision "allows habeas petitioners to prevent States from enforcing their judgments, potentially forever, on the grounds of a nonexistent right to competency in habeas proceedings." App. 15a-16a. That right, he said, "has no basis in the Constitution or federal statues." App. 16a.

REASONS FOR GRANTING THE WRIT

The Court should grant the Warden's petition for three reasons. First, the Sixth Circuit's novel interpretation of *Rees v. Peyton*, 384 U.S. 312 (1966)—that habeas petitioners have a "right to competence"—is shared by no other circuit.

Second, the Sixth Circuit's decision runs headlong into AEDPA and *Ford v. Wainwright*, 477 U.S. 399 (1986). The court ordered an indefinite stay of a capital habeas proceeding—something that AEDPA prohibits. And the court's opinion circumvents *Ford*'s procedural and substantive limitations on post-conviction incompetency claims.

Third, this decision will improperly bring Ohio's capital litigation to a halt. Under the Sixth Circuit's extraordinarily loose standards, any

prisoner can make a minimal showing of incompetence, demand a hearing, and secure an indefinite stay of his habeas proceedings.

A. The significance of *Rees v. Peyton* is an open and disputed question.

1. The Court has never clarified *Rees*.

In *Rees*, a capital prisoner instructed his attorney to withdraw his pending petition for certiorari. 384 U.S. at 313. Counsel objected, indicating that "he could not conscientiously accede to these instructions without a psychiatric evaluation." *Id*. This Court stated that "it [was] ultimately the responsibility of this Court to determine" "[w]hether or not Rees shall be allowed in these circumstances to withdraw his certiorari petition." *Id*. The Court then remanded the case to the district court to determine "whether [the prisoner] ha[d] capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or . . . whether he [was] suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises." *Id*. at 314.

After the district court found the prisoner incompetent, this Court, in an unexplained order, "held without action" the petition for certiorari. *Rees v. Peyton*, 386 U.S. 989 (1967). Decades passed. When the prisoner died in 1995, the Court finally dismissed the petition. See *Rees v. Superintendent of the Va. State Penitentiary*, 516 U.S. 802 (1995).

The Court has never again ordered such relief, although others have requested it. Just last term, a capital prisoner filed a petition for certiorari and

invoked *Rees*. Alleging incompetence, the prisoner requested a competency determination and sought a stay of the proceedings. The Court summarily denied the request and the petition. See *Bedford v. Collins*, 130 S. Ct. 2344 (2010).

In fact, the Court has shown very little interest in *Rees* over the years. Despite the high number of capital habeas petitions and incompetency claims on the Court's docket, the case makes only one other appearance in the United States Reporter. See *Whitmore v. Arkansas*, 495 U.S. 149, 166 (1990) (citing *Rees* to deny standing to a "next friend" who attempted to pursue an appeal on behalf of a capital prisoner). Several dissenting opinions mention the case, but only to reiterate the standard for reviewing a prisoner's request to terminate his habeas rights. See, e.g., *Rumbaugh v. McCotter*, 473 U.S. 919, 919 (1985) (Marshall, J., dissenting) ("*Rees* specified the findings necessary to a determination that one who seeks to waive further review of a criminal conviction is competent to make such a grave choice.").

In short, the Court has never explained *Rees* or the basis for its "hold without action" choice.

2. Most circuits interpret *Rees* to require a competency hearing before a court allows a prisoner to waive habeas relief.

In most federal circuits, *Rees* is relied on in one discrete situation—"where a death-row inmate elects to abandon further legal proceedings." *Smith v. Armontrout*, 812 F.2d 1050, 1057 (8th Cir. 1987); accord *Brewer v. Lewis*, 989 F.2d 1021, 1026 n.4 (9th Cir. 1993) (*Rees* "state[s] the test for determining

whether a habeas petitioner is competent to waive his right to federal review of his conviction and sentence."); *Rumbaugh v. Procunier*, 753 F.2d 395, 398 (5th Cir. 1985) (same).

In those cases, *Rees* provides "the controlling legal standard for assessing the validity of a death row inmate's choice to forego post-conviction review." *Henderson v. Haley*, 353 F.3d 880, 893 (11th Cir. 2003). "An appeal may not be withdrawn if the prisoner is incompetent." *Michael v. Horn*, 459 F.3d 411, 420 (3d Cir. 2006). If a court "ha[s] any doubts about [the prisoner's] competency," *Rees* demands a hearing. *Id.*

The Ninth Circuit's take on *Rees* is particularly revealing. Although the court affords capital prisoners a "right to competence" in their federal habeas proceedings, it does *not* ground that right in *Rees*. Rather, the Ninth Circuit locates the right in 18 U.S.C. § 3599, which supplies appointed counsel to capital prisoners. See *Rohan ex rel. Gates v. Woodford*, 334 F.3d 803, 813 (9th Cir. 2003).

To be sure, the Ninth Circuit's reading of § 3599 is open to debate.[2] See App. 20a (Rogers, J., dissenting) (criticizing *Rohan* because the provisions of § 3599 "say nothing about the competency of the petitioner"). But the court offered one significant observation: Whether or not capital prisoners have a right of "competence to pursue collateral review of a state conviction in federal court . . . is an issue the Supreme Court precedents do not conclusively resolve." *Rohan*, 334 F.3d at 810.

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[2] The State of Arizona is seeking review of *Rohan*'s holding. See Pet'n for Cert., *Ryan v. Gonzales*, No. 10-930.

3. The Sixth Circuit interprets *Rees* to establish a "right to competence" for capital habeas petitioners.

For decades, the Sixth Circuit applied *Rees* narrowly like its sister circuits do—to "cases where a death row inmate seeks to forego further appeals." *Harper v. Parker*, 177 F.3d 567, 571 (6th Cir. 1999). If a court "'believe[s] that the defendant may be . . . suffering from a mental disease or defect,'" it should conduct "a preliminary hearing" to discern whether he is competent "to waive his right to further appeals." *Id.*

Recent proceedings illustrate this practice. In *Awkal v. Mitchell*, a capital prisoner informed the Sixth Circuit of his desire to withdraw his habeas petition. Consistent with *Rees*, the court stayed its proceeding and instructed the district court to conduct a competency hearing. See *Awkal v. Mitchell*, No. 01-4728, 2006 U.S. App. Lexis 5984, at *4 (6th Cir. Mar. 8, 2006).

After the district court found the prisoner incompetent, a Sixth Circuit panel denied his request to terminate the appeal and proceeded to issue a decision on the merits, granting habeas relief. See *Awkal v. Mitchell*, 559 F.3d 456 (6th Cir. 2009). The en banc court then reversed that decision. See *Awkal v. Mitchell*, 613 F.3d 629 (6th Cir. 2010) (en banc), *cert. denied*, 131 S. Ct. 1002 (2011). Although every member of the Sixth Circuit—the majority and the dissenters—recognized the prisoner's incompetence, not one contemplated the need for an indefinite stay under *Rees*.

The Sixth Circuit took the very opposite approach here. The court announced that capital habeas petitioners possess "a statutory right to competence" because the *Rees* decision incorporated the federal competency-to-stand-trial statute, 18 U.S.C. § 4241, into habeas proceedings. App. 4a-5a.

The Sixth Circuit further announced that *Rees* may be invoked "by action or inaction." App. 7a. Unlike the *Rees* prisoner, who expressly sought to "withdraw [his] petition and forgo any further legal proceedings," 384 U.S. at 313, Carter has never attempted to terminate this litigation. No matter, the Sixth Circuit said, because district courts may conduct competency hearings under *Rees* whenever (1) the prisoner "refuse[s] to meet with his attorneys to discuss collateral attacks"; and (2) his attorneys express concern that the prisoner "[can]not understand the proceedings or assist counsel in his defense." App. 8a.

The Sixth Circuit's decision creates two clear divisions in lower court authority. First, it held that this Court established the "right to competence" on federal habeas review "long ago" in *Rees*. App. 4a. No other circuit adopts that view. To the contrary, these others courts recognize that the issue of competence in habeas proceedings is one that "the Supreme Court precedents *do not conclusively resolve*." *Rohan*, 334 F.3d at 810 (emphasis added).

Second, the Sixth Circuit held that *Rees* may be invoked in a variety of situations and absent a request to terminate post-conviction proceedings. Other circuits take a far more constrained view: The standards in *Rees* are used only to "assess[] the validity of a death row inmate's choice to forego post-

conviction review." *Henderson*, 353 F.3d at 893. Where the prisoner does not "direct[] his counsel to withdraw his petition . . . and to forgo any further federal habeas proceedings," *Michael*, 459 F.3d at 420, these circuits do not apply *Rees*.

The disagreement across the circuits is stark. The Court should grant certiorari and resolve these divergent approaches to *Rees*.

B. The Sixth Circuit's decision is in tension with this Court's habeas jurisprudence.

Even without the circuit split, this case would still be worthy of review because the decision below is incompatible with AEDPA and *Ford v. Wainwright*, 477 U.S. 399 (1986).

1. The Sixth Circuit's indefinite stay violates AEDPA.

After establishing a new pathway for incompetency claims, the Sixth Circuit crafted an exceptional remedy. Because the district court found Carter incompetent, the Sixth Circuit ordered an indefinite stay of his habeas proceeding.

According to the court, "Carter alone has evidence of the interactions between him and his trial and appellate attorneys, and that evidence is inaccessible as long he remains unable to communicate with his habeas attorneys." App. 12a. The only suitable response, the Sixth Circuit said, was an indefinite stay: The district court could not appoint a "next friend" to represent Carter in this litigation because "the next friend would be forced to proceed through this action without the foundational facts that support Carter's claims." App. 13a.

The Sixth Circuit's decision, premised on Carter's incompetence, is inconsistent with AEDPA. See *Rhines v. Weber*, 544 U.S. 269, 276 (2005) ("AEDPA . . . circumscribe[s] the[] discretion" of federal courts "to issue stays" in habeas proceedings). The Sixth Circuit mistakenly assumed that a stay was necessary to preserve Carter's ability "to provide . . . evidence in support of his claims." App. 12a.

But Carter will never have the opportunity on habeas review to offer evidence in support of his claims, even if he regains competency. Under AEDPA, "[t]he record under review is limited to . . . the record before the state court." *Cullen v. Pinholster*, 131 S. Ct. 1388, 1398 (2011). The federal courts "are barred from considering . . . evidence" extraneous to the state court record. *Id.* at 1411 n.20. Therefore, any evidence that Carter might "later introduce[] in federal court is *irrelevant* to § 2254(d)(1) review."[3] *Id.* at 1400 (emphasis added).

Simply put, a capital prisoner's incompetence in no way obstructs his habeas attorneys' ability to advance, or the federal courts' ability to adjudicate, his habeas claims. For that reason, AEDPA prohibits the issuance of an indefinite stay based on a prisoner's incompetence.

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[3] The Ninth Circuit made the same mistake in *Rohan*. Allowing a habeas proceeding to go forward, the court feared, would "prevent [the incompetent prisoner] from ever presenting th[e] evidence [within his private knowledge] to a federal tribunal." 334 F.3d at 818. If such evidence is not already included in the state court record, AEDPA precludes its consideration.

2. The court's decision supplants *Ford v. Wainwright*.

The Sixth Circuit's decision is monumental in a second respect: It effectively puts an end to this Court's decision in *Ford v. Wainwright*, 477 U.S. 399, 410 (1986), which "prohibits the State from carrying out a sentence of death upon a prisoner who is insane."

Three critical limitations inure to *Ford*-based incompetency claims. First, the test is demanding: To halt an execution, a court must find that the prisoner cannot rationally understand "the punishment [he is] about to suffer and why [he is] to suffer it." *Panetti v. Quarterman*, 551 U.S. 930, 957 (2007) (citation omitted). Second, the window to file the claim is limited: The prisoner must wait until his "execution is imminent." *Id.* at 946. Third, the prisoner must abide by AEDPA. To secure federal habeas relief, he must exhaust the *Ford* claim in state court and, upon returning to federal court, demonstrate that the state court's ruling is "contrary to" or "an unreasonable application" of clearly established federal law. 28 U.S.C. §§ 2254(b)(1)(A), (d)(1).

The Sixth Circuit's decision here undoes those constraints in several respects.

As a preliminary matter, the Sixth Circuit's definition of "incompetence" is looser than the *Ford* standard. Rather than investigating the prisoner's ability to comprehend his death sentence, the Sixth Circuit focuses on the prisoner's capacity for effective communication with his attorneys. Any mental illness could trigger that minimal standard.

Also under the Sixth Circuit's framework, incompetency claims ripen much sooner, and stay ripe for much longer, than *Ford* claims. Prisoners like Carter (who are nowhere near execution) can raise challenges at any point during their federal habeas proceedings—from the initial filing until the eve of certiorari review. No longer are they confined to the period before their execution date.

Finally, these incompetency claims skirt AEDPA. Under the Sixth Circuit's decision, a prisoner can bypass the state courts entirely, file his claim in federal court, and secure de novo review. If successful, the prisoner "prevent[s] [the] State[] from enforcing [its] judgments, potentially forever." App. 15a (Rogers, J., dissenting).

All told, the Sixth Circuit's "right to competence" displaces the *Ford* decision. The decision below does everything that *Ford* does, but on less rigorous terms—a lax definition of "incompetence," a long filing window, and no state court deference. Because capital prisoners can now litigate competency claims in this more favorable forum, they will no longer have any use for *Ford*.

In short, the Sixth Circuit's framework impermissibly circumvents AEDPA and *Ford*. Further review is therefore warranted.

C. The Sixth Circuit's decision obstructs Ohio's capital litigation system.

Certiorari is necessary for a third reason. As Judge Rogers observed below, the Sixth Circuit's decision is "an anomalous monkey wrench thrown into the capital-litigation process." App. 26a. It will

seriously and unnecessarily disrupt these proceedings.

First, the "right to competence," as defined by the Sixth Circuit, is easily invoked. The district court here ordered a hearing after "Carter . . . refused to meet with his attorneys" and his attorneys expressed fear that "Carter could not understand the proceedings or assist counsel." App. 8a. Any capital prisoner can replicate that scenario, request a competency hearing under *Rees*, and seek an immediate stay of proceedings. Cf. *Rhines*, 544 U.S. at 277-78 (observing that "capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of the sentence of death").

Second, this process is quite protracted. Carter filed his habeas petition in 2002 and his competency motion in 2005. The district court issued a determination in 2008 and the Sixth Circuit affirmed that finding in 2010. Over eight years have passed without any consideration of the merits of Carter's habeas petition. A capital prisoner advancing a similar incompetency motion—no matter how frivolous—can expect a similar delay.

Third, the Sixth Circuit's decision gives birth to all sorts of collateral litigation. Most immediate, the Sixth Circuit instructed the district court to sort through Carter's remaining habeas claims and "determine whether Carter's assistance is essential to their full and fair adjudication." App. 15a. If the district court allows any claims to go forward, Carter will appeal. Next, the State will develop a medication plan in an effort to restore Carter to competency. Carter will presumably object to forced

medication, prompting another round of hearings and appeals. See, e.g., *Sell v. United States*, 539 U.S. 166 (2003). Finally, if Carter's condition improves, the State will ask the district court to lift the stay. As part of its new responsibility "to monitor Carter's on-going condition," App. 14a, the district court will appoint another coterie of experts, conduct another competency hearing, and issue another set of findings—and the displeased party will take yet another appeal.

Fourth, "competency" is not a static condition. A capital prisoner deemed competent at the start of his habeas proceeding may claim that he has later become incompetent. When habeas proceedings *span decades* (as they often do in the Sixth Circuit), a prisoner can seek several competency determinations. Each request then restarts this lengthy process.

And all these labors will be for naught: Contrary to the Sixth Circuit's assumption, see App. 12a-13a, prisoners like Carter (even if they regain competency) may not submit new evidence in a federal habeas proceeding. They must demonstrate an entitlement to relief using only "the record that was before that state court." *Pinholster*, 131 S. Ct. at 1398.

At bottom, the Sixth Circuit's "monkey wrench" forestalls the conclusion of an untold number of capital habeas proceedings and frustrates "the State's strong interest in enforcing its criminal judgments." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). If such consequences are to be imposed on the State and its citizens, they should occur only after careful deliberation from this Court.

CONCLUSION

The Court should grant the petition for certiorari.

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