THIS IS A CAPITAL CASE
EXECUTION SET FOR
December 18, 2024 (from 12:01 am until Sunrise CST)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TAHINA CORCORAN, next friend for JOSEPH E. CORCORAN, Petitioner,

v.

RON NEAL,

Warden, Indiana State Prison, Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Seventh Circuit

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PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED FOR REVIEW

Every day, Mr. Corcoran is tormented by the guards at the Indiana State Prison. The guards use an ultrasound machine they keep somewhere in the prison to send out ultrasonic waves that torture Mr. Corcoran, telling him what to do and inflicting excruciating pain. He suffers from a sleep and speech disorder that makes him involuntarily talk out loud and reveal his innermost thoughts—which led to him refusing the State's offer of life sentences because they would not sever his vocal cords to prevent this from happening. People retaliate against him when they hear his private thoughts. He can hear them talking about him through the walls of his prison cell. Of course, the ultrasound machine and the sleep and speech disorder are his delusions. But the torture and the disorder have plagued Mr. Corcoran for the better part of three decades. He attested he wants to escape prison and this torture, and recently published a book about it. Testifying experts presented at a competency hearing all found him to be irrational and incompetent with one noting Mr. Corcoran would rather die than reveal his mental illness.

This case presents the following questions:

1. May a state court dispose of an evidentiarily-supported incompetency to be executed claim under *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Panetti v. Quarterman*, 551 U.S. 903 (2007), because the state court found the condemned competent 20 years ago under the *Dusky v. United States*, 362 U.S. 402 (1960), and *Rees v. Peyton*, 384 U.S. 312 (1966)?

2. Does a state court violate the due process principles of *Panetti* when it relies on evidence to find the condemned competent without providing an adequate means for the condemned to submit psychiatric evidence contextualizing or rebutting that evidence?

3. Can the Seventh Circuit constrain this Court's holding in *Brumfield v. Cain*, 576 U.S. 305 (2015), which endorsed that a federal court assessing the weight a state court provided certain evidence may be properly made under 28 U.S.C. § 2254(d)(2)?

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Joseph Corcoran, in the person of his next-friend, Tahina Corcoran, is the petitioner in this case and was represented in the court below by the Capital Habeas Unit of the Federal Defender's Office for the Western District of Missouri.

Ron Neal, Warden of the Indiana State Prison, is the Respondent. He was represented in the court below by Assistant Indiana Attorney General Tyler Banks.

Pursuant to Rule 29.6, no parties are corporations.

RELATED PROCEEDINGS

United States Supreme Court:

Corcoran v. Neal, No. 22-5542 (Mar. 28, 2016) (cert denied from § 2254 proceedings)
Wilson v. Corcoran, No. 91-10 (Nov. 8, 2010) (cert granted from § 2254 proceedings)
Corcoran v. Levenhagen, No. 08-10495 (Oct. 8, 2009) (cert granted from § 2254 proceedings)

United States Court of Appeals for the Seventh Circuit:

Corcoran v. Wilson, No. 08-2093 & 07-2182 (Dec. 31, 2008; June. 23, 2022,) (§2254 proceeding)
Corcoran v. Neal, No. 13-1318 (Apr. 15, 2015) (§2254 proceeding)
Corcoran v. Neal, No. 24-3259 (Dec. 16, 2024) (§2254 *Ford* proceeding)

United States District Court for the Northern District of Indiana:

Corcoran v. Wilson, 3:05-cv-389 (Apr. 9, 2007; Jan. 10, 2013) (§ 2254 proceeding)
Corcoran v. Neal, 3:24-cv-970 (Dec. 13, 2024) (§2254 *Ford* proceeding)

Supreme Court of Indiana:

Corcoran v. State, No. 02S00-9805-DP-293 (Dec. 6, 2000; Sep. 5, 2002) (direct appeals)
Corcoran v. State, No. 02S00-0304-PD-00143 (Jan. 11, 2005) (post-conviction appeal)
Corcoran v. State, No. 02S00-0508-PD-350 (Apr. 18, 2006) (post-conviction appeal)
In re Corcoran, No. 02S00-0508-PD-350, 24S-SD-222 (Dec. 10, 2024) (*Ford* proceeding)

Circuit Court of Allen County, Indiana:

State v. Corcoran, No. 02D04-9707-CF-465 (1997) (trial)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Tahina Corcoran, as next friend on behalf of Jospeh Corcoran, respectfully petitions for a writ of certiorari to review the 2-1 decision of the Seventh Circuit Court of Appeals entered on December 16, 2024. Appendix at p. 69a-78a.

OPINIONS BELOW

On December 16, 2024, the Seventh Circuit issued a 2-1 opinion denying a stay and a *Ford/Panetti* claim. The opinion is to be published and appears in the Appendix at p. 69a-78a. A December 17, 2024 Seventh Circuit order denying rehearing en banc is unpublished and appears in the Appendix at p. 109a. A December 13, 2024 opinion and order from the Northern District of Indiana is unpublished and appears in the Appendix at p. 38a-68a. The December 10, 2024 Indiana Supreme Court majority and dissenting opinions denying a stay and the *Ford/Panetti* claim is to be published and appears in the Appendix at p. 2a-37a. The December 5, 2024 Indiana Supreme Court order denying a stay and the *Ford/Panetti* claim is to be unpublished and appears in the Appendix at p. 1a.

JURISDICTION

The Seventh Circuit Court of Appeals entered judgment on December 16, 2024 and denied rehearing en banc on December 17, 2024. Apx. 109a. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely under Rule 13.1.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment of the United Stated Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment of the United Stated Constitution states in relevant part, "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It also involves 28 U.S.C. § 2254(d), which states in relevant part:

> (d)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; or
> >
> > (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.

STATEMENT OF THE CASE

Long History of Mental Illness – the State concedes seriously mentally ill

On July 26, 1997, a tragedy unfolded when Mr. Corcoran thought people were talking about him. They weren't, it was only something he believed due to his auditory hallucinations. When he confronted them with a weapon, his brother Jim Corcoran, their sister's fiancé, Scott Turner, and two of Jim's friends, Timothy Bricker and Doug Stillwell, lay dead.

The State of Indiana charged Mr. Corcoran with four counts of murder on July 31, 1997. R. 29-36. Prior to trial, Mr. Corcoran rejected a plea offer for life without parole—a plea offer the prosecutor left open for acceptance until the very day the trial began. Mr. Corcoran's reason for rejecting the plea reveals the extent to which his mental illness controls him; Mr. Corcoran agreed to accept the plea offer to save his life only if he could have his vocal cords severed, and which he insisted had to be done before he came to court to accept the plea. T. 2773.

On May 22, 1999, a jury found Mr. Corcoran guilty of four counts of murder, and on May 25, 1999, recommended a sentence of death on each count. The trial court sentenced Mr. Corcoran to death and improperly castigated Mr. Corcoran accusing: "It's shameful that you would come into this court, Mr. Corcoran, and try to characterize your illness as a mental illness to the disrespect of all people in this country that are in fact mentally ill." T. 2909.

Mr. Corcoran has consistently been diagnosed with severe mental illness, and the symptoms and manifestations long predate his 1999 trial. As early as 1992, Mr.

Corcoran had already been diagnosed with major depression and schizoid personality disorder. *See, e.g.*, R. 2607; SR 38 (Def's Pre-Sent. Memo, Ex. A p. 4). Friends and neighbors noted his odd behaviors. PC Comp. Tr. at 79, Defense Ex. V ¶ 4 (Russell Branning Affidavit) (responding/conversing with people not there); PC Comp. Tr. at 78-79, Defense Ex. U ¶ 7 (Jaynee Buss Affidavit) (always insisting he could hear people talking about him).

Despite clear warnings that Mr. Corcoran was suffering from mental illness, Mr. Corcoran did not receive mental health services or treatment until he was already in prison for the current offense. T. 2683-84 (Mr. Corcoran's prior trial lawyers from his 1992 trial never told his family about the extent of his mental illness, but if they had, the family would have pursued treatment).

The crime itself is a result of his mental illness. It was an irrational reaction to words not actually spoken.—a tragedy driven by the untreated mental illness.

During trial, Mr. Corcoran determinedly attempted to minimize and conceal his delusions and hallucinations. Dr. Philip Coons, M.D., testified at sentencing that this was expected: "the person with paranoid schizophrenia generally minimizes their symptoms and doesn't bring attention to them . . . unless you know what doors to open, what question to ask, you may well miss it because they keep it to themselves. And that was true of Mr. Corcoran. Had I not known about some kind of sleep problem, I don't think I would have uncovered this delusional system." T. 2706. Another expert, Dr. Eric Engum, a neuropsychologist, also testified during the

penalty phase that Mr. Corcoran was "trying to mask it. He's trying to hide it. He's very secretive, again consistent with paranoia and suspiciousness." *Id.* at 2318.

Dr. Coons testified that at the time of the 1997 murders, Mr. Corcoran was suffering from paranoid schizophrenia. *Id.* at 2729. Dr. Coons and another mental health experts believed Mr. Corcoran's was not competent to stand trial because his mental illness rendered him incapable of assisting counsel in his own defense. Dr. Coons explained that Mr. Corcoran's "refusal to accept either a plea bargain or a bench trial without the death penalty was a product of his mental illness." SR 78 (Def.'s Pre-Sent. Memo, Ex. C p. 11). Dr. Larry Davis agreed. SR 99-100 (Def.'s Pre-Sent. Memo, Ex. D p. 6-7) ("I believe his underlying psychosis and associated illogic rendered him incompetent, specifically to work effectively with his own defense attorney in his defense."). Trial counsel have recently signed affidavits asserting that had they fully understood the extent of Mr. Corcoran's mental illness, and had they realized how his mental illness prevented them from "consulting with Corcoran in a rational or logical manner," they would have requested a competency hearing. Doc. 1-1 (Attachment I (Affidavit of Mark Thoma); Attachment J (Affidavit of John Nimmo)). But trial counsel did not have this understanding, and the trial proceeded, even though Mr. Corcoran was so mentally ill that he could not assist in his own defense to save his life.

At sentencing, Mr. Corcoran revealed his delusion involving a nonexistent sleep disorder, which he continues to believe he suffers from to this day. The trial

court asked Mr. Corcoran about his trial counsel. Mr. Corcoran was unhappy with their performance and felt they had not assisted him properly:

> THE COURT: Is there anything you feel your attorneys have failed to do in representing you?
> THE DEFENDANT: Um, I feel that they've failed to get me treatment for my sleeping disorder. Other than that, no.
> THE COURT: You feel they have failed to treat you for what, sir?
> THE DEFENDANT: My sleeping disorder.
> THE COURT: All right. And what is it that you expected your attorneys to do for your sleeping disorder, Mr. Corcoran?
> THE DEFENDANT: Simply give me a court order so that I could go to a sleeping disorder clinic.

Id. at 2587-88.

Mr. Corcoran has no grasp on reality and has been living in a fully delusional world for decades. At the time of the crime and prior to the trial, Mr. Corcoran's every decision, and indeed his every thought, was through the lens of his delusional world and influenced by his hallucinations. He should never have been allowed to stand trial—he was incompetent because he could not rationally and realistically assist counsel in defense of his life. His attorneys, however, realized this too late to save him. Mr. Corcoran was convicted and sentenced to death despite his incompetence and mental illness, which continued over the next two decades.

At the 2003 post-conviction competency hearing, three mental health experts examined Mr. Corcoran and unanimously opined he was incompetent to waive his appeals: Dr. George Parker (a board-certified forensic psychiatrist), Dr. Robert Kaplan (a clinical psychologist), and Dr. Edmund Haskins (a neuropsychologist). PC Comp. T. 13, 59, 66. All three experts diagnosed Mr. Corcoran with paranoid schizophrenia, *id.* at 11, 48, 66, and all three testified that Mr. Corcoran was not

engaging in rational decision-making, but rather, had decided to not pursue state post-conviction review on the basis of his delusion that the prison was torturing him with an ultrasound machine. *Id.* at 14, 53, 66-67.

Dr. Parker testified that Mr. Corcoran experienced delusions and auditory hallucinations and had negative symptoms of schizophrenia, leading Parker to render a paranoid schizophrenia diagnosis. *Id.* at 47-48. He explained that Mr. Corcoran believes that the prison's ultrasound machine tortures him with sounds and causes physical symptoms. *Id.* at 50. Mr. Corcoran believes that the machine both projects sounds that he hears and records his thoughts and projects those throughout the prison. *Id.* at 51. He believes he can hear people talking about him through the walls of his prison cell. *Id.* Dr. Parker also explained that Mr. Corcoran holds the delusional belief that he "speaks in his sleep and says embarrassing or provocative things that make people act in strange ways or perhaps hostile ways toward him. When that delusion is more intensive, he begins to believe that he . . . while awake . . . is essentially asleep and speaking involuntarily." *Id.* at 29.

Dr. Parker determined that these delusions and hallucinations prevented Mr. Corcoran from making rational decisions about whether to proceed with his appeals. *Id.* at 53. Dr. Parker noted that while Mr. Corcoran did recognize that he faced difficulties, Mr. Corcoran believed they were due "to some physical disorder" and that he "truly believe[d]" that there was an ultrasound machine in the prison. *Id.* at 58. Dr. Parker testified, "[y]ou don't break though that illogic. That is the nature of the delusion. You can't convince the person otherwise." *Id.* at 58.

Dr. Kaplan characterized Mr. Corcoran's paranoid schizophrenia as a "severe mental illness" after reviewing Mr. Corcoran's records and conducting a clinical interview and psychological testing. *Id.* at 9, 11, 16-17 ("[Dr. Kaplan] He is suffering from a very severe mental disease and defect. [Defense Counsel] What mental disease is that? [Dr. Kaplan] Paranoid schizophrenia."). Dr. Kaplan explained:

> [H]e has, -- he has a psychosis which is paranoid schizophrenia that is leading him to believe that, you know, one of the reasons that he wants to die is because he doesn't want to continue to suffer with this speech disorder that he really doesn't have. And another reason he wants to die is because he doesn't want to continue to be a victim of the guards' ultrasound machine. And that is a highly bizarre belief that it is not likely to be in existence either.

Id. at 14. Accordingly, Mr. Corcoran did not have the capacity to make a rational decision.

Dr. Kaplan affirmed that Mr. Corcoran's "paranoid schizophrenia is creating a reality in his mind that doesn't exist, and on the basis of the reality that doesn't exist, he is making decisions about whether he wishes to proceed with his defense against the death penalty or not." *Id.* at 17. When Dr. Kaplan administered the MacArthur Competency Assessment to Mr. Corcoran, it indicated that Mr. Corcoran had a "barely adequate understanding of . . . and ability to determine what facts were relevant versus what facts were irrelevant to present to his own Counsel." *Id.* at 20. This was evidenced by Mr. Corcoran's total inability to think of a single piece of information that would be needed to make a decision on whether to hypothetically plead guilty; yet, he would advise such a person to plead guilty. *Id.* at 20. Notably, this is "exactly the opposite of what he did in the previous instance." *Id.* at 20. In

making a critical decision literally about his life, Mr. Corcoran could not conceive of even one relevant thing he needed to know or consider when making that decision. *Id.* at 20-21. Dr. Kaplan repeated on cross that, "for a psychotic reason he told me he didn't want to go on with these proceedings. . . ." *Id.* at 31. As Dr. Kaplan stated succinctly, Mr. Corcoran "can't even conceive of reality as a normal person would," and "can't think straight [and] can't reason logically." *Id.* at 32.

Dr. Kaplan testified that while medications might help Mr. Corcoran, they only have a "variable effect," and even while medicated, Mr. Corcoran was still paranoid and experiencing delusions. *Id.* at 34 ("But, it didn't appear that any time he was not paranoid or not delusional."). In other words, while medications *might* temporarily diminish the manifestations of Mr. Corcoran's mental illness, they do not control or eliminate them, and he is always suffering some level of delusions and hallucinations.

Finally, Dr. Haskins confirmed that Mr. Corcoran suffers from paranoid schizophrenia with delusions. *Id.* at 66. Dr. Haskins described how Mr. Corcoran suffers from two recurrent delusions: "one, involving the notion that he has, um, involuntary speech, and the other one involving the notion that the guards in the prison have an ultrasound machine that they are using to torment him. On both counts, I believe that this indicates paranoid schizophrenia." *Id.*

Dr. Haskins opined that Mr. Corcoran's "psychoses do not permit him to reason and make a reasoned decision." *Id.* at 67. Dr. Haskins affirmed that Corcoran was desperate to escape the pain his delusions inflicted upon him. *Id.* at 68 (". . . he wants to escape in whatever way he can. And the only way open to him, is to bring about

his own death."); *id.* at 69-70 ("wanting to choose the only option that is going to bring him what he perceives, as being relief, which is his own death."). Additionally, Dr. Haskins noticed "the very strong feeling [Mr. Corcoran] was attempting to minimize the severity of his underlying psychosis." *Id.* at 71.

All three experts agreed that Mr. Corcoran's serious paranoid schizophrenia prevents him from making rational decisions. Dr. Kaplan testified that Mr. Corcoran's decision to waive his appeals was not rational because it was made on "the basis of a reality that doesn't exist." *Id.* at 17. Dr. Parker testified similarly, stating that Mr. Corcoran is unable to make a rational decision because his schizophrenia has "a direct bearing on his thought process" and his delusions are the reason he wants to be executed. *Id.* at 55. Dr. Haskins explained that Mr. Corcoran's "psychoses do not permit him to reason and make a reasoned decision in that way." *Id.* at 67.

All three experts also testified that Mr. Corcoran could not rationally consult with his counsel. Dr. Parker testified that because of the way Mr. Corcoran experiences life, "with its delusions and hallucinations and negative symptoms of schizophrenia, he is unable to process what, for most people would be reasonable advice regarding his legal proceedings." *Id.* at 59. Dr. Haskins noted this uncooperativeness is not a choice, but a result of his mental illness and "the psychotic perception that he is being tormented and has this illness." *Id.* at 70.

All three experts also testified that Mr. Corcoran wants to be executed because he wants to be relieved of the pain he experiences from his delusions and hallucinations, including the "pain and suffering of his involuntary speech disorder

which really doesn't exist." *Id.* at 19, 55, 68. Furthermore, all three experts agreed that after specifically testing for it, Mr. Corcoran was not malingering or feigning his symptoms. *Id.* at 28, 56, 68, 71. Medical records from the Indiana Department of Correction noted that Mr. Corcoran's "current accepted diagnosis" was schizophrenia. *Id.* at 44.

The State agreed Mr. Corcoran is mentally ill and presented no experts or evidence to contest Drs. Kaplan, Parker, or Haskins' diagnosis or conclusions as to Mr. Corcoran's detachment from reality. The state trial court noted the same:

- "The State concedes that Petitioner is mentally ill." PC R. 242;
- "The State of Indiana has conceded that the Defendant suffers from mental illness, and I think that is probably a wise concession, gentlemen, as the evidence that was presented at the competency hearing as well as the evidence presented at Mr. Corcoran's trial was that he suffers from a mental disease or defect of mental illness." PC Comp. Dec. Tr. at 4.

Mr. Corcoran remains compromised. Mr. Corcoran's paranoid schizophrenia, his delusions, and the pain he suffers as a result have persisted in the two decades since his post-conviction competency hearing.

Now in 2024, Mr. Corcoran continues to suffer the debilitating symptoms of his paranoid schizophrenia. As he has for over twenty years, he experiences auditory hallucinations, psychosis, and the ever-present delusions regarding the ultrasound machine he believes the prison guards are torturing him with and his sleep disorder. Although for over two decades, the Indiana Department of Correction has attempted medicating him with a myriad of psychotropic drugs, including Geodon, Haldol, Navane, and Cogentin, Mr. Corcoran's illness has proven to be resistant to treatment,

and nothing during his incarceration has cured him of his paranoid schizophrenia. As recently as March 1, 2024, treating correctional personnel recorded:

> Patient then began sharing information about what he believes to be an ultrasonic machine here at [Indiana State Prison] that can control his and other's thoughts, sleep, voice, etc. Patient reports it is 'top secret' but it bothers him 'endlessly all day.' Patient reports the machine does put him to sleep at night. Patient stated 'others think I'm delusional but I know its here.' Writer inquired if patient ever recognizes his own thoughts as delusional, patient avoided the question. . . . Patient denies MH symptoms and the expressed delusions are the only observable concern.

Doc. 1-1 (Attachment K (Excerpt of Correction medical records).

Furthermore, just months after the department noted Mr. Corcoran's delusions about the ultrasonic machine, Mr. Corcoran published a book titled, *Electronic Harassment: A Whistle-blower Report,* and appears in the Appendix at p. 78a-110a. The book provides a glimpse into Mr. Corcoran's recurring thoughts and beliefs—and into his continuing delusion. In his book, he writes about his reality:

- "My goal is to arm people with what victimizers do not want their victims to know: THE TRUTH." Apx. 87a;
- "…that people can be surveilled anywhere, in any place, and from great distances from a device that sits on a desk." Apx. 92a;
- "The answer is that I want to show that what I am describing is not a nut job conspiracy theory, but is basic electronics… ." *Id.*;
- "I suspect that many credentialled MDs do not even know about this phenomenon. The reason why they likely do not know is because it is undetectable by unaided observation. No one by simply talking to an individual, looking at them or even listening to them is able to tell if a person's throat vibrates when they think. In fact, it is so faint that it cannot even be felt. For all practical purposes it is undetectable and would not be an issue unless…" *Id.*;
- "So, in essence, a small percentage of people are susceptible to ultrasound surveillance; someone with one of those devices can pretty much listen to them think." Apx. 93a;

- "The same ultrasonic signal that captures audible sounds by modulation can be used to send audible sound. Furthermore, the modulating signal can also send an electronic charge." *Id.*;

- "So think of the possibilities with such equipment – and the enormous potential for abuse! With it an operator could send a quiet voice into someone's head and make them think that they are thinking the thought…" *Id.*;

- "Or maybe something extremely bad: a screaming, demonic voice in their head that only they can hear (aside from the operator talking into the box) that tells them to kill people." Apx. 93a-94a;

- "The device can easily be used to make someone seriously paranoid…A person susceptible to ultrasonic surveillance would be the easiest to make paranoid. Since an individual can tell what the individual is thinking it would be easy to cause them to believe false things." Apx. 94a;

- "Therefore, using electricity to activate bodily processes is not limited to muscle movements and sleep cycles. Let's say, therefore, that there is an unfortunate man who some bad actor wants to wake up, make stand on his feet, run to a wall, and then pound on it angrily with a closed fist. After this the bad actor wants the poor man to feel dizzy, confused and then vomit." Apx. 95a;

- "So let's return to the unfortunate man. To wake him up, delivering an electrostatic charge to his midbrain via a modulating ultrasonic frequency will do the trick. To make him stand up, run to the wall, make a fist, and pound on it repeatedly you would simply target the right muscles, in the right order with the proper electrostatic charges. Obviously a cascade of functions must be done to accomplish this, which is very easily done electronically (i.e., a multitude of calculations per second). To make him angry an electrostatic charge can be delivered to the amygdala. To then make him dizzy simply target the vestibular apparatus within his inner ear. The prefrontal cortex would be targeted next to make him confused. For vomit you need only to target the correct places in the stomach, esophagus, and mouth — being dizzy would also help the matter. To some people all of this sounds like science fiction. Unfortunately it is not; it is basic electronics and basic physiology." Apx. 96a;

- "They can spy on people and deceive people virtually unnoticed. Moreover, they can abuse people with anonymity and virtual impunity." *Id.*;

- "[I]t is apparent to me that correctional staff and other individuals and/or agencies use ultrasonic surveillance devices on susceptible people for sport. However, the fact that institutions keep their possession of such equipment confidential would make it extremely difficult for those abused to expose the abuse." Apx. 97a;

- "In essence, they would treat the poor soul like a video game avatar rather than a real person whose life is going to be adversely affected by the nonsense they are afflicting the victim with." Apx. 98a;

- "And when you research and find inaccurate information that confirms the victimizers' deception, and you then put stock in it, it frankly makes you look like a mental case. Their goal is accomplished. They have a completely plausible cover for their wrongdoing." *Id.*;

- "The ignorance on the part of mental health professionals about this technology is taken advantage of by victimizers. If a credentialled medical person says a man is mentally ill, but he says that he is the victim of electronic harassment, who would people be more likely to believe? So because of this the victimizer's cover is now seemingly backed up by medical science….Because of this they will likely be oblivious to the fact that mental illness can be mimicked electronically." Apx. 99a;

- "I recently discovered, by an experiment performed on me, how this is done. Someone need only to use the device to cause you to scratch yourself in your sleep. If done correctly you get the equivalent of a rug burn. As I write this I have a burn on my arm from this method that has been there for over a month." Apx. 99a-100a;

- "No one should be forced to live with an electronically simulated mental illness, such as Tourette's, tics, auditor- hallucinations, pain, anger, or a host of other abuses." Apx. 100a.

In short, Mr. Corcoran's longstanding and documented mental illness continues to torment him as it did at the time of the 1997 offense. He is completely unable to think rationally and has no grasp of reality.

Mr. Corcoran sent an affidavit to the Indiana Supreme Court on November 22, 2024, which the court filed on December 3, 2024. In the affidavit, Mr. Corcoran stated, "I, Joseph Edward Corcoran, do not wish to litigate my case further." Doc. 1-1 at 164. He wrote:

> I understand that if this Court rejects my counsel's petition the death warrant will be carried out. I will then be put to death for the heinous crime I committed. I understand that the execution will end my life. I understand medically my heart will stop and all brain activity will cease. I do now know, however, what will happen metaphysically. (But neither does anyone else") I understand the execution, in the interest of judgment, serves as both a punishment and a deterrent.

Id. at 165.

After reviewing Mr. Corcoran's records, expert reports, and Mr. Corcoran's writings, including his book and November 2024 affidavit, Dr. Angeline Stanislaus, M.D., a board-certified forensic psychiatrist, found that "[Mr. Corcoran] is still very delusional and has no insight into his illness," and that "he currently remains seriously mentally ill due to his untreated psychotic symptoms." Doc. 1-1 at 261; *see also id.* at 262 ("At the present time, he is only prescribed Zoloft 100mg, which is an antidepressant. This does not treat his symptoms from schizophrenia."). Dr. Stanislaus remarked that in his November 2024 affidavit, "[Mr. Corcoran] makes it sound like his decision to forgo any further litigation is logical," consistent with other experts' opinions that he tries to hide his mental illness. *Id.* at 253-54, 261. But, she noted, "[h]e states that in execution his heart will stop, and all brain activity will cease. This again ties into his delusion of the ultrasonic machine inserting and broadcasting his thoughts from his brain." *Id.* at 261. As a final matter, Dr. Stanislaus urged, "an in-person psychiatric evaluation to further access his though processes/beliefs and symptom presentation."

No Assessment of Current Competency

After the completion of direct appeal proceedings, Mr. Corcoran initially refused to sign the post-conviction petition counsel prepared and waived post-conviction review. It was the unanimous opinion of the three mental health professionals that Mr. Corcoran was irrational and not competent—he only waived review to hasten his execution because he hoped to gain relief and escape from the pain caused by his delusions that he was being tortured. Even though it was the

unanimous opinion of the experts that Mr. Corcoran was not thinking rationally or logically (and was incapable of doing so because of his paranoid schizophrenia) and was out of touch with reality, the post-conviction court— the same court that had chastised Mr. Corcoran for faking mental illness—nevertheless found him competent to waive his appeals.

The Attorney General presented no expert opinion challenging those opinions and conceded the severe mental illness. When affirming the trial court, the Indiana Supreme Court noted:

> The State also concedes that Corcoran suffers from a mental illness. At the competency hearing, the State Public Defender presented the testimony of three mental health experts, each of whom concluded that Corcoran suffers from paranoid schizophrenia. One of the symptoms of Corcoran's condition, according to the three experts, are recurrent delusions that Department of Correction prison guards are torturing him through the use of an ultrasound machine, causing him substantial pain and uncontrollable twitching.

Corcoran v. State, 820 N.E.2d 655, 660 (Ind. 2005); *id.* at 665 (Rucker, J., dissenting) ("Corcoran is under the paranoid delusion that prison guards are torturing him with sound waves. As a result, **Corcoran wants the State to execute him in order to end the pain**. I am not willing to accommodate him.") (emphasis added).

The Seventh Circuit passed on this competency-to-waive determination and upheld the Indiana Supreme Court's finding. But there were significant gaps in the majority's logic, and Judge Williams noted those. In concluding that Mr. Corcoran was competent to waive postconviction review, the majority in this Court relied on two assertions: "First, the court reasoned Corcoran never told any of the experts that he wanted to die to escape his delusions. **That is not true.** Second, the court stated that each expert indicated Corcoran's medication controlled his psychotic symptoms.

That also is not true." *Corcoran v. Buss*, 551 F.3d 703, 716 (7th Cir. 2008) (Williams, J., concurring in part and dissenting in part).

The record plainly supports Judge Williams' statements. During the 2003 post-conviction hearing, Dr. Kaplan testified that Mr. Corcoran expressly told him he wanted the State to execute him because "he wanted to be released from the quote, unquote, pain and suffering of his involuntary speech disorder which really doesn't exist." Doc. 13-2 (PC Comp. Tr. 19). Dr. Kaplan also testified, as did the other two experts, that Mr. Corcoran wanted to escape the ultrasound machine and the torture the guards inflicted upon him with the machine—an irrational belief. Mr. Corcoran's desire to "escape" is the operative word; in his 2006 signed statements to Judge Sharp of the United States District Court for the Northern District of Indiana , Mr. Corcoran wrote that he looked forward to his execution because then, he could "die and escape" prison. Doc. 1-1 (Attachment D at 125a). Judge Williams was correct—Mr. Corcoran did in fact tell experts he wanted to die and escape prison, and in fact told a federal court the same. One of the three reasons the Indiana Supreme Court relied on to find Mr. Corcoran competent in 2005 has been proven false.

Additionally, while the Indiana Supreme Court in 2005 found that Mr. Corcoran's schizophrenia symptoms responded to medication, Dr. Kaplan testified that Mr. Corcoran's schizophrenia was medication-resistant. He explained that even when Mr. Corcoran was on a medication regimen, "it didn't appear that at any time he was not paranoid or delusional." Doc. 13-2 (PC Comp. Tr. 34). The psychotic

symptoms persisted. The second of the three reasons the Indiana Supreme Court relied on to find Mr. Corcoran competent in 2005 has also been proven incorrect.

Finally, in 2005, Mr. Corcoran claimed to have fabricated "stories" of his delusions and that he lied to doctors to get medication "to help him sleep." But, as Judge Williams pointed out that while she "agree[s] that ordinarily, the Indiana court's decision to rely on one person's testimony over other people testimony would be one to which we would defer, . . . the person whom the court credited was a person diagnosed with a severe mental illness that causes delusions, who told a doctor and his sister he wanted to die to escape those delusions." *Corcoran*, 551 F.3d at 717. The third reason the Indiana Supreme Court found Mr. Corcoran competent was also highly suspect.

On November 15, 2024, Mr. Corcoran raised the newly ripened claim that his execution would violate the Eighth and Fourteenth Amendments of the Constitution under *Ford v. Wainwright*, 477 U.S. 399 (1986), *Panetti v. Quarterman*, 551 U.S. 903, 942 (2007), and *Madison v. Alabama*, 586 U.S. 265, 267 (2019), because he lacks a rational understanding of the reason for the execution, rendering him incompetent to be executed. Dt. Ct. Doc. 1-1. On December 5, 2024, the Indiana Supreme Court, by a razor-close vote of 3-2, denied the request. Apx. 1a. On December 10, 2024, the Indiana Supreme Court explained the denial and issued its opinions. Apx. 2a-37a.

The majority premised its denial on two things: Mr. Corcoran's own statements, relying substantially upon a handwritten affidavit filed with the court after the competency briefing, and its 2005 determination that Mr. Corcoran was

competent to waive his appeals made under *the Dusky v. United States*, 362 U.S. 402 (1960) and *Rees v. Peyton*, 384 U.S. 312 (1966) competency standards. *Id.* There has never been a competency determination under the *Ford/Panetti* standard. *Id.*

Two Indiana Supreme Court Justices dissented. Justice Goff and joined by Chief Justice Rush, noted:

> The evidence submitted by Corcoran's attorneys reveals a documented history of severe mental illness, an inability to cooperate with counsel, and a desire to be executed to escape prison—all of which raise substantial questions about his current mental capacity. As a result, we should stay Corcoran's execution to allow his attorneys to seek successive post-conviction relief to litigate his current competency. But at a minimum, we should stay Corcoran's execution and order a psychiatric examination.

Apx. 31a. The dissenting justices expressed concern that, "[E]ven if it seems that Corcoran may understand why the State is seeking execution, the point is that we simply do not know," Apx. 35a., observing, "In his mind, Corcoran views execution not as punishment but as the only path to escaping torment from which he suffers." Apx. 34a. After reviewing the evidence of Mr. Corcoran's mental illness, they opined that "[t]o ignore these findings now and proceed without a current competency evaluation amounts to enabling his delusions—a state-sanctioned escape from suffering rather than a measured act of justice." Apx. 32a-33a. (citing *Panetti*, 551 U.S. at 960).

The dissenting judges emphasized, "A competency evaluation is needed not because Corcoran fails to acknowledge the facts of his case, but because evidence shows that his mental illness distorts his ability to have the requisite rational understanding." Apx. 36a. Finally, the dissenters cautioned, "The death penalty . . . is not a mechanism for granting reprieve from suffering or a means to expedite escape

from incarceration. It is the gravest act the State can undertake, reserved for those who bear the full weight of their moral culpability." *Id.* To proceed with Mr. Corcoran's execution, per his wish, would "undermine[] society's interest 'in not allowing the death penalty . . . to be used as a means of state-assisted suicide.'" *Id.* (quoting *Smith v. State*, 686 N.E.2d 1264, 1275 (Ind. 1997)).

The Seventh Circuit was also sharply divided. Apx. 69a-78a. While the panel affirmed the state court's denial under AEDPA, the dissent found problems with the state court's analysis.

The dissent noted the state court improperly imported the previous competency determination. "By treating its 2005 decision as conclusive here, the Indiana Supreme Court effectively substituted the *Rees* standard in place of the *Ford*/*Panetti* standard." Apx. 76a (Lee, J., dissenting). This is error because competency to waive "is markedly different from the standard governing a prisoner's competency to be executed . . ." Apx. 75a. As best described by the dissent, "In *Panetti's* parlance, the Indiana Supreme Court determined in 2005 that Corcoran had the capacity to understand the rationale for his execution, but it did not inquire (because it had no reason to) whether Corcoran had a rational understanding of it. And, indeed, to date, no court has conducted such an inquiry." Apx. 76a.

The dissent noted that the state court's looking backwards to a two-decade old competency determination was the incorrect method when the assessment is required to be premised upon current competency. As noted by the dissent, "Twenty years have passed since that evaluation, and, as the Supreme Court had recognized, "[p]rior

findings of competency do not foreclose a prisoner from proving he is incompetent to be executed because of his present mental condition." *Panetti*, 551 U.S. at 934." Apx. 76a.

The dissent also faulted the state court for not extending the process required by both *Ford* and *Panetti*. As the dissent noted, "But, because Corcoran filed his affidavit after briefing had concluded, the Indiana Supreme Court did so without providing defense counsel an opportunity to respond to it. This is precisely the lack of due process the Supreme Court condemned in *Ford* and *Panetti*." Apx. 77a. Significantly, Dr. Parker opined that Mr. Corcoran "would rather be executed than admit that schizophrenia might be contributing to his desire to die." Doc. 13-2 (PC Comp. T. 56-57).

There has not been a current assessment of competence. In a break from its previous practices, the Indiana Supreme Court denied any process and refused to permit an evaluation.

REASONS FOR GRANTING THE WRIT

III. This Court should hear this case because reasonable jurists could conclude and have concluded that the significant evidence of Mr. Corcoran's longstanding schizophrenia satisfies the *Panetti* and *Madison* standards of incompetency – standards that have never been applied. (Questions 1 & 2)

As the opinions of the dissenting Seventh Circuit judge and the 2 Indiana Supreme Court justices in written dissent show, reasonable jurists could conclude that the Indiana Supreme Court's decision finding that Mr. Corcoran did not meet the minimum threshold standard for incompetency is contrary to or an objectively unreasonable application of *Panetti* or *Madison v. Alabama,* 586 U.S. 265 (2019), or is based on unreasonable determinations of fact. The dissenting judge explicitly recognized that: "In *Panetti's* parlance, the Indiana Supreme Court determined in 2005 that Corcoran had the capacity to understand the rationale for his execution, but it did not inquire (because it had no reason to) whether Corcoran had a rational understanding of it. And, indeed, to date, no court has conducted such an inquiry." Apx. 76a (Lee, J., dissenting). Accordingly, this Court should grant review and hear Mr. Corcoran's petition.

As noted by the dissent (and not discounted by the Seventh Circuit Panel), "By treating its 2005 decision as conclusive here, the Indiana Supreme Court effectively substituted the *Rees* standard in place of the *Ford*/*Panetti* standard." Apx. 76a. The state court cannot substitute competency standards—it has to apply the unambiguously correct one.

This is particularly true when the standard previously employed "is markedly different from the standard governing a prisoner's competency to be executed . . ."

Apx. 75a. Deference should not be given to state courts when they apply the wrong standard.

In applying a 20-year-old waiver competency determination, the state court opinion was contrary to *Panetti* and *Madison*. But the application of an incorrect competency standard is of no import to the competency determination, particularly at the threshold stage. *Panetti*, 551 U.S. at 959. This also ignores a bedrock principle of *Panetti* that"[p]rior findings of competency do not foreclose a prisoner from proving he is incompetent to be executed because of his present mental condition." *Panetti*, 551 U.S. at 934. The state court improperly applied such a bar.

Relying on the previous competency finding (again utilizing a different standard) is erroneous because the bases upon which relied were erroneous, a majority of what the state court relied upon simply was not true. As noted by Judge Williams, that Mr. Corcoran never said he wanted to escape torture and that medical i is dampening the impact of the mental illness these bases of the state court opinion are "not true." *Corcoran*, 551 F.3d at 716 (Williams, J., concurring in part and dissenting in part)).

The state's position amounts to Mr. Corcoran must be competent because he sounds so. Setting aside past and current experts as well as *Panetti* say that's not enough, Mr. Corcoran's affidavits were written for the court, whereas the book was not meant specifically for the court's eyes. He knows what to tell the court to get his execution, but the book tells the real story—he's trying to get out to the world what he truly thinks is happening.

No one disputes that Joseph Corcoran is mentally ill except Joseph Corcoran himself. His bare assertions of understanding the reason for his execution are tightly intertwined with his flat denials that he is mentally ill, denials which themselves are symptoms of his mental illness. And yet, who does the Indiana Supreme Court rely on to establish Joseph Corcoran's rational understanding of his execution? Joseph Corcoran himself, who once again provides a court with the words he knows will carry the day and hasten his escape from the harsh realities of prison life and, most important to him, his overwhelming delusions. This nullifies the unanimous testimony of experts that Mr. Corcoran always tries to present well and avoid his mental illness- he fakes good, according to Dr. Parker. That is because Mr. Corcoran "would rather be executed than admit that schizophrenia might be contributing to his desire to die." Doc. 13-2 (PC Comp. T. 56-57); *see also* Apx. 36a (Goff, J., dissenting) ("The death penalty . . . is not a mechanism for granting reprieve from suffering or a means to expedite escape from incarceration.")

In denying relief, the state court improperly conflated Mr. Corcoran's stated rationale with being rational. In so doing, the state court ignored clear evidence of Mr. Corcoran's mental illness. The court ignored what is blatantly obvious—Mr. Corcoran lives in a different reality, is completely unable to think rationally or in a manner that is in any way rooted in reality and is thus incompetent to be executed. Again, as the Judge Lee in dissent noted, this conflation of the two differing questions and how rationale is not the test. Apx. 76a; *see also* Apx. 32a ("The evidence before us—consisting of prior expert evaluations and contemporary

accounts and reports—raise significant concerns about whether Corcoran has the requisite rational understanding.") (Goff, J., dissenting).

The Indiana Supreme Court dissenters noted the problem with this, explaining, "A competency evaluation is needed not because Corcoran fails to acknowledge the facts of his case, but because evidence shows that his mental illness distorts his ability to have the requisite rational understanding." Apx. 36a. But under *Panetti*, neither Mr. Corcoran's purported understanding of the fact of his execution, nor any awareness of court proceedings, are sufficient to negate Mr. Corcoran's lack of rational understanding. *Panetti*, 551 U.S. at 959 ("A prisoner's awareness of the state's rationale for an execution is not the same as a rational understanding of it.").

The state court, as did the Seventh Circuit Panel, improperly defined competency. It is fluid. Thus, to rely on an earlier competency finding from twenty years ago to refute a current competency challenge is contrary to and unreasonable on its face. In short, it is error to bootstrap a prior finding on competency to a current, and different competency question in that it utterly ignores that competency waxes and wanes.

As noted by the dissent, "Twenty years have passed since that evaluation, and, as the Supreme Court had recognized, "[p]rior findings of competency do not foreclose a prisoner from proving he is incompetent to be executed because of his present mental condition." *Panetti*, 551 U.S. at 934." Apx. 76a.

The Panel's conclusions ignore the well-established principle that competency is variable over time—it is not static. The Supreme Court has expressly stated that competency must be evaluated at the time of the specific occurrence in which competency is relevant. In *Drope v. Missouri*, 420 U.S. 162, 181 (1975), the Court emphasized that a defendant's competency must be evaluated *at the time of trial.* Similarly, in *Pate v. Robinson*, 383 U.S. 375, 387 (1966), the Supreme Court also highlighted the importance of a contemporaneous competency hearing.

The Supreme Court in *Panetti*, once noted: "Gross delusions stemming from a severe mental disorder may put an 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. It is therefore error to derive from *Ford*, and the substantive standard for incompetency its opinions broadly identify, a strict test for competency that treats delusional beliefs as irrelevant once the prisoner is aware the State has identified the link between his crime and the punishment to be inflicted." *Panetti*, 551 U.S. at 954. But as the dissent notes, such a determination has **never** occurred.

Further, the state court's seeming commingling of the threshold question with the ultimate merits analysis of Mr. Corcoran's evidence to hold that he had not met the minimum required threshold also was an objectively unreasonable application of *Panetti*. If *Panetti* meant for the threshold determination to be equivalent to a full merits determination, there would have been no reason for the Court make any distinction between a threshold determination and a subsequent "fair hearing." *Panetti*, 551 U.S. at 949.

As in *Panetti*, "the factfinding procedures upon which the [Indiana Supreme Court] relied were 'not adequate for reaching reasonably correct results' or, at a minimum, resulted in a process that appeared to be 'seriously inadequate for the ascertainment of the truth.'" *Id.* at 954. Reliance on an affidavit that Petitioner did not have the opportunity to respond is seriously inadequate for the ascertainment of the truth. *Id.*

In relying on Mr. Corcoran's affidavit, the state court failed to comply with the directive from *Panetti* which requires "an adequate means by which to submit psychiatric evidence in response to the evidence that had been solicited by the state court.'" *Panetti*, 551 U.S. at 948. This offends *Ford* as well. *See Ford*, 477 U.S. at 415 (noting that the state procedure did not allow a defendant to challenge or impeach the opinion of the state-appointed psychiatrists who deemed him competent). As the dissent noted, "But, because Corcoran filed his affidavit after briefing had concluded, the Indiana Supreme Court did so without providing defense counsel an opportunity to respond to it. This is precisely the lack of due process the Supreme Court condemned in *Ford* and *Panetti*." Apx. 75a. The state court unreasonably failed to provide Petitioner with the required opportunity or means to respond to the recent affidavit with psychiatric evidence.[1]

The dissent correctly noted this approach ultimately minimized Mr. Corcoran's delusional writings. While Mr. Corcoran's affidavits were written for the court, his

[1] Petitioner could have presented the testimony of Board-Certified Forensic Psychiatrist Dr. Angeline Stanislaus, who could have rebutted and challenged the solicited evidence.

book on what he believes are the inner workings of the ultrasound machine was not meant specifically for the court's eyes. He knows what to tell the court to get his execution, which he did in his affidavit, but the book tells the real story of his delusions—it is his attempt to warn the world of the electronic torture he truly thinks is happening. As expert testimony from Dr. Parker indicated, Mr. Corcoran "would rather be executed than admit that schizophrenia might be contributing to his desire to die." Doc. 13-2 (PC Comp. T. 56-57); *see* Apx. 74a ("The Indiana Supreme Court's reliance on Corcoran's untested affidavit is particularly troubling given that defense counsel's entire theory is premised on Corcoran's inability to rationally comprehend the reasons behind his execution and his efforts to hide his true motivations for seeking the death penalty.").

Depriving Petitioner of the opportunity to respond to the affidavit prevented "[e]xpert evidence which may clarify the extent to which severe delusions may render a subject's perception of reality so distorted that he should be deemed incompetent." *Panetti*, 551 U.S. at 960. Consequently, an error occurred because there was no opportunity to challenge it, as noted by the State to this (and accepted by the Panel), "the *most* contemporaneous evidence of his understanding [that] was a substantial part of the basis of the state court's opinion (Ex. 15 at 24–25)." State's Brief p. 33-34 (emphasis in original) (referring to Mr. Corcoran's 2024 affidavit).

As the Supreme Court stated in *Panetti*, "[D]ue to the state court's unreasonable application of *Ford*, the factfinding procedures upon which the court relied were 'not adequate for reaching reasonably correct results' or, at a minimum,

resulted in a process that appeared to be 'seriously inadequate for the ascertainment of the truth. We therefore consider petitioner's claim on the merits and without deferring to the state court's finding of competency." *Panetti*, at 954 (quoting *Ford v. Wainwright*, 477 U.S. 399, 423-24 (1986) (Powell, J., concurring in part and concurring in judgment)). In his dissent, Judge Lee noted that this denial of an opportunity to respond to, or in any way address the affidavit, "is precisely the lack of due process the Supreme Court condemned in *Ford* and *Panetti*." Apx. 77a (citing *Ford*, 477 U.S. at 415), and *Panetti*, 551 U.S. at 948)).

Furthermore, the State's failure to comply with its own processes and procedures from *Timberlake* ensuring a current evaluation—in this case, the effect of Mr. Corcoran's long-standing fixed delusions on his competency—was objectively unreasonable. *Id.* at 950-51. The state court's conflation of a merits-type analysis with threshold minimum showing required for further process was an objectively unreasonable application of Supreme Court law. *Id.* at 950. In conclusion, the process afforded Mr. Corcoran fails to meet minimum procedural due process requirements under the Constitution where the state court's credibility determinations were made by fiat declaration that a single statement is more credible than decades of documented mental illness. Although the Constitution does not require a full trial, it does require much more than what happened here.

This history clearly and convincingly establishes that Mr. Corcoran has been endorsing these same kinds of delusional beliefs about torture and mind-control for decades, long before an execution date was anywhere in his near future. The state

court's decision was based on an unreasonable determination of the facts given the evidence presented, as the record clearly indicates that Mr. Corcoran has a long history of hallucinations, delusions, and disorganized thinking.

The foregoing shows the state court's decision finding that Mr. Corcoran did not meet the minimum threshold standard for incompetency rests on unreasonable determinations of fact and is contrary to or an objectively unreasonable application of *Panetti* or *Madison*. This Court should grant review and hear Mr. Corcoran's petition.

IV. This Court should hear this case to ensure compliance with this Court's precedent regarding evidentiary weight under § 2254(d).

This Court in *Brumfield v. Cain*, 576 U.S. 305, 314 (2015), has determined that arguments as to the weight a state court gives certain evidence are properly made under 28 U.S.C. 2254(d)(2). In *Brumfield*, in which the Court only interpreted and applied § 2254(d)(2), the court's "examination of the record before the state court compels [the Court] to conclude that both of [the state court's] critical factual determinations were unreasonable." *Id.* at 314. In fact, one of the unreasonable factual determinations in *Brumfield* was very similar to the unreasonable factual determination the court made here regarding criteria related to intellectual disability. *Id.*

The Panel improperly indicated:

> The next friend argues about the weight they believe the state court should have given certain evidence, whether it is Corcoran's November 2024 affidavit or a new expert report by Dr. Angeline Stanislaus. But arguments as to weight are properly made under 28 U.S.C. § 2254(d)(1), not (d)(2). *See Lopez v. Smith*, 574 U.S. 1, 8 (2014).

Apx. 72a. This runs counter to multiple Seventh Circuit ruling including a previous ruling from the court in Mr. Corcoran's case

Indeed, the Seventh Circuit previously held that a state court's decision involves an unreasonable determination of the facts if it "rests upon fact-finding that ignores the clear and convincing weight of the evidence." *Corcoran v. Neal*, 783 F.3d 676, 683 (7th Cir. 2015) (quoting *McManus v. Neal*, 779 F.3d 634, 649 (7th Cir. 2015)). This is consistent with other precedent from the Seventh Circuit. *Gage v. Richardson*, 978 F.3d 522, 528 (7th Cir. 2020); *Newman v. Harrington*, 726 F.3d 921, 928 (7th Cir.

2013).Other circuit courts agree that the factual determination is properly made under § 2254(d)(2). *See Winston v. Kelly*, 592 F.3d 535, 554 (4th Cir. 2010) (citing *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) and finding when a petitioner alleges that a state court based its decision on an "unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding" under § 2254(d)(2), the question is not whether the state court's determination was incorrect but whether it is "sufficiently against the weight of the evidence that it is objectively unreasonable."); *Allen v. Stephan*, 42 F.4th 223, 246 (4th Cir. 2022), *cert. denied sub nom., Chestnut v. Allen*, 143 S. Ct. 2517 (2023); *Sarausad v. Porter*, 479 F.3d 671, 677–78 (9th Cir. 2007), *rev'd and remanded sub nom., Waddington v. Sarausad,* 555 U.S. 179 (2009) (under § 2254(d)(2), the federal court must decide whether the state court adjudication "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.") (emphasis added.).

This Court should grant, vacate and remand for a consideration of the *Ford* claim without this error.

CONCLUSION

For the foregoing reasons, Petitioner respectfully asks this Court to grant the petition for writ of certiorari.

Respectfully submitted,

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