No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CLARENCE WAYNE DIXON, Petitioner,

vs.

STATE OF ARIZONA, Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED FOR REVIEW

The Eighth Amendment prohibits a State from executing a prisoner who is insane. *Ford v. Wainwright*, 477 U.S. 399 (1986). After *Ford,* the Court clarified that competency to be executed turns on a two-prong test, which requires consideration of whether: (1) a prisoner suffers from a mental illness and (2) whether that illness "obstructs a rational understanding of the State's reason for his execution." *Panetti v. Quarterman*, 551 U.S. 930, 956–57 (2007).

(1) Does *Panetti v. Quarterman*, 551 U.S. 930 (2007) foreclose a schizophrenic prisoner from demonstrating that non-bizarre delusions obstruct his rational understanding of the State's reason for his execution?

(2) Did the state court contravene and unreasonably apply *Panetti v. Quarterman*, 551 U.S. 930 (2007), when it failed to consider evidence of non-bizarre delusions that qualify as "delusions" under the diagnostic criteria in assessing whether a schizophrenic prisoner is mentally competent to be executed under the Eighth Amendment?

PARTIES TO THE PROCEEDING

The parties to the proceeding are listed in the caption, *supra*. The petitioner is not a corporation.

RELATED PROCEEDINGS

Clarence W. Dixon v. David Shinn et al., 16-99006 (9th Cir. May 10, 2022) (Order Affirming Denial of Habeas Relief)

Clarence W. Dixon v. David Shinn, *et al.*, CV-14-258-PHX-DJH (D. Ariz. May 10, 2022) (Order Denying Habeas Relief)

State of Arizona v. Hon. Robert Carter Olson, CV-22-0117-SA (Ariz. May 9, 2022) (Order Denying Special Action Jurisdiction)

State of Arizona v. Clarence W. Dixon, S1100CR202200692 (Pinal Cnty. Super. Ct. May 3, 2022) (Order Finding Dixon Competent to be Executed)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Clarence Wayne Dixon, now incarcerated on death row at the Arizona State Prison Complex, in Florence, Arizona is scheduled to be executed at 10 a.m. on May 11, 2022. Dixon respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit which affirmed the United States District Court for the District of Arizona's denial of his petition for writ of habeas corpus and motion for stay of execution.

OPINIONS BELOW

The Ninth Circuit's Opinion affirming the denial of Dixon's petition for writ of habeas corpus is included in the Appendix at A-2. The Ninth Circuit's Opinion affirming the denial of Dixon's motion for stay of execution is included in the Appendix at A-2. The Order of the United States District Court denying Dixon's petition for writ of habeas corpus is included in the Appendix at A-3. The Order of the United States District Court denying Dixon's motion for stay of execution is included in the Appendix at A-3. The decision of the Arizona Supreme Court declining jurisdiction of Dixon's Petition for Special Action, seeking review of the Pinal County Superior Court's May 3, 2022 Order finding him mentally competent to be executed is included in the Appendix at A-4. The Pinal County Superior Court's Order finding Dixon competent to be executed is included in the Appendix at A-5.

JURISDICTION

On May 10, 2022, the Ninth Circuit affirmed the United States District Court's denial of Dixon's petition for writ of habeas corpus and motion for stay of execution.

(A-2.) Dixon now timely files this Petition wherein he asks this Court to review the judgment and order of the Ninth Circuit affirming the denial of habeas relief and motion for stay of execution. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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.

STATEMENT OF THE CASE

This petition is brought by a capital defendant sentenced to death in Arizona even though under this Court's precedent he is incompetent to be executed. On May 11, 2022, the State seeks to execute Clarence Wayne Dixon, a 66-year-old Native American man who has been incarcerated for over 40 years. Dixon has suffered from untreated schizophrenia for most of his life. Dixon's severe mental illness first manifested itself at least a 45 years ago. It has infected every stage of his capital case. While only Dixon's present competency is before this Court, his well-documented mental health history is relevant to the issue. A comprehensive recitation of these facts will assist the Court in addressing the question at the heart of this case:

Whether the Pinal County Superior Court properly considered Dixon's psychotic beliefs about the reason for his punishment in its assessment of his competency for execution.

I. Introduction

Clarence Dixon is a 66-year-old legally blind man of Native American ancestry who has long suffered from a psychotic disorder – paranoid schizophrenia. Previously, an Arizona court determined that he was mentally incompetent and legally insane. An Arizona Department of Corrections psychologist found that Dixon "operates on an intuitive feeling level, with much less regard for rationality and hard facts," and that he is a "severely confused and disturbed prisoner." (Hearing Ex. 5 at 1–2.)

For almost thirty years, Dixon has been unable to overcome his psychotically driven belief that all levels of the state and federal judiciary, including members of the Arizona Supreme Court, have conspired to deny him relief on a claim that the Northern Arizona University ("NAU") police department lacked authority to investigate, arrest him, and collect his DNA in an unrelated 1985 criminal case.[1] Since 1991, Dixon has prepared an unending stream of pro se filings on this issue, fired his lawyers in the capital murder case so that he could continue to pursue this issue, and more recently has filed judicial complaints seeking disbarment of the Arizona Supreme Court Justices based on his belief that they are involved in an "extrajudicial killing, an illegal and immoral homicide created in the name [of] and

[1] Dixon was never arrested by the NAU police and his DNA was collected by the Arizona Department of Corrections.

for the people of Arizona." (Tr. 05/03/2022 a.m. at 86; see also Hearing Exhibits 25–29, 32)

In *Ford v. Wainwright*, this Court held that "the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane." 477 U.S. 399, 409–10 (1986). In so holding the Court reasoned that it "is no less abhorrent today than it has been for centuries to exact in penance the life of one whose mental illness prevents him from comprehending the reasons for the penalty or its implications." *Id.* at 417.

The Court clarified *Ford*'s substantive incompetency standard in *Panetti v. Quarterman* where it rejected "a strict test for competency [to be executed] 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." 551 U.S. 930, 960 (2007). Repudiating a competency standard that focuses on a prisoner's mere "awareness of the State's rationale for an execution," *id.* at 959, the Court held that a prisoner must also have a rational understanding of the State's reason for his execution—that is, he must be able to "comprehend[] the *meaning and purpose* of the punishment to which he has been sentenced," *id.* at 960 (emphasis added). Because Dixon does not have a rational understanding of why he is being executed, the Eighth Amendment's prohibition against cruel and unusual punishment bars his execution and this Court's intervention is required.

This Court has clearly established that a petition for writ of habeas corpus raising an Eighth Amendment claim of mental incompetency to be executed is unripe

until an execution is imminent. *See Panetti*, 551 U.S. at 947 ("[W]e have confirmed that claims of incompetency to be executed remain unripe at early stages of the proceedings."); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 645 (1998) (competency claim necessarily unripe until state issued warrant of execution). At issue in *Panetti* was whether the restrictions on second or successive habeas petitions found in § 2244(b) of the Anti-Terrorism and Effective Death Penalty Act ("AEDPA") applied to "a § 2254 application raising a *Ford*-based incompetency claim filed as soon as that claim is ripe." 551 U.S. at 945. This Court held that it does not. *Id.* at 947 ("The statutory bar on 'second or successive' applications does not apply to a *Ford* claim brought in an application filed when the claim is first ripe. Petitioner's habeas application was properly filed, and the District Court had jurisdiction to adjudicate his claim.").

In *Panetti*, following the Texas courts' scheduling of the petitioner's execution date and denial of his mental incompetency claim, he "returned to federal court, where he filed another petition for writ of habeas corpus pursuant to § 2254 and a motion for stay of execution." 551 U.S. at 938, 941. The United States District Court for the Western District of Texas "granted petitioner's motion[] . . . to stay his execution[]" while it adjudicated the merits of Panetti's habeas petition raising the Eighth Amendment incompetency to be executed claim. *Id.* at 941. Dixon's Petition arrives to the federal district court in the very same procedural posture which warranted a similar course of action.

II. Procedural History

Dixon was indicted on one count of first-degree murder of Deana Bowdoin and one count of first-degree rape of Deana Bowdoin for offenses committed on January 7, 1978. Indictment, *State v. Dixon*, CR2002-019595 (Maricopa Cnty. Super. Ct. Nov. 26, 2002), Doc. 1. The trial court later dismissed the first-degree rape count based on the running of the statute of limitations. Minute Entry, *State v. Dixon*, CR2002-019595 (Maricopa Cnty. Super. Ct. Nov. 4, 2003), Doc. 78. At trial, Dixon fired his appointed counsel and represented himself.[2] Waiver of Counsel, *State v. Dixon*, CR2002-019595 (Maricopa Cnty. Super. Ct. Mar. 16, 2006), Doc. 131. A jury found Dixon guilty of first-degree murder and sentenced him death. Verdict, *State v. Dixon*, CR2002-019595 (Maricopa Cnty. Super. Ct. Jan. 24, 2008), Doc. 354. The Arizona Supreme Court denied Dixon's direct appeal, *State v. Dixon*, 250 P.3d 1174 (2011), and petition for review from the trial court's dismissal of his petition for post-conviction relief. Dixon's federal habeas petition was likewise denied, Order, *State v. Dixon*, No. CR-13-0238-PC (Ariz. Feb. 11, 2014).

On April 5, 2022, the Arizona Supreme Court issued a warrant of execution scheduling Dixon's execution date for May 11, 2022. Warrant of Execution, *State v. Dixon*, No. CR-08-0025-AP (Ariz. Apr. 5, 2022); *see also* Ariz. R. Crim. P. 31.23(c). On April 8, 2022, Dixon filed a Motion to Determine Mental Competency to be Executed in the Pinal County Superior Court wherein he argued that expert evidence established that he "is presently unable to form a rational understanding of the

[2] No competency evaluation occurred at Dixon's capital trial.

State's reason for his execution rendering him incompetent to be executed[]" under the Eighth Amendment to the U.S. Constitution. (Pinal ROA 44, Mot. to Determine Competency at 4.) That same day, the Superior Court found that Dixon demonstrated his entitlement to a hearing under A.R.S. § 13-4022, *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Panetti v. Quarterman*, 551 U.S. 930 (2007), and scheduled that hearing for May 3, 2022. (Pinal ROA 43.)

III. Relevant Facts

a. The evidentiary hearing

At the evidentiary hearing on May 3, 2022, Dixon presented the testimony of Dr. Amezcua-Patino and introduced 30 exhibits in his case-in-chief. (Tr. 05/03/2022 a.m. at 18–88; Hearing Exs. 1–29, 32.) Dr. Amezcua-Patino testified that he has been a licensed physician and, since 1988, has specialized in psychiatry. (Tr. 05/03/2022 a.m. at 18.) For the last 34 years Dr. Amezcua-Patino has maintained his clinical psychiatric practice and has 37 years' worth of experience diagnosing and treating people with schizophrenia. (Tr. 05/03/2022 a.m. at 18, 22–23.) Dr. Amezcua-Patino testified that half of his work has been in the impatient setting, and that he has worked in "probably every single hospital in the Valley . . . including Arizona State Hospital." (Tr. 05/03/2022 a.m. at 18.) In 2012, and again in 2022, Dr. Amezcua-Patino diagnosed Dixon with paranoid schizophrenia. (Tr. 05/03/2022 a.m. at 36–37.)

Dr. Amezcua-Patino testified that Dixon clearly satisfied the diagnostic criteria for a schizophrenic illness under the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM-V")—a psychotic illness which derives

from a thought disorder characterized by delusions, hallucinations, cognitive symptoms, paranoia, and lack of emotionality. (Tr. 05/03/2022 a.m. at 30–32.) He testified that people with schizophrenia are often intelligent and can "maintain a high level of sophistication in their thinking." (Tr. 05/03/2022 a.m. at 33.) In men, "[t]he full-blown symptoms of schizophrenia usually get manifested in the late teens, early 20s" which, Dr. Amezcua-Patino testified, is when Dixon experienced the onset of that psychotic disorder. (Tr. 05/03/2022 a.m. at 34, 42–43.)

Dr. Amezcua-Patino testified that Dixon, as a direct result of his schizophrenic illness, experiences auditory, visual, and tactile hallucinations. (Tr. 05/03/2022 a.m. at 59–60.) He also experiences "paranoia, meaning he's distrustful and concerned about what other people are trying to do to him[,]" and delusional grandiosity. (Tr. 05/03/2022 a.m. at 61, 69.) According to Dr. Amezcua-Patino, Dixon "feels that there is a plot where the judicial system has to protect themselves from his claims because his claims [related to the Northern Arizona University Police] will be terribly embarrassing." (Tr. 05/03/2022 a.m. at 61.) Dr. Amezcua-Patino testified about the questioning techniques he employed with Dixon over the course of several in-person evaluations designed to test the rigidity of his delusions:

> . . . I had multiple – multitude of techniques in terms of empathic understanding, empathic questioning, you know, paradoxical intention, to try to get him to explain to me how it is that despite all of this evidence that has been provided in front of him about, again, the irrationality of his request, including from his attorneys, and ne always gets back to the same point, which is, **"They say that they want to kill me because I killed someone. But I know that they want to kill me because they don't want to be embarrassed."**

Tr. 05/03/2022 a.m. at 62–63 (emphasis added).)

In order to evaluate Dixon's mental competency for execution, Dr. Amezcua-Patino testified that he reviewed "about 5,100 pages of documents" that pre-dated [Dixon's] incarceration and contained "lifetime type of information." (Tr. 05/03/2022 a.m. at 26.) That information reflected that "the issue of mental illness and schizophrenia has been raised long before this last set of meetings with [Dixon]." (Tr. 05/03/2022 a.m. at 27.)

Dr. Amezcua-Patino testified that in order for a person to be mentally competent to be executed "he needs to be able to not only understand that somebody wants to kill him, but he needs to understand the reasons for that[,]" including the societal interests in his execution. (Tr. 05/03/2022 a.m. at 36, 64.) "And he has to have enough rationality to develop that understanding." (Tr. 05/03/2022 a.m. at 36, 64.) Dr. Amezcua-Patino testified that, in Dixon's case, "in all the time that I've spent with him, he has not been able to do that." (Tr. 05/03/2022 a.m. at 64.) This is because, Dr. Amezcua-Patino explained, when prompted to consider his impending execution, Dixon "goes back to this same premise of: They're afraid of me embarrassing them" because of his claim against the NAU police. (Tr. 05/03/2022 a.m. at 64.) Dr. Amezcua-Patino testified that while "[t]here have been some different variations over the years in terms of different wording to the same thing, and going into different explanations, which is not unusual for people with delusional thinking[,]" the crux of Dixon's psychotic delusion "always go[es] back to the same [psychotic delusional] premise, meaning: **They want to execute me because they don't want to be embarrassed**." (Tr. 05/03/2022 a.m. at 64–65 (emphasis added).)

The superior court questioned Dr. Amezcua-Patino next. (Tr. 05/03/2022 p.m. at 13–14.) The court asked Dr. Amezcua-Patino to explain how to reconcile Dixon's high intelligence and pro se writings which "seem to suggest, . . . ordered thought" and "rationality," with Dr. Amezcua-Patino's opinion that he does not rationally understand the State's reasons for his execution. (Tr. 05/03/2022 p.m. at 13–14.) Dr. Amezcua-Patino testified that it was important to view Dixon's writings "in the context of an illness[.]" (Tr. 05/03/2022 p.m. at 15.) "[T]he fact that he knows the law, and the fact that he knows facts about the law, doesn't mean that these conclusions of law are rational[,]" Dr. Amezcua-Patino explained. (Tr. 05/03/2022 p.m. at 15.) He added further that "there are a number of factors here so factual knowledge is not the same as rational understanding." (Tr. 05/03/2022 p.m. at 15.)

To rebut Dixon's evidence, the State called Carlos Vega, Psy.D., and entered two exhibits[3] into evidence in rebuttal. (Tr. 05/03/2022 p.m. at 27–46.) In all, Dr. Vega's direct examination consisted of just twenty pages of transcript. (Tr. 05/03/2022 p.m. at 27–47.) Dr. Vega testified that he received his doctorate in psychology and works primarily with the courts to conduct Rule 11 prescreens and competency assessments pursuant to Rule 26.5 of Arizona's Rules of Criminal Procedure. (Tr. 05/03/2022 p.m. at 27–29.) He stated that he has testified as an expert in the Pinal County Superior Court in "[m]ostly in DCS cases." (Tr. 05/03/2022 p.m. at 29.) Dr.

[3] Those exhibits consisted of Dr. Vega's report (Hearing Ex. 31) and CV (Hearing Ex. 30).

Vega testified that in that context, he generally interviews the subject of his evaluation "one time." (Tr. 05/03/2022 p.m. at 30.)

In Dixon's case, Dr. Vega testified that he reviewed "a number of evaluations, a number of court documents" and conducted a 70-minute evaluation of Dixon by video. (Tr. 05/03/2022 p.m. at 32.) He testified that Dixon denied receiving psychotropic medications and appeared to have "above average intellect." (Tr. 05/03/2022 p.m. at 34–35.) They talked about politics and, according to Dr. Vega, Dixon's reference to President Biden as a "lukewarm leader" indicated that he "is acutely aware of reality." (Tr. 05/03/2022 p.m. at 36.) Dr. Vega testified that Dixon said his DNA had been obtained illegally, he had no memory of the murder, and, in response to a hypothetical question from Dr. Vega about "what if all of a sudden you have a recollection that you did kill [the victim], and he said . . . you know, if I killed her, if I have memories of killing her, on my way to execution, I would feel relief." (Tr. 05/03/2022 p.m. at 39–40.)

Dr. Vega testified that Dixon could not be delusional because "in order for there to exist, a delusion, in order for there to be a delusion, you it is impossible for it to happen." (Tr. 05/03/2022 p.m. at 42.) When asked by the State, "does what Dixon's specific diagnosis is, ultimately affect your opinion about whether he has a rational understanding of the State's reason for his execution?" Dr. Vega testified, without hesitation, "Yeah, of course it does." (Tr. 05/03/2022 p.m. at 43.) Dr. Vega stated he diagnosed Dixon with "antisocial personality disorder[.]" (Tr. 05/03/2022 p.m. at 43.)

Dr. Vega testified that even if Dixon held the delusional belief about the courts conspiring to reject his NAU claim in order to protect government actors from embarrassment, he is nonetheless mentally competent to be executed based on factors found insufficient in *Panetti*: because "it doesn't affect the connection between I murdered her or I don't remember murdering her. I may have murdered her. And I am being executed." (Tr. 05/03/2022 p.m. at 44–45.) Ignoring the fact that Dixon's competency to represent himself was never evaluated pre-trial, Dr. Vega testified further that Dixon's mental competency for execution is supported by the fact that he "was never found incompetent to represent himself." (Tr. 05/03/2022 p.m. at 45.) According to Dr. Vega, Dixon's writings also reflect that he "is not delusional." (Tr. 05/03/2022 p.m. at 46.)

On cross-examination, Dr. Vega admitted that he has never previously evaluated a person's mental competency for execution, (Tr. 05/03/2022 p.m. at 47) is not a medical doctor and has no experience treating people with schizophrenia, (Tr. 05/03/2022 p.m. at 47–48) "did a little bit, very little" research into the standards for assessing competency for execution, (Tr. 05/03/2022 p.m. at 101) and intentionally destroyed the audio recording of his interview with Dixon (Tr. 05/03/2022 p.m. at 49.)

Dr. Vega testified that he found Dixon cognitively intact because "of motions that he writes and stuff.]"[4] (Tr. 05/03/2022 p.m. at 50.) When asked how that finding could be reconciled with Dixon's prior neuropsychological test scores showing

[4] Dr. Vega later testified that he "didn't read" and "just barely, you know, looked at" Dixon's writings. (Tr. 05/03/2022 p.m. at 93.)

"significant cognitive impairments[,]" Dr. Vega dissembled, claiming that because an MRI of [Dr. Vega's] own brain showed "significant" pathologies, validated neuropsychological "test results . . . don't say a lot to me." (Tr. 05/03/2022 p.m. at 51.) He then added "and of course I am not all completely there." (Tr. 05/03/2022 p.m. at 51.) Then in an about-face, Dr. Vega reported finding that Dixon showed "cognitive distortions." (Tr. 05/03/2022 p.m. at 61–62.) Dr. Vega admitted that information Dixon provided about his weight, reason for weight loss, and the number of days until his execution were all incorrect (Tr. 05/03/2022 p.m. at 53–55) but denied that this was evidence of confusion (Tr. 05/03/2022 p.m. at 56). He also admitted that impending execution "may affect [Dixon's] memory here and there." (Tr. 05/03/2022 p.m. at 56.)

Dr. Vega agreed that Dixon's "beliefs about his NAU argument and about why it has been consistently denied is a fixed belief that is not amenable to change in light of conflicting evidence[.]" (Tr. 05/03/2022 p.m. at 70.) This is the very definition of a delusional belief incidental to a schizophrenia diagnosis in the DSM-V. (Hearing Ex. 36.) Defying reason and common sense, let alone professional diagnostic standards, Dr. Vega insisted the DSM-V definition of delusional thinking was wrong and that his own personal standard should be applied. Objecting to the DSM-V definition of "delusion," he claimed that only bizarre delusions qualify as "delusions" for a schizophrenia diagnosis and the DSM-V failed to "define[] it correctly." (Tr. 05/03/2022 p.m. at 70–77.) Eventually, Dr. Vega was forced to admit that: (1) Dixon satisfied each and every one of the DSM-V criteria for a diagnosis of paranoid

schizophrenia; and (2) that this diagnosis squared with Dixon's longstanding documented history of that psychotic illness. Then, in total disregard of recognized professional diagnostic standards, he denied that Dixon suffers from that psychotic disorder. (Tr. 05/03/2022 p.m. at 77–85.) Dr. Vega topped it off with an assertion that Dixon has antisocial personality disorder, and of course he made this diagnosis by refusing to apply the DSM-V criteria for the diagnosis. (Tr. 05/03/2022 p.m. at 87–91.)

Dr. Vega testified that his evaluation of Dixon's competency to be executed focused on assessing what transpired related to the murder and whether Dixon was involved. (Tr. 05/03/2022 p.m. at 96.) He confirmed that the extent of his inquiry consisted of asking Dixon whether he knew the murder victim, recalled the murder, and Dixon's statements that he would not be executed if he lived in a state without the death penalty, did not recall the crime and could not bring the victim back, and would feel relief if he were to hypothetically regain his memory. (Tr. 05/03/2022 p.m. at 96–97.) With respect to the claim that Dixon expressed "relief" in response to Dr. Vega's hypothetical, Dr. Vega admitted that those were not Dixon's exact words and he asked no follow up questions. (Tr. 05/03/2022 p.m. at 98–100, 109–10.) Dr. Vega also testified that he never asked Dixon the question "why do you believe that you are being executed" because "I didn't have to. I really didn't have to ask him what he believed. I mean it was – it was obvious." (Tr. 05/03/2022 p.m. at 100–01.)

b. The state court's decision

The Pinal County Superior Court found that Dixon failed to prove either by a preponderance or by clear and convincing evidence that he is mentally incompetent to be executed under the Eighth Amendment to the U.S. Constitution. (Pinal ROA 8.) The superior court held that the question of whether Dixon proved he lacks a rational standing of the State's rationale for his execution under a preponderance of the evidence "is a much closer question." (Pinal ROA 8.) Dixon received the complete transcript of the hearing on May 5, 2022. On May 7, 2022, Dixon filed pursuant to A.R.S. § 13-4022(I) a petition for special action review of the superior court's denial of his *Ford* claim in the Arizona Supreme Court. Petition for Special Action, *Dixon v. Hon. Robert Carter Olson*, No. CV-22-0117 (Ariz. May 7, 2022). On May 9, 2022, the Arizona Supreme Court declined jurisdiction over Dixon's petition. Order, *Dixon v. Hon. Robert Carter Olson*, No. CV-22-0117 (Ariz. May 9, 2022).

c. The federal court proceedings

On May 10, 2022, the United State District Court for the District of Arizona denied habeas corpus relief and denied a stay of execution. (Dist. Ct. ECF No. 97.) The Ninth Circuit panel affirmed the district court's denial of habeas corpus relief and stay of execution. (Ninth Cir. ECF No. 15-1) The Ninth Circuit denied rehearing en banc. (Ninth Cir. ECF Nos. 18, 19.)

This petition for writ of certiorari follows.

REASONS FOR GRANTING THE WRIT

In *Ford v. Wainwright*, this Court held that the Eighth Amendment prohibits states from executing those who are mentally incompetent. 477 U.S. 399, 409–10 (1986). Subsequently, in *Panetti v. Quarterman*, the Court reaffirmed the basic premise of *Ford*, noting that "today, no less than before, we may seriously question the retributive value of executing a person who has no comprehension of why he has been singled out and stripped of his fundamental right to life." 551 U.S. 930, 957 (2007) (quoting *Ford*, 477 U.S. at 409–10). *Ford* and *Panetti* recognized that the retributive purpose of capital punishment is called into question where an individual's mental state is so distorted "that his awareness of the crime and punishment has little or no relation to the understanding of those concepts shared by the community as a whole." *Panetti*, 551 U.S. at 959.

In *Panetti*, this Court articulated a two-step test under the Eighth Amendment for determining whether a person is mentally incompetent to be executed. That test requires asking, first, whether a prisoner suffers from a mental illness; and second, whether a prisoner's mental illness "obstructs a rational understanding of the State's reason for his execution." 551 U.S. at 956–57. The Court explained that where a "prisoner's mental state is so distorted by mental illness that his awareness of the crime and punishment has little or no relation to the understanding of those concepts shared by the community as a whole," then the fundamental respect for humanity underlying the Eighth Amendment bars his execution. *Id.* at 957–59.

Importantly, this Court in *Panetti* rejected an incompetency test predicated on a prisoner's *awareness* that he committed murder; his *awareness* that he will be executed; and his *awareness* that "the reason the State has given for the execution is his commission of the crimes in question." *Id.* at 956. Such an awareness standard, the Court held, is "too restrictive to afford a prisoner the protections granted by the Eighth Amendment." *Id*. at 956–58; *see also id.* at 959 (finding that a prisoner may be incompetent even though he "can identify the stated reason for his execution," and stating that for purposes of determining competency to be executed, a prisoner's "awareness of the crime and punishment" is not merely a "prisoner's awareness of the State's rationale for an execution," but rather encompasses, at a minimum, "a rational understanding of it[]").

Application of the *Panetti* standard to the evidence and testimony in this case clearly and convincingly establishes that Dixon is not competent to be executed. First, the evidence unequivocally demonstrated, and the superior court found, that Dixon suffers from a longstanding psychotic disorder—namely, paranoid schizophrenia. (Pinal ROA 8 at 2.) Dr. Vega's testimony to the contrary was indefensible and bordered on making a mockery of the proceedings. He agreed the diagnostic criteria for a psychotic illness are present, but idiosyncratically refused to apply them in defiance of professionally recognized standards. (Tr. 05/03/2022 p.m. at 77–85.) He then applied an antisocial personality diagnosis that was unsupported by requisite diagnostic criteria. (Tr. 05/03/2022 p.m. at 87–91.)

Step two in *Panetti* asks whether a prisoner's mental illness "obstructs a rational understanding of the State's reason for his execution." 551 U.S. at 956–57. Both Dr. Vega and Dr. Amezcua-Patino agreed that Dixon fixates on a belief qualifying as "delusional" under the DSM-5 diagnostic criteria that all levels of the judiciary are working together to deny his NAU claim, not because they believe it to be legally incorrect, but because they believe it to be meritorious but deny it anyway to protect state agencies from exposing "politically disastrous, [] dark embarrassment that for many years a law enforcement entity has operated without statutory authority." (Tr. 05/03/2022 a.m. at 69–70; Tr. 05/03/2022 p.m. at 22, 78–79.) The only question left for the superior court to resolve was whether Dixon's fixation on that delusional belief obstructs him from forming a rational understanding of the State's reasons for his execution. *Panetti*, 551 U.S. at 956 ("The legal inquiry concerns whether these delusions can be said to render him incompetent."). The superior court failed to undertake that constitutionally mandated inquiry. *See Pirtle v. Morgan*, 313 F.3d 1160, 1167 (9th Cir. 2002) ("A decision is an 'unreasonable application' of Supreme Court law if the state court identifies the correct legal standard but applies it in an unreasonable manner to the facts before it.").

Dr. Vega is unequivocally disqualified from credibly answering this question. He engaged in a discreditable, arbitrary, and capricious diagnostic process, in defiance of professional standards, to find Dixon does not suffer from a psychotic disorder, when in fact, as the Superior Court found, Dixon does. (Pinal ROA 8 at 2.) Dr. Vega is therefore in no position to address step two, the *causation* prong in the

Panetti analysis: whether Dixon's serious mental illness impairs his rational understanding of the State's reasons for his execution.[5] Only Dr. Amezcua-Patino is able to reliably address this question. And he did.

Dr. Amezcua-Patino explained how Dixon's paranoid schizophrenia and the delusions that contaminate his thought process prevent him from understanding that he is going to be executed as an expression of the State's outrage at the murder he was convicted of carrying out, and instead lead him to believe that government actors "want to execute me because they don't want to be embarrassed." (Tr. 05/03/2022 a.m. at 64–65.)

I. *Panetti* does not foreclose a schizophrenic prisoner from demonstrating that non-bizarre delusions obstruct his rational understanding of the State's reason for his execution

Panetti's two-step test under the Eighth Amendment for determining whether a person is mentally incompetent to be executed requires (1) a mental illness and (2) that the mental illness obstruct a rational understanding of the State's reason for his execution. 551 U.S. at 956–57. To establish a mental illness in *Panetti*, the petitioner proffered evidence that he suffered from a mental illness "indicative of schizo-affective disorder" that "result[ed] in a genuine delusion involving his understanding of the reason for his execution." *Id.* at 954. Under *Panetti*, regardless of the content of the delusion, "the legal inquiry concerns whether these delusions can be said to render [the Petitioner] incompetent." *Id.* at 956.

[5] Dr. Vega also testified that his ultimate opinion about whether Dixon has a rational understanding of the State's reasons for his execution is dependent on his ASPD and non-diagnosis of schizophrenia, which the Superior Court made a factual finding was incorrect. (Tr. 05/03/2022 p.m. at 43.)

Although the state's experts in *Panetti* "resisted the conclusion that petitioner's stated beliefs were necessarily indicative of incompetency, particularly in light of his perceived ability to understand certain concepts and, at times, to be clear and lucid," Panetti's experts testified that this should be reconciled as follows:

> Well, first, you have to understand that when somebody is schizophrenic, it doesn't diminish their cognitive ability. . . . Instead, you have a situation where—and why we call schizophrenia thought disorder[—]the logical integration and reality connection of their thoughts are disrupted, so the stimulus comes in, and instead of being analyzed and processed in a rational, logical, linear sort of way, it gets *scrambled up and it comes out in a tangential, circumstantial, symbolic . . . not really relevant kind of way*. That's the essence of somebody being schizophrenic[.]

Panetti, 551 U.S. at 955 (emphasis added). Thus, a delusion, stemming from schizophrenia, may render a subject's perception of reality distorted because, in response to certain stimulus, a thought gets "scrambled up and it comes out in a tangential, circumstantial, symbolic . . . not really relevant kind of way." This distortion is not dependent on its bizarre nature. *Panetti*, 551 U.S. at 954; *compare* DSM-V at 87 ("Delusions are deemed bizarre if they are clearly implausible and not understandable to same-culture peers and do not derive from ordinary life experiences."), *with id.* "delusions are fixed beliefs that are not amenable to change in light of conflicting evidence."

Panetti's description of "severe" delusions or "gross" delusions is not a characterization of the bizarre nature of the delusion, but commentary on the extent to which those delusions scramble the thought process. The court must look to the

consequence of the delusion to determine its severity and impact on a person's rational understanding of the State's reason for his execution.

II. The state court contravened and unreasonably applied *Panetti* when it failed to consider evidence of non-bizarre delusions that qualify as "delusions" under the diagnostic criteria in assessing whether a schizophrenic prisoner is mentally competent to be executed under the Eighth Amendment

Although it acknowledged *Panetti*'s standard, the superior court contravened and unreasonably applied it. (Pinal ROA 8 at 2–4.) The superior court found that Dixon proved by clear and convincing evidence that he has paranoid schizophrenia. (Pinal ROA 8 at 2.) However, it failed to consider the unrefuted medical evidence of Dixon's psychotic delusional thought process resulting therefrom as only "arguably delusional" and merely reflective of Dixon's "favored legal theory." (Pinal ROA 8 at 2–3.) This was objectively unreasonable. Once the superior court determined Dixon suffered from schizophrenia, by definition, it was required to also conclude that Dixon, in fact, experiences delusional thinking attendant to that psychotic illness. *See Panetti*, 551 U.S. at 955-56.

Both experts agreed that Dixon's fixation on his belief that all levels of the judiciary have conspired to deny his NAU claim not because it is legally incorrect, but because it is meritorious but would cause grave embarrassment to state agencies meets the DSM-5 definition of delusion. (Tr. 05/03/2022 at 70-71.) Dr. Vega however testified that this belief is not a delusion because the DSM-5 definition of delusion is

wrong and "watered down," compared to his own "40 years of working in this field."[6] (Tr. 05/03/2022 at 72, 77.) The superior court's finding that Dixon did not establish that he suffers from delusions ignores the uncontested testimony by both experts that Dixon's belief about why his NAU claim has been repeatedly denied meets the DSM-5 definition for delusion. It demonstrates that the superior court relied on Dr. Vega's more restrictive personal definition of delusion, contravening generally accepted medical definitions as described in the DSM-5. The superior court's adoption of Dr. Vega's incorrect and unsubstantiated definition of "delusions" was objectively unreasonable. *See* 28 U.S.C. § 2254(d)(2).

Dr. Amezcua-Patino has explained that, in the context of Dixon's paranoid schizophrenic thought disorder, his "unshakeable" belief that the judicial system and actors in it have all conspired to wrongly deny his NAU claim to shield government entities from embarrassment qualifies as a delusion under the diagnostic criteria and prevents him from developing the rationality of thought necessary to understand the meaning and purpose of his execution. (Tr. 05/03/2022 a.m. at 27–28; Hearing Ex. 36.) This evidence was not refuted by Dr. Vega, whose contrived opinions conflict with generally accepted diagnostic criteria.[7]

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[6] As discussed previously, Dr. Vega also testified that is not a medical doctor, has no experience diagnosing or treating schizophrenia, has no patients, and rarely sees subjects more than once because his work is exclusively court-ordered evaluations. Dr. Vega explained that he "do[es not] do any treatment at all" because he would "probably go crazy if I did, so I just do the [evals]." (Tr. 05/03/2022 at 47.)

[7] The superior court's finding also disregarded points on which both experts agreed: Dr. Vega conceded that Dixon's "beliefs about his NAU argument and why it has been consistently denied is a fixed belief that is not amenable to change in light of conflicting evidence[,]" thus qualifying as a delusion under the DSM-V definition. (Tr. 05/03/2022 p.m. at 70.) Dr. Vega even acknowledged that Dixon "could very well

Dixon's "favored legal theory" begs the relevant question: whether that theory is grounded in a serious mental illness which impairs Dixon's rational understanding of the reasons for his execution. *Panetti* required the superior court to focus on that question.

The superior court should have assessed Dixon's mental competency within the framework of his schizophrenic illness and the psychotic delusions to which it characteristically gives rise. *Id.* at 960 ("The beginning of doubt about competence in a case like petitioner's is not a misanthropic personality or an amoral character. It is a psychotic disorder."). Applying *Panetti*'s framework here, the superior court failed to assess how Dixon's favored legal theory is inextricably linked to his delusional, psychotic-driven belief that "[t]hey say that they want to kill me because I killed someone. But I know that they want to kill me because they don't want to be embarrassed" that the NAU police in 1985 acted without statutory jurisdiction by arresting him in an unrelated criminal case, investigating, and collecting his DNA. (Tr. 05/03/2022 a.m. at 62–65; *see also* Hearing Ex. 31, Vega Report at 6.) Under *Panetti*, "the legal inquiry concerns whether these delusions can be said to render [Dixon] incompetent." *Id.* at 956. The evidence before the superior court shows it does, and the similarities between Panetti's and Dixon's *Ford* claims cannot be ignored.

Panetti suffered from mental illness "indicative of schizo-affective disorder" that "result[ed] in a genuine delusion involving his understanding of the reason for

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have had delusional disorder" and "[a]bsolutely" be on the "schizophrenic spectrum." (Tr. 05/03/2022 p.m. at 65–66, 86.)

his execution." *Id.* at 954. Like Dixon, Panetti believed that "the stated reason is a sham." *Id.* 954–55. Just as Panetti believed that "the State in truth wants to execute him to stop him from preaching[,]" *id.*, Dixon's mental illness has had parallel effects. He believes that "[t]hey say they want to kill me because I killed someone. But I know that they want to kill me because they don't want to be embarrassed" by his exposé––an exposé that is entirely constructed on his delusional belief—that the NAU police acted without statutory jurisdiction. (Tr. 05/03/2022 a.m. at 62–63.)

The district court recognized that "[t]here is no doubt that Dixon's 'concept of reality,' is flawed by his delusional belief that the courts have denied relief on his claimed legally valid NAU issue for reasons unrelated to its merits." (A-3 at 22.) However, the superior court ruled that Dixon had not demonstrated that he experienced delusions, instead characterizing Dixon's belief as "arguably delusional," or simply his belief of judicial "bias." (A-5 at 3.) As the district court recognized "there is no doubt" that Dixon holds a "delusional belief that the courts have denied relief on his claimed legally valid NAU issue for reasons unrelated to its merits." (A-3 at 22.) This finding demonstrates that the superior court's contrary finding that Dixon had not proved his beliefs are delusional is an unreasonable determination of facts. *See* 28 U.S.C. § 2254(d)(2). It also demonstrates that the superior court failed to consider the question of Dixon's rational understanding within the context of the symptoms of his mental illness, as required by *Panetti*. *See* 28 U.S.C. § 2254(d)(1). The superior court's adoption of Dr. Vega's more restrictive personal definition of delusion, contravening generally accepted medical definitions as outlined in the

DSM-5, was objectively unreasonable. No fair-minded jurist could disagree that the superior court's adoption of Dr. Vega's diagnostically incorrect and unsubstantiated definition of "delusions" was flatly unsupported by the record. 28 U.S.C. § 2254(d)(2). *Cf. Harrington v. Richter*, 562 U.S. 86, 101 (2011) ("A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004))).

Replicating the mistakes of the state's experts in *Panetti*, the superior court found that Dixon failed to demonstrate that he is mentally incompetent to be executed by relying on statements from Dr. Amezcua-Patino's interviews with Dixon reflecting his awareness that the State seeks to execute him "for murder[,]" as well as indicia of Dixon's above-average intelligence and pro se writings that reflected "sophistication, coheren[ce], and organized thinking, and fluent language skills[.]" (Pinal ROA 8 at 4.)

In sum, the superior court contravened and unreasonably applied *Panetti* by failing to consider as part of its competency inquiry evidence in the record before it demonstrating that Dixon experiences delusions as a result of his paranoid schizophrenic illness that prevent him from rationally understanding why he is being executed. 28 U.S.C. § 2254(d)(1). The United States District Court and Ninth Circuit panel erred when they concluded otherwise.

III. The state court unreasonably determined Dixon's competency to be executed, when the court relied on Dixon's intelligence, coherence, and hypothetical relief to determine that Dixon did not prove his beliefs obstruct his rational understanding of the State's reason for his execution.

The superior court found that Dixon proved both by a preponderance and clear and convincing evidence "that [he] has a mental disorder or mental illness of schizophrenia." (Pinal ROA 8 at 2.) But with respect to whether Dixon's psychotic illness prevents him from rationally understanding the State's reasons for his execution, the superior court determined that the evidence presented at the hearing was "conflicting and ambiguous." (Pinal ROA 8 at 3.) Yet Dr. Amezcua-Patino is the only expert who assessed Dixon's mental competency under the appropriate standard, and he testified unequivocally that Dixon lacks a rational understanding of the meaning and purpose of his execution. (Tr. 05/03/2022 a.m. at 36, 64.) Dr. Amezcua-Patino is also the only expert who asked Dixon why he believes he is being executed. (*Compare* Tr. 05/03/2022 a.m. at 58–59, 62–63 (Dr. Amezcua-Patino testifying about the various techniques he used to probe Dixon's beliefs about his execution), *with* Tr. 05/03/2022 p.m. at 100–01 (Dr. Vega testifying that he never asked Dixon the question "why do you believe that you are being executed").)

The superior court relied on evidence that Dixon made "reflective observations" in prior writings, has high-average intelligence, and has "shown sophistication, coherent and organized thinking, and fluent language skills in pleadings and motions that he drafted" in order to "reject[]" the assertion that Dixon's fixation over the NAU

issue "is dispositive" of the competency question. (Pinal ROA 8 at 3.) This was objectively unreasonable.

The superior court's reliance on indicia of intelligence to support its finding that Dixon failed to demonstrate that he is mentally incompetent to be executed is refuted by the medical evidence. Intelligence does not minimize the effect of a serious psychotic illness such as paranoid schizophrenia. No evidence presented at the hearing shows otherwise. Dr. Amezcua-Patino testified that people with schizophrenia are often intelligent and can "maintain a high level of sophistication in their thinking." (Tr. 05/03/2022 a.m. at 33.) It is *not* counterintuitive: intelligence does not relieve the sufferer of paranoid schizophrenia from auditory and visual hallucinations or psychotic delusions. As Dr. Amezcua-Patino explained, Dixon's intellectual abilities must not be confused for mental competency because, as someone with paranoid schizophrenia, Dixon's writings are rooted in psychotic delusions which have no basis in reality. (Tr. 05/03/2022 p.m. at 13–21.) Dixon's writings thus needed to be understood "in the context of an illness[.]" (Tr. 05/03/2022 p.m. at 15.)

It must follow from the above that there is nothing in the nature of "coherence" and "sophistication" in writings driven by psychotic delusions. This is plainly evident from nearly all Dixon's writings but especially two handwritten letters from Dixon to the Arizona Judicial Commission in April 2022 where he demands that the members of the Arizona Supreme Court be disbarred based on purely conspiratorial and delusional beliefs pertaining to his impending execution. (Tr. 05/03/2022 a.m. at 83–

89; Tr. 05/03/2022 p.m. at 94; Hearing Exs. 25–29.) There, Dixon embraced the irrational belief that—no matter what the State's stated rationale for his execution––his execution "will result in an extrajudicial killing that would merit disbarment of those who are unconcerned with their unprofessional reason for being even after the 12th hour." (Tr. 05/03/2022 p.m. at 117.) The evidence is clear and convincing: as a result of his paranoid schizophrenic illness, Dixon "has had a consistent delusion for a long time and that delusion can terminate his ability to be rational about what is happening to him." (Tr. 05/03/2022 p.m. at 20.)

Rather than rely on the uncontroverted medical evidence, the court deemed "persuasive" Dr. Vega's claim that Dixon said he would feel "relief" if he were to hypothetically regain his memory. (Pinal ROA 8 at 4.) Such evidence is neither persuasive nor relevant. Dixon's hypothetical *imaginary* beliefs are not a substitute for understanding Dixon's real-time psychotically driven belief: that state officials have conspired to unlawfully execute him to avoid embarrassment. Moreover, Dr. Vega's claim is undermined by his intentional destruction of this evidence and defeated by his admission that those were not Dixon's exact words, the context was omitted, and he asked no follow up or clarifying questions. (Tr. 05/03/2022 p.m. at 98–100, 109–10.)

The superior court's reliance on Dr. Vega's observation that Dixon has a rational understanding of the State's reasons for his execution is also unreasonable because Dr. Vega testified that Dixon's "specific diagnosis [] ultimately affect[s his] opinion about whether he has a rational understanding of the State's reason for his

execution[]" (Tr. 05/03/2022 p.m. at 43), but the superior court found Dr. Vega's non-diagnosis of schizophrenia erroneous (Pinal ROA 8 at 2). By Dr. Vega's own admission, if his non-diagnosis of schizophrenia was erroneous, then his related opinion about whether Dixon rationally understands the State's reasons for his execution cannot be relied upon. (Tr. 05/03/2022 p.m. at 43.)

Furthermore, as explained above, Dr. Vega's opinions were untethered from diagnostic norms and bordered on the farcical. *See* Statement of the Case, *supra*. Dr. Vega evaluated Dixon for only 70 minutes over video and openly admitted that he did "very little" research into the standards for evaluating a person's mental competency to be executed, based his medically unfounded opinions substantially on Dixon's statements and, knowing that, intentionally destroyed the audio recording of Dixon's actual statements prior to the hearing. Dr. Vega also admitted that he never asked Dixon why he believes he is being executed, capriciously refused to apply the DSM-V diagnostic criteria for schizophrenia, delusions, and persecutory delusions, and failed to apply the DSM-V diagnostic criteria to his own diagnosis of antisocial personality disorder. *See* Statement of the Case, *supra*.

CONCLUSION

Dixon respectfully requests that this Court grant his petition for writ of certiorari and reverse the order and judgment of the Ninth Circuit Court of Appeals affirming the district court's denial of his petition for writ of habeas corpus.

Respectfully submitted: May 10, 2022.

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