No. _____

In The
Supreme Court of the United States

STANFORD JAMES STELLE, III,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

On Petition For A Writ Of Certiorari To The California Court Of Appeal, Second Appellate District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Pate v. Robinson, 383 U.S. 375, 385 (1966) and *Drope v. Missouri*, 420 U.S. 162, 172 (1975) require courts to provide adequate procedures to prevent a mentally incompetent criminal defendant from being tried, convicted, or sentenced in violation of the Due Process Clause. A trial court must hold an initial competency hearing if "sufficient doubt" exists as to the defendant's present competency. *Drope*, 420 U.S. at 180; *Dusky v. United States*, 362 U.S. 402, 402 (1960). Because a defendant's mental condition can change during the course of the proceedings, a court has a continuing responsibility to assess competency consistent with due process even after it holds an initial competency hearing.

California, in conflict with at least four States, applies a heightened standard to successive competency determinations by allowing courts to rely on a prior competency finding unless it "is presented with a substantial change of circumstances or with new evidence casting a serious doubt on the validity of that finding." *People v. Rodas*, 429 P.3d 1122, 1129 (Cal. 2018) (internal quotation marks omitted).

The question presented is: Does California's heightened standard for a successive competency hearing violate the Due Process Clause of the Fourteenth Amendment?

RELATED PROCEEDINGS

People v. Stelle, No. S277945 (California Supreme Court) (order denying petition for review issued February 1, 2023).

People v. Stelle, No. B322499 (California Court of Appeal, Second Appellate District) (order modifying opinion and denying rehearing issued December 12, 2022).

People v. Stelle, No. B322499 (California Court of Appeal, Second Appellate District) (opinion issued November 23, 2022).

People v. Stelle, No. INF1500499 (California Superior Court, County of Riverside) (final judgment issued April 30, 2021; order denying motion for new trial issued April 30, 2021).

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PETITION FOR A WRIT OF CERTIORARI

Stanford James Stelle, III respectfully petitions for a writ of certiorari to review the judgment of the California Court of Appeal, Second Appellate District.

OPINIONS BELOW

The opinion of the California Court of Appeal (Pet. App. 13-48) is available at 2022 Cal. App. Unpub. LEXIS 7152, 2022 WL 17175092. The order modifying the opinion and denying rehearing (Pet. App. 1-12) is available at 2022 Cal. App. Unpub. LEXIS 7565, 2022 WL 17577243.

JURISDICTION

The California Supreme Court denied a timely petition for review on February 1, 2023. Pet. App. 64. This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment, U.S. Const. amend. XIV, provides in relevant part:

> No state shall . . . deprive any person of life, liberty, or property, without due process of law.

The Supremacy Clause, U.S. Const. art. VI, para. 2, provides in relevant part:

> This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

INTRODUCTION

This Court has long forbidden trial courts from trying, convicting, or sentencing a mentally incompetent criminal defendant. That due process right is "rudimentary." *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996) (internal quotation marks omitted). To avoid the risk of trying an incompetent person, trial courts must hold a competency hearing when there is a sufficient doubt about a defendant's competency. *Drope v. Missouri*, 420 U.S. 162, 176 (1975).

California courts apply that standard to an initial competency determination, but apply a heightened, unconstitutional standard to successive competency hearings. California's standard is just one among a confused spectrum of standards States and Federal circuit courts apply.

This Court should grant the Petition to bring necessary clarity to the procedural safeguards required to protect a criminal defendant's continuing fundamental due process right not to be tried, convicted, or sentenced if mentally incompetent.

STATEMENT OF THE CASE

The trial court doubted Mr. Stelle's competence just weeks after his 2015 arraignment. Based on the opinions of two court-appointed experts, the trial court found Mr. Stelle incompetent to stand trial.

Nearly four years later and approaching the maximum state-funded time in so-called "return to competency" treatment, the court found Mr. Stelle "returned" to competence in May 2019. The trial court rejected the opinion of a neuropsychologist, then the head of psychology at Loma Linda University Hospital, who concluded Mr. Stelle remained incompetent, and instead, relied on a four-year-old recorded phone call involving Mr. Stelle and the opinion of a court-appointed expert who claimed Mr. Stelle was malingering. Neither the court-appointed expert nor the Government disclosed that a prosecutor had pressured that expert to find Mr. Stelle competent.

As the case proceeded towards trial, defense counsel repeatedly informed the court of counsel's doubt about Mr. Stelle's competency and ability to assist in his own defense. In October 2020, the trial court held a threshold hearing to determine whether Mr. Stelle was entitled to the process *Pate* and *Drope* require, that is, a successive competency hearing. Two experts—a licensed clinical psychologist with forty years of experience and member of the court's appointment panel and the Loma Linda neuropsychologist who previously saw Mr. Stelle—evaluated Mr. Stelle a week or two before the threshold hearing and testified at that

hearing. Both concluded Mr. Stelle was not competent to stand trial because of: (1) a traumatic brain injury suffered years earlier in a high-speed, head-on motorcycle-automobile collision that sent Mr. Stelle headfirst through the windshield of an oncoming car; (2) previously undiagnosed autism spectrum disorder; and (3) previously undiagnosed schizotypal personality disorder. The prior court-appointed expert, who a prosecutor secretly pressured, testified at the hearing, but did not re-evaluate Mr. Stelle, choosing instead to rely on his May 2019 report.

In deciding whether Mr. Stelle should be entitled to a successive competency hearing, the trial court also heard testimony from a jail guard and a bus driver who testified that Mr. Stelle was conversant about music during bus rides and that he sometimes asked for alternate (i.e., vegetarian) meals. At the conclusion of the threshold hearing, the trial court denied Mr. Stelle's request for a successive competency hearing, notwithstanding the unrebutted opinions of two experts who had just evaluated Mr. Stelle. Applying California's heightened standard for a successive competency hearing, the trial court concluded there was no substantial change in circumstances or new evidence casting serious doubt on the prior finding of competency.

Under *Pate* and *Drope*, a trial court must provide a successive competency hearing if there was sufficient doubt about Mr. Stelle's present competency. But California courts require more; they demand evidence that in their judgment establishes a substantial change in circumstance or new evidence casting a serious doubt

on the prior finding. Because there was evidence that supported a sufficient doubt about Mr. Stelle's then-present competency under *Pate* and *Drope*, the trial court's refusal to suspend criminal proceedings and initiate another competency proceeding violated due process.

A. Legal Background

Blackstone recognized a person who became "mad" before arraignment should not be arraigned "because he is not able to plead to it with that advice and caution that he ought." *Drope*, 420 U.S. at 172 (quoting 4 W. Blackstone, Commentaries *24). If he "became 'mad' after pleading, he should not be tried, 'for how can he make his defense?'" *Id.*

Likewise, this Court has "repeatedly and consistently recognized that 'the criminal trial of an incompetent defendant violates due process.'" *Cooper*, 517 U.S. at 354 (quoting *Medina v. California*, 505 U.S. 437, 453 (1992)).

To try an incompetent defendant is to deny that person core due process rights, "including the right to effective assistance of counsel, the rights to summon, to confront, and to cross-examine witnesses, and the right to testify on one's own behalf or to remain silent without penalty for doing so." *Id.* (internal quotation marks omitted). To stand trial, a criminal defendant must have (1) "sufficient *present* ability to consult with his lawyer with a reasonable degree of rational understanding," and (2) "a rational as well as factual

understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960) (emphasis added).

In *Pate*, this Court held that an Illinois court violated due process by depriving a criminal defendant of an adequate hearing on his competence to stand trial. 383 U.S. at 385-86. This Court required a competency hearing when there was a "bona fide doubt" about a criminal defendant's competence. *Id.*

Nine years later, this Court recognized again "the failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial." *Drope*, 420 U.S. at 172 (citing *Pate*, 383 U.S. at 385). This Court noted that *Pate* did not "prescribe a general standard with respect to the nature or quantum of evidence necessary to require resort to an adequate procedure." *Id.* Instead, the *Pate* Court relied on Illinois law, which required a hearing when "the evidence raised a '*bona fide* doubt' as to a defendant's competence," to conclude that the defendant's evidence entitled him to a hearing. *Id.* at 172-73.

In *Drope*, this Court explained that the history of irrational conduct and a suicide attempt generated "a sufficient doubt" of petitioner's competence, requiring a hearing. *Id.* at 179-80. This Court stated:

> The import of our decision in *Pate v. Robinson* is that evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial

> are all relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances, be sufficient.

Id. at 180.

This Court warned, "[e]ven when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." *Id.* at 181. A criminal defendant must have "'sufficient *present* ability'" to be competent. *Id.* at 172 (quoting *Dusky*, 362 U.S. at 402) (emphasis added).

Pate and *Drope* answered the question when due process requires an initial competency hearing (i.e., whenever evidence creates a sufficient, bona fide, or reasonable doubt). And *Drope* admonished courts to be alert to a defendant's competency at all stages of a criminal case. *Id.* at 172.

But *Pate* and *Drope* left open, and this Court has never addressed, what evidentiary showing is sufficient to require a successive competency hearing and whether the court may consider contrary evidence at this stage. On this question, the case law is fractured, and some jurisdictions, like California, apply a heightened, unconstitutional standard that weighs competing evidence *before* deciding whether due process requires a successive competency hearing.

This Court should clarify the confusion by endorsing the standards adopted by those courts that ensure a defendant does not stand trial unless the defendant is presently competent.

B. Factual and Procedural Background

In March 2015, the Government charged Mr. Stelle in a fourteen-count Complaint with violations of California Penal Code sections 288.7, 269, and 288. CT 14-17.[1] In May 2015, Mr. Stelle's counsel moved for a competency evaluation, which the trial court ordered, declaring its own doubt about Mr. Stelle's competency. CT 20. The trial court appointed Dr. Michael Leitman to examine Mr. Stelle. *Id.* On June 14, 2015, Dr. Leitman found Mr. Stelle incompetent to stand trial. CT 305. At the prosecutor's insistence, the trial court ordered a second competency evaluation. CT 23, 31-32, 305. In August 2015, the second court-appointed expert, Dr. Joy Smith Clark, also found Mr. Stelle incompetent to stand trial. CT 305.

In November 2015, the trial court, considering the two experts' competency reports, found Mr. Stelle incompetent to stand trial. In December 2015, the trial court ordered Mr. Stelle committed to receive "return to competency" treatment in the Liberty Healthcare Restoration of Competency Program. CT 63-64, 69-70.

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[1] "CT" refers to the Clerk's Transcript on Appeal in the Court of Appeal of the State of California, Second Appellate District, Division Two, No. B322499, on appeal from Riverside County Superior Court No. INF1500499.

Liberty then transferred Mr. Stelle to Patton State Hospital in May 2016 because he had not returned to competency. CT 104, 305. As the state-funded commitment period neared expiration in late 2017, Patton State Hospital abruptly determined Mr. Stelle returned to competence. Pet. App. 19.

No hearing on Mr. Stelle's purported return to competence occurred until May 2019. CT 184; Pet. App. 20. Meanwhile, Mr. Stelle's counsel engaged a neuropsychologist from Loma Linda University Hospital, Dr. Michael Gilewski, to evaluate Mr. Stelle. CT 147; RT 87; Pet. App. 20.[2] Dr. Gilewski concluded Mr. Stelle remained incompetent to stand trial, finding he had a major neurocognitive disorder and deteriorating general cognition. RT 166-67, 170-71. The trial court ordered another competency examination, appointing Dr. William H. Jones. Pet. App. 20. In May 2019, Dr. Jones concluded Mr. Stelle was competent to stand trial, despite acknowledging that Mr. Stelle was confused, disoriented, and had a poor understanding of the legal process. CT 306; Pet. App. 20.

Before Dr. Jones evaluated Mr. Stelle, the Managing Deputy District Attorney overseeing Mr. Stelle's prosecution sent Dr. Jones an undisclosed, *ex parte* communication, in which the prosecutor wrote:

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[2] "RT" refers to the Reporter's Transcript on Appeal in the Court of Appeal of the State of California, Second Appellate District, Division Two, No. B322499, on appeal from Riverside County Superior Court No. INF1500499.

> Please know that at this point [Mr. Stelle's] Patton time has expired. So if he's found incompetent by Judge Olson, he cannot continue treatment at Patton and he can essentially no longer be prosecuted for his crimes.

RT 148.

On May 24, 2019, the trial court, without an evidentiary hearing and without knowledge of the prosecution's *ex parte* influence of Dr. Jones, found Mr. Stelle competent.[3] CT 184; Pet. App. 67. The trial court explained that a four-year-old recorded phone call involving Mr. Stelle was "extremely enlightening" and adopted Dr. Jones's conclusion that Mr. Stelle was malingering[4] and therefore competent. RT 20.

Mr. Stelle's counsel continued to question Mr. Stelle's competence to stand trial. At the November 22, 2019 preliminary hearing on the Complaint, Mr. Stelle's counsel explained those doubts, in part by noting Mr. Stelle's insistence about finding his dog rather than rationally assisting in his defense. CT 182, 188-89, 217.

In October 2020, Mr. Stelle's counsel moved for further competency proceedings. CT 304. The trial

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[3] *Cf. Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972). The prosecutor's and Dr. Jones's failure to disclose this information inexorably infected the proceeding.

[4] In this context, to malinger means to "pretend to have a mental illness." *People v. Tejeda*, 40 Cal. App. 5th 785, 789 (Cal. Ct. App. 2019).

court denied the motion. CT 239-40, 462. On October 20, however, the trial court permitted counsel to introduce evidence on the motion but not to "relitigate," "redo," or "revisit" the previous May 2019 competency finding. RT 161, 187, 265, 283, 344, 370. This was not a successive competency proceeding, but instead, a threshold inquiry to determine whether Mr. Stelle was entitled to have a successive competency hearing including the right to have a jury decide the issue. *See* Cal. Penal Code §§ 1368, 1369.

Over several days Drs. Leitman and Gilewski testified regarding Mr. Stelle's inability to understand the proceedings or assist in his own defense owing to multiple conditions, including: (1) a traumatic brain injury from a head-on motorcycle collision in which he was ejected from his motorcycle into the windshield of an oncoming vehicle; (2) previously undiagnosed autism spectrum disorder; and (3) previously undiagnosed schizotypal personality disorder. RT 94-106, 263-73. Further, Dr. Gilewski explained the malingering tests administered by Dr. Jones in May 2019 were inappropriate for a person with a traumatic brain injury or autism spectrum disorder. *Id.* at 93-97. Dr. Gilewski also found Mr. Stelle's cognitive performance deteriorated during his five years of incarceration. RT 33, 92-93. The prosecution countered with testimony from a jail guard and a bus driver, who testified about their limited interactions with, and observations of, Mr. Stelle, addressing his politeness, requests for particular meals, and lack of segregation from other inmates. RT 197-209, 219, 249. The prosecution then called Dr. Jones

who testified based on his May 2019 evaluation and report. CT 313.

The trial court insisted it was not revisiting the prior competency finding but concluded that finding was "absolutely right" and "[n]othing has been shown that indicates [Mr. Stelle] is not competent." Pet. App. 62. The trial court said the prosecution's *ex parte* communication in May 2019 with Dr. Jones was "not right" and that it was "concerning . . . that anyone would go to the professional who is supposed to be giving us an objective report and say . . . if you do not find him competent that means he skates." RT 377. But the trial court ignored the Government's misconduct and offered Mr. Stelle no remedy. *Id.* Ultimately, the trial court concluded there was no substantial change of circumstances or new evidence casting a serious doubt on the prior finding of competence. *Id.*

At trial, Mr. Stelle's lack of competence to stand trial manifested itself in front of the jury, prompting several juror questions related to Mr. Stelle's competency:

- "Does the defendant need to be mentally competent so they are able to participate in their own defense? Does Stan meet that criteria?" RT 1356.
- "Judge, given the psychologist diagnosis, is he saying due to autistic spectrum disorder, communication disorder, and cognitive disorder, is the defendant mentally capable of in his trial or diagnosis to the limit his ability provides?" RT 1524.

- "[I]s it appropriate or ethical to use diagnostic terms, for example, autism, cognitive impairment and communication disorder to describe behaviors observed?" RT 1742.
- "There is no evidence that the defendant has been clinically diagnosed with a developmental disability nor evidence of, quote, 'clinically diagnosed communication or mental limits or being on autism spectrum.' We only had a psychologist that said based on his observation of the defendant on the witness stand. There was no definitive diagnosis presented. True or false." RT 1828.

Because the trial court excluded expert testimony on Mr. Stelle's capacity at the time of the crimes, the trial court largely left the jury's questions unanswered. The jury found Mr. Stelle guilty on December 17, 2021. Pet. App. 57-60.

The trial court sentenced Mr. Stelle to a determinate sentence of 38 years and an indeterminate sentence of 105 years to life. Pet. App. 53. Defense counsel continued to doubt Mr. Stelle's competence to understand the sentencing proceedings and assist in his defense, submitting another medical opinion. RT 1934, 1938. The trial court considered the report and heard testimony from a probation officer and jail calls. *Id.* at 1943, 1945, 1960, 1968-72. The probation officer testified Mr. Stelle could not be Mirandized because he did not understand the warning; Mr. Stelle stated "he did not know the law. . . . I only know about horses and plants." *Id.* at 1950. The trial court again denied Mr.

Stelle's counsel's request for a competency proceeding. *Id.* at 1980.

Mr. Stelle appealed to the California Court of Appeal, arguing the trial court violated his due process rights by failing to hold a successive competency proceeding. Pet. App. 13-48. The Court of Appeal affirmed, relying on California's unconstitutional requirement that Mr. Stelle establish a substantial change of circumstances or offer new evidence casting a serious doubt on the prior finding. *Id.* Mr. Stelle's counsel moved for rehearing and modification of the opinion. *Id.* at 1-12. The Court of Appeal modified and corrected twenty-eight errors in its initial opinion, but did not grant rehearing, did not explain how those errors may have affected its analysis, and otherwise left its judgment in place. *Id.* Mr. Stelle timely filed a petition for review in the California Supreme Court, which it denied on February 1, 2023. *Id.* at 64.

REASONS FOR GRANTING WRIT

The courts below applied an unconstitutional framework to assess whether Mr. Stelle was entitled to a successive competency proceeding. First, the trial court required Mr. Stelle to establish "a substantial change of circumstances" or "new evidence casting a serious doubt" on a prior finding of competence, a standard having no basis in *Pate* or *Drope.* And second, in assessing whether to even hold a successive competency hearing, the trial court weighed and evaluated

competing evidence of competency from the prior May 2019 ruling to evidence of incompetency presented in October 2020. Mr. Stelle presented "sufficient doubt" or at least sufficient *new* doubt he was not competent in October 2020 at the time his trial began. That is enough under this Court's precedents.

Other jurisdictions have erected similar unconstitutional burdens to avoid proceedings on competency, greatly increasing the risk of a court trying, convicting, or sentencing an incompetent defendant. Still other jurisdictions apply standards that adhere to *Pate* and *Drope* and that ensure courts try only those defendants who are presently competent. This Court should grant review to address the question of what standard a court should apply in determining whether a full hearing on a defendant's competency is required in light of changes in the defendant's mental condition following an earlier, initial determination of competency.

I. State And Federal Courts Apply Disparate, Diverging Standards On Successive Competency Hearings.

A. The States apply a broad spectrum of standards, with California and West Virginia setting the highest—and unconstitutional—barriers to successive competency proceedings.

California and West Virginia illustrate the problem of a heightened burden to a successive competency hearing. They further demonstrate the constitutional

conflict that arises when the same defendant who would not be found competent in one jurisdiction is nonetheless tried and convicted by a court in another jurisdiction.

In California, courts provide constitutionally adequate process for initial concerns about competency. "[W]hen a doubt exists as to the defendant's mental competence, the court must appoint an expert or experts to examine the defendant." *People v. Rodas*, 429 P.3d 1122, 1129 (Cal. 2018). A jury will then resolve the dispute. Cal. Penal Code § 1369. But once a defendant is found to have "returned" to competence, California imposes a higher, unconstitutional standard to evaluate a defendant's competence. "If, after a competency hearing, the defendant is found competent to stand trial, a trial court may rely on that finding unless the court 'is presented with a substantial change of circumstances or with new evidence casting a serious doubt on the validity of that finding.'" *Rodas*, 429 P.3d at 1129 (quoting *People v. Jones*, 811 P.2d 757, 780 (Cal. 1991)).

California erected its unconstitutional barrier on a flawed foundation. In *People v. Zatko*, 145 Cal. Rptr. 643, 651 (Cal. Ct. App. 1978), the court recognized a judicial reliance interest in the finality of competency rulings unless there is a "substantial change of circumstances or with new evidence which casts a serious doubt upon the validity of the pretrial finding of present sanity." *Id.* The court relied on a disparate set of cases addressing the obligation of the court to inquire and develop for consideration a defendant's concern

over their *counsel's competence*. *Id.* (citing *People v. Munoz*, 115 Cal. Rptr. 726, 727-28 (Cal. Ct. App. 1974); *In re Miller*, 109 Cal. Rptr. 648, 659 (Cal. Ct. App. 1973); *People v. Groce*, 95 Cal. Rptr. 688, 689-90 (Cal. Ct. App. 1971)).

Neither *Zatko* nor the opinions on which it relied addressed any constitutional or policy concern implicated by imposing a heightened burden on further competency proceedings. Nor did the California Supreme Court consider the constitutionality of imposing a heightened burden when it adopted that burden in *Jones*, 811 P.2d at 780-81 (relying on *Zatko*). The fundamental principle that no court can try, convict, or sentence an incompetent criminal defendant gave way to a vague concern for judicial convenience conceived in response to a much different question.

California's heightened standard does not contemporaneously assess whether "the accused [is] unable to meet the standards of competence," as required by *Drope*, 420 U.S. at 181, but only whether the trial court's prior decision should be revisited. "[A] trial court must always be alert to circumstances *suggesting* a change that would render the accused unable to meet the standards of competence to stand trial," *Drope*, 420 U.S. at 181 (emphasis added), because a defendant must have a "sufficient *present* ability" to be competent, *id.* at 172 (emphasis added). California's heightened burden fails to ensure a defendant has a "sufficient *present* ability to consult with his lawyer with a reasonable degree of rational understanding." *Dusky*, 362 U.S. at 402 (emphasis added). Instead,

California attempts to settle the issue of competency once and for all in violation of due process.

West Virginia imposes a similarly high burden. In *State v. Sanders*, 549 S.E.2d 40, 52 (W. Va. 2001), the West Virginia Supreme Court held a second competency proceeding was unnecessary "unless it is presented with new evidence casting serious doubt on the validity of the earlier competency finding, or with an intervening change of circumstance that renders the prior determination an unreliable gauge of present mental competency." *Id.*

Like California, West Virginia focuses on the *prior* competency finding, not the defendant's *present* competency. *See Dusky*, 362 U.S. at 402 (requiring "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding"). And West Virginia goes farther than California, requiring an intervening change of circumstance that renders the *prior* determination an "unreliable gauge" of present competency. *Sanders*, 549 S.E.2d at 52.

Other states also impermissibly focus on the prior determination before a defendant may receive a successive competency hearing on the defendant's present competence. *Dang v. Commonwealth*, 752 S.E.2d 885, 893 (Va. 2014). And, some states require new information. *State v. Lynch*, 234 P.3d 595, 602 (Ariz. 2010) (a new factor or the appearance of change in his condition); *Pate v. Commonwealth*, 769 S.W.2d 46, 47 (Ky. 1989) (new information calling into question previous finding).

In conflict with California and West Virginia, other states apply the *Pate* and *Drope* standards to initial *and* any successive competency hearing. *Hunter v. State*, 660 So. 2d 244, 248 (Fla. 1995) (bona fide doubt); *Malo v. State*, 361 N.E.2d 1201, 1204 (Ind. 1977) (reasonable grounds); *Archie v. State*, 875 So. 2d 336, 338 (Ala. Crim. App. 2003) (reasonable and bona fide doubt). Others apply a blend of several standards, subjecting fundamental due process rights to varying standards based on the vagaries of individual states. *See*, *e.g.*, *State v. Lafferty*, 20 P.3d 342, 360 (Utah 2001), *overruled in part on other grounds by Met v. State*, 388 P.3d 447, 460 (Utah 2016) (bona fide doubt, substantial change in circumstance, or new evidence casting a serious doubt).

Still other States like Texas conform to *Pate* and *Drope* and require a formal competency hearing whenever there is "some evidence" supporting a rational finding of incompetence. *Turner v. State*, 422 S.W.3d 676, 692-93 (Tex. Crim. App. 2013); *see id.* at 689 (observing that Texas's "statutory scheme [Tex. Code Crim. Proc. ch. 46B, subch. A-C] has codified the constitutional standard for competency to stand trial"); *accord Boyett v. State*, 545 S.W.3d 556, 566 (Tex. Crim. App. 2018) (applying "some evidence" standard in reversing district court's denial of appointment of expert and formal competency trial).[5] Texas requires trial

[5] Under Texas law, "[o]n suggestion that the defendant may be incompetent to stand trial," the court must inquire whether there is "some evidence from any source" that would support a finding of incompetency. Tex. Code Crim. Proc. art. 46B.004(c). If

courts to put aside any evidence of competency and determine only if there is more than a scintilla of evidence that would support a rational finding of incompetency to stand trial. *Turner*, 422 S.W.3d at 692-93.

The conflict among the States is exemplified by the Florida Supreme Court's decision in *Nowitzke v. State*. 572 So. 2d 1346 (Fla. 1990). There, a Florida trial court found the defendant incompetent, then competent, and then refused to hold a successive competency hearing despite defense counsel's renewed doubt about the defendant's competence. *Id.* at 1349. The Florida Supreme Court reversed, holding the trial court erred in failing to conduct the successive competency hearing because "defense counsel presented ample reasonable grounds to believe that [the defendant] might be incompetent." *Id.* at 1349-50; *see also Hunter*, 660 So. 2d at 248 (applying the bona fide doubt standard).

In contrast to *Nowitzke*, here the trial court, applying California's heightened standard, denied Mr. Stelle a second competency hearing despite multiple expert opinions establishing his incompetence, his counsel's repeated expressed doubt, and his bizarre behavior in pre-trial proceedings and during trial—even jurors doubted his incompetence. A defendant's minimum due process protections should not vary from state to state whether it is California, West Virginia, Texas, or Florida.

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that inquiry reveals evidence to support a finding of incompetency, the court must order an examination. *Id.* art. 46B.005(a).

Absent guidance, the States have adopted a hodgepodge of standards, many of which diverge on the critical question—a defendant's "sufficient present ability." *Dusky*, 362 U.S. at 402.

B. The Federal circuits apply at least two different standards.

The federal circuits apply relatively consistent standards when deciding whether to hold an *initial* competency hearing.[6] But an entrenched split exists on when a court must hold a *successive* competency hearing.

On the one hand, the First, Second, and Sixth Circuits apply a heightened standard similar to California and West Virginia to obtain a successive competency hearing. *United States v. Maryea*, 704 F.3d 55, 69 (1st Cir. 2013) (significant change in circumstances); *Yeboah-Sefah v. Ficco*, 556 F.3d 53, 82 (1st Cir. 2009)

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[6] *Johnson v. Norton*, 249 F.3d 20, 26-27 (1st Cir. 2001) (sufficient doubt); *Nicks v. United States*, 955 F.2d 161, 168 (2d Cir. 1992) (sufficient doubt); *Taylor v. Horn*, 504 F.3d 416, 433 (3d Cir. 2007) (reason to doubt); *Walton v. Angelone*, 321 F.3d 442, 459 (4th Cir. 2003) (bona fide doubt); *United States v. Flores-Martinez*, 677 F.3d 699, 706 (5th Cir. 2012) (reasonable or bona fide doubt); *Warren v. Lewis*, 365 F.3d 529, 533 (6th Cir. 2004) (bona fide doubt); *Sturgeon v. Chandler*, 552 F.3d 604, 612 (7th Cir. 2009) (bona fide or substantial reason to doubt); *Griffin v. Lockhart*, 935 F.2d 926, 929-30 (8th Cir. 1991) (sufficient doubt); *Anderson v. Gipson*, 902 F.3d 1126, 1133-34 (9th Cir. 2018) (bona fide doubt); *Lay v. Royal*, 860 F.3d 1307, 1314 (10th Cir. 2017) (bona fide doubt); *United States v. Wingo*, 789 F.3d 1226, 1235 (11th Cir. 2015) (bona fide doubt).

(significant change in circumstances); *Senna v. Patrissi*, 5 F.3d 18, 20 (2d Cir. 1993) (substantial change); *Franklin v. Bradshaw*, 695 F.3d 439, 450 (6th Cir. 2012) (significant new evidence). These Circuits suffer from the same Constitutional problems inherent in California's and West Virginia's standards. *See* Section I.A, *supra*.

Conversely, the Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits apply the same standard in determining whether to hold an initial or successive competency hearing. *United States v. McKnight*, 794 F. App'x 271, 273-74 (4th Cir. 2020) (bona fide doubt); *Reynolds v. Norris*, 86 F.3d 796, 799-800 (8th Cir. 1996) (sufficient doubt); *United States v. White*, 670 F.3d 1077, 1082 (9th Cir. 2012) (bona fide doubt); *United States v. Williams*, 113 F.3d 1155, 1160-61 (10th Cir. 1997) (bona fide doubt); *United States v. Cometa*, 966 F.3d 1285, 1291 (11th Cir. 2020) (bona fide doubt).

This entrenched split results in criminal defendants receiving disparate Constitutional protection by dint of their geographic location.

II. This Court Should Address The Broad Spectrum Of Standards And Provide Needed Clarity.

Courts nationwide hold approximately 60,000 competency hearings per year, finding defendants incompetent approximately 27.5 percent of the time. Gianni Pirelli, et al., *A Meta-Analytic Review of Competency to Stand Trial Research*, 17 Psychology, Public

Policy, and Law 1, 2, 13 (2011). Many of those defendants who a trial court initially finds to be incompetent are the subjects of the same boomeranging competency findings as Mr. Stelle.

Given the frequency with which competency issues present themselves and the requirement that trial courts continually evaluate changes to competency, *Drope*, 420 U.S. at 181, this Court should bring needed clarity to the necessary standard for a successive competency hearing. A uniform standard for answering that recurring Constitutional question, instead of the current patchwork approach, will prevent denials of due process based only on a defendant's jurisdiction.

The question presented is particularly important in cases where a court has found a defendant incompetent, then competent, and then receives new expert medical evidence showing that the defendant has returned to incompetency. A defendant cannot "waive" his right to have the court decide whether he is competent. *Pate*, 383 U.S. at 384. Courts must have a clear Constitutional standard to apply when alerted to changes in a defendant's competency.

III. This Case Is An Ideal Vehicle To Address This Question.

The procedural posture and facts of this case make it an ideal vehicle to determine when courts must hold a successive competency hearing. This case cleanly presents the question.

Mr. Stelle's counsel pressed, and the courts below passed upon, the question presented at every stage of the proceedings: at arraignment, at the initial determination of incompetence, at the hearing on the purported return to competence, at the pre-trial probable cause hearing, at a series of hearings in October 2020 on whether to initiate a second competency proceeding, at trial (wherein jurors questioned Mr. Stelle's competence), in pre-sentencing, at sentencing, at the California Court of Appeal, and in the petition for review to the California Supreme Court.

The facts in this case highlight the importance of the rights at stake, presenting a clear case where due process was denied. Specifically, after the trial court found Mr. Stelle had returned to competency, the trial court received two new expert opinions that contained new evidence and concluded Mr. Stelle was incompetent. Yet the trial court disregarded those two new expert opinions, refusing to hold a successive competency hearing and denying Mr. Stelle the due process to which he is entitled.

CONCLUSION

For the foregoing reasons, Petitioner Stanford James Stelle, III respectfully requests this Court grant the petition for a writ of certiorari.

This the 2nd day of May, 2023.

Respectfully submitted,

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