**Nos. 25-5262; 25A137**

# In the Supreme Court of the United States

IN RE:

BYRON LEWIS BLACK,

PETITIONER

ON APPLICATION FOR STAY OF EXECUTION AND ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

## BRIEF IN OPPOSITION


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**CAPITAL CASE**
**QUESTION PRESENTED**

Did the United States Court of Appeals for the Sixth Circuit correctly determine that Black's "idiocy" argument is not a newly ripened competency claim and thus requires second-or-successive authorization?

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## INTRODUCTION

Byron Lewis Black comes to this Court days before his execution attempting to overturn decades of precedent through habeas review. This Court's established competency test asks whether a prisoner has "a rational understanding of the reason for [his] execution." *Panetti v. Quarterman*, 551 U.S. 930, 957-58 (2007). Everyone agrees—even Black's own expert—that Black satisfies that standard. So Black attempts to refashion the competency test to include a categorical exclusion for "idiots." Far from showing a circuit split on this issue, Black fails to identify a single court that has even entertained the idiocy argument, much less adopted his position on it. Worst still, Black presses his novel idiocy argument through a successive habeas petition. The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) allows no such thing.

Black's claim is premised on the notion that he qualifies as the "kind of person (an 'idiot') who by [Black's] own definition has personal characteristics *that are present at birth or very early in life*." Pet.App.35a-36a (emphasis added). As the Sixth Circuit rightly concluded, this claim dresses up in competency garb Black's thrice rejected intellectual disability claim under *Atkins v. Virginia*, 536 U.S. 304 (2002). For that reason alone, the new petition is subject to dismissal under § 2244(b)(1). Pet.App.6a.

But even if Black's novel idiocy claim were regarded as somehow distinct from his rejected intellectual disability claim, the new petition still requires authorization under § 2244(b)(2) because the claim is not newly ripened. As Black readily

acknowledges, his alleged idiocy status existed very early in his life and is permanent in nature. Pet. at 8-10. Black could (and should) have raised this idiocy argument in his first petition—a reality highlighted by Black's reliance on the same evidence previously offered in support of intellectual disability claim. And the fact that Black has subsequently marshaled cumulative evidence to bolster his intellectual disability and idiocy claims does not render the latter newly-ripened. Absent second-or-successive authorization, Black may not prosecute his idiocy claim days before his scheduled execution. And he has not—and cannot—obtain that authorization. *See* 28 U.S.C. § 2244(b)(3)(E).

This Court should deny Black's petition for certiorari and deny a stay.

## STATEMENT

### A. Legal Background

#### 1. Competency for Execution

In *Ford v. Wainwright*, this Court held that prisoners have a common law and Eighth Amendment right to challenge their competency to be executed. 477 U.S. 399, 409-10 (1986) (plurality opinion); *id.* at 418 (Powell, J., concurring in part and concurring in the judgment). The "standard for competency" is whether a prisoner can "reach a rational understanding of the reason for [his] execution." *Panetti*, 551 U.S. at 957-58. In other words, "[t]he critical question is whether a prisoner's mental state is so distorted ... that he lacks a rational understanding of the State's rationale for his execution." *Madison v. Alabama*, 586 U.S. 265, 269 (2019). "[R]ational understanding of the State's reasons for resorting to punishment" is the "kind of

comprehension [that] is the *Panetti* standard's *singular focus*." *Id*. at 276 (emphasis added).

The *Ford* Court was careful not to "suggest that only a full trial on the issue of sanity will suffice to protect the federal interests," and it "le[ft] to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences." 477 U.S. at 416-17 (plurality opinion). "It may be," the Court explained, "that some high threshold showing on behalf of the prisoner will be found a necessary means to control the number of nonmeritorious or repetitive claims of insanity." *Id*. at 417 (plurality opinion). Because a criminal defendant must have been competent to stand trial, "[t]he State therefore may properly presume that [he] remains sane at the time sentence is to be carried out, and may require a substantial threshold showing of insanity merely to trigger the hearing process." *Id*. at 426 (Powell, J., concurring in part and concurring in the judgment); *see Panetti*, 551 U.S. at 949 ("Justice Powell's opinion … sets the minimum procedures a State must provide to a prisoner raising a *Ford*-based competency claim.").

The Tennessee Supreme Court's opinion in *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999), governs the procedure for deciding Tennessee prisoners' competency to be executed. *See* Tenn. Sup. Ct. R. 12(4)(A) (citing *Van Tran* in reference to proceedings on competency for execution). Under that procedure, a prisoner may assert incompetence in response to the State's motion to set an execution date. *Van Tran*, 6 S.W.3d at 267. Upon setting an execution date, the Tennessee Supreme Court remands to the trial court to adjudicate the competency claim. *Id*.

### 2. Authorization for Second or Successive Petition

Federal law places stark limitations on second or successive habeas corpus petitions. *Banister v. Davis*, 590 U.S. 504, 509 (2020). A habeas corpus petitioner may not raise an old claim that was "presented in a prior application." 28 U.S.C. § 2244(b)(1). Nor may a petitioner raise a new claim in a second or successive petition unless he makes a prima facie showing to the court of appeals that the claim "relies on a new and retroactive rule of constitutional law" or "alleges previously undiscoverable facts that would establish his innocence." *Banister*, 590 U.S. at 509 (citing 28 U.S.C. § 2244(b)(2) and (b)(3)(C)). "The point of § 2244(b)'s gatekeeping restrictions is to conserve judicial resources, reduce piecemeal litigation, and lend finality to state court judgments within a reasonable time." *Rivers v. Guerrero*, 145 S Ct. 1634, 1644 (2025) (cleaned up).

The Court has carved out a small number of exceptions when numerically second petitions do not require authorization under § 2244(b). As relevant here, the Court concluded in *Panetti* that, because a *Ford*-based incompetency claim does not ripen until execution is imminent, a second petition filed shortly before the execution asserting incompetency does not require authorization as a second-or-successive petition. 551 U.S. at 942-45. But beyond this "unusual posture [of] a § 2254 application raising a *Ford*-based incompetency claim filed as soon as that claim is ripe," any additional "last-minute filings that are frivolous and designed to delay executions can be dismissed in the regular course." *Id.* at 946 (citing *Stewart v. Martinez-Villareal*, 523 U.S. 637, 644-45 (1998)).

## B. Factual Background

Almost four decades ago, Black brutally murdered his girlfriend, Angela Clay, and her two young daughters, Latoya (age nine) and Lakeisha (age six), amid a jealous lover's quarrel. *Black*, 815 S.W.2d at 170-72. About a year before the murders, Angela separated from her husband, Bennie Clay, and started dating Black. *Id*. at 170. But "at times she was seeing both." *Id*. And in December 1986, "during a dispute over Angela," Black shot Bennie twice, chased him down the street, and "stood over him" with a cocked gun before Angela pushed him away. *Id*. at 170-71. Black pled guilty to the non-lethal shooting but received a workhouse sentence that allowed weekend furloughs. *Id*. at 171.

With Black on furlough, the violence continued. He kicked in the front door of Angela's apartment when she refused to let him enter. *Id*. at 172. He later threatened Angela: "If I can't have you, won't nobody have you." *Id*. Three weeks before the murders, Angela's neighbor heard Black again threaten to kick in Angela's apartment door. *Id*. And days before the killings, Black was seen arguing with Angela. *Id*.

Tragically, early in the morning on March 28, 1988, Black murdered Angela, Latoya, and Lakeisha in their Nashville home.

Police first found the bodies of Angela and nine-year-old Latoya in the master bedroom. Angela had been shot in the head while asleep in her bed. *Id*. at 171. Latoya was found wedged between the bed and a chest of drawers. *Id*. She had been

shot once through the neck and chest while lying in bed. *Id.* But death was not instantaneous; she bled out over the course of three to ten minutes. *Id.*

In the other room, police found the body of six-year-old Lakeisha lying face down on the floor next to her bed. *Id.* She had been shot once in the chest and once in the pelvis while lying in bed. *Id.* at 171-72. "Abrasions on her arm indicated a bullet had grazed her as she sought to protect herself from the attacker." *Id.* at 172. And "bloody finger marks . . . running from the head of the bed to the foot of the bed" showed that the six-year-old struggled before her death. *Id.*

Trial evidence clearly pointed at Black. *Id.* at 175. He was with the victims the evening they were murdered. *Id.* He had been fighting with Angela just days before, having previously threatened to kill her. *Id.* Inside the victims' house, police found the receiver from the kitchen phone in the master bedroom. *Id.* at 172. And the phone from the master bedroom was lying in the hallway between the two bedrooms. *Id.* Black's fingerprints were recovered from both phones. *Id.*

Ballistics evidence also directly tied Black to the murders. The evidence showed that the same weapon fired the .44 caliber bullet recovered from Latoya's pillow, the .44 caliber bullet removed from Lakeisha's body, a bullet fragment recovered from the automobile driven by Bennie the day Black shot him, and the .44 caliber bullet removed from Bennie's body. *Id.* at 173. So, Black used the same gun to murder Angela and her children that he had previously used to shoot Bennie.

The night the bodies were discovered, the police interviewed Black. *Id.* at 172. When a detective informed Black that his girlfriend was found murdered in her

apartment, he initially looked distraught, and he began crying. *Id*. But when two other detectives entered the interview room, Black's demeanor changed, the tears ceased, and he became "dull." *Id*.

Black initially claimed that the last time he saw Angela was about 10 p.m. the previous night, when he dropped her off at her mother's house after picking her up from work. *Id*. But during a later interview, Black admitted returning to Angela's house that night, finding the victims dead inside, and simply leaving because he "didn't want to get involved." *Id*. at 173. After seeing his girlfriend and her children dead, Black said he simply went to his mother's house and "got ... at least seven or eight hours of sleep." *Id*. He did not report the deaths or tell anyone what he had seen that night until his third police interview. *Id*.

### C. Procedural Background

A jury convicted Black of murdering Angela, Latoya, and Lakeisha, under "six aggravating circumstances." *Id*. at 170. He was sentenced to death. *Id*.

#### 1. Black's death sentence survives exhaustive review.

In 1991, the Tennessee Supreme Court affirmed Black's murder convictions and death sentence on direct appeal. *Id*. at 170. For decades after, Black attempted to overturn his convictions and death sentence in state and federal courts. He unsuccessfully sought relief under the Tennessee Post-Conviction Procedure Act. *Black v. State*, No. 01C01-9709-CR-00422, 1999 WL 195299, at *1 (Tenn. Crim. App. Apr. 8, 1999), *perm. app. denied* (Sept. 13, 1999), *cert. denied*, 528 U.S. 1192 (2000). He then petitioned for a federal writ of habeas corpus, but the U.S. District Court for

the Middle District of Tennessee denied relief. *Black v. Bell*, No. 3:00-0764, 181 F. Supp. 2d 832 (M.D. Tenn. 2001).

While Black's federal habeas corpus appeal was pending in the Sixth Circuit, he reopened his state post-conviction petition to litigate an intellectual disability claim under *Atkins*. *Black v. State*, No. M2004-01345-CCA-R3-PD, 2005 WL 2662577 (Tenn. Crim. App. Oct. 19, 2005), *perm. app. denied* (Tenn. Feb. 21, 2006). But the trial court ultimately found that Black "failed to prove that he was mentally retarded and that the weight of the proof was that he was not mentally retarded." *Id.* at *1. The Tennessee Court of Criminal Appeals affirmed, and the Tennessee Supreme Court denied further review. *Id.* This Court denied certiorari. *Black v. Tennessee*, 549 U.S. 852 (2006).

Black then raised his intellectual disability arguments on federal habeas corpus review, where he received de novo review. *Black v. Carpenter*, 866 F.3d 734, 740 (6th Cir. 2017). The Sixth Circuit concluded that Black failed to show "that he has significantly subaverage general intellectual functioning that manifested before Black turned eighteen." *Id.* at 750. This Court denied certiorari. *Black v. Mays*, 584 U.S. 1015 (2018).

In 2021, the Tennessee General Assembly amended Tennessee's intellectual disability statute. *See* 2021 Tenn. Pub. Acts, ch. 399, § 3. The revision established a procedure for certain death-row inmates to raise an intellectual disability claim if it was not "previously adjudicated on the merits." *See id.* at § 2 (codified at Tenn. Code Ann. § 39-13-203(g)).

Black sought to relitigate his intellectual disability claim through a motion under that 2021 amendment. *Black v. State*, No. M2022-00423-CCA-R3-PD, 2023 WL 3843397, at *3 (Tenn. Crim. App. June 6, 2023). But he had already litigated intellectual disability. Twice. So the trial court summarily dismissed that motion as statutorily barred by the prior adjudications of Black's intellectual disability claim. *Id*. at *4. The Tennessee Court of Criminal Appeals affirmed, and Black did not seek further review from the Tennessee Supreme Court or from this Court. *Id*. at *14.

**2. The state courts reject Black's competency claim.**

On September 20, 2019, the State filed a motion for the Tennessee Supreme Court to set Black's execution date. D.Ct.Doc.182-1. Black filed a response asserting incompetency under *Madison*. D.Ct.Doc.182-2. On March 3, 2025, the Tennessee Supreme Court set Black's execution for August 5, 2025, and remanded to the trial court for "competency proceedings . . . in accordance with the timelines and procedures established in *Van Tran*." *Black v. State*, No. M2000-00641-SC-DPE-CD (Tenn. Mar. 3, 2025) (order); *see also* D.Ct.Doc.182-9.

Black filed his competency petition and attached 25 exhibits, including May 2025 reports from psychologists Dr. Daniel Martell, Dr. Ruben Gur, and Dr. Lea Ann Preston Baecht. *Black*, 2025 WL 1927568, at *5-*7; *see also* D.Ct.Doc.182-10 at 30-70, 96-114. Only Dr. Baecht conducted "a mental health evaluation to assess [Black's] competency to be executed." D.Ct.Doc.182-10 at 102. She centered that evaluation on the relevant legal standard through detailed discussion of *Van Tran*, *Ford*, *Panetti*, and *Madison*. D.Ct.Doc.182-10 at 113. She correctly understood that Black's

competency turned on his ability to "reach a rational understanding of the reason for the execution." *Id.* Dr. Baecht concluded that Black "likely meets this low bar for competency to be executed" because he "understands that he is scheduled to be executed on August 5, 2025, and he recognizes that death is permanent." *Id.* He "also understands that the reason the [S]tate seeks to execute him is because it is believed that he murdered Lakeisha Clay." *Id.*

The state court denied relief under *Ford*, largely based on Dr. Baecht's assessment. D.Ct.Doc.182-15 at 20-36. The court concluded that it lacked jurisdiction to review Black's idiocy claim because the Tennessee Supreme Court's remand order "contemplated no such common law claim." D.Ct.Doc.182-15 at 35.

The Tennessee Supreme Court affirmed the trial court's decision. *Black*, 2025 WL 1927568, at *1. "In this *Van Tran* proceeding," the court said, "Mr. Black was required to make a threshold showing that a genuine, disputed issue exists regarding his present competence to be executed under the *Panetti* standard." *Id.* at *8. The Court held that "Mr. Black has failed to make a threshold showing that he is presently incompetent to be executed under this standard." *Id.* The Court emphasized that "Mr. Black's own expert, Dr. Baecht, found him likely competent to be executed under the *Panetti* standard." *Id.* Black's "other two experts," the Court said, "did not expressly address the *Panetti* standard in their assessments, and neither expert undermined Dr. Baecht's assessment so as to create a genuine, disputed issue regarding Mr. Black's present competency to be executed." *Id.*

The Tennessee Supreme Court also held that "to the extent Mr. Black seeks to relitigate intellectual disability or argue for a new categorical exclusion from execution, his argument regarding common law idiocy is procedurally barred." *Id.* at *7. The Court found that Black "had ample opportunities" to raise his idiocy argument "at an earlier stage" but "did not do so." *Id.* at *9.

Finally, the Tennessee Supreme Court declined Black's request "to reconsider the standard for competency to be executed, [because] he offer[ed] no compelling reason . . . to adopt a standard that differs from longstanding precedent." *Id.* A certiorari petition and related stay motion are pending on that decision, docketed as Nos. 25-5129 and 25A65.

**3. Black files a second federal habeas corpus petition.**

Weeks before his scheduled execution, on July 18, 2025, Black filed a second habeas corpus petition in the district court, raising his idiocy claim. Pet.App.41a-120a. In an order filed July 29, 2025, the district court concluded that Black's new idiocy claim is not newly ripened. Pet.App.09a-40a. After exhaustively reviewing *Ford*, *Panetti*, and *Madison*, the district court seriously questioned whether Black's idiocy claim qualifies as a competency claim instead of an ineligibility claim, like intellectual disability or age. Pet.App.32a n.25, 34a n.27, 39a n.31. But either way, the court concluded, Black's idiocy claim is not a newly-ripened "*Ford*-based" competency claim. Pet.App.33a-40a.

The district court reasoned that "*Ford*-based" competency claims relate to the dual rationales that the execution offends morality *and* that the execution serves no

retributive purpose. Pet.App.26a. And "there simply is no room under *Madison* for treating *Ford*-based claims as protecting a separate and distinct category of persons (such as common law 'idiots')" because doing so "based merely and solely on his being a particular kind of person" ignores "whether his execution would serve no retributive purpose." Pet.App.27a. This would "sidestep the *Panetti* standard," and "a claim that sidesteps the *Panetti* standard is not a *Ford*-based claim." *Id.*

Given the retributive-purpose rationale, "*Ford*-based" competency claims protect "only those defendants that cannot reach a rational understanding for their executions." *Id.* And Black's claim is not a "*Ford*-based" competency claim because it does *not* concern whether he can "rationally understand the reasons for his death sentence." Pet.App.35a.

As for ripeness, the district court found no basis to excuse Black's failure to raise an idiocy claim in his first habeas petition. The claim is premised on Black "being a kind of person (an 'idiot') who by [Black's] own definition has personal characteristics that are present at birth or very early in life." Pet.App.35a-36a. In fact, it is "virtually impossible that the kinds of characteristics that make an offender an 'idiot' could somehow remain unrecognized until the offender is old enough to reach the federal habeas phase of a capital case." Pet.App.36a. So the district court transferred Black's petition to the Sixth Circuit for consideration as a second-or-successive petition

Upon transfer to the Sixth Circuit, Black challenged the district court's transfer order through a motion to remand. He also filed a motion for stay of

execution and a corrected second-or-successive authorization motion. By order filed August 1, 2025, the Sixth Circuit denied Black's motions and declined to authorize consideration of his second or successive petition. Pet.App.1a-8a. The court acknowledged that Black bases his idiocy claim on an argument "that he belongs to a class of individuals (those with 'idiocy') who could not be executed under common law." Pet.App.6a. But his argument "runs headlong into precedent, specifically the Supreme Court's holding in *Madison* that the *Panetti* Court set out *the* appropriate standard for competency." Pet.App.7a (cleaned up) (emphasis in original).

Instead, Black's claim "[a]t bottom" is an intellectual disability claim under *Atkins* "masquerading as a claim of incompetency" and "based on the same arguments advanced in his first habeas petition." *Id.* A reasserted intellectual disability claim is not new and "cannot be considered newly 'ripe' so as to render his latest § 2254 petition non-successive for § 2244(b) purposes." *Id.* For these reasons, the new petition is barred under 28 U.S.C. § 2244(b)(1). *Id.*

Addressing Black's alternative request for second-or-successive authorization, the Court determined that Black failed to make the requisite showing. Pet.App.8a. "To the extent that Black submits that he is ineligible for the death penalty under the *Ford* exception, his argument fails as a matter of law [because] Black's purportedly new evidence makes no showing that he does not have a rational understanding of the State's reasons for his execution." *Id.* To the extent that he attempts to relitigate his intellectual disability claim, his purported new evidence merits no further exploration "because his 'idiocy' claim is based on the same

operative facts offered on his first habeas petition in support of his intellectual disability claim." *Id.*

## REASONS FOR DENYING THE WRIT

This Court grants a writ of certiorari "only for compelling reasons." Sup. Ct. R. 10. But Black's petition tees up no "compelling reason[]"—from Rule 10 or otherwise—to justify this Court's review. The petition does not suggest that the decision below "conflict[s] with the decision of a United States court of appeals on the same important matter" or "conflicts with a decision by a state court of last resort." Sup. Ct. R. 10(a). Indeed, no court has heard and resolved the unique idiocy claim that Black presents at this late hour. Also, the petition does not claim that the court below "departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court." *Id.*

Instead, the petition presses a novel and unprecedented common-law idiocy claim, and it declares that the decision below "decided an important question of federal law that has not been, but should be, settled by this Court." Pet. at 12. But the Sixth Circuit did no such thing. The lower court unsurprisingly concluded that a previously-rejected intellectual disability claim repackaged into a second habeas corpus petition as a common-law idiocy claim must be dismissed under 28 U.S.C. § 2244(b)(1). And even if the idiocy claim were more appropriately characterized as new, it is not newly-ripened and cannot secure second-or-successive authorization under 28 U.S.C. § 2244(b)(2). There is no reason to grant certiorari or stay the execution.

## I. Black's Idiocy Claim Is Properly Understood as an Intellectual Disability Claim and Is Procedurally Barred.

The Sixth Circuit correctly held that Black's idiocy claim "at bottom" is a reasserted intellectual disability argument under *Atkins* that should be dismissed under 28 U.S.C. § 2244(b)(1). Black lacks a procedural pathway to litigate intellectual disability for the umpteenth time. And he certainly cannot create one by affixing the label "competency" onto his challenge and presenting it as a newly-ripened *Ford*-based competency claim (which his own proof does not support).

Black's certiorari petition bears out in stark terms how his request for relief is based on intellectual disability. He starts by defining "idiots" as those who "exhibited deficits in intellectual functioning from early in life, if not from birth." Pet. at 5. And he admits that "low intellectual functioning is at the core of 'idiocy.'" *Id*. at 6. In his view, "key indicators of 'idiocy' included unsound memory, brain malformations, and the inability to manage one's own affairs." *Id*. at 8. Still, idiocy "at common law was a condition defined by low intellectual functioning." *Id*.

From this, Black argues that he satisfies the common-law standard for idiocy because he "is intellectually disabled." *Id*. at 8. Stated differently, he has shown "significant intellectual limitations that were a historical analogue to 'idiocy.'" *Id*. While he presents *additional* bases to support his idiocy argument—brain malformations, dementia/ profound memory loss, and an inability to manage his own affairs—it is his purported intellectual disability manifesting early in his life that marks when he first supposedly met the common-law standard for idiocy. Pet. at 8-10.

This Court has already exempted the intellectually disabled from execution in *Atkins* by reference to clinical definitions of that class as those with "subaverage intellectual functioning [and] significant limitations in adaptive skills . . . that became manifest before age 18." 536 U.S. at 318; *see also* Tenn. Code Ann. § 39-13-203(a) (using this same definition of intellectual disability). That is, intellectual disability claims rest on a person's permanent cognitive state. *Hill v. Shoop*, 11 F.4th 373, 386 (6th Cir. 2021) ("*Atkins* supports the conclusion that intellectual disability is not a transient condition."); *Heller v. Doe*, 509 U.S. 312, 323 (1993) (noting, in a different context, that intellectual disability "is a permanent, relatively static condition").

Simply put, Black has repeatedly tried and failed to prove his intellectual disability under *Atkins*. He litigated intellectual disability in state court. And he lost. *Black*, 2005 WL 2662577 at *1. Then, in his first habeas petition, he proved neither subaverage intellectual functioning nor significant limitations in adaptive skills manifesting before the age 18 *under de novo review*. *Black*, 664 F.3d at 743-50; *Black*, 2013 WL 230664, at *6-*19. For over twenty years, Black has trotted out his intellectual disability claim in state and federal courts. It has failed consistently at every level. On the eve of his execution, he tries once again, in a new habeas corpus petition raising an old claim, while relying on intellectual disability principles to prove it. Pet.App.113a-116a.

This is not the first instance in which a capital petitioner has asked the Court shortly before an execution to intervene and consider an intellectual disability claim

via a second or successive petition. This Court denied those requests. *See Bowles v. Inch*, 140 S. Ct. 26 (2019); *In re Hill*, 574 U.S. 1143 (2015). And it should deny Black's request here. The Sixth Circuit rightly rejected Black's attempt and dismissed the claim as barred by 28 U.S.C. § 2244(b)(1).

## II. Even If Black's Idiocy Claim Is Not an Intellectual Disability Claim, It Is Not Newly-Ripened and Requires Second-or-Successive Authorization.

Assuming arguendo that Black's idiocy claim is not an intellectual disability argument, it is not newly-ripened, as a true *Ford* claim would be under *Panetti*. Black asserts no lack of rational understanding under *Ford*. Instead, his purported "competency" claim is grounded in a condition that, by Black's own admission, presented early in his life and is permanent in nature. And the claim relies on facts long in existence, indeed the very same evidence on which Black based his intellectual disability claim in the first petition. The claim did not ripen once execution was imminent, so it requires second-or-successive authorization under 28 U.S.C. § 2244. And Black has no basis for satisfying 28 U.S.C. § 2244(b)(2)'s requirements or for challenging the Sixth Circuit's denial of authorization, *see id.* § 2244(b)(3)(E).

Although Black characterizes his idiocy claim as a *Ford*-based competency claim, the categorical bar he seeks finds no support in *Ford* or its progeny. *Ford* decided only "that the Eighth Amendment's ban on cruel and unusual punishments precludes executing a prisoner who has 'lost his sanity' *after sentencing*." *Madison*, 586 U.S. at 268 (cleaned up) (emphasis added). The "sole question" under *Ford* is

whether the defendant has a rational understanding of why the State seeks his execution. *Madison*, 586 U.S. at 275, 283.

Black cannot point to a single decision treating his proposed idiocy rule as an issue of competency—no district court, no Court of Appeals, and certainly no Supreme Court decision. That is unsurprising. As the district court rightly concluded, this Court resolved any doubt that competency protections focus on dual rationales, (1) the morality of execution, *and* (2) the lack of a retributive purpose in it. Pet.App.22a-28a. Black's idiocy argument relies solely on the former and speaks in no way to the latter. It is not a newly-ripened "*Ford*-based" competency claim.

That the claim is not newly ripened is bolstered by Black's acknowledged early onset of idiocy status. Pet. at 8-10. Under Black's own definition, "[i]diocy was understood as 'a defect of understanding from the moment of birth,' in contrast to lunacy, which was 'a partial derangement of intellectual faculties, the senses returning at uncertain intervals.'" *Penry v. Lynaugh*, 492 U.S. 302, 331 (1989) (quoting 1 W. Hawkins, Plea of the Crown, 2 n.2 (7th ed. 1795)); Pet.App.95a-97a, 103a. "There was no one definition of idiocy at common law, but the term 'idiot' was generally used to describe persons who had a total lack of reason or understanding, or an inability to distinguish between good and evil." *Id*. at 331-32. "[T]he old common law notion of 'idiocy'" placed an "emphasis on a permanent, congenital mental deficiency." *Id*. at 332.

Due to the early onset and permanence of idiocy, any purported claim for sentencing relief based on idiocy could and should be raised much sooner than when

an execution date is set. Even if an idiocy claim were somehow distinct from an intellectual disability claim, the early onset of these statuses means that each claim "ripens" well before a first habeas corpus petition is filed. *See Bowles v. Secretary, Florida Dept. of Corr.*, 935 F.3d 1176, 1182 (11th Cir. 2019) ("If Bowles has an intellectual disability now, then he had an intellectual disability when he filed his first federal habeas petition."). Just as an impending execution date does not ripen an intellectual disability claim, it likewise fails to ripen an idiocy-based Eighth Amendment claim.

Finally, even if some hypothetical idiocy claim (which no court has never recognized) could be newly ripened in some circumstances (which no court has ever held), Black's specific claim is not newly ripened. Black relies almost exclusively on facts in existence at the time of the first habeas corpus petition to support his request for relief. Black first relies on various intelligence quotient (I.Q.) tests conducted over a span of many years. Pet.App.65a-67a, 114a. He relied on those same test results (while ignoring others) to support his intellectual disability claim in prior federal court proceedings. *Black*, 866 F.3d at 738. Black also relies on facts about his childhood, his poor performance in school, and circumstances surrounding his overarching assertion that he "has always been incapable of managing his own affairs." Pet.App.67a-71a, 114a-116a. Again, he offered this same evidence previously when litigating his intellectual disability claim. *Black*, 2013 WL 230664, at *15-*19.

Black attempts to avoid the early onset of his supposed idiocy status by relying on his more recent expert opinion reports and by also arguing that persons can qualify for idiocy later in life. But in so doing, he ignores his own argument throughout that *he* has qualified for idiocy status since very early in life. Pet.App.67a-72a, 75a-77a, 114a-115a. That is his claim, based upon old facts and despite any newly-developed, cumulative evidence. And that claim is not newly ripened.

Black could have raised an idiocy claim in his first habeas corpus petition when he fully litigated an intellectual disability claim under the same proof. He elected not to so. At this late juncture, his idiocy claim is not newly ripened—meaning his new petition is barred as second or successive under 28 U.S.C. § 2244(b).

## III. Black's Idiocy Claim Conflicts with Settled Precedent.

Beyond the procedural limitations stemming from the belated presentation on federal habeas corpus review, Black's idiocy claim still presents no unsettled question of federal law that calls for this Court's resolution in this abbreviated federal habeas corpus appeal. This is not a petition teeing up a constitutional issue that has divided lower courts. Far from it. No court has resolved the idiocy theory presented. And Black's novel theory departs from this Court's well-established competency test, which fully accounts for the common-law's approach to idiocy.

**1.** Black's idiocy claim flouts this Court's established precedent. In *Panetti*, this Court carefully defined the category of incompetent persons the Eighth Amendment exempts from execution. "The Eighth Amendment," *Panetti* held, "prohibits the execution of a prisoner whose mental illness prevents him from

'rational[ly] understanding' why the State seeks to impose that punishment." *Madison*, 586 U.S. at 267 (quoting *Panetti*, 551 U. S. at 959). In *Madison*, the Court clarified that this "standard has no interest in establishing any precise cause: Psychosis or dementia, delusions or overall cognitive decline are all the same under *Panetti*, so long as they produce the requisite lack of comprehension." *Id*. at 278. "The critical question," the Court said, "is whether a prisoner's mental state is so distorted ... that he lacks a rational understanding of the State's rationale for his execution." *Id*. at 269 (cleaned up). And *Madison* reiterated that *Ford* claims only concern the ban on "executing a prisoner who has lost his sanity after sentencing." *Id*. at 268 (cleaned up).

Black openly rejects that test. Pet.App.93a-116a. But that is nothing more than a request for this Court to overhaul the well-established *Panetti* test. Black cannot satisfy the governing standard, so he wants this Court to overrule its precedent to craft a new test. That is an extraordinary request that the Court should not entertain in a procedurally barred second or successive habeas petition.

**2.** Black suggests that this Court's *Panetti* test overlooks common-law protections for a much broader class of persons generally unable to manage their affairs. Pet. at 1. But far from ignoring the common law, *Panetti* and its lineage rested on it.

*Ford* lays bare *Panetti's* common-law roots. In "keep[ing] faith with our common-law heritage," *Ford* held that the Eighth Amendment prohibits executing the insane. 477 U.S. at 401. To get there, the Court acknowledged that the common

law sets the floor for Eighth Amendment protections. *Id.* at 406 ("The Eighth Amendment's proscriptions are not limited to those practices condemned by the common law."). Describing that floor, the Court specifically mentioned "[i]diots." *Id.* But given the variable and imprecise descriptions of idiocy, the Court rested its analysis on common-law principles. *Id.* at 406-10. Chief among them, the Court said, is the diminished "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." *Id.* at 409. The Court also cited "the natural abhorrence civilized societies feel at killing one who has no capacity to come to grips with his own conscience or deity." *Id.* And lastly, the Court acknowledged the "intuition that such an execution simply offends humanity." *Id.*

*Ford*'s careful integration of common-law principles and protections is even more evident from the Court's conclusion with "a principle that has long resided there." *Id.* at 417. That is, "[i]t 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.* Justice Powell's concurring opinion in *Ford* restated the same basic principle: "[T]he Eighth Amendment forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are to suffer it." *Id.* at 422-23 (opinion concurring in part and concurring in judgment).

*Panetti* "clarified the scope of that category . . . by focusing on whether a prisoner can 'reach a rational understanding of the reason for [his] execution.'"

*Madison*, 586 U.S. at 268 (quoting *Panetti*, 551 U. S. at 958). And the Court reaffirmed that scope in 2019, stating that "[t]he critical question is whether a prisoner's mental state is so distorted . . . that he lacks a rational understanding of the State's rationale for his execution." *Id*. at 269 (cleaned up). "But *Ford* had explored what lay behind the Eighth Amendment's prohibition," including among other things, the common-law protection of idiots. *Id*. at 269; *Ford*, 477 U.S. at 406 (recognizing and accounting for "idiots").

The protection under *Ford* and its progeny fully encompasses that under the common law. Black's idiocy claim is no less than a foundational attack on three decades of this Court's precedent that already fully accounts for the common law in construing the Eighth Amendment. Even if procedural barriers did not impact Black's ability to pursue his belated idiocy claim on federal habeas corpus review, the claim itself is devoid of legal footing, which is reason enough to deny cert.

## IV. Black's Tactical Delay Is Reason Enough to Deny a Stay.

"[A] stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill v. McDonough*, 547 U. S. 573, 584 (2006). An applicant for a stay of execution must satisfy all the traditional stay factors and therefore must show that there is "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari," that there is "a fair prospect that a majority of the Court will vote to reverse the judgment below," and, in a close case, that the equities

favor the granting of relief. *Hollingsworth v. Perry*, 558 U. S. 183, 190 (2010) (per curiam). For the reasons stated above, there is no reason to grant certiorari or reverse the judgment below.

Even setting aside the question of certworthiness, Black's tactical delay in waiting only four days before his execution to present this Court with an idiocy claim that he could have pursued decades ago is reason enough to deny a stay. It is well known that "capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of a sentence of death." *Rhines v. Weber*, 544 U.S. 269, 277-78 (2005). "[I]t is the same strategy adopted by many death-row inmates with an impending execution: bring last-minute claims that will delay the execution, no matter how groundless." *Price v. Dunn*, 587 U.S. 999, 1008 (2019) (Thomas, J., concurring in denial of certiorari).

But given the significant interests at stake, "[l]ast-minute stays should be the extreme exception, not the norm." *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) (cleaned up). The State and victims have a "powerful and legitimate interest in punishing the guilty." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (cleaned up). They also "have an important interest in the timely enforcement of a [death] sentence." *Bucklew*, 587 U.S. at 149 (cleaned up). In Tennessee, victims have the constitutional right to "a prompt and final conclusion of the case after the conviction or sentence." Tenn. Const. art I, § 35. Once post-conviction proceedings "have run their course ... finality acquires an added moral dimension." *Calderon*, 523 U.S. at 556. "Only with an assurance of real finality can the State execute its moral judgment

in a case" and "the victims of crime move forward knowing the moral judgment will be carried out." *Id.* "To unsettle these expectations is to inflict a profound injury." *Id.*

To avoid such injury, "the last-minute nature of an application that could have been brought earlier, or an applicant's attempt at manipulation, may be grounds for denial of a stay." *Bucklew*, 587 U.S. at 150 (cleaned up). Indeed, this Court applies "a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). Black "had ample opportunities to raise" his idiocy claim "at an earlier stage"—given that it is fundamentally an intellectual disability argument, as the Sixth Circuit properly concluded. Pet.App.6a. Yet, Black waited *thirty-six years* to present his new-fangled theory. "The proper response to this maneuvering is to deny [Black's] meritless request[] expeditiously." *Price*, 587 U.S. at 1008. Black's tactical delay is reason enough to deny a stay.

## CONCLUSION

The application for stay of execution and petition for writ of certiorari should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a true and exact copy of the foregoing document was emailed to petitioner's counsel, Kelley J. Henry, at kelley_henry@fd.org, on August 3, 2025, and a paper copy will be sent by first class mail to Ms. Henry, at 810 Broadway Ste 200, Nashville, Tennessee 37203-3861, on August 4, 2025.

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