

**In The  
Supreme Court of the United States**

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JOHN FERGUSON, PETITIONER

*v.*

MICHAEL D. CREWS, SECRETARY,  
FLORIDA DEPARTMENT OF CORRECTIONS.

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

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**MOTION FOR LEAVE TO FILE BRIEF AND  
BRIEF FOR THE NATIONAL ALLIANCE ON  
MENTAL ILLNESS, THE NATIONAL ALLIANCE  
ON MENTAL ILLNESS—FLORIDA CHAPTER,  
THE FLORIDA PSYCHOLOGICAL  
ASSOCIATION, AND THE FLORIDA  
PSYCHIATRIC SOCIETY AS AMICI CURIAE  
IN SUPPORT OF PETITIONER**

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RANDALL J. FONS  
MORRISON & FOERSTER LLP  
5200 Republic Plaza  
370 Seventeenth St.  
Denver, CO 80202

MARK DAVID MCPHERSON  
MORRISON & FOERSTER LLP  
1290 Ave. of the Americas  
New York, NY 10104

BRIAN R. MATSUI  
*Counsel of Record*  
FABIEN M. THAYAMBALLI  
MORRISON & FOERSTER LLP  
2000 Pennsylvania Ave., NW  
Washington, D.C. 20006  
(202) 887-8784  
BMatsui@mofocom

JULY 30, 2013

**MOTION OF THE NATIONAL ALLIANCE  
ON MENTAL ILLNESS, THE NATIONAL  
ALLIANCE ON MENTAL ILLNESS—FLORIDA  
CHAPTER, THE FLORIDA PSYCHOLOGICAL  
ASSOCIATION, AND THE FLORIDA  
PSYCHIATRIC SOCIETY TO FILE A BRIEF AS  
AMICI CURIAE IN SUPPORT OF PETITIONER.**

Pursuant to Rule 37.2(b) of the Rules of the Supreme Court of the United States, the National Alliance on Mental Illness, National Alliance on Mental Illness—Florida Chapter, Florida Psychological Association, and Florida Psychiatric Society respectfully move this Court for leave to file the accompanying brief as amici curiae in support of petitioner John Ferguson.

Pursuant to Rule 37.2(a), Counsel of Record for all parties were notified of amici's intention to file an amicus curiae brief as least 10 days prior to the due date for the amicus curiae brief. A letter from counsel for petitioner John Ferguson consenting to the filing of this brief has been filed with the Clerk of this Court in accordance with Rule 37.2(a). Respondent, the Secretary of the Florida Department of Corrections, has withheld consent.

This case involves a significant issue of constitutional and statutory law: whether the Eleventh Circuit erroneously denied habeas relief because the Florida Supreme Court applied a standard for competency to be executed that is contrary to this Court's decision in *Panetti v. Quarterman*, 551 U.S. 930 (2007). Amici's members routinely participate in competency

hearings and therefore have a strong interest in the appropriate formulation and application of competency standards. Moreover, amici's mission is to improve the lives of those with mental illness and to ensure that scientific knowledge concerning their condition is disseminated and put to practical use. Here, the Eleventh Circuit approved a competency standard that violates the Eighth Amendment and is premised on an unscientific understanding of mental illness. Unless this Court grants the petition and reverses the decision below, Florida will continue to execute mentally ill individuals who do not understand the reason they are being put to death.

Accordingly, amici respectfully request leave to file the accompanying brief.

Respectfully submitted,

RANDALL J. FONS  
MORRISON & FOERSTER LLP  
5200 Republic Plaza  
370 Seventeenth St.  
Denver, CO 80202

MARK DAVID MCPHERSON  
MORRISON & FOERSTER LLP  
1290 Ave. of the Americas  
New York, NY 10104

BRIAN R. MATSUI  
*Counsel of Record*  
FABIEN M. THAYAMBALLI  
MORRISON & FOERSTER LLP  
2000 Pennsylvania Ave., NW  
Washington, D.C. 20006  
(202) 887-8784  
BMatsui@mofa.com

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**BRIEF FOR THE NATIONAL ALLIANCE  
ON MENTAL ILLNESS, THE NATIONAL  
ALLIANCE ON MENTAL ILLNESS—FLORIDA  
CHAPTER, THE FLORIDA PSYCHOLOGICAL  
ASSOCIATION, AND THE FLORIDA  
PSYCHIATRIC SOCIETY AS AMICI CURIAE  
IN SUPPORT OF PETITIONER**

The National Alliance on Mental Illness, the National Alliance on Mental Illness—Florida Chapter, the Florida Psychological Association, and the Florida Psychiatric Society respectfully submit this brief as amici curiae in support of petitioner.<sup>1</sup>

**INTEREST OF AMICI CURIAE**

The National Alliance on Mental Illness (“NAMI”) is the largest grassroots mental health organization in the United States. Its mission is to build better lives for the millions of Americans who live with mental illness. To this end, NAMI advocates

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<sup>1</sup> Pursuant to Supreme Court Rule 37.2(a), counsel of record for all parties were notified of amici curiae’s intention to file this brief at least 10 days before the due date of this brief. A letter from counsel for petitioner John Ferguson consenting to the filing of this brief has been filed with the Clerk of this Court pursuant to Supreme Court Rule 37.2(a). Respondent, the Secretary of the Florida Department of Corrections, has withheld consent. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

for access to services, treatment, and research, raises awareness about mental illness, and provides free education, advocacy, and support group programs.

The National Alliance on Mental Illness—Florida Chapter is the state-level organization in Florida affiliated with NAMI.

The Florida Psychological Association is a state affiliate of the American Psychological Association, which is the world's largest association of psychologists. A scientific and professional organization, the Florida Psychological Association is dedicated to the creation, communication, and application of psychological knowledge for the benefit of society.

The Florida Psychiatric Society is the Florida branch of the American Psychiatric Association—a medical specialty society and the world's largest psychiatric organization. Its member physicians work together to ensure humane care and effective treatment for all persons with mental disorders.

Amici have expertise in the articulation and application of legal competency standards. At issue in this petition is the vitality of this Court's competency standard articulated in *Panetti v. Quarterman*, 551 U.S. 930 (2007), in the face of a conflicting, less protective state law standard. NAMI filed an amicus brief in *Panetti* and has participated in the American Bar Association's Task Force on Mental Disability and the Death Penalty and adopted the Task Force's recommendation against the execution of individuals who are unable to understand their punishment or its



purpose. In addition, amici's members are frequently involved in competency hearings.

As organizations concerned with mental health and the proper use of scientific knowledge, amici submit this brief in order to provide a scientific understanding of psychotic disorders, such as petitioner John Ferguson's schizophrenia, and to bring attention to the faulty reasoning employed by the Florida courts in determining that petitioner is competent to be executed.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

The State of Florida deems petitioner John Ferguson competent to be executed under a competency standard that this Court has held to be incompatible with the Eighth Amendment. According to the Florida Supreme Court's decision in this matter, prisoners may be executed so long as they are "*aware* of the punishment they are about to receive and the reason they are to receive it." *Ferguson v. State*, 112 So. 3d 1154, 1157 (Fla. 2012) (emphasis added). To be sure, petitioner can regurgitate the State's avowed rationale for executing him. But that says nothing about his *actual competency* to be executed, based on this Court's standard for judging that competency. This Court in *Panetti* drew a distinction between a prisoner's mere "awareness of the State's rationale for an execution" and that prisoner's "rational understanding of it." *Panetti*, 551 U.S. at 959. Here, as a result of his paranoid schizophrenia, petitioner

suffers from the delusional belief that he is actually being executed because he is the anointed Prince of God. Because petitioner does not “rationally understand” the reason for his impending execution, *Panetti*’s standard of competency forbids his execution.

The Florida Supreme Court dismissed *Panetti* as a narrow decision that left Florida jurisprudence unaffected, and the Eleventh Circuit did not quarrel with that result. In so doing, both courts failed to appreciate the scientific underpinnings of this Court’s holding. The distinction this Court drew in *Panetti* has strong foundations in the literature concerning psychotic disorders such as that suffered by petitioner. A prisoner with such a disorder can be highly intelligent and rational in certain respects yet entirely fail to grasp the true reason for his execution. Without this “rational understanding,” his execution is senseless and unconstitutional. *See id.* at 957-59.

Florida’s competency standard fails to protect against such senseless and unconstitutional executions. It allows the execution of prisoners who do not truly understand why they are being put to death. Indeed, when Florida first articulated its unconstitutional standard, it permitted the execution of a man who believed he was being killed because he was Jesus. *See Provenzano v. State*, 760 So. 2d 137, 140-41 (Fla. 2000) (Anstead, J., dissenting). Yet the Eleventh Circuit determined that Florida’s standard is not “contrary to” clearly established federal law, *see* 28 U.S.C. § 2254(d)(1), and denied petitioner’s

request for federal habeas relief. *See* Pet. App. 50a, 63a. Unless this Court grants the petition for a writ of certiorari, Florida will continue to take lives in violation of the Constitution.

Even putting aside Florida's unconstitutional legal standard, Florida courts assessing competency repeatedly engage in factual reasoning that is wholly unsupported by the scientific understanding of psychotic disorders. Review is necessary to ensure that all courts make accurate competency determinations, finding competent only those prisoners who understand the link between their crimes and their punishment.

## ARGUMENT

### **A. Scientific Research Demonstrates That Mental Illness Can Impair A Prisoner's Capacity To Understand The Reason For His Execution While Leaving Other Cognitive Functions Intact**

Individuals suffering from psychotic disorders are not necessarily mentally impaired in all respects. Their illness may distort some beliefs but not others, and they may display a great deal of intelligence. For this reason, one cannot infer that a prisoner rationally understands the reason for his execution from the mere fact that he can recite what he has been told. Mental illness can produce a severely delusional worldview that leads the prisoner to believe that the State's announced rationale is a sham, and

that he is being executed for entirely different reasons.

Petitioner's mental condition exemplifies this aspect of psychotic disorders. Petitioner has been diagnosed with paranoid schizophrenia. *See Ferguson v. State*, 112 So. 3d at 1156-57. Schizophrenia and schizoaffective disorder are well known examples of psychotic disorders. *See* American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 297 (4th ed. text rev. 2000) ("DSM-IV-TR"); American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 87, 99, 105 (5th ed. 2013) ("DSM-5").

The thought processes of individuals suffering from paranoid schizophrenia "are strange and do not lead to conclusions based on reality or universal logic." Robert Cancro & Heinz E. Lehmann, "Schizophrenia: Clinical Features," *Kaplan & Sadock's Comprehensive Textbook of Psychiatry* 1189 (7th ed. 2000). Nevertheless, "[s]chizophrenic patients may be highly intelligent, certainly not confused, and . . . painstaking in their abstractions and deductions." *Id.*

Indeed, "[t]he essential feature of the Paranoid Type of Schizophrenia is the presence of prominent delusions or auditory hallucinations in the context of a relative *preservation* of cognitive functioning and affect." DSM-IV-TR 313 (emphasis added). Despite

their ostensibly normal behavior in many respects,<sup>2</sup> individuals with paranoid schizophrenia frequently hold delusional beliefs that impede their understanding of certain experiences. *See id.*

The story of John Forbes Nash helps to illuminate the distinction between impaired cognitive functioning and impaired rational thinking. Nash developed brilliant mathematical concepts and won the Nobel Prize for his pioneering work on game theory. At the same time, he believed that he was being recruited by aliens from outer space to save the world. As he later explained, “the ideas I had about supernatural beings came to me the same way that my mathematical ideas did. So I took them seriously.” E. F. Torrey, *Surviving Schizophrenia: A Manual for Families, Patients, and Providers* 25-26 (5th ed. 2006).

The delusions of persons suffering from schizophrenia are often classified as “persecutory” or “grandiose.” DSM-IV-TR 313; *see also* DSM-5 87. The central theme of a persecutory delusion is that the individual is the victim of a conspiracy to thwart his or her goals. *See* DSM-IV-TR 325. The central theme of a grandiose delusion is “the conviction of having some great (but unrecognized) talent or insight of having made some important discovery.” *Id.*

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<sup>2</sup> To be sure, some individuals with schizophrenia have impaired cognitive functions, particularly with respect to concentration and interactions with others. Many, however, do not.

Grandiose delusions may also “have a religious content (e.g., the person believes that he or she has a special message from a deity).” *Id.* Persecutory and grandiose delusions often occur together, as when persons experiencing persecutory delusions reason that “they must be very important if so much effort is spent on their persecution.” Cancro & Lehmann, *supra*, at 1187. Thus, petitioner’s sincere belief that he is the “Prince of God,” *Ferguson v. State*, 112 So. 3d at 1157, is an archetypal combination of persecutory and grandiose delusions.

Individuals with schizophrenia “think and reason . . . according to their own intricate private rules of logic.” Cancro & Lehmann, *supra*, at 1189. Consequently, they remain unshakably certain of their delusional beliefs even in the face of contrary evidence. *See* DSM-5 87. Psychologist Milton Rokeach illustrates this point perfectly in his groundbreaking study, *The Three Christs of Ypsilanti*. The study followed three schizophrenic patients in a Michigan hospital, each of whom believed that he was Jesus Christ. They continued to hold this belief even though they were unable to perform miracles and were aware that the others also claimed to be Jesus. One of the patients concluded that the other two could not possibly be Jesus because they were patients in a mental hospital. *See* Milton Rokeach, *The Three Christs of Ypsilanti* 50-74 (1964).

Persons suffering from schizophrenia have a remarkable capacity to interpret facts in a way that coheres with their delusions. They may understand

certain aspects of the surrounding world yet arrive at interpretations that are completely alien to those of the rest of society.<sup>3</sup> Thus, a prisoner with schizophrenia may be aware of the State's announcement that he is to be punished for murder, but he may not rationally understand that this is the true reason for his punishment. Instead, he may attribute his death sentence to a nefarious conspiracy or to his divine mission.

This scientific insight guided the Court in *Panetti*, when it rejected a competency standard virtually identical to that applied by the Florida Supreme Court in this case. In *Panetti*, this Court held that a prisoner is not competent to be executed merely because "he can identify the stated reason for his execution." 551 U.S. at 959. "A prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it." *Id.* Courts making competency determinations must

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<sup>3</sup> Many persons with schizophrenia have "spotty" insight into their own condition a well. Xavier F. Amador, Ph.D. & Andrew A. Shiva, *Insight into Schizophrenia: Anosognosia, Competency, and Civil Liberties*, 11 *Geo. Mason U. C.R. L.J.* 25, 27 (2000-2001). Schizophrenia patients may be aware of certain symptoms and aspects of their illness but not others. *See id.* at 27, 29. For example, in one study of awareness deficits associated with schizophrenia, a twenty-six year old patient "displayed insight into his thought disorder." *Id.* at 29. At the same time, he "had poor insight about the *reason* for his hospitalization" and believed that he was in a psychiatric ward because "that's all they have available now" given "the heavy drug and alcohol uses that is going on." *Id.* (emphasis added).

therefore consider whether the prisoner “suffers from a severe, documented mental illness that is the source of gross delusions preventing him from comprehending the meaning and purpose of the punishment to which he has been sentenced.” *Id.* at 960.

**B. The Florida Supreme Court Applied A Competency Standard That Is Contrary To This Court’s Decision In *Panetti***

Florida’s competency standard cannot be reconciled with *Panetti*’s holding and with the scientific insight that guided it. Nevertheless, the Eleventh Circuit found that this standard is not contrary to clearly established federal law. Pet. App. 50a. Review is therefore necessary not only to vindicate petitioner’s rights, but also to prevent further illegal executions in the nation’s fourth most populous State.

The Florida Supreme Court’s decision and the decision of the Eleventh Circuit denying habeas relief disregard *Panetti* in its entirety. In petitioner’s case, the Florida court applied the standard it had articulated in *Provenzano*, a pre-*Panetti* decision: “[T]he Eighth Amendment only requires that defendants be *aware* of the punishment they are about to suffer and why they are to suffer it.” *Ferguson v. State*, 112 So. 3d at 1156 (emphasis added) (quoting *Provenzano v. State*, 760 So. 2d at 140).

*Provenzano*’s acceptance of a prisoner’s mere *awareness* of—as opposed to a rational understanding of—the State’s rationale for its punishment cannot be squared with this Court’s decision in *Panetti*, as the



facts of *Provenzano* illustrate. Thomas Provenzano was executed even though he had a severely delusional understanding of the reason for his execution. The Florida circuit court made “finding[s] based upon clear and convincing evidence” to this effect:

Thomas Provenzano has, for over twenty years on occasion, believed that he is Jesus Christ. In conjunction with this delusional belief, Provenzano believes that he is not going to be executed because he murdered another human being, but that he really will be executed because he is Jesus Christ.

*Provenzano*, 760 So. 2d at 140-41, 143 (Amstead, J., dissenting) (quoting circuit court order).

The circuit court nevertheless held that Provenzano’s understanding of the “process” by which he was sentenced to death rendered him competent. *Id.* at 141 (Amstead, J., dissenting) (quoting circuit court order). In its view, Provenzano was competent because he understood “the details of his trial, his conviction, and the jury’s recommendation by a vote of seven to five that he be sentenced to death[,] . . . the fact that in accordance with the jury’s recommendation, he was sentenced to death for the murder of Bailiff Arnie Wilkerson, and that he will die once he is executed.” *Id.* at 140 (quoting circuit court order). The Florida Supreme Court affirmed. *See id.*

*Provenzano* therefore flatly contradicts *Panetti*. If a prisoner sincerely believes that he is being executed because he is Jesus Christ, rather than

because he murdered another human being, he is not competent to be executed despite the fact the he may understand the “process” by which he is going to be executed. *See Panetti*, 551 U.S. at 959-60.

No amount of deference under AEDPA can obscure this conclusion. The Eleventh Circuit emphasized that federal habeas courts must tolerate “some use of imprecise language” by state courts. Pet. App. 47a. But imprecision is not the Florida Supreme Court’s sin. To the contrary, it applied precisely the wrong standard for competency to be executed. AEDPA does not permit the application of a competency standard that is “patently incorrect in the wake of *Panetti*.” Pet. App. 64a (Wilson, J., concurring in the result). Unless this Court explicitly overrules the *Provenzano* competency standard, Florida will continue to execute prisoners in violation of the Constitution.

### **C. The Florida Courts’ Reasoning Is Inconsistent With The Scientific Understanding Of Psychotic Disorders**

The decision of the Florida courts here is troubling for an additional reason. The state circuit court and supreme court opinions reveal a fundamental misunderstanding of psychotic disorders that has ramifications beyond petitioner’s individual case.

The state circuit court believed that a prisoner could be executed so long as he knows “the details of his trial; conviction; jury recommendation of death; whose murder he was sentenced to die for; and that

he will physically die once he is executed.” *State v. Ferguson*, No. 04-2012-CA-507, Order at 4-5 (Fla. 8th Cir. Ct. Oct. 12, 2012). Similarly, the Florida Supreme Court deemed it significant that petitioner “is aware that he has never before had a death warrant signed on his behalf and that he would be the first person to receive Florida’s current protocol of medications for lethal injection.” *Ferguson v. State*, 112 So. 3d at 1157.

To be sure, these facts may demonstrate that petitioner is aware of various aspects of the surrounding world. In a person free of mental illness, this might permit the inference that he understands the reason for his execution. But this inference is unwarranted when the prisoner suffers from a psychotic disorder such as schizophrenia, as petitioner does. Individuals with schizophrenia are often “intelligent” and far from “confused.” Cancro & Lehmann, *supra*, at 1189. They may nevertheless harbor delusional beliefs regarding their persecution or divinity. *See* DSM-IV-TR 313, 325. These delusions may lead a death-row inmate to believe that the State is executing him for a reason other than his murders.

Unfortunately, there is little reason to believe that courts outside of Florida have a significantly better understanding of psychotic disorders. The distinction between “awareness” and “understanding” drawn in *Panetti* does little good if state courts continue to conflate the two and if they rely instead on an intuitive, unscientific conception of mental illness. Certiorari is therefore warranted not only to correct a

decision contrary to clearly established federal law, but also to reaffirm *Panetti* and to ensure its proper application in competency determinations.

**CONCLUSION**

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

RANDALL J. FONS  
MORRISON & FOERSTER LLP  
5200 Republic Plaza  
370 Seventeenth St.  
Denver, CO 80202

MARK DAVID MCPHERSON  
MORRISON & FOERSTER LLP  
1290 Ave. of the Americas  
New York, NY 10104

BRIAN R. MATSUI  
*Counsel of Record*  
FABIEN M. THAYAMBALLI  
MORRISON & FOERSTER LLP  
2000 Pennsylvania Ave., NW  
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