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EDITOR INTRODUCTION

The 2015 Law Journal for Social Justice Symposium, "Contemporary Discrimination" focused on current concerns regarding civil rights and civil liberty. Discussions ranged from the political legislative process, resistance in enforcement of civil rights judgments, and sexual orientation employment discrimination. Panelists included politicians, scholars from diverse backgrounds, practicing attorneys and community organizers.

Drawing on broader considerations, this issue features articles analyzing an array of concerns in the criminal, civil and international tribunals. The first article, *You Have Your Whole Life in Front of You…Behind Bars*, written by Rachel Forman, beings this issue by discussing a need to ban life without parole sentences for juvenile non-homicide offenders. Inalvis M. Zubiaur, in *Death Row: Mentally Impaired Inmates and the Appeal Process*, continues the focus on sentencing by engaging concerns regarding capital punishment. Next, in *Injection and the Right of Access*, Timothy F. Brown argues for increased access to lethal injection procedures to understand its constitutionality. Shifting consideration to the civil sphere, Victor D. Lopez & Eugene T. Maccarrone raise issues about privacy, due process, public policy and the basic fairness of traffic enforcement by camera, in *Traffic Enforcement by Camera*. Beginning the focus on international concerns, *Fictitious Labeling*, by Efe Ukala, discusses "recommendations that may help curb constitutional issues resulting from deportation." Brittany Fink, in *Increase Quota, Invite Opportunities, Improve Economy*, proposes amendments to the DREAM Act that extend the path to citizenship." Katharine Villalobos then focuses on the sociology of immigration in *The Crucible*, using historical examples to discuss the War on Terror. *Falling Through the Cracks* by Marissa N. Goldberg changes the focus to international law and unique considerations of women in the drug trade industry. Finally, *Seeking Truth in the Balkans* by Erin K. Lovall and June E. Vutrano concludes the issue by discussing the role of international law in seeking justice following the wars in the Balkans. Together these articles analyze issues that raise important questions about fairness and civil rights in the domestic and international contexts.

Special thanks to the entire staff of the Law Journal for Social Justice, who helped create this edition.

Kristyne Schaaf-Olson
2014-2015 Editor-in-Chief
The Law Journal for Social Justice

DEATH ROW: MENTALLY IMPAIRED INMATES AND THE APPEAL PROCESS

By Inalvis M. Zubiar*

Introduction

Capital punishment law in the United States has been and continues to be shaped by the decisions of the Supreme Court of the United States.[1] Without a doubt, capital punishment is one of the most controversial topics in our society.[2] As a result, the Supreme Court has had to rule on controversial issues relating to the death penalty, including whether juveniles and mentally impaired offenders should be sentenced to death and the manners in which the death penalty is carried out.[3]

The question of whether it is constitutional to execute an offender who is mentally impaired at the time of execution has reached the Supreme Court of the United States several times.[4] Most recently, in

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* Juris Doctor Degree, St. Thomas School of Law Miami Gardens, Florida May 2014. Bachelor's Degree, History Major, Florida International University, Miami, Florida, April 2010. The author would like to dedicate the article to all those persons who formed part of her law school experience and that encouraged her, supported her, and helped her growth during law school. Special thanks to Professor Jessica Fonseca-Nader for her constant support, patience, encouragement, and most importantly for believing in the author and always being ready to help no matter the time or the place. Finally, the author thanks her family for their unconditional love and support.

[1] LINDA E. CARTER & ELLEN KREITZBER, UNDERSTANDING CAPITAL PUNISHMENT LAW 2 (1st ed. 2004).

[2] *See* Lewis F. Powell Jr., *Capital Punishment*, 102 HARV. L. REV. 1035, 1035 (1989) (explaining how the Supreme Court established the death penalty as constitutional and that the majority of American citizens agree with the use of the death penalty sentence); *see also* CARTER & KREITZBER, *supra* note 1, at 7 (explaining that in 2003, 74% of Americans supported the death penalty while only 24% disagreed with it); Brad Snyder, *Disparate Impact on Death Row: M.L.B and the Indigent's Right to Counsel at Capital State Postconviction Proceedings*, 107 YALE L.J. 2211, 2211(1998) (stating that over the course of the past forty years, one perennial controversy surrounding the death penalty has been the fact that most defendants sentenced to death are poor).

[3] *See* CARTER & KREITZBER, *supra* note 1, at 2.

[4] *See* Penry v. Lynaugh, 492 U.S. 302, 340 (1989); Atkins v. Virginia, 536 U.S. 304 (2002); Peggy M. Tobolowsky, *Article: Atkins Aftermath: Identifying Mentally Retarded Offenders and Excluding Them From Execution*, 30 J. LEGIS. 77, 77 (2003). In 1989 the Supreme Court of the United States held that it was constitutional to execute a mentally impaired offender because there was no violation of the Eighth Amendment. *Penry*, 492 U.S. at 340. In the *Penry* case, five justices agreed it was not a violation of the Eight Amendment's cruel and unusual punishment prohibition to execute mentally impaired offenders. Tobolowsky, *supra.* In 2002, when several states decided that the execution of mentally impaired offenders was not proper, the Supreme Court reviewed the issue

Atkins v. Virginia, the Supreme Court held that the execution of mentally impaired offenders is a violation of the Eighth Amendment.[5] However, the decision requires state legislatures to define mental impairment, assign the burden of proof, and determine post-conviction review procedures.[6]

Although the *Atkins* decision provided relief to mentally impaired offenders, it has caused different interpretations by the states and confusion about the expectations of capital offenders awaiting execution.[7] During the aftermath of the decision, there have been several petitions asking the Supreme Court to intervene in the execution of mentally impaired offenders.[8] Moreover, other concerns involving mentally impaired offenders have emerged.[9] Currently, one specific concern is what should be done with mentally impaired offenders who are unable to assist their counsel during the appeal process.[10] Should their appeal process continue or should it be indefinitely stayed?[11]

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again. *Id.* The Supreme Court overruled *Penry* and held that the execution of mentally impaired offenders violated the Eight Amendment because it was cruel and unusual punishment. *Atkins*, 536 U.S. at 321. This time, six justices agreed that the execution of mentally impaired offenders violated the Eight Amendment. Tobolowsky, *supra.*

[5] *Atkins*, 536 U.S. at 321. The execution of a mentally impaired offender is excessive. *Id.* The Constitution restricts the power of the States to execute mentally impaired offenders. *Id.*

[6] *See* Tobolowsky, *supra* note 4, at 85.

[7] *See id.* (stating that the Supreme Court, although it held the execution of mentally impaired defendants unconstitutional, left many issues such as the implementation of the Constitutional ban, the procedural attributes of the exclusion, and the definition of mental impairment, unaddressed).

[8] *See, e.g.*, Petition for Writ of Certiorari at 3, Wilson v. Thaler, 2012 WL 3186106 (U.S.) (July 19, 2012) (No.12-5349) (describing Marvin Wilson's case where the Supreme Court refused to intervene in the execution of an offender diagnosed with a mild Mental Retardation and an IQ of 61); *see also*, John Rudolf, *Marvin Wilson Execution: Texas Puts Man With 61 IQ To Death*, THE HUFFINGTON POST (Aug. 7, 2012, 8:53 PM), http://www.huffingtonpost.com/2012/08/07/marvin-wilson-execution-texas_n_1753968.html (explaining that although Texas' benchmark for mental retardation was a 70 IQ and below, Wilson was still executed).

[9] *See* Tobolowsky, *supra* note 4, at 85 (explaining that because the Supreme Court did not define or dictate specific definitions and procedural attributes of the death penalty, states had the opportunity to shape and interpret the *Atkins* decision in different ways).

[10] *See generally* Ryan v. Gonzales, 133 S. Ct. 696 (2013) (encompassing two cases, Ryan v. Gonzales, No. 10-930 (U.S. filed Jan. 18, 2011) and Tibbals v. Carter, No. 11-218 (U. S. filed Aug. 17, 2011), that went in front of the Supreme Court of the United States presenting the question of whether a mentally impaired defendant has a competency right and whether the federal habeas proceedings should be indefinitely stayed because the defendants are unable to assist counsel).

[11] *See generally Ryan*, 133 S. Ct. at 696 (providing both the state's assertions that the appeal process should not be indefinitely stayed because incompetence to assist counsel and the respondents' arguments they have the right of competency, therefore, the

The Supreme Court of the United States granted certiorari in *In re Gonzales*[12] and *Carter v. Bradshaw*[13] to determine whether habeas petitioners sentenced to death must be competent to assist counsel during the appeal process.[14] The Court also considered whether district courts have authority to grant an indefinite stay of proceedings to a capital habeas petitioner who is not competent to aid counsel.[15] Oral arguments were heard on October 9, 2012, and the Supreme Court decision was released on January 8, 2013.[16]

This comment will focus on mentally impaired offenders, the capital punishment appeal process, and the right of the capital offender to assist counsel. Part I of this comment provides a detailed explanation of the death sentence appeal process.[17] The *Gonzales* case will be discussed in Part II of this comment.[18] This part will also focus on the origins of the case, and will explore the intricacies and reasons for the Supreme Court's decision to grant certiorari.[19] In the same manner, Part III will analyze and evaluate the *Carter* case.[20] Part IV will discuss the concerns the Supreme Court faced when deciding the cases.[21] Part V will look at the concerns of the petitioners, respondents and the questions the Supreme Court raised during oral arguments.[22] Furthermore, the Supreme Court decision will be discussed in Part VI.[23] Part VII will discuss the Court's decision and its benefits and consequences.[24]

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state must wait until they are declared competent in order to continue with the proceedings).

[12] In re Gonzales, 623 F.3d 1242 (9th Cir. 2010), *cert. granted sub nom*. Ryan v. Gonzales, No. 10-930 (U.S. Mar. 19, 2012).

[13] Carter v. Bradshaw, 644 F.3d 329 (6th Cir. 2011), *cert. granted sub nom*. Tibbals v. Carter, No. 11-218 (U.S. Mar. 19, 2012).

[14] *Stay of Capital Habeas Proceeding if Petitioner Lacks Competence to Assist Counsel*, CRIM. L. NEWS (Eagan, M.N), May 7, 2012, at 1 [hereinafter CRIM. L. NEWS].

[15] *Id.*

[16] SUPREME COURT OF THE UNITED STATES, ARGUMENT CALENDAR (Oct. 1, 2012), *available at* http://www.supremecourt.gov/oral_arguments/argument_calendars.aspx [hereinafter ARGUMENT CALENDAR]; Ryan v. Gonzales, 133 S. Ct. 696 (2013).

[17] *See infra* Part I.

[18] *See infra* Part II.

[19] *See infra* Part II.

[20] *See infra* Part III.

[21] *See infra* Part IV.

[22] *See infra* Part V.

[23] *See infra* Part VI.

[24] *See infra* Part VII.

I. BACKGROUND: THE DEATH SENTENCE APPEAL PROCESS

The concept of capital punishment was first introduced to the United States by colonial governments during the seventeenth century.[25] As time passed, the concept evolved and by the beginning of the twenty-first century, it was clear that the United States supported and enforced the execution of capital offenders.[26] Capital punishment has been one of the most controversial topics over the last decades.[27] Out of the fifty states, thirty-one currently impose the death penalty.[28]

A. Death Penalty: Trial

Criminal prosecution in the United States consists of two phases: a trial phase and a sentencing phase.[29] However, the terminology changes

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[25] Hugo Adam Bedau, *Background and Developments*, *in* THE DEATH PENALTY IN AMERICA 3, 3 (Hugo Adam Bedau ed., 1997). The capital punishment laws that were developed in the different colonies were a series of variations of the laws of England. *Id.* Although the capital law varied from colony to colony, all colonies authorized public hanging as the mandatory punishment for certain crimes against the person, property and the state. *Id.* at 4.

[26] Franklin E. Zimring, THE CONTRADICTIONS of AMERICAN CAPITAL PUNISHMENT 3, 5 (2003) (explaining that capital punishment is a singular practice in the United States and as such, the country is not willing to stop executing criminal defendants).

[27] S*ee* CARTER & KREITZBER, *supra* note 1, at 1 (explaining that capital punishment is a controversial topic not only in the United States, but also in many parts of the world today); *See generally* Bedau, *Preface*, *in* THE DEATH PENALTY IN AMERICA, *supra* note 25, at v (stating that the death penalty continues to be part of the news in the United States). There are 111 countries that do not impose the death penalty by law. CARTER & KREITZBER, *supra* note 1, at 1. On the other hand, there are eighty-four countries that continue to authorize the death penalty for crimes including murder, corruption, rape, robbery, and adultery. *Id.*

[28] DEATH PENALTY INFORMATION CENTER, FACTS ABOUT the DEATH PENALTY 1 (2015), *available at* http://www.deathpenaltyinfo.org/documents/FactSheet.pdf. The following states impose the death penalty: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming. *Id.* Since the beginning of 2012, 131 executions have occurred in the United States. *Id.* In addition, there are currently 3,019 inmates on death row awaiting execution as of January 1, 2015. *Id.* at 2. The five states that currently have the most inmates awaiting execution are: California with 743 inmates, Florida with 403 inmates, Texas with 276 inmates, Alabama with 198 inmates and Pennsylvania with 188 inmates. *Id.*

[29] John G. Douglas, *Confronting Death: Sixth Amendment Rights at Capital Sentencing*, 105 COLUM. L. REV. 1967, 1967 (2005) (comparing the phases of regular criminal prosecution cases to the phases in capital cases).

when referring to capital offenses.[30] In a capital case, the phases are referred to as the "guilt phase" and the "penalty phase," respectively.[31] Although capital procedure may vary from jurisdiction to jurisdiction, all of the jurisdictions require both phases.[32]

The defendant's guilt is determined during the guilt phase.[33] If the defendant is found guilty of an offense punishable by death, the penalty phase takes place in order to determine whether the offender should be sentenced to death.[34] During the penalty phase, an analysis and determination regarding the sentence to be imposed on the defendant is made by the jury and then by the judge, who makes the ultimate decision.[35]

B. The Appeal Process

Once a defendant is sentenced to death, the appellate process begins automatically.[36] States that enforce the death penalty provide the defendant a direct appeal of their capital conviction.[37] A death sentence is usually appealed to both the state and the federal courts.[38]

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[30] *See id.* The two phases, no matter how they are named, are separate universes. *Id.* at 1968. The trial phase is adversarial and it is governed by the Sixth Amendment. *Id.* On the other hand, the sentencing phase is regulated by very few rules. *Id.*

[31] *Id.* at 1967.

[32] *See* CARTER & KREITZBER, *supra* note 1, at 51. The capital sentencing procedures require the two phases, the guilt and the penalty, to take place. *Id.* These two stages are the structure of the bifurcated trial. *Id.*

[33] *Id.*; *see also* OFFICE OF VICTIM'S SERVICES, CAL. ATTORNEY GENERAL'S OFFICE, A VICTIM'S GUIDE TO THE CAPITAL CASE PROCESS 1, *available at* http://oag.ca.gov/sites/all/files/pdfs/publications/deathpen.pdf (explaining that during the guilt phase, the jury must decide whether the prosecution has proved beyond a reasonable doubt that the defendant is guilty of the crime) [hereinafter OFFICE OF VICTIM'S SERVICES].

[34] CARTER & KREITZBER, *supra* note 1, at 51. The penalty phase prolongs the capital punishment procedure. *Id.*

[35] *Id.*; MICHIGAN STATE UNIVERSITY AND DEATH PENALTY INFORMATION CENTER, STAGES IN A CAPITAL CASE 3 (2000), *available at* http://deathpenaltycurriculum.org/student/c/about/stages/stages.PDF [hereinafter STAGES IN A CAPITAL CASE]. The penalty phase is similar to the guilt phase in several aspects, including opening and closing statements, interrogation of witnesses, introduction of exhibits, and jury instructions. CARTER & KREITZBER, *supra* note 1, at 51. At the end of the phase, after reviewing aggravating and mitigating circumstances, the jury decides whether to recommend the death sentence to the defendant. STAGES IN A CAPITAL CASE, *supra*, at 4. Once the jury gives its recommendation, the trial judge makes the ultimate determination whether or not to impose the death penalty. *Id.* The offender may be sentenced to death, or the judge may lower the sentence to life imprisonment without parole. *Id.*

[36] OFFICE OF VICTIM'S SERVICES, *supra* note 33, at 2.

[37] *See* CARTER & KREITZBER, *supra* note 1, at 183 (explaining that once a defendant

i. Direct Appeal

In most states, the appeal automatically goes to the state's highest court.[39] The appellate process reviews issues that arose during the guilt phase.[40] These issues are similar to those presented in the appellate process of any criminal trial.[41] Issues may include motions to suppress evidence, erroneous jury instructions, evidentiary errors, etc.[42]

There are several issues on appeal that are germane to capital cases.[43] These issues usually emerge during the penalty phase and may include challenges to the recommendation of the death penalty or aggravating circumstances, failure to admit mitigating evidence, and problems with the jury instructions.[44] After reviewing the case, the highest court of each state will either affirm the sentence or vacate it and remand the case for a new sentencing hearing.[45] If the state's highest court renders a decision adverse to the defendant, the last step of the direct appeal process is to petition review to the Supreme Court of the United States.[46] Once the

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has been sentenced to death an appeal of that sentence is permitted).

[38] OFFICE OF VICTIM'S SERVICES, *supra* note 33, at 2.

[39] *Death Penalty Appeals Process*, CAP. PUNISHMENT IN CONTEXT http://www.capitalpunishmentincontext.org/resources/dpappealsprocess (last visited Jun. 3, 2015) [hereinafter CAPITAL PUNISHMENT] (explaining and describing the different stages of the appeal process).

[40] CARTER & KREITZBER, *supra* note 1, at 183.

[41] *Id.*; *see also* CAPITAL PUNISHMENT, *supra* note 39 (explaining the direct appeal is limited to issues that occurred during trial); Jillian Redding, *Death Penalty Appeals and Habeas Proceedings*, OLR RESEARCH REPORT (Apr. 24, 2009), http://www.cga.ct.gov/2009/rpt/2009-R-0178.htm (clarifying that at this point the defendant may only challenge trial errors and if his claim challenges the effectiveness of counsel only, the defendant may forgo a direct appeal and bring a habeas corpus claim).

[42] CARTER & KREITZBER, *supra* note 1, at 183; *see also* GRASSROOTS INVESTIGATION PROJECT OF EQUAL JUSTICE USA & NATIONAL DEATH ROW ASSISTANCE NETWORK OF CURE, *Capital Defense Handbook: For Defendants and their Families*, http://www.ndran.org/Capital%20Defense%20Handbook.htm (last visited Oct. 18, 2012) (explaining issues such as a judge's wrongful ruling on a motion, a jury's exposure to prohibited evidence, prosecutor's use of improper statements when referring to the jury, or any other action that is considered unlawful).

[43] CARTER & KREITZBER, *supra* note 1, at 183.

[44] *Id.*

[45] *See* Redding, *supra* note 41 (providing an explanation of the appeals that are possible for a defendant sentenced to life, a description of the federal and habeas proceedings and a compilation of the status of appeals by inmates sentenced to death in the state of Connecticut); *see also* CAPITAL PUNISHMENT, *supra* note 39 (clarifying that after reviewing the case the judges can affirm or reverse the conviction and sentence).

[46] CAPITAL PUNISHMENT, *supra* note 39.

direct appeal is exhausted, the defendant's conviction and sentence is challenged through the state habeas procedure.[47]

ii. Post-Conviction Relief: State Habeas Procedure

In order to initiate post-conviction proceedings, the defendant must request a writ of habeas corpus to the state's original trial judge.[48] If the writ is denied, the conviction is then appealed to the intermediate trial court and finally to the state's highest court.[49] During the habeas corpus stage, the defendant is permitted to raise facts and issues not reflected in the record on appeal.[50] Ineffective assistance of counsel, evidence regarding the defendant's innocence, prosecutorial misconduct, and juror misconduct are some of the issues that may be introduced during this stage of the appeals process.[51] Once the state habeas corpus proceeding has been exhausted and if it fails, the defendant has one last opportunity to save his life through the federal habeas procedure.[52]

iii. Post-Conviction Relief: Federal Habeas Procedure

Once the defendant exhausts the state's habeas procedure, the defendant can file a writ of habeas corpus in federal court.[53] The federal

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[47] *See* CARTER & KREITZBER, *supra* note 1, at 197 (explaining that once the direct avenues of the appellate review are exhausted, the defendant has the option of challenging his conviction and sentence).

[48] CAPITAL PUNISHMENT, *supra* note 39; *see also* Redding, *supra* note 41 (stating that a habeas corpus claim challenges defects in regard to a defendant's constitutional rights). Some examples of constitutional rights that may be included in a habeas corpus petition are ineffective assistance of counsel, illegal detention, deprivation of liberty, and actual innocence, among others. Redding, *supra*.

[49] CAPITAL PUNISHMENT, *supra* note 39.

[50] STAGES IN A CAPITAL CASE, *supra* 35, at 5; *see also* CARTER & KREITZBER, *supra* note 1, at 197 (clarifying that post-conviction proceedings give the defendant the opportunity to present facts and issues discovered by the attorney after the original trial took place); OFFICE OF VICTIM'S SERVICES, *supra* note 33, at 6 (explaining that facts not reflected in the trial court's record may be considered during this stage of the appeal process).

[51] *See* CARTER & KREITZBER, *supra* note 1, at 197; STAGES IN A CAPITAL CASE, *supra* note 35, at 5.

[52] *See* CAPITAL PUNISHMENT, *supra* note 39 (clarifying that federal habeas corpus is the last stage of the appeals process); *see also* Redding, *supra* note 41 (showing that the determination the court makes if the state habeas corpus proceeding is successful depends on the type of error the court finds, the court could either grant a new trial or new penalty phase.).

[53] *See* STAGES IN A CAPITAL CASE, *supra* note 35, at 6 (explaining that the writ entails a request to bring a person before the court to ensure the defendant's

court, however, may only review issues concerning a violation of the defendant's constitutional rights.[54] In order to facilitate the decision-making process, a record of all the previous proceedings, including the trial and appeal stages, is compiled and submitted to the court.[55] The federal habeas corpus proceeding is regulated by the 1996 Antiterrorism and Effective Death Penalty Act ("AEDPA").[56]

The federal habeas corpus appeal process entails three stages: petition to the United States District Court, an appeal to the United States Court of Appeals, and ultimately an appeal to the Supreme Court of the United States.[57] The United States District Court has the power to grant a new hearing, dismiss the petition, or overturn the conviction and sentence.[58] An appeal to the United States Court of Appeals is limited to only those issues raised in the United States District Court.[59] If the defendant is denied relief, his last option is to request a writ of certiorari to the Supreme Court of the United States.[60] If the Supreme Court denies certiorari, the denial will represent the last and final stage of the appellate process.[61]

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imprisonment is legal).

[54] *See* OFFICE OF VICTIM'S SERVICES, *supra* note 33, at 8 (explaining that the defendant will argue that the sentence should be overturned because it was the result of a violation of defendant's constitutional rights).

[55] *See id.* (explaining the record includes the trial, direct appeal and state habeas action).

[56] 28 U.S.C. § 2244 (1996); 28 U.S.C. § 2254(d) (1996); 28 U.S.C. § 2254(b) (1996); 28 U.S.C. § 2254 (b)(3) (1996); *see also* Redding, *supra* note 41. According to the AEDPA, a defendant has a one-year deadline to file a habeas petition in federal court. Redding, *supra.* The time limit begins from the conclusion of the direct review. *Id.* The direct review includes all direct appeals from sentencing and any appeal to the Supreme Court of the United States. *Id.* The AEDPA also bars relief on a claim already decided in a state court. §2254(d). The defendant must exhaust all state remedies prior to seeking federal habeas proceedings unless there is no proper state proceeding or the process would be ineffective. *Id.* The state is allowed to waive the state exhaustion and procedural defenses allowing the defendant to forgo the state exhaustion procedure. § 2254 (b)(3). The AEDPA also bars repetitious habeas petitions and allows for the tolling of time when a state proceeding has been filed. § 2244.

[57] CAPITAL PUNISHMENT, *supra* note 39.

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *Id.*

iv. Post-Conviction Relief: Federal Habeas Procedure

After the appeal process has been exhausted, the defendant may seek executive clemency as final recourse.[62] Clemency is based on the idea of mercy and a presumption that there is a need to remedy an incorrect or unjust result in the criminal justice system.[63] A governor or other governmental body may grant executive clemency to an inmate facing execution in the form of pardon, reprieve, or commutation.[64]

When a pardon is issued, the inmate is relieved from his conviction and sentence.[65] A reprieve entails a temporary delay of the execution.[66] The execution may be delayed or postponed in order to grant additional time for review.[67] Among other reasons, additional time for review is granted in order to allow DNA testing to be made.[68] The commutation of a sentence, where the governor reduces the inmate's sentence, is the most common form of relief.[69] In these cases, the death sentence is usually commuted to life imprisonment without the possibility of parole.[70]

II. THE GONZALES CASE: MENTALLY IMPAIRED OR THE DESIRE TO BE

Ernest Valencia Gonzales ("Gonzales") was sentenced to death after he was found guilty of felony murder, aggravated assault, theft, armed

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[62] *See* CARTER & KREITZBER, *supra* note 1, at 253 (explaining that clemency is the ultimate recourse for a death row inmate).

[63] *Id.* at 255.

[64] *See* CAPITAL PUNISHMENT, *supra* note 39 (stating that a governor may postpone an execution, may commute a death sentence to a lesser sentence, or may pardon the defendant); *see also* OFFICE OF VICTIM'S SERVICES, *supra* note 33, at 15 (explaining that the governor has the power of granting full or conditional pardons, reprieves of executions, and commutation of sentences).

[65] CARTER & KREITZBER, *supra* note 1, at 253.

[66] *Id.*; *see, e.g.*, *Condemned Georgia Inmate Gets Reprieve*, CNN JUSTICE (July 23, 2012), http://articles.cnn.com/2012-07-23/justice/justice_georgia-execution-stay_1_mental-retardation-georgia-inmate-fellow-inmate (reporting that Georgia's Supreme Court issued a reprieve to an inmate who was sentenced to death and going to be executed for procedural reasons).

[67] *See* CAPITAL PUNISHMENT, *supra* note 39.

[68] CARTER & KREITZBER, *supra* note 1, at 253.

[69] CAPITAL PUNISHMENT, *supra* note 39; *see also* CARTER & KREITZBER, *supra* note 1, at 254 (explaining that the death row inmate usually seeks to have his sentence(s) commuted to life imprisonment).

[70] *See* CARTER & KREITZBER, *supra* note 1, at 254 (discussing as an example, Governor Ryan of Illinois, and explaining that most of the death sentences commuted by him in 2003 were from a death sentence to life imprisonment without parole).

robbery, and two counts of burglary.[71] On February 20, 1990, Gonzales stabbed Darrel Wagner ("Wagner") seven times.[72] Although Wagner was still alive at the time Gonzales fled from the scene of the crime, Wagner died later that night as a result of his injuries.[73] Gonzales' first trial ended in a hung jury.[74] In the second trial, the jury found Gonzales guilty of all six counts.[75]

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[71] State v. Gonzales, 892 P.2d 838, 842 (Ariz. 1995); *see also* Brief for Petitioner at 4, Ryan v. Gonzales, 133 S. Ct. 696 (2013) (No. 10-930), 2012 WL 3041301 [hereinafter Gonzales Brief for Petitioner]; Arizona Department of Corrections Inmate Data Search of Ernest Gonzales, Inmate No. 058534, https://corrections.az.gov/ (follow the "Inmate Data Search" hyperlink; then enter "058534" into the "Number Search" box; then follow the "Go" hyperlink; click on the blue hyperlink inmate number) (reporting that in addition to the death penalty Gonzales was sentenced to three consecutive life terms for the other offenses).

[72] *Gonzales*, 892 P.2d at 842; see *also December 99 Executions*, PRO-DEATH PENALTY.COM, http://www.prodeathpenalty.com/pending/99/dec99.htm (last updated Oct. 12, 2014) [hereinafter DECEMBER 99] (explaining that Deborah perceived a light coming from inside the house and Darrel proceeded to investigate after he noticed the door ajar). Darrel Wagner, his wife Deborah, and Deborah's son arrived home after dinner to find Gonzales burglarizing their house. *Gonzales*, 892 P.2d at 838. Deborah and her son stayed outside. *Id.* As Darrel entered the house, he and Deborah saw Gonzales holding their VCR under his arm. *Id*. Deborah told her son to run to the neighbor's house and call 911. *Id.* Gonzales shoved Darrel out the front door. *Id.* Darrel lost his balance and fell. *Id.* Gonzales stabbed him seven times. *Id*. Deborah, who was witnessing the event, implored Gonzales to stop and leave. *Id.* When Gonzales ignored her demands she jumped on his back and wrapped her arms around him to keep him from stabbing Darrel. *Id.* Gonzales swung at Deborah and stabbed her twice. *Id.* Gonzales then left with her purse. *Id.*

[73] *Gonzales*, 892 P.2d at 842; *see also* DECEMBER 99, *supra* note 72 (stating that Darrel died as a result of stab wounds to his chest, to the lower lobe of his right lung, and to the left ventricle of his heart). Although he was severely injured, Darrel managed to help his wife up and called 911. *Gonzales*, 892 P.2d at 842. Darrel then collapsed and died the same night. *Id.* Deborah spent five days in intensive care. *Id.*

[74] *Gonzales*, 892 P.2d at 843; *see also* Brief for the United States as Amicus Curiae Supporting Petitioners at 2, Ryan v. Gonzales, 133 S. Ct. 696 (2013) (No. 10-930), 2012 WL 1979938 [hereinafter Brief of Amicus Curiae] (explaining that Gonzales' first trial resulted in a hung jury and it was after retrial that Gonzales was convicted on all counts). Gonzales claimed the first trial resulted in a hung jury because of Deborah's less than positive in-court identification. *Gonzales*, 892 P.2d at 843. Deborah positively identified Gonzales during the second trial. *Id.*

[75] *Gonzales*, 892 P.2d at 843; *see also* Brief of Arizona Voice For Crime Victims as Amicus Curiae In Support of Petitioner at 3, Ryan v. Gonzales, 133 S. Ct. 696 (2013) (No. 10-930), 2012 WL 1997853 [hereinafter Gonzales Brief of Arizona Voice] (explaining that Gonzales was convicted of the six counts against him and sentenced to death after two trials, yet, it was not until six years after the murder, on January 8, 1996, that his convictions and death sentence became final). The six counts included one for felony murder, one for aggravated assault, one for theft, one for armed robbery and two for burglary. *Gonzales*, 892 P.2d at 838.

The State of Arizona has been prevented from carrying out Gonzales' sentence for the last sixteen years.[76] Gonzales' death sentence has been the cause of multiple appeals that have resulted in indefinite stays of the execution and have thus prolonged his life.[77] On direct appeal, Gonzales raised several issues, including a claim of judicial bias.[78] After reviewing each issue, the Supreme Court of Arizona upheld Gonzales' conviction and death sentence.[79] The Supreme Court of the United States denied certiorari at that time.[80]

After the Supreme Court of the United States denied certiorari, Gonzales continued the appeal process by pursuing post-conviction relief in state court.[81] In addition to other claims, Gonzales raised the judicial bias issue once again.[82] Gonzales' attempt was once again unsuccessful in the state court process.[83]

On November 15, 1999, Gonzales filed a petition for a writ of federal habeas corpus.[84] In response to his request, the district court appointed the Federal Public Defender's Office to represent Gonzales.[85] The Court then requested an amended petition from Gonzales listing every constitutional error or deprivation entitling him to habeas relief.[86] Thirteen of the sixty

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[76] *See* Gonzales Brief of Arizona Voice, *supra* note 75, at 3 (explaining the appeal process was the cause of the delay).

[77] *Id.*

[78] Brief of Amicus Curiae, *supra* note 74, at 3; *see also Gonzales*, 892 P.2d at 847; Brief for Respondent at 4, Ryan v. Gonzales, 133 S. Ct. 696 (2013) (No. 10-930), 2012 WL 3027353 [hereinafter Gonzales Brief of Respondent] (explaining that the judicial bias claim was first raised by Gonzales after his first trial). Before the second trial, Gonzales moved to disqualify Judge Howe. *Gonzales*, 892 P.2d at 847. He claimed the trial judge had been biased against him. *Id.* Another judge, Judge Coulter, heard Gonzales' motion and denied it. *Id.* Although Gonzales made the same claim during direct appeals, the Supreme Court of Arizona affirmed Judge Coulter's denial of his motion. *Id*. at 848.

[79] Gonzales Brief of Respondent, *supra* note 78, at 4; *see also Gonzales*, 892 P.2d at 852 (explaining that after all the issues were reviewed, no error was found, therefore, the court affirmed Gonzales' conviction and sentence).

[80] Gonzales Brief for Petitioner, *supra* note 71, at 4.

[81] *Id.*

[82] Brief of Amicus Curiae, *supra* note 74, at 3.

[83] *See* Gonzales Brief for Petitioner, *supra* note 71, at 5 (explaining the trial court and the Arizona Supreme Court denied relief).

[84] Gonzales v. Schriro, 617 F. Supp. 2d 849, 852 (D. Ariz. 2008); *see also* Gonzales Brief of Respondent, *supra* note 78, at 5 (stating Gonzales filed his petition for federal habeas corpus the same year his state petition for post-conviction relief was denied).

[85] *Schriro*, 617 F. Supp. 2d at 852; Gonzales Brief of Respondent, *supra* note 78, at 5. Gonzales filed a request for appointment of habeas counsel for the District of Arizona in November 1999. *Schriro*, 617 F. Supp. 2d at 852.

[86] *Schriro*, 617 F. Supp. 2d at 852; *see also* Brief of Amicus Curiae, *supra* note 74, at 3 (explaining that once again as part of the sixty claims, Gonzales included the judicial

claims were withdrawn from the federal court and filed in state court because they had not been exhausted at the state level.[87] On January 12, 2006, the District Court of Arizona dismissed some of the claims in the amended petition on procedural grounds and set a deadline for Gonzales to submit a brief on the merits for the remaining claims.[88]

During the appeal process, Gonzales' mental health deteriorated.[89] He was unable to understand his legal situation and the consequences of the death penalty sentence.[90] Between 2003 and 2006, Gonzales refused twenty-six visits from his habeas counsel and support staff, who were trying to discuss the upcoming proceedings.[91] Furthermore, he claimed to be connected with the Department of Corrections through "a telephonic, science monitoring device, in which other prisoners, attorneys, police, prison officials, civilians etc., are attached to [his] hearing daily."[92] Gonzales also claimed that his imaginations, fantasies, and thoughts were being stolen by attorneys, prisoners, police, etc.[93]

Gonzales' condition prompted the district court to order an evaluation of his mental capacity.[94] Both the state and Gonzales sought the opinions of mental health experts.[95] Two different expert reports with different

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bias claim). The petition needed to "set forth in a clear and concise fashion, the legal and factual basis for each ground for relief." *Schriro*, 617 F. Supp. 2d at 852. A 237 page amended petition raising sixty claims was filed on July 17, 2000. *Id.*

[87] *Schriro*, 617 F. Supp. 2d at 852; *see also* Gonzales Brief of Respondent, *supra* note 78, at 5 (stating the filing of the claims in the state court resulted in a stay of the federal proceedings).

[88] *Schriro*, 617 F. Supp. 2d at 852; Gonzales Brief for Petitioner, *supra* note 71, at 7. Before the briefing deadline, Gonzales' counsel moved to stay the action claiming Gonzales was no longer capable of assisting and communicating counsel. *Schriro*, 617 F. Supp. 2d at 852. Defense counsel's inability to speak with Gonzales and Gonzales's apparent inability to understand counsel made it impossible for counsel to address evidentiary and other issues relevant to the presentation of the issues in front of the Court. Gonzales Brief for Petitioner, *supra* note 71, at 7.

[89] Gonzales Brief of Respondent, *supra* note 78, at 5.

[90] *Id.* In addition, Gonzales grew suspicious of his appointed counsel. *Id.* Starting in 2001, Gonzales sent numerous letters to federal and state court. *Id.* at 6. In some of the letters, he reflected his belief that he was a victim of studies and projects conducted upon him without his authorization. *Id.*

[91] *Schriro*, 617 F. Supp. 2d at 852; *see also* Gonzales Brief of Respondent, *supra* note 78, at 5 (discussing that during one of the times Gonzales refused counsel and staff, he accused them of poisoning his food).

[92] Gonzales Brief of Respondent, *supra* note 78, at 6.

[93] *Id.*

[94] *Schriro*, 617 F. Supp. 2d at 852.

[95] *Id.* Dr. Anna Scherzer was selected as the expert for the State. *Id.* On the other hand, Dr. Raphael Morris served as the expert for Gonzales. *Id.* at 853.

conclusions were presented to the Court.[96] Based on her eight-hour interview with Gonzales, the state's expert, Dr. Anna Scherzer, concluded that Gonzales had the capacity to communicate and to understand his legal position.[97] The defendant's expert, Dr. Raphael Morris, diagnosed Gonzales with Schizophrenia, Disorganized Type,[98] and concluded that Gonzales lacked the capacity to rationally communicate with counsel.[99] Therefore, Gonzales was unable to engage in a coherent discussion or give input about the claims raised on appeal.[100]

Prior to an evidentiary hearing where the experts' conclusions were to be discussed, the State filed a motion requesting an extended mental health assessment of Gonzales to be conducted by the Arizona State Hospital.[101] The Court granted the request, and after a ninety-day assessment was conducted, Dr. James Seward ("Dr. Seward") explained in his report that he continued to question the truthfulness of Gonzales' symptoms, and suggested that malingering was possible.[102] Dr. Seward also opined that Gonzales suffered from a psychotic disorder, and could not communicate rationally for an extended period.[103] The Court thereafter determined that it lacked discretion to grant Gonzales a stay [104] and ordered that the

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[96] *Id.* at 852-53; *see also* Brief of Amicus Curiae, *supra* note 74, at 4 (explaining Gonzales' expert concluded Gonzales was not competent to understand his legal situation or assist counsel and the State's expert concluded he was competent but faking his symptoms). Both experts were psychiatrists. *Schriro*, 617 F. Supp. 2d at 852.

[97] *Schriro*, 617 F. Supp. 2d at 852; Brief of Amicus Curiae, *supra* note 74, at 5. During the evaluation Gonzales showed normal speech, logical appreciation and awareness of his death sentence. *Schriro*, 617 F. Supp. 2d at 852. Dr. Scherzer further explained Gonzales mentioned he had chosen to present himself as severely mentally ill. *Id.* However, she could not exclude the possibility of mental illness and recommended Gonzales to be placed under observation with medications to be administered if necessary. Brief of Amicus Curiae, *supra* note 75, at 5.

[98] *Schriro*, 617 F. Supp. 2d at 853; *Schizophrenia – Disorganized Type*, MEDLINE PLUS, http://www.nlm.nih.gov/medlineplus/ency/article/000937.htm (last updated Mar. 7, 2012) [hereinafter MEDLINE PLUS] (explaining that Schizophrenia, Disorganized Type is a type of schizophrenia in which behavior is disturbed and has no purpose); *see also Types of Schizophrenia*, WEBMD, http://www.webmd.com/schizophrenia/guide/schizophrenia-types (last updated May 1, 2013) (explaining that Schizophrenia, Disorganized Type, is characterized by speech and behavior that are disorganized or difficult to understand, and flattening or inappropriate emotions).

[99] *Schriro*, 617 F. Supp. 2d at 853.

[100] *Id.* Dr. Morris recommended anti-psychotic medication. *Id.*

[101] *Id.*

[102] *Id.*

[103] *Id.* Dr. Seward explained Gonzales' symptoms were genuine after observing his improvement when taking anti-psychotic medication. *Id.* Gonzales refused to continue taking the medications because of side effects such as back pain and restlessness. *Id.*

[104] Gonzales Brief of Respondent, *supra* note 78, at 8.

proceedings continue although defense counsel was unable to communicate with Gonzales.[105]

As a result of the Court's ruling, on May 23, 2008, defense counsel filed an emergency motion for stay of the district court's proceedings and an emergency motion requesting the Circuit Court to enter an order requiring the district court to establish Gonzales' mental capacity.[106] The Ninth Circuit Court of Appeals rejected the district court's analysis and held that federal courts have discretion to stay habeas proceedings.[107] Additionally, the Circuit Court explained that a court may properly exercise this discretion when dealing with a mentally incompetent defendant who is unable to communicate with counsel.[108] The Supreme Court of the United States granted certiorari.[109]

III. THE CARTER CASE: MENTAL INCAPACITY FROM BIRTH TO DEATH

Sean Carter's ("Carter") childhood was full of abuse and instability.[110] In February 1997, after Carter was thrown out of his parent's house days before turning eighteen, he went to live with his adoptive grandmother, Veader Prince ("Prince").[111] During the period he was living with Prince,

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[105] *Id.*; *see also* Brief of Amicus Curiae, *supra* note 74, at 4 (explaining that the court concluded that a finding of incompetence would not give Gonzales the possibility to stay the proceedings).

[106] Gonzales Brief of Respondent, *supra* note 78, at 8. The motion asked the Court to order the District Court to issue a temporary stay of proceedings, hold a hearing, and make a finding on the issue of Gonzales' competency. *Id.* at 9.

[107] *Id.* at 8.

[108] *Id.* Because the record supported Gonzales' mental incapacity and the communication between him and his counsel was essential for the proceedings, the Court explained it was proper to stay the proceedings pending determination of Gonzales' competency. *Id.*

[109] CRIM. L. NEWS, *supra* note 14, at 1.

[110] *See* Brief of Respondent at 2, Ryan v. Gonzales, 133 S. Ct. 696 (2013) (No. 11-218), 2012 WL 3027158 [hereinafter Carter Brief of Respondent]. Carter's biological mother, his half uncle, and aunt suffered from schizophrenia. *Id.* When he was only two years old, Children's Services found him tied to a couch, malnourished with an enlarged stomach. *Id.* He was removed from the care of his biological mother and placed with a foster mother. *Id.* At age eight, Carter was placed with a prospective adoptive family but then suffered from verbal and physical abuse. *Id.* Once again, when he was ten, Child Services removed him and placed him with the Carter family. *Id.* Carter later reported he was physically abused by his adoptive father, and his adoptive mother threatened to cut off his penis. Carter Brief of Respondent, *supra.* Carter also explained that he was sexually abused during his childhood. *Id.* In February 1997, when he was thrown out the Carter's residence, Carter went to live with his adoptive grandmother, Veader Prince. *Id.*

[111] State v. Carter, 734 N.E.2d 345, 347 (Ohio 2000). Carter stayed with his adoptive grandmother until July 1997 when he was incarcerated for theft. *Id.*

Carter was incarcerated for theft.[112] When Carter was released from jail, approximately six months after his eighteenth birthday, he returned to Prince's house and stayed there without Prince's knowledge until she discovered Carter and asked him to leave.[113] Although Carter left for some time, he returned later that day. This resulted in an argument where Prince tried to push him out the door, and in response, Carter began to beat her.[114] Carter anally raped Prince and stabbed her with a kitchen knife eighteen times.[115] When interrogated, Carter confessed to murdering Prince but denied that he raped her.[116] The State convicted Carter of aggravated murder, aggravated robbery, rape, and criminal trespass.[117]

Before trial, because Carter claimed he suffered from auditory hallucinations, the state conducted a competency hearing.[118] Dr. Stanley

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[112] *Id.*

[113] *Id.* Prince's son, Vernon, discovered Carter sleeping in the house but decided to leave when he was unable to find his mother. *Id.* Prince arrived home as Vernon was in the process of leaving and when questioned about Carter's presence in the house, Prince responded she had no idea Carter was there. *Id.* at 348. Prince and Vernon proceeded to talk to Carter. *Id. at 348.* Prince requested Vernon to give him the keys and title to his car in order for Carter to leave. *Id.* at 348. Upon receiving the keys, Carter left the house and drove around for some time. *Carter*, 734 N.E.2d 345 at 349. Carter returned to Prince's house to find the door locked. *Id.* In order to enter the house, Carter climbed through a bedroom window. *Id.* at 350.

[114] *Id.* at 350. Carter was hoping to convince Prince to let him stay one week with her, because he had nowhere to go. *Id.* During the argument, Prince told him to leave. *Id.*

[115] Brief of Petitioner at 5, Ryan v. Gonzales, 133 S. Ct. 696 (2013) (No. 11-218), 2012 WL 1950264 [hereinafter Carter Brief of Petitioner]; *Carter*, 734 N.E.2d at 350. One of the stabs severed the aorta, which became the cause of death. *Id.* A DNA test matched the semen obtained from her rectum to Carter. Carter Brief of Petitioner, *supra.* Carter explained that at some point during the encounter, he took a knife from the kitchen and started stabbing her. *Carter*, 734 N.E.2d at 350. He could not provide exact details of what happened. *Id.* He remembered hitting Prince's face and stabbing her neck. *Id.* According to his testimony, the next event Carter remembered was being in the kitchen washing his hands and the knife. *Id.* Carter tried to cover up the evidence as much as possible. *Id.* He covered the body with some clothes, moved the couch in Prince's bedroom to cover up the blood, put a chicken in a pot on the stove, left a note saying "Took Sean to the hospital," changed his clothes, took the money she had in her purse and one of the cars and left the house. *Id.* On September 15, 1997, a Pennsylvania police officer found Carter sleeping in a vehicle parked among some small trees. *Id.*at 349. The vehicle was traced to Ohio and police officer learned Carter was a suspect for Prince's death, and he was wanted for questioning. Carter Brief of Petitioner, *supra*.

[116] *Carter*, 734 N.E.2d at 350.

[117] *Id.* at 345; *see also* Brief of Amicus Curiae, *supra* note 74, at 7 (clarifying that Carter was sentenced to death for the aggravated murder conviction and prison time for the other counts).

[118] Carter Brief of Respondent, *supra* note 110, at 3; *see also* Carter Brief of Petitioner, *supra* note 115, at 5 (explaining that the court appointed Dr. Stanley Palumbo

Palumbo ("Dr. Palumbo"), the court appointed expert, opined that Carter was competent to stand trial.[119] The defense failed to introduce the testimony and reports of social worker Albert Linder or psychologist Douglass Darnall, which indicated that Carter may have been suffering from mental illness.[120] The only testimony presented in favor of Carter's mental incapacity was that of a sheriff's deputy, who testified that Carter was suicidal and had attempted to kill himself with a shank while he was in custody.[121] Although the trial court found that Carter was competent to stand trial, Carter pleaded not guilty by reason of insanity.[122]

During the second competency hearing, three experts provided their independent opinions and analysis of Carter's competency.[123] Dr. Stephen King ("Dr. King") diagnosed Carter with a psychotic disorder and testified that Carter had thoughts of killing defense counsel, had constant hallucinations, and laughed inappropriately.[124] Because of this, Dr. King concluded that Carter was not competent to assist counsel.[125] Conversely,

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to examine Carter's competence to stand trial).

[119] Carter Brief of Respondent, *supra* note 110, at 3; *Carter*, 734 N.E.2d at 355. Dr. Palumbo explained that Carter suffered from auditory hallucinations, including hearing the voice of the devil. Carter Brief of Respondent, *supra*. Dr. Palumbo also explained it seemed Carter did not want to listen to and trust his attorneys but he emphasized this was a complete different situation from not being capable to aid counsel. *Carter*, 734 N.E.2d at 355. Dr. Palumbo further testified that Carter did not suffer from a gross mental disorder that interfered with Carter's understanding of the proceedings or the ability to aid in his defense. *Id.* The competency standard requires the court to find the defendant incompetent to stand trial when the defendant is incapable of understanding the nature and objective of the proceeding and/or is incapable of assisting in his defense. *Id.*

[120] Carter Brief of Respondent, *supra* note 110, at 3. Both Linder and Darnall had previously evaluated Carter. *Id.* Linder had concluded that Carter suffered from paranoia and auditory and visual hallucinations. *Id*. He also concluded that it was possible Carter was suffering from a major psychiatric disorder. *Id.* Similarly, Dr. Darnall found that Carter was suffering from a mental disorder. *Id.*

[121] *Id.*

[122] *Carter*, 734 N.E.2d at 355; Carter Brief of Petitioner, *supra* note 115, at 6. Carter's insanity plea prompted the trial court to again examine his mental competence to stand trial. Carter Brief of Petitioner, *supra*.

[123] Carter Brief of Petitioner, *supra* note 115, at 6; *Carter*, 734 N.E.2d at 355. The experts were Dr. Stephen King, Dr. Stanley Palumbo, and Dr. Robert Alcorn. Carter Brief of Petitioner, *supra.* Dr. King was the defense expert and his opinion differed from the other two experts. *Id.* Dr. Palumbo, one of the state's experts did not change his previous recommendation. *Carter*, 734 N.E.2d at 355. Furthermore, Dr. Alcorn, also a state's witness, determined Carter was competent. *Id.* at 356.

[124] *Carter*, 734 N.E.2d at 355; Carter Brief of Respondent, *supra* note 110, at 4. Dr. King explained Carter showed bizarre behavior during their interview. *Carter*, 734 N.E.2d at 355. He further explained Carter thoughts kept him from assisting trial counsel. *Id.*

[125] *Carter*, 734 N.E.2d at 355.

Dr. Palumbo testified that although Carter showed irritability and anger towards his attorney, Carter was competent to assist counsel and stand trial.[126] Additionally, the State's second expert, Dr. Robert Alcorn, concluded Carter was competent to stand trial.[127] Whether competent or not, Carter did not want to go to trial because he disliked the fact that he had to be shackled for court proceedings.[128] Before trial, Carter attempted to commit suicide.[129] Once trial started, Carter manifested his desire to be absent from trial and even lunged at the judge when he insisted Carter's presence was necessary.[130]

During the penalty phase, the defense called two witnesses.[131] The first witness, the social worker who handled Carter's case with Children's Services when he was younger, testified that she feared Carter was "schizoid-prone."[132] The second witness, psychologist, Sandra

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[126] *Id.* at 356. Dr. Palumbo explained that Carter's reactions against counsel were exactly the same as other defendants had experienced toward their attorneys. *Id.*

[127] *Id.* Dr. Alcorn testified Carter was not happy with his attorney's job but explained this was a common reaction due to the situation Carter was in. *Id.*

[128] *Id.*; Carter Brief of Petitioner, *supra* note 115, at 6; Carter Brief of Respondent, *supra* note 110, at 4. Carter disliked the fact he had to be shackled for court proceedings. *Carter*, 734 N.E.2d at 355. Carter's disagreements with counsel were also apparent. *Id.*

[129] *Carter*, 734 N.E.2d at 355.

[130] Carter Brief of Petitioner, *supra* note 115, at 6; Carter Brief of Respondent, *supra* note 110, at 4. At trial, during opening statements, Carter asked whether he had to proceed with the trial or if he could just plead guilty. Carter Brief of Petitioner, *supra*. When the judge insisted that he needed to remain in court for the rest of the day, Carter lunged at the judge and had to be restrained and removed from the courtroom. Carter Brief of Respondent, *supra*. As a result, Carter observed the remainder of trial from a separate room where he could monitor the proceeding by closed circuit television. *Id.* Courtroom deputies were instructed to call his attorneys in the event Carter wanted to communicate with them. *Id.* Due to Carter's removal, neither the judge nor Carter's attorneys were able to observe Carter and his mental state during trial. *Id.* at 5. Carter remained absent every day thereafter, and each day his counsel communicated to the court Carter still did not want to attend trial. *Id.* at 7. During the last day of the guilt phase, Carter expressed his desire to return but imposed the condition he needed to be unshackled. *Id*. at 5. Because what Carter was requesting was dangerous for his attorneys, the court decided that Carter would only return on the condition that his attorneys were willing to waive their own protection. *Id.* at 5. One of the attorneys refused to give the waiver. *Id.* Ultimately, Carter remained absent and was convicted. *Id.* at 5.

[131] Carter Brief of Respondent, *supra* note 110, at 5. One of the witnesses was a social worker and the other was a mitigation specialist. *Id.*

[132] *Id.*; *Schizoid Personality Disorder*, ENCYCLOPEDIA OF MENTAL DISORDERS, http://www.minddisorders.com/Py-Z/Schizoid-personality-disorder.html (last visited Jun. 3, 2015). Schizoid personality disorder is characterized by persistent withdrawal from social relations and lack of emotional responses. *Id.* A person with this type of disorder appears aloof, with no intention to engage in close relationship. *Id.* The social worker explained she had no personal knowledge of the events because she last had contact with

McPherson, concluded that Carter did not understand pain, had no ability to understand what other people were thinking, and that he did not care because he was always alone.[133] During closing arguments, the defense described Carter as a "piece of machinery that doesn't feel for other people."[134] The court sentenced Carter to death by lethal injection.[135]

Carter raised several issues in his direct appeal to the Ohio Supreme Court.[136] Carter challenged the trial court's competency finding, claimed ineffective assistance of counsel, and questioned the constitutionality of the lethal injection.[137] The Ohio Supreme Court held that the death penalty was an appropriate sentence.[138]

During the state's habeas proceedings, Carter claimed that his attorneys failed to develop a complete record that would show his incompetence to stand trial.[139] The state trial court held that Carter's claims were barred because they were raised on direct appeal.[140] The court of appeals affirmed the trial court's ruling and rejected Carter's claims on the merits.[141] The Ohio Supreme Court refused to review the case or decisions of the lower courts.[142]

Carter when he was seven. Carter Brief of Respondent, *supra.*

[133] Carter Brief of Respondent, *supra* note 110, at 6; Carter Brief of Petitioner, *supra* note 115, at 7. Dr. McPherson concluded Carter's IQ was in the normal range, there was no substantial incapacity affecting his conduct but he had a genetic potential for schizophrenia. Carter Brief of Petitioner, *supra.* She explained Carter's family history of mental illness, childhood emotional problems and familial placement history. *Id.*

[134] Carter Brief of Respondent, *supra* note 110, at 6.

[135] Brief of Amicius Curiae, *supra* note 74, at 7.

[136] State v. Carter, 734 N.E.2d 345, 350 (Ohio 2000); Carter Brief of Respondent, *supra* note 110, at 6. Fourteen propositions of law were presented to the Ohio Supreme. *Carter*, 734 N.E.2d at 350. The Court rejected each of the propositions of law and affirmed each of the convictions and the death sentence. *Id.*

[137] Carter Brief of Petitioner, *supra* note 115, at 8. Carter also objected to the grand jury's indictment, and the jury instructions). *Id.*

[138] Brief of Amicus Curiae, *supra* note 74, at 7; *see also* Carter Brief of Petitioner, *supra* note 115, at 8 (explaining that the Ohio Supreme Court also affirmed all of Carter's convictions).

[139] Brief of Amicus Curiae, *supra* note 74, at 7; Carter Brief of Petitioner, *supra* note 115, at 8; Carter Brief of Respondent, *supra* note 110, at 7. Carter further alleged his attorneys not only failed to challenge the sufficiency of the indictment, but also failed to prepare for the penalty phase of the trial. Carter Brief of Petitioner, *supra.* In order to establish the facts relevant to his claims, Carter requested an evidentiary hearing. Carter Brief of Respondent, *supra.* The state trial court refused to provide the hearing. *Id*. at 7. The trial court rejected Carter's claims, explaining that the records of the case were complete. *Id.*

[140] Carter Brief of Respondent, *supra* note 110, at 7. The trial court rejected Carter's claims explaining the record of the case was complete. *Id.*

[141] Carter Brief of Petitioner, *supra* note 115, at 8; Brief of Amicus Curiae, *supra* note 74, at 8. The appellate court determined Carter's inability or unwillingness to aid

Attorneys from the Ohio Public Defender's Office began to represent Carter in 2002.[143] They requested an examination of Carter's mental capacity and a competency hearing.[144] During the competency hearing, Carter presented the opinion of two different experts, psychologist Dr. Bob Stinson ("Dr. Stinson") and neuropsychologist Dr. Michael Gelbort ("Dr. Gelbort").[145] Dr. Stinson explained that Carter could only provide vague answers to questions and that he was unable to communicate effectively.[146] Similarly, Dr. Gelbort opined that Carter's fragmented and distracted thinking prohibited him from responding to questions and recalling prior events.[147] The State's expert, Dr. Philip Resnick ("Dr. Resnick"), agreed with Dr. Stinson's diagnosis of schizophrenia, but

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his counsel in the defense of his case was well documented in the record. Brief of Amicus Curiae, *supra*. The court claimed nothing in Carter's new petition raised new grounds or established any new evidence outside the record that would give the court reasons to review the case again. *Id.*

[142] Carter Brief of Respondent, *supra* note 110, at 7.

[143] *Id.* The Office of the Public Defender tried to reopen the direct appeal in 2003. *Id.* They claimed ineffective assistance of appellate counsel for insufficient pursuit of the claims regarding ineffective assistance of trial counsel, but the Ohio Supreme Court denied the motion. *Id.* Carter gave counsel an affidavit stating he wanted them to continue with the federal habeas process on his behalf. *Id.* at 8. By the time Carter's new attorneys decided to pursue the federal habeas corpus relief, Carter refused to meet with them and cooperate. *Id.* During this time, Carter was placed in a psychiatric incarceration facility. *Id.* In the federal habeas petition, the attorneys included claims such as incompetence to stand trial and ineffective assistance of trial and appellate counsel. *Id.* The fact Carter was removed from trial and placed in a separate room allowed attorneys to assert a violation of Carter's right to a fair trial. *Id.*

[144] Carter Brief of Petitioner, *supra* note 115, at 9; Carter v. Bradshaw, 583 F. Supp.2d 872, 873 (N.D. Ohio 2008). The attorneys filed a Suggestion of Incompetence the same date the federal habeas proceeding was initiated. *Bradshaw*, 583 F. Supp.2d at 873. Carter amended his habeas petition three times, in 2003, 2004 and 2005. Carter Brief of Petitioner, *supra.* He asserted incompetency at trial, ineffective assistance of counsel, prosecutorial misconduct, and unconstitutional jury instructions. *Id.* He claimed the execution of a mental ill prisoner was a violation of the Eighth Amendment and that Ohio's lethal injection method was unconstitutional. *Id.*

[145] Carter Brief of Respondent, *supra* note 110, at 8–9; Brief of Amicus Curiae, *supra* note 74, at 8. Dr. Stinson concluded that Carter suffered from schizophrenia, a depressive disorder and a personality disorder. Brief of Amicus Curiae, *supra*. Dr. Stinson testified that Carter suffered from hallucinations, distorted thinking, unpredictable agitation, and spontaneous laughter. Carter Brief of Respondent, *supra*.

[146] Carter Brief of Respondent, *supra* note 110, at 9. Dr. Stinson further explained Carter did not understand the nature of the habeas proceeding, and held the false belief he could not be executed unless he volunteered. *Id.*

[147] *Id.*; *see also* Brief of Amicus Curiae, *supra* note 74, at 8 (stating that Dr. Gelbort explained that while Carter could provide some basic assistance, this would not be very beneficial to counsel because Carter's cognitive capabilities were limited).

disputed that Carter held false beliefs about the risk of execution.[148] Therefore, Dr. Resnick explained that Carter could sufficiently communicate with counsel.[149]

After the competency hearing, Dr. Stinson submitted an updated report explaining that Carter's condition had deteriorated.[150] Carter could no longer comprehend or respond to communications and engaged in nightly screaming and laughing.[151] Habeas counsel explained that Carter was unable to remember his trial, the trial verdict, his attorneys, or even the experts who had recently examined him.[152] The district court concluded that it was inappropriate to render a decision in the case, dismissed Carter's habeas petition, and tolled the statute of limitations, allowing Carter to re-file after his competency was restored.[153]

On appeal, the Sixth Circuit amended the district court's order and remanded the case for reconsideration.[154] The Sixth Circuit issued its decision relying on *Rees v. Payton*, which recognized a statutory right of competence in the federal habeas proceeding.[155] The court concluded that the district court did not abuse its discretion when it found Carter

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[148] Carter Brief of Respondent, *supra* note 110, at 9; *see also* Brief Amici Curiae of the American Civil Liberties Union and The National Association of Federal Defenders, in Support of Respondents at 3, Ryan v. Gonzales, 133 S. Ct. 696 (2013) (No. 11-218), 2012 WL 3109425 (stating that the experts for both the State and Carter diagnosed Carter as suffering from debilitating schizophrenia, yet the experts disagreed as to how well Carter was able to assist counsel in his case); Brief of Amicus Curiae, *supra* note 74, at 8 (clarifying that Dr. Resnick concluded Carter understood the nature and punishment of his conviction and was capable of assisting counsel).

[149] Carter Brief of Respondent, *supra* note 110, at 9.

[150] *Id.*

[151] *Id.*

[152] *Id.*

[153] *Id.* at 10; Rohan ex rel. Gates v. Woodford, 334 F.3d 803, 803 (9th Cir. 2003). The Court explained that Carter's recollections about his claims were an essential part of his assistance to counsel. Carter Brief of Respondent, *supra.* The district court based its conclusion on *Rohan ex rel. Gates v. Woodford*. *Id.* In the *Rohan* case, the Ninth Circuit decided that the statutory right to counsel in federal post-conviction relief in capital cases implies a statutory right to competence for the proceeding. *Rohan*, 334 F.3d at 803. The case also held that based on the ineffective assistance claim an incompetent petitioner was entitled to stay the proceeding until found competent. *Id.*

[154] Brief of Amicus Curiae, *supra* note 74, at 10; *see also* Carter Brief of Petitioner, *supra* note 115, at 12 (explaining that the Sixth Circuit agreed with the district court's ultimate ruling but did not agree with the analysis or the remedy).

[155] Carter Brief of Petitioner, *supra* note 115, at 12. *Rees* recognized "a statutory right to competence" for federal habeas petitioners sentenced to the death penalty. *Id.* The court explained, "the prisoner must be competent enough to (1) understand the nature and consequences of the proceedings against him, and (2) assist properly in his defense." *Id.*

incompetent to assist counsel.[156] However, the court rejected the district court's remedy, explaining that it was too broad.[157] According to the circuit court, the district court needed to stay the proceedings and monitor Carter's mental condition.[158] The Sixth Circuit ordered the district court to rule on the claims that did not require Carter to assist counsel.[159] The State appealed the decision to the Supreme Court of the United States and certiorari was granted.[160]

IV. DEATH PENALTY AND THE APPEAL PROCESS: CONCERNS AND ISSUES

Each case, in its unique way, grants the Supreme Court an opportunity to decide whether the appeal process of a mentally impaired capital defendant can be stayed due to the defendant's mental incapacity to assist counsel.[161] Does a district court have the authority to grant an indefinite postponement of the appeal process if an individual is claiming he cannot assist counsel?[162] If it does not, would it be fair to continue the appeal process if neither Gonzales nor Carter is able to communicate with counsel?[163] The States and the defendants have both formulated their own answers to these questions.[164]

As it was previously discussed, Gonzales and Carter were unable to communicate with counsel because of their mental incapacity.[165] As a result, both district courts stayed their federal habeas proceedings.[166] Each

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[156] Carter Brief of Respondent, *supra* note 110, at 10.

[157] *Id.* The court explained that the remedy set by the district court shifted the burden to the warden to continuously file petitions seeking to enforce Carter's sentence. *Id.*

[158] *Id.* at 11; *see also* Carter Brief of Petitioner, *supra* note 115, at 13 (clarifying that the Sixth Circuit ruled that habeas proceedings should be stayed until Carter was found to be competent to assist counsel).

[159] Carter Brief of Respondent, *supra* note 110, at 11; *see also* Brief of Amicus Curiae, *supra* note 74, at 10 (explaining that a "next friend" was to be appointed to litigate those claims where Carter's assistance was irrelevant).

[160] Carter Brief of Petitioner, *supra* note 115, at 13.

[161] *See* Gonzales Brief for Petitioner, *supra* note 71, at I (reflecting this issue in front of the Supreme Court); *see also* Carter Brief of Petitioner, *supra* note 115, at I (discussing this question to the Supreme Court).

[162] *See* Gonzales Brief of Respondent, *supra* note 78, at 10–13; *see also* Carter Brief of Respondent, *supra* note 110, at 12–15.

[163] *See* Gonzales Brief of Respondent, *supra* note 78, at 10–13; Carter Brief of Respondent, *supra* note 110, at 12–15.

[164] *See* Gonzales Brief of Respondent, *supra* note 78, at 10–13; Gonzales Brief for Petitioner, *supra* note 71, at 8–9; Carter Brief of Respondent, *supra* note 110, at 12–15; Carter Brief of Petitioner, *supra* note 115, at 14–15.

[165] *See supra* discussion Parts III and IV.

[166] *Id.*

side, the government and the defendants, took varying positions on whether the district courts have discretion to stay habeas proceedings due to a defendant's incapacity to communicate with counsel. [167] In order to evaluate the district courts' discretion, it is imperative to first determine whether a defendant is entitled to a right of competency in a death penalty habeas proceeding.

According to the State in both cases, there is no existing right of competency.[168] The State in *Tibbals v. Carter*[169] claimed the Sixth Circuit erred in its interpretation of *Rees v. Peyton*[170] and 18 U.S.C. § 4241 when it granted the right of competency to Carter.[171] Similarly, the State in *Ryan v. Gonzales*[172] alleged that the Ninth Circuit erred in its interpretation of 18 U.S.C. § 3599(a) (2) when it determined Gonzales had the right to be competent during the appeal process.[173] On the other hand, Carter claimed the Sixth Circuit did not err because section 4241 grants him the right to be competent during the appeal process and *Rees* confirmed the right.[174] Gonzales claimed the district court correctly stayed the proceedings because communication with counsel was impossible.[175]

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[167] *See* Gonzales Brief for Petitioner, *supra* note 71, at 8 (stating that staying a federal habeas corpus proceeding based on the incompetency of an offender to communicate with counsel contravenes the State's interest in the finality of the conviction); Gonzales Brief of Respondent, *supra* note 78, at 11 (alleging the stay is proper if communication between the capital habeas petitioner and his counsel is impossible due to the petitioner's incompetence); Carter Brief of Petitioner, *supra* note 115, at 14 (claiming that any competency related stay of the habeas proceeding would be an abuse of the district court's discretion); Carter Brief of Respondent, *supra* note 110, at 12–13 (claiming courts have an inherent discretion to grant stays and that no individual should lose his chance to have a proper defense because of his mental illness).

[168] *See* Carter Brief of Petitioner, *supra* note 115, at 15-16 (claiming the Sixth Circuit Court of Appeals erred when it found a habeas petitioner to be competent in order to understand the nature and consequences of the proceedings and to properly assist counsel); Gonzales Brief for Petitioner, *supra* note 71, at 9 (explaining the Ninth Circuit Court of Appeals incorrectly interpreted Title 18 of United States Code § 3599 (a)(2) when it concluded it created the right to competently assist counsel).

[169] *See generally* Carter Brief of Petitioner, *supra* note 115, at 14 (alleging the provision, 18 U.S.C § 424, utilized by the Sixth Circuit when concluding the right of competency existed is "far off base" and *Rees* does not confer a right of competency).

[170] *See generally* Rees v. Payton, 384 U.S. 312, 314 (1966) (remanding the case to the district court in order for it to determine the mental capacity of Rees while retaining jurisdiction over the case).

[171] Carter Brief of Petitioner, *supra* note 115, at 14; *see also* Carter v. Bradshaw, 644 F.3d 329 (6th Cir. 2011) (explaining that according to § 4241(d) a court may hospitalize incompetent defendants until they are competent to proceed with the proceedings).

[172] *See* Carter Brief of Respondent, *supra* note 110, at 15.

[173] *Id.*

[174] *See* Carter Brief of Respondent, *supra* note 110, at 15.

[175] Gonzales Brief of Respondent, *supra* note 78, at 11.

Section 3599(a) (2) gives a defendant seeking to vacate or set aside a death sentence the right to obtain adequate representation.[176] Moreover, it has been established that a habeas petitioner's right to qualified legal counsel includes the right of counsel to properly present habeas claims.[177] Inadequate communication with counsel would jeopardize the right to have qualified legal counsel.[178]

According to 18 U.S.C. § 4241, any time after prosecution has been initiated and prior to the completion of a sentence, a defendant may file a motion for a hearing to determine competency.[179] Furthermore, the section explains that if the court determines the defendant is mentally impaired and is unable to understand the nature and consequences of the proceedings, or is unable to assist counsel, the Attorney General should hold the defendant for treatment until the defendant's mental condition improves or a new determination about his competency is made.[180] In *Rees*, the Supreme Court of the United States upheld the validity of section 4241 when it stayed Rees' habeas procedure until the lower court could reach a decision on the defendant's competency.[181] Thus, the question remains whether the Supreme Court's decision to stay Rees' proceedings in order to determine his mental state is an indication that all defendants have a right of competency during the appeal process.

The discretion of a federal court to stay proceedings against a defendant is permitted by 28 U.S.C. § 2251.[182] The question of this discretion has been an issue in several cases and has been discussed by the Supreme Court on several occasions.[183] In *McFarland v. Scott*,[184] the Supreme Court held that district courts have jurisdiction to stay the

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[176] 18 U.S.C. § 3599 (2008).

[177] Gonzales Brief of Respondent, *supra* note 78, at 10; *see also* McFarland v. Scott, 512 U.S. 850, 858 (1994) (explaining the right to counsel includes a right for the counsel to meaningfully research and present the habeas claims).

[178] *See* Gonzales Brief of Respondent, *supra* note 78, at 11.

[179] *See* 18 U.S.C. § 4241(a) (2006).

[180] 18 U.S.C. § 4241 (d).

[181] *Rees*, 384 U.S. at 314; *see also Rohan ex rel. Gates*, 334 F.3d at 807 (declaring the right of competency was established at common law when it prohibited the trial and executions of incompetents).

[182] *See* 28 U.S.C. § 2251 (a)(1) (2006) (explaining that a habeas proceeding judge may grant a stay based on any matter before the judge during the habeas proceeding).

[183] *See, e.g.*, Clinton v. Jones, 520 U.S. 681, 706 (1997) (stating the district courts have the authority to stay grants when exercising their discretion properly); Landis v. North Amer. Co., 299 U.S. 248, 254 (1936) (explaining district courts ordinarily have the authority to grant stays).

[184] *See McFarland*, 512 U.S. at 859 (holding that when the right to legal representation for capital defendants in federal habeas proceedings is jeopardized, the district court has sufficient reason to stay the proceeding).

execution of a capital defendant while the defendant pursues the right to appointment of counsel.[185] Similarly, the Supreme Court gave district courts discretion to stay a mixed habeas petition in order to allow the capital defendant to present his unexhausted claims to the state court.[186] In *Gonzales* and *Carter*, the Supreme Court was faced with the question of whether district courts have discretion to grant a stay because of the inability to communicate with counsel because of incapacity.[187]

Although Gonzales filed his first petition for a writ of habeas corpus in November 1999, the merits of the petition have yet to be decided.[188] In the same manner, an indefinite stay was issued in *Carter*, and the State of Ohio has spent ten years trying to carry out his sentence.[189] These decisions have prompted the state in both cases to request writs of certiorari from the Supreme Court.[190] Because of the different opinions, interpretations, and discrepancies regarding the grant of the indefinite stays, the Supreme Court should define the scope of the indefinite stays and determine whether they are proper in light of the rights of both the states and the defendants.

Gonzales and Carter both argued to the Supreme Court that an indefinite stay is proper because it is not fair to continue the appellate process while defendants are unable to communicate with counsel.[191] It has been established that sometimes a petitioner's interest in achieving federal review of his claims outweighs the presumption that a federal petition should be finalized in a speedy manner.[192] On the other hand, the interest of the states should also be considered.[193] The purpose of AEDPA is to "reduce delays in the execution of state and federal criminal

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[185] *Id*.

[186] Rhines v. Weber, 544 U.S. 269, 269 (2005).

[187] *See* Gonzales Brief for Petitioner, *supra* note 71, at i; Carter Brief of Petitioner, *supra* note 115, at 5.

[188] Gonzales Brief for Petitioner, *supra* note 71, at 2. For the last five years, the State of Arizona has tried to carry the sentence and has been litigating Gonzales' incompetency. *Id.* The district court indefinitely stayed the proceedings. *Id.*

[189] Carter Brief of Petitioner, *supra* note 115, at 3. No federal court has examined the merits of Carter's habeas claims since he filed the habeas petition. *Id.*

[190] *See* Gonzales Brief for Petitioner, *supra* note 71, at 3; Carter Brief of Petitioner, *supra* note 115, at 13. The state in Gonzales claims the indefinite stay imposed by the Ninth Circuit is prejudicial to the State of Arizona. Gonzales Brief for Petitioner, *supra*. Similarly, in *Tibbals* the state claimed the indefinite stay goes against the AEDPA purpose to reduce delays in the executions of state and federal death sentences. Carter Brief of Petitioner, *supra.*

[191] Gonzales Brief of Respondent, *supra* note 78, at 20.

[192] *Rhines*, 544 U.S. at 278.

[193] *See generally*, Carter Brief of Petitioner, *supra* note 115, at 21 (explaining the purpose of AEDPA is to reduce delays in states cases, especially capital cases).

sentences, particularly in capital cases."[194] The reinstatement of the death penalty in 1976 increased the procedural regulations of capital cases.[195] As a result, the costs of pre-trial, trial, appeals, and incarceration has increased.[196] Indefinitely prolonging executions will increase both the costs to the state, and the number of federal habeas proceedings.

V. ORAL ARGUMENTS: THE ROAD TO A DECISION

The *Gonzales* and the *Carter* cases were scheduled for oral arguments on October 9, 2012.[197] Alexandra T. Schimmer ("Mrs. Schimmer"), counsel for the State of Ohio, and Scott Michelman ("Mr. Michelman"), counsel for Carter, appeared before the Supreme Court first.[198] Thomas C. Horne ("Mr. Horne"), counsel for the State of Arizona, Ann O'Connell ("Mrs. O'Connell"), Assistant to the Solicitor General as amicus curiae supporting both Carter and Gonzales, and Leticia Marquez ("Mrs. Marquez"), representing Gonzales, presented their arguments to the Supreme Court thereafter.[199]

A. The *Tibbals v. Carter* Oral Argument

Mrs. Schimmer presented the argument on behalf of the State of Ohio and declared that the Sixth Circuit's decision to stay Carter's habeas proceedings was wrong because an indefinite stay of habeas proceedings

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[194] *Rhines*, 544 U.S. at 276 (citing Woodford v. Garceau, 538 U.S. 202, 206 (2003)).

[195] Adam M. Gershowitz, *Pay Now, Execute Later: Why Counties Should Be Required To Post A Bond To Seek The Death Penalty*, 41 U. RICH. L. REV. 861, 861 (2007).

[196] S*ee also* S.V., *The High Price of Killing Killers*, DEATH PENALTY INFORMATION CENTER (Jan. 4, 2000), http://www.deathpenaltyinfo.org/node/2289 (explaining the State of Florida spends $51 million a year to enforce the death penalty); s*ee generally*, *Cost of the Death Penalty: Financial Facts About the Death Penalty*, DEATH PENALTY INFORMATION CENTER http://www.deathpenaltyinfo.org/costs-death-penalty #financialfacts, (last visited Jun. 3, 2015) [hereinafter DEATH PENALTY INFORMATION CENTER]. (The cost of the death penalty in California has totaled over $4 billion since 1978. DEATH PENALTY INFORMATION CENTER, *supra.* If the Governor of California would commute the sentences of those offenders currently in death row, the state would save $170 million per year. *Id.* At the same time, there is an additional $90,000 cost of confinement per inmate on death row compared to the maximum-security prisons where those sentenced to life without possibility of parole serve their sentences. *Id.*

[197] ARGUMENT CALENDAR, *supra* note 16.

[198] *See* Carter Oral Argument Transcript at 1, Ryan v. Gonzales, 133 S. Ct. 696 (2013) (No. 11-218), 2012 WL 4793856 [hereinafter Carter Oral Argument Transcript].

[199] *See* Gonzales Oral Argument Transcript at 1, Ryan v. Gonzales, 133 S. Ct. 696 (2013) (No. 10-930), 2012 WL 4793855 [hereinafter Gonzales Oral Argument Transcript].

is "fundamentally incompatible with the timeliness concerns underlying AEDPA."[200] The State of Ohio recognized that limited stays could be appropriate in certain circumstances, but argued this was not the case because Carter's claims were record-based.[201] According to the State, limited stays would only be appropriate when the disclosure of evidence or the prisoner's ability to communicate with his counsel would be necessary for the claim presented.[202] Moreover, no matter the circumstances, indefinite stays are never appropriate.[203] Accordingly, the State requested the Court to implement a "bright boundary line."[204]

Such a request caused the Supreme Court to be concerned about the State's proposition.[205] In the Court's view, the State of Ohio was requesting that there be no stays of any length to determine competency.[206] The State clarified that an indefinite stay is "a stay that is imposed until the prisoner is restored to competence."[207] If restoring competence is feasible, the Court was concerned about the point in time the stay would become indefinite. In addition, the Court wondered if it was possible to extend the time granted for treatment every time the recovery of

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[200] Carter Oral Argument Transcript, *supra* note 198, at 3.

[201] *Id.* Record-based claims, according to Mrs. Schimmer, could be resolved by counsel without the assistance of his client. *Id.*

[202] *Id.* at 4. Justice Kagan asked for a circumstance where a stay of the proceedings would be proper. *Id.* Ms. Schimmer explained those circumstances when a limited stay would be proper would only be applicable in a case where the AEDPA does not restrict the federal review of the state record. *Id.* In this case, she opined that Carter's assistance would not be necessary. *Id.* As a result, a limited stay would not be proper. *Id.* Furthermore, Ms. Schimmer explained all of Carter's claims are record-based and decided on the merits in the state proceedings. *Id.*

[203] *Id.* Justice Kennedy was concerned that an indefinite stay is never appropriate. *Id.* at 4. Mrs. Schimmer explained an indefinite stay would frustrate the AEDPA's timeliness concerns. *Id.* at 5. Consequently, district courts should only have the power to grant limited stays. *Id.* Furthermore, it is the petitioner's opinion that it would not be proper to allow a prisoner to essentially win the case by postponing or suspending his death sentence, the punishment afforded by the law. *Id.*

[204] *Id.* According to Justice Kagan, the facts of this case would not allow the Supreme Court to determine the question of how much of a stay is proper. *Id.* Consequently, Mrs. Schimmer explained that drawing a boundary line would be proper. *Id.* To the State, a "bright boundary line" would be for the Supreme Court to rule that indefinite stays are never permitted, but limited stays would be fine for claims that are not record-based. *Id.* at 6.

[205] Carter Oral Argument Transcript, *supra* note 198, at 8. Justice Sotomayor expressed her concern about the proposition made by the State of Ohio. *Id.*

[206] *Id.*

[207] *Id.* at 6. According to the State, if a doctor says competence can be restored, the State agreed they have to try, but "it cannot come at all costs." *Id.* at 10. At the end, it is in the State of Ohio's interest to have a competent prisoner in a habeas case. *Id.* at 11.

competency was unsuccessful.[208] One year is presumed to be sufficient to restore the competence of a prisoner.[209] Most prisoners regain competence within a period of six to nine months.[210] Once the prisoner is given a reasonable time to regain competence, the State argued, the proceedings have to continue in order to meet the finality concerns of the AEDPA.[211] Further, if within a reasonable time the prisoner does not regain competence, it is fair to conclude there is no longer a reasonable probability he will recover.[212] Therefore, a stay is no longer required.[213]

The respondent started by asking the Court to take into consideration the important principle that "no individual should lose potentially meritorious claims because of mental illness."[214] Concerned with the State's contention that a defendant could always come back and present new evidence, Carter argued this is not always the case.[215] Once a claim is adjudicated without the defendant's assistance, and he loses, a defendant who regains competence cannot come before the court asking to be heard on the same claim.[216] The Court explained that once a claim has been adjudicated, to be able to come back with new evidence, a defendant must show there is new law or new facts in regard to the claim.[217] The new facts must accompany a showing of actual innocence.[218] In other words, the defendant must show that no reasonable fact finder would have found

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[208] *Id.* at 12. Justice Roberts wondered if it would be appropriate to grant six months for the defendant's competence to be restored and extend the time if treatment was unsuccessful. *Id.*

[209] *Id.*; Brief for American Psychiatric Association and American Academy of Psychiatry and the Law as Amici Curiae in Support of Respondents at 19–21, Ryan v. Gonzales, 133 S. Ct. 696 (2013) (No. 10-930) (No. 11-218), 2012 WL 3090948 [hereinafter Brief of Psychiatric Association]. Mrs. Schimmer explained the one year of time is supported by the American Psychiatric Association and Carter's own amici. Carter Oral Argument Transcript, *supra* note 198, at 12. According to the American Psychiatric Association, most incompetent defendants recover competence within a "finite period of time." Brief of Psychiatric Association, *supra* at 20. For example, in the State of Florida during the years of 2002 to 2004, 78.5% percent of defendants recovered their competence within 180 days and 87.3% within 270 days. *Id.* at 20 n. 30. In Michigan from 2002 to 2005, defendants stayed in a hospital to have their competence restored an average of 134 days and a median of 100 days. *Id.*

[210] Carter Oral Argument Transcript, *supra* note 198, at 13.

[211] *Id.* at 14.

[212] *Id.*

[213] *Id.* at 15. At this point, the State's interest in the continuation of the proceedings weighs more. *Id.* Therefore, the proceedings must continue. *Id.*

[214] *Id.* at 16.

[215] *Id.*

[216] *Id.* at 17. Section 2244(b) creates a bar on second or successive petitions. *Id.*

[217] *Id.* at 19.

[218] Carter Oral Argument Transcript, *supra* note 198, at 19.

him guilty.[219] Instead of this burden, Carter argued, district courts should determine whether the record suggests a claim is potentially meritorious and whether the petitioner is genuinely incompetent.[220]

The Supreme Court expressed concerns regarding the standard to be used to determine competence.[221] Although mental health experts will be involved in the competency decision, the Court was concerned about the limits on the inherent authority district courts have regarding the length of stays. [222] As Carter explained, most defendants would not be able to establish incompetency.[223] The Court viewed the question as an issue of whether the stay could simply go on and on.[224] Carter admitted he agreed with the State that in most cases competency issues are resolved within a matter of months.[225] His case, on the other hand, is different because six months, nine months, or one year, would not be long enough due to his severe incapacity and the number of meritorious claims that required his assistance.[226]

B. The *Ryan v. Gonzales* Oral Argument

The State of Arizona reminded the Supreme Court that Congress' objective when it passed the AEDPA was "that the death penalty process needs to be speeded up, and habeas should not result in undue delays."[227] In addition, the State of Arizona agreed with the State of Ohio's proposition that competency can be restored within six to nine months.[228] As a result, the State requested the Court to set a standard of no more than

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[219] *Id.* at 20.

[220] *Id.* at 22. In order for the standard not to be a loose one, it must include the two considerations. Chief Justice Roberts explained that considering only whether the claim is merely suggested by the record is a pretty loose standard that entitled the defendant to a stay. *Id*. at 21.

[221] *See id.* at 25–26 (showing the concern of Justice Kennedy, Justice Scalia and Justice Ginsburg about the standard to prove incompetence).

[222] *Id.* at 30. Chief Justice Roberts expressed his concern about the limits on the district court's power. *Id.* Justice Scalia elucidated the point that mental health experts do not always agree. *Id.* at 27.

[223] *Id.* A defendant would have to prove to mental experts he is really incompetent. *Id*.

[224] Carter Oral Argument Transcript, *supra* note 198, at 30.

[225] *Id.*

[226] *Id.* at 31. Justice Ginsburg stated Carter's situation was different because he had never been competent. *Id.* Consequently, he was not competent to stand trial and his mental condition never improved. *Id.*

[227] Gonzales Oral Argument Transcript, *supra* note 199, at 3. Mr. Horne also explained that the *Rees* case was pre-AEDPA. *Id.* In addition, *Rees* is not applicable to the issues presented by the *Gonzales* case. *Id.*

[228] *Id.*

one year for a stay.[229] There needs to be a balance between the purpose of "finality, comity, federalism, and reduction of delays in death sentences cases" and the defendant's need to be competent.[230]

The State of Arizona argued that there should not be grants of stays for record-based claims and, where a stay is appropriate, one year should be the maximum time allotted for a defendant to regain competency regardless of whether subsequent stays are granted.[231] The allotted time should begin to run when treatment starts.[232] Once the time has been exhausted, the proceedings should continue whether the defendant is competent or not.[233] Even when there is evidence or testimony of a mental health expert showing there is a ninety percent chance the defendant will recover competency within a month after the allotted time, no other stay should be granted.[234] The State explained that if one additional stay is granted after the maximum allotted time has expired then there is no way to stop courts from granting several subsequent stays.[235]

Supporting the petitioners in both cases, Mrs. O'Connell declared that the United States agreed with Arizona and Ohio as to their propositions.[236] Attempting to persuade the Supreme Court on how a limited stay would work, Mrs. O'Connell explained incompetent defendants should be given a period of time in order to be treated. [237] If the defendant cannot regain competency at the end of the allotted time, then the court may grant an additional reasonable extension of time as long as doctors substantiate the probability of recuperation.[238] Nevertheless, it is imperative to keep in

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[229] *Id.* Mr. Horne elucidated that the one-year standard would give some guidance to the district courts. *Id.*

[230] *Id.* at 5. Because the Court has determined no stay can be indefinite, Mr. Horne asked the court to form a guideline and declared the way to balance both interests. *Id.*

[231] *Id.*

[232] *Id.* at 8. The American Psychiatric Association serves as basis for the proposition. *Id.* Their brief indicates that six to nine months is the time within which ninety percent of the cases of incompetent defendants are cured. *Id.* Treatment usually begins after some type of hearing or after the case has been stayed. *Id.* at 8-9.

[233] Gonzales Oral Argument Transcript, *supra* note 199, at 11.

[234] *Id*.

[235] *Id.*

[236] *Id.* at 14. Mrs. O'Connell explained to the Court that she agreed with the guidelines proposed by the petitioners declaring when a stay should or should not be granted. *Id.*

[237] *Id.* During treatment, an assessment of the probability that the defendant could regain competency is made. *Id.*

[238] *Id.* The phrase a "reasonable extension of time" made Justice Scalia wonder if this framework would work in the case of stays. *Id.* For him, the definition of a "reasonable extension" is imperative in the stay context. *Id.* at 16. Mrs. O'Connell explained that the extension is up to the district courts to determine. *Id.* After all, they have discretion and they need to keep in mind that one year would be the maximum time

mind that there will be an outer limit of one year to grant the stay.[239] A district court cannot grant several stays that would amount to a period of more than one year.[240] District courts should not grant stays at all in matters concerning record-based claims.[241]

Gonzales was asked to provide an example of a case limited to the record where a stay would be appropriate and communication with the client would be necessary for fair and full adjudication.[242] A good example, according to Gonzales, would be claims arising from the sentencing phase.[243] The Court was concerned that incompetent clients would be unable to make the decision of whether to pursue sentencing claims.[244] Gonzales clarified that a stay would not be proper in every single case but explained it is the attorney's duty to communicate with the client, therefore having a competent client is clearly important.[245]

Gonzales also argued that one year, in certain situations, may not be enough. As a result, district courts needed to have discretion to explore other options if the defendant was not competent after the one-year period. Based on the *Gonzales* case, where it took his attorney six years to bring the competency claim and Gonzales refused treatment, the Court expressed its concern about the finality of a stay if an incompetent defendant who is receiving treatment, once he is about to recuperate, demands treatment to stop because it makes him sick.[246] The facts of this case did not allow the Supreme Court to test the one-year standard proposed by Ohio and Arizona.

VI. FINAL DECISION: RIGHT OF COMPETENCY OR NOT?

Although both the Sixth and the Ninth Circuits concluded there was a right of competency for death row inmates pursuing federal habeas, the

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allotted for the stay. *Id.*

[239] Gonzales Oral Argument Transcript, *supra* note 199, at 16.

[240] *See id.* at 18 (explaining that setting a standard saying no stays of more than one year will be of guidance for the district courts).

[241] *Id.* at 19. On record-based cases, it would be an abuse of discretion for district courts to grant stays. *Id.* AEDPA does not allow stays without justification. *Id.* In record-based cases, there is no role for a defendant to play. *Id.* at 19-20.

[242] *Id.* at 25–26. Justice Kagan declared that although she has been thinking about one example, she has to confess she has not been successful. *Id.*

[243] *Id.* at 26. Sentencing claims are usually not pursued by petitioners of habeas proceedings. *Id.* These claims are strictly on the record. *Id.* Deciding whether to make these claims is an "all-encompassing" decision that a client needs to make. *Id.*

[244] *Id.* at 26–27.

[245] Gonzales Oral Argument Transcript, *supra* note 199, at 26–27.

[246] *Id.*

reasoning for the conclusions differed.[247] While the Sixth Circuit, in the *Carter* case, determined 18 U.S.C. § 4241 gave district courts discretion to stay the proceedings due to incompetence, the Ninth Circuit concluded the discretion was granted by 18 U.S.C. § 3599.[248] The Supreme Court concluded: "neither 18 U.S.C. § 3599 nor 18 U.S.C. § 4241 provides such a right."[249] The Court reversed the judgment in *Gonzales* and remanded the *Carter* case for proceedings consistent with the holding. [250]

The Supreme Court began with an analysis of section 3599.[251] Section 3599 only guarantees the right to federally funded counsel for a federal habeas petitioner on death row.[252] Once an attorney is appointed, unless the attorney or the defendant requests otherwise, the attorney must represent the defendant throughout every subsequent stage of available judicial proceedings.[253] The Supreme Court clarified that section 3599 does not "direct district courts to stay proceedings when habeas petitioners

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[247] *Ryan*, 133 S. Ct. at 702; *see also Carter*, 644 F.3d at 337 (holding that the habeas proceedings should be stayed until Carter is rendered competent according to section 4241); *In re Gonzales*, 623 F.3d at 1246 (explaining that because Gonzales had raised at least one claim that could benefit from communication with counsel, he was eligible for a stay of his habeas proceedings). The Sixth Circuit based its conclusion on the interpretation of section 4241, while the Ninth Circuit followed section 3599. *Ryan*, 133 S. Ct. at 702.

[248] *Ryan*, 133 S. Ct. at 702; *see also* Gonzales Brief of Respondent, *supra* note 78, at 15 (claiming the district courts have discretion to stay habeas proceeding in situations of incompetency as it is confirmed by section 3599); s*ee also Carter*, 644 F.3d at 337 (explaining that staying the proceedings according to section 4241(d) would enable all parties to remain actively involved in the litigation and the court to monitor Carter's condition).

[249] *Ryan*, 133 S. Ct. at 700.

[250] *Id.* at 709–710.

[251] *See id.* at 702 (describing § 3599's purpose and applicability).

[252] *Id.*; 18 U.S.C. § 3599 (2008). In an action where a criminal defendant is charged with a crime punishable by death, if the defendant is unable to obtain adequate representation, experts, investigation, and other services because it is financially impossible, the court shall appoint the attorneys and furnish those services necessary. § 3599. According to § 3599(b), those attorneys who are appointed are required to have experience in death penalty litigation. § 3599(b). Depending on the stage they are appointed to represent the death row defendant, the attorneys must be admitted to practice in the court where prosecution is to be tried or in the appellate court for no less than five years. § 3599(b)–(c). In addition, the attorneys must have no less than three years' experience in the trial of felony prosecution or handling of felony appeals in the court. §3599(b)–(c).

[253] *Ryan*, 133 S. Ct. at 702; *see also* 18 U.S.C. § 3599(d) (2008) (explaining that subsequent stages may include trial, sentencing, motions for new trial, pretrial proceedings, appeals, applications for writ of certiorari to the Supreme Court of the United States, all post-conviction processes, including applications for stays of execution, motions, competency proceedings and clemency petitions and proceedings).

are found incompetent."[254] In fact, the only portion of the section that references competency is §3599(e), which simply explains that appointed attorneys shall represent the defendant in competency proceedings.[255] The Court, therefore, concluded that it is doubtful that Congress would have authorized an attorney to represent a death row defendant in post-conviction competency proceedings only if the defendant was competent.[256]

The Supreme Court explained that implying the right to counsel affords the criminal defendant a right to competency does not follow the constitutional precedent of the United States.[257] Although there is a connection between the right to counsel and the right to be competent in order to assist counsel, there is no derivation of the right to competence from the right to counsel.[258] The Supreme Court refused to infer that Congress deviated from precedent to include a right of competence within the right to counsel in federal proceedings.[259]

The reliance of the Ninth Circuit on the *Rohan Ex Rel. Gates v. Woodford* case prompted the Supreme Court to analyze the case and its reasoning.[260] In *Rohan*, a habeas petitioner claimed a right of competency based on the Due Process Clause and on 21 U.S.C. § 848(q)(4)(B), which granted appointment of counsel to a defendant having financial problems during post-conviction proceedings.[261] The Ninth Circuit concluded the

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[254] *Ryan*, 133 S. Ct. at 702.

[255] *Id.*; *see also* 18 U.S.C. § 3599(e) (2008) (declaring: "shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant").

[256] *Ryan*, 133 S. Ct. at 702 n. 3.

[257] *See id.* at 703 (explaining that if the right to counsel would carry an implied right to competence at trial, such a right would flow from the Sixth Amendment. On the other hand, it has been repeatedly recognized that the criminal trial of an incompetent defendant violates due process and not the Sixth Amendment).

[258] *Id.*

[259] *Id.* The assumption is that when Congress enacts a statute, it is aware and following judicial precedent. *Id.*

[260] *Rohan ex rel. Gates*, 334 F.3d at 803; s*ee also Ryan*, 133 S. Ct. at 702 (declaring the Court briefly addresses the *Rohan* case because it was the controlling precedent of the Ninth Circuit). The Ninth Circuit held that the statutory right to counsel in federal post-conviction relief proceedings implied a right of competence. *Rohan,* 334 F.3d at 803. In addition, a petitioner is entitled to a stay until found incompetent. *Id.*

[261] *Ryan*, 133 S. Ct. at 703; 21 U.S.C. § 848(q)(4)(B) (1996-2006); *see also* 21 U.S.C § 848 (2006) (explaining part of (q)(4)(B) was repealed in 2006, and therefore, is not applicable anymore). Section 848(q)(4)(B) declared that in any post-conviction proceeding where a defendant is seeking to set aside a death sentence and is having financial problems, he is entitled to the appointment of one or more attorneys. 21 U.S.C. § 848(q)(4)(B) (repealed 2006).

Due Process claim represented substantial constitutional questions.[262] The Supreme Court found the conclusion "puzzling in light of the Ninth Circuit's acknowledgment that there is 'no constitutional right to counsel on habeas,' and that 'there is no due process right to collateral review at all.'"[263] The Supreme Court, therefore, found there were no constitutional or substantial concerns.[264]

Moreover, the reliance on § 848(q)(4)(B) was also incorrect.[265] Following the holding in *Calderon v. United States Dist. Court for Central Dist. of Cal.,*[266] the Ninth Circuit determined that as long as a petitioner's statutory right depended on his ability to communicate with counsel, making him pursue relief in his condition "is no less an infringement than dismissing his late petition."[267] The Supreme Court refused to accept the Ninth Circuit's assertion because the "backward-looking," "record-based" nature of the federal habeas proceeding allows counsel to provide effective representation to a petitioner regardless of whether he is competent or not.[268] Consequently, by studying only the record of the state court proceedings, attorneys are capable of identifying legal errors and forming relevant arguments without the assistance of their clients.[269]

The Court also found that § 4241 is "simply inapplicable to federal habeas proceedings."[270] According to its language, § 4241 only applies to trial proceedings prior to sentencing and "at any time after the commencement of probation or supervised release."[271] Federal habeas proceedings are the direct result of sentencing.[272] As a result, federal habeas petitioners are incarcerated and not on probation.[273] The Court noted that Carter had been incarcerated since April 3, 1998, was sentenced to death, had not been on probation or supervised release, and the

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[262] *Rohan*, 334 F.3d at 814.

[263] *Ryan*, 133 S. Ct. at 704 (quoting *Rohan ex rel. Gates*, 334 F.3d at 814 (internal citations omitted); *see also Rohan*, 334 F.3d at 814 (explaining that habeas is a limited and secondary component of the criminal justice process and, therefore, many of the defendant's rights do not attach).

[264] *Ryan*, 133 S. Ct. at 704.

[265] *Id.;* Section 848(q)(4)(B) was superseded by 18 U.S.C. § 3599(a)(2). *Id.* at 704 n. 5.

[266] Calderon v. United States Dist. Court for Central Dist. Of Cal., 163 F. 3d. 530 (1998). In this case, the Ninth Circuit explained that a prisoner's incompetence could "eviscerate the statutory right to counsel." *Id.* at 541.

[267] *Ryan*, 133 S. Ct. at 704 (quoting *Rohan ex rel. Gates*, 334 F.3d at 814).

[268] *Id*

[269] *Id.* at 705.

[270] *Id.* at 707.

[271] 18 U.S.C. § 4241 (2006).

[272] *Ryan*, 133 S. Ct. at 707.

[273] *Id.*

expiration of his maximum sentence of January 1, 7777.[274] Therefore, § 4241 is not applicable to Carter. Similar to the rest of Title 18, the Supreme Court explained that § 4241 is applicable exclusively to federal defendants subject to prosecution by the United States.[275] Carter is not a federal defendant, but a state prisoner challenging his conviction in a federal action.[276] Lastly, if there is reasonable cause to believe that a defendant's incompetence renders him unable to assist in his defense and understand the proceeding, § 4241 authorizes the district court to grant a motion for competency determination.[277] However, this statutorily provided right is inapplicable to habeas proceedings under § 2254, the proceedings applicable to both Gonzales and Carter.[278]

In these cases, both respondents and petitioners agreed that district courts have authority to issue stays if exercising their discretionary power properly.[279] The parties disagreed, however, about whether a stay would be proper and about the proper duration of the stay.[280] The Supreme Court did not limit the discretion of the district courts: "[w]e do not presume that district courts need unsolicited advice from us on how to manage their dockets."[281] The Court found it "unnecessary to determine the precise contours of the district court's discretion,"[282] and addressed only the district court's discretion in regards to the "outer limits."[283]

Title 28 U.S.C. § 2254(d) regulates the type of claims allowed in a writ of habeas corpus.[284] The section precludes claims that were adjudicated

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[274] Ohio Department of Corrections Inmate Search of Sean Carter, Inmate No. A356659, http://www.drc.ohio.gov/OffenderSearch/Search.aspx (make sure "A" is selected in the "number" drop down box; then enter "356659" into the "number" box; then follow the search hyperlink).

[275] *Ryan*, 133 S. Ct. at 707.

[276] *Id.*; *see also* Carter Brief of Petitioner, *supra* note 115, at 5–13 (stating the State of Ohio is the sole prosecutor of Carter and the one carrying the execution of the death sentence).

[277] *Ryan*, 133 S. Ct. at 707.

[278] *Id.*; *see generally* 28 U.S.C. § 2254 (1996) (this section gives the power to a capital offender to request a writ of habeas corpus and regulates the request and the claims that can be raised).

[279] *Ryan*, 133 S. Ct. at 708. Both Gonzales and Carter argued extensively in their briefs that district courts have discretion to grant stays when a determination was made that the petitioner is not competent. *Id*. at 707. The petitioners do not dispute this and agree with the fact that the AEDPA has not deprived the district courts of such authority. *Id*. at 708.

[280] *Id.*

[281] *Id.*

[282] *Id.*

[283] *Id.* By "outer limits," the Supreme Court refers to the circumstances where a stay is proper or improper. *Id.* at 708–10.

[284] *See* 28 U.S.C. § 2254(d) (1996) (setting up the limits for the claims that can be

on the merits in state court proceedings unless the determination was made because of an unreasonable application of the law or facts of the case.[285] Federal habeas is "a guard against extreme malfunctions in the state criminal justice systems, not a substitute for ordinary error correction through appeal."[286] As a result, once the claims are classified as record-based, irrespective of the petitioner's competence, a stay of the proceedings should not be granted.[287] In the end, Counsel can read the record and formulate the claims.[288] Because all the claims raised by Gonzales were properly exhausted claims and record-based, the District Court did not err nor abuse its discretion when it denied the stay.[289] On the other hand, the Ninth Circuit improperly reversed this decision when it granted the stay of the proceedings.[290]

Although similar to *Gonzales*, the *Carter* case presented an inconclusive determination. The District Court concluded Carter's assistance was necessary to four of his claims.[291] However, three out of the four claims were adjudicated on the merits in state post-conviction proceedings.[292] Therefore, they were subject to scrutiny under § 2254(d).[293] As a result, Carter could not present extra record evidence.[294] Consequently, no stay of the proceedings would be necessary.

Assuming Carter's claim was not exhausted, an indefinite stay of the proceedings would not be proper.[295] The Supreme Court explained that the purpose of AEDPA is "to reduce delays in the execution of state and

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raised on the federal habeas proceedings).

[285] *Id.*

[286] *Ryan*, 133 S. Ct. at 708 (quoting Harrington v. Ritcher, 131 S. Ct. 770 (2011)).

[287] *See id.* (explaining that record-based claims can be formed by counsel without the assistance of their client).

[288] *Id.*

[289] *Id.* Gonzales' claims included that he was prejudiced by the presence of the victim's wife in the courtroom during jury selection, the trial judge's refusal to recuse himself, that the wife's in-court identification was tainted, that Arizona's statutory death penalty scheme is unconstitutional because it precludes the sentencer from considering all mitigating evidence, and that there was insufficient evidence supporting two aggravating factors found by the judge. *Id.*

[290] *Id.*

[291] *Id.* at 709.

[292] *Ryan*, 133 S. Ct. at 709. Claim one alleges Carter was incompetent to stand trial and was unlawfully removed from the trial. Claims two, five and six include ineffective assistance of counsel. *Id.* at 709 n. 15.

[293] *Id.*; 28 U.S.C. § 2254(d). Once a claim is adjudicated on the merits in state proceedings, it becomes precluded from review in habeas proceedings unless one of the exceptions is met. *Id.* at (d)(1)–(2).

[294] *Ryan*, 133 S. Ct. at 709.

[295] *Id.*

federal criminal sentences."[296] As a result, staying a federal habeas proceeding goes against the finality objective encouraged by the AEDPA.[297] Finality, as the Supreme Court elucidated, is of extreme importance in habeas proceedings: "[w]ithout time limits on stays, petitioners could frustrate AEDPA's goal of finality by dragging out indefinitely their federal habeas review."[298] The Supreme Court explained that district courts have the discretion to determine whether a claim will substantially benefit from the petitioner's assistance.[299] If this is the case, and the petitioner is incompetent to assist counsel, the district court should take into account the probability that the petitioner will regain competence in the foreseeable future.[300] In cases where no reasonable hope of competence is visible, a stay of the proceedings would be inappropriate.[301] As a result, the federal habeas proceedings must continue without the assistance of the petitioner.[302] A prolongation of the stay would frustrate the State's attempts to defend the presumptively valid judgment.[303]

The Supreme Court did not completely define the discretion of the district courts. However, it did set limits to their discretion. On the one hand, the Court found no stay should be granted to record-based claims.[304] Consequently, whether the petitioner is competent or not, his assistance is not necessary to continue the federal habeas proceedings.[305] On the other hand, when there is a probability a claim could be enhanced by the assistance of the petitioner, the district court has discretion to grant a stay if the petitioner is incompetent.[306] Yet, such a stay is not indefinite, and as soon as the district court learns the petitioner will not be brought to

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[296] *Id.*

[297] *Rhines*, 544 U.S. at 277. Stays, if granted too frequently, undermine the purposes of the AEDPA. *Id.* AEDPA's finality objective would be destroyed if a defendant is allowed to delay the resolution of his proceedings. *Id.* Stays also undermine AEDPA's goal of reorganizing federal habeas proceedings by decreasing the incentive petitioners have to exhaust all their claims in state court prior to filing their federal petitions. *Id.*

[298] *Ryan*, 133 S. Ct. at 709 (quoting *Rhines*, 544 U.S. at 277–278).

[299] *Id.*

[300] *Id.*

[301] *Id.*

[302] *Id.*

[303] *Id.*

[304] *Ryan*, 133 S. Ct. at 709. Record-based claims, as it is implied by the term, arise from a review of the record. *Id.*

[305] *See id.* at 708 (explaining attorneys can review the record by themselves to create the claims that will be raised on appeal and that the assistance of the petitioner is not relevant).

[306] *See id.* at 709 (stating that district courts have discretion to grant the stay).

competence, the district court should allow the proceeding to continue without assistance of the petitioner.[307]

VII. RYAN V. GONZALES: BENEFITS OF A DECISION AND CONCLUSION

In the *Ryan v. Gonzales* decision, the Supreme Court once again defined the history of the death penalty in the United States. The decision not only defined the discretion of the district courts when granting stays, but also limited the number of incompetency claims allowed for capital offenders awaiting the execution of their sentences. For now, the Supreme Court determined no stays would be granted to record-based claims.[308] In this sense, the Supreme Court enhanced the efficiency of the federal habeas proceeding process. No stays for record-based claims means no delay in the process, effective representation of counsel, and in the long run, less expenses for legislatures. This rule takes some responsibility from the capital offender petitioner and places it in the hands of the attorneys. As a result, the seriousness of the death penalty and the rules of professional conduct requiring an attorney to zealously and diligently represent his client would prompt attorneys to look at the record closely to form adequate claims on behalf of their clients. In addition, because the record itself would be the only basis for many of the claims raised on appeals, the handling and the preservation of the record below could improve substantially. Because this decision limited the discretion of the district courts when facing record-based claims, the district court's decision would be simple and no conflicts guided by a difference of opinion will emerge between the judges listening to the cases during appeals.

Although the Supreme Court limited the discretion district courts have when dealing with record-based cases, the Court did not implement a definite period of time for the stays. To the Supreme Court, it is clear that district courts have the discretion to grant stays if a capital offender claims he is incompetent to assist counsel. As long as the claims before the district court are not record-based, the court may grant a stay, require treatment, and evaluate the defendant's recuperation.[309] This decision should help the district courts make better assessments of their discretion. Furthermore, the decisions of the different courts will become consistent

[307] *See id.* (elucidating that a stay should not be indefinite and whether the petitioner regains competence or not, the proceedings must continue).

[308] *Id.*

[309] *See id.*

with each other because, although judges have different opinions about the death penalty, the stays they can grant are limited.

By deciding not to grant a definite period of time a stay could last, the Supreme Court has given every defendant a fair chance to claim incompetency and recover at his or her own pace. After all, not every defendant will regain competency by the ninth month of his or her treatment. In this regard, refusing to set a specific limit of time gives defendants an equal opportunity to recuperate. In addition, it allows the district courts to play an active role in each individual's treatment while preserving the decision of the Supreme Court not to allow indefinite stays.

By defining an "outer limit" and ruling that once the capital offender receives treatment but does not recuperate, the competency the process will continue, the Supreme Court has closed the doors to fraudulent claims. It is a fact that after *Atkins,* claiming incompetency is one of the ways to avoid execution of the death sentence.[310] As a result, if a claim of incompetency is made in relation to the appeal process, treatment will be ordered and the process will eventually continue whether the defendant regains competency or not. Therefore, both truthful and fraudulent cases will continue in one way or the other. Consequently, there is a probability that capital offenders' fraudulent claims of incompetence will diminish, and little by little will disappear. Another benefit of setting an "outer limit" is a reduction in the battles between the experts. For years, the intricacies that define the mental incapacity finding have placed courts in the middle of the battles of the experts, where one side claims insanity and the other normality with the aim of obtaining a definite outcome. Because the appeal process will continue whether a defendant recuperates competency or not, it is probable these battles will evolve and their competitive aspect will weaken.

The fact that no indefinite stays will be granted will be beneficial for state legislatures and the judicial system in general. As it is, the capital appeals process takes a long time. Limiting the stays will speed up the process and make the post-conviction stages more efficient and definite. In addition, states will eventually be able to carry out the sentences and their backlogs will be reduced. Once the appeal process is enhanced and the time of the proceedings is diminished, the states will be able to execute the capital offenders placed on death roll sooner. As a result, the costs of having capital offenders incarcerated for many years before execution will diminish. In addition, the victims and their families will also have closure sooner.

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[310] *See* Atkins v. Virginia, 536 U.S. 304 (2002) (holding that that the execution of mentally impaired offenders is a violation of the Eighth Amendment).

Although the *Ryan v. Gonzales* decision will raise several issues, and will probably cause many concerns and a variety of discussions, it was imperative for the Supreme Court to render a decision. The case not only allows society to see how capital punishment continues to evolve in the country, but it also provides guidance and defines the rights of individuals and those of the states. As a result, this comment serves as an update of capital punishment law, mental impaired capital offenders, and the appeal process.