AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 11: The Contemporary Era – Criminal Justice: Punishments: The Death Penalty

**Madison v. Alabama**, \_\_\_ U.S. \_\_\_ (2019)

*Vernon Madison was sentenced to death after he killed a police officer in 1985. During his very long stay on death row, his mental condition deteriorated. In 2016, he filed a habeas corpus petition claiming he could not be executed because he lacked the mental capacity that such cases as* Ford v. Wainwright *(1986) required for carrying out a death sentence. After a complex series of appeals, that claim was eventually denied by the Supreme Court of the United States in* Dunn v. Madison *(2016). Madison filed a new claim of incompetence in 2018 after Alabama set an execution date. A state trial court rejected that claim. Madison appealed to the Supreme Court of the United States.*

*The Supreme Court of the United States by a 5-3 vote remanded the case to the Alabama courts for further consideration. Justice Elena Kagan’s majority opinion held that states could execute persons who did not remember their crimes, but not persons who do not understand why they are being executed. Both dementia and delusions, Kagan insisted, might cause a person not to understand the reason for their execution. Justice Samuel Alito’s dissent did not dispute this holding, but claimed that the Alabama trial court correctly applied the law. No one on the court discussed whether an execution should take place 34 years after the crime was committed. Was Justice Kagan correct that the justices needed to make sure the Alabama courts get the law right, a matter that will take another year or so. Do you think a different ruling likely from the state court? If not, what was the point of the remand? For that matter, what is the point of an execution 34 years after a crime has been committed?*

Justice [KAGAN](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0301239401&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90cb435e3a8211e9bc5c825c4b9add2e) delivered the opinion of the Court.

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This Court decided in *Ford v. Wainwright* (1986), that the Eighth Amendment’s ban on cruel and unusual punishments precludes executing a prisoner who has “lost his sanity” after sentencing. . . . Among the reasons for that time-honored bar, the Court explained, was a moral “intuition” that “killing one who has no capacity” to understand his crime or punishment “simply offends humanity.” Another rationale rested on the lack of “retributive value” in executing a person who has no comprehension of the meaning of the community’s judgment. The resulting rule, now stated as a matter of constitutional law, held “a category of defendants defined by their mental state” incompetent to be executed. The Court clarified the scope of that category in *Panetti v. Quarterman* (2007) by focusing on whether a prisoner can “reach a rational understanding of the reason for [his] execution.” . . . The critical question is whether a “prisoner’s mental state is so distorted by a mental illness” that he lacks a “rational understanding” of “the State’s rationale for [his] execution.” Or similarly put, the issue is whether a “prisoner’s concept of reality” is “so impair[ed]” that he cannot grasp the execution’s “meaning and purpose” or the “link between [his] crime and its punishment.”

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. . . . [A] person lacking memory of his crime may yet rationally understand why the State seeks to execute him; if so, the Eighth Amendment poses no bar to his execution. . . . [A] person suffering from dementia may be unable to rationally understand the reasons for his sentence; if so, the Eighth Amendment does not allow his execution. What matters is whether a person has [a] “rational understanding” . . . —not whether he has any particular memory or any particular mental illness.

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. . . . *Panetti* asks about understanding, not memory—more specifically, about a person’s understanding of why the State seeks capital punishment for a crime, not his memory of the crime itself. And the one may exist without the other. . . . [I]f you somehow blacked out a crime you committed, but later learned what you had done, you could well appreciate the State’s desire to impose a penalty. Assuming, that is, no other cognitive impairment, loss of memory of a crime does not prevent rational understanding of the State’s reasons for resorting to punishment. . . .

[*Panetti*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) reasoned that execution has no retributive value when a prisoner cannot appreciate the meaning of a community’s judgment. But as just explained, a person who can no longer remember a crime may yet recognize the retributive message society intends to convey with a death sentence. . . . Moral values do not exempt the simply forgetful from punishment, whatever the neurological reason for their lack of recall.

But such memory loss still may factor into the “rational understanding” analysis that [*Panetti*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) demands. If that loss combines and interacts with other mental shortfalls to deprive a person of the capacity to comprehend why the State is exacting death as punishment, then the [*Panetti*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) standard will be satisfied. That may be so when a person has difficulty preserving any memories, so that even newly gained knowledge (about, say, the crime and punishment) will be quickly forgotten. Or it may be so when cognitive deficits prevent the acquisition of such knowledge at all, so that memory gaps go forever uncompensated. . . .

. . . . [*Panetti*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) . . . focuses on whether a mental disorder has had a particular effect: an inability to rationally understand why the State is seeking execution. . . . [T]hat standard has no interest in establishing any precise cause: [Psychosis](https://1.next.westlaw.com/Link/Document/FullText?entityType=disease&entityId=Ic6c75a10475411db9765f9243f53508a&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)) or dementia, delusions or overall cognitive decline are all the same under [*Panetti*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), so long as they produce the requisite lack of comprehension. . .. And here too, the key justifications [*Ford*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1986132787&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) and [*Panetti*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) offered for the Eighth Amendment’s bar confirm our conclusion about its reach. As described above, those decisions stated that an execution lacks retributive purpose when a mentally ill prisoner cannot understand the societal judgment underlying his sentence. And they indicated that an execution offends morality in the same circumstance. Both rationales for the constitutional bar thus hinge . . . on the prisoner’s “[in]comprehension of why he has been singled out” to die. . . .

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. . . [T]he 2018 ruling we review today contains only one sentence of explanation. It states that Madison “did not provide a substantial threshold showing of insanity[ ] sufficient to convince this Court to stay the execution.” If the state court used the word “insanity” to refer to a delusional disorder, then error occurred: The court would have denied a stay on the ground that Madison did not have that specific kind of mental illness. And the likelihood that the court made that mistake is heightened by the State’s emphasis, at that stage of the proceedings (as at others), that Madison was “not delusional or psychotic” and that “dementia” could not suffice to bar his execution. . . . Alabama argues, however, that the court spoke of “insanity” only because the state statute under which Madison sought relief uses that term. But even if so, that does not advance the State’s view that the state court properly understood the Eighth Amendment bar when assessing Madison’s competency. Alabama told this Court in opposing certiorari that its statute covers only those with delusional disorders, and not those with dementia. The state court’s (supposed) echoing of statutory language understood in that way cannot provide assurance that the court knew a person with dementia might receive a stay of execution; indeed, it suggests exactly the opposite. The court’s 2018 order thus calls out for a do-over.

Alabama further contends, however, that we should look past the state court’s 2018 decision to the court’s initial 2016 determination of competency. . . . According to the State, nothing material changed in the interim period, thus, we may find the meaning of the later ruling in the earlier one. . . . But the state court’s initial decision does not aid Alabama’s cause. First, we do not know that the court in 2018 meant to incorporate everything in its prior opinion. The order says nothing to that effect; and though it came out the same way as the earlier decision, it need not have rested on all the same reasoning. Second, the 2016 opinion itself does not show that the state court realized that persons suffering from dementia could satisfy the [*Panetti*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))standard. True enough, as Alabama says, that the court accurately stated that standard in its decision. But as described above, Alabama had repeatedly argued to the court (over Madison’s objection) that only prisoners suffering from delusional disorders could qualify as incompetent under [*Panetti*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). . . .

For those reasons, we must return this case to the state court for renewed consideration of Madison’s competency (assuming Alabama sets a new execution date). In that proceeding, two matters disputed below should now be clear. First, under [https://i1.next.westlaw.com/StaticContent_43.5.2001/images/v1/flag_yellow_small.png?ignoreDeliveryNewLinehttps://i1.next.westlaw.com/StaticContent_43.5.2001/images/v1/caution_orange_small.png?ignoreDeliveryNewLine](https://1.next.westlaw.com/Link/RelatedInformation/Flag?documentGuid=I31956e699c2511d9bdd1cfdd544ca3a4&transitionType=InlineKeyCiteFlags&originationContext=docHeaderFlag&contextData=(sc.Search))[Ford](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1986132787&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) and [https://i1.next.westlaw.com/StaticContent_43.5.2001/images/v1/flag_yellow_small.png?ignoreDeliveryNewLine](https://1.next.westlaw.com/Link/RelatedInformation/Flag?documentGuid=I6f67ef13258611dcaf8dafd7ee2b8b26&transitionType=InlineKeyCiteFlags&originationContext=docHeaderFlag&contextData=(sc.Search))[Panetti,](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) the Eighth Amendment may permit executing Madison even if he cannot remember committing his crime. Second, under those same decisions, the Eighth Amendment may prohibit executing Madison even though he suffers from dementia, rather than delusions. The sole question on which Madison’s competency depends is whether he can reach a “rational understanding” of why the State wants to execute him. [https://i1.next.westlaw.com/StaticContent_43.5.2001/images/v1/flag_yellow_small.png?ignoreDeliveryNewLine](https://1.next.westlaw.com/Link/RelatedInformation/Flag?documentGuid=I6f67ef13258611dcaf8dafd7ee2b8b26&transitionType=InlineKeyCiteFlags&originationContext=docHeaderFlag&contextData=(sc.Search))[Panetti, 551 U.S. at 958, 127 S.Ct. 2842](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&fi=co_pp_sp_780_958&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_780_958). In answering that question—on which we again express no view, see supra, at ––––—the state court may not rely on any arguments or evidence tainted with the legal errors we have addressed. And because that is so, the court should consider whether it needs to supplement the existing record. Some evidence in that record, including portions of the experts’ reports and testimony, expressly reflects an incorrect view of the relevance of delusions or memory; still other evidence might have implicitly rested on those same misjudgments. The state court, we have little doubt, can evaluate such matters better than we. It must do so as the first step in assessing Madison’s competency—and ensuring that if he is to be executed, he understands why.

We accordingly vacate the judgment of the state court and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice [ALITO](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0153052401&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90cb435e3a8211e9bc5c825c4b9add2e), with whom Justice [THOMAS](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0216654601&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90cb435e3a8211e9bc5c825c4b9add2e) and Justice [GORSUCH](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0183411701&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90cb435e3a8211e9bc5c825c4b9add2e) join, dissenting.

[*The dissent began by arguing that the Court should not have discussed whether dementia provides a basis for an incompetent to be executed claim because the Court had not agreed to adjudicate that issue when granting certiorari*.]

Even if it were proper for us to consider whether the order below was based on an erroneous distinction between dementia and other mental conditions, there is little reason to think that it was. After a full evidentiary hearing in 2016, the state court rejected petitioner’s [*Ford*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1986132787&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))/*[Panetti](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))* claim based on a correct statement of the holding of those decisions. It found that petitioner “ha[d] not carried his burden [of showing] by a preponderance of the evidence ... that he ... does not rationally understand the punishment he is about to suffer and why he is about to suffer it.” . . .

In concluding that the state court might have drawn a distinction between dementia and other mental conditions, the majority seizes upon the wording of the order issued after a subsequent hearing in 2018. In that order, the same judge ****wrote: “Defendant did not provide a substantial threshold showing of *insanity*, a requirement set out by the United States Supreme Court, sufficient to convince this Court to stay the execution. . . Taken out of context, the term “insanity” might not be read to encompass dementia, but in context, it is apparent that the state court’s use of that term was based on the way in which it was used in [*Ford*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1986132787&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) and [*Panetti*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). The state court did not simply refer to “insanity.” It referred to “insanity, a requirement set out by the United States Supreme Court.” . . . In other words, what the state court clearly meant by “insanity” was what this Court termed insanity in [*Ford*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1986132787&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) and [*Panetti*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). What was that? . . .[A] defendant suffers from “insanity,” as the term is used in [*Ford*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1986132787&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) and [*Panetti*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), if the prisoner does not understand the reason for his execution.

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[T]he majority attributes to the state court an interpretation of the term “insanity” that was advanced by the State in this Court in its brief in opposition to the petition for certiorari. . . . The State did not argue that a defendant who lacks a rational understanding of the reason for his execution due to dementia is not “insane” under [Ala. Code § 15–16–23](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000002&cite=ALSTS15-16-23&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). Instead, the State’s point was that a defendant is not “insane” in that sense merely because he cannot remember committing the crime for which he was convicted.

The majority’s other proffered basis for doubt is that the State “repeatedly argued to the [state] court (over Madison’s objection) that only prisoners suffering from delusional disorders could qualify as incompetent under [*Panetti*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012563651&pubNum=0000780&originatingDoc=I90cb435e3a8211e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)).” The majority, however, cites no place where the State actually made such an argument. . . . But arguing, as the State did, that petitioner was not entitled to relief because the claim that he was delusional was untrue is not the same as arguing that petitioner could be executed even if his dementia rendered him incapable of understanding the reason for his execution. . . . And even if the State ****had made such an argument, what matters is the basis for the state court’s decision, not what counsel for the State wrote or said.

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