

UNFIT FOR TRIAL, BARRED FROM REVIEW: COMPETENCY AND PROCEDURAL DEFAULT AFTER *YANG*

Abstract: Competency to stand trial is a fundamental requirement of due process, yet federal courts remain divided on whether competency claims raised for the first time on collateral review may be procedurally defaulted. Some circuits exempt substantive competency claims on fairness grounds, while others subject all competency claims to default in the name of finality. Still, other courts distinguish between procedural and substantive claims. The Supreme Court has not resolved the question, leaving a fractured doctrine on an issue central to the legitimacy of criminal convictions. In 2024, in *Yang v. United States*, the U.S. Court of Appeals for the Seventh Circuit held that all competency claims are subject to procedural default and declined to recognize a distinction between procedural and substantive competency. This Comment argues that *Yang* is correct: a categorical rule better aligns competency with habeas doctrine, preserves systemic values of finality and efficiency, and still permits review of meritorious claims through established exceptions.

INTRODUCTION

For more than half a century, the Supreme Court has recognized that trying an incompetent defendant violates due process.¹ Yet, federal courts remain divided over whether competency claims raised for the first time on collateral review can be barred by procedural default.² The result is a fractured doctrine

¹ See *Pate v. Robinson*, 383 U.S. 375, 378 (1966) (reversing a conviction where the defendant's competency was not properly assessed); *Drope v. Missouri*, 420 U.S. 162, 172, 180–81 (1975) (emphasizing the trial court's ongoing duty to inquire into competency when evidence raises doubt); *Medina v. California*, 505 U.S. 437, 453 (1992) (recognizing that there is a "longstanding recognition that the criminal trial of an incompetent defendant violates due process"). Competency doctrine protects defendants who cannot understand the proceedings or assist counsel from being subjected to criminal punishment. See Richard J. Bonnie, *The Competence of Criminal Defendants: Beyond Dusky and Drope*, 47 U. MIA. L. REV. 539, 540–41 (1993) (noting that trials of incompetent defendants' risk unreliable convictions because such defendants cannot meaningfully participate in their own defense).

² See, e.g., *Silverstein v. Henderson*, 706 F.2d 361, 367 (2d Cir. 1983) (exempting substantive competency claims from procedural default on due process grounds); *Sena v. N.M. State Prison*, 109 F.3d 652, 655 (10th Cir. 1997) (adopting an intermediate approach that distinguishes between procedural and substantive competency claims); *Yang v. United States*, 114 F.4th 899, 909–13 (7th Cir. 2024) (holding that competency claims raised for the first time on collateral review may be subject to procedural default).

at the core of habeas law, with fairness on one side, finality on the other, and no adequate resolution from the Supreme Court.³

This conflict matters because procedural default can determine whether collateral claims of incompetence are ever heard.⁴ Exempting such claims from default risks endless challenges and instability in judgments, whereas failing to exempt them may risk leaving convictions of incompetent defendants uncorrected.⁵ Against this backdrop, in 2024, in *Yang v. United States*, the U.S. Court of Appeals for the Seventh Circuit held that all competency claims are subject to procedural default on collateral review if not raised earlier.⁶ Aligning itself with what it described as the “emerging consensus,” the court broke from the other circuits that distinguish between substantive and procedural claims.⁷

This Comment, proceeding in three parts, analyzes the federal circuit split over procedural default of competency claims first raised in collateral proceedings.⁸ Part I examines the Supreme Court’s competency jurisprudence, the

³ See, e.g., *Wainwright v. Sykes*, 433 U.S. 72, 87–89 (1977) (explaining that procedural default protects the finality of criminal judgments by enforcing compliance with established procedural rules); see also *Cooper v. Oklahoma*, 517 U.S. 348, 352–54 (1996) (underscoring the fairness and accuracy concerns implicated by competency determinations); Gabrielle Brown, Comment, *Second Time’s the Harm: The Sixth Circuit’s Deliberately Indifferent Approach to Sexual Harassment*, 65 B.C. L. REV. 2183, 2184–92 (2024) (discussing how unresolved legal questions contribute to persistent circuit disagreement). Federal habeas corpus review allows prisoners to challenge the legality of their detention on constitutional grounds through collateral proceedings after conviction. See 28 U.S.C. §§ 2254–2255 (establishing statutory mechanisms for federal collateral review); see also *Engle v. Isaac*, 456 U.S. 107, 126–27 (1982) (describing habeas review as constrained by procedural rules that balance fairness with the finality of criminal judgments).

⁴ See *Yang*, 114 F.4th at 909–13 (addressing the division among the circuits over whether competency claims are subject to procedural default); see also Sergio Filipe Zanutta Valente, *An Overlooked Consequence: How Sinn v. Ramirez Paves the Way for New State Collateral Proceedings*, 75 STAN. L. REV. 1531, 1536, 1543 (2023) (explaining that procedural default operates to bar federal review of certain claims). In practical terms, procedural default can determine whether a defendant ever receives judicial review of their competency to stand trial. See *Coleman v. Thompson*, 501 U.S. 722, 750 (1991) (holding that federal courts may not review claims barred by independent and adequate state procedural rules). When competency concerns are missed at trial and on direct appeal, the claim may never be heard on the merits at all. See *Bousley v. United States*, 523 U.S. 614, 621–22 (1998) (treating claims not raised on direct appeal as defaulted and generally unavailable on collateral review absent cause and prejudice).

⁵ Compare *Silverstein*, 706 F.2d at 367 (declining to apply procedural default to substantive competency claims based on due process concerns), with *Smith v. Moore*, 137 F.3d 808, 818–19 (4th Cir. 1998) (subjecting substantive competency claims to default to preserve the finality of criminal judgments).

⁶ *Yang*, 114 F.4th at 909–13 (adopting a rule subjecting all competency claims first raised on collateral review to procedural default).

⁷ See *id.* at 909–11 (adopting a single default rule and rejecting the substantive and procedural distinction as “confusing”). But see *Sena*, 109 F.3d at 655 (maintaining a bifurcated approach that treats procedural and substantive competency claims differently).

⁸ See *Yang*, 114 F.4th at 909–13 (cataloguing the disagreement among federal courts over whether competency claims first raised on collateral review are procedurally defaulted); see also *supra* note 2 and accompanying text (surveying the disagreement among federal courts over the procedural treatment of competency claims first raised on collateral review).

competing approaches of the circuit courts, and the factual and procedural history of *Yang*.⁹ Part II discusses the Seventh Circuit's reasoning and situates it within the broader circuit split.¹⁰ Part III argues that the Seventh Circuit got it right in *Yang*, and that, upon consideration of the doctrinal and practical consequences, a categorical rule provides the most stable, coherent, and sustainable framework possible.¹¹

I. THE LEGAL, FACTUAL, AND PROCEDURAL BACKGROUND OF *YANG V. UNITED STATES*

In 2024, in *Yang v. United States*, the U.S. Court of Appeals for the Seventh Circuit held that a competency claim raised for the first time on collateral review is subject to procedural default.¹² Section A of this Part discusses the Supreme Court's competency jurisprudence.¹³ Section B examines the procedural default doctrine, its application to competency claims, and the competing approaches taken by the federal appellate courts.¹⁴ Section C discusses the factual and procedural history of *Yang*.¹⁵

A. Supreme Court Foundations: Dusky, Pate, and Drope

The constitutional requirement that a criminal defendant be competent to stand trial is rooted in the Due Process Clause of the Fifth Amendment.¹⁶ In

⁹ See *infra* notes 12–48 and accompanying text.

¹⁰ See *infra* notes 49–76 and accompanying text.

¹¹ See *infra* notes 80–110 and accompanying text.

¹² *Yang*, 114 F.4th at 913 (concluding that competency claims first raised in a 28 U.S.C. § 2255 motion are subject to procedural default). Before *Yang*, the Seventh Circuit had not decided whether such claims could be raised for the first time on collateral review. *Id.*; see *Boulb v. United States*, 818 F.3d 334, 342 (7th Cir. 2016) (declining to address whether the petitioner's competency claim was procedurally barred). Historically, courts have distinguished between “substantive” and “procedural” competency claims. See *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam) (defining competency in terms of the defendant's present ability to consult with counsel and understand the proceedings); *Pate v. Robinson*, 383 U.S. 375, 384–85 (1966) (recognizing that a trial court's duty to conduct a competency hearing when evidence raises doubt); *Drope v. Missouri*, 420 U.S. 162, 180–81 (1975) (expanding that obligation by requiring continued inquiry when later developments suggest incompetence).

¹³ See *infra* notes 16–23 and accompanying text.

¹⁴ See *infra* notes 24–36 and accompanying text.

¹⁵ See *infra* notes 37–48 and accompanying text.

¹⁶ See U.S. CONST. amend. V (providing that no person shall be deprived of life, liberty, or property without due process of law); *id.* at amend. XIV, § 1 (extending that protection to the States). The Constitution prohibits the criminal trial or conviction of a defendant who is not competent to stand trial. See *United States v. Rahim*, 431 F.3d 753, 759 (11th Cir. 2005) (acknowledging the due process bar on trying incompetent defendants); *Pate*, 383 U.S. at 385 (requiring a competency hearing once the evidence raises a bona fide doubt about the defendant's competence); *Yang*, 114 F.4th at 909 (locating the competency requirement in the Fifth Amendment). This competency requirement applies to both federal and state prosecutions. See *Powers v. Noble*, 132 F.4th 996, 1001 (7th Cir. 2025) (applying the same due process principle to a state conviction under the Fourteenth Amendment).

1960, in *Dusky v. United States*, the Supreme Court set the foundational standard, holding that a defendant is considered competent only when they can comprehend the proceedings against them and communicate rationally with their counsel.¹⁷ In 1966, in *Pate v. Robinson*, the Court recognized competency is a due process right that cannot be waived.¹⁸ The Court further held a trial court must investigate whenever the evidence before it raises doubt as to a defendant's competency.¹⁹ In 1975, in *Drope v. Missouri*, the Court reinforced these protections, reaffirming that trial courts have an affirmative duty to act when they are faced with evidence that creates doubt about a defendant's competency.²⁰ The Court tied *Pate* directly back to *Dusky* by explaining that these procedural safeguards exist to protect the substantive right not to be tried while incompetent.²¹

¹⁷ *Dusky*, 362 U.S. at 402 (articulating the constitutional standard for competency to stand trial). The *Dusky* test remains the baseline measure for competency in all criminal proceedings. See *Yang*, 114 F.4th at 906 (reaffirming *Dusky* as the governing standard); *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996) (describing *Dusky* as the settled constitutional benchmark for trial competence).

¹⁸ *Pate*, 383 U.S. at 384–85 (holding that competency cannot be waived because an incompetent defendant cannot knowingly and intelligently relinquish that right). Because a waiver of a constitutional right, including claims regarding competency, must be knowing and intelligent, an incompetent defendant cannot meet that standard. See *Edwards v. Arizona*, 451 U.S. 477, 482 (1981) (defining waiver of the right to counsel as a knowing and intelligent act).

¹⁹ *Pate*, 383 U.S. at 384–85 (using the “bona fide doubt” standard to trigger a trial court’s duty to inquire into competence). A “bona fide doubt” arises when evidence raises a reasonable question as to whether the defendant can understand the proceedings and rationally consult with counsel. *Pate*, 383 U.S. at 384–85. *Pate* reflects the concrete stakes of competency doctrine. See *Bonnie*, *supra* note 1, at 540–41 (explaining that trying incompetent defendants undermines the fairness and reliability of criminal adjudication). The record contained substantial evidence of Robinson’s long history of disturbed behavior and mental instability, yet the defendant was tried without a competency hearing. *Pate*, 383 U.S. at 378–79, 385–86. The Court’s intervention underscores that competency doctrine is not merely procedural; it protects against convicting defendants who may be unable to understand the proceedings or participate meaningfully in their defense. See *Bonnie*, *supra* note 1, at 542–43 (conceptualizing competency doctrine as a safeguard against imposing criminal liability on defendants unable to understand proceedings or assist counsel).

²⁰ *Drope v. Missouri*, 420 U.S. 162, 179–81 (1975) (reaffirming *Pate* and recognizing a trial court’s continuing obligation to assess competency); *Pate*, 383 U.S. at 385–86 (requiring judicial inquiry once the evidence creates a bona fide doubt about competence). The Court broadened *Pate* by emphasizing that trial courts must remain alert to changes in a defendant’s condition, not just at trial, but also pre-trial and must consider all available evidence that might be indicative of a defendant’s competency. *Id.*; see also *Westbrook v. Arizona*, 384 U.S. 150, 150–51 (1966) (per curiam) (vacating a conviction where the trial court failed to evaluate the defendant’s competence to waive counsel). *Drope* likewise illustrates the human stakes of competency doctrine. See *Bonnie*, *supra* note 1, at 540–41 (explaining that competency doctrine protects defendants who cannot meaningfully participate in their defense). During trial, the defendant shot himself in an apparent suicide attempt and was hospitalized, yet the proceedings continued in the defendant’s absence without an adequate competency inquiry. *Drope*, 420 U.S. at 166–67, 179–81. The case demonstrates how easily questions of competency can arise during criminal proceedings and how serious the consequences can be when courts fail to stop and assess whether a defendant can meaningfully participate in their own defense. See *Bonnie*, *supra* note 1, at 545–46 (linking competency protections to the need for defendants to understand proceedings and assist counsel).

²¹ See *Dusky*, 362 U.S. at 402 (defining competency in terms of the defendant’s ability to consult with counsel and understand the proceedings); *Pate*, 383 U.S. at 384–86 (identifying hearings and

Congress codified these constitutional principles in 18 U.S.C. § 4241, which allows either party to request a competency hearing at any stage prior to sentencing and empowers courts to initiate such inquiries *sua sponte*.²² These precedents form the foundation for later debates over whether procedural default can bar competency claims raised for the first time on collateral review.²³

B. Procedural Default and the Split Over Competency Claims

Federal courts uniformly accept that trying an incompetent defendant violates due process.²⁴ The more difficult question, however, is whether claims of incompetency may be procedurally defaulted if not raised on direct appeal.²⁵ This tension arises from the intersection of two doctrinal frameworks: federal

related safeguards as mechanisms for enforcing the prohibition on trying incompetent defendants); *Drope*, 420 U.S. at 172 (reaffirming *Dusky* and emphasizing the trial court's responsibility to inquire when evidence raises doubt).

²² 18 U.S.C. § 4241. Section 4241 codifies procedures for determining a defendant's competency to stand trial. *Id.* Subsection (a) allows the defense, prosecution, or court *sua sponte* to move for a competency hearing after prosecution begins and before sentencing, or during probation or supervised release. *Id.* Subsection (b) authorizes a court-ordered psychological or psychiatric examination and report. *Id.* Subsections (c)–(d) require a hearing and permit the defendant's commitment to the Attorney General's custody if incompetency is found, with restoration or dismissal depending on the finding. *Id.* Subsection (e) directs discharge upon defendant's recovery, and subsection (f) bars use of a competency finding to preclude defendant from raising an insanity defense. *See* 18 U.S.C. § 4241(a)–(f) (setting forth procedures for competency determinations, including hearings, evaluations, and commitment upon a finding of incompetency); *see also* Steven R. Marino, Comment, *Are You Sufficiently Competent to Prove Your Incompetence? An Analysis of the Paradox in the Federal Courts*, 6 SETON HALL CIR. REV. 165, 168–69 (2009) (describing § 4241 as codifying the procedures and substantive standards for determining competency). “*Sua sponte*” means “[w]ithout prompting or suggestion; on its own motion” *Sua Sponte*, BLACK’S LAW DICTIONARY (12th ed. 2024).

²³ *See Dusky*, 362 U.S. at 402 (articulating the constitutional standard for competency); *Drope*, 420 U.S. at 180–81 (imposing a continuing obligation to assess competency). *Compare Zapata v. Estelle*, 588 F.2d 1017, 1021–22 (5th Cir. 1979) (permitting collateral review of substantive competency claims), and *Silverstein v. Henderson*, 706 F.2d 361, 367–68 (2d Cir. 1983) (treating substantive competency claims as exempt from procedural default), with *Martinez-Villareal v. Lewis*, 80 F.3d 1301, 1306–07 (9th Cir. 1996) (deeming competency claims first raised in habeas proceedings as defaultable), and *Smith v. Moore*, 137 F.3d 808, 818–19 (4th Cir. 1998) (subjecting substantive competency claims to ordinary default principles), and *Lyons v. Luebbers*, 403 F.3d 585, 593–94 (8th Cir. 2005) (extending default to both procedural and substantive competency claims), and *Yang*, 114 F.4th at 913 (adopting a uniform default rule). *See also* *Petition for Writ of Certiorari at 17–19, Yang v. United States*, 145 S. Ct. 1182 (2025) (No. 24-704) (arguing that the circuit split persists because the Supreme Court has not resolved the issue left open by *Dusky*, *Pate*, and *Drope*).

²⁴ *See Medina v. California*, 505 U.S. 437, 453 (1992) (recognizing that the long-standing rule that trying an incompetent defendant violates due process); *supra* note 1 and accompanying text (collecting authorities affirming that due process prohibits trying incompetent defendants).

²⁵ *See Yang*, 114 F.4th at 909–13 (addressing whether competency claims first raised on collateral review are subject to procedural default); *supra* note 23 and accompanying text (compiling cases on how courts apply procedural default to competency claims raised on collateral review).

competency law, codified at 18 U.S.C. § 4241, and the procedural default doctrine that governs collateral review under 28 U.S.C. §§ 2254 and 2255.²⁶

Collateral review, whether under 28 U.S.C. § 2254 for state prisoners or § 2255 for federal prisoners, provides a limited post-appeal remedy for constitutional violations.²⁷ Unlike direct appeal, which corrects legal error, collateral review addresses only fundamental defects that render a judgment unreliable or unlawful.²⁸ The procedural default doctrine restricts that review: a federal court does not consider claims in habeas proceedings if the petitioner could have raised it earlier or on direct appeal.²⁹ To overcome default, the petitioner must show both cause for the failure and prejudice resulting from the alleged

²⁶ See 28 U.S.C. §§ 2254–2255 (establishing federal post-conviction review for state and federal prisoners); *Coleman v. Thompson*, 501 U.S. 722, 750 (1991) (articulating the cause-and-prejudice standard for overcoming procedural default); *supra* note 22 and accompanying text (referencing 18 U.S.C. § 4241). Federal habeas corpus review is codified in 28 U.S.C. §§ 2254 and 2255. See *Engle v. Isaac*, 456 U.S. 107, 126–27 (1982) (characterizing habeas as a collateral remedy shaped by concerns for finality and comity). Section 2254 governs petitions by state prisoners, whereas § 2255 provides a parallel mechanism for federal prisoners to challenge convictions or sentences. See 28 U.S.C. § 2254(a) (authorizing federal habeas relief for state prisoners “only on the ground that [the petitioner] is in custody in violation of the Constitution or laws or treaties of the United States”); *id.* § 2254(b) (requiring exhaustion of available state remedies unless unavailable or ineffective, permitting denial on the merits despite lack of exhaustion, and allowing waiver of exhaustion only by express state consent); *id.* § 2255(a) (permitting federal prisoners to move to “vacate, set aside, or correct the sentence” imposed without jurisdiction or which is “in violation of the Constitution or laws of the United States,” or which is in excess of statutory maximums or “is otherwise subject to collateral attack”); *id.* § 2255(b) (requiring a hearing unless the record conclusively shows no entitlement to relief). Both statutes incorporate procedural doctrines that limit review of claims not raised at trial or on direct appeal, absent a showing of cause and prejudice or actual innocence. See *id.* § 2254(b)(1) (restricting review of claims not properly presented in state court); *Coleman*, 501 U.S. at 750 (linking state procedural default to limits on federal habeas review); see also 28 U.S.C. § 2255(e) (channeling most federal prisoners’ collateral attacks through § 2255 rather than habeas); *Bousley v. United States*, 523 U.S. 614, 615, 622–23 (1998) (applying procedural default to claims omitted on direct appeal).

²⁷ See *Engle*, 456 U.S. at 126–27 (describing federal habeas corpus as a limited collateral remedy that preserves the finality of criminal judgments); *supra* note 26 (collecting authorities describing the limited, finality-protecting nature of federal habeas review).

²⁸ See *supra* note 26 (discussing 28 U.S.C. § 2255(a)); *Hill v. United States*, 368 U.S. 424, 428 (1962) (limiting collateral relief to jurisdictional or constitutional errors and fundamental defects resulting in a complete miscarriage of justice); *United States v. Addonizio*, 442 U.S. 178, 184–85 (1979) (clarifying that § 2255 does not permit review of ordinary sentencing errors correctable on direct appeal but is confined to defects that render the judgment unlawful).

²⁹ See *Murray v. Carrier*, 477 U.S. 478, 495–96 (1986) (recognizing that default may be excused upon a showing of cause and prejudice or actual innocence); *Wainwright v. Sykes*, 433 U.S. 72, 86–87 (1977) (establishing the cause and prejudice framework for defaulted claims); *Bousley*, 523 U.S. at 621–22 (treating claims not raised on direct review as procedurally barred on collateral attack); see also Catherine T. Struve, *Direct and Collateral Federal Court Review of the Adequacy of State Procedural Rules*, 103 COLUM. L. REV. 243, 244, 246 (2003) (examining procedural default as a balance between enforcing federal rights and respecting state procedural rules). Ineffective assistance of counsel claims are not subject to procedural default on collateral review, even if they were not raised on direct appeal. See *Massaro v. United States*, 538 U.S. 500, 505–06 (2003) (permitting ineffective assistance claims to be raised for the first time on collateral review due to the inadequacy of the trial record).

violation, or demonstrate actual innocence.³⁰ Absent such a showing, federal courts cannot reach the merits and instead foreclose the claim entirely unless an exception applies.³¹

The federal circuit courts are divided on how this doctrine applies to competency.³² Some circuits hold that all competency claims may be defaulted; others exempt substantive claims from default; and, a few distinguish between procedural and substantive claims.³³ Procedural competency claims al-

³⁰ See *United States v. Frady*, 456 U.S. 152, 167–68 (1982) (requiring a habeas petitioner to demonstrate both cause for the default and actual prejudice resulting from the alleged error); *United States v. Cuff*, 79 F.4th 470, 476 (5th Cir. 2023) (reaffirming that claims omitted on direct appeal are barred absent a showing of cause and prejudice or actual innocence).

³¹ See *Coleman*, 501 U.S. at 750 (holding that federal habeas review of claims defaulted in state court is barred unless the petitioner “can demonstrate cause for the default and actual prejudice,” or show that “failure to consider the claims will result in a fundamental miscarriage of justice”); *Murray*, 477 U.S. at 488 (defining cause as an external impediment to compliance and prejudice as actual harm resulting from the violation); *Schlup v. Delo*, 513 U.S. 298, 327–28 (1995) (recognizing actual innocence as a gateway that permits review of otherwise procedurally barred claims).

³² See RANDY HERTZ & JAMES S. LIEBMAN, *FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE* § 20.2 (7th ed. 2015) (observing disagreement among federal courts regarding the procedural treatment of competency claims on collateral review). See generally *supra* note 23 (illustrating the circuit split over procedural default of competency claims raised for the first time on collateral review).

³³ Compare *Lyons v. Luebbbers*, 403 F.3d 585, 592–94 (8th Cir. 2005) (treating both procedural and substantive competency claims as subject to default when not raised on direct appeal), and *Martinez-Villareal v. Lewis*, 80 F.3d 1301, 1306–07 (9th Cir. 1996) (applying procedural default to competency claims in habeas review), and *LaFlamme v. Hubbard*, No. 97-16973, 2000 U.S. App. LEXIS 14070, at *6 (9th Cir. June 9, 2000) (same), with *Smith v. Moore*, 137 F.3d 808, 818–19 (4th Cir. 1998) (finding default where a substantive competency claim was not properly presented in state court), and *United States v. Basham*, 789 F.3d 358, 379–80 n.10 (4th Cir. 2015) (citing *Smith*, 137 F.3d at 819) (reaffirming the applicability of default principles to competency claims), and *Hodges v. Colson*, 727 F.3d 517, 540 (6th Cir. 2013) (treating competency claims like other constitutional claims for default purposes). The Seventh Circuit observed that it “could not locate any decision from the Fourth, Fifth, or Sixth Circuits speaking to whether procedural competency claims may be procedurally defaulted.” *Yang*, 114 F.4th at 909 n.2 (7th Cir. 2024). Other circuits have taken the opposite approach, exempting substantive competency claims from default or distinguishing them from procedural ones. See *Silverstein v. Henderson*, 706 F.2d 361, 367 (2d Cir. 1983) (holding that competency claims are not subject to procedural default because “*Wainwright*’s waiver rule cannot apply when the basis for attacking the conviction is that the defendant is incompetent to stand trial”); *Wainwright*, 433 U.S. at 86–87 (establishing the modern procedural default framework); *Zapata v. Estelle*, 588 F.2d 1017, 1021–22 (5th Cir. 1979) (permitting substantive competency claims to be raised for the first time on collateral review). But see *Green v. Lumpkin*, No. 20-70021, 2023 WL 2941470, at *4–6 (5th Cir. Apr. 13, 2023) (applying default to a substantive competency claim). The Fifth Circuit’s published precedent, *Zapata*, therefore, exempts substantive competency claims from default, whereas its unpublished decision in *Green* reflects a more recent, but non-precedential, trend in the opposite direction. See *Zapata*, 588 F.2d at 1021–22 (holding that a petitioner may raise substantive competency claims for the first time on collateral review); *Green*, 2023 WL 2941470, at *4–6 (holding that a substantive competency claim was procedurally defaulted when not raised on direct appeal). Likewise, the Tenth and Eleventh Circuits expressly distinguish between procedural and substantive claims. See *Sena v. N.M. State Prison*, 109 F.3d 652, 654–55 (10th Cir. 1997) (treating only procedural competency claims as defaultable); *Lay v. Royal*, 860 F.3d 1307, 1314–15 (10th Cir. 2017) (reaffirming distinction between substantive and procedural competency claims); *Adams v. Wainwright*, 764 F.2d

lege that the trial court failed to hold a required hearing on the defendant's competency, whereas substantive claims contend that the defendant was actually incompetent to stand trial.³⁴

Each approach considers the balance between fairness and finality.³⁵ This fractured doctrinal landscape forms the backdrop against which the Seventh Circuit decided *Yang*.³⁶

C. Factual History of *Yang v. United States*

In 2019, Xengxai Yang robbed a bank in Appleton, Wisconsin, and admitted to the crime after his arrest.³⁷ A grand jury indicted Yang on three counts of armed bank robbery and firearm offenses.³⁸ Yang pleaded not guilty and gave

1356, 1359 (11th Cir. 1985) (emphasizing that substantive competency implicates the defendant's ability to be tried at all); *Raheem v. GDCP Warden*, 995 F.3d 895, 928–29 (11th Cir. 2021) (maintaining distinction in modern habeas practice).

³⁴ See *supra* note 12 (separating procedural competency claims from substantive competency claims); see also Valente, *supra* note 4, at 1543–44 (distinguishing between procedural and substantive competency claims).

³⁵ See *Engle v. Isaac*, 456 U.S. 107, 126–27 (1982) (describing federal habeas doctrine as balancing the protection of constitutional rights with the need for finality in criminal judgments); *Wainwright v. Sykes*, 433 U.S. 72, 88–90 (1977) (highlighting that procedural default rules preserve finality while allowing limited review in exceptional circumstances); *supra* note 33 (collecting authorities reflecting the division among the circuits).

³⁶ See *Yang*, 114 F.4th at 909–13 (reviewing the competing approaches among the courts of appeals and concluding that procedural default applies to competency claims raised for the first time on collateral review); Petition for Writ of Certiorari, *supra* note 23, at 17–19 (arguing that lower courts have adopted competing approaches to procedural default of competency claims). See generally *supra* note 33 (describing the circuit split over procedural default of competency claims raised for the first time on collateral review).

³⁷ See Decision and Order Denying § 2255 Motion to Vacate Judgment at 2–3, *Yang v. United States*, 2023 WL 4868917 at *1 (E.D. Wis. July 31, 2023) (No. 21-CV-01281), ECF No. 52 (providing factual background of Yang's robbery and post-arrest admissions and noting Yang's three federal charges); Natalie Brophy, *Man Who Robbed Appleton Credit Union in 2019 Because He 'Decided to Try Something New Today' Sentenced to 14 Years in Prison*, POST CRESCENT (Feb. 5, 2021), <https://www.postcrescent.com/story/news/2021/02/04/appleton-bank-robbery-xengxai-yang-sentenced-14-years-prison/4397243001/> [perma.cc/MJ2U-5WL5] (explaining that the timeline and events of the robbery and statements Yang made to law enforcement officers after the incident). Yang entered the bank “[w]earing a black mask, a black sweatshirt, and sunglasses, and armed with a sawed-off, semi-automatic .22 caliber rifle.” *Yang*, 114 F.4th at 902. After robbing the bank, Yang fled on foot and was apprehended by police within a block of the bank. *Id.* After the police arrested Yang and read him his *Miranda v. Arizona* rights, Yang admitted to robbing the bank and remarked, “I decided to try something new today, so I robbed the bank.” *Id.*; see 384 U.S. 436, 444–45 (1966) (requiring that custodial suspects be informed of their rights prior to interrogation).

³⁸ See Petition for Writ of Certiorari, *supra* note 23, at 6 (listing the indictment counts including “armed bank robbery,” “brandishing a firearm during a crime of violence,” and “unlawful possession of a firearm”); 18 U.S.C. § 2113(a), (d) (criminalizing armed bank robbery); *id.* § 924(c)(1)(A)(ii), (B)(i) (imposing penalties for brandishing a firearm during a violent crime); 26 U.S.C. §§ 5841, 5845(a), 5861(d), 5871 (regulating registration and unlawful possession of certain firearms). A federal grand jury determines whether probable cause exists to charge a defendant with a federal offense. See U.S. CONST. amend. V (providing that “[n]o person shall be held to answer for a capital, or otherwise

notice of an intent to assert an insanity defense.³⁹ After a psychological evaluation found that Yang was not insane at the time of the offense, Yang entered a guilty plea.⁴⁰ Yang later moved to withdraw that plea, citing dissatisfaction with defense counsel's handling of the insanity evaluation.⁴¹ New counsel ordered a second evaluation, which suggested Yang's mental disorders impaired his judgment and sense of wrongfulness.⁴² The court granted the motion to withdraw the plea and allowed Yang to reassert the insanity defense.⁴³ After a bench trial, the court rejected that defense, finding Yang guilty and sentencing him to 168 months in prison.⁴⁴ No party raised concerns about his competency at any stage of the proceedings, and Yang did not appeal his conviction.⁴⁵

infamous crime, unless on a presentment or indictment of a Grand Jury"); FED. R. CRIM. P. 6(a) (governing federal grand juries). If the grand jury finds probable cause, it returns an indictment formally charging the defendant with the offenses and initiating the criminal prosecution in federal court. *See* 4 WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE § 15.1(a) (4th ed. 2015) (describing the grand jury's role in charging criminal offenses).

³⁹ *See* FED. R. CRIM. P. 12.2(a) (requiring timely written notice of an intent to assert an insanity defense absent good cause for delay); *Yang*, 114 F.4th at 902 (noting Yang's not guilty plea and assertion of an insanity defense).

⁴⁰ *See Yang*, 114 F.4th at 902 (noting the appointment of Dr. Kent Berney to evaluate Yang and concluding that Yang was not insane at the time of the offense).

⁴¹ *See id.* (stating that Yang initially pleaded guilty but later sought to withdraw his plea). When the court questioned Yang's competency at the plea hearing, defense counsel had no doubts about Yang's ability to proceed. *Id.* at 902–03. Yang then described feeling “like [he] was in [a] video game” during the robbery, a statement later cited by both sides regarding Yang's mental state. *Id.* at 903. The record in *Yang* illustrates how competency concerns can surface in fragmented and easily overlooked ways. *See Bonnie*, *supra* note 1, at 549–52 (explaining that competency concerns may arise gradually and may not always be apparent during early stages of criminal proceedings). Mental-health evaluations, unusual perceptions, and later expert opinions all pointed to serious questions about Yang's mental state, yet no competency challenge was raised until collateral review. *See Yang*, 114 F.4th at 902–05 (describing the progression of mental-health evidence and the absence of a competency challenge at trial or on direct appeal). That sequence underscores the practical reality that competency issues often emerge imperfectly and only become fully legible after conviction. *See Bonnie*, *supra* note 1, at 545–46 (explaining that questions about a defendant's competence to stand trial often arise gradually as evidence about the defendant's mental condition develops during criminal proceedings).

⁴² *See* Gov't's Response to Section 2255 Motion at 2, *Yang v. United States*, 114 F.4th 899 (7th Cir. 2024), (No. 21-C-1281) (E.D. Wis. Jan. 20, 2022), ECF No. 8 (noting that the newly appointed counsel obtained a second expert opinion from Dr. Denver Johnson, whose report “*did* provide a basis for pursuing an insanity defense”); Petitioner's Second Amended 28 U.S.C. § 2255 Motion at 7–8, *Yang v. United States*, 2023 WL 4868917 (E.D. Wis. Oct. 25, 2022) (No. 21-CV-01281), ECF No. 31 (explaining Dr. Johnson opined that Yang's mental disorders and neurocognitive deficits “seriously impaired his judgment and the ability to appreciate . . . the wrongfulness of his acts”).

⁴³ *Yang*, 114 F.4th at 903.

⁴⁴ Brief of Plaintiff-Appellee at 7–8, *Yang v. United States*, 114 F.4th 899 (7th Cir. 2024) (No. 23-2777) (7th Cir. Dec. 22, 2023). At the hearing on Yang's request for a bench trial, defense counsel confirmed that counsel and Yang had discussed the differences between jury and bench trials. *Yang*, 114 F.4th at 903–04. In a bench trial, the judge serves as the finder of fact and determines guilt or innocence without a jury. *See* FED. R. CRIM. P. 23(a) (providing that a defendant may waive a jury trial with the consent of the government and the approval of the court). The court explained the consequences of waiver, and Yang indicated an understanding and stated that he was “starting to feel like

In 2021, Yang filed a habeas petition under 28 U.S.C. § 2255 to vacate his sentence, arguing that the trial court violated Yang's constitutional rights by failing to conduct a competency hearing.⁴⁶ The district court denied relief, holding that Yang procedurally defaulted his competency claim by failing to raise it at trial or on direct appeal.⁴⁷ In 2024, the Seventh Circuit affirmed that ruling, holding that procedural default applies to all competency claims initially raised in collateral proceedings.⁴⁸

II. DIVERGING PATHS ON COMPETENCY CLAIMS ON COLLATERAL REVIEW

Federal courts disagree on whether competency claims raised for the first time on collateral review may be procedurally defaulted.⁴⁹ This split reflects how courts balance the Supreme Court's view that competency is non-waivable with its limit on habeas review in the name of finality and efficiency.⁵⁰ Section A of this Part examines the circuits that apply default to all com-

[himself] more." *Yang*, 114 F.4th at 904. Counsel affirmed Yang's competency, and the court accepted the waiver. *Id.* At trial, both Dr. Johnson and Dr. Berney testified. *Id.* The court found Yang failed to prove insanity, emphasizing the post-arrest interview, during which Yang spoke clearly and demonstrated an understanding of rights, as evidence that the deficits did not impair functioning. *Id.* Yang apologized for the robbery, acknowledged the harm caused, and expressed plans to continue an education and support family members after serving the sentence. *Id.* at 904.

⁴⁵ *Yang*, 114 F.4th at 904.

⁴⁶ *Id.*; see *supra* note 26 (referencing 28 U.S.C. § 2255). Yang's petition, filed pro se, was initially framed as a claim of ineffective assistance of counsel. Gov't's Response to Section 2255 Motion at 1, *Yang v. United States*, 114 F.4th 899 (7th Cir. 2024) (No. 21-CV-01281) (E.D. Wis. Jan. 20, 2022), ECF No. 8; Notice to Initiate 2255 Petition and Request Assistance of Counsel at 1–3, *Yang v. United States*, 114 F.4th 899 (7th Cir. 2024) (No. 19-CR-0067) (E.D. Wis. Nov. 5, 2021), ECF No. 1. The district judge later appointed Yang a third attorney, who reframed the petition as a due process challenge. Petitioner's Second Amended 28 U.S.C. § 2255 Motion at 1–2, *Yang v. United States*, 2023 WL 4868917 (E.D. Wis. Oct. 25, 2022) (No. 21-CV-01281), ECF No. 31. The petition included expert opinions and testimony from Yang's probation officer about Yang's alleged memory issues. *Yang*, 114 F.4th at 904–05. At an evidentiary hearing, the court questioned whether the claim was procedurally defaulted but allowed Yang to present evidence to preserve the issue for appeal. *Id.* at 905. Defense counsel argued that the claim relied on extra-record evidence. *Id.* Yang's probation officer testified that memory problems disrupted an interview, though the officer conceded Yang had recalled personal details previously. *Id.* Dr. Johnson opined that Yang was "very likely" incompetent at trial but acknowledged he had not raised concerns with trial counsel. *Id.*

⁴⁷ *Yang*, 114 F.4th at 905. The court found Yang showed neither cause nor prejudice and was not actually innocent. *Id.* at 912–13.

⁴⁸ *Id.* at 909–11. The court expressly rejected the distinction between "procedural" and "substantive" competency claims, reasoning that both safeguard the same due process right. *Id.* at 909.

⁴⁹ See *id.* at 909–13 (surveying the disagreement among federal courts regarding whether competency claims raised for the first time on collateral review are subject to procedural default); *supra* note 33 (describing divergent circuit approaches to procedural default of competency claims raised on collateral review).

⁵⁰ See, e.g., *Pate v. Robinson*, 383 U.S. 375, 384–85 (1966) (establishing that competency is a due process right that cannot be waived); *Drope v. Missouri*, 420 U.S. 162, 179–80 (1975) (emphasizing the trial court's continuing obligation to assess competency); *United States v. Frady*, 456 U.S. 152,

petency claims.⁵¹ Section B reviews the circuits that exempt substantive competency claims from default.⁵² Section C discusses the circuit that distinguish between procedural and substantive claims.⁵³

A. Prioritizing Finality: Default Across the Board

Several circuit courts have held that competency claims may be procedurally defaulted if not raised during trial or on direct appeal.⁵⁴ In 1996, in *Martinez-Villareal v. Lewis*, the U.S. Court of Appeals for the Ninth Circuit concluded competency claims are subject to procedural default on collateral review.⁵⁵ The court emphasized the distinction between procedural default and waiver.⁵⁶ Similarly, in 2005, in *Lyons v. Luebbbers*, the Eighth Circuit emphasized that bypassing procedural rules for competency claims would undermine the finality of criminal judgments and the government's interest in efficient postconviction review.⁵⁷ Together, these decisions reflect the view that compe-

167–68 (1982) (requiring a habeas petitioner to demonstrate both cause for the default and actual prejudice resulting from the alleged error).

⁵¹ See *infra* notes 54–62 and accompanying text.

⁵² See *infra* notes 63–68 and accompanying text.

⁵³ See *infra* notes 69–76 and accompanying text.

⁵⁴ See *Smith v. Moore*, 137 F.3d 808, 818–19 (4th Cir. 1998) (concluding that competency-to-stand-trial claims raised for the first time on federal habeas are subject to procedural default); *Hodges v. Colson*, 727 F.3d 517, 540 (6th Cir. 2013) (treating competency claims like other constitutional claims subject to default on collateral review); *Yang v. United States*, 114 F.4th 899, 913 (7th Cir. 2024) (adopting a categorical rule that such claims are procedurally barred if not raised earlier); *Lyons v. Luebbbers*, 403 F.3d 585, 592–94 (8th Cir. 2005) (extending default to both substantive and procedural competency claims); *Martinez-Villareal v. Lewis*, 80 F.3d 1301, 1306–07 (9th Cir. 1996) (recognizing that competency claims may be forfeited through default); *LaFlamme v. Hubbard*, No. 97-16973, 2000 U.S. App. LEXIS 14070, at *9–15 (9th Cir. June 9, 2000) (same).

⁵⁵ See *Martinez-Villareal*, 80 F.3d at 1306–07 (concluding that competency claims first raised on collateral review may be subject to procedural default).

⁵⁶ See *id.* (differentiating procedural default from waiver). The court distinguished waiver, which requires a knowing and intelligent relinquishment of rights, from procedural default, which enforces state procedural compliance regardless of the defendant's awareness. *Id.* Emphasizing principles of finality and federalism, the Ninth Circuit reasoned that state courts must have the first opportunity to correct constitutional errors, and allowing petitioners to bypass those procedures by labeling claims as competency-based would undermine those interests. *Id.* at 1306–08. This reasoning reflects the broader habeas doctrine, where default rules safeguard the balance between ensuring fairness to defendants and respecting state courts' judgments. See *Wainwright v. Sykes*, 433 U.S. 72, 87–90 (1977) (describing the cause and prejudice framework as preserving finality while allowing limited review). In an unpublished opinion, the Ninth Circuit reaffirmed this approach. See *LaFlamme*, 2000 U.S. App. LEXIS at *9–15 (applying procedural default to a competency claim raised in habeas proceedings).

⁵⁷ See *Lyons*, 403 F.3d at 593–94 (treating competency claims like other constitutional claims subject to procedural default if not properly preserved). In *Lyons*, the court reasoned that, like any other constitutional right, competency claims may be lost if not preserved in accordance with state procedures and that exempting them would weaken the finality of convictions and strain federal habeas review. *Id.* The Eighth Circuit, however, has not always found that both procedural and substantive competency claims are procedurally barred. See *Vogt v. United States*, 88 F.3d 587, 590–91 (8th Cir. 1996) (declining to apply procedural default to substantive competency claims).

tency claims should remain subject to the ordinary procedural limits governing federal habeas relief.⁵⁸

The Fourth and Sixth Circuits have taken the same approach with respect to substantive competency claims.⁵⁹ In 1998, in *Smith v. Moore*, the Fourth Circuit held that procedural default applies to substantive competency claims, reasoning that courts should not exempt such claims from the requirement of showing cause and prejudice.⁶⁰ Likewise, in 2013, in *Hodges v. Colson*, the Sixth Circuit held that courts may procedurally default substantive competency claims.⁶¹ Both decisions reflect the view that exempting these claims would undermine the finality of verdicts and respect for state courts.⁶²

B. Protecting Fairness: Exempting Substantive Competency Claims

In contrast to the circuits that apply procedural default to competency claims, a limited number of circuits have held that substantive competency claims cannot be procedurally defaulted.⁶³ In 1983, in *Silverstein v. Henderson*, the Second Circuit held such claims are exempt from procedural default.⁶⁴ The court analogized procedural default to waiver and reasoned that a defendant cannot knowingly and intelligently waive a right where the very allegation

⁵⁸ See *Martinez-Villareal*, 80 F.3d at 1305–07 (treating competency claims raised on collateral review as subject to procedural default); *Lyons*, 403 F.3d at 593–94 (highlighting that procedural rules governing habeas review serve important interests in finality and efficient postconviction adjudication).

⁵⁹ See *Smith*, 137 F.3d at 818–19 (concluding that a substantive competency claim is defaulted if not raised on direct appeal); *Hodges*, 727 F.3d at 540 (treating substantive competency claims as defaulted when not raised on direct appeal).

⁶⁰ See *Smith*, 137 F.3d at 818–19 (reasoning that substantive competency claims are not exempt from ordinary habeas rules despite the fundamental nature of the right). The *Smith* court emphasized that *Pate* addressed waiver, not procedural default, and explained that exempting competency claims would undermine the principle that state courts have the first opportunity to adjudicate constitutional errors, thereby weakening finality. *Id.*; *Pate*, 383 U.S. at 384–85 (addressing competency hearing requirement where evidence raises doubt about competency).

⁶¹ *Hodges*, 727 F.3d at 540 (rejecting an automatic exemption from procedural default for competency claims where the defendant failed to raise the issue earlier). The court emphasized that, absent a concrete constitutional reason to treat competency claims differently, the ordinary rules of cause and prejudice must govern collateral attacks, even where the underlying issue involves mental capacity. *Id.* at 539–40.

⁶² See *id.* at 540 (highlighting that applying procedural default to competency claims promotes respect for state courts and the finality of criminal judgments); *Smith*, 137 F.3d at 818–19 (rejecting the argument that substantive competency claims categorically evade procedural bars and confirming that such claims are governed by the same default framework as other constitutional errors).

⁶³ See *Silverstein v. Henderson*, 706 F.2d 361, 367 (2d Cir. 1983) (treating claims of actual incompetence as not subject to procedural default); *Zapata v. Estelle*, 588 F.2d 1017, 1021 (5th Cir. 1979) (permitting collateral review of substantive competency claims despite a failure to raise them earlier).

⁶⁴ See *Silverstein*, 706 F.2d at 366–68 (declining to apply procedural default to competency claims).

is that the defendant lacked the capacity to stand trial.⁶⁵ Similarly, in 1979, in *Zapata v. Estelle*, the Fifth Circuit allowed review of a substantive competency claim raised for the first time on collateral review, reasoning that competency is a foundational requirement to stand trial and that barring such claims would violate due process.⁶⁶ These decisions prioritize fairness over finality.⁶⁷ Incompetence undermines the validity of a conviction, and substantive competency claims therefore remain reviewable even when first raised on collateral review.⁶⁸

C. Splitting the Difference: A Procedural and Substantive Divide

The Tenth and Eleventh Circuits have adopted an intermediate approach, holding that courts may apply procedural default to procedural competency claims but may not apply it to substantive competency claims.⁶⁹ In 1997, in *Sena v. New Mexico State Prison*, the Tenth Circuit held procedural competency claims may be subject to procedural default.⁷⁰ The court reasoned that such claims can be defaulted because the defendant may have possessed sufficient competency to preserve the issue.⁷¹ By contrast, the court held that courts can-

⁶⁵ See *id.* (reasoning that a petitioner's competency cannot be precluded on collateral review). The court highlighted that unlike procedural safeguards, which can be forfeited through inaction, the substantive prohibition on trying an incompetent defendant is derived from due process and cannot be extinguished by procedural default. *Id.*

⁶⁶ See *Zapata*, 588 F.2d at 1021–22 (allowing review of a substantive competency claim despite the petitioner's failure to raise it on direct appeal). The court reasoned that claims implicating such a fundamental defect fall outside the ordinary default rules governing collateral review. *Id.* But see *Green v. Lumpkin*, No. 20-70021, 2023 WL 2941470, at *4–6 (5th Cir. Apr. 13, 2023) (declining to consider a substantive competency claim based on the petitioner's failure to raise it earlier). Because *Green* is unpublished, it does not carry precedential weight in the Fifth Circuit. See 5th Cir. R. 47.5.4 (stating that unpublished opinions are not precedent except under specific conditions not met in the *Green* case). The inconsistency illustrates the unresolved tension within the circuit over how competency claims fit within habeas doctrine. See Jonathan Dame, *Too Late Not to Die: An Empirical Review of Procedural Default in Capital Habeas Cases, 2017–2021*, 112 GEO. L.J. 673, 674, 683 (2024) (observing that federal courts “routinely consider the merits of defaulted claims notwithstanding unexcused default,” creating inconsistency both across and within circuits); 28 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 672.08(2)(a) (3d ed. 2000) (noting that courts differ on whether procedural default applies to competency claims and identifying *Yang v. United States* as adopting default where others have declined).

⁶⁷ See *Silverstein*, 706 F.2d at 366–68 (reasoning that an incompetent defendant cannot knowingly waive the right not to be tried while incompetent).

⁶⁸ See *Zapata*, 588 F.2d at 1021–22 (characterizing competency as a prerequisite to trial rather than a mere procedural safeguard).

⁶⁹ See *Sena v. N.M. State Prison*, 109 F.3d 652, 654–55 (10th Cir. 1997) (distinguishing between substantive competency claims, which are not subject to procedural default, and procedural claims, which may be barred); *supra* note 33 (illustrating the cases reflecting this bifurcated approach).

⁷⁰ See *Sena*, 109 F.3d at 654–55 (treating a procedural competency claim as defaulted where it depended on trial error and could have been raised earlier).

⁷¹ See *id.* (explaining that procedural default enforces compliance with state procedural rules rather than addressing the defendant's actual mental capacity at trial). The court emphasized that procedural default is concerned with enforcing state procedural rules, not with the defendant's actual mental capacity at trial. *Id.* The Tenth Circuit reaffirmed this distinction two decades later in *Lay v.*

not apply procedural default to substantive competency claims because incompetency prevents meaningful participation in the litigation process.⁷² The Eleventh Circuit adopted a similar framework in 1985, in *Adams v. Wainwright*, reasoning that substantive competency goes to the very validity of a conviction, such claims must be reviewable on collateral review.⁷³ Procedural competency claims, on the other hand, challenge the adequacy of trial safeguards, and courts may bar them under the procedural default doctrine.⁷⁴ This distinction attempts to balance fairness and finality but creates practical difficulties.⁷⁵ Many habeas petitions allege both that the trial court failed to hold a hearing and that the defendant was actually incompetent, making it difficult to classify them as either procedural or substantive.⁷⁶

III. COMPETENCY, FINALITY, AND THE CASE FOR DEFAULT

In 2024, in *Yang v. United States*, the U.S. Court of Appeals for the Seventh Circuit addressed whether competency claims raised for the first time on collateral review are subject to procedural default.⁷⁷ The decision highlights the tension between the constitutional requirement of competency and the procedural limits governing federal habeas review.⁷⁸ That tension reflects a broader disa-

Royal, emphasizing that procedural competency claims turn on whether a reasonable judge should have entertained a bona fide doubt about competency. 860 F.3d 1307, 1314–15 (10th Cir. 2017).

⁷² See *Sena*, 109 F.3d at 654–55 (concluding that substantive competency claims are not subject to procedural default). The court reasoned that an incompetent defendant could not realistically waive or forfeit such a claim, distinguishing substantive incompetence from other constitutional rights. *Id.*; see *Lay*, 860 F.3d at 1314–15 (reaffirming that substantive competency claims remain reviewable despite default). Although the *Lay* panel adhered to this precedent, Judge Briscoe wrote separately to question whether exempting substantive claims from default is consistent with the habeas principle of respecting the finality of judgments. 860 F.3d at 1318–19 (Briscoe, J., concurring).

⁷³ See *Adams v. Wainwright*, 764 F.2d 1356, 1359 (11th Cir. 1985) (reasoning that substantive incompetency implicates the validity of the conviction itself and therefore remains reviewable on collateral attack).

⁷⁴ See *id.* (reasoning that incompetency undermines the fundamental fairness of a trial in a way distinct from procedural error); *Raheem v. GDCP Warden*, 995 F.3d 895, 928–29 (11th Cir. 2021) (confirming that substantive competency claims remain exempt from procedural default while requiring procedural claims to comply with ordinary preservation rules).

⁷⁵ See *Sena*, 109 F.3d at 654–55 (treating procedural competency claims as subject to default while preserving review of substantive claims to balance fairness and finality); *Adams*, 764 F.2d at 1359 (adopting the same framework); see also *Lay*, 860 F.3d at 1314–15 (acknowledging the distinction but noting the difficulty of classifying certain claims).

⁷⁶ See *Sena*, 109 F.3d at 654–55 (recognizing that both procedural and substantive competency issues may arise in a single case); *Lay*, 860 F.3d at 1314–15 (illustrating this overlap where the petitioner alleged both a failure to hold a competency hearing and actual incompetency); *Raheem*, 995 F.3d at 928–29 (applying the distinction to a petition that combined claims of trial court error with assertions of incompetency).

⁷⁷ See *Yang v. United States*, 114 F.4th 899, 909–10 (7th Cir. 2024) (addressing whether competency claims first raised on collateral review are subject to procedural default).

⁷⁸ See *id.* (describing an “emerging consensus” that such claims are subject to procedural default and rejecting the procedural-substantive distinction as “confusing”).

greement among federal circuit courts over how such claims should be treated.⁷⁹ The different approaches adopted by the circuits reflect competing concerns about fairness, accuracy, and finality of criminal judgments.⁸⁰ Yet each of the alternative frameworks adopted by other circuits introduces doctrinal and practical problems that undermine consistent application of competency protections.⁸¹ Section A critiques the flaws and inconsistencies in the exemption and compromise approaches adopted by other circuits and explains why they produce instability and doctrinal confusion.⁸² Section B then argues that the Seventh Circuit's categorical rule provides a more coherent and administrable framework for resolving competency claims raised for the first time on collateral review.⁸³

A. The Limits of Fairness-First and Compromise Approaches

Courts that exempt or split competency claims prioritize fairness at the expense of finality and doctrinal uniformity.⁸⁴ The Second and Fifth Circuits' exemption approach stretches the holdings of *Pate v. Robinson* and *Drope v. Missouri* beyond their proper scope.⁸⁵ Those cases barred waiver of competen-

⁷⁹ See *id.* (surveying the competing approaches among federal courts regarding the procedural treatment of competency claims on collateral review). But see *Sena*, 109 F.3d at 654–55 (preserving review of substantive competency claims while allowing procedural claims to be defaulted); *Lay*, 860 F.3d at 1314–15 (retaining that distinction while acknowledging the difficulty of classifying blended claims); *Adams*, 764 F.2d at 1359 (adopting the same bifurcated framework); *Silverstein v. Henderson*, 706 F.2d 361, 367 (2d Cir. 1983) (exempting substantive competency claims from procedural default).

⁸⁰ See *Yang*, 114 F.4th at 909–11 (adopting a uniform rule under which all competency claims first raised on collateral review are subject to procedural default); *cf. Sena*, 109 F.3d at 654–55 (allowing default of procedural competency claims while preserving substantive ones); *Adams*, 764 F.2d at 1359 (same). But see *Silverstein*, 706 F.2d at 367–68 (treating substantive competency claims as exempt from procedural default).

⁸¹ See *Yang*, 114 F.4th at 909–11 (rejecting the competing approaches developed in other circuits and characterizing the resulting framework as confused); *Sena*, 109 F.3d at 654–55 (maintaining a distinction between procedural and substantive competency claims); *Adams*, 764 F.2d at 1359 (same). But see *Silverstein*, 706 F.2d at 367–68 (declining to apply procedural default to substantive competency claims).

⁸² See *infra* notes 84–90 and accompanying text.

⁸³ See *infra* notes 91–110 and accompanying text.

⁸⁴ See *Silverstein*, 706 F.2d at 367–68 (reasoning that substantive competency claims are not subject to procedural default because incompetence undermines the validity of the conviction); *Zapata v. Estelle*, 588 F.2d 1017, 1021–22 (5th Cir. 1979) (permitting review of a substantive competency claim first raised on collateral attack on the ground that competency is a prerequisite to trial). But see *Green v. Lumpkin*, No. 20-70021, 2023 WL 2941470, at *4–6 (5th Cir. Apr. 13, 2023) (applying procedural default to bar a substantive competency claim).

⁸⁵ See *Pate v. Robinson*, 383 U.S. 375, 384–86 (1966) (establishing that a defendant cannot waive competency and requiring a hearing when the evidence raises a bona fide doubt); *Drope v. Missouri*, 420 U.S. 162, 180–81 (1975) (confirming that due process prohibits trying an incompetent defendant and imposes a continuing duty to assess competency). Neither case addressed whether competency claims may be lost through procedural default on collateral review. See *Yang*, 114 F.4th at 908–11 (observing that *Pate* and *Drope* did not resolve that question and therefore do not support an exemption from default).

cy at trial; they said nothing about default on collateral review years later.⁸⁶ By conflating the two, these courts risk eroding the doctrinal limits of habeas review.⁸⁷ More broadly, exempting competency claims from procedural default places them outside the ordinary structure of federal habeas review, which generally requires petitioners to satisfy procedural prerequisites before obtaining collateral relief.⁸⁸ Similarly, the compromise approach of the Tenth and Eleventh Circuits, which distinguishes between substantive and procedural competency, invites arbitrary line-drawing because most petitions raise both kinds of claims.⁸⁹ These fragmented approaches provide little guidance for courts, create uncertainty for litigants, and lead to inconsistent outcomes.⁹⁰

B. The Case for Procedural Default of All Competency Claims

In light of the doctrinal and practical shortcomings of the exemption and compromise approaches, the Seventh Circuit was correct in *Yang*, holding that all competency claims are subject to procedural default.⁹¹ Its decision brings coherence to habeas doctrine by situating competency within the ordinary procedural framework that bars claims not raised on direct appeal, absent a showing of cause and prejudice or actual innocence.⁹² Far from foreclosing merito-

⁸⁶ See *Pate*, 383 U.S. at 378, 384–85 (mandating a competency hearing when the evidence raises doubt about the defendant’s competence); *Drope*, 420 U.S. at 180–81 (finding error where the trial court failed to halt proceedings to evaluate competency after new evidence emerged).

⁸⁷ See *Smith v. Moore*, 137 F.3d 808, 818–19 (4th Cir. 1998) (distinguishing *Pate* as addressing waiver at trial rather than procedural default on collateral review and concluding that substantive competency claims may be barred if not raised in state court); *Pate*, 383 U.S. at 384–85 (requiring a competency hearing when the evidence raises a bona fide doubt as to the defendant’s competence); *Yang*, 114 F.4th at 910–13 (adopting a rule subjecting all competency claims to procedural default and criticizing the substantive procedural distinction).

⁸⁸ See *Wainwright v. Sykes*, 433 U.S. 72, 86–90 (1977) (establishing the cause and prejudice framework governing procedurally defaulted claims).

⁸⁹ See *Adams v. Wainwright*, 764 F.2d 1356, 1359 (11th Cir. 1985) (adopting the same framework); *Sena v. N.M. State Prison*, 109 F.3d 652, 654–55 (10th Cir. 1997) (distinguishing between procedural competency claims, which may be defaulted, and substantive claims, which remain reviewable); *Lay v. Royal*, 860 F.3d 1307, 1314–15 (10th Cir. 2017) (illustrating the overlap where a petition alleged both a failure to hold a competency hearing and actual incompetence); *Raheem v. GDCP Warden*, 995 F.3d 895, 928–29 (11th Cir. 2021) (confirming the continued application of that distinction).

⁹⁰ See *Yang*, 114 F.4th at 909–13 (rejecting both the exemption and compromise approaches as unworkable and establishing a uniform rule under which all competency claims may be subject to procedural default on collateral review); *Sena*, 109 F.3d at 654–55 (distinguishing between procedural and substantive competency claims and applying default to the former); *Adams*, 764 F.2d at 1359 (endorsing the same dichotomy); *Silverstein v. Henderson*, 706 F.2d 361, 367–68 (2d Cir. 1983) (treating substantive competency claims as exempt from procedural default).

⁹¹ See *Yang*, 114 F.4th at 910–13 (joining the “emerging consensus” that competency claims may be subject to procedural default and holding that all competency-based claims raised for the first time on collateral review are barred absent a showing of cause and prejudice or actual innocence).

⁹² See *Wainwright*, 433 U.S. at 86–87 (providing that claims not raised in compliance with state procedures are barred on federal habeas review absent a showing of cause and prejudice).

rious claims, this framework preserves review through those two established exceptions.⁹³ Channeling competency claims through these existing standards deters re-litigation of settled convictions, conserves judicial resources, and protects the finality of judgments.⁹⁴ At the same time, this framework preserves review for defendants who can satisfy the established gateway requirements.⁹⁵ This is particularly true where ineffective assistance of counsel or a previously undiscovered or misunderstood mental illness explains the failure to raise competency earlier.⁹⁶

Applying procedural default uniformly also eliminates the unworkable distinctions made between substantive and procedural competency.⁹⁷ Both types of claims challenge the same underlying defect: the defendant's competency to stand trial.⁹⁸ Treating them differently therefore forces courts to engage in artificial classification disputes rather than focusing on the central question of whether a petitioner can satisfy the established gateways for collateral relief.⁹⁹ Treating them alike spares courts from classification battles and

⁹³ See *Yang*, 114 F.4th at 911–13 (clarifying that procedurally defaulted claims may still be reviewed upon a showing of cause and prejudice or actual innocence).

⁹⁴ See *Wainwright*, 433 U.S. at 84–87, 89–90 (noting that procedural default rules prevent repeated collateral attacks and preserve the finality of criminal judgments); *Yang*, 114 F.4th at 910–11 (emphasizing that situating competency claims within the procedural default framework promotes efficiency and finality).

⁹⁵ See *Murray v. Carrier*, 477 U.S. 478, 488 (1986) (establishing that procedural default may be excused upon a showing of cause and prejudice); *Coleman v. Thompson*, 501 U.S. 722, 750 (1991) (permitting review of defaulted claims upon a showing of cause and prejudice or actual innocence); see also *Yang*, 114 F.4th at 910–11 (emphasizing that procedural default does not foreclose review where a petitioner satisfies established gateway exceptions).

⁹⁶ See *Murray*, 477 U.S. at 488 (recognizing ineffective assistance of counsel as an external impediment that can establish cause). Courts have recognized that cause may exist where a defendant could not reasonably discover a mental illness at the time of trial, where counsel failed to investigate competency despite indicia of impairment, or where subsequent psychological evaluation reveals conditions that materially affect competency. See, e.g., *id.* (identifying constitutionally ineffective assistance of counsel as sufficient to establish cause).

⁹⁷ *Yang*, 114 F.4th at 909–10 (declining to adopt the substantive and procedural distinction developed in other circuits and stating that it is “confusing”). But see *Sena v. N.M. State Prison*, 109 F.3d 652, 654–55 (10th Cir. 1997) (maintaining that procedural competency claims may be defaulted while substantive claims remain reviewable).

⁹⁸ See *Yang*, 114 F.4th at 909–11 (observing that both substantive and procedural competency claims safeguard the same due process right not to be tried while incompetent). In practice, habeas petitions frequently present competency claims in hybrid form, alleging both that the trial court failed to conduct an adequate competency inquiry and that the defendant was, in fact, incompetent to stand trial. See *Lay*, 860 F.3d at 1314–15 (noting that petitions frequently combine allegations of trial court error with claims of actual incompetence); *Sena*, 109 F.3d at 654–56 (acknowledging that both procedural and substantive theories are often raised together). The overlap between these theories underscores the difficulty of maintaining a clear doctrinal distinction between procedural and substantive competency claims. See *Yang*, 114 F.4th at 909–11 (describing the distinction as difficult to apply and conceptually confusing).

⁹⁹ See *id.* (declining to distinguish between procedural and substantive competency claims and characterizing the resulting framework as confused); *Sena*, 109 F.3d at 654–56 (differentiating proce-

more appropriately directs the inquiry toward whether a petitioner can clear the established gateways to collateral relief.¹⁰⁰ The Seventh Circuit's approach preserves a path for genuine claims while protecting finality and preventing endless re-litigation of settled convictions.¹⁰¹ A uniform rule provides clarity for litigants and stability within the system.¹⁰²

The Seventh Circuit's decision not only resolves the issue within its own circuit but also aligns with the "emerging consensus" among the federal courts that habeas review must remain procedurally disciplined.¹⁰³ With certiorari denied, *Yang* now stands as a model for other circuits to adopt, offering the clearest articulation yet of the proper balance between due process and procedural discipline in federal habeas law.¹⁰⁴

Beyond resolving the issue within the Seventh Circuit, the continuing split over competency and procedural default presents a question of national importance that may ultimately require resolution by the Supreme Court.¹⁰⁵ As federal courts continue to confront collateral competency claims, divergent doctrinal approaches produce inconsistent access to habeas relief depending on geographic jurisdiction.¹⁰⁶ Such disparities undermine the uniform administra-

dural and substantive competency); *Adams v. Wainwright*, 764 F.2d 1356, 1359 (same); *see also Wainwright*, 433 U.S. at 86–90 (articulating the cause-and-prejudice framework governing procedural default in federal habeas review).

¹⁰⁰ *See* Brief of Plaintiff-Appellee at 18–20, *Yang v. United States*, 114 F.4th 899 (7th Cir. 2024) (No. 23-2777) (7th Cir. Dec. 22, 2023) (contending that a uniform application of procedural default avoids line-drawing problems and channels review through established gateway exceptions).

¹⁰¹ *See Yang*, 114 F.4th at 910–13 (emphasizing that procedural default preserves fairness by permitting review where a petitioner demonstrates cause, prejudice, or actual innocence).

¹⁰² *See id.* at 909–10 (rejecting the procedural-substantive distinction and noting that a unified competency framework promotes finality and procedural efficiency).

¹⁰³ *See id.* at 910–11 (adopting a rule that all competency claims first raised on collateral review are subject to procedural default and highlighting the advantages of a uniform approach).

¹⁰⁴ *See Yang v. United States*, 114 F.4th 899, 913 (7th Cir. 2024), *cert. denied*, 145 S. Ct. 1182 (2025) (leaving intact the Seventh Circuit's holding). The Supreme Court's denial of certiorari does not signify approval of the lower court's reasoning but simply declines review, allowing the decision to remain binding within the circuit. *See Teague v. Lane*, 489 U.S. 288, 296 (1989) (explaining that a denial of certiorari "imports no expression of opinion upon the merits of the case") (quoting *United States v. Carver*, 260 U.S. 482, 490 (1923)).

¹⁰⁵ *See Yang*, 114 F.4th at 909–13 (surveying the disagreement among federal courts regarding procedural default and competency claims); *see also Teague*, 489 U.S. at 308 (emphasizing the importance of uniformity and stability in federal habeas doctrine).

¹⁰⁶ *See Yang*, 114 F.4th at 910–13 (mapping the competing approaches adopted by federal courts of appeals regarding competency claims raised on collateral review); *see also Engle v. Isaac*, 456 U.S. 107, 126–27 (1982) (describing the structured limits placed on federal habeas review). The consequences of unresolved competency claims can be significant for defendants suffering from serious mental illness. *See Bonnie*, *supra* note 1 (explaining that trying incompetent defendants risks unreliable convictions because they cannot meaningfully participate in their defense). Studies show that individuals with schizophrenia, severe bipolar disorder, or cognitive impairment may be unable to understand courtroom proceedings, communicate with counsel, or make rational decisions about their defense. *See id.* (describing how serious mental illness can impair a defendant's ability to understand proceedings and assist counsel). Courts have repeatedly confronted situations in which serious doubts

tion of federal constitutional protections and create uncertainty for litigants, counsel and trial courts alike.¹⁰⁷ The Seventh Circuit's categorical framework offers a particularly administrable solution, one that situates competency within the broader structure of habeas jurisprudence and preserves avenues for relief in extraordinary cases.¹⁰⁸ If other circuits adopt this approach, federal habeas doctrine will gain both doctrinal clarity and greater national consistency in addressing competency-based challenges to criminal convictions.¹⁰⁹ For these reasons, the Seventh Circuit's categorical rule offers the most coherent and sustainable approach for resolving competency claims raised for the first time on collateral review.¹¹⁰

CONCLUSION

In 2024, in *Yang v. United States*, the U.S. Court of Appeals for the Seventh Circuit held that all competency claims raised for the first time on collateral review are subject to procedural default. By aligning itself with other circuits that apply default to all such claims, the court rejected both the fairness-

about competency emerged only after trial had begun. See *Drope v. Missouri*, 420 U.S. 162, 166–67, 179–81 (1975) (reversing a conviction where the defendant's suicide attempt during trial raised substantial doubts about competency).

¹⁰⁷ See *Teague*, 489 U.S. at 308–10 (highlighting that limits on collateral review promote uniformity and stability in criminal adjudication); see also *Wainwright v. Sykes*, 433 U.S. 72, 88–90 (1977) (underscoring that procedural default rules preserve the integrity and finality of criminal convictions). Courts have encountered situations in which defendants suffering from serious mental illness attempted to navigate criminal proceedings despite clear difficulties participating in their own defense. See *Bonnie*, *supra* note 1 (noting that mentally ill defendants may struggle to understand proceedings or assist counsel, even when formally deemed competent). In *Indiana v. Edwards*, for example, the Supreme Court addressed a defendant with schizophrenia who insisted on representing himself at trial despite significant evidence of mental instability. 554 U.S. 164, 167–70 (2008). The Court recognized that mental illness may leave a defendant formally competent to stand trial yet still render the defendant unable to conduct a coherent defense, illustrating the practical challenges courts face when applying competency doctrine in real cases. *Id.* at 175–78.

¹⁰⁸ See *Yang*, 114 F.4th at 910–13 (holding that competency claims first raised on collateral review are subject to procedural default but remain reviewable upon a showing of cause and prejudice or actual innocence).

¹⁰⁹ See *Teague*, 489 U.S. at 308 (noting the importance of doctrinal clarity and uniformity in federal habeas jurisprudence); see also *Wainwright*, 433 U.S. at 88–90 (explaining that procedural rules promote finality and consistent application of criminal judgments). The stakes of doctrinal fragmentation are especially acute for defendants with serious mental illness or cognitive impairments, whose ability to preserve claims at trial or on direct appeal may itself be compromised by the very condition later invoked as a basis for relief. See *Bonnie*, *supra* note 1 (acknowledging that a defendant's mental incompetence can preclude them from understanding the case against them or working effectively with counsel). When one circuit permits review and another bars it, access to a judicial determination of competency may turn less on the merits of the claim than on the jurisdiction in which the conviction occurred. See *Pate*, 383 U.S. at 378–79 (reversing a conviction where substantial evidence raised doubts about the defendant's competency but no adequate hearing was held).

¹¹⁰ See *Yang*, 114 F.4th at 910–13 (explaining that a uniform application of procedural default to competency claims preserves procedural discipline while permitting review through established habeas exceptions).

first approach and the compromise distinction between substantive and procedural claims. This rule preserves meaningful review for truly meritorious claims and reinforces the systemic interests of finality and efficiency. More broadly, *Yang* provides a coherent model for integrating competency and fairness into the established habeas framework without sacrificing stability in criminal judgments. Fairness demands review, but finality demands limits, and *Yang* shows how both approaches can coexist.

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