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Refusing to "Kiss the Great Writ Good-Bye": The Ninth Circuit, in *Doody v. Ryan,* Ignores the Supreme Court's Cues Regarding Federal Habeas Relief

Drew Goodwin
Boston College Law School, drew.goodwin@bc.edu

REFUSING TO "KISS THE GREAT WRIT GOOD-BYE": THE NINTH CIRCUIT, IN *DOODY v. RYAN*, IGNORES THE SUPREME COURT'S CUES REGARDING FEDERAL HABEAS RELIEF

Abstract: On May 4, 2011, the U.S. Court of Appeals for the Ninth Circuit in *Doody v. Ryan* held that the Arizona Court of Appeals' application of U.S. Supreme Court precedent regarding *Miranda* warnings was unreasonable. Therefore, it granted the defendant federal habeas relief under the Antiterrorism and Effective Death Penalty Act (AEDPA). In so doing, the Ninth Circuit once again displayed an improper understanding of the AEDPA and the requisite deference it must apply to state court decisions. This Comment argues that the Supreme Court should adopt a more precise unreasonableness standard to curtail the Ninth Circuit from defying congressional intent and Supreme Court precedent.

Introduction

In its 2000 opinion, *Williams v. Taylor,* the U.S. Supreme Court considered for the first time the Antiterrorism and Effective Death Penalty Act (AEDPA).[1] Central to that case was section 2254(d)(1) of the AEDPA that authorizes federal courts to grant habeas petitions only if the state court unreasonably applied Supreme Court precedent or unreasonably determined the facts of the case.[2] In granting the defen-

[1] 529 U.S. 362, 367, 398–99 (2000) (concluding that the defendant in a capital murder sentencing had been denied his constitutionally guaranteed right to effective assistance of counsel when the defendant's counsel failed to present and explain significant mitigating factors, and holding that it was unreasonable for the Virginia Supreme Court to have decided otherwise); *see* Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, 28 U.S.C. §§ 2244, 2253–2255, 2261–2266 (2006).

[2] 529 U.S. at 367; *see* § 2254(d)(1). Under Title I of the AEDPA, Congress limited the authority of federal courts to grant the writ of habeas corpus. § 2254(d)(1). Congress enacted these changes to "further principles of comity, finality, and federalism, to encourage exhaustion of state remedies, and to reduce delays in the execution of state and federal criminal sentences—particularly in capital cases." Kurtis A. Kemper, Annotation, *Construction and Application of Antiterrorism and Effective Death Penalty Act (AEDPA)—U.S. Supreme Court Cases,* 26 A.L.R. Fed. 2d 1, 1 (2008); *see* Vicki C. Jackson, *Introduction: Congressional Control of Jurisdiction and the Future of the Federal Courts-Opposition, Agreement, and Hierarchy,* 86 Geo. L.J. 2445, 2449–50 (1998) (asserting that Congress enacted the AEDPA to limit federal authority for granting prisoners relief in response to "the populist sentiment that

dant's habeas petition, the Court emphasized an important difference between an "incorrect" application and an "unreasonable" application of clearly established federal law.[3] Although the *Williams* Court failed to explain exactly what makes a decision unreasonable instead of merely incorrect, in the decade since, Supreme Court precedent has directed lower federal courts to give a high level of deference to state court decisions.[4]

On May 4, 2011 the U.S. Court of Appeals for the Ninth Circuit, sitting en banc, granted habeas relief under the AEDPA in *Doody v. Ryan* (*Doody III*).[5] Although the Supreme Court has attempted to clarify the AEDPA's deferential standard of review, the Ninth Circuit has repeatedly exploited the lack of a precise unreasonableness definition after *Williams*.[6] Moreover, because the Supreme Court has denied certiorari in this case, the Ninth Circuit will continue to grant habeas relief without proper deference to state court decisions until the Supreme Court creates a more precise definition of unreasonableness.[7]

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courts are mollycoddling prisoners"); William J. Meade, Case & Statute Comment, *The Demise of De Novo Review in Federal Habeas Corpus Practice,* 85 Mass. L. Rev. 127, 132 (2001) (explaining that the AEDPA "marks a great shift" to a system of federal review which more properly respects state courts' decisions). Section 2254(a) of the AEDPA prohibits federal courts from entertaining applications for habeas corpus from individuals in state custody unless the individual is in state custody in violation of the Constitution or federal law. § 2254(a). The statute reads, in pertinent part:

> [A]n application for a writ of habeas corpus . . . shall not be granted . . . unless the adjudication of the claim (1) resulted in a decision that was contrary to, or involved, an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Id. § 2254(d)(1).

[3] *See Williams,* 529 U.S. at 410–11.

[4] *See* Harrington v. Richter, 131 S. Ct. 770, 786–87 (2011).

[5] 649 F.3d 986, 990 (9th Cir. 2011), *cert. denied,* 132 S. Ct. 414 (2011).

[6] *See, e.g.*, *Richter,* 131 S. Ct. at 785 (explaining that the Ninth Circuit, by reviewing the lower court decision in a manner closer to direct than deferential review, "disclose[d] an improper understanding of [section] 2254(d)'s unreasonableness standard"); Uttecht v. Brown, 551 U.S. 1, 10 (2007) (holding that the AEDPA requires federal courts to accord deference to state decisions and, by not according this proper level of deference, the Ninth Circuit failed to respect the limited role of federal habeas relief); Woodford v. Visciotti, 537 U.S. 19, 25 (2002) (reversing the Ninth Circuit's decision because it substituted its own judgment for that of the state court).

[7] *See* Ryan v. Doody (*Doody IV*), 132 S. Ct. 414, 414 (2011) (denying certiorari); *Williams,* 529 U.S. at 410.

Part I of this Comment summarizes the Ninth Circuit's decision in *Doody III*.[8] Part II then examines the analytical structure of the court's decision in light of Supreme Court precedent.[9] Finally, Part III evaluates the Ninth Circuit's reasoning in *Doody III* and argues that the court misapplied the AEDPA standard of review; further, it suggests how the Supreme Court could close the loophole that the Ninth Circuit continues to exploit.[10]

I. The Ninth Circuit's Decision in *Doody III*

A. *Doody Found Guilty of Temple Murders*

In the summer of 1991, Maricopa County, Arizona was rocked by one of the largest mass killings in the county's history.[11] On August 10, 1991, nine individuals were murdered inside the Wat Promkunaram Buddhist Temple located west of Phoenix, including six monks, a nun, and two acolytes.[12] The case investigators initially received an anonymous tip implicating four men from Tucson (the "Tucson Four") and, during interrogations, these four men eventually confessed.[13] Nearly one month after these confessions, however, the police located the murder weapon, dropped all charges against the Tucson Four, and shifted the focus of the investigation onto Jonathan Doody, a seventeen-year-old high school student.[14] Police officers approached Doody on October 25, 1991 at a high school football game.[15] After he voluntarily accompanied the police officers to the station, Doody was interrogated for nearly thirteen consecutive hours and eventually confessed to participating in the murders.[16]

The state charged Doody and his friend Alessandro Garcia with the "Temple murders."[17] Prior to trial, Doody moved to suppress his confession on the grounds that the warnings he was given were inade-

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[8] *See infra* notes 11–39 and accompanying text.

[9] *See infra* notes 40–91 and accompanying text.

[10] *See infra* notes 92–120 and accompanying text.

[11] *See* Shandra Martinez et al., *9 Found Slain in Valley Temple Buddhist Monks, Nun Were "Executed,"* Ariz. Republic (Aug. 11, 1991, 12:00 AM), http://www.azcentral.com/12news/news/articles/2008/11/20/20081120templemurdersbackground112008-CR.html.

[12] *Id.*

[13] *Doody III,* 649 F.3d at 991.

[14] *Id.* at 991 n.2 (noting that the State dropped all charges against the Tucson Four and never disputed that the Tucson Four's confessions were false).

[15] *Id.*

[16] *Id.*

[17] State v. Doody (*Doody I*), 930 P.2d 440, 444 (Ariz. Ct. App. 1996).

quate under the standard created by the U.S. Supreme Court in its 1966 decision in *Miranda v. Arizona*.[18] The trial court conducted a ten-day suppression hearing and ultimately denied both motions.[19] Garcia subsequently pled guilty to nine counts of murder and agreed to testify against Doody pursuant to a plea agreement.[20] The jury convicted Doody on nine counts of first-degree murder, and he was sentenced to nine consecutive life terms.[21] He challenged the trial court's decision, arguing that the trial court erred by failing to suppress his confession.[22] The Arizona Court of Appeals, with a cursory glance at the facts, concluded that the trial court did not err in finding that the officers advised Doody of his *Miranda* rights in a clear and understandable manner.[23] The court emphasized that it was required to heed great deference to the trial court's rulings because of its access to certain intangible evidence, specifically witness credibility, which could not be reproduced on appeal.[24]

B. *The Ninth Circuit Grants Doody Habeas Relief*

After exhausting his potential remedies in state court, Doody filed for federal habeas relief.[25] Although the federal district court affirmed the state court's rulings, the Ninth Circuit eventually provided Doody with the relief that he sought.[26] On February 25, 2010, the Ninth Circuit concluded, in *Doody v. Schriro* (*Doody II*), that the detective's warnings to Doody undermined the policy behind *Miranda* and that it was unreasonable for the state court to have decided otherwise.[27] Thus, under the AEDPA, habeas relief was appropriate.[28] On remand from

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[18] *Id.* at 444, 445, 448; *see also* Miranda v. Arizona, 384 U.S. 436, 444 (1966) (holding that, before questioning, suspects must be warned of the right to remain silent, that any statement made may be used as evidence against them, and that they have the right to the presence of an attorney, either retained or appointed). This Comment focuses exclusively on the issue of the *Miranda* warnings and does not address the issue of the voluntariness of Doody's confession.

[19] *Doody I,* 930 P.2d at 444.

[20] *Id.*

[21] *Id.* at 444–45.

[22] *Id.* at 445, 448.

[23] *Id.* at 449 (addressing the facts for only two paragraphs before deferring to the trial court's ruling).

[24] *Id.* at 445 n.3.

[25] *Doody III,* 649 F.3d at 1001.

[26] *Id.*

[27] 596 F.3d 620, 637 (9th Cir. 2010), *cert. granted, vacated sub nom.* Ryan v. Doody, 131 S. Ct. 456 (2010) (remanding back to the Ninth Circuit for further consideration in light of *Florida v. Powell,* 130 S. Ct. 1195, 1213 (2010)).

[28] *Id.*; *see* 28 U.S.C. § 2254(d)(1) (2006).

the Supreme Court in *Doody III,* the Ninth Circuit reached the same conclusion.[29]

In determining that the state court had unreasonably applied Supreme Court precedent, the Ninth Circuit engaged in a lengthy explanation of the facts of the case.[30] The court explained that the *Miranda* warnings the officers gave Doody misinformed him of his constitutional right to counsel.[31] The investigators' most notable mistake, according to the Ninth Circuit, came when the detective instructed Doody that he had the right to counsel "if [he was] involved in it . . . but if [he was], then that's what that would apply to . . . ."[32] The court opined that this was tantamount to explaining to Doody that he was entitled to an attorney only if he had committed the crime of which he was being accused.[33] Additionally, the majority emphasized that the detectives' explanation of the *Miranda* form consumed twelve pages of transcript when it should have been no more than a page.[34] The Ninth Circuit held that the Arizona Court of Appeals' conclusion that the *Miranda* warnings were clear and understandable was both an unreasonable determination of the facts and an unreasonable application of Supreme Court precedent.[35] Accordingly, the court granted Doody habeas corpus.[36]

On October 12, 2010, the Supreme Court granted certioriari, vacated the judgment of the Ninth Circuit, and remanded the case for further consideration in light of its 2010 decision, *Florida v. Powell,* in which the Court held a *Miranda* warning sufficient.[37] On remand in *Doody III,* the Ninth Circuit affirmed its prior ruling and submitted a nearly identical opinion—it decided that *Powell* was easily distinguish-

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[29] 649 F.3d at 990.

[30] *See id.* at 990–1001.

[31] *Id.* at 1003.

[32] *Id.*

[33] *Id.*

[34] *Id.* at 1006 (describing the detectives' twelve-page explanation of the one-page *Miranda* form as "the very antithesis of clarity").

[35] *Doody III,* 649 F.3d at 1003. Additionally, the court concluded that the detectives erred by repeatedly describing the *Miranda* warnings as beneficial to both Doody and the detectives. *Id.* at 1004–05. The Ninth Circuit determined that the detectives had inappropriately characterized these warnings as mutually beneficial, when, in fact, the *Miranda* warnings were more accurately described as preserving the defendant's valuable constitutional rights. *Id.*

[36] *Id.* at 1007.

[37] Ryan v. Doody, 131 S. Ct. 456, 456 (2010); *see Powell,* 130 S. Ct. at 1213 (holding that the warnings that the suspect had "the right to talk to a lawyer before answering any questions" and that he could invoke this right "at any time" satisfied *Miranda* because it reasonably conveyed the *Miranda* rights to the suspect).

able on its facts and saw no need to alter its *Miranda* analysis from *Doody II*.[38] The State of Arizona again petitioned the Supreme Court for certiorari, but, on October 11, 2011, the Supreme Court denied certiorari.[39]

II. The Two Layers of Analysis in *Doody III*

The *Doody III* court employed a two-layer analytical structure in reaching its decision to grant federal habeas relief under the AEDPA.[40] First, it reviewed the facts of Doody's case in light of the Supreme Court's 1966 decision, *Miranda v. Arizona,* and its progeny, and determined that the suspect's warnings were constitutionally deficient.[41] Second, the *Doody III* court evaluated the state court's treatment of the *Miranda* issue and concluded that, under the AEDPA, the Arizona Court of Appeals' decision was unreasonable and not merely incorrect.[42] Accordingly, the Ninth Circuit granted Doody habeas relief.[43] This Part situates the *Doody III* court's two-layer analysis within the relevant Supreme Court precedent.[44]

A. *The* Doody III *Court First Analyzed the Detective's* Miranda *Warnings*

1. Subjective Analysis of the Adequacy of *Miranda* Warnings

In *Miranda,* the Supreme Court held that, before police initiate questioning, they must warn suspects: (1) that they have the right to remain silent, (2) that any statement made may be used as evidence against them, and (3) that they have the right to counsel, either re-

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[38] *See Doody III,* 649 F.3d at 1005. Both the majority and the dissent concluded that *Powell,* which merely reiterated the requirement that *Miranda* warnings clearly convey a suspect's right to counsel, would not change their analyses and was easily distinguishable on the facts. *See id.* at 1005–06; *id.* at 1037 (Tallman, J., dissenting). Consequently, the analysis in *Doody III* was functionally identical to that in *Doody II. Compare Doody II,* 596 F.3d at 634–37 (holding that the detectives did not reasonably convey to Doody his right to counsel based on relevant *Miranda* case law), *with Doody III,* 649 F.3d at 1002–07 (holding that the detectives did not reasonably convey to Doody his right to counsel based on relevant *Miranda* case law, including *Powell*).

[39] *Doody IV,* 132 S. Ct. at 414.

[40] 649 F.3d 986, 990 (9th Cir. 2011), *cert. denied,* 132 S. Ct. 414 (2011).

[41] *Id.* at 1003. The relevant warning in this case is the third warning of *Miranda* that requires law enforcement officials to convey to the person in custody of "the right to the presence of an attorney." *See* Miranda v. Arizona, 384 U.S. 436, 479 (1966); *Doody III,* 649 F.3d at 1009.

[42] 649 F.3d at 1007.

[43] *Id.*

[44] *See infra* notes 45–91 and accompanying text.

tained or appointed.[45] The relevant *Miranda* warning in *Doody III* was the third warning.[46] Although the third *Miranda* warning requires police to convey to a suspect the right to counsel, the Supreme Court does not require police to use any specific phrase or combination of words to do so.[47] For example, in *California v. Prysock,* a 1981 case, and *Duckworth v. Eagan,* a 1989 case, the Supreme Court explained that "no talismanic incantation" is necessary to give sufficient warnings.[48] In *Prysock* and *Duckworth,* the Court held that, to determine whether police officers adequately explained the right to counsel, "the inquiry is simply whether the warnings reasonably conve[yed] to [the suspect] . . . rights as required by *Miranda.*"[49] Accordingly, courts must look at the warnings in their *totality* to determine if they are adequate; an isolated deviation from a traditional script will not render the warnings defective.[50]

Moreover, in 2010, in *Florida v. Powell,* the Supreme Court further emphasized the importance of considering the totality of the circumstances when analyzing the adequacy of *Miranda* warnings.[51] In *Powell,* after the police officers had the defendant in custody they informed him: "You have the right to talk to a lawyer before answering any of our questions."[52] The Florida Supreme Court had determined that this *Miranda* warning was misleading because it suggested to the defendant that he was entitled to counsel before questioning, but not through the entire process.[53] The Supreme Court reversed, however, explaining that the Florida Supreme Court had mistakenly focused on one statement made by the officer instead of considering the totality of all the statements.[54] When looking at the totality of the circumstances, includ-

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[45] 384 U.S. at 444.

[46] *Doody III,* 649 F.3d at 1002–03.

[47] *Miranda,* 384 U.S. at 479; *see* Florida v. Powell, 130 S. Ct. 1195, 1205 (2010); Duckworth v. Eagan, 492 U.S. 195, 202–03 (1989); California v. Prysock, 453 U.S. 355, 361 (1981).

[48] *See Duckworth,* 492 U.S. at 202–03 (quoting *Prystock,* 453 U.S. at 359) (holding that courts do not need to scrutinize *Miranda* warnings "as if construing a will or defining the terms of an easement" because the proper inquiry is whether the warnings reasonably convey the *Miranda* rights to the suspect); *Prysock,* 453 U.S. at 359, 361 (explaining that, in determining whether *Miranda* warnings were adequate, the proper inquiry is if the warnings reasonably convey the rights to the suspect).

[49] *Duckworth,* 492 U.S. at 203 (quoting *Prysock,* 453 U.S. at 361) (internal quotation marks omitted).

[50] *Id.* at 202–03.

[51] *See* 130 S. Ct. at 1205.

[52] *Id.* at 1199–1200.

[53] Florida v. Powell, 998 So. 2d 531, 541 (Fla. 2008), *rev'd,* 130 S. Ct. 1195 (2010).

[54] *Powell,* 130 S. Ct. at 1205. Specifically, the Court noted that the police officer made a second statement in which he informed the suspect of "the right to use any . . . rights at any time . . . during th[e] interview." *Id.* at 1204–05. When viewed in combination, these

ing the verbal and written statements given to the defendant, the *Miranda* warnings in *Powell* were adequate.[55] Thus, *Powell* demonstrates that even a potentially misleading statement will not necessarily render the *Miranda* warning deficient.[56] Instead, the court must determine, based on the totality of the circumstances, whether the police reasonably conveyed the *Miranda* rights to the defendant.[57]

2. The *Doody III* Court's Conclusion that the *Miranda* Warnings Were Inadequate

The *Doody III* court held that Doody's *Miranda* warnings failed to properly notify him of his constitutional right to the presence of an attorney.[58] The *Doody III* court distinguished *Powell* by asserting that, in giving Doody's *Miranda* warning, the detectives departed to a point that bordered on confusing the suspect.[59] In particular, the court focused on one statement made by the detective, in which he implied that Doody had the right to counsel only if he was involved in the crime.[60] Unlike in *Powell,* in which the warnings did not ultimately suggest any limitation on the right to counsel, in *Doody III* the detective "expressly and affirmatively limited" the suspect's right to counsel.[61] Accordingly, the Ninth Circuit concluded that the detective's "misleading and unintelligible" commentary came "nowhere close to the *Miranda* standard mandating clarity" and thus was constitutionally deficient.[62]

B. *Was the State Court's Decision Unreasonable Under the AEDPA?*

1. Ambiguous Language to Clarify an Amorphous AEDPA Standard

Under the AEDPA, as interpreted by the Supreme Court's 2000 decision in *Williams v. Taylor,* the Ninth Circuit could not have granted

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two warnings conveyed all the necessary aspects of the third *Miranda* warning. *See id.* at 1205; *Miranda,* 384 U.S. at 479.

[55] 130 S. Ct. at 1205–06. Specifically, the Supreme Court emphasized that, although the officers did not communicate the third *Miranda* warning in the clearest way possible, their statements were sufficient when given a "commonsense reading." *Id.* at 1205.

[56] *Id.* at 1205–06.

[57] *See id.* at 1205; *Duckworth,* 492 U.S. at 202–03; *Prysock,* 453 U.S. at 361.

[58] *See* 649 F.3d at 1003.

[59] *Id.* at 1006.

[60] *Id.* at 1002–03. The detective instructed Doody that he had the right to counsel "if you were involved in [the crime] . . . but if you were, then that's what that would apply to . . . ." *Id.* at 1003.

[61] *Id.* at 1005.

[62] *Id.* at 1006, 1007.

habeas relief in *Doody III* if the Arizona Court of Appeals' decision was merely erroneous.[63] Instead, habeas relief was predicated on whether the state court's application of *Miranda* was "unreasonable."[64] Although the Supreme Court provided scant guidance in *Williams* on what constitutes an unreasonable—as opposed to a simply incorrect decision—it has since provided further direction.[65] For example, the Supreme Court has established that federal habeas relief under the AEDPA should be difficult to obtain because such relief is designed to protect only against extreme malfunctions by the state courts and not ordinary errors.[66]

The Supreme Court first interpreted section 2254(d)(1) in *Williams* to require federal courts to withhold habeas relief for state court decisions that are incorrect but not unreasonable.[67] In *Williams,* the defendant filed a habeas petition in federal court, claiming ineffective assistance of counsel under the standard established in the Court's 1984 decision, *Strickland v. Washington.*[68] After granting certiorari in *Williams,* the Court held that the defendant had met the requirements of the AEDPA.[69] Nonetheless, although *Williams* afforded the Court an opportunity to clarify the broad language of section 2254(d)(1) for lower courts, it did not take full advantage.[70] Justice Sandra Day O'Connor, writing for the Court, explained two different ways in which a state court can unreasonably apply clearly established federal Supreme Court law.[71] First, the state court could properly identify the rule of law, but then unreasonably apply that law to the facts of the case; or, second, the state court could either unreasonably extend a legal principle when it should not apply or unreasonably fail to extend a legal principle when it should apply.[72] Although the majority distinguished

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[63] *See* 28 U.S.C. § 2254(d)(1) (2006); Williams v. Taylor, 529 U.S. 362, 367 (2000); *see also Miranda,* 384 U.S. at 479; *Doody III,* 649 F.3d at 990.

[64] *See* § 2254(d)(1); *Miranda,* 384 U.S. at 479; *Doody III,* 649 F.3d at 990.

[65] *See* 529 U.S. at 367; *see also* Harrington v. Richter, 131 S. Ct. 770, 786 (2011); Yarborough v. Alvarado, 541 U.S. 652, 664 (2004).

[66] *Richter,* 131 S. Ct. at 786; *Yarborough,* 541 U.S. at 664; *see* § 2254(d)(1).

[67] 529 U.S. at 367, 411.

[68] *Williams,* 529 U.S. 370–71; *see* Strickland v. Washington, 466 U.S. 668, 687 (1984) (holding that, to prove a violation of the Sixth Amendment right to counsel, a defendant must show that the counsel's performance was deficient and that this deficient performance prejudiced the defense).

[69] *Williams,* 529 U.S. at 367; *see* § 2254(d)(1).

[70] *See Willliams,* 529 U.S. at 407; *see also* Padraic Foran, Notes, *Unreasonably Wrong: The Supreme Court's Supremacy, the AEDPA Standard, and* Carey v. Musladin, 81 S. Cal. L. Rev. 571, 592 (2008) (noting that the *Williams* opinion injected more confusion into the already confusing habeas analysis).

[71] *Williams,* 529 U.S. at 407.

[72] *Id.*

two types of unreasonableness, it failed to explain when a state court's rulings would be "unreasonable" instead of simply "incorrect."[73] Justice O'Connor did, however, insist that "unreasonable" is different from "incorrect."[74]

The Supreme Court offered further guidance to lower federal courts as to when an incorrect decision is more likely than not to be unreasonable in its 2004 decision, *Yarborough v. Alvarado*.[75] Yet, the Court used ambiguous language in attempting to clarify this already amorphous standard.[76] According to the *Yarborough* Court, federal courts should look at how general or specific the law is that the state court applied.[77] On the one hand, a specific legal rule, such as banning alcohol to persons under the age of twenty-one, minimizes judicial discretion by requiring particular outcomes when judges are presented with particular facts.[78] On the other hand, a more general legal standard, such as whether probable cause existed for an arrest, provides significant judicial discretion and allows judges to import their own subjective opinions.[79] Thus, if a court has greater discretion in its decision then it is less likely that its decision was "unreasonable."[80]

Furthermore, in its 2011 opinion *Harrington v. Richter,* in which the Court held that the Ninth Circuit had misapplied the AEDPA's unreasonableness standard, the Court went beyond discussing mere likelihoods and attempted to create a workable standard for what constitutes an "unreasonable" decision.[81] The Court explained that a petitioner must show that the state court's ruling contained "an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement."[82] Therefore, before declaring a state court decision unreasonable under section 2254(d)(1), a federal court should determine if the state court was wrong and that no fair-minded

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[73] *See id.* at 410–11.

[74] *Id.*

[75] 541 U.S. at 663–64; *see Richter,* 131 S. Ct. at 787.

[76] *See Yarborough,* 541 U.S. at 663–64.

[77] *Id.* at 664.

[78] *Id.*; *see* Todd E. Pettys, *Federal Habeas Relief and the New Tolerance for "Reasonably Erroneous" Applications of Federal Law,* 63 Ohio St L.J. 731, 790 (2002) (explaining the difference between specific "rules" and general "standards" when analyzing the range of potential outcomes in a particular case).

[79] *Yarborough,* 541 U.S. at 664; *see* Pettys, *supra* note 78, at 791.

[80] *Yarborough,* 541 U.S. at 664; *see* Pettys, *supra* note 78, at 791.

[81] 131 S. Ct. at 787 (concluding that the Ninth Circuit erred in overturning the state court's decision regarding effective assistance of counsel without using the proper deferential standard).

[82] *Id.* at 786–87.

jurist could disagree that it was wrong.[83] In *Richter,* the Court criticized the Ninth Circuit for conducting a de novo review of the case and then, without further explanation, declaring that the state court's decision had been unreasonable.[84] According to the Court, this lack of deference undermined the purpose of section 2254(d)(1).[85]

Although *Richter* provided another opportunity for the Court to clarify its amorphous standard, the Court again failed to use precise language, for it is unclear how a reviewing court would determine if there is any possibility for fair-minded disagreement.[86] Thus, the *Richter* standard is still subject to significant judicial discretion—different people can have different opinions on whether or not fair-minded people would disagree on a particular issue.[87] The Court did make one thing clear, however: federal habeas relief should be difficult to obtain, especially when reviewing a state court's application of a general legal rule.[88]

2. The *Doody III* Court's Application of AEDPA Unreasonableness

In *Doody III,* the Ninth Circuit laid the correct foundation for a proper inquiry under the AEDPA by acknowledging that it could only overturn the state court's decision if that decision was unreasonable.[89] Yet, the majority only discussed this standard once more in the opinion when it asserted "the responsibility that federal judges have to grant habeas relief if Supreme Court precedent has been unreasonably applied."[90] After holding that the reading of Doody's *Miranda* rights was defective, the Ninth Circuit concluded that no fair-minded jurist could reach a different conclusion and declared that "*whatever the applicable standard* for reviewing the state court decision," it was compelled to grant habeas relief in this case because the *Miranda* violation was so egregious.[91]

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[83] *Id.* at 786.

[84] *Id.*

[85] *Id.* at 786; *see* 28 U.S.C. § 2254(d)(1) (2006).

[86] *See* 131 S. Ct. at 786.

[87] *See id.*

[88] *Id.*; *Yarborough,* 541 U.S. at 664; *see* § 2254(d)(1).

[89] 649 F.3d at 1002; *see Williams,* 529 U.S. at 411 (holding that the proper inquiry under the AEDPA is whether the state court decision was unreasonable as opposed to incorrect).

[90] *See Doody III,* 649 F.3d at 1006.

[91] *Id.* at 1007 (emphasis added); *see Miranda,* 384 U.S. at 479.

III. Closing the Loophole Created by an Ambiguous Unreasonableness Standard

By reversing the Arizona Court of Appeals' decision for a second time in *Doody III,* the Ninth Circuit once again displayed an improper understanding of the AEDPA.[92] When considering a federal habeas petition under the AEDPA, a federal court must consider the generality or specificity of the applied law—the more general the rule, the more leeway the state court has in reaching its decision.[93] The generality of the law regarding *Miranda* warnings was laid out in the Supreme Court's 2010 decision, *Florida v. Powell,* in which the Court held that a judgment on the adequacy of *Miranda* warnings necessarily involves some degree of subjectivity.[94] Furthermore, the Supreme Court has emphasized that a court should review *Miranda* warnings in their totality to determine their adequacy.[95] Thus, Supreme Court precedent suggests that the rules governing *Miranda* warnings are fairly general.[96]

The Ninth Circuit erred in *Doody III* by failing to consider either the generality of the *Miranda* rules or the totality of the circumstances when analyzing the sufficiency of *Miranda* warnings.[97] In particular, the court inappropriately focused on one statement made by the detectives during their interrogation, and only briefly mentioned the full *Miranda* form provided to Doody and the dialogue accompanying the detectives' explanation of it to him, which comprised twelve pages

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[92] *See* 649 F.3d 986, 1002–07 (9th Cir. 2011), *cert. denied,* 132 S. Ct. 414 (2011); *see also* 28 U.S.C. § 2254(d)(1) (2006); *see also, e.g.*, McDaniel v. Brown, 130 S. Ct. 665, 673 (2010) ("[T]he [Ninth Circuit] Court of Appeals' discussion of the . . . evidence departed from the deferential review that . . . § 2254(d)(1) demand[s]."); Knowles v. Mirzayance, 556 U.S. 111, 121–23 (2009) ("The [Ninth Circuit] Court of Appeals reached [the wrong] result based, in large measure, on its application of an improper standard of review . . . ."); Woodford v. Visciotti, 537 U.S. 19, 25 (2002) ("An unreasonable application of federal law is different from an incorrect application of federal law. The Ninth Circuit did not observe this distinction, but ultimately substituted its own judgment for that of the state court, in contravention of 28 U.S.C. § 2254(d)." (citations omitted) (internal quotation marks omitted)).

[93] Yarborough v. Alvarado, 541 U.S. 652, 664 (2004) (explaining that, when applying a general standard to a specific case, the trial court must employ a substantial element of judgment that is not present when the trial court is applying a bright-line standard); *see* § 2254(d)(1).

[94] *See* 130 S. Ct. 1195, 1205 (2010).

[95] *See* Duckworth v. Eagan, 492 U.S. 195, 202–03 (1989); California v. Prysock, 453 U.S. 355, 361 (1981).

[96] *See supra* notes 45–57 and accompanying text.

[97] *See* 649 F.3d at 1002–07; *see also* Miranda v. Arizona, 384 U.S. 436, 479 (1966); *supra* notes 89–91 and accompanying text.

of script.[98] Although the majority decided that this lengthy explanation provided more confusion than clarity to the suspect, a fair-minded jurist could reasonably find that, because the detectives engaged in such a detailed explanation, they reasonably conveyed to Doody his rights under *Miranda*.[99] The Ninth Circuit failed to properly take into account how general the law is in this area, and thus how deferential their review should be.[100] Given such a subjective inquiry, the range of reasonable conclusions is necessarily quite broad.[101]

Moreover, the Ninth Circuit looked so closely at the facts of the case that the review could be more aptly described as de novo rather than deferential.[102] In fact, the Ninth Circuit appeared to substitute its own judgment for that of the state court in a manner similar to that which the Supreme Court chastised in its 2011 decision, *Harrington v. Richter*.[103] After engaging in its own *Miranda* analysis and concluding that it disagreed with the state court's analysis, the Ninth Circuit declared that no fair-minded jurist could disagree with its determination.[104] Nonetheless, the Ninth Circuit's perfunctory treatment of the state court's decision detracts from the validity of its holding.[105] Thus, by failing to adequately consider whether the state court's decision was unreasonable, the Ninth Circuit undermined the respect for state decisions imbedded in section 2254(d)(1).[106]

The Ninth Circuit was able to ignore the Supreme Court's cues to afford great deference to the state court decision in *Doody III* because of the Supreme Court's amorphous unreasonableness standard.[107] The term "unreasonable" means different things to different people in dif-

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[98] *See Duckworth,* 492 U.S. at 202–03; *Prysock,* 453 U.S. at 361; *Doody III,* 649 F.3d at 1002–06.

[99] *See Doody III,* 649 F.3d at 1002–06; *see also Duckworth,* 492 U.S. at 202–03; *Prysock,* 453 U.S. at 361.

[100] *See Doody III,* 649 F.3d at 1002–07; *see also Yarborough,* 541 U.S. at 664.

[101] *See* Harrington v. Richter, 131 S. Ct. 770, 788 (2011); *Doody III,* 649 F.3d at 1002–07.

[102] *See Doody III,* 649 F.3d at 990–1002; *see also Richter,* 131 S. Ct. at 786.

[103] *See Doody III,* 649 F.3d at 1007; *see also Richter,* 131 S. Ct. at 786.

[104] *See Doody III,* 649 F.3d at 1007; *see also Miranda,* 384 U.S. at 479.

[105] *See Doody III,* 649 F.3d at 1007; *see also Richter,* 131 S. Ct. at 786.

[106] *See* 28 U.S.C. § 2254(d)(1) (2006); *Doody III,* 649 F.3d at 1002–07; *see also* Williams v. Taylor, 529 U.S. 362, 410–11 (2000) (emphasizing the deferential nature of habeas review through its distinction between "incorrect" and "unreasonable" state decisions); Kemper, *supra* note 2, at 1.

[107] *Richter,* 131 S. Ct. at 786; *Yarborough,* 541 U.S. at 664; *Williams,* 529 U.S. at 410–11.

ferent contexts.[108] Different judges will come to different determinations of whether or not fair-minded jurists could disagree with their decisions.[109] Despite the Supreme Court's efforts at clarification, the AEDPA standard of review for habeas petitions is a subjective concept that depends on the individual opinions of the judges involved.[110] Therefore, the Ninth Circuit can recite the correct legal standard under the AEDPA, as it did in *Doody III,* and then grant the habeas petition for any reason because the term "unreasonable" has no clear definition.[111] Although Congress intended to curb the number of successful habeas petitions through its passage of the AEDPA, this amorphous unreasonableness standard does not guarantee that result, for it allows the Ninth Circuit to grant habeas petitions for almost any reason.[112]

To close this loophole and reign in the Ninth Circuit, the Supreme Court should clarify the unreasonableness standard with a two-step process.[113] First, the reviewing court should determine if the state court was applying a bright-line legal rule or a rule that requires some degree of judicial discretion.[114] When the state court applies a bright-line legal rule, such as prohibiting the sale of alcohol to those under twenty-one, then the reviewing court may grant the habeas petition for an incorrect state court decision.[115] In contrast, when the state court applies a general rule requiring some degree of judicial discretion, such as determining the adequacy of *Miranda* warnings, then the

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[108] *See* Pettys, *supra* note 78, at 768–82 (explaining how "unreasonable" can take on different meanings under frameworks of different jurisprudential philosophies, such as formalism, skepticism, and conventionalism).

[109] *See* Pettys, *supra* note 78, at 768–82. *See generally* Suja A. Thomas, *The Fallacy of Dispositive Procedure,* 50 B.C. L. Rev. 759, 777–78 (2009).

[110] *See Richter,* 131 S. Ct. at 786; *Yarborough,* 541 U.S. at 664; *Williams,* 529 U.S. at 410–11; Pettys, *supra* note 78, at 768–82.

[111] *See Richter,* 131 S. Ct. at 786; *Yarborough,* 541 U.S. at 664; *Williams,* 529 U.S. at 410–11; *Doody III,* 649 F.3d at 1006.

[112] Kemper, *supra* note 2, at 1; *see* John H. Blume, *AEDPA: The Hype and the Bite,* 91 Cornell L. Rev. 259, 272–73 (2006) (explaining that the Supreme Court has remained largely silent regarding the unreasonableness standard of the AEDPA and has consequently allowed state courts to inject their own interpretations).

[113] *See McDaniel,* 130 S. Ct. at 673 (admonishing the Ninth Circuit for not applying the proper level of deference to the state court's decision); *Knowles,* 556 U.S. at 121–23 (explaining that the Ninth Circuit has an improper understanding of the AEDPA); *Woodford,* 537 U.S. at 25 (criticizing the Ninth Circuit for substituting its own judgment for that of the state court).

[114] *See Yarborough,* 541 U.S. at 664; Pettys, *supra* note 78, at 789–93 (contending that an essential element of a proper AEDPA analytical framework is considering the general or specific nature of the rule being analyzed because this is the most significant predictor of whether a decision is "unreasonable" or not).

[115] *See* Pettys, *supra* note 78, at 789–93.

reviewing court may not grant the habeas petition unless the court unanimously decides that the state court's decision was unreasonable.[116]

This clear standard would more effectively fulfill the goals of the AEDPA because it would force federal courts to show immense deference to the decisions of state courts, and it would significantly reduce the number of habeas petitions clogging the federal system.[117] Petitioners would not be completely at the mercy of state courts, however, because federal judges would often unanimously agree to overturn especially egregious state decisions.[118] Furthermore, petitioners can still appeal state court decisions by requesting executive clemency.[119] Regardless, the Supreme Court should more cogently explain the meaning of "unreasonable" under the AEDPA, lest the Ninth Circuit continue to grant habeas relief without the proper deference to state court decisions.[120]

Conclusion

The Ninth Circuit's decision in *Doody III* is the latest in a long line of Ninth Circuit decisions to improperly apply the standard of review required for habeas cases under the AEDPA. After its inception in 1996, the AEDPA created confusion throughout federal courts. In recognition of this, the Supreme Court has provided lower federal courts with guidance on the proper interpretation of the AEDPA. The Ninth Circuit, however, has repeatedly failed to follow the Supreme Court's jurisprudence in this area, and has consistently declined to grant state courts the proper level of deference. Although the Supreme Court denied certiorari in this case, the Court should clarify

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[116] *Compare* Tucker v. Catoe, 221 F.3d 600, 614–15 (4th Cir. 2000) (holding that, despite an incorrect determination, the state court's determination was not unreasonable because it was a "close issue"), *with* Washington v. Smith, 219 F.3d 620, 630 (7th Cir. 2000) (concluding that the issue of ineffective assistance of counsel was so obvious and fell "so wide of the mark" that the state court's decision must have been unreasonable).

[117] *See* Jackson, *supra* note 2, at 2449–50; Kemper, *supra* note 2, at 1; Meade, *supra* note 2, at 132.

[118] *See* Pettys, *supra* note 78, at 797 (positing that federal courts are more likely to grant federal habeas relief when the applicant has proved a case by a wide margin).

[119] Cavazos v. Smith, 132 S. Ct. 2, 7 (2011) (reversing a Ninth Circuit decision and denying a petitioner habeas relief, but stating that the petitioner can still seek clemency, an important avenue "to help ensure that justice is tempered by mercy").

[120] *See* 28 U.S.C. § 2254(d)(1) (2006); *Doody III,* 649 F.3d at 990; *see also Williams,* 529 U.S. at 410–11; Ryan v. Doody (*Doody IV*), 132 S. Ct. 414, 414 (2011).

the term "unreasonable" in the context of the AEDPA to prevent the Ninth Circuit from taking advantage of this ambiguous language.

Drew N. Goodwin

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