Fields v. Jordan: A Clarification in What Constitutes "Clearly Established" Law Under the Antiterrorism and Effective Death Penalty Act

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I. INTRODUCTION

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") was designed to promote "comity, finality, and federalism," with the goal of reducing federal court involvement in state court matters.[1] Specifically, AEDPA aimed to extricate federal courts from their "tutelary relationship" with state courts.[2] This statute dramatically altered the federal writ of habeas corpus.[3] The "Great Writ" of habeas corpus historically allowed federal courts to free state prisoners who had been unconstitutionally imprisoned.[4] While AEDPA made numerous changes to this federal habeas corpus process, perhaps the most significant alteration was the way in which federal courts review legal claims that state courts have denied on the merits.[5]

One of the obstacles to relief stems from the interpretation of a brief yet pivotal clause in AEDPA's amendments to 28 U.S.C. § 2254(d)(1). Under this provision, a federal court may grant a writ of habeas corpus only if the state court's adjudication on the merits "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme

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[1] Williams v. Taylor, 529 U.S. 420, 436 (2000).

[2] Hennon v. Cooper, 109 F.3d 330, 335 (7th Cir. 1997).

[3] *See generally* Larry W. Yackle, *A Primer on the New Habeas Corpus Statute*, 44 BUFF. L. REV. 381 (1996).

[4] The American writ of habeas corpus has its origins in the writ of habeas corpus ad subjiciendum, often referred to as the "Great Writ." This writ was used by courts in the American colonies and early states even before the adoption of the U.S. Constitution. For a history of the Great Writ, *see, e.g.*, Clarke D. Forsythe, *The Historical Origins of Broad Federal Habeas Review Reconsidered*, 70 NOTRE DAME L. REV. 1079 (1995).

[5] Melissa M. Berry, *Seeking Clarity in the Federal Habeas Fog: Determining what Constitutes "Clearly Established" Law under the Antiterrorism and Effective Death Penalty Act*, 54 CATH. U.L. REV. 747, 748 (2005).

Court of the United States."[6] While much has been debated regarding the meanings of "contrary to" and "unreasonable application,"[7] one aspect that is often overlooked is what qualifies as "clearly established Federal law, as determined by the Supreme Court of the United States."[8]

Because AEDPA mandates that clearly established law must exist for a court to grant a writ of habeas corpus, how a habeas court defines clearly established law carries significant consequences. When federal courts deny habeas relief on the basis that no clearly established law exists in a particular case, it is essential to have a consistent understanding of what constitutes clearly established law.

In particular, a key question about AEDPA's clearly established limitation is how specific must clearly established law be to support federal habeas relief. The United States Court of Appeals for the Sixth Circuit addressed this issue in a decision that significantly narrowed the definition of "clearly established" federal law, providing greater clarity on the matter. This ruling has already impacted subsequent federal habeas cases. While the narrow interpretation of what qualifies as clearly established law hampers federal review of constitutional claims to the detriment of criminal defendants, it effectively fulfills AEDPA's primary objective. As such, AEDPA remains the primary impediment to more meaningful habeas review in federal court.

II. *FIELDS V. JORDAN*

In *Fields v. Jordan*, the United States Court of Appeals for the Sixth Circuit addressed the issue of whether there exists "clearly established" Supreme Court precedent in the context of jury experiments.[9] Fields, the defendant, was initially convicted and sentenced to death for murder in the state trial court.[10] His conviction was later overturned by the Kentucky Supreme Court, leading to a retrial.[11] During the retrial, the prosecution argued that Fields confessed to the murder and was found near the crime scene, while the defense claimed that Fields was too intoxicated to use the "twisty knife" to unscrew a porch window and that the blood evidence did not implicate him.[12] The state trial court allowed the jurors to possess various pieces of evidence, including the "twisty knife" in

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[6] Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104–132, § 401(b)(1) (1996).

[7] *See, e.g.*, Judith L. Ritter, *The Voice of Reason – Why Recent Judicial Interpretations of the Antiterrorism and Effective Death Penalty Act's Restrictions on Habeas Corpus are Wrong*, 37 SEATTLE U.L. REV. 55, 56–57 (2013); *See generally* Todd Pettys, *Federal Habeas Relief and the New Tolerance for "Reasonably Erroneous" Applications of Federal Law*, 63 OHIO ST. L.J. 731 (2002).

[8] 28 U.S.C. § 2254(d)(1) (2000).

[9] Fields v. Jordan, 86 F.4th 218 (6th Cir. 2023).

[10] *Id.* at 229.

[11] *Id.*

[12] *Id.*

the jury room during their deliberations. Fields had no objection to this approach. Fields was once again convicted and sentenced to death.[13] As part of his post-conviction motion, however, Fields provided the affidavits of two jurors who revealed that the jury had conducted an "experiment" with the knife.[14] Fields argued that this experiment violated his rights to confront witnesses, to due process, and to a fair trial.[15] The trial court held that the experiment did not show any "juror misconduct" that violated the Constitution.[16] The Kentucky Supreme Court affirmed on the basis of various circuit decisions that jurors may "use their own senses, observations, and experiences to conduct an experiment or reenactment with already admitted evidence."[17] The Kentucky Supreme Court's decision triggers AEDPA.[18]

On appeal, Fields primarily argued that his Constitutional rights were violated when the jury conducted an experiment with a "twisty knife" during their deliberations.[19] However, the Sixth Circuit found that Fields failed to get past AEDPA's first step by identifying "clearly established" law on this topic.[20]

First, Fields invoked the Court's precedent on the Confrontation Clause which gives defendants the right "to be confronted with the witnesses against" them.[21] However, the Sixth Circuit held that Fields failed to demonstrate how these precedents interpreting the Confrontation Clause would apply to the jury experiment in his case, and no Supreme Court decision has ever suggested that the Confrontation Clause applies to physical evidence.[22]

Second, Fields said that the jury experiment violated his Sixth Amendment right to "a trial by an impartial jury" with the support of two decisions holding that general jury-trial right also includes a specific guarantee against juror bias.[23] Nevertheless, the Sixth Circuit concluded that Fields did not explain why these decisions about the Sixth Amendment right against jury bias "clearly" apply to the jury experiment in his case.[24] Specifically, Fields did not contend that his jurors were "biased" against him.[25]

Lastly, Fields relied on the Court's precedent under the Due Process Clause, which forbids a state from "depriving" defendants of their "life" or "liberty" "without due process of law."[26] However, for the third time, Fields failed to

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[13] *Id.*
[14] *Id.*
[15] *Fields*, 86 F.4th at 231.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Fields*, 86 F.4th at 232.
[21] *Id.* at 233 (quoting U.S. Const. amend. VI).
[22] *Id.*
[23] *Id.* at 234 (quoting U.S. Const. amend. VI).
[24] *Id.*
[25] *Id.*
[26] *Fields*, 86 F.4th at 235 U.S. (quoting U.S. Const. amend. XIV, § 1).

demonstrate that any of these due process rulings "clearly" apply to the jury experiment in his case.[27]

In response, Fields referenced the decisions in *Irvin*, *Turner*, *Parker*, and one earlier ruling.[28] He claimed that these decisions clearly establish "a constitutional right to have the jury determine guilt or innocence based only on evidence presented at trial."[29] Fields further contended that, because the prosecution did not introduce the jury-room cabinet and screws as evidence, the Kentucky Supreme Court made an unreasonable application of this clear rule by permitting the jury to consider such "extrinsic evidence" during their deliberations.[30]

The Sixth Circuit rejected this argument, explaining that the "general proposition" cannot be considered clearly established law.[31] The court noted that Fields had framed these precedents at an excessively broad level, and none of the cases directly addressed the specific issue in this case.[32] In other words, these precedents did not speak to whether jurors are allowed to "test" an admitted exhibit using objects available in the jury room.[33] Since the Supreme Court has not provided any guidance on jury experiments, Field's case does not meet the standard of "clearly established" law.[34]

III. ANALYSIS

This decision is important because it clarifies that "clearly established" law does not encompass abstract principles expressed in overly general terms.[35] In specific, prisoners cannot compensate for the absence of a specific Supreme Court decision by asserting that the federal Courts of Appeals have extended general principles in a similar context.[36] Further, the existence of conflicting interpretations of the Supreme Court's general principles in lower courts indicates a lack of clearly established federal law.[37] In essence, state prisoners cannot circumvent the dearth of Supreme Court precedents by manipulating the level of generality in describing the Court's holdings.[38] As a result, the Sixth Circuit significantly narrowed the definition of "clearly established" federal law

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[27] *Id.*

[28] *Id.*

[29] *Id.* (citing Parker v. Gladden, 385 U.S. 363, 364-65 (1966); Turner v. Louisiana, 379 U.S. 466, 472 (1965); Irvin v. Dowd, 366 U.S. 717, 722 (1961); Patterson v. Colorado, 205 U.S. 454, 462, 27 S. Ct. 556, 51 L. Ed. 879 (1907)).

[30] *Id.* at 236.

[31] *Id.*

[32] *Fields*, 86 F.4th at 236.

[33] *Id.*

[34] *Id.* at 239.

[35] *Id.* at 236.

[36] *Id.* at 231–32.

[37] *Id* (citing Casey v. Musladin, 549 U.S. 70, 76–77 (2006).

[38] *Fields*, 86 F.4th at 236.

such that the jury experiment with extrinsic evidence did not violate any "clearly established" law in AEDPA context.

Since its release, panels of the Court have cited *Fields* to justify not being bound by previous panel decisions that they would normally follow — they argue that those earlier rulings, issued before *Fields*, relied on an outdated interpretation of "clearly established" law. [39] These cases frequently applied Fields' narrow interpretation of "clearly established" law, which states that "prisoners may not sidestep the lack of Supreme Court precedent on a legal issue by raising the 'level of generality' at which they describe the Court's holdings on other issues."[40] As a result, the Court in these cases concluded that, because prisoners could not point to a specific Supreme Court ruling directly on point, they failed to satisfy AEDPA's first step in identifying "clearly established" law.[41]

On one hand, such a narrow interpretation of "clearly established" law makes it more difficult for habeas petitioners to succeed in pursuing the Writ, thereby raising concerns. First, it would effectively render the "unreasonable application" clause of the statute meaningless.[42] The natural reading of this clause, which limits habeas relief to state decisions that are "contrary to, or involve an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,"[43] emphasizes decisions that either directly contradict or unreasonably apply established law.[44] By focusing primarily on what law has been "clearly established," federal courts may be less compelled to examine how state courts are interpreting and applying that law.[45] As the dissent in *Fields* contended, "the Supreme Court has explained [] that it may articulate clearly established law in the form of 'a general standard,'"[46] this broader interpretation of "clearly established" law—one that extends beyond the specific holdings of Supreme Court precedents —

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[39] *See, e.g.*, Durmen v. Morrison, 2024 U.S. App. LEXIS 25076, at *8 (6th Cir. Oct. 3, 2024); Davis v. Jenkins, 115 F.4th 545, 559 (6th Cir. 2024); Hollins v. Smith, 2023 U.S. Dist. LEXIS 220444, at*6–7 (Ohio N.D. Ct. Dec. 12, 2023). One of the arguments in Fields v. Jordan, 86 F.4th 218, 238–39 (6th Cir. 2023), is that the Sixth Circuit is obligated to follow its own decisions establishing that the Supreme Court has clearly defined a principle for AEDPA purposes. In Doan v. Brigano, 237 F.3d 722, 733 n.7 (6th Cir. 2001), the Sixth Circuit held that Supreme Court precedents had clearly established the general rule that a defendant must be granted the right to confront the evidence and witnesses against them, as well as the right to a jury that considers only the evidence presented at trial. Although the majority acknowledges Doan's binding authority, it "rejects Doan's holding" for addressing the issue at too broad a "'level of generality.'" *Fields*, 86 F.4th at 239.

[40] *See, e.g.*, Durmen, 2024 U.S. App. LEXIS at *8; Davis, 115 F.4th at 559.

[41] *See, e.g.*, Durmen, 2024 U.S. App. LEXIS at *8; Davis, 115 F.4th at 558.

[42] Ursula Bentele, *The not so Great Writ: Trapped in the Narrow Holdings of Supreme Court Precedents*, 14 LEWIS & CLARK L. REV. 741, 759 (2010).

[43] 28 U.S.C. § 2254(d)(1) (2006).

[44] Bentele, *supra* note 42, at 759.

[45] *Id.*

[46] Fields, 86 F.4th at 253 (quoting Marshall v. Rodgers, 569 U.S. 58, 62 (2013)).

was also hinted at in the Supreme Court's own early explanation of what constitutes an "unreasonable application" of clearly established law.[47] In *Williams v. Taylor*, Justice O'Connor noted that a state court decision could be unreasonable if "the state court either unreasonably extends a legal principle from our precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply."[48] However, this possibility would be completely foreclosed if "clearly established" law was limited solely to the specific holdings of Supreme Court precedents.[49] Under such an interpretation, any extension—or failure to extend—legal principles beyond the holdings of Supreme Court precedents would be shielded from federal review.[50]

Moreover, a narrow interpretation of "clearly established" law raises concerns about the role of federal courts in safeguarding constitutional principles, particularly when state courts either ignore or adopt overly restrictive interpretations of those principles.[51] State courts are often ill-equipped to handle complex issues of constitutional criminal procedure due to heavy caseloads, limited resources, and a lack of experience in these matters.[52] In contrast, federal judges are better positioned to protect the constitutional rights of criminal defendants.[53] Ensuring these rights—especially in cases involving minority defendants — is one of the core responsibilities of the judiciary.[54] A narrow interpretation of "clearly established" law would significantly diminish the role of federal courts in fulfilling this function.[55] Limiting habeas relief solely to the specific holdings of Supreme Court precedents narrows the remedy in a way that unfairly restricts relief to petitioners whose circumstances happen to align with those of cases that reached the Court through direct appeal.[56]

Lastly, placing undue emphasis on whether the law has been established through explicit holdings raises the risk of manipulation of what Supreme Court cases in fact held.[57] This tendency to reframe case law is already evident in the Supreme Court's habeas corpus jurisprudence.[58] For instance, in *Carey v. Musladin*, the majority reinterpreted the precedents cited by the habeas petitioner, focusing on the fact that the outside influence in those cases involved

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[47] Bentele, *supra* note 42, at 761.
[48] Williams v. Taylor, 529 U.S. 362, 407 (2000).
[49] Bentele, *supra* note 42, at 762.
[50] *Id.*
[51] *Id.*
[52] Lynn Adelman, *Who Killed Habeas Corpus?*, DISSENT (2018), https://www.dissentmagazine.org/article/who-killed-habeas-corpus-bill-clinton-aedpa-states-rights/.
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] Bentele, *supra* note 42, at 762.
[57] *Id.* at 763.
[58] *Id.* at 764.

state actors, in an effort to diminish their relevance to a case where the influence came from private individuals in the courtroom audience.[59] However, the Supreme Court had previously found constitutional violations in instances where private conduct — such as that of a mob — created a risk of external influence on a jury.[60] As Judge Rosemary Barkett of the Court of Appeals for the Eleventh Circuit has persuasively demonstrated, Supreme Court opinions can be interpreted in various ways, leading to different outcomes in cases that present novel factual scenarios.[61]

On the other hand, a narrow interpretation of "clearly established" law in *Fields* aligns with the objectives of AEDPA – to advance "comity, finality, and federalism."[62] To begin with, the narrow interpretation has the virtue of protecting comity interests involved in federal habeas review of state convictions, particularly by safeguarding "the State's sovereign authority to punish offenders and their good-faith attempts to honor constitutional rights."[63] When state courts have thoroughly and faithfully adjudicated a criminal case based on the prevailing understanding of constitutional rules at the time, comity interests are at their peak and it can be seen as disrespectful for a federal court to reopen the case.[64]

Moreover, a narrow interpretation of "clearly established" law avoids the risk of promoting "endless reopening of convictions"[65] and the "floods of stale, frivolous and repetitious petitions [that] inundate the docket of the lower courts."[66] While there are debates around the competing values of finality in criminal convictions and federal habeas review,[67] proponents typically emphasize the importance of finality in conserving "economic[,] . . . intellectual, moral, and political resources" and in preventing

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[59] Carey v. Musladin, 127 S. Ct. 649, 651–53, 653 n.2 (2006).

[60] *Id.* at 657.

[61] Bentele, *supra* note 42, at 763.

[62] Williams, 529 U.S. at 436. Comity, as a component of federalism, refers to the principle that "federal courts should respect the decisions of state courts in adjudicating constitutional claims." Barry Friedman, *Failed Enterprise: The Supreme Court's Habeas Reform*, 83 Cal. L. Rev. 485, 489 (1995). Finality refers to "the principle that the criminal process must have some end." *Id.* "Federalism refers to the coordinate role of the states in both adjudicating guilt and innocence, and in addressing claims of constitutional violation." *Id.*

[63] Calderon v. Thompson, 523 U.S. 538, 555–56 (1998) (quoting Murray v. Carrier, 477 U.S. 478, 487 (1986)).

[64] Jeffrey G. Ho, *Finality, Comity, and Retroactivity in Criminal Procedure: Reimagining the Teague Doctrine After* Edwards v. Vannoy, 73 STAN. L. REV. 1551, 1587 (2021).

[65] Paul M. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441, 452 (1963).

[66] Brown v. Allen, 344 U.S. 443, 536 (1953).

[67] *See* Nathan Nasrallah, *The Wall that AEDPA Built: Revisiting the Suspension Clause Challenge to the Antiterrorism and Effective Death Penalty Ac*t, 66 CASE W. RSRV. L. REV. 1147, 1151–53 (2016).

other harms, such as undermining a judge's "sense of responsibility" through repeated relitigation of a case's merits.[68] The narrow interpretation of "clearly established" law is consistent with such finality interests by establishing a "difficult to meet" standard,[69] thereby preserving the "effectiveness of the substantive commands of criminal law," especially in maintaining the deterrent and rehabilitative impact of a final conviction.[70]

IV. CONCLUSION

The *Fields* decision significantly narrowed the definition of "clearly established" federal law under AEDPA, on the ground that no Supreme Court case has addressed the specific scenario of an out-of-court jury experiment that employed unadmitted physical evidence. This restrictive interpretation of what constitutes "clearly established" law raises concerns, such as the potential of overlooking other aspects of the statute and hindering the federal review of constitutional principles to the determent of criminal defendants. However, balancing the role of states in resolving claims of constitutional violations while ensuring the finality of the criminal process are primary goals of AEDPA—which, as *Fields* makes clear, it largely accomplished. While *Fields* is unhelpful to federal habeas petitioners, it accords with aims of AEDPA. Consequently, AEDPA remains a significant barrier to more substantive habeas review in federal court.

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[68] Bator, *supra* note 65, at 451.

[69] Harrington v. Richter, 562 U.S. 86, 102 (2011) ("If this standard is difficult to meet, that is because it was meant to be.").

[70] Bator, *supra* note 65, at 452.