

No. 18-6252

---

---

*IN THE SUPREME COURT OF THE UNITED STATES*

**HERSIE WESSON, JR.,**  
*Petitioner,*

**v.**

**STATE OF OHIO,**  
*Respondent.*

---

*On Petition for a Writ of Certiorari to the  
Ninth District Court of Appeals of Ohio*

---

**REPLY TO PETITION FOR A WRIT OF CERTIORARI**

---

Office of the Ohio Public Defender

Rachel Troutman (0076741)  
Supervising Attorney  
Death Penalty Department  
*Rachel.Troutman@opd.ohio.gov*  
**Counsel of Record**

Melissa Jackson (0077833)  
Assistant State Public Defender  
Death Penalty Department  
*Melissa.Jackson@opd.ohio.gov*

250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394 (Telephone)  
(614) 644-0708 (Fax)

*Counsel for Petitioner, Hersie Wesson, Jr.*

## TABLE OF CONTENTS

TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES.....	ii
REPLY .....	1

## TABLE OF AUTHORITIES

### CASES

<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002) .....	1, 2
<i>Ford v. Wainwright</i> , 477 U.S. 399 (1986) .....	1
<i>Panetti v. Quarterman</i> , 551 U.S. 930 (2007) .....	1, 2

### CONSTITUTIONAL PROVISIONS

U.S. Const., amend VIII .....	1, 2
U.S. Const., art. VI .....	1

## CAPITAL CASE

### REPLY

The State failed to address the crux of Hersie Wesson's argument: Wesson is categorically exempt from the death penalty because there is no qualifier to this Court's holding in *Atkins v. Virginia*, 536 U.S. 304 (2002). Wesson is not asking this Court to judicially legislate – he is asking this Court to enforce the Constitution, which applies to all persons. The State continues to refuse to address the merits of his claim.

The State's reliance on the Supremacy Clause is inapposite. Wesson's entire point is that the United States Constitution cannot be ignored nor circumvented by the State. "This Constitution . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." U.S. Const. Art. VI.

Ohio will violate the Eighth Amendment to the United States Constitution if Wesson, an offender with an intellectual disability, is put to death. The Eighth Amendment "places a substantive restriction on the State's power to take the life' of a[n] [intellectually disabled] offender." *Atkins*, 536 U.S. at 321 (quoting *Ford v. Wainwright*, 477 U.S. 399, 405 (1986)). Accordingly, Ohio cannot ignore Wesson's categorical exception to the death penalty, because it will violate the Constitution by doing so.

The State correctly observed that *Panetti v. Quarterman*, 551 U.S. 930 (2007) is factually distinct from Wesson's case, however, Wesson's analogy to *Panetti* was

not factually-based. Wesson's comparison to *Panetti* was to demonstrate why he deserves an opportunity to be heard by the courts. *Panetti* involved a categorical exception to the death penalty for the insane, just as *Atkins* created a categorical exception for an offender with an intellectual disability. Wesson analogizes his case to *Panetti* in the sense that Wesson, who was never afforded an *Atkins* hearing, must have an opportunity to be heard on his *Atkins* claim. Because once an offender makes a preliminary showing that his mental state would bar his execution, he is entitled to a hearing. *Panetti*, 551 U.S. at 934.

Wesson is per se excluded from a death sentence, however, the state courts have refused to hear his *Atkins* claim. He respectfully requests that this Court enforce the Eighth Amendment and grant a writ of certiorari to review the decision below.

Respectfully submitted,

Office of the Ohio Public Defender

/s/ Rachel Troutman

Rachel Troutman (0076741)

Supervising Attorney

Death Penalty Department

Rachel.Troutman@opd.ohio.gov

Counsel of Record

/s/ Melissa Jackson

Melissa Jackson (0077833)

Assistant State Public Defender

Death Penalty Department

Melissa.Jackson@opd.ohio.gov

250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394 (Telephone)  
(614) 644-0708 (Fax)

***Counsel for Petitioner Hersie Wesson, Jr.***