

**CAPITAL CASE  
EXECUTION SCHEDULED AUGUST 5, 2025 AT 10:00 A.M.**

Nos. 25-5214; 25A118

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IN THE  
Supreme Court of the United States

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BYRON LEWIS BLACK,  
*Petitioner,*

*v.*

STATE OF TENNESSEE,  
*Respondent.*

\_\_\_\_\_  
ON PETITION FOR A WRIT OF CERTIORARI TO  
THE TENNESSEE SUPREME COURT

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**REPLY TO BRIEF IN OPPOSITION TO  
PETITION FOR A WRIT OF CERTIORARI AND  
MOTION FOR STAY OF EXECUTION**

\_\_\_\_\_  
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## REPLY

Respondent's Brief in Opposition ("BIO") appears to be written in response to the petition it wishes were filed instead of the one actually filed. Tellingly, Respondent does not deny that if Mr. Black had sat on his rights and waited, under Tennessee law he would now prevail on a motion to be declared ineligible for the death penalty due to his intellectual disability and be removed from death row. It is precisely because he did not delay that he stands to be executed. Any suggestion that he tactically delayed defies logic and common sense. Respondent does not deny that every expert who has evaluated Byron Black agrees that Mr. Black is intellectually disabled as that condition is defined by the medical community and this Court's binding precedent. Instead, like the lower court, it wraps its arms around decisions of the lower courts which have been debunked and abrogated by decisions of this Court.

Respondent similarly mischaracterizes the Question Presented in an effort to avoid the inconvenient fact that this Court has granted review in a case whose core issue is central to the issue here: "Whether and how courts may consider the cumulative effect of multiple IQ scores in assessing an *Atkins* claim." *Hamm v. Smith*, No. 24-872, 2025 WL 1603602, at \*1 (June 6, 2025) (order granting certiorari). But *Hamm* is directly on point and will have a direct effect on this litigation.

**A. Respondent mischaracterizes Mr. Black's claim and creates a strawman procedural argument.**

Respondent attempts to manufacture a procedural default problem by re-writing the question presented and mischaracterizing Mr. Black's argument. To reset, the question that Mr. Black brings to this Court is that he was denied his liberty interest in accessing a state-created procedure through the Tennessee Supreme Court's refusal to follow binding precedent from this Court. The problem

that gives rise to the petition is the announcement by the Tennessee Supreme Court in this case that it was permitted to rely on previous decisions that unquestionably could not be made under current law.<sup>1</sup> That was the basis of the Tennessee Supreme Court's decision in refusing to grant the motion and prompted the Question Presented by Mr. Black. The only available remedy is for Mr. Black to do what he has done—seek review in this Court.

Respondent does not deny that Tennessee has created a procedure to remedy injustice through the Motion to Recall the Mandate. The Tennessee Supreme Court did not refuse to consider Mr. Black's motion for any procedural reason. The motion was not denied as improperly filed or untimely. There is simply no basis to allege a procedural default.

**B. Black has demonstrated extraordinary diligence.**

The procedural history as recounted in the petition and the BIO illustrate Mr. Black's extreme diligence. He raised his *Atkins* claim before *Atkins* claims even existed. He argued to the state courts that the statutory definition for intellectual disability was outdated and wrong. But the state court disagreed. It held that that the law required a bright-line cutoff IQ score of 70 or below on a test administered prior to age 18. *Black v. State*, No. M2004-01345-CCA-R3PD, 2005 WL 2662577 (Tenn. Crim. App. Oct. 19, 2005), *cert. denied sub nom, Black v. Tennessee*, 549 U.S.

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<sup>1</sup> It would be a strange rule of procedure that litigants are required to foretell that the Court in which they are litigating will refuse to follow this Court's precedent. And even if they did, then what? Would respondents require every litigant to include a warning in their pleadings to the Court that should that court refuse to follow binding precedent of a higher court, they will ---do what? They will appeal to a higher court. Which is what Mr. Black has done.

852 (2006). That decision is no longer good law. It has been abrogated by *Hall v. Florida*; 572 U.S. 701 (2014), *Brumfield v. Cain*, 576 U.S. 305 (2015), and *Moore v. Texas*, 586 U.S. 133 (2019).

The Sixth Circuit acknowledged that the 2005 Tennessee opinion, whose mandate Mr. Black sought to recall was in error and found that decision to be an unreasonable application of clearly established federal law. *Black v. Bell*, 664 F.3d 81, 96 (6th Cir. 2011) (remanding because the “state court’s analysis contradicts the governing law”). Yet, the Tennessee Supreme Court and Respondent rely on the 2005 decision to say that Mr. Black has received a fair adjudication of his *Atkins* claim. By reviving this old case to deny Mr. Black’s motion to recall the mandate, the Tennessee Supreme Court embraced a decision that is in direct conflict with this Court’s holding. That is the where the denial of Mr. Black’s liberty interest occurred.

It is also important to pause briefly to call out Respondent’s role in causing any perceived delay. Respondent’s strategy has been to overwhelm Mr. Black’s counsel with multiple, simultaneous requests for execution dates of their clients. The small staff of attorneys who make up the middle district of Tennessee’s capital habeas unit are charged with representing nearly half of Tennessee’s death row. The State of Tennessee sought execution dates for a quarter of their clients this year, including the May 22, 2025, execution of Oscar Smith.

Mr. Black, who now has dementia, is a person living with intellectual disability. He did not delay, and his counsel have been fighting to prove the truth of *Atkins* claim in every way possible.

**C. *Hamm* bears directly on the issues in this case.**

Respondent simply ignores that the core of the Tennessee Supreme Court's denial of the motion to recall the mandate is tethered to the central question at issue in *Hamm*. In this case, Byron Black has scores on gold standard tests that ring the bell – 57, 67, 69, 73, and 76. Yet, the Tennessee Supreme Court denied his motion based on test scores that are illegitimate measures of IQ. *Hamm* will answer whether the Court was free to do so.

WHEREFORE, this court should grant the petition for writ of certiorari and Application for Stay of Execution. In the alternative, the Court should grant the stay of execution and hold Mr. Black's case pending the outcome in *Hamm*.

Respectfully submitted,

*/s/ Kelley J. Henry*

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was delivered to opposing counsel, Nicholas Spangler, Asst. Attorney General, P.O. Box 20207, Nashville, TN 37202, via email and United States Mail, First Class, postage pre-paid, on this 31st day of July, 2025.

/s/ Kelley J. Henry  
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