

No. 26-5754

In the Supreme Court of the United States

In re: Jamaal Howard,
Petitioner

On Petition for Writ of Mandamus
to the United States Court of Appeals for the Fifth Circuit

Reply to Real Party in Interest's Brief in Opposition

This is a capital case.
Mr. Howard is scheduled to be executed on
Wednesday, October 7, 2026, after 6:00 p.m.

Don Bailey*
Texas Bar No. 01520480
309 North Willow
Sherman, Texas 75090
Tel. (903) 892-9185
Email donbailey46@hotmail.com

Jeffrey R. Newberry
Texas Bar No. 24060966
University of Houston Law Center
4170 Martin Luther King Blvd.
Houston, Texas 77204-6060
Tel. (713) 743-6843
Email jrnewber@central.uh.edu

*Counsel of Record, Member of the Supreme Court Bar

Counsel for Jamaal Howard, Petitioner

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Petitioner Jamaal Howard filed his Petition for Writ of Mandamus ("Pet.") on October 6, 2026. The Real Party in Interest, the Director of the Texas Department of Criminal Justice, Correctional Institutions Division (the "State"), has filed a Brief in Opposition ("BIO"). Howard files this Reply to address only those arguments he believes merit a response.

I. The panel's alternative holding does not insulate its limitations ruling from review.

The State's principal argument is that the panel's alternative holding under 28 U.S.C. § 2244(b)(1) makes the question presented moot or, at least, makes this case a poor vehicle for deciding it. BIO at 3, 11–12. The State insists that the panel's analysis was "focused and sober" and did not "rely on limitations." BIO at 12. The State's own brief refutes that assertion.

The panel rejected equitable tolling on the ground that Howard "was not diligent with his rights" and had acted with "laches" and "unclean hands." App. A at 5–6. Those findings, made without a record by a court that had no authority to adjudicate limitations at all, are the centerpiece of the State's opposition to a stay. The State block-quotes the panel's unclean-hands passage near the start of its brief, and it closes the brief on the same note. BIO at 4 (quoting App.

A at 6); BIO at 18 (quoting App. A at 9–10). The State cannot maintain both that the limitations ruling is irrelevant to the order under review and that the same ruling supplies the principal reason to deny a stay. The panel itself did not treat the rulings as separable; it denied a stay because Howard’s application is “barred by the statute of limitations” and makes “a previously presented claim.” App. A at 9.

Nor does § 2244(b)(3)(E) distinguish between the two holdings. The State contends that Howard’s challenge to the § 2244(b)(1) holding “runs even more squarely headlong into § 2244(b)(3)(E)’s prohibition on authorization appeals.” BIO at 11. But § 2244(b)(3)(E) speaks to “[t]he grant or denial of an authorization,” not to the grounds on which a court of appeals rests it. If that provision does not bar a writ confining the court of appeals to the inquiry Congress prescribed, it does not become a bar because the panel paired its limitations ruling with an alternative one. *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380 (2004). Howard does not ask this Court to reverse the § 2244(b)(1) holding. He asks the Court to vacate an order resting on a ground Congress assigned to the district court and to direct the panel to decide his motion under § 2244(b) alone. Pet. 15. That remedy reaches the alternative holding too.

The State, moreover, makes no effort to defend the alternative holding on its terms. It does not address this Court’s decisions looking to whether a claim was adjudicated, not merely whether it once appeared in a filing, in deciding whether a later application is second or successive. *Stewart v. Martinez-Villareal*, 523 U.S. 637, 643–45 (1998); *see* Pet. 13–14. Its only response is that the panel cited *Felder v. McVicar*, 113 F.3d 696, 698 (7th Cir. 1997), a decision that predates *Martinez-Villareal*. BIO at 3, 12–13. And the State itself describes Howard’s *Atkins*

claim as one that was “withdrawn” and “abandoned.” BIO at i, 1. That is another way of saying that no court ever adjudicated it.

Finally, the State’s fallback, that this case is a “poor vehicle,” borrows a certiorari concept that has no purchase here. BIO at 3. Because § 2244(b)(3)(E) forbids certiorari review of authorization orders, no other vehicle will ever arrive.

II. The division among the circuits does not make Howard’s right to relief disputable.

The State’s answer to the question presented is a head count. Because the circuits are divided, it reasons, Howard’s right to relief cannot be “clear and indisputable.” BIO at 12–13. Missing from that argument is the statute. The State does not quote or cite § 2244(b)(3)(C), which confines the court of appeals to deciding whether an application satisfies the requirements of “*this subsection*.” Nor does it cite § 2244(b)(4), which, in the very next paragraph, directs the district court to decide whether a claim satisfies the requirements of “*this section*.” The State offers no reading of “*this subsection*” that includes § 2244(d), and it offers no explanation for Congress’s choice of different words in adjacent paragraphs. *See* Pet. 8–10. A division among the circuits shows only that some courts have not followed the text. It does not make the text unclear.

The State’s position also proves too much. Section 2244(b)(3)(E) forbids certiorari review of authorization orders. If a circuit split were enough to defeat mandamus, a split over the meaning of the gatekeeping provisions could never be resolved: certiorari would be unavailable by statute, and mandamus would be unavailable because of the very split that makes review necessary. That is the problem Justice Souter identified when this Court first construed these provisions. *Felker v. Turpin*, 518 U.S. 651, 667 (1996) (Souter, J., concurring). The State does not address it.

III. Howard did not sit on his claim; the clinical standards changed.

The State faults Howard for the five-and-a-half years that passed “with no litigation” after his initial federal proceeding ended. BIO at 1. Those are the years in which the obstacles to his claim fell away. Four days after this Court denied certiorari in January 2021, the American Association on Intellectual and Developmental Disabilities extended the developmental period to age twenty-two. In March 2022, the American Psychiatric Association eliminated the requirement that adaptive deficits be directly related to intellectual impairment. Pet. 5. The Texas Court of Criminal Appeals recognized those changes in 2024 and 2025. *Ex parte Mays*, 686 S.W.3d 745, 748 n.5 (Tex. Crim. App. 2024); *Ex parte Estrada*, No. WR-53,499-02, 2025 WL 1122323, at *1 n.2 (Tex. Crim. App. Apr. 16, 2025). And in August 2026, the American Psychological Association issued forensic guidelines explaining that the adaptive-deficit criterion requires observation of deficits at multiple points in the developmental period. Pet. 5–6.

The State also asserts that testing in 2017 “revealed that he does not have an intellectual disability.” BIO at 1. It did not. Dr. Temple found that Howard satisfied the first and third criteria for intellectual disability. Dr. Patton found that Howard “does demonstrate significant AB deficits after age 15,” but concluded that, under the framework then in force, those deficits were too closely linked to Howard’s mental illness, and observable for too short a time, to support the diagnosis. Pet. 4–5. The obstacle was the framework, not the evidence. The framework has changed.

Howard’s claim is that the Eighth Amendment categorically forbids his execution. *Atkins v. Virginia*, 536 U.S. 304, 321 (2002). No court has ever weighed the evidence of his intellectual disability under the clinical standards that now govern, and the panel denied authorization

without deciding whether his claim satisfies § 2244(b)(2)(A). App. A at 8. The equities do not favor executing Howard before any court has done so.

Conclusion and Prayer for Relief

For these reasons and those set out in his Petition, Howard asks the Court to issue a writ of mandamus directing the Fifth Circuit to vacate its October 5, 2026, order and to reconsider his motion for authorization under 28 U.S.C. § 2244(b) alone, without regard to § 2244(d). He further asks the Court to stay his execution, scheduled for October 7, 2026, pending its consideration of his Petition.

DATE: October 7, 2026

Respectfully submitted,

/s/ Don Bailey

Don Bailey*
Texas Bar No. 01520480
309 North Willow
Sherman, Texas 75090
Tel. (903) 892-9185
Email donbailey46@hotmail.com

/s/ Jeffrey R. Newberry

Jeffrey R. Newberry
Texas Bar No. 24060966
University of Houston Law Center
4170 Martin Luther King Blvd.
Houston, Texas 77204-6060
Tel. (713) 743-6843
Email jrnewber@central.uh.edu

*Counsel of Record, Member of the Supreme Court Bar

Counsel for Jamaal Howard, Petitioner