

Nos. 26-5773 & 26A470

In the Supreme Court of the United States

In re Jamaal Howard,
Petitioner

On Petition for Writ of Habeas Corpus

**Reply in Support of Petition for Writ of Habeas Corpus
and Application for Stay of Execution**

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

Don Bailey
Counsel of Record
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
Fax (832) 842-4671
Email jrnewber@central.uh.edu

Counsel for Jamaal Howard, Petitioner

Respondent's brief in opposition confirms that Howard's claim belongs in a district court.

Howard replies briefly on three points.

I. This Court has the power to transfer Howard's petition, and Respondent's contrary argument is the *Davis* dissent.

Respondent's lead argument is that the Court may not transfer Howard's petition under 28 U.S.C. § 2241(b) because the district court lacks jurisdiction over a successive petition the Fifth Circuit declined to authorize. BIO 17. That was the posture in *Davis*. The Eleventh Circuit had denied Troy Davis authorization to file a successive petition. *In re Davis*, 565 F.3d 810, 827 (11th Cir. 2009). This Court nonetheless transferred his original petition to the district court for hearing and determination. *In re Davis*, 557 U.S. 952, 952 (2009). The only authority Respondent offers for its contrary view is the dissent in that case. BIO 18 (citing *Davis*, 557 U.S. at 955 (Scalia, J., dissenting)). The Court did not accept that view then, and Respondent gives no reason it should now.

Respondent's position is also irreconcilable with *Felker*, which holds that § 2244(b)(3)(E) did not repeal this Court's authority to entertain an original habeas petition. *Felker v. Turpin*, 518 U.S. 651, 660–62 (1996). The statute's limits on successive petitions “inform [the Court's] consideration” of such a petition; they do not strip the Court of the power to act on it. *Id.* at 663. Respondent told this Court as much yesterday, arguing that mandamus was unnecessary because “[t]his Court's doors remain open to Howard.” Br. in Opp. 13, *In re Howard*, No. 26-5754. They are. Respondent now asks the Court to treat them as locked.

II. Respondent concedes the clinical changes on which Howard’s claim depends.

Respondent acknowledges that the Texas Court of Criminal Appeals (“CCA”) has adopted the DSM-5-TR’s framework and has “explicitly incorporated the manual’s abandonment of the ‘relatedness link’ between adaptive and intellectual deficits.” BIO 23 (citing *Ex parte Mays*, 686 S.W.3d 745, 748 (Tex. Crim. App. 2024)). It acknowledges that the CCA has not decided whether the developmental period extends to age twenty-two. *Id.* And it quotes a member of the CCA observing that the criteria for intellectual disability “have changed incrementally with each passing edition” of the diagnostic manual. BIO 20 n.10 (quoting *Mays*, 686 S.W.3d at 750 n.1 (Yeary, J., dissenting)).

Those concessions dispose of Respondent’s central merits argument. Respondent’s case against Howard’s adaptive deficits rests on Dr. Patton’s note that the deficits he found were “strongly linked to the onset of [Howard’s] mental health issues.” BIO 31 (quoting App. C, Ex. 3). That is the relatedness requirement. Under the manual then in force, which required that adaptive deficits be “directly related to the intellectual impairments,” Dr. Patton’s observation was disqualifying. APA, *Diagnostic and Statistical Manual of Mental Disorders* 38 (5th ed. 2013). Under the manual Respondent agrees now governs, it is not. *See* APA, *Diagnostic and Statistical Manual of Mental Disorders* 38 (5th ed., text rev. 2022). Respondent cannot concede that the relatedness requirement is gone and then ask the Court to deny relief because Howard’s evidence would have failed it. Nor does Dr. Patton’s note help Respondent on onset. The deficits he measured were significant by age sixteen, within the developmental period under any definition. App. C, Ex. 3.

III. Respondent's factual objections are reasons to transfer, not reasons to deny.

The rest of Respondent's argument consists of disputes about the evidence: whether Dr. Temple adequately accounted for Howard's co-occurring illnesses, BIO 28–29; what weight to give the Flynn Effect, BIO 29–30; whether the trial experts who suspected schizophrenia were right, BIO 32; and whether the accounts of the people who knew Howard as a teenager are reliable, BIO 31–32. Howard disagrees on each point, but none can be resolved on the papers. They are the questions a district court resolves after taking evidence, and § 2241(b) allows this Court to send them there rather than decide them itself.

Respondent's own framing makes the point. It argues that the DSM-5-TR's abandonment of the relatedness requirement “may provide clinicians discretion that they did not have under the previous edition,” but that “it affords lawyers none.” BIO 32. Howard agrees. That is why he asks the Court to send his claim to a forum where clinicians applying the framework that now governs can be heard. No clinician has yet evaluated Howard under that framework, and a full-scale IQ score of 74 and an adaptive-behavior composite of 67 show why one should.

Conclusion

The Court should transfer Howard's petition to the United States District Court for the Eastern District of Texas under 28 U.S.C. § 2241(b) for hearing and determination, and should stay Howard's execution pending the Court's disposition of his petition and, if the petition is transferred, pending the conclusion of proceedings in the district court.

Respectfully submitted,

/s/ Don Bailey

Don Bailey
Counsel of Record
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
Fax (832) 842-4671
Email jrnewber@central.uh.edu

Counsel for Jamaal Howard, Petitioner

Certificate of Service

I, Don Bailey, a member of the Bar of this Court, certify pursuant to Rule 29.5(b) that on October 7, 2026, I served a copy of this reply by email on counsel for Respondent:

Jennifer Wren
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711
jennifer.wren@oag.texas.gov

All parties required to be served have been served.

/s/ Don Bailey

Don Bailey