

No. _____

In the Supreme Court of the United States

In re Jamaal Howard,
Petitioner

APPLICATION FOR STAY OF EXECUTION

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

To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the
United States and Circuit Justice for the Fifth Circuit:

Petitioner Jamaal Howard is scheduled to be executed by the State of Texas after
6:00 p.m. central time today, Wednesday, October 7, 2026. He has filed in this Court a
petition for an original writ of habeas corpus asking the Court to transfer his application to
the United States District Court for the Eastern District of Texas for hearing and
determination under 28 U.S.C. § 2241(b), as the Court did in *In re Davis*, 557 U.S. 952,
952 (2009). Howard is intellectually disabled, and the Eighth Amendment forbids the
State from executing him. *Atkins v. Virginia*, 536 U.S. 304, 321 (2002). No court has ever
considered that claim under the clinical framework that now governs it. Pet. 1–2. Howard
asks the Court to stay his execution pending its consideration of his petition.

A stay is warranted when there is a fair prospect that a majority of the Court will
grant the relief the applicant seeks and a likelihood that irreparable harm will result from

the denial of a stay. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Both conditions are met here. Like the claim in *Davis*, Howard’s claim is that the State may not carry out the punishment at all; *Atkins* “places a substantive restriction on the State’s power to take the life” of an intellectually disabled offender. *Atkins*, 536 U.S. at 321 (quoting *Ford v. Wainwright*, 477 U.S. 399, 405 (1986)). Pet. 6–7. The standards that inform the Court’s consideration of an original petition favor transfer: Howard’s present claim was not “presented in a prior application,” it rests on a framework that did not exist when his initial federal proceeding ended, and he makes a substantial showing that he is intellectually disabled. Pet. 7–11. The Court has also granted certiorari to review the Fifth Circuit’s reading of the “previously unavailable” requirement on which successive *Atkins* claims depend. *Guerrero v. Johnson*, No. 25-1003 (U.S. cert. granted June 15, 2026). And without a stay, Howard will be executed before the Court can consider his petition.

As Rule 23.3 requires, Howard first sought a stay in the courts below. The Fifth Circuit denied his motion for a stay of execution when it denied him authorization to file a successive petition. App. A. The Texas Court of Criminal Appeals denied his motion for a stay of execution when it dismissed his subsequent application, App. B, and today it denied a separate motion for a stay of execution by a ruling communicated to counsel by email, stating that no order would issue, App. E. No other court can grant the relief Howard seeks: the Fifth Circuit’s order “shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.” 28 U.S.C. § 2244(b)(3)(E).

Howard respectfully asks the Court to stay his execution pending its consideration of his petition for an original writ of habeas corpus and, if the Court transfers the petition, pending the conclusion of proceedings in the district court.

Respectfully submitted,

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