

No. 19A_____

In the Supreme Court of the United States

STATE OF OHIO,

Applicant,

v.

SHAWN FORD,

Respondent.

*ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO*

**APPLICATION FOR AN EXTENSION OF TIME IN WHICH
TO FILE A PETITION FOR WRIT OF CERTIORARI**

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TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SIXTH CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 22, and 30, the State of Ohio respectfully seeks a 58-day extension of time, until Friday, April 3, 2020, in which to file a *certiorari* petition seeking review of *State of Ohio v. Ford*, 2019-Ohio-4539 (Ohio) (attached at Appendix A). (April 5, which would be the sixtieth day in a 60-day extension, falls on a Sunday)

1. This is a capital case; Shawn Ford murdered his girlfriend and her parents, a jury convicted him, and he was sentenced to death. At the penalty phase of his trial, Ford objected that he was intellectual disabled and therefore ineligible for the death penalty under the Eighth Amendment. *See Atkins v. Virginia*, 536 U.S. 304 (2002). The trial court rejected this argument, but the Supreme Court of Ohio reversed and remanded: it held that, in light of the post-*Atkins* intellectual-disability case law, the trial court applied the wrong test for deciding whether Ford is intellectually disabled for Eighth Amendment purposes. Appendix A, ¶¶42–100

2. The State of Ohio will petition for *certiorari*, seeking review of the Supreme Court of Ohio's decision. Because the Supreme Court of Ohio awarded relief under the federal constitution, this Court has jurisdiction over the case under 28 U.S.C. §1257(a).

3. The Supreme Court of Ohio issued its opinion and judgment on November 7, 2019. *See* Appendices A and B. Under the Supreme Court's rules, the petition for writ of *certiorari* would be due 90 days later, on February 5, 2020. *See* S. Ct. Rule

13.1. Thus, the State is filing this application for an extension of time more than “10 days before the date the petition is due.” Rule 13.5.

4. There is good cause for a 58-day extension.

First, Summit County, Ohio (which prosecuted this case and handled the appeal at the Supreme Court of Ohio) recently retained attorneys from the Ohio Attorney General’s Office to assist with this appeal, one of whom will serve as counsel of record in this Court. This case, just like most other *Atkins* cases, involves a complex analysis of a complex record. Counsel of record, along with the rest of the team, needs the additional time to adequately review that record and assess its relevance to this case. That time is especially needed in light of counsel’s many obligations in other cases pending before this Court, the Supreme Court of Ohio, and the Sixth Circuit Court of Appeals (including briefing and oral argument in an upcoming Sixth Circuit *en banc* case).

Second, this case presents certworthy issues. Most prominently, this case presents an opportunity for this Court to “provide definitive procedural or substantive guides for determining when a person who claims mental retardation ‘will be so impaired as to fall within [*Atkins*’ compass].” *Bobby v. Bies*, 556 U.S. 825, 831 (2009) (quoting *Atkins*, 536 U.S. at 321) (alternation in original). Neither *Atkins* nor any subsequent case provides any such guidance. *Id.* In every such case, this Court “left to the States ‘the task of developing appropriate ways to enforce’ the restriction on executing the intellectually disabled.” *Moore v. Texas*, 137 S. Ct. 1039, 1048 (2017) (quoting *Atkins*, 536 U.S. at 321). In recent years, some Justices have

expressed concern about “the lack of guidance” this approach “offers to States seeking to enforce the holding of *Atkins*.” *Id.* at 1058 (Roberts, C.J., dissenting). By granting review of this case, the Court can finally provide that guidance: in reviewing the question whether the state courts correctly applied the Eighth Amendment to Ford, the Court can announce precisely what standard courts should apply to determine whether someone is too intellectually disabled to be executed under *Atkins* and its progeny. Resolving confusion over the meaning of a constitutional guarantee is precisely the sort of issue this Court often grants *certiorari* to decide.

5. An extension in this case will not prejudice either party. Shawn Ford will not be released from prison no matter what happens on remand from the Supreme Court of Ohio—the only issue left to decide is whether he is eligible for the death penalty. Thus, a 58-day extension of time poses no risk of unfairly postponing Ford’s release from prison.

6. Counsel for the State contacted respondent’s counsel, who consents to a 30-day extension but objects to a 58-day extension. Because the additional 28 days will not prejudice Ford, and because that time will aid the State in briefing this complex case, the State is seeking the full 58-day extension.

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In sum, Ohio respectfully requests that the Court extend the time in which to petition for a writ of *certiorari* until April 3, 2020.

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