Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

The Cruel and Unusual Punishments Clause's Ban on Executing the Intellectually Disabled

Updated May 21, 2026

In 2002, the Supreme Court in *Atkins v. Virginia* ruled that the imposition of capital punishment on the intellectually disabled constitutes "cruel and unusual" punishment in violation of the Eighth Amendment, leaving to the states the responsibility to determine who qualifies as intellectually disabled. (The Eighth Amendment binds both the federal as well as state and local governments by virtue of the Fourteenth Amendment.) In and after *Atkins*, the Court has provided some guideposts to the states in performing this constitutional inquiry. The Court has not, however, resolved whether and how states may consider a defendant's scores from multiple intelligence quotient (IQ) tests. In 2025, the Court granted a petition in *Hamm v. Smith* that raised this open question, but the Court later dismissed the petition as improvidently granted. The per curiam decision produced a concurring opinion and two dissenting opinions; six Justices authored or joined these separate opinions, reflecting their thoughts on this case and the Court's capital punishment jurisprudence generally.

This Sidebar discusses the Supreme Court's jurisprudence on the Eighth Amendment and the imposition of capital punishment on the intellectually disabled. It sketches the Supreme Court's specific decisions applying the Eighth Amendment's Cruel and Unusual Punishments Clause to the subject of executing the intellectually disabled. Against this backdrop, this Sidebar provides an overview of the *Hamm* case and the separate opinions accompanying the decision to dismiss the petition for review. Finally, this Sidebar closes with considerations for Congress.

The Categorical Ban on Imposing Capital Punishment on Individuals with Intellectual Disabilities

Atkins v. Virginia

In 2002, the Supreme Court determined in *Atkins v. Virginia* that subjecting prisoners with intellectual disabilities to capital punishment had become "truly unusual," and that it was "fair to say" that a "national consensus" had developed against this policy. To wit, in 1989, only two states that otherwise permitted capital punishment and the federal government prohibited the execution of persons with intellectual disabilities. By contrast, in 2002, the Court observed, an additional sixteen states that otherwise allowed

Congressional Research Service
https://crsreports.congress.gov
LSB11426

capital punishment had prohibited execution of persons with intellectual disabilities, and no states had reinstated the power. What mattered, the Court clarified, was "not so much the number" of states that had changed course, but instead the "consistency of the direction of change."

The Court checked the execution of individuals with disabilities against the purposes of punishment. Neither of the two generally recognized penological justifications for the death penalty—retribution and deterrence—applies with full force to individuals with intellectual disabilities, the Court concluded. It found that retribution corresponds with, and reflects, the culpability of the defendant; however, impaired intellectual capacity reduced the defendant's culpability and moral blameworthiness. The Court also pointed out that deterrence theory of punishment is premised on the ability of individuals to conform their conduct to bounds of the law, and diminished intellectual capacity reduces an individual's ability to engage in self-control. As to murder in particular, the Court asserted that this crime involves premeditation and deliberation, but the Court suggested that the intellectually disabled are not as capable of engaging in "that sort of calculus."

The *Atkins* Court left to the states the "task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences." In the course of its opinion, the Court referred to definitions of "intellectual disability" from the medical community that centered on three criteria: (1) "significantly subaverage general intellectual functioning"; (2) "significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety"; and (3) "[t]he onset must occur before age 18 years." These criteria became relevant in subsequent cases in which the Court provided some guideposts on how states are to evaluate the criteria.

Post-*Atkins* Supreme Court Cases

Schriro v. Smith (2005)

After *Atkins*, the U.S. Court of Appeals for the Ninth Circuit considered a pending federal habeas action in which a petitioner in Arizona argued he was intellectually disabled and therefore could not be executed. The Ninth Circuit suspended the proceedings, ordering the "Arizona courts to conduct a jury trial to resolve [the petitioner's] . . . claim." On appeal, the Supreme Court stressed that states—not federal courts—are to "adopt[] their own measures for adjudicating [such] claims." The Court reversed the Ninth Circuit's decision, reasoning that "Arizona had not even had a chance to apply its chosen procedures when the Ninth Circuit pre-emptively imposed its jury trial condition."

Panetti v. Quarterman (2007)

The Court in *Panetti v. Quarterman* clarified when a prisoner's current mental state can bar their execution under *Ford v. Wainwright*—in which the Court in 1986 had held that the Eighth Amendment prohibits the government from carrying out the death penalty on an individual who has a severe mental illness. Relying on the understanding that the execution of a prisoner who cannot comprehend the reasons for his punishment serves "no retributive purpose," in *Panetti,* the Court concluded that the operative test was whether a prisoner can "reach a rational understanding of the reason for [his] execution." The Court announced a standard that if a prisoner's mental state is so distorted by mental illness that he cannot grasp the execution's "meaning and purpose" or the "link between [his] crime and its punishment," he cannot be executed. The Court also described the procedural requirements in such a case. Once a death row inmate has made a "preliminary showing that his current mental state would bar his execution," due process entitles him to a hearing at which he may present "evidence and argument from the prisoner's counsel,

including expert psychiatric evidence" in support of his claim of incompetence and in rebuttal of any state-offered evidence.

Hall v. Florida (2014)

The Court in *Hall v. Florida* reviewed a Florida law establishing a mandatory bright-line cutoff under which an individual was not intellectually disabled if the individual possessed an IQ of above 70. The Florida Supreme Court had upheld the "70-point threshold" as constitutional.

The Supreme Court invalidated the law's "rigid rule," observing that "[i]ntellectual disability is a condition, not a number." The majority found that, although IQ scores are helpful in determining mental capabilities, they are imprecise in nature. The Court referenced a corresponding consensus of mental health professionals that concluded that an IQ test score should be read not as a single fixed number, but as a range that accounts for a "standard error of measurement" or "SEM." The Court explained that an SEM "means that an individual's score is best understood as a range of scores on either side of the recorded score," "within which one may say an individual's true IQ score lies." Accordingly, the Court determined that a state's assessment of an IQ score must include consideration of the corresponding SEM. In addition, the Court added that "once the SEM applies and the individual's IQ score is 75 or below[,] the [intellectual disability] inquiry" should not bar "factors indicating whether the person had deficits in adaptive functioning."

Moore v. Texas (2014 and 2019)

In two opinions stemming from the same underlying case, the Court reviewed and rejected intellectual disability standards adopted in Texas. In 1980, a Texas state court convicted a defendant for a murder committed during an attempted robbery and sentenced him to death. Following *Atkins*, in 2014, a Texas state habeas court found the defendant to be intellectually disabled and recommended that he be declared ineligible for the death penalty. The Texas Court of Criminal Appeals (CCA), however, denied relief. On appeal, in *Moore v. Texas* (*Moore I*), the Supreme Court rejected the standards used by this Texas court to evaluate whether a death row inmate was intellectually disabled, which created an "unacceptable risk that persons with intellectual disability will be executed." The defendant's six credited IQ scores yielded an average of 70.66. The Court wrote that *Hall* instructs that an IQ score be adjusted for the SEM and that "[b]ecause the lower end of [the defendant's] score range falls at or below 70, the CCA had to move on to consider [the defendant's] adaptive functioning."

Here, the Texas court erred in these two respects, the Court concluded. First, the Court majority concluded that the Texas court improperly narrowed the SEM when assessing the defendant's IQ scores. Second, it found that the Texas court failed to properly analyze the defendant's adaptive functioning. For example, the Court noted that the Texas decision emphasized the petitioner's perceived adaptive strengths and his behavior in prison and discounted several traumatic experiences from the defendant's past. The Supreme Court vacated and remanded the case. On remand, the Texas CCA again concluded that the defendant was not intellectually disabled for capital punishment purposes.

The case returned to the Supreme Court. In a 2019 per curiam opinion, the Court again held that the standard used by Texas fell short of the requirements set forth in *Hall*. The Court criticized the Texas court for its reliance on the petitioner's adaptive strengths in lieu of his adaptive deficits; its focus on the petitioner's adaptive improvements made in prison; its tendency to consider the petitioner's social behavior to be caused by emotional problems, instead of his general mental abilities; and its continued reliance on a lay opinion. In consideration of *Moore I*, the Court concluded the petitioner was a person with intellectual disability, reversing the lower court's judgment and remanding the case.

Madison v. Alabama (2019)

In 2019, in *Madison v. Alabama*, the Court explained that a prisoner challenging his execution on the ground of a mental disability cannot prevail merely because he cannot remember committing his crime. The Court found that the relevant temporal moment is not the prisoner's memory vis-à-vis the commission of the offense, but rather the prisoner's appreciation for the nature of the pending execution. The Court made clear that, under its decision in *Panetti*, a prisoner's claim hinges on whether he has a rational understanding of the reason for his execution. A person's memory loss or dementia, the Court added, could relate to the latter inquiry: "persons suffering from dementia could satisfy the *Panetti* standard." The Court returned the case to state court to reevaluate the prisoner. In doing so, the court stated that general loss of memory, alone, does not bar execution.

Hamm v. Smith

Background

Joseph Clifton Smith was tried and convicted of first-degree murder, a capital offense in Alabama. Following the guilt phase of his trial, Smith was sentenced to death. Smith raised an *Atkins* claim—that he was intellectually disabled and therefore ineligible for capital punishment—that the Alabama state courts rejected. Smith turned to federal court, seeking habeas relief on the ground that his sentence violated *Atkins*. The federal district court held an evidentiary hearing on his *Atkins* claim. At the hearing, Smith presented five IQ scores relevant to whether he suffered from "significantly subaverage general intellectual functioning"—75, 74, 72, 78, and 74. The district court concluded that Smith was intellectually disabled, observing that Smith had IQ "scores as low as 72, which according to testimony could mean his IQ is actually as low as 69 if you take into account the standard error of measurement."

The U.S. Court of Appeals for the Eleventh Circuit affirmed, leading to Alabama asking the Supreme Court to review the decision. The Supreme Court denied the petition for review, vacated the Eleventh Circuit opinion, and instructed the Eleventh Circuit to clarify on remand whether its affirmance was based (1) solely on "the fact that the lower end of the standard-error range for Smith's lowest IQ score is 69" or on (2) a "holistic approach to multiple IQ scores that considers the relevant evidence, including as appropriate any relevant expert testimony." The Eleventh Circuit responded that it had employed the latter basis. The Commissioner of the Alabama Department of Corrections, John Hamm, filed a petition for review before the Supreme Court.

In 2025, the Supreme Court granted the certiorari petition to address "[w]hether and how courts may consider the cumulative effect of multiple IQ scores in assessing an *Atkins* claim." In 2026, the Court delivered a per curiam decision, dismissing the petition as "improvidently granted." As a general matter, the Court may come to this conclusion in light of "circumstances . . . which were not . . . fully apprehended at the time certiorari was granted," including a recognition that the case has presented the legal question too "abstractly" and that it would be appropriate to wait for a case that may bring that question into "proper focus"; that the case suffers from a jurisdictional or procedural defect; or that an intervening state court decision may adequately address the relief sought. The Court's decision in *Hamm* produced concurring and dissenting opinions.

The Concurring Opinion

Justice Sotomayor, joined by Justice Jackson, concurred in the decision to dismiss the petition. According to Justice Sotomayor, dismissal was warranted in this case because none of the parties offered the Court a single scientific methodology for evaluating multiple IQ scores, the lower courts in the case did not meaningfully address how to evaluate multiple IQ scores, and the lower courts do not appear split on this

issue. According to the concurrence, neither the parties nor the lower courts brought the question presented into sufficiently sharp focus, and there was no pressing need to provide clarity to courts below. The oral argument seemed to signal Justice Sotomayor's eventual concurrence; she questioned Alabama's counsel on whether the "rule that you're proposing has been adopted by Alabama," adding that, "When we get that case, we might answer your question, but, in the abstract, I don't know how we can answer it here."

The Dissenting Opinions

Justice Alito authored the principal dissenting opinion, which was joined in part by Chief Justice Roberts and in full by Justices Thomas and Gorsuch. Justice Alito wrote that the Court failed to provide lower courts with "workable rules" in an important area of law, capital punishment, where courts have been experiencing "confusion" and issuing "unsound" opinions on the "recurring" issue of how to consider multiple IQ scores in the *Atkins* context. Justice Alito asserted that the Eleventh Circuit's approach—"us[ing] the lower bound of [Smith's] lowest score to determine whether his 'true' IQ is 70 or below"—is "flagrantly unsound." Justice Alito would have clarified that this approach is off the table, and would have remanded the case to the Eleventh Circuit for "fresh consideration" of Smith's *Atkins* claim.

Justice Thomas also wrote a separate dissent. He argued that *Atkins* itself lacks support in the text or history of the Constitution, does not withstand the *stare decisis* criteria to support adherence to existing precedent, and, thus, should be overruled.

Considerations for Congress

Congress has a long-standing and ongoing interest in legislation involving the death penalty. For example, some bills in the current Congress would introduce new federal capital offenses (*see*, *e.g.*, H.R. 7702, 119th Cong.) and would add aggravating factors that courts may consider in deciding whether a death sentence should be imposed (*see*, *e.g.*, H.R. 4697, 119th Cong.; S.1675, 119th Cong.). Even though the Court dismissed the petition in *Hamm*, because the issues raised in the case turn on an interpretation of the Eighth Amendment, Congress's options to address the scope and meaning of *Atkins* and its progeny may be more limited. If it chose to, it could restrict the use of capital punishment beyond what is required under the Eighth Amendment (as interpreted by courts), for example, by providing enhanced limitations on the application of federal capital punishment for particular IQ scores. Congress may also leave resolution of these issues to the courts and a possible future case that the Supreme Court considers a more appropriate vehicle to address the question presented in *Hamm*.

Author Information

Dave S. Sidhu
Legislative Attorney

Disclaimer