

A REPORTER'S GUIDE TO APPLICATIONS

Pending Before

The Supreme Court of
the United States



A Reporter's Guide to Applications Pending Before The Supreme Court of the United States

*Prepared by the Public Information Office
Supreme Court of the United States.*

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A Reporter's Guide
To Supreme Court
Procedure For Applications

An application is a request for emergency action addressed to an individual Justice. Although most applications involve routine matters such as requests for extensions of the time limit for filing papers, some—such as applications for a stay of injunctive relief in a high-profile case or for a stay of execution—draw the attention of reporters. These applications usually concern an effort to buy time, to maintain the status quo—to stay the implementation of a lower court order—pending final action by this Court (or under certain circumstances, a lower court).

Applications are addressed to a specific Justice, according to federal judicial circuit. The United States is divided into 13 federal circuits, with each Justice assigned to a specific circuit or circuits (see page 18).

Case law has established four general criteria that the applicant normally must satisfy in order for the Court to grant a stay. They are:

1. That there is a “reasonable probability” that four Justices will grant certiorari, or agree to review the merits of the case;
2. That there is a “fair prospect” that a majority of the Court will conclude upon review that the decision below on the merits was erroneous;
3. That irreparable harm will result from the denial of the stay;
4. Finally, in a close case, the Circuit Justice may find it appropriate to balance the equities, by

exploring the relative harms to the applicant and respondent, as well as the interests of the public at large.

Applications are typically handled on “paper;” that is, there are normally no hearings or oral arguments. Applications and any related papers submitted to the Court are filed with the Clerk’s Office and forwarded to the Justices. A Justice need not be physically present in the Court building in order to act on an application, although there are instances in which the Circuit Justice cannot be reached. In that case, the application is referred to the next junior Justice.

The Circuit Justice may act on an application alone or refer it to the full Court for consideration. The fact that an application has been referred to the full Court may not be known publicly until the Court acts on the application and the referral is noted in the Court’s order. Applications for stays in capital cases are often, though not always, referred to the full Court. If an application is referred, the Justices do not meet officially or publicly, but confer, sometimes by phone, or through the exchange of memoranda.

Once the full Court has acted on an application, the application is closed and there is no further opportunity to request the same relief.

If the full Court acts on an application, five Justices must agree in order for the Court to grant a stay, but the votes of only four Justices are required to grant certiorari. Quite often an application will request a stay from the Court pending the timely filing and disposition by this Court of the party’s petition for writ of certiorari.

Where to find the Court's ruling on an emergency application depends upon on the nature of the ruling:

- If the Court issues an order resolving the application, without any accompanying opinions, the order will be noted on the docket page for the case. It will also be posted as a "miscellaneous order" on the "Orders of the Court" page of the website.
- If the Court issues an order resolving the application, and one or more individual Justices issue an opinion along with the order, the order and opinion(s) will be posted on the "Opinions Relating to Orders" page of the website. These orders are listed by case name and number, and the initials of any Justices who issued an accompanying opinion are noted. The order will also be noted on the docket page for the case, with a link to any opinions.
- If the Court resolves the application through a per curiam opinion, it will be available on the "Opinions of the Court" page of the website, listed by case number and case name. The docket for the case will include a short summary of the Court's holding, with links to the per curiam opinion and any other separate opinions that individual Justices may have issued.

There are several possible scenarios for the disposition of an application:

- A Justice may simply deny without comment or explanation. If the Circuit Justice denies an application, there will often be no separate order

issued. The denial will be reflected on the public docket.

- If a Justice acts alone to deny an application, a petitioner may renew the application to any other Justice of his or her choice, and theoretically can continue until a majority of the Court has denied the application. In practice, renewed applications usually are referred to the full Court to avoid such a prolonged procedure.
- A Justice may call for a response from the respondent in the matter before reaching a final decision. Such responses are usually due by a designated date and time. The Justice may grant an interim stay, known as an administrative stay, pending receipt and consideration of a response. The petitioner may reply to the response. While the Court typically will not grant a stay without receiving a response to the application, it may act on the application before receiving a reply.
- A Justice may grant. If an application is granted by an individual Justice, or if the full Court acts upon one, its disposition is indicated by a written order or sometimes, an opinion. An order granting an application will indicate how long the order will remain in effect—usually until the Court acts on the petition for writ of certiorari. In fairly standard language, the order will often go on to state that if the petition is denied, the stay will automatically terminate, but if the Court grants full review, the stay will remain in effect until the Court hands down a decision on the merits and the mandate or judgment is issued.

- If a Circuit Justice, acting alone, grants an application, the other side may file a motion to the full Court to vacate that Justice's stay. As a practical matter, these are rarely, if ever, granted.

Sometimes the application for a stay and the petition for writ of certiorari are filed simultaneously and acted on by the Court at the same time.

Sometimes an order will be accompanied by statements or opinions by Justices writing in support of, or dissent from, the action of the Court. If the opinion is written by a Circuit Justice acting alone, it is called an In-Chambers opinion.

Applications may be filed with the Clerk's Office after regular business hours, and may be acted on by the Court at any time. Once the application is accepted for filing by the Clerk's Office, an electronic version is made available on the Court's public docket. Copies of applications are made available to the Public Information Office by the Clerk's Office upon their receipt. The public affairs specialist is the primary press contact for information on applications, including emergency applications for stay filed in capital cases.

The Public Information Office maintains a list of press names, email addresses, and phone numbers for applications. Press who wish to be included on a "call-out" list for a specific application should contact the Public Information Office at pio@supremecourt.gov. The Public Information Office business-hours number is 202-479-3211 (press 1).

Reporters may also track the progress of applications by signing up to receive email notifications of activity in pending cases. To do so, visit the docket page for the case.

Click on the envelope icon that is just above the case number. You will be asked to enter an email address. When you click "Subscribe," an email will be sent to you with a link to confirm the correct email address. Once you click that link, you will receive email notifications every time there are new filings or action by the Court in the case.

"Call-out" is provided by the Public Information Office on a limited basis, usually upon request by a member of the press.

If you are following a particular application, you may alert the public affairs specialist and ask to be called when it has been decided. Similarly, if you are aware of an application likely to be filed with the Court, we will be happy to notify you when the application has been filed and docketed and provide the case docket number.

Questions Most Often Asked By Reporters

Q: Who are the best contacts for guidance on the status of a particular case? Where can copies of papers filed with the Court be obtained?

A: The Public Information Office staff at the Court are the best contacts for information on what has been filed and when, as well as for updates on status. The Court makes many different forms of information about cases available on its online docket system. For more substantive guidance on the facts of a case, the best contacts are usually the lawyers handling the case.

Q: How is it determined which Justice will handle an application?

A: The country is divided into 13 federal judicial circuits and each Supreme Court Justice is assigned one or more of these circuits. The Justices decide among themselves who will be responsible for which circuits, and those assignments are announced in a written order of the Court. These assignments usually change only when the Court's membership changes.

Q: What if that Justice is unavailable?

A: The application goes to the next Justice junior in seniority; the Chief Justice ranks first, followed by Justices Clarence Thomas, Samuel A. Alito, Jr., Sonia Sotomayor, Elena Kagan, Neil M. Gorsuch, Brett M. Kavanaugh, Amy Coney Barrett, and Ketanji Brown Jackson.

Q: How can a reporter find out when an application has been acted on by the Court, and what action the Court took, particularly after hours?

A: During business hours, call the Court's Public Information Office: 202-479-3211 (press 1). You may also reach the office by emailing pio@supremecourt.gov. If an opinion or court order is released, the Public Information Office will email it to members of the press upon request.

Q: Does the Court have to act within certain time constraints when considering an application?

A: There is no law or rule requiring the Court to act by a designated time, but as a practical matter, an application by definition implies a deadline of some sort.

Q: Will there always be something in writing released when a Justice or the Court acts on an application?

A: When a Justice denies an application, there is usually nothing in writing. When a Justice grants an application, or if the full Court acts on an application, there is usually at least an order setting out the terms of the action, and sometimes there will be separate statements or opinions.

Q: What might TV be able to capture on camera when a "big" application is pending, or lawyers are about to file papers with the Court?

A: Not much. Most after-hour filings are either delivered by messenger or emailed to the Court. Since cameras are not permitted inside the building, unless a

lawyer involved in a case has indicated he/she will be available to answer questions from the press outside, there's nothing to see. Please know that exterior filming is permitted on the public sidewalk only in front of the Court building.

Q: Will anyone at the Court speak on camera or agree to be recorded for radio regarding a Court decision?

A: We follow the example of the Court. Sorry, the answer is "No."

Q: How much notice does the Court usually have that an execution is imminent and an application for a stay of execution may be filed?

A: The Clerk's Office distributes a list of scheduled executions on a weekly basis to the Justices' chambers. Many on the list have had cases at the Supreme Court before, and copies of those case filings are made available to chambers. Lower courts will notify the Supreme Court of their decisions and will transmit copies of their rulings as they are announced so that the Justices can be kept informed. Meanwhile, legal counsel will usually call the Clerk's Office in advance of the scheduled execution to "check in," to be advised of filing procedures, and to advise the Court whether he/she intends to appeal to the Court.

Progress Of A Capital Case

The following has been prepared by the U. S. Supreme Court Clerk's Office as a basic guideline for tracking a capital case through the judicial system.

1. Individual is found guilty of a capital offense.
2. In a separate proceeding defendant is sentenced to death either by a jury or a judge.
3. **Direct appeal** on the merits. Grounds may be any legal or constitutional error arising at the trial. The appeal is limited to the trial record.
 - a. A direct appeal of the conviction based on the case through the state courts (in some states an appeal is automatic and mandatory).
 - b. A direct appeal of the sentence to death. State supreme court, or court of last resort, may conduct a proportionality review to determine whether the sentence is proportionate to sentences imposed in similar cases.
 - c. A petition for certiorari, seeking direct review, filed in the U. S. Supreme Court (the Supreme Court will only hear cases where it believes a substantial federal issue is raised).
4. **Execution date** may be set. The warrant may be issued any time after the state supreme court, or court of last resort, affirms the death sentence.
5. **Applications for a stay of execution:** Even if appeals are pending, an application for a stay or

modification of the execution date is required to stop an impending execution. After an application for a stay has been denied by either the highest state court or a federal court of appeals, the application may be filed with the U. S. Supreme Court.

6. **State petition for a writ of habeas corpus (post-conviction relief).** Review is not limited to the trial record. The petitioner may raise other issues such as newly discovered evidence, and state or federal constitutional claims, including ineffective assistance of counsel at the trial. (where the petition is filed varies from state to state):
 - a. File petition in the state trial court.
 - b. File the petition in the state court of appeals for the district where the trial occurred.
 - c. File the petition in the highest state court.
 - d. File a petition for Certiorari with the U. S. Supreme Court.
7. **Federal habeas corpus proceedings.** This is a civil remedy which permits a person in custody to challenge the constitutionality of his or her conviction or sentence. The court reviews whether the petitioner is in custody in violation of the Constitution or laws or treaties of the U. S.
 - a. **District Court:** (jurisdiction in both the district where the petitioner is confined and the district of the conviction):

1. May stay the state court proceeding (may be automatic when a petitioner seeks habeas relief for the first time in federal court).
2. May summarily dismiss petition.
3. May order an evidentiary hearing.
- b. **Court of Appeals:** State prisoners must obtain a certificate of appealability from the district court, a circuit judge, or circuit justice to appeal a decision to the court of appeals.
- c. **Supreme Court:** Defendant may file a Petition for Writ of Certiorari.
8. May repeat steps 5, 6, and 7 with subsequent petitions. However, a U. S. court of appeals must authorize the district court to consider a second or successive federal habeas petition, and the grant or denial of such authorization is not reviewable on certiorari.
9. A death row inmate may file an original habeas corpus petition in the U. S. Supreme Court along with an application for stay of execution.

Justices of the Supreme Court
of the United States and
Judicial Circuits

John G. Roberts, Jr., nominated by President George W. Bush, took his seat as Chief Justice of the United States September 29, 2005.

Clarence Thomas, nominated by President George H.W. Bush, took his seat as an Associate Justice October 23, 1991.

Samuel A. Alito, Jr., nominated by President George W. Bush, took his seat as an Associate Justice January 31, 2006.

Sonia Sotomayor, nominated by President Barack Obama, took her seat as an Associate Justice August 8, 2009.

Elena Kagan, nominated by President Barack Obama, took her seat as an Associate Justice August 7, 2010.

Neil M. Gorsuch, nominated by President Donald J. Trump, took his seat as an Associate Justice April 10, 2017.

Brett M. Kavanaugh, nominated by President Donald J. Trump, took his seat as an Associate Justice October 6, 2018.

Amy Coney Barrett, nominated by President Donald J. Trump, took her seat as an Associate Justice October 27, 2020.

Ketanji Brown Jackson, nominated by President Joseph R. Biden, Jr., took her seat as an Associate Justice June 30, 2022.

Circuit	Justice	States Included	Clerk's Office
Federal	Roberts	Nationwide	Washington
D. C.	Roberts	District of Columbia	Washington
First	Jackson	Maine, New Hampshire, Massachusetts, Rhode Island, Puerto Rico	Boston
Second	Sotomayor	New York, Vermont, Connecticut	New York
Third	Alito	New Jersey, Pennsylvania, Delaware, Virgin Islands	Philadelphia
Fourth	Roberts	Maryland, West Virginia, Virginia, North Carolina, South Carolina	Richmond
Fifth	Alito	Mississippi, Louisiana, Texas, Canal Zone	New Orleans
Sixth	Kavanaugh	Ohio, Michigan, Kentucky, Tennessee	Cincinnati
Seventh	Barrett	Indiana, Illinois, Wisconsin	Chicago
Eighth	Kavanaugh	Minnesota, Iowa, Missouri, Arkansas, Nebraska, North Dakota, South Dakota	St. Louis
Ninth	Kagan	California, Oregon, Nevada, Montana, Washington, Idaho, Arizona, Hawaii, Alaska, Guam	San Francisco
Tenth	Gorsuch	Colorado, Wyoming, Utah, Kansas, Oklahoma, New Mexico	Denver
Eleventh	Thomas	Alabama, Florida, Georgia	Atlanta

