



For people with intellectual
and developmental disabilities

December 22, 2016

President Barack Obama
The White House
1600 Pennsylvania Ave. N.W.
Washington, D.C. 20500

Via Electronic Mail {us pardon.attorney@usdoj.gov; kira.gillespie@usdoj.gov }

RE: Executive Clemency for Abelardo Arboleda Ortiz, Case No. 263460

Dear Mr. President:

I write on behalf of The Arc of the United States (The Arc) to urge you to commute the death sentence of Abelardo Arboleda Ortiz to life without the possibility of parole because he is an individual with intellectual disability (ID). The Arc is a national non-profit organization which, for over 65 years, has sought to promote and protect the civil and human rights of individuals with intellectual and developmental disabilities through the work of its national office and over 650 state and local chapters throughout the country. Through its National Center on Criminal Justice and Disability[®], The Arc seeks justice for those with ID who find themselves entangled in the criminal justice system, often without necessary accommodations or understanding of their disability.

The Arc has deep sympathy for the family and friends of the victim in this case, and we support appropriate punishment of all responsible parties. However, Mr. Ortiz's personal and legal history is replete with evidence indicating an ID diagnosis, which brings him under the protection of the United States Supreme Court's decisions in *Atkins v. Virginia*, 536 U.S. 304 (2002) and *Hall v. Florida*, 134 S. Ct. 1986 (2014).

In its 2002 *Atkins* decision, the U.S. Supreme Court recognized the special risk of wrongful execution faced by persons with ID (formerly termed "mental retardation") and banned the execution of persons with ID as cruel and unusual punishment under the Eighth Amendment, noting that individuals with ID "do not act with the level of moral culpability that characterizes the most serious adult criminal conduct" and that "[n]o legitimate penological purpose is

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served by executing a person with intellectual disability...to impose the harshest of punishments on an intellectually disabled person violates his or her inherent dignity as a human being.” In its more recent 2014 *Hall* decision, the U.S. Supreme Court again demonstrated its concern that people with ID not be executed in violation of the Constitution, requiring that evidence beyond IQ tests be taken into account when determining whether an individual has ID.

The evidence presented by widely-recognized experts in this case, such as Dr. Gregory Olley, supports the conclusion that Mr. Ortiz has met the three prongs of an ID diagnosis: (1) significantly impaired intellectual functioning; (2) adaptive behavior deficits in conceptual, social, and practical adaptive skills; and (3) origination of the disability before the age of 18. More recently, the government commissioned a new expert, Dr. Daniel Martell, to review the records and he, too, concluded that Mr. Ortiz has ID.

Both the defense and government experts agree that Mr. Ortiz’s IQ has consistently fallen below the threshold for an ID diagnosis, based on numerous IQ assessments. It is also clear that Mr. Ortiz has significant limitations in his adaptive functioning, which includes social, practical, and conceptual skills. Significant impairment in only one of these areas is sufficient to confer an ID diagnosis. Mr. Ortiz clearly satisfies this requirement because he exhibits significant impairments in all three areas. Both defense and prosecution experts agreed that Mr. Ortiz is illiterate and unable to write in Spanish or English, and that Mr. Ortiz also repeatedly failed the first grade before he stopped attending school altogether. To this day, Mr. Ortiz cannot tell time, use a calendar, or perform simple calculations. Mr. Ortiz’s impairments also impact his decision-making and ability to socialize with others, making him extremely vulnerable to peer pressure. He is also unable to live alone, manage his own finances, or travel independently.

Contrary to accepted science endorsed by the U.S. Supreme Court in *Atkins* and *Hall*, the government has taken the position in previous habeas litigation in this case that Mr. Ortiz does not have ID because he is able to conduct certain activities of daily living independently and behave appropriately in a courtroom. However, as the government’s new expert himself has explained, this position was in error because individuals with ID—like everyone else—differ substantially from one another. For each person with ID there will be things he or she cannot do but also many things he or she *can* do. Because the mixture of skill strengths and skill deficits varies widely among persons with ID, there is no clinically accepted list of common, ordinary strengths or abilities that preclude a diagnosis of ID. Thus, the focus in assessing an individual’s adaptive behavior must be on deficits. Adaptive strengths are irrelevant to this analysis.

Given the clarity of the ID diagnosis in this case, it is troubling that the lawyers who represented him throughout his trial failed to properly investigate evidence of Mr. Ortiz’s ID. As a result, no evidence of Mr. Ortiz’s ID was presented to the jury during the sentencing phase of his trial. The evidence of Mr. Ortiz’s ID as affirmed by experts—on the basis of his IQ under 75,

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the various adaptive deficits described above, and an age of onset prior to 18—means that Mr. Ortiz’s death sentence violates current prohibitions against cruel and unusual punishment as set forth in the U.S. Supreme Court decisions in *Atkins* and *Hall*.

The Arc does not seek to eliminate punishment of Mr. Ortiz or others with disabilities, but rather, to ensure that justice is served and the rights of all parties are protected. The Arc is committed to seeking lawful outcomes for people with ID and will continue working to ensure that the U.S. Supreme Court rulings on this issue are abided by in jurisdictions across the country. I humbly ask that you consider commutation to address the miscarriage of justice in the case of Abelardo Arboleda Ortiz.

Most respectfully,



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