URGENT ACTION

INTELLECTUAL DISABILITY CLAIM AS EXECUTION SET

Clifton Williams is due to be executed in Texas on 21 June for a murder committed in 2005. The courts have rejected the claim that he has intellectual disability. His lawyers are seeking further review on this issue, as well as pursuing executive clemency.

Cecilia Schneider, 93 years old, was beaten and stabbed to death and her body set on fire during a burglary of her home on 9 July 2005. **Clifton Williams**, aged 21 at the time of the crime, was charged with her capital murder and in October 2006 was convicted and sentenced to death. At trial and on appeal, his lawyers claimed that he has intellectual disability, and that his execution would violate *Atkins v. Virginia*, the 2002 US Supreme Court ruling banning the death penalty on individuals with such disabilities. Two defence experts assessed his IQ at under 70, while the expert for the state assessed it at 70 on one test, 71 on another, and 73, 78 and 83 on others (an IQ of 70-75 is commonly taken as an indicator of possible intellectual disability). His lawyers argue that with the margin of error, his IQ could be as low as 65, alongside evidence of his adaptive deficits.

The *Atkins* ruling left it to states to determine how to meet the constitutional ban. In the absence of a law passed by the legislature, in 2004 the Texas Court of Criminal Appeals (CCA) created a framework for judges and lawyers to assess claims of intellectual disability in capital cases (known as the 'Briseño factors'). From the outset there was concern that this framework was non-scientific and that it under-protected individuals *Atkins* intended to exempt from execution. It was not until *Moore v. Texas* in 2017 that the US Supreme Court found the Briseño factors to be "an invention of the CCA untied to any acknowledged source" and contravened its rule, articulated in *Hall v. Florida* in 2014, that adjudications of intellectual disability must be "informed by the views of medical experts".

By then, Texas courts had already determined that Clifton Williams did not have intellectual disability. In 2013, a federal judge agreed, using the deferential standard set by the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA) for federal review of state court rulings. He wrote that "while a different factfinder might have reached a different conclusion" on whether Clifton Williams had intellectual disability, under the AEDPA standard his lawyers had not managed to rebut the "presumption that the state court's determination was correct". Because the Fifth Circuit Court of Appeals had previously "held that the Briseño factors do not contradict *Atkins*", Clifton Williams's challenge to the CCA's "use of the Briseño factors must fail". The Fifth Circuit upheld this in 2014, reiterating that it had previously affirmed the Briseño factors as "an appropriate mechanism for enforcing *Atkins*'s prohibition against executing intellectually disabled capital defendants". In 2015, the US Supreme Court refused to take the case. An execution date of 21 June has been set. Clifton Williams's lawyers are seeking to bring a new challenge in the courts in light of the *Moore v. Texas* decision in order to reopen their claim that he has intellectual disability.

1) TAKE ACTION

Write a letter, send an email, call, fax or tweet:

- Opposing the execution of Clifton Williams, and calling for his death sentence to be commuted;
- Pointing to evidence that he has borderline intellectual disability, and that his lawyers maintain this rises to the level of actual intellectual disability, which would render his execution unconstitutional;
- Noting the power of executive clemency is not constrained in the way courts may be on such issues;
- Explaining that you are not seeking to excuse violent crime or to downplay the suffering caused.

Contact these two officials by 21 June, 2018:

Clemency Section, Board of Pardons and Paroles
8610 Shoal Creek Blvd., Austin, Texas 78757-6814, USA
Fax: +1 512 467 0945
Email: bpp-pio@tdcj.state.tx.us
Salutation: Dear Board Pardons and Paroles

Governor Greg Abbott
Office of the Governor, P.O. Box 12428
Austin, Texas 78711-2428, USA
Fax: +1 512 463 1849
Salutation: Dear Governor

2) LET US KNOW YOU TOOK ACTION

Click here to let us know if you took action on this case! *This is Urgent Action 100.18*
Here's why it is so important to report your actions: we record the actions taken on each case—letters, emails, calls and tweets—and use that information in our advocacy.

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ADDITIONAL INFORMATION

In its *Atkins* ruling the US Supreme Court ruled that executing individuals with "mental retardation" ran counter to a "national consensus" against such use of the death penalty. The Court did not define intellectual disability but pointed to definitions used by professional bodies, which referred to significantly sub-average intellectual functioning (usually assessed by IQ); related limitations in adaptive functioning; and onset before the age of 18. In *Hall v. Florida* in 2014, it ruled that a determination as to whether a person had intellectual disability in this context must be "informed by the medical community's diagnostic framework".

In its Briseño ruling in 2004, the Texas CCA showed some scepticism to *Atkins* and indicated that it viewed expert definitions used in the social services field (as pointed to in *Atkins*) as not being appropriate for use in deciding whether someone might be exempt from execution. The CCA claimed its task was to define the "level and degree of mental retardation at which a consensus of Texas citizens would agree that a person should be exempted from the death penalty", and suggested that "most Texas citizens might agree" that the fictional character of Lennie in John Steinbeck's novel *Of Mice and Men* would be exempt. In other words, the Briseño factors were based on a misreading of *Atkins* which, while leaving states to decide how to comply with the constitutional rule it set out, did not leave it to them to decide that certain people with intellectual disability were not protected – all were.

Describing the adaptive functioning prong of the definition as "exceedingly subjective", the CCA developed seven "evidentiary factors" to be used in assessing whether an offender had intellectual disability (framed around such questions as whether the person had "formulated plans" or acted impulsively; whether their conduct showed "leadership"; or whether they could "hide facts or lie effectively"). The CCA suggested that even if experts could agree that a defendant had intellectual disability, a judge or a jury could still decide that he or she was not exempt from the death penalty. The use of the Briseño factors has contributed to a low rate of success in *Atkins* claims in Texas compared to other death penalty states (a 2014 study showed that the national average success rate was 55% compared to 17% in Texas). In *Moore v. Texas* in 2017, the US Supreme Court stated that the CCA's "attachment to the seven Briseño evidentiary factors further impeded its assessment of… adaptive functioning", and "by design and in operation…create an unacceptable risk that persons with intellectual disability will be executed".

In the Fifth Circuit's 2014 ruling in Clifton Williams's case (three years before *Moore v Texas*), one of the judges noted he had long been concerned that the Briseño factors might "run afoul of *Atkins*", but did not think it mattered in Clifton Williams's case because neither the jury nor the CCA had relied on the factors in dismissing his intellectual disability claim. Clifton Williams's lawyers have said that this is "demonstrably false" and that at the trial the prosecution followed the Briseño factors in urging jurors to dismiss the intellectual disability claim, and that the CCA's opinion rejecting the intellectual disability claim on appeal was itself "shaped and formed" by the Briseño framework.

Amnesty International opposes the death penalty unconditionally. Today there are 142 countries that are abolitionist in law or practice. There have been 1,475 executions in the USA since 1976 when the US Supreme Court approved new capital statutes. Texas accounts for 550 of these executions, or 37 per cent of the national total.

Name: Clifton Williams
Gender m/f: m

UA: 100/18 Index: AMR 51/8429/2018 Issue Date: 16 May 2018