

EXHIBIT 3



For people with intellectual
and developmental disabilities

April 18, 2017

Governor Asa Hutchinson
State Capitol Room 250
Governor's Office
500 Woodlane Ave.
Little Rock, AR 72201

RE: Clemency for Ledell Lee

Dear Governor Hutchinson:

I write on behalf of The Arc of the United States (The Arc) to urge you to commute the death sentence of Ledell Lee pending a full clinical evaluation to determine whether Mr. Lee has an 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 victims in this case, and we support appropriate punishment of all responsible parties. However, Mr. Lee's history is replete with evidence indicating a potential ID diagnosis, which would bring him under the protection of the United States Supreme Court's decisions in *Atkins v. Virginia*, 536 U.S. 304 (2002), *Hall v. Florida*, 134 S. Ct. 1986 (2014), and the more recent decision in *Moore v. Texas*, No. 15-797, slip op. (U.S. Mar. 28, 2017).

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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 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 2014 *Hall* decision, the U.S. Supreme Court further clarified its decision that people with ID not be executed in violation of the Constitution, requiring that adaptive behavior evidence, beyond IQ test scores alone, be taken into account when determining whether an individual has ID. The more recent *Moore* case further confirms adaptive behavior criteria as necessary in determining whether someone meets diagnostic criteria for ID, and that such criteria must comport with modern clinical and scientific understanding of ID.

The evidence presented by the neuropsychological expert in this case, Dr. Dale Watson, supports the conclusion that if Mr. Lee undergoes a full evaluation, he will likely meet 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. In order to complete his analysis, Mr. Lee’s adaptive deficits and history during the developmental period (before age 18) need to be fully assessed. 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 would preclude a diagnosis of ID. Thus, the focus in assessing an individual’s adaptive behavior must be on deficits. As recently confirmed in *Moore*, adaptive strengths are irrelevant to this analysis and IQ alone cannot paint a full picture of whether a person has an ID. Thus, we urge that Mr. Lee receive a full evaluation for ID to determine whether he may be eligible for the *Atkins* constitutional protection from the death penalty.

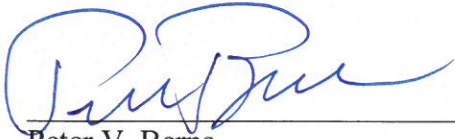
Given the high likelihood of ID in this case, it is troubling that the lawyers who represented Mr. Lee throughout his trial failed to properly investigate evidence of Mr. Lee’s potential ID. As a result, no evidence of Mr. Lee’s potential disability was presented to the jury during the sentencing phase of his trial. If a full evaluation confirms Mr. Lee’s suspected diagnosis of ID, then Mr. Lee’s death sentence violates current prohibitions against cruel and unusual punishment as set forth in the U.S. Supreme Court decisions in *Atkins*, *Hall*, and *Moore*.

The Arc does not seek to eliminate punishment of Mr. Lee 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

Governor Asa Hutchinson
The Arc of the United States Letter in Support of Clemency for Ledell Lee
April 18, 2017
Page | 3

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 possibility of an unconstitutional miscarriage of justice in the case of Ledell Lee.

Most respectfully,



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