

## **Letter to Governor Parson**

### **RE: Do not execute Ernest Johnson, a man with an Intellectual Disability**

September 24, 2021

Governor Mike Parson  
PO Box 720  
Jefferson City, MO

RE: Executive Clemency for Ernest Lee Johnson

Dear Governor Parson,

We are writing as disability advocates and organizations in Missouri to urge you to reduce Mr. Johnson's death sentence or call a Board of Inquiry consisting of experts and clinicians who can determine Ernest Johnson's Intellectual Disability ("ID") Claim. Since 2002, the Supreme Court has recognized that the constitution prevents the execution of intellectually disabled persons. *See Atkins v. Virginia*, 536 U.S. 304 (2002). Following *Atkins*, the Supreme Court issued a series of rulings defining how the criminal justice system should evaluate claims of intellectual disability. These cases have repeatedly emphasized the importance of relying on accepted clinical data and practices to reliably evaluate ID claims. Mr. Johnson's case was litigated in 2006, before the Supreme Court's most recent opinions clarifying the clinical approach to an ID determination. As a result, the jury was not provided with reliable clinical data to reliably determine Mr. Johnson's ID claim. We are asking for clemency or an independent inquiry to evaluate Mr. Johnson's ID claim, given the evolving Supreme Court precedent because we believe Mr. Johnson meets the clinical and legal standards for ID and executing him would cause a serious violation of the constitutional protection provided to those who are intellectually disabled.

Mr. Johnson categorically meets the definition of intellectual disability because all three indicators of an intellectual disability are present. The indicators include a full-scale IQ below 70, significant limitations in adaptive behaviors, and the manifestation of those characteristics before the age of 18. Mr. Johnson's IQ is 67, which falls within the range for an ID diagnosis. His ID was present from the moment he was born because he was diagnosed with Fetal Alcohol Spectrum Disorder, a form of ID, due to his mother's abuse of drugs and alcohol during pregnancy. In addition, there was a history of ID in his family. Both Mr. Johnson's mother and younger brother were ID and his brother had to be institutionalized at a young age because of his profound disabilities. Mr. Johnson also suffered from two severe brain injuries and frequent sexual abuse during his childhood. These factors are strong indicators of ID in Mr. Johnson.

Mr. Johnson's adaptive deficits include but are not limited to an unsuccessful work history, inability to hold a job, and difficulty performing even the most basic tasks. He could never lead his life independently and always relied on the generosity of others to provide for his basic needs. During his school years, he was placed in special education classes and held back repeatedly. He dropped out of school in the 8th grade.

Even though assessing experts agreed that Mr. Johnson meets the criteria for intellectual disability, the prosecution urged the jury to use their "gut" to determine the ID question instead of relying on the clinical evidence and argued Mr. Johnson did not have an ID because he had "street smarts." The prosecution relied on evidence from DOC employees who told investigators Mr. Johnson was able to "play basketball" and "play cards" while in prison. Thus, they believed that Mr. Johnson did not have an intellectual disability even though they were unqualified to make such clinical judgments. Each person with ID is unique and has certain strengths, skills, and weaknesses, just like everyone else. There are no accepted strengths or abilities that can cancel out an ID diagnosis. An assessment of an individual's adaptive abilities must focus on the individual's deficits and Mr. Johnson has significant adaptive deficits. Relying on stereotypes and an individual's behavior in a highly-structured environment subverts an assessment of adaptives.

We believe a grant of clemency is merited given the evidence already collected. At minimum, an independent Board of Inquiry should be empaneled where it is strongly felt they will agree Mr. Johnson is ID because this diagnosis has been confirmed by his IQ of 67, adaptive deficits, and onset before age 18. That means Mr. Johnson's death sentence violates Missouri laws and the U.S. Supreme Court's decisions in *Atkins* and implementing *Atkins*, which deemed the execution of persons with ID as cruel and unusual punishment.

Throughout the past 27 years of appeals, numerous medical professionals and clinicians have concluded Mr. Johnson meets the clinical criteria for a diagnosis of intellectual disability. This highlights the need for clemency or a Board of Inquiry to determine the ID claim. Our organizations do not seek to eliminate punishment of Mr. Johnson or others with disabilities but, rather, to ensure justice is served and the rights of all parties are protected. We are firmly committed to seeking lawful outcomes for people with intellectual disabilities and will continue to work to ensure the U.S. Supreme Court and other court rulings on these issues are recognized in all jurisdictions.

Sincerely,

**Mark A. Keeley, MSW, LCSW**

President/CEO

St. Louis Arc

Direct: (314) 817-2280

1177 N. Warson Road

St. Louis, MO 63132  
[mkeeley@slarc.org](mailto:mkeeley@slarc.org)

Wendy Sullivan  
Easterseals Midwest  
11933 Westline Industrial Drive  
ST Louis MO 63146  
314-394-7016  
[Wendy.sullivan@esmw.org](mailto:Wendy.sullivan@esmw.org)

Cindy Clark  
President and CEO  
Emmaus Homes, Inc.  
3731 Mueller Rd.  
St. Charles, MO 63301  
314-265-0047  
[clarkc@emmaushomes.org](mailto:clarkc@emmaushomes.org)



Vicky Davidson  
Executive Director  
Missouri Developmental Disabilities Council  
1706 East Elm, PO Box 687  
Jefferson City, MO 65102  
800-500-7878  
[vdavidson@moddcouncil.org](mailto:vdavidson@moddcouncil.org)