

## Endnotes

[1] 536 U.S. 304 (2002).

[2] *Id.* at 317.

[3] The American Association on Mental Retardation (AAMR) is now the American Association on Intellectual and Developmental Disabilities (AAIDD). The term ‘mental retardation’ has been replaced with the term ‘intellectual disability’ to describe the identical phenomenon.

[4] The seven ‘*Briseño* factors’ were established in *Ex Parte Briseño*:

1. Did those who knew the person best during the developmental stage – his family, friends, teachers, employers, authorities – think he was mentally retarded at that time, and, if so, act in accordance with that determination?
2. Has the person formulated plans and carried them through or is his conduct impulsive?
3. Does his conduct show leadership or does it show that he is led around by others?
4. Is his conduct in response to external stimuli rational and appropriate, regardless of whether it is socially acceptable?
5. Does he respond coherently, rationally, and on point to oral or written questions or do his responses wander from subject to subject?
6. Can the person hide facts or lie effectively in his own or others’ interests?
7. Putting aside any heinousness or gruesomeness surrounding the capital offense, did the commission of that offense require forethought, planning, and complex execution of purpose?

*Briseño*, 135 S. W. 3d 1, 8-9 (Tx.Crim.App.2004).

[5] *Id.* at 6.

[6] *Moore* slip op at 3.

[7] Clinical definitions of intellectual disability require three criteria: 1) significantly sub-average intellectual functioning, usually established with IQ tests; 2) deficits in adaptive functioning (the inability to learn basic skills and adjust behavior to changing circumstances); and 3) onset of these deficits before age 18. See *Atkins* at 318.

[8] See *Ex Parte Moore*, No. 314483-C (185<sup>th</sup> Jud. Dist., Harris Cty, Tex., Feb 6, 2015).

[9] 470 S. W. 3d, at 522-23, 526–527.

[10] *Moore*, slip op at 2, quoting *Hall v. Florida*, 572 U.S, 134 S. Ct. 1986 (2014). In *Hall*, the Supreme Court disallowed Florida’s strict use of a 70 IQ to prove intellectual disability.

[11] *Moore*, slip op at 1-2 (Roberts, C.J., dissenting).

[12] *Id.*, slip op at 9.

[13] *Moore*, slip op at 17, quoting *Hall*.

[14] University of Texas Law School Professor Jordan Steiker and Richard Burr, the lawyer who represented Jose Briseño, estimate that Texas has executed 30-40 people with strong claims of intellectual disability, and that between 30 and 40 of the 242 remaining on the state's death row have similarly strong claims to exemption. Lincoln Caplan, *When Will Texas Stop Executing the Intellectually Disabled?* *The New Yorker*, Nov. 30, 2016.

[15] Andrew Cohen, *Of Mice and Men: The Execution of Marvin Wilson*, *The Atlantic*, Aug 8, 2012.

[16] *The New Yorker*, *When Will Texas Stop Executing the Intellectually Disabled?* Lincoln Caplan, Nov. 30, 2016.