IN THE SUPREME COURT FOR THE STATE OF UTAH

MICHAEL ANTHONY ARCHULETA,	)	
	)	
Appellant,	)	Case No. 20160419-SC
	)	
v.	)	
	)	
STATE OF UTAH,	)	DEATH PENALTY CASE
	)	
Appellee.		

SUPPLEMENTAL REPLY BRIEF OF APPELLANT

Appeal from the Fourth Judicial District Court in Millard County
District Court Case No. 14070047
The Hon. Jennifer A Brown

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TABLE OF CONTENTS

Table of Authorities

Federal Cases

Federal Statutes

United States Constitution

Utah Constitution

State Cases

State Statutes

Other

Introduction

Mr. Archuleta's death sentence violates *Atkins v. Virginia*, 536 U.S. 304 (2002). The substantive rule of *Atkins*—announced six days after Mr. Archuleta's initial post-conviction petition was filed—changed the law by excluding intellectually disabled persons from State execution. Utah's Post-Conviction Remedies Act ("PCRA")—both at the time of Mr. Archuleta's initial post-conviction proceedings, and currently—permits collateral relief based on new, retroactive rules of constitutional law. Because Mr. Archuleta's death sentence violates the United States and Utah Constitutions, his *Atkins* claim is cognizable under the PCRA. For the reasons below and in Mr. Archuleta's prior briefing, this Court should remand his case to the district court for a merits determination. Alternatively, if this Court finds his sentence is illegal on its face, it should remand to the district court with instructions to correct his sentence.

Supplemental Issues

I. Mr. Archuleta's *Atkins* claim is cognizable under the PCRA.

As detailed in the Supplemental Opening Brief of Appellant ("Supp. OB"), Mr. Archuleta's *Atkins* claim was cognizable during his initial post-conviction proceedings and is now, because his death sentence was "imposed in violation of the United States Constitution or Utah Constitution." Utah Code Ann. § 78-35a-104(1)(a) (Lexis 2002) (Supp. OB Addendum 1); Utah Code Ann. § 78B-9-104(1)(a) (Lexis 2010). The accrual

date of his *Atkins* claim should have been the day *Atkins* was decided, June 20, 2002.[1]

a. Mr. Archuleta's *Atkins* claim was cognizable under the PCRA during his initial post-conviction proceedings, because his death sentence violates the United States and Utah Constitutions. The same is true now.

Mr. Archuleta's death sentence violates the United States and Utah Constitutions, because he is intellectually disabled. *See Atkins*, 536 U.S. at 320; Utah Const. art. I, § 9. He is entitled to post-conviction relief, because his sentence violates "the United States Constitution or Utah Constitution." *See* Utah Code Ann. § 78B-9-104(1)(a) (2010).[2] As described in detail in Mr. Archuleta's Supplemental Opening Brief, relief was thus available during Mr. Archuleta's initial post-conviction proceedings, and is under the current PCRA as amended in 2008.

During Mr. Archuleta's initial post-conviction proceedings, Utah law required

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[1] In his prior briefing and argument to this Court, Mr. Archuleta explained why applying time and procedural bars to his *Atkins* claim is improper and why applying the PCRA and its 2008 amendments would lead to an unconstitutional result in this case. He does not abandon those arguments, but in this supplemental briefing responds to the Court's questions regarding whether the PCRA allows for collateral relief based on new constitutional law and when, as a general matter, such claims would begin to accrue.

[2] The State suggests that Mr. Archuleta did not allege that his death sentence violates the Utah Constitution and, thus, that this Court should "disregard this argument." (Supplemental Brief of Appellee ("Supp. AB") at 7 n.3.) This is incorrect. The first claim of Mr. Archuleta's post-conviction petition—the claim that is the subject of this appeal—was, "The imposition of the death penalty on Michael Archuleta, an individual who is intellectually and developmentally disabled constitutes a violation of the Eighth and Fourteenth amendments to the United States Constitution, of Utah state law, and of the Utah Constitution Art. I, § 9." (12/12/14, Petitioner's Memorandum in Support of PCR Petition at i, 62.) And, at any rate, the State has presented no argument that the Utah Constitution's ban on cruel and unusual punishment is somehow narrower than the Eighth Amendment to the United States Constitution.

giving effect to, at least, federal retroactivity principles in cases on collateral review. Those principles, including *Teague v. Lane*, 489 U.S. 288 (1989) (plurality opinion), required giving effect to *Atkins* on collateral review. *E.g.*, *Ochoa v. Sirmons*, 485 F.3d 538, 540 (10th Cir. 2007); *In re Holladay*, 331 F.3d 1169, 1172 (11th Cir. 2003). Relief was thus available under Utah Code Ann. § 78-35a-104(1)(a). (Supp. OB Addendum 1.) As discussed in detail in prior arguments, Mr. Brass was ineffective when he failed to raise Mr. Archuleta's *Atkins* claim.

Even under the current version of the PCRA, Mr. Archuleta's *Atkins* claim is cognizable under Utah Code Ann. § 78B-9-104(1)(a) (2010). As explained in Mr. Archuleta's Supplemental Opening Brief, the amended version of the PCRA removed the specific reference to state and federal retroactivity principles, but did not do away with them. A plain reading of section 78B-9-104(1)(a) permits a petitioner to seek relief from any sentence imposed in violation of his constitutional rights. Precisely as the prior version of the PCRA did, *see* Utah Code Ann. § 78-35a-107(1)-(3) (Lexis 2002) (Supp. OB Addendum 2), the amended PCRA does not explicitly address the "accrual dates" for claims based on retroactively applicable new constitutional rules. And while this Court has not specifically addressed "the question of what retroactivity principles apply in the causes of action listed in subsections § 78B-9-104(1)(a) through 104(1)(e)," it has recognized that "the [United States] Supreme Court's retroactivity precedents may possibly act as a floor, requiring us to allow retroactive application of at least those precedents that would be applied retroactively in a federal habeas case." *Winward v. State*, 2015 UT 61, ¶ 10 n.1,

355 P.3d 1022, 1025 n.1. For the reasons described in detail in Mr. Archuleta's Supplemental Opening Brief, this Court may apply retroactivity principles that are more expansive than those in *Teague*, but may not apply retroactivity principles that are more restrictive. *See State v. Whitfield*, 107 S.W.3d 253, 267 (Mo. 2003); *Colwell v. State*, 59 P.3d 463, 471 (Nev. 2002) (quoting *State v. Fair*, 502 P.2d 1150, 1152 (Or. 1972)). (*See also* 3/23/2018, Supplemental Briefing Order at 1 (quoting *Montgomery v. Louisiana*, 136 S. Ct. 718, 731 (2016)).) The PCRA's ground for relief based on unconstitutional sentences encompasses, at a conservative minimum, the principles of *Teague*.

Despite this, the State argues that Utah Code section 78B-9-104(1)(a) cannot apply, because "*Atkins* had not issued before Archuleta was convicted and sentenced, and it could not be said that 'the conviction *was obtained* or the sentence *was imposed* in violation of the United States Constitution.'" (Supp. AB at 2.) That reading is contrary to the plain language of the prior version of Utah Code Ann. § 78-35a-104(1)(a) (Lexis 2002).[3] And, as explained in Mr. Archuleta's Supplemental Opening Brief and above, nothing in the current version of the ground for relief based on constitutional violations supports the stilted reading the State suggests.

The State also suggests that applying federal retroactivity principles like *Teague* to section 78B-9-104(1)(a) would somehow render section 78B-9-104(1)(f) superfluous.

[3] The State makes no argument regarding the prior version of the PCRA except to say it "has no reason to dispute that" Utah Code Ann. § 78-35a-104(1)(a) "accommodated federal retroactivity principles." (Supp. AB at 18 n.7.)

(Supp. AB at 8.) There is simply no basis in the statute or cases interpreting it to suggest that. Again, the prior version of the same subsection incorporated federal retroactivity principles, as the State has agreed, and nothing suggests it still does not do so. No logic suggests that multiple—even *each*—ground for relief does not incorporate the required retroactivity principles. *See generally Winward*, 2015 UT 61, ¶ 10 n.1, 355 P.3d 1022, 1025 n.1.

Practically, it is inherently inconsistent for the State to argue that Mr. Archuleta's claim should be procedurally barred because post-conviction counsel should have raised it, and at the same time that the specific ground for relief—worded now just as it was then—does not include the principles of retroactivity that would have permitted him to do so. There is no reason to interpret the PCRA in this way.

In sum, the version of the PCRA applicable at the relevant time of Mr. Brass's initial post-conviction proceedings explicitly allowed the consideration of new constitutional rules by incorporating federal principles of retroactivity. The current version of the PCRA does not remove that consideration, nor does any case law interpreting it. To read into these statutes a limitation barring the application of new constitutional rules in collateral review cases would violate *Teague*, *Atkins*, and *Montgomery*. *See Montgomery*, 136 S. Ct. at 731-32. No precedent requires such a reading, and this Court should not adopt one. Mr. Archuleta's *Atkins* claim is cognizable under the PCRA, because his sentence violates "the United States Constitution or Utah Constitution."

The State has made no determination of when, under this ground for relief, the claim

accrues. Again, for purposes of this briefing and subject to the arguments in Mr. Archuleta's initial briefing and argument before this Court, his *Atkins* claim accrued the day *Atkins* was decided.

b. Mr. Archuleta's *Atkins* claim was cognizable during his initial post-conviction proceedings under Utah Code Ann. § 78-35a-104(1)(a) and remained cognizable after the 2008 PCRA amendments under Utah Code Ann. § 78B-9-104(1)(a) (Lexis 2010). In addition, under the amended PCRA, as the State concedes, Utah Code Ann. § 78B-9-104(1)(f)(ii) may also provide a ground for relief.

For the reasons explained in Mr. Archuleta's Supplemental Opening Brief, Mr. Archuleta's *Atkins* claim is not cognizable under Utah Code § 78B-9-104(1)(f)(i). First, that subsection did not exist at the time of Mr. Archuleta's initial post-conviction proceedings when *Atkins* was decided. Second, in its current version, it explicitly excludes rules that are newly announced during collateral proceedings. The State now concedes this point. (Supp. AB at 2, 9.)

The State has now taken the position that Mr. Archuleta's *Atkins* claim is cognizable under Utah Code Ann. § 78B-9-104(1)(f)(ii). (Supp. AB at 14.) For the reasons in Mr. Archuleta's Supplemental Opening Brief—again, subject to the issues raised in Mr. Archuleta's initial briefing—the accrual date would still be the date *Atkins* was decided.

The bottom line is that, for the purposes of answering this Court's questions, at the time of Mr. Archuleta's initial post-conviction petition, his *Atkins* claim was cognizable under the PCRA and continues to be so now. And—to the extent the PCRA or its restrictions, including its temporal limitations, should apply—for the reasons in Mr.

Archuleta's Supplemental Opening Brief, the "accrual date" is the date *Atkins* was decided.

c. If this Court disagrees that Mr. Archuleta's claim is properly brought under the PCRA, given the weight of the evidence, it has the authority to correct his sentence under Utah Rule of Criminal Procedure 22(e).

As detailed in Mr. Archuleta's Supplemental Opening Brief, Utah Rule of Criminal Procedure 22(e) allows a court to correct a sentence that, among other things, "exceeds the statutorily authorized maximums." Utah R. Crim. P. 22(e)(1). It permits the Court to "correct an illegal sentence, or a sentence imposed in an illegal manner, *at any time*," and "applies to sentences that are manifestly or patently illegal." *State v. Candedo*, 2010 UT 32, ¶ 9, 232 P.3d 1008, 1012 (emphasis added) (internal citations and quotation marks omitted).

"Because an illegal sentence under Rule 22(e) includes constitutional violations, an appellate court must allow a petitioner to raise constitutional, as well as jurisdictional and statutory challenges to his or her sentence under Rule 22(e)." *Id.* at ¶ 11; *see also State v. Houston*, 2015 UT 40, ¶ 22, 353 P.3d 55, 65, as amended (Mar. 13, 2015). Here, Mr. Archuleta's sentence is illegal, because it violates the maximum allowable sentence for an intellectually disabled person according to the United States and Utah Constitutions.[4] Thus, the State's argument that this Court has no "jurisdiction" to consider a Rule 22 challenge is incorrect and contrary to the case law explaining Rule 22.

[4] The State concedes that this claim falls, at least, within a portion of the PCRA that permits relief for "status exemptions." (Supp. AB at 3.) A sentence imposed when one should be exempt is an illegal sentence.

As described above, however, the PCRA provides an appropriate avenue for relief on Mr. Archuleta's *Atkins* claim, and, for the reasons described in his Supplemental Opening Brief, it is not precluded from PCRA litigation under Utah Code Ann. § 78B-9-102(2)(b).

On the other hand, Mr. Archuleta has presented the state courts with significant evidence of his intellectual disability. The State now argues that evidence has not been "vetted," (Supp. AB at 12 n.4), but, in fact, the federal district court did just that, and the State itself, by asking for summary judgment, suggested the claim could be decided on the face of the facts presented. Notwithstanding the State's later withdrawal of that position—based either on a change in the law as the State argued to the district court, or based on the "host of strategic reasons [the State was] not prepared to necessarily disclose publicly," (Supp. OB Addendum 3 at 59-60)—this Court may find Mr. Archuleta's evidence sufficient on its face to prove his intellectual disability. In that case, Mr. Archuleta's sentence is illegal and this Court may grant relief.[5] *See Houston*, 2015 UT 40, ¶ 20, 353 P.3d at 65.

II. If this Court finds that Mr. Archuleta's *Atkins* claim is not cognizable under the PCRA, or is more properly raised in a request to correct his sentence under Utah Rule of Criminal Procedure 22(e), it should remand the case to the district court.

[5] The State seems to misconstrue Mr. Archuleta's argument in stating that "Archuleta and the State agree that rule 22(e) does not support relief." (Supp. AB at 11.) Mr. Archuleta's argument was clear and he respectfully relies on the points in his Supplemental Opening Brief.

As explained above, the PCRA provides an avenue to raise Mr. Archuleta's *Atkins* claim. If this Court determines that Mr. Archuleta's *Atkins* claim is not cognizable under specific provisions of the PCRA, the PCRA would be unconstitutional and this Court should exercise its authority over the writ of habeas corpus to permit Mr. Archuleta's *Atkins* claim to be heard on its merits. *See Montgomery*, 136 S. Ct. at 729.

Alternatively, if this Court determines that Mr. Archuleta's *Atkins* claim is cognizable under Rule 22(e), and not under the PCRA, it should remand this case to the district court with instructions to correct his sentence or to consider his claim under that Rule.

a. If Mr. Archuleta's *Atkins* claim is not cognizable under the PCRA, that statute is unconstitutional and this Court should exercise its inherent constitutional authority over the writ of habeas corpus to remand the case to the district court for a merits determination.

If this Court determines that the PCRA did not and does not provide any avenue for Mr. Archuleta to raise his *Atkins* claim, it should exercise its constitutional authority over the writ of habeas corpus to remand his *Atkins* claim to the district court.

If, under the circumstances in this case, this Court determines that the PCRA did not and does not permit petitioners to seek collateral relief based on new, retroactive constitutional rules and there is no state remedy available to Mr. Archuleta, this would violate his constitutional rights. *See Montgomery*, 136 S. Ct. 731; *Whitfield*, 107 S.W.3d at 267. The State's execution of an intellectually disabled person would violate the Eighth Amendment to the United States Constitution and Article I, § 9 of the Utah Constitution.

Despite this, the State now argues that "if the PCRA is not open to this type of claim. . . . Archuleta has no remedy in state court," and "*Montgomery* does not say otherwise." (Supp. AB at 20.) The State suggests that *Montgomery* "requires state courts to apply federal law only if 'a state collateral proceeding is open to a claim controlled by federal law' in the first place. But where a state proceeding is not open, *Montgomery* did not require it to be." (Supp. AB at 20 (internal citation omitted); *see also* Supp. AB at 3.) This is incorrect. The essential point of *Montgomery*, as this Court recognized, is that a state must give effect to federal constitutional principles, including by giving retroactive effect to those principles on collateral review. The State's citation to Justice Thomas's dissent is no proof that this Court may leave Mr. Archuleta with no remedy for his constitutional claim. *See, e.g.*, *Montgomery*, 136 S. Ct. at 729 ("That constitutional command is, like all federal law, binding on state courts.").[6]

The legislature's attempt to entirely extinguish this Court's power over the writ of habeas corpus is unconstitutional if it does not permit this Court to exercise discretion to apply common-law exceptions or to excuse time and procedural bars to remedy an egregious injustice. *See generally Hurst*, 777 P.2d at 1037. (12/19/2016, Opening Brief of Appellant at 84-99.) Mr. Archuleta respectfully relies on his prior briefing and arguments

[6] The State, seemingly without "conced[ing] that Archuleta is entitled to a federal habeas writ," (Supp. AB at 22 n.8), suggests that Mr. Archuleta does have a remedy available and that it is in federal court. Whether that is true or not has no relevance to the issues before this Court—state courts do not simply pass the buck to federal courts where a fundamental constitutional issue is at stake.

on this point.

b. If this Court determines that Utah Rule of Criminal Procedure 22(e) is the appropriate mechanism for Mr. Archuleta to raise his *Atkins* claim, it may grant relief and remand this case to the district court.

For the reasons above, Mr. Archuleta's *Atkins* claim is cognizable under the PCRA. Nevertheless, if this Court finds that Mr. Archuleta's *Atkins* claim is cognizable under Utah Rule of Criminal Procedure 22(e), it would be foreclosed from review under the provisions of the PCRA. Utah Code Ann. § 78B-9-102(2)(b). In that event, the Court should exercise its discretion to remand this case to the district court with instructions to correct Mr. Archuleta's illegal sentence or, at the very least, consider his claims under Rule 22(e). *See Houston*, 2015 UT 40, ¶ 20, 353 P.3d at 65 (quoting *State v. Candedo*, 2010 UT 32, ¶ 9, 232 P.3d at 1012) (appellate courts may vacate illegal sentences at any time, regardless of issue preservation, "'because an illegal sentence is void'"); *see also generally Montgomery*, 136 S. Ct. at 726-27 (noting Louisiana's post-conviction statutes did not permit retroactive application of new constitutional rules in cases on collateral review, but its mechanism for correcting "illegal sentence[s]" did).

For the reasons above and in Mr. Archuleta's prior briefing, if this Court determines that Mr. Archuleta's *Atkins* claim is cognizable under Rule 22(e)(1)(A), nothing prohibits this Court from considering it under Rule 22. The State suggests this is untrue, but provides no authority to support its argument. There is no time limit to seeking or obtaining relief under Rule 22(e)(1)(A). *See* Rule 22(e)(2). *See also State v. Telford*, 2002 UT 51 ¶ 5, 48 P.3d 228, 230; *State v. Fairchild*, 2016 UT App 205, ¶ 29, 385 P.3d 696, 704.

III. The district court improperly dismissed Mr. Archuleta's PCRA petition without providing notice and an opportunity to be heard. This was plain error.

After moving for summary judgment on Mr. Archuleta's *Atkins* claim (05/27/2015, Memorandum in Support of Motion for Partial Summary Judgment), the State asked to file a reply (07/27/2015, Motion for Leave to File a Reply Memorandum in Support of Summary Judgment Motion). In its reply, instead of responding to Mr. Archuleta's opposition to partial summary judgment, the State indicated that "the State has concluded to withdraw its [summary judgment] motion on the merits of Archuleta's *Atkins* claim" and it also moved to stay its summary judgement motion on its procedural defenses. (09/23/2015, Reply Re: Summary Judgment Motion at 1.) Despite this, the district court denied the State's motion to stay and dismissed Mr. Archuleta's petition *sua sponte* on procedural grounds. (*See* 12/19/2016, Opening Brief of Appellant, Addendum 2.)

The district court did not give the parties notice and an opportunity to be heard before its *sua sponte* dismissal of Mr. Archuleta's *Atkins* claim. *See* Utah Code Ann. § 78B-9-106(2)(b). It failed to provide notice to the parties that it intended to dismiss the petition *sua sponte*, it failed to give the parties an opportunity to brief whether *sua sponte* dismissal was appropriate or authorized given the State's changed position regarding a merits determination,[7] it failed to give the parties an opportunity to address crucial

[7] Again, for example, federal habeas law regarding the review of state convictions and sentences deems "exhaustion" or preservation requirements waived, or the State estopped from relying on them, if "the State, through counsel, expressly waives the requirement." 28 U.S.C. § 2254(b)(3).

constitutional issues, and it failed to permit oral argument on any of these points. The court, without the parties' input, bypassed the important constitutional issues before it.

For the reasons detailed in Mr. Archuleta's Supplemental Opening Brief, the district court's *sua sponte* dismissal of Mr. Archuleta's petition on procedural grounds, without providing notice or an opportunity to be heard, was plain error. (Supp. OB at 20-23.) Especially where both the State and Mr. Archuleta agreed that a merits determination was warranted, the court should have allowed argument from both sides on, at the very least, its authority to dismiss the claim *sua sponte*. The district court's failure to provide notice and an opportunity to be heard requires a reversal of its dismissal of Mr. Archuleta's petition. *See, e.g.*, *Bluemel v. State*, 2011 UT App 133, ¶ 5, 253 P.3d 1128, 1129; *Esparza-Recendez v. State*, 2012 UT App 344, ¶ 6, 293 P.3d 377, 378; *Schwenke v. State*, 2014 UT App 103, ¶ 4, 326 P.3d 684, 685.

Despite this, the State now makes a string of arguments supporting the district court's dismissal and suggesting that the parties had ample opportunity to be heard, because they briefed procedural issues in this case. (Supp. AB at 22-28.) The State misses the point. The State does not properly address the issues above, including the court's power to *sua sponte* dismiss a claim after the State waives its procedural defenses. Each of the State's arguments relies on this misunderstanding, and none of them address the key points the district court failed to address. In the same way, the State's argument that Mr. Archuleta "has not identified any argument that he would have raised" (Supp. AB at 28) is simply incorrect.

The State also suggests that "it was entirely reasonable and correct" for the district court to "rule without further and redundant notice or briefing," because "neither party had requested oral argument on the summary judgment motion." (Supp. AB at 24-25 & n.9.) This is incorrect. (7/20/2015, Response to Respondent's Motion for Partial Summary Judgment at 1 ("[U]nless this Court is inclined to deny Respondent's motion, Mr. Archuleta requests argument on the question of summary judgment.").)

The State further suggests that Mr. Archuleta's opposition to the State filing a summary judgment reply suggests that "Not only had [Mr. Archuleta] said all he had to say, he believed neither party had any right to say anything more." (Supp. AB at 26 (emphasis omitted).) This is also incorrect. First, the State's requested reply did not address the issues listed above (including the power to *sua sponte* dismiss despite a waiver), on which the district court never heard from either party. Second, as a practical matter, the State has a history of seeking the ultimate word on issues by requesting, for example, sur-rebuttals, or even by filing motions attempting to prevent Mr. Archuleta from even having time to respond. (*See Archuleta v. Bigelow*, No. 2:07-CV-630 TC (Sept. 26, 2013 D. Utah), ECF No. 96 ("Surreply in Opposition to Petitioner's Motion to Stay and Hold Habeas Proceedings in Abeyance"); 12/24/2014, Request to Submit for Decision Respondent's Motion to Expedite Ruling, at 2 (asking state district court to grant the State access to Mr. Archuleta "immediately without input from opposing counsel").) Respectfully, at some point within reason, it becomes appropriate for a petitioner to request an end to those actions and a return to the normal procedures for pleading and briefing. Mr. Archuleta's

opposition followed the well-established principles of Rule 65C for opposing the State's reply, and it is absolutely no indication that he had said "all he had to say" or had even said anything at all about the issues listed above. In fact, the opposition was filed before the State changed its position and asked the district court to consider the merits of his *Atkins* claim. The opposition proves nothing.

Finally, the State once again alleges that Mr. Archuleta has engaged in "dilatory tactics" in state court. (Supp. AB at 4. n.1.) This issue is beyond this Court's Supplemental Briefing Order and, at any rate, Mr. Archuleta has addressed it (*e.g.*, 5/24/2017, Reply Brief of Appellant at 4-8).

Conclusion

For the reasons above, Mr. Archuleta's *Atkins* claim was cognizable under the PCRA and—subject to Mr. Archuleta's prior arguments, including those regarding the application of the current PCRA—it accrued on the day *Atkins* was decided. Alternatively, if this Court determines Mr. Archuleta's *Atkins* claim is proven on its face, it should remand to the district court with instructions to correct Mr. Archuleta's illegal sentence under Utah Rule of Criminal Procedure 22(e). The district court's failure to give the parties notice and an opportunity to address all of the issues in this complex case was plain, reversible error. For the reasons in this and prior briefing, this Court should reverse the district court's grant of summary judgment and remand with instructions for it to grant relief or to consider the merits of Mr. Archuleta's *Atkins* claim.

Respectfully submitted this 11th day of June, 2018.

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s/ Charlotte G. Merrill
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Certificate of Compliance

This brief complies with this Court's Supplemental Briefing Order, because it contains 4,210 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

s/ Charlotte G. Merrill
by Charlotte G. Merrill

Certificate of Service

I hereby certify that on this 11th day of June, 2018, the foregoing Supplemental Reply Brief was filed electronically with the Clerk's Office and two copies were mailed via First Class Mail, postage prepaid, to the following:

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I further certify that the original and nine copies of the Supplemental Reply Brief will be mailed via fed-ex within seven days.

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