

Office of the  
**FEDERAL PUBLIC DEFENDER**  
for the District of Arizona  
Capital Habeas Unit  
850 West Adams Street, Suite 201  
Phoenix, Arizona 85007

**JON M. SANDS**  
Federal Public Defender

direct: 602.382.2816  
email: [therese\\_day@fd.org](mailto:therese_day@fd.org)

June 14, 2024

Ms. Jennifer Yim  
Administrative Director  
Utah Board of Pardons & Parole  
448 East Winchester, Suite 300  
Murray, Utah 84107

**Hand-delivered**

**Re: Petition for Commutation for Taberon Dave Honie**

Dear Ms. Yim,

Please find enclosed Mr. Honie's Petition for Commutation of his death sentence and documents in support thereof, including the documents required under R671-312-B-3. Mr. Honie is represented by myself, Eric Zuckerman, and Kelly Culshaw. Mr. Zuckerman is licensed in Utah, and Ms. Culshaw and I are admitted in Utah pro hac vice. Our pro hac vice orders are attached as exhibits to the petition.

We have indicated within the petition the witnesses we expect to testify at the clemency hearing, but for clarity, we anticipate calling the following witnesses: Mr. Honie, Matthew Sakiestewa Gilbert, Ph.D., Victoria Reynolds, Ph.D., Teresita Honie, and Tressa Honie.

Ms. Culshaw is in Salt Lake City today and will serve the assistant attorney general in-person with the commutation petition. Please let me know if you have any questions or need any further information. Thank you for assistance in this matter.

With kind regards, I remain,

Respectfully yours,

  
Therese Michelle Day  
Counsel for Mr. Honie

**Petition for Commutation for  
Taberon Dave Honie**

DOB: 10/29/75  
UDOC No. 134877

Presented to the  
Utah Board of Pardons & Parole  
448 East Winchester, Suite 300  
Murray, Utah 84107

Submitted by  
Jon M. Sands  
Federal Public Defender for the District of Arizona  
Therese Michelle Day (Georgia Bar No. 213801) (pro hac vice)  
Assistant Federal Public Defender  
Eric Zuckerman (Utah Bar No. 16742)  
Assistant Federal Public Defender  
Kelly L. Culshaw (Ohio Bar No. 0066394;  
California Bar No. 304778) (pro hac vice)

Office of the Federal Public Defender for the District of Arizona  
850 West Adams Street, Suite 201  
Phoenix, Arizona 85007  
Tel: 602.382.2816  
therese\_day@fd.org  
eric\_zuckerman@fd.org  
kelly\_culshaw@fd.org

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## I. Introduction



Taberon Honie is a forty-eight-year-old Hopi-Tewa man from First Mesa, an ancient Hopi-Tewa village within the reservation lands of the sovereign nation of the Hopi in Arizona. In 1998, Mr. Honie was extremely intoxicated and became involved in a domestic dispute with Claudia Benn, the mother of his girlfriend Carol Pikyavit, which resulted in him tragically taking Ms. Benn's life. Ms. Benn was a beloved member of the Paiute Tribe and was living in Cedar City, Utah, at the time of the crime. Mr. Honie has always expressed genuine remorse and sadness for the death of Ms. Benn from the moment he was arrested until the present.

Mr. Honie remains close to his former girlfriend Carol, who testified at trial that she would be satisfied with a sentence of life without parole. Mr. Honie's daughter Tressa, who is now twenty-seven years old, does not want her father executed and would like to tell this to the Utah Board of Pardons and Parole ("Board") at the commutation hearing. Mr. Honie's and Carol's daughter Tressa now has a daughter of her own named Alana, and Mr. Honie also

has a relationship with her, his granddaughter. Mr. Honie is close to his family, all of whom still live on the Hopi Reservation and who have been active in the Hopi community. His family has been in regular contact with him throughout his time in prison. They also have made the long drive from the Hopi Reservation to Utah to visit Mr. Honie on many occasions throughout the years. Mr. Honie's family love and care for him and will be devastated if he is executed. Mr. Honie's mother, Teresita, would like to tell the Board about the family's love for Mr. Honie at the hearing.

Mr. Honie has been incarcerated on Utah's death row for nearly twenty-five years, during which he has demonstrated that he is not a risk of danger to others and can live productively and positively, being a source of support for others and being of use through his work for the prison. The modern justifications for the use of the death penalty, deterrence, and retribution, will not be served by taking his life.

II. Reasons for supporting a commutation of Mr. Honie's sentence from death to life without parole

This Board is imbued with the awesome power to change the fate of a man who has been condemned to death by giving him life in the form of a sentence of life without parole. Utah Code Ann. § 77-27-5.5(1). This power is a matter of grace and mercy. Mr. Honie stands before you asking that you grant him mercy and commute his sentence of death to life without parole.

The pardon power of the executive is to temper justice with mercy. *See* THE FEDERALIST PAPERS, The Federalist, 74 (Hamilton) at 364–65 (Oxford University Press 2008). Chief Justice John Marshall agreed with this when he said, “A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the

individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed.” *United States v. Wilson*, 32 U.S. 150, 160 (1833). “Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law. The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt.” *Ex parte Grossman*, 267 U.S. 87, 120–21 (1925). As such, executive clemency is the “fail safe” of the criminal justice system. *Herrera v. Collins*, 506 U.S. 390, 415 (1993).

A. Mr. Honie has always taken responsibility for and expressed sincere remorse for taking Ms. Benn’s life

Mr. Honie admitted to killing Ms. Benn and has taken responsibility for his actions from the time he was arrested. Mr. Honie was extremely intoxicated at the time of the crime and his interrogation. During his interrogation following his arrest, Mr. Honie told Detective Davis he was sorry for what happened and that he “should die for what he d[id] wrong.” Mr. Honie told Detective Davis, “I don’t know what the hell I did[;] I could have killed her myself, I don’t know[.]” Mr. Honie then said, “If I did, I am very, very sorry[.]” Mr. Honie also said, “Dee, please forgive me[.]”

At his sentencing, Mr. Honie apologized to the victims and his family and expressed his deep remorse for taking Ms. Benn’s life:

It’s hard for me to express my feelings openly, so please bear with me, if you would. Please don’t think that I don’t have any remorse or sympathy if I don’t cry or show how I really feel. It’s just that I was taught by tradition that if you’re a male, you don’t cry openly.

During the past couple of days there is not one day that went by that I didn’t feel like throwing myself on the floor on my knees and begging for forgiveness from everyone I hurt. I wish I could go back in time and change a lot of things, mainly what has happened, but I can’t.

Carol[,] Benit[a], Levi, Corky, Mitzi, and all the sons and daughters, I am [truly] deeply very sorry for . . . killing Dee, for taking her out of your lives. I regret that I have no excuse for my action. My heart is sad. My soul cries out every time when I think of what I've done. Like I said, if I could change it all, I would. Believe me, I would.

You all hate me and I understand. I gave you all reason to hate me. I'd ask for forgiveness, but right now all I ask is please don't let the hate and anger you feel for me eat you up so much that it makes you unmanageable, makes you incapable of running your lives.

I'm sure you want me dead. Maybe you'll get your wish. Whatever I get, I deserve. Whatever it is will not be as bad as what I have to carry with me until the day I die. Caine is the name God knows me by now. Of this I am ashamed. Please, Lord, forgive me.

I used to always apologize and never really mean it. Believe me when I say I'm sorry for it's coming from the bottom of my heart.

I'll pay for what I've done in this world and the next. Keep in mind that not only do I want to—not only am I going to pay for killing Dee, but also that I want to pay for what I did. Not because I have to. People always ask me why I just don't kill myself. I reply by saying I already hurt my daughter and my family by doing this crime. I don't want to hurt or disgrace them any more by taking the easy way out of the mess I made of my life. Also, I sentenced my daughter and her cousin[s] to grow up with the horrible memories I put in their minds. If they have to deal with it, so do I. I just hope as they—I just hope as they are growing up they will be able to forget these memories. I hope and pray they do.

Again to all of you I'm sorry. I wish there was more I could do and say to show you all just how sorry and sad I really [am]. There isn't though. . . .

Mom, Dad, Rita[-]Mom, sorry I had to drag you through this. Thank you for all not turning your backs on me. I love you all.

My apologies to the State of Utah and Iron County for doing this terrible horrible crime in this state and county. To the P[a]iute Tribe my apologies for me taking the life of an important person to you all. I pray one day all of you will forgive me. If not, I understand. That's all I have.

During the Defense's closing arguments, Keith Barnes, one of Mr. Honie's attorneys told the court he had come to know Mr. Honie during the trial, and wanted to "share . . . [his]

observations on the remorse that Mr. Honie has shown.” Mr. Barnes told the Court, “I do not agree with my learned colleague Mr. Burns . . . that [Mr. Honie] showed no emotion and he showed no remorse.” Mr. Barnes explained that during a recess during Mr. Honie’s preliminary hearing, he spent time in holding with Mr. Honie “as he cried and as he talked about this offense with much emotion, the sorrow that he felt, the sorrow to the victim and the victim’s family as he acknowledged the atrocious deed he had committed.” Mr. Barnes also told the court he observed Mr. Honie write many letters in which he expressed that “he felt terrible for what he had done” and that “he took responsibility for what he had done, and he always referred to himself as being the lowest form of life that lives. That’s a lot of sorrow[.]” Mr. Barnes then asked the judge to consider this remorse and “save his life[.]”

Mr. Honie continues to be deeply remorseful for taking Ms. Benn’s life and for the impact her loss has had on her family and community.

- B. Mr. Honie suffered multiple traumatic events throughout his childhood that were never sufficiently conveyed to the jurors at trial or to the judge who sentenced him to death
  - 1. Mr. Honie’s family history and traumatic childhood background





Mr. Honie was born on October 29, 1975, in Keams Canyon, Arizona, to Teresita and Franklin Honie, the fifth of their six children. Mr. Honie has four older siblings, Wilfred Honie (born in 1967), Franklin Honie, Jr. (born in 1969), Francine Honie (born in 1971), Martina Honie (born in 1973), and a younger sister, Katherine Honie (born in 1977).

Mr. Honie and his family are Hopi-Tewa and live on the Hopi Reservation in northeastern Arizona. Franklin is from Keams Canyon, Arizona, not far from First Mesa, and is of the Hopi-Tewa Tribe, Spider and Stick Clan. Teresita is from Polacca, Arizona, and is of the Hopi-Tewa Tribe, Parrot and Kachina Clan.



*Photo taken by Adriel Heisey, Villages on First Mesa*

The Hopi are one of the oldest living cultures and have lived for more than 2,000 years in the same area where they reside today. The Hopi live in villages on a high mesa, which originally protected them against other migrating tribes. The Tewa, from the Rio Grande, helped the Hopi drive out Spanish missionaries during the Pueblo Revolt of 1680 and eventually became part of the Hopi community, but retained their own native language and culture. The Hopi are a matrilineal society organized by clanships. Mr. Honie is of the Parrott and Kachina Clan, the clan of his mother. Mr. Honie grew up learning the spiritual teachings of the Hopi and attended traditional ceremonies and Kachina dances.



*Photo taken by Barbara Armstrong*

The Hopi community is impoverished. In 1989, 49.4 % of people living on the Hopi Reservation lived below the poverty level, with a per capita income of \$4,566, as shown in data collected by the U.S. Department of Commerce. In 1989, 46.7% of homes on the Hopi Reservation lacked complete plumbing facilities. According to the 1990 Census, 30.6% of all homes on the Hopi Reservation lacked complete kitchen facilities, 49.3% did not have a telephone, and 24% did not have a vehicle.

Mr. Honie's parents, Franklin and Teresita, met in 1965 in Window Rock, Arizona. Franklin was seventeen years old, and Teresita was attending St. Michael Boarding School. They were married a year later, then moved to Glendale, California, where Franklin worked for a plastics company. Franklin began drinking heavily when he and Teresita lived in California. He often stayed up all night drinking, and disappeared on drinking binges, sometimes for a week. When he drank, he became verbally and sometimes physically abusive to Teresita. After living in California for three years, Franklin and Teresita moved back to the

Hopi Reservation in 1970. They moved into Franklin's family home on First Mesa and remained there for seventeen years.

After returning to First Mesa, Franklin was not working and would drink for days at a time, then stop for a while. Teresita began drinking in 1974 and became dependent on alcohol. She began drinking because everyone else was, and she would sometimes stay up all night drinking and then go to work without sleeping. Teresita states it is "probable that I drank when I was pregnant with [Mr. Honie] because I was drinking regularly at that time." She had irregular menstrual cycles and did not realize she was pregnant until two or three months into her pregnancy. She also had gestational diabetes, and "a long and difficult labor" with Mr. Honie, and notes he was "blue in color and did not cry" when he was delivered.

Mr. Honie was raised in his family home on the mesa until he was in the eighth grade. The home comprised two rooms, a bedroom where the entire family slept, and a front room that included the kitchen. The home on First Mesa did not have running water or toilets.





Mr. Honie's early years on First Mesa reflect the impoverished circumstances of the Hopi people living on the reservation at that time. His early childhood records indicate that he was treated for scabies and impetigo on several occasions between 1977 and 1990. Mr. Honie described the living circumstances on First Mesa as extremely difficult, "We had no water in the house until 1982. After that we were able to have a bathroom and toilet in the house. Prior to the water, we would use an outhouse bathroom and we carried water into the house to cook and bathe. We got electricity about a year before the water." There were no stores, commercial buildings, healthcare, etc., within the reservation, only one gas station and one coffee shop. There was also no trash removal so "families just threw trash over the edge of the mesa. As children, we would dig around and play in the trash." When Mr. Honie was growing up, there was very little for children to do. "We had no recreation center, no after school activities, nothing. We lived at a poverty level below the city slums. We all had a view that 'I will never amount to anything. I will never be able to leave the mesa so what is the use? I will always be looked down on by others and the people in Polacca will be better than me.'"

Mr. Honie's childhood was marked by neglect, violence, and chaos. Teresita and Franklin fought a lot, and she moved out of the home on at least two occasions. The first time she moved out, Mr. Honie was ten years old. Franklin had been drinking when Teresita came home and she made a remark about it while the family was having dinner. Franklin ordered her to leave the house and physically pushed her out. She lived at her mother's home for approximately three months. She remembers once looking out of the window and seeing Mr. Honie looking back at her. Teresita told him it was okay to come inside and talk with her.

Franklin forced Teresita to leave the house on another occasion, but it only lasted a couple of weeks. Franklin remembers Mr. Honie crying at night when his mother wasn't home because he missed her. Teresita and Franklin argued about Franklin's drinking and their marital infidelities. The children were aware of these infidelities. Teresita acknowledged that "[i]n retrospect, I can see that there was a lack of respect in our marriage. The resulting strife took a toll on all of our kids."

Mr. Honie's brother, Wilfred ("Si"), remembers that when he was small his parents fought a lot over his father's drinking. Si states that his father drank all the time. Si and his siblings were often in tears when their parents fought. Si remembers that his parents frequently left the kids home alone. He states his father was usually off somewhere drinking, and then after getting work as a janitor, that kept him away from home. Teresita was also often away from home because of work and drinking after work.

In their absence, Si, as the oldest child, had to take care of his siblings. Si almost burned the house down twice when he tried to start fires to cook or warm the house. Si always made sure that he and his siblings had something to eat. He started making dinner for them when

he was eight years old. They ate potatoes, spaghetti, or macaroni and cheese. While there was always something to eat, they had no parental oversight. Si believed that his parents hated him and often cried himself to sleep. Sometimes he would lay on his back in bed and hoist his father's heavy steel shot puts and drop them on his chest, hoping it would kill him. Si was distraught over the turmoil in his family. He believed that if he was dead, his parents wouldn't fight so much, and maybe his father wouldn't drink. Si and his siblings all blamed themselves for their parents' absence, drinking, and fighting.

Si began drinking when he was in the fifth grade and first smoked marijuana when he was in the sixth grade. When it was time to begin junior high school, Si decided to move to Keams Canyon to live with his grandparents and attend school there. He went to Keams Canyon to get away from his family—he was tired of the responsibility of taking care of his siblings. He later went to Indian boarding school in Riverside, California. While there, he was expelled due to drinking and returned home and graduated from Hopi Junior Senior High School.

Franklin's and Teresita's drinking and fighting were detrimental to Mr. Honie. Mr. Honie felt abandoned and acted out because of it. Mr. Honie began getting into trouble and hanging around the wrong people. He also began drinking and doing drugs. Mr. Honie was also profoundly affected by his belief that Franklin was not his biological father. Franklin was aware that Mr. Honie mistakenly believed that Franklin was not his biological father, but never discussed this with Mr. Honie.

To compensate for his parents' absence and neglect, Mr. Honie sought mother-figures in the community. Mr. Honie grew close to three elderly women in the community who he

called his “grandmas”. All three women died over time. After the second “grandma” died, Mr. Honie told Franklin he did not want to have any more grandmas because every time he got close to someone, they left him. When Mr. Honie was nearly a teenager, his third “grandma” died. Mr. Honie told Franklin he felt they had all abandoned him.



As a child, Mr. Honie was always good, well behaved, and helpful. He would chop wood and haul water for the elderly. Mr. Honie’s cousin Dave Leslie stated Mr. Honie was a positive influence on him. Mr. Honie was always kind, never aggressive, and taught Dave everything he knew. Mr. Honie, who participated in Hopi ceremonies, taught Dave what he knew about the ceremonies.

#### *Serious Vehicle Accident on the Mesa*

When Mr. Honie was twelve years old, Teresita and Franklin were involved in a serious vehicle accident with a large garbage truck on the road up to the mesa. The garbage truck’s brakes failed on the steep hill coming down from the mesa and it struck Teresita and Franklin’s



vehicle. Teresita was pinned under the steering wheel, and she recalls Mr. Honie coming up to the driver's side of the car. Mr. Honie saw the accident from the mesa and ran down. He was the third person at the scene of his parents' accident. "[Mr. Honie] was very upset, banging on the truck and crying and screaming." When she looked at Franklin, he was having a seizure. Franklin dented the dashboard from the impact of the collision and "was bleeding heavily and was having trouble breathing." He "was lapsing in and out of consciousness." As the rescue workers were pulling Franklin from the vehicle, Mr. Honie yelled, "Dad! Wake up, [D]ad!" Teresita tried to talk with Mr. Honie about the accident, but he would not talk about it. He told Teresita, "I don't want to remember, there was a lot of blood." Teresita states that Mr. Honie "seemed to be very traumatized by the accident and his personality changed after this. He became more withdrawn."

Si remembers that in the aftermath of the wreck, Mr. Honie was crying and running in circles. Not long after the accident, Mr. Honie also began drinking more—the accident had a big effect on him. Mr. Honie's older sister, Francine ("Bae"), noted that before the accident Mr. Honie was always so energetic. He was always walking, singing, humming, and making things from the junk he found. He also was always visiting elderly people and helping them. After the accident, Mr. Honie began to act strangely. Sometimes he would sit in a stupor. He became a loner. Mr. Honie's sister Martina states that Mr. Honie was traumatized by the accident and it changed him a lot. Mr. Honie often stayed away from home after this, and when he was home, he stayed in his room.

Franklin went through two brain surgeries after the accident, and his ability to think and speak were affected. Bae recalls that the accident caused the entire family to change. As

the oldest daughter, she was required to take care of her parents when they returned from the hospital. She states that after the accident, everything was different. (*Id.*) It tore the family apart. They all struggled with it.

*Steep Fall from the Mesa Leaving Mr. Honie Unconscious*

When Mr. Honie was a teenager, “he fell off a steep cliff from the mesa.” He “had been drinking and was being chased by a police officer when he fell.” Mr. Honie “landed quite a ways below, at the bottom of the mesa. He was unconscious and had to be airlifted to Flagstaff.” The distance from where Mr. Honie lost his balance and where he landed was 121 feet.



While Mr. Honie survived the fall down the cliff, “his personality seemed to change after this. He seemed to be angry all the time.” Franklin recalls that Mr. Honie suffered headaches after the fall. Mr. Honie also started stealing things from their home after this incident and selling them to buy alcohol and drugs.

2. Mr. Honie has a long history of alcohol and drug abuse and depression beginning when he was a child

It is not uncommon for children of alcoholics to become alcoholics themselves,

especially when the mother drank alcohol during her pregnancy as Teresita believes she did. In Mr. Honie's case, these factors as well as his chaotic and traumatic homelife as a child likely led to his alcohol and drug abuse.

Mr. Honie has an extensive history of alcohol and drug abuse, including using beer, wine, distilled spirits, marijuana, hash oil, marijuana laced with other drugs (*i.e.*, PCP, cocaine, heroin), PCP, LSD, mushrooms, peyote, mescaline, inhalants (*i.e.*, gasoline, solvents, etc.), cocaine (powder and rock), methamphetamine, heroin (smoked on marijuana and intravenous), codeine, Vicodin, Percocet, Darvon, Demerol, Valium, and Ecstasy.

Mr. Honie first consumed alcohol at approximately age five, when he took one of his father's beers from the refrigerator. By the age of ten, he was drinking beer, whiskey, and wine with his peers. He also began abusing marijuana at the same age. After this, he began using inhalants. By the time Mr. Honie was twelve or thirteen years old, he and his friends "were using cocaine, meth, heroin, marijuana, and beer/whiskey/wine." He abused alcohol and other drugs daily until he was arrested for this offense.

Mr. Honie also has a longstanding history of depression. He attempted suicide in 1989, reporting, "We were partying and I was drunk. I took a pistol and put it to my head and I told everyone 'I'll see you on the other side.' My friend hit the gun and when it went off the bullet only grazed my head and I had burn marks on my head." In 1996, while Mr. Honie was incarcerated in Peach Springs, Arizona, he suffered with depression and became suicidal. He was placed at Aspen Hills Psychiatric Facility, evaluated, and received antidepressant medications. During this same time, he was treated at the Indian Recovery Center and underwent a psychiatric evaluation at Valley Mental Health. He was diagnosed as suffering

from depression and prescribed an antidepressant. In 2009, he was diagnosed with depression while he was incarcerated. Mr. Honie describes his symptoms at that time, "It hurt to get up and go through my day. I had no energy and I was sad and discouraged."

### 3. Mr. Honie's parents' own traumatic histories

Mr. Honie's mother, Teresita, was born in 1949, in Polacca, Arizona, to Finney and Rena Leslie. Her siblings are Murray Leslie (deceased), Dave Leslie (deceased), Ebin Leslie (deceased), DellaRita Leslie (deceased), Maudine James (deceased), and Sherwin Leslie. Her parents also had two children who died during their infancy, Vina and Raycita. Teresita grew up in Polacca on the family ranch. As a child, her parents sent her away to live with other families. The first time, she was given to a couple in middle village for a couple of months. She cried and did not understand why she was sent away. Her sister finally came and took her home. A couple of years later, her parents sent her to live with another lady, and she stayed with her for more than two years. Her parents never told her why she was sent away, but she believes that they were not capable of caring for her.

Teresita and her siblings were sent away from their families to attend Indian boarding schools. Teresita initially attended Polacca Day School until the second grade, then transferred to St. Michael Indian Boarding School where her other siblings went to school. Teresita was diagnosed with Bell's palsy while she was at St. Michael and was required to leave at the end of the tenth grade. Her brother Sherwin ran away from St. Michael during his first year, so he was sent even further away from the family home in Hopi to attend Sherman Indian School in Riverside, California.

There is a long history of alcoholism in Teresita's family. All four of her brothers were/are alcoholics, and only one is living today. Her father was a binge drinker. Her parents fought when her father drank, and her father physically abused her mother. On one occasion he hit her mother with a two-by-four board, and on another occasion, he attempted to run over her mother with a car. When Teresita was twelve or thirteen years old, her parents had been fighting and her mother left her father. Her father became so angry that he set the house on fire.

Teresita's oldest sibling Murray was an alcoholic and would disappear for months at a time, even up to a year, on drinking binges. He died due to his drinking and diabetes. Her brother Dave was also an alcoholic and was verbally abusive and violent when he drank. He threw anything he could get his hands on. Teresita's sister, Maudine, recalled that whenever Dave came home from drinking, she, her mother, and her siblings would hide from him until he calmed down. Her brother Ebin also had a drinking problem but did not get violent when he drank. And her brother Sherwin is an alcoholic and is verbally abusive when he drinks.

Mr. Honie's father, Franklin, was born in 1942, in Keams Canyon, Arizona, to Otto and Audrey Honie. Franklin had one brother and three sisters: Wilber, Marilyn, Eleana, and Veralyn. His family was not close, and they all went their separate ways. Franklin grew up with his grandmother and attended elementary school at Keams Canyon Boarding School. Franklin then went on to Phoenix Indian Boarding School and completed the tenth grade. Franklin's family was very active in the Hopi traditions, and he partook in many ceremonies. Franklin started drinking alcohol when he was seventeen years old. He had seen his older siblings and various family members drinking around him and began drinking hard liquor himself.

#### 4. Family history of mental illness

Teresita has a longstanding history of depression, has attempted suicide, and takes a prescription antidepressant. Teresita attempted suicide when Mr. Honie was ten or eleven years old. Teresita recalls she and Franklin were arguing, and Franklin accused her of cheating on him. She went into the bedroom and cried, took a gun from the dresser, put bullets into the gun, and sat on the bed with the gun in her hand. Franklin came into the bedroom and took the gun from her. Mr. Honie remembers this suicide attempt because he picked the gun up and hid it. Teresita also told him she had attempted suicide before.

Mr. Honie's older sister Bae also has a history of depression and has been hospitalized at Aspen Hill Psychiatric Facility and prescribed an antidepressant. Bae suffered from depression as a girl and once went to see a counselor. She believed she was speaking to the counselor in confidence, but the counselor told her mother something she said during the counseling session, so she never went back. Bae recalls she tried to kill herself when she was about nineteen years old. She had been drinking and fighting with her boyfriend and became upset and took a bunch of her father's pills. She had to have her stomach pumped.

Mr. Honie's younger sister, Kathryn ("Cassie") started drinking and using marijuana when she began high school. She also drank a lot when she was away at college in Blanding, Utah. She was depressed and self-medicated with alcohol. She stopped attending classes and her G.P.A. dropped so low she lost her scholarship through the tribe.

Cassie continued to drink and moved to Las Vegas with her aunt, Maudine. During this time she drank less but was still battling depression. Cassie states she attempted suicide in 2006 or 2007. She was depressed and "tried to walk across a busy street." Police arrived and

stopped her, and she was placed on a seventy-two hour hold in a psychiatric hospital. None of her family visited her while she was in the hospital. Cassie continues to suffer from depression and believes that her mother and sisters also suffer from depression, but it is not something they talk about.

- C. The difficulties of the Hopi-Tewa due to governmental policies that resulted in impoverishment, poor healthcare and social services, and the destruction of family units by removing children from their families so they could be assimilated to white culture at Indian boarding schools

One of the worst stereotypical attitudes about Native Americans reared its head during Mr. Honie's sentencing proceedings. Evidence was presented at trial regarding Mr. Honie's alcohol and substance abuse as well as his extreme intoxication on the date of the offense. After comparing the value of Mr. Honie's life to the value of Ms. Benn's life, the prosecution racialized this evidence in closing:

[Mr. Honie] did not murder a drunken Indian in the park in Cedar City. He did not murder a woman who, ah, had spent her live [sic] drinking alcohol and puking and walking the streets and shoplifting at Wall-Mart [sic]. He murdered someone that these people look up to. He murdered a superstar in the P[a]jute community and much like Mr. Ho[o]sava that [sic] worked hard to get his bachelor's degree and two-year substance degree and return to the people, she returned to her people.

The "firmly rooted stereotype in American culture of the drunken Indian ... is, in its own way, equally pernicious." Aviva Orenstein, *Propensity or Stereotype?: A Misguided Evidence Experiment in Indian Country*, 19 Cornell J.L. & Pub. Pol'y 173, 192 (2009).

But beyond the invocation of a racial stereotype, one juror believed the fact that Mr. Honie is Native American directly impacted his death sentence. As Juror Pike noted in her declaration, "I believe [Mr. Honie] had no chance because he is Native American. If he was a white LDS man, like Mark Hacking, he would have been given a lighter sentence. Mr. Honie

got the death penalty because he wasn't Mormon. Mormons don't put Mormons on death row.”

It is important for this Board to have knowledge about Mr. Honie's culture in order to understand who he is. As mentioned above, Mr. Honie is Hopi-Tewa and of the Parrot-Kachina Clan. The history of his people is his history, his family's history, and it is an important part of who he is. Mr. Honie includes the declaration of Matthew Sakiestewa Gilbert, Ph.D., a professor of history at the University of Arizona and chair of American Indian Studies who is an enrolled member of the Hopi Tribe. Dr. Gilbert provides a broader historical, cultural, and sociological context to Mr. Honie's life and experience on the Hopi reservation. He expects Dr. Gilbert will testify during proceedings before this Board so only briefly addresses issues relevant to Dr. Gilbert's declaration.

The Hopi-Tewa have a long and storied history. The Hopi originated near northeastern Arizona. The Tewa migrated North from New Mexico, after fighting alongside the Hopi in the Pueblo Revolt of 1680, and successfully forcing the encroaching Spaniards to leave their land. As Europeans and later the U.S. government sought more land the Hopi and Hopi-Tewa fought off efforts of colonialism until the Indian Reorganization Act of 1934, which created the Hopi Reservation where Mr. Honie grew up, on First Mesa.

What followed were centuries of U.S. efforts to assimilate the Hopi and Hopi-Tewa to the white Anglo-Protestant ways, or put more bluntly, to destroy their identity and culture. Indian schools came in the late 1800s and early 1900s. Children were torn from their families and cultures and sent to off-reservation boarding schools. Many of Mr. Honie's ancestors



attended boarding schools during their formative years, missing important customs, teachings, and parenting, including Mr. Honie's parents.

As noted earlier, Mr. Honie grew up on First Mesa. His family's experience there is discussed elsewhere in this petition. What may be missing is the understanding of how little there was for youth like Mr. Honie on the reservation, which attributed at least in part, to how prevalent alcohol and substance use was among youth like Mr. Honie. Given his own familial history, there was little hope of Mr. Honie avoiding the bane of alcohol substance abuse. As Mr. Honie recalled:

We had no recreation center, no after-school activities, nothing. We lived at a poverty level below the city slums. We all had a view that 'I will never amount to anything. I will never be able to leave the mesa so what is the use?'

Colonialism, white paternalism, boarding schools, and the U.S. government's efforts to destroy Hopi culture had "devastating intergenerational effect[s] on Hopi families[]" like Mr. Honie's.

D. The synergistic effects of Mr. Honie's traumatic background, brain damage, long-standing substance abuse, and extreme intoxication affected his judgment and behavior at the time of the crime

1. The crime

On July 9, 1998, when Mr. Honie was twenty-two years old, he was involved in a domestic dispute with Claudia Benn, the mother of his girlfriend Carol Pikyavit, which resulted in Ms. Benn's tragic murder. *State v. Honie*, 57 P.3d 977, 981 (Utah 2002). Mr. Honie was also charged with aggravated sexual abuse of child, but the jury did not find that this aggravating factor existed. *Honie v. State*, 342 P.3d 182, 189 (Utah 2014).

Nancy Cohn, Ph.D., the defense psychologist, testified at trial that the crime resulted from a heated domestic incident between Ms. Benn and Mr. Honie. Dr. Cohn testified that Ms. Benn did not approve of Mr. Honie's relationship with her daughter and often said demeaning things about Mr. Honie to her daughter. Mr. Honie and Ms. Pikyavit had an on-again-off-again relationship and shared a child together. A prior sexual relationship between Mr. Honie and Ms. Benn complicated the relationship and resulted in ongoing conflicts between Ms. Benn and Mr. Honie.

Dr. Cohn testified that she believed Mr. Honie went to Ms. Benn's home to sleep under the porch and wait for Ms. Pikyavit to get home. When Ms. Benn heard Mr. Honie under the porch, she began yelling at him and demeaning him until Mr. Honie came out from under the porch, broke the glass door, and entered the house. Dr. Cohn testified that the crime resulted from "extreme emotional arousal" in an "intense domestic dispute[.]"

Dr. Cohn also testified that Mr. Honie felt remorse and shame for his actions. This was confirmed by Detective Lynn Davis who interrogated Mr. Honie following the crime. Mr. Honie told Detective Davis that Ms. Benn did not want him seeing Ms. Pikyavit so he had to sneak into the house to see her. Mr. Honie then told Detective Davis, "Claudia wasn't supposed to die." Mr. Honie said that he just wanted to scare her because he was upset that Ms. Benn was interfering with his relationship with Ms. Pikyavit.

Detective Davis testified that Mr. Honie told him he went to Ms. Benn's home to sleep under the porch. Mr. Honie told Detective Davis he had been fighting with Ms. Benn through the sliding glass door and that he became upset because Ms. Benn was verbally cutting him down. Ms. Benn said that he was worthless and a "no good s.o.b." and that she did not think

her daughter should go out with him because she was too good for him. Ms. Benn called Mr. Honie “a black bastard . . . [who] ain’t worth shit[.]” Claudia’s words upset Mr. Honie to the point that he broke the sliding glass door and went into the house, where there was a physical altercation between the two and Claudia was killed.

Detective Davis questioned Mr. Honie about whether he sexually abused D.R. that night; and Mr. Honie told Detective Davis he had not sexually abused any of the three children in the home that night. Mr. Honie stated that the three children “were the gems of my eyes.”

2. Mr. Honie was extremely intoxicated at the time of the crime

Mr. Honie had been drinking and smoking marijuana throughout the day and evening of the crime. Mr. Honie told his counsel that on the day of the incident, he started drinking at 8:00 a.m. He and a friend consumed an eighteen-pack of Budweiser beer between the hours of 8:00 a.m. and 11:00 a.m. Then they purchased another eighteen-pack between 12:00 p.m. and 1:00 p.m. and continued to drink beer while doing other drugs.

Mr. Honie stated that along with the beer, he smoked marijuana four to five times. He and his friend then purchased and consumed two half pints of liquor and smoked more marijuana. Mr. Honie then used methamphetamine three times. Later that day, Mr. Honie and his friend purchased and consumed another eighteen-pack of beer, to which Mr. Honie added Everclear. Mr. Honie then went to a bar and drank a pitcher of beer. While Mr. Honie had no memory of events after this, he was told that he smoked PCP with a drug dealer and then passed out on the lawn of the home where he was staying. Mr. Honie did not remember being advised of his rights by the police and his mind was not clear until two days following the incident.

Rick Sweeney was a taxi driver in Cedar City. At Mr. Honie's preliminary hearing he testified that on July 9, 1998, at approximately 11:20 or 11:30 p.m., he was dispatched to the corner of 300 West and 600 South to pick someone up. Mr. Sweeney arrived at approximately 11:40 p.m. and saw Mr. Honie leaning against a stop sign. Mr. Honie got into his taxi and sat on the front seat. Mr. Sweeney knew Mr. Honie from picking him up a few times before. Mr. Sweeney testified that he could tell Mr. Honie had been drinking and was intoxicated. When questioned by the police about picking up Mr. Honie, Mr. Sweeney told them that Mr. Honie "had too much to drink [and] . . . was really drunk." Mr. Sweeney stated in a declaration he "believe[d] that the police did not want him to say that [Mr.] Honie was as intoxicated as he really was," and that he later minimized Mr. Honie's intoxication in his trial testimony.

Police officers at the scene of the crime also smelled alcohol on Mr. Honie and testified that Mr. Honie had made bizarre statements at the scene. Officer Robinson testified that he could smell alcohol on Mr. Honie from two feet away. Officer Robinson also testified that at one point he was alone with Mr. Honie and Mr. Honie asked him to do him a favor. Officer Robinson asked him what the favor was, and Mr. Honie said, "Just shoot me." Officer Robinson told him he could not do that. Officer Griffiths also smelled alcohol on Mr. Honie's breath.

The police took a blood sample from Mr. Honie and submitted the blood to be tested for alcohol and THC. The testing revealed that Mr. Honie's blood alcohol level was 0.07%, four-and-a-half hours after the incident. The blood test also revealed THC in his blood, both active and metabolized. No testing was requested by the police for methamphetamine or phencyclidine.

William K. Johnston, Ph.D., a forensic chemist and toxicologist, later performed a retrograde extrapolation to determine that Mr. Honie's blood alcohol level at the time of the incident was actually 0.15%, which was higher than the police lab report indicated.

Mr. Honie also was seen by an emergency room doctor several hours after his arrest for the deep cut on his hand. Dr. Stults stated that it was his "opinion that [Mr.] Honie was highly intoxicated. He looked intoxicated, he smelled intoxicated and he acted intoxicated." Dr. Stults also stated that Mr. Honie, "was marginally responsive and answered my questions in monosyllables" and could not tell him "what had occurred within the past few hours[.] While Mr. Honie's recitation of a lengthy list of alcohol and drugs he had taken that night may have not been accurate, Dr. Stults found that Mr. Honie's "extreme intoxication suggested that he had consumed at least some of these substances copiously." Dr. Stults believed that Mr. Honie "was not of sound, composed or lucid mind at the time [he] examined him."

While Mr. Honie was extremely intoxicated at the time of the crime, defense counsel failed to present evidence about his extreme intoxication at the time of the crime, which would have lessened Mr. Honie's culpability and supported a life sentence rather than the death penalty. Jurors interviewed during federal habeas proceedings said that Mr. Honie's intoxication was never brought to their attention, and it would have been an important factor in considering his guilt.

Juror Marsha Lynn Pike stated that the testimony of Dr. Stults would have been something the jurors should have heard, "This is important information that I would have like to have known because Mr. Honie's impairment was never brought to our attention. We did not know how drunk he was at the time of the crime or whether he had impaired judgment."

Juror Jacqueline Wanda Ballard stated, “I don’t remember anything about Mr. Honie being impaired at the time of the crime. It would make a big difference for me if I had known at the time of the trial that he had been under the influence of alcohol or drugs.” Another juror, Stacie Peterson, stated that Dr. Stults’s information “would have been relevant to Mr. Honie’s case and is something that should have been presented to the jurors. I believe that this information could have changed the outcome of Mr. Honie’s trial.”

James Barton Reese, the alternate juror, stated in a declaration, “It would have been helpful to hear testimony from Dr. Michael Stults, the emergency room doctor who treated Mr. Honie after his arrest. His opinion that Mr. Honie was extremely intoxicated when he treated him and was not of sound or lucid mind would have been relevant to the case. I am not surprised we never heard from him because everyone was just going through the motions.”

3. The combined effects of Mr. Honie’s underlying traumatic background and brain damage, along with his long-standing substance abuse and extreme intoxication at the time of the crime, affected his judgment and behavior at the time of the crime

This crime would not have happened but for Mr. Honie’s extreme intoxication from alcohol and drugs, as well as his traumatic childhood, which impacted his brain development and ability to control his behavior. During Mr. Honie’s state postconviction proceedings, the judge found that “that trial counsel ‘did not present the most important mitigating evidence—the correlation between [Mr. Honie’s] unconventional social behavior throughout his life and credible scientific explanations for these behavior patterns.’” Unfortunately, due to limited funding during post-conviction proceedings, this information was not developed until Mr. Honie’s federal habeas proceedings. The following information from experts retained during

Mr. Honie's federal habeas proceedings explain the correlation between Mr. Honie's behavior and the crime.

*Robert L. Smith, Ph.D.*

Dr. Smith, a clinical psychologist and addiction specialist, diagnosed Mr. Honie with Persistent Depressive Disorder, Borderline Personality Disorder, and drug and alcohol dependency. Dr. Smith found these issues originated from Mr. Honie's repeated experiences of childhood trauma as discussed above.

Dr. Smith notes that research demonstrates that children who grow up in a dysfunctional family environment are at an increased risk for the development of depression and substance abuse. (Sources: National Institute of Drug Abuse - NIDA, National Institute of Alcoholism and Alcohol Abuse - NIAAA, and Substance Abuse and Mental Health Services Administration - SAMHSA). These children often develop psychiatric symptoms similar to Mr. Honie, such as Persistent Depressive Disorder and Borderline Personality Disorder, and they learn to self-medicate their symptoms with alcohol and other drugs, which was the case for Mr. Honie.

Given that Mr. Honie endured abuse and neglect throughout his childhood, he developed a distorted self-identity and very unhealthy interpersonal relationships. His impaired personality development resulted in his struggles with his girlfriends, especially with Carol Pikyavit. He did not have adequate coping skills or strategies and was overwhelmed by the frustration and sadness at having failed relationships. As a result, Mr. Honie developed a severe form of depression called Persistent Depressive Disorder. This depression began in childhood and continued throughout his adult years until his arrest for murder. He experienced

symptoms of decreased energy, low self-esteem, feelings of hopelessness and despair. At points, his symptoms included overwhelming sadness and suicidal ideation. At various times, his depression progressed and met the criteria for Major Depression. He was never adequately diagnosed or treated. Thus, he attempted to treat himself through his use of alcohol and other drugs. Unfortunately, his substance use only exacerbated his depression and sense of isolation and suspicion of others.

With regard to Mr. Honie's Borderline Personality Disorder, his symptoms began during adolescence and progressed into adulthood. Mr. Honie recounted that he had no real friends as he was growing up, only acquaintances during middle school and high school. He noted that this pattern continued into adulthood with the exception of his relationships with his girlfriends. Mr. Honie's traumatic childhood background left him emotionally scarred. These traumatic events prevented him from achieving normal emotional and personality development. Instead, Mr. Honie developed a distorted self-identity and very unhealthy interpersonal relationships. He either did not trust or he became overly dependent and enmeshed with his partners.

The research regarding personality disorders has shown that they result from dysfunctional relationships with the individual's family of origin, primarily their parents. As a result of this dysfunction, the individual cannot form healthy relationships. Ultimately, the child perceives himself as unimportant and believes that he has some personality defect that makes him unvalued and unwanted. Other factors that contribute to negative personality traits include: delinquent peers, poverty, abuse, and neglect. Mr. Honie experienced virtually all of these stressors: denial of paternity by his biological father; neglect by both of his parents;



witnessing domestic violence; living in poverty; introduction to alcohol and drugs at a young age; running away and living on the streets; and abusing substances with his peers when he was a young teenager. Each of these causative factors was present for Mr. Honie during his childhood and adolescence, resulting in his development of Borderline Personality Disorder.

The final psychological disorder affecting Mr. Honie was his Substance Use Disorder. He abused marijuana, alcohol, and stimulants (i.e., cocaine and methamphetamine). These substances impaired the functioning of Mr. Honie's central nervous system, resulting in mood swings, poor impulse control, difficulty with attention and concentration, disrupted processing of information and sensory input, poor judgment, difficulty with decision-making, aggressive behavior, and distorted perception and memory. Mr. Honie had an extensive history of abusing these substances in combination. As an adolescent, his use progressed and involved alcohol and numerous other drugs. Eventually, he came to prefer alcohol and marijuana as his "escape" and stimulants to help him remain vigilant and to remain awake. Mr. Honie never had a chance to avoid his debilitating addiction to alcohol and marijuana, having been exposed to both in significant amounts before the age of 10.

Mr. Honie's addiction to all of these substances resulted directly from both genetic and environmental factors. The literature indicates that children of parents who abuse alcohol and other drugs are five to seven times more likely to develop an addiction. (Sources: NIDA, NIAAA, and SAMHSA). With regard to his parents, both his mother and father were alcoholics. In addition, his maternal and paternal aunts and uncles have significant histories of substance abuse. Consequently, Mr. Honie was genetically predisposed to develop his own addiction.

Further, the research regarding alcohol and drug dependence indicates that children who grow up in a dysfunctional family environment are at an increased risk for substance abuse. These individuals often develop psychiatric symptoms and/or disorders that they learn to “self-medicate” with alcohol and other drugs. Mr. Honie suffered a chaotic childhood, involving abuse and neglect. The result for Mr. Honie was sadness, frustration, anger, and dysfunctional relationships. In turn, Mr. Honie relied upon alcohol, marijuana, cocaine, and methamphetamine in an attempt to cope with his emotional pain. Mr. Honie had no control over his genetic make-up; the behavior of his parents and family members; or the environment in which he grew up. These factors were “given” to him. He had no choice or options regarding these circumstances.

Dr. Smith explains how Mr. Honie’s psychological disorders and extreme intoxication on the day of the crime impacted his actions at the time of the crime. Given the report of the drugs and alcohol Mr. Honie consumed on the day of the crime, he “was acutely intoxicated by the effects of alcohol and the drugs that he consumed during the time leading up to the instant offense.” Dr. Smith states:

All of these substances impaired the functioning of Mr. Honie’s central nervous system at the time of the instant offense and the PCP, methamphetamine and marijuana were active during the time of his arrest and interview by the police. Each of these substances caused Mr. Honie to experience mood swings, poor impulse control, difficulty with attention and concentration, disrupted processing of information and sensory input, poor judgment, difficulty with decision-making, aggressive behavior and distorted perception and memory. In combination, their effects were magnified and the level of impairment was increased.

Dr. Smith then explains that the interaction between Mr. Honie’s substance abuse and his untreated psychiatric disorders interacted and had a “synergistic effect.” Each disorder

exacerbated the negative effects of the other. Mr. Honie's "depression; abuse of alcohol, marijuana, cocaine and methamphetamine; and his Borderline Personality Disorder interacted, causing him to be desperate, impulsive, emotionally labile and erratic at the time of the instant offense and continued to impair his cognition and behavior when he was interviewed by the police."

*Gregory Meyer, Ph.D.*

Mr. Honie was also evaluated by a neuropsychologist, Gregory Meyer, Ph.D., during his federal habeas proceedings. Dr. Meyer found that "Mr. Honie has an extensive and well-documented substance abuse history, beginning with substantial prenatal alcohol exposure and including extensive personal use of alcohol and various street drugs beginning in childhood and continuing to the point of his current incarceration." He also found that Mr. Honie "has a history that is significant for multiple head injuries, including significant loss of consciousness from injuries and intoxication."

With regard to Mr. Honie's history of head injuries, Dr. Meyer notes that Mr. Honie reported that as a child "he engaged in rock fights with other children and . . . that one pastime . . . was to put each other in aluminum tubes and then roll the tubes down the mesa." Mr. Honie also played "ram power" with his oldest brother, during "which they would run and butt the fronts of their heads against each other." Mr. Honie reported "seeing stars several times from these activities[.]"

Mr. Honie also described to Dr. Meyer the steep fall he had from the mesa. Mr. Honie said that he was at Walpi Village when he fell and hit his head on a rock, which knocked him out and then caused him to tumble down the side of the mesa, landing several feet below. Mr.

Honie was airlifted to Flagstaff by helicopter. He briefly regained consciousness in the helicopter but was unconscious for forty-five to sixty minutes before coming to in the hospital. Dr. Meyer stated that given the description of this fall, it is possible Mr. Honie hit the area of his head associated with the right parietal and occipital regions of his brain.

Dr. Meyer opines that these and other head injuries, along with his probable prenatal exposure to alcohol, extensive history of alcohol and substance abuse, and “the acute toxic effects of substantial alcohol and marijuana, as was found in his system after the crime[.]” had an effect on his behavior at the time of the crime. Dr. Meyer concludes that “some of the grisliness of the crime is tied to the fact that Mr. Honie had a compromised brain that [resulted in] executive function deficits [that] was further complicated that night by the acute effects of substances that also impair executive functions.”

Dr. Meyer found that even after sixteen years of abstinence, Mr. Honie “has lingering and substantial deficits in the executive function of set-shifting and mental flexibility.” Further, “[t]hese deficits may be due to prenatal alcohol exposure, the closed head injuries he experienced, his extensive substance abuse across the ten-year period from about age 12 or 13 to the start of his current incarceration at age 22, or the combination of these three factors, as all of these factors contribute to the kind of deficits in neuropsychological processing that Mr. Honie has.”

*Victoria Reynolds, Ph.D.*

Mr. Honie also includes a report by Dr. Victoria Reynolds, a clinical psychologist who specializes in the assessment and treatment of the impact of traumatic life experiences. Mr.

Honie expects that Dr. Reynolds will testify during proceedings before this Board, so he only briefly addresses Dr. Reynolds' findings herein.

Throughout his childhood and young adulthood, Mr. Honie was exposed to several traumatic events that resulted in what is known as complex trauma. He also inherited generations of trauma from his parents, extended family, and his Hopi-Tewa community, which is referred to as inter-generational trauma. In his own home, he experienced poverty, neglect, and exposure to drug and alcohol use and abuse, and domestic violence. This history had a significant impact on Mr. Honie's development, including the development of his brain, which resulted in his own struggles with addiction, and the present offense.

Dr. Reynolds will explain how Mr. Honie's multiple adverse childhood experiences ("ACEs") had lasting effects on him, including at the time of the crime. Dr. Reynolds will also explain that studies of the adult brains of trauma victims show that almost every structure of the brain is affected by trauma. This is because childhood trauma exerts a prepotent influence on brain development, the resulting dysfunctions and dysregulations in arousal, memory, cognition, behavior, and mood may be characterized as a brain disorder with life-long implications.

Dr. Reynolds will also explain the effects of intergenerational trauma. While Mr. Honie's parents love their children and tried to provide them with a better life than they themselves had, they came to parenting with their own personal and cultural trauma histories. The poverty of Mr. Honie's family that was described at trial was insufficient to offer a picture of the atrocities committed for over a century against the Hopi community on the mesa and on generations of Mr. Honie's relatives. These cultural traumas included mass deaths due to

disease, war, displacement, and the forcible separation of Native children from their families, communities, and culture, and the widespread abuse of Native children within these institutions.

Mr. Honie's parents, themselves, and their siblings were taken from their families and sent to Indian schools so that they would assimilate to white culture and leave their Hopi-Tewa culture behind. Because they were taken from their parents, they never learned how to parent by being cared for by their own parents. They also grew up in poverty and had few opportunities for employment on the reservation. They experienced alcohol abuse within their families and witnessed family violence. These traumas were never addressed or treated for Mr. Honie's parents. And protective factors that could have diminished the impact of these traumas were not found in Mr. Honie's parents' generation. As a result, traumatic experiences such as alcoholism, witnessing domestic violence, and child neglect were replicated and passed down into Mr. Honie's generation.

These multigenerational traumas of his family and his people were inherited by Mr. Honie through "genetic, biological, behavioral, psychiatric, and emotional legacy." And, it was not just Mr. Honie who was affected; his siblings have their own struggles, including depression, suicide, legal difficulties, and problems maintaining intimate relationships.

Despite Mr. Honie's parents' best efforts, there is compelling evidence that from birth to age thirteen, the Honie family lived in poverty and in conditions that, by any standard, did not meet the basic needs of the adults and children in the household. Eight family members lived in a two-room home without running water, toilets, or electricity. Inside the home, his parents often drank alcohol and fought with each other. In a two-room home there is no

privacy; the children could not escape their parents' drinking, arguing, and fighting. Mr. Honie's mother left the house and the children, sometimes for as long as weeks after these fights. Exposure to his parents' domestic violence impacted the development of Mr. Honie's neurobiological arousal system, and witnessing violence modeled what "normal" intimate relationships between men and women should look like.

The parents also left the care of the younger children to their older children. Leaving infants and toddlers for prolonged periods of time in states where they cannot meet or regulate their own needs (such as hunger and the need for food; loneliness or distress and the need for human soothing; and physical contact, physical discomfort, and the need to be dry, warm, and cleaned, etc.) is a form of traumatic neglect, which is evidenced in anecdotal history and Mr. Honie's childhood medical records. By the time Mr. Honie was eight, his older siblings were themselves abusing alcohol.

Mr. Honie's parents were alcoholics, his older siblings were abusing alcohol and marijuana, which left no one to oversee Mr. Honie's access to alcohol. He had his first drink at age 5. He was drinking alcohol and using drugs regularly by age 10. His abuse of substances become more severe in middle and late adolescence and was worsened by his parents' serious car accident.

The brains of children exposed to trauma and neglect to the degree that Mr. Honie was showed differences in their brain development and functioning. Chronic trauma predicts substance abuse. This is true because trauma-exposed children forced to cope with that trauma on their own, including its intolerable physical and emotional impacts, find ways to numb, avoid, and otherwise manage the biologic and emotional dysregulations that occur. And, as he

aged, Mr. Honie drank to “to get drunk; to deaden the nerves and the bullshit[;]” he drank and drugged to avoid and numb the impact of these traumas on his mind and emotions. While there were attempts to address the substance abuse, Mr. Honie’s substance abuse persisted until he was twenty-two years old, in part because Mr. Honie’s underlying trauma-related anger, depression, despair, and the hopelessness that drove his addictions was never addressed. Dr. Reynolds discusses in detail the impact on brain development of exposure to chronic trauma as well as substance use and abuse. Simply put, the damage done to the developing brain primes the traumatized individual to perceive ever-present life-threatening danger, regardless of how minimal the threat may be or even the absence of a threat.

His early childhood exposure to domestic violence defined Mr. Honie’s interpersonal behavior in his adult intimate relationships. Indeed, the majority of Mr. Honie’s violent behavior, including this crime, occurred within the context of sexual and intimate emotional ties to women. As Dr. Reynolds states, “[i]n conjunction with the synergistic effects of extreme intoxication, the cascade of Mr. Honie’s rage into the uncontrolled violence on the night of July 10, 1998, must be understood as reflecting the longstanding impact of trauma on his brain and, therefore, on his subsequent behaviors.”

- E. Mr. Honie has demonstrated that he can live a productive and positive life in prison if his death sentence is commuted to life without parole

For nearly twenty-five years, Mr. Honie has demonstrated his ability to adjust to the abnormal environment that is prison. Surrounded by individuals, many of whom lack the ability to conform and obey community expectations when resolving conflicts and disputes, he has been found guilty of only eight disciplinary infractions.



Review of his prison record does not reflect a pattern of predatory behavior. Nor is there evidence of his continual, methodical use of violence. Efforts to gain control over staff or the operation of the facility are absent. In short, Mr. Honie has demonstrated that he can be safely housed at the Utah State Correctional Facility.

Mr. Honie came to prison uneducated. His ability to focus and learn was hindered by undiagnosed attention deficit hyperactivity disorder (ADHD). Mr. Honie left school in the ninth grade, though his records reflect social promotions to the tenth and eleventh grades. Despite this, Mr. Honie believes that before prison the last time he truly learned was in elementary school. While in prison Mr. Honie obtained his high school diploma. He did this for his daughter, Tressa. He did not want her to use his lack of an education as an excuse to derail her own education. He also learned a trade while incarcerated—plumbing.

Mr. Honie's records reveal numerous positive reviews of his attitude and work. Mr. Honie also demonstrates exceptional adjustment. Mr. Honie served as an institutional plumber, a position of significant trust. Mr. Honie worked as a plumber from July 21, 2020, until December 20, 2022. According to his supervisor, Travis Sagers, Mr. Honie was the only death row prisoner hired to work as a plumber. Consistent with many other institutional assessments, Mr. Sagers found Mr. Honie to be a good worker who took direction well. His attitude was positive, and he was a respectful and pleasant team member. Mr. Honie also helped to train other prison workers.

There was an uncommon amount of trust placed in Mr. Honie when he worked as a plumber. Mr. Honie was responsible for a bucket of tools, which included screwdrivers, a hammer, and a razor knife, along with pliers. His supervisor, Travis Sagers, always felt safe

around Tate. “Tate was good about watching over his tools and watching our backs.” One review from 2021 notes that Mr. Honie “was exemplary in attempting to fix a problem with the toilet [redacted] fix it on the first try but his efforts are noted.”

Mr. Honie worked hard and for long hours, even beyond his schedule. If Mr. Honie was working on a job, Mr. Sagers knew he would not need to return to fix the problem; Mr. Honie would do it. His work ethic was exemplary:

He wanted to fix things and help people, such as when he helped fix a shower wand for a young inmate in a wheelchair. Tate took pride in his work, but it was not arrogant pride. He wanted to achieve. I believe he also thought people wanted to watch him fall, so he went the extra mile in his job so that did not happen.

And he appreciated the opportunity and trust Mr. Sagers gave him. For two years, the prison administrators and its staff relied on Mr. Honie’s skill and work ethic, trusting him to get the job done without problems.

Mr. Sagers noted that other inmates called Mr. Honie names and tried to coerce him. Mr. Honie did not react. This is why the fight that occurred on July 29, 2023, is so surprising. Mr. Honie does not have a record filled with violent encounters. Indeed, he carried around dangerous tools during the time he worked as a plumber without incident. His behavior assessments regularly scored him as low risk and/or minimum.

Mr. Honie’s C-Notes and disciplinary infractions include behaviors like refusing to rack, interfering with the count, disobeying an order, disrespectful behavior, and possession of contraband. This Board is familiar with these behaviors, which often represent a person’s response to the reality of confinement. The prisoner is told what he can do, when to do it, where he can place items, what he can have and not have, what he can eat, what he can wear

and many other rules he must follow daily, weekly, yearly and into decades. As the prisoner learns the correctional regiment is steadfast, he generally becomes more compliant over the years.

In this context, and in the entirety of Mr. Honie's prison record, the solitary B02 charge for striking another inmate once, resulting in injury, stands as an outlier of both the behavior Mr. Honie has, and will continue, to demonstrate. While the records received by Mr. Honie's counsel are redacted, the description of a video of the incident describes Mr. Honie striking another inmate once, after the inmate exchanged words with Mr. Honie and then stood and approached Mr. Honie. The inmate fell from the single blow and when he rose back up, the inmate again approached Mr. Honie to exchange more words. The video reflects the inmate walking towards the bathroom and Mr. Honie, while initially following, returns to his bunk.

Mr. Honie's description of the events indicates that other inmates had complained to this inmate about using too much bleach while he was cleaning, to which he responded disrespectfully. Mr. Honie then asked the inmate to be quiet because other inmates were having phone calls. Mr. Honie describes that the inmate got in his face and that Mr. Honie reacted to that. When he got up, the other inmate said to Mr. Honie that they were not done, and that Mr. Honie should follow him to the bathroom to finish the fight. As the video reflects, Mr. Honie thought better of this and returned to his bunk.

Should this Board grant Mr. Honie clemency, Mr. Honie's disciplinary record will look much like it has over the last two decades-plus—he will live peaceably, not posing a threat to the men with whom he is incarcerated or the people charged with maintaining institutional safety.

F. Mr. Honie has the support of his family and has been a positive influence on his daughter Tressa and granddaughter Alana

Mr. Honie's family has been an integral part of the Hopi-Tewa community all of their lives. Teresita worked as a teacher's aide for children in special education at Hopi High School. While she recently retired, she has come back at times when her help was needed. She has also participated in the many community events, including, most recently, the conference on domestic violence on the Hopi reservation. She also helps with all the cultural and spiritual events by cooking and providing food and other assistance that benefits the community. Prior to the accident on the mesa, Franklin worked as a janitor at Polacca Day School. Franklin has also actively participated in Hopi spiritual and cultural activities, keeping Hopi culture alive.

Mr. Honie remains very close to his family who are in regular contact with him and who have visited him throughout the years he has been on death row, despite the very long drive from the Hopi Reservation to the Salt Lake City area and despite their many health issues that have made these trips quite difficult for them physically and financially. His family loves him very much and cooperated with Mr. Honie's legal teams to try to spare him from the death penalty. They also have spent years worrying about Mr. Honie and his circumstances in the prison. His family has suffered much throughout their own lives and losing Mr. Honie to an execution would be devastating to them.

Mr. Honie also remains close to Claudia Benn's daughter, Carol (his former girlfriend), who speaks regularly to Mr. Honie and cares for him. While Mr. Honie killed her mother, she testified at trial that she would be satisfied with a sentence of life without parole. She wants Mr. Honie to be part of their lives and part of the lives of Tressa and Alana, his daughter and granddaughter. He speaks with Tressa regularly and has a positive influence on her by advising

her and encouraging her not to make the mistakes he made. He also now has a granddaughter with whom he has a close and positive relationship. Mr. Honie's family and his daughter Tressa do not want him to be executed and will be devastated if Mr. Honie is killed.

While Mr. Honie committed a horrible crime—taking the life of another—he has paid for his crime by serving nearly twenty-five years on death row and will continue to pay for his crime by spending the rest of his life in prison if the Board commutes his sentence to life without parole. Executing Mr. Honie will only create more pain for his family and his daughter Tressa. Mr. Honie does not have to be executed and is worthy of mercy. A life sentence is appropriate.

- G. The inequities in Mr. Honie's case warrant commuting his death sentence to life without parole

There are countless errors regarding Mr. Honie's trial counsel that would demonstrate the inequities and unfairness of his capital trial; however, funding restrictions during state post-conviction proceedings prevented him from developing these claims in state court, and the extremely restrictive nature of federal habeas review of state capital decisions, which relies solely on evidence presented during state court proceedings, resulted in the denial of relief on these claims. Mr. Honie acknowledges that this Board's purpose is not to consider legal issues, *see* Utah Code Ann. § 77-27-5.5(6); Rule 671-312B-3(h), but believes the Board may consider certain facts that may affect the lens through which it considers whether Mr. Honie is deserving of mercy.

Among the inequities that occurred at Mr. Honie's trial was that Mr. Honie wanted the jury to sit for his sentencing, rather than a judge. While Mr. Honie initially waived a sentencing jury, he later sought to withdraw his waiver and to be sentenced by a jury of his peers.

However, his attorney misadvised him it was too late to do so. Resultantly, Mr. Honie was sentenced to death by a solitary, elected judge. Had a jury of his peers considered the penalty, Mr. Honie might not be before this Board today.

Juror interviews revealed that two of the jurors who decided Mr. Honie's guilt would not have imposed a death sentence in Mr. Honie's case. As this Board is aware, a solitary juror can prevent the imposition of the death sentence in a capital case. Juror Pike stated, "It bothered me that we weren't going to have a say in the sentencing phase. I believe that if we had been able to decide Mr. Honie's sentence, we would not have sentenced him to death. I would not have sentenced him to death." Juror Ballard stated, "I do not want Mr. Honie to be executed even though we found him guilty." Alternate Juror Reese stated, "I am surprised Mr. Honie was sentenced to death. I find this disturbing knowing what I know now. Mr. Honie deserved more than he got from his defense team. I would not have a problem if Mr. Honie's sentence was commuted to life."

The sentencing judge also lacked compelling and powerful mitigation evidence when it considered what sentence to impose, much of which this Board has and can consider as it decides whether to grant mercy. Following trial, the state post-conviction court acknowledged this and found several important issues that warranted further investigation, including Mr. Honie's polysubstance abuse and intoxication at the time of the crime, Mr. Honie's mental health, and Mr. Honie's background and experiences, family history, social situation, and mental state. Because of these noted deficiencies, trial counsel's mitigation case at the penalty phase was limited to the cursory testimony of five family members, one of whom asked to

speak on the day of the trial and had never met with a member of the defense team before this time, and the testimony of the defense psychologist, a school counselor, and Ms. Pikyavit.

### III. Case information

Pursuant to Utah Administrative Code R671-312B-3 (c)–(f), Mr. Honie provides certified copies of his Judgment, Sentence & Commitment and Warrant of Execution for which he seeks commutation; and information about his appeals and other avenues of relief sought in challenging his convictions and sentence, along with all final orders, rulings, determinations, and appellate decisions.

Mr. Honie was convicted of aggravated murder by a jury and was sentenced to death by a judge in the Fifth Judicial District Court in Iron County, Utah. The Utah Supreme Court affirmed his conviction and sentence on January 11, 2002. Mr. Honie, thereafter, sought state post-conviction relief from his judgment and sentence. The State moved for summary judgment, which was granted in part and denied in part. The State later filed a second motion for summary judgment, which was granted.

Mr. Honie filed a Motion for Relief from and to Set Aside Judgment on September 20, 2011, which was denied on February 9, 2012. He then filed a consolidated appeal challenging the state post-conviction court's grant of summary judgment and denial of Rule 60(b) relief on October 1, 2012. The Utah Supreme Court affirmed the post-conviction court's summary judgment as to all claims. The Utah Supreme Court then summarily denied Honie's Petition for Rehearing.

Mr. Honie filed a habeas petition in the United States District Court for the District of Utah pursuant to 28 U.S.C. § 2254, which he later amended. The district court denied relief and

did not grant any certificates of appealability. Mr. Honie filed a motion to alter or amend the judgment pursuant to Rule 59(e), which was denied by the district court. Mr. Honie timely appealed. The United States Court of Appeals for the Tenth Circuit affirmed the denial of the petition for writ of habeas corpus. Mr. Honie sought a petition for writ of certiorari in the United States Supreme Court, which was denied.

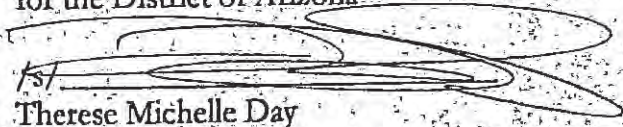
#### IV. Prayer for relief

For the reasons stated above, Mr. Honie requests the Utah Board of Pardons and Parole to commute his sentence of death to life without parole.




Respectfully submitted this 14th day of June, 2024.

Jon M. Sands  
Federal Public Defender  
Therese Michelle Day  
Eric Zuckerman  
Kelly L. Culshaw  
Office of the Federal Public Defender  
for the District of Arizona

  
/s/ Therese Michelle Day  
Assistant Federal Public Defender  
Counsel for Petitioner

/s/   
Taberon Dave Honie, Petitioner

I, Kelly L. Culshaw, am a licensed member of the bars of California (Cal. Bar No. 304778) and Ohio (Ohio Bar No. 0066394) and have been admitted pro hac vice in Utah to represent Mr. Honie in his warrant litigation before the Fifth Judicial District Court, Iron County, and before the Utah Board of Pardons and Parole. I personally witnessed Taberon Dave Honie sign this commutation petition.

/s/   
Kelly L. Culshaw  
Assistant Federal Public Defender  
Counsel for Petitioner

## Exhibits to Clemency Petition

Exhibit Letter	Description of Record
	Order Granting Pro Hac Vice–Day 05/31/2024
	Order Granting Pro Hac Vice–Culshaw 05/31/2024
Ex. A	Tr. 05/17/1999; Tr. ROA 607
Ex. B	Tr. 05/20/1999; Tr. ROA 606
Ex. C	Tr. 05/19/1999; Tr. ROA 605
Ex. D	Declaration of Franklin Honie, Sr., 04/14/2015
Ex. E	Declaration of Teresita Honie, 04/13/2015
Ex. F	Hopi Health Care - Childhood Health Records re: Tate
Ex. G	Hopi Health Care Records
Ex. H	Affidavit of Robert L. Smith, Ph.D., 04/24/2015
Ex. I	Declaration of Wilfred Honie, 04/14/2015
Ex. J	Declaration of David Leslie, 04/22/2015
Ex. K	Declaration of Francine Honie, 04/16/2015
Ex. L	Declaration of Martina Honie, 04/15/2015
Ex. M	Declaration of Jeremy Voas, 04/08/2015
Ex. N	Declaration of Maudine James, 04/14/2015
Ex. O	Declaration of Kathryn Honie, 04/10/2015
Ex. P	Declaration of Marsha Lynn Pike, 05/16/2016
Ex. Q	Declaration of Dr. Matthew Sakiestewa Gilbert, 06/11/2024
Ex. R	Affidavit of Taberon Dave Honie, 03/11/2005; PCR ROA 808–12
Ex. S	Tr. Preliminary Hearing, 09/17/1998; Tr. ROA 597
Ex. T	Declaration of Rick Sweeney, 05/19/2014
Ex. U	Toxicology Report; PCR ROA 814-815
Ex. V	Preliminary Toxicology Report; PCR ROA 1362
Ex. W	Report of William K. Johnston, Ph.D., 07/20/2011; PCR ROA 3471–73
Ex. X	Declaration of Michael Stults, M.D, 08/19/2013
Ex. Y	Tr. Hearing on Motions, 01/21/1999; Tr. ROA 598)
Ex. Z	Declaration of Jacqueline Wanda Ballard, 05/17/2016
Ex. AA	Declaration of Stacie Peterson, 05/18/2016
Ex. BB	Declaration of James Barton Reese, 05/16/2016
Ex. CC	Report of Gregory J. Meyer Ph.D., 05/05/2015
Ex. DD	Report of Dr. Victoria Reynolds, 06/04/2024
Ex. EE	Declaration of Travis Sagars, 02/28/2024
<b>Certified Copies of Court Records</b>	
Ex. FF	Special Verdict Questions & Verdict (Certified), 05/18/1999
Ex. GG	Judgment, Sentence & Commitment (Certified), 05/24/1999
Ex. HH	Statement of Convictions & Judgment of Death (Certified), 05/24/1999
Ex. II	Warrant of Execution (Certified), 06/10/2024
<b>Applicable Final Orders, Rulings, Determinations, and Appellate Decisions</b>	
Ex. JJ	Findings of Fact and Conclusions of Law, 05/24/1999; Tr. ROA 552-543

## Exhibits to Clemency Petition

Ex. KK	<i>State v. Honie</i> , 2002 UT 4
Ex. LL	Ruling on Mot to Dismiss Amended Petition & Partial Summary Judgment, 12/01/2005; PCR ROA 965-1070
Ex. MM	Memorandum Decision re State's 2nd Motion for Summary Judgment, 06/22/2011; PCR ROA 3315-3348
Ex. NN	Order denying 60b Motion for Relief and to Set Aside Judgment, 02/09/2012
Ex. OO	<i>Honie v. State</i> , 2014 UT 19
Ex. PP	<i>Honie v. State</i> , 2014 Utah LEXIS 233 (Oct. 24, 2014) (unpublished)
Ex. QQ	Memorandum Decision and Order Denying Amended Petition and COA, 06/12/2019; USDC Dkt. 135
Ex. RR	Memorandum Decision and Order Denying Motion to Alter Judgment, 10/09/2019; USDC Dkt. 142
Ex. SS	<i>Honie v. Powell</i> , 58 F.4th 1173 (10th Cir. 2023).
Ex. TT	<i>Honie v. Powell</i> , 144 S. Ct. 504 (2023).