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January 14, 2020

The Honorable William Byron Lee
Governor of the State of Tennessee
c/o Lang Wiseman, Esquire
Deputy to the Governor and Chief Counsel
600 Charlotte Avenue
Nashville, Tennessee 37243

Re: Request for Commutation of Death Sentence of Nicholas (“Nick”) Todd Sutton

Dear Governor Lee:

Nick Sutton has gone from a life-taker to a life-saver. Five Tennesseans, including three prison staff members, owe their lives to him. The support of his victims’ families, correction staff, jurors, and those whose lives he has saved attest that a life sentence meets the imperatives of justice and mercy. We ask you to exercise the power of clemency in the vein for which it was designed—to commute the death sentence of a man who has undergone personal transformation, a man who is worth far more to our society and prison system alive than dead. In the words of a former Correction Lieutenant whose life Nick saved: “[I]t is my opinion that Nick Sutton, more than anyone else on Tennessee’s Death Row, deserves to live.” (A2, at 3).¹

I. Nick Saved the Lives of Three Correction Staff Members and Others While Incarcerated.

Nick has protected and saved the lives of prison staff members and other inmates while incarcerated. Five people owe their lives to Nick. He is an asset to the Tennessee Department of

¹ Supporting documentation is provided in the attached Appendix. Citations preceded by “A” refers to the Appendix number and its corresponding page.

Correction (“TDOC”) who makes the prison a safer and more secure place for all. As a result, no fewer than seven current and former Tennessee correctional professionals support this application for clemency and ask that you spare Nick’s life. (A2 to A8).

Nick risked his own safety on three separate occasions to protect correction staff from violence by other inmates. It is the opinion of James E. Aiken, a former correction commissioner, prison warden, and a prison adaptation expert who met with Nick and reviewed his incarceration history that, “Mr. Sutton saved the lives of these three [prison staff members].” (A1, at 7). Nick has also saved the lives of two other inmates. These actions demonstrate Nick’s true belief in the value of human life.

Former Correction Lieutenant Tony Eden states that Nick saved his life during a prison riot that occurred at Tennessee State Prison in 1985:

A group of five inmates, armed with knives and other weapons, surrounded me and attempted to take me hostage. Nick and another inmate confronted them, physically removed me from the situation and escorted me to the safety of the trap gate in another building. I firmly believe that the inmates who tried to take me hostage intended to seriously harm, if not kill me. Nick risked his safety and well-being in order to save me from possible death. I owe my life to Nick Sutton. (A2, at 3).

Mr. Eden adds: “If Nick Sutton was released tomorrow, I would welcome him into my home and invite him to be my neighbor. . . . It is my opinion that Nick Sutton, more than anyone else on Tennessee’s Death Row, deserves to live.” (A3, at 2).

In 1994, Cheryl Donaldson, former Manager of Unit 2 [the death row unit at Riverbend Maximum Security Institution (“RMSI”)], slipped and fell while carrying her unit keys and radio and struck her head hard on the floor. No other staff members saw her fall or were in a position to come to her aid. She believes many inmates would have taken advantage of her at this time, and even assaulted her or caused a security breach, but that:

Nick, however, did exactly the opposite. He sprang into action, helped me to my feet, retrieved my keys and radio, and alerted staff to come to my assistance. This was typical of Nick, who always puts others before himself and is willing to help anyone in need. (A3, at 2).

Sheriff's Deputy Howard Ferrell, who is now deceased, previously testified that in 1979 Nick stepped in to stop another inmate from attacking him from behind while Deputy Ferrell attempted to break up a serious fight between two inmates. Deputy Ferrell was acting as a jailer in the Hamblen County Jail at the time and was surrounded by up to 60 inmates as he tried to separate them. Nick grabbed an inmate who was about to strike Deputy Ferrell from behind with the head of a push broom. Nick tackled the inmate just as he was about to land a blow to the back of Deputy Ferrell's head. He then pinned the inmate to the ground until other deputies could arrive and secure the scene. According to Deputy Ferrell: "he [Nick] probably could have saved my life." (A9, at 790).

Nick also cared for fellow inmates who faced severe and debilitating health problems—even death—had Nick not intervened. (A 30, at 1). Joyce House, the mother of exonerated death row inmate Paul House, describes Nick as her son's "saving grace" while his health rapidly deteriorated after he was diagnosed with multiple sclerosis while incarcerated. (A10, at 2). Paul was denied access to a wheelchair or walker while on death row and was forced to crawl on the floor on his hands and knees. He was left to shower sitting on the bathroom floor. Nick refused to allow his friend to "live his life like that" and began carrying Paul around the prison. (A10, at 1). He took Paul to the shower every day and helped him clean himself. Nick did whatever he could to protect Paul and ease his suffering as his body betrayed him. Nick consoled Paul at night when he sat in his cell and cried himself to sleep. (A10, at 1). Ms. House stresses: "[A]s my son often told me, Nick is the only reason Paul is alive today. As a mother, it was so difficult not to be able

to care for my son. I owe so much to Nick for providing Paul with the care that I was unable to give him.” (A10, at 6).

Nick also saved the life of Pervis Payne, another death row inmate, when he nearly died from a punctured intestinal tract. “As Nick walked by Pervis’s cell, he saw Pervis stagger and brace himself against the wall for balance.” (A11, at 1). Rather than let his friend collapse, Nick ran to get the Unit Manager and insisted that she call for medical assistance. (A11, at 2). Because of Nick’s actions, Pervis was rushed to an outside hospital for emergency life-saving surgery. Pervis credits Nick with saving his life. (A11, at 2). Pervis remained in the hospital for about a month and returned to the prison in a severely weakened condition. Nick continued to care for and look out for his friend as he recovered from surgery. Pervis was much too weak to do his assigned job, so Nick did his work for him for several months. This allowed Pervis to keep his job with its modest wages and earn some money while he recovered from surgery. (A11, at 2).

Nick also cared for fellow inmate Lee Hall when he became blind while on death row and struggled to navigate life in prison. (A12). Lee was not provided with a cane or walking stick, so Nick routinely guided him around Unit 2. Lee would hold onto Nick’s shoulders, allowing Lee to move about the unit. Nick could not bear the thought of Lee falling, which would often happen before Nick stepped in to help his friend. Lee’s disability made him a vulnerable target of other inmates who might hurt or take advantage of him. However, Nick always made certain that Lee was safe and protected despite his blindness. Last month, not long after Lee was executed, his parents sent Nick a Christmas card thanking him for all that he had done for their son. (A12).

Quite simply, Nick, who once murdered a man behind bars, now makes the prison a safer and more secure place for staff and other inmates. As Commissioner Aiken notes, not only do these actions demonstrate Nick’s compassion for others, this type of behavior “is rare from

maximum security inmates, and indicates Mr. Sutton is willing to risk his well-being to ensure the safety of others within the prison.” (A1, at 8).

II. Victims’ Families Support This Request for Clemency.

At 58, Nick is a different person than the man who, at 23 years of age, killed Carl Estep. At the time Nick killed Mr. Estep, he was serving a life sentence for the murder of Dorothy Sutton, his paternal grandmother, which he committed in Tennessee when he was 18. Nick had also been convicted of the murders of Charles Almon and John Large in North Carolina. Both of those murders also occurred when Nick was 18 years old. Despite the lives he has taken, Nick has the support of members of the Estep, Sutton, and Almon families.

Nick has the support of Carl Estep’s eldest daughter, Rosemary (Estep) Hall. Ms. Hall notes that the pain and suffering her family has endured would only be made worse by executing Nick. Ms. Hall states that she speaks for the entire Estep family when voicing her support for Nick’s request for clemency. (A13). Ms. Hall strongly supports Nick’s request for commutation: “It breaks my heart that Mr. Sutton has lost so much of his life on death row for killing my father.” (A13, at 3).

Nick is profoundly remorseful for the killing of Carl Estep and offers no justification for taking his life. However, Ms. Hall asks you to grant Nick mercy and spare his life. (A13, at 3). Tennessee has amended its Constitution to include the Crime Victims’ Bill of Rights. This constitutional amendment establishes the right of the victim’s family to confer with the State about the case and the right to be heard at all critical stages of the criminal justice process. Ms. Hall’s position has never been heard before now, and we ask you to consider it at this time.

Not only does Nick have the support of the Estep family, Nick also has support from both the Sutton and Almon families in his request for clemency. Although Nick does not have a death

sentence from these convictions, both families have suffered the loss of a loved one, and ask you to spare Nick's life.

Nick's own family was devastated when Nick murdered Dorothy Sutton in 1979, but now asks that you commute Nick's death sentence in light of his profound transformation. (A14, at 1). Nick's cousin, Lowell Sutton, believes "there is no question that Nick has transformed his life in prison. He has become a mentor and leader among his peers, is beloved and trusted by prison staff, and is an asset to the prison and its population." (A14, at 2).

Despite the fact that Nick caused significant pain to his own family, Lowell states "although the loss of my aunt was very hard on our family, I forgive Nick, our family forgives Nick, and we do not want him to be executed." (A14, at 2). "Our family supports a life sentence and we have no desire to see Nick put to death." (A14, at 2). The family of Dorothy Sutton asks you to consider their forgiveness in deciding Nick's fate: "Nick's execution will only cause more pain and hurt for our family; please spare us that." (A14, at 2).

The Almon family has also suffered with the loss of Charles Almon, whom Nick killed in 1979. The Almon family is close and for decades has felt the absence of their beloved brother, son, and uncle. (A15). Ms. Anna Lee is the great niece of Mr. Almon and, having been born after his death, has only known her great uncle through her family's stories. (A15). Ms. Lee asks you to spare Nick's life because allowing him to be executed would dishonor the memory of her great uncle. Ms. Lee wants to remember her great uncle with loving memories and stories, "not with more tragedy." She pleads that the State of Tennessee not add "violence on top of violence." (A15).

This sentiment is shared by Charles Maynard who is Ms. Lee's father and the nephew of Charles Almon. (A16). Mr. Maynard, who was named Charles in honor of his uncle, makes clear that he forgives Nick for the murder, and notes that "tak[ing] another life does nothing to right this

wrong” and asks that you commute Nick’s death sentence and spare his family further pain. (A16).
Mr. Maynard makes clear that he speaks for his entire family in making this request. (A16).

III. Jury Members Support Clemency.

In light of Nick’s transformation, personal growth, and genuine remorse, five members of the jury that sentenced him to death and one alternate juror are now in favor of Nick receiving a life sentence. These jurors are moved by Nick’s transformation over his 34 years on death row. They believe that Nick’s life is worth saving and support commutation. The jurors note the positive influence that Nick has played in the lives of other inmates and prison staff members, and stress how the TDOC system will benefit if Nick’s death sentence is commuted.

Juror A states:

Although I was in favor of Mr. Sutton receiving a sentence of death during his trial, I have reviewed statements regarding Mr. Sutton and his behavior and character during his time in prison and I am now in favor of Mr. Sutton receiving a life sentence in exchange for his current death sentence.

After reading statements from Riverbend staff, both current and former, I agree Nick Sutton has made the best of his time in prison and would be able to have a positive impact on the prison community [within the] Tennessee Department of Corrections. (A17).

Juror B notes:

When serving on the jury, I was in agreement that the death penalty was the appropriate sentence for Mr. Sutton. After reviewing statements from RMSI staff, I agree that Nick Sutton could really help others turn their lives around.

I am in complete support of Mr. Sutton receiving a life sentence in exchange for his death sentence and hope he can really make a difference in the lives of other inmates within the Department of Corrections. (A18).

Juror C offers:

I was in favor of Mr. Sutton receiving the death penalty at the time of sentencing, but after reviewing documents from Riverbend staff, I am in favor of Mr. Sutton being given a life sentence in exchange for his death sentence.

Although I believe[d] the death sentence was the correct sentence, I now think that a life sentence would be the right thing to do. (A19).

Juror D states:

I was in agreement with a death sentence at the time of trial, but as years have passed, I now believe that a sentence of life is sufficient for Mr. Sutton.

I am in support of Mr. Sutton receiving a life sentence in exchange for his current death sentence. (A20).

Juror E notes:

At the time of sentencing, I was in agreement with giving Mr. Sutton the death sentence he received. However, at this time, I am in support with (sic) giving Mr. Sutton a life sentence in exchange for his death sentence. (A21).

Alternate Juror F adds:

Although I was very in favor of the death penalty at the time of sentencing, after reviewing statements from Riverbend staff, I am in support of Mr. Sutton spending the rest of his life in general population within the Department of Corrections.

I agree with giving Mr. Sutton a life sentence in exchange for his death sentence. (A22).

Just as many others who know Nick's transformation in the last decades, five jurors who initially sentenced him to death and one alternate juror now believe that he should live.

IV. Nick Has Worked Tirelessly to Change His Life During His 34 Years on Death Row.

Despite Nick's prior murders, we now have the benefit of 34 years of prison records and the experience of seven correction staff members to help judge Nick's redemption and transformation and whether he would pose any danger if given a life sentence and moved to general population.

Nick was finally able to escape his drug addiction when he was sent to death row and housed in a stable environment where he is safe from harm. For the first time since adolescence,

he was able to get sober and, through years of hard work and perseverance, become the man he is today. Nick is a truly reformed inmate who, while on death row, has dedicated his life to improving himself, to helping others, and to counseling people through the hardships and traumas life has dealt them.

Numerous current and former Tennessee state correctional officers and counselors attest to Nick's character, extraordinary prison adjustment, and his positive influence in the lives of others, and strongly support him receiving a life sentence. These prison staff members—seven in total—describe Nick as:

- Not the same man who committed those crimes (A3, at 4);
- A model inmate who makes the prison a safer place (A7, at 1);
- The most rehabilitated prisoner that I met working in maximum security prisons over the course of 30 years (A2, at 2);
- One of the finest inmates that I have had the privilege to know (A7, at 2);
- A positive role model and positive influence (A4, at 2);
- Someone who has worked harder than any inmate I have known to better himself. He has learned from his mistakes, has grown and matured, and he has become one of the most influential inmates, inspiring other inmates to better themselves (A4, at 2);
- Living proof of the possibility of rehabilitation and the power of redemption (A3, at 3);
- An honest, kind and trustworthy man who has used his time in prison to better himself and show that change is possible (A3, at 2);
- A man who has not only rehabilitated himself but works to help other inmates improve their lives (A3, at 2);
- Someone whose honesty and life experiences make him the perfect person to positively mentor younger inmates and to be a role model for all of those on the compound (A6, at 2);
- A man whose efforts at self-improvement and willingness to embrace change are an inspiration (A3, at 3);
- Having an ability to reach people through his calm and thoughtful communication with others (A8, at 1);
- Leading by example with a positive attitude, tireless work ethic and the desire to constantly better himself (A5, at 1–2);
- A prime example of a person's ability to change and that those convicted of murder can be rehabilitated (A2, at 3);
- A sincere and caring man who puts the needs of others before his own (A7, at 1–2);
- An upstanding, courteous, and sensible man who is respected by staff and inmates alike (A8, at 1);
- Inspiring other inmates to better themselves while on death row (A2, at 2);

- Genuinely concerned about staff and fellow inmates (A8, at 1);
- Posing no danger to the prison staff or other inmates (A8, at 1); and
- Someone whose presence among the younger inmates throughout the prison will make a huge difference, not only in improving the prison culture, but in helping to repair the lives of those who have the opportunity for a second chance (A6, at 2).

Nick's history on death row shows a remarkable lack of disciplinary infractions. (A1, at 5).

He has received no serious disciplinary actions since 1990. Commissioner Aiken states:

Not only does Mr. Sutton have a stellar disciplinary record, he has earned a great deal of trust from prison staff. Mr. Sutton has held a position as a 'maintenance man' at Riverbend for the past 20 years. In my experience, holding such a position for this long is remarkable. This position is highly coveted within the institution and inmates entrusted with it have access to tools and locations within the institution requiring a great deal of trust from staff. Former Riverbend Counselor and Unit Manager Cheryl Donaldson states this position is 'offered only to model inmates who are well regarded and trusted by the Unit Manager and senior prison staff. [This position] allows Mr. Sutton to move freely throughout Unit 2 and use tools which would otherwise be considered weapons.' Within Riverbend even the slightest infraction would result in Mr. Sutton losing this position. Based on my professional experience, I can say that holding such a position for so long clearly indicates Mr. Sutton is a model inmate trusted by prison staff and administration. (A1, at 6-7).

Not only is Nick respected and trusted by correction officers, administration, and other inmates, he has also thrived in prison, taking advantage of numerous educational and vocational training opportunities. As Commissioner Aiken notes:

An inmate that takes advantage of courses and training programs within the institution, and successfully completes them, is one who is focused on bettering himself and contributing to the institutional environment, and not partaking in these programs to impress others. [His certificate for completing a] conflict management course is especially notable based on my experience because such a course is primarily focused on improving the community within an institution and assisting both peers and staff in reducing interpersonal conflicts. Mr. Sutton has not been idle while awaiting his sentence and has chosen to improve himself and contribute to the prison community. (A1, at 20).

Nick has proven for more than 30 years that he is grateful for the opportunities he has been given by pursuing betterment for himself and the death row community.

Throughout his time on death row, Nick has participated in classes that provide him additional opportunities to improve himself. In recent years, he has studied mediation and conflict resolution as well as trauma and recovery. Over the past two years, Dr. Graham Reside, Professor of Ethics at Vanderbilt Divinity School, has taught courses to a combined class of divinity students and death row inmates, including Nick, who has become a leader in the classes. (A24, at 1). The courses have included the study of violence and punishment, trauma and compassion, and justice and love. (A24, at 1). Dr. Reside reflects that prison is a hard place to become gentle and kindhearted, so Nick's ever-present kindheartedness "is a testament to Nick's commitment to transform himself[.]" (A24, at 1). Dr. Reside notes that Nick continually strives to leave behind a legacy of wisdom, care, and concern and is a man of intense integrity, grace, and consideration. (A24, at 1). Nick has become a mentor to the divinity students, and he "is not afraid to tell the hard truths." Dr. Reside believes that executing Nick—"after such a valiant struggle to become a loving and generous witness in the world"—would be unjust. (A24, at 2). Dr. Reside asks that through this clemency application and the supporting materials that you get to know Nick and come to appreciate "the good fight he has fought to walk from the darkest places into the light." (A24, at 2).

Dr. Douglas A. Knight, Professor of Hebrew Bible, Emeritus at Vanderbilt Divinity School, co-taught the course Nick took on trauma and compassion. Dr. Knight notes that Nick has become a transformed and empathetic man who "appreciates deeply the value of everyone's life, and he seeks to promote the well-being of all with whom he comes in contact." (A25, at 2). He

adds that sparing Nick's life will allow him to continue to be "a positive force for good in the lives of others who know him, both inside and outside the prison." (A25, at 2).

Nick's transformation inspires others beyond the prison walls. He makes a constant effort, from his prison cell, to be a dedicated and loving husband, step-father, step-grandfather, friend and mentor. His two step-granddaughters have strong and enduring relationships with him and draw strength from his active presence in their lives. Over the years of his incarceration, through letters, visits and telephone calls, Nick has counseled them not to repeat the mistakes he made. According to Cassidy Whitson, his eldest step-granddaughter:

Nick is an inspiration to me not only because he loves and supports me, but I know about the crimes that he has committed and know that he is a changed man. His strong faith in the Lord has enabled him to better himself and, in turn, encourage me to continue bettering myself. I know his advice to me is heartfelt and genuine. He is facing much bigger circumstances than I am and I know that if he can continue to make positive changes in his life, so can I. He has reminded me throughout my life that when I see that wrong turn, don't take it . . .

Nick is close with many other of our family members. He talks regularly by phone to my half-sister Madison, who is twelve. He keeps encouraging her to do well in school just as he has done with me. (A26, at 2).

Nick credits his Christian faith with giving him the strength to change his life. Others describe how faith has transformed Nick's life. (A2, at 2; A5, at 2; A26, at 2; A27, at 1; A29, at 2; A31, at 1–2). Through Nick's evolving faith and his desire to grow and constantly better himself, he has become living proof of the possibility of redemption and a person's ability to change.

Commissioner Aiken, who classified thousands of inmates over the course of his career, attests that Nick's institutional history is "reliable evidence" of his good behavior over his lengthy incarceration, recording an overall pattern of positive conduct. (A1, at 5). Commissioner Aiken believes that Nick "will continue to improve his life and the lives of others if [his sentence is

commuted]. I have no doubt that Mr. Sutton can be safely managed in general population by [the Tennessee Department of Correction] if he were granted clemency.” (A1, at 20–21).

V. Nick Is Genuinely Remorseful and Has Accepted Responsibility for the Murder of Carl Estep and the Other Lives He Has Taken.

Nick accepts responsibility for the murder of Carl Estep and the other lives he has taken. He understands that he owes a great debt to society. His expressions of remorse and acceptance of responsibility for his crimes have been consistent and sincere. His contrition is evident in how he has lived during 34 years on death row.

Nick has expressed remorse to many people for ending Mr. Estep’s life and for his other offenses. Chaplain Ronnie Shelton states that at the time of his crimes, “Nick was in a very dark place and is extremely remorseful for the pain he caused and the lasting effects of his actions.” (A29, at 2). Christ Church Volunteer Frances Christian states that Nick “deeply regrets the mindset he had and the lives that were lost.” (A30, at 2). Former Correction Lieutenant Tony Eden notes that Nick is “deeply remorseful for his crimes, for the lives he has taken, and for the pain that he has caused his victims’ families. Nick knows that he cannot change the past, but he has acknowledged his wrongs, has learned from his mistakes, and has worked hard to become a better person.” (A2, at 3). Former Unit 2 Manager Cheryl Donaldson adds that Nick told her that “he deeply regretted his crimes, constantly reflected on his wrongs, his victims and their families, and is haunted by the lives that he has taken.” (A3, at 2–3). She notes that Nick is “truly remorseful for the senseless pain and suffering that he has caused . . . He has admitted his wrongs, accepted responsibility for his crimes and demonstrated remorse. Nick’s efforts at self-improvement and willingness to embrace change are an inspiration.” (A3, at 3). Current Correction Officer Robert Mosely (presently a Captain) offers that he has “interacted with thousands of inmates during [his] time at RMSI and firmly believe[s] that Nick’s remorse is genuine.” (A5, at 2).

As witnessed by those who know him, Nick understands that he has caused pain by taking life and sincerely regrets his actions.

VI. The State Offered Nick a Life Sentence that He Was Unable to Accept.

Prior to the start of his capital trial, the prosecution offered Nick a life sentence in exchange for his guilty plea. The State agreed that a life sentence was appropriate and would serve the interests of justice in this case. (A33). The prosecution, however, conditioned Nick's life sentence offer on his co-defendant Charles Freeman also entering a guilty plea and accepting a sentence of 30 to 40 years. (A34, at 2). Nick did not accept the offer because Mr. Freeman was minimally involved in Mr. Estep's death. Nick also maintained—and continues to maintain—that his other co-defendant, Thomas Street, is innocent. (A34, at 1–2). Despite the life offer and Nick's willingness to accept the offer for himself, the State sought and obtained a death sentence at trial. The jury also sentenced Mr. Street to life and acquitted Mr. Freeman. (A34, at 2).

At the time of Nick's crime, defendants who were sentenced to life in prison were eligible for consideration of parole after having served 25 years.² Mr. Street, who received a life sentence, has been paroled since 2014. (A34, at 1). Nick has already served 34 years and had he been offered a plea bargain that did not mandate his co-defendant serve 30 to 40 years, he would have been parole-eligible in 2010. It is arbitrary and capricious that Nick received a death sentence rather than life due to his concern that his co-defendant not be forced into accepting an unjust plea. By offering Nick a life sentence prior to trial, the prosecution agreed that Nick is not the “worst of the worst,” that he could be housed safely in prison for life, and that such a sentence served the interest of justice.

² Prior to the 1993 enactment of life in prison without the possibility of parole, the only available punishments for first degree murder were death and life with the possibility of parole. A defendant who received a life sentence was eligible for parole consideration after he or she served 25 calendar years. *State v. Bush*, 942 S.W.2d 489, 504 n.8 (Tenn. 1997).

VII. The Legal Process Broke Down in Nick’s Case.

Nick’s trial and post-conviction attorneys failed to investigate and raise compelling claims for relief. John Appman, the sole attorney responsible for representing Nick at trial is now deceased and could not be interviewed by current counsel. Michael Passino, the lawyer who represented Nick in his initial post-conviction proceedings, was then an inexperienced capital defense attorney and now acknowledges that his representation was inadequate. (A35, at 1–2; 5–6). As a result, a claim that Nick was visibly shackled and handcuffed during his capital trial and sentencing was not previously raised. Mr. Passino admits that his failure to raise the shackling issue was “one of breathtaking stupidity.” (A35, at 4). As a result, Nick was denied a full and fair opportunity to present his case. Clemency is now the only viable means to correct this grievous error.³

Shackling “undermines the presumption of innocence and the related fairness of the [trial].” *Deck v. Missouri*, 544 U.S. 622, 630 (2007). There was no showing that shackling and handcuffing were justified by an essential state interest, alternatives were not explored, and steps were not taken to minimize the prejudicial effect of the restraints. Shackling is so inherently prejudicial that “where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation.” *Deck*, 544 U.S. at 635. Shackling without justification profoundly offends due process.

³ Nick’s shackling claim is currently before the Tennessee Court of Criminal Appeals in *Nicholas Todd Sutton v. State*, Morgan Co. Case No. E2018–00877–CCA–R3–PD (reopened post-conviction proceeding) and *Nicholas Todd Sutton v. State*, Morgan Co. Case No. E2019–01062–CCA–R3–ECN (related coram nobis proceeding). Both cases are still pending but must overcome significant procedural hurdles in order to prevail. Furthermore, the pending proceedings were tainted by the District Attorney’s conflict of interest. The District Attorney General for the Ninth Judicial District has been disqualified from Nick’s still pending coram nobis proceedings—which only concerns the shackling claim—and currently harbors a conflict of interest due to the prior representation of Carl Estep, the victim in Nick’s capital murder case, by a senior member of the Office—Assistant District Attorney General Robert C. Edwards. The conflict was imputed to the entire Office. (A36; A37). The District Attorney’s conflict of interest in this case raises concerns about that Office’s ability to render an opinion on Nick’s request for commutation.

Nick need not demonstrate that he was prejudiced by being visibly shackled in front of his jury to succeed on such a legal claim, but the shackling impacted the trial.⁴ The courtroom was described as an “armed fortress.” (A35, at 1–2; A19, at 1). One juror tells how “[a]rmed guards were everywhere.” (A19). The perceived threat caused by shackling and handcuffing Nick was so great that, more than 30 years later, at least one juror remains traumatized by the experience of having served on Nick’s jury. Juror A reports:

Even though the trial was thirty years ago, I am still affected by it. I will always carry the emotional trauma of this case.

A big cause of my fear was how heavily guarded the courthouse and courtroom were. Although we were told that the security was because it was a murder case, I knew it had to be really bad to call for that much security. The courtroom was small and crowded with several guards. Mr. Sutton and his co-defendants wore heavy chains. Other than this being a murder case, the heightened security was never explained to us. (A17, at 1).

This issue was not raised until 2017 by current counsel and was dismissed by the post-conviction and coram nobis courts on procedural grounds, decisions Nick has appealed.

VIII. Nick Was Incarcerated in a Notoriously Violent Prison Where He Witnessed Extreme Inmate Violence and Was Threatened by Carl Estep.

Nick was incarcerated at Brushy Mountain Prison (“BMP”) in 1980 when he was 19 years old. This prison had “an atmosphere of well-founded fear.” (A1, at 10). Nick learned quickly that “inmates at Brushy live in constant fear of violent attack” and that “no part of BMP [was] safe harbor from [that] constant threat[.]” *Grubbs v. Bradley*, 552 F. Supp. 1052, 1101–02 (M.D. Tenn. 1982). At BMP, Nick understood that prison staff would not intervene to stop the violence and that he was in constant danger and could be attacked at any time. (A1, at 10–11). After three and a half

⁴ The prosecution compounds this constitutional violation by making numerous improper arguments to the jury regarding Nick’s future dangerousness which the Tennessee Court of Criminal Appeals found “obviously inappropriate.” *Sutton v. State*, 1999 WL 423005, at *26–27 (Tenn. Crim. App. 1999).

years in this dangerous environment, Nick was moved from one violent and over-crowded prison to another: Morgan County Regional Correctional Facility (“MCRCF”).

Once at MCRCF, Nick again realized that he was in serious danger at all times. (A1, at 9). On one occasion, another inmate wielding a lead pipe attacked Nick from behind with such force that his eye became dislodged from the orbital socket. (A1, at 10–11). Nick learned through experience that he could not let his guard down in MCRCF.

Nick’s substance abuse that began in childhood followed him into prison. (A40, at 3). Nick and Carl Estep had a volatile confrontation over drugs. After this confrontation, Mr. Estep began threatening Nick and at one point informed several inmates that he was getting a knife from his cell. (A1, at 12). Mr. Estep even told staff at MCRCF that he planned to kill Nick. (A1, at 12). Nick’s co-defendant Thomas Street stated he believed that Carl Estep meant to kill Nick and had told many men in MCRCF he had “something coming” for Nick. (A34, at 1). Commissioner Aiken also believes these threats were sincere and that based on his decades of institutional experience, Nick was in a “kill or be killed” position with no assistance or protection from prison staff and nowhere to retreat from Carl Estep’s threat. (A1, at 12).⁵ Not only did the violent prison environment exacerbate the conditions surrounding the murder of Carl Estep (A1, at 12–13), the omnipresent violence and threat of attack overwhelmed Nick’s young brain, which had been significantly impaired by trauma and adolescent drug use. (A38, at 5–6).

⁵ Indeed, the fact that Nick would not have sought protective custody is supported by what was known about the conditions in solitary confinement and protective custody at BMP where Nick was incarcerated for three and a half years preceding his time at MCRCF. According to an Order by the Davidson County Chancery Court issued in 1978: “Violence within segregation units is therefore not uncommon and in fact one of the most recent murders at Brushy Mountain occurred in the segregation unit.” *See Trigg v. Blanton*, Chancery Court Memorandum of Law, No. A–6047, at 41 Aug. 23, 1978, (Cantrell, Ben. H.). Additionally, as dangerous and violent as general population was at BMP, the Chancellor described protective custody as “severe and debilitating” for inmates. *Id.* at 61.

IX. Nick's Violent, Abusive, and Mentally Ill Father Beat Him Mercilessly and Taught Him to Use Drugs to Numb His Pain.

Nick was abandoned by his mother in infancy and left with his maternal grandparents. (A39; A40, at 1–2). Nick remained with them for only three years before he was moved again to live with his paternal grandparents—and his father, Anderson “Pete” Sutton. (A40 at 1; A14, at 1). Pete was a violent, abusive, and unstable man who suffered from severe mental illness, struggled with substance abuse, and was repeatedly institutionalized. (A40, at 2; A14 at 1). Nick’s grandfather was the only buffer between him and Pete. Sadly, when Nick was in elementary school, his paternal grandfather died. Nick and his grandmother were now at the mercy of Nick’s brutal, mentally ill, and addicted father. (A39; A40, at 2). Nick’s cousin, Lowell Sutton, recalls Pete’s “idea of parenting generally consisted of yelling at, beating, and terrorizing his son.” (A14, at 3). Nick’s father made his life a “living hell.” (A14, at 3). Pete was a “mean, physically and mentally abusive, and neglectful” father who was “absent from Nick’s life for long periods of time and usually took no interest in Nick’s well-being.” (A14, at 3).

Despite being remembered, as a “kind and sweet boy” never known to harm anyone (A14, at 1) and “gentle” and “fun-loving” (A28, at 1), Nick was repeatedly beaten by his father during his childhood. (A40, at 2). This physical abuse was so extreme that Nick would turn up to school with severe injuries which he was forced to explain as “accidents.” (A40, at 2). Lowell recalls:

one occasion where Pete beat Nick so badly that he broke his arm and another time where Pete flew into a rage and took Nick and Aunt Dorothy hostage at gunpoint, resulting in an armed stand-off with the police. Pete’s mistreatment of Nick broke my heart; he made Nick’s life a living hell. (A14, at 1).

The physical abuse was not limited to Nick. He witnessed his father’s repeated and terrifying domestic violence against his paternal grandmother, Dorothy Sutton. (A40, at 2). Nick’s

childhood friend, George Webb, recalls Pete was a “violent man to both his own mother and Nick.” (A28, at 3).

In addition to physical violence, Nick suffered significant emotional abuse, neglect, and isolation at the hands of his father. (A14, at 3). Nick’s father insulted and cursed at him throughout his childhood. (A40, at 2). His father’s screaming insults and attacks only worsened once his father began to drink and use cocaine. (A40, at 2–3). Nick dreaded his father’s alcohol and drug consumption given the violence that would follow. As the school day would draw to a close, Nick’s fear and anxiety would intensify in anticipation of the emotional and physical abuse that awaited him at home. Nick recalls wishing he had never been born for the first of many times in elementary school while riding the school bus home to his father.

Nick’s entire childhood was also pervaded by substance abuse. Nick’s father was frequently intoxicated and abused both narcotics and alcohol. (A40, at 2). He also actively encouraged Nick to begin using drugs himself. (A40, at 2). Nick was taught to numb his own pain with drugs and alcohol, and his emotionally distant grandmother offered little else to help Nick deal with his trauma and fear. (A28, at 4). As a result, Nick routinely used illicit drugs with his father by age 12. (A40, at 2). Lowell recalls that Nick “got caught up in drugs and became a different person.” (A14, at 4).

Pete’s drug use exacerbated his severe mental illness and increased his brutality toward Nick. (A39; A40, at 2–3). Throughout Nick’s childhood, his father was frequently institutionalized in Eastern State Psychiatric Hospital or incarcerated. (A40, At 2). Despite representing a reprieve from his father’s beatings, these periods of separation further compounded the insecurity and chaos of his childhood. (A40, at 2–3; A28, at 1).

Despite the horrific abuse, Nick loved his father. When Nick was only a teenager, Pete was found dead from hypothermia and exposure in the yard at the family home. (A39; A40, at 3). The coroner indicated alcohol intoxication was involved. (A40, at 3). Nick was orphaned without receiving any explanation and was traumatized by his father's sudden passing and absence.

None of this evidence was presented to the jury charged with the decision over Nick's life. As Judge Martin stated, the "failure to obtain and present to the jury evidence regarding Sutton's awful early life robbed Sutton of his clearly established right to show himself as a human being in the jury's eyes and made easier what should be the most difficult decision a jury can make." (A39).

X. Pervasive Childhood Trauma and Substance Abuse Significantly Impaired Nick's Juvenile Brain.

Nick was 18-years-old when he committed his prior homicides and 23 when he murdered Carl Estep. Neuroscience teaches us that the period of brain development up to age 25 is crucial. (A38, at 4–6). This period is one of profound growth and change, yet also of vulnerability. "Trauma and polysubstance abuse will typically delay neurodevelopment and can cause significant neuropsychological impairments." (A38, at 7). As Barry M. Crown, Ph.D., a highly qualified and experienced forensic neuropsychologist who evaluated Nick notes, "the brains of juveniles and young adults, especially those that are impaired by prior traumatic injury, do not operate in the same manner as that of a mature adult." (A38, at 5).

As part of his evaluation, Dr. Crown reviewed records pertaining to Nick's social history and neurocognitive functioning and administered a battery of neuropsychological tests. He reports that Nick's testing indicates brain damage occurred during the early developmental period and was exacerbated by significant childhood trauma and polysubstance abuse. (A38, at 1). Though it would have been available at the time, none of this information was ever presented to Nick's jury.

Nick also suffered significant injury to his juvenile brain through childhood head injuries resulting in a loss of consciousness and two severe injuries to the orbital socket of the eye (by being shot in the eye as a child and hit with a lead pipe). (A38, at 5). These injuries are diagnostically significant for a resulting diagnosis of diffuse brain injury which occurred in the developmental period before age 25. (A38, at 5). Nick's damaged juvenile brain impaired his ability to reason, respond to threats, and his ability to exercise judgment: much of which arose from circumstances beyond Nick's control. (A38, at 4).

Nick's childhood trauma caused developmental impairments which were relevant to his violent crimes—all committed before age 25. (A38, at 5–6). As Dr. Crown further notes, “Mr. Sutton's young age at the time of his prior homicides is an important contributing factor to these violent crimes.” Dr. Crown offers that “[b]y the time Mr. Sutton committed his capital crime, his brain was significantly impaired, and he was suffering from severe cognitive deficits.” (A38, at 7). Nick's young damaged brain was no match for the extreme violence and chaos of BMP and MCRCF. (A38, at 7). Had Nick been placed in a secure and structured environment at a young age, Dr. Crown believes that Nick “could have been ‘corrected’ rather than victimized.” (A38, at 7). “Mr. Sutton has demonstrated no violent behavior since reaching the important cognitive developmental milestone of age 25 and achieving sobriety.” (A38, at 6).

Despite all this trauma and damage, Nick exhibits the ability to respond favorably to the structure provided by RMSI and within the TDOC. This is a testament to the TDOC's efforts to remedy the environment that pervaded its prisons in the 1970s and 1980s. The current Tennessee prison system has provided Nick with order, structure, routine, and predictability that was never present in the chaotic life he had as a child, adolescent, and young adult. Nick has greatly benefitted

from the highly controlled prison environment and has become a cooperative prisoner who does not pose a threat or risk to others. (A1, at 6).

Nick's rehabilitation and transformation into a responsible and mature adult reaffirm the statements of correction officers and staff that Nick has become an asset to the prisons and that his life should be spared. Granting Nick mercy by commuting his death sentence gives you and the State of Tennessee the chance to reaffirm that no person, no matter how much they have suffered and hurt, is beyond rehabilitation.

XI. Only One Other Inmate Has Been Sentenced to Death in Tennessee for Killing Another Inmate and He Is No Longer on Death Row.

Nick is only one of two men since the return of capital punishment who has been sentenced to death in Tennessee for the murder of another inmate. Considering the pervasive violence (which included dozens of homicides) throughout the TDOC system in the 1970s and 1980s—the period leading up to the murder of Carl Estep—this is significant. It was not until 2004 that a Tennessee jury sentenced a second inmate, Joel Richard Schmeiderer, to death for the killing of another prisoner. Although data regarding the number of inmate homicides in the TDOC system is incomplete, the fact remains that only two men have received a death sentence for killing an inmate.⁶ In 2014, Mr. Schmeiderer's case was settled for a sentence less than death. Nick remains the only person sent to Tennessee's death row for killing an inmate.

XII. Within the Past Six Years, Executive Clemency Has Been Granted in Other States in Capital Cases that Are Comparable to Nick's.

Between 2014 and 2019, five Governors have commuted the death sentences of men facing execution under similar circumstances to this case.

⁶ Although complete TDOC records of inmate on inmate homicides are not available, the information that current counsel have been able to obtain from the TDOC indicates that out of at least 90 inmate homicides in Tennessee prisons from 1981 through 2019 (with no data for 1985–1992 and incomplete data for 2019), Nick is the only inmate under sentence of death for killing another inmate.

On December 9, 2019, the Governor of Kentucky commuted Leif Halvorsen’s two death sentences to life imprisonment with the possibility of parole. In 1983, Mr. Halvorsen and his co-defendant shot and killed three people—including a 19-year-old woman—during an argument over \$400. After shooting each victim multiple times, Mr. Halvorsen and his co-defendant attempted to dispose of the bodies by throwing them off a bridge. Mr. Halvorsen’s life had spiraled out of control due to severe drug addiction. At the time of the murders, Mr. Halvorsen was under the influence of a number of drugs, including cocaine. The sole reason presented to the Governor when asking for his mercy was Mr. Halvorsen’s redemption. Mr. Halvorsen admitted his involvement in the murders and expressed remorse and contrition for the three lives that he took. During his 36 years on death row, Mr. Halvorsen dramatically turned his life around and dedicated it to helping others. Mr. Halvorsen’s incarceration allowed him to finally escape his drug addiction, reclaim his life, and become a positive force behind prison walls. He guided people towards staying out of trouble and towards turning their lives around, inspired many, and saved lives. His leadership dispelled violence and made the prison safer. As a result of his transformation while serving his death sentences, the family of one of his victims and prison staff members supported his request for clemency. In the order granting clemency, the Governor wrote, “Leif has a powerful voice that needs to be heard by more people.”

On July 20, 2018, the Governor of Ohio granted clemency to Raymond Tibbits. In 1997, Mr. Tibbits killed his wife and their infirm housemate. He stabbed his wife 21 times, beat her with a baseball bat, and stabbed his housemate 12 times, leaving four knives sticking out of his body. The commutation was based in part on the severe and unrelenting physical abuse and childhood trauma experienced by Mr. Tibbits which was never presented to the jury. Indeed, a member of Mr. Tibbits’s jury became a vocal and outspoken advocate in support of his clemency stating

“[b]ased on what I know today (about his childhood), I would not have recommended the death penalty.”

On February 22, 2018, less than an hour before Thomas Whitaker was scheduled to be executed, the Governor of Texas commuted Mr. Whitaker’s death sentence. In 2003, Mr. Whitaker hired a hitman to kill his father, mother, and brother for insurance money. During a planned ambush at their home, Mr. Whitaker’s mother and brother were killed but his father survived. Mr. Whitaker’s clemency was based upon several factors, including his and his father’s profound religious faith, the fact that his co-defendant did not receive the death penalty, and his father’s (the victim) opposition to execution.

On August 25, 2017, the Governor of Arkansas announced that he would grant clemency to Jason McGehee. Mr. McGehee was one of three defendants convicted of the 1998 kidnapping, torturing, and murdering a 15-year-old boy. Mr. McGehee was the only defendant to receive a death sentence for the murder. In granting the clemency, the Governor stated “the disparity in sentence given to Mr. McGehee compared to the sentences of his co-defendants was a factor in my decision.” The Governor’s decision was also based, in part, on evidence the jury never heard regarding severe abuse, neglect and trauma that Mr. McGehee suffered as a child.

On July 9, 2014, the Governor of Georgia commuted the death sentence of Tommy Waldrip. In 1991, Mr. Waldrip murdered a 19-year-old student who was an eyewitness to a robbery that his son committed. Mr. Waldrip and his co-defendants kidnapped and beat their victim to death before burying him. Although no specific reason was given for granting clemency, one issue raised by Mr. Waldrip’s attorneys was that the sentences for Mr. Waldrip and his co-defendants were not proportional, as the two other people convicted of the same murder both received life sentences.

XIII. In Tennessee, Executive Clemency Has Been Granted Three Times in the Last Twelve Years in Capital Cases.

Here in Tennessee, Governor Philip N. Bredesen, Jr., commuted the death sentences of three inmates.

On January 11, 2011, Edward Jerome Harbison's death sentence was commuted to life without parole. Clemency was partly based on the sentence's "disproportionality" to the sentences being served by other offenders for similar crimes. Mr. Harbison's attorneys also based the clemency application on the profound impact of Mr. Harbison's wretched childhood, which was filled with trauma and abuse. Mr. Harbison was sentenced to death for beating an elderly woman to death in 1983. He struck her in the head at least three times with a 25-pound marble vase, breaking all of the bones of her head, expelling brain tissue, and disfiguring her beyond recognition.

On July 14, 2010, Gaile Owen's death sentence was commuted to life imprisonment based partly on the fundamental unfairness of a contingent life imprisonment offer made and then rescinded by the prosecution in her case. Governor Bredesen noted that nearly all the similar cases he reviewed resulted in life sentences. In 2011, Ms. Owens was granted parole and released from prison. Ms. Owens was sentenced to death for the 1986 murder-for-hire of her husband.

On September 14, 2007, Michael Boyd's death sentence was commuted to life without parole based on serious concerns regarding ineffective assistance of Mr. Boyd's trial counsel which Governor Bredesen called "grossly inadequate" and other procedural barriers to fairness in the appellate process. Mr. Boyd was sentenced to death for the 1986 killing of William Price in the course of a robbery.

In each of the cases described above, governors and their parole boards recognized that the inmate transformed his life in prison; the death sentence was disproportionate compared to others

that engaged in the same type of crime; that the victim or jurors strongly supported clemency and asked the Governor to show mercy; that a contingent life imprisonment offer was inherently unfair; or that the original sentencing jury and judge had not heard all the mitigating evidence of extreme childhood trauma. As a result, Governors exercised their constitutional powers of clemency to extend mercy to the condemned. All these factors are present in Nick's case and warrant commutation.

XIV. Conclusion.

Clemency is an act of mercy and grace, with deep roots in the American and Tennessean traditions. Clemency provides a last opportunity to exercise mercy and administer true justice in cases where action is merited, and the court system is without the capacity to take the appropriate action. The United States Court of Appeals for the Ninth Circuit has pointed out that a case of true personal reform and efforts to improve the lives of those around them is just that case: "Although [petitioner's] good works and accomplishments since incarceration may make him a worthy candidate for the exercise of gubernatorial discretion, they are not matters that we in the federal judiciary are at liberty to take into consideration in our review of [petitioner's] habeas corpus petition." *Williams v. Woodford*, 384 F.3d 567, 628 (9th Cir. 2002).

While Nick Sutton offers no justification for his crimes, he asks that you let him live. He asks that you recognize his remorse, rehabilitation, and transformation while offering no excuses for the murder of Carl Estep and for taking the lives of others. He understands the severity of the crimes he has committed. He cannot change the past or take back the tragic events of his young life, even though he would give anything to be able to do so. However, Nick has changed himself over the past 34 years. He can continue to influence the lives of others for the rest of his natural life, and by doing so improve the lives of those around him and continue to make the prison a safer

and more secure place for staff and other inmates. Therefore, he asks for your compassion and mercy.

Nick's rehabilitation has been consistent and sincere over the past 34 years. Nick is now a loving and valued husband, step-father, step-grandfather, mentor, leader, and friend. Nick has spent decades attempting to better himself while housed on death row and presents no danger to anyone within the prison as evidenced by the support of both current and former TDOC staff. Despite his horrific childhood, Nick now offers love and support to others in ways that he never received from his own parents.

Though Nick knows he has caused pain and trauma to others through the acts of violence he committed as a teenager and young man, he has transformed his life and saved the lives of others, and there are now those that "owe [their] lives to Nick Sutton" and can say that Nick is the "only reason" they are alive today. (A2, at 3) (A10, at 2). Nick now understands the gift of life and accepts the profound pain he has caused by taking the lives of others.

The Estep family asks you to spare Nick's life. The Sutton family asks you to spare Nick's life. The Almon family asks you to spare Nick's life. Those who Nick has saved ask you to spare his life. Current and former prison staff members ask you to spare Nick's life. Religious and community leaders ask you to spare Nick's life. Five members of the jury that initially sentenced Nick to death and one alternate juror ask you to spare his life.

For all these reasons, we respectfully request that you commute Nicholas Todd Sutton's death sentence so that he may use your gift of life to foster redemption and help benefit others by his positive example.

Thank you for your time, attention, and consideration to this important matter.

Respectfully,



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