APPLICATION FOR EXECUTIVE CLEMENCY—
CURRENT MICHIGAN PRISONER

On behalf of:
TEMUJIN KENSU
(A.K.A. FREDRICK FREEMAN, MDOC No. 189355)

"I again plea for the release of Temujin Kensu. I studied the record and it is stunning how this man was convicted much less kept in prison over the decades."

— ***The Late Sen. Carl Levin***
— *2020 Email to Gov. Whitmer's Asst. Legal Counsel (Included in Appendix A)*

"[T]he standard used by the CIU in its review of the Kensu case predetermined the outcome – to us, the wrong outcome. . . . We pray that those with the power to grant relief conduct a full review and grant relief to Mr. Kensu."

— ***Rep. Andy Levin, Rep. Rashida Tlaib, and State Sen. Stephanie Chang***
— *May 25, 2022, Joint Statement (Appendix B)*

"[T]he pardoning of an innocent condemnee through executive clemency demonstrates not the failure of the system but its success."

— Justice Antonin Scalia
Kansas v. Marsh, 548 U.S. 163, 193 (2006)

Respectfully Submitted by:

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Barry Scheck, *Co-Founder, The Innocence Project*
Peter Neufeld, *Co-Founder, The Innocence Project*
Ross Parker, *Former Chief Asst. U.S. Atty., EDMI*
James Samuels, *Former Board Member, CDAM & PAAM*
Thomas Rombach, *Former President, State Bar of MI*

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***Additional innocence organizations listed on next page*

Description of Additional Signatories:

Barry Scheck & Peter Neufeld
Co-Founders, The Innocence Project
Mr. Scheck and Mr. Neufeld founded the Innocence Project in New York in 1992; the IP has won relief for 237 wrongfully convicted people as of June 2022. The IP is a founding member of the Innocence Network, an umbrella organization consisting of 69 Innocence organizations across the United States and in 10 other countries.

Saul A. Green
Former U.S. Attorney for the Eastern District of Michigan
Mr. Green served as U.S. Attorney from 1994 to 2001. Upon entering private practice, he worked with the Innocence Project to represent a wrongfully convicted man named Eddie Joe Lloyd, who in 2002 became the first person in Michigan to be exonerated through DNA testing.

James R. Samuels
Former President of the Criminal Defense Attorneys of Michigan & Former Board Member of the Prosecuting Attorneys Association of Michigan
Mr. Samuels is a former elected prosecutor of Mecosta County and now a defense attorney whose work has resulted in multiple exonerations of innocent people. Mr. Samuels is the only attorney in the history of our state to have held leadership positions on the boards of both CDAM and PAAM.

Ross G. Parker
Former Chief Assistant U.S. Attorney and Former Chief of the Criminal Division of the U.S. Attorney's Office for the Eastern District of Michigan
Mr. Parker served as an assistant U.S. Attorney for 28 years and as chief of the criminal division from 1981 to 1989. He served as Chief Assistant U.S. Attorney from 1989 to 1993. Mr. Parker has been a longtime supporter of Mr. Kensu, including acting as his advocate at the 2010 clemency hearing.

Thomas C. Rombach
Former President, State Bar of Michigan
Mr. Rombach is a former prosecutor and currently a criminal defense attorney and civil litigator. He served as president of the State Bar of Michigan from 2014-15.

Additional Innocence Organization Signatories

The Exoneration Project
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Midwest Innocence Project
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Wisconsin Innocence Project
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Illinois Innocence Project
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APPLICATION FOR EXECUTIVE CLEMENCY

I. Introduction

A. An Unreasonable Conviction And The Repeated Failure To Review It Substantively

The case of Temujin Kensu (aka Fredrick Freeman) is well-known in our state and across the country.[1] It remains the starkest example of our state producing a conviction from virtually no evidence of guilt—which is something that numerous news stories, podcasts, and documentary specials have noted.[2] Mr. Kensu's wrongful conviction should never have happened in the first place because he presented complete evidence of his innocence even at his original trial. But in law, as in life, unreasonable things sometimes happen. And when they do, they must be corrected.

The U.S. Supreme Court has long recognized that a "jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt," and "when such a conviction occurs in a state trial, it cannot constitutionally stand." *Jackson v. Virginia*, 443 U.S. 307, 317-18 (1979). But the Supreme Court has also noted that the judiciary is not always able to correct its own mistakes, and so "[c]lemency is . . . the historic remedy for preventing miscarriages of justice where judicial process has been exhausted." *Herrera v. Collins*, 506 U.S. 390, 411 (1993). Former Michigan Gov. Jennifer Granholm recognized as much in granting clemency in the unreasonable murder conviction of Thomas Cress in 2010, as discussed

[1] Temujin Kensu is Mr. Kensu's correct legal name today. Much of the media coverage of this case and nearly all of the legal documents use Mr. Kensu's prior name, Fred Freeman. This application uses both names depending on what is more appropriate in the immediate context. To be clear though, "Mr. Kensu" and "Mr. Freeman" refer to the same person.

[2] *See e.g.* Hannah Rappleye, *Is Temujin Kensu a 'ninja killer' or wrongfully convicted man?*, NBC NEWS, March 21, 2021, https://www.nbcnews.com/news/all/temujin-kensu-ninja-killer-or-wrongfully-convicted-man-n1260983; *Undisclosed* Podcast, "Fred Freeman," Episodes dated April 6, 2020 through May 7, 2020 (available on all podcast platforms). A fuller list of recent/significant media coverage is provided in Appendix C.

in Section IV(C) below. And as that section (particularly the letter of support from the Exoneration Project) explains, governors of other states, including Illinois, Indiana, Missouri, New York, and California have also granted clemency in murder cases in recent years where the defendant presented compelling evidence of innocence. *See* pp. 23-26 below.

When Mr. Kensu previously sought clemency in 2020, he noted that he had exhausted all judicial remedies. Nevertheless, Mr. Kensu's counsel was informed in a December 29, 2020, phone call from the Governor's office that clemency would be denied because there actually remained one more option for him to exhaust—the Attorney General's CIU review process. Now, after more than two years of pursuing relief through the AG CIU, Mr. Kensu has again been denied relief on procedural and technical grounds, as the CIU's denial letter makes clear. Thus, he now returns to seek clemency, hoping to at long last be judged by the facts of his case, and not by the age of the conviction, the length of his trial, or simply the number of prior decisionmakers who have punted instead of digging into the facts of his case.

At its core, this remains a clear and simple case of wrongful conviction, and Mr. Kensu prays that the Governor will now exercise her executive power for its true purpose—to "correct [an] injustice[] that the ordinary criminal process seems unable or unwilling to consider." *Dretke v. Haley*, 541 U.S. 386, 399 (2004) (Kennedy, J., dissenting).

B. Overwhelming Evidence Of Innocence And Health Reasons Both Strongly Counsel Toward Granting Executive Clemency In This Case.

Mr. Kensu has served 35 years in prison for a crime he did not commit. Indeed, for the past three-and-a-half decades, while Mr. Kensu has sat in prison serving a sentence of life without parole, **it is undisputed that nine disinterested and unimpeached alibi witnesses place him more than 400 miles from the scene of the murder for which he was convicted**.

More recently, it was revealed that the only two scene witnesses to identify Mr. Kensu

picked him out of an egregiously biased photo lineup—which was then sanitized and misrepresented to the jury at trial. The expert at a 2014 post-conviction hearing called the lineup (as it was shown to the witnesses) **the most egregiously biased photo lineup she had ever evaluated.** To make things even worse, when the prosecution presented the photo lineup to the jury at trial, it cropped the photos to **conceal from the jury all of the suggestive features that made the photo lineup so blatantly unfair.** The photos in question are included at page 7 below.

In addition to his complete alibi and the discovery that the witnesses selected him from a biased photo lineup, Mr. Kensu has also presented a recantation from Philip Joplin, the jailhouse informant who implicated him at trial. Before his death, Joplin admitted in a video interview with investigative reporter Bill Proctor (video link included at page 16 below) both that his trial testimony against Mr. Kensu was false and that—contrary to his claim at trial—he did indeed receive benefits for implicating Mr. Kensu. Although such revelations of concealed incentives given to cooperating witnesses have resulted in convictions being vacated across the state and country,[3] Mr. Kensu had the bad luck of presenting this evidence back in a time when our judicial system was still in denial about the possibility and the gravity of such egregious misconduct.

[3] Significant local examples include the recent exonerations of Juwan Deering (Oakland County, 2021; National Registry of Exonerations Profile: https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6042) and Ronnell Johnson (Washtenaw County, 2022; National Registry of Exonerations Profile: https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6321)—two men whose cases were constitutionally tainted by the prosecution offering benefits to its witnesses and not disclosing those benefits to the defense. When these constitutional violations came out in the Deering and Johnson cases, they led to prosecutors join the defense request to grant relief. *See e.g.* Elisha Anderson, *Man who says he was wrongfully convicted of killing 5 kids freed from prison*, September 30, 2021, *available at:* https://www.freep.com/story/news/local/michigan/oakland/2021/09/30/juwan-deering-free-prison/5928691001/; Elisha Anderson, *Michigan man released from prison after his dad's undisclosed plea deal discovered*, June 2, 2022, *available at:* https://www.freep.com/story/news/local/michigan/2022/06/02/ronnell-johnson-washtenaw-county-freed-from-prison/7469568001/.

Even beyond Mr. Kensu's innocence, there are also other good reasons for the Governor to exercise mercy in granting clemency. In serving 35 years in prison for a crime he did not commit, Mr. Kensu has seen his health deteriorate significantly, and the Department of Corrections has repeatedly proved itself incapable of providing adequate care for Mr. Kensu's worsening health issues. He was in fact recently diagnosed with a brain tumor, which is only the latest in a long line of documented health issues, many of which require long-term expensive treatment. A letter from David Sanders, attached here as Appendix D (along with supporting health reports), summarizes the many serious health issues Mr. Kensu faces.

Mr. Kensu has pursued legal relief for many years. His federal habeas corpus petition was granted in 2010 by the Hon. Denise Page Hood, but the Sixth Circuit reversed based on procedural barriers. A second habeas petition was denied by the federal district court, again due to the notoriously restrictive procedural rules that apply to federal habeas corpus petitions. And as noted above, the Attorney General's Conviction Integrity Unit denied Mr. Kensu's case *not* because the evidence of innocence was lacking, but simply because he did not present sufficient new evidence to meet their criteria for review. *See* May 17, 2022, Letter from AG CIU, Appendix E. **One actor after another has thus punted on this case based on technicalities.**

The Governor can and now should end this decades-long handwringing and buck-passing that other government entities have engaged in when confronted with the facts of Mr. Kensu's case. Simply put, no one evaluating this case from a neutral perspective could reasonably conclude that Mr. Kensu is guilty. As former State Sen. Steve Bieda wrote in a 2018 letter of support for Mr. Kensu: "In an era when so many wrongful convictions and miscarriages of justice have been revealed, it is no longer defensible to ignore the moral impetus of situations such as this one," and the Governor should grant clemency to "undo decades of injustice, and prove to our citizenry once again that our Constitution's last failsafe for justice, the executive pardon power, remains an

effective tool for justice, where all other tools fail." Bieda Letter, Appendix F.

As noted above, this request for clemency is supported by letters and statements of the late Sen. Carl Levin (Appendix A), U.S. Rep. Rashida Tlaib (Appendix B), U.S. Rep. Andy Levin (Appendix B), State Sen. Stephanie Chang, (Appendix B and G), and former State Sen. Steve Bieda (Appendix F), as well as a formal resolution by the Board of Commissioners for Oakland County—the county where Mr. Kensu was arrested at the start of his ordeal (Appendix H).

II. Description Of The Circumstances Of The Crime (Application Question 3)

Around 9:00 a.m. on November 5, 1986, Scott Macklem was shot and killed with a shotgun in a parking lot at St. Clair Community College in Port Huron. At the time, Mr. Kensu resided near Escanaba—over 400 miles away—and nine disinterested, unimpeached witnesses placed him in Escanaba shortly before and after the murder. Trial Tr. 1528-1719.[4]

A. Investigation And Scene Witnesses

Mr. Kensu became a suspect because he previously dated the victim's fiancée, Crystal Merrill. *Id.* at 534-38. Mr. Kensu dated Merrill for a few weeks in May/June of 1986, but by July—four months before the murder—he had ended the relationship and moved to Escanaba. *Id.* at 538, 636. Merrill acknowledged that she had stopped communicating with Mr. Kensu at the end of June. *Id*. at 536, 537-39.

No shotgun, shells, or getaway car implicating Mr. Kensu were ever recovered. An empty box of shells found near the scene had fingerprints, but they did not match Mr. Kensu. Indeed, no physical evidence has ever connected Mr. Kensu to the scene or to the crime.

The only evidence implicating Mr. Kensu was the testimony of a jailhouse informant, *id.*

[4] All documents are available electronically, upon request, from the Mich. Innocence Clinic.

at 1349, who later recanted, *Freeman v Trombley*, 744 F Supp 2d 697, 722 (ED Mich 2010), and the testimony of two scene witnesses, neither of whom actually saw the shooting.

Rene Gobeyn, the first scene witness, told the police that he saw a man driving away from the scene. *Id.* at 1011, 1014, 1038. He said the man was a white male around 25 years of age, but he gave no further physical description. Prelim. Tr. 132-33. After this initial interview, **Gobeyn asked one of his community college instructors to hypnotize him.** Gobeyn Hypnosis Tr. 11/5/86 at 1, 7. During the hypnosis session, Gobeyn "recalled" that the driver had "dark hair." *Id.* at 3. The hypnotist then asked Gobeyn if the person also had a beard. Gobeyn responded, "I think so." *Id*. No further physical characteristics were given. While Gobeyn underwent hypnosis supposedly to "enhance" his memories, **many of the details he gave at trial were verifiably false,** such as the license plate number of the car. Trial Tr. 1016, 1056-58.[5] A few days later, Gobeyn was called to the police station to look at a photo lineup. *Id.* at 1019. He was shown mug shots of five different men, and he selected Mr. Kensu as the person he had seen driving out of the parking lot. *Id*.

Despite repeated attempts to obtain the original (uncropped) photo lineup, Mr. Kensu was

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[5] A recent investigation by the *Undisclosed* podcast—in which they interviewed the professor who hypnotized Gobeyn as well as an expert on hypnosis—revealed that, beyond the fact that hypnosis is generally problematic to use in police investigations, the specific hypnosis conducted in this case was especially bad. The expert, Dr. Steven Lynn, noted in the April 13, 2020, podcast episode as follows:

> The effect of hypnosis is to increase the overall volume of memory. . . . [T]here are a lot of false memories that are mixed in. A lot of guesses turn into fairly confidently held beliefs. There's now pretty sizable literature showing that there are risks of both false memories and unwarranted confidence in memories.
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> ***
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> **I've seen a lot of really bad examples of hypnotically refreshed memories, but this ranks close to the bottom, I would say. This really is an egregious example of how not to use hypnosis.**

Transcript of April 13 Episode at 5-7. The *Undisclosed* podcast episodes are very helpful in understanding this case. They are available on all podcasting platforms, and transcripts of the episodes are available at: https://drive.google.com/drive/folders/1rrzwdUpwhBZ9H43DyhfI7mzZyAdw0wVa?usp=sharing.

denied access to the actual photos viewed by the scene witnesses for more than 20 years after the trial. *See* 3/12/14 Evidentiary Hearing Tr. 37. When he finally obtained the original photos, Mr. Kensu learned that there were many suggestive factors that made his photo stand out, but **these were hidden from the defense, the judge, and the jury because the prosecution only presented cropped and sanitized versions of the photos at trial.** *Id.* at 43-44. At a 2014 evidentiary hearing, a world-renowned eyewitness identification expert, Dr. Jennifer Dysart, called the original photo lineup **the most egregiously suggestive identification procedure she had ever seen**. *Id.* at 167.

Figure 1- Original uncropped photos as shown to witnesses (Mr. Kensu is at the bottom left)

Figure 2- Cropped/sanitized version of photos, as shown to jury and judge (Mr. Kensu is on far left)

The Sixth Circuit Court of Appeals summarized the biasing features of the original uncropped photo array as follows (using Mr. Kensu's prior name, Fred Freeman):

> "[T]he original uncropped photographs reveal several differences between Freeman's photos and those of the four police fillers that are not clear in the composite exhibit shown to the jury:
>
> 1. Freeman's photo features a striped background while the others have solid backgrounds;
> 2. Freeman's profile photo is of his left side, and the others are taken from the right;
> 3. Freeman's body is facing forward in his profile shot, and the other profile photos show the men turned to the side;
> 4. both of Freeman's photos include the police placard while the police fillers' photos only have the police placard in the forward-facing photos;
> 5. only Freeman's placard bears the name of a city other than Port Huron;
> 6. Freeman's front-facing and profile photos are separated by a white gap, and the others were joined with no gap;
> 7. and Freeman's photograph bore the most recent date."

Sixth Circuit Opinion, 10/2/2017 (numbering added), Appendix I.

The only other scene witness to identify Mr. Kensu was Richard Kreuger. He testified that an hour before the shooting he observed a man loitering in a nearby parking lot. Trial Tr. 1114-16. He described the man as about six feet tall, with a beard, and wearing a green fatigue-style jacket and a knitted cap pulled down to his eyes. *Id.* at 1119-20. Kreuger did not know the color of the cap. *Id.* at 1120. He was not able to see the color of the man's hair. *Id.* at 1123.

About two days later, Kreuger was asked to look at a police photo lineup. *Id.* at 1122. This was the same suggestive array shown to Gobeyn. *Id.* at 1397. He picked Mr. Kensu as "the one [face] that may be the face" he had seen in the parking lot. *Id.* at 1122-23. However, at a later physical lineup, Kreuger picked a police filler instead of Mr. Kensu. *Id.* at 1139.

B. The Trial

Mr. Kensu was tried for first-degree murder in 1987. At no point did the state offer any physical evidence linking him to the crime. **Nine disinterested, unimpeached alibi witnesses**

placed Mr. Kensu in Escanaba on the day of the murder—over 400 miles from the crime scene. Trial Tr. 1528-1719. To counter Mr. Kensu's strong alibi, the prosecution offered only conjecture. Putting his own personal pilot on the stand, the prosecutor sought to establish that it was theoretically possible for a person to charter a flight from Escanaba to Port Huron, commit a murder, and then charter a flight back. *Id.* at 1907-22. **The State offered no evidence that any such flight actually occurred, and it never explained how the indigent Mr. Kensu would have been able to afford to pay for such a flight.**

The State *did* offer days of highly improper and irrelevant character evidence from Mr. Kensu's ex-girlfriend and others—including testimony that Mr. Kensu was a "psychological terrorist" and part of a "deadly secret ninja organization." Trial Tr. 457-59, 475-76, 498-99, 1950; *see also id.* at 466-67. This evidence, as noted by Judge Douglas Shapiro of the Michigan Court of Appeals, "**should not have been admitted and was likely prejudicial** . . . [t]his is specifically the type of evidence [the Michigan Rules of Evidence] seek[] to exclude." *People v. Freeman*, No. 311257, 2015 WL 4599481 *12 (Mich. Ct. App. July 30, 2015) (Shapiro, J., concurring).

The scope and scale of this irrelevant and prejudicial evidence creates a strong likelihood that Mr. Kensu's conviction was a result of this inadmissible character evidence, as opposed to actual evidence of guilt. The admission of this evidence so troubled Judge Shapiro that he stated that federal habeas corpus relief should have been granted in this case. *Id*. at *11.

At no point did Mr. Kensu's defense attorney object to the State's presentation of this evidence. Trial counsel's lack of objection may have stemmed from his documented substance abuse problems: **defense counsel was struggling with cocaine and alcohol addiction when he handled Mr. Kensu's case**, and his secretary testified that his addiction noticeably affected him. *Freeman v. Trombley*, 483 F. App'x. 51, 57 (6th Cir. 2012); *see also Freeman*, 744 F. Supp. 2d at 707 ("It is undisputed that defense counsel had a substance abuse problem around the time he was

serving as [Mr. Kensu's] defense attorney.").

The only actual inculpatory evidence consisted of Gobeyn and Kreugar's accounts and a jailhouse informant named Philip Joplin. Joplin testified that Mr. Kensu confessed to him while they shared a cell. Trial Tr. 1347-50. At trial, Joplin said that he was not offered any reward in exchange for his testimony against Mr. Kensu. *Id*. at 1353-54. **This was later revealed to be false**, as described below. Joplin's account was controverted at trial by another inmate who had been in the same cell and who made clear that Mr. Kensu always denied any involvement in the murder. *Freeman*, 483 F. App'x. at 61-62.

III. Description Of Why Mr. Kensu Seeks Clemency (Application Question 4)

Mr. Kensu seeks clemency for two reasons: his actual innocence and his long-term, debilitating health problems.

A. Despite His Innocence, Mr. Kensu Has Been Unable To Obtain Relief In Court Due To Procedural Barriers.

Mr. Kensu's strong claim of actual innocence—supported by the unimpeached testimony of nine disinterested alibi witnesses—has taken him to the verge of exoneration by our courts, only to be undone by procedural barriers. Federal District Court Judge Denise Page Hood granted him federal habeas corpus relief in 2010, but that decision was reversed in 2012 by the Sixth Circuit on procedural grounds (namely that Mr. Kensu's claims were barred by the habeas statute of limitations). *Freeman*, 683 F. App'x. at 67.

In later state court proceedings, Judge Shapiro of the Michigan Court of Appeals noted that he agreed that federal habeas corpus relief was warranted in this case, but he was nevertheless compelled by procedural rules to deny relief. *Freeman*, 2015 WL 4599481 *12, 13. He highlighted glaring flaws in the trial, noting that "there is a reasonable probability that, but for counsel's failure

to object to [the improper admission of other-acts evidence and inadmissible testimony], the outcome of defendant's trial would have been different." *Id*. at *13. **He then explicitly acknowledged the procedural barriers that prevented the courts from addressing the substance of Mr. Kensu's innocence claim**, noting, "[u]nfortunately, the Sixth Circuit's decision precludes us from granting relief on any of these grounds." *Id.*

The most recent federal district court denial of Mr. Kensu's second habeas petition was once again based entirely on procedure, rather than the merits of the case:

> **The import of the procedural posture of this case cannot be overstated, and it is, in fact, determinative. . . .** [The federal habeas corpus rule] provides procedural requirements a petitioner must satisfy before the Court can consider the merits of any petitioner's claim. . . .
>
> **This Court is confined to review first whether Freeman has satisfied these procedural requirements before it can consider the merits of Freeman's claims.** Thus, this Court may not independently analyze whether it believes Freeman's state-court trial was unfair and base its decision on this opinion. In fact, [the federal habeas rule] prohibits the Court from engaging in any merits analysis—unless and until Freeman satisfies the initial . . . procedural hurdles.
>
> For the reasons set forth below, **this Court concludes that Freeman has failed to satisfy the procedural hurdles . . . and it therefore DENIES the Petition.**

Freeman v. Warren, 2019 WL 507089, at *1 (E.D. Mich., February 8, 2019) (emphasis added).

Mr. Kensu also applied for assistance from the Attorney General's Conviction Integrity Unit, which reviewed his case for over two years. At the end of its review, however, the AG CIU succumbed to the same shortcoming as the courts and ended up punting on the case. Instead of advocating for Mr. Kensu's freedom due to overwhelming evidence of his innocence, the AG CIU simply noted that it could not move forward with the case because Mr. Kensu did not have sufficient "new" evidence to meet the AG CIU's criteria for review. *See* AG CIU Denial Letter, Appendix E. One might have assumed that the whole reason for the AG CIU to exist is to reach cases that the courts cannot reach due to procedural barriers, but unfortunately, in this instance, the AG CIU decided to limit itself by the same restrictive rules of procedure that previously

prevented court after court from reviewing the substance of Mr. Kensu's innocence claims.

While procedural barriers may bind the courts, and apparently even the AG's CIU, executive clemency is the proper forum where truth can prevail regardless of legal technicalities. And the truth of Mr. Freeman's innocence has always been clear, as described below.

Clemency exists to "correct injustices that the ordinary criminal process seems unable or unwilling to consider."

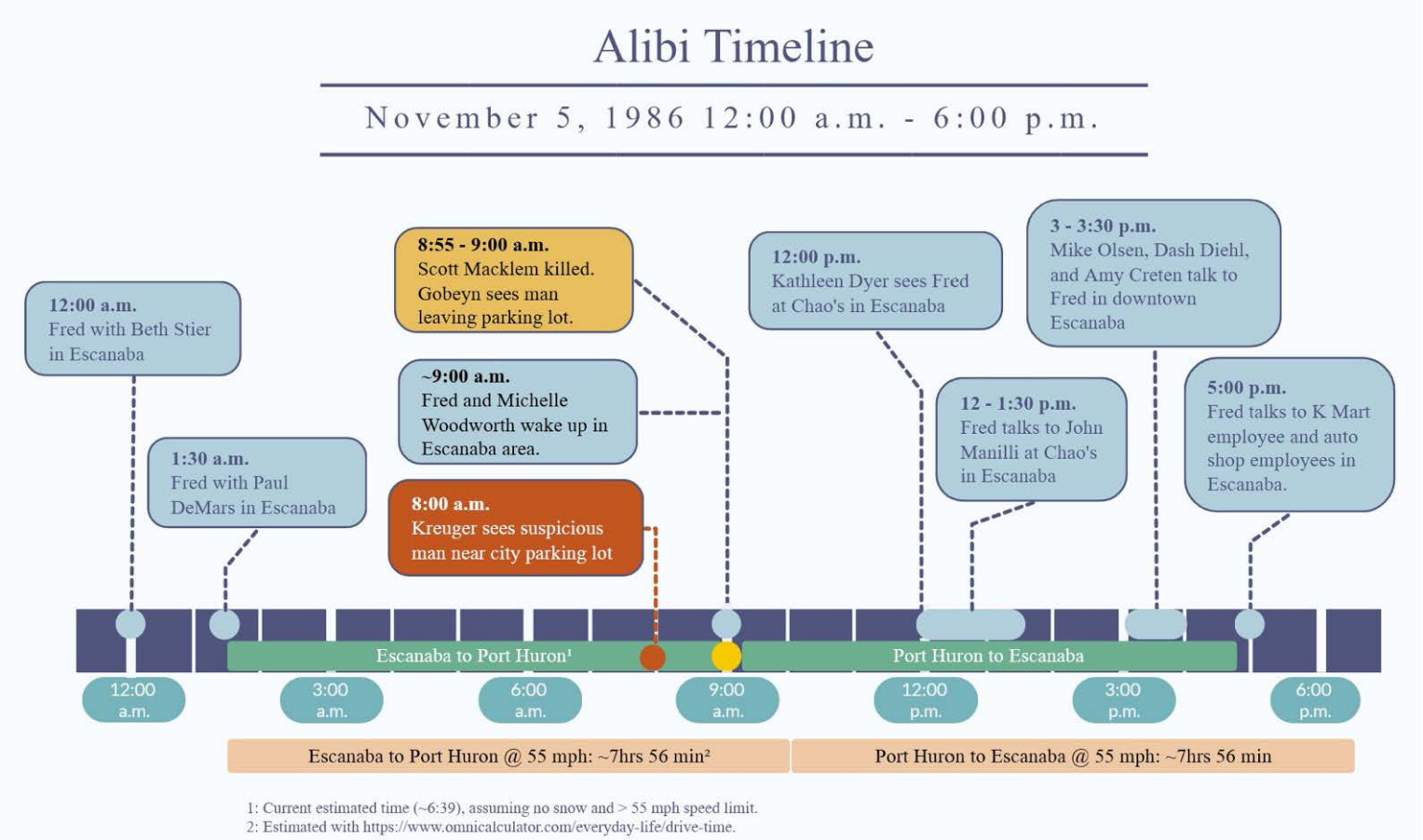
Dretke v. Haley, 541 U.S. 386, 399 (2004) (Kennedy, J., dissenting).

i. Nine disinterested witnesses established Mr. Kensu's alibi.

Escanaba is over 400 miles away from Port Huron. At trial, defense counsel called nine disinterested and unimpeached alibi witnesses who established that Mr. Kensu was in Escanaba on November 5, 1986. Trial Tr. 1528-1719. Paul DeMars testified that he was with Mr. Kensu until around 1:30 a.m. on the morning of November 5. *Id*. at 1634-36. Jeffrey McNamara, a waiter at the Elias Brothers restaurant in Escanaba, testified to seeing Mr. Kensu and Mr. DeMars at the restaurant just after midnight. *Id.* at 1657-59. Several other witnesses, including Kathleen Dyer and John Manalli, testified that they saw and interacted with Mr. Kensu at Chao's Tae Kwon Do studio (in Escanaba) around 12 p.m. on November 5. *Id*. at 1540-41, 1611-12. Other witnesses testified that they saw and spoke with Mr. Kensu in downtown Escanaba in the middle of the afternoon that day. *Id*. at 1669, 1712-13.

The graphic below (which uses Mr. Kensu's prior name, Fred Freeman) depicts the impossibility of Mr. Kensu's guilt, given the testimony of the several independent and disinterested alibi witnesses. Even with today's increased speed limits, it would take 6 hours and 39 minutes to drive each way between Escanaba and Port Huron. Back in 1987, with the speed limit being 55 mph, it would have taken 7 hours and 56 minutes each way. This assumes no stops are made and all roads are perfectly clear (which is unlikely). These drive times being what they are, **it is simply**

impossible for Mr. Kensu to have committed the crime at 9 a.m. in Port Huron and then be seen in Escanaba by disinterested witnesses like Dyer and Manalli at 12-1:30 p.m.



ii. The prosecution had to resort to an unfounded charter-airplane theory—for which no actual evidence was ever provided.

Since Escanaba is over 400 miles and nearly 8 hours from Port Huron by road, the prosecution needed to convince the jury that Mr. Kensu somehow managed to commit the murder at 9:00 a.m. and return by 12 p.m. to Escanaba, where he was seen by several witnesses who had no reason to lie for him. In support of this theory, the State called the prosecutor's personal charter pilot as a witness, who testified to the hypothetical possibility of chartering a private aircraft to travel between the two cities. *Id*. at 1907-22. **The prosecution never presented flight records, witness accounts, or any other evidence that such a chartered flight had actually occurred.**

Such testimony by the prosecutor's personal pilot was simply irrelevant non-evidence that should never have been admitted in the first place. While the prosecution has tried to downplay the charter plane theory in recent years, **at least one juror made clear in an interview with investigative reporter Bill Proctor that the jury convicted because of the chartered plane theory**. *See* Juror Interview by Bill Proctor at 3:40-4:30 and 6:37-7:57 (juror saying "I wasn't too sure either" and "I was undecided" before being presented with chartered plane theory); video *available at*: https://www.youtube.com/watch?v=z6jNMbG16X8.

iii. An additional witness would place Mr. Kensu in Escanaba at the exact time of the murder—making Mr. Kensu's guilt impossible even with a chartered plane.

Trial counsel failed to call the one witness who could have established that it was impossible for Mr. Kensu to have committed the murder, even with the assistance of a chartered plane. Mr. Freeman's then-girlfriend, Michelle Woodworth, has always maintained, both in sworn affidavits and in a polygraph examination she passed, that she and Mr. Kensu were together at their home in the Escanaba area at 9:00 a.m. on November 5, 1986—the exact time of the shooting. *Freeman*, 744 F. Supp. 2d at 714; *Freeman*, 483 F. App'x. at 59-60. Although Judge Hood considered the substance of Woodworth's account in her 2010 decision to grant habeas corpus relief, the Sixth Circuit, in overturning Judge Hood's decision, subsequently held that consideration of Woodworth's account was barred by the rules of procedure. Woodworth has remained supportive of Mr. Kensu over the years, and a 2018 letter from her was attached by Sen. Carl Levin to his own letter of support (Appendix A). Woodworth was also interviewed in 2021 by the AG CIU in the presence of Mr. Kensu's counsel. In that interview she reaffirmed the account she has always given, making clear that Mr. Kensu was with her in Escanaba at 9:00 a.m. on the day of the shooting, **meaning he absolutely could not be the killer of Scott Macklem, even if**

he had somehow managed to charter an airplane without anyone noticing.

iv. The photo lineup that Gobeyn and Kreuger saw was highly suggestive—a fact that the State tried to hide for 20 years.

The two eyewitnesses who identified Mr. Kensu at trial both saw a photographic lineup containing photographs of Mr. Kensu and four other men. Trial Tr. 1397. The photos shown to these witnesses made Mr. Kensu stand out in several significant ways. **The State, however, concealed just how suggestive the photo lineup was at trial by showing only cropped versions of the photos to the jury.** Mr. Kensu did not discover how suggestive the original lineup was until more than 20 years after his conviction, when a private investigator finally located the original un-cropped photographs in 2008. 3/12/14 Evid. Hr. Tr. 37.

At the start of a 2014 evidentiary hearing, the State stipulated that Mr. Kensu was not provided the un-cropped photos at any point after trial or direct appeal until they were discovered in 2008. *Id*. at 9, 10-11. This was not for lack of trying. As the Sixth Circuit recently noted:

> Although the State asserts that the photographs were available to Freeman [before trial] under the open file policy, Freeman's unsuccessful attempts to obtain the photos on direct appeal and collateral review call into question the completeness of the prosecution's file. Thus, Freeman has made a prima facie showing that the original photographs could not have been discovered previously through the exercise of due diligence.

Sixth Circuit Opinion, 10/2/17 at 6-7, Appendix I.

The suppression of the original photos (at page 7 above) is very significant. At trial, the prosecution showed only the cropped versions of the photos (People's Exhibit 26, also at page 7 above), which sanitized the many suggestive elements and served to mislead the jury into thinking Gobeyn and Kreuger had selected Mr. Kensu from a fair lineup. Evid. Hr. Tr. at 44, 46-48.

When he finally located the original, un-cropped photos that the witnesses had seen, Mr. Kensu saw for the first time that he had been selected from a highly suggestive and unfair lineup. As noted earlier, the Sixth Circuit recently recognized these significant suggestive elements:

> [T]he original uncropped photographs **reveal several differences** between Freeman's photos and those of the four police fillers that are not clear in the composite exhibit shown to the jury: **Freeman's photo features a striped background** while the others have solid backgrounds; **Freeman's profile photo is of his left side**, and the others are taken from the right; **Freeman's body is facing forward in his profile shot**, and the other profile photos show the men turned to the side; **both of Freeman's photos include the police placard** while the police fillers' photos only have the police placard in the forward-facing photos; **only Freeman's placard bears the name of a city other than Port Huron**; **Freeman's front-facing and profile photos are separated by a white gap**, and the others were joined with no gap; and Freeman's photograph **bore the most recent date**. At the state post-conviction evidentiary hearing, an expert in eyewitness identification testified that the differences between Freeman's photographs and the other photographs could have affected the reliability of Gobeyn's and Krueger's identifications. **She characterized the photo array as "highly suggestive."**

Sixth Circuit Opinion, 10/2/17 at 8 (citations omitted; emphasis added), Appendix I.

As the Sixth Circuit recognized, the photo lineup was stacked to make Mr. Kensu stand out significantly. Indeed, Dr. Jennifer Dysart, the expert at the 2014 evidentiary hearing said that, **of the more than 100 identification procedures she has evaluated as an expert, this was the most suggestive identification procedure she has ever seen.** 3/12/14 Evid. Hr. Tr. at 167.

v. Joplin recanted and admitted his testimony was incentivized.

On July 2, 1994, Joplin, the jailhouse informant who had claimed that Mr. Kensu had confessed, recanted in a videotaped interview with television reporter Bill Proctor. *Freeman*, 744 F Supp 2d at 720-22. *See also* Video of Proctor Interview of Joplin, *available at:* https://www.youtube.com/watch?v=ftLesLPQ1QE. Joplin revealed that, contrary to his testimony at trial, he had fabricated the story of Mr. Kensu's confession in exchange for a shortened prison term (he was indeed released from prison early). He also stated that law enforcement officials had been coaching him in preparation for trial and threatening him with an extended prison sentence and perjury charges if he failed to cooperate.[6] *Id.*; *Freeman*, 483 F. App'x. at 62-64.

[6] Joplin's social worker noted the behind-the-scenes deal-making that resulted in Joplin's testimony in 1987. *See* Spreitzer Letter 5/28/1987, Appendix J. This letter is supported by other statements Joplin made. *See* Joplin Letter 2/3/1987 ("I was told . . . that if I cooperated with the

B. Mr. Kensu Has Many Debilitating Health Issues, Including A Brain Tumor, Which Provide Additional Grounds For Clemency.

In addition to the evidence supporting his actual innocence, Mr. Kensu makes his request for executive clemency pursuant to a host of serious medical issues, with the recent discovery of a brain tumor chief among them. Mr. Kensu's health has significantly deteriorated over 35 years of incarceration. As David Sanders of the advocacy group "Proving Innocence" notes in his letter:

> Mr. Kensu is not a well man and his health disabilities and diseases only worsen over time. . . . A primary concern is polymyopathy, which is a disease of the muscle in which nerves are dying causing muscle fibers not to function properly. He suffers from Severe Combined Immune Disease, Mixed Connective Tissue Disease, Polyarthritis and Hyper eosinophilia. He is on chemotherapy, Methotrexate at present, which suppresses his immune system and has other concerning side effects but he must take this drug for his condition.
>
> Mr. Kensu's immune and muscle diseases continue to worsen as time passes requiring that his chemotherapy be increased and, most disturbing, is that for the last year the MDOC has refused to let him see his Immunologist/Rheumatologist even though the doctor requested to have him brought to his office in May of 2021. Mr. Kensu has kited and reported about this many times.
>
> ***
>
> His hearing has degraded to the point where he is now considered "disabled" by the MDOC. This is most likely due to his immune disease. He requires special hearing aids which have not yet been provided and he is still waiting for resolution of this for over a year now.

Sanders Letter at 1-2, Appendix D.

In 2014, after being denied access to a gastrointestinal specialist for over 25 years, Mr. Kensu required emergency surgery to treat a sigmoid volvulus (a bowel obstruction). The botched surgery severely narrowed Mr. Kensu's colon, requiring the assistance of painful, twice-daily enemas in the place of normal bowel movements. *See* MDOC Bureau of Health Care Services Report (September 25, 2017) at 4; Appendix L.

Port Huron Police Department that I would be allowed to plead as a second felony offender, if I did not I would be allowed to plead as a third felony offender…."); *see also* 1990 Joplin Affidavit; both attached as Appendix K.

Spreitzer, the social worker who worked with Joplin in 1987, recently drafted an email supporting Mr. Kensu's release, which is included in Appendix J along with his 1987 letter.

Even walking presents a challenge for Mr. Kensu due to the pain and discomfort caused by a number of injuries and ailments affecting his knee, spine, and ankle. An MRI of Mr. Kensu's right knee performed on June 3, 2016, revealed osteoarthritis, thinning ligaments and tendons, and grade III to IV chondromalacia (severe thinning of the cartilage under the kneecap). MDOC Bureau of Health Care Services Visit Report (September 15, 2017) at 3; Appendix M. An examination of Mr. Kensu's spine revealed degenerative disc disease. September 25, 2017 MDOC Report at 1; App. L. Finally, a study of Mr. Kensu's ankle also revealed soft tissue swelling and the presence of bone fragments from previous injuries. *Id*. at 1-2.

On top of all this, Mr. Kensu has been diagnosed with a brain tumor. On May 22, 2017, an MRI showed a small lesion in Mr. Kensu's brain with a differential diagnosis of subependymoma, ependymoma, central neurocytoma, or giant cell astrocytoma—all different varieties of brain tumors. MDOC Bureau of Health Care Services Visit Report (May 23, 2017) at 1; Appendix N. A follow-up assessment on October 4, 2017, determined that the lesion was most likely a subependymoma. Letter from Dr. Stephen Edwin Sullivan at 3; Appendix O.

Although the neurosurgeon recommended MRIs to monitor the tumor's growth, *id.*, **such MRIs "have been denied to Mr. Kensu for over two and a half years."** Sanders Letter at 2 (emphasis added). "Despite Mr. Kensu's very serious and progressively worsening health issues that are surely shortening his lifespan, treatments, medications, and other doctor-ordered care are routinely denied by the MDOC as indicated above." *Id.*

The significant health issues Mr. Kensu has are obviously difficult to manage, and unfortunately, the MDOC has a long track record of failing to provide him even minimally adequate medical care. To list just one of many examples, in 2016 five MDOC employees were found in a civil lawsuit to have been "deliberately indifferent" to Mr. Kensu's "serious medical needs" in violation of the Eighth Amendment. *See* Civil Suit Verdict Form (March 28, 2016) at 1-

2; Appendix P. Mr. Kensu was awarded damages, but his request for an order that the medical treatment he needed be provided was denied because he was transferred from the prison that had denied him treatment (Saginaw Correctional Facility) to another MDOC facility. Yet Mr. Kensu was transferred back to Saginaw Correctional Facility almost immediately after this denial. Once returned to Saginaw, many of the medical devices he had received previously were seized by the same people whom the federal courts had found violated Mr. Kensu's constitutional rights. Mr. Kensu had to once again initiate a civil suit in an effort to secure access to the care and medical items needed to address his medical conditions.

The long-term prognosis of the brain tumor is unknown, but what is known is that there is no such thing as a harmless brain tumor, and Mr. Kensu is rightly concerned that his medical needs will not be met by the MDOC (given their prior track record in his case). While he has encountered many physicians in the system that have been supportive and compassionate, he has also had to fight to receive care for injuries and illnesses that were minor in comparison to a brain tumor. The stakes are now higher and, given the MDOC's prior record, Mr. Kensu requests that he be granted clemency so that he can obtain adequate medical treatment outside of prison.

IV. Description Of Why Mr. Kensu Should Be Granted Clemency (Question 5)

A. The Traditional Executive Power of Clemency And Why This Case Is The Perfect Candidate For Clemency.

> ***"It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible."***
>
> — ***Chief Justice William Rehnquist***
> *Herrera v. Collins*, 506 U.S. 390, 415 (1993)

The U.S. Supreme Court has described executive clemency as "the fail safe" of our criminal justice system. Chief Justice Rehnquist's words make clear that it is intended as a mechanism to

correct wrongful convictions and adequately address compelling claims of innocence that the courts have not been able to reach:

> Clemency is deeply rooted in our Anglo-American tradition of law. . . . [H]istory is replete with examples of wrongfully convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence.

Herrera, 506 U.S. at 411-12, 415.

Further, Justice Scalia noted that pardoning "innocent condemnee[s] through executive clemency. . . demonstrates not the failure of the system but its success." *Kansas v. Marsh*, 548 U.S. 163, 193 (2006) (Scalia, J., concurring). **In other words, our nation's highest court clearly understands and intends that executive clemency serve as a critical avenue of relief for innocent defendants.**

Our state's Supreme Court has also long recognized the importance of clemency. In 1895, the Court stated that the pardon power "is vested exclusively in the governor of the state, and any law which restricted this power would be unconstitutional and void." *Rich v. Chamberlain,* 104 Mich. 436 (1895). The Court continued, "[t]he power conferred by this section of the constitution is practically unrestricted, and the exercise of executive clemency is a matter of discretion." *Id.*

The Court reiterated this doctrine in 1952, when it stated, "[t]he power of pardon and commutation of sentence rests in the governor alone. . . . The Constitution by implication forbids the judiciary to commute a sentence. It does not enable the legislature to pass a law that will infringe upon the exclusive power of the governor to commute a sentence." *People v. Freleigh*, 334 Mich. 306 (1952).

The Constitution of Michigan of 1963 states, "[t]he governor shall have power to grant reprieves, commutations and pardons after convictions for all offenses, except cases of impeachment, upon such conditions and limitations as [s]he may direct, subject to procedures and regulations prescribed by law. [S]he shall inform the legislature annually of each reprieve,

commutation and pardon granted, stating reasons therefore." Mich. Const. Art. 5, § 14.

The Michigan Legislature has specified procedures the governor must follow when granting clemency. All applications for clemency must be filed with the parole board and contain any information the parole board requires. M.C.L. 791.243. The governor, however, has the power to grant clemency (meaning either a commutation or a pardon) regardless of the parole board's recommendation. Additionally, the governor has the power to request that the parole board's process be expedited when the commutation is "based in part on a prisoner's medical condition." M.C.L. 791.244(2). Again, "[t]he power of pardon and commutation of sentence rests in the governor alone." *Freleigh*, 334 Mich. at 306.

Mr. Kensu's case is a perfect example of a conviction that begs for clemency. Judges in both state and federal court have recognized significant flaws in his trial and the lack of evidence against him. The Sixth Circuit noted in 2017 that Mr. Kensu **"has made an adequate prima facie showing that, had he had access to the original photographs at trial and been able to use them in his defense, no reasonable factfinder would have found him guilty."** Sixth Circuit Opinion, 10/2/17 at 9 (emphasis added); App. I. And yet, our courts have repeatedly proved incapable of overcoming procedural barriers to grant relief based on the substance of this case.

Mr. Kensu has also pursued every educational opportunity he could, both inside and outside of prison. He has completed a pre-college program at Mott Community College, has pursued multiple bachelor's degrees, and holds a paralegal degree with a specialty in corporate law. Mr. Kensu has also served as a letter writer for illiterate prisoners, performed paralegal services for impaired prisoners, and served as a Warden's Forum Member and Chairman. He has volunteered as a sign language translator for deaf prisoners, as a music teacher, and with juvenile offender programs. Finally, Mr. Kensu has continuously received exemplary work and behavior reports from MDOC for his full-time job, which requires extra security clearance. *See* Appendix Q.

Despite all of this, Mr. Kensu remains in prison, serving a life sentence. He has been up and down the state and federal courts many times, all while his health has continued to deteriorate. Mr. Kensu thus turns to this request for executive clemency.

B. Importantly, The Parole Board Has Made Clear On The Record That It Does Not Consider Innocence As Part Of Its Recommendation To The Governor, And Thus It Is Critical That The Governor's Office Conduct Its Own Analysis Of The Evidence Of Innocence.

Although Michigan's clemency process involves the parole board giving a recommendation to the governor's office about whether to grant or deny clemency in a particular case, it is important to note: 1) that this recommendation is in no way required or binding (given the language from *Chamberlain* and *Freleigh*, quoted above), and 2) that **the parole board has made clear on the record that it does not consider innocence as part of its recommendation**. This being the case, it is critical that the governor's office conduct its own review of the evidence of Mr. Kensu's innocence, rather than just accept the parole board's recommendation.

For example, a public hearing was granted in 2018 in the clemency application of Michigan Innocence Clinic client Donyelle Woods. At that hearing, both the **presiding parole board member and the assistant attorney general made clear that they do not evaluate the evidence of innocence**. At the start of the hearing, presiding board member Anthony King said:

> This is not a retrying of the case. So we're not going to spend hours upon hours going over the appeals, et cetera. The focus here today for this Parole Board is does [the defendant] pose a threat to public safety[?] **Our decision with regard to our recommendation to the Governor will be based upon that criteria alone**.

Woods Public Hearing Transcript, 11/27/18 at 5 (emphasis added), Appendix R. Assistant Attorney General Scott Rothermel then made that point even more clear:

> I'm not here to retry you. I'm, frankly, not here to go through every bit of your clemency and why you're seeking the innocence. The Innocence Project has put forth your claim in a very detailed brief, and that will go to the Governor. . . . [T]the Governor will be able to read it. I don't feel it's necessary that we go over these facts and

circumstances of his claimed innocence now.

Id. at 44, 53-54. Mr. King again immediately agreed that the hearing should exclude any consideration of clemency based on innocence. *Id.* at 54.

Because the parole board has made clear that it does not take innocence into account, it is critical that the governor's office review the evidence of innocence substantively on its own, instead of automatically following the parole board's recommendation. Otherwise, Mr. Kensu will again be denied a substantive review of the evidence in his case, which would repeat the failure of the courts and the AG CIU with respect to this case.

C. Gov. Whitmer Should Follow The Example Of Governors In Michigan And Across The Country Who Have Granted Clemency Even In Murder Cases Upon A Showing Of Actual Innocence.

The most recent example of clemency being granted in Michigan in a comparable case was Gov. Jennifer Granholm's 2010 grant of clemency to Thomas Cress. The Cress case, which was also handled by the Michigan Innocence Clinic, involved a 1983 murder and sexual assault conviction out of Calhoun County. Ed White, *Man convicted in teen's slaying will be released*, THE ASSOCIATED PRESS, December 30, 2010, *available at:* http://legalnews.com/oakland/819074.

The Cress clemency—in terms of the high-profile nature of the crime, the age of the conviction, and the opposition by the prosecution—was quite similar to Mr. Freeman's clemency request. Despite those difficulties, Gov. Granholm commuted Cress's sentence, with her spokesperson stating that there was a "compelling demonstration that he was wrongly incarcerated" and "has served 25 years for a murder he didn't commit." *Id.* Cress's attorney—Michigan Innocence Clinic co-founder and now Michigan Supreme Court Chief Justice Bridget McCormack, who was also Mr. Kensu's attorney until she left the Clinic to join the Supreme Court—lauded Gov. Granholm's decision, noting that she "dug in" and made the right choice in

following the evidence of innocence. *Id.*

More recently, governors in other states have also granted clemency in high-profile murder cases. The letter of support from The Exoneration Project at the University of Chicago Law School, Appendix S, speaks to several pardons and commutations granted by the governors of Illinois, Indiana and Kentucky—specifically in murder cases, and even in some instances where a conviction integrity unit had reviewed the case and declined to grant relief. Exoneration Project Letter at 2-3. The Exoneration Project's letter lists as examples:

1) **Keith West**, who was convicted of murder in Kentucky in 1995 and was fully pardoned by Gov. Matt Bevin in 2019.

2) **David Bates**, who was convicted of murder in Illinois in 1985 and was fully pardoned by Gov. Pat Quinn in 2015.

3) **Keith Cooper**, who was convicted in Indiana of robbery causing great bodily injury in 1997 and was fully pardoned by Gov. Eric Holcomb in 2017.

Id. at 2 (including links to the Registry of Exonerations for further details on all cited cases). The EP's letter also mentions the Illinois cases of Tyrone Hood and Johnny Savory (discussed below), as well as an additional seven commutations granted in innocence cases by Illinois Gov. J.B. Pritzker during the COVID-19 pandemic. *Id.* at 2-3.

In a separate letter of support, Erica Nichols-Cook, director of the Wrongful Conviction Division of the Iowa Office of the State Public Defender, describes the case of her former client, **Peggy Jo Jackson**. Appendix T. Noting that former Illinois Gov. Pat Quinn granted clemency to Jackson in 2013, Ms. Nichols-Cook writes:

> The court system and its procedural barriers allow for finality, but not always justice. Governor Quinn recognized the tragic injustice that occurred here and granted Peggy Jo Jackson relief when the judicial branch could not do so. We encourage you to do the same for Temujin Kensu.

Appendix T. A handful of additional significant examples of clemency follow:

- **Shirley Smith, California:** Smith had been convicted of murder in 1997 in the death of

her infant grandson. Courts failed to overturn the conviction despite strong evidence that Smith was innocent. Justice Ruth Bader Ginsburg dissented from the U.S. Supreme Court's denial of relief in 2011, noting the strong chance that Smith was innocent. California Gov. Jerry Brown commutated Smith's sentence in April 2012. *See* A.C. Thompson, *California Governor Commutes Sentence in Shaken Baby Case*, PRO PUBLICA, April 6, 2012, *available at:* https://www.propublica.org/article/california-governor-commutes-sentence-in-shaken-baby-case.

- **Tyrone Hood, Illinois**: Former Illinois Gov. Pat Quinn granted clemency to Hood, who was convicted of killing a college basketball player, but maintained his innocence and urged police to investigate another suspect. Gov. Quinn commuted his sentence in 2015. Hood was fully exonerated shortly afterward and is included in the National Registry of Exonerations: https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4638.

- **Johnnie Savory, Illinois**: Gov. Quinn fully pardoned Johnnie Savory, who was convicted of a double homicide. Savory's case involved a false confession extracted by police. Given strong evidence that the confession was false and that another man was the true perpetrator, Governor Quinn issued a pardon to Savory in 2015. His case is also included in the National Registry of Exonerations: https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4630.

- **Felipe Rodriguez, New York**: Rodriguez was convicted of a brutal 1987 murder in Queens. There were no witnesses to the crime, no murder weapon was found, and no DNA evidence was available for testing. Instead, Rodriguez was convicted on the basis of a faulty police line-up and false testimony from a man who wanted to protect himself. Former New York Gov. Andrew Cuomo granted Rodriguez clemency in 2016, after he served 27 years of wrongful incarceration. Rodriguez was fully exonerated shortly thereafter, and his case is also included in the National Registry of Exonerations: https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5660.

- **Rodney Lincoln, Missouri:** Lincoln was convicted in a 1982 murder and sexual assault in St. Louis. The courts upheld the conviction despite strong evidence that Lincoln was innocent and convicted through the use of junk science. Gov. Eric Greitens commuted Lincoln's sentence on the basis of actual innocence in June 2018. *See* Rachel Rice, *A week of freedom: Rodney Lincoln, his murder sentence commuted, adjusts to life after 36 years behind bars*, ST. LOUIS POST-DISPATCH, June 13, 2018, *available at:* https://www.stltoday.com/news/local/crime-and-courts/a-week-of-freedom-rodney-lincoln-his-murder-sentence-commuted-adjusts-to-life-after-36/article_cde8c8d7-90a9-5053-a0bc-27e0536377ff.html.

- **Greg Mingo, New York**: Mingo was convicted of murder in 1982 stemming from a robbery and double-murder in Queens. Mingo always maintained his innocence and had significant alibi support for his innocence claim. Over 40 years, Mingo exhausted every avenue for litigation. On August 23, 2021, former New York Gov. Andrew Cuomo granted clemency to Mr. Mingo, along with five other men who had all been convicted of murder

> or "of crimes related to murder." *See* Jacob Kaye, *Cuomo grants six more clemencies before leaving office*, QUEENS DAILY EAGLE, August 24, 2021, *available at:* https://queenseagle.com/all/2021/8/24/cuomo-grants-six-more-clemencies-before-leaving-office.

The Exoneration Project's letter notes that: "Executive clemency [has been] 'exercised from time immemorial,' [and it] is a critical tool for justice and mercy when the judicial system fails." EP Letter at 1 (quoting *United States v. Wilson*, 7 Pet. 150, 160-161 (1833)). Moreover:

> "A pardon is an act of grace," an incredible act of humanity and mercy only wielded by the governor in Michigan. It is an awesome responsibility, but indispensable to innocent men and women around the country, like our clients and Mr. Kensu. . . . As the sole wielder of the clemency power in Michigan, [the Governor] can review this case with fresh eyes and without any outside pressures and give Mr. Kensu a chance at a life outside of a cage.

Id. at 3 (quoting *Wilson*, 7 Pet. at 160-61).

V. Mr. Kensu's Home And Job Placement Plans (Question 6)

Executive clemency offers Mr. Kensu the chance to begin again, and he intends to make the most of it. Keith Altman, an attorney in Farmington Hills, has extended a standing job offer to Mr. Kensu, should he be released from prison. Letter from Keith Altman; Appendix U ("I believe wholeheartedly in Mr. Kensu's innocence. In fact, so much so that it is my intention to hire Mr. Kensu to work for my law firm once he is no longer incarcerated."). Mr. Altman considers Mr. Kensu a close friend, writing: "I have found Temujin to be extremely intelligent, thoughtful, and passionate about not only his own plight, but the plight of fellow prisoners. We have spoken often of his desire to continue his work with those falsely accused, as well as those prisoners who are being mistreated. . . ."

Mr. Kensu also has a support network to facilitate his reentry into society. He intends to live with his fiancée, Paula Kensu, who works as a HR Delivery Service Manager for Ally Bank in Applegate, MI. Ms. Kensu lives in her own home, and she would be happy to welcome Mr.

Kensu to stay there as well. *See* Paula Kensu Letter of Support, Appendix V. Mr. Kensu also remains close with Angela Smith, who has always been like a sister to him. Ms. Smith has attended all of his court hearings and currently works as a teacher in a Montessori school in Kalamazoo. Angela Smith Letter of Support, Appendix W.

Mr. Kensu has several other supportive family members in Michigan, including his aunt, Carol Anne-Blower, who serves on the City of Flint's Planning Commission, his uncle, John Freeman, who is an architect, and his cousin, Mike Freeman. Mr. Kensu also has children and grandchildren, all of whom he hopes to reconnect with upon release. And as stated before, Michelle Woodworth, Mr. Kensu's girlfriend in 1987 and the mother of his son, has remained supportive over the years, as evidenced by her letter to former Sen. Carl Levin (included along with Sen. Levin's letter in Appendix A).

VI. Conclusion

Mr. Kensu has served 35 years in prison for a crime he did not commit. He was not, and is not, a murderer. Despite his wrongful incarceration, Mr. Kensu has refused to let anger dictate his actions during the last three-and-a-half decades. His faith and the personal relationships he has built and maintained—both in and out of prison—have helped him cultivate a mindset of patience and positivity. Now, diagnosed with a brain tumor and other serious health issues, unable to attain relief in court due to procedural barriers, Mr. Kensu turns to Governor Whitmer for clemency—which is the one thing that can correct this textbook example of our justice system's fallibility.

The mistakes made in the St. Clair County courthouse 35 years ago have forever altered Mr. Kensu's life. With the Governor's aid, they need not continue to dictate his future. While our justice system has come a long way since 1987—and it is highly unlikely that anyone would be convicted today on the basis of several days of irrelevant character evidence elicited by the

prosecution and unchallenged by a drug-addled defense attorney—that is little solace to Mr. Kensu, who did suffer from those unfortunate irregularities at his trial.

Therefore, Mr. Kensu respectfully requests that the Governor do as urged in letters of support from the late Sen. Carl Levin and a host of other elected officials: grant clemency and finally end the nightmare of Mr. Kensu's wrongful conviction.

> ***"I again plea for the release of Temujin Kensu. . . . It is never too late for a humanitarian act."***
>
> — ***The Late Sen. Carl Levin***
>
> — *2020 Email to Gov. Whitmer's Asst. Legal Counsel (Included in Appendix A)*

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Dated: June 27, 2022