PETITION FOR EXECUTIVE CLEMENCY FOR

NATHAN DUNLAP

May 6, 2013

“Executions harm society by mirroring and reinforcing existing injustice. The death penalty distracts us from our work toward a just society. It deforms our response to violence at the individual, familial, institutional, and systemic levels. It perpetuates cycles of violence”

–Bishop James Gonia, Rocky Mountain Synod, Lutheran Evangelical Church.

“Race and class should not be the consistent determinants of who gets executed.”


“Assuming that the death penalty may sometimes be appropriate, there is no principled reason for it to be applied in the circumstances of this case. Nathan Dunlap's mental illness is being controlled with appropriate medication. He should be punished for his crimes, not by being put to death, but by spending the rest of his life in prison.”

– Former Colorado Supreme Court Justice Jean Dubofsky and 12 other former Colorado judges.
**OVERVIEW**

Nathan Dunlap respectfully asks you, Governor Hickenlooper, to grant him clemency, and to commute his death sentence to life imprisonment without the possibility of parole.

By asking you to exercise the clemency power and spare his life, Mr. Dunlap does not seek to avoid responsibility for the crimes he committed on December 14, 1993. Mr. Dunlap understands that he took four innocent lives, and irrevocably damaged a fifth. He knows he inflicted immeasurable suffering on the families of Sylvia Crowell, Ben Grant, Margaret Kohlberg, and Colleen O'Connor, as well as on Bobby Stephens and his family.

"I’m sorry for the pain and suffering I’ve caused the victims’ families and friends, Bobby Stephens and his family and friends, and my family and friends. I’m sorry for the hate that I’ve created. I’m sorry for the loss of life. The loss of friends, family and loved ones. I’m just sorry for everything that happened on December 14, 1993, and the ripple effect that followed. . . . I know saying, writing and feeling sorry isn’t enough and I wish there was something more that I could do to relieve any pain.”

– Nathan Dunlap, April 2013.

There are many reasons to spare Nathan Dunlap, and there is no principled reason to execute him. He has been safely housed in prison for nearly 20 years, and he poses no danger to others. His execution will have no deterrent effect, and his case involves the same problems of racial bias, arbitrariness, and geographical disparity that have led to calls for the repeal or reform of Colorado’s death penalty.

Nathan Dunlap’s childhood was characterized by extreme physical, emotional and sexual abuse. The jury that sentenced him to death knew nothing of his serious mental illness, or the role of that illness in his commission of the murders. Nathan Dunlap – then 19 years old – was in the grip of his first full-blown manic phase when he committed his terrible crime.
Today, three of Mr. Dunlap’s trial jurors say that if they had known about his bipolar disorder and psychosis, they might have voted for life, instead of death. Under Colorado law, even one juror’s “life” vote would have spared Mr. Dunlap.

Further, recent neuroimaging confirms that Nathan Dunlap suffers from significant brain abnormalities that impair his impulse control and moral reasoning. This brain damage was surely present in 1993, and it further helps us understand how Mr. Dunlap came to commit his terrible crime.

Yet Nathan Dunlap’s mental illness and brain damage do not mean that he is dangerous now. Since 2006, when the DOC finally began treating Mr. Dunlap’s illness with medication, his mental health has been stable and his behavior exemplary. And his brain has matured, reducing the behavioral effects of the frontal lobe damage.

Just as Nathan Dunlap has matured with the passage of time, so have society’s views of the ultimate sanction changed. The systemic flaws in Colorado’s death penalty, together with the mitigating aspects of Mr. Dunlap’s case, have generated widespread support for clemency in his case. Former judges and prosecutors, faith leaders, civil rights leaders, international human rights organizations, academics, mental health advocates, and ordinary citizens all agree that Nathan Dunlap’s life should be spared.

One thing is certain: Mr. Dunlap will never leave prison alive. It is your decision whether or not he dies at our hands. He asks you to exercise the power of clemency, and to allow him to spend the remainder of his life in prison, without the possibility of parole.

“Forty-one percent of death row inmates in the United States are Black, although Black people represent only 12% of the U.S. population. The imbalance in Colorado is even more striking. While only 4.3 percent of those who live in Colorado self-identify as African-American, Colorado’s death row is 100% African-American.”

– Rosemary Harris Lytle and others, on behalf of the NAACP, April 2013.
Nathan Dunlap accepts responsibility for his crimes. He is deeply remorseful.

First and foremost, Nathan Dunlap does not seek clemency in order to avoid responsibility or evade punishment for his crimes. Long before his trial, in December 1994, Mr. Dunlap offered to plead guilty in exchange for four consecutive life-without-parole sentences; the Arapahoe County District Attorney’s Office rejected this offer.

Mr. Dunlap went to trial because a guilty plea would have precluded him from being sentenced by a jury, under an aspect of Colorado law that has since been ruled unconstitutional. But he has never denied his guilt, and he continues to take full responsibility for his crimes.

Attached to this petition, at Tab 1, is a letter Nathan Dunlap has written to you, Governor Hickenlooper. He writes, in part:

I’m sorry for the pain and suffering I’ve cause the victims’ families and friends, Bobby Stephens and his family and friends, and my family and friends. I’m sorry for the hate that I’ve created. I’m sorry for the loss of life. The loss of friends, family, and loved ones. I'm just sorry for everything that happened on December 14, 1993 and the ripple effect that followed.

As I’ve put my thoughts and feelings to paper, I know saying, writing, and feeling sorry isn’t enough and I wish there was something more that I could do to relieve any pain.
Nathan Dunlap grew up in a home filled with chaos and abuse.¹

At birth Nathan Dunlap had two strikes against him. His family has a multi-generational history of mental illness, and he grew up in a home of extreme violence.

• **Nathan Dunlap’s family has been plagued by mental illness for at least five generations.**

Nathan’s mother, Carol Dunlap, née Jones, suffers from severe bipolar disorder. Carol’s family speaks of “the Jones Curse,” a history of mental illness with deep roots in the family tree. Carol’s father, Garnett Charles Jones, Jr., was diagnosed with paranoid schizophrenia. The family believes he really had bipolar disorder because of the episodic nature of his symptoms. Garnett Jones married (or claimed to have married) 14 different women, and fathered at least 21 children. He reportedly abused Carol both physically and sexually.

At least two of Carol’s many half-siblings, Garnett Charles Jones, III, and Lynn Jones, suffer from bipolar disorder, as do several of Carol’s nieces and nephews. Carol’s paternal grandmother, Lillian Coleman Jones, also was inflicted with the Jones Curse, though she was never formally diagnosed with bipolar disorder. Nathan Dunlap’s younger brother, Garland, reportedly suffers from depression and was suicidal as a child and teen. His older sister, Adinea, has a son who has been diagnosed with bipolar disorder.

• **Carol Dunlap’s bipolar disorder terrified her children, especially Nathan.**

Carol Dunlap’s bipolar disorder produced frequent psychotic manic episodes, which led to at least seven hospitalizations between 1972 and 1994. These episodes

¹Materials supporting this section of Mr. Dunlap’s petition are appended at Tab 3 and are addressed in Mr. Dunlap’s clemency video. Many of the materials regarding Mr. Dunlap’s mental illness, appended at Tab 4, also describe his family background and abusive home life.
had a profound effect on her children’s lives. In 1972, when her first child, Adinea, was six months old, Carol experienced a mental health crisis that landed her in a mental hospital. Adinea was placed with the Williams family. For the next two to three years, Adinea mainly lived with the Williamses, by all accounts a loving and stable foster family. Meanwhile, Carol was in and out of mental hospitals. She had a brief affair with a man named Jerome Lang, who impregnated her and then soon thereafter left her.

Carol’s second child, whom she named Nathan Jerard Rochelle, was born on April 8, 1974. Carol married Jerry Dunlap when Nathan was a few months old. Jerry Dunlap formally adopted both Nathan and Adinea and gave them his last name. Nathan didn’t learn until he was fifteen that Jerry was not his biological father. He has never met Jerome Lang.

Because Carol was still dealing with significant mental health issues when Nathan was born, he joined his sister in the Williams home. The Williamses’ custody of Adinea and Nathan was somewhat informal. Carol visited the children and sometimes took them for a time. Years later, at Nathan Dunlap’s trial, Ira Williams and his daughter testified that Adinea and Nathan were quiet, well-behaved children, but Carol would berate them for any reason or no reason. She was also physically violent towards the children, and they were terrified of her.

When Nathan was a toddler, Carol severed ties with the Williams family and resumed her custody of Nathan and Adinea. By that time, the Dunlaps had moved from Chicago to Memphis; Garland, the only biological child of both Carol and Jerry, was born in 1976. The family eventually moved to Michigan, and then, in 1984, to Colorado.

Throughout these years, Carol had manic episodes that terrorized her children. She would stop eating and sleeping, and would wake the children in the middle of the night to rearrange all the furniture in the house. She would become hyper-religious, and sometimes joined a cult. She also became hyper-sexual, and would touch her sons inappropriately. Carol once tried to kill herself and Garland because she believed Garland had become possessed by the Devil.

2 Adinea’s father is Rufus Rochelle, who was Carol’s first husband.
Many of Carol’s manic episodes led to her hospitalization. She received a number of different diagnoses over the years, including schizophrenia. Finally, in 1987 (when Nathan was 13 years old), doctors at Bethesda Hospital in Denver diagnosed her with bipolar disorder and began treating her with lithium. The lithium helped stabilize Carol’s mental health. Nathan, who was the most afraid of his mother’s illness of the three Dunlap children, vigilantly monitored Carol’s daily compliance with her medication.

- Nathan Dunlap showed signs of mental illness before the murders, but he never received treatment or support.

Given the Dunlap family’s experiences, one surely wonders why Nathan Dunlap’s mental illness was not identified and treated before he committed such a terrible crime. The answer probably lies in part with the fact that bipolar disorder tends not to manifest fully until the late teens or early 20s. Still, there were points along the road where Nathan’s life could have taken a different direction. At least twice in his junior high years, Nathan Dunlap tried to commit suicide. These cries for help did not lead to diagnosis or treatment.

In January 1989, Jerry Dunlap asked the psychologist at Overland High School to evaluate Nathan, who was then 14 years old. Psychological testing revealed signs of hypomania, but no further effort was made at diagnosing or treating Nathan. Several months later, Nathan Dunlap robbed a dry cleaners and a hair salon. He was adjudicated guilty of these crimes, and placed in a series of youth facilities. His erratic behavior at one facility led to his hospitalization at St. Joseph’s. At least one mental-health professional there expressed concern that Nathan might have an emerging thought disorder.

Carol Dunlap actively interfered with the rehabilitative process during these out-of-home placements. For example, she terminated the family’s counseling sessions, apparently to avoid inquiry into the “family secrets” of physical and sexual abuse (discussed below). Ultimately, no further efforts were made to diagnose or treat Mr. Dunlap’s mental health.
After the murders, Mr. Dunlap’s mother and sister finally recognized that he appeared to be experiencing a manic episode. They repeatedly told his lawyers about their concerns. Yet even when her son’s life was on the line, Carol Dunlap refused to give Nathan’s trial lawyers her own mental health records.

- **Nathan Dunlap and his sister endured severe physical and sexual abuse.**

Growing up while coping with a parent’s mental illness is challenging in its own right. For young Nathan the challenges didn’t stop there. Both Carol and Jerry Dunlap were physically violent towards the children, especially Adinea and Nathan. The kids would receive severe beatings with belts, fists, and wooden rods for such infractions as leaving soapy water in the sink after washing dishes or taking doughnuts from the breakfast area at a motel where the family was staying. It is no wonder that Adinea called her home a “living hell.”

Jerry Dunlap – who had played professional football and weighed over 300 pounds – was most violent towards Nathan. Jerry apparently blamed Nathan for Carol’s mental health problems. Nathan’s siblings now believe that Jerry also hated Nathan because Carol Dunlap often told Jerry how much she had loved Jerome

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Garland Dunlap endured less abuse than his siblings. Garland was his mother’s favorite and Jerry’s only biological child.
Jerry would throw Nathan against walls, hurl him down hallways, hit him with objects, and punch him. Carol testified at Nathan’s trial that she did not know about this abuse, and assumed the noises she sometimes heard in the night were family members “moving furniture.” Whether or not she knew, she certainly did nothing to stop it.

Jerry also sexually assaulted Adinea for nearly a decade. The abuse began with fondling when Adinea was around 9 years old, and escalated to intercourse when she was approximately 12. Nathan discovered this abuse when he was 15 and Adinea was 17, by finding Jerry raping Adinea in the basement.

After Nathan discovered the sexual abuse, Jerry began beating Nathan more frequently and more severely than ever before. One day, Jerry came to the Burger King where Nathan worked and inflicted a severe beating on Nathan in the restaurant’s bathroom.

Jerry Dunlap later admitted his physical abuse of Nathan and sexual abuse of Adinea. He also has told investigators that Carol Dunlap sexually abused Nathan. Jerry described an incident when Nathan was approximately 8 years old, when he discovered Nathan and Carol naked in bed together. Nathan was sitting between Carol’s legs, and Carol was touching his penis. Carol’s hospitalization records also allude to her inappropriate sexual behavior with Nathan.

The abuse Mr. Dunlap suffered is no excuse for his commission of the murders at Chuck E. Cheese’s. However, it provides part of the explanation. Further, recent studies have shown that a history of childhood abuse and trauma may lead to the earlier onset and more severe manifestation of bipolar disorder in those with a genetic predisposition to the disease. Nathan Dunlap’s mental illness is discussed in the next section of this petition.
Nathan Dunlap’s jury knew nothing about his mental illness or its role in his conduct. Since the Department of Corrections finally began treating Mr. Dunlap’s bipolar disorder in 2006, his mental health has been stable and his behavior exemplary.\footnote{Supporting materials regarding Mr. Dunlap’s mental illness are appended at Tab 4. Mr. Dunlap’s clemency video provides additional support.}

There is no longer any dispute: Nathan Dunlap suffers from bipolar disorder. Bipolar disorder is organic and hereditary, and Mr. Dunlap had it in 1993, just as he has it today. Whether or not his lawyers were unconstitutionally ineffective for not investigating his mental illness and presenting evidence of that illness at his trial, the fact remains that Mr. Dunlap suffers from a serious, but readily treatable mental illness, and he was exhibiting symptoms of that illness when he committed the Chuck E. Cheese murders.

Since December 1993, Colorado has known Nathan Dunlap only as “the Chuck E. Cheese murderer,” and has viewed him as a cold-blooded, remorseless killer who struck down four innocent people and gravely injured a fifth, for no apparent reason. The prosecution effectively painted this picture of Mr. Dunlap at trial, and the defense offered no alternative viewpoint. Indeed, Mr. Dunlap’s own lawyer began his closing argument at the sentencing stage of the trial by saying: “How can anyone be so cold? How can anyone be so cruel? What road can anyone go down that could take them to the point where they could make the choices that were made at Chuck E. Cheese? I still don’t know.”\footnote{Trial Vol. 95 at 5747.}

What Mr. Dunlap’s trial lawyer did not know, and what he was therefore unable to tell the jury, was that Mr. Dunlap was not cold or cruel. He was sick. He was a teenager suffering from bipolar disorder and psychosis, in the grip of his first full-blown manic episode. He also was a young man horrified by signs in himself of the same mental illness from which his mother suffered, and which had filled his childhood with terror and chaos.
Mr. Dunlap’s mental illness is no excuse for his crime. It is, however, another important piece of the puzzle, the missing explanation that his own trial lawyer told the jury he had failed to discover.

Perhaps it makes no difference now whether Nathan Dunlap’s trial lawyers did a “good” or “bad” job. But the fact remains that we are not working with the same limited set of facts that the jury was given. We now have the opportunity to understand Nathan Dunlap’s crime, and the appropriate sentence for it, in a different light.

• **Nathan Dunlap was manic at the time of the murders.**

In September 1993, Mr. Dunlap began exhibiting signs of hypomania. Over the next few months, he stopped eating and sleeping, and though he had always been meticulous about his appearance, he became progressively more wild-eyed and unkempt. He constructed an alternate reality for himself, one in which he was not “crazy,” like his mom, but was instead a “cool, bad dude.” He started carrying a gun, and committed a series of armed robberies of area businesses. This period of escalating violence and criminality culminated on December 14, 1993, in the tragedy at Chuck E. Cheese’s.

Mr. Dunlap’s behavior immediately after the murders revealed his mania and delusional thinking. Police reports and accounts of Mr. Dunlap’s friends described him as agitated, energetic, and intent both on bragging about his crime and showing off his superior knowledge of forensic investigation techniques. Soon after his arrest, his behavior became so bizarre that he was placed in a suicide-watch observation cell at the Arapahoe County Jail. By February 1994, his mental health had deteriorated to the point that a judge sent him to the Colorado Mental Health Institute at Pueblo ("CMHIP") for a competency evaluation.
The trial lawyers did not investigate Mr. Dunlap’s mental health, and so the jury did not learn about his mental illness.

Mr. Dunlap’s lawyers received reports from the CMHIP evaluation that described him as violent and erratic, and reported that he had both confessed to and bragged about committing the murders. The CMHIP doctors said Mr. Dunlap was competent to stand trial and was not mentally ill. Their reports, however, also referenced Mr. Dunlap’s sleep disturbance, as well as sometimes “psychotic sounding” behavior and statements. The reports also mentioned that a battery of psychological tests indicated that Mr. Dunlap was not malingering, and might be experiencing mania and psychosis, although the doctors dismissed these results without explanation.

After receiving the CMHIP reports, Mr. Dunlap’s lawyers decided not to further investigate his mental health. They never had an independent expert review Mr. Dunlap’s extensive available mental health records, nor did they have an independent doctor do a full mental-health evaluation. They eventually hired a psychiatrist, Dr. Rebecca Barkhorn, ostensibly to explore Mr. Dunlap’s dysfunctional family life. They refused to give her Mr. Dunlap’s available mental-health records and did not have her conduct an independent psychiatric evaluation. No mental-health evidence was offered at Mr. Dunlap’s trial.

Several years after the trial, experts engaged by Mr. Dunlap’s post-conviction defense team diagnosed him with bipolar disorder and psychosis. These experts – who included Dr. Barkhorn herself – relied mainly on Mr. Dunlap’s 1994 CMHIP records and other materials that were in the trial lawyers’ files. Those materials, explained the experts, indicated that Mr. Dunlap was manifesting signs of mania and psychosis at the time of the murders, and was clearly experiencing a psychotic manic episode during his evaluation at CMHIP a few months later.

Notably, Dr. Barkhorn said she would have diagnosed Mr. Dunlap’s bipolar disorder and psychosis before trial if counsel had given her the available records. She also said Mr. Dunlap’s sleep disturbance during his time at CMHIP was both a hallmark of mania and so extreme as to be physiologically impossible to mangle.
Again, it is worth pointing out that Mr. Dunlap’s abusive and chaotic upbringing may have contributed to the violence and intensity of his emerging bipolar disorder in 1993. While bipolar disorder has long been known to have a strong genetic component, recent research has shown that childhood abuse may contribute both to the manifestation of the disease in those with a genetic predisposition to it, and to the intensity with which the disease presents in a particular individual.

- Finally, in 2006, the DOC diagnosed Mr. Dunlap’s bipolar disorder and began treating him with lithium.

During Mr. Dunlap’s post-conviction hearing, which lasted until late 2004, the State disputed his mental illness, and offered its own expert testimony that he was malingering. Finally, however, in 2006 – thirteen years after the murders – Department of Corrections mental-health staff agreed that Mr. Dunlap suffers from bipolar disorder. DOC began administering Mr. Dunlap a daily dose of lithium, the medicine most commonly used to treat bipolar disorder.

The results of this treatment are striking. From 1996 to 2006, Mr. Dunlap’s behavior in prison was characterized by cycles of bizarre, agitated, destructive, and delusional behavior and frequent disciplinary problems. DOC records show that he experienced extended psychotic manic episodes in 1997 and 2000, and also experienced periods of deep depression, including a suicide attempt in 2002.

Since 2006, however, Mr. Dunlap has not had a single disciplinary write-up. He has remained medication-compliant and has had no manic or depressive

"DOC used to refer to Nathan Dunlap as a malinger because they did not want to believe that the man may have a form of mental illness that could have played a role in his crime. . . . When I first got to know Nathan, I suspected that he probably had a bipolar disorder judging on his behavior. It would appear to me that he was cycling into a depressive stage, and then cycling out of that into a manic stage. So, as I began to research Mr. Dunlap, I saw that there was this family connection with the bipolar disease. Bipolar disease is passed from generation to generation."

– Glenn Cline, former DOC mental health worker, interviewed for clemency video.
episodes. His dosage has been increased over time, beginning with 300 milligrams per day in 2006. He now takes 1500 milligrams of lithium per day.

- **Three of Mr. Dunlap’s jurors now say they might have voted for a life sentence if they had known about his mental illness. Even one “life” vote would have precluded a death sentence.**

One might ask, and fairly, why Nathan’s Dunlap’s history of mental illness and abuse matters. Nathan Dunlap killed four people and injured a fifth. Why should we be concerned with his mental health condition? It matters because this critical information was kept from the jurors at trial.

The jury charged with deciding whether Nathan Dunlap should live or die was told nothing about his mental illness or its role in his conduct. In recent affidavits, three of Mr. Dunlap’s jurors now say that if they had known about his illness, they might have voted for a life sentence, instead of a death sentence.

“If I had known that Mr. Dunlap had this serious mental illness, it may have changed my decision about whether to sentence him to death or life without parole. Knowing about his bipolar disorder could have mitigated my impression of him as cold and remorseless, and it would have made my decision at the sentencing stage much harder.”

– Affidavit of Juror C, October 2012.

“I think the jury should have been told about Mr. Dunlap’s mental illness. I would have wanted to know about this in making my sentencing decision, and would have carefully considered any evidence of mental illness that was presented. If I had known that Mr. Dunlap was mentally ill, it might have changed my decision about what punishment to impose.”

– Affidavit of Juror T, October 2012.
Under Colorado law, if even one juror had decided that Mr. Dunlap's mental illness warranted a life sentence, then he would not have been sentenced to death.

**Recent neuroimaging confirms that Mr. Dunlap has brain damage that further helps explain his behavior.**

Neuropsychological testing of Mr. Dunlap conducted in both 2000 and 2011 indicated that he suffers from frontal lobe impairments, likely caused by a traumatic brain injury. Building on this information, Mr. Dunlap's brain was scanned using PET and MRI technology in January 2013. These images reveal abnormalities in Mr. Dunlap's brain, particularly in areas of the brain that play a key role in regulating impulse control and moral reasoning. There is no way to "malinger" or "fake" an MRI or PET reading.

The imaging results are consistent with the results of Mr. Dunlap's neuropsychological tests. There is a clear correspondence between Mr. Dunlap's impaired neuropsychological test scores and impaired brain locations seen in the imaging. Since Nathan Dunlap has not sustained any head injuries during his incarceration that might have caused this brain damage, his brain must have been damaged before he committed the murders in December 1993.

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6Reports relating to Mr. Dunlap's neuroimaging are attached at Tab 5.
Dr. Ruben Gur, professor of psychology at the University of Pennsylvania’s Perelman School of Medicine, explains that the damage to Mr. Dunlap’s brain “has significant implications regarding [his] ability to regulate his own behavior, which portends possible disabilities with regard to planning, moral reasoning, judgment, executive ability, response inhibition, and emotional regulation.” Mr. Dunlap’s brain damage also “portend[s] difficulties with memory, conflict resolution, the ability to delay gratification, impulsivity, volatility, and proneness to emotional disturbances.”

Mr. Dunlap's brain damage not only has an independent effect on his behavior and emotions, it also tends to exacerbate the manifestations of his bipolar disorder, particularly when that disorder is not being treated. According to Dr. Gur, the combination of brain damage and bipolar disorder “would make it difficult for [Mr. Dunlap] to regulate his emotional state or inhibit and modulate responses once they have been initiated.”

Mr. Dunlap's brain damage, like his bipolar disorder, is no excuse for his terrible crimes. But these new findings help explain how Mr. Dunlap came to commit those crimes, and place his moral culpability in a different light. Nathan Dunlap is responsible for what happened in 1993, but not to the extent he should be put to death.

**Nathan Dunlap has matured, and he is not dangerous.**

DOC staff attest that Mr. Dunlap is a cooperative and rule-abiding inmate who poses no danger to others in prison. Mr. Dunlap has not had a disciplinary write-up since DOC began treating his mental illness with lithium in 2006.

Mr. Dunlap was only 19 at the time of the crime. Now he is 39 years old. Numerous studies document the differences between the impulsive adolescent brain and the brain of a mature adult. As Dr. Robert McIntyre explains, in his April 2013 report appended at Tab 5, “[R]ecently, brain science has generated statements by CDOC officials and other materials supporting this section of Mr. Dunlap’s clemency request are appended at Tab 6. See also Mr. Dunlap’s clemency video.
significant data showing that the normal human brain matures consequent to two biological processes; neuronal myelination, and synaptic pruning.” These two processes enhance moral reasoning and impulse control, as well as what Dr. McIntyre calls “top-down cognitive control of behavior.”

Nathan Dunlap is mature, thoughtful, intelligent, and caring. He understands the role his mental illness plays in his behavior, and is committed to remaining medication-compliant. He has siblings, nieces, nephews, and friends who love him, who will maintain close relationships with him if he is allowed to live, and who would be devastated by his execution.

“I love my brother. My children love my brother. . . . My younger brother and his young family love my brother. . . . he is not the same person that was put on death row so many years ago. Two things that have never changed are Nathan is still my little brother and my very best friend.”

– Adinea Dunlap Ashlock, February 2013.

Nathan Dunlap’s case reflects all that is wrong with Colorado’s broken death-penalty system.⁸

- The death penalty is arbitrarily sought and imposed.

The mitigating circumstances of Mr. Dunlap’s case, particularly the facts that his sentencing jury was not told about his mental illness, and that he poses no danger to others in prison, warrant clemency. Mr. Dunlap’s case also warrants clemency because it reflects all of the problems that plague Colorado’s broken death-penalty system.

Nathan Dunlap committed a terrible crime, and he should spend the rest of his life in prison. But like all others on Colorado’s death row, he is a young African-American man who committed murder in Arapahoe County. Imposition of the death penalty in this State turns on those arbitrary and biased factors of race, 

⁸Materials supporting this section of Mr. Dunlap’s petition are appended at Tab 7. See also the clemency video.
youth, and geography, and not the facts of a particular crime.

A recent Denver University Law School study analyzed more than 500 first-degree murder cases prosecuted in Colorado between 1999 and 2010. Using this data, a court ruled that 9 out of every 10 could have been prosecuted as death-penalty cases under Colorado law, because at least one statutory aggravating factors was present. But death was only sought in 3% of those cases, only seriously pursued in 1% of those cases, and only obtained in three cases. Even more striking, just one county – Arapahoe – is responsible for all of Colorado's current death sentences, including Mr. Dunlap's. In other words, it is the prosecution, not the facts, that determines whether death is sought.

Furthermore, research compiled by University of Colorado Sociology Professor Michael Radelet shows that between 1980 and 2010, there were at least 36 murders in Colorado involving three or more victims and/or particularly gruesome circumstances. Only one person in Colorado – Nathan Dunlap – faces execution for such a crime. For example, after escaping from prison in 1990, Michael Bell murdered a convenience store clerk in Broomfield, and later shot and killed three men in Lefthand Canyon, outside Boulder. Bell eventually pleaded guilty to all four murders and was sentenced to life in prison.

Another example is the Denver case of Edward Herrera. He pleaded guilty to four 2003 murders and was sentenced to four life sentences. He also pleaded guilty to two counts of attempted murders (one of these victims was rendered paralyzed for life). Each victim was bound with duct tape and shot in the head as one of the victims' 3-year old daughter watched. All four victims were Hispanic.

Race also plays a significant role in Colorado’s death penalty. Like all three of Colorado’s death-row inmates, Nathan Dunlap is African-American. Mr. Dunlap was sentenced to death by a jury that did not include a single African-American person.
The death penalty is a drain on Colorado’s limited resources.

Recent testimony before the House Judiciary Committee indicates that the defense of a death-penalty case costs at least 25 times as much per year as a non-death-penalty case. There is every reason to believe the prosecution and judicial costs are many times higher in death-penalty cases as well. Those costs are compounded by the many additional years of litigation in death-penalty cases.

By some estimates, Nathan Dunlap's case has cost Colorado taxpayers more than $18 million dollars over the past 19.5 years. It is important to note that most of those millions could have been saved if the Arapahoe County District Attorney's Office had accepted Mr. Dunlap's 1994 offer to plead guilty in exchange for four consecutive sentences of life in prison without the possibility of parole.

While those costs are behind us, and cannot be recouped by sparing Mr. Dunlap's life, to move forward with his execution is to validate and perpetuate Colorado's costly and broken system of capital punishment.

The costs of carrying out a death sentence are not measured only in dollars. Those employees of the Colorado Department of Corrections who must participate in the process of taking a human life may suffer what former Oregon prison superintendent Frank Thompson describes as “awful and lifelong repercussions.”

Mr. Thompson, who presided over the only two executions Oregon has carried out in the past half-century, believes that “[n]o one has the right to ask a public servant to take on a lifelong sentence of nagging doubt, and for some us, shame and guilt.” From his unique vantage point, he urges you, in a letter appended at Tab 7, to “relieve employees of the Colorado Department of Corrections of such burdens by granting the clemency request of Inmate Dunlap for life without the possibility of parole.”
Widespread support exists for Mr. Dunlap’s clemency request.

Dozens of former judges and prosecutors, faith leaders, leaders of Colorado’s communities of color, civil rights leaders, academics, human rights organizations, mental health advocates, and ordinary citizens all agree that Nathan Dunlap’s death sentences should be commuted to life in prison with no possibility of parole.

Fifteen retired judges, including two retired justices of the Colorado Supreme Court, two retired Colorado Court of Appeals judges, and judges who served in seven different judicial districts, have written letters calling upon you, Governor Hickenlooper, to grant Mr. Dunlap clemency. These judges stress that clemency is warranted because of the mitigating aspects of Mr. Dunlap’s case, combined with the many deep flaws in Colorado’s death-penalty system.

The views of these judges are echoed by Richard Bloch, who once prosecuted death-penalty cases in Arapahoe County, and by a group of former prosecutors from Colorado and around the country. Edward Barad, a prominent Denver attorney, also urges you to grant clemency to Mr. Dunlap, and to end Colorado’s broken death-penalty system.

“I firmly believe that the threat of a death sentence does not deter criminal activity. . . . there is then only one reason for the death penalty and that is for vengeance. . . . It is time for this barbaric punishment to be stopped.”

Richard Bloch, former Chief Deputy DA, 18th Judicial District, April 2013.

Mr. Dunlap’s mental illness, the systemic flaws in Colorado’s use of the death-penalty, and deep moral conviction have led religious leaders from across Colorado to call upon you to commute Mr. Dunlap’s death sentence to life without the possibility of parole. These pleas for mercy have come from the Colorado Council of Churches, on behalf of its 850 member congregations, from a group of 18 Colorado rabbis, from the Catholic diocese, from the Rocky Mountain Synod of the Lutheran Evangelical Church, from the Greater Metro Denver Ministerial Alliance, and from the Mountain View Friends Meeting. Archbishop Desmond

9Letters and other public expressions of support for Mr. Dunlap’s clemency request are appended at Tab 8. See also Mr. Dunlap’s clemency video.
Tutu, a renowned human rights leader and winner of the 1984 Nobel Peace Prize, has personally contacted you in support of clemency for Nathan Dunlap.

The racially biased and arbitrary imposition of the death penalty in Colorado also has generated calls for clemency from the Colorado Montana Wyoming Conference of the NAACP, the Colorado Latino Forum, and the ACLU. This message is echoed by a group of 75 academics representing 13 different disciplines at 6 different Colorado universities, and by the International Commission Against the Death Penalty.

The National Alliance on Mental Illness (“NAMI”) is the nation’s largest organization representing persons with severe mental illness and their families. NAMI, too, urges you to commute Mr. Dunlap’s death sentence to life without parole. NAMI believes that in light of Mr. Dunlap’s serious mental illness, and the fact that his sentencing jury was not told about that illness, his execution would be “senseless and cruel.”

“The sanctions of death are unique among punishments in their conclusive and irreversible nature. When administered to individuals suffering from mental illness, the death penalty results in an unalterable and irrevocable judgment of death. This judgment may be imposed in a constitutional manner only when the harm caused by the illness that the defendant suffers is determined not to be a causal factor in his criminal conduct.”

– Michael J. Fitzpatrick, Executive Director, NAMI, April 2013.

These voices are joined by those of the family members and friends who know and love Mr. Dunlap as an individual, and who would be personally devastated by his execution.
CONCLUSION

The executive clemency power serves to temper the law’s harsh results with compassion. Without that power, wrote Alexander Hamilton, in the Federalist Papers, “justice would wear a countenance too sanguinary and cruel.”10

Governor Hickenlooper, for all the reasons set out above and documented in the attached materials, we urge you to exercise your power of executive clemency. Please commute Nathan Dunlap’s sentence from death to life imprisonment without the possibility of parole.

Respectfully submitted,

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May 6, 2013

10The Federalist No. 74, at 446 (Alexander Hamilton) (Clinton Rossiter ed., 1961).
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