



Pursuant to NRS 47.130(2), Zane Michael Floyd requests this Court take judicial notice of the Board of Pardons Letter to Mr. Floyd discussed below, which has been attached as an exhibit to this request.

This document is relevant to the argument regarding access to clemency contained in Mr. Floyd's Opening and Reply Briefs. Exhibit 1 is a Letter from the Board of Pardons to Mr. Floyd informing him that his application would not be considered at the time. It is dated December 28, 2021.<sup>1</sup>

Pursuant to NRS 47.130(2), a judicially noticed fact must be either generally known within the territorial jurisdiction of the trial court or be capable of determination by resort to a source whose accuracy "cannot reasonably be questioned." NRS 47.130(2)(b). Here, the letter from the Board of Pardons satisfies both requirements.

Exhibit 1 meets the requirement of NRS 47.130(2)(a) as it is a publicly known fact in Nevada that Mr. Floyd has not been before the Pardon's board. *See Naoka Foreman, Activists Protest as Board of*

---

<sup>1</sup> This is also the date that Mr. Floyd filed his Opening Brief in this matter. As such, undersigned counsel was unaware of this letter at the time of the filing of the Opening Brief.

*Pardons Again Disregards Zane Floyd Clemency Petition*, The Nevada Independent (March 23, 2022), <https://thenevadaindependent.com/es/article/activists-protest-as-board-of-pardons-again-disregards-zane-floyd-clemency-petition>; *Faith Leaders Criticize Nevada Board of Pardons Failure to Hold a Clemency Hearing for Zane Floyd*, Nevada Coalition Against the Death Penalty (September 28, 2021), <https://nvcadp.org/elementor-2146/>.

Exhibit 1 meets the requirements of NRS 47.130(2)(b), as the letter comes from the Board of Pardons, an official Nevada agency, and thus is from a source “whose accuracy cannot reasonably be questioned.”

While this Court will generally not take judicial notice of records in another case this rule is flexible, and this Court will take judicial notice of the record in another case depending on the “closeness” between cases—including administrative proceedings. *See Mack v. Est. of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009). For example, this Court has found a valid reason to take judicial notice of business records maintained at the Secretary of State’s office in *Jory v. Bennight*, 91 Nev. 763, 766, 542 P.2d 1400, 1402-03 (1975), and of an attorney

general advisory opinion in *Cannon v. Taylor*, 88 Nev. 89, 92, 493 P.2d 1313, 1314-15 (1972). Similarly, here the Court should take judicial notice of the attached exhibit as it is a part of a closely related administrative proceeding.

In *Cannon v. Taylor*, 88 Nev. 89, 493 P.2d 1313 (1972), this Court noted that “...respondents’ counsel has merely directed our attention to an incontrovertible fact, verifiable from the records in the building where we sit.” *Id.* at 92, 1314. Here, Mr. Floyd is not merely directing this Court’s attention to a fact verifiable within the same building but by the members of the Court itself—this Court makes up the majority of the Board of Pardons. *See* Nev. Const. Art. 5 § 14(1). The names of the Justices of the Nevada Supreme Court are clearly listed in the upper right of Exhibit 1.

Mr. Floyd is not attempting to improperly expand the record in this matter, but rather show not only has he not been before the Board but the potential reasons for why an application is not chosen for consideration are unconstitutionally vague. As Mr. Floyd noted in his Opening Brief and his Reply, this is prejudicial to the constitutional rights of death row defendants.

Exhibit 1 has a close relationship to the issues addressed in Mr. Floyd's briefs and there is a valid reason for this Court to take judicial notice of it.

Mr. Floyd therefore respectfully requests that this Court take judicial notice of the document attached to this request.

Dated this 27th day of April, 2022.

Respectfully submitted,

Rene L. Valladares  
Federal Public Defender

/s/ David Anthony  
David Anthony  
Assistant Federal Public Defender

/s/ Brad D. Levenson  
Brad D. Levenson  
Assistant Federal Public Defender

## CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2022, I electronically filed the foregoing document with the Nevada Supreme Court by using the appellate electronic filing system. The following participants in the case will be served by the electronic filing system:

Alexander Chen  
Alexander.Chen@clarkcountyda.com

/s/ Sara Jelinek  
An Employee of the  
Federal Public Defender

## **INDEX OF EXHIBITS**

Exhibit 1 Letter from Board of Pardons (December 28, 2021)

# EXHIBIT 1

# EXHIBIT 1



# STATE OF NEVADA

ADDRESS ALL COMMUNICATIONS TO

PARDONS BOARD  
1677 OLD HOT SPRINGS ROAD  
SUITE A  
CARSON CITY, NEVADA 89706  
TELEPHONE (775) 687-6568  
FAX (775) 687-6736

DENISE DAVIS, Executive Secretary



## BOARD OF PARDONS

STEVE SISOLAK  
Governor, Chairman  
AARON D. FORD  
Attorney General, Member  
RONALD D. PARRAGUIRRE  
Chief Justice, Member  
JAMES W. HARESTY  
Justice, Member  
LIDIA S. STIGLICH  
Justice, Member  
ELISSA F. CADISH  
Justice, Member  
ABBI SILVER  
Justice, Member  
KRISTINA PICKERING  
Justice, Member  
DOUGLAS W. HERNDON  
Justice, Member

## BOARD OF PARDONS

December 28, 2021

To: 66514 - FLOYD, ZANE

Current Location: ELY STATE PRISON

Dear Pardons Board Applicant,

After reviewing your application and other information related to your case, it was determined that your application would not be considered at this time. You will need to apply again if you wish to have your case reviewed for consideration at a future meeting of the Pardons Board. Applications will be made available at that time.

There is no exclusive reason why an application is not approved as each application is evaluated on its own merit. Typical reasons for denial may include being parole eligible in the near future or having been denied parole on your current sentence, having a relatively short sentence, having an appeal pending, expiring soon or management issues including but not limited to disciplinary or work record. The reasons listed in this letter are not all inclusive.

Please note that there is no right afforded to any person to be considered for or be placed on an agenda before the Pardons Board, nor is there a right or avenue established to appeal this decision.

Signed,

A handwritten signature in blue ink that reads "Denise Davis".

Denise Davis  
Executive Secretary