CAPITAL CASE

No. 21-6001

IN THE

Supreme Court of the United States

TERENCE TRAMAINE ANDRUS,
Petitioner,

v.

TEXAS,
Respondent.

On Petition for a Writ of Certiorari to the Texas Court of Criminal Appeals

BRIEF OF NATIONAL ALLIANCE ON MENTAL ILLNESS AND NATIONAL ASSOCIATION OF SOCIAL WORKERS AS *AMICI CURIAE* SUPPORTING PETITIONER

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INTERESTS OF *AMICI CURIAE*[1]

The National Alliance on Mental Illness ("NAMI") is the nation's largest grassroots mental health organization. It is dedicated to building better lives for the millions of American affected by mental illness. NAMI has a long history of advocating on behalf of people with mental illness involved with criminal justice systems and opposing the death penalty for people with serious mental illness.

The National Association of Social Workers ("NASW") is a professional membership organization with 110,000 social workers in 55 chapters. The NASW Texas Chapter has about 5,300 members. Since 1955, NASW has worked to develop high standards of social work practice while unifying the social work profession. NASW develops policy statements on issues of importance to the social work profession, promulgates professional policies, conducts research, publishes professional studies and books, provides continuing education, and promotes and administers the *NASW Code of Ethics*. NASW with its Texas Chapter emphasizes the importance in criminal sentencing, especially in death penalty cases, of full consideration of trauma, mental illness, and other mitigating evidence. See Nat'l Ass'n of Soc. Workers, *Social Work Speaks: National Association of Social Workers Policy Statements 2018–2020*, at 29, 32 (11th ed. 2018) (hereinafter NASW, *Social Work Speaks*). NASW believes that

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[1] No counsel for any party authored this brief in whole or in part, and no entity or person other than *amici* or their counsel made any monetary contribution toward the preparation or submission of this brief. The parties received timely notice of *amici*'s intent to file this brief and consented to its filing.

equal application of the law and protection of the dignity of every human being are fundamental to a legal system that upholds social justice.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Texas Court of Criminal Appeals ("CCA") concluded below that Petitioner Terence Andrus's mitigating evidence—which this Court described as "abundant," "vast," "compelling," "powerful," "myriad," "voluminous," and previously "untapped"—was actually "not particularly compelling," "relatively weak," and deserved "skepticism." The CCA thus brushed aside evidence that Mr. Andrus spent his formative years in an environment plagued with crime and violence, raised in an unstable and abusive home by a mother whose drug use or symptoms of mental illness prevented her from adequately caring for Mr. Andrus or his four siblings. The CCA's conclusions depended on the judges' unsupported intuitions about how childhood trauma and mental illness manifest themselves. Not only are these intuitions unsupported by clinical research, but they also rest on inaccurate stereotypes about mental illness.

In fact, both settled clinical understandings and common sense show that the court below was wrong. In turn, a single juror could easily have concluded, in line with this Court's prior decision, that this extensive mitigating evidence changed the balance of aggravating and mitigating factors for Mr. Andrus's moral culpability. Because Mr. Andrus's death sentence required a unanimous jury recommendation, the prejudice inquiry requires only "'a reasonable probability that at least one juror would have struck a different balance' regarding [Mr. Andrus's] 'moral culpability.'"

Pet. App. 23 (citing *Wiggins* v. *Smith*, 539 U.S. 510, 537–38 (2003)).

Established clinical research shows that exposure to traumatic events in childhood—like those Mr. Andrus experienced as a child—has deep and enduring effects throughout a person's life. Because exposure to abuse, neglect, violence, and instability during childhood can cause long-lasting psychological, behavioral, and social effects, evidence of exposure to childhood trauma can be powerful mitigating evidence. The CCA improperly discounted this evidence, which there is a "reasonable probability" a juror would have credited.

Further, the CCA's mistaken intuitions about mental illness led it to misconstrue several facts as disproving any mental illness, when those facts are actually consistent with mental illness. For instance, people with mental illness may still be able to care for family members at certain points in time, or they may deny their mental illness or refuse treatment for it. Indeed, the record as a whole shows that Mr. Andrus has struggled with mental illness throughout much of his life.

ARGUMENT

I. The court below erroneously discounted the extent and impact of childhood abuse and neglect as mitigating evidence.

Traumatic childhood experiences can cause profound impairments, including long-term psychological, behavioral, social, and biological consequences. This Court recognized that Mr. Andrus was exposed to traumatic events during his childhood, including "extreme neglect and privation" and "a family environment filled with violence and abuse." Pet. App. 18. And the record is clear that Mr. Andrus suffers from serious

mental illness. See 3EHRR70.[2] "Even Andrus's jail records—upon which the State and the CCA relied heavily—posit the prospect of schizophrenia, mood disorder, schizophrenia affective disorder, bipolar disorder, and post-traumatic stress disorder." Pet. 32. Yet, as the petition explains (at 21–28), the CCA disagreed with this Court and rejected this significant mitigating evidence.

Simply put, if a majority of this Court could view the record as establishing "compelling" mitigating factors, at least one juror could reasonably do so too.

A. Exposure to traumatic events in childhood can cause profound and long-lasting negative effects well into adulthood.

Trauma transforms the brains of children who experience it. Traumatic experiences that can produce these brain changes include suffering abuse or neglect; witnessing violence in the home or community; and growing up in a household with substance misuse, mental health problems, or parental separation—all of which happened to Mr. Andrus. See *Adverse Childhood Experiences*, Nat'l All. on Mental Illness Sw. Wash., https://namiswwa.org/about-mental-illness/aces/ (last visited Nov. 15, 2021) (hereinafter NAMI, *ACEs*). Exposure to trauma causes toxic stress, which can impair brain development and affect the body's stress response. See *Adverse Childhood Experiences (ACEs)*, Ctrs. for Disease Control & Prevention (Nov. 5, 2019), https://www.cdc.gov/vitalsigns/aces/index.html; *ACEs*

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[2] This brief uses the same citation format for state habeas proceedings as the Petition. *See* Pet. ii–iii. "EHRR" refers to the Reporter's Record for Mr. Andrus's state habeas evidentiary hearing, "SX" refers to an exhibit offered by the State in the habeas proceeding or at trial, and "DX" refers to an exhibit offered by Mr. Andrus in the habeas proceeding.

and Toxic Stress: Frequently Asked Questions, Ctr. on the Developing Child, Harv. Univ., https://bit.ly/3cgA2DW (last visited Nov. 15, 2021). Brain imaging studies have confirmed that changes occur in the structure and functioning of the brain of a mistreated child. See Charles B. Nemeroff, *Paradise Lost: The Neurobiological and Clinical Consequences of Child Abuse and Neglect*, 89 Neuron Rev. 892, 899–901 (2016).

These trauma-induced changes cause adverse consequences that can persist and remain significant throughout adulthood. For example, the changes can lead to cognitive impairment and emotional dysregulation, and they can significantly increase the risk of developing mental and behavioral health issues like Post-Traumatic Stress Disorder ("PTSD"), depression, bipolar disorder, and substance abuse disorders. Children's Bureau, U.S. Dep't of Health & Hum. Servs., *Supporting Brain Development in Traumatized Children and Youth* 2 (Sept. 2017), https://www.childwelfare.gov/pubpdfs/braindevtrauma.pdf. Studies have found that emotional dysregulation, the inability to control or regulate emotional responses to provocative stimuli, is the mechanism that connects childhood trauma and interpersonal functioning in adulthood. See, *e.g.*, Julia C. Poole et al., *Do Adverse Childhood Experiences Predict Adult Interpersonal Difficulties? The Role of Emotion Dysregulation*, 80 Child Abuse & Neglect 123 (2018). And recent research has documented the relationship between traumatic childhoods events and PTSD. See, *e.g.*, Julia I. Herzog & Christian Schmahl, *Adverse Childhood Experiences and the Consequences on Neurobiological, Psychosocial, and Somatic Conditions Across the Lifespan*, 9 Frontiers Psychiatry 420 (2018). Children who experience traumatic events are also more likely to suffer

from depression and chronic disease in adulthood. See Phelan Wyrick & Kadee Atkinson, *Examining the Relationship Between Childhood Trauma and Involvement in the Justice System*, Nat'l Inst. Just. J., no. 283 (Apr. 29, 2021), https://bit.ly/3Fg8V8w.

B. Mr. Andrus experienced childhood trauma that may have caused profound and long-lasting negative effects well into adulthood.

As a child, Mr. Andrus experienced textbook traumas. He suffered neglect, abuse, and violence; he witnessed violence in the home and community; he grew up in a household with substance misuse; and he was raised in an unstable household because of parental separation or household members being in jail or prison. See NAMI, *ACEs*, *supra*; Pet. App. 18. These types of damaging childhood experiences can have negative long-term effects and adversely impact a person's demeanor, behaviors, and mental and emotional well-being. See NAMI, *ACEs*, *supra*.

This Court has recognized that Mr. Andrus's childhood was "marked by extreme neglect." Pet. App. 18. "By the time Andrus was 12, his mother regularly spent entire weekends, at times weeks, away from her five children to binge on drugs," and when his mother was with her children, "she often was high." *Id.* at 17. She left "her children to fend for themselves," and many times "there was not enough food to eat." *Id.* at 18. Mr. Andrus's biological father was rarely around, as he was "in and out of prison for much of Andrus' life." *Id.* As a result, Mr. Andrus was forced to care for his four siblings when he was only twelve years old. *Id.* at 19.

Mr. Andrus also grew up in an environment of "violence and abuse." Pet. App. 18. Mr. Andrus lived in a

neighborhood where there were "frequent shootings" and "gang fights." *Id.* His mother dated "drug-addicted, sometimes physically violent, boyfriends." *Id.* at 17. She would introduce Mr. Andrus and his siblings to her boyfriends. One of those boyfriends raped Mr. Andrus's younger half-sister. *Id.* at 18. Another boyfriend was killed in a shooting. *Id.* at 19.

Not only did Mr. Andrus grow up in a violent neighborhood around violent people, but he also witnessed violence and its effects firsthand. One of his mother's boyfriends physically abused her. Pet. App. 17. And Mr. Andrus remembers his mother coming home covered with the blood of her murdered boyfriend. 6EHRR194. Mr. Andrus also received "beatings" from his mother that left bruises, SX32 at 2, and his mother's boyfriends punched him hard enough to knock the wind out of him, *id.* at 4.

Substance misuse was also a staple of Mr. Andrus's childhood environment. He "was six years old when his mother began selling drugs out of the apartment where Andrus and his four siblings lived." Pet. App. 17. She often sold drugs at home, in front of her children, and she was often high in front of them. *Id.* at 18.

Finally, Mr. Andrus suffered familial separation and had incarcerated family members. Mr. Andrus's mother was often absent or high; his father was incarcerated; and several father figures—in the form of his mother's boyfriends—were incarcerated, and one was murdered. Mr. Andrus also faced the traumatic loss of his sister, when Child Protective Services removed her from their home after her biological father raped her at a young age. See Pet. App. 17. Whether or not Mr. Andrus knew that his sister was sexually abused, he was unquestionably aware of her removal from the household. The removal of a sibling by the state after

a rape must have exacerbated an already unstable, traumatic environment.

It is thus unsurprising that, since at least his first diagnosis at age ten or eleven, Mr. Andrus has struggled with mental health issues. See Pet. App. 19. A clinical psychologist who evaluated Mr. Andrus as an adult concluded that he experienced "'very pronounced trauma' and posttraumatic stress disorder symptoms from, among other things, 'severe neglect' and exposure to domestic violence, substance abuse, and death in his childhood." *Id.* at 20.

C. Mr. Andrus's childhood trauma is precisely the type of mitigating evidence this Court has recognized could move at least one death-penalty juror.

The pronounced childhood trauma, violence, and neglect that Mr. Andrus experienced track the mitigating evidence that this Court has recognized could lead at least one juror to spare a defendant's life.

Indeed, the Court has found in several comparable cases that exposure to violence during childhood—in the form of physical abuse or domestic violence—is powerful mitigating evidence that could impact the *Strickland* prejudice calculus. For example, in *Williams* v. *Taylor*, the substantial mitigating evidence that petitioner's counsel failed to investigate and present included evidence that "Williams had been severely and repeatedly beaten by his father." 529 U.S. 362, 390, 395 (2000). *Rompilla* v. *Beard* similarly concluded that counsel's failure to examine a file revealing that petitioner's father often beat his mother, that his parents fought violently, and that his father beat him when he was young constituted prejudice that warranted habeas relief. 545 U.S. 374, 390–92 (2005). This Court also made similar findings in *Sears* v. *Upton*,

where petitioner's parents "had a physically abusive relationship" and divorced, and his father was "verbally abusive" and disciplined him with "age-inappropriate military-style drills." 561 U.S. 945, 948, 956 (2010) (per curiam). So too in *Porter* v. *McCollum*, where petitioner "routinely witnessed his father beat his mother" and was his "father's favorite target, particularly when Porter tried to protect his mother." 558 U.S. 30, 33, 43 (2009) (per curiam). Mr. Andrus's childhood environment teemed with this type of violence and abuse: he grew up in gang- and crime-ridden neighborhoods, lived in a home where a sibling was raped, witnessed a boyfriend abuse his mother, and suffered physical abuse himself.

This Court has also recognized that extreme neglect during childhood of the type Mr. Andrus experienced is mitigating evidence. In *Wiggins*, "on at least one occasion, [petitioner's] mother left him and his siblings alone for days without food." 539 U.S. at 525. Mr. Andrus was similarly left on his own with his siblings while his mother "would occasionally just take a week or a weekend and binge [on drugs]." DX13 at 2. This Court also recognized the powerful mitigating effect of neglect in *Rompilla*, where petitioner's father locked him in a small and filthy dog pen, petitioner had an isolated background, his family had no indoor plumbing, and he slept in the attic with no heat. 545 U.S. at 392. And the Court has noted that a person's parents being imprisoned (for neglect) is mitigating evidence as well. *Williams*, 529 U.S. at 395.

Finally, the Court has held that absent or lost parental figures can serve as mitigating evidence. For example, in *Williams*, petitioner "had been committed to the custody of the social services bureau for two years during his parents' incarceration." *Id.* Similarly, Mr. Andrus went without his mother for extended periods of

time, spent most of his childhood with his father being in and out of prison, and experienced the traumatic loss of other parental and familial figures in his life.

In short, the record here contains evidence that this Court has consistently held to create mitigating circumstances. Thus, the decision below not only disregards this Court's prior opinion in this very case; it also clashes with multiple decisions of this Court considering similar facts.

D. The court below erroneously concluded that Mr. Andrus was not physically abused because he gave inconsistent accounts of abuse.

The CCA appears to have concluded that Mr. Andrus could not have experienced physical abuse as a child—a hallmark traumatic experience—because he once "denied a history of physical abuse" during an evaluation at a Texas Youth Commission ("TYC") corrections facility. Pet. App. 6. The CCA reached that conclusion even though Mr. Andrus had also told a clinical psychologist retained by his trial counsel that his mother and her boyfriends would beat him: "As for physical abuse, Applicant told Dr. Brown that his mother would beat him with a board that left bruises on him and that her boyfriends would beat him with their fists at her behest." *Id.* The CCA thus concluded from this conflicting evidence that there was no reasonable probability that at least one juror would find that Mr. Andrus had been physically abused.

But victims of childhood abuse often deny their abuse. See, *e.g.*, *Why Do Children Not Tell?*, Child Safe of Cent. Mo., Inc., https://www.childsafehouse.org/info/faqs/why-do-children-not-tell/ (last visited Nov. 15, 2021). There are many reasons for this, including internalized shame, fear that nobody will believe them,

and dissociation. Thus, that a person denied a history of physical abuse once—but not at other times—does not necessarily mean no abuse occurred. Rather, a childhood victim's inconsistent accounts of physical abuse are entirely consistent with abuse taking place.

What is more, denying a history of abuse or trauma is particularly common during intake at a correctional facility. As Dr. Hammel, a mental health expert, testified during the habeas proceedings: "[I]f you have a history of trauma . . . you tend to be on high alert and you're aware that weakness is not something you want to display." 7EHRR32. "And so entering into a system where you're talking to a psychologist who you don't know and don't trust, people usually are not reporting on—they're not reporting accurately on their history of trauma, their family histories, et cetera." *Id.* Thus, it is no surprise that Mr. Andrus, who was only 16 years old when he entered the TYC juvenile detention center, did not reveal his history of abuse. The CCA thus erred by assuming, without support, that no reasonable juror could conclude that Mr. Andrus had indeed been abused simply because he denied it on this occasion—but not later.

II. The court below misconstrued several factors consistent with mental illness as disproving mental illness, with no record or scientific support.

The CCA also relied on dangerous and inaccurate stereotypes to conclude that Mr. Andrus did not suffer from a mental illness. In particular, the CCA assumed that several facts—Mr. Andrus taking care of his siblings when he was a child, denying mental illness, and refusing to take psychotropic drugs, as well as a change in the presentation of mental illness throughout his life—disproved any mental illness. But these unsupported assumptions are simply wrong. Mental

illness may not preclude a person from caring for family members. It is also common for people with mental illness to deny their illness and decline treatment, for various reasons. Thus, the facts the CCA treated as disproving mental illness are in fact consistent with well-established clinical understandings of mental illness.

A. Serious mental illness may not preclude daily functioning.

The CCA discounted Mr. Andrus's mental illness in part because he could sometimes take care of his four siblings: "Whatever his mental health issues were, those issues were not so severe or persistent as to keep him from—according to his own testimony—taking care of his siblings." Pet. App. 7.

That Mr. Andrus was sometimes left on his own to care for his siblings does not suggest that he lacked any mental illness. Clinical studies show that mental illness does not always impair intellectual or daily functioning. In fact, some people diagnosed with serious mental illnesses can function very effectively in certain areas, while still suffering from severe psychiatric disturbances. See, *e.g.*, James T. R. Jones, "*High Functioning": Successful Professionals with Severe Mental Illness*, 7 Duke F. L. & Soc. Change (2015). And mental illness is not static, so having higher-functioning periods where one can care for others does not mean one is not ill.

Indeed, the record is clear that Mr. Andrus was already struggling with mental illness when he was caring for his siblings: by the time he was cooking and cleaning for them at age twelve, he had been diagnosed with affective psychosis, Pet. App. 19, which is linked to bipolar disorders or major depressive disorder, Iruma Bello & Lisa Dixon, *Treating Affective Psychosis*

and Substance Use Disorders Within Coordinated Specialty Care 3 (2017), https://bit.ly/31YEXaF. In fact, being forced to take care of his siblings at such an early age itself inflicted "the trauma of being in charge of [his] siblings and not having a parent there," 6EHRR168, and may well have exacerbated his struggles with mental illness. Assigning a parental role to children often results in "interpersonal deficits in the child that can carry on into adulthood." Jennifer A. Engelhardt, *The Developmental Implications of Parentification: Effects on Childhood Attachment*, 14 Graduate Student J. Psych. 45, 45 (2012). That Mr. Andrus was forced to care for his siblings, out of necessity, does not mean he was not mentally ill, either then or later.

B. People with mental illness may deny their illness or decline medical treatment for many reasons.

The CCA also suggested that Mr. Andrus was faking a mental illness because "he decries having been treated for [it] while in TYC." Pet. App. 7. But people with mental illness commonly deny or minimize their conditions, for various reasons.

To start, the CCA's suggestion ignores the well-documented phenomenon of anosognosia, a common condition where people with mental illness fail to recognize they are mentally ill. See *Anosognosia*, Nat'l All. on Mental Illness, https://www.nami.org/About-Mental-Illness/Common-with-Mental-Illness/Anosognosia (last visited Nov. 15, 2021); Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 101 (5th ed. 2013) ("DSM-5"). Anosognosia is particularly pronounced in people experiencing active symptoms of psychosis (*e.g.*, delusions, paranoia, auditory hallucinations), which prevent people from recognizing their distorted thinking. See DSM-5, *supra*, at 101. Mr. Andrus may have experienced these symptoms.

Dr. Hammel testified in the habeas proceedings that he thought Mr. Andrus "had some experiences that were outside of reality" while he was incarcerated, and explained: "Put under enough stress and distress, the psyche can break down and people can have transient or temporary psychotic symptoms." 7EHRR90. But even people not suffering from active psychosis sometimes experience anosognosia too.

The CCA's suggestion also ignores the well-documented stigma of mental illness, which often leads people to conceal or deny their condition for fear that disclosure will adversely impact them. Stigma can pervade the lives of people with mental illness in many different ways, including the denial of personal and professional opportunities and treatment in the criminal justice or healthcare system. See, *e.g.*, Patrick W. Corrigan & Petra Kleinlein, *The Impact of Mental Illness Stigma*, *in On the Stigma of Mental Illness: Practical Strategies for Research and Social Change* 11 (Patrick W. Corrigan ed., 2005). Mental illness stigma is also a major factor that can prevent someone from seeking care and treatment. See, *e.g.*, Patrick W. Corrigan et al., *The Impact of Mental Illness Stigma on Seeking and Participating in Mental Health Care*, 15 Psych. Sci. Pub. Int. 37 (2014). In fact, most adults (56%) with a mental illness receive no treatment. Mental Health Am., *The State of Mental Health in America* 28 (2022).

The CCA was also skeptical about Mr. Andrus's mental illness because "TYC records . . . documented [his] refusal to take psychotropic medications prescribed for him and the discontinuation of those medications." Pet. App. 7. But again, people with mental illness may refuse treatment for many reasons, including fears of stigma or the negative or unpredictable

side effects of medication. Indeed, many of the psychotropic medications prescribed to Mr. Andrus can have a range of serious adverse side effects—especially if they are prescribed incorrectly—including paradoxically worsening depression or anxiety. See *Why Do Some Individuals with Serious Mental Illness Refuse to Take Medication?*, Treatment Advoc. Ctr. (Mar. 2014), https://bit.ly/3wT68is. Moreover, people with mental illness may refuse treatment because they have had bad experiences with treatment in the past or have a poor relationship with the mental health provider. See *id.* Mr. Andrus had no reason to trust the medical staff at the juvenile corrections facility who were trying to give him medications with serious side effects.

For all these reasons, the CCA's unsupported assumptions were mistaken. People with mental illness sometimes deny their conditions or resist treatment, in part because of the illness itself and in part because of how our society treats people with mental illness. These facts accord with Mr. Andrus's serious diagnoses.

C. Mental illness presents differently throughout a person's life.

The CCA also failed to appreciate that mental illness is not static, and often presents in different ways throughout a person's life. Instead, the CCA repeatedly emphasized Mr. Andrus's misbehavior while at TYC as a juvenile, see Pet. App. 7, which it seemed to view as inconsistent with his supposed high functioning at other times. But many factors could have exacerbated Mr. Andrus's mental health struggles while he was incarcerated at TYC, where he was subject to harsh conditions and received the wrong treatment for his mental illness. Indeed, multiple factors can affect how mental illness presents at a particular moment,

including the person's level of treatment, support, and integration into society.

Incarceration—especially solitary confinement—can exacerbate mental health conditions and cause serious mental health dysfunctions. See NASW, *Social Work Speaks*, *supra*, at 303; Am. Bar Ass'n, *Severe Mental Illness and the Death Penalty* 16 (Dec. 2016) ("The stress of jail and prison often aggravates these individuals' symptoms, in particular if they are placed in solitary confinement.") (citing Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. Am. Acad. Psychiatry & L. 104 (2010)). This includes postincarceration syndrome, a set of symptoms present in many currently incarcerated and recently released prisoners caused by prolonged confinement in a punishing environment. NASW, *Social Work Speaks*, *supra*, at 304.

Additionally, misdiagnosis and improper treatment can worsen symptoms of mental illness, particularly among people who are incarcerated. See, *e.g.*, Henry A. Nasrallah, *Consequences of Misdiagnosis: Inaccurate Treatment and Poor Patient Outcomes in Bipolar Disorder*, 76 J. Clinical Psychiatry E1328 (2015), https://pubmed.ncbi.nlm.nih.gov/26528666/; Joyce Kosak, *Comment: Mental Health Treatment and Mistreatment in Prisons*, 32 Wm. Mitchell L. Rev. 389 (2005). By contrast, proper mental health treatment can help people living with mental health conditions to recover and live well. See *Treatments*, Nat'l All. on Mental Illness, https://www.nami.org/About-Mental-Illness/Treatments (last visited Nov. 15, 2021).

The record shows that Mr. Andrus's incarceration, solitary confinement, and improper treatment regimen could easily have exacerbated his mental illness. Dr. Alonso-Katzowitz, a psychiatrist who reviewed

Mr. Andrus's mental health history and treatment, explained: "While at the TYC, concerns were brought up that Andrus was inappropriately prescribed medications for behavioral disorders which would not be indicated, and for depression when there had been no prior diagnosis made." DX1 at 5. The doctor also explained the potentially serious adverse side effects of the medications that Mr. Andrus was prescribed while at TYC, many of which could have made him temporarily dangerous, such as increasing the risk of suicidality, worsening depression or anxiety, or causing psychosis, aggressive behavior, mania, depression, anxiety, irritability, and insomnia. *Id.* Further, as the petition explains, TYC confined Mr. Andrus for weeks in a filthy, cold cell in solitary confinement rather than provide him with any meaningful health treatment. Pet. 31–32.

Since 2012, however, there is virtually no record of misconduct by Mr. Andrus. Dr. Hammel explained in the habeas proceedings that this is not unexpected because Mr. Andrus is no longer taking "inappropriate" medications, and because he has "been off substances for an extended period of time and he ha[s] been in a structured safe environment." 7EHRR51. This illustrates that Mr. Andrus, like other individuals who struggle with mental illness, can improve in the right environment. It also underscores that the CCA was wrong to assume that, because Mr. Andrus was sometimes able to function (as when caring for his siblings), he must never have been mentally ill.

CONCLUSION

For these reasons, the Court should grant the petition for writ of certiorari, vacate the CCA's decision below, summarily reverse, and order a new penalty-phrase trial.

Respectfully submitted,

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