No. 21-6001

(CAPITAL CASE)

IN THE

Supreme Court of the United States

TERRENCE TRAMAINE ANDRUS,
PETITIONER

V.

TEXAS,
RESPONDENT.

On Petition For A Writ of Certiorari To The Court of Criminal Appeals of Texas

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BRIEF OF AMICUS CURIAE AMERICAN BAR ASSOCIATION IN SUPPORT OF GRANTING THE PETITION FOR A WRIT OF CERTIORARI

STANLEY J. PANIKOWSKI
DANIELLE T. MORRISON
JUSTIN R. SARNO
DLA PIPER LLP (US)
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: (619) 699-2700
stanley.panikowski@us.dlapiper.com

REGINALD M. TURNER
Counsel of Record
AMERICAN BAR ASSOCIATION
321 N. Clark St.
Chicago, IL 60654
(312) 988-5000
amicusbriefs@
americanbar.org

Counsel for Amicus Curiae American Bar Association

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INTEREST OF *AMICUS CURIAE*[1]

The American Bar Association ("ABA") submits this amicus curiae brief in support of the Petitioner under Rule 37.3. The ABA is the largest voluntary association of attorneys and legal professionals in the world. Its members come from all fifty States and other jurisdictions and include judges, legislators, law professors, prosecutors, and public defenders, as well as attorneys in law firms, corporations, non-profit organizations, and government agencies.[2]

Since its founding in 1878, the ABA has advocated for the improvement of the justice system. The ABA has a well-established concern that the death penalty be enforced in a fair and unbiased manner, with appropriate procedural protections: "A system that takes life must first give justice."[3] For example, in 1986 the ABA founded the ABA Death Penalty Representation Project to provide training and technical assistance to judges and lawyers in death-penalty jurisdictions. That Project has produced

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[1] No part of this brief was authored by counsel for any party, and no person or entity has made any monetary contribution to this brief other than *amicus curiae* and its counsel. Counsel of record for all parties have consented to the filing of this brief.

[2] Neither this brief nor the decision to file it should be interpreted as reflecting the views of any judicial member of the ABA. No member of the ABA Judicial Division Council participated in this brief's preparation.

[3] ABA, *Evaluating Fairness and Accuracy in State Death Penalty Systems: The Virginia Death Penalty Assessment Report* at quote by John J. Curtin, Jr (Sept. 2013), https://www.americanbar.org/content/dam/aba/administrative/death_penalty_moratorium/tx_complete_report.authcheckdam.pdf. (last accessed November 8, 2021).

multiple guidelines and reports representing the carefully considered views of all components of the ABA membership (encompassing judges, prosecutors, defense counsel, and others).

In 1989, the ABA House of Delegates adopted the *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* ("ABA Guidelines"), which were designed to "amplify previously adopted [ABA] positions on effective assistance of counsel in capital cases [and to] enumerate the minimal resources and practices necessary to provide effective assistance of counsel." ABA Guidelines, intro. cmt. (1989).[4] The Guidelines were the result of an in-depth process for ascertaining the prevailing practices for capital defense across the country. In February 2003, the ABA approved revisions to the ABA Guidelines to update and expand upon the obligations of lawyers in death-penalty jurisdictions and to explain why the best practices set forth therein are essential to ensure fairsness and reliability in capital cases.

Between 2003 and 2013, the ABA's Death Penalty Due Process Review Project conducted comprehensive assessments of the operation of the death penalty in twelve States, including Texas, that have collectively carried out nearly 65% of all executions since *Gregg v.*

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[4] *Guidelines for the Appointment of Performance Counsel in Death Penalty Cases* (revised Feb. 2003), available at https://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/2003guidelines.pdf (last visited Nov. 8, 2021) (last visited Nov. 8, 2021).

Georgia, 428 U.S. 153 (1976).[5] The assessments were conducted by teams that included current and former judges, prosecutors, and defense attorneys. These teams also included state bar representatives, state legislators, and law professors who evaluated each State's administration of the death penalty against uniform benchmarks for fairness and accuracy.[6] The Texas Death Penalty Assessment Report observed that lawyers appointed to represent capital defendants—as was the case for Mr. Andrus—

> frequently don't seek the legally required second defense lawyer, perform mitigation or push for court-funded resources until after the prosecution has declared it will seek the death penalty. … This course of conduct is especially troubling considering that one of counsel's chief responsibilities is uncovering mitigating evidence that may encourage the State not to seek the death penalty.[7]

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[5] ABA, State Death Penalty Assessments, *available at* http://www.americanbar.org/groups/crsj/projects/death_penalty_due_process_review_project/state_death_penalty_assessments.html (last visited Nov. 8, 2021); *see also* Death Penalty Info. Ctr., Number of Executions by State and Region Since 1976, *available at* https://deathpenaltyinfo.org/number-executions-state-and-region-1976 (last visited Nov. 8, 2021).

[6] *See* ABA, Section of Individual Rights & Responsibilities, *Death Without Justice: A Guide for Examining the Administration of the Death Penalty in the United States* (June 2001) (setting forth benchmarks).

[7] ABA, *Evaluating Fairness and Accuracy in State Death Penalty Systems: The Texas Capital Punishment Assessment Report*, (Sept. 2013) ("2013 Texas Death Penalty Assessment

Finally, the ABA has a vested interest in promoting and maintaining the rule of law through adherence to precedent. To that end, the ABA adopted a Statement of Core Principles committing to, and urging other nations to commit to, key rule-of-law principles.[8] The ABA also has established a Rule of Law Initiative that works to "promote justice, economic opportunity and human dignity through the rule of law."[9]

SUMMARY OF ARGUMENT

This case is before this Court for a second time. In *Andrus v. Texas*, this Court summarily reversed the Texas Court of Criminal Appeals ("CCA") and ordered that court on remand "to address the prejudice prong of *Strickland* in a manner not inconsistent with this opinion." 140 S. Ct. 1875, 1887 (2020) ("*Andrus I*").[10] The ABA respectfully submits that the CCA not only failed to follow *Strickland* in a manner consistent with this Court's prior opinion in *Andrus I*, but it failed to follow this Court's instruction altogether.

Report"), p. 150, *available at*, https://www.americanbar.org/content/dam/aba/administrative/death_penalty_moratorium/tx_complete_report.pdf.

[8] ABA Resolution 06M111 (adopted 2006), https://perma.cc/Z6YX-AJJ8.

[9] ABA, *Rule of Law Initiative Program Book* 4 (2016).

[10] In *Strickland v. Washington*, 466 U.S. 668, 694 (1984), the Court held that to establish prejudice a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

In *Andrus I*, this Court drove home the well-established rule that "[c]ounsel in a death-penalty case has 'a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.'" 140 S. Ct. at 1881 (quoting *Wiggins v. Smith*, 539 U.S. 510, 521 (2003)). The Court concluded that "the habeas record reveals that [Mr.] Andrus' counsel fell short of his obligation in multiple ways[.]" *Andrus I*, 140 S. Ct. at 1881. That failure unquestionably fell below "prevailing professional norms at the time of [Mr.] [Andrus'] trial." *Id*. (second alteration in original). Thus, this Court "conclude[d] that the record makes clear that [Mr.] Andrus has demonstrated counsel's deficient performance under Strickland[.]" *Id*. at 1878.

Having found trial counsel's performance deficient, this Court explained that prejudice would exist here if there is a "reasonable probability that, but for counsel's ineffectiveness, the jury would have made a different judgment about whether Andrus deserved the death penalty as opposed to a lesser sentence." *Id*. This Court then reversed and remanded to the CCA because it "conclude[d] that the record makes clear . . . that the Court of Criminal Appeals may have failed properly to engage with . . . whether Andrus has shown that counsel's deficient performance prejudiced him[.]" *Id*. The Court specifically directed the CCA to assess prejudice by considering "the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding—and reweigh[ing] it against the evidence in aggravation." *Id*. at 1886 (internal quotation marks omitted). The Court pointedly noted that "because [Mr.] Andrus' death sentence required a unanimous

jury recommendation … prejudice here requires only a reasonable probability that at least one juror would have struck a different balance regarding [Mr.] Andrus' moral culpability." *Id.* (internal citation and quotation marks omitted).

Well-established ABA Guidelines for capital cases support Petitioner's view that the CCA failed to follow this Court's clear directive on remand. The CCA failed to undertake a prejudice analysis in a manner that took into account the practical effect of trial counsel's failure to investigate and competently present mitigating evidence. Instead, like the *dissenting* opinion in *Andrus I*, the CCA "train[ed] its attention on the aggravating evidence actually presented at trial" without considering how a competent presentation of the "tidal wave" of mitigating evidence identified by the habeas court—and viewed as "significant" by *this* Court—"might have sufficiently 'influenced the jury's appraisal' of [Mr.] [Andrus'] moral culpability.'" *Id.* at 1887 & n.7. That one-sided approach was incompatible with the balanced inquiry that this Court's remand order in *Andrus I*, and *Strickland*, demanded.

First, the CCA's discussion and analysis unjustifiably deviated from this Court's express instruction in *Andrus I* and were contrary to this Court's precedents. *See Porter v. McCollum*, 558 U.S. 30, 44 (2009) (holding that the Florida Supreme Court's minimization of evidence consistent with a "theory of mitigation" "reflect[ed] a failure to engage" with that evidence and caused the court to incorrectly conclude defendant was not prejudiced by trial counsel's ineffective assistance).

The rationale underlying the CCA's decision also does not align with prevailing norms of capital defense practice as reflected in the ABA Guidelines. Disregard of mitigating evidence in the prejudice analysis—which is precisely what the CCA did—perpetuates systemic injustice in capital sentencing. "A comprehensive study of capital cases in America between 1973 and 1995 found that sixty-eight percent of all death sentences were set aside by appellate, post-conviction, or habeas courts due to serious error," including "egregiously incompetent defense lawyering, [which] … account[ed] for thirty-seven percent of the state post-conviction reversals[.]" [11] This point (and others) demonstrates the CCA's complete failure to fairly adhere to the constraints of this Court's *Andrus I* remand.

Second, the CCA's failure to follow this Court's instruction about how to conduct its prejudice analysis undermines the rule of law and the hierarchical respect owed to this Court's constitutional precedent in accordance with well-established principles of *stare decisis*. Fundamental to our system of government is the existence of "a tribunal … in which all cases which might arise under the Constitution … should be finally and conclusively decided." *Abelman v. Booth*, 62 U.S. (21 How.) 506, 518 (1858); *see also Ramos v. Louisiana*, 140 S. Ct. 1390, 1411 (2020) (Kavanaugh, J., *concurring*); *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 378 (2010); *Payne v. Tennessee*,

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[11] O'Brien, S., *When Life Depends On It: Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*, 36 Hofstra L. Rev. 677, 696 (2008) (the "Supplementary Guidelines").

501 U.S. 808, 827 (1991). This Court is that tribunal. The CCA's failure to heed this Court's instruction erodes this founding principle and must be rectified.

This is the second time within the past three years that the CCA has improperly denied relief from a death sentence on remand from this Court. *See Moore v. Texas ("Moore I")*, 137 S. Ct. 1039 (2017), and *Moore v. Texas ("Moore II")*, 139 S. Ct. 666 (2019). Just as it did in *Moore II*, this Court should require fidelity to its prior decision.

The ABA therefore respectfully asks the Court to grant the petition for a writ of certiorari and summarily reverse the CCA's decision.

ARGUMENT

A. THE CCA'S DECISION ON REMAND CONFLICTS WITH THIS COURT'S CLEAR INSTRUCTION IN *ANDRUS I* TO ASSESS THE "TIDAL WAVE" OF MITIGATING EVIDENCE IN A "ONE REASONABLE JUROR" PREJUDICE ANALYSIS.

In *Andrus I*, this Court meticulously reviewed the "tidal wave" of mitigating evidence that trial counsel had failed to present to the jury and found that it "raise[d] a significant question" about whether "'available mitigating evidence taken as a whole' might have sufficiently 'influenced the jury's appraisal' of [Andrus'] moral culpability' as to establish *Strickland* prejudice[.]" *Andrus I*, 140 S. Ct. at 1887 (quoting *Williams v. Taylor*, 529 U.S. 362, 398 (2000)). The Court explained that the "habeas record reveal[ed] … counsel performed almost no mitigation

investigation, overlooking vast tranches of mitigating evidence." *Id.* at 1881.

This evidence included trial counsel's stark admission that he was "barely acquainted with the witnesses who testified during the case in mitigation," and "did not prepare the witnesses or go over their testimony before calling them to the stand." *Id.* at 1882. Trial counsel also acknowledged that he did not investigate or present to the jury evidence that Mr. Andrus (1) had attempted suicide in prison, (2) was traumatized from his juvenile incarceration, and (3) was found by an expert clinical psychologist to have suffered "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.* (internal quotation marks omitted). Counsel also averred that he did not uncover—and therefore did not present to the jury—Mr. Andrus's mental-health issues, even though a mitigation expert had observed before trial that Mr. Andrus "had been 'diagnosed with affective psychosis,' [which is] a mental-health condition marked by symptoms such as depression, mood lability, and emotional dysregulation" and possibly had schizophrenia. *Id.* at 1882-83.

These are but a few examples.

This Court explained that the "untapped body of mitigating evidence was, as the habeas hearing revealed, simply vast," and "could have served as powerful mitigating evidence." *Id.* at 1883. Worse, not only did trial counsel deprive Andrus of the right to present this evidence to the jury, but counsel's failure

to investigate and unearth this information also caused the dearth of evidence he did present to "backfire[] by bolstering the State's aggravation case." *Id*. at 1881.

The Court thus "remand[ed] for the Court of Criminal Appeals to address *Strickland* prejudice[.]" *Id*. at 1887. The Court explained that the prejudice inquiry "necessarily require[s] a court to speculate as to the effect of the new evidence on the trial evidence, regardless of how much or little mitigation evidence was presented during the initial penalty phase" and "assess whether there is a *reasonable probability that at least one juror* would have struck a different balance" in sentencing him to death. *Id.* at 1886-87 (emphasis added) (internal quotation marks omitted). The CCA failed to follow this clear instruction.

1. *The CCA should have conducted its prejudice analysis in light of the effect of competently presented evidence by effective counsel.*

This Court has long referred to the ABA Guidelines as "guides to determining what is reasonable." *Wiggins v. Smith*, 539 U.S. 510, 522 (2003). While the Guidelines most directly provide guidance on what is reasonable counsel performance, the rationale underlying the ABA Guidelines also informs the *Strickland* prejudice analysis. The instructions to counsel contained within the ABA Guidelines exist because there was a consensus in the legal community that failing to take these basic steps in representation of a capital case is likely to harm the client. Here, in the context of conducting a prejudice analysis where

mitigating evidence was not competently presented to the jury, the CCA should have considered (1) what effective assistance would have looked like, and (2) the likely effect that the competent presentation of mitigation evidence would have had on the jury. The CCA did not follow this standard, and instead undertook an improperly lopsided review of the habeas evidence identified by this Court in what was ultimately a prejudiced effort to justify its original decision.

Had trial counsel followed the prevailing norms reflected in the various guidelines promulgated by the ABA, Mr. Andrus would not need to once again seek imminent redress from this Court to fight for his life after having been denied his fundamental right to a fair trial, in which "[t]he right to [the effective assistance of] counsel plays a crucial role." *Strickland*, 466 U.S. at 685-86. The CCA's refusal to recognize the prejudice caused by trial counsel's constitutionally deficient performance renders hollow the Sixth Amendment rights that the ABA Guidelines seek to protect.

For example, ABA Guideline 10.7(A) states that counsel at every stage of litigation has "an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty." This Court found that Mr. Andrus's trial counsel's performance was unreasonable in failing to conduct an adequate investigation, and that finding is material to the prejudice prong of the *Strickland* test. As the commentary to the ABA Guidelines explains, the rule of ABA Guideline 10.7 exists because "[u]nfortunately, inadequate investigation by defense attorneys . . . ha[s]

contributed to wrongful convictions in both capital and non-capital cases. In capital cases, the mental vulnerabilities of a large portion of the client population compound the possibilities for error. This underscores the importance of defense counsel's duty to take seriously the possibility of the client's innocence, to scrutinize carefully the quality of the state's case, and to investigate and re-investigate all possible defenses."[12]

ABA Guideline 10.11 reiterates this obligation (and the prejudicial consequences of failing to meet it) in the specific context of sentencing: "As set out in Guideline 10.7(A), counsel at every stage of the case have a continuing duty to investigate issues bearing upon penalty and to seek information that supports mitigation or rebuts the prosecution's case in aggravation."[13] Given that "areas of mitigation are extremely broad and encompass any evidence that tends to lessen the defendant's moral culpability … a mitigation presentation is offered not to justify or excuse the crime but to help explain it."[14] The ABA Guidelines further explain that failure to adequately investigate and prepare a mitigation case will make the mitigation presentation ineffective and result in a

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[12] ABA Guidelines at 1016-17; accord ABA Standards for Criminal Justice: Prosecution Function and Defense Function (3d ed. 1993) ("Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction[.]").

[13] *Id*. at 1055.

[14] *Id*. at 1060 (internal quotation marks omitted).

death verdict where the jury might otherwise have voted for life:

> Indeed, "[t]his Eighth Amendment right to offer mitigating evidence 'does nothing to fulfill its purpose unless it is understood to presuppose that the defense lawyer will unearth, develop, present, and insist on the consideration of those compassionate or mitigating factors stemming from the diverse frailties of humankind.'" [15] "Nor will the presentation be persuasive unless it (a) is consistent with that made by the defense at the guilt phase and (b) links the evidence offered in mitigation to the specific circumstances of the client.[16]

2. The CCA's failure to consider the effect of a competent presentation of the mitigating evidence caused it to impermissibly discount that "tidal wave" of evidence.

The CCA's opinion on remand failed to give proper weight to the prejudicial impact of counsel's deficient performance. It did so by failing to assess and synthesize the mitigation evidence identified by this Court from the perspective of a reasonable juror hearing the information from competent counsel. On remand, the CCA stated it would conduct a prejudice analysis in light of "whether there is a reasonable probability that at least one juror would have struck a different balance in answering the mitigation special issue." App002, App006. But in reality, the CCA did no such thing. Instead of analyzing the effect the

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[15] *Id.* at 927 (quotations omitted).

[16] *Id.* (quotations omitted).

mitigation evidence would have had on a reasonable juror had it been competently presented, the CCA itself subjectively diminished the value of that evidence in light of what the court deemed to be the aggravating evidence.

Further, despite purporting to take the mitigating evidence as a whole and weigh it against the aggravating evidence, the CCA failed to account for how the mitigating evidence, if competently presented, would have affected a reasonable juror's analysis of the aggravating evidence—up to and including mooting the aggravating evidence altogether. The CCA even stated that "much of Applicant's proposed new mitigating evidence could be considered aggravating in some respects." App011. This crucial failure is itself sufficient to establish the CCA's failure to conduct a proper prejudice analysis.

For example, at one point in its analysis, the CCA assumed for the sake of argument that Mr. Andrus's mental-health issues existed, and recognized that the record included a diagnosis of antisocial personality disorder, as well as its juvenile precursor "conduct disorder." App007. The court found these diagnoses to be both mitigating and aggravating because of record evidence that Mr. Andrus had "accidentally" killed a puppy,[17] "blew up frogs," committed multiple

[17] The CCA's characterization of the record on this point is misleading at best and fails to account for the additional evidence introduced during the post-conviction hearing. As explained in detail in the Petition, the record in this case contains "[n]o competent evidence of any history of sadism toward animals." (Pet. at 26, n. 11).

acts of violent misconduct while in juvenile detention, and possessed drugs in a drug-free zone. App005-07.

However, the CCA failed to account for Mr. Andrus's mental health history in a way that diminished his moral culpability. Guidelines 10.7 and 10.11 expressly recognize the mitigating effect that mental health issues may have on jurors at sentencing and, for that reason, recommend both that defense counsel begin investigating a defendant's mental health at the outset of the representation and then evaluate whether evidence of the defendant's mental health would be helpful at sentencing. The CCA's opinion on remand does not take into consideration how an adequate investigation of Mr. Andrus's mental health history may have enabled trial counsel to present a history that has both mitigating and aggravating aspects in a light that need only have changed one juror's sentencing decision. Additionally, the court took no time to analyze whether a reasonable juror may have viewed the entirety of Mr. Andrus's mental health and criminal history, including his supposed behavior with animals, conduct while incarcerated, and possession of drugs as consequences of his traumatic upbringing and a manifestation of his mental-health issues—not as aggravating evidence.

Instead of conducting the required analysis, the CCA arbitrarily re-cast this mitigation evidence to suit a pre-determined, historical narrative of violence and criminal propensity that culminated in the charges underlying his conviction, and which conveniently justified the imposition of capital punishment. *See also* App007-09.

As another example, the CCA on remand found the "mitigating evidence offered at the habeas stage was relatively weak," and concluded that counsel's failure to investigate and present this evidence did not prejudice Mr. Andrus. But the CCA was not free to develop its own characterization of the mitigating evidence. This Court had already approved of the habeas courts finding of a "tidal wave" of mitigating evidence and had reached an independent conclusion that trial counsel failed to uncover and present "voluminous mitigating evidence." As the ABA Guidelines make clear, the failure to present mitigating evidence (let alone a "tidal wave" of it) has a high likelihood of prejudicing a defendant's case in sentencing. Nevertheless, contrary to this Court's clear instruction and despite prevailing practices and norms, the CCA failed to assess properly the mitigation evidence that the habeas court had identified. Indeed, the CCA's conduct also directly contravened this Court's directives when assessing an analogous situation in *Porter v. McCollum*, 558 U.S. 30 (2009).

It is bad enough when trial counsel's performance is constitutionally inadequate. It is even worse when a state appellate court improperly tilts the scales of justice to deny the required relief and further prejudice a defendant. Left uncorrected, the improper denial of a remedy threatens to diminish the observance of the right to counsel itself. The ABA developed the ABA Guidelines for the precise reasons that this case unfortunately illuminates. Mr. Andrus's ineffective assistance of counsel is not an anomaly. Despite the literal life and death stakes facing a capital defendant, "egregiously incompetent

defense lawyering," accounts for "thirty-seven percent of the state post-conviction reversals[.]"[18] This Court's grant of the requested relief in this case will advance the application of the "prevailing professional norms" set forth in the ABA Guidelines, which endeavor to further the legal community's collective and continued pursuit of justice. *Wiggins*, 539 U.S. at 522.

B. THE CCA'S REFUSAL TO FOLLOW THIS COURT'S CLEAR INSTRUCTION RAISES SERIOUS AND IMPORTANT CONCERNS ABOUT THE RULE OF LAW THAT ONLY THIS COURT CAN REMEDY.

Finally, the CCA's opinion on remand directly contradicts this Court's decision and instruction in *Andrus I* as to the scope of the CCA's review on remand. Leaving the CCA's decision intact would erode the rule of law and threaten the legitimacy and potency of this Court's judgments.

In *Andrus I*, this Court unmistakably directed the CCA to conduct a prejudice inquiry from the perspective of "whether there is a reasonable probability that at least one juror would have struck a different balance," which would "necessarily require[] [the] court to speculate as to the effect of the new evidence on the trial evidence." *Andrus I*, 140 S. Ct. at 1887. As explained above, whatever passing heed it gave to *Andrus I*, the CCA's substantive analysis disregarded that directive. And at multiple points on remand, the CCA dismissed this Court's conclusions about the character and significance of the habeas

[18] Supplementary Guidelines at 696.

record. *See, e.g.*, App007 ("Although the Supreme Court described Applicant's infractions at TYC as 'notably mild,' we conclude that a jury would have been convinced otherwise[.]"); App007 ("Applicant committed other crimes when he was not in custody. … The Supreme Court discounted these crimes, but we do not[.]"); App008 ("The Supreme Court [] questioned the reliability of the [pre-trial, photo-array identification] … we don't judge the photo array to be unduly suggestive[.]"). This cavalier treatment of this Court's characterization of the mitigation evidence was an essential part of the CCA's untenable conclusion that Mr. Andrus had not shown a reasonable probability that just one juror could have reached a different result at his sentencing hearing. App009.

But a decision of this Court is "binding upon the States, and under the Supremacy Clause of Article VI of the Constitution, it must be obeyed." *Sims v. Georgia*, 385 U.S. 538, 544 (1967); *see also Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."). The CCA needs to be reminded of this bedrock rule again here.

This Court's constitutional decisions are binding on all federal and state courts, such that no other court may ignore or fail to fully follow those decisions. *Abelman v. Booth*, 62 U.S. (21 How.) 506, 518 (1858) ("It was essential, therefore, to its very existence as a [Federal] Government, that … a tribunal should be established in which all cases which might arise under the Constitution … should be finally and conclusively decided. Without such a tribunal, it is obvious that

there would be no uniformity of judicial decision[.]"); *United States v. Martinez-Cruz*, 736 F.3d 999, 1006 (D.C. Cir. 2013) (Kavanaugh, J., dissenting) ("As a lower court in a system of absolute vertical stare decisis headed by one Supreme Court, it is essential that we follow both the words and the music of Supreme Court opinions."). From "its earliest days this Court [has] consistently held that an inferior court has no power or authority to deviate from the mandate issued by an appellate court." *Briggs v. Pennsylvania Railroad Co.*, 334 U.S. 304, 306 (1948) (citing cases). And this Court's decision are "binding precedent until [it] see[s] fit to reconsider them." *Hohn v. United States*, 524 U.S. 236, 252-53 (1998).

The CCA's decision on remand contravenes these core principles that animate the rule of law in the United States. Summary reversal is therefore the necessary and appropriate relief. *See, e.g., Stanton v. Stanton*, 429 U.S. 501, 503-04 (1977) (summarily reversing where, on remand, a state court failed to comply with this Court's mandate); *Deen v. Hickman*, 358 U.S. 57, 57-58 (1958) (per curiam) (granting relief where a state court's decision on remand failed to comply with this Court's mandate).

CONCLUSION

The Court should grant the petition for a writ of certiorari and summarily reverse the decision of the Court of Criminal Appeals of Texas.

Respectfully submitted,

STANLEY J. PANIKOWSKI
DANIELLE T. MORRISON
JUSTIN R. SARNO
DLA PIPER LLP (US)
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: (619) 699-2700
Stanley.Panikowski@us.dlapiper.com

REGINALD M. TURNER
Counsel of Record
AMERICAN BAR ASSOCIATION
321 N. Clark St.
Chicago, IL 60654
(312) 988-5000
amicusbriefs@americanbar.org

Counsel for Amicus Curiae

NOVEMBER 18, 2021