No. 22-6570

# In the Supreme Court of the United States

RICHARD GALVAN MONTIEL,

*Petitioner*,

v.

KEVIN CHAPPELL, WARDEN OF SAN QUENTIN STATE PRISON,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## BRIEF IN OPPOSITION


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March 17, 2023

CAPITAL CASE

## QUESTION PRESENTED

Whether the California Supreme Court could reasonably have concluded that petitioner was not prejudiced by his counsel's performance during the penalty phase of his capital murder trial.

## DIRECTLY RELATED PROCEEDINGS

Superior Court of the State of California, County of Kern:

*People v. Montiel*, No. 19948 (Nov. 20, 1979) (judgment of death).

*People v. Montiel*, No. 19948 (Dec. 8, 1986) (judgment of death, on penalty-phase retrial).

California Supreme Court:

*People v. Montiel*, No. S004297 (Sept. 26, 1985) (on automatic appeal, convictions affirmed, one of two special-circumstance findings set aside, death sentence reversed, and cause remanded for penalty-phase retrial).

*People v. Montiel*, No. S004756 (Oct. 27, 1993) (on automatic appeal from penalty-phase retrial, death sentence affirmed).

*In re Montiel*, No. S033108 (Feb. 21, 1996) (petition for writ of habeas corpus denied).

Supreme Court of the United States:

*Montiel v. California*, No. 93-7680 (June 30, 1994) (certiorari denied).

United States District Court for the Eastern District of California:

*Montiel v. Chappell*, No. 1:96-cv-05412-LJO-SAB (Nov. 26, 2014) (petition for writ of habeas corpus denied).

United States Court of Appeals for the Ninth Circuit:

*Montiel v. Chappell*, No. 15-99000 (Aug. 5, 2022) (denial of habeas corpus relief affirmed).

*Montiel v. Chappell*, No. 15-99000 (Aug. 5, 2022) (memorandum declining to further expand certificate of appealability).

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## STATEMENT

1. One morning in January 1979, petitioner Richard Galvan Montiel broke through the glass in Eva Mankin's front door, unlocked the door, and went inside. Pet. App. 199. While Mankin telephoned the police for help, Montiel grabbed her purse and took off running. *Id.* at 199, 212. Later that morning, Montiel arrived at the house of his friend Victor Cordova. *Id.* at 199, 213. *Id.* Montiel's appearance, behavior, and pattern of speech led Cordova—a seller and user of PCP—to believe that Montiel was under the influence of PCP. *Id.* at 213.

Half an hour later, Montiel and Cordova left on a motorcycle. Pet. App. 199, 213. When the motorcycle broke down, Montiel climbed off and, holding a can of beer, walked up the driveway of a nearby house while Cordova pushed the motorcycle to a gas station. *Id*. About 10 minutes later, Montiel arrived at the gas station and announced to Cordova that "he [had] just killed a man," adding that he had done so "like you do a goat." *Id.* at 199. Montiel walked off again after expressing concern that he had left his beer in the victim's home; when Montiel returned, he was carrying the can of beer and a paper sack. *Id.* at 199, 213-214.

Montiel later told Tom Stinnett, who picked up Montiel and Cordova from the gas station, that "he [had] cut some man's head off." Pet. App. 199. Once back at Cordova's house, Montiel produced a sack containing paper cash, some pennies, and a bloody knife. *Id.* at 199, 214. Montiel later told Cordova that he was worried he may have left fingerprints at the scene. *Id.* at 200.

The murder victim, Gregorio Ante, was 78 years old and slightly disabled by a stroke. Pet. App. 200. About 11:00 a.m. on the day of the murder, Ante's son, Henry, arrived at Ante's house to make some repairs. *Id.* To pay for parts, Ante gave Henry $20 of the $200 that he had in his shirt pocket. *Id.* Henry saw that, in addition to the money in Ante's shirt pocket, Ante had money in his pants pocket. *Id.* When Henry left the house around 12:10 p.m., he saw two men on a motorcycle in front of the house. *Id.*

About 10 to 15 minutes after Henry left, Ante's grandson arrived and found Ante's lifeless body. Pet. App. 200. The $180 was still in Ante's shirt pocket, but his pants pocket was pulled out, and the money that had been there was gone. *Id.* at 200, 213. Ante's house had been ransacked, and his penny collection was missing. *Id.* Among other injuries, he had a large, deep slash wound to his throat. *Id.*

After his arrest, Montiel made incriminating statements to his cellmate, Michael Palacio. Pet. App. 200. Montiel told Palacio that he had entered Ante's house to use the phone. *Id.* Upon seeing that Ante had cash, Montiel went to the kitchen, got a knife, cut Ante's throat, and left with the money. *Id.*

2. a. The prosecution charged Montiel with the robbery and burglary of Mankin and with the robbery and murder of Ante. Pet. App. 198. As to the murder, the prosecution alleged three special circumstances: that it was intentional and committed for financial gain; that it was especially heinous, atrocious, and cruel; and that it was committed while carrying out a robbery. *Id.*;

*see* Cal. Penal Code § 190.2(a)(1), (a)(14), (a)(17)(i). The prosecution witnesses at the guilt phase of the trial included Dr. Ronald Siegel, a psychopharmacologist and psychologist. Pet. App. 200. Siegel opined that Montiel had been under the influence of PCP on the day of the crimes, but had not been so intoxicated that he could not form the intent to kill or steal. *Id.* at 200-201. Siegel further concluded that Montiel had been able to premeditate and meaningfully reflect on the consequences of his actions. *Id.* at 201. The jury convicted Montiel of all counts and found true all allegations except for the allegation that the murder was especially heinous, atrocious, and cruel, which the jury found not true. *Id.* at 56, 198.

The penalty phase of the trial resulted in a hung jury and the court declared a mistrial. Pet. App. 198. On retrial, the jury returned a sentence of death. *Id.*

b. On automatic appeal, the California Supreme Court affirmed the judgment of guilt and the robbery-murder special circumstance finding, but it set aside the finding on the financial-gain special circumstance, deeming it inapplicable on the facts of the case. Pet. App. 202-209. The court vacated the death sentence on instructional-error grounds and remanded for resentencing. *Id.* at 209.

c. At the penalty-phase retrial, the jury heard evidence of Montiel's crimes. Pet. App. 212-214. Both parties also introduced evidence regarding Montiel's mental state and degree of intoxication at the time of the crimes. *Id.*

at 214. The prosecution again presented the testimony of Dr. Siegel. *Id.* Montiel countered with evidence about his drug abuse—beginning with teenage glue-sniffing—and about his consumption of alcohol and PCP just before the crimes. *Id.* at 214-215. Montiel also introduced the expert testimony of Dr. Louis Nuernberger, a prison psychiatrist who had evaluated Montiel when he arrived on death row. *Id.* at 215. Nuernberger concluded that Montiel had no gross mental disorder apart from "toxic dementia" and that Montiel's extended use of PCP and alcohol was "directly responsible" for the crimes. *Id.*

In addition, Montiel presented the testimony of several family members, who told the jury that his family life had been happy and he had been well-behaved and a good student until he started abusing drugs and alcohol in high school. Pet. App. 216. Montiel also presented evidence of his good behavior in custody and his rehabilitation on death row. *Id.* at 216-217. Nonetheless, the jury returned a verdict of death. *Id.* at 212.

d. On automatic appeal, the California Supreme Court affirmed the judgment of death in a 6-1 decision. Pet. App. 252; *see id.* at 211-252; *id.* at 252-254 (Mosk, J., dissenting). Among other arguments, the court rejected Montiel's claim that his counsel at the penalty-phase retrial was ineffective for failing to prepare Nuernberger to testify. *Id.* at 233-234. The court held that Montiel had failed to establish either that counsel had performed deficiently or that Montiel had suffered any prejudice as a result of the alleged errors. *Id.* at 234.

e. Montiel then filed a state habeas corpus petition asserting, among other things, that counsel at the penalty-phase retrial was ineffective for failing to prepare Nuernberger adequately to testify and for failing to investigate and present evidence explaining why Montiel abused drugs. *See* Pet. App. 118-119, 137-140. The declarations Montiel offered in support of his petition included a 1993 declaration by clinical psychologist Dr. Dale Watson. *Id.* at 35, 39. Watson evaluated Montiel and concluded that he "suffers from cognitive and neuropsychological deficits and probable brain dysfunction," that he "functions at the level of borderline intelligence," and that he "is impaired by significant learning disabilities and very severe attention/concentration deficits (in the mildly retarded range)." *Id.* at 39. Watson opined that the onset of Montiel's deficits "dates at least from adolescence" and that Montiel's chronic inhalation of toluene (found in glue) likely caused diffuse brain damage. *Id.* The California Supreme Court summarily denied Montiel's habeas petition "on the merits." *Id.* at 255.

3. a. Montiel filed a federal habeas corpus petition, which the district court denied. Pet. App. 196; *see id.* at 55-196. In rejecting Montiel's claim that penalty-phase counsel had failed to prepare Nuernberger adequately to testify, the court recounted the contents of Watson's declaration. *Id.* at 120-121.[1] The

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[1] Montiel misrepresents the record in asserting that the district court made "findings that [Montiel] is mentally retarded." Pet. ii. In denying Montiel's petition, the district court merely recounted the contents of Watson's declaration. *See, e.g.,* Pet. App. 120-121, 148-149.

court concluded: "Even assuming [counsel] failed to adequately prepare Dr. Nuernb[e]rger to testify, in light of the limited evidence of brain injury, Montiel's less compelling background and his history of violence, it is not likely the jury would have determined that the evidence in mitigation outweighed the evidence in aggravation and have imposed a life sentence." *Id.*[2]

Turning to Montiel's claim that counsel was ineffective for failing to investigate and present evidence explaining why Montiel abused drugs, the district court again recounted the contents of Watson's declaration. Pet. App. 148-149. The court determined that, even assuming counsel's representation was deficient, the claim failed for lack of prejudice. *Id.* at 145-149. The court explained: "Even if [counsel] had obtained an expert who would have testified consistently with Dr. Watson's opinion, it is not likely, in light of the limited evidence of brain injury, Montiel's less compelling background, and his history of violence that the jury would have determined that the evidence of mitigation outweighed the evidence in aggravation and have imposed a life sentence." *Id.* at 149.[3] The district court granted a certificate of appealability on two claims,

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[2] In characterizing Montiel's background as "less compelling," the district court was comparing it to those of the defendants in the cases upon which Montiel relied: *Bean v. Calderon*, 163 F.3d 1073 (9th Cir. 1998), and *Clabourne v. Lewis*, 64 F.3d 1373, 1384-1387 (9th Cir. 1995). Pet. App. 120-121.

[3] This time, in labelling Montiel's background "less compelling," the district court was comparing it to those of the defendants in *Wiggins v. Smith*, 539 U.S. 510 (2003), and *Caro v. Woodford*, 280 F.3d 1247, 1255 (9th Cir. 2002). Pet. App. 144-149.

including the claim that counsel had failed to prepare Nuernberger adequately to testify. *Id.* at 5, 196.

b. The court of appeals affirmed in a decision authored by Judge Friedland. Pet. App. 1-53; *see id.* at 6, 47. It expanded the certificate of appealability to embrace two additional claims of ineffective assistance by penalty-phase counsel, including Montiel's claim that counsel was ineffective for failing to investigate and present evidence explaining why Montiel abused drugs. *Id.* at 5, 32. The court assumed without deciding that the alleged errors of Montiel's counsel constituted deficient performance, but held that "the California Supreme Court could reasonably have concluded" that Montiel had failed to establish prejudice. *Id.* at 34.

The court of appeals recounted the contents of the declarations Montiel had offered in support of his state habeas petition, including Watson's declaration. Pet. App. 35-40. The court assumed that the information in the declarations could have been introduced at the penalty-phase retrial. *Id.* at 35-36. And the court acknowledged that "[t]he new mental health evidence . . . offered a non-cumulative and more robust assessment of Montiel's cognitive and neuropsychological deficits, which the jury could have considered in mitigation." *Id.* at 45. But the court concluded that it could not "say that the California Supreme Court would have been unreasonable in holding that the error did not prejudice the defense sufficiently to undermine confidence in the outcome of the penalty-phase trial." *Id.* The court observed that the murder had been

"gruesome" and that "[t]he prosecution's case in aggravation was relatively strong, showing that Montiel had engaged in a prior pattern of violence, with one incident resulting in a felony conviction." *Id.* Moreover, "notwithstanding the alleged errors made by [counsel], the jury did hear substantial mitigation presentation, including testimony from nineteen witnesses." *Id.* at 47. The court concluded: "In short, weighing the aggravating circumstances against the totality of the mitigating evidence—and applying, as we must, AEDPA's very deferential standard of review—we hold that a reasonable jurist could conclude that Montiel failed to establish prejudice." *Id.*

Montiel filed a petition for rehearing and rehearing en banc, which the court of appeals denied. Pet. App. 54.

## ARGUMENT

Montiel argues that the California Supreme Court unreasonably rejected his penalty-phase ineffective assistance claims, Pet. 13-16, and that the court below erred in concluding otherwise, *id.* at 17-19. But as that court explained, the California Supreme Court could reasonably have determined that Montiel failed to establish that he suffered prejudice by virtue of his counsel's allegedly deficient performance in failing to present additional mental-health mitigation evidence. The court of appeals applied settled law to the facts of this case; its decision does not create any conflict of authority or otherwise warrant further review.

1. Montiel contends that no reasonable jurist could dispute that he was prejudiced by his trial counsel's failure to present "evidence of [his] mental retardation" in mitigation at his penalty-phase retrial. Pet. 14. To prevail on that kind of claim, Montiel had to "show a 'substantial' likelihood of a different sentence" if the jury had heard the evidence in question. *Cullen v. Pinholster*, 563 U.S. 170, 202 (2011); *see Strickland v. Washington*, 466 U.S. 668, 694 (1984). That kind of inquiry requires a court to "'reweigh the evidence in aggravation against the totality of available mitigating evidence.'" *Pinholster*, 563 U.S. at 198 (quoting *Wiggins v. Smith*, 539 U.S. 510, 534 (2003)). And when such a claim is raised in a federal habeas proceeding governed by 28 U.S.C. § 2254, the claimant must show that the state court's weighing of the mitigating and aggravating factors "is so obviously wrong that its error lies 'beyond any possibility for fairminded disagreement.'" *Shinn v. Kayer*, 141 S. Ct. 517, 523 (2020) (per curiam). This standard is "doubly deferential" to state courts, *Pinholster*, 563 U.S. at 202, and Congress intended for it to be "difficult to meet," *Kayer*, 141 S. Ct. at 523.

The court of appeals correctly determined that Montiel could not clear that high bar. In accordance with this Court's framework, the court of appeals reviewed: (1) the mitigation evidence Montiel's counsel presented at the penalty-phase retrial; (2) the additional mitigation evidence Montiel now asserts counsel should have presented; and (3) the prosecution's aggravation evidence.

Pet. App. 40, 44-47; *see Kayer*, 141 S. Ct. at 524-526; *Pinholster*, 563 U.S. at 198-202.

*Mitigation evidence presented at trial.* As the court of appeals observed, this is not a case where counsel "put on virtually no case for mitigation." Pet. App. 47. On the contrary, counsel put on a "substantial mitigation presentation, including testimony from nineteen witnesses." *Id.* Counsel called Victor Cordova, who testified that Montiel appeared "loaded" on PCP when he arrived at Cordova's house on the morning of the crimes. *Id.* at 213. Cordova further testified that, before the murder, Montiel had smoked part of a PCP cigarette. *Id.* at 213-214. Although this testimony was called into question on cross-examination, when Cordova admitted that Montiel had asked him to exaggerate the quantity of PCP he had seen Montiel ingest before the murder, it was undisputed that Montiel was on PCP during the crime. *Id.*

Counsel also presented the testimony of several of Montiel's family members. Pet. App. 214-215. They testified about Montiel's drug history, asserting that he had started sniffing glue as a teenager and that, by the time of the murder, he was regularly using alcohol and PCP. *Id.* They also testified that Montiel had been hallucinating for several weeks prior to the murder. *Id.* at 215. And they testified that Montiel had been a good student and well-behaved, with a happy family life, until he started abusing drugs and alcohol in high school. *Id.* at 216.

Additionally, counsel presented the testimony of Dr. Louis Nuernberger, a prison psychiatrist who had evaluated Montiel's mental condition upon his arrival on death row. Pet. App. 215. Nuernberger opined that Montiel had no gross mental disorder apart from drug-induced "toxic dementia" and that Montiel's "extended intoxication with PCP and alcohol" was "directly responsible" for the murder. *Id.*

Counsel also called a prison chaplain, a prison teacher, and two custodial officers to testify that Montiel did not pose a behavioral problem in custody and had made educational and other rehabilitative progress. Pet. App. 215. Finally, Montiel himself took the stand, confirming his good behavior in custody and telling the jury about the religious, educational, and artistic interests he had developed on death row. *Id.* at 217. Yet despite hearing all this mitigation evidence, the penalty-phase jury returned a verdict of death.

*Additional mitigation evidence now proffered.* Montiel faults counsel for not presenting evidence that he is intellectually disabled. Pet. 13-16. He cites the declaration of Dr. Watson, which he included as an exhibit to his state habeas petition. *Id.* at 13; *see* Pet. App. 35, 39. Watson opined that Montiel "suffers from cognitive and neuropsychological deficits and probable brain dysfunction," that he "functions at the level of borderline intelligence," and that he "is impaired by significant learning disabilities and very severe attention/concentration deficits (in the mildly retarded range)." Pet. App. 39. Watson further opined that the onset of Montiel's deficits "dates at least from

adolescence," and that Montiel's chronic inhalation of toluene (found in glue) likely caused diffuse brain damage. *Id.*

Montiel contends that, "[f]or the reasons articulated by this Court in *Atkins v. Virginia*, 536 U.S. 304 (2002), evidence of Mr. Montiel's mental retardation provides compelling reasons not to sentence Mr. Montiel to death." Pet. 14. In *Atkins*, this Court prohibited the execution of an individual determined to be intellectually disabled. 536 U.S. at 321; *see Hall v. Florida*, 572 U.S. 701, 704 (2014) ("mental retardation" and "intellectual disability" describe "the identical phenomenon"). But no determination of intellectual disability has been made in Montiel's case. And a reasonable jurist could conclude that Montiel's jury would likely have returned a verdict of death even if it had heard Watson's opinion that Montiel is mildly intellectually disabled.[4]

For one thing, a reasonable jurist could construe Watson's declaration to mean that Montiel's likely brain damage and resultant intellectual deficits were not congenital but self-inflicted—the result of his voluntary substance

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[4] Montiel contends that the court of appeals gave "no consideration [to] the mitigating impact of the habeas corpus evidence that Mr. Montiel is mentally retarded." Pet. 18. That is not accurate. The court recognized that "[t]he new mental health evidence . . . offered a non-cumulative and more robust assessment of Montiel's cognitive and neuropsychological deficits, which the jury could have considered in mitigation." Pet. App. 45. Nonetheless, the court concluded: "[W]e cannot say that the California Supreme Court would have been unreasonable in holding that the error [by counsel in not adducing the evidence] did not prejudice the defense sufficiently to undermine confidence in the outcome of the penalty-phase trial." *Id.*

abuse. *See* Pet. App. 39; *see also id.* at 120-121, 148-149. Such a construction would be consistent with the testimony of Montiel's family that Montiel had been a good student until he started to abuse drugs. *Id.* at 216. By suggesting that Montiel was responsible for his own intellectual deficits, Watson's declaration may well have painted a less sympathetic picture than Montiel asserts.

Moreover, other evidence in the record would have cast doubt on Watson's opinions regarding Montiel's mental health. Dr. Nuernberger, for example, testified that Montiel suffered from no gross mental disorder apart from the drug-induced "toxic dementia" he experienced at the time of the murder. Pet. App. 215. And the jury heard evidence of the academic and other rehabilitative progress Montiel had made while on death row, which also is in tension with Watson's opinion. *Id.* at 216-217; *see Brumfield v. Cain*, 576 U.S. 305, 321 (2015) (suggesting that an inmate's completion of academic courses while in prison may cast doubt on a claim of cognitive impairment).

*Aggravation evidence.* The prosecution presented an extensive aggravation case. First, it presented evidence about the gruesome nature of the crime. Pet. App. 212-214. Though Montiel characterizes his murder of Gregorio Ante as "a single stab wound homicide," Pet. 3, Montiel in fact killed Ante with "a deep slash wound to the throat, which severed [his] carotid arteries and blocked his breathing passage." Pet. App. 213. The court of appeals aptly described the murder as "gruesome," *id.* at 45, and Montiel boasted to Cordova that he had killed a man "like you do a goat," *id.* at 199.

The prosecution called Dr. Ronald Siegel, a psychopharmacologist, who acknowledged that Montiel had been "grossly intoxicated" by PCP and alcohol when he committed the crimes. Pet. App. 214. Siegel further acknowledged that extended use of PCP can lead to a chronic mental disorder, characterized by momentary delusional episodes. *Id.* However, considering Montiel's actions at and after the time of the crimes—including his efforts to cover up the murder—Siegel opined that, at the time of the murder, Montiel had not been hallucinating and "knew what he was doing." *Id.*

The prosecution also presented evidence of five other violent episodes by Montiel. Pet. App. 216-217. The violent acts spanned five years. *Id.* One was a 1972 robbery of a fast-food restaurant during which Montiel twice fired a gun at an employee, resulting in a felony conviction. *Id.* at 216. The prosecution also introduced evidence of a 1973 residential burglary, in which Montiel displayed a knife when the victim returned home and confronted him. *Id.*

Given the strength of this "extensive aggravating evidence," *Pinholster*, 563 U.S. at 198, and in the light of both the mitigation evidence presented at trial and the evidence now proffered by Montiel, the court of appeals correctly held that "[a] reasonable jurist could conclude that Montiel failed to establish prejudice from [counsel]'s errors." Pet. App. 47.

2. Montiel's arguments to the contrary are unpersuasive. He contends that this Court's decisions in *Williams v. Taylor*, 529 U.S. 362 (2000), and *Rompilla v. Beard*, 545 U.S. 374 (2005), support his position. Pet. 14-15. But

those cases are readily distinguishable. In *Williams*, trial counsel's "sole argument in mitigation" was that Williams had turned himself in. Counsel failed to present extensive records graphically describing Williams' nightmarish and abusive childhood and mental illness. 529 U.S. at 370-371, 395. And in *Rompilla*, trial counsel presented "relatively brief testimony" by five of Rompilla's family members, who said they believed he was innocent and beseeched the jury for mercy. 545 U.S. at 378. Counsel failed to present any evidence of Rompilla's mental illness or evidence that Rompilla's childhood had included (1) beatings by his father with fists, straps, belts, and sticks, (2) imprisonment by his father in a dog pen filled with excrement, and (3) a lack of access to indoor plumbing and proper clothing. *Id.* at 391-392.[5]

These decisions do not compel a reasonable jurist to find prejudice here. The *Strickland* prejudice inquiry requires a "case-by-case" analysis. *Lockhart v. Fretwell*, 506 U.S. 364, 369 n.2 (1993). A reasonable jurist could conclude that the new mitigation evidence in cases like *Williams* and *Rompilla* was more convincing than the evidence that Montiel faults his counsel for not presenting. Likewise, a reasonable jurist could conclude that the aggravation evidence was weightier in this case.

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[5] Further, in *Rompilla*, no state court had decided whether the defendant was prejudiced by his counsel's failures; the federal court therefore decided the issue without the constraint of § 2254(d). 545 U.S. at 390. This distinction is significant because "[t]he *Strickland* standard is a general one, so the range of reasonable applications is substantial." *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Montiel also appears to suggest that counsel's failure to introduce a psychologist's diagnosis of "mild[]" intellectual disability, Pet. App. 39, is necessarily prejudicial. *See* Pet. 13 ("Mr. Montiel's mental retardation was mitigating ballast that could not be outweighed by any lawfully presented aggravating evidence."). But *Strickland* emphasized that "a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury," and "a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support." 466 U.S. at 695-696. Thus, for example, where "new evidence about [a petitioner's] family history is overwhelming," a habeas petitioner may be able to establish *Strickland* prejudice even in the face of significant aggravating evidence. *Foust v. Houk*, 655 F.3d 524, 546 (6th Cir. 2011). But here, a reasonable jurist could consider Montiel's additional mitigation evidence far from overwhelming, particularly in light of the aggravating evidence.

In the end, Montiel simply disagrees with the court of appeals' (and the California Supreme Court's) application of settled legal principles to the facts of this case. It may be true, as the court of appeals suggested, that a reasonable jurist could have found some "merit to Montiel's *Strickland* claims." Pet. App. 6. But reasonable jurists could have reached the opposite conclusion as well, *see id.*—particularly given the extensive mitigation evidence Montiel's attorney presented and the abundant evidence in aggravation, such as Montiel's violent history and the gruesome nature of the murder.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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RICHARD GALVAN MONTIEL, *Petitioner,*

v.

KEVIN CHAPPELL, WARDEN OF SAN QUENTIN STATE PRISON, *Respondent.*

## CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the BRIEF IN OPPOSITION contains 3,804 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 17, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE BY MAIL**

I, Sean M. McCoy, Deputy Attorney General, a member of the Bar of this Court hereby certify that on **March 17, 2023**, three copies of the BRIEF IN OPPOSITION in the above-entitled case were mailed, first class postage prepaid to:

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I further certify that all parties required to be served have been served.

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