(ORDER LIST: 583 U.S.)

MONDAY, MARCH 5, 2018

CERTIORARI -- SUMMARY DISPOSITION

15-1205 SHANAHAN, CHRISTOPHER, ET AL. V. LORA, ALEXANDER

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of *Jennings* v. *Rodriguez*, 583 U. S. ____ (2018).

ORDERS IN PENDING CASES

16-1140 NIFLA, ET AL. V. BECERRA, ATT'Y GEN. OF CA

17-368 SALT RIVER PROJECT V. TESLA ENERGY OPERATIONS, INC.

The motions of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument are granted.

17-1060 UNITED STATES, EX REL. CARTER V. HALLIBURTON CO., ET AL.

The Solicitor General is invited to file a brief in this case expressing the views of the United States.

17-5639 CHAVEZ-MEZA, ADAUCTO V. UNITED STATES

The motion of petitioner for appointment of counsel is granted, and Todd A. Coberly, Esquire, of Santa Fe, New Mexico, is appointed to serve as counsel for the petitioner in this case. Justice Gorsuch took no part in the consideration or decision of this motion.

17-6582 WANZER, JERRY V. GLOOR, DEBRA, ET AL.

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

CERTIORARI GRANTED

17-647 KNICK, ROSE MARY V. SCOTT, PA, ET AL.

The petition for a writ of certiorari is granted limited to Question 1 presented by the petition.

17-6086 GUNDY, HERMAN A. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is granted limited to Question 4 presented by the petition.

CERTIORARI DENIED

17-552 WILSON, THOMAS V. CALLAHAN, CHRISTOPHER, ET AL.

17-567 SCOTT, G. HARRISON, ET AL. V. FDIC

17-618 WA ALLIANCE OF TECH. WKRS. V. DEPT. OF HOMELAND SECURITY

17-635 SNODGRASS, KEVIN V. MESSER, S. L., ET AL.

17-770 ICTSI OREGON, INC. V. INTERNATIONAL LONGSHORE, ET AL.

17-772 NICHOLSON, BRENT, ET AL. V. THRIFTY PAYLESS, INC. ET AL.

17-782 CHATEAU FOGHORN LP V. HOSFORD, WESLEY

17-924 CABACOFF, ROBERT S. V. SELECT PORTFOLIO SERVICING, INC.

17-937 DAVENPORT, LENA V. HOMESTEAD, PA, ET AL.

17-940 GRANT, LARRY V. BENNETT, TOM, ET AL.

17-941 HAINES, MADELYN, ET AL. V. LANGE, ARTHUR, ET AL.

17-943 OSTRANDER, PHILLIP J. V. VIRGINIA

17-956 TANGUY, PHILIPPE, ET AL. V. WEST, WILLIAM G., ET AL.

17-958 WILLIAMS, LINWOOD A. V. COURT SERVICES AGENCY, ET AL.

17-963 BERMAN, LAREESA V. KAFKA, THOMAS A.

17-968 CLARK, JONATHAN, ET AL. V. SHAWNEE, KS

17-969 ROSS, ABIGAIL V. UNIVERSITY OF TULSA

17-971 JAQUEZ, DANIEL A. V. SESSIONS, ATT'Y GEN.

17-990 LAYTON, BARRY A. V. BORDIN, STEVEN K.

17-993 KOZIOL, LEON R. V. ATTORNEY GRIEVANCE COMMITTEE

17-1000 SUN, XIU J. V. DILLON, MARK C., ET AL.

17-1019 RODRIGUEZ, JOE O. V. BANK OF AMERICA, N.A., ET AL.

17-1021 PATTON, KELCEY V. T. D.

17-1022 MEISNER, RHONDA V. ZYMOGENETICS, ET AL.

17-1040 SHUTACK, DAVID V. SIDLEY AUSTIN LLP, ET AL.

17-1053 BATSCH, ROBERT F., ET AL. V. CIR

17-1054 NGUYEN, DAWN V. UNITED STATES

17-1082 RECREATIONAL DATA SERVICES, INC. V. TRIMBLE NAVIGATION LIMITED

17-1088 HERBERT, CHARLES V. V. UNITED STATES

17-1114 CALAFF, IVAN V. CAPRA, SUPT., SING SING

17-6070 RHOTON, GLENDAL V. BROWN, SUPT., WABASH

17-6321 MINTO V. SESSIONS, ATT'Y GEN.

17-6514 HOLLY, ZACHARY V. ARKANSAS

17-6552 FIFER, MARCUS B. V. UNITED STATES

17-6657 REAVES, LAZARUS A. V. UNITED STATES

17-6938 TISIUS, MICHAEL V. MISSOURI

17-6945 EVANS, RICK L. V. UNITED STATES

17-7230 PRINCE, ASHLEY V. CHOURAQUI, MICHELE

17-7232 BOSSE, SHAUN M. V. OKLAHOMA

17-7235 JOHNSON, ROBERT L. V. DC DEPT. OF EMPLOYMENT

17-7240 MORRIS-CALDERON, MARGARET V. RANDI, JAMES, ET AL.

17-7247 MARQUEZ, ANDRES V. COLORADO

17-7249 ROMERO, MAURICIO B. V. DHL EXPRESS, INC., ET AL.

17-7251 HOLTON, FELICIA V. FIRST COAST SERVICE, ET AL.

17-7253 LEVERTON, RANDALL E. V. COLORADO

17-7254 KELLEY, JAMES L. V. DAVIS, DIR., TX DCJ

17-7259 ROBERTS, JOHNNIE R. V. VANNOY, WARDEN

17-7260 SWINTON, ROBERT L. V. STEUBEN COUNTY JAIL, ET AL.

17-7264 PACKER, GREGORY L. V. PENNSYLVANIA

17-7275 MASON, TREMAINE V. ILLINOIS

17-7294 JORDAN, ALVIN P. V. MICHIGAN

17-7310 HAMILTON, JAN V. COLORADO

17-7312 KATO, JAMARIO V. VANNOY, WARDEN

17-7318 SMITH, GLENDA A. V. WYOMING, OH, ET AL.

17-7324 DAVIS-MASSEY, CANDICE, ET VIR V. AMEEN, CHERYL, ET AL.

17-7327 COTTON, KARL V. SUPREME COURT OF U. S., ET AL.

17-7364 GORAYA, KULTAR S. V. FLORIDA

17-7369 HARRIS, FRANCIS V. STEADMAN, CRAIG

17-7373 PASSMORE, JOHN V. DEPT. OF JUSTICE

17-7375 GARDNER, RONALD L. V. BURT, WARDEN

17-7376 GRIFFIN, RANDY H. V. FLORIDA

17-7411 HALE, DELANO V. OHIO

17-7424 SANDERS, ERIC A. V. FAMILY DOLLAR STORES, INC.

17-7438 WEST, TIMOTHY V. BRADSHAW, WARDEN

17-7449 MURPHY, GLYNN T. V. FLORIDA

17-7527 DILLON, KIM W. V. DAUGAARD, GOV. OF SD, ET AL.

17-7567 WILLIAMS, SEBASTIAN P. V. JACKSON, WARDEN

17-7582 SIMPSON, DAVID Z. V. UNITED STATES

17-7597 CARRASCO-ORTIZ, EDWARDO V. UNITED STATES

17-7605 WROTEN, FREDERICK V. GORDY, WARDEN, ET AL.

17-7608 WOODARD, VEROD V. UNITED STATES

17-7616 SIMMONS, ERICKA V. UNITED STATES

17-7626 SENAT, WILBUR V. UNITED STATES

17-7628 RAMKISSOON, HUBY V. UNITED STATES

17-7643 NASH, CARLOS D. V. CAIN, SUPT., SNAKE RIVER

17-7648 RAMIREZ-HERNANDEZ, ARMANDO V. UNITED STATES

17-7649 SMITH, BILLY D. V. UNITED STATES

17-7651 MARSHALL, ANDRACOS V. UNITED STATES

17-7653 DAVIS, CLIFFORD S. V. UNITED STATES

17-7656 ALVARADO, SAMUEL D. V. UNITED STATES

17-7661 VAUGHN, WILLIAM L. V. HOLLOWAY, WARDEN

17-7668 JONES, ALEXANDRA V. UNITED STATES

17-7670 McDUFFIE, TODD V. UNITED STATES

17-7671 CRAWFORD, GLENDON S. V. UNITED STATES

17-7672 JOHNSON, DAVID V. UNITED STATES

The petitions for writs of certiorari are denied.

16-334 BANK MELLI V. BENNETT, MICHAEL, ET AL.

The petition for a writ of certiorari is denied. Justice Breyer took no part in the consideration or decision of this petition.

17-633 ENDO PHARMACEUTICALS, ET AL. V. NEW HAMPSHIRE

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

17-5830 WEBSTER, RICKY D. V. UNITED STATES

17-6542 YEPA, GAVIN V. UNITED STATES

The petitions for writs of certiorari are denied. Justice Gorsuch took no part in the consideration or decision of these petitions.

17-7666 CLARY, MOSES V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

HABEAS CORPUS DENIED

17-7665 IN RE EDWIN E. TROUT

The petition for a writ of habeas corpus is denied.

MANDAMUS DENIED

17-6390 IN RE MICHAEL W. EGGERS

The petition for a writ of mandamus is denied.

REHEARINGS DENIED

16-9727 MUA, JOSEPHAT, ET AL. V. CA CASUALTY INDEMNITY EXCHANGE

17-741 MADRIGALES-RODRIGUEZ, JOSE M. V. SESSIONS, ATT'Y GEN.

17-758 ARORA, NARESH C., ET UX. V. JAMES, CAPTAIN, ET AL.

17-5848 DEATON, KEITH A. V. KELLEY, WENDY

17-6182 IN RE GUY T. LeGRANDE

17-6314 IN RE DaREN K. GADSDEN

17-6375 DONCHEV, FAITH V. DeSIMONE, DENNIS

17-6476 BAKER, PHILLIP E. V. UNITED STATES

17-6620 YOUNG, RUBIN V. WHITE, CHRISTINA, ET AL.

17-6762 FRIAS, LUIS V. UNITED STATES

17-6836 MILLER, BRADLEY B. V. DUNN, VIRGINIA T.

17-6907 KE, LEI V. DREXEL UNIVERSITY, ET AL.

The petitions for rehearing are denied.

SUPREME COURT OF THE UNITED STATES

TODD WESSINGER *v.* DARREL VANNOY, WARDEN

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

No. 17–6844. Decided March 5, 2018

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, dissenting from the denial of certiorari.

Petitioner Todd Wessinger was sentenced to death by a jury that was never presented with significant mitigation evidence that may have convinced its members to spare his life. For instance, Wessinger suffers from a major neurocognitive disorder that compromises his decision-making abilities. As a child, he experienced a stroke in his left frontal lobe that affected how the left and right sides of his brain communicate. He also suffered from childhood seizures, and he has a hole in the area of his brain associated with executive functioning that resulted from some form of cerebrovascular illness.

The jury never considered this evidence at sentencing, or other mitigation about Wessinger's family history of poverty, alcoholism, and domestic violence, because Wessinger's trial counsel did not attempt to discover it.* Wessinger's attorneys on postconviction review similarly failed to conduct any mitigation investigation in preparation for his state habeas petition.

The first postconviction counsel to represent Wessinger suffered a mental breakdown and did no work on his

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*Wessinger's conviction and sentence were affirmed on direct appeal without consideration of any ineffective-assistance-of-counsel claim because, in Louisiana, such claims are "customarily addressed in post-conviction proceedings, not on direct appeal." *State* v. *Wessinger*, 98–1234 (La. 5/28/99), 736 So. 2d 162, 195.

petition. The second attorney was highly inexperienced and had to put together a petition on a compressed timeline. He filed a shell petition to meet the 1-year filing deadline, but failed to immediately seek funding to support a mitigation investigation. See Record in No. 15–70027 (CA5), Doc. 513312967, p. 138 (Record Doc.). He subsequently attempted to rectify that error to no avail. The court viewed his requests as delaying the case and as not sufficiently supported by facts. See *id.,* at 142–144. Counsel proceeded to file an amended petition based only on the limited facts developed in the trial record. Apparently recognizing his limitations, he then sought to withdraw from representation; but it was not until he received the State's opposition to the petition 18 months after filing the motion to withdraw that he realized the motion had been denied. Having done no work during the interim period, he pulled together a second amended petition that added discrete allegations regarding the penalty phase portion of the capital proceedings but that still were based only on the deficient trial court record. His efforts were too little, too late. Counsel had pursued no mitigation investigation, and the state court denied postconviction relief.

On federal habeas review, the District Court granted Wessinger's 28 U. S. C. §2254 petition on the basis that both trial counsel's and postconviction counsel's failure to investigate mitigation evidence constituted ineffective assistance of counsel under *Strickland* v. *Washington*, 466 U. S. 668 (1984). A panel majority of the Court of Appeals for the Fifth Circuit reversed. 864 F. 3d 387 (2017). The panel concluded that Wessinger had not received ineffective assistance of counsel during the postconviction proceedings, and was therefore barred from raising his ineffective-assistance-of-trial-counsel claim in federal court. See *Martinez* v. *Ryan*, 566 U. S. 1, 17 (2012). That conclusion is clearly wrong.

This Court repeatedly has held that the failure to perform mitigation investigation constitutes deficient performance. See, *e.g., Williams* v. *Taylor*, 529 U. S. 362, 396 (2000) (finding deficiency where "counsel did not fulfill their obligation to conduct a thorough investigation of the defendant's background"); *Porter* v. *McCollum*, 558 U. S. 30, 40 (2009) (*per curiam*) ("The decision not to investigate did not reflect reasonable professional judgment"). There is nothing about the facts of this case that calls for a different conclusion.

The Fifth Circuit panel majority does not dispute the District Court's finding that the attorney who filed Wessinger's state habeas petitions "did no investigation" into mitigation. *Wessinger* v. *Cain*, 2015 WL 4527245, *2 (MD La., July 27, 2015). It does not disagree with the District Court's findings that counsel "did not obtain any medical records, school records, employment records or family history records," or that he did not "conduct interviews of any witnesses, friends, teachers, coaches, or family members" regarding potential mitigating factors, aside from having a couple brief conversations with Wessinger's mother and brother. *Ibid.*

Even more striking, the panel majority does not acknowledge that counsel did absolutely nothing on Wessinger's case for a period of at least 18 months after filing the first amended petition.

Despite these blatant shortcomings, the panel majority found that the failure to conduct any mitigation research was not a result of deficient performance, but a product of the state postconviction court's denial of funding for a mitigation investigation. As the record demonstrates, however, the denial of funds resulted at least in significant part from counsel's deficiencies: Wessinger's first counsel did nothing on his case; his second counsel delayed in requesting funds immediately upon taking the case; and, when counsel ultimately made the requests, the court

viewed them as unsupported by any facts. See Record Doc., at 138–139, 142–144.

More important, as noted by the Fifth Circuit panel dissent, the denial of funds does not excuse counsel's failure to perform *any* independent mitigation investigation. 864 F. 3d, at 393 (opinion of Dennis, J.). In fact, conducting such an investigation may have placed the requests for funding on substantially stronger ground. The denial of funds also does not explain or justify counsel's complete abandonment of the case for 1½ years.

The Court's denial of certiorari here belies the "bedrock principle in our justice system" that a defendant has a right to effective assistance of trial counsel, and undermines the protections this Court has recognized are necessary to protect that right. *Martinez*, 566 U. S., at 12. Indeed, the investigation of mitigation evidence and its presentation at sentencing are crucial to maintaining the integrity of capital proceedings. The layers of ineffective assistance of counsel that Wessinger received constitute precisely the type of error that warrants relief under this Court's precedent. Yet, Wessinger will remain on death row without a jury ever considering the significant mitigation evidence that is now apparent. Because that outcome is contrary to precedent and deeply unjust and unfair, I dissent from the denial of certiorari.