

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 2020 TERM



STEVEN LIVADITIS,
PETITIONER

v.

RON DAVIS,
RESPONDENT



MOTION FOR LEAVE TO FILE *IN FORMA PAUPERIS*

CAPITAL CASE

Petitioner asks leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis*. Petitioner is a death-sentenced inmate at San Quentin State Prison in San Quentin, California. Petitioner has had counsel appointed pursuant to 21 U.S.C. § 848(Q)(4)(B) throughout his federal habeas proceedings.

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CAPITAL CASE

QUESTIONS PRESENTED

(1) Was the state court's summary denial of Petitioner's claims, alleging defense counsel's failure to present any penalty phase evidence of (i) Petitioner's mental illness and (ii) the mental impairments and abusive conduct of Petitioner's mother, contrary to or an unreasonable application of clearly established federal law as determined by the Supreme Court, or an unreasonable determination of the facts, within the meaning of 28 U.S.C. § 2254(d)?

(2) Would it be unreasonable for a state court to conclude that, in light of the aggravating circumstances in this case, there is no reasonable probability of a different result if counsel had presented the substantial evidence that Petitioner was mentally ill and that his mother was also mentally ill and abusive?

LIST OF PARTIES

All parties appear on the caption of the case on the cover page.

LIST OF PROCEEDINGS

1. United States Court of Appeals for the Ninth Circuit - *Steven Livaditis v. Ron Davis*, 933 F.3d 1036 (9th Cir. 2019) - Original opinion issued on August 9, 2019 (docket no. 82); Denial of Petition for Rehearing and Rehearing en Banc (Case No. 14-99011) on October 28, 2019 (docket no. 92);
2. United States District Court for the Central District of California - *Steven Livaditis v. Jeanne Woodford*, Case No. 2:96-cv-02833-SVW - Order issued July 8, 2014 denying petition for writ of habeas corpus (docket no. 304);
3. California Supreme Court - *People v. Livaditis (Steven)*, 2 Cal.4th 759 (1992) - Opinion filed on June 18, 1992 affirming judgment in full;
4. California Supreme Court - *Livaditis (Steven) on H.C.*, Case No. 1998 Cal. LEXIS 7651 - Opinion filed November 24, 1998 denying Petition for Writ of Habeas Corpus; and
5. Los Angeles County Superior Court - *People v. Livaditis (Steven)*, Case No. A095327 - Judgment of death entered June 19, 1987.

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Opinion, *Livaditis v. Davis*, 933 F.3d 1036 (9th Cir. 2019)

APPENDIX B

Order Denying Petition for Rehearing and Petition for Rehearing En Banc, *Livaditis v. Davis*, Case No. 14-99011 (9th Cir. October 28, 2019)

APPENDIX C

Opinion, *Livaditis v. Woodford*, Case No. 2:96-cv-02833-SVW (United States District Court for Central California, July 8, 2014)

APPENDIX D

Opinion, *People v. Livaditis*, 2 Cal.4th 759 (1992)

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Opinion, *Livaditis (Steven) on H.C.*, 1998 Cal. LEXIS 7651 (1998)

¹ The appendices are filed concurrently under separate cover.

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THE SUPREME COURT OF THE UNITED STATES

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Ninth Circuit Court of Appeal appears at Appendix ("App.") A to this Petition and is reported at 933 F.3d 1036 (9th Cir. 2019). The order denying the Petition for Rehearing and Rehearing En Banc appears at Appendix B and is unpublished. The opinion of the United States District Court appears at Appendix C and is unpublished. The opinion of the Supreme Court of California on direct appeal appears at Appendix D and is reported at 2 Cal.4th 759 (1992). The opinion of the Supreme Court of California on habeas appears as Appendix E and is unpublished.

JURISDICTION

The district court had jurisdiction of Petitioner's habeas corpus petition under 28 U.S.C. § 2254. The district court denied a Certificate of Appealability. The Ninth Circuit issued a Certificate of Appealability and had jurisdiction under 28 U.S.C. § 2253(c)(1). The Ninth Circuit judgment was entered on August 9, 2019. App A. A timely petition for rehearing and rehearing en banc was denied on October 28, 2019. App B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment to the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . and to have the Assistance of Counsel for his defense.

Fourteenth Amendment to the United States Constitution:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On July 8, 1987, the state trial court imposed a judgment of conviction and sentence of death on Petitioner for crimes that occurred on June 23, 1986. Jury selection in the case began on April 22, 1987. Petitioner pled guilty on April 26, 1987, and trial of the penalty phase began on June 4, 1987. The jury began deliberations on June 16, 1987, and returned a verdict of death on June 19, 1987.

On June 18, 1992, the state court affirmed the death judgment on automatic direct appeal. App. D. Petitioner's state court petition for writ of habeas corpus was denied on November 4, 1998. App. E.

On April 23, 1997, Petitioner filed his original federal habeas corpus petition in district court. Petitioner returned to state court to exhaust the claims in his federal petition. His Second Amended Petition for Writ of Habeas Corpus (SAP") was filed on January 7, 1999. On March 30, 2009, the district court granted, in part, Petitioner's motion for an evidentiary hearing as to Claims 5 [shackling]; portions of Claim 11 [ineffective assistance of counsel] and Claim 12 [competency to stand trial]. The district court conducted the evidentiary hearing on April 28, June 15 and 22, and July 8, 2010.

On July 8, 2014, the district court issued its order and judgment denying the SAP in full. App. C. Petitioner filed his Notice of Appeal and Motion to Proceed in Forma Pauperis on October 17, 2014. A Request for Certificate of Appealability was filed in the Ninth Circuit on October 29, 2014. On September 18, 2015, the Ninth Circuit granted a certificate of appealability "as to Claim 11 in part, limited to Petitioner's contentions that defense counsel was ineffective at the penalty phase in failing to present any mitigating evidence concerning: (I) Petitioner's alleged mental health problems; and (ii) Petitioner's allegedly abusive and mentally unstable mother." Order, dated September 18, 2015.

On August 9, 2019, the Ninth Circuit affirmed the denial of the petition for writ of habeas corpus. App. A. The Petition for Rehearing and Rehearing en Banc was denied on October 28, 2019. App. B.

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STATEMENT OF THE FACTS

A. Summary of Crime and Prosecution Case

On June 23, 1986, Petitioner entered a jewelry store in Beverly Hills just after it opened. Petitioner drew a revolver from his briefcase and demanded that the employees assist him in collecting jewelry and watches. Alerted to the robbery, several employees managed to exit the building but one security guard and four other employees remained inside. One of the employees triggered a silent alarm, and the police responded. Petitioner was about to leave the store, accompanied by one of the hostages. However, he observed a police car parked across and street and forced the hostage back inside with the others. For the next approximately thirteen and one half hours, Petitioner held the employees hostage and the police at bay. The only demands made by Petitioner during this siege were for food, the withdrawal of police from the area and live television coverage. None of these demands were met.

At one point during the morning of the robbery, Petitioner killed the security guard by stabbing him once. Allegedly, the security guard had angered Petitioner by commenting that Petitioner thought he was a big man because he had a gun. Later in the day, while on the telephone with a local television reporter, Petitioner paused in his conversation, walked over to one of the hostages and killed her by shooting her in the head. He returned to his telephone conversation and informed the reporter that his gun had misfired.

The standoff was finally resolved when one of the hostages suggested that they exit the building as a group covered by a large blanket to avoid identification of Petitioner. Once outside, the plan was for Petitioner to escape in one of the hostages' cars parked in the adjacent parking lot. Meanwhile, Los Angeles Police Department SWAT teams had been deployed at various

locations surrounding the jewelry store. One of those teams had been misinformed that all of the male hostages were black. At approximately 11:30 p.m., Petitioner and the remaining three hostages exited the store covered by a large blanket. When they reached the parking lot, the police exploded two flash grenades. Petitioner and the hostages were knocked down. One of the hostages, a white male, stood up and pointed at Petitioner. Mistaking the standing hostage for Petitioner, a police sniper shot and killed the hostage. The police immediately converged on the group and arrested Petitioner. Throughout the hostage situation, his arrest and subsequent statements to the media and his family, Petitioner expressed remorse for his actions and insisted that he had never intended to harm anyone. At the time of the crime, Petitioner was twenty-two years old.

The prosecution also presented evidence that Petitioner had been involved in two commercial burglaries and one resisting arrest charge while living in Las Vegas, Nevada. Shortly before leaving for Los Angeles, California, Petitioner robbed a jewelry store at gun point, held several employees hostage and escaped with a substantial amount of expensive jewelry.

B. Summary of Defense Penalty Phase

The theme adopted by defense counsel was to present a picture of a loving family who cared deeply for Petitioner and who would be devastated if the jury imposed the death penalty. To promote this sympathy-invoking approach, Petitioner's mother, sister, brother, two aunts and one uncle testified on his behalf. The only additional witness was a Greek Orthodox pastor who had served at the family's parish in Brooklyn, New York during Petitioner's childhood.

Petitioner's mother, Sophie Livaditis, testified about the difficulties that the family suffered both from an abusive father and poverty. The jury learned that she had married at the

direction of her family and that Petitioner's father, Louis, was an alcoholic who physically abused her and her four children. Financial problems forced the family to move from New York to Texas. After the parents were divorced, she and her children returned to New York and lived in dire poverty. Petitioner and his sister, Fanny, were sent to live at a Greek Orthodox orphanage after his mother injured her back. Petitioner's mother explained that he was very unhappy at the orphanage because he was always worried about her and was very upset when he was not living with her.

Petitioner's mother further testified that he moved to Greece for three years because he loved Greece and believed that the United States was too violent an environment. Eventually, she moved to Greece and life was fine until Petitioner was forced to return to the United States to avoid the Greek army draft. Throughout all of his time Petitioner was a perfect son.

According to his mother, the root of all of Petitioner's problems stemmed from his move to Las Vegas and exposure to the wrong type of people. She testified that when Petitioner was arrested for stealing from a computer store in Las Vegas, she asked the judge to allow Petitioner to return to New York and live with her, but he was released in Las Vegas and disappeared. Shortly before the Beverly Hills jewelry store robbery, Petitioner telephoned her and was very scared.

Throughout her testimony, Petitioner's mother repeatedly talked about what a good boy he had been and that all of her offspring had been model children. She testified that none of her other children had ever been in trouble with the authorities and that Petitioner's problems were caused by the bad company he fell in with in Las Vegas. On cross-examination, she

admitted that all of her children had experienced the same hardships during their childhoods, but that none of Petitioner's siblings had committed any crimes.

Petitioner's maternal aunt testified very briefly. She described one incident of Petitioner's father striking his mother outside the presence of the children. The other aunt knew Petitioner when he was in Greece. She testified that he was a "normal" child who attempted to save a kitten abused by other children. The uncle described himself as fulfilling the father role. He also blamed bad associations in Las Vegas for Petitioner's crimes. He admitted that he had virtually no contact with Petitioner for five years.

The Greek Orthodox pastor testified that he observed that the family was living in poverty. He believed that Petitioner was devoted to his mother. On cross-examination, the pastor admitted that Petitioner had social and academic problems at the orphanage but that he had no first-hand knowledge of the problems.

Petitioner's older brother, George Livaditis, testified next. His only comment regarding his parents was that their relationship was not very nice. He recalled events relating to the poverty that the family suffered after returning to New York with his mother digging through garbage for food. Petitioner was characterized as the mother's favorite and someone who was constantly trying to help his mother. The testimony quickly focused on the period when the two brother lived in Las Vegas, and Petitioner became involve in crime. According to the brother, Petitioner's problems were caused by the people he associated with while in Las Vegas. After Petitioner was arrested for burglary of a computer store, his brother lost touch with him. The next real contact occurred after Petitioner was arrested for the Beverly Hills jewelry store robbery and murders.

On cross-examination, the People extracted testimony to the effect that Petitioner had been his mother's favorite and had received special treatment in comparison to the other children. In response to the People's questions, the brother stated that Petitioner had used his brother's name to avoid arrest after Petitioner had robbed the jewelry store in Las Vegas. On redirect, defense counsel elicited the fact that the brother had called the police and turned Petitioner in after the computer store burglary. During recross examination, the brother admitted that he had no knowledge about the people that Petitioner was involved with in Las Vegas. On further redirect, the brother again blamed bad company in Las Vegas for Petitioner's actions.

After telling the jury that Petitioner's two sisters would testify, defense counsel only called the younger of the two sisters, Fanny Livaditis. In less than five pages of testimony, Petitioner's sister recounted that he was a good and sensitive child who received the most attention from his mother. She characterized his behavior as always good to the family and very close to his siblings. She recalled that he seemed confused and moody after his service in the United States army but that she had not seen very much of him after he went to Greece at the age of fourteen. Her testimony concluded with her statement that she loved her brother and did not want him to die. No questions were asked of this sister regarding any abuse or hardship during their childhood. She testified that her experience at the orphanage had been a positive one. The People asked no questions. The defense did not call Petitioner's other sister to testify.

Other than the testimony of Petitioner's mother, the jury heard no evidence that he had ever been abused by either of his parents. One aunt was the only person who corroborated Petitioner's mother's testimony that the family had abused her. Neither of Petitioner's siblings were asked any questions regarding any abuse of Petitioner's or the other children by their

parents or any other relative. All of the defense witnesses painted a picture of Petitioner as a normal and well-behaved child who was very devoted to his mother who, in turn, returned his affection to a greater degree than with his siblings. The jury was told that Petitioner came from a very loving and close family and extended family that were always ready to provide emotional and financial assistance to him.

**MITIGATION EVIDENCE NOT PRESENTED TO JURY AS A RESULT
OF DEFENSE COUNSEL’S INEFFECTIVE ASSISTANCE²**

Defense counsel failed to present widespread and compelling mitigation evidence in his possession or readily available to him regarding Petitioner’s background and mental health prior to the crime. This evidence rebutted the testimony of Petitioner’s family presented by defense counsel and truthfully depicted Petitioner’s childhood abuse and life long mental illness.

A. *Failure to Present Mitigation Evidence in Defense Counsel’s Possession Regarding Petitioner’s Background*

Petitioner’s defense counsel failed to conduct the investigation necessary to make an informed decision whether to develop and use the mitigating information in his possession. Defense counsel’s purported decision to present a penalty phase defense designed principally to evoke sympathy for Petitioner’s family was not based upon any strategic or tactical decision supported by a competent investigation. Rather, it was the result of taking the path of least resistance and making use of mitigating evidence that essentially dropped into his lap. Defense counsel’s presentation at the penalty phase of the “mercy” theme, far from being the product of

² The abuse of Petitioner and his mental impairments described in this petition are all based upon evidence presented to the California Supreme Court in Petitioner’s state habeas petition.

informed strategic decision making, was in fact part of a “shotgun approach” that succeeded only in producing “a halfhearted mitigation case.” *Wiggins v. Smith*, 539 U.S. 510, 526 (2003).

The facts are uncontested that defense counsel did not conduct a reasonable investigation. Defense counsel did not seek relevant medical records of Petitioner or of Petitioner’s family. Defense counsel was aware that Petitioner had been abused by his mother and other caretakers and took no steps to investigate any of the abuse. Defense counsel obviously did not pursue his knowledge that Pauline was mentally ill. Defense counsel sought to excuse his incompetent representation by claiming that he decided to limit his defense to mercy evidence after traveling to Greece and interviewing members of Petitioner’s family.

This claim is belied by the facts. Although defense counsel claims that he intended to investigate the abuse of Petitioner when he went to Greece, his actions demonstrate the opposite. Defense counsel allowed the interviews in Greece to be structured in such a manner as to preclude any investigation of abuse. The interviews were conducted in groups without any independent interpreter. No questions relating to abuse were asked of any of the interviewees. Defense counsel did not elect to pursue a mercy defense after making any reasonable effort to investigate whether Petitioner had been abused by his caretakers.

Even if Petitioner’s relatives in Greece were unwilling to disclose the facts of his mother’s abuse and mental instability, defense counsel failed to pursue any investigation of the evidence by any other available avenue, including investigation of Petitioner’s immediate family. He made no effort to obtain Fanny Livaditis’ juvenile records or investigate the mental state of Petitioner’s older sister, Pauline Livaditis. He failed to interview either any of Petitioner’s siblings about abuse history they had disclosed in their letters to him. Defense counsel failed to

investigate Sophie Livaditis' mental health and background, despite the fact that he believed (correctly) she was emotionally unstable and her children had recounted incidents of severe abuse of Petitioner by his mother. All of this investigation could have been conducted without interviewing any of Sophie's siblings or their spouses. No evidence was presented at Petitioner's trial that his mother and sister suffered from mental illness or that Sophie Livaditis suffered an abusive background. Without conducting an adequate investigation of Sophie and Pauline Livaditis, the decision not to pursue and present evidence of their mental health problems was not competent representation.

Even more significant, defense counsel completely failed to adequately investigate Petitioner's mental state and medical background. Defense counsel made no attempt to obtain Petitioner's medical records immediately after the charged offenses or at any time in the preceding years when Petitioner resided in Las Vegas. The evidence that Petitioner was suffering from a mental disorder or defect and that he had experienced head trauma would not have been inconsistent with presenting a plea for mercy from Petitioner's family.

Defense counsel's mercy defense would not have been inconsistent with presenting evidence of Petitioner's horrific childhood and adolescence. If defense counsel had conducted an adequate investigation, he also could have presented evidence that Sophie Livaditis herself suffered from mental and physical abuse. An explanation of her own mental and physical disabilities would have enabled counsel to explain in a non-judgmental fashion how Sophie's mental defects resulted in her abuse of Petitioner and his siblings. This evidence would have been consistent with a truthful presentation of the facts that George Livaditis' experience as a youth was so painful that he blocked the memories, that Fanny Livaditis had run away from

home and ended up in a juvenile facility and that Pauline Livaditis was suffering from mental illness.

Moreover, if defense counsel still wished to make an *informed* decision not to reveal Sophie's abusive behaviors, nothing in the "mercy" theme was inconsistent with showing her full range of disabilities. If anything, the jurors' knowledge of the depth of Sophie's physical and psychological dysfunction – largely from the effects of her husband's violence and her own deprived background – would have made her *more* sympathetic. In this regard, one of defense counsel's more inexplicable actions was to *reject* Sophie's offer to display the still-visible scars left on her by her husband's brutality. One can think of few more poignant means to connect with penalty phase jurors than to show them lasting evidence of a father's rage-filled abuse of Petitioner's mother, and ask them to consider the effect of the equally lasting by unseen scars inflicted on the mind of a young child.

B. Failure to Adequately Investigate, Discover and Present Mitigation Evidence Readily Available to Defense Counsel Regarding Petitioner's Mental Health

Defense counsel's failure to investigate and obtain competent expert assessment of the evidence regarding the cause, severity and functional impact of the troubled nature of Petitioner's developmental background was extremely prejudicial. But for counsel's failings, the jury would have heard significant mitigating evidence regarding Petitioner's abuse history and mental illness.

The data considered by mental health experts retained during Petitioner's post-conviction proceedings, and which were available at the time of trial, show that Petitioner's mental impairments and functioning were shaped by the impact of forces even before his birth. Adequate investigation and preparation of social history information would have enabled

competent mental health professionals to inform defense counsel, and the sentencing jury, that Petitioner was born a vulnerable child, with a background and an extensive family history of emotional and psychiatric disorders.

As the youngest child born into a chaotic and dysfunctional family Petitioner was the one least able to fend for himself when the family disintegrated into chaos. Fanny Livaditis described to defense counsel how Petitioner, “being a little kid,” was particularly terrified by violent outbursts from his father, “this giant.” All three of Petitioner’s older siblings described his extreme emotional reaction to his parents’ domestic violence and the abuse to which he was subjected. Petitioner’s mother could not protect him from his father, and her own psychological impairments caused her to exacerbate the abuse Petitioner suffered, and to prolong it after the father left the family home.

Sophie’s own childhood, in rural Greece, was marked by a range of psychological trauma caused by poverty, hunger and violence. Other members of Sophie’s family were reported to have symptoms of psychological disturbance, including her mother and maternal grandfather. When Sophie was in her early teens, her family’s economic desperation forced them essentially to sell Sophie to older relative living in New York City. Her putative “parents” put her to work for them as a sales clerk. Six years after Sophie’s arrival she was then forced to marry Petitioner’s father, Louis Livaditis, in an arranged marriage. Over the course of the next eight years, Sophie gave birth to four children. Her family priest described her as incapable of parenting so many children.

Louis Livaditis was a largely absent husband and parent. He spent his nights and the family’s money gambling and drinking. During the times he was at home he frequently abused

his wife and children. Louis attacked Sophie with knives and other weapons. Such aggravated assaults also occurred in the children's presence. Louis's violent behavior sometimes triggered retaliation from Sophie and the parents' fights could engulf their children, who were also at risk for being struck. During one attempt by Fanny to protect her mother, Louis struck Fanny hard enough to knock out one of the child's teeth.

Sophie's ability to cope with the marital discord and domestic pressures was compromised by, and exacerbated the effects of, her life-long mental impairments. She confided to her priest that she had attempted to abort the pregnancy leading to Petitioner's birth. Since at least that time, she was noticeably mentally unstable. She was depressed, emotionally labile, anxious and explosive toward her children. She constantly complained of ill health, and spent much of her time bed ridden. By the late 1960's she sought medical treatment for a reported spontaneous inability to see, hear or talk. She became addicted to Valium and alcohol and was later hospitalized for investigation of somatic symptoms. Within two to three years of Louis's departure, Sophie was unable to care for her two youngest children – Petitioner and his sister Fanny – and placed them at the St. Basil's Academy orphanage in Upstate New York. Within the following year, members of a church welfare community service committee recommended placement in the orphanage of Sophie's older son, George, in the orphanage due to the effect of Sophie's physical and mental problems.

During a hospital stay at the time, Sophie was referred for a psychiatric evaluation due to bizarre behaviors. Sophie's demeanor and presentation were clearly inappropriate. She smiled in an inappropriate manner. Despite being on Welfare and Medicaid, with two of her children

institutionalized out of economic necessity, Sophie denied being concerned with any financial problems. The examining doctor noted her discussion of physical symptoms (headaches) had a “dissociative element,” and recommended treatment with Thorazine.

As a result of Sophie’s own impairments, Petitioner’s “life has been dominated by repeated physical abuse, emotional neglect and psychological maltreatment. He experienced this type of care taking from his father up until the time Steve was six years old, and from his mentally ill mother throughout childhood and adolescence.” Even before Louis left the home, Sophie subjected her children to physical and psychological abuse, including burning their buttocks on the stove as part of toilet training.

After Louis left, the abuse to which Sophie subjected Petitioner and siblings was unrelenting, irrational and horrendous. She berated her older daughter, Pauline, about her weight and threatened to tape her mouth shut. She forced Fanny to eat foods she could not tolerate and then made the child eat her own vomit when she threw up. Sophie punched and spat on Fanny and also attacked her at night as she lay sleeping in bed, beating her around the head and face with coat hangers. Sophie terrorized her sons by beating Petitioner and George with belts, coat hangers, broom handles and mops. She also made bizarre forays into the bathroom when the boys showered, pulling back the shower curtain and beating their naked bodies with the wire hangers. Sophie supplemented her own infliction of abuse by enlisting the aid of male relatives to inflict theirs. A “particularly dominant,” abuser was the children’s maternal uncle, Theofanis Tsantsalos. “Uncle Fanis” regularly beat Petitioner, sometimes stripping him as well as Fanny naked beating them with a belt. Rather than introducing evidence of such abuse, defense

counsel's closing words to the penalty phase jury portrayed Uncle Fanis as a father figure to Petitioner.

The physical and psychological abuse and chaos that Petitioner's and his siblings endured is known to be inimical to healthy mental and emotional development. *See Wallace v. Stewart*, 184 F.3d 1112, 1116 (9th Cir. 1999), *cert. denied*, 528 U.S. 1105 (2000). The effects on the Livaditis's children were consistent with this understanding. Pauline Livaditis was mentally ill. George Livaditis had a measured IQ of 80, attempted to repress memories of his childhood, was incapable of having meaningful social or emotional relationships and was described by the family priest as "excitable, overly anxious and neurotic." Fanny was exhibiting signs of psychological stress by age eight, and noted by first and second grade teachers to lack social skills. At the age of fifteen, Fanny ran away from home to California, was incarcerated in the California Youth Authority and later placed in foster care and given counseling.

Petitioner's development and functioning followed a familiar, if more tragic, downward spiral. Petitioner was described as a quiet, withdrawn child who rarely spoke, a fact that pleased his mother who wanted him to be still and quiet. When Sophie then left Petitioner at St. Basil's Orphanage without warning and without explanation, he became noticeably depressed, crying frequently and suffering significant weight loss. *See, Sears v. Upton*, 561 U.S. 945, 947 (2010) (among the mitigating evidence counsel prejudicially failed to present included the fact that "Sears struggled in school, demonstrating substantial behavior problems from a very young age. For example, Sears repeated the second grade.").

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In Petitioner's early teens he was sent to live in Athens with his Uncle Fanis and his wife Pepi. These relatives, who physically abused Petitioner in New York, continued to do so in Greece. In addition to the physical abuse, they replicated Sophie's psychological mistreatment, frequently berating him as being "stupid," "lazy," and a "pig" and "donkey." During this time, Petitioner exhibited strange behaviors and mannerisms.

Returning to the United States Petitioner displayed the academic, occupational and social limitations that mark mental illness such as PTSD, Bipolar Disorder and Schizoaffective Disorder. He again made earnest effort, but only barely managed to obtain his GED and enlist in the military. There he was disappointed that his aptitude testing qualified him for only menial laundry employment.

After completing his active duty, and unable to live independently, Petitioner returned to Greece where he lived briefly with his mother. Relatives noticed he was depressed confused about life. Shortly after returning to Greece, Petitioner, at the age of 20, made his first known suicide attempt; and again experienced auditory hallucinations. From that point through the time of the capital offenses, Petitioner's thinking was increasingly affected by his mental illness. He made additional suicide attempts, experienced auditory hallucinations and suffered severely depressed and manic states. All of these symptoms and conditions were directly related to Petitioner's genetic predisposition to psychotic illness and to the effects of his childhood trauma.

The presentation of this evidence would have formed the basis for testimony from a child abuse expert that would have provided a more complete picture of Petitioner's childhood and development as well as demonstrating how Petitioner was severely negatively impacted by his childhood experiences. This evidence would have included, *inter alia*:

(1) An individual's development and functioning are the product of a combination of factors: the biological family's medical and psychiatric history; the individual's medical and psychiatric history; traumas and stressful life events; parental child rearing practices; history of child physical abuse, neglect and psychological maltreatment; individual factors such as intelligence, temperament, coping deficits or strengths; education; social history; and family and community social support. These factors, singly and together, have long term effects on a child's development and subsequent psychological functioning, which includes social, emotional, cognitive and mental processes.

(2) In Petitioner's case, he was born a vulnerable child, with a background and an extensive family history of emotional and psychiatric disorders. He suffered two life threatening physical traumas as an infant. He was terribly abused and maltreated beginning in infancy and extending over his young life.

(3) Other factors relevant to the abuse and maltreatment point towards long lasting impairments in Petitioner's development. The abuse and maltreatment were severe in intensity, and occurred during critical developmental stages of Petitioner's life. Moreover, the perpetrators were Petitioner's parents and others responsible for his care; the effects of child abuse and maltreatment on children are especially pronounced when the abuser is someone who the child would normally trust. Abuse by that person often destroys the child's ability to trust anyone or to feel secure or able to safely interact with the world. Finally, the abuse and maltreatment were repeated throughout Petitioner's childhood and adolescence.

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(4) The combination of these factors contributed to multiple impairments and vulnerabilities in Petitioner's development and health, and in his subsequent behavioral, cognitive, social, and emotional functioning.

Declaration of Dr. Mindy Rosenberg, Ph.D..

Additional mental health experts would have explained to the jury (1) that Petitioner suffers from neurological impairment (Declaration of Dr. Dale Watson); (2) the devastating impact of Petitioner's horrendous childhood on his future development (Declaration of David Foster); and (3) that Petitioner suffers from severe psychiatric disorders, neuropsychiatric and medical deficits which significantly impaired his ability to reason and control his actions (Declaration of Dr. David Foster).

REASONS FOR GRANTING THE PETITION

THIS COURT SHOULD GRANT THE PETITION BECAUSE THE LOWER COURTS FAILED TO APPLY CONTROLLING CASE LAW FROM THIS COURT AND FROM THE NINTH AND OTHER CIRCUIT DECISIONS REGARDING INEFFECTIVE ASSISTANCE OF COUNSEL DURING THE PENALTY PHASE OF A CAPITAL TRIAL

A. Controlling Case Law Excludes Finding that the State Court's Denial was Not Unreasonable

This case deserves this Court's consideration because, respectfully, the lower court decisions that the state court was not unreasonable in summarily denying a death-sentenced prisoner's ineffective assistance of counsel claim conflicts with the holdings of this Court governing virtually every aspect of the analysis required under *Strickland v. Washington*, 466 U.S. 668 (1984). *See, e.g. Rompilla v. Beard*, 545 U.S. 374, 383-385, 393 (2005) (counsel's failure to review readily available record of prior conviction for potential mitigating evidence fell

below standard of reasonable performance - defense counsel's failure to investigate petitioner's personal and family history of multigenerational mental illness made it unreasonable for counsel to rely on a mitigation defense based on "naked pleas for mercy" from petitioner's family); *Williams v. Taylor*, 529 U.S. 362 (2000) (prejudice analysis must consider all the mitigating evidence in state habeas, including the extent of petitioner's horrific childhood abuse, petitioner's psychosis at the time of arrest, and significant head injury shortly before the commission of the capital offense); *Porter v. McCullum*, 558 U.S. 30 (2009) (prejudice analysis failed to consider the prejudicial impact of failing to present readily available evidence of mental illness and brain damage that would have supported two state statutory factors in mitigation); *Sears supra*, 561 U.S. at 954 (2010), *Ake v. Oklahoma*, 470 U.S. 68 (1985) (lay jurors were not capable of inferring existence of mitigating mental impairments from desultory evidence that petitioner's father "spanked" him and his siblings); *Brumfield v. Cain*, 135 S.Ct. 2269 (2015) and *Nunes v. Mueller*, 350 F.3d 1045 (9th Cir. 2003) (prejudice analysis cannot rely on reasons justifying the state court in being "skeptical" of the expert opinions supporting the habeas claims without affording petitioner an evidentiary hearing).

This case is therefore of exceptional importance to capital habeas petitioners because, if allowed to stand, the Ninth Circuit's published opinion will provide authority for essentially equating "deference" to state court decisions under the Antiterrorism and Effective Death Penalty Act (AEDPA) with "abandonment or abdication of judicial review," contrary to *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003).

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In a case like this, no Ninth Circuit decision found prejudice lacking from trial counsel's failure to present *any* evidence of major mental illness and brain damage, while failing to investigate the extent of a defendant's childhood abuse. *See, e.g., Bemore v. Chappell*, 788 F.3d 1151, 1175-76 (9th Cir. 2015) (it would have been objectively unreasonable for state court to find prejudice standard had not been met where counsel presented weak alibi defense at guilt phase and failed to present mental health mitigation defense at penalty phase that could have persuaded a single juror to vote against capital sentence); *Hamilton v. Ayers*, 583 F.3d 1100, 1131 (9th Cir. 2009) (failure to present "horrific treatment" defendant suffered in childhood and his diagnosis of major mental health problems was prejudicial in penalty phase following defendant's conviction of murder for financial gain in killing of his pregnant wife); *Frierson v. Woodford*, 463 F.3d 982, 996-97 (9th Cir. 2006)(defendant, who was convicted of kidnaping and robbery, and execution-style murder of one of the victims, was prejudiced by counsel's failure to investigate and present evidence of defendant's multiple head trauma in childhood, possible organic brain dysfunction, borderline mental retardation and a learning disability, and history of chronic substance abuse, and emotional disorder); *Silva v. Woodford*, 279 F.3d 825, 828, 847-48 (9th Cir. 2002) (defendant who was convicted of "gruesome abduction, robbery and murder," was prejudiced by counsel's failure to investigate and present evidence of defendant's childhood, mental illnesses, organic brain disorders, and substance abuse); *Jackson v. Calderon*, 211 F.3d 1148, 1163 (9th Cir. 2000) (defendant, convicted of first-degree murder of police officer was prejudiced by counsel's failure to investigate history of child abuse, neglect, family instability, and mental illness).

A finding of no prejudice in light of such failure is also unprecedented in this Court's decisions. *See, e.g., Sears, supra*, 561 U.S. at 949 (in murder and kidnapping case, defendant suffered "significant frontal lobe abnormalities" that were etiologically linked to a social history "'replete with multiple head trauma, substance abuse and traumatic experiences of the type expected' to lead to these significant impairments"); *Rompilla, supra* 545 U.S. 374, 390-92 (2005) (in torture/murder case, counsel's failure to investigate and present evidence that defendant was "reared in [a] slum environment," suffered "'from organic brain damage," which stemmed from "problems that relate back to his childhood," and impaired his capacity to appreciate the criminality of his conduct or to conform his conduct to the law undermined confidence in the death verdict); *Wiggins, supra*, 539 U.S. at 535 (where defendant convicted of murder and robbery in drowning death of 77-year-old woman, failure to investigate and present evidence of defendant's severe privation and abuse in childhood, physical and sexual abuse in foster care, periods of homelessness and "diminished mental capacities," rendered death verdict unreliable); *Williams, supra*, 529 U.S. 362 (in case involving robbery/murder and separate assaults against elderly victims, one of whom was left in a "vegetative state," counsel's failure to investigate defendant's "nightmarish childhood," severe physical abuse, borderline mental retardation and good conduct in prison undermined confidence in the outcome).

In Petitioner's case, the Ninth Circuit's prejudice analysis (App. A at 26-29) is contrary to decisional law of Supreme Court and this Circuit in three respects. First, contrary to *Porter, supra* 558 U.S. at 31, the Ninth Circuit did not mention or consider the probability of a different result where defense counsel failed to present evidence that would have supported two statutory factors in mitigation. In *Porter*, the Supreme Court held it was objectively unreasonable

to find no reasonable probability of different penalty for defendant, convicted of two counts of murder, where counsel failed to present evidence that included defendant's military background and mental illness that met state counterparts of Cal. Penal Code § 190.3(d) and (h). As with factors (d) and (h), the Florida counterparts required the jury to consider mental impairments that influenced the defendant's actions and/or impaired his ability to understand and conform his behavior to the requirements of the law.

The probability of a more favorable result was even greater here because Petitioner's jury deliberated for three days and requested clarification of another mitigating factor that required consideration of Petitioner's mental state in committing the crimes. The jurors' question demonstrates their willingness to consider and give full mitigating effect to specific mitigating factors. Defense counsel's abysmal failure to uncover such evidence prejudicially deprived the jurors – and Petitioner – of an opportunity to consider such factors.

Second, contrary to the holdings in *Brumfield* and *Nunes*, the Ninth Circuit suggests reasons for challenging the weight of the expert opinions submitted in support of Petitioner's state court habeas claims. App. A at 28-29. At best, the Ninth Circuit's critiques merely "cut against" Petitioner's claims, but do not foreclose his ability to prove them. *Brumfield*, *supra*, at 2280. At worst, the Ninth Circuit's reasoning conflicts with *Nunes* in making credibility calls without benefit of an evidentiary hearing.

For example, the Ninth Circuit dismisses the clinical findings of Dr. Mindy Rosenberg on the grounds that *lay* jurors who considered the paltry evidence that Petitioner's father spanked Petitioner and his siblings "could have inferred the negative effects from that treatment," thereby rendering Dr. Rosenberg's findings "cumulative." App. A at 27. Dr. Rosenberg expended nearly

30 hours evaluating Petitioner and his siblings and prepared a detailed psychosocial assessment that demonstrated “Livaditis’s childhood trauma ‘adversely affected his subsequent psychological development, including his behavioral, social, emotional, and cognitive functioning.’” App. A at 24. The notion that lay jurors could have discerned such outcomes from the fragments of evidence presented by defense counsel directly conflicts with the Court’s recognition of the importance of a “well-credentialed expert’s assessment” in evaluating the cause and mitigating significance of mental impairments. *Sears, supra*, 561 U.S. at 949. The Ninth Circuit’s suggestion is also at odds with the Court’s recognition that the assistance of a mental health expert is necessary for a capital defendant to be “fairly able to present at least enough information to the jury, in a meaningful manner, as to permit it to make a sensible determination.” *Ake, supra*, 470 U.S. at 82. *See also, Caro v. Woodford*, 165 F.3d 1223, 1227 (9th Cir.), *cert. denied*, 527 U.S. 1049 (1999) (the fact the jury had evidence that the defendant was beaten and suffered head injuries as a child did [not] cure the prejudice of the jury not having “the benefit of expert testimony to explain the ramifications of these experiences on [the defendant’s] behavior.”).

Similarly, the Ninth Circuit minimizes Dr. Watson’s and Dr. Foster’s findings, based on their use of clinical terminology, without regard for its true clinical and medical significance. The Ninth Circuit minimizes Dr. Watson’s findings as showing “only” a “‘mild degree of neuropsychological degree of neuropsychological impairment,’” and faults Dr. Foster for being “‘tentative’” in concluding that Petitioner’s “symptoms were ‘consistent with ‘ brain damage.’” App. A at 27. Dr. Watson’s detection of right hemisphere brain damage was obtained using “the most widely researched and validated neuropsychological battery.” He further noted that

“bilateral findings are also present.” As Dr. Foster explained, the use of the term “mild” did *not* mean “the *effect* of these impairments are mild,” only that measured damaged compared to other brain damaged individuals was mild. Significantly, the area of the brain damaged made it likely that Petitioner would suffer difficulty understanding reality and controlling his impulses.

Dr. Foster’s use of the term “consistent” with regard to brain damage referred to his *own* administration of neuropsychological testing during his evaluation of Petitioner, which yield “consistent” results i.e., results that confirmed Dr. Watson’s finding. The fact that Dr. Foster found Petitioner’s measured brain damage to be “consistent” with the clinically documented link between right hemispheric damage and petitioners diagnosed mental illnesses was far from tentative. It constituted congruent medical findings that supported the experts’ conclusions.

Third, the Ninth Circuit failed to evaluate “the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding,” as required by *Williams, supra*, 529 U.S. at 397, and *Wiggins, supra*, 539 U.S. at 527. Although acknowledging the existence of jail medical records indicating Petitioner’s psychotic state at the time of arrest (App. A at 24, 26-29), the Ninth Circuit does not consider that evidence that Petitioner “had been under observation for a psychotic episode,” and was “prescribed medication to control psychosis,” would have been particularly powerful “coming as it did from doctors with no connection to the defense.” *Hovey v. Ayers*, 458 F.3d 892, 926-927 (9th Cir 2006). Neither does the Ninth Circuit address the evidence of significant head injuries Petitioner suffered shortly before he committed an earlier robbery, which the Ninth Circuit cites as evidence of Petitioner’s aggravating behavior.

Because the Ninth Circuit overlooked such evidence it failed to consider that evidence of mental illness and brain damage can mitigate aggravating criminal behavior which the jurors understand to be the manifestation of a defendant's impairments. Thus, for example, the Ninth Circuit points to the apparently aggravating fact that immediately after fatally stabbing a security guard, Petitioner gave a statement to the press by telephone, *from the crime scene*, in which he "indicated he believed Smith's stabbing was 'appropriate.'" App. A at 26. Understood in the context of Petitioner's mental illness and brain damage, however, his belief that he acted properly was a strong indication of insanity. At minimum, it would have supported the jurors' consideration of statutory factors requiring mitigation based on psychological disturbances and impairment of Petitioner's ability to appreciate the nature of his acts.

It is clear from the cases summarized above that it is reasonable to conclude that there was a probability of a more favorable result if the jury had considered the available mitigating evidence.

B. Counsel's Deficient Investigation Cannot be Justified on the Ground His Mitigation Presentation was not Unconstitutionally Deficient.

The Ninth Circuit's conclusion that defense counsel's failure to conduct a thorough background investigation can be justified as a strategic choice merely because he "did not select a constitutionally deficient mitigation strategy" (App. A at 21) is contrary to established law in at least two respects.

First, without an adequate investigation, defense counsel could not have reached a reasonable strategy to defend Petitioner. As the Court made clear in *Sears, supra*, 561 U.S. 945, that a theory might be reasonable, in the abstract, does not obviate

the need to analyze whether counsel's failure to conduct an adequate mitigation investigation before arriving at this particular theory prejudiced Sears. The “reasonableness” of counsel's theory was, at this stage in the inquiry, beside the point: Sears might be prejudiced by his counsel's failures, whether his haphazard choice was reasonable or not.

Id. at 954, *see also, Williams, supra*, 529 U.S. at 396 (2000)(trial counsel’s decision to focus on one mitigation theme cannot be justified as a tactical decision when trial counsel fail to conduct a thorough investigation of the defendant’s background).

Second, defense counsel did not discharge his “duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland, supra*, 466 U.S. at 690-91. As evidenced by defense counsel’s declaration, defense counsel criticized the trial court for denying his request for additional time to prepare. Defense counsel clearly states that he “was not yet ready to proceed.” As defense counsel expressly admits, his penalty phase investigation was missing an investigation of Petitioner’s medical and social history.

Had I been given additional time, I would have done everything I could to obtain additional medical records and related social history. Information gleaned from these records would have assisted me in the preparation of Mr. Livaditis’ trial and would have been highly relevant in terms of deciding how to proceed at the penalty phase.

Ibid.

Instead of conducting even a superficial investigation into the social and mental health history of Petitioner, defense counsel's investigation was limited to interviewing Petitioner at the county jail; receiving letters from Petitioner's family members; receiving brief reports of his investigator's interviews with a cousin, the family priest, two co-workers and another priest, police officer and lawyer who came into contact with Petitioner in Las Vegas; and obtaining some elementary school records.

The Ninth Circuit describes defense counsel as having extensive interviews with the family. App. A at 21. The record contains three transcripts of recorded meetings with defense counsel and family members. As described above, these interviews were not "extensive."

Third, in light of the information provided to defense counsel by Petitioner's family, which made it "obvious" both Petitioner's sister and mother suffered from mental illness, it would have been unreasonable not to investigate further. *See Wiggins, supra*. 539 U.S. at 527. Contrary to the Ninth Circuit's belief, there is no evidence in the record that defense counsel *consulted* a mental health expert. App. A at 24, 28. Defense counsel's declaration makes only oblique reference to a "mental expert," to whom defense counsel would have shown social history records *if* he had found them. Defense counsel does not explain whether this was an expert whom he retained on another case or had engaged on Petitioner's behalf. Moreover, defense counsel explained that he might have developed evidence of Petitioner's background if he "could have relied on documents" instead of "only having to use family members as witnesses." Defense counsel explicitly stated that he did *not* retain an expert qualified to testify

to the effects of having a family in which “both parents and their caretakers are abusive and mentally ill.”

“In assessing the reasonableness of an attorney's investigation, however, a court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further.” *Wiggins, supra*, 539 U.S. at 527. *See also, Douglas v. Woodford*, 316 F.3d 1079, 1086, 1089 (9th Cir. 2003) (“The information [counsel] did obtain about [petitioner's] troubled childhood revealed the need to dig deeper,” thereby requiring him to pursue any “significant alternative source of information that was readily discoverable.”).

As the Ninth Circuit acknowledged in *Bemore, supra*, 788 F.3d at 1174, a strategic decision cannot be made without an adequate investigation. “A decision is not a ‘strategic’ one if not informed. The question under Strickland is ‘whether the investigation supporting [counsel's] decision not to introduce mitigating evidence . . . was itself reasonable.’ *Wiggins*, 539 U.S. at 523.”

As this Court has recognized, in *Boyle v. California*, 494 U.S. 370, 380 (1990). [E]vidence about the defendant's background and character is irrelevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to . . . emotional or mental problems, may be less culpable than defendants who have no such excuses.

Id. at 380. Petitioner was entitled to have the evidence of his mental and emotional problems presented fully and explained coherently to the jury.

The question for Petitioner’s jurors was whether there was any reason not to give him the greater punishment of death. In weighing their answer, the jurors should have been able to place the information discussed above on Petitioner’s side of the scales.

The Eighth Amendment commands that there is no crime *automatically* deserving of death. *Sumner v. Shuman*, 483 U.S. 66 (1987). The prejudice of counsel’s failure to present similar background mitigation has been held to outweigh the gravity of crimes worse than those committed by Petitioner. For example, in *Wallace*, the defendant lay in wait and then personally bludgeoning to death two teen age children and their mother, seriatim, as they arrived home. The defendant’s apparent motive for this pitiless crime was to take money from the mother’s purse and buy liquor. *Wallace, supra*, 184 F.3d at p. 1113. As in Petitioner’s case, the defendant in *Wallace* immediately confessed and pled guilty. *Id.*

The Ninth Circuit found that defense counsel was prejudicially deficient in failing to present evidence of *Wallace*’s “profoundly dysfunctional” home environment, genetic predisposition to psychosis and alcoholism, parental signs of major mental illness, and the defendant’s diagnosis of “major depressive disorder.” *Id.* at p. 1116; *see also, Williams, supra*, 529 U.S. at 368 (death penalty reversed even though defendant murdered his victim with a mattock and robbed him and had prior convictions for armed robbery, burglary and grand theft and subsequent to the murder, committed two auto thefts, assaulted two elderly victims (one of the attacks put the victim in a vegetative state) and set a fire in the jail while awaiting trial.).

In this case, the prejudice of defense counsel’s failure to present available mitigating evidence was compounded by his presentation of implicitly *misleading* information about the

factors that shaped and impaired Petitioner's functioning. A similarly deficient performance was described by the Ninth Circuit in *Boyd v. Brown*, 404 F.3d 1159 (9th Cir. 2005):

The harm caused by counsel's failure to investigate and present evidence of abuse was not just that the jury was deprived of relevant information about Boyde's childhood. Boyde's counsel called both Boyde's mother and stepfather-the alleged abusers-to testify during sentencing. We cannot fault this decision, as a defendant's parents will often make the most persuasive case to the jury for sparing their son's life. But *the evidence he elicited from the parents suggested-in stark contrast to what counsel's own investigation had revealed-that* Boyde had a normal, non-violent childhood.

Id. at 1177-78 (emphasis added). The jury was left to wonder how Boyd learned to commit such violent acts and could not look to his childhood as an explanation his parents' testimony and counsel's deficiency took care of that but must instead have concluded that he grew violent *despite* his childhood. *Id.* at p. 1178 (emphasis in original).

Similarly, as in *Sears*, the prosecution in this case was able to capitalize on counsel's deficiency. In *Sears*, the Court explained:

Seven witnesses offered testimony that Sears came from a middle-class background; his actions shocked and dismayed his relatives; and a death sentence, the jury was told, would devastate the family. Counsel's mitigation theory, it seems, was calculated to portray the adverse impact of Sears' execution on his family and loved ones. But the strategy backfired. The prosecutor ultimately

used the evidence of Sears' purportedly stable and advantaged upbringing against him during the State's closing argument. With Sears, the prosecutor told the jury, “[w]e don't have a deprived child from an inner city; a person who[m] society has turned its back on at an early age. But, yet, we have a person, privileged in every way, who has rejected every opportunity that was afforded him.”

Id. at 949-948 (emphasis added).

Similarly, in this case defense counsel tailored the evidence to give the jury the impression that Petitioner's *father* had been abusive, while presenting a wholly benevolent portrait of Sophie and “Uncle Fanis.” The misleading impressions unfairly left Petitioner vulnerable to the prosecutor's argument that if anyone had an advantage among the Livaditis children it was Petitioner. Then in a direct echo of *Boyd*, the prosecutor urged that one had to look at Petitioner's criminal acts and wonder where this behavior came from.

No reasonable interpretation of this Court's authority can find defense counsel's performance to be professionally adequate or find that no probability exists that at least one juror would have been influenced to spare Petitioner's life.

CONCLUSION

Mental illnesses and the related cognitive impairments reduce the quality of one's judgment and thoughtful behaviors. The behaviors of Petitioner resulted in loss of life that was unquestionably tragic. That is also a defining, common feature of all capital prosecutions, and

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one reason why the *minimum* punishment in such cases is a sentence of life in prison without the possibility of parole. For the reasons set forth above, certiorari should be granted.

Dated: January 27, 2020

Respectfully submitted,

JAN B. NORMAN
GARY D. SOWARDS

By: /s/ Jan B. Norman
JAN B. NORMAN

Attorneys for Petitioner-Appellant
STEVE LIVADITIS

CERTIFICATE OF COMPLIANCE

I certify that pursuant to United States Supreme Court Rules, Rule 33.1(h)2, the attached Petition for Writ of Certiorari is proportionately spaced with a Times New Roman typeface of 12 points, contains 8776 words according to my word processing program.

Dated: January 27, 2020

Respectfully submitted,

JAN B. NORMAN
GARY D. SOWARDS

By: */s/ Jan B. Norman*
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