

No. 21-5095

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IN THE  
**Supreme Court of the United States**

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MELISSA ELIZABETH LUCIO,  
*Petitioner,*  
v.

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT  
OF CRIMINAL JUSTICE, CORRECTIONAL  
INSTITUTIONS DIVISION,  
*Respondent.*

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**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Fifth Circuit**

**THIS IS A CAPITAL CASE**

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**BRIEF OF FORMER PROSECUTORS,  
ANTI-VIOLENCE ORGANIZATIONS, AND  
EXPERTS IN THE FIELD OF GENDER-  
BASED VIOLENCE AS *AMICI CURIAE*  
IN SUPPORT OF PETITIONER**

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### **INTEREST OF *AMICI CURIAE*<sup>1</sup>**

Amici are law professors, independent experts, former prosecutors, and organizations with expertise in the field of gender-based violence. All have deep familiarity with the nature and effects of gender-based violence, including sexual violence and intimate partner violence. As individuals and organizations committed to protecting women who are victims of gender-based violence, they have an abiding interest in the legal system's recognition and accommodation of the needs of victims. They are also committed to ensuring that courts and juries are educated about the mental health consequences of gender-based violence.

**Battered Women's Justice Project (BWJP)** serves as a national resource center on the civil and criminal legal responses to gender-based violence and promotes systemic change within these systems to create an effective and just response to victims, perpetrators, as well as the children exposed to gender-based violence.

**The Criminal Defense & Advocacy Clinic (CDAC)** of Brooklyn Law School works to defend individuals in the criminal legal system, particularly those who have experienced gender-based violence, familial abuse, and sexual exploitation. The CDAC works to implement alternatives to the carceral system and find

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<sup>1</sup> Pursuant to S. Ct. Rule 37.2(a), all parties received timely notice of amici's intent to file this brief, and all have provided written consent to the filing of this amicus curiae brief. Pursuant to S. Ct. Rule 37.6, no counsel for a party authored this brief in whole or in part and no person or entity other than the amicus or counsel made a monetary contribution to its preparation or submission.

responses to harm that promote healing and accountability.

**Friendship of Women, Inc.** provides leadership and comprehensive services to empower and promote safety, health, and the overall well-being of adults and children impacted by family and sexual violence. Friendship of Women, Inc. maintains a clear vision that we are, above all, a social change agency committed to ending violence against battered women, men, and their children in all of Cameron County communities.

**The Gender Justice Clinic** at Cornell Law School seeks to address gender-based violence on a local, national, and global level. The Clinic focuses on issues such as intimate partner violence, sexual assault, and discrimination at work and in the criminal legal system.

**Global Rights for Women (GRW)** works with leaders around the world to advance women and girls' human right to live free from violence through legal reform and institutional and social change. GRW works to eradicate gender-based violence by ensuring that survivors are acknowledged and believed, perpetrators are held accountable, and communities no longer tolerate gender-based violence.

**Illinois Coalition Against Domestic Violence (ICADV)** is a not for profit organization founded in 1978 by 12 local domestic violence programs with the vision to eliminate violence against women and children, and to promote the eradication of domestic violence across the state of Illinois. ICADV is a membership organization representing the interests of over 50 domestic violence service-provider agencies and community partners that provide direct services to survivors of



domestic violence. ICADV has an interest in transforming societal attitudes and institutions regarding the role, consequences, and impact of gender-based violence on survivors especially those who are charged with crimes.

**Indiana Coalition Against Domestic Violence, Inc.** (ICADV) works to prevent and eliminate domestic violence. It pursues a vision where all people engage in healthy relationships characterized by the mutual sharing of resources, responsibilities and affection; where youth are nurtured with those expectations; and where all people are supported within a society committed to equality in relationships and equity in opportunity as fundamental human rights.

**Jane Doe Inc.** (JDI) (the MA Coalition Against Sexual Assault and Domestic Violence) is the state-wide dual coalition of 60 member programs serving survivors of SA/DV in Massachusetts. We offer policy advocacy and training and strive to uplift the needs of survivors at the margins in our advocacy.

**The National Clearinghouse for the Defense of Battered Women** works to ensure justice for victims of gender-based violence, where the defendant's experiences of abuse are relevant to her legal claim or defense. The National Clearinghouse assists victim defendants by providing technical expertise, defense attorneys, anti-domestic violence advocates, expert witnesses, and others. The National Clearinghouse works with defense teams to help factfinders understand the ways in which lay and expert evidence of the defendant's experiences of abuse may help them understand behavior, evaluate facts, assess credibility, and determine culpability.

**The Nevada Coalition to End Domestic and Sexual Violence** (NCEDSV) was founded in 1980 to work toward the elimination of domestic and sexual violence against all persons. Our member programs share the goal of ending domestic violence through coordinated community response efforts, community education, public policy development, and services for victims.

**Ohio Domestic Violence Network** (ODVN) is Ohio's federally recognized state coalition and comprehensive domestic violence resource. ODVN provides direct legal services, training, technical assistance, and advocacy to over 15,000 survivors, their families, and allies. ODVN provides training opportunities for judges, attorneys, children services agencies, advocates, and other community service providers.

**The Survivors Justice Project** (SJP) of Brooklyn Law School is an interdisciplinary collective that includes domestic violence survivors, currently and formerly incarcerated women, activists, lawyers, and students. It works to decarcerate domestic violence survivors by ensuring the robust implementation and expansion of the New York State Domestic Violence Survivors Justice Act.

**The Texas Council on Family Violence** (TCFV) is a nonprofit coalition in Texas dedicated solely to creating safer communities and freedom from family violence. With a statewide reach and direct local impact, TCFV shapes public policy, equips service providers with essential tools, and initiates strategic prevention efforts. Since 1978, we have been a nationally recognized leader in our efforts to end family violence.

**The Women's Defense Initiative of the Center on Wrongful Convictions (CWC)**, founded in 1999 at Northwestern University Law School, identifies and resolves wrongful convictions. To date, the CWC has exonerated more than forty innocent men, women, and children from around the country.

**The Women's Prison Project** at Tulane Law School is a joint program of the Law School's Domestic Violence Clinic and the Criminal Justice Clinic. The Project seeks justice and freedom for Louisiana women who are unjustly incarcerated for killing an abusive partner, or for having participated in crimes under the duress of an abusive partner. The program focuses on intimate partner violence and trauma as a pathway to prison for women.

**Kerry Hyatt Bennett** has been an adjunct professor at the Indiana University Robert H. McKinney School of Law for the past decade, specializing in state and federal domestic violence law. She has also been the Chief Legal Counsel at the Indiana Coalition Against Domestic Violence (ICADV) since 2005.

**Sarah M. Buel** is a former prosecutor and law professor with more than forty years' experience who maintains an active interest in the fair and effective functioning of the criminal justice system. She was co-founder of the University of Texas Voices Against Violence program to provide services for victims of sexual assault, relationship violence, and stalking. She also co-founded the interdisciplinary University of Texas Institute on Domestic Violence and Sexual Assault.

**Cindy Dyer** was appointed by President George W. Bush to serve as the Director of the United States Department of Justice, Office on Violence Against

Women from 2007-2009. Prior to her appointment she was a prosecutor with the Dallas County, Texas, District Attorney's Office.

**Leigh Goodmark** is the Marjorie Cook Professor of Law at the University of Maryland Frances King Carey School of Law. Since 2013, Professor Goodmark has led the Gender Violence Clinic at the University of Maryland School of Law. She is the author of *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence* (University of California Press, 2018) and *A Troubled Marriage: Domestic Violence and the Legal System* (New York University 2012). She is the co-editor of *Comparative Perspectives on Gender Violence: Lessons from Efforts Worldwide* (Oxford 2015).

**Carol Jacobsen** is a professor emerita at the University of Michigan and the Founding Director of the Michigan Women's Justice & Clemency Project. She is the author of *For Dear Life: Women's Decriminalization and Human Rights in Focus* (2019).

**Professor Donna Kay Coker** is the Dean's Distinguished Scholar at the University of Miami School of Law. Professor Coker is a nationally recognized expert on intimate partner violence. She focuses on the connection between economic vulnerability, restorative justice responses, and the intersections of gender, race, poverty, and immigration status.

**Nancy K. D. Lemon** is a lecturer at the Berkeley School of Law of the University of California. Lemon, a leading authority on domestic violence for more than 35 years, pioneered its study in law schools and is the author of *Domestic Violence Law*, the premier textbook on the subject (West Group, 5th Ed. 2018). Lemon has been teaching the Domestic Violence Seminar at

Berkeley Law—the first law school class of its kind—since 1988, and also directs the Domestic Violence Field Placement.

**Martha Mahoney** is a professor and Dean's Distinguished Scholar at the University of Miami School of Law. Professor Mahoney's work in criminal law began with an effort to resolve problems involving domestic violence and claims of self-defense and expanded to include feminist theory and challenges to social change. Governor Lawton Chiles appointed her to serve on the Domestic Violence Review Panels consulting for the Florida Parole Commission on domestic violence issues in petitions for clemency..

### SUMMARY OF ARGUMENT

Melissa Lucio was only six years old when she was sexually abused for the first time. For the next two years, her stepfather repeatedly abused her, and Melissa was powerless to stop him. Like many child sex-abuse victims, Melissa became vulnerable to repeated victimization. At the age of sixteen, she married a violent man who abandoned her after she bore five children. Her next partner continued the cycle of violence, punching her in public and beating her at home. By the time she gave birth to her twelfth child, Melissa had experienced homelessness, drug addiction, and severe mental illness.

As a result of the violence she endured throughout her life, Melissa suffered from Post-Traumatic Stress Disorder and depression. Her symptoms, as described by two experts appointed to assist the defense team, were consistent with those of other trauma victims: dissociation, emotional numbing, and avoidance. These symptoms gave her the appearance of being detached, unemotional, and—from the perspective of Texas

Ranger Victor Escalon—guilty. In the wake of her daughter's death, witness after witness described her lack of emotion and flat affect. Escalon testified at trial that her slumped posture, passivity, and failure to make eye contact during interrogation told him "right there and then" that she "did it." Escalon eventually extracted Melissa's agreement that she "did it," after five hours of interrogation.

Yet there was another explanation for Melissa's demeanor and responses to interrogation that the jury never heard. Defense experts were prepared to explain to the jury that her flat affect and acquiescence were symptoms of trauma resulting from the violence she had endured throughout her life. By excluding this testimony, the trial court deprived Melissa of the only means she had of explaining that, notwithstanding her demeanor and self-incriminating statements, she was innocent of her daughter's murder. In the absence of informed expert opinion, and deprived of critical context for her capitulation to Escalon's repeated suggestions that she was responsible for her daughter's death, the jury convicted her.

The trial court's ruling prevented Melissa from presenting reliable evidence relating directly to her innocence. The Court of Appeals' failure to remedy this violation of her constitutional rights demands this Court's intervention.

**ARGUMENT****I. THIS COURT SHOULD GRANT CERTIORARI TO UPHOLD THE RIGHT OF A VICTIM OF GENDER-BASED VIOLENCE TO PRESENT CRITICAL EVIDENCE RELATING TO HER INNOCENCE.****A. Melissa Lucio Suffered Severe Trauma That Affected Her Demeanor After Mariah's Death And Her Responses To Interrogation.****1. Trauma And Abuse Marked Melissa's Early Childhood And Continued Throughout Her Adult Life.**

Male violence was a constant presence in Melissa Lucio's life. When she was a young child, her father abandoned her and her five brothers and sisters. ROA.5010, 5466. After his disappearance, Melissa's mother became the family's sole provider. ROA.5010. She entered into a series of relationships with men who were physically violent with her, often in Melissa's presence. ROA.5011.

When Melissa was only six years old, one of her mother's partners began sexually abusing her. ROA.5006, 5011. When Melissa told her mother about the abuse, her mother did not believe her. ROA.5006. For two years, until she was eight years old, Melissa endured repeated sexual violence. ROA.5006, 5012. These early experiences of subjugation and fear shaped all of Melissa's subsequent relationships. *See Lucio v. Lumpkin*, 987 F.3d 451, 490 (5th Cir. 2021) (Higginbotham, J., dissenting) ("Abuse would remain a feature of Melissa's relationships with the men closest to her.").

When Melissa was sixteen years old, she dropped out of high school, ROA.5389, and married Guadalupe Lucio, ROA.5012. Mr. Lucio was an alcoholic who was physically and emotionally violent throughout their marriage. ROA.5008. In 1994, Mr. Lucio abandoned Melissa and their five children—repeating the cycle of abuse and abandonment Melissa had experienced as a child. ROA.4990. Several months later, Melissa met and moved in with Robert Alvarez. ROA.4990. He too was violent and abusive. ROA.5009, 5021.

The State of Texas learned of the violence in Melissa's home long before her arrest, yet repeatedly failed to protect her and her children from harm. *Lucio*, 987 F.3d at 491–93. Melissa's children called 911, ROA.5445, and reported to Child Protective Services (CPS) that there was domestic violence in their home. ROA.5441. But neither the police nor CPS took any action. ROA.5441, 5445. Similarly, in 2004, neighbors stated that they heard Mr. Alvarez yelling epithets at the children, ROA.5445, and the school principal reported Mr. Alvarez punching Melissa in the park. ROA.5009. CPS again did nothing. ROA.5442. As one of the dissenters in the Court of Appeals observed, “the tragedy of Mariah's death unfolded against the depressingly familiar background of the State's struggle with CPS's systemic failures.” *Lucio*, 987 F.3d at 492 (Higginbotham, J., dissenting).

The violence that men meted out on Melissa caused lasting psychological damage. While the State stood by and watched, Melissa struggled to cope with the consequences of her trauma. She lived in a state of constant economic precarity and was homeless for several months. ROA.4995. She was unable to



extricate herself from her relationship with her abuser. And she was powerless to remove herself and her children from a home that largely replicated the violence of her childhood. *See Lucio*, 987 F.3d at 493 (Higginbotham, J., dissenting). As Dr. John Pinkerman later observed:

From early childhood through her first marriage and into her present relationship with Mr. Alvarez, Mrs. Lucio was subject to sexual, physical and emotional abuse. The abuse was known by others but no significant actions were ever taken to protect her. She learned that outcries were ineffective and it was better to cultivate a predictable and secure abusive relationship than risk losing family and identity as a mother.

ROA.5393.

**2. Defense Experts Concluded That Melissa's History Of Trauma Impaired Her Functioning And Damaged Her Mental Health.**

The consequences of the severe, repeated gender-based violence that Melissa endured were documented by two experts appointed to assist the defense team at trial: social worker Norma Villanueva and psychologist Dr. John Pinkerman. Both Villanueva and Pinkerman reviewed extensive information regarding Melissa's history of abuse, relationships, and family life, and met with Melissa several times prior to trial. ROA.4987-88, 8975. Dr. Pinkerman also conducted a comprehensive psychological evaluation. ROA.8975.

In preparation for her testimony, Ms. Villanueva chronicled Melissa's traumatic experiences and

lifetime of abuse. When explaining her proposed testimony to the trial judge, Ms. Villanueva noted that Melissa's history of trauma "influenced her decision making and how she felt with the different investigators, male and female . . . [and] how she deal[t] with different people in levels of authority." ROA.4706-07. In the penalty phase of trial—the only time she was allowed to testify before the jury—Ms. Villanueva explained that Melissa consistently displayed a flat affect. ROA.5011. This "dead pan face," she observed, is "very characteristic of children that have been abused, especially, if they're not being protected." ROA.5011. She also testified that Melissa fit the profile of a battered woman and that her affect and demeanor were typical of battered women and child-abuse victims. ROA.5032-33.

Dr. Pinkerman's report confirmed Ms. Villanueva's observations and explained how Melissa's experiences of gender-based violence had affected her mental health. He noted that Melissa "tends to assume the role of the passive and weak child" when confronted by someone stronger than her. ROA.5392. He then connected this passivity to Melissa's childhood abuse: "In times of significant stress, she withdraws into simpler, concrete, unrealistic and constricted functioning marked by passivity, denial, acquiescence and resignation." ROA.5393. "This pattern of behavior is likely associated with her early childhood experiences of abuse and is often identified in individuals experiencing prior trauma such as sexual abuse." ROA.5393. Dr. Pinkerman also found that Melissa's personality was "characterized by repression, denial and dissociation." ROA.5393. In times of intense pain, he noted, Melissa is likely to dissociate, and "that means, in a manner, stepping away from ourselves, so we don't feel the pain . . . .

As a result of such a disassociation, we may not be fully thinking, seeing, hearing, or feeling everything.” ROA.5395.

Dr. Pinkerman concluded that Melissa suffered from Post-Traumatic Stress Disorder as a result of the violence she endured. ROA.5121, 5396. She “exhibits a consistent pattern of ‘psychological numbing’ often identified with victims of violence and abuse.” ROA.5394. Thus, in times of significant stress, she “quickly numbs her emotions and assumes a passive, empty presentation.” ROA.5393. He backed up his conclusions by referring to psychological literature, explaining that “numbing of responsiveness” is “a psychological defense against remembering painful affects [sic] . . . [it] is a core, biologically based, symptom of PTSD.” ROA.5395. In addition to her PTSD symptoms, Dr. Pinkerman noted that Melissa experienced depression stemming from her lifetime of abuse. ROA.5121. Finally, Dr. Pinkerman concluded that Melissa was unlikely to have physically harmed Mariah as she had no history of physical violence, aggression, or abuse. ROA.5394.

Dr. Pinkerman and Ms. Villanueva clearly and consistently attested to the pervasive impact that Melissa’s history of trauma had on her functioning. Their observations and conclusions—which they were prevented from sharing with the jury at the culpability phase of Melissa’s trial—were directly relevant to explaining Melissa’s reactions in the wake of Mariah’s death and her responses to interrogation.

### 3. The Defense Experts' Conclusions Are Consistent With Scholarly Research On Trauma.

Dr. Pinkerman's and Ms. Villanueva's observations regarding Melissa's behavioral patterns and psychological functioning are consistent with research on victims of gender-based violence. Those who suffer childhood trauma are more likely to experience repeated trauma throughout their lives, Victoria L. Banyard, et al., *The Long-Term Mental Health Consequences of Child Sexual Abuse: An Exploratory Study of the Impact of Multiple Traumas in a Sample of Women*, 14 J. Traumatic Stress 697, 699 (2001), along with "increased victimization, psychological dysfunction, substance abuse, and homelessness," JoAnn Y. Sacks, et al., *The Impact of Early Trauma and Abuse on Residential Substance Abuse Treatment Outcomes for Women*, 34 J. Substance Abuse Treatment 90, 91 (2008). As a result, victims learn to passively accept repeated abuse as "a dreaded but unavoidable fate" that is "the inevitable price of the relationship." Judith Herman, *Trauma and Recovery: the Aftermath of Violence—From Domestic Abuse to Political Terror* 112 (Basic Books ed. 1992).

Researchers have repeatedly found that sustained childhood sexual abuse and other forms of gender-based violence have long-lasting consequences for a victim's mental health. Anywhere from 51 to 75 percent of women who have experienced intimate partner violence exhibit symptoms of PTSD, compared to just 10.4 percent of the general population. Alison M. Nathanson, et al., *The Prevalence of Mental Health Disorders in a Community Sample of Female Victims of Intimate Partner Violence*, 3 Partner Abuse 2 (Jan. 2012). Both PTSD and depression are "often

chronic . . . and can persist many years after the abuse has ended.”<sup>2</sup> Katherine M. Iverson, et al., *Cognitive-Behavioral Therapy for PTSD and Depression Symptoms Reduces Risk for Future Intimate Partner Violence among Interpersonal Trauma Survivors*, 79 J. Consulting & Clinical Psych. 193 (2011).

Women who have suffered multiple forms of trauma, like Melissa, are apt to suffer more severe mental health symptoms. Banyard, *The Long-Term Mental Health Consequences of Child Sexual Abuse*, at 709; Herman, *Trauma and Recovery*, at 94. Dissociation, avoidance, and emotional numbing are common symptoms of PTSD. Banyard, *The Long-Term Mental Health Consequences of Child Sexual Abuse*, at 697; Bethany Brand, et al., *Assessing Trauma-Related Dissociation in Forensic Contexts: Addressing Trauma-Related Dissociation as a Forensic Psychologist, Part II*, 10 Psych. Inj. and Law 298, 299 (2017). When confronted with overwhelming stress or a traumatic event, trauma victims may enter dissociative or amnesic states to cope with the pain. National Institute of Justice (NIJ), *The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials*, Rep. Responding to Section 40507 of the VAWA 11 (1996). During amnesic states, the individual is unable to recall traumatic events. *Id.* at 10. And during dissociative states, the individual experiences a “detached state[] of consciousness” and the “surrender of voluntary action, suspension of initiative and critical judgment, subjective detachment or calm . . .

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<sup>2</sup> One study found that nearly 48 percent of domestic violence victims experience depression. National Institute of Justice (NIJ), *The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials*, Report Responding to Section 40507 of the VAWA 13 (1996).

including numbness and analgesia, and distortion of reality.” Herman, *Trauma and Recovery*, at 43. When in these states, the victim may adopt a flat affect “to avoid overwhelming emotions associated with the trauma.” NIJ, *The Validity and Use of Evidence Concerning Battering*, at 10.

The assessments of Dr. Pinkerman and Ms. Villanueva indicate that Melissa Lucio was experiencing some or all of these symptoms at the time of Mariah’s death and during her interrogation.

**B. Without Dr. Pinkerman’s And Ms. Villanueva’s Testimony, Melissa Was Unable To Explain How Her Experiences Of Gender-Based Violence Related To Her Defense.**

**1. Dr. Pinkerman And Ms. Villanueva Would Have Explained The Impact Of Gender-Based Violence On Melissa’s Reactions And Demeanor Following Mariah’s Death.**

Melissa Lucio’s experiences of gender-based violence affected her entire life. She lived in a state of constant economic precarity and was homeless for several months. ROA.4995. And like many trauma victims, she also used drugs. Sacks, *The Impact of Early Trauma and Abuse*, at 91; ROA.4993. At times, Melissa was depressed to the point of “giving up.” ROA.9010.

The State exploited Melissa’s symptoms of trauma to persuade the jury of her guilt. For example, the State repeatedly elicited descriptions of Melissa’s calm and detached demeanor after Mariah’s death. ROA.4364–65; 4386–87; 4397–98. Had he been permitted to testify, Dr. Pinkerman would have explained

that Melissa dissociated from the reality of losing her daughter and numbed her emotions to distance herself from the pain. ROA.5131-33, 5393. In the absence of his expert opinion, the jury was apt to conclude—as the State clearly hoped it would—that her lack of visible emotion was a sign of cold indifference to her child's death.

Additionally, the State elicited testimony from Victor Escalon, one of Melissa's interrogators, that he knew Melissa was guilty before he even began to question her. After describing her body language—that she hung her head down, avoided eye contact, and slumped in her chair—Escalon said that he knew “right there and then” that she “did it.” ROA.4410. Dr. Pinkerman and Ms. Villanueva would have explained to the jury that Melissa's body language and demeanor were not indicative of guilt but were instead consistent with the symptoms of trauma caused by her experiences of violence. ROA.5029-32, 5132-33.

**2. Dr. Pinkerman And Ms. Villanueva  
Would Have Explained That Melissa's  
Response To Police Interrogation  
Was Consistent With The Reactions  
Of Trauma Victims.**

**i. Melissa's History Of Trauma  
Shows That She Is Especially  
Susceptible To Suggestion.**

On the night of Mariah's death, Mariah was rushed to the hospital while Melissa was taken to the police station to be interrogated. Once there, five interrogators questioned Melissa, ROA.4232, for over five hours, ROA.4233, from ten at night to three in the morning. ROA.4332-33. They did not offer her food to eat nor did they allow her to sleep. ROA.4333. While

interrogating her, the detectives repeatedly insisted that she was responsible for Mariah's death. They stopped only when Melissa finally acquiesced to their version of events.<sup>3</sup>

One of the interrogators, Texas Ranger Victor Escalon, pointed to specific bruises in photographs taken of Mariah's dead body and asked Melissa how they happened. ROA.8202-04. Although Melissa responded that she did not know what happened and that she did not hit Mariah, Escalon continued to insist that she was responsible for those bruises. ROA.8202-04. Melissa ultimately capitulated to the pressure to repeat what Escalon kept telling her, stating "I guess I did it." ROA.8204. After securing this admission, Escalon brought a doll into the interrogation room at 3 a.m., ROA.8220, and asked Melissa to demonstrate on the doll how she would spank Mariah. ROA.8223. When Melissa dutifully complied, Escalon disregarded it and insisted that she hit the doll harder, "real hard like . . . like you would do it." ROA.8224. When Melissa insisted that her initial demonstration was accurate, he again dismissed her and he demonstrated a hard spank. ROA.8224. He then instructed Melissa to spank the doll again and mimic his demonstration, which she did. ROA.8224. The prosecutors then presented these admissions to the jury as evidence of Melissa's guilt. *Lucio*, 987 F.3d 451 at 500-01. As one of the dissenting opinions below observed,

A battered woman was convicted of capital murder because, in a case lacking direct evidence, prosecutors told the jury that, five

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<sup>3</sup> For a more in-depth discussion of the interrogation, see Pet. 8-10.



hours into interrogation, in the middle of the night after the discovery of her dead child, [Melissa] accepted a seasoned interrogator's suggestion that she was responsible, ultimately agreeing with him that she "did it."

*Lucio*, 987 F.3d 451 at 517.

In reality, Melissa's acceptance of the interrogators' suggestions was entirely consistent with the reactions of trauma victims. Trauma victims often experience psychological reactions that make them look guilty, even when they are not. NIJ, *The Validity and Use of Evidence Concerning Battering*, at 10–11. Such reactions include "the absence of emotional reactions . . . or a wish to be punished for the assault." *Id.* Trauma expert Judith Herman has reported that trauma victims may respond to trauma or perceived danger with feelings of "indifference, emotional detachment, and profound passivity." *Trauma and Recovery*, at 42–43. Dr. Lenore Walker, one of the foremost experts on Battered Woman Syndrome, has confirmed that victims of intimate partner violence may be therefore "more susceptible to internalizing guilt and assuming responsibility for the crime." *False Confessions of Battered Women, The Battered Woman Syndrome*, 459 (Springer Publ'g Co. 4th ed. 2017). Dr. Pinkerman's conclusions, which he was unable to share with the jury at the culpability stage, were consistent with this scholarly research. He would have explained to the jury that Melissa was often passive when confronted by authority figures, and that she numbed her emotions and dissociated from painful events (such as her daughter's death). ROA.5393–94.

Research shows that past trauma is "significantly associated" with heightened suggestibility among individuals who falsely confess to crimes. Gisli H.

Gudjonsson, et al., *False Confessions and Individual Differences: The Importance of Victimization among Youth*, 45 J. Personality & Individual Differences 801, 804 (2008). Dr. Walker coined the phrase “acquiescence response bias” to describe how victims respond affirmatively to authority figures “whether or not it makes sense to them.” *False Confessions*, at 458. Similarly, domestic violence victims, like Melissa, may have “automatic, often unconscious habits of obedience,” making them vulnerable to authority figures. Herman, *Trauma and Recovery*, at 111.

Many victims “have such profound deficiencies in self-protection that they can barely imagine themselves in a position of agency or choice.” Herman, *Trauma and Recovery*, at 112. These victims are “easily subjected to influence from authority figures,” especially when they have been conditioned by their abusers to be submissive and compliant in order to stop the violence. Walker, *False Confessions*, at 458. This is as true of victims of childhood sexual abuse, see Herman, *Trauma and Recovery*, at 112, as it is of victims of domestic violence, Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing their Experiences*, 167 U. Penn. L. Rev. 399, 413–14 (2019). Melissa was both.

Intimate partner violence can also compromise a victim’s ability to focus on long-term consequences. Walker, *False Confessions*, at 458. Viewed in this light, Melissa’s acquiescence may have served “as an immediate way of getting out of a very stressful situation.” *Id.* Dr. Pinkerman’s findings support this conclusion. He explained that after her arrest, Melissa did not understand the gravity of the situation and still thought she could reunite with her children.

ROA.5394. But in the absence of Dr. Pinkerman's and Ms. Villanueva's testimony, the jury had no reason to attribute Melissa's trauma symptoms to anything other than a guilty conscience.

In sum, we agree with the conclusion of Judges Haynes, Higginbotham, Stewart, Dennis, Elrod, Graves, and Higginson in the Court below: without Dr. Pinkerman's and Ms. Villanueva's testimony at the culpability phase, Melissa was unable to explain to the jury how her history of trauma caused her to passively accept her interrogators' insistence that she was responsible for her child's death. Therefore, Melissa—"a battered woman and mother—must be heard to answer why she acquiesced and told her interrogator, 'I just did it.'" *Lucio*, 987 F.3d at 518 (Higginson, Stewart, and Elrod, JJ, dissenting).

**ii. Melissa's Flat Affect Throughout The Interrogation Is Consistent With Research On Trauma Victims' Behavior During Situations Of Overwhelming Emotion And Pain.**

In the video of Melissa's interrogation, which was introduced as evidence, Melissa's demeanor was "constrained and her affect was flat." ROA.5394. Dr. Pinkerman and Ms. Villanueva would have explained this demeanor as consistent with those who have experienced extreme trauma. Dr. Pinkerman would have informed the jury that Melissa "exhibits a consistent pattern of 'psychological numbing,'" ROA.5394, and the ability to isolate or disassociate her feelings and thoughts. ROA.5132. He would have explained that her long history of childhood and adult abuse, along with Mariah's death, contributed to her dissociative state and flat affect. ROA.5132. Ms. Villanueva

would likewise have testified that Melissa's flat affect was consistent with the behavior of individuals who had endured childhood sexual abuse. ROA.5011. Without their testimony, the jury was given no explanation for why a grieving mother would not cry, would not openly express emotion, and would instead appear emotionally detached in the wake of her child's death.

**II. THIS COURT SHOULD GRANT CERTIORARI BECAUSE THE ACTIONS OF THE COURTS BELOW REFLECT INDIFFERENCE TO THE CONSEQUENCES OF GENDER-BASED VIOLENCE.**

**A. The Handling Of Melissa's Interrogation And Trial Reflect A Profound Misunderstanding Of The Nature Of Trauma.**

The legal proceedings in Melissa Lucio's case expose the legal system's failure to understand the consequences of gender-based violence and its relevance in the criminal justice system. This was evident during Melissa's interrogation when the detectives repeatedly pressured her to confess. Given Melissa's background as a trauma victim and her susceptibility to suggestion, the interrogators' behavior was particularly problematic. They interrogated her for over five hours, ROA.4233, and during some of that time, male detectives were left alone in the room with her. ROA.4232-33. Even more troubling, at 2:30 a.m. Ranger Victor Escalon turned the camera away from Melissa, ROA.8216, and told her he was going to put her hair into a ponytail. ROA.8217. This behavior by a male interrogator asserted dominance over Melissa and relegated her to the role of a child. *See* ROA.5392 (noting that Melissa "tends to assume the role of the passive and weak child" when confronted by some-

one stronger than her). Given her background as a trauma victim, the male detective's behavior ensured that Melissa was compliant and submissive to his demands—including his instructions to hit the doll harder and harder.

Then, at trial, the State elicited testimony from Escalon comparing Melissa's behavior to that of an innocent person. After describing Melissa's passivity, ROA.4410, Escalon testified that innocent individuals are "going to be upset . . . they're going to tell you: 'Get out of my face. I didn't do anything . . . I want my attorney.'" ROA.4411. He further explained that the difference in behavior between a guilty person and an innocent person is "black and white. You'll see the difference. It'll stand out." ROA.4411.

But when the defense tried to introduce testimony that would have directly countered this non-expert opinion by explaining how Melissa's history of gender-based violence influenced her behavior and statements, the judge excluded it. This ruling reveals the court's failure to comprehend how gender-based violence can affect a victim's psychological functioning and interactions with authority figures—and underscores the importance of admitting that very testimony. *Cf. United States v. Lopez*, 913 F. 3d 807, 823 (9th Cir. 2019) (expert testimony on Battered Woman Syndrome, and other similar psychological states, can help a jury dismantle "some widely held misconceptions about [the] victims, so that it may evaluate the evidence free of the constraints of popular myths"); *United States v. Alzanki*, 54 F.3d 994, 1006 (1st Cir. 1995) (finding that expert testimony on abuse victims' behavior "was 'reasonably likely' to assist the jury in understanding and assessing the evidence [because] the matter at issue was highly

material, somewhat technical, and beyond the realm of acquired knowledge normally possessed by lay jurors”).

**B. The Court Of Appeals’ Plurality Opinion Reflects Its Unawareness Of The Consequences Of Gender-Based Violence.**

Although amici agree that the plurality opinion of the court below is not controlling, it is noteworthy that the plurality fails to acknowledge the significance of Melissa’s history as a trauma victim. The plurality’s recitation of the facts glosses over Melissa’s history of sexual abuse and intimate partner violence. By doing so, it reaffirms the trial court’s erroneous reasoning that Melissa’s experiences of gender-based violence were irrelevant to her defense.

The plurality’s failure to comprehend the effects of gender-based violence was apparent in its disdainful treatment of Melissa’s drug use. *Lucio*, 987 F.3d at 479 (observing that Melissa and her husband “sold the[ir] food stamps and spent the money on cocaine”). Had the plurality understood the nature and effects of trauma, it would have recognized that trauma victims often use drugs to numb or escape the painful memories of abuse. Herman, *Trauma and Recovery*, at 44. By failing to recognize the relevance of Melissa’s background of gender-based violence, the plurality removed essential context for her actions, erased her experiences, and compounded the trial court’s failures.

**CONCLUSION**

This Court should grant certiorari to affirm that victims of gender-based violence, like Melissa, have the right to present critical evidence relating to their defense, including expert testimony explaining the impact of their past trauma on their behavior and responses to interrogation.

Respectfully submitted,

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