

No. 21-6001

**In The
Supreme Court of the United States**

TERENCE TRAMAIN ANDRUS,

Petitioner,

v.

TEXAS,

Respondent.

—◆—
**On Petition For Writ Of Certiorari
To The Court Of Criminal Appeals Of Texas**

—◆—
**BRIEF OF AMICI CURIAE
EIGHT MILLION STORIES AND
LONE STAR JUSTICE ALLIANCE
IN SUPPORT OF PETITIONER**

—◆—
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INTEREST OF *AMICI CURIAE*¹

Fueled by zero-tolerance policies and in-school policing, the so-called “school-to-prison pipeline” sweeps a disproportionate number of young men from low-income families from their schools and communities directly into the criminal justice system. Because *amici curiae* filing this brief endeavor to reduce or eliminate this school-to-prison pipeline, they have a compelling interest to ensure that every juror in a capital case receives a complete picture of the individual history of the defendant before them to appropriately consider whether that history mitigates punishment. The *amici curiae* believe that allowing jurors to hear and weigh the effects of an individual’s experience in the school-to-prison pipeline necessarily reduces the reach and effect of this vicious cycle.

Petitioner Terence Tramaine Andrus (“Mr. Andrus”) was convicted of committing the crime for which he was sentenced to death, but he did not commit his crime in a vacuum. Instead, Mr. Andrus was molded by the tangible effects of systemic injustices stretching back hundreds of years, culminating in a frighteningly efficient school-to-prison pipeline that vilifies

¹ The parties received timely notice and have consented to the filing of this brief. This brief was authored in whole by the undersigned counsel. No fee has been paid or will be paid for preparing this brief, and no person or entity other than the *amici* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Supreme Court Rule 37(6).

and marginalizes children from all walks of life, but disproportionately young men living in poverty.

Eight Million Stories, Inc. (“Eight Million Stories”) is a Houston, Texas-based non-profit organization founded in 2017 dedicated to transforming the lives of vulnerable youth, as Mr. Andrus once was, through education, skills training, employment, and authentic relationships. Eight Million Stories exists to break this lifelong cycle of poverty and incarceration by providing support and opportunities to disconnected youth who have been pushed out of the school system. The organization seeks to bridge the achievement gap by providing individualized educational programming that includes social and emotional learning, jobs skills training, career exploration, and employment opportunities. Eight Million Stories believes that providing young people expelled from our school systems the opportunity to complete their education and find sustainable employment drastically reduces rates of recidivism. Eight Millions Stories helps students learn from their past mistakes and rewrite their own stories. Indeed, if an organization like Eight Million Stories supported Mr. Andrus during his childhood, he likely would not be before this Court.

The Lone Star Justice Alliance (“LSJA”) is a non-profit legal organization dedicated to improving the lives of youth and emerging adults in the justice system. Through research, alternatives-to-incarceration pilot programs, litigation, advocacy, and community engagement, LSJA seeks to replace the punitive approach to juvenile behavior with one guided by public

health principles. LSJA envisions a justice system that uses developmentally appropriate responses to behavior and treats youth and emerging adults with equity and dignity to promote resilience, conserve costs, and increase public safety.

The *amici's* experience with, and commitment to resolving, these issues will aid the Court as it considers the questions presented in this case: Whether the Texas Court of Criminal Appeals' disregard for this Court's express guidance to conduct a prejudice analysis, which would have included weighing the mitigating circumstances put forth in the evidentiary hearing before the state trial court, creates widespread confusion regarding the proper standard to be applied in assessing whether a death-penalty defendant is prejudiced when he receives constitutionally ineffective assistance of counsel.



SUMMARY OF THE ARGUMENT

The *amici curiae* defer to the Petitioner's submission for a comprehensive recitation of the facts. Briefly, as relevant to the *amici curiae's* interest, Mr. Andrus is once again before this Court on a writ of habeas corpus. After an extensive, eight-day evidentiary hearing that unleashed a "tidal wave" of mitigation evidence—a record encompassing 41 full volumes—that was not presented to the sentencing jury, the trial court recommended to the Texas Court of Criminal Appeals ("CCA") that relief be granted and Mr. Andrus receive

a new sentencing trial. *Andrus v. Texas*, 140 S. Ct. 1875, 1878–79 (2020) (per curiam).

The CCA disagreed in an unpublished, per curiam opinion. *Id.* at 1878. Mr. Andrus appealed to this Court, which unequivocally held that Mr. Andrus’ trial counsel’s performance fell so far below the objective standard of reasonableness that it was deficient within the meaning of *Strickland v. Washington*, 466 U.S. 668 (1984). *Andrus*, 140 S. Ct. at 1881–86. This Court remanded the case to the CCA with instructions to determine whether, under the *Strickland* standard, counsel’s deficient performance prejudiced Mr. Andrus. *Id.* at 1887.

In a curious act of defiance, the CCA ignored this Court’s instructions. Rather than engage in a robust and genuine *Strickland* analysis, the CCA focused once again on the record from the underlying trial to the exclusion of the habeas record, thereby guaranteeing the same erroneous conclusion that Mr. Andrus was not prejudiced by his counsel’s failure to locate or present any of the facts that came to light in the eight-day habeas hearing. *Ex Parte Andrus*, 622 S.W.3d 892 (Tex. Crim. App. 2021).

The “tidal wave” of mitigation evidence admitted during the habeas proceeding includes substantial details of Mr. Andrus’ upbringing, which—as with many young men in poverty—swept him into the criminal justice system a very young age. The *amici curiae* ask this Court to view Mr. Andrus’ criminal actions as an adult against the backdrop of his childhood. As a young

man, he suffered physical trauma, untreated mental illness, and severe poverty in the then-declining Third Ward in Houston, Texas. His own mother first exposed him to illicit drugs at just six years old. And his forced experience with the rightfully besmirched Texas Youth Commission steered him toward recidivism rather than toward becoming a contributing member of his community.

This background set a young Mr. Andrus into a cycle of incarceration, which, unfortunately, is not unique, especially for children of similar background. Children who grow up in circumstances similar to those confronted by Mr. Andrus frequently return to the criminal justice system, an outcome the *amici curiae* exist to prevent. Had this evidence been presented to the sentencing jury, at least one juror unquestionably would have voted against condemning Mr. Andrus to death.

◆

ARGUMENT

This Court already decided that Mr. Andrus' court-appointed attorney was constitutionally defective. The remaining question is therefore simple: Did the CCA correctly engage in a prejudice analysis as required by *Strickland*? In other words, did the lower court consider the totality of the available mitigation evidence—both from trial and the habeas proceeding—and reweigh it against the evidence in aggravation? *See Andrus*, 140 S.Ct at 1886 (setting forth the applicable

standard the CCA was to apply). The obvious answer is no. As explained below, the CCA's omissions are glaringly apparent, and many of those omissions concern Mr. Andrus' entanglement in the school-to-prison pipeline. Properly considered, there is no question the evidence the CCA ignored would likely have persuaded at least one juror to spare Mr. Andrus' life. *Id.* (citing *Wiggins v. Smith*, 539 U.S. 510, 537–38 (2003); TEX. CODE CRIM. PROC., Art. 37.071, § 2(e)(1)).

I. THE SCHOOL-TO-PRISON PIPELINE.

Mr. Andrus is but one of countless children across the nation swept up in the school-to-prison pipeline. Generally, the term “school-to-prison pipeline” refers to a variety of policies and practices nominally designed to serve our nation’s youth that, in reality, displace the most at-risk children from their classrooms and into the juvenile justice system. Melina Angelos Healey, *Montana’s Rural Version of the School-to-Prison Pipeline: School Discipline and Tragedy on American Indian Reservations*, 75 Mont. L. Rev. 15, 18 (2014).

The devastating consequences associated with incarcerating a juvenile to both the individual and society as a whole are myriad. Empirical research shows that incarceration produces long-term, detrimental effects for juveniles, including reinforcement of violent attitudes and behaviors; more limited educational, employment, military, and housing opportunities; an increased likelihood of not graduating from high school; mental health concerns; and increased future

involvement in the criminal justice system. Jason P. Nance, *Dismantling the School-to-Prison Pipeline: Tools for Change*, 48 *Ariz. St. L.J.* 313, 319–20 (2016).

A child who enters the school-to-prison pipeline is far more likely to commit further crimes, as prior incarceration is by far the strongest predictor of recidivism over other factors such as parent abuse or negligence; having peers present at the time of the offense; carrying a weapon; gang membership; gender; race; poor relationships with parents; and residing in a single-parent household. *Id.* at 320. In other words, rather than deterring criminal behavior, juvenile justice processing *increases* delinquency and future involvement in the justice system, presumably the polar opposite of its intended effect. *Id.*

Not all students are equally affected by the school-to-prison pipeline. A student's socioeconomic status, gender, disability status, and race are each predictive of whether that student will enter the pipeline. Leah Aileen Hill, *Disrupting the Trajectory: Representing Disabled African American Boys in a System Designed to Send Them to Prison*, 45 *Fordham Urb. L.J.* 201, 208–09 (2017). Students living in poverty are more likely to enter the pipeline, as are disabled students, male students, and students of color. *Id.* at 209. “Individually, each of these markers increases the chances that a student will be suspended or expelled from school and funneled into the criminal justice system.” *Id.*; see also Brian J. Fahey, Note, *A Legal-Conceptual Framework for the School-to-Prison Pipeline: Fewer Opportunities for Rehabilitation for Public School*

Students, 94 Neb. L. Rev. 764, 794 (2016) (noting the disproportionate effect of exclusionary school discipline policies on minority and learning-disabled students); Logan J. Gowdey, Note, *Disabling Discipline: Locating A Right to Representation of Students with Disabilities in the ADA*, 115 Colum. L. Rev. 2265, 2269, 2275–76 (2015) (summarizing data concerning the disproportionate effect of school discipline on poor, minority, and disabled students); Healey, *supra*, at 19 (“Minority children, as well as children with learning and emotional disabilities, are removed from their classrooms, suspended, and expelled at rates far higher than white and non-disabled children.”).

Though harrowing, it is perhaps predictable, then, that as a child, Mr. Andrus—a young man of color, living in poverty, with untreated disabilities—was swept up in the school-to-prison pipeline. But the habeas record also shows that this was not predetermined or unavoidable; when Mr. Andrus had support (such as that provided by the *amici* to others on a similar path), he became a successful, productive member of society. Yet, *none* of this evidence of Mr. Andrus’ background or the instances of success he created with support was considered by the CCA in its most recent opinion or put before the sentencing jury.

A. Childhood Poverty Is a Predictor of Entering the Pipeline.

The level of poverty children confront is closely tied to their health, housing opportunities, level of

nutrition, and early learning opportunities, all of which affect their cognitive development. Nance, *supra*, at 334. Poverty is associated with a range of conditions that increase the likelihood a child will enter the school-to-prison pipeline:

For instance, students born into poverty do not have access to resources that can support their academic success. They often lack access to quality healthcare, which is a necessary resource for healthy development. As a result, they are more likely to suffer from health conditions that affect their school readiness. The lack of access to quality healthcare is compounded by the fact that children who endure poverty are more likely to live in areas filled with environmental toxins that are detrimental to their health and well-being. Housing conditions in impoverished neighborhoods are often poor and inadequate. Some children do not have homes and are forced to live in homeless shelters, where the lack of permanent housing undermines their sense of security. Children who do not have adequate housing often move more frequently and do not enjoy simple comforts many of us take for granted, such as a quiet study space. Crime and violence are also associated with areas of concentrated poverty. Children growing up under these conditions can develop a “toxic stress response.” This, of course, adds to the deluge of problems children in poverty face—all of which accompany them to school.

Hill, *supra*, at 209–10.

It goes without saying that many children living in poverty succeed despite the odds. *Id.* at 212. The environmental obstacles those children face, however, present an uphill battle marked by intra-personal violence, increased psychological stress, negative social capital such as lack of access to resources and social connections, and the reciprocal cycle of mistrust of the institutions meant to serve them. *Id.* at 211–12; *see also* Pedro Noguera, *A Broader and Bolder Approach Uses Education to Break the Cycle of Poverty*, 93 Phi Delta Kappan 8, 9–11 (2011). The vast majority of schools are not prepared or designed to address the range of challenges facing children who live in poverty. Hill, *supra*, at 212–13; Noguera, *supra*, at 9–11. Poverty therefore remains an all-encompassing factor that is reliably predictive of whether a child will enter the school-to-prison pipeline. Hill, *supra*, at 213.

B. Students with Disabilities Are Disciplined Disproportionately.

Children with disabilities are also overrepresented in the school-to-prison pipeline. Students with disabilities are more than twice as likely as their non-disabled peers to receive one or more out-of-school suspensions. *Id.* at 214; Gowdey, *supra*, at 2276; *see also* U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, *2013-2014 CIVIL RIGHTS DATA COLLECTION: A FIRST LOOK* (2016), at 4 [hereinafter “CRDC”], <https://www.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>. Students with emotional disturbance are suspended or expelled at significant rates compared to their peers,

even though the nature of their disabilities makes it difficult for them to manage their behavior. Hill, *supra*, at 214; *see also* Yael Cannon et al., *A Solution Hiding in Plain Sight: Special Education and Better Outcomes for Students with Social, Emotional, and Behavioral Challenges*, 41 *Fordham Urb. L.J.* 403, 416 (2013).

Students with emotional and learning disabilities are arrested at higher rates than their nondisabled peers. Hill, *supra*, at 215. Although they represent only 12% of the student population, they represent 25% of the students referred to law enforcement or subjected to arrest. *Id.* It is estimated that anywhere between 30 and 70 percent of young people in juvenile correctional facilities have disabilities. *Id.* In one study that examined youth across multiple juvenile justice settings, 70.4% were diagnosed with at least one mental health disorder, and 79.1% of those youth also met the criteria for at least one additional mental health diagnosis. Cannon, *supra*, at 422. As with poverty, the disability status of a child is a reliable indicator of whether a child will have involvement in the school-to-prison pipeline. Hill, *supra*, at 215.

C. Male Students Experience a Disproportionate Amount of Discipline.

Similarly, boys are generally subjected to greater discipline, including suspension and expulsion, than girls. Hill, *supra*, at 215. National data show that while boys and girls each make up about 50% of the student population, boys constitute nearly 75% of students

suspended multiple times and expelled. *Id.* at 215–16. While boys represent 54% of preschool enrollment, they represent 78% of preschool children receiving one or more out-of-school suspensions. CRDC, *supra*, at 3. Gender bias appears to play a role in the targeting of boys, as evidence shows that boys are often disciplined more harshly than girls because of stereotypes about boys and aggression. Hill, *supra*, at 216; *see also* Laura R. McNeal, *Managing Our Blind Spot: The Role of Bias in the School-to-Prison Pipeline*, 48 *Ariz. St. L.J.* 285, 289 (2016) (“[S]tudies conducted on school discipline reveal that boys are more likely to receive harsher disciplinary sanctions than girls because they are viewed as having a higher propensity for aggressive behavior.”). Thus, the mere biological fact of being male predisposes a child to involvement in the school-to-prison pipeline.

D. Students of Color Experience a Disproportionate Amount of Discipline.

United States Department of Education data reveals that children of color are disciplined more often, suspended more often, expelled more often, referred to the police more often, and arrested more often than their white counterparts. *See* CRDC, *supra*, at 3–4. Black students experience the highest rates of excessive discipline. *Id.* Black students are more likely to be suspended whether they are in preschools or K-12 schools. *Id.* at 3. Black students are also more likely to be expelled from school and more likely to be referred to law enforcement by school officials. *Id.* at 4. Native

American, Latino, Native Hawaiian and Pacific Islander, and multiracial boys are also disproportionately suspended from school. *Id.* at 3. Evidence suggests that some school administrators and teachers believe that some students, particularly Black male students, simply cannot be taught, are “unsalvageable,” and are prison-bound. Nance, *supra*, at 327. Children of color, experiencing a disproportionate amount of discipline, are accordingly more likely to end up in the school-to-prison pipeline.

E. Success Is Possible with Support.

The above-cited statistics are borne out in the student population Eight Million Stories serves. Of the 150 students served to date, 100% qualify for free or reduced lunch, 93% are male, and 55% are Black. The average educational proficiency of these students is 7th grade. But Eight Million Stories believes that a child’s potential is not predetermined by race, class, gender, or disability status. Success is possible for any child with the right support. The program’s success demonstrates the truth of this philosophy: Of the 150 students served thus far, 60% gained employment and 40% gained their high school equivalency diploma, while only 3% have re-offended. Recidivism is not a predetermined outcome.

II. THE EVIDENTIARY HEARING RECORD IS REplete WITH COMPELLING MITIGATION EVIDENCE RELATED TO MR. ANDRUS' UPBRINGING THAT THE CCA WHOLLY OVERLOOKED.

Certainly, Mr. Andrus was not destined to end up committing a capital offense. Nevertheless, a jury must understand the circumstances of a capital defendant's background in order for the question of mitigation to have a meaningful effect in the criminal justice system. The ramifications of the school-to-prison pipeline on Mr. Andrus were clearly brought to bear through the testimony and evidence adduced at the habeas evidentiary hearing. The habeas record also demonstrates that, like the student population Eight Million Stories serves, success was possible for Mr. Andrus. The few times Mr. Andrus had support in his life, he was successful. AppEHX12, 15.² Yet the CCA altogether failed to acknowledge both the mitigating evidence of Mr. Andrus' upbringing and the brief periods during which he avoided the pipeline.

Powerful and persuasive mitigation evidence abounds from the eight-day evidentiary hearing before the trial court. Particularly with respect to Mr. Andrus' upbringing, the testimony elicited during the evidentiary hearing offers important historical context that paints a vivid and brutal picture of the circumstances under which Mr. Andrus grew up. Witnesses testified

² "AppEHX" refers to an exhibit offered by Petitioner that was admitted into evidence during the trial court evidentiary hearing.

that Mr. Andrus’ childhood environment severely impaired his development during adolescence and gave him lasting deficits as to his ability to cope, to build relationships, and to react appropriately to the world around him. If the original sentencing jury had heard this testimony, a minimum of at least one juror would have voted against sentencing Mr. Andrus to death.

A. Testimony from the Writ Hearing Provides Context the CCA Did Not Consider Concerning Mr. Andrus’ Impoverished Childhood.

The record reflects that Mr. Andrus was born and raised in Houston’s Third Ward, “a neighborhood . . . known for its frequent shootings, gang fights, and drug overdoses.” *Andrus*, 140 S. Ct. at 1879. At the evidentiary hearing in the trial court, Mr. Andrus presented Dr. Tyina Steptoe as an expert on the history of Third Ward. 4EHRR200.³ Dr. Steptoe detailed the rich history and deterioration of this once-vibrant neighborhood.⁴ 4EHRR203–32. Dr. Steptoe’s testimony (or

³ “EHRR” refers to the Evidentiary Hearing Reporter’s Record from the evidentiary hearing. The volume number is listed first and the page number is listed last. For example, here 4EHRR200 refers to volume 4, page 200 of the Evidentiary Hearing Reporter’s Record.

⁴ Born and raised in Houston, Dr. Steptoe is a professor of history at the University of Arizona. 4EHRR196, 198. She received her Ph.D. from the University of Wisconsin in 2008. *Id.* The University of California Press published her book *Houston Bound: Culture and Color in a Jim Crow City* in 2015, a history of Houston from World War I through the Civil Rights Movement. 4EHRR197–98. The book explains how different groups of

similar testimony from a qualified expert) likely would have facilitated a deeper and more resonant understanding among the jury of the neighborhood and circumstances in which Mr. Andrus was raised.

As developed during the habeas proceeding, Third Ward is the same neighborhood where Mr. Andrus' mother, his biological father, and the male authority figures in his life grew up. AppEHX8, 9. The testimony explained that this neighborhood was an epicenter of the crack epidemic in the 1980s and 1990s, Mr. Andrus' formative years. 4EHRR225–29. Drug use, distribution, and other vices were a way of life during Mr. Andrus' childhood in this community, which was also shaped by larger social forces of economic neglect and racial discrimination spanning more than a century. 4EHRR210–29; AppEHX8–18.

As further developed in the habeas hearing, before the Civil War, counties like Fort Bend, Brazoria, and Matagorda that surround Houston were known as the “Texas Sugar Bowl” because of the rich, fertile land surrounding the area, which was very good for growing crops like sugar cane and cotton. 4EHRR204. The region therefore experienced a rapid expansion based on a plantation economy. *Id.* When Houston was formed in 1836 following the Battle of San Jacinto, six geopolitical entities known as “wards” were created in the area surrounding downtown. *Id.* Each ward had its own political representation. 4EHRR204–05. Because

migrants who came to Houston affected notions of race and culture within the city. *Id.*

of the size and the structure of the wards, each ward felt like its own small town with its own business and entertainment districts. *Id.* The wards ceased to exist as official political entities around the turn of the Twentieth Century, but they continued to exist as discernible neighborhoods around Houston for decades thereafter, and are still recognizable ways to refer to different neighborhoods. 4EHRR205–06. As developed in the writ hearing testimony, the Third Ward’s history as a Black community goes back to the Reconstruction Era. 4EHRR210. The Third Ward is the site of the first public property purchased by African Americans in Houston: Emancipation Park. *Id.*

During World War I, Houston’s economy grew rapidly because the expanded ship channel permitted ocean-going vessels to enter the Port of Houston. 4EHRR207. A major rise in the exportation of cotton and oil meant the availability of more jobs, attracting diverse people to the city. *Id.* Black people moving into the area mostly settled in the Third, Fourth, and Fifth Wards, as these were historically Black neighborhoods. 4EHRR208. Before the push for integration began after World War II, the Third Ward had its own thriving businesses and institutions—more vibrant than other southern cities, like New Orleans, Memphis, or Atlanta. 4EHRR219. But with the construction of interstate highways in the late 1950s—particularly I-45 that cut through Third Ward—Third Ward started to decline. 4EHRR220–21. The interstate cut Third Ward off from other parts of the city and made mobility without a car very difficult. 4EHRR220.

This development led businesses to close down. 4EHRR220–21. Those who could afford to do so began to move away from Third Ward. 4EHRR230.

In the post-War era, economic opportunities disappeared as people abandoned the neighborhoods—sadly, Houston’s Wards became centers of vice, particularly drugs⁵ and prostitution. 4EHRR223–24.

The writ hearing testimony further set forth how Houston was one of the first cities devastated by crack cocaine. 4EHRR225. By 1984, it was a serious concern in terms of addiction and the rising crime rate that the drug epidemic spawned. *Id.* The inexpensive nature of crack allowed it to take root in working class communities. 4EHRR226. A crack rock could be purchased for as little as \$5, but the resulting high only lasted for about 15 minutes, meaning crack induced a nearly irresistible urge for more, fueling a destructive addiction cycle. *Id.* When people ran out of money to buy crack, they often turned to robbery and shoplifting to get the funds to purchase more. 4EHRR227.

During this time, there was also a rise in codeine abuse in Houston. *Id.* Codeine is a prescription drug that people tended to mix with liquids such as beer or soda. 4EHRR228. The concoction was colloquially referred to as “lean,” “sizzurp,” or “drank.” *Id.* This epidemic continued into the 1990s in Houston while Mr. Andrus was growing up there. *Id.* Sadly, several

⁵ Before the 1980s, the primary drug of choice was heroin; the neighborhood then became an epicenter for the crack cocaine epidemic. *Id.*

witnesses specifically recalled Mr. Andrus' mother frequently partaking in "drank," often in front of her children. AppEHX5, 9, 11, 12, 13, 14.

By the 1990s, consistent with its status as a center of drug use and distribution, the Third Ward had developed an underground economy centered almost entirely around forms of vice. 4EHRR228–29. Kids, including Mr. Andrus, grew up surrounded by illegal conduct—people selling and doing drugs, engaging in prostitution, robbing, and killing. AppEHX9, 10, 11, 13.

The rising crime rate caused further depopulation of Third Ward. 4EHRR229–30. As a result, Third Ward transitioned from a community with socioeconomic diversity to one exclusively populated by those who could not afford to leave. 4EHRR230. This process affected the tax base and, by extension, school funding. *Id.* As the neighborhood became poorer and less desirable, businesses shuttered. *Id.* Individuals left behind who did not own a car had difficulty finding employment, and often had to leave the neighborhood to find a job. 4EHRR231. In a city the size of Houston, public transportation was an option, but it was very difficult. 4EHRR231–32.

In sum, the writ hearing testimony clearly explains that throughout Mr. Andrus' childhood, the Third Ward was deeply afflicted by poverty and vice, and this Court concluded that the CCA should reconsider its opinion in light of this evidence. The CCA's opinion mentions none of this background.

B. Testimony from the Evidentiary Hearing Contextualizes Mr. Andrus' Experience in the Texas Youth Commission.

Dr. Scott Hammell⁶ explained that Mr. Andrus suffered physiological changes to his brain as a result of trauma in his childhood, including his early exposure to violence, death, severe emotional neglect, substance abuse, domestic violence, and distrust. 6EHRR168–69. This trauma, according to Dr. Hammell, stunted Mr. Andrus' emotional development. 6EHRR181. Other evidence in the record reiterates this point. AppEHX5.

Dr. Hammell also detailed Mr. Andrus' social history, including his relationship to his relatives, the circumstances of his neighborhood, the incarceration of family members, and the violence and drug use in his family. 6EHRR169–215. Dr. Hammell's evaluation revealed that Mr. Andrus' history of trauma is consistent with post-traumatic stress disorder (“PTSD”) symptoms, if not the full disorder, and that Mr. Andrus suffers from mood disorder. 7EHRR52.

Similarly, featured testimony regarding Third Ward's history contextualizes the school-to-prison pipeline Mr. Andrus entered when he was sent to the Texas Youth Commission (“TYC”). Will Harrell⁷ detailed Mr.

⁶ Dr. Hammell is a clinical psychologist who was formerly employed at the Texas Youth Commission. 6EHRR119. Dr. Hammell interviewed Mr. Andrus on three occasions, spoke to his family members, and reviewed relevant records in preparation for his testimony at the evidentiary hearing. 6EHRR130.

⁷ Will Harrell was appointed by former Governor Rick Perry to serve as the first Chief Independent Ombudsman over the

Andrus' incarceration at the TYC, including the dangerousness of the facility Mr. Andrus was placed in, the lack of appropriate mental health care, the fact that he was unduly placed in isolation for weeks at a time, the lack of proper mental health diagnosis due to undertrained staff, and the fact that his prescribed medication was neither appropriate nor adequately distributed. 5EHRR161–63, 168, 179–81.

Mr. Harrell reviewed Mr. Andrus' TYC records and determined that Mr. Andrus was unfairly held accountable for failing to succeed in a behavioral program that was later discredited and that Mr. Andrus was sent to the Texas Department of Criminal Justice ("TDCJ") as an "adult" offender when he should not have been. 5EHRR121–22. Harrell testified that Mr. Andrus' time at the TYC damaged and traumatized him while providing him no meaningful assistance. 5EHRR246. Critically, despite this Court's instructions to reconsider its opinion in light of this powerful evidence, the CCA opinion instead makes no mention of Dr. Scott, Mr. Harrell, or their testimony.

Texas Youth Commission. 5EHRR111–12. In the evidentiary hearing, Mr. Harrell detailed the scandal that resulted in the legislative reformation of the Texas Youth Commission and noted that Mr. Andrus was incarcerated prior to this legislative reform. 5ERHH140–60. The CCA majority opinion does not acknowledge the TYC's salacious past.

C. Testimony from the Evidentiary Hearing Demonstrates Mr. Andrus Was Capable of Redemption.

The testimony from the evidentiary hearing also demonstrates that Mr. Andrus, when adequately supported, was capable of being a productive, successful member of society, but was ensnared in a cycle of poverty and incarceration. For example, family friends Sean Gilbow and Phyllis Garner testified that they took in Mr. Andrus after his release from incarceration with the TYC and the TDCJ. 6EHRR48, 95. They testified that Mr. Andrus abided by the rules of the house and did his assigned chores. 6EHRR49, 95–96. He was focused on finding steady employment and got a job working with Mr. Gilbow on an oil rig. 6EHRR97. Mr. Gilbow was subsequently arrested and sent back to prison, leaving Mr. Andrus without transportation to the job. *Id.* Ms. Garner attempted to get Mr. Andrus a job with the company where she had long been employed, but his criminal history proved to be a barrier. 6EHRR98. Repeatedly, Mr. Andrus was unable to secure a legitimate job because of the adult record created by TYC’s decision to transfer him to TDCJ to serve out the end of his sentence. *Id.* The CCA did not acknowledge that Mr. Andrus showed himself to be capable of success when offered support.

III. PREJUDICE IS APPARENT FROM THE RECORD BEFORE THIS COURT.

It bears repeating that *none* of the foregoing evidence was put before the sentencing jury and *none* of

the foregoing evidence was mentioned in the CCA's majority opinion. The jury learned nothing about Mr. Andrus' upbringing or early life whatsoever. They heard only the deeply misleading testimony of Mr. Andrus' mother, who falsely created an impression of a hard-working single mother, and Mr. Andrus' father, who was barely present in Mr. Andrus' life due to his own extended stints in prison. As this Court summarized the evidence adduced at the evidentiary hearing:

The evidence revealed a childhood marked by extreme neglect and privation, a family environment filled with violence and abuse. Andrus was born into a neighborhood of Houston, Texas, known for its frequent shootings, gang fights, and drug overdoses. Andrus' mother had Andrus, her second of five children, when she was 17. The children's fathers never stayed as part of the family. One of them raped Andrus' younger half-sister when she was a child. The others—some physically abusive toward Andrus' mother, all addicted to drugs and carrying criminal histories—constantly flitted in and out of the picture.

Starting when Andrus was young, his mother sold drugs and engaged in prostitution. She often made her drug sales at home, in view of Andrus and his siblings. She also habitually used drugs in front of them, and was high more often than not. In her frequently disoriented state, she would leave her children to

fend for themselves. Many times, there was not enough food to eat.

After her boyfriend was killed in a shooting, Andrus' mother became increasingly dependent on drugs and neglectful of her children. As a close family friend attested, Andrus' mother "would occasionally just take a week or a weekend and binge [on drugs]. She would get a room somewhere and just go at it."

With the children often left on their own, Andrus assumed responsibility as the head of the household for his four siblings, including his older brother with special needs. Andrus was around 12 years old at the time. He cleaned for his siblings, put them to bed, cooked breakfast for them, made sure they got ready for school, helped them with their homework, and made them dinner. According to his siblings, Andrus was "a protective older brother" who "kept on to [them] to stay out of trouble." Andrus, by their account, was "very caring and very loving," "liked to make people laugh," and "never liked to see people cry." While attempting to care for his siblings, Andrus struggled with mental-health issues: When he was only 10 or 11, he was diagnosed with affective psychosis.

At age 16, Andrus was sentenced to a juvenile detention center run by the Texas Youth Commission (TYC), for allegedly "serv[ing] as the 'lookout'" while he and his friends robbed a woman of her purse. While in TYC custody, Andrus was prescribed high doses of

psychotropic drugs carrying serious adverse side effects. He also spent extended periods in isolation, often for purported infractions like reporting that he had heard voices telling him to do bad things. TYC records on Andrus noted multiple instances of self-harm and threats of suicide. After 18 months in TYC custody, Andrus was transferred to an adult prison facility.

Andrus, 140 S. Ct. at 1879–80. This Court concluded that Mr. Andrus’ childhood and upbringing, and the neighborhood that served as its backdrop, were critical pieces of mitigating evidence. The CCA’s decision to ignore this evidence in its opinion was clear error requiring intervention by this Court.

The Supreme Court instructed the CCA to weigh the totality of the available mitigation evidence adduced at trial and at the habeas proceeding against the aggravating evidence. *Id.* at 1886. “[P]rejudice exists if there is a reasonable probability that, but for his counsel’s ineffectiveness, the jury would have made a different judgment about whether Andrus deserved the death penalty as opposed to a lesser sentence.” *Id.* at 1885–86 (citations omitted). Because Mr. Andrus’ death sentence required a unanimous jury recommendation, “prejudice here requires only ‘a reasonable probability that *at least one juror* would have struck a different balance’ regarding Andrus’ ‘moral culpability.’” *Id.* at 1886 (quoting *Wiggins*, 539 U.S. 537–38) (emphasis added).

Mr. Andrus was not predestined to commit the crime for which he was sentenced to death. At least one juror presented with the mitigating evidence adduced at the habeas proceeding could have seen that the odds were stacked against him. At least one juror certainly would have seen the mitigating circumstances warranted mercy and voted accordingly.



CONCLUSION

The CCA's treatment of this case begs several questions:

- If Mr. Andrus' case for mitigation does not rise to a level at which at least *one* juror would be expected to vote against the death penalty, can any case do so?
- Is it possible to meaningfully consider the mitigation evidence in this case and come to any conclusion other than the conclusion dictated by this Court's precedent, including in *Andrus I*—that at least one (if not all) jurors presented with this mitigation evidence would have spared his life?
- May a state's highest court simply ignore a mandate from this Court if it disagrees with the Court's view regarding minimum standards of proof in capital cases?

Because *Amici* respectfully submit that each of these questions must be answered "No," they ask this

Court to grant the relief requested by Mr. Andrus' able counsel.

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Respectfully submitted,

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