

In the
Supreme Court of the United States

Thomas Leo Springs,

Petitioner,

v.

Dexter Payne, et al.,

Respondents.

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

Reply in Support of Petition for Writ of Certiorari

CAPITAL CASE

LISA G. PETERS
FEDERAL PUBLIC DEFENDER

Heather Fraley *
Alex Satanovsky
Anisha Jones
Assistant Federal Public Defenders
1401 W. Capitol, Ste. 490
Little Rock, AR 72201
(501) 324-6114
Heather_Fraley@fd.org
Alex_Satanovsky@fd.org
Anisha_Jones@fd.org

** Counsel of Record*

TABLE OF CONTENTS

A.	This Court’s decision in <i>Mays v. Hines</i> , 592 U.S. 385, 391-92 (2021), supports (rather than belies) Springs’ call for certiorari to clarify the standard for assessing reasoned state decisions under the AEDPA.....	1
1.	<i>Mays</i> bolsters Springs’ contention that this Court’s precedents require federal courts to consider all of a state court’s reasons for denying relief, and certiorari is necessary to correct a circuit split on this issue.....	1
2.	To the extent <i>Mays</i> allows a federal court to rely on evidence not cited by the state court in its reasoned decision, certiorari is necessary to clarify how such a holding comports with <i>Wilson</i>	4
3.	There is no question there is a circuit split this Court needs to resolve regarding the scope of <i>Wilson</i>	6
B.	The Arkansas Supreme Court and the Eighth Circuit misapplied <i>Strickland</i> by relying on impeachment evidence that <i>could</i> have been used, rather than actually determining whether it likely <i>would</i> be used.	6
C.	The significant prejudice to Springs compels this Court’s intervention.	12
Conclusion		16

TABLE OF AUTHORITIES

CASES

<i>Camargo v. State</i> , 987 S.W.2d 680 (1999) -----	14
<i>Dunn v. Reeves</i> , 141 S. Ct. 2405 (2021)-----	9
<i>John Cheeseman Trucking, Inc. v. Dougan</i> , 853 S.W.2d 278 (Ark. 1993) -----	10
<i>Lafler v. Cooper</i> , 566 U.S. 156 (2012) -----	7
<i>Marcyniuk v. State</i> , 436 S.W.3d 122 (Ark. 2014)-----	13
<i>Marks v. Davis</i> , 106 F.4th 941 (9th Cir. 2024)-----	2
<i>Mays v. Hines</i> , 592 U.S. 385 (2021)-----	1, 5
<i>Missouri v. Frye</i> , 566 U.S. 134 (2012)-----	7
<i>Murphy v. Collier</i> , 139 S. Ct. 1111 (2019) -----	13
<i>Osburn v. State</i> , 2011 Ark. 514 (Ark. 2011)-----	14
<i>Owens v. Duncan</i> , 781 F.3d 360 (7th Cir. 2015) -----	10
<i>Porter v. McCollum</i> , 558 U.S. 30 (2009)-----	7
<i>Pye v. Warden</i> , 853 Fed. Appx. 548, (11th Cir. 2021) -----	2, 6
<i>Ramirez v. Collier</i> , 595 U.S. 411 (2022) -----	13
<i>Sheppard v. Davis</i> , 967 F.3d 458 (5th Cir. 2020) -----	6
<i>Shoop v. Hill</i> , 586 U.S. 45 (2019)-----	11
<i>Springs v. Kelley</i> , No. 5:13-cv-05, (E.D. Ark. Sep. 17, 2019)-----	12
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984) -----	6
<i>Thornell v. Jones</i> , 144 S. Ct. 1302 (2024)-----	14
<i>Wiggins v. Smith</i> , 539 U.S. 510 (2004) -----	7

<i>Wilson v. Sellers</i> , 584 U.S. 122 (2018)	1
<i>Wong v. Belmontes</i> , 558 U.S. 15 (2009).....	7, 8, 10

OTHER AUTHORITIES

Christian Broadcasting Network, “A Murdered Father, A Convicted Mother, and a Broken Son” (Dec. 10, 2022)	13
Capital Representation Project, <i>Texas Governor Issues Rare Clemency Grant to Thomas Whitaker</i> (Apr. 18, 2018).....	13
Logan, <i>When Balance and Fairness Collide</i> , 33 U. MICH. J.L. REFORM 1, 13 (2000)	15
Rountree & Rose, <i>The focal concerns of jurors evaluating mitigation: Evidence from federal capital jury forms</i> , 56 LAW & SOC'Y REV. 213, 215 (2022)	14
U.S. Dep’t of Justice, JUSTICE MANUAL § 9-10.100 (Apr. 2014).....	13

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

- A. **This Court’s decision in *Mays v. Hines*, 592 U.S. 385, 391-92 (2021), supports (rather than belies) Springs’ call for certiorari to clarify the standard for assessing reasoned state decisions under the AEDPA.**
1. ***Mays* bolsters Springs’ contention that this Court’s precedents require federal courts to consider all of a state court’s reasons for denying relief, and certiorari is necessary to correct a circuit split on this issue.**

In his Petition, Springs argued that the Eighth Circuit’s reliance on evidence and arguments not considered by the Arkansas Supreme Court, and its failure to address all of the actual reasons and evidence relied upon by the Arkansas courts to affirm Springs’ death sentence, was contrary to this Court’s holding in *Wilson v. Sellers*, 584 U.S. 122 (2018), which requires federal courts to train their analysis under the AEDPA to a state court’s actual reasons for denying relief. In response, the State contends that the Eighth Circuit’s approach was consistent with this Court’s holding in *Mays v. Hines*, 592 U.S. 385, 391–92 (2021). Quite the contrary, *Mays* reinforces the holding of *Wilson* by making clear that federal courts must look at “*all* the reasons and evidence” relied upon by the state court before determining whether the state court’s decision was reasonable. *Id.* at 391.

In *Mays*, this Court reprimanded the Sixth Circuit for failing to “properly consider[] the entire record” when granting relief under the AEDPA. 592 U.S. at 392. Petitioner in that case argued his trial counsel were ineffective for failing to present an alternative-suspect defense but the state court held there was no prejudice based on a number of factors including the strength of the state’s case and “farfetched” nature of the alternate-suspect defense. *Id.* at 389. The Sixth Circuit found this ruling

unreasonable without discussing the facts and reasons given by the state court. *Id.* This Court faulted the Sixth Circuit for ignoring “voluminous evidence” and “omitting inconvenient details from its analysis” because under the AEDPA “a federal court must carefully consider *all the reasons* and evidence supporting the state court’s decision.” *Id.* at 390, 392-93 (emphasis added). “[T]here is no way to hold that a decision was ‘lacking in justification’ without identifying—let alone rebutting—all of the justifications.” *Id.* at 393.

According to the State, *Mays* stands for the proposition that “a habeas court must defer under AEDPA unless it rebuts all the reasons supporting the state court’s decision.” BIO at 6 (cleaned up). The State contends that “once the Eighth Circuit found that some of the Arkansas Supreme Court’s reasons were reasonable, it had to defer.” BIO at 6. But this is not what *Mays* holds at all.¹ *Mays* instructs federal courts to assess *all* of the facts and reasons relied upon by the state court before deciding whether the state court decision was reasonable. The Sixth Circuit in *Mays* failed to grapple with *any* of the “substantial evidence” linking petitioner to the crime—evidence which was specifically cited by the Tennessee post-conviction court. This Court found deference appropriate after concluding the totality of facts and reasons articulated by the state court rendered its decision reasonable.

¹ Though no majority circuit opinion has yet interpreted *Mays* as the State has here, clarification may yet be necessary. Compare *Marks v. Davis*, 106 F.4th 941, 1009-10 (9th Cir. 2024) (R. Nelson, J., concurring and dissenting in part) (interpreting *Mays* the same way as the State) with *Pye v. Warden*, 853 Fed. Appx. 548, 559 (11th Cir. 2021) (interpreting *Mays* the same way as Springs), vacated in non-pertinent part, 50 F.4th 1025 (en banc). It is worth noting that in both cases the lower court was reversed for failing to consider the entire record.

Thus, contrary to the State's interpretation, *Mays* emphasizes the importance of doing precisely what the Eighth Circuit here failed to do: consider *all* the facts and reasons relied upon by the state court to support its holding before deciding whether its decision was reasonable. Contrary to *Mays*, the Eighth Circuit failed to even mention three of the four reasons given by the Arkansas Supreme Court (all of which undermine the credibility of that court's ultimate prejudice ruling). It also failed to consider the un rebutted evidence in the record showing that the prosecutor would not have cross-examined or impeached Matthew if he had testified at trial, and relied on facts never mentioned by either state court that adjudicated the claim.

Far from the State's claim that *Mays* allows a federal court to conclude its analysis after finding one of several articulated justifications for a state court decision reasonable, Springs' case demonstrates why courts must examine the entirety of the state court's rationale when assessing its reasonableness. The Arkansas Supreme Court held that Springs could not demonstrate prejudice because Matthew's testimony was: (1) not comparable to Jacob's, (2) was cumulative to testimony provided by others, (3) could have led to impeachment "evidence that established the family was living in a shelter at the time of the murder and that the Department of Human Services had a case file on the family because of past issues," and (4) would "have raised questions about the remaining children as to why none of them were willing to testify on their father's behalf." Pet.App. 89a

As aptly explained by the district court, these reasons find no support in the law or the record, and some (like the suggestion of "comparability" or the questions that Matthew's testimony would raise) are outright incoherent and border on absurd.

See Pet.App. 45a–49a. The unreasonableness of three of the four reasons given by the Arkansas Supreme Court bring that court’s credibility into question, and color the reasonableness of the fourth remaining reason. Standing alone, the holding that Springs could not demonstrate prejudice from trial counsel’s failure to present testimony from any of his children that they loved him or did not want to lose their sole remaining parent because the prosecution “could” have impeached this already traumatized victim with evidence that the DHS had a file on the family is unreasonable for all of the reasons articulated in the second Question Presented. Pet. 20–29. The totality of the four reasons used by the Arkansas Supreme Court warrants this Court’s review. Just as a witness who lies repeatedly is difficult to trust, so, too, is a court that provides multiple unreasonable justifications for its decisions not to be trusted.

2. To the extent *Mays* allows a federal court to rely on evidence not cited by the state court in its reasoned decision, certiorari is necessary to clarify how such a holding comports with *Wilson*.

The State contends it was not error for the Eighth Circuit to rely on facts never mentioned by the Arkansas courts because those facts were helpful in “explaining why the Arkansas Supreme Court’s own rationale for denying relief was reasonable.” BIO at 7. Though any effort by the federal courts to step outside the bounds of a reasoned state court decision when assessing the reasonableness of such a decision seems contrary to *Wilson*, to the extent *Mays* allows—and even requires—a federal court to consider the entire state-court record in assessing reasonableness under the AEDPA, certiorari is necessary to clarify this point.

And even assuming that a federal court may rely on facts not cited by the state court to support a finding of reasonableness, *Mays* makes clear that the court may not “omit[] inconvenient details from its analysis.” *Mays*, 592 U.S. at 392. Here, even if it was acceptable for the Eighth Circuit to mine the DHS files mentioned in passing by the Arkansas Supreme Court for damaging facts with which the prosecution “could” have impeached Matthew, it was not appropriate for the court to ignore myriad other facts in the record that completely undercut its holding. If the Eighth Circuit had considered the “entire record” as suggested by *Mays*, the unreasonableness of the Arkansas Supreme Court’s conclusion would be clear. While highlighting facts from the DHS file that may have been damaging to Springs, the Eighth Circuit (and the Arkansas Supreme Court) omitted the inconvenient details from the file revealing that the victim—Matthew’s mother—had also physically abused the children. It was likely for this reason that the prosecutor objected to admission of the DHS file at the Rule 37 proceeding—a fact which completely undercuts the conclusion that they may have introduced them at trial. What is more, Matthew was a 15-year-old victim witness who had just lost his mother and would have been testifying that he loved his father and did not want to lose him too. The prosecution chose not to cross-examine or impeach other mitigation witnesses who were far less vulnerable or sympathetic than Matthew, because prosecutors often refrain from cross-examining family mitigation witnesses as a matter of decency and respect. Even years later at the Rule 37 hearing, the prosecutor chose not to cross-examine or impeach Matthew. Viewing the entire record, no fairminded jurist could conclude the prosecutor would actually have used the DHS files to impeach Matthew.

3. There is no question there is a circuit split this Court needs to resolve regarding the scope of *Wilson*.

The state oddly contends there is no circuit split on the meaning and application of *Wilson*, citing to *Pye*, 50 F.4th at 1038, for support. Yet *Pye* itself acknowledges the existence of such a split. *Id.* (noting that “most”—not all—“of the courts of appeals” have held that *Wilson* means deference is owed only to the decision, not to the reasons, of a state court) (citing *Sheppard v. Davis*, 967 F.3d 458, 467 n.5 (5th Cir. 2020)). If the First, Second, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits agree in their interpretation of *Wilson*, that means the Third, Fourth, and Ninth do not. That is the definition of a circuit split. The question is not whether there is a split, but whether this Court wishes to resolve it.

Certiorari would also provide important guidance about how to apply AEDPA deference in a common situation. The State agrees that *Wilson* requires courts to examine the reasons given by state courts. But *Wilson* does not say how a federal court should rule where a single legal claim is disposed through a mix of reasons of varying supportability. Neither *Wilson* nor *Mays* provides any definitive answer, and this case presents a perfect vehicle for this guidance.

B. The Arkansas Supreme Court and the Eighth Circuit misapplied *Strickland* by relying on impeachment evidence that *could* have been used, rather than actually determining whether it likely *would* be used.

This Court’s *Strickland* jurisprudence requires courts to examine the evidence a jury would likely see if counsel was not deficient, and to then weigh that new evidentiary picture on its merits. Pet.20–24; *see, e.g., Strickland v. Washington*, 466 U.S. at 673, 695–96, (1984) (finding that defendant’s rap sheet “would probably have

been admitted into evidence” in response to new mitigation, and assessing its weight on the merits); *Wong v. Belmontes*, 558 U.S. 15, 20, 25–26 (2009) (examining the state-court record as proving that rebuttal aggravation “almost certainly” would be used in response to new mitigation); *Porter v. McCollum*, 558 U.S. 30, 43 (2009) (considering the weight of the defendant’s AWOL status, which “would also” be introduced by the State in response to mitigation); *Wiggins v. Smith*, 539 U.S. 510, 536–38 (2004) (same, as to the defendant’s social-history evidence that “would have” likely been introduced); *see also Lafler v. Cooper*, 566 U.S. 156, 163–64, 174 (2012) (requiring an inquiry into whether the prosecution would have made the same or different tactical choices, had trial counsel not been deficient); *Missouri v. Frye*, 566 U.S. 134, 148 (2012) (same).

In its Brief in Opposition, the State agrees that:

Proving *Strickland* prejudice—and disproving it—requires a prediction of what might have happened had defense counsel performed differently[.] [* * *]

[T]here is no hard-and-fast requirement of certainty at any step. Instead, **a defendant needs to show that all the contingencies attending a claim of deficiently unrepresented evidence, from introduction to admission to the prosecution’s response to the evidence’s effect on the jury, ultimately amount to a reasonable probability of a different outcome.**

BIO at 16, 17–18 (emphasis added). The State agrees with Springs’ position. *Compare* Pet. 23 (“[T]he Court’s clearly established *Strickland* prejudice law is understood to allow reweighing of only the evidence a jury would actually be likely to see, absent deficient performance”); Pet. 20 (“This Court’s *Strickland* cases clearly require that prejudice be decided upon a threshold assessment of what evidence a jury would

actually see”).² Under the agreed standard, if the record shows certain evidence likely to be seen by a jury (*e.g.*, the rebuttal evidence that “almost certainly” be introduced in *Belmontes*, 558 U.S. at 20, or the rap sheet that “probably” would be used in *Strickland*), then such evidence is weighed accordingly. But if the record shows no indicia that impeachment would actually be used, a reviewing court cannot give it any weight. The BIO does not point to any cases—from any court—that authorize weighing hypothetical impeachment regardless of what the record shows. *But see* Pet. 23–24 (collecting lower court cases doing the opposite).

The State’s agreement with Springs simplifies the resolution to the second Question Presented: This Court’s *Strickland* jurisprudence does not allow reviewing courts to weigh hypothetical impeachment evidence if the record shows that no such evidence would actually be put to the jury.

Here, the Arkansas Supreme Court never considered what evidence Springs’ jury would likely see if counsel was not deficient. The state court did not consider the “contingenc[y]” of the likely “prosecution’s response” to Matthew’s testimony. BIO 16–18. Observing that a prosecutor “could have” impeached Matthew is entirely different from assessing the “probability that [impeachment] would have been admitted and used.” BIO 16–17.

² To create an appearance of disagreement, the BIO falsely avers that the Petition is arguing for a rule requiring “certainty” about what evidence would be used at a trial without deficient counsel.

This Court in *Wiggins* could not be clearer (and unanimously, too) that *Strickland* prejudice requires this assessment. The State’s attempt around the Court’s unanimous embrace of the rule is unpersuasive. Applying *Strickland* prejudice, *Wiggins* first considered whether, but for counsel’s deficient investigation, “counsel *would . . . have* altered their chosen strategy [by introducing certain new evidence].” 539 U.S. at 535 (emphasis added). This majority rejected the notion that “Wiggins’ counsel would not have altered their chosen strategy,” and thus it considered the weight of the new evidence to grant relief. *Id.* at 536–37. The dissent embraced the same question, but it saw the record as showing that such evidence likely would never be used. *Id.* at 553–54 (Scalia, J., dissenting) (concluding that “Wiggins’ attorneys would not have [changed their strategy], and therefore Wiggins was not prejudiced by their allegedly inadequate investigation. There is simply nothing to show . . . this evidence would have been introduced in this case.”) (cleaned up). The Arkansas Supreme Court (like the Eighth Circuit) skipped this step. Without hinting to any chance that the prosecutor would impeach Matthew—and without even an assertion by the State in its briefing before it elsewhere, *see* CA8 App. at 1231—it weighed evidence a hypothetical prosecutor “could have” used.

This error might be excusable under AEDPA if the record showed Matthew’s impeachment as inevitable, or at least probable. If that were so, the state court’s use of “could have” might be read charitably as its way of saying “would have.” This Court does not “readi[ly] attribute error” to an ambiguous state-court opinion. *Dunn v. Reeves*, 141 S. Ct. 2405, 2407 (2021) (holding that the Eleventh Circuit misread the

state-court opinion as imposing a contrary-to *Strickland* rule). But what makes this Petition compelling is that *all* record indicia points one way: Matthew’s testimony “almost certainly would [not] have” provoked impeachment. *Belmontes*, 558 U.S. at 20. The State’s contrary assertion, *see* BIO 21–22, was not even made in any of the state-court proceedings. It is nothing more than Monday-morning conjecture that would not survive a sufficiency review.³

The record speaks for itself in demonstrating that Matthew would not be impeached. To paraphrase Justice Scalia: “There is simply nothing to show (and the [Arkansas Supreme Court] does not even dare to *assert*) that . . . this evidence would have been introduced *in this case*.” *Wiggins*, 539 U.S. at 554 (Scalia, J., dissenting) (emphasis in original). The State’s newly minted position has “no factual basis of any sort, in the trial record or elsewhere”—it is “made[] up.” *Owens v. Duncan*, 781 F.3d 360, 364 (7th Cir. 2015) cert. dismissed as improvidently granted, 577 U.S. 189 (2016).

³ See, e.g., *John Cheeseman Trucking, Inc. v. Dougan*, 853 S.W.2d 278, 281 (Ark. 1993) (fact findings are insufficient if, given an “examin[ation] of the record,” the evidence does not “induce the mind to pass beyond suspicion or conjecture.”)

The relevant excerpts of the record that speak to this issue are as follows:

Trial	The jury heard ample evidence regarding the DHS involvement in the Springs’ family. Pet. 25 & n.4; CA8 App. 254, 349-50, 353-54, 367, 537-38. The State did not impeach Springs’ character witnesses with the DHS records. Pet. 24-26 & nn.5-6; CA8 App. 894-905.
Rule 37	The State did not cross-examine or impeach Matthew at all, let alone by reference to the DHS records. Pet. 27 & n.8; CA8 App. 1162, 1197, 1202. The State twice objected to the admission of DHS records. Pet. 27-28; CA8 App. 1030-31, 1091-92. The State declined to present rebuttal evidence after Springs rested. Pet. 27; CA8 App. 1205. The State’s proposed findings of fact, and the court’s order, on the <i>Strickland</i> claim said nothing about impeaching Matthew. Pet. 27-28; Pet.App. 108a, 114a-118a. The State did not assert that Matthew would have been impeached on appeal to the Arkansas Supreme Court. Pet. 28; CA8 App. 1231.

Moreover, the Petition explains—with no response in the BIO—that the decision to not impeach Matthew reflects a strategy courtroom lawyers use to avoid the risk of snowballing juror sympathy for a sympathetic witness. *See* Pet. 26–27 & nn.6–7. And Matthew is the exemplar for this advice—he was a child witness who would naturally impress upon jurors through an emotionally reflective plea that, in effect, would ask that he and his siblings not be orphaned.

This record shows, as plainly as any the Court may see, a prosecutor’s lack of intent to impeach a witness. This Court should reject the groundless revisionism the State now advances. *Cf.* Pet. 27 n.8 (noting the Eighth Circuit’s skepticism about the

actual likelihood of Matthew being impeached). The Court should not condone an error that is this “well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Shoop v. Hill*, 586 U.S. 45, 48 (2019).

C. The significant prejudice to Springs compels this Court’s intervention.

Matthew’s testimony would make a life sentence reasonably likely. He spoke credibly on behalf of his father, right after expressing profound love for his mother. His mom was his best friend, with whom he played and share secrets, and who taught him to be a respectful gentleman. Pet.App. 40a. Yet he described his love for his father, his forgiveness of his father, the good things his father did for him and his siblings, and of his desire to have him in his life. Pet.App. 40a-41a. That kind of sincerity and reflection would speak volumes to the jurors.

Matthew spoke not only for himself, but for all of his siblings’ love for Springs. “[H]e still has his chance to redeem himself. I want him to know that me and his kids, my brothers and sister, we love him to death and we care about him more than anything.” Pet.App. 41a. The State did not challenge—in any way—Matthew’s description of the siblings’ sentiments. CA8.App. 1202.⁴

⁴ Matthew’s sister Chantelle also confirms the siblings’ forgiveness of Springs. See Pet.App. 42a. To be sure, the weight of Chantelle’s testimony is not before the Court because she was not called at the Rule 37 hearing, and *Strickland* prejudice must be determined by the record. Cf. Part B, *supra* (the legal argument).

Jurors would put great weight on what Matthew says. The need to defer to the interest of a victim's relative animates all decisionmakers, at all phases of a capital case. This concern informs prosecutorial decisions to charge death in the first place. *See, e.g.*, U.S. Dep't of Justice, JUSTICE MANUAL § 9-10.100 (Apr. 2014). And it is a rare factor that has influenced actual grants of executive clemency.⁵ It is also the kind of factor that informs discretion on otherwise-legal issues, such as stays of execution. *E.g., Murphy v. Collier*, 139 S. Ct. 1111, 1112 (2019) (Alito, J., dissenting) (concern about victim re-traumatization). It even permeates issues as collateral as the design of an execution procedure. *See Ramirez v. Collier*, 595 U.S. 411, 430, 1280 (2022). The

But for purposes of deciding on certiorari, the Court does not have to blind itself to indicia that assuages any doubt about Matthew's sincerity or credibility.

Chantelle did not make it into the record because Springs told his Rule 37 lawyer to not call her—citing a dream he had about President Obama's dog on the eve of the hearing. Pet.App. 43a & n.9. And years after those proceedings, four of Springs' children attended his evidentiary hearing and got the chance to interact with their father without a barrier. *See Springs v. Kelley*, No. 5:13-cv-05, at Vol. 2 at pp. 275-78, 321 (E.D. Ark. Sep. 17, 2019) (considering request that Springs' children Joshua, Michael, Jacob, and Matthew personally visit with him during a recess at federal evidentiary hearing).

⁵ *See, e.g.*, Christian Broadcasting Network, "A Murdered Father, A Convicted Mother, and a Broken Son" (Dec. 10, 2022) (video feature profiling a child's forgiveness resulting in a clemency grant in a spousal murder case) available at <https://cbn.com/article/forgiveness/murdered-father-convicted-mother-and-broken-son>; Schaffer, ABA Capital Representation Project, *Texas Governor Issues Rare Clemency Grant to Thomas Whitaker* (Apr. 18, 2018) (detailing Governor Abbott's and Texas Parole Board's decision to grant clemency due to the advocacy of the widower to not have their son executed) available at https://americanbar.org/groups/committees/death_penalty_representation/project_press/2018/spring/texas-governor-issues-rare-clemency-grant-to-thomas-whitaker/.

deference all decisionmakers place on victims' interests shows that the jury—the central decisionmaker here—would give Matthew's testimony strong weight.

The unique features of Arkansas law dispel any doubts about *Strickland* prejudice. Arkansas jurors are empowered to “show mercy” and reject death for any reason—even if they find aggravating factors to “exist and outweigh the mitigating circumstances.” See, e.g., *Marcyniuk v. State*, 436 S.W.3d 122, 134 (Ark. 2014) (citing *Camargo v. State*, 987 S.W.2d 680, 682-83 (1999)); *Osburn v. State*, 2011 Ark. 514, 2 (Ark. 2011) (collecting cases). And if only one juror insists on that mercy, the verdict must be life. See, e.g., *Osburn*, 2011 Ark. at 2 (“[O]ur statute permits mercy . . . if even one juror finds a life sentence more appropriate, for whatever reason, the defendant receives a sentence of life in the State of Arkansas.”). The one-juror rule and the mercy-for-any-reason rule means *Strickland* prejudice is not difficult here. Cf. *Wiggins*, 539 U.S. at 537 (granting relief in light of Maryland's one-juror rule, yet noting that Maryland law requires a death sentence depending on the objective aggravation-mitigation balancing).

The mitigation Matthew would bring is not the “classic mitigating evidence”—such as mental illness, abuse, and general privation—this Court examined in many cases granting relief and (more often) reversing such relief. Cf. *Thornell v. Jones*, 144 S. Ct. 1302, 1314 (2024) (citing such cases). But Matthew's evidence is stronger than such “classic evidence.” Studies show that such classic evidence is often discounted or seen as aggravating. See Rountree & Rose, *The focal concerns of jurors evaluating mitigation: Evidence from federal capital jury forms*, 56 LAW & SOC'Y REV. 213, 215

(2022) (citing studies of actual and prospective jurors finding that “substance abuse” and “child abuse” as evincing bad character and a disposition for violence, and often likely to be aggravating). But jurors of all moral priors would be moved by a reflective and nuanced plea of love and mercy, particularly from a relative of both the victim and defendant. *See Logan, When Balance and Fairness Collide*, 33 U. MICH. J.L. REFORM 1, 13 (2000) (evidence “relating to defendants’ love for and by family and friends, plays a critically important yet intangible role [in capital sentencing].”)

Finally, the jury knew nothing about the children’s love for Springs and what he meant to them. The State selected Jacob to read his statement to the jury, but had Matthew and Chantelle read theirs to the judge after the verdict. Jacob’s passing reference to his desire to speak to his father in the future about why he killed his mom was moving enough to be a write-in mitigator by at least one but less than 12 jurors. The jury had no idea that Springs’ children loved him and what he meant to them. Hearing from Matthew would have shown Springs as a human being with redeeming qualities, in a way that good-character testimony from adult neighbors and coworkers could never have. It is reasonably probable that at least one juror would have voted to show mercy in this case.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari.

Dated this 16th day of October, 2024

Respectfully submitted,

By: /s/ Heather Fraley

Heather Fraley

Counsel of Record

Alex Satanovsky

Anisha Jones

1401 W. Capitol, Ste. 490

Little Rock, AR 72201

(501) 324-6114

Heather_Fraley@fd.org

Alex_Satanovsky@fd.org

Anisha_Jones@fd.org