No. 24-6212

CAPITAL CASE

In the

Supreme Court of the United States

RAYMOND A. LEWIS,
Petitioner,
v.
RAUL MORALES,
Acting Warden, SATF Corcoran Prison,
Respondent.

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

Shortly after he was sentenced to death in December, 1990, Mr. Lewis discovered evidence that, after four days of penalty phase deliberations, two holdout jurors were persuaded by their foreperson to cease their careful weighing of the aggravating and mitigating evidence and consider Mr. Lewis's "everlasting life"—which he would experience regardless of the sentence imposed and only because of his acceptance of Jesus Christ—as a reason to sentence him to death.

On February 14, 1991, less than two months after receiving his death sentence, Mr. Lewis presented the trial court with this evidence, in the form of a juror declaration, letters written to his counsel by the jury foreperson, and additional proffered testimony relating statements made by the foreperson post-trial. The evidence was impressively consistent and established a very strong likelihood that one or more jurors prejudicially adopted as fact the foreperson's non-record, inadmissible, and unconfronted assertion of Mr. Lewis's everlasting Christian afterlife—and treated it as a non-statutory aggravating factor in favor of a death judgment.

Mr. Lewis asked the court to schedule a hearing where he could question the affected jurors under oath and prove juror misconduct. His timely, reasonable request for due process was denied, and thirty-four years later still no court has made a true inquiry into Mr. Lewis's claim of juror misconduct; nor has any court properly given him the presumption of prejudice to which he is entitled under the long-standing, clearly established law of this Court. *Mattox v. U.S.*, 146 U.S. 140, 150, 157 (1892);

Remmer v. U.S., 347 U.S. 227, 229 (1954); *Remmer v. U.S.*, 350 U.S. 377, 379 (1956); *Tanner v. U.S.*, 483 U.S. 107, 117-18 (1987).

In defense of the lower courts' unreasonable holdings, the State makes unpersuasive, inapposite arguments.

ARGUMENT IN REPLY

The State argues, essentially, that a capital defendant's constitutional rights are not implicated when jurors consult their own religious beliefs or share those beliefs with other jurors in the course of penalty phase deliberations. Brief in Opposition (hereinafter "BIO") at 12 ("while Lewis argues that religious beliefs should themselves count as extraneous [], he does not cite any authority establishing that jurors may not consult their religious beliefs during deliberations"). *See also* BIO at 5, 6, 11, 17, 18. But Mr. Lewis has not pressed a constitutional challenge to foreperson Paul W.'s discussion of his religion during death penalty deliberations—though that surely did occur, and possibly prejudicially so.

The State's rote refrain that jurors may discuss and consult their personal religious beliefs during deliberations is non-responsive to the issue presented here: Mr. Lewis has consistently claimed that (1) Paul W. improperly inserted a "fact" related to Mr. Lewis's religion (not his own) into jury deliberations, (2) in an effort to encourage deadlocked jurors who were known to share his religious views to change their votes to death, and (3) that effort was successful. Based on clear precedent from this Court, the evidence Mr. Lewis presented was sufficient to entitle him to a hearing

and shift the burden to the State to disprove that the jury's consideration of the extraneous source was prejudicial.

It was patently unreasonable for the California Supreme Court to find the evidence merely showed that foreperson Paul W. harmlessly shared his personal religious beliefs during deliberations; and it was patently unreasonable for the California Supreme Court to find Mr. Lewis failed to make a *prima facie* showing that Paul W. and the hitherto undecided jurors, at Paul W.'s urging, disregarded the trial court's instructions and instead countenanced Mr. Lewis's Christian afterlife as a factor in favor of a death sentence. Because Mr. Lewis showed that non-record, inadmissible, and unconfronted evidence was submitted to the jury, for the purpose of encouraging a death sentence, and that at least one juror prejudicially relied on that evidence to sentence him to death, *Mattox* and *Remmer* were implicated and the state courts' failure to apply the straightforward procedures required by those cases was unreasonable.

Because of these fundamentally erroneous fact-findings and unreasonable misapplications of law, Mr. Lewis has satisfied 28 U.S.C. § 2254(d)(1) and (d)(2), and is entitled to a federal hearing, a presumption of prejudice, and *de novo* review of his claim. The Court should, at a minimum, grant certiorari to vacate the Ninth Circuit's order denying a certificate of appealability.

I. Preliminary Matters.

A few preliminary matters related to the State's arguments in opposition are called for.

First, the State asserted that the California Supreme Court summarily denied this claim. BIO at 8. That is false. This claim was raised as a point of error on direct appeal and was addressed as such by the federal district court and the Ninth Circuit. App'x. at 392a[1]; App'x. at 65a-75a. Therefore, the State is mistaken in its belief that 28 U.S.C. § 2254(d) requires the federal courts to consider the reasonableness of any arguments or theories that could have supported the state court decision; the federal courts must analyze the arguments and theories the California Supreme Court did rely on in *People v. Lewis*, 26 Cal.4th 334, 387-91 (2001), and only "defer[] to those reasons if they are reasonable." *Wilson v. Sellers*, 584 U.S. 122, 125 (2018). *Cf.* BIO at 9.

Second, the State urges a misleadingly limited definition of clearly established federal law. The State argues that Mr. Lewis may not satisfy 28 U.S.C. § 2254(d)(1) because this Court's precedent addressing infringement of extraneous sources into jury deliberations did not specifically confront the jury's consideration of extra-record evidence related to a capital defendant's destiny in the afterlife in light of his chosen religion, or the relative meaninglessness of his mortal life in light of his favorable

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[1] Defendant argues that Paul W.'s statement did not relate to his mental processes, evidence of which is proscribed by Evidence Code section 1150, subdivision (a). Rather, his statement constituted evidence that Paul W. prejudicially influenced Sally W. [*sic*] with 'an entirely illegitimate basis for imposing a death sentence. Defendant maintains that the jurors were improperly exposed to an extraneous source outside the record, i.e., an "extra-judicial code of conduct." Also, Paul W.'s statement that if defendant had been exposed to Jesus Christ he would have everlasting life whatever happened to him, "sharp[ly] contrasted" with the jury instruction that life means life and death means death. Thus, the trial court should have set aside the penalty verdict, or at a minimum, held a hearing to investigate the allegations of jury misconduct.

People v. Lewis, 26 Cal.4th 334, 388 (2001) (citations and footnote omitted).

prospects in the afterlife. BIO at 8-12. The State's overly burdensome argument is unavailing, particularly in light of the Court's recent discussion in *Andrew v. White*, 604 U.S. --, 145 S.Ct. 75 (Jan. 21, 2025). There, the Court held, "[t]o the extent the Court of Appeals thought itself constrained by AEDPA to limit *Payne* [*v. Tennessee*, 501 U.S. 808 (1991),] to its facts, it was mistaken. General legal principles can constitute clearly established law for purposes of AEDPA so long as they are holdings of this Court." *Id*. at 82. *See also id*. (reaffirming that "'certain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt") (quoting *White v. Woodall*, 572 U.S. 415, 427 (2014) (further citations omitted).

Finally, the State argues that there is no state-court fact-finding for the federal courts to review at all, because both the trial court and the California Supreme Court assumed the truth of Mr. Lewis's allegations before concluding that his evidence was inadmissible. BIO at 16. But, as discussed further below, the relevant California Supreme Court fact-finding was that foreperson Paul W. did not insert an extraneous source into the jury deliberations. *See* App'x. D at 392a ("Contrary to defendant's contention, by referring to Jesus Christ and defendant's possible everlasting life, Paul W. did not improperly refer to an extraneous source[]."). It is upon that invalid finding that the Court's contravention of *Mattox* and *Remmer* lies.

II. The California Supreme Court's Rejection of Mr. Lewis's Point of Error was Based on an Unreasonable Determination of the Facts in Light of the Evidence Mr. Lewis Presented to the Trial Court.

The *Mattox-Remmer* test is straightforward. There are only two questions a court must answer when presented with defense evidence of an improper extraneous influence on the jury. First, the court must ask whether there is, in fact, evidence that an extraneous source was introduced into deliberations. *Remmer v. U.S.*, 347 U.S. at 229; *Mattox v. U.S.*, 146 U.S. at 150. If that question is answered in the affirmative, the extraneous source is, "for obvious reasons, deemed presumptively prejudicial." *Remmer v. U.S.*, 347 U.S. at 229. "The presumption is not conclusive, but the burden rests heavily upon the Government to establish, after notice to and hearing of the defendant, that such contact with the juror was harmless to the defendant." *Id.* (citing *Mattox v. U.S.*, 146 U.S. at 148-50). The second question, then, is whether the State has satisfied its burden of showing that the defendant was not prejudiced by the extraneous source. *Id.* That question may only be answered after the taking of evidence and argument at a hearing. *Id.*

The California Supreme Court concluded that an extraneous source was not introduced into Mr. Lewis's jury's penalty phase deliberations and stopped its analysis there, instead applying state evidentiary rules to determine that Mr. Lewis's evidence of misconduct was inadmissible. *See* App'x. at 38a. That determination was based on an unreasonable determination of the facts, satisfying 28 U.S.C. § 2254(d)(2) and entitling Mr. Lewis to a hearing and full merits review in federal court.

The unrebutted evidence before the trial court when Mr. Lewis requested a hearing to prove his juror misconduct claim included:

- ❖ Five pages of mitigation testimony from Mr. Lewis's sister, during which she provided the only evidence of Mr. Lewis's Christianity—a statement that he had changed and become more religious while in jail;

- ❖ The record fact that Mr. Lewis's jury deliberated for four days before agreeing that the appropriate sentence was death;

- ❖ A declaration from juror Jeffrey E. stating that:

  - the jurors held hands and prayed together before guilt and penalty phase deliberations;

  - at some point during the four days of deliberations, after foreperson Paul W. "asked why people were having a difficult time making a decision," Sally B. replied that she needed more time to make the "right decision," and Paul W. responded "he did not know if it would help her, but what had helped him make his decision [to vote for death] was that Raymond had been exposed to Jesus Christ and if that was in fact true Raymond would have 'everlasting life' regardless of what happened to him"; and

  - "sometime after [foreperson Paul W.'s statements] we reached a [death] verdict";

- ❖ A proffer of testimony from Mr. Lewis's investigator that shortly after the trial foreperson Paul W. related to him and Mr. Lewis's lead counsel that:

  - he did make the statement to Sally B. and a second holdout juror (whom he refused to name);

  - "right after the statements were made another vote was taken and it decided to kill [Mr. Lewis]"; and

  - he would not sign a declaration; and

- ❖ A post-trial letter sent by Paul W. to Mr. Lewis's lead trial counsel in which he clearly stated that he was far more concerned with Mr. Lewis's relationship to God, and his afterlife, than he was with Mr.

> Lewis's participation (or not) in a murder, and his mortal life: "Someday you, I, and Raymond will all equally stand before our God and the question He will ask all of us will not be about murder, it will be, did you accept my Son Jesus Christ and the penalty He paid to forgive all the sins you committed. *A 'no' answer to that question will be much worse than being guilty of a murder charge and the penalty will be much worse than loosing [sic] your physical life*." (underlines in original, italics added).

The evidence very clearly demonstrates that Mr. Lewis's Christian destiny to experience "everlasting life," regardless of the penalty imposed for the crime for which he was convicted, was unlawfully considered in aggravation of a death sentence by—at least—foreperson Paul W. According to Jeffrey E., Paul W. said that Mr. Lewis's afterlife destiny "helped him" reach his death verdict. Paul W. confirmed Jeffrey E.'s recollection. Paul W., in his letter to trial counsel, then reconfirmed that his principal concern as a juror was with Mr. Lewis's eternal life as a person who had accepted Jesus Christ, and not with the evidence presented at trial. While Paul W. apparently commended Mr. Lewis's choice of religion, he undoubtedly considered his religion as a non-statutory, non-evidentiary factor in favor of imposing a death sentence. "It is not open to reasonable doubt that the tendency of [Paul W.'s consideration of Mr. Lewis's "'everlasting life' regardless of what happened" to him] was injurious to [Mr. Lewis]." *Mattox*, 146 U.S. at 150. At the very least, the evidence is strong enough to require a hearing upon request.

Mr. Lewis also presented sufficient evidence of an improper extraneous influence on juror Sally B. and the unnamed second holdout juror. According to Jeffrey E., foreperson Paul W.'s statements were made after Paul W. questioned the jurors on why they were deliberating so long, indicating impatience. Jeffrey E. also

declared that the statements were made after Sally B. asserted that she needed more time to deliberate, further indicating that Paul W. wished to hurry her along. The statement presented a non-evidentiary, improper ground for imposing a death sentence, and either "sometime after" (per Jeffrey E.) or "right after" (per Paul W.) the statement was made, the holdout jurors changed their vote to death, indicating the statement was made on day four of deliberations and pretty quickly had its intended effect. It is patently unreasonable for a court presented with that evidence to hold that no improper extraneous source penetrated the jury room and to deny a death-sentenced defendant any process on his timely claim to the contrary.

The timing of foreperson Paul W.'s reference to Mr. Lewis's "everlasting life" regardless of the sentence imposed, the purpose of the reference, and its apparently precipitate effect on two jurors that had until then remained undecided for four days, combined with evidence that all of the jurors were themselves known Christians who had prayed together, is powerful evidence that—at their foreperson's urging—those jurors considered Mr. Lewis's Christian afterlife as a factor in favor of death.

Recently, the Utah Supreme Court explained why the religious beliefs of jurors are important evidentiary factors in deciding whether the improper insertion of religious evidence in aggravation of a death sentence prejudiced a capital defendant. Again, the state and lower courts in this case have missed the point by considering only the constitutional propriety of jurors' internal belief systems having an undefinable, general influence on the jurors' decision-making; rather, the relevance

of the jurors' religious beliefs is the likely prejudicial effect that improper, aggravating religious evidence had on those jurors.

In *State v. Lovell*, -- P.3d --, 2024 UT 25, 2024 WL 3530117 (2024), the Utah Supreme Court vacated a death sentence because mitigation witnesses that were called by the defense to testify to the defendant's remorse and changed character were questioned on cross-examination about the defendant's ex-communication from the LDS Church. *Id.*[2] The *Lovell* Court discussed several cases in which courts had granted relief where it was shown that religious evidence and arguments were pressed in aggravation, and it noted that "the use of religiously charged arguments supporting death has been 'universally condemned . . . as confusing, unnecessary, and inflammatory'; they 'have no place in our non-ecclesiastical courts and may not be tolerated there.'" *Id.* at *17 (quoting *Bennett v. Angelone*, 92 F.3d 1336, 1346 (4th Cir. 1996)).

As part of its analysis, the court held that "the prejudicial nature of [the aggravating religious] testimony is even more acute considering our State's religious demographics," and because the record showed at least two seated jurors were familiar with the LDS Church's religious materials. *Id.* at *23-24. That scenario created, in the court's mind, an unacceptable risk that a faithful juror would consider

[2] In *Lovell*, the court granted relief on a trial counsel ineffectiveness claim predicated on counsel's failure to object to, and elicitation of, the aggravating religious testimony. 2024 UT 25, 2024 WL 3530117 (2024). In that case, the evidence was elicited during trial, on the witness stand, and thus the court recognized an underlying Eighth Amendment violation under *Caldwell v. Mississippi*, 472 U.S. 320 (1985). In this case, because the aggravating component of the religious evidence was presented by the jury foreperson during deliberations, outside the courtroom and immune from confrontation, the error falls squarely within the *Mattox-Remmer* framework. Otherwise, the relevant considerations are the same.

the testimony as "divine guidance" to disregard the mitigation evidence. *Id*. at *23. "In other words, this testimony encouraged the jury to not thoroughly consider [the defendant's] evidence of remorse." *Id*. at *17.

Similarly, here, foreperson Paul W.'s "testimony" to the undecided jurors that because of his acceptance of Jesus Christ Mr. Lewis would experience "everlasting life" regardless of the jury's sentencing decision, given in the jury room where it was immune from confrontation, encouraged those undecided jurors to cease their thorough consideration of Mr. Lewis's mitigation evidence. Indeed, Paul W.'s testimony converted the mitigating evidence of Mr. Lewis's devoutness into an aggravating factor supporting imposition of a death sentence upon less than full consideration of the properly admitted evidence. The prejudice caused by Paul W.'s statement "is even more acute" considering that the undecided jurors prayed with him—their jury foreperson—before the guilt and penalty phase deliberations began, indicating their impressionability when presented with his religious arguments in favor of death.

The State has presented no argument or authority establishing that it would have been constitutional for it to have presented evidence at the penalty phase of Mr. Lewis's trial that, because he was a Christian, Mr. Lewis would experience eternal life regardless of the imposition of a death sentence. It could not do so. It therefore cannot conjure authority or make a non-frivolous argument that it was proper for the jury foreman to present that same evidence on the fourth day of jury deliberations, outside the presence of the parties, with the aim of motivating two deadlocked jurors

to vote in favor of the death penalty. Instead, the State misstates the evidence to create the appearance that no such misconduct occurred. But it is simply unreasonable to draw that conclusion in light of the record evidence.

The State's final argument in defense of the lower courts' findings is that the source of the extraneous evidence and argument was technically "internal" to the deliberations: "[Mr.] Lewis did not allege that jurors were exposed to any *outside* source's comments on anything at all—let alone on his guilt or poor character, or whether he deserved the death penalty." BIO at 11 (emphasis in original). In response, Mr. Lewis would recall the Court's attention to pages 23 and 24 of his petition, in which he cites cases from the First, Second, Fifth, Sixth, Eighth, Ninth, Tenth and Eleventh Circuits, all either granting relief or mandating a hearing under *Mattox-Remmer* where jurors were exposed to improper, non-evidentiary statements made by one of the jurors in the jury room. As those courts have all recognized, and as this Court made clear in *Tanner v. U.S.*, 483 U.S. 1071, 117-18 (1987), the "source" of the extraneous source need not be external to the jury. A source is extraneous if it was submitted to the jury in a setting external to the courtroom, depriving the defendant of his Sixth and Fourteenth Amendment rights to object to and confront improper evidence and argument.

The evidence here clearly demonstrates the jury foreperson's unconstitutional insertion of a non-evidentiary, inadmissible, non-statutory aggravating factor into deliberations for the purpose of encouraging a death verdict. Mr. Lewis's Sixth and Fourteenth Amendment rights were violated by the jury's consideration of that factor.

Because the California Supreme Court found otherwise, 28 U.S.C. § 2254(d)(1) and (2) are satisfied and, at the very least, a certificate of appealability should issue so that Mr. Lewis's claim may be properly analyzed under the clearly established law of *Mattox* and *Remmer*.

III. The California Supreme Court's Finding that Mr. Lewis was not Prejudiced by Paul W.'s Conduct was an Unreasonable Determination of the Facts in Light of the Evidence Presented and was Contrary to the Clearly Established Law of This Court.

Although the California Supreme Court rejected Mr. Lewis's point of error on the ground that Paul W. did not insert an extraneous source into jury deliberations, the Court also found there was no possible prejudice from Paul W.'s statement. The finding of no prejudice was both an unreasonable fact-finding and contrary to *Mattox* and *Remmer*.

As a preliminary matter, it violates the clear holding of *Remmer* that a prejudice determination may not be made until the court holds a hearing where the defendant may be heard. *Supra*, 347 U.S. at 229. Mr. Lewis's hearing request was denied. In addition, the California Supreme Court failed to assume prejudice. *Id*. As a consequence, the procedures it employed directly contravened the clearly established procedures required by *Remmer*, satisfying 28 U.S.C. § 2254(d)(1).

Even if it had been permissible to make a prejudice determination without fact development, the Court's findings in support of its no-prejudice determination were unreasonable. In *Lovell*, the Utah Supreme Court found the improper introduction of aggravating religious testimony prejudiced the capital appellant because it

> impermissibly risked diminishing the jury's sense of responsibility for determining the appropriateness of death, and it is reasonably likely that a juror either based their decision on this testimony or used [the improper] testimony to discount the mitigation evidence [the appellant] presented. Our confidence in the sentencing hearing has been undermined because there is a reasonable probability that at least one juror would have opposed imposition of the death penalty if the jury had not been exposed to this evidence.

State v. Lovell, *supra*, 2024 WL 3530117 at *24; *see also id.* at *16 (holding the aggravating religious testimony impermissibly "invited the jury" to "'believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere'") (citing *Caldwell v. Mississippi*, *supra*, 472 U.S. at 328-29). Mr. Lewis made the same prejudice argument, but the California Supreme Court rejected it, reasoning that

> [e]verlasting life obviously does not exist in the physical world. . . . We assume that Sally B. perceived the difference between physical and spiritual everlasting life in light of the jury instruction. Jurors are presumed to be intelligent, capable of understanding the instructions and applying them to the facts of the case.

App'x. D at 393a (quotations and citation omitted).

The California Supreme Court's analysis is baseless, not only because no such evidence of perception was presented by the State—or by Sally B. herself—but also because the evidence that Mr. Lewis did present completely undermines the court's presumptions. First, Paul W.'s letters to counsel clearly indicated that the afterlife was a very "real world" concern for him and that Mr. Lewis's (and his counsel's) position in the afterlife was foremost on his mind during deliberations. Second, Sally B. and one other holdout juror changed their votes shortly after Paul W. inserted the consideration of Mr. Lewis's eternal life into their deliberations, and both Sally B.

and the unnamed second juror showed themselves to be devout Christians by praying with Paul W. before deliberations. The only reasonable reading of the evidence is that, whether those three jurors understood Christian scripture literally or figuratively, they were persuaded to rely on the scripture's promise of an "everlasting life" to Mr. Lewis, regardless of the sentence they imposed, to resolve their four-day indecision in favor of the death penalty. At the very least, the State had the burden of disproving the clear implication of the evidence, which it did not do because, in lieu of ordering a hearing, the California Supreme Court simply inserted its own belief that "[e]verlasting life obviously does not exist in the physical world[]," and ascribed that belief to the jurors.

Because the unrebutted evidence established a strong inference that three jurors who voted for the death penalty assigned Mr. Lewis's mortal life less value than that of a non-Christian based on their belief that he would receive God's gift of eternal life upon his physical death, the California Supreme Court's no-prejudice finding was unreasonable, and this Court should not sustain it.

CONCLUSION

For the above reasons, the Petition for a Writ of Certiorari should be granted.

Dated: April 10, 2025

Respectfully submitted,

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