No. 25-5153

IN THE SUPREME COURT OF THE UNITED STATES

STEVEN DAVID CATLIN,

PETITIONER,

vs.

EDWARD J. SILVA, Acting Warden,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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Petitioner respectfully submits this reply brief addressing new points raised in the brief in opposition ("BIO," post), filed September 18, 2025.

In summary, the BIO argues that there is no conflict between the Ninth Circuit's opinion here and decisions of this Court or the court of appeals, that there is no error in the Ninth Circuit's application of settled rules regarding the right to the effective assistance of counsel, and that, therefore, there is no basis for further review. E.g., see BIO at 7.

These contentions are made by ignoring arguments or aspects of arguments presented in the petition, as well as parts of the record and holdings in the underlying state court automatic appeal opinion; the BIO examines numerous individual cases and their holdings, but fails to consider the arguments which the petition presented on many of those same cases, as well as other cases which the petition also cited, and fails to address the overall analysis which the petition offered, effectively ignoring the forest by focusing only on a few of the trees.

I.

THE STATE COURT'S *STRICKLAND* DECISION WAS UNREASONABLE UNDER 28 U.S.C. § 2254(d)(1) & (2)

Counsel's failure to investigate and present additional mitigation evidence of Petitioner Steven Catlin's ("Catlin") family history, childhood sexual abuse, neurotoxin exposure, brain damage and other childhood trauma was deficient

performance and prejudicial to Catlin, and the state court's summary *Strickland*[1] decision to the contrary was unreasonable under 28 U.S.C. § 2254(d)(1) & (2).

As respondent notes in its BIO, trial counsel "hired an experienced mitigation investigator to assist with the penalty phase" and had copies of social history documents replete with "red flags," yet they presented a "good guy" penalty phase defense focusing on Catlin's positive qualities and lack of future dangerousness.[2] BIO at 9. The presentation of such a defense was inexplicable and inexcusable after priming the potential jurors during death qualification *voir dire* for the mitigating evidence that they could expect to hear, such as a tragic family history, trauma, sexual abuse, mental health issues and brain damage.

Respondent highlights the court of appeal's finding that "'defense counsel made a strategic decision to focus the penalty-phase defense on Catlin's positive qualities' including his 'lack of present dangerousness and the benefits to society that sparing him could provide'" (BIO at 11) while ignoring counsel's initial abject failure in his duty to investigate potential mitigation evidence before deciding on a penalty phase defense. *See Strickland*, 466 U.S. at 690-691; *Williams v. Taylor*, 529 U.S. 362, 396 (2000); *Wiggins v. Smith*, 539 U.S. 510, 534 (2003); *Porter v. McCollum*, 558 U.S. 30, 39–40 (2009). Any reasonable penalty phase investigation starts with interviews of the client and obtaining and reviewing myriad social

[1] *Strickland v. Washington*, 466 U.S. 668 (1984).

[2] While true that defense counsel retained an experienced mitigation investigator, she expressed repeated concern to lead counsel about Dellostritto's lack of engagement and direction in preparing the penalty phase defense.

history documents, yet penalty phase counsel Dellostritto spent the bulk of his billed hours reviewing the transcripts from Catlin's previous trial in Monterey County rather than performing or overseeing any actual investigation. Over four years representing Catlin, Dellostritto met with him a sum total of four times, according to his billing records: March 27, 1986; December 23, 1986; October 9, 1989; and May 20, 1990.

Dellostritto's billing records, setting aside travel time, and resolving any doubts in Dellostritto's favor, establish that:

- after having been appointed in February 1986 to serve as Catlin's penalty phase counsel, Dellostritto spent approximately 6 hours with Catlin in 1986;
- Dellostritto had no contact with Catlin in 1987, 1988 or the first nine months of 1989, and then spent no more than 2 hours with him in October 1989;
- Dellostritto spent a maximum of five hours with Catlin one day just prior to the close of the guilt phase of the case.

This deficient performance was made even more prejudicial because counsel spent significant time during the death qualification *voir dire* educating the potential jurors concerning potential mitigation testimony about Catlin's childhood, background and psychological profile, so that the jury reasonably expected to be presented with such mitigation and they could have reasonably concluded, in the absence of any such testimony, that none existed.

By the end of the prosecution's penalty phase case, the jury had decided that Catlin had poisoned to death his adopted mother and one of his wives. Catlin had

conceded that he was convicted of the murder of another wife. It had been presented with evidence that he had choked and thrown out of a vehicle another of his wives. As respondent notes, "[e]vidence that a defendant had 'committed another murder' is 'the most powerful imaginable aggravating evidence.' *Wong v. Belmontes*, 558 U.S. 15, 28 (2009).'" (BIO at 13–14). Yet, in the face of this known aggravation, trial counsel is alleged to have made a strategic decision to present a "good guy" defense in mitigation with evidence that described Catlin as "loyal" and "helpful[]," that he had once saved a boy's life, and that he had adjusted well in prison. *People v. Catlin*, 26 P.3d 357, 372 (Cal. 2003).

A strategic decision to present a penalty phase defense cannot be made until counsel has engaged in a thorough investigation, including establishing a trusting rapport with the client and independently obtaining and reviewing social history records. *See, e.g., Wiggins*, 539 U.S. at 524–25 (2003) (counsel's ineffectiveness lay not in failure to present evidence of client's family background, but rather in failure to conduct an investigation sufficient to support a professionally reasonable decision whether to do so); *Douglas v. Woodford*, 316 F.3d 1079, 1089 (9th Cir. 2003) ("It is, of course, difficult for an attorney to advise a client of the prospects of success or the potential consequences of failing to present mitigating evidence when the attorney does not know that such evidence exists.").

As this Court held in *Rompilla*, under *Strickland's* focus on the deficient performance of counsel that results in prejudice, it is important to review "norms of adequate investigation in preparing for the sentencing phase of a capital trial, when

defense counsel's job is to counter the State's evidence of aggravated culpability with evidence in mitigation." *Rompilla v. Beard,* 545 U.S. 374, 381 (2005). This Court noted:

> A standard of reasonableness applied as if one stood in counsel's shoes spawns few hard-edged rules, and the merits of a number of counsel's choices in this case are subject to fair debate. This is not a case in which defense counsel simply ignored their obligation to find mitigating evidence, and their workload as busy public defenders did not keep them from making a number of efforts, including interviews with Rompilla and some members of his family, and examinations of reports by three mental health experts who gave opinions at the guilt phase. None of the sources proved particularly helpful.

Rompilla, 545 U.S. at 381.

The problem here was that counsel barely spent any time with Catlin, relied on the work that had been done in the Monterey County trial and failed to investigate the "red flags" in the few social history records in his possession. As a result, the jury that convicted Catlin of the poisoning deaths of his adopted mother and wife and that heard that he had been convicted in the poisoning death of another wife and the assault of another wife was prevented from learning of Catlin's tragic family history, childhood sexual abuse, neurotoxin exposure, brain damage and other childhood trauma. Had the jury heard any of this mitigating evidence, one juror may well have been persuaded to spare Catlin's life. *See Penry v. Lynaugh* 492 U.S. 302, 319 (1989) ("[E]vidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background . . . may be less culpable").

Respondent notes that the case in aggravation was "considerable" and that the jury "did not debate for long," returning a death verdict in "less than two-and-a-half hours" to seemingly argue that the mitigation evidence would not have affected the jury's verdict. BIO at 13–15. Here, respondent makes the strongest argument for the need to have investigated and presented the considerable amount of mitigating evidence available here in order to counter the "considerable" aggravating evidence and to provide the jury with the explanation that was previewed during *voir dire* but never provided as jurors had expected. Evidence regarding Catlin's sexual abuse by a family friend as well as his brain damage from neurotoxic exposure, child abuse, and alcohol and drug use would have been enough to persuade at least one juror to spare Catlin's life. *Porter*, 558 U.S. at 33; *see also Williams*, 529 U.S. at 374 n.5.

Instead, counsel met with Catlin four times for less than thirteen hours and failed to review the social history records in his possession, including medical, court, and school records which contained Catlin's history of trauma, sexual and emotional abuse, head injuries and exposure to neurotoxins. The prejudice here was worsened by the juror's expressed openness to a mitigation case as had been previewed in *voir dire*. As a result of counsel's abysmal failure to investigate and present such evidence, the jurors were prejudicially deprived of an opportunity to consider such factors and render a verdict for life.

In this case, the state court decision was unreasonable because, based upon the uncontested factual habeas corpus record before it, when reweighing the

mitigation and aggravation evidence adduced from the habeas corpus record, it failed to give proper credence to the readily available mitigation evidence of a tragic family history, childhood sexual abuse, neurotoxin exposure, brain damage and other childhood trauma that Catlin's trial counsel failed to investigate and present. Catlin was prejudiced by counsel's deficient performance in failing to investigate this compelling evidence and present it at trial.

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: October 3, 2025

Respectfully submitted,

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