

In the Supreme Court of the United States

MICHAEL STEPHEN COMBS,

Petitioner,

v.

NATHAN GAUGHAN, WARDEN,

Respondent.

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

BRIEF IN OPPOSITION

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October 23, 2026

**CAPITAL CASE
QUESTION PRESENTED**

Whether the court of appeals erred in holding that the California Supreme Court's denial of petitioner's penalty-phase ineffective assistance of counsel claim was not contrary to or an unreasonable application of clearly established federal law.

DIRECTLY RELATED PROCEEDINGS

Supreme Court of the United States:

Combs v. California, No. 04-9588 (certiorari denied June 6, 2005).

United States Court of Appeals for the Ninth Circuit:

Combs v. Broomfield, No. 19-99010 (opinion issued March 12, 2026) (this case below).

United States District Court for the Central District of California:

Combs v. Davis, No. 2:05-cv-04777-ODW (judgment entered October 4, 2019) (this case below).

California Supreme Court:

In re Combs, No. S134705 (state habeas petition denied July 11, 2012).

People v. Combs, No. S033975 (judgment affirmed December 16, 2004).

Superior Court of the State of California, San Bernardino County:

People v. Combs, No. BCR 2436 (judgment entered June 21, 1993).

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STATEMENT

Petitioner Michael Stephen Combs was sentenced to death after a jury found him guilty for the murder of Janine Lee. Pet. App. A 5. Although Combs raised various claims for habeas review below, this petition is based solely on his claim that trial counsel conducted an inadequate investigation at the penalty phase by failing to “exhaust[]” a search for Combs’s biological mother. Pet. 18.

1. Combs and Janine Lee worked together in Barstow, California. Pet. App. A 6. On October 24, 1990, Combs asked Lee to drive him and Cynthia Purcell (who Combs was “go[ing] out” with at the time (Pet. App. K 231)) to nearby Calico. Pet. App. A 6-7. Lee agreed. *Id.* at 7.

Later that same day, Lee was found dead in a canyon near Calico. Pet. App. A 6. Lee had been bound and beaten. *Id.* Her primary cause of death was strangulation, and the secondary cause was blunt force trauma to her head. *Id.* The next day, Lee’s father reported that someone had tried to cash a check on an account he held with his daughter. *Id.* at 7.

About a week after Lee’s body was found, Combs and Purcell got into a car accident in Arizona. Pet. App. A 7. They were driving Lee’s car, which had been reported stolen. *Id.* An investigating officer arrested Combs and Purcell. *Id.* A search of the car turned up evidence related to Lee’s homicide, including a nylon cord that matched the cord used to bind Lee, a flashlight consistent with the blunt force trauma to Lee’s head, her wallet, her checkbook, and a check made payable to Combs. *Id.*

The day of his arrest, Combs gave a recorded confession. Pet. App. A 7. Combs admitted that he and Purcell had murdered Lee so they could steal her car and money. *Id.* According to Combs, the whole thing was his plan. *Id.* Combs described how he and Purcell tricked Lee into taking them to Calico, strangled her, hit her in the head with rocks and a flashlight, dumped her body in the canyon, and drove away in her car. *Id.* When asked if he regretted what he did, Combs expressed regret that Lee did not have more money. *Id.*

2. In February 1993, a jury convicted Combs of first-degree murder. Pet. App. A 9. The jury found true three special circumstances that rendered Combs eligible for the death penalty: he had committed the murder while on release pending other charges, he had laid in wait, and he had murdered Lee in commission of a robbery. *Id.* at 9-10.

At the penalty phase, the prosecution relied on the circumstances of Lee's murder, as well as evidence of Combs's prior offenses, which included various juvenile adjudications and prior felony convictions. Pet. App. A 10. The prosecution also presented evidence that, on three different occasions while in jail, Combs had threatened violence against himself and others. *Id.*

Defense counsel called numerous lay and expert witnesses on Combs's behalf. Pet. App. A 10. Those witnesses testified in detail regarding Combs's social history, learning disabilities, difficulty in school, and medical and psychiatric history. *Id.* For example, Dr. John Graves diagnosed Combs with post-traumatic stress disorder and a mixed-type personality disorder. *Id.* He

further opined that Combs's methamphetamine intoxication at the time of the murder aggravated his manic-depressive illness. *Id.* Dr. Edward Fischer gave Combs "a battery of tests" and opined that Combs showed signs of brain dysfunction present from birth or an early age, along with schizophrenia and mania. *Id.* at 11. Dr. Francis Michael Crinella performed additional tests and testified that Combs had brain abnormalities and lesions, and he opined that Combs suffered from organic brain syndrome, which occurred either prenatally or early in life. *Id.* Dr. Crinella also opined that fetal alcohol syndrome or prenatal exposure to drugs were potential explanations for Combs's brain lesions. *Id.*

In rebuttal, the prosecution called Dr. Harvey Oshrin, who diagnosed Combs with no mental illness and a probable antisocial personality disorder. Pet. App. MM 1353, 1360-1361. He acknowledged Combs's brain lesions but did not believe Combs suffered from an organic brain disorder. *Id.* at 1362-1364. The prosecution also called a nurse who worked at the jail where Combs was incarcerated awaiting trial in December 1992. Pet. App. LL 1342, 1344. Combs had told the nurse that his goal was "to get a mental health illness diagnosis hoping to get a lesser charge," and that he had inflicted various wounds on himself while incarcerated in an attempt to "manipulat[e] . . . the staff." *Id.* at 1344.

The jury returned a verdict of death. Pet. App. A 11; Pet. App. F 214-218.

3. The California Supreme Court affirmed the judgment and sentence on direct appeal. *People v. Combs*, 34 Cal. 4th 821 (2004). This Court denied Combs's petition for a writ of certiorari. *Combs v. California*, 545 U.S. 1107 (2005) (No. 04-9588).

4. Combs filed a state habeas petition that included the claim he presently alleges: that trial counsel provided ineffective assistance at the penalty phase by failing to adequately investigate Combs's biological family history. Pet. 15.¹ The California Supreme Court summarily denied that aspect of the petition. Pet. App. E 213.

5. Combs filed a federal habeas petition. Pet. 15; Pet. App. Z 467. The district court denied the petition. Pet. App. C 88-211. As to the claim at issue here, the court applied the test for ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 669 (1984), and the habeas standard of review under 28 U.S.C. § 2254(d). *See* Pet. App. C 102-104 (describing these standards); *see also id.* at 134-135, 138-142 (applying these standards to the present habeas claim). The court observed that Combs's trial counsel searched extensively for Combs's biological parents. *See generally id.* at 136-137, 138-139. Counsel also presented extensive evidence at the penalty phase that Combs experienced brain damage early in life and suffered from various mental conditions. *Id.* at 140, 147-148. The court thus held that Combs had

¹ Combs's trial counsel died sometime before March 2006. C.A. S.E.R. 115, 117.

not shown that the state court unreasonably determined the facts or misapplied the law in denying Combs's ineffective assistance claim. *Id.* at 142. The court nevertheless granted a certificate of appealability as to that claim. Pet. App. B 86-87.

6. The court of appeals affirmed, holding that the California Supreme Court reasonably could have found that Combs's claim failed the "performance prong" of *Strickland*'s test. Pet. App. A 19. As the court of appeals explained, this was "not a case where counsel conducted a cursory investigation of potential mitigating evidence or ignored obvious leads." *Id.* Instead, the record established that "trial counsel conducted an adequate investigation and search for Combs' biological mother." *Id.* at 20.

The court highlighted some of the affirmative steps trial counsel took to find Combs's mother. For example, the court noted that a defense investigator had identified Combs's parents and verified their California address when Combs was born, but that further leads to people in California matching their names had proven "negative." Pet. App. A at 20. The court further observed that when the investigator later discovered that someone with the name of Combs's birth mother might be living under the remarried name of Shirley Ann Miller in Wisconsin, he visited two Wisconsin towns connected to Miller but found her at neither. *Id.* Given these substantial efforts, the court concluded that trial counsel's investigation "did not fall below an objective standard of reasonableness." *Id.* at 21.

The court of appeals reached this conclusion despite Combs's complaints about trial counsel's alleged failure "to check driver's licenses or social security records in Texas." Pet. App. A 22. As the court explained, there was no evidence that further attempts to locate Combs's biological mother in Texas would have been successful. *Id.* The record showed that Combs's mother did not work while living in Texas, and to the extent she ever obtained a Texas driver's license, it was not until "the summer of 1993, or possibly in the spring." *Id.* at 22 & n.3. But that would have come too late to be helpful to the defense investigator's search: the guilt phase of Combs's trial ended with a guilty verdict on February 25, 1993, and the penalty phase ended with a death verdict less than two months later on April 13, 1993. *See id.*

Because trial counsel's search for Combs's biological mother was constitutionally adequate, the court of appeals did not examine whether the habeas claim at issue in this petition could satisfy *Strickland's* prejudice prong. *See* Pet. App. A 19. However, regarding Combs's separate—but related—claim of whether trial counsel had provided ineffective assistance by failing to provide defense experts with adequate information as to "a hereditary aspect to his bipolar disorder or fetal alcohol spectrum disorders (FASD)," the court of appeals held that the "California Supreme Court could have reasonably concluded that Combs failed to show that he was prejudiced" by this alleged deficiency. *Id.* at 33.

The court of appeals offered several possible reasons for rejecting Combs's claim for want of prejudice. *See* Pet. App. A 34-35. For example, although Combs's habeas experts had relied on a 2006 declaration from Combs's biological mother regarding her prenatal drug and alcohol use to support their opinions that Combs may have suffered from FASD, Combs's mother had repudiated critical portions of that declaration in a 2011 deposition. Pet. App. A 34. And in any event, the court reasoned that "the California Supreme Court could have reasonably concluded that additional testimony" concerning Combs's claimed brain damage "would have been outweighed by the strong evidence" that supported Combs's death sentence. *Id.* at 35.

ARGUMENT

The court of appeals' rejection of Combs's claim of ineffective assistance of counsel was correct under well-settled law. Combs does not assert any conflict of authority with decisions of other courts. Nor is there any other reason for further review.

1. The standards that apply to Combs's claim are well established. An ineffective assistance claim must demonstrate that (1) "counsel's performance was deficient," and (2) the "deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 669, 687 (1984). Under the performance prong, there is a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. And under the prejudice prong, Combs must establish "a reasonable possibility that, but for

counsel's unprofessional errors, the result of the proceedings would have been different." *Id.* at 694.

Where a state court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the state court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). And where, as here, the state court summarily denied the claim, the federal court must determine what arguments or theories "could have supported[] the state court's decision," and may grant relief only if each such theory was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 102-103 (2011).

Strickland's performance inquiry and Section 2254(d) "are both highly deferential," so "when the two apply in tandem," it is "all the more difficult" to "establish[] that a state court's application of *Strickland* was unreasonable under § 2254(d)." *Richter*, 562 U.S. at 105 (internal quotation marks omitted). Applying Section 2254(d), the question under the deficient performance prong is "whether there is any reasonable argument that counsel satisfied *Strickland's* deferential standard." *Id.* A federal court may grant relief "only if *every* fairminded jurist would agree that *every* reasonable lawyer would have

made a different decision.” *Dunn v. Reeves*, 594 U.S. 731, 739-740 (2021) (per curiam) (internal brackets and quotation marks omitted).

2. The court of appeals correctly applied these standards to reject Combs’s claim that trial counsel provided ineffective assistance by failing to “exhaust[]” the search for his biological mother. *Contra* Pet. 18-24.

a. When evaluating failure-to-investigate claims, “*Strickland* does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing.” *Wiggins v. Smith*, 539 U.S. 510, 532 (2003). Rather, counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Andrus v. Texas*, 590 U.S. 806, 814 (2020) (internal quotation marks omitted). “In judging the defense’s investigation,” “hindsight is discounted by pegging adequacy to ‘counsel’s perspective at the time’ investigative decisions are made, and by giving a ‘heavy measure of deference to counsel’s judgments.’” *Rompilla v. Beard*, 545 U.S. 374, 381 (2005) (quoting *Strickland*, 466 U.S. at 689, 691). “[T]he duty to investigate does not force defense lawyers to scour the globe on the off chance something will turn up.” *Id.* at 383.

As the court of appeals recognized, a “fairminded jurist” could certainly conclude that trial counsel’s search for Combs’s biological parents was constitutionally adequate. *Dunn*, 594 U.S. at 731; *see* Pet. App. A 20. The investigation began with a search for Comb’s biological parents in California,

resulting in several “negative leads” that were “checked and eliminated.” Pet. App. J 225-226. It included a subpoena for medical records from Combs’s mother, which largely proved futile because those records “revealed much of the same information . . . received earlier” in the investigation. *Id.* at 226. It extended to trial counsel and the defense investigator traveling to Wisconsin to follow up on a potential lead based on drivers’ license records for Combs’s mother. And it ended after the search in Wisconsin led them to “an empty spot” in a “run down trailer park.” Pet. App. W 422.

Based on trial counsel’s substantial investigative efforts, it was entirely reasonable for trial counsel to conclude that “[a]ll investigative leads were checked with negative results.” Pet. App. J 226-227. Put differently, this was not a case where trial counsel conducted an “incomplete investigation” due to “inattention.” *Wiggins*, 539 U.S. at 526; *contra* Pet. 19-20. Nor was it a case where trial counsel had made no “reasonable efforts” to examine “readily available” evidence. *Rompilla*, 545 U.S. at 384; *contra* Pet. 20. Instead, trial counsel pursued a thorough investigation and made a reasonable decision to stop after exhausting numerous leads.

Combs nevertheless contends that trial counsel should have pursued additional leads indicating that Combs’s mother “had gone to Texas.” Pet. App. W 422; *see* Pet. 21-22. But trial counsel was not required to “scour the globe” for Combs’s mother. *Rompilla*, 545 U.S. at 383. And that is especially true in cases like this one, where investigators had already pursued numerous other

leads—all of which had proven to be unreliable. *See Wiggins*, 539 U.S. at 525 (investigation can be adequate where there is evidence to suggest that “further investigation would have been fruitless”). Indeed, as the court of appeals noted, it is unlikely that further investigation would have led to Combs’s mother. *See* Pet. App. A 22. The evidence showed that Combs’s mother only “stayed briefly” in her sister’s Texas garage sometime “in approximately 1993,” before moving to Oregon in 1994. Pet. App. U 416. She did not have a job in Texas and could not say for certain that she obtained a Texas driver’s license—thus making it unlikely that any search for her through public records would have borne fruit. C.A. E.R. 660-663; Pet. App. A 22 n.3. And even Combs’s post-conviction investigator admitted that Combs’s mother was “the hardest lady to catch up with.” C.A. E.R. 663; Pet. App. A 22.

Despite this admission, Combs alleges that trial counsel’s investigation must have been constitutionally inadequate because his post-conviction counsel located Combs’s mother “in less than a year.” Pet. 23. But “hindsight” must be “discounted” when assessing the adequacy of trial counsel’s investigation. *Rompilla*, 545 U.S. at 381. The relevant question is whether counsel’s performance was adequate in light of “counsel’s perspective at the time investigative decisions [were] made.” *Id.* (internal quotation marks omitted). And here, as the court of appeals explained, the “evidence available at the time” of trial counsel’s investigation was unlikely to lead to Combs’s mother. Pet. App. A 22 & n.3.

Combs’s final attempt to undermine the adequacy of trial counsel’s efforts also fails. He relies on the fact that trial counsel sought a subpoena of Combs’s mother’s medical records shortly before trial to argue that counsel’s investigation “began nearly two years too late.” Pet. 21; *see id.* at 11. But Combs did not raise the “substance” of this untimeliness argument before the California Supreme Court or in the federal courts below, which is fatal to his claim. *Anderson v. Harless*, 459 U.S. 4, 6 (1982); *see* C.A. E.R. 407-437 (focusing only on counsel’s decision to end investigation); C.A. E.R. 2297-2320 (same). And regardless, there is no evidentiary support for this claim. The defense investigator explained that the records received as a result of this subpoena disclosed “much of the same information [he] had *received earlier*”—*i.e.*, after the investigator had already begun his search for Combs’s parents and exhausted numerous other leads. Pet. App. J 226 (emphasis added). Combs’s allegation thus does not cast doubt on the court of appeals’ conclusion that the California Supreme Court could have reasonably denied Combs’s failure-to-investigate habeas claim. *See* Pet. App. A 19.

b. Combs’s focus on trial counsel’s search for his biological mother also ignores the significant efforts that counsel undertook to present other forms of mitigating evidence—and the strategic reasons for doing so. *See Strickland*, 466 U.S. at 690 (“[S]trategic choices made after thorough investigation . . . are virtually unchallengeable.”).

Trial counsel thoroughly investigated and presented evidence of Combs's background from the time of his adoption at eighteen months until his arrest for Lee's murder. *People v. Combs*, 34 Cal. 4th 821, 834-836 (2004). Counsel called as witnesses several relatives and schoolteachers, as well as two psychologists and a psychiatrist who had recently evaluated Combs. Pet. App. A 10-11, 22-25. These experts testified that Combs had sustained brain damage early in life, diagnosed Combs with various mental conditions, and explained how Combs's conditions affected his behavior. *See, e.g.*, Pet. App. HH 580-581 (expert explaining how Combs's "organic brain syndrome" and "two psychiatric disorders" caused him to "do abnormal things"); Pet. App. LL 1139-1140 (another expert testifying as to Combs's "manic depressive illness"); Pet. App. LL 1241-1242 (yet another expert testifying about Combs's "brain damage" and "borderline personality" disorder).

Against this backdrop, trial counsel cannot be said to have put on a "halfhearted mitigation case," *Wiggins*, 539 U.S. at 526, or overlooked a "voluminous amount of favorable evidence," *Williams v. Taylor*, 529 U.S. 362, 364 (2000). Instead, counsel's presentation of evidence reflected a "strategic decision, made after reasonable investigation, to focus on Combs's life after he was adopted." Pet. App. A 25. Given the paucity of information relating to Combs's pre-adoption life and the contrasting wealth of information regarding his life post-adoption, a "fairminded jurist" could conclude that trial counsel's performance was adequate. *Dunn*, 594 U.S. at 739; *see* Pet. App. A 24-25.

3. The California Supreme Court also could have reasonably rejected Combs’s habeas claim for failure to establish prejudice. Prejudice at the penalty phase is analyzed by “reweigh[ing] the evidence in aggravation against the totality of available mitigating evidence” and examining whether “at least one juror would have struck a different balance.” *Wiggins*, 539 U.S. at 534, 537. The “likelihood of a different result must be substantial, not just conceivable.” *Richter*, 562 U.S. at 112.

Here, Combs’s prejudice claim relies on the theory that—had trial counsel found his mother—her testimony “would have changed the penalty phase presentation from multiple inconsistent, speculative diagnoses into a coherent narrative of the cause of Combs’s organic brain damage.” Pet. 25. More specifically, Combs argues that his mother’s “concrete testimony” would have allowed for a unified presentation of expert testimony that Combs suffered from Fetal Alcohol Spectrum Disorder (“FASD”). Pet. 25-28. But a “fairminded jurist” could conclude that this theory falls short of establishing prejudice. *Dunn*, 594 U.S. at 739.

To start, a state court could reasonably choose to give little weight to Combs’s proposed mitigating evidence. Combs’s theory is built entirely on statements from his mother’s 2006 declaration, in which she described her heavy use of drugs and alcohol while pregnant. *See* Pet. 25-28. But as the court of appeals observed, Combs’s mother “later repudiated” critical parts of that declaration. Pet. App. A 34. For example, although Combs’s mother

stated in 2006 that she smoked a “full lunch baggie” of marijuana and “drank [twelve cans] of beer per week” while pregnant, Pet. App. U 414, she later testified that she only had a “little bitty” amount of marijuana and “a six-pack” of beer “every two weeks,” Pet. App. Y 465. Given this conflicting testimony, it is unlikely that defense experts would have coalesced around a single “coherent” diagnosis of FASD at the penalty-phase trial. Pet. 25.

But even crediting Combs’s assumption that experts would have coalesced around a single FASD diagnosis, it remains unclear why that would have mattered. As the court of appeals observed, regardless of their “different diagnoses,” “all the penalty experts had testified that Combs suffered from brain damage.” Pet. App. A 31. The jury was thus acutely aware that Combs was suffering from brain damage and heard multiple experts testify as to how this influenced his behavior. *Supra* pp. 3, 13.² Combs identifies no reason to believe that the mere addition of a “diagnostic label[]” (Pet. App. N. 243) to explain the cause of that brain damage was “substantial[ly]” likely to make a difference to the jury’s penalty-phase decision. *Richter*, 562 U.S. at 112.

In any event, the California Supreme Court could reasonably conclude that Combs’s prejudice claim fails given the significant countervailing aggravating evidence. As the court of appeals observed, the evidence against

² For similar reasons, Combs’s reliance on post-conviction expert testimony that he was not “malingering evidence of brain damage” is unpersuasive. Pet. 28. The jury was already presented with voluminous evidence of his brain damage, and an additional diagnosis as to the cause of that damage would not have changed that underlying evidence.

Combs was “strong.” Pet. App. A 31. That evidence included not just “Combs’ financial motive for killing Lee, his pre-planning and selection of Lee as his victim, and his execution of his plan to kill Lee,” *id.*, but also Combs’s prior offenses, his lack of remorse, and his attempts to use his mental conditions to get a lesser charge and manipulate hospital staff, *see supra* pp. 2-3. Faced with this evidentiary record, the state court’s decision to reject Combs’s *Strickland* claim was not unreasonable. *See Schriro v. Landrigan*, 550 U.S. 465, 480-481 (2007) (evidence of “‘cognitive and behavioral deficiencies consistent with fetal alcohol syndrome’” was “weak” compared to aggravating evidence).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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