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JUNE 13 THROUGH JUNE 21, 2022

REBECCA A. WOMELDORF

REPORTER OF DECISIONS

Reporter's Note

Orders commencing with June 13, 2022, begin with page 1004. The preceding orders in 596 U. S., from March 28 through June 9, 2022, were reported in Part 1, at 901–1003. These page numbers are the same as they will be in the bound volume, thus making the *permanent* citations available upon publication of the preliminary prints of the United States Reports.

June 13, 2022

Certiorari Granted—Vacated and Remanded

No. 21–1078. Office of the United States Trustee *v.* John Q. Hammons Fall 2006, LLC, et al. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Siegel* v. *Fitzgerald*, 596 U. S. 464 (2022). Reported below: 15 F. 4th 1011.

Certiorari Dismissed

No. 21–7851. Chhim *v.* City of Houston, Texas, et al. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 21M126. Montano *v.* United States. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 20–1199. Students for Fair Admissions, Inc. *v.* President and Fellows of Harvard College. C. A. 1st Cir.; and

No. 21–707. Students for Fair Admissions, Inc. *v.* University of North Carolina et al. C. A. 4th Cir. [Certiorari granted, 595 U. S. 1184.] Motion of respondent Cecilia Polanco et al. for leave to file volume IV of the joint appendix under seal in No. 21–707 granted.

No. 21–7579. Siddeeq *v.* DeKalb County, Georgia. C. A. 11th Cir.; and

No. 21–7595. O. C. *v.* V. C. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until July 5, 2022, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 21–7881. In re Sulzner. Petition for writ of mandamus denied.

Certiorari Denied

No. 21–151. Uvukansi *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 21–920. Willman *v.* United States (Reported below: 81 M. J. 355); Frantz *v.* United States (81 M. J. 452); Turner *v.* nUnited States (81 M. J. 451); and Williams *v.* United States (81 M. J. 450). C. A. Armed Forces. Certiorari denied.

No. 21–994. Kapoor *v.* United States; and
No. 21–6952. Lee *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 12 F. 4th 1.

No. 21–1014. T. O., a Child, et al. *v.* Fort Bend Independent School District et al. C. A. 5th Cir. Certiorari denied. Reported below: 2 F. 4th 407.

No. 21–1017. Jewel et al. *v.* National Security Agency et al. C. A. 9th Cir. Certiorari denied. Reported below: 856 Fed. Appx. 640.

No. 21–1046. Faculty, Alumni, and Students Opposed to Racial Preferences *v.* New York University. C. A. 2d Cir. Certiorari denied. Reported below: 11 F. 4th 68.

No. 21–1089. Smith et al. *v.* United States;
No. 21–7083. Rich *v.* United States;
No. 21–7095. Darrah *v.* United States; and
No. 21–7119. Carlos Castano *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 14 F. 4th 489.

No. 21–1218. Ayres et al. *v.* Indirect Purchaser Plaintiffs et al. C. A. 9th Cir. Certiorari denied.

No. 21–1223. Ohana Military Communities, LLC, et al. *v.* Lake et al. C. A. 9th Cir. Certiorari denied. Reported below: 14 F. 4th 993.

No. 21–1228. Ameranth, Inc. *v.* Olo, Inc. C. A. Fed. Cir. Certiorari denied.

No. 21–1324. Zarba et al. *v.* Town of Oak Bluffs, Massachusetts, et al. C. A. 1st Cir. Certiorari denied.

No. 21–1337. Gillis *v.* Gillis. Ct. App. Ore. Certiorari denied. Reported below: 304 Ore. App. 646, 468 P. 3d 495.

No. 21–1350. Jordan *v.* Department of Labor et al. C. A. 8th Cir. Certiorari denied.

No. 21–1356. M. H. *v.* West Virginia Department of Health and Human Services et al. Sup. Ct. App. W. Va. Certiorari denied.

No. 21–1359. Corliss *v.* Crossroads Financing, LLC, et al. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 21–1363. Lavergne *v.* Vannoy, Warden. C. A. 5th Cir. Certiorari denied.

No. 21–1365. Tidiri *v.* Board of Regents et al. C. A. 8th Cir. Certiorari denied. Reported below: 859 Fed. Appx. 745.

No. 21–1388. Best Payphones, Inc. *v.* Public Service Commission of New York et al. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 192 App. Div. 3d 1416, 145 N. Y. S. 3d 173.

No. 21–1415. Doe *v.* Garland, Attorney General, et al. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 4th 941.

No. 21–1420. Yili You *v.* Garland, Attorney General. C. A. 9th Cir. Certiorari denied.

No. 21–1421. Kline *v.* Ahuja, Director, Office of Personnel Management. C. A. D. C. Cir. Certiorari denied.

No. 21–1425. Castro Santos *v.* White et al. C. A. 5th Cir. Certiorari denied. Reported below: 18 F. 4th 472.

No. 21–1433. Boatright *v.* U. S. Bancorp et al. C. A. 2d Cir. Certiorari denied.

No. 21–1439. Collins *v.* Cain, Commissioner, Mississippi Department of Corrections. C. A. 5th Cir. Certiorari denied.

No. 21–1452. Cwik *v.* Georgia. Ct. App. Ga. Certiorari denied. Reported below: 360 Ga. App. 525, 859 S. E. 2d 142.

No. 21–1459. Levien et al. *v.* HIBU PLC et al. C. A. 3d Cir. Certiorari denied.

No. 21–1461. Vercellino *v.* Optum Insight, Inc., et al. C. A. 8th Cir. Certiorari denied. Reported below: 26 F. 4th 464.

No. 21–7061. Balentine *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 21–7076. Maurival *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 861 Fed. Appx. 388.

No. 21–7082. Speer *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 860 Fed. Appx. 66.

No. 21–7329. Taylor *v.* Powell, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 7 F. 4th 920.

No. 21–7335. Flores *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 21–7570. Clayborne *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied.

No. 21–7572. Shropshire *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 21–7573. Lillie *v.* Iowa. Dist. Ct. Woodbury County, Iowa. Certiorari denied.

No. 21–7577. Kerr *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 313 So. 3d 586.

No. 21–7584. Dickerson *v.* South Carolina. Sup. Ct. S. C. Certiorari denied.

No. 21–7591. Lee *v.* Washington (two judgments). Ct. App. Wash. Certiorari denied.

No. 21–7592. Deroven *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 21–7593. Young *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 21–7602. Kelley *v.* Feeney. Sup. Ct. N. H. Certiorari denied.

No. 21–7603. Evans *v.* Stange, Warden. C. A. 8th Cir. Certiorari denied.

No. 21–7607. Sims *v.* Michigan. Cir. Ct. Saginaw County, Mich. Certiorari denied.

No. 21–7608. Spearman *v.* Whitmer, Governor of Michigan, et al. C. A. 6th Cir. Certiorari denied.

No. 21–7614. Tauscher *v.* Donison et al. C. A. 9th Cir. Certiorari denied.

No. 21–7617. Wyre *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 21–7618. Williams *v.* Texas. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 21–7620. Hall *v.* United States et al. C. A. 8th Cir. Certiorari denied.

No. 21–7637. Adams *v.* Hooper, Warden. C. A. 5th Cir. Certiorari denied.

No. 21–7642. Weathers *v.* Nebraska. Ct. App. Neb. Certiorari denied. Reported below: 30 Neb. App. ——.

No. 21–7695. Hatcher *v.* Valentine, Warden. C. A. 6th Cir. Certiorari denied.

No. 21–7708. Patel *v.* Rockwood. C. A. 2d Cir. Certiorari denied.

No. 21–7713. Neely *v.* Superior Court of California, Sacramento County. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 21–7719. Wall *v.* Kiser, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 21 F. 4th 266.

No. 21–7737. Douglas *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 2021 WI App 36, 906 N. W. 2d 633.

No. 21–7769. Tucker *v.* United States; and
No. 21–7892. Samuels *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 12 F. 4th 804.

No. 21–7787. Hibbard *v.* McDonough, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied.

No. 21–7848. Ibarra-Ozuna *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 21–7852. Salazar-Figueroa *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7859. Fish *v.* United States. C. A. 10th Cir. Certiorari denied.

No. 21–7860. Hobbs *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 24 F. 4th 965.

No. 21–7865. Brooks *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 21–7866. Zamudio *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7867. Mackey *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 21–7870. Cantoni *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 21–7873. Branner *v.* Georgia. Sup. Ct. Ga. Certiorari denied.

No. 21–7874. Meyer *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 19 F. 4th 1028.

No. 21–7875. Pearson *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 21–7880. Riley *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7891. Ramirez-Frechel *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 23 F. 4th 69.

No. 21–7895. Mayes *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 21–7920. Wheeler *v.* Dixon, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 21–1064. Louisiana Public Service Commission *v.* Federal Energy Regulatory Commission. C. A. D. C. Cir. Certiorari denied. Justice Kavanaugh took no part in the consideration or decision of this petition. Reported below: 10 F. 4th 839.

No. 21–1066. Washington Bankers Assn. et al. *v.* Washington et al. Sup. Ct. Wash. Motion of Western Bankers Association for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 198 Wash. 2d 418, 495 P. 3d 808.

No. 21–1211. George *v.* House of Hope Recovery et al. C. A. 9th Cir. Motion of Law School Clinics for leave to file brief as *amici curiae* granted. Certiorari denied.

No. 21–1322. Sensenich *v.* PHH Mortgage Corp. C. A. 2d Cir. Motions of Hon. Melanie Cyganowski et al. and National Association of Chapter 13 Trustees for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 6 F. 4th 503.

No. 21–6001. Andrus *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 622 S. W. 3d 892.

Justice Sotomayor, with whom Justice Breyer and Justice Kagan join, dissenting.

A state habeas court recommended vacating petitioner Terence Andrus' death sentence after an 8-day hearing that uncovered a plethora of mitigating evidence that trial counsel had failed to investigate or present. The court held that Andrus had received ineffective assistance of counsel at the punishment phase of his trial. See *Strickland* v. *Washington*, 466 U. S. 668 (1984). The Court of Criminal Appeals of Texas reversed; this Court summarily vacated and remanded. See *Andrus* v. *Texas*, 590 U. S. 806 (2020) (*per curiam*).

This Court held that counsel had rendered constitutionally deficient performance. That conclusion was based on an "apparent 'tidal wave'" of "compelling" and "powerful mitigating evidence" in the habeas record, none of which counsel presented to the jury. *Id.*, at 814, 816, 823. The Court also found counsel ineffective for several specific failures to investigate and rebut the State's case in aggravation. *Id.*, at 818–821. The Court remanded to allow the Texas court to evaluate in the first instance whether, in light of the Court's holding as to deficient performance, Andrus had shown prejudice under *Strickland*.

On remand, the Court of Criminal Appeals, in a divided 5-to-4 decision, failed to follow this Court's ruling. Instead of properly weighing the habeas evidence as a whole, the Texas court concluded that Andrus failed to establish prejudice (and therefore denied habeas relief) based on its disagreement with, and rejection of, the determinations underlying this Court's holding that Andrus' counsel had rendered deficient performance. As a result, the dissenting judges below explained, the Texas court's opinion was irreconcilable with this Court's prior decision and barred by vertical *stare decisis* and the law of the case.

I agree with the dissenting judges below. Andrus' case cries out for intervention, and it is particularly vital that this Court act when necessary to protect against defiance of its precedents. The Court, however, denies certiorari. I would summarily reverse, and I respectfully dissent from the Court's failure to do so.

I

A

This Court's prior decision outlined the events of Andrus' trial and habeas proceedings. See *Andrus*, 590 U. S., at 808–813. Only a brief summary follows.

In 2008, at age 20, Andrus killed Avelino Diaz and a bystander, Kim-Phuong Vu Bui, during an unsuccessful carjacking while under the influence of PCP-laced marijuana. The State charged Andrus with capital murder. At the guilt phase of trial, Andrus' counsel did not put on a defense case and informed the jury, in closing, that "the punishment phase" was "where we are going to be fighting." 45 Tr. 18.

But defense counsel hardly put up a fight at the punishment phase. Counsel made no opening statement and allowed the State to put on its case in aggravation essentially without challenge. After the State rested, the jury heard a mere shadow of a case in mitigation. See *Andrus*, 590 U. S., at 808–810. Andrus' counsel presented only a handful of witnesses, none of whom testified to the extreme neglect, privations, and trauma of Andrus' youth or his mental-health struggles as an adult. One of the witnesses, Andrus' mother, directly contradicted Andrus' own testimony as to his childhood, testimony that was thoroughly corroborated in subsequent habeas proceedings. Counsel thus enabled the State to argue credibly in closing that there was no piece of evidence before the jury "that reduce[d]" Andrus' "moral blameworthiness." 52 Tr. 49. "[N]ot one." *Ibid.* On this incomplete and corrupted presentation, the jury sentenced Andrus to death.

After the state appellate courts affirmed Andrus' conviction and sentence, he filed a state habeas application, now represented by competent counsel. Andrus alleged in the main that trial counsel had been ineffective for failing to investigate or present available evidence at the penalty phase. Over the course of an 8-day evidentiary hearing, Andrus presented a "tidal wave of information . . . with regard to mitigation" that the jury never heard. 7 Habeas Tr. 101. Based on this abundance of new evidence, see *Andrus*, 590 U. S., at 810–813, the state habeas court granted relief and ordered a new punishment trial.

The Court of Criminal Appeals of Texas reversed. In a unanimous order, it concluded that Andrus had "fail[ed] to meet his burden under *Strickland*." App. to Pet. for Cert. 29. The court "decline[d] to adopt any of the trial court's findings of fact and conclusion of law" and denied relief based on "[its] own review of the record." *Ibid.*

B

Andrus petitioned for this Court's review. The Court granted certiorari, summarily vacated the decision below, and remanded for further proceedings. See *Andrus*, 590 U. S., at 824. The Court held, after a review of the record from the trial and habeas proceedings, that Andrus had met his burden of establishing constitutionally deficient performance by counsel under the first prong of *Strickland*.

This Court identified three categories in which counsel's performance had fallen short. First, the Court held counsel ineffective for "perform[ing] almost no mitigation investigation, overlooking vast tranches of mitigating evidence" (including evidence of Andrus' disturbing childhood, the trauma he experienced in juvenile detention, and his lifelong mental-health struggles) that would have been "compelling" and "powerful." *Andrus*, 590 U. S., at 814, 816. Second, the Court reasoned, counsel's mystifying introduction of "seemingly *aggravating* evidence," such as testimony from Andrus' mother that downplayed the horrors of his childhood and contradicted Andrus' own testimony, confirmed the "gaping distance" between his performance at trial and the constitutional minimum. *Id.*, at 817. Third, the Court concluded that counsel had failed to investigate the State's case in aggravation and thus did not rebut critical aggravating evidence. *Id.*, at 818–819.

Having found deficient performance, the Court remanded for a determination of prejudice under the second prong of *Strickland*. "[P]rejudice exists," the Court explained, "if there is a reasonable probability that, but for his counsel's ineffectiveness, the jury would have made a different judgment about whether Andrus deserved the death penalty as opposed to a lesser sentence." *Andrus*, 590 U. S., at 821. The Court cautioned that the Court of Criminal Appeals "must consider 'the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding'—and 'reweig[h] it against the evidence in aggravation.'" *Ibid.* (quoting *Williams* v. *Taylor*, 529 U. S. 362, 397–398 (2000); alteration in original). Because Texas law requires a unanimous jury recommendation to impose death, "prejudice here requires only 'a reasonable probability that at least one juror would have struck a different balance' regarding Andrus' 'moral culpability.'" *Andrus*, 590 U. S., at 822 (quoting *Wiggins* v. *Smith*, 539 U. S. 510, 537–538 (2003); citing Tex. Code Crim. Proc. Ann., Art. 37.071, § 2(e)(1) (Vernon 2006)).

C

On remand, the Texas Court of Criminal Appeals denied relief, this time by a divided vote of five to four. *Ex parte Andrus*, 622 S. W. 3d 892 (2021).

In summarizing this Court's opinion vacating and remanding, the majority of the Texas court four times described this Court's conclusions as what the Court "believed." *Id.*, at 896–897. Twice more, the majority caveated this Court's determinations with "[a]ccording to the Court." *Ibid.* Most strikingly, the majority described what it called "certain *alleged* failures by counsel" from this Court's opinion, which had directly held that these failures constituted deficient performance under *Strickland* prong one. 622 S. W. 3d, at 897 (emphasis added); see *Andrus*, 590 U. S., at 814–821.

The majority proceeded to find no prejudice under *Strickland* prong two "because the mitigating evidence offered at the habeas stage was relatively weak . . . and because the aggravating evidence was strong." 622 S. W. 3d, at 899–900. The majority based its decision almost entirely on its disagreement with the conclusions underlying this Court's holding as to *Strickland* prong one. See, *e. g.*, 622 S. W. 3d, at 901 ("Although the Supreme Court described Applicant's infractions [while in juvenile detention] as 'notably mild,' we conclude that a jury would have been convinced otherwise"); *id.*, at 902 ("The Supreme Court discounted [Andrus' prior] crimes, but we do not"); *id.*, at 903–904 ("[T]he Supreme

Court . . . criticized" a photo array, but "we do not judge [it] to be unduly suggestive"). It accordingly dismissed the mitigating evidence this Court had found "compelling" and "powerful," *Andrus*, 590 U. S., at 814, 816, as "not particularly compelling" and "relatively weak," 622 S. W. 3d, at 893, 900, 906.

Judge Newell dissented, joined by three of his colleagues. All four had joined their court's prior decision denying relief and expressed the belief that this Court's decision to vacate and remand was mistaken. *Id.*, at 908. Even so, the dissent opined, this Court's "characterization of the mitigation evidence that [Andrus'] trial attorney failed to uncover was integral to the determination that [Andrus'] attorney's representation fell below prevailing professional norms." *Id.*, at 909. In the dissent's view, the majority was not free to depart from this Court's conclusions. *Ibid.*

The dissent also criticized the majority for misapplying the applicable prejudice standard. All Andrus had to show was "a reasonable probability that at least one juror would have struck a different balance . . . and voted to spare [Andrus'] life." *Ibid.* "Based upon the Supreme Court's characterization of the mitigation evidence in this case, [Andrus] has met that standard." *Ibid.*

Andrus now asks this Court to summarily reverse, Pet. for Cert. 40, supported by eight *amicus curiae* briefs. The Court, however, denies certiorari.

II

This Court previously held that Andrus received constitutionally deficient assistance of counsel. Andrus contends that he has shown that those deficiencies prejudiced him. See *Strickland*, 466 U. S., at 694. As noted, prejudice exists if there is a reasonable probability that, but for counsel's errors, a single juror " 'would have struck a different balance' regarding Andrus' 'moral culpability.' " *Andrus*, 590 U. S., at 822 (quoting *Wiggins*, 539 U. S., at 537–538). A court must evaluate "the totality of the available mitigation evidence . . . in reweighing it against the evidence in aggravation." *Williams*, 529 U. S., at 397–398.

Instead of weighing the totality of the evidence in a manner consistent with this Court's decision, the Court of Criminal Appeals violated vertical *stare decisis* and the law-of-the-case doctrine by rejecting or ignoring the conclusions of this Court. It did not acknowledge powerful record evidence that contradicted its reasoning, and when it did grapple with the evidence this

Court previously analyzed, it followed the views of the dissent from the Court's decision and not the holdings of this Court. As a result, it "either did not consider or unreasonably discounted" the evidence adduced in the habeas proceeding. *Porter* v. *McCollum*, 558 U. S. 30, 42 (2009) (*per curiam*). Applying the proper standard, Andrus is plainly entitled to relief, and the Texas court's contrary determination should be summarily reversed.

A

The Court of Criminal Appeals unmistakably erred in its analysis of prejudice as to both unpresented mitigating evidence and unexplored evidence rebutting the State's case in aggravation.

1

Throughout its opinion, the Texas court rejected or ignored this Court's conclusions as to the childhood mitigation and mental-health mitigation evidence adduced on habeas review. To the minimal extent that the Texas court's analysis of the mitigating evidence relied on any evidence this Court did not consider, that reliance does not withstand the slightest scrutiny. The following analysis highlights only a small fraction of the volumes of mitigating evidence in the habeas record.

Mitigating evidence—childhood. This Court previously held that Andrus' counsel performed deficiently in large part because counsel failed to "look into or present the myriad tragic circumstances that marked [his] life." *Andrus*, 590 U. S., at 815. As the Court outlined, "[t]he [habeas] evidence revealed a childhood marked by extreme neglect and privation." *Id.*, at 810. That evidence included affidavits, testimony, or both from two of Andrus' siblings, numerous other family friends and relatives, and two expert psychologists who investigated or evaluated Andrus' family circumstances, as well as many volumes of family medical and criminal records.

The habeas evidence showed that Andrus and his siblings were raised by a mother who engaged in prostitution, sold drugs, and habitually used drugs in front of the children. *Id.*, at 811. She exposed the children to physical and sexual abuse through her violent boyfriends, one of whom raped Andrus' younger half-sister when she was a child. *Id.*, at 810–811; see also *id.*, at 815 ("Andrus suffered 'very pronounced trauma' and posttraumatic stress disorder symptoms from, among other things, 'severe neglect' and exposure to domestic violence, substance abuse, and death in his childhood"). Beyond the evidence this Court specifically cited, expert habeas testimony established that "[w]itnessing domestic violence" was "traumatic" for Andrus, and that even if Andrus was not sexually abused himself, the consequences of the rape of his younger half-sister (notably, her removal from the family home) were emotionally disruptive for him, too. 6 Habeas Tr. 169, 218. There was also evidence that Andrus himself suffered physical abuse: His mother would beat him and his siblings with a board "until she got tired" and would enlist boyfriends to "hold the children down while she beat them" or beat them directly. 7 *id.*, at 127. Moreover, because Andrus' mother was so often absent or disoriented, she left her children to fend for themselves for extended periods, often without leaving them enough food to eat. *Andrus*, 590 U. S., at 811. Lacking a stable parental figure, Andrus assumed responsibility for his four siblings at around 12 years old: He would cook breakfast for them, get them ready for school, clean for them, help them with their homework, make them dinner, and put them to bed. *Ibid.*

The jury heard virtually none of this evidence; counsel presented only scattered snippets of testimony that Andrus was a good sibling and that his father was incarcerated for much of his childhood. Thus, the Court explained, counsel "overlook[ed] vast tranches" of "compelling" and "powerful" mitigating evidence. *Id.*, at 814, 816.[1]

This Court additionally held that counsel rendered deficient performance because he not only failed to put forward the mitigating evidence referred to above but also unwittingly aided the State's case in aggravation. The Court noted that counsel elicited testimony from Andrus' mother that "did not reveal any difficult circumstances in Andrus' childhood" but falsely "sketched a portrait of a tranquil upbringing, during which Andrus got himself into trouble despite his family's best efforts." *Id.*, at 809, 817. This portrait directly "undermined Andrus' own testimony." *Id.*, at 818. In fact, when Andrus testified that his mother sold drugs from their home, his counsel pointed out that she had said nothing

[1] Expert evidence on habeas review explained that Andrus' adverse childhood experiences caused "significant limitations in his childhood and adolescent development" that likely "formed the foundation for [his] negative life trajectory," including his "substance abuse, maladaptive behaviors, and ultimate resort to criminal violence." 13 Habeas Tr., Def. Exh. 5, p. 2; accord, 6 *id.*, at 152, 167–168.

to that end in her testimony. As this Court previously observed, "[w]hether counsel merely intended to provide Andrus an opportunity to explain the discrepancy (or, far worse, sought to signal that his client was being deceitful) the jury could have understood counsel's statements to insinuate that Andrus was lying," a suggestion counsel "did nothing to dislodge." *Ibid.*

On remand, the Court of Criminal Appeals found that Andrus failed to establish prejudice in part because the evidence of his horrific childhood "overlapped [with] evidence heard by the jury," save for some that was "not particularly compelling" and "relatively weak." 622 S. W. 3d, at 893, 900. In particular, the Texas court expressed doubt as to whether Andrus had suffered physical or sexual abuse, relying in part on a 2005 report stating that he denied physical abuse while in juvenile detention with the Texas Youth Commission (TYC). *Id.*, at 900. That directly ignored this Court's conclusion as to the devastating effects, and corresponding mitigating value, of *exposure* to such abuse. In addition, by relying on the 2005 TYC report to discount the possibility that Andrus suffered physical abuse, the court not only overlooked the habeas evidence of the details of his beatings but also neglected to address expert testimony establishing that it was "common" and "expected" for juvenile detainees to "deny having problems" in their homes so as to avoid displaying weakness. 7 Habeas Tr. 32.[2]

As to the purported overlap, the Court of Criminal Appeals stressed that some "evidence about family dysfunction" was presented to the jury. 622 S. W. 3d, at 900. It observed that An-

[2] The Court of Criminal Appeals also minimized the mitigating impact of Andrus' traumatic childhood because, while habeas evidence indicated that he was left hungry, he reportedly once told a "Dr. Brown" that he never went without food and did not testify to hunger at trial. 622 S. W. 3d, at 900–901. Here and elsewhere, the Texas court relied on representations in a letter from "Dr. Brown," a psychologist contacted at the last minute by deficient trial counsel and who received "limited life history documents." 13 Habeas Tr., Def. Exh. 2, p. 1. A testifying expert on habeas review (who not only met with Andrus repeatedly but also reviewed volumes of records and thoroughly investigated his background, and whose testimony the state habeas court found credible) undercut Dr. Brown's letter as poorly reasoned and unsubstantiated. See 6 *id.*, at 127–128, 130; 7 *id.*, at 63–68, 150–151; 1 Supp. Clerk's Record 15. The Texas court made no mention of this credible expert testimony, and more broadly, it overlooked (as to the issue of hunger) that both Dr. Brown's letter and Andrus' trial testimony were shaped by ineffective counsel.

drus' mother testified that Andrus was helpful in raising the children, Andrus' father testified that he had been largely absent, and Andrus testified about his mother's drug dealing and periodic abandonment, indicating that the evidence uncovered in state habeas proceedings was redundant of that evidence. *Ibid.* But the court did not address the yawning gap between this broadly "tranquil" portrait of Andrus' upbringing at trial and the "disturbing" reality revealed in excruciating detail on habeas review. *Andrus*, 590 U. S., at 815, 817. Nor did it consider how Andrus' counsel's presentation and comments undercut Andrus' testimony and aided the State. See *supra*, at 1016–1017.

Mitigating evidence—mental health. This Court also found deficient performance in counsel's failure to investigate or present evidence of Andrus' mental health. See *Andrus*, 590 U. S., at 816. The Court noted that even "[w]hile attempting to care for his siblings," Andrus "struggled with mental-health issues." *Id.*, at 811. Expert habeas evidence established that "the trauma of being in charge of [his] siblings and not having a parent there" contributed to Andrus' mental-health issues, deprived him of the ability to "trust anybody," and meant that he did not have his "own emotional needs met." 6 Habeas Tr. 168, 183.

This Court further observed how these issues worsened when a teenage Andrus spent 18 months in juvenile detention where he was "dosed on high quantities of psychotropic drugs" and "frequently relegated to extended stints of solitary confinement," leaving "an already traumatized Andrus all but suicidal." *Andrus*, 590 U. S., at 807. The Court described Andrus' forcible medication as part of a traumatizing "ordeal," *ibid.*, again backed by compelling evidence from the habeas proceeding.[3] In addition,

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[3] Habeas evidence established that TYC officials improperly prescribed Andrus medications that could cause mania, aggression, and psychosis, among other adverse effects, and shifted him on and off these medications frequently. See 6 Habeas Tr. 160–165; 13 *id.*, Def. Exh. 1, at 3, 5; *id.*, Def. Exh. 4, at 6–7. Even as officials diagnosed Andrus with mental illnesses and subjected him to this rotating set of clinically inappropriate medications, they never provided him with the interventions he needed. See *id.*, at 8–9. Instead, they subjected him to a punitive "resocialization program" that was later discontinued and discredited, see *id.*, at 5–6, 8–9, and when he did not succeed, transferred him to adult prison, see, *e. g.*, 5 *id.*, at 121–122 (TYC ombudsman: Andrus "was [unfairly] held accountable for failing in a failed system").

the Court set forth the harm Andrus' solitary confinement in TYC custody imposed, levied "for purported infractions like reporting that he had heard voices telling him to do bad things." *Id.*, at 818; see also *id.*, at 819, n. 2 (citing habeas evidence that Andrus was isolated "for 90 days at a time when [he] was 16 or 17 years old," which " 'would horrify most current professionals' ").[4] Andrus also engaged in self-harm and threats of suicide in TYC custody, this Court noted, acts that culminated a few years later when, detained pending trial for his capital offense, he slashed his wrist and smeared bloody messages on the walls asking to " '[j]ust let [him] die.' " *Id.*, at 812.

In reasoning that Andrus had not established prejudice, the Court of Criminal Appeals stated that the evidence of mental-health issues "deserve[d] some skepticism." 622 S. W. 3d, at 901. It discounted Andrus' mental-health challenges because they "were not so severe or persistent as to keep him from . . . taking care of his siblings," *ibid.*, without accounting for record evidence of how Andrus' care for his siblings was consistent with, and exacerbated, those challenges. It criticized Andrus for "on the one hand . . . now claim[ing] he had mental health issues, but on the other . . . decr[ying] having been treated for them" with psychotropic medications while in TYC custody, *ibid.*, contravening this Court's conclusion as to the damage Andrus suffered from being forced to take clinically inappropriate medications. Moreover, the Texas court did not grapple with the harm Andrus suffered from his solitary confinement or his suicide attempt, both of which this Court highlighted as salient.[5]

[4] The TYC ombudsman, appointed after mounting complaints and public scandals, condemned the agency's use of isolation and explained that it involved being locked in a small, dark, and windowless cell with a mattress. *Id.*, at 112, 122, 154–155; 13 *id.*, Def. Exh. 4, at 2–4. According to the ombudsman's expert testimony, TYC records showed Andrus was "decomposing" and "becoming unhinged" as a result of his repeated and prolonged isolation "in a dark, damp room with no communication, [no] school." 5 *id.*, at 170.

[5] To the extent the Texas court cited any evidence in its mental-health mitigation discussion that this Court did not expressly mention, it gave significant weight to two written observations by individual TYC analysts regarding Andrus' mental health, pulled from about 1,000 pages of TYC records. See 622 S. W. 3d, at 901. But a testifying expert on habeas review, found credible by the state habeas court, testified that the TYC analysts' views were inconsistent, unreliable, and potentially pretextual, see 7 Habeas

Finally, the Texas court reasoned in its prejudice analysis that Andrus' mental-health issues were "also aggravating" because "Dr. Brown's report revealed . . . a disturbing history of animal cruelty" and "also revealed that [Andrus] enjoyed playing with fire and once set fire to his mother's apartment, though she was able to put out the fire." *Ibid.* The court again did not acknowledge Andrus' expert testimony (deemed credible by the state habeas court) attacking the reliability of these claims, which were made in a letter from a nontestifying psychologist contacted at the last minute by ineffective trial counsel. See n. 2, *supra*. But even if the court had been right to view Andrus' mental health as a double-edged sword, that would not be dispositive. The issue is whether the available mitigating evidence, whether susceptible to multiple interpretations or not, "might have sufficiently influenced the jury's appraisal of Andrus' moral culpability." *Andrus*, 590 U. S., at 823 (internal quotation marks and alteration omitted). For that to be true, the evidence need not have made Andrus "any more likable to the jury," so long as it "helped the jury understand [him], and his horrendous acts." *Sears* v. *Upton*, 561 U. S. 945, 951 (2010) (*per curiam*).

The Court of Criminal Appeals improperly failed to consider or analyze any of Andrus' mitigating evidence beyond its rejection of this Court's conclusions. See *Williams*, 529 U. S., at 397–398 (finding State Supreme Court decision not just erroneous but unreasonable "insofar as it failed to evaluate the totality of the available mitigation evidence").

2

Aggravating evidence. The Court of Criminal Appeals was even more explicit in rejecting this Court's conclusions regarding counsel's failure to rebut the State's aggravating evidence.

At the penalty phase, the State bore the burden of proving that Andrus presented a future danger to society. See Tex. Code Crim. Proc. Ann., Art. 37.071, § 2(b)(1). To that end, it put forth evidence that Andrus had been hostile and violent in TYC custody; that he had committed an uncharged aggravated robbery of

Tr. 78–80, 85; 1 Supp. Clerk's Record 15, and still other expert testimony (again, found credible) showed that TYC's mental-health program at the time lacked adequate oversight, staffing, and quality assurance, see 5 Habeas Tr. 161–162; 13 *id.*, Def. Exh. 4, at 6; 1 Supp. Clerk's Record 13. The Texas court did not so much as mention this contrary evidence.

a dry-cleaning business; that he had been involved in an aggravated robbery as a teenager, for which he was sent to TYC detention; that he had also been adjudicated as a juvenile for possession of a controlled substance and later pleaded guilty to misdemeanor theft; that he had gang-related tattoos; and that he had attacked prison officials while awaiting trial.

This Court held counsel deficient for failing to pursue "ample opportunit[ies]" to "rebut critical aggravating evidence." *Andrus*, 590 U. S., at 818–819. First, this Court noted that although the State relied heavily on Andrus' acts of aggression while detained in TYC custody, investigation would have shown "that [his] behavioral problems [in TYC custody] were notably mild, and the harms he sustained severe." *Id.*, at 819. The Court cited evidence from a TYC ombudsman who testified that it was " 'surpris[ing] how few' citations Andrus received, 'particularly in the dorms where [Andrus] was' housed," and that there was " 'nothing uncommon' about Andrus' altercations because 'sometimes you have to fight to get by' in the 'violent atmosphere' and 'savage environment.' " *Ibid.*, n. 2. Indeed, habeas evidence established that the "vast majority" of Andrus' citations at TYC were for "disruption of program," which could include "talking out of turn." 5 Habeas Tr. 174; 13 *id.*, Def. Exh. 4, p. 7.[6] Meanwhile, although Andrus was removed from the general population 77 times, approximately half of those were not punishments but "self-referrals" that he initiated to seek refuge from the "violent 'Lord of the Flies' scenario" and "brutal pecking order" within TYC, despite the unique horrors attended to isolation. 5 *id.*, at 155–

[6] For example, Andrus was cited for "throwing a paperclip," "shooting a rubber band," "talking while standing in line or . . . in the lunch room," and "eating a cookie in class." 5 Habeas Tr. 174; see also *id.*, at 187 ("I saw once he asked for a calculator. . . . Violated dress code, usually that means your shirt is not tucked in. He was talking during quiet time. Talked once after the lights were out"). TYC staff also issued citations simply to prove their work ethic to supervisors, or even for "self-referrals" to isolation. *Id.*, at 176–177. Given all of this, the TYC ombudsman explained, after reviewing about 1,000 pages of TYC records, that Andrus' number of citations was in fact "average or pretty low." *Id.*, at 177. Yet the jury heard none of this context. Instead, jurors heard largely unchallenged testimony (which the State emphasized in closing) suggesting that Andrus had received age-appropriate care and rejected a resocialization program, see 48 Tr. 60–61, 68–69, 73–74; 52 *id.*, at 31, a program that was later discontinued and discredited, see n. 3, *supra*.

156, 179, 183, 189, 204–205. As noted, TYC officials also punished Andrus with isolation for reporting that he was hearing voices. *Id.*, at 183; *Andrus*, 590 U. S., at 812.

In view of this evidence, this Court explained: "[W]ith sufficient understanding of the violent environments Andrus inhabited his entire life, counsel could have provided a counternarrative of Andrus' later episodes in prison." *Id.*, at 819. "[I]nstead, counsel left all of that aggravating evidence untouched at trial—even going so far as to inform the jury that the evidence made it 'probabl[e]' that Andrus was 'a violent kind of guy.'" *Ibid.*

Although this Court "described [Andrus'] infractions at TYC as 'notably mild,'" the Court of Criminal Appeals believed "a jury would have been convinced otherwise." 622 S. W. 3d, at 901. The Texas court relied heavily on Andrus' 295 citations, including threats and assaults, and the 77 times he was "remove[d] . . . from the general population" (*i. e.*, placed in solitary confinement) before his transfer to adult prison. *Ibid.* In the court's view, this proved Andrus "was far more dangerous and disruptive than the typical juvenile held in custody of TYC," evidence that categorically "outweighed" the conditions at TYC. *Id.*, at 902.

The Court of Criminal Appeals doubly erred here. First, its assessment was irreconcilable with any reasonable analysis of Andrus' TYC record or with this Court's careful recitation of the record evidence. The Texas court relied on a mere sliver of the evidence: the overall numbers of times Andrus was cited or isolated (numbers that, as this Court previously explained, the record shows to be inflated) and the violent nature of some of his infractions. This Court considered that evidence and more, and it reached a directly contrary conclusion based on expert testimony (found credible by the state habeas court) that placed those infractions in context. See *Andrus*, 590 U. S., at 811–812, 819–820, and n. 2.

Second, this Court's precedents teach that even if "it is possible that a jury could have heard [all of the mitigating evidence] and still have decided on the death penalty, that is not the test." *Rompilla* v. *Beard*, 545 U. S. 374, 393 (2005). The likelihood of a different result "must be substantial, not just conceivable," *Harrington* v. *Richter*, 562 U. S. 86, 112 (2011), but "[w]e do not require a defendant to show that counsel's deficient conduct more likely than not altered the outcome of his penalty proceeding," *Porter*, 558 U. S., at 44 (internal quotation marks omitted). Moreover, here, the likelihood of a different result need only be established as to one juror, not a unanimous jury. *Andrus*, 590 U. S., at 822. Given the sheer volume of evidence supporting this Court's view of Andrus' TYC record, it is difficult to conclude that every reasonable juror would have rejected it. By reasoning otherwise, the court below appeared to hold Andrus to an improper standard.

Beyond Andrus' TYC record, this Court found counsel had been deficient by failing to rebut the State's reliance on Andrus' alleged commission of a knifepoint robbery at a dry-cleaning business. The Court noted that the State never charged Andrus for this robbery and that "the only evidence originally tying Andrus to the incident was a lone witness statement, later recanted by the witness, that led to the inclusion of Andrus' photograph in a belated photo array, which the police admitted gave rise to numerous reliability concerns." *Andrus*, 590 U. S., at 820 (footnote omitted). "The very problem" was that the jury heard the State's account, "but not any of the significant evidence that would have cast doubt on Andrus' involvement in the offense at all." *Ibid.*

The Court of Criminal Appeals, on remand, found that Andrus had not been prejudiced by this failure because although "[t]he Supreme Court discounted" the State's prior-crimes evidence, it "d[id] not." 622 S. W. 3d, at 902. On the uncharged dry-cleaning robbery, the Texas court disapproved of this Court's "question[ing of] the reliability of the [pretrial, photo-array] identification," which it "d[id] not judge . . . to be unduly suggestive." *Id.*, at 903–904. The Texas court also second-guessed this Court's reliance on the witness' recantation and habeas testimony. *Id.*, at 904. Here again, the court squarely rejected this Court's analysis of the evidence on the performance prong to deny relief on the prejudice prong.[7] Moreover, the court overlooked what this

[7] The court disagreed with this Court's characterization of a detective's testimony regarding the reliability of the pretrial photo-array identification, but the detective in fact conceded the relevant point. See 8 Habeas Tr. 35 ("Q: . . . Only one of [the men in the array] is looking directly up and out. Do you see that? And that's Terence Andrus? A: Yes. [Number] 3 may be looking out, but I understand your point"). In any event, this Court clearly considered and rejected the Texas court's precise argument. Compare 622 S. W. 3d, at 903, with 590 U. S., at 820, and n. 4; *id.*, at 830, n. 4 (ALITO, J., dissenting). Similarly, for the witness' recantation and habeas

Court deemed "[t]he very problem" with counsel's failures: that the jury never heard any of the bases on which the statement and photo identification (made months after the incident by a victim who initially could tell the police only that he had been assaulted by "a black man," see 3 Habeas Tr. 65) were vulnerable to attack. Again, the issue is not whether habeas evidence conclusively establishes Andrus' innocence of the uncharged robbery, but whether it would be reasonably probable to lead one juror to strike a different balance.

The Court of Criminal Appeals also disputed this Court's analysis of the aggravated robbery for which Andrus was sentenced to TYC. The Texas court charged this Court with "discount[ing] this crime" because this Court said Andrus " 'allegedly' act[ed] as a 'lookout.' " 622 S. W. 3d, at 902. Citing its opinion on direct appeal (from before the habeas hearing), the Texas court opined that the victim had identified Andrus as the gunman by his clothing. *Ibid.* The Texas court noted this Court's contrary determination, but concluded that "[t]he trial evidence solidly pointed to [Andrus] as the gunman." *Id.*, at 902–903. It thus reached another result that contradicted a conclusion of this Court. See *Andrus*, 590 U. S., at 812, n. 1. To be sure, as the Texas court noted, this Court erroneously said that "*the victim* described at least two individuals as wearing such clothing," *ibid.* (emphasis added), when it should have said that *a responding sergeant* described at least two individuals as wearing such clothing, see 46 Tr. 25–27. The point stands, however: The victim could not identify faces or individuals, only clothing, and Andrus was not the only individual wearing the clothing identified by the victim. More broadly, the Texas court once again seemed to apply a heightened prejudice standard by dismissing the possibility that even one juror might agree with this Court's assessment of the evidence. See *Wiggins*, 539 U. S., at 537–538 (prejudice requires only "a reasonable probability that at least one juror would have struck a different balance" of a capital defendant's "moral culpability").

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testimony, this Court already considered and rejected all of the court below's arguments save one (the witness' relationship with Andrus) in its exchange with the dissent. Compare 622 S. W. 3d, at 904, with *Andrus*, 590 U. S., at 820, n. 4; *id.*, at 829–830, and nn. 3, 4 (ALITO, J., dissenting).

3

Conclusion. Aside from the Court of Criminal Appeals' description of the undisputed brutality of Andrus' capital crime and its accounting of his violence while incarcerated pending trial, see 622 S. W. 3d, at 902, 904–905, its analysis of prejudice impermissibly contravened the reasoning on which this Court relied to find deficient performance. The Court of Criminal Appeals also declined to account for substantial record evidence that undercut its conclusions and misapplied the relevant legal standards.

Even the State, in its brief opposing certiorari, does not meaningfully attempt to reconcile the Court of Criminal Appeals' reasoning with this Court's prior decision. Instead, the State echoes the Texas court's critiques of that precedent, repeatedly attacking it rather than accepting its premises as settled. On remand from this Court, however, other courts generally are not free to dispute this Court's conclusions. To the contrary, "it is essential" that courts "follow both the words and the music of Supreme Court opinions" on issues of federal law. *United States* v. *Martinez-Cruz*, 736 F. 3d 999, 1006 (CADC 2013) (Kavanaugh, J., dissenting). The Court of Criminal Appeals followed neither here.

B

"[E]xtricating" the court's "improper . . . analysis from [its] opinion leaves too little that might warrant reaching a different conclusion than did the trial court." *Moore* v. *Texas*, 586 U. S. 133, 142 (2019) (*per curiam*). It is impossible reasonably to disagree with the state habeas court and the dissenting judges below: There exists a reasonable probability that, had counsel presented the evidence uncovered on habeas review, at least one juror would have struck a different balance.

At sentencing, the jury heard next to nothing "that would humanize [Andrus] or allow [the jury] to accurately gauge his moral culpability." *Porter*, 558 U. S., at 41. Andrus' mother offered only a sparse chronology of his childhood and painted a counterproductive portrait of that period of his life as relatively tranquil. Andrus' biological father, who also testified at sentencing, hardly knew Andrus (having been absent or incarcerated for almost all of his childhood) and could venture only that Andrus seemed "good around [him]" the one year they lived together. 50 Tr. 8. Counsel's direct examination of Andrus about his childhood was cursory (constituting about four pages of the trial transcript) and followed the contrary testimony of his mother. The only potentially mitigating evidence, then, was (1) a lone expert's generalized opinion that drugs can hamper the adolescent brain's ability to make sound judgments, and (2) lay testimony that Andrus' "antisocial personality disorder" led him to be "manipulative" and that Andrus had begun to vocalize remorse in the prior two months. 51 *id.*, at 34, 37. But the former point hardly needs proof (as the State pointed out, see *Andrus*, 590 U. S., at 809), and the latter testimony told a double-edged and incomplete story at best. All told, the jury heard hardly a whisper of the appalling circumstances that marred Andrus' childhood and adolescence, enabling the State to assert while cross-examining Andrus that the jury never "heard one mitigating circumstance in [his] life." 51 Tr. 60.

Meanwhile, "there exists too much mitigating evidence that was not presented to now be ignored." *Porter*, 558 U. S., at 44 (internal quotation marks omitted). The jury never heard the extensive reports that, throughout Andrus' childhood, Andrus' mother was often too drugged to pay attention to her children, had a string of abusive and drug-addicted boyfriends, and frequently left her five children to fend for themselves while she went out and took drugs for extended periods. The jury never heard the details regarding the physical abuse young Andrus reportedly suffered, the domestic violence he witnessed, or the sexual abuse that tore a beloved younger sibling from his home. The jury never heard the poignant accounts by Andrus' siblings of how Andrus had cared and provided for them when their parents would not. The jury never heard expert testimony that the severe neglect and privation Andrus suffered as a child left him damaged and emotionally stunted.[8] The jury never heard about the harrowing experiences Andrus endured in the TYC system, the damaging effects of his prolonged periods of isolation there, and the utter lack of appropriate support he received. The jury never heard about the line Andrus' experts later drew between

[8] This Court has repeatedly recognized the potency of childhood neglect and exposure to violence as mitigating evidence in capital punishment proceedings, even where it does not directly rebut the prosecution's arguments for death. See, *e. g., Porter*, 558 U. S., at 33, 43; *Rompilla* v. *Beard*, 545 U. S. 374, 392 (2005); *Wiggins* v. *Smith*, 539 U. S. 510, 525 (2003); *Williams* v. *Taylor*, 529 U. S. 362, 395 (2000).

all of this hardship and trauma and the trajectory of his life. The jury never heard about Andrus' diagnosis with affective psychosis or his various other mitigating mental-health issues. These scores of lengthy reports went well beyond anything in Andrus' brief trial testimony, which was uncorroborated at trial and undermined by his own mother. All of this "accumulated [evidence] would have destroyed the benign conception of [Andrus'] upbringing and mental capacity defense counsel had formed." *Rompilla*, 545 U. S., at 391.

The State's unrebutted aggravating evidence, to be sure, was forceful. The evidence of Andrus' violent behavior and defiance while detained, however, could have been understood in a much different light had counsel investigated and presented the significant body of mitigating evidence revealed at the habeas hearing. As noted, there was "nothing uncommon" about the citations Andrus received for violent behavior while in TYC custody; given the "savage" environment, the TYC ombudsman was "surprised how few" incidents were noted in Andrus' record. 5 Habeas Tr. 189. Andrus' exceptionally turbulent introduction to the state detention system, a punishment for his inability to succeed in a failed and discredited program when he was 16, also may have influenced how the jury evaluated his later incidents of violence in prison. Especially considering the severe neglect Andrus experienced as a child, the jury could have viewed his aggressive behavior as borne out of deep-seated distrust of others. See *Sears*, 561 U. S., at 951.

Beyond that, untapped evidence could have blunted the force of the State's other aggravating circumstances. As the habeas evidence revealed, counsel could have introduced significant doubt regarding the State's linking of Andrus to the uncharged dry-cleaning robbery. As for the State's suggestion that Andrus lacked remorse because he appeared to express it only shortly before trial, evidence of his mental-health struggles, culminating in his suicide attempt while incarcerated pending trial, could have persuaded the jury that he was battling inner turmoil far beyond what he was able to vocalize.[9]

[9] After trial, once Andrus was in a safe environment and was no longer being prescribed clinically "inappropriate" medications, habeas evidence indicated that he had "virtually no record of misconduct" in prison. 7 Habeas Tr. 51. Andrus now produces visual art and poetry, see https://www.terenceandrus.com, and published an essay reflecting on this Court's prior

In sum, effective counsel would have painted a vividly different tableau of aggravating and mitigating evidence than was presented at trial. During the punishment phase, the State's aggravating evidence went largely unchallenged, while the defense's mitigating evidence consisted of a few biographical facts about Andrus and some damaging information that tended to portray Andrus as morally culpable. In contrast, if measured against "the totality of the available mitigation evidence," *Williams*, 529 U. S., at 397, the State's aggravating evidence would have appeared dramatically different, while the defense's case in mitigation would have gone from counterproductive to compelling. Given that sea change, I find it clear that the "tidal wave," 7 Habeas Tr. 101, of "available mitigating evidence, taken as a whole, 'might well have influenced the jury's appraisal' of [Andrus'] moral culpability," *Wiggins*, 539 U. S., at 538 (quoting *Williams*, 529 U. S., at 398). Because there is a reasonable probability that "at least one juror would have struck a different balance," *Wiggins*, 539 U. S., at 537, I would summarily reverse.

III

I dissent with full recognition that summary reversal is "a rare disposition, usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker* v. *Hansen*, 450 U. S. 785, 791 (1981) (Marshall, J., dissenting). Rightly so. This Court must exercise its certiorari jurisdiction and apply its resources in a manner that entrusts the lower courts with the diligent and proper resolution of individual cases.

Even so, summary dispositions remain appropriate in truly extraordinary cases involving categories of errors that strike at the heart of our legal system. Cf., *e. g., City and County of San Francisco* v. *Sheehan*, 575 U. S. 600, 611, n. 3 (2015) (explaining that error correction is warranted where an issue has particular "importance . . . 'to society as a whole'"). This is certainly true

decision in his case, see T. Andrus, Reflection on *Andrus v. Texas*, 134 Harv. L. Rev. Forum 78 (2020). Although the sentencing jury would not have known of these facts, they are not inconsequential: They underscore the force of Andrus' mental-health mitigation evidence and demonstrate his potential for moral redemption, a potential that the jury was never given an opportunity to see.

in capital cases like this one, where the life-or-death stakes engender a special "need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson* v. *North Carolina*, 428 U. S. 280, 305 (1976) (plurality opinion).

Summary correction is particularly necessary where, as here, a lower court clearly and directly contravenes this Court's settled precedent. See, *e. g.*, *Bosse* v. *Oklahoma*, 580 U. S. 1 (2016) (*per curiam*). That is all the more so when this Court remands and the subsequent lower court opinion, "when taken as a whole and when read in the light both of our prior opinion and the . . . record, rests upon analysis too much of which too closely resembles what we previously found improper." *Moore*, 586 U. S., at 142. Such defiance of vertical *stare decisis*, if allowed to stand, substantially erodes confidence in the functioning of the legal system.

That is precisely what this Court permits today. As I have explained, and as the dissenting judges below warned, the Court of Criminal Appeals' opinion on remand cannot be reconciled with this Court's prior opinion, let alone with the habeas record. In fact, the Texas court repeatedly indicated its disdain for this Court's conclusions. At bottom, were the Texas court's characterizations of the record correct, this Court hardly could have found deficient performance. These errors are especially damaging because they bear on the right to effective assistance of counsel, the very "foundation for our adversary system," *Martinez* v. *Ryan*, 566 U. S. 1, 12 (2012), in a capital case where the stakes could not be higher. If summary reversal is ever warranted, it is warranted here.

This Court's failure to act does not mark the end of the road for Andrus. He still may seek federal habeas review of the Court of Criminal Appeals' ultimate denial of relief, a denial that plainly "was contrary to, or involved an unreasonable application of, clearly established" precedents of this Court. 28 U. S. C. § 2254(d)(1). The Court's refusal today to exercise its discretionary certiorari jurisdiction must not be misinterpreted to foreclose such relief. Nevertheless, the Court's refusal is lamentable. In view of the egregious nature of the errors below, the overwhelming record evidence, the unparalleled stakes for Andrus, and the importance of protecting and enforcing vertical *stare decisis*, I would not leave such errors unresolved, and I respectfully dissent.

No. 21–7864. Johnston *v.* United States. C. A. 7th Cir. Certiorari denied. Justice Barrett took no part in the consideration or decision of this petition.

No. 21–7878. Mitchell *v.* United States. C. A. 9th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.

Rehearing Denied

No. 20–1709. Pon *v.* United States, 595 U. S. 1069;

No. 21–1147. Uziel *v.* Superior Court of California, Los Angeles County, et al., 596 U. S. 943;

No. 21–6630. Rodriguez *v.* United States, 596 U. S. 927;

No. 21–6791. Javaheri *v.* U. S. Bank N. A. et al., 595 U. S. 1287;

No. 21–7036. Davis *v.* Orange County Sheriff's Office et al., 596 U. S. 915;

No. 21–7126. Butler *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 596 U S. 928;

No. 21–7167. M. D. *v.* Montana Department of Public Health and Human Services, Child and Family Services Division, et al., 596 U. S. 929; and

No. 21–7311. Baldwin *v.* Office of Injured Employee Counsel, 596 U. S. 946. Petitions for rehearing denied.

June 21, 2022

Certiorari Dismissed

No. 21–7656. Bradford *v.* Voong et al. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 859 Fed. Appx. 758.

No. 21–7909. Moore *v.* United States. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

Miscellaneous Orders

No. 21M127. Lancaster *v.* Illinois;

No. 21M128. Otieno-Ngoje *v.* Wilmington Savings Fund Society FSB; and

No. 21M129. Martin *v.* Kline, Warden. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 156, Orig. New York *v.* New Jersey. Motion for leave to file bill of complaint and joint motion for leave to file cross-motions for judgment on the pleadings granted. New Jersey is allowed until August 22, 2022, to file an answer and motion for judgment on the pleadings; New York's opposition and cross-motion for judgment on the pleadings is due on or before October 21, 2022; New Jersey's response to New York's cross-motion and reply in support of its motion is due on or before November 7, 2022; and New York's reply in support of its cross-motion is due on or before November 22, 2022. [For earlier order herein, see 595 U. S. 1300.]

No. 21–887. Luna Perez *v.* Sturgis Public Schools et al. C. A. 6th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 21–7629. Holmes *v.* Granuaile, LLC, et al. C. A. 4th Cir.; and

No. 21–7922. Ehret *v.* United States. C. A. 5th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until July 12, 2022, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 21–7973. In re Villarreal; and.

No. 21–7982. In re Hicks. Petitions for writs of habeas corpus denied.

No. 21–7634. In re Lin Ouyang. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 21–1052. United States ex rel. Polansky *v.* Executive Health Resources, Inc., et al. C. A. 3d Cir. Certiorari granted. Reported below: 17 F. 4th 376.

No. 21–1195. Bittner *v.* United States. C. A. 5th Cir. Certiorari granted. Reported below: 19 F. 4th 734.

Certiorari Denied

No. 21–187. Mohamud *v.* Weyker. C. A. 8th Cir. Certiorari denied. Reported below: 984 F. 3d 564.

No. 21–241. Monsanto Co. *v.* Hardeman. C. A. 9th Cir. Certiorari denied. Reported below: 997 F. 3d 941.

No. 21–438. Olaf Sööt Design, LLC *v.* Daktronics, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 839 Fed. Appx. 505.

No. 21–676. Musta *v.* Mendota Heights Dental Center et al. Sup. Ct. Minn. Certiorari denied. Reported below: 965 N. W. 2d 312.

No. 21–998. Bierbach *v.* Digger's Polaris et al. Sup. Ct. Minn. Certiorari denied. Reported below: 965 N. W. 2d 281.

No. 21–1134. Adams *v.* Department of Homeland Security. C. A. Fed. Cir. Certiorari denied. Reported below: 3 F. 4th 1375.

No. 21–1153. Al-Qarqani et al. *v.* Chevron Corp. et al. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 4th 1018.

No. 21–1173. Nixon *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 327 So. 3d 780.

No. 21–1187. Sumotext Corp. *v.* Zoove, Inc., dba StarStar Mobile, et al. C. A. 9th Cir. Certiorari denied.

No. 21–1191. Gonzalez *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 23 F. 4th 788.

No. 21–1255. Acres Bonusing, Inc., et al. *v.* Marston et al. C. A. 9th Cir. Certiorari denied. Reported below: 17 F. 4th 901.

No. 21–1284. Romeril *v.* Securities and Exchange Commission. C. A. 2d Cir. Certiorari denied. Reported below: 15 F. 4th 166.

No. 21–1296. City of Edmond, Oklahoma, et al. *v.* BNSF Railway Co. C. A. 10th Cir. Certiorari denied. Reported below: 22 F. 4th 1190.

No. 21–1345. Moorhead *v.* Lake, Clerk, District Court of the Virgin Islands, et al. C. A. 3d Cir. Certiorari denied.

No. 21–1361. DeSelms, Individually and as Trustee of the Circle Road Revocable Living Trust Dated November 11, 2010 *v.* Bank of New York Mellon, fka Bank of New York. C. A. 9th Cir. Certiorari denied.

No. 21–1366. Sheoran *v.* Walmart Stores East, LP, et al. C. A. 6th Cir. Certiorari denied.

No. 21–1386. Xiangyuan Sue Zhu *v.* Kijakazi, Acting Commissioner of Social Security. C. A. 10th Cir. Certiorari denied.

No. 21–1406. Duralev *v.* Garland, Attorney General. C. A. 9th Cir. Certiorari denied.

No. 21–1409. Bixler *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 21–1427. Garcia Garcia *v.* Garland, Attorney General. C. A. 5th Cir. Certiorari denied.

No. 21–1451. Adams *v.* Dodge, Chief Judge, Tribal Court of the Nooksack, et al. C. A. 9th Cir. Certiorari denied.

No. 21–1457. Barnes *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 849 Fed. Appx. 213.

No. 21–1462. Griffith *v.* McDonough, Secretary of Veterans Affairs. C. A. 11th Cir. Certiorari denied.

No. 21–1488. Ooma, Inc. *v.* Oregon Department of Revenue. Sup. Ct. Ore. Certiorari denied. Reported below: 369 Ore. 95, 501 P. 3d 520.

No. 21–5780. Patton *v.* Kimble. C. A. 4th Cir. Certiorari denied. Reported below: 847 Fed. Appx. 196.

No. 21–6517. Stinson *v.* Cauley et al. C. A. 8th Cir. Certiorari denied.

No. 21–6896. K. A. *v.* Garland, Attorney General. C. A. 3d Cir. Certiorari denied. Reported below: 997 F. 3d 99.

No. 21–7097. Ceasar *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 10 F. 4th 66.

No. 21–7381. Hoffman *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 2020–00137 (La. 10/19/21), 326 So. 3d 232.

No. 21–7397. Jones *v.* Great Southern National Bank et al. C. A. 5th Cir. Certiorari denied.

No. 21–7641. Diaz Perez *v.* Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 21–7643. Trejo *v.* Allison, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied.

No. 21–7650. Terry *v.* Ransom, Superintendent, State Correctional Institution at Dallas, et al. C. A. 3d Cir. Certiorari denied.

No. 21–7653. Braun *v.* DeMars et al. C. A. 8th Cir. Certiorari denied.

No. 21–7654. Munoz *v.* Superior Court of California, Orange County, et al. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 21–7658. Campbell *v.* Florida Bar. Sup. Ct. Fla. Certiorari denied.

No. 21–7660. McLaughlin *v.* Precythe, Director, Missouri Department of Corrections. C. A. 8th Cir. Certiorari denied. Reported below: 9 F. 4th 819.

No. 21–7667. Irving *v.* California. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 21–7717. Williams *v.* Mississippi. C. A. 5th Cir. Certiorari denied.

No. 21–7764. Kelvin Jones *v.* South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 435 S. C. 138, 866 S. E. 2d 558.

No. 21–7825. Wycuff *v.* Sheldon, Warden. C. A. 6th Cir. Certiorari denied.

No. 21–7845. Rundle *v.* Windsor Manor, Inc. Sup. Ct. Va. Certiorari denied.

No. 21–7846. Arroyo-Garcia *v.* Ohio. Ct. App. Ohio, 10th App. Dist., Franklin County. Certiorari denied. Reported below: 2021-Ohio-4325.

No. 21–7858. Lewis *v.* Mississippi. C. A. 5th Cir. Certiorari denied.

No. 21–7887. Rodd *v.* Crandall et al. C. A. 8th Cir. Certiorari denied.

No. 21–7890. Bargo *v.* Pritzker, Governor of Illinois, et al. C. A. 7th Cir. Certiorari denied.

No. 21–7893. Mueller *v.* Parnall. Ct. App. N. M. Certiorari denied.

No. 21–7900. Henry *v.* Brown. C. A. 2d Cir. Certiorari denied.

No. 21–7907. Stringer *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7910. Marshall *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7911. Dille *v.* Mississippi. Ct. App. Miss. Certiorari denied. Reported below: 334 So. 3d 1162.

No. 21–7915. Rodriguez-Navarrete *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7918. Castiblanco Cabalcante *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7919. Ambriz-Villa *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 28 F. 4th 786.

No. 21–7921. Wirichaga-Landavazo *v.* United States. C. A. 10th Cir. Certiorari denied.

No. 21–7923. Topping et al. *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 16 F. 4th 805.

No. 21–7925. Smith *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 21–7928. Lindsey *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7931. Bailey *v.* Dixon, Secretary, Florida Department of Corrections. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 21–7938. Kimes *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7939. Webster *v.* Kijakazi, Acting Commissioner of Social Security, et al. C. A. 5th Cir. Certiorari denied.

No. 21–7942. Jones *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7951. Folk *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 21–7952. Grados *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 21–7957. Morales *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7958. Luna-Aquino *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 21–7959. Good *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 21–7960. Montoya-Balderrama *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7961. Goodwin *v.* Spearman, Warden. C. A. 9th Cir. Certiorari denied.

No. 21–7967. Hernandez *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 21–7971. Salazar-Sanchez *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–7974. Rojas-Leal, aka Lopez-Lopez *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 21–184. Byrd *v.* Lamb. C. A. 5th Cir. Motions of Peter Schuck, Seth Stoughton, and American Civil Liberties Union et al.

for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 990 F. 3d 879.

No. 21–679. Shoop, Warden *v.* Cassano. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 1 F. 4th 458.

Justice Thomas, with whom Justice Alito joins, dissenting.

In 1997, respondent August Cassano was serving a life sentence in Ohio for aggravated murder. The prison assigned Cassano a new cellmate, Walter Hardy. A few days later, Cassano murdered Hardy by stabbing him 75 times with a prison shank. An Ohio jury convicted Cassano of capital murder, and the trial court sentenced him to death. Yet, more than 20 years later, the Sixth Circuit granted Cassano habeas relief because it thought that the state trial court had ignored Cassano when he purportedly invoked his right to represent himself at trial. In doing so, the Sixth Circuit failed to treat the state-court adjudication of Cassano's self-representation claim with the deference demanded by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).

To correct this manifest error, I would grant Ohio's petition and summarily reverse the Sixth Circuit. Therefore, I respectfully dissent from denial of certiorari.

I

Cassano is no stranger to violence. In 1976, he and an accomplice shot bartender Donald Pinto through the heart during a heist in Akron, Ohio. An Ohio jury convicted Cassano of aggravated murder and robbery, and he received a life sentence. *State* v. *Cassano*, 1976 WL 188932, *1–*2 (Ohio App., Nov. 10, 1976). Over his first 21 years in custody, Cassano participated in over 100 fights and stabbed four people. Once, he stabbed a fellow inmate approximately 32 times before the victim escaped. *State* v. *Cassano*, 96 Ohio St. 3d 94, 98, 2002-Ohio-3751, ¶¶3, 25, 772 N. E. 2d 81, 87, 89.

In 1997, prison officials assigned Walter Hardy to be Cassano's cellmate. That decision angered Cassano, who said he " 'didn't want that snitching ass faggot in his cell.' " *Id.*, at 95, 772 N. E. 2d, at 87. Cassano told other inmates that if Hardy was not removed, he would " 'remove [Hardy] himself.' " *Ibid.* It was no bluff. A few days later, a corrections officer responded to a scuffle in the cell. He found Cassano standing over Hardy and stabbing him with a shank. Hardy pleaded for help, yelling, " 'he's killing me, he's stabbing me.' " *Ibid.*, 772 N. E. 2d, at 88. As the officer waited for backup, he ordered Cassano to stop. *Ibid.* But Cassano kept stabbing Hardy until backup arrived and the officers entered the cell. Hardy later succumbed to the roughly 75 stab wounds Cassano inflicted on his head, neck, back, and chest. *Id.*, at 96, 772 N. E. 2d, at 88. A nurse checked Cassano for injuries. *Ibid.* His only complaint was that his shoulder was tired. *Ibid.*

State prosecutors charged Cassano with capital murder in March 1998, and the state trial court appointed him defense counsel. But, by May 14, 1998, Cassano no longer approved of his appointed counsel. That day, he filed two *pro se* motions. One, labeled a "Waiver of Counsel," said that Cassano wanted to control his own defense. The other, labeled a "Motion for Appointment of Substitute Counsel," said that his counsel was ineffective and asked the court to appoint him another lawyer. When the old counsel withdrew, the trial court appointed the requested attorney along with two others. The court did not explicitly rule on the motion for waiver of counsel. See 1 F. 4th 458, 462–463 (CA6 2021).

On September 25, 1998, Cassano filed another motion, this time requesting to participate in the trial as co-counsel alongside his new attorneys. During a hearing that day, he reiterated that he had "a right to be co-counsel with [his] attorneys." App. to Pet. for Cert. 260a. The trial court responded that Cassano was "not going to represent [himself] in this matter," and denied the motion. *Ibid.*

On April 23, 1999—three days before trial—Cassano told the trial court that he did not think his lead attorney had prepared adequately for trial. Cassano said: "I would like my lead counsel to be here and be prepared when my trial starts." *Id.*, at 264a. A short time later, the trial court asked whether Cassano had anything else to say. Cassano responded: "Is there any possibility I could represent myself? I'd like that to go on record." *Id.*, at 265a. The judge refused, explaining that he and Cassano had "talked about it before" and that he would "be doing [Cassano] a disservice by allowing that." *Ibid.* Neither the court nor the parties discussed self-representation again. See *id.*, at 265a–

271a. A jury then found Cassano guilty of aggravated murder, and he was sentenced to death.

Cassano appealed. As relevant here, he brought a claim that the trial court had violated his right to represent himself by denying what he argued were three motions requesting self-representation. The Supreme Court of Ohio affirmed in a published opinion. In a section labeled "Preliminary Issues: Self-representation," the court described the three alleged invocations before "reject[ing] Cassano's claim that his rights of self-representation were violated." *Cassano*, 96 Ohio St. 3d, at 98, 100, 772 N. E. 2d, at 90, 91.

Cassano later filed a federal habeas petition under 28 U. S. C. § 2254. His "First Claim for Relief" argued that the state trial court violated his right to self-representation in the lead-up to trial, in violation of *Faretta* v. *California*, 422 U. S. 806 (1975). See Amended Pet. for Habeas Corpus in *Cassano* v. *Bradshaw*, No. 1:03–cv–1206 (ND Ohio), ECF Doc. 138, p. 15. The District Court for the Northern District of Ohio reviewed the Supreme Court of Ohio's decision rejecting Cassano's *Faretta* arguments on direct appeal. Applying AEDPA deference, the District Court denied relief but issued a certificate of appealability on Cassano's *Faretta* claim. *Cassano* v. *Bradshaw*, 2018 WL 3455531, *18–*26, *57 (July 18, 2018).

A divided panel of the Court of Appeals reversed and conditionally granted Cassano's petition. First, it found that the Supreme Court of Ohio had not, in fact, addressed Cassano's alleged invocation of the right to self-representation in his May 1998 waiver of counsel motion. 1 F. 4th, at 467–468. The panel majority then held that Cassano had invoked his right to self-representation clearly and unequivocally despite the simultaneous, contradictory motion for substitute counsel. *Id.*, at 468–470. Second, regarding the September 1998 motion, the Court of Appeals conceded that Cassano had requested only "a form of hybrid representation," and so the Supreme Court of Ohio's "conclusion that Cassano failed to invoke his right to self-representation" in that motion was "reasonable." *Id.*, at 471. Finally, the Court of Appeals reviewed the state high court's analysis of Cassano's April 1999 motion. The Court of Appeals purported to apply AEDPA deference, but still held that "nothing about Cassano's [April] request was unclear or equivocal, and no fairminded jurist could conclude otherwise." *Id.*, at 473. The Court of Appeals conditionally granted habeas relief unless Ohio retried this quarter-century-old capital case within six months. *Id.*, at 479.

Judge Siler dissented, arguing that the panel failed to properly apply AEDPA deference to the Supreme Court of Ohio's decision. See *id.*, at 479–480. Judge Griffin and Judge Thapar (joined by Judge Nalbandian) dissented from the denial of rehearing en banc. See 10 F. 4th 695, 696 (CA6 2021). Judge Thapar maintained that the "panel disregarded federal law, spurned Supreme Court precedent, and trampled on Ohio's state courts" in order to "erroneously g[i]ve postconviction relief to a repeat murderer." *Id.*, at 700. The State filed an application with JUSTICE KAVANAUGH for a recall and stay of the Court of Appeals' mandate, which he granted pending the disposition of a writ of certiorari. Order in No. 21A34 (Sept. 20, 2021).

II

AEDPA significantly limits federal courts' power to upset state criminal convictions. When a state court adjudicates a state prisoner's federal claim on the merits, a federal court may not grant habeas relief unless the adjudication of the claim resulted in a decision (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by" this Court's decisions, or (2) "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). As relevant here, a decision is "contrary to" clearly established federal law if it "applies a rule different from the governing law set forth in our cases." *Bell* v. *Cone*, 535 U. S. 685, 694 (2002). A decision "involve[s] an unreasonable application of . . . clearly established law" only if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with this Court's precedents." *Harrington* v. *Richter*, 562 U. S. 86, 102 (2011).

Under this Court's precedents, a criminal defendant may waive his right to counsel and instead represent himself. See *Faretta*, 422 U. S., at 835. To exercise that right, a defendant must " 'knowingly,' " "intelligently," "clearly[,] and unequivocally" invoke it before the trial court. *Ibid.*; see also *Raulerson* v. *Wainwright*, 469 U. S. 966 (1984) (Marshall, J., dissenting from denial of certiorari) (a defendant has a right "to proceed without counsel if he clearly and unequivocally asks to do so").

A

Applying AEDPA, this case is straightforward. To begin, the Supreme Court of Ohio expressly addressed and adjudicated the merits of Cassano's various *Faretta* arguments. The state high court labeled a section of its decision "Preliminary Issues: Self-representation." *Cassano*, 96 Ohio St. 3d, at 98, 772 N. E. 2d, at 90. It then described the May 1998 waiver of counsel and the dueling request for substitute counsel filed the same day. *Id.*, at 99, 772 N. E. 2d, at 90–91. It also described Cassano's September 1998 and April 1999 motions. See *ibid.*, 772 N. E. 2d, at 91. After recounting all three alleged invocations of the right to self-representation, the court then cited state and federal case law derived from *Faretta* and "reject[ed] Cassano's claim that his rights of self-representation were violated." *Id.*, at 100, 772 N. E. 2d, at 91. The opinion leaves no doubt that the state high court reached and decided the merits of Cassano's *Faretta* claim.

But even if the Supreme Court of Ohio's opinion had not "expressly address[ed]" Cassano's *Faretta* claim, "a federal habeas court must presume that the federal claim was adjudicated on the merits" when the state court rejects it. *Johnson* v. *Williams*, 568 U. S. 289, 301 (2013). Only if indisputable evidence "leads very clearly to the conclusion that [the] federal claim was inadvertently overlooked in state court" may a federal court review the claim *de novo*. *Id.*, at 303. Here, it is obvious that the Supreme Court of Ohio did not "inadvertently overloo[k]" Cassano's *Faretta* claim or any of the claim's supporting evidence. At the very least, nothing "very clearly" establishes that court's inadvertence.

Because the Supreme Court of Ohio adjudicated Cassano's *Faretta* claim on the merits, AEDPA's deferential standard applies. The court's merits decision easily survives review. No one meaningfully disputes that the court applied the correct governing rule set forth in *Faretta*. See *Cassano*, 96 Ohio St. 3d, at 99, 772 N. E. 2d, at 90. And a fairminded jurist could readily find that the Supreme Court of Ohio applied that rule reasonably.

To start, Cassano filed his May 1998 motion for waiver of counsel simultaneously with his request for substitute counsel. (They were docketed within a minute of one another.) Neither motion referenced the other. Given these simultaneous, contradictory motions, a fairminded jurist could easily agree with the Supreme

Court of Ohio that Cassano did not clearly and unequivocally invoke his right to represent himself. In fact, two federal jurists would have held that Cassano made no clear and unequivocal demand to represent himself "no matter what standard of review" applies. 10 F. 4th, at 702 (opinion of Thapar, J.).

Moreover, a fairminded jurist could agree with the Supreme Court of Ohio that Cassano's April 1999 question to the state trial court—"Is there any possibility I could represent myself?" App. to Pet. for Cert. 265a—"was not an explicit and unequivocal demand for self-representation," *Cassano*, 96 Ohio St. 3d, at 100, 772 N. E. 2d, at 91. Cassano asked a "tepid question," and "[q]uestions are not demands." 10 F. 4th, at 703 (opinion of Thapar, J.). For example, a fairminded jurist could reasonably think that Cassano was asking "a contingent question inquiring whether self-representation [was] even an option for the future." *Id.*, at 698 (opinion of Griffin, J.). In that vein, the rest of the exchange suggests equivocation. Shortly before Cassano asked about self-representation, he said: "I would like my lead counsel to be here and be prepared when my trial starts." App. to Pet. for Cert. 264a. Much like Cassano's conflicting filings in May 1998 left unclear whether he did or did not want counsel, Cassano's conflicting statements in April 1999 left unclear whether he did or did not continue to want counsel as the trial loomed.

Ultimately, the Supreme Court of Ohio's decision was one over which fairminded jurists could disagree. That is sufficient to preclude habeas relief under AEDPA.

B

The Court of Appeals erred when it held otherwise. To begin, the Court of Appeals plainly erred when it declined to apply AEDPA deference because, in its view, the Supreme Court of Ohio had "'inadvertently overlooked'" Cassano's May 1998 dueling motions. 1 F. 4th, at 468 (quoting *Williams*, 568 U. S., at 303). The Court of Appeals pointed to two reasons for its decision. First, because the Supreme Court of Ohio "explicitly address[ed] whether Cassano invoked his right to self-representation on either September 25, 1998 or April 23, 1999," and did not as explicitly address the May 1998 motions, the Court of Appeals thought that the state court must have inadvertently overlooked those motions. 1 F. 4th, at 468. Second, the Court of Appeals observed that the Supreme Court of Ohio "referred to Cassano's

September 25, 1998 motion as the 'only written motion' and his statements at the April 23, 1999 hearing as the only time he 'mention[ed] that he wanted to represent himself.'" *Ibid.* (quoting *Cassano*, 96 Ohio St. 3d, at 100, 772 N. E. 2d, at 91).

Even assuming that the Supreme Court of Ohio did not expressly address Cassano's *Faretta* claim, but see *supra*, at 1040, the Court of Appeals did not properly apply the presumption of merits adjudication. As stated above, that presumption is rebutted only by "evidence lead[ing] *very clearly* to the conclusion that [the] federal claim was inadvertently overlooked in state court." *Williams*, 568 U. S., at 303 (emphasis added). Simply "issu[ing] an opinion that addresses some issues but does not expressly address [a] federal claim in question" cannot alone be evidence leading "very clearly" to the conclusion that the federal claim was inadvertently overlooked. *Id.*, at 292, 303. To the extent the Court of Appeals relied on what it perceived to be the lack of any explicit discussion of the May 1998 motions, it erred.

As for the Supreme Court of Ohio's statements regarding the September 1998 motion and the April 1999 hearing, this evidence also falls far short of showing that the state high court did not adjudicate the merits of Cassano's *Faretta* claim based on the May 1998 motions. Again, in the section entitled "Preliminary Issues: Self-representation," the Supreme Court of Ohio specifically described the dueling motions that Cassano filed. See *Cassano*, 96 Ohio St. 3d, at 99–100, 772 N. E. 2d, at 90–91. Only nine sentences later the court "reject[ed] Cassano's claim that his rights of self-representation were violated." *Id.*, at 100, 772 N. E. 2d, at 91. It is implausible that the court neglected or forgot about what it had just recounted. The absence of further, specific discussion is more likely a reflection of the state high court's judgment that the argument was "too insubstantial to merit [further] discussion" once already flagged in the opinion. *Williams*, 568 U. S., at 299. The May 1998 waiver of counsel, simultaneously contradicted by a request for new counsel, simply did not count for much of anything. At the very least, the statements identified by the Court of Appeals were insufficient to overcome the presumption of merits adjudication by "very clearly" showing that the Supreme Court of Ohio overlooked the May 1998 motions, instead of tersely dismissing them. *Id.*, at 303.

The Court of Appeals likewise erred when, purporting to apply AEDPA deference to the Supreme Court of Ohio's assessment of

Cassano's April 1999 motion, it nevertheless found the state court's decision objectively unreasonable. See 1 F. 4th, at 474. It bears repeating: "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of [that] decision." *Harrington*, 562 U. S., at 101 (quoting *Yarborough* v. *Alvarado*, 541 U. S. 652, 664 (2004)). As discussed above, *supra*, at 1042, the Supreme Court of Ohio's decision that Cassano's tepid April 1999 question on the eve of trial "was not an explicit and unequivocal demand for self-representation," *Cassano*, 96 Ohio St. 3d, at 100, 772 N. E. 2d, at 91, was "at least debatable," 562 U. S., at 110.

Perhaps recognizing that the substance of Cassano's April 1999 motion—a single question—did not suffice, the Court of Appeals emphasized the "context" in which the question was asked. 1 F. 4th, at 474. It noted that, at the earlier September 1998 hearing, the trial court had told Cassano that he was " 'not going to represent [himself] in this matter,' " and that the law did not require the court to allow him to represent himself. *Ibid.*; see App. to Pet. for Cert. 260a. Taking into account that statement and the court's "stern admonishment" during the September hearing "that Cassano would never be allowed to even speak in the courtroom," the Court of Appeals held that "no fairminded jurist could conclude" that Cassano's April 1999 question "was unclear or equivocal." 1 F. 4th, at 474.

The Court of Appeals' analysis is obviously wrong. First, the Court of Appeals ignored the more immediate context of the April 1999 hearing, which supports the Supreme Court of Ohio's reasoned decision. Cassano equivocated at the April hearing. He first demanded counsel's presence at the trial, then asked about self-representation, and then accepted counsel's help. That context suggests equivocation just as much as his tepid question does.

Second, the "context" that the Court of Appeals chose to highlight does not help Cassano's cause. The state trial court made the September 1998 comments at a hearing in which it rejected Cassano's request to be appointed *co-counsel* with his attorneys, which (as the Court of Appeals itself recognized) he had no right to demand. See *id.*, at 471; see *McKaskle* v. *Wiggins*, 465 U. S. 168, 183 (1984) ("*Faretta* does not require a trial judge to permit 'hybrid' representation"). A fairminded jurist could find that those September 1998 comments, made in a hearing about a distinguishable issue some seven months before, did not somehow transmogrify an ambiguous and equivocal question into a clear and unequivocal invocation of a constitutional right.

Third, as for the trial court's conduct at the April 1999 hearing itself, it did not "admonis[h]" Cassano against "even speak[ing] in the courtroom." 1 F. 4th, at 474. Rather, the trial court *solicited* questions from Cassano. Cassano took that opportunity to complain about his counsel, demand their presence at his trial, and inquire about self-representation. See App. to Pet. for Cert. 264a–265a. A fairminded jurist could find that none of his statements invoked his right to self-representation in clear and unequivocal terms, and that he was not coerced into silence by the trial court. That is all it takes to satisfy AEDPA.

III

Because the Court of Appeals' decision was obviously wrong and squarely foreclosed by our precedent, this case merits summary reversal. See *Presley* v. *Georgia*, 558 U. S. 209, 217 (2010) (Thomas, J., dissenting); S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice § 5.12(c), p. 5–44 (11th ed. 2019) (Shapiro). In fact, summary reversal is particularly appropriate because the Court of Appeals "committed [a] fundamental erro[r] that this Court has repeatedly admonished [it] to avoid." *Sexton* v. *Beaudreaux*, 585 U. S. 961, 967 (2018) (*per curiam*); Shapiro § 5.12(c), at 5–45. This is far from the first time that the Sixth Circuit has failed to apply the deference that AEDPA and our governing precedents demand. See, *e. g., Rapelje* v. *Blackston*, 577 U. S. 1019, 1021 (2015) (Scalia, J., dissenting from denial of certiorari) ("The Sixth Circuit seems to have acquired a taste for disregarding AEDPA"). Over the last two decades, we have reversed the Sixth Circuit almost two dozen times for failing to apply AEDPA properly. See 10 F. 4th, at 696–697 (listing cases). Many of those reversals have been summary. See *ibid.* The Court should add this case to the list.

Instead, the Court chooses to leave in place a clearly erroneous decision that relieves Cassano of his death sentence. In doing so, the Court inflicts a harm on "the State and its citizens." *Shinn* v. *Martinez Ramirez*, 596 U. S. 366, 390 (2022). By saddling the State with the risk and expense of retrying a repeat murderer's quarter-century-old capital case, the Court permits the Court of Appeals to "intrud[e] on [Ohio's] sovereignty to a degree matched by few exercises of federal judicial authority." *Id.*, at 376 (internal quotation marks omitted). At worst, the State has lost its sovereign right to "enforce societal norms through criminal law." *Ibid.* (internal quotation marks omitted). At best, if the retrial results in the same verdict and sentence, the Court will have consigned the State to several decades' worth of additional death penalty appeals. See *Ramirez* v. *Collier*, 595 U. S. 411, 451 (2022) (THOMAS, J., dissenting). Ohio and its citizens deserve better.

* * *

The Court of Appeals should have faithfully applied AEDPA deference and denied the writ. Its failure to do so "illustrate[d] a lack of deference to the state court's determination and an improper intervention in state criminal processes, contrary to the purpose and mandate of AEDPA and to the now well-settled meaning of and function of habeas corpus in the federal system." *Harrington*, 562 U. S., at 104. Because I would grant the State of Ohio's petition and summarily reverse, I respectfully dissent from denial of certiorari.

No. 21–1140. UNITEDHEALTHCARE INSURANCE CO. ET AL. *v.* BECERRA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. D. C. Cir. Motion of America's Physician Groups for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 16 F. 4th 867.

No. 21–1237. LLOYDS BANKING GROUP PLC ET AL. *v.* SCHWAB SHORT-TERM BOND MARKET FUND ET AL. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE, JUSTICE KAGAN, and JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 22 F. 4th 103.

No. 21–1258. HEGAR, COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS *v.* TEXAS ENTERTAINMENT ASSN., INC. C. A. 5th Cir. Motions of Texas Association Against Sexual Assault and Multistate Tax Commission et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 10 F. 4th 495.

No. 21–1377. ROMAN CATHOLIC BISHOP OF OAKLAND ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL.; and ROMAN CATHOLIC BISHOP OF ORANGE ET AL. *v.* SUPERIOR

Court of California, Los Angeles County, et al. Ct. App. Cal., 2d App. Dist., Divs. 7 and 8. Motion of United States Conference of Catholic Bishops for leave to file brief as *amicus curiae* granted. Certiorari denied.

No. 21–1382. Audubon Imports, LLC, dba Mercedes Benz of Baton Rouge, et al. *v.* Bayerische Motoren Werke Aktiengesellschaft (BMW AG) et al. C. A. 9th Cir. Certiorari denied. Justice Breyer took no part in the consideration or decision of this petition.

Rehearing Denied

No. 19–7882. Harris *v.* May et al., 590 U. S. 946;

No. 20–219. Cummings *v.* Premier Rehab Keller, P. L. L. C., 596 U. S. 212;

No. 21–5222. Bush *v.* Nathan, Trustee, 595 U. S. 1187;

No. 21–5458. DuLaurence *v.* Woodlock, Judge, United States District Court for the District of Massachusetts, 595 U. S. 1140;

No. 21–6927. Wallgren *v.* Whitten, Warden, 596 U. S. 905; and

No. 21–7463. Sandford *v.* United States, 596 U. S. 948. Petitions for rehearing denied.

No. 21–1144. Leach et al. *v.* Mentor Worldwide, LLC, 596 U. S. 934; and

No. 21–1151. Armstrong *v.* School District of Philadelphia, 596 U. S. 949. Petitions for rehearing denied. Justice Alito took no part in the consideration or decision of these petitions.

No. 21–7187. Jozwiak *v.* Raytheon Missile Systems et al., 596 U. S. 949. Petition for rehearing denied. Justice Breyer and Justice Alito took no part in the consideration or decision of this petition.