

No. 21-6001
(CAPITAL CASE)

IN THE
SUPREME COURT OF THE UNITED STATES

TERENCE TRAMAINE ANDRUS,

Petitioner,

v.

TEXAS,

Respondent.

On Petition for Writ of Certiorari to
the Texas Court of Criminal Appeals

BRIEF OF ADVOCATES FOR CHILD VICTIMS
OF DOMESTIC VIOLENCE AS AMICI CURIAE
IN SUPPORT OF PETITIONER

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INTERESTS OF AMICI CURIAE¹

Amici are nonprofit organizations committed to protecting and advancing the interests of children who are the victims of family domestic violence.

The National Family Violence Law Center at George Washington University Law School serves as the preeminent home for national research and expert support for the growing movement to better protect children in contested custody cases. It provides pioneering quantitative and qualitative research, training and education, state and federal policy development, and selective litigation.

California Protective Parents Association (“CPPA”) was established in 1998 to protect children from incest and family violence through research, education, and advocacy. CPPA seeks to improve and reform family court to ensure that children are not placed at risk of harm by unsafe custody and visitation decisions. CPPA sponsors and participates in legal conferences to educate attorneys, mental health providers, legislators, and the public to shift the culture away from dismissing abuse, and to instead create a movement to end ongoing abuse for children in their own homes.

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* states that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amici curiae* or their counsel made a monetary contribution to this brief’s preparation or submission. All parties were given notice of the filing of this brief on or before November 8, 2021. All parties have consented to the filing of this brief.

The Domestic Violence Legal Empowerment & Appeals Project (“DV LEAP”) is a national leader in appellate advocacy on behalf of family domestic violence survivors. DV LEAP represents survivors in appeals at the state and federal levels and provides best-practices trainings to lawyers, judges, mental health professionals, and litigants. DV LEAP also partners with local and national advocacy organizations to improve policy and laws regarding survivors of family domestic violence.

As part of their missions, all *amici* have a particular interest in ensuring that courts give appropriate weight to evidence of childhood trauma when assessing the moral culpability of criminal defendants. Because the Texas Court of Criminal Appeals’ disregard of extensive mitigating evidence regarding Petitioner’s adverse childhood experiences is inconsistent with settled constitutional doctrine and well-established developmental psychology, reversal by this Court is warranted.

SUMMARY OF THE ARGUMENT

Terence Tramaine Andrus is back on death row because the Texas Court of Criminal Appeals (“CCA”) concluded there was no reasonable probability that even one juror would assess his moral culpability differently after learning about his pervasive and severe adverse childhood experiences. That conclusion is irreconcilable with this Court’s precedents and well-accepted tenets of developmental psychology.

This Court has already held that “the grim facts” of Mr. Andrus’ youth are “powerful mitigating evidence” that his trial counsel should have investigated and presented to the jury. *Andrus v. Texas*, 140 S. Ct. 1875, 1878, 1883 (2020). In remanding the case to the CCA, the Court left open a single question: whether there was a reasonable probability that the mitigating evidence, if developed by competent counsel, could have persuaded one juror to strike a different balance.

The CCA should have answered that question affirmatively. As an expert testified at Mr. Andrus’ habeas hearing, well-established developmental psychology research confirms that severe abuse, neglect, and household dysfunction during childhood can cause lasting neurological, emotional, and behavioral damage. The record shows that Mr. Andrus’ early life was filled with these traumas. Yet, the CCA dismissed the totality of this evidence as “not particularly compelling” and not reasonably likely to persuade a single juror not to vote for the death penalty. *Ex parte Andrus*, 622 S.W.3d 892, 893 (Tex. Crim. App. 2021). It reached this conclusion in part by ignoring much of the habeas record, including many mitigating facts of Mr. Andrus’

life and developmental psychology research concerning adverse childhood experiences. Even when the CCA acknowledged mitigating facts, it minimized their significance, often for scientifically discredited reasons.

This Court has vacated death sentences in numerous similar cases, reversing the decisions of lower courts that improperly discounted evidence of a defendant's adverse childhood experiences. Allowing the CCA's ruling to stand would undercut this precedent and trivialize the harm suffered by severely traumatized children. This Court should grant *certiorari* and reverse the CCA's judgment.

ARGUMENT

The CCA erred when it ruled that Mr. Andrus was not prejudiced by his trial counsel's failure to investigate and present the "vast," "untapped body of mitigating evidence" amassed during the state habeas proceeding. *Andrus*, 140 S. Ct. at 1883.

The available mitigating evidence, if developed by competent defense counsel at trial, would have revealed to the jury that Mr. Andrus' childhood was filled with extreme abuse, neglect, and household dysfunction. This Court has held that such evidence of adverse childhood experiences is "relevant to assessing a defendant's moral culpability" at the penalty phase of a capital trial. *Wiggins v. Smith*, 539 U.S. 510, 535 (2003). As advocates for child victims of family violence, *amici* know that this legal principle has a firm grounding in developmental psychology. Scientific evidence in the habeas record here shows that individuals who suffer severe and pervasive trauma during childhood, through no fault of their own, are placed at high risk for lasting neurological damage that can lead to violence and other harmful behaviors in adulthood.

In dismissing the mitigating evidence in the habeas record as "not particularly compelling," *Ex parte Andrus*, 622 S.W.3d at 893, the CCA flouted this Court's guidance, as well as well-accepted insights about the psychology of human development. The CCA ignored many of Mr. Andrus' adverse childhood experiences, despite compelling research set forth in the habeas record that connects those experiences to negative adult outcomes. When the CCA did discuss mitigating evidence, it minimized the significance of that

evidence, often on grounds that cannot withstand scientific or logical scrutiny. These errors are central to the CCA's mistaken conclusion that Mr. Andrus' mitigating evidence was not reasonably likely to persuade even one juror to vote against the death penalty.

I. Mr. Andrus' Extreme Childhood Trauma Must Be Considered in Evaluating His Moral Culpability.

As this Court has already noted, there are "many circumstances in Andrus' life that could have served as powerful mitigating evidence." *Andrus*, 140 S. Ct. at 1883. Indeed, any attempt to assess Mr. Andrus' moral culpability without considering the traumatic events of his childhood would be inconsistent with this Court's precedents and accepted developmental psychology.

This Court has recognized that at the sentencing stage of a capital trial, jurors' votes are likely to be influenced by "the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background ... may be less culpable than defendants who have no such excuse." *Wiggins*, 539 U.S. at 535 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989), *overruled in part on other grounds by Atkins v. Virginia*, 536 U.S. 304 (2002)). Accordingly, this Court has routinely found prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984), in capital cases where the defendant's trial counsel failed to share with the jury evidence of traumatic events in the defendant's youth. *See, e.g., Porter v. McCollum*, 558 U.S. 30, 33, 43 (2009) (reversing the lower court's no-prejudice determination as

“unreasonable” because it “discount[ed] to irrelevance the evidence of [the petitioner’s] abusive childhood”); *Rompilla v. Beard*, 545 U.S. 374, 390–93 (2005) (holding that petitioner was prejudiced by counsel’s failure to investigate “mitigation leads” that “would have destroyed [a] benign conception of [his] upbringing”); *Wiggins*, 539 U.S. at 535 (same); *Williams v. Taylor*, 529 U.S. 362, 395–97 (2000) (same).²

There is thus ample precedent for concluding that if the jury had known “the grim facts” of Mr. Andrus’ early life, *Andrus*, 140 S. Ct. at 1878, at least one juror would have been reasonably likely to vote against the death penalty. But even if the Court were writing on a blank slate, uncontroversial developmental psychology would compel the same result. Well-established research—which, as the habeas record shows, was available to trial counsel—shows that childhood experiences like Mr. Andrus’ can permanently interfere with normal neurological and emotional development, placing the traumatized child at high risk for violence and other negative behaviors in adulthood.

² The Court has vacated death sentences on this ground even in cases where, unlike here, the Court must apply the deferential standard of review under the Antiterrorism and Effective Death Penalty Act (“AEDPA”). *See, e.g., Porter*, 558 U.S. at 31 (applying AEDPA and reversing lower court’s no-prejudice determination as “objectively unreasonable”).

A. Mr. Andrus' Adverse Childhood Experiences Were Severe and Pervasive.

The habeas record shows that Mr. Andrus' youth was filled with what experts refer to as Adverse Childhood Experiences, or "ACEs."³ ACEs are grouped into three major categories: neglect (physical and emotional), abuse (physical, emotional, and sexual), and household dysfunction (including violence against a parent, substance abuse, family history of mental illness, incarceration of family members, and divorce or separation). *Violence Prevention: About the CDC-Kaiser ACE Study*, CTRS. FOR DISEASE CONTROL & PREVENTION (2021), <https://perma.cc/4MRD-2KHR>.⁴ The more ACEs that an individual experiences in childhood, the greater their risk of severe and harmful outcomes. *Id.* As Dr. Scott Hammel, a clinical psychologist, testified at the habeas hearing, Mr. Andrus

³ The ACE framework has been used for more than two decades in studies examining the lasting impact of childhood trauma and is "universally recognized within the scientific community." Carson Gilbert, *Echoes of Our Past: Examining the Effects of Childhood Trauma and Proposing a New Constitutional Bar to Capital Punishment*, 50 U. MEMPHIS L. REV. 551 (2019).

⁴ The ACE framework also appears in public health guidance from the States, including Texas. *See, e.g., Texas BRFSS Topical Brief: Adverse Childhood Experiences*, TEXAS DEP'T OF STATE HEALTH SERVS. (2019), <https://perma.cc/7MD6-RPTZ>.

suffered severe and repeated ACEs in all three major categories. 6EHRR152, 168–69.⁵

Mr. Andrus grew up in a “family environment filled with violence and abuse.” *Andrus*, 140 S. Ct. at 1879. Mr. Andrus’ mother would hit him and his siblings with a board “until she got tired,” as Dr. Hammel testified based on his investigation of Mr. Andrus’ social history. 7EHRR127. Mr. Andrus’ mother would also “have her boyfriends hold the children down while she beat them, or would have [the boyfriends] beat them.” *Id.* In addition to the abuse he personally suffered, Mr. Andrus witnessed other domestic violence. 6EHRR169 (testimony of Dr. Hammel); *see also Andrus*, 140 S. Ct. at 1879 (noting physical abuse against Mr. Andrus’ mother).

Throughout his childhood, Mr. Andrus was subjected to severe neglect, requiring him effectively to raise himself. *See* DX5 at 11 (affidavit of clinical psychologist Dr. Michael Lindsey, noting that Mr. Andrus “lack[ed] a nurturing parent as an infant”); 6EHRR194 (testimony of Dr. Hammel that Mr. Andrus’ overall childhood trauma is “severe, particularly because of the neglect”). His biological father was imprisoned for much of his childhood. *Andrus*, 140 S. Ct. at 1879; DX5 at 10. Although he formed a close relationship with one male role model, that man was murdered when Mr. Andrus was twelve. DX5 at 9. Meanwhile, Mr. Andrus’ mother “would leave her children to fend for themselves,” often without enough food. *Andrus*, 140 S. Ct.

⁵ When citing the record, *amici* adopt the citation conventions set forth in the Petition for Certiorari. *See* Pet’n at ii–iii.

at 1879–80; DX9 at 3 (affidavit of Mr. Andrus’ brother Torad). She was sometimes absent on drug binges for up to a week. *Andrus*, 140 S. Ct. at 1880; DX13 at 2 (affidavit of Sean Gilbow, who knew Mr. Andrus and his mother). Mr. Andrus was therefore forced to assume responsibility for taking care of his siblings long before he was ready for that role. *Andrus*, 140 S. Ct. at 1880; DX5 at 8–9.

Around age fifteen, Mr. Andrus became involved in a gang and began using illegal drugs. DX9 at 3–4 (brother’s affidavit); *Andrus*, 140 S. Ct. at 1879. At sixteen, he was sent to juvenile detention. There, he “was prescribed high doses of psychotropic drugs carrying serious adverse side effects,” even though the prescriptions often did not match the diagnoses he had been given. *Andrus*, 140 S. Ct. at 1880; 6EHRR158–62 (testimony of Dr. Hammel). He was also “frequently relegated to extended stints of solitary confinement.” *Andrus*, 140 S. Ct. at 1877; DX4 at 8–9 (affidavit of Will Harrell, former ombudsman for the state agency that oversaw Mr. Andrus’ juvenile detention).

B. Adverse Childhood Experiences Like Mr. Andrus’ Can Profoundly Affect Adult Behavior.

In remanding this case to the CCA, this Court recognized that Mr. Andrus’ ACEs are “powerful mitigating evidence.” *Andrus*, 140 S. Ct. at 1883. This finding is confirmed by well-documented developmental psychology. As Dr. Lindsey stated in his affidavit, Mr. Andrus’ ACEs caused “significant limitations in his childhood and adolescent development,” and “[i]t is reasonably certain that these impairments formed the

foundation for Andrus’s negative life trajectory,” including his “substance abuse, maladaptive behaviors, and ultimate resort to criminal violence.” DX5 at 2. This expert opinion follows from well-established research showing that multiple ACEs, particularly high numbers of them, can profoundly impact a child’s emotional, neurological, and behavioral development. Mr. Andrus’ many ACEs are therefore highly relevant to assessing his moral culpability at the capital sentencing stage.

Dr. Lindsey and Dr. Hammel provided evidence in the habeas proceeding that the physical and emotional neglect Mr. Andrus suffered as an infant likely inhibited his emotional development, making him more vulnerable to future ACEs as he developed. *See* DX5 at 11 (affidavit of Dr. Lindsey, noting that Mr. Andrus’ “sense of trust is compromised through the lack of a nurturing parent as an infant”); 7EHR25 (testimony of Dr. Hammel explaining how “the normal development of emotional regulation” relies on caregivers). Research confirms that infants learn how to regulate their emotional responses to stress through interactions with their caregivers, which Mr. Andrus consistently lacked. *See* Jean François Bureau et al., *Attachment Dysregulation as Hidden Trauma in Infancy: Early Stress, Maternal Buffering and Psychiatric Morbidity in Young Adulthood*, in *THE IMPACT OF EARLY LIFE TRAUMA ON HEALTH AND DISEASE: THE HIDDEN EPIDEMIC* 48 (Ruth A. Lanius et al., eds., 2010). Neglect from one’s caregiver during infancy can also obstruct one’s ability to deescalate feelings of stress later in childhood. *Id.* at 51; Bessel A. van der Kolk, *The Neurobiology of Childhood Trauma and Abuse*, 12

CHILD & ADOLESCENT PSYCHIATRIC CLINICS N. AM. 293, 304–06 (2003). Thus, even in early childhood, Mr. Andrus was already at high risk for being unable to manage his emotional responses to ACEs he would encounter later.

Dr. Hammel also testified that as Mr. Andrus developed beyond infancy, his ACEs had the potential to cause damaging physiological changes in his brain. *See* 6EHRR167–68; *see also* DX126 at 4 (Child Welfare Information Gateway Factsheet, noting that “[c]hild abuse and neglect have been shown to cause important regions of the brain to fail to form or grow properly, resulting in impaired development” with “long-term consequences”). Research confirms that repeated stress during childhood can overstimulate and overdevelop the amygdala, the portion of the brain responsible for processing fearful and threatening stimuli, leaving children like Mr. Andrus in a heightened state of anxiety. *See* Jack Shonkoff & Andrew Garner, *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, 129 PEDIATRICS e232, e236–37 (2012). Toxic stress can also impede development of the hippocampus, which controls emotional memory recall and regulation, making the child less able to de-escalate stress. Richard G. Dudley, Jr., *Childhood Trauma and Its Effects: Implications for Police* 5, NEW PERSP. IN POLICING, U.S. DEP’T OF JUST., NAT’L INST. OF JUST. (2015), <https://perma.cc/VMY8-JT35>. These alterations may “result[] in difficulties in memory, mood regulation and contextual learning, which includes learning to differentiate dangerous situations from safe ones.” *Id.* at 5–6. Such changes to the brain can persist into adulthood. *See* Christine Heim & Charles B.

Nemeroff, *The Role of Childhood Trauma in the Neurobiology of Mood and Anxiety Disorders: Preclinical and Clinical Studies*, 49 *BIO. PSYCHIATRY* 1023, 1033 (2001); Daniel P. Chapman et al., *Adverse Childhood Experiences and the Risk of Depressive Disorders in Adulthood*, 82 *J. AFFECTIVE DISORDERS* 217, 223 (2004); Elizabeth A. Schilling et al., *Adverse Childhood Experiences and Mental Health in Young Adults: A Longitudinal Survey*, 7 *BMC PUB. HEALTH* 30 (2007).

ACEs also have a compounding effect, as Dr. Lindsey explained—that is, the more ACEs Mr. Andrus encountered, the greater the harm from each new ACE. See DX5 at 4 (Dr. Lindsey noting that “the impact [of trauma] can be both cumulative and exponential”). Teenage solitary confinement, for example, is an ACE that is particularly harmful to juvenile detainees with serious preexisting ACEs. See Elizabeth M. Rademacher, Note, *The Beginning of the End: Using Ohio’s Plan to Eliminate Juvenile Solitary Confinement as a Model for Statutory Elimination of Juvenile Solitary Confinement*, 57 *WM. & MARY L. REV.* 1019, 1028 (2016); see also Tamar R. Birckhead, *Children in Isolation: The Solitary Confinement of Youth*, 50 *WAKE FOREST L. REV.* 1, 15–16 (2015).⁶ Not only does solitary confinement mimic past instances of physical and emotional neglect, but it can also “exacerbate preexisting mental illness” in teenagers with a high past exposure to ACEs. Birckhead, *supra*, at 14. It also

⁶ The psychological harms of solitary confinement are not exclusive to adolescents. See Rademacher, *supra*, at 1027–28. But teenagers, especially those with significant ACEs, are at elevated risk compared to the adult population. *Id.* at 1028.

“increase[s] the likelihood of subsequent drug abuse,” *id.*, which further “undermine[s] [an adolescent’s] ability to adapt to the adult world.” David Lisak & Sara Beszterczey, *The Cycle of Violence: The Life Histories of 43 Death Row Inmates*, 8 PSYCH. MEN & MASCULINITY 118, 126 (2007).⁷

Because of their profound impact on neurological and emotional development, the ACEs that Mr. Andrus suffered put him at high risk for negative behaviors in adulthood. As Dr. Hammel testified in the habeas proceeding, such trauma is “predictive of long-term problems, whether that be psychological development, physical development, emotional development, [or] involvement with the legal system.” 6EHRR152.

Violent adult behavior, in particular, is closely linked to ACEs. Studies have shown that “childhood abuse is a crucial risk factor for later violence, arguably the most crucial single factor that can be identified.” Lisak & Beszterczey, *supra*, at 118. Childhood trauma can “lead[] to a risk for greater impulsivity and aggressive behavior” because it “imped[es] the brain’s ability to inhibit” such behaviors. *Id.* at 120; *see also* Ryan C. Meldrum et al., *Are Adverse Childhood*

⁷ Other ACEs similarly increase the probability of drug abuse. *See* DX126 at 6 (Child Welfare Information Gateway Factsheet, noting “consistent[]” research findings linking ACEs to adult drug use). Mr. Andrus began using drugs as early as fifteen and soon “relied on drugs to self-soothe.” 7EHRR30 (testimony of Dr. Hammel); *see also* DX9 at 3–4 (brother’s affidavit). He continued to abuse drugs after he was released from juvenile detention, where he was “frequently relegated to extended stints of solitary confinement.” *Andrus*, 140 S. Ct. at 1877; DX4 at 8.

Experiences Associated With Deficits in Self-Control?, 47 CRIM. JUST. & BEHAV. 166, 166 (2020) (finding that “experiencing a greater variety of ACEs is negatively associated with self-control”). The link between ACEs and future violence is particularly acute in boys, who are often socialized to respond to ACEs by developing aggressive behaviors. This process has been described as “‘violentization,’ in which the vulnerable, abused boy discovers power in violence, and in the ‘turning of the tables’ on those more vulnerable than him.” Lisak & Beszterczey, *supra*, at 125.⁸

Scientific evidence regarding the impact of ACEs, which was in the habeas record before the CCA, would be directly relevant to any juror’s assessment of Mr. Andrus’ moral culpability. By linking ACEs to specific neurological, emotional, and behavioral outcomes, well-established developmental psychology confirms the commonsense intuition that some defendants’ crimes may be partly “attributable” to trauma in their youth. *Wiggins*, 539 U.S. at 535. It also helps factfinders distinguish between defendants with severe childhood trauma and those “who have no such excuse.” *Id.*; see also James Garbarino, *ACEs in the Criminal*

⁸ The risk for future violence is also higher in victims of post-traumatic stress disorder, which is characterized by “increased baseline arousal levels, ... lowered thresholds of ... irritability, and ... increased levels of anger.” Lisak & Beszterczey, *supra*, at 119. Mr. Andrus suffered several of these PTSD-like symptoms after his solitary confinement, placing him at high risk for “aggression” and “fits of rage.” See Rademacher, *supra*, at 1027–28; 7EHRR52 (testimony of Dr. Hammel that Mr. Andrus had “plenty of characteristics of somebody who has some post-traumatic-stress-disorder-based symptoms”).

Justice System, 17 ACAD. PEDIATRICS S32, S32 (2017) (noting that extreme ACE exposure “constitutes a compelling ‘mitigating factor,’” whereas a “generically ‘bad childhood’” may not). In this case, the evidence makes clear that Mr. Andrus “had an exceptionally bad childhood” filled with ACEs, which helps explain his criminal conduct and mitigates his moral culpability. DX5 at 7.

II. The Lower Court Erred by Ignoring or Minimizing Mr. Andrus’ Adverse Childhood Experiences.

Despite “the many circumstances in Andrus’ life that could have served as powerful mitigating evidence,” *Andrus*, 140 S. Ct. at 1883, the CCA concluded that Mr. Andrus’ mitigation evidence was not reasonably likely to sway even one juror. In doing so, the CCA committed two distinct errors: (1) it completely ignored many of the ACEs in Mr. Andrus’ life and the scientific evidence linking those ACEs to negative and criminal outcomes in adulthood; and (2) it inappropriately minimized the mitigating significance of the ACEs it did acknowledge, often for scientifically discredited reasons. Each error warrants reversal.

A. The Lower Court Ignored Vast Swaths of Mitigating Evidence.

The CCA ignored vast swaths of mitigating evidence of traumatic childhood events in the habeas record.

Most glaringly, the CCA failed to address the ACEs that this Court itself highlighted, as well as others set

forth in the habeas record. For example, the CCA’s opinion did not mention that the closest person to a stable father figure in Mr. Andrus’ life was fatally shot when he was twelve, DX5 at 9; that in juvenile detention, he was “frequently relegated to extended stints of solitary confinement,” *Andrus*, 140 S. Ct. at 1877;⁹ that his family did not visit him in juvenile detention, leading a probation officer to express surprise that such neglect did not drive him to worse behavior, DX140 at 6; or that juvenile detention “left him badly traumatized,” *Andrus*, 140 S. Ct. at 1882.

Similarly, the CCA made only a passing reference to other record evidence that this Court noted in instructing the CCA to consider the prejudice prong, including that Mr. Andrus’ mother was physically abused; his surrounding community was filled with drugs and crime; his mother’s boyfriends had drug addictions and criminal histories; he lacked any stable father figure; while in juvenile detention, he reported hearing voices telling him to do bad things; and he engaged in self-harm multiple times, including a suicide attempt. *Ex parte Andrus*, 622 S.W.3d at 896–98. Rather than analyzing the impact of these circumstances, the CCA dismissed them in conclusory fashion as “not particularly compelling,” *id.* at 893, baldly

⁹ The CCA stated only that the juvenile detention center staff “remove[d] him from the general population.” *Ex parte Andrus*, 622 S.W.3d at 901. This description elides the fact that Mr. Andrus was not merely segregated but isolated, even though “[m]ost national standards reject the use of isolation [in juvenile detention] as ... harmful.” DX4 at 8 (affidavit of former ombudsman).

contradicting this Court’s own prior finding that the mitigating evidence is “compelling,” *Andrus*, 140 S. Ct. at 1881.

Nor did the CCA even mention *any* of the expert testimony, affidavits, and publications in the habeas record that provide scientific background on the life-long destructive effects of ACEs. *See supra* Part I.B. It never acknowledged even the general principle that childhood traumas can permanently impede healthy psychological development, often leading to violent adult behavior.

The CCA’s failure to give any weight to much of the habeas record is indefensible. Its analysis implies that many of Mr. Andrus’ ACEs are irrelevant to his moral culpability, but well-established developmental psychology shows that these ACEs may be among the fundamental causes of Mr. Andrus’ negative conduct in adulthood. *See supra* Part I.B. Because Mr. Andrus’ crime may be partly “attributable” to his ACEs, those ACEs mitigate his moral culpability. *Wiggins*, 539 U.S. at 535. Indeed, when this Court first considered Mr. Andrus’ case, it highlighted many of the precise experiences that the CCA overlooked or summarily dismissed on remand. The CCA erred in disregarding what this Court had previously characterized as “powerful mitigating evidence.” 140 S. Ct. at 1877–80, 1883.¹⁰

¹⁰ Notably, this Court was not the first to find the mitigating evidence in the habeas record compelling. The trial judge who conducted the habeas hearing issued a detailed, 20-page decision

In its prior cases finding prejudice under *Strickland*, this Court has emphasized the importance of ACEs that mirror the ones Mr. Andrus suffered. For example, in vacating the death sentences in *Rompilla* and *Porter*, this Court relied on evidence that the petitioners in those cases—like Mr. Andrus—were physically beaten and exposed to domestic violence between their parents. *Rompilla*, 545 U.S. at 392; *Porter*, 558 U.S. at 33. The Court has also highlighted evidence of severe parental neglect in several cases. *See Rompilla*, 545 U.S. at 393 (as a teenager, petitioner was abandoned by his mother for extended periods); *Wiggins*, 539 U.S. at 516–17 (as a child, petitioner was “frequently” left “home alone for days”); *Williams*, 529 U.S. at 395 (petitioner’s parents were imprisoned for neglect).¹¹ This Court’s precedents thus make clear that the CCA erred when it failed to engage with evidence of many of Mr. Andrus’ ACEs.

recommending vacatur of Mr. Andrus’ death sentence based on the “ample,” “persuasive” mitigating evidence in the record. App049. The CCA failed to address many of the facts noted by the trial court, just as it ignored evidence highlighted by this Court.

¹¹ The evidence of neglect is even more extensive here than in past cases where this Court has emphasized neglect. Mr. Andrus never had a long-term father figure—unlike, for example, Ronald Rompilla, whose abusive father was at least present. *Rompilla*, 545 U.S. at 392. Moreover, the habeas record shows that the pattern of neglect continued throughout every stage of Mr. Andrus’ childhood. *See* 6EHR180-82 (testimony of Dr. Hammel, noting absence of indication that Mr. Andrus had positive interactions with his mother at any stage of childhood).

B. The Lower Court Used Scientifically Discredited Reasoning to Minimize the Mitigating Effect of the Evidence It Acknowledged.

When the CCA did turn its attention to the evidence of Mr. Andrus’ traumatic experiences, it minimized that evidence for reasons that defy both well-accepted science and logic.

For example, the CCA discounted the detailed evidence of the physical abuse Mr. Andrus suffered, primarily because Mr. Andrus “denied a history of physical abuse” during an evaluation conducted at a juvenile detention center when he was about 17 years old. *Ex parte Andrus*, 622 S.W.3d at 900. But at the habeas hearing, Dr. Hammel explained that it is “common” and “expected” for juvenile detainees to “deny having problems” in their home lives. 7EHRR32. Traumatized youths in juvenile detention “tend to be on high alert” and “aware that weakness is not something you want to display,” so they usually do not “report[] accurately on their history of trauma,” especially “to a psychologist who [they] don’t know and don’t trust.” *Id.*¹² If so

¹² See also Azade Azad & Lina Leander, *Children’s Reporting About Sexual Versus Physical Abuse: Patterns of Reporting, Avoidance and Denial*, 22 PSYCHIATRY, PSYCH. & L. 890, 890 (2015) (“Physically and sexually abused children” were “high in avoidance and denial regarding information about the abuse.”); Irit Hershkowitz et al., *Dynamics of Forensic Interviews with Suspected Abuse Victims Who Do Not Disclose Abuse*, 30 CHILD ABUSE & NEGLECT 753, 754 (2006) (“[T]here is consensus that many abuse victims ... never disclose their experiences or do so belatedly.”).

informed, a reasonable juror would likely place far less weight on Mr. Andrus' statement during that juvenile detention evaluation than the CCA did.¹³

The CCA also belittled the evidence that “some of [Mr. Andrus'] family members suffered physical and sexual abuse” on the ground that this evidence was “not specific to” Mr. Andrus. *Ex parte Andrus*, 622 S.W.3d at 900. This reasoning too is misguided, as expert testimony in the habeas record demonstrates. Dr. Hammel explained that “exposure to violence,” including violence against others, is a traumatic event that “impedes the normal development of emotional regulation.” 7EHRR25; *see also* 6EHRR169 (testimony of Dr. Hammel that “[w]itnessing domestic violence” is a “traumatic event[] and part of a pattern of early trauma for Mr. Andrus”); DX128 at 4 (U.S. Department of Justice task force report, noting that children who witness domestic violence are “at high risk for severe and potentially lifelong problems with physical health, mental health, and school and peer relationships as well as for disruptive behavior”). The removal of Mr. Andrus' younger half-sister, Tafarra, from the home, following her sexual abuse, was similarly likely to have negative consequences for Mr. Andrus' psychological development. Dr. Hammel testified, and common sense confirms, that his sister's removal from the

¹³ The CCA further stated that in his trial testimony, Mr. Andrus “did not contradict the prosecutor's assertion that he had not suffered physical abuse.” *Ex parte Andrus*, 622 S.W.3d at 900. Not so. When asked on cross-examination to confirm that he never experienced “physical abuse,” Mr. Andrus responded, “I mean, I got beat. Shit.” 51RR64–65. Mr. Andrus' disagreement with the prosecutor was clear.

home would be “emotionally disruptive to anybody who’s got a sibling.” 6EHRR218.

The CCA’s suggestion that Mr. Andrus’ role as a caretaker for his siblings undermined evidence regarding his history of mental illness, *Ex parte Andrus*, 622 S.W.3d at 901, is likewise baseless. In fact, Mr. Andrus’ being forced to occupy a quasi-parental role when only a child, due to his mother’s neglect and the absence of a father figure, may have exacerbated his mental illness. Dr. Hammel testified that Mr. Andrus experienced “the trauma of being in charge of your siblings and not having a parent there, which creates a particular reaction to trauma” in which children lose the ability to “trust anybody.” 6EHRR168; *see also* DX5 at 9 (“Children who grow up too fast, often because they must care for other siblings, miss out on their own childhood. This is both frightening to the child and damaging to his healthy psychological development.”).

The CCA also discounted evidence of Mr. Andrus’ mental illness in light of his testimony that he was prescribed inappropriate psychiatric medications. *Ex parte Andrus*, 622 S.W.3d at 901 (“on the one hand Applicant now claims he had mental health issues, but on the other hand he decries having been treated for them while in [juvenile detention]”). But Mr. Andrus’ argument that he was given improper psychiatric prescriptions certainly does not show that he does not have a mental illness. Patients with different psychiatric diagnoses require different treatments, and prescribing an inappropriate medication can lead to serious harm. *See* DX1 at 3, 5 (affidavit of psychiatrist Dr. Julie

Alonso-Katzowitz, noting that Mr. Andrus was prescribed “psychotropic medication that was not indicated for his current diagnoses” and that these medications can cause “potentially serious” adverse effects). The CCA’s rationale for discounting the evidence of Mr. Andrus’ mental illness is therefore meritless.¹⁴

The CCA’s insistence on minimizing the substantial mitigating evidence based on incorrect assumptions about psychology, along with its failure to acknowledge key ACEs in the habeas record, *see supra* Part II.A, led the CCA to conclude that the mitigation evidence was “not particularly compelling” and thus not reasonably likely to sway even a single juror. *Ex parte Andrus*, 622 S.W.3d at 893. That was reversible error.

CONCLUSION

It is reasonably probable that Mr. Andrus’ life would be spared if he were afforded a fair penalty-phase proceeding with competent defense counsel. More broadly, this Court’s intervention is necessary to ensure that lower courts do not blithely disregard evidence of childhood trauma or established psychology when assessing the moral culpability of defendants

¹⁴ This Court found that Mr. Andrus has “struggled with mental health issues” and received at least one diagnosis of mental illness; that he “assumed responsibility as the head of the household for his four siblings” while his mother was absent; and that he was “prescribed high doses of psychotropic drugs carrying serious adverse side effects” while in juvenile detention, without noting any supposed contradiction—likely because the Court correctly perceived none. *Andrus*, 140 S. Ct. at 1880.

whose traumatic childhoods jeopardized their opportunity to develop into healthy adults.

* * *

For the foregoing reasons, the Court should grant the Petition and reverse the judgment below.

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Respectfully submitted,

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