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No. 18-6409

In The
Supreme Court of the United States

SCOTTY GARNELL MORROW,

Petitioner,

v.

BENJAMIN FORD, Warden,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

**BRIEF OF AMICI CURIAE
CHILD USA, THE INSTITUTE ON VIOLENCE,
ABUSE AND TRAUMA, THE JUVENILE LAW
CENTER, THE LEADERSHIP COUNCIL ON CHILD
ABUSE & INTERPERSONAL VIOLENCE, and
DR. MURRAY DAVID SCHANE OF MALESURVIVOR
IN SUPPORT OF PETITIONER**

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**BRIEF OF AMICI CURIAE
IN SUPPORT OF PETITIONER**

With the joint written consent of the parties filed with the Clerk of the Court, CHILD USA, IVAT, the Juvenile Law Center, the Leadership Council on Child Abuse & Interpersonal Violence, and Dr. Murray David Schane of MaleSurvivor, respectfully submit this brief as amici curiae.¹

INTERESTS OF AMICI CURIAE

Amicus curiae, **CHILD USA**, a Philadelphia-based non-profit think tank, draws on the combined expertise of the nation's leading medical and legal academics to reach evidence-based solutions to persistent and widespread problems involving child protection. All child victims deserve justice, and CHILD USA aims to find the path for them.

The Vision of the **Institute on Violence, Abuse and Trauma (“IVAT”)** is a world free from violence, abuse, and trauma. Our Mission is to promote violence-free living by improving the quality of life for individuals on local, national and international levels by sharing and disseminating vital information, improving cross-discipline collaborations, conducting research

¹ Counsel for amici curiae authored this brief in whole and no other person or entity other than amici or their counsel has made a monetary contribution to the preparation or submission of this brief. Counsel for both parties were given ten days notice and both parties consented to the filing of this brief.

and trainings, and providing direct professional services, program evaluation, and consulting.

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values. Juvenile Law Center believes that this goal of fairness and accuracy can best be achieved through the presentation of all relevant information – including that associated with adverse events and aspects of a defendant's childhood and adolescence – for full consideration by the fact finders in capital cases.

The Leadership Council on Child Abuse & Interpersonal Violence is a 501c3 that supports the ethical application of psychological science to human welfare (www.leadershipcouncil.org). We have educated judges, attorneys, mental health professionals, and the media, and have written amicus briefs to support the rights of victims and the access of vulnerable children to therapy and to loving caregivers. The scientific advisors of our organization are some of the leading practitioners and researchers on

interpersonal abuse and trauma and have written many of the authoritative books and articles that prescribe therapeutic and evaluative protocols in the area of sexual abuse and trauma (Chu, 1998; Courtois, 2010; Dalenberg, 2000; Loewenstein, 2006; Silberg, 2013; Waters, 2015).

Murray David Schane, M.D. is President of the Board of Directors of MaleSurvivor. MaleSurvivor has been a leader in the fight to improve the resources and support available to male survivors of all forms of sexual abuse in the U.S. and around the globe. We are a community built upon a unique foundation of respect and mutual partnership between survivors themselves and the professionals who work with them.



SUMMARY OF ARGUMENT

Thanks to a habeas hearing in the Superior Court of Butts County, it is now unquestionable that Petitioner Scotty Morrow was sexually abused as a child. Pet. App. 240. Childhood sexual abuse has a profound and debilitating impact on childhood development. See, e.g., S. Berkowitz et al., *The Child and Family Traumatic Stress Intervention: Secondary Prevention for Youth at Risk Youth of Developing PTSD*, 52 J. CHILD PSYCHOL. PSYCHIATRY 676-85 (Jun. 2011). Morrow's Trial Counsel failed to present evidence of his childhood abuse/trauma, making Morrow a poor witness in his own defense. Moreover, it "is clear that Trial Counsel's investigation did not include meaningful

inquiry into any portion of Petitioner’s formative years.” Pet. App. 243. Based on its conclusive review of this important life experience that was never presented at trial, the Superior Court of Butts County granted the petition for a writ of habeas corpus and vacated Morrow’s death sentence, ruling Morrow was denied effective assistance of counsel at his sentencing hearing. His Trial Counsel did not provide enough mitigating evidence, especially the evidence of the abuse.

The habeas court understood that Morrow was a poor witness in his own self-defense; by blunting his emotions, Morrow looked “flat, callous, and stoic,” Pet. App. 230, and thus unsympathetic to the jury. Dr. Buchanan, a psychologist who testified at the trial without knowing anything about Morrow’s abuse history, admitted that knowledge about Morrow’s abuse would have made a difference in the trial.

Following this Court’s opinions in *Strickland v. Washington*, 466 U.S. 668 (1984), *Wiggins v. Smith*, 539 U.S. 510 (2003), and *Rompilla v. Beard*, 545 U.S. 374 (2005), the habeas court concluded that Trial Counsel’s “performance was deficient” and “counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Strickland*, 466 U.S. at 686. Trial Counsel’s performance was not “reasonable[] under prevailing professional norms,” *id.* at 688; *Wiggins*, 539 U.S. at 521, and there was “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694.

Despite the habeas court's conclusions based on critical facts and this Court's case law, both the Georgia Supreme Court and the Eleventh Circuit Court of Appeals ignored those facts, reversed the habeas court's ruling and reinstated Morrow's death sentence. *Humphrey v. Morrow*, 717 S.E.2d 168 (Ga. 2011) (Pet. App. 173); *Morrow v. Warden*, 886 F.3d 1138 (11th Cir. 2018) (Pet. App. 1). We agree with Petitioner that the Eleventh Circuit has not followed this Court's jurisprudence. We ask this Court to grant certiorari in order to hold that child sexual abuse is an important mitigating factor and, under *Strickland* and its progeny, must be investigated and presented by trial lawyers, even when the victims themselves do not volunteer the evidence. The long history of silent and silenced child sexual abuse victims supports such a grant from this Court. This Court needs to tell the lawyers and the courts to protect child abuse victims throughout the country from having their abuse ignored.

◆

ARGUMENT

Until recently, many states have had child sex abuse statutes of limitation that have made it difficult for prosecution to occur. *See generally* Marci A. Hamilton, *Justice Denied: What America Must Do to Protect Its Children* (2012). Victims are cruelly shut out from the system of justice through a combination of the effects of trauma, the power differential with the perpetrator, and a legal system inadequate to the task. *Id.* We ask this Court to take account of the needs of

children and child victims whenever they are at stake, whether as victims, as the Court sees in other cases, or as *perpetrators* of crimes stemming from the trauma of childhood victimization, as happened in this case.

The Georgia Supreme Court and the Eleventh Circuit Court of Appeals wrongly concluded that Morrow's sexual abuse was relevant only if he volunteered that information to his lawyers before his trial. Pet. App. 11; Pet. App. 188. We ask this Court to grant certiorari to clarify that sexual abuse victims very rarely disclose information about their abuse. Morrow should not have been required to do so. Such a requirement, if allowed by this Court, would place an impossible burden on victims of abuse, who are frequently silenced.

I. THE FACTS DEMONSTRATE THAT PETITIONER'S LAWYERS SHOULD HAVE INVESTIGATED HIS SEXUAL ABUSE.

It is now unquestionable, thanks to a habeas hearing in the Superior Court of Butts County, that Petitioner Scotty Morrow was sexually abused as a child. As that court concluded:

Petitioner was also the victim of a series of rapes during this time period. Credible evidence exists that Earl Green, . . . sexually assaulted Petitioner in the basement on multiple occasions. During the time frame of these assaults, Petitioner began to wet the bed and display behavioral and adjustment problems. Pet. App. 240.

Additional evidence corroborates the assault evidence against Earl Green. We now know that Morrow had problems at school and was chased home by bullies when he was a student. George May, Morrow's mother's new partner, also beat him while he was naked. Pet. App. 240-41.

This evidence was never presented at Morrow's trial. The habeas court observed that the "evidence of Petitioner's development amassed by habeas counsel differs in both quality and quantity from that offered at trial." Pet. App. 238. It concluded there is "no evidence of a written records request from Trial Counsel to any school, physician or hospital in the record before this Court." Pet. App. 228. Moreover, it "is clear that Trial Counsel's investigation did not include meaningful inquiry into any portion of Petitioner's formative years in New York and New Jersey prior to his marriage." Pet. App. 243. Based on its conclusive review of this important life experience that was never presented at trial, the Superior Court of Butts County granted the petition for a writ of habeas corpus and vacated Morrow's death sentence, ruling Morrow was denied effective assistance of counsel at his sentencing hearing. His Trial Counsel did not provide enough mitigating evidence, especially the evidence of the abuse.

The habeas court understood that Morrow was a poor witness in his own self-defense; by blunting his emotions, Morrow looked "flat, callous, and stoic," Pet. App. 230, and thus unsympathetic to the jury. Dr. Buchanan, a psychologist who testified at the trial without knowing anything about Morrow's abuse history,

admitted that knowledge about Morrow's abuse would have made a difference in the trial. Abuse would have explained how Morrow

learned to separate his conscious existence from his emotional states. In the face of an experience such as a rape or beating, the victim often divorced himself from his emotions as a means of surviving the event. . . . By the time he reached adulthood, Mr. Morrow was skilled at blocking out emotion. Pet. App. 244.

Following this Court's opinions in *Strickland v. Washington*, 466 U.S. 668 (1984), *Wiggins v. Smith*, 539 U.S. 510 (2003), and *Rompilla v. Beard*, 545 U.S. 374 (2005), the habeas court concluded that Trial Counsel's "performance was deficient" and "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Strickland*, 466 U.S. at 686. Trial Counsel's performance was not "reasonable[] under prevailing professional norms," *id.* at 688; *Wiggins*, 539 U.S. at 521, and there was "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

The habeas court gave a lengthy list of reasons to explain why Trial Counsel's search for mitigation evidence was deficient. Counsel delayed in investigating the case, did not appoint someone familiar with mitigation evidence, and knew, but ignored, the fact that Morrow had left Georgia at age seven and did not return there until he was an adult. There were numerous "glaring red flags" about abuse provided by Morrow

and his family. Pet. App. 267. The habeas court concluded that Trial Counsel had not made a strategic decision not to present abuse evidence, but instead “simply failed to appreciate the importance of diligently documenting their client’s life, and so neglected to do so.” Pet. App. 262. In the habeas court’s words, “Trial Counsel had before them numerous indicators that additional investigation would be fruitful,” and yet never pursued it. Pet. App. 265.

Although an important part of the trial was about why Morrow “snapped” as he killed two women and injured a third, the lawyers had no evidence of Morrow’s life from age seven to age twenty. Pet. App. 7. The habeas court concluded that “[w]hen his crime is viewed in light of all the available evidence in mitigation, there is – at a bare minimum – a reasonable probability that at least one of the jurors would have struck a different balance as to sentence.” Pet. App. 272, citing *Rompilla*, 545 U.S. at 393. To overturn a death sentence, one juror is all that is necessary. *Id.*

The habeas court’s conclusion was strong:

Trial Counsel failed to perform a complete background investigation, failed to uncover substantial mitigating evidence and expert testimony explanatory of the crime and supportive of their case theory, and thus failed to make a complete presentation of all reasonably available evidence to the jury. Had counsel performed as constitutionally required, there is a reasonable probability that the outcome of Petitioner’s sentencing would have been different. Pet. App. 257.

We ask this Court to affirm the habeas court's emphasis on the importance of lawyers and courts recognizing the violation that occurs with child sexual abuse.

II. BECAUSE OF THE SHAME AND SECRECY HISTORICALLY ASSOCIATED WITH CHILDHOOD ABUSE, VICTIMS CANNOT BE EXPECTED TO VOLUNTEER TO REPORT IT.

Both the Georgia Supreme Court and the Eleventh Circuit emphasized that the habeas court was mistaken about Morrow's case because Morrow himself had never volunteered information about his abuse. This fails to consider the facts of disclosure of childhood sexual abuse, namely that conservative estimations suggest that between twenty-five and thirty-three percent of victims never report or disclose their abuse. *See, e.g.,* Katie Wright et al., *The Australian Royal Commission into Institutional Responses to Child Sexual Abuse*, 74 INTL. J. CHILD ABUSE & NEGLECT 1, 4 (2017); Mary-Ellen Pipe et al., *Child Sexual Abuse: Disclosure, Delay, and Denial* 32 (2013) ("failure to disclose is common among sexually abused children."). Georgia disagreed with the habeas court's conclusion that Morrow's counsel performed deficiently in failing to discover Morrow's alleged rapes, particularly because Morrow himself never made such allegations pre-trial. Pet. App. 188. Georgia also concluded that the psychologist's testimony would not have been strengthened by revelation of the abuse. "Thus, we conclude that the testimony of Morrow's expert about

Morrow's recent allegations about the rapes would not have been given *great weight* by the jury." Pet. App. 189 (emphasis added).

The Georgia Court was very dismissive of Morrow's and the habeas court's claims of rape:

As to Morrow's essentially-unsubstantiated claim of rape, our discussion above demonstrates that trial counsel did not perform deficiently regarding those allegations because Morrow never revealed them pre-trial and that those allegations, which are based essentially on only Morrow's own report, would have been regarded as suspect by the jury even if we were to assume that they should have been discovered pre-trial. Pet. App. 191.

The Eleventh Circuit then affirmed the Georgia Supreme Court's ruling that Trial Counsel were not deficient because Morrow and his family had not reported the abuse. In those courts' reasoning, Morrow's silence defeats his claim completely.

Judge Wilson, a concurring judge on the Eleventh Circuit who agreed only with his court's result, more accurately expressed the errors of the courts and the importance of courts' really listening to Morrow's claims of abuse. As Judge Wilson wrote,

in my estimation, the Superior Court of Butts County's resolution of the issues presented here was far more thorough and considerate than the resolution reached by the Supreme Court of Georgia in its reversal of the Superior Court's opinion. The Superior Court undertook a

searching inquiry into Morrow's childhood, and unequivocally found that Morrow was "the victim of a series of rapes" while he was growing up in the New York area. It in turn concluded that trial counsel's failure to conduct a proper investigation into his life there rendered their performance deficient and prejudiced the outcome of Morrow's case. Pet. App. 30.

I fear that, in Morrow's case, the result we have reached is based on the Supreme Court of Georgia's unwillingness to grapple with the intricacies of his case. Namely, here we are faced with the short shrift trial counsel gave not only to Morrow's time in New York and New Jersey and the sexual abuse that occurred there, . . . It is hard to ignore that there could have been a recognizable impact on at least one member of the jury. Pet. App. 30-31.

Judge Wilson more accurately captured the long history of sexual abuse crimes, including the silence of the victims. In many cases of child abuse, victims are unable to come forward for decades. *See, e.g.*, CHILD USA, *Average and Median Age of CSA Disclosure* (2018), www.childusa.org/law. In virtually all cases, the crime occurs in secret, making corroboration difficult. These problems play into the dangers for children posed by perpetrators. Child molesters often abuse their victims for years, leaving numerous victims in their wake over the course of a lifetime. *See, e.g.*, Carla Correa & Meghan Louttit, *More than 160 Women Say Larry Nassar Sexually Abused Them*, N.Y. TIMES, Jan. 24, 2018.

On average, one in four girls and one in six boys are sexually abused.² Child sex abuse is a global and national epidemic that has flourished in, among other places, youth-serving organizations and families. Rarely is the perpetrator of the abuse a stranger; in fact, the vast majority of child sex abuse is perpetrated by individuals known to the child or the family. See Kenneth Lanning, *Child Molesters: A Behavioral Analysis* 5 (2010), http://www.missingkids.com/content/dam/ncmec/en_us/desktop/publications/nc70.pdf. Children are often groomed by adults they trust, but are so disabled by the trauma that they remain unable to disclose the abuse until much later in life.³ Most abuse occurs, as it did here, at the hands of those who are in the family or closely associated with the victim.

² NSOPW, *Raising Awareness About Sexual Abuse: Facts and Statistics*, U.S. DEPT. OF JUSTICE, <https://www.nsopw.gov/en-US/Education/FactsStatistics?AspxAutoDetectCookieSupport=1#reference> (last visited Oct. 12, 2018); see also CDC, *Preventing Child Abuse & Neglect Fact Sheet*, <https://www.cdc.gov/violenceprevention/pdf/CAN-factsheet.pdf> (2017) (noting that at least one in seven children experienced abuse or neglect within the past year – a likely underestimate). Other studies have placed the incidence of sexual abuse of boys as low as 1 in 20, but the 20-25% figure for the abuse of girls has remained constant. See National Center for Victims of Crime, *Child Sexual Abuse Statistics*, NCVC, <http://victimsofcrime.org/media/reporting-on-child-sexual-abuse/child-sexual-abuse-statistics> (last visited Oct. 12, 2018).

³ See generally BESSEL VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN MIND AND BODY IN THE HEALING OF TRAUMA* (2014); Penelope K. Trickett et al., *The Impact of Sexual Abuse on Female Development: Lessons from a Multigenerational, Longitudinal Research Study*, 23 *DEVELOPMENT & PSYCHOPATHOLOGY* 453-76 (2011).

The adverse effects of childhood trauma are indisputable. As explained by the Center for Disease Control (“CDC”), Adverse Childhood Experiences (“ACEs”) “have a tremendous impact on future violence victimization and perpetration, and lifelong health and opportunity.” U.S. Dep’t Health & Human Services, CDC, *About Adverse Childhood Experiences*, https://www.cdc.gov/violenceprevention/acestudy/about_ace.html (Apr. 1, 2016).⁴ The ACE Study is one of the largest investigations of the effects of childhood abuse, definitively showing a strong correlation between Adverse Childhood Experiences and later impairments.⁵ Robert F. Anda et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, 256 EUR. ARCH PSYCHIATRY CLIN. NEUROSCI. 174, 175 (Nov. 2005) (“Numerous studies have established that childhood stressors such as abuse or witnessing domestic violence can lead to a variety of negative health outcomes and behaviors, such as substance abuse, suicide

⁴ Vincent J. Feletti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults*, 14 AM. J. PREVENTATIVE MED. 4, 245-58 (1998); S.R. Dube et al., *Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span: Findings from the Adverse Childhood Experiences Study*, 286 JAMA 24, 3089-96 (Dec. 2001) (explaining that childhood trauma can lead to negative health outcomes).

⁵ The findings from the ACE study show a strong graded relationship between adverse childhood experiences and related impairments (e.g., disrupted neurodevelopment; social, emotional, and cognitive impairment; disease; disability; etc.). See, e.g., Feletti, *supra* note 4; U.S. Dep’t Health & Human Services, CDC, *Adverse Childhood Experiences (ACEs)*, <https://www.cdc.gov/violenceprevention/acestudy/index.html> (Apr. 1, 2016).

attempts, and depressive disorders.”). Those impairments were undoubtedly present in Morrow’s difficult life.

Trauma affects childhood victims of sexual abuse or assault in a way that is distinct from victims of other crimes. Frequently, children are so disabled by the trauma that they cannot disclose the abuse until much later in life.⁶ As a direct result of the shame and secrecy historically associated with child sex abuse, victims often remain in the shadows – unable to come forward. *See, e.g.,* Judy Cashmore et al., *The Characteristics of Reports to the Police of Child Sexual Abuse and the Likelihood of Cases Proceeding to Prosecution after Delays in Reporting*, 74 INTL. J. CHILD ABUSE & NEGLECT 49, 49-61 (2017) (explaining that delays in disclosing and reporting child sexual abuse to the police are common); Katie Wright et al., *The Australian Royal Commission into Institutional Responses to Child Sexual Abuse*, 74 INTL. J. CHILD ABUSE & NEGLECT 1, 4 (2017) (suggesting that on average it took victims over twenty years to disclose their abuse). Indeed, the average age of reporting is 52. One-third of victims never disclose their abuse.⁷ At least thirty-three percent of such cases are never reported. *See id.*; *see also* Mary-Ellen Pipe et al., *Child Sexual Abuse: Disclosure, Delay, and Denial* 32 (2013) (“failure to disclose is common among sexually abused children.”).

⁶ *See, e.g.,* S. Berkowitz et al., *The Child and Family Traumatic Stress Intervention: Secondary Prevention for Youth at Risk Youth of Developing PTSD*, 52 J. CHILD PSYCHOL. PSYCHIATRY 676-85 (Jun. 2011).

⁷ CHILD USA, *Average and Median Age of CSA Disclosure*, (2018), www.childusa.org/law.

Recent media coverage of sex abuse victims, including the Larry Nassar trials, the Pennsylvania Grand Jury report on clergy sex abuse, U.S. Department of Justice investigations, #MeToo, #TimesUp, and #WhyIDidntReport, has brought into light the glaring prevalence of a once-silent and hidden culture that enables sexual abuse. Tragically, the epidemic is bigger than can be quantified as the nature of sexual abuse is too painful for many victims to come forward, much less identify and hold accountable their abusers. Cities have recently held “All Survivor Days” to honor victims who tell their stories and speak for those who cannot. *See generally* CHILD USA, *All Survivors Day*, www.childusa.org/asd (2018).

The Eleventh Circuit’s conclusion that Morrow should have voluntarily reported his abuse is completely inconsistent with what we know about the victims of child sexual abuse. They are likely to remain silent, even when they have suffered serious pain and have done nothing wrong. As Justice Kennedy observed in his powerful dissent in *Stogner v. California*, “young victims often delay reporting sexual abuse because they are easily manipulated by offenders in positions of authority and trust, and because children have difficulty remembering the crime or facing the trauma it can cause.” 539 U.S. 607, 650 (2003) (Kennedy, J., dissenting).

We urge this Court to grant certiorari and reverse the Eleventh Circuit’s holding that child victims of abuse must volunteer what happened to them. The movement for children’s rights has faced a long story

of children's silence, which must be acknowledged here. Silent child abuse victims should not be punished for their silence.

III. CHILDHOOD SEXUAL ASSAULT IS POWERFUL MITIGATING EVIDENCE.

The Georgia Supreme Court and the Eleventh Circuit also concluded that the jury would not have taken Morrow's testimony seriously and would not have given the abuse testimony "great weight." Pet. App. 189; Pet. App. 12. They concluded that Morrow's volunteering of the abuse at the time of trial was the only testimony that might have had great weight, and do not blame his counsel for failing to independently discover it. They believed Morrow's attorneys had good reason not to believe Morrow was hiding anything from them. The courts agreed that counsel "had no reason to doubt Morrow's honesty." Pet. App. 19.

In reaching those conclusions, the courts read the facts very differently from how the Superior Court of Butts County viewed them. The Eleventh Circuit thought that extensive evidence of Morrow's family situation was presented at the trial. The court thought the trial did not demonstrate that Trial Counsel had reason to disbelieve Morrow when he failed to disclose the abuse. In affirming the Georgia Supreme Court, the Eleventh Circuit wrote:

The record establishes that the jury heard evidence that Morrow "was picked on in school" and spanked as a child, and the Georgia

Supreme Court was entitled to conclude that “cumulative” evidence on these points had no reasonable probability of changing Morrow’s sentence.

The Georgia Supreme Court also reasonably determined that the new “allegations about the rapes would not have been given great weight by the jury.” It pointed out “that Morrow’s only direct evidence of the alleged rapes . . . was his own statement to a psychologist” and that the “psychologist’s testimony” carried less weight “in light of the weaker evidence upon which that testimony, in part, relied.” The Georgia Supreme Court was entitled to give less weight to secondhand testimony. True, Morrow could have personally testified about the rape. But the record establishes that Morrow did not want to testify and was a poor witness, and Walker explained that Morrow’s testimony was so “disaster[ous]” at trial that counsel declined to put him on the stand again during sentencing. And Morrow offers no direct evidence of rape to bolster his allegations. Pet. App. 24-25 (citations omitted).

The Circuit also defended Georgia’s conclusion that Morrow’s new evidence of abuse would not have changed the jury’s reaction to hearing that his mother’s “boyfriend had been abusive to Morrow’s mother” and that “Morrow [once] attempted to defend his mother with a baseball bat.” Pet. App. 25. The Eleventh Circuit also affirmed the Georgia Court’s conclusion that there were no “red flags” for the lawyers to

follow about Morrow's abuse at the time of the trial. Pet. App. 21.

Those conclusions ignore the habeas court's wise understanding that Morrow testified poorly because he was a victim of sexual abuse. As noted above, the habeas court understood that Morrow was a poor witness in his own self-defense. Citing Dr. Buchanan, the habeas court explained how knowing about the abuse likely would have made a difference in Morrow's testimony. Once again, Judge Wilson was more accurate when he concluded "It is hard to ignore that there could have been a recognizable impact *on at least one member of the jury.*" Pet. App. 31 (Wilson, J., concurring) (emphasis added).

This Court has long recognized that childhood rape is "powerful" mitigating evidence. *Wiggins v. Smith*, 539 U.S. 510, 535 (2003). For decades, victims have been silent about their abuse in film, sports, and religion, or by doctors, their own family and friends, and in so many other places. That is why so many advocates for children have led their victims' cases into court. Brave whistleblowers in Hollywood, Olympic and non-Olympic sports, religion, scouting, the family, and elsewhere, have led the movement for truth and justice for the victims of child sexual abuse. Whistleblowers made sure the courthouse doors were open to the silent victims by identifying them and making sure the courts would listen. This is the only way to bring justice to these long-suffering victims.

Gymnast and Nassar survivor Sarah Klein, reported “As a former competitive gymnast and the first known abuse survivor of Olympic team doctor Larry Nassar, our ‘army of survivors’ proved that we can overcome opposition and change laws.” Press Release, CHILD USA, *Larry Nassar Survivors Join CHILD USA and SNAP (the Survivors Network of those Abused by Priests) at Press Conference to Call Upon Lawmakers to Pass a Window for Justice in Pennsylvania* (Sept. 11, 2018), www.childusa.org/press. Experts believe there are likely more. For Klein, the “acid test of a legal system is its capacity to do justice.” *Id.* We ask this Court to recognize that justice occurs only when abuse victims are heard. Justice does not occur when victims like Morrow are ignored, as in this case.

Similarly, “[p]arents deserve to know who is endangering their children and how.” Press Release, CHILD USA, *CHILD USA Responds to Release of Grand Jury Report on Clergy Sex Abuse in Six Pennsylvania Dioceses* (Aug. 14, 2018), www.childusa.org/press (quoting University of Pennsylvania Professor, Marci Hamilton, CEO and Academic Director of CHILD USA). Pennsylvanians learned about sex abuse because their prosecutors took the lead and issued grand jury reports detailing the dangers that children had suffered. The *hundreds* of abusers and *thousands* of victims in the 1356-page recent Pennsylvania Grand Jury Report highlighted the horrific ubiquity of sexual abuse within one institution; it also pointed to the truth that this scourge is far-reaching, across society, organizations, and events. *See* Nathaniel Lash, *Catholic Church*

Clergy Sex Abuse: Read the Full Grand Jury Report, PHILA. INQUIRER, Aug. 14, 2018, www2.philly.com/philly/news/catholic-church-clergy-sex-abuse-read-the-full-grand-jury-report-20180814.html. The horrific findings of the grand jury wholly confirm the understanding of all advocates in the field of sexual abuse and human rights – *this happens everywhere* – in churches, universities, sports teams, doctors’ offices, the military, schools, and families.

Just as it happened to Morrow.

This Court established in *Strickland* that “An ineffective assistance claim has two components: A petitioner must show that counsel’s performance was deficient, and that the deficiency prejudiced the defense.” *Strickland*, 466 U.S. at 687. To establish deficient performance, a petitioner must demonstrate that counsel’s representation “fell below an objective standard of reasonableness.” *Id.* at 688. This Court has emphasized that “[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.” *Id.* In *Wiggins*, this Court concluded that the attorney should have conducted a fuller background investigation of the client’s history, including his being sexually abused. This Court concluded that Wiggins’ lawyers were unreasonable to ignore Wiggins’ history of sexual abuse or to think it was irrelevant to the case. Instead, the reasonable lawyer would have investigated “*all reasonably available* mitigating evidence.” 539 U.S. at 524. In Wiggins’ case, as in this one, the lawyers should have paid attention to his family and social history because his abuse was

very relevant to Wiggins’ personal history and his case. *Id.*

The same is true for Scotty Morrow. A reasonable lawyer knows that abuse victims are usually unwilling to talk about it, and certainly not to volunteer information about it. A reasonable lawyer also knows that there “is a reasonable probability that at least one juror would have struck a different balance.” *Id.* at 537. This Court has long recognized that a “troubled history,” like sexual abuse, is “relevant to assessing a defendant’s moral culpability” (citing *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989)) (“[E]vidence about the defendant’s background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background . . . may be less culpable than defendants who have no such excuse.”). *Wiggins*, 539 U.S. at 535.

Justice Kennedy wrote eloquently of the pain of children who have been sexually victimized, who have suffered “deep and lasting hurt.” *Stogner*, 539 U.S. at 652 (Kennedy, J., dissenting). This Court should grant certiorari to ensure that those victims do not continue to be hurt by the actions of the courts below, who do not always recognize the painful facts of sexual abuse, in the very same justice system designed to protect them.



CONCLUSION

As a result of the appellate courts' failure to adequately consider the provable impact of childhood sexual abuse on its victims, this Court should grant certiorari, summarily vacate the decision below, and remand the case to the Eleventh Circuit to reconsider its opinion. Or, this Court should grant Petitioner's writ and set the case for full hearing before this Court.

Respectfully submitted,

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