No. 24-6933

IN THE SUPREME COURT OF THE UNTED STATES

MIKAL D. MAHDI,

Petitioner,

v.

BRYAN P. STIRLING, Commissioner,
South Carolina Department of Corrections,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND APPLICATION FOR STAY OF EXECUTION

**** Execution Scheduled for April 11, 2025 @ 6:00 p.m. ****

ALAN WILSON
Attorney General of South Carolina

DONALD J. ZELENKA
Deputy Attorney General

*MELODY J. BROWN
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Senior Assistant Attorney General

RICHARD B. LARRABEE
Assistant Attorney General

P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

**counsel of record* *Counsel for Respondent*

CAPITAL CASE

Death-sentenced inmate Mikal Mahdi asserts that his execution would be unjust because his sentencing judge did not hear certain background mitigation evidence; however, the testimony from lay witnesses Harris, Wilson, and Smith that he relies upon was presented and considered in the 2009 state post-conviction relief action as part of the claim that counsel prematurely ended the mitigation investigation. The state court found on an extensively developed record neither deficient performance nor prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). That adjudication was later reviewed again under 28 U.S.C. § 2254. This Court denied petitions for review from each adjudication. Both adjudications were reviewed by the Supreme Court of South Carolina in determining whether Mahdi met the heightened standard for original jurisdiction habeas corpus, and, on April 7, 2025, the state supreme court resolved Mahdi did not. The question presented is:

QUESTION PRESENTED

Should this Court dismiss the petition for lack of jurisdiction when the Supreme Court of South Carolina applied its state law test for evaluating original jurisdiction habeas corpus petitions to deny Mahdi's petition; or, alternatively, should this Court deny the petition when Mahdi seeks to re-litigate a fully developed but rejected claim of ineffective assistance when this Court previously considered the claim in denying Mahdi's prior petitions to this Court following the denial of state post-conviction relief and the denial of federal habeas corpus relief, *see* Docket Nos. 16-741 and 22-5536.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Constitutional Provisions:

Statutes:

Court Rules:

INTRODUCTION

Petitioner Mikal Mahdi was sentenced to death on December 8, 2006, for the murder of Capt. James Myers. After nearly twenty years of challenges in state and federal courts, his execution is now scheduled for Friday, April 11, 2025. Mahdi makes this late request to stay his execution to allow this Court to consider the sufficiency of his original mitigation case, but that is a subject that has been thoroughly covered and addressed in his prior litigation in state and federal courts in multi-layers of review.

In his present petition, Mahdi specifically claims that his trial counsel missed mitigation from three background-focused witnesses which may have persuaded the state court judge who sentenced him to have imposed a life sentence instead. It is not a new claim; he raised it in state and federal collateral proceedings. And the evidence was considered for its potential impact in sentencing under the standard *Strickland* test. In fact, this Court denied Mahdi's petitions for certiorari review following the denial of both state post-conviction relief and federal habeas corpus relief. And rightly so. The claim shows an ordinary application of *Strickland* after a fact-intensive inquiry. That fails to show a claim worthy of a grant of certiorari review. Mahdi's recycled argument is facially insufficient to warrant additional review and certainly insufficient to support a stay of execution.

In sum, Mahdi's attempt to cast this case as an example of the denial of consideration of his best case in mitigation is unfounded. Mahdi's offered mitigation, as expanded and considered in collateral actions, did not overcome the heinous

brutality of the murder and the history of violence that shows the true character of Mikal Mahdi.

The petition should be denied.

STATEMENT OF JURISDICTION

Mahdi claims jurisdiction under 28 U.S.C. § 1257(a). On April 7, 2025, the Supreme Court of South Carolina denied Mahdi's petition for a writ of habeas corpus in its original jurisdiction. Respondent submits that the Court lacks jurisdiction because the Supreme Court of South Carolina rejected review on the basis of state law grounds: its test for determining whether to exercise its original jurisdiction to grant relief. *See Wilson v. Moore,* 178 F.3d 266, 275-76 (4th Cir.1999) (a determination by the Supreme Court of South Carolina not to exercise its original jurisdiction is not a merits ruling on the underlying claim presented).

STATEMENT OF THE CASE

A. Facts of the Crime:

Mahdi's South Carolina crimes were part of a multi-state spree in July 2004 beginning in Virginia and ending in Florida. Mahdi's callous murder of a convenience store clerk in North Carolina was captured in chilling detail on store surveillance. Mahdi continued the violence into and across South Carolina. That Supreme Court of South Carolina summarized the facts in the direct appeal review, *Mahdi v. State,* 678 S.E.2d 807, 807–08 (2009). However, in an unusual addition, then Chief Justice Jean Toal authored a concurring opinion to "record the facts of this particularly

heinous case." *Id.* at 808.[1] The Chief Justice set out an expanded version of the facts that more fully describes Mahdi's crimes and his extraordinary brutality:

> On July 14, 2004, Petitioner, then a resident of Virginia, embarked upon a crime spree that would span four states. Petitioner stole a .380 caliber pistol from his neighbor, a set of Virginia license plates, and a station wagon. Petitioner left Virginia and headed to North Carolina.
>
> On July 15, Petitioner entered an Exxon gas station in Winston–Salem, North Carolina armed with the .380 pistol. Petitioner took a can of beer from a cooler and placed it on the counter. The store clerk, Christopher Jason Boggs, asked Petitioner for identification. As Boggs was checking Petitioner's identification, Petitioner fatally shot him at point-blank range. Petitioner fired another shot into Boggs as he lay on the floor. Petitioner then attempted unsuccessfully to open the store's cash register. Petitioner left the store with the can of beer, and headed to South Carolina.
>
> Early in the morning of July 17, Petitioner approached Corey Pitts as he sat at a traffic light in downtown Columbia, South Carolina. Petitioner stuck his gun in Pitts' face, forced him out of his car, and stole Pitts' Ford Expedition. Petitioner replaced the Expedition's license plates with the plates he had stolen in Virginia, and headed southeast on I–26.
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> About thirty-five minutes down the road, Petitioner stopped at a Wilco Hess gas station in Calhoun County and attempted to buy gas with a credit card. The pump rejected the card, and Petitioner spent forty-five minutes to an hour attempting to get the pump to work. Due to his suspicious behavior, the store clerks called the police. Aware that the clerks' suspicions had been alerted, Petitioner left the Expedition at the station and fled on foot through woods behind the station.

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[1] Then Chief Justice Toal of the state court explained the necessity of the addition as follows: "I recite these facts to emphasize the egregious nature of Petitioner's crimes. In my time on this Court, I have seen few cases where the extraordinary penalty of death was so deserved. I therefore concur with the majority and vote to affirm Petitioner's conviction and sentence." 678 S.E.2d at 809 (Toal, C.J., concurring).

> About a quarter to half mile from the station, Petitioner came upon a farm owned by Captain James Myers, a thirty-one year veteran law enforcement officer and fireman. Petitioner broke into a work shop on the Myers property. Once inside the work shop, Petitioner watched television and examined Myers' gun collection. Petitioner found Myers' shotgun and used the tools in the shop to saw off the barrel and paint it black. Petitioner also took Myers' .22 caliber rifle and laid in wait for Myers.
>
> That day, Myers had been at the beach celebrating the birthdays of his wife, sister, and daughter. Myers had visited with his father before returning to his farm. Upon arriving at the farm, Myers stopped by the work shop, where he was confronted by Petitioner. Petitioner shot Myers nine times with the .22 rifle. Petitioner then poured diesel fuel on Myer's body and set the body on fire. Petitioner stole Myers' police-issued truck, and left with Myers' shotgun, his .22 rifle, and Myers' police-issued assault rifle.
>
> Later that evening, Myers' wife, also a law enforcement officer, became worried when Myers did not return home. Mrs. Myers drove to the work shop and discovered Myers' burned body lying in a pool of blood.
>
> Petitioner escaped to Florida, where he was spotted by police on July 21 driving Myers' truck. Fleeing the police, Petitioner abandoned the truck on foot in possession of the assault rifle. When cornered by police, Petitioner abandoned the rifle and was eventually taken into custody.

Id. at 809.[2]

During sentencing, the State presented evidence of other acts of violence, summarized by the sentencing judge as follows:

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[2] The district court, in review under 28 U.S.C. § 2254, noted this expanded version of the facts in its opinion. (BIO App. 13a-15a). The district court added, by footnote, that Mahdi had also "pled guilty to first-degree murder in the death of Mr. Boggs and received a life sentence in North Carolina." (BIO App. 14a n. 1).

On January 7th, 1998, while in the Virginia Department of Juvenile Justice for grand larceny and breaking and entering, Mr. Mahdi, then 14 years of age, conveyed to a counselor doing an evaluation profile that his only strength was robbing people. On June 30th, 1998, Mr. Mahdi, then 15 years old, was involved in an over 9 (nine) hour standoff with the Brunswick County, Virginia Sheriff's Department who was attempting to execute an order on the defendant to return him to a juvenile detention facility when Mr. Mahdi made the comment, according to Brunswick County Sheriff James Woodley, that, "I'm going to kill a cop before I die." On November 23, 2000, the Defendant, then 17 years of age, attempted to grab the gun of a Richmond, Virginia Police Officer who was attempting to arrest Mr. Mahdi on a vandalism charge for slashing his mother's automobile tires. During this arrest, Mr. Mahdi commented, according to Officer Mike Koehler, that he "should have killed that crazy bitch," referring to his mother. On April 17th, 2001, then 18 years old, while attempting to break into an apartment in Richmond, Virginia, Mr. Mahdi stabbed Moises Rivera, a maintenance supervisor, five (5) times, resulting in a felony conviction for malicious wounding. Mr. Mahdi received a fifteen (15) year prison sentence suspended to the service of thirty-nine (39) months to be followed by fifteen (15) years of probation.

During each of these periods of incarceration, Mr. Mahdi's behavior was maladaptive, assaultive and demonstrated an utter disrespect for authority, including threatening the life of a Detention officer.

Following Mr. Mahdi' s release on probation on May 12, 2004, his criminal activities escalated during a crime spree that resulted in his killing Christopher Jason Boggs during a robbery of an Exxon Station in Winston-Salem, North Carolina on July15, 2004. Mr. Mahdi shot Mr. Boggs twice in the face at point blank range with a weapon that had been stolen from his grandmother's neighbor's house in Lawrenceville, Virginia. On July 18, 2004, three days later at approximately 3:30 a.m., Mr. Mahdi carjacked Corey Pitts' automobile in Columbia, South Carolina using a chrome plated handgun. Following his murder of Captain Myers, Mr. Mahdi was apprehended on July 21, 2004 in

> Satellite Beach, Florida, after jumping out of Captain Myers' city-issued truck armed with a Ruger .223 assault rifle belonging to the Orangeburg Department of Public Safety. Following his arrest, Mr. Mahdi stated that, according to Sergeant Darren Frost of the Satellite Beach Police Department, that he did not shoot Sergeant Frost only because the gun was stuck in a three shot burst and he did not think he could shoot him, the other cop, referring to the other police officer, and the f'ing dog. While in safekeeping in the South Carolina Department of Corrections awaiting this trial, Mr. Mahdi made numerous threats to kill various department employees.

(BIO App. 5a-7a).[3]

B. Relevant Procedural History:

1. Trial Level Proceedings.

The Calhoun County grand jury indicted Mahdi on August 23, 2004, for Murder, Grand Larceny greater than $5,000, and Burglary, second degree, violent. The State issued a notice of intent to seek the death penalty. The Honorable Clifton Newman was assigned to hear the capital proceedings. Carl Grant, Esq., and Glenn Walters, Esq., were appointed to represent Mahdi. Mr. Grant was in a serious motorcycle accident in the early summer of 2006 and was relieved as counsel. Josh Kroger, Esq., was appointed as second chair.

From November 26-29, 2006, a jury of twelve jurors and four alternates were selected and impaneled. However, prior to the swearing of the jury, on November 30,

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[3] The district court also summarized the evidence of Mahdi's past violent behavior and threats of violence, including the near murder of "Moises Rivera, whom Mahdi almost stabbed to death," and, quoted various threats Mahdi made in post-arrest detention, including, at a disciplinary hearing for hitting an officer, that he intended to "kill that mother f****** officer," and, while complaining that he was not responded to in a timely fashion, a threat to kill or have someone else kill the grievance coordinator. (*See* BIO App. 46a, 48a-49a).

2006, Mahdi waived his right to a jury on guilt and sentencing and entered pleas of guilty to all charges, which Judge Newman accepted. Mahdi admitted to all the facts supporting the plea including: that he killed Capt. Myers with malice aforethought; that he entered a building belonging to the victim without consent and with intent to commit a crime and while in or immediately after leaving the building was armed with a deadly weapon; and used the weapon during the burglary to commit the murder of the victim.

A separate sentencing proceeding was held before Judge Newman beginning on December 4, 2006. On December 8, 2006, Judge Newman filed his written sentencing order and read the order into the record. Judge Newman found the State proved two statutory aggravating circumstances beyond a reasonable doubt.[4] After considering all the evidence in extenuation, aggravation, and mitigation of punishment, Judge Newman sentenced Mahdi to death.[5] In concluding his Order, Judge Newman stated as follows:

> In extinguishing the life, hope, and dreams of Captain Myers in such a wicked, depraved and conscienceless manner, the Defendant Mikal Deen Mahdi also extinguished any justifiable claim to receive the mercy he seeks from this Court.

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[4] In previously discussing South Carolina's capital sentencing procedure, this Court has observed that "the State's evidence in aggravation is not limited to evidence relating to statutory aggravating circumstances." *Simmons v. South Carolina*, 512 U.S. 154, 162 (1994). In shorthand, South Carolina is not a "weighing" state (as the old term goes). The State does not have a system where the sentencer is obliged to weigh statutory aggravating circumstances and mitigating circumstances one against the other. *State v. Bellamy*, 359 S.E.2d 63, 65 (S.C. 1987), *overruled by State v. Torrence*, 406 S.E.2d 315 (S.C. 1991) ("A jury should not be instructed to 'weigh' the aggravating circumstances against the mitigating circumstances.") (citing *State v. Plath*, 313 S.E.2d 619 (S.C. 1984)).

[5] Mahdi was also sentenced to consecutive terms of 15 years for burglary and 10 years for grand larceny. (R. 1741, 1825).

> In considering all of the evidence in this case, I have concluded that the only appropriate punishment for the murder of Captain James E. Myers is death.

(BIO App. 11a).

2. Direct Appeal.

Mahdi did not timely appeal; however, the Supreme Court of South Carolina granted an original writ to allow for briefing and direct appeal review. Mahdi, represented by counsel, raised one issue:

> Did the trial judge improperly consider Mikal Mahdi's initial exercise of his constitutional right to a trial by jury in imposing a death sentence?

(*See* BIO App. 16a).

On June 15, 2009, the state supreme court not only affirmed Mahdi's plea and sentence but also conducted the required proportionality review. *Mahdi v. State*, 678 S.E.2d 807, 808 (S.C. 2009). Mahdi did not seek certiorari review from this Court at that juncture.

3. State Collateral Proceedings and Appeal.

Mahdi filed his initial state post-conviction relief ("PCR") application on August 18, 2009. The Honorable Doyet Early was appointed to preside over the collateral action. Teresa Norris, Esq., and Robert Lominack, Esq., were appointed to represent Mahdi. PCR counsel filed amended applications raising multiple issues, including the following relevant to this action:

> **Ground 10(a)/11(a)(iii):** Counsel failed to adequately investigate, develop, and present mitigation evidence

> concerning Applicant's family, social, institutional, and mental health history.

(*See* BIO App. 17a).

On March 9, 2011, a PCR evidentiary hearing was held at the Broad River Correctional Institution parole hearing courtroom.[6] After presentation of testimony and other evidence, Judge Early took the matter under advisement. Judge Early filed his Order of Dismissal on January 8, 2013, and an Amended Order of Dismissal on August 20, 2014, dated August 19, 2014. (BIO App. 18a). Mahdi filed a motion to alter or amend which Judge Early denied on September 9, 2014. Mahdi appealed.

New counsel joined Ms. Norris in representing Mahdi on appeal: Seth Farber, Esq., and Brandon Duke, Esq. Counsel asked for review of one issue:

> Was Petitioner denied the effective assistance of counsel at his capital sentencing proceeding by trial counsel's decision to rely entirely on a single expert witness to present mitigating evidence about petitioner's background instead of calling available lay witnesses who could have provided detailed and specific testimony in mitigation?

(BIO App. 114a).

On September 8, 2016, the Supreme Court of South Carolina denied the petition for review. Mahdi sought review from this Court on the following question:

> Whether counsel in a capital sentencing proceeding can, consistent with this Court's holdings in *Williams v. Taylor*, 529 U.S. 362 (2000), and its progeny, properly rely exclusively on expert testimony and forgo calling available lay witnesses with detailed, firsthand information about mitigating circumstances in the defendant's background.

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[6] The hearing was held inside the facility due to security concerns. Mahdi and a fellow death row inmate were charged with stabbing a guard while on death row.

(BIO App. 19a; *see also* Sup.Ct. Docket No. 16-741).

This Court denied the petition on February21, 2017. *Mahdi v. South Carolina*, 580 U.S. 1116 (2017). (*See also* BIO App. 19a).

4. Section 2254 Habeas Corpus Action in District Court and Appeal to the Fourth Circuit.

Mahdi, represented by counsel,[7] filed a "place-holder" petition which allowed a stay of execution to exhaust federal remedies; however, he subsequently moved to stay the federal action to return to state court for a successive PCR action. The district court denied the motion on October 3, 2017, with leave to re-file if the successive state action should be allowed to be developed.[8]

Mahdi subsequently filed an amended petition, and Respondents filed a return and moved for summary judgment on December 20, 2017. On March 12, 2018, Mahdi filed a response in opposition and several affidavits outside the state court record which Respondents moved to strike. In an Order filed September 24, 2018, the district court granted Respondent's motion for summary judgment; granted in part and denied in part the motion to strike (allowing consideration of materials to evaluate Mahdi's arguments to excuse default); denied the petition; and declined to issue a certificate of appealability. (BIO App. 108a-109a). The district court devoted nearly

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[7] The district court appointed E. Charles Grose, Esq., and John L. Warren, III, Esq. to represent Mahdi in the federal action. Derek Alan Shoemake, Esq., would later replace Mr. Warren when Mr. Warren accepted a federal clerkship

[8] In Mahdi's second state PCR action, he argued several issues, but none directly relevant to this appeal. The action was denied as untimely, successive, barred by laches, and/or res judicata, collateral estoppel, judicial estoppel, and the principle of "the law of the case" or not cognizable on post-conviction relief; and, at any rate, without merit. The state appeal was summarily dismissed. Mahdi filed a petition for writ of certiorari in this Court which was denied on December 3, 2018. *Mahdi v. South Carolina*, 586 U.S. 1039 (2018).

40 pages to the mitigation issue, carefully comparing the trial and PCR records, (*see* pp. 27-66 of the 97 order, BIO App. 39a-78a), and ultimately resolved that the PCR court reasonably applied this Court's precedent to the facts of the case, (BIO App. 73a-78a). The district court denied Mahdi's motion to alter or amend and Mahdi timely appealed.

After briefing and argument, the Fourth Circuit affirmed the denial of relief by published opinion issued on December 20, 2021. *Mahdi v. Stirling*, 20 F.4th 846, 866 (4th Cir. 2021). Relevant to this petition, the Fourth Circuit found:

> Mahdi maintains that trial counsel's performance was deficient because, "[e]ven though [his] family, friends and community members were available, trial counsel did not present a single witness who personally knew [him] or who could properly bring to light the trauma [he] endured throughout his childhood." Opening Br. 62. And though Mahdi acknowledges that Hammock's [the trial-level social worker's] testimony presented some of the troubled details of his life, he asserts "it was woefully deficient." Opening Br. 62–63.
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> The State suggests Mahdi's argument "cannot be squared with the record." Resp. Br. 33. Reiterating the PCR court's determination "that trial counsel made reasonable investigation into Mahdi's background," Resp. Br. 29, the State emphasizes Hammock's credentials and testimony related to the effect Mahdi's "educational, parental, and role model issues, and other recognized risk factors ... had on his development." Resp. Br. 33–34. Moreover, the State argues, the district court correctly found the PCR court's decision that the evidence presented by non-family lay witnesses during the PCR evidentiary hearing was cumulative of that presented during the sentencing hearing was reasonable.
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> We agree that trial counsel's performance was not deficient. As a threshold matter, Mahdi has presented no grounds to conclude that the PCR court's determination

> that trial counsel "conducted a reasonable and thorough mitigation investigation and presented what mitigation they could that was favorable to Mahdi at the time of the sentencing proceeding," J.A. 7556, was "sufficiently against the weight of the evidence," *Williams*, 914 F.3d at 312.

Mahdi v. Stirling, 20 F.4th 846, 901 (4th Cir. 2021).

The Fourth Circuit reviewed the state court record, noting that the PCR judge credited defense counsel's testimony regarding investigation, and acknowledged that counsel gathered a qualified team of experts to investigate Mahdi's background and reach out to potential witnesses. *Id.* Notably, Mahdi's family was not cooperative, and their later PCR testimony added to the aggravation side of the scales:

> For example, Carson and Lawanda testified about Mahdi's manipulative behavior, including his frequent malingering about suicide and the incident when he made a false claim of abuse in an effort to retaliate against them. Indeed, Carson told Haas that he "still laughs about this today because he feels [Mahdi] was just being manipulative and really wasn't struggling [with suicide]." J.A. 2774. He also referred to Mahdi as a "demon" based on his behavior. J.A. 2706. Rose described Mahdi's anger and violent conduct as a child, including "hit[ting his mother] a couple of times." J.A. 2288. Sophia testified about an incident where Mahdi slashed his mother's tires because she would not let him use her car.
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> During the PCR hearing, Haas and trial counsel also testified about their interactions with other members of Mahdi's family. Shareef spent most of his time during his meeting with Haas "talking a lot about his ... personal beliefs," J.A. 2773, and otherwise "refused to participate," J.A. 2837. Vera refused to meet with anyone from the South Carolina defense team. Saleem would not speak with them. Nathan was not "helpful at all," J.A. 2777, and indeed "was proud of the fact that he had identified his nephew for the North Carolina authorities," J.A. 2814. And Nancy "wanted to brag about the accomplishments of the

> family. She did not want to address the issues with regard to her grandson and how he got there." J.A. 2816. In short, Mahdi's family put up road block after road block in preventing trial counsel's efforts to gather potential witnesses—family or otherwise—to testify on Mahdi's behalf.

Id. at 902.[9]

As to the narrow group of lay witness that Mahdi wants the Court to limit its consideration to in this petition:

> We also agree with the district court that the PCR court's determination that "much, if not all, of the evidence Mahdi offered at PCR regarding his family and social history" through non-family lay witnesses "was cumulative to the evidence presented in Mahdi's capital sentencing proceeding" through Hammock's testimony and exhibits, J.A. 7560, was not "sufficiently against the weight of the evidence," *Williams*, 914 F.3d at 312. During the PCR evidentiary hearing, Mahdi's teachers testified or submitted affidavits about the significant gaps in his education, his behavioral outbursts, and Shareef's failures as a father, though they all acknowledged they knew nothing about Mahdi's home life. What's more, they also presented negative testimony that hurt Mahdi's mitigation efforts. Specifically, they testified about Mahdi's anger and behavioral issues, including the fact that he used to "draw pictures of people hanging, the nooses and things like that." J.A. 2345.
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> Smith and Douglas Pond provided testimony concerning Shareef's troubled behavior in the community, specifically recounting the incident at the local Whites-only pool. Sheriff Woodley, who testified and was cross-examined by trial counsel during the sentencing hearing, submitted an affidavit about Shareef's violent behavior towards his mother and Vera as well as his lack of respect for authority.

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[9] This reflects a recurring theme in the broader the dig for information – further information offered in PCR for purposes of showing potential mitigation continued to bring about more and more evidence in aggravation. *See Mahdi,* 20 F.4th at 904 ("It is also worth noting that each witness who testified during the PCR hearing would have likely introduced evidence that would have undermined Mahdi's mitigation strategy at sentencing.").

> And Sharon Pond testified about Shareef's mental health issues, though she conceded she had never met Mahdi before and that medical professionals ultimately did not find any health or major mental illness in Shareef.

Id. at 903.

The Fourth Circuit agreed that

> [t]rial counsel recognized the importance of Mahdi's family history and background, which explains why Hammock alluded to all of it in her testimony during the sentencing hearing. Specifically, she testified about Mahdi's "rather chaotic" childhood, J.A. 1597, including the extensive gaps in his education. She also testified at length concerning Shareef's violent and outlandish behavior towards Nancy and Vera; his reputation for being "at odds with people in the community, with his own family and with law enforcement," J.A. 1610; and his "inability ... to parent appropriately and correctly," J.A. 1597. Trial counsel could hardly be said to have performed deficiently by presenting evidence that "would have added nothing of value," *Bobby*, 558 U.S. at 12, 130 S.Ct. 13, and was cumulative of what had already been submitted to the trial court.

Id. at 903-904.

The Fourth Circuit further found the PCR court's determination that Mahdi failed to show prejudice was likewise reasonable based on the extensive record and this Court's precedent such that "even if [the court of appeal] were to reach this second prong of the *Strickland* analysis, [it] would still affirm the district court's holding." *Id.* at 904-905.

Mahdi next filed a timely petition for writ of certiorari in this Court and raised the following single issue:

> Did the state post-conviction court misapply this Court's Sixth Amendment precedent when it held that Mikal Mahdi's trial attorneys reasonably ended their investigation into mitigating evidence.

(Docket No. 22-5536, Petition filed September 6, 2022).

This Court denied the petition on January 9, 2023. *Mahdi v. Stirling*, 143 S. Ct. 582 (2023).

5. Original Jurisdiction State Habeas Corpus Action.

Though Mahdi exhausted his ordinary state and federal remedies with this Court's denial of his 2022 petition for writ of certiorari to review the Fourth Circuit opinion, the Supreme Court of South Carolina stayed the issuance of a notice of execution until it decided a challenge to the methods of execution statute. The opinion in the methods case was issued on July 31, 2024. *See Owens v. Stirling,* 904 S.E.2d 580 (S.C. 2024), *reh'g denied* (Aug. 16, 2024). On August 31, 2024, the Supreme Court of South Carolina issued an order listing Mahdi as one of the death-sentenced inmates who could then have a notice issued. Pursuant to the terms of that order, Mahdi's notice was issued on March 14, 2025.

On March 18, 2025, Mahdi filed a petition for writ of habeas corpus in the original jurisdiction of the Supreme Court of South Carolina. One of his two claims alleged trial counsel was ineffective in investigation and presentation of lay witness mitigation testimony at sentencing. The State filed a return on March 26, 2025, and submitted the petition should be denied and argued that Mahdi had litigated the mitigation claim previously, including relying on some of the same lay witnesses and experts he offered in support of his arguments in that petition. The State argued Mahdi did not meet the stringent requirements for original jurisdiction habeas corpus review. On April 7, 2025, the state supreme court issued an order that found just

that: "Mahdi has not met his burden of showing a constitutional violation that, in this setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice." (Pet. App. 12a). Thus, the court denied Mahdi's petition. (Pet. App. 12a).

REASONS WHY THE PETITION SHOULD BE DISMISSED OR DENIED AND THE APPLICATION FOR STAY DENIED

The petition should be denied as Mahdi cannot meet the jurisdictional requirements for review by this Court. However, even if he could establish a jurisdictional basis, the claim he seeks to have reviewed is one already rejected by state and federal courts after fact-intensive inquiries. Having received multiple levels of review of essentially the same argument,[10] Mahdi fails to show that this Court should now engage in a fact-intensive and redundant review. Notably, this Court has previously rejected the claim for review in two other petitions. It should do so again.

I. Mahdi has failed to show a ruling based on federal law for this Court to review, thus, fails to establish the necessary jurisdiction requirement.

On April 7, 2025, the Supreme Court of South Carolina denied Mahdi's petition for writ of habeas corpus in the original jurisdiction concluding that he failed to carry "his burden of showing a constitutional violation that, in this setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice," *i.e.*, the test

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[10] Cognizant that misstatements in the petition should be addressed in the brief in opposition, *see* Sup. Ct. Rule 15.2, Respondent underscores that Mahdi's assertions that (1) "[i]f this Court does not grant certiorari review and stay Mahdi's execution, he will be put to death even though his trial attorneys mishandled his capital defense," and (2) "the state courts failed to remedy these deficiencies" rather "addressed them in ways that violate federal law," are in no way reconcilable with the record. Mahdi may not agree with the resolutions, but his trial attorney's investigation and presentation of the mitigation case have been reviewed and his challenges considered in state and federal action. The state PCR court found no deficiency and no prejudice under the proper *Strickland v. Washington* standard.

for original jurisdiction state habeas corpus petitions. (Pet.App. 6a). Mahdi represents to this Court that it is this ruling that should be reviewed. (Pet. 1). However, Mahdi has shown only that the state supreme court applied its own state court test for original jurisdiction habeas corpus matters. To be sure, Mahdi presented a petition; he simply presented a petition that is not entitled to merits review on the claims. It is a review outside the ordinarily and readily available review by the state courts.

The Supreme Court of South Carolina has, under the state constitution, the authority to issue writs in its original jurisdiction. Article V, § 5, S.C. Constitution. However, the court primarily functions as an appellate court. *See, e.g., Key v. Currie*, 406 S.E.2d 356, 357 (S.C. 1991). A petition for original jurisdiction federal habeas corpus must overcome the longstanding rule that "a writ of habeas corpus is reserved for the very gravest of constitutional violations, 'which, *in the setting*, constitute[ ] a denial of fundamental fairness shocking to the universal sense of justice.' " *Moore v. Stirling*, 871 S.E.2d 423, 429 (S.C. 2022) (citing *Butler v. State*, 397 S.E.2d 87, 88 (S.C. 1990)). The "in the setting" requirement refers not just to a presence or absence of error, but consideration is made as to whether there was "a meaningful opportunity to protect" defendant's "rights." *Tucker v. Catoe*, 552 S.E.2d 712, 718 (S.C. 2001). *See also McWee v. State*, 593 S.E.2d 456, 458 (S.C. 2004) (explaining that in *Butler* then again in *Tucker*, to grant relief, the Supreme Court of South Carolina "found it was the combination of the constitutional violation *and* other circumstances which

compelled it to conclude the applicant had been denied fundamental fairness shocking to the universal sense of justice").

Consequently, the decision whether to exercise jurisdiction rests on the state test does not present a federal question for this Court to review: "Without any doubt it rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law." *John v. Paullin*, 231 U.S. 583, 585 (1913).[11]

As the test suggests, review of the petition claims is necessary, but the review is not simply of the proposed claim under relevant law, but also consideration of the context of the case.

"While the allegations in the petition are treated as true, the petition must set forth a prima facie case showing the petitioner is entitled to relief" which is to say, "it must allege that the petitioner has exhausted all other remedies, and it must set out a constitutional claim that meets the standard delineated in *Butler*." *Moore,* 871 S.E.2d at 429. Mahdi could not make this preliminary showing under state law. Thus, the petition was dismissed on the basis of the state law test, not federal law as

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[11] Mahdi is actually attempting to challenge (again) the state PCR court's ruling from the 2009 PCR action. He is simply using the reference to the recent state supreme court original jurisdiction petition as a swerve to the clear untimeliness of the request as to mitigation evidence, and the presentation of personal and family history through one witness. (*See* Pet. at 2 n. 1). As shown *infra,* both of these claims were previously presented to this Court, and Mahdi's petitions were denied.

Mahdi attempts to make it. The court considered other circumstances not required in application of the *Strickland* test. *See McWee, supra; Butler, supra.*

The Fourth Circuit has similarly found that denials of original jurisdiction petitions submitted to the Supreme Court of South Carolina do not constitute rulings on merits.[12] *Wilson v. Moore*, 178 F.3d 266, 277 (4th Cir. 1999). Wilson's case was based in federal habeas corpus reviewed under 28 U.S.C. § 2254, consequently, whether the state court considered the claim on the merits affected not only procedural default, but also whether the materials submitted in the petition for original jurisdiction review could be considered a part of the state court record for § 2254 review. *Id,* at 273. The Fourth Circuit rejected Wilson's argument that the order, which reflected the petition was "denied," indicated that Supreme Court of South Carolina considered the merits of the federal claim.

The Fourth Circuit resolved "[a]fter examining the totality of the circumstances accompanying the entry of the state order, we conclude that the order fairly appears to rest on state procedural grounds, not federal law." *Id,* at 275-276. It reached that conclusion having considered that there was no mention of federal law in the order and there was no discernable difference in the state court's use of "denied" rather than "dismissed" to indicate the type of review given. *Id.* The Fourth Circuit considered other state case orders including one that had been presented to this Court previously, *Yates v. Aiken*, where this Court had reversed the denial of a petition and

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[12] In general, this Court may depend on the federal court of appeals to have "familiarity" with the state law at issue. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 16 (2004) (" Our custom on questions of state law ordinarily is to defer to the interpretation of the Court of Appeals for the Circuit in which the State is located.").

remanded to the Supreme Court of South Carolina for further proceedings. *Id.*, at 275 n. 9 (citing *Yates v. Aiken,* 349 S.E.2d 84, 85 (S.C. 1986), *rev'd,* 484 U.S. 211 (1988)). It noted, however, that subsequent guidance from this Court was then available to determine whether the action was based on independent and adequate state law grounds, citing *Harris v. Reed*, 489 U.S. 255 (1989), and *Coleman v. Thompson*, 501 U.S. 722, 729 (1991), and that precedent reinforced its conclusion that the ruling was not on the merits. *Id.* [13]

In further support of the precise decision at issue here, the Supreme Court of South Carolina set out its parameters of review, plainly, in its Order. (Pet. App. 5a, setting on the standard of review and noting "a petitioner seeking a writ of habeas corpus bears a much higher burden"). This "review plus" of any constitutional claim presented distinguishes the review from mere application of federal law. In prime example, under the state test, even the existence of a constitutional error does not warrant review if the petition does not meet the remainder of the test such as previous presentation of the issue in ordinary remedies. And Mahdi, with his record of litigation, simply could not show the system had failed him, keeping him for proper consideration. Rather, Mahdi's various challenges failed factually and legally when reviewed within his ordinary remedies. Indeed, in denying the petition, the state supreme court first found a procedural bar to relief:

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[13] Additionally, as the Supreme Court of South Carolina explained in the subsequent opinion following remand, Yates had filed *both* a petition for writ of certiorari to review his denial of postconviction relief *and* a petition for writ of habeas corpus in the original jurisdiction. Those petitions were consolidated before the Court, logically making review of one over the other difficult. *See Yates,* 349 S.E.2d at 85.

> **First, the PCR court and the district court have already determined this issue.** *See Simpson v. State,* 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998) (noting habeas corpus cannot be used as a substitute for appeal or other procedure for the correction of errors for which the defendant previously had the opportunity to avail himself).

(Pet. App. 6a).

A passing or light review of Mahdi's ineffective assistance claim on the established record is not enough for Mahdi to show proper jurisdiction in this Court where *in addition to showing a possible constitutional error,* a state habeas corpus petition still must establish the procedural or other failures that demonstrate the extraordinary exercise of original jurisdiction would be warranted. Mahdi even implicitly admits in his petition that the state supreme court did not grant him a new *Strickland* review by the virtue of the complaints that he levies against the state court:

- While the state supreme court addressed whether Mahdi's trial counsel were deficient, it did so in ways that were nonresponsive to the arguments raise."
- "the state court misses the point"
- "the state court offers no relevant rejoinder to Mahdi's claim of deficient performance"
- "None of the state court's reasoning speaks to [Mahdi's precise] concerns."
- and asserts, "The superficiality of the state supreme court's prejudice analysis...."

(*See* Pet. at 32, 33, 34, 40).

The above proves Respondent's point; the state supreme court was not granting

a new *Strickland* review, it was assessing whether there was the possibility of constitutional error, that in the context of the entirety of the case, "constitutes a denial of fundamental fairness shocking to the universal sense of justice." *Butler, supra.* Mahdi frustration with the ruling is one of his own making: he is trying to reshape the contours of the state supreme court's review to convince this Court that the state court misapplied federal law in a *Strickland* analysis when it the state court was applying the state law test for original jurisdiction habeas corpus actions.

Consequently, as the state court order demonstrates on its face, the decision that Mahdi failed to show relief was due under original jurisdiction rests on the decision of the state supreme court to exercise jurisdiction under its own announced state law test. That will not support jurisdiction here. *John, supra. See also Coleman,* 501 U.S. at 729 ("This Court will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment."). The petition should be dismissed. But even if Mahdi could show sufficient jurisdiction, he is still simply asking the Court to revisit an old issue. The established record shows the Court need not conduct a redundant review it already passed on in earlier litigation.

II. The petition here constitutes little more than an untimely petition for rehearing of the Court's previous orders denying Mahdi's petition for certiorari review.

As the state supreme court found, this ineffective assistance of counsel claim regarding the mitigation investigation was presented in both his state and federal court actions, resolving that it "agree[d] with the PCR court and the district court,

and find that the evidence raised in Mahdi's instant petition is merely cumulative to that raised at sentencing." (Pet. App. 6a-7a). Mahdi also blends into his complaints that only a social worker presented Mahdi's history to the sentencing judge rather than counsel presenting lay witnesses, (*see* Pet. at 31, 40), including, presumably, the witnesses he references in his "Statement of the Case," Myra Harris, Carol Wilson, and Georg Smith, (Pet. at 21-25, 38-39). These are not simply repetitive in general, these complaints were raised previously to this Court:

> Whether counsel in a capital sentencing proceeding can, consistent with this Court's holdings in *Williams v. Taylor*, 529 U.S. 362 (2000), and its progeny, properly rely exclusively on expert testimony and forgo calling available lay witnesses with detailed, firsthand information about mitigating circumstances in the defendant's background.

(BIO App. 19a; *see also* Sup.Ct. Docket No. 16-741).

> Did the state post-conviction court misapply this Court's Sixth Amendment precedent when it held that Mikal Mahdi's trial attorneys reasonably ended their investigation into mitigating evidence.

(Docket No. 22-5536, Petition filed September 6, 2022).

Under this Court's Rule 44.2, petitions for rehearing on an order denying certiorari review must be filed within a 25-day window. These requests to reconsider questions presented from Mahdi's prior petitions are little more than untimely petitions for rehearing. Further, such petitions must be accompanied by a certificate that the request is made "in good faith and not for delay...." Rule 44.2, Sup.Ct.R. The request here is most certainly for delay and contrary to the history of Mahdi's litigation.

III. The state and federal records of Mahdi's prior actions demonstrate that the state PCR court's rejection of Mahdi's ineffective assistance of counsel claim regarding the mitigation investigation was reasonably rejected under this Court's precedent.

Though procedurally limited in multiple ways, if the underlying complaints could be reached on the merits, the record that follows Mahdi into any review shows the claim is without merit.

Though Mahdi describes his trial counsel's mitigation investigation as insufficient, there is no denying that trial counsel made reasonable investigation into Mahdi's background. Indeed, much of the sentencing presentation by the defense centered on explaining Mahdi's family and experiences. Credentialed and capital case experienced social worker Marjorie Hammock testified at length concerning her biopsychological assessment of Mahdi. She testified that she conducted interviews of Mahdi, and his mother and other family members (grandmother, uncles and aunts). She also reviewed records, consulted with others, and visited Mahdi's home. The district court summarized her detailed sentencing phase testimony, which included information on Mahdi's father, Shareef, the arranged marriage of Mahdi's parents, and the "very unstable, and chaotic" environment in the home, including allegation of abuse toward the mother. (*See* BIO App. 53a). Her information also described Mahdi's "difficulty in school" and that he "struggled with his self-esteem." (BIO App. 53a-54a). She opined "Mahdi's child development was greatly impacted by his father's inability to properly parent." (BIO App. 55a). She identified risk factors and

other issues in Mahdi's background. (BIO App. 55a). Mahdi's claim that the record shows an anemic case is incorrect.

Further, the PCR hearing allowed for further insight into the investigation behind the presentation and the additional negatives that came along with that, again, as summarized by the district court:

> The State ... presented testimony from Mahdi's trial attorneys and defense team, which included: James Gordon, the private investigator (App. A001742-47); Paige M. Haas, the mitigation investigator (App. A001800-26); Dr. Thomas V. Martin, the forensic psychiatrist (App. A001747-84); and Dr. Geoffrey R. McKee, the forensic psychologist (App. A001784-1800). The attorneys and investigators testified regarding the investigation, sharing information in periodic team meetings, consulting with the attorneys assigned to Mahdi's North Carolina murder case, ***and personal interactions with uncooperative family members and potential witnesses.*** Dr. Martin discussed his findings that Mahdi had a violent outlook, expressed no remorse, and was manipulative. (App. A001755-56). [FN 20] ***Those findings led Dr. Martin to diagnose Mahdi with antisocial personality disorder.*** (App. A001756) ***Dr. McKee agreed and diagnosed Mahdi with antisocial personality disorder*** with a history of alcohol abuse. (App. A001790). ***Both doctors indicated none of the information they heard or reviewed during the evidentiary hearing would have changed their opinions and, in fact, the DJJ records, which they had not previously reviewed, were consistent with their diagnoses.*** (App. A001783-84, A001799-1800).
>
> [FN 20] Mahdi told Dr. Martin that his actions were "justified" and that "people only understand force." (App. A001761).

(BIO App. 68a-69a). The Supreme Court of South Carolina, noted, too, the great difficulty the additional negative information posed for counsel. (Pet. App. 8a).

Mahdi Failed to Show an Unreasonable Application of Strickland

For an ineffective assistance of counsel claim to warrant relief, the oft quoted test is that a petitioner must show (1) that his trial counsel's performance fell below an objective standard or reasonableness, and (2) that a reasonable probability exists that but for counsel's error, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1985). In considering evidence omitted from the sentencing phase, a petitioner must "establish 'a reasonable probability that a competent attorney, aware of [the available mitigating evidence], would have introduced it at sentencing,' and 'that had the jury been confronted with this ... mitigating evidence, there is a reasonable probability that it would have returned with a different sentence.'" *Wong v. Belmontes,* 558 U.S. 15, 20 (2009) (quoting *Wiggins v. Smith,* 539 U.S. 510, 535 (2003) (alternations in original). In the prejudice analysis, a reviewing court must "consider *all* the relevant evidence that the jury would have had before it" which requires consideration of possible mitigation with additional aggravating evidence that may also come in. *Id.*, 558 U.S. at 20.

In reviewing the state PCR order, the district court concluded:

> While the PCR evidence certainly expanded on and added depth to Ms. Hammock's testimony and the other evidence offered at sentencing, it would not have significantly "altered the sentencing profile presented to the sentencing judge." *Strickland,* 466 U.S. at 700.

(BIO App. 73a). And much of the PCR evidence was covered in the sentencing presentation, with the district court also observing that trial counsel had

> assembled a team of qualified experts to assist in Mahdi's defense and specifically to investigate potential mitigating

> evidence. Members of the team traveled to Lawrenceville, Virginia; Richmond, Virginia; Baltimore, Maryland; and Philadelphia, Pennsylvania. (App. A001805-06). They interviewed Mahdi and several of his family members, including: Nancy; Mahdi's uncle, Nathaniel; Vera; Shareef; Mahdi's maternal aunts, Corliss Artis and Sophia Gee; Carson and Lawanda Burwell; and Mahdi's paternal aunt, Kathy. (App. A001806-08). And, the team consulted with Mahdi's North Carolina attorneys and their mitigation investigator, who had already spent time gathering information from Mahdi's family. (App. A001808). In addition, Paige Haas, the team's mitigation investigator, testified that she attempted to speak with Saleem, but was not successful. (App. A001809).

(BIO App. 75a-76a).

The district court further noted the state court record established that counsel held scheduled meetings and shared information with the defense team, and that the mitigation investigator obtained school records and spoke to teachers. (BIO App. 76a). The court concluded "[i]t is not unreasonable or against prevailing professional norms for counsel to rely on a qualified mitigation investigator and other experts." (BIO App. 77a). *See generally Council v. State,* 670 S.E.2d 356, 363 (S.C. 2008) (concluding counsel erred in not retaining "a social history investigator" rather leaving the task to "his law partner and private investigator to collect potentially relevant information" observing that "neither of these individuals was qualified, in terms of social work experience, to evaluate the information to assess Respondents background").

Without doubt, the Sixth Amendment requires counsel in a capital case to conduct a reasonable investigation into mitigation evidence. *Wiggins v. Smith,* 539 U.S. 510 (2003); *Williams v. Taylor,* 529 U.S. 362, 296 (2000). And, because Mahdi

challenged counsel's performance, he had to show an unreasonable application of the two-prong *Strickland* test. A court considering a claim of ineffective assistance must apply a "strong presumption" that representation was within the "wide range" of reasonable professional assistance and counsel made all significant decisions in the exercise of reasonable professional judgment. *Id.,* at 689. "[T]here comes a point at which [more information] can reasonably be expected to be only cumulative, and the search for it distractive from more important duties." *Bobby v. Van Hook*, 558 U.S. 4, 11 (2009).

Counsel was not deficient in investigation or their strategic decisions that followed. Notably, the district court, addressing the concern that the investigation did not go deep enough into Mahdi's history, reasoned: "While PCR counsel may not have traced Mahdi's lineage all the way back to 1648, as Mr. Dworkin [another expert retained for the federal habeas action] did, they did present evidence regarding Mahdi's family's history, racial views, and significant experiences with racism, and the very segregated nature of their environment." (Attachment 1, p. 710).

Moreover, as that state PCR judge found and the district court agreed, even if deficiency existed, the additional evidence Mahdi pointed to "could not counterbalance the overwhelming evidence in aggravation" such as:

- The video murder of his North Carolina victim and his casually walking out with a beer;
- That Mahdi shot Captain Myers nine times, set fire to his body, and stole his truck and his weapon in order to run from police;
- Mahdi's statements to police when captured in Florida;
- Mahdi's extensive history of disciplinary violations in prison, including violence and threats of violence against employees and escape attempts, even

when contained in SCDC's most secure unit; and the fact that Mahdi planned to effect escape in Judge Newman's own courtroom.

(BIO App. 91a).

The district court also noted the additional aggravation that accompanied the offered evidence such as:

- an antisocial personality disorder
- Dr. Martin's opinion that Mahdi "was essentially becoming a racist militant in his own way. His outlook on life was quite violent. His way of surviving is by force. He seemed to have no difficulty talking about killing people if necessary in order to achieve independence"
- that Mahdi's brother, subjected to the same environment went into the Job Corp and the Army instead of falling into criminal life
- that Mahdi had fled Virginia because of possible murder charges after his involvement in a drug deal that went awry
- that he took multiple steps to avoid detection and committing other crimes
- and, while in Florida after the murder, he wore Captain Myers's uniform and "investigated" a report of criminal activity

(BIO 93a-94a).

The district court reasonably concluded "the scales remain tipped in the State's favor." (BIO Attachment 2, 82-83). No relief was due. *Sigmon v. Stirling*, 956 F.3d 183, 192 (4th Cir. 2020) ("The question of whether counsel's deficiency prejudiced the defense "centers on 'whether there is a reasonable probability that, absent [counsel's] errors, the sentencer ... would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.' ") (quoting *Williams v. Ozmint*, 494 F.3d 478, 484 (4th Cir. 2007) (alterations in original) (quoting *Strickland*, 466 U.S. at 695)). Mahdi did not carry his burden of proof. Indeed, the history of the detailed, careful review of this case is part of what convinced the Supreme Court of South Carolina to deny the original jurisdiction petition. (*See* Pet. App. 6a-9a).

As to prejudice, Mahdi was required to show that had counsel acted competently, there is a reasonable probability a different sentence would have resulted. *Belmontes*, 558 U.S. at 19 (citing *Strickland*, 466 U.S. at 694). To make that determination, a review court must consider the old mitigation evidence and the new mitigation evidence, along with the evidence in aggravation produced at sentencing, and the aggravating evidence that would likely come in with the new mitigation. *Id.*, at 20. "The likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

Though Mahdi essentially submits that the Fourth Circuit, the district court, and the state court erred in finding he failed to prove ineffective assistance, his legal structure for review is flawed. Mahdi urges the Court to consider only a portion of what he submitted in PCR in hopes to shield himself from more evidence in aggravation. However, as this Court has instructed, *Belmontes, supra,* all the evidence must be considered – not just the select portion he showcases in this petition. The PCR court correctly found that even more aggravating evidence would have come in with the new mitigation. *See Belmontes*, 558 U.S. at 19 (reasonable for counsel not to offer evidence that would "open the door" to "damaging evidence"); *Burger v. Kemp*, 483 U.S. 776, 793 (1987)(when defendant's background is "by no means uniformly helpful" to him since it "suggest[s] violent tendencies," it is reasonable to choose not to present it).

Further, in federal habeas, Mahdi failed to show the State PCR Court unreasonably applied this Court's precedent and failed to show by clear and

convincing evidence the PCR Court reached an unreasonable determination of the facts given the record before that Court. The PCR Court's determination of this issue is fully supported by the record. As the district court and the Fourth Circuit correctly found, Mahdi failed to show habeas relief was due. (App. at 98a-99a). Again, the issue has been thoroughly considered and properly rejected. No further review is warranted.

IV. Having failed to show a reasonable probability that the petition could be considered sufficiently meritorious to support a grant of the petition, the application for a stay of execution should likewise be denied.

Whether to grant the stay is controlled by the three traditional factors this Court has considered before: "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).[14]

The questionable correctness of Mahdi's tautology that an unconstitutional death penalty constitutes irreparable harm because death is itself irreparable is beside the point. Mahdi is unable to satisfy either of the first two factors.

As to the first factor in the test: There is, in particular, one reason to believe that four Justices will not vote to grant certiorari on this matter: They have already declined to do so. In Mahdi's litigation.

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[14] "In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.* Given the repeated and lengthy reviews of this claim at multiple levels, there is no reason to consider this a close case.

Here is the question presented in Mahdi's petition for writ of certiorari submitted to this Court in December 2016:

> 1. Whether counsel in a capital sentencing proceeding can, consistent with this Court's holdings in Williams v. Taylor, 529 U.S. 362 (2000), and its progeny, properly rely exclusively on expert testimony and forgo calling available lay witnesses with detailed, firsthand information about mitigating circumstances in the defendant's background.

And for purposes of a reminder, here is the question presented in Mahdi's petition for writ of certiorari submitted to this court on April 7, 2025:

> 1. Did Mikal Mahdi receive ineffective assistance of counsel when his trial attorneys abandoned their investigation after deciding Mahdi's family members would not make helpful witnesses, resulting in a mitigation presentation that lasted less than 30 minutes and failed to convey the lifelong childhood trauma Mahdi endured.

While not a word-for-word replication, the second question is a rephrasing of the first. The essence of the two questions is the same: Whether Mahdi's counsel was ineffective in the handling of his mitigation case because of the failure to call lay witnesses who were not members of Mahdi's family to testify. Mahdi's 2016 petition to this Court, again underscores this fact under the reasons for granting the petition—specifically when it states: "In short, trial counsel was deficient for failing adequately to investigate an entire category of witnesses (non-family members) and failing to present the mitigating testimony that several of them would have offered."

And this Court denied Mahdi's petition for writ of certiorari in February 2017. There is no compelling reason to believe that this Court would look *more* favorably

upon this issue now that it has been raised at the eleventh hour in a case with legitimate jurisdictional questions.

This, of course, also shows that the second factor is likely unsurmountable for Mahdi. If it is unlikely that four Justices of this Court will grant certiorari, it is even less likely that five Justice would reverse the judgment below. Indeed, for all of the reasons already stated, Respondent respectfully submits that they should not.

CONCLUSION

The Court should dismiss the petition for want of jurisdiction, or alternatively, deny the petition.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

*MELODY J. BROWN
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Senior Assistant Attorney General

RICHARD B. LARRABEE
Assistant Attorney General

Counsel for Respondents

**counsel of record*
April 9, 2025