
**BEFORE THE GOVERNOR OF THE STATE OF TEXAS
AND
THE TEXAS BOARD OF PARDONS AND PAROLES**

In the Matter of:

MELISSA ELIZABETH LUCIO,

Applicant.

**APPLICATION FOR COMMUTATION OF DEATH SENTENCE
TO A LESSER PENALTY
OR, IN THE ALTERNATIVE, A 120-DAY REPRIEVE
FROM EXECUTION
(Scheduled for April 27, 2022)**

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INTRODUCTION

Fifteen years ago, a loving family suffered an unfathomable loss when two-year old Mariah Alvarez died days after an accidental fall down a flight of stairs. The family now faces the incalculable loss of their beloved mother, sister, and grandmother, slated to be executed for a crime that never occurred. The execution of Melissa Lucio would be a historic miscarriage of justice. The Board has the power to prevent the execution of a wrongfully convicted woman and spare this family the anguish of losing Melissa, compounding the tragedy they have already endured.

Bobby Alvarez was only eight years old when his mother was sentenced to death. He pleads:

If she was executed ... I wouldn't be able to function anymore. I have already been through enough trauma in my life with the death of my sister Mariah and being

separated from my family and loosing [sic] her would be another [trauma] that I think i could not overcome. . . She is my mom. . . . I beg you not to execute her.¹

Bobby's mother, Melissa Lucio, ended up on death row through a horrific combination of investigative missteps and a prosecution unhinged from the truth. Melissa is a lifelong survivor of childhood sexual abuse and intimate partner violence who found her life's joy in her children. By all accounts, Melissa was a loving mother who never abused her children, as the children themselves told the police. But when Mariah stopped breathing on the evening of February 17, 2007, days after falling down a steep set of stairs, investigators immediately fixated on Melissa as a suspect. Convinced that Mariah's injuries must have resulted from abuse, not an accident, they set out for evidence to confirm their assumptions and discounted evidence that corroborated witness accounts of Mariah's fall and declining health in the following days. They became convinced a crime had occurred and focused on Melissa as the purported abuser because she didn't fit their stereotype of a grieving mother, even though Melissa and Mariah's father Robert were both home the day of Mariah's death, and even though only Robert—not Melissa—had a documented history of violence against his family. New forensic evidence shows that Mariah's death was entirely consistent with an accidental fall down the stairs and resulting medical complications. But the investigators' conviction that Mariah died at the hands of her mother led to a biased medical investigation and blinded them to the truth.

Less than three hours after Mariah died, Melissa was subjected a coercive, late-night interrogation conducted by five law enforcement officers. Over five hours, Melissa denied hurting Mariah more than *100 times*. But the interrogators refused to accept any response that was not an admission of guilt. Eventually, Melissa—gripped by shock and grief, pregnant with twins, and

¹ Bobby's statement to the Board is attached as Exhibit 20 (Feb. 27, 2022 Declaration of Bobby Alzarex).

determined to protect her other children and keep the family together—admitted “guilt,” shaking her head and yielding to the interrogator’s repeated demands to “get it over with” and “tell [him]” that she had hit Mariah in the past: “What am I going to say? I- I’m responsible for it.”

At trial, prosecutors relied on Melissa’s coerced “confession” and a false narrative of purported abuse concocted from unscientific testimony to convince the jury that Mariah had suffered injuries that had to be the result of abuse immediately before her death, and could not have resulted from a fall. Jurors did not hear evidence that would have corroborated Mariah’s family’s account—*the truth*—of how Mariah died. Four of the jurors who voted to sentence Melissa to death now urge the Board to grant her clemency, because they are gravely concerned about the evidence that was withheld from them and their role in sending an innocent woman to die. Juror Johnny Galvan explains that “[t]he fact that you can’t pinpoint what caused Mariah’s death means that [Melissa] shouldn’t be executed.”² Juror Ernestina Espinoza agrees: “With the information that is now available I do not think the state of Texas should execute Melissa.”³ Juror Alejandro Saldivar states, “I think if I heard this evidence I may have decided differently.”⁴ Meanwhile, Mariah’s father, Robert Alvarez, was prosecuted only for “causing injury to a child by omission.” He received a four-year prison term, and is now a free man.

We do not seek to re-litigate before this Board issues that were decided by the courts, but we do ask the Board to consider evidence that the jury never saw and that the courts have not considered. Medical experts have reviewed the evidence and now affirm that Mariah’s injuries can be attributed to complications after her fall “that have nothing to do with intentional force,”

² Ex. 35 at 1 (Declaration of Johnny Galvan).

³ Ex. 34 at 1 (Declaration of Ernestina Espinoza).

⁴ Ex. 24 at 1 (Declaration of Alejandra Saldivar).

and that the State relied on false and misleading evidence at trial in the guise of medical opinion.⁵ Indeed, this clemency petition includes seven new reports, including from nationally recognized medical professionals, a pathologist, a police trainer, clinical psychologist, and neuroscientist that disprove every element of the prosecution's case against Melissa.⁶ Melissa's jury never heard this testimony, nor did it hear how Melissa was especially vulnerable to the aggressive, intimidating, and psychologically manipulative interrogation tactics of the police due to her history of trauma, "abnormally high" levels of suggestibility and compliance, and low IQ.⁷ The jury did not hear that Melissa agreed with what the interrogators wanted to hear, because as a victim of child rape and domestic violence, she learned that surrender meant survival.

Clemency has always served as a fail-safe in our system to ensure that the state does not execute an innocent person. When the Board questioned the guilt of Henry Lee Lucas, it recommended clemency. In accepting the Board's recommendation even though Mr. Lucas had been convicted of multiple murders, Governor George W. Bush affirmed his obligation to ensure that "the State of Texas never executes a person for a crime they *may not have committed*."⁸ When there is *any* doubt regarding the guilt of a person facing imminent execution, this Board has a moral imperative to do everything it can to stop the execution. The reasons for doubt here are innumerable. The prospect that the State might shed innocent blood for a death Melissa Lucio did

⁵ Ex. 5 at 6 (Declaration of Dr. Ophoven).

⁶ See Ex. 5-11 (Declaration of Dr. Janice Ophoven); (Declaration of Dr. Michael Laposata); (Declaration of Dr. Adam Freeman); (Declaration of Dr. Harry Davis); (Declaration of Dr. Christopher Sullivan); (Report of Dr. Gisli Gudjonsson); (Report of David Thompson).

⁷ Ex. 10 at 17 (Report of Dr. Gisli Gudjonsson).

⁸ Allen Myerson, *Citing Facts, Bush Spares Texas Inmate on Death Row*, N.Y. Times, (June 27, 1998) (emphasis added), <http://www.nytimes.com/1998/06/27/us/citing-facts-bush-spares-texas-inmate-on-death-row.html>.

not cause, much less intend, should strike righteous fury in the heart of Texans.⁹

Even aside from Melissa’s innocence, she is deserving of mercy. She is not a danger to others, and never was. Melissa is a person of deep faith and ministers to others—her children, her fellow inmates, her own spiritual advisor, even the prison wardens. Melissa walks with God every day, and finds strength in the knowledge that her fate is in His hands. She spends much of her time knitting blankets for prison guards and struggling to learn how to crochet. During the two hours that she is allowed outside each day, she often sits next to a small garden and runs her hands through the dirt. Her friends describe her as a shy and quiet grandmother who enjoys talking about her children and grandchildren and painting gifts to send her grandchildren on their birthdays. There is simply no compelling reason to take her life when, far from posing a risk to society, she continues to serve as a force for good in the lives of others.

The Governor has established a special process for survivors of domestic violence and human trafficking to apply for full pardons. By sparing Melissa’s life, the Board would be sending a message to the thousands of women in Texas who, like Melissa, are victims of sexual abuse and domestic violence: The path out of that abuse doesn’t end in abandonment. In Governor Abbott’s words, the “true path” of clemency leads to “redemption and restoration.”¹⁰ A broad coalition of Texas organizations and experts on domestic violence—including battered women’s shelters from around the state—has called for clemency in Melissa’s case. After reviewing the circumstances

⁹ See Ps. 106:38-39 (“They shed innocent blood, the blood of their sons and daughters ... They defiled themselves by what they did.”); Deut. 19:10 (“Do this so that innocent blood will not be shed in your land, which the Lord your God is giving you as your inheritance, and so that you will not be guilty of bloodshed”); Prov. 6:17-19 (“There are six things the Lord hates, seven that are detestable to him: haughty eyes, a lying tongue, hands that shed innocent blood, a heart that devises wicked schemes, feet that are quick to rush into evil, false witness who pours out lies and a person who stirs up conflict in the community.”).

¹⁰ Myerson, *supra* n.8.

of her case, they conclude that Melissa was “a victim long before she was a defendant.”¹¹

Melissa will forever regret failing to get Mariah to the hospital promptly after her fall, when she first started showing signs of decline. She is tormented by the question whether she might have been able to prevent her child’s death. But she did not murder Mariah. We ask the Board to heed the plea from inter-faith leaders across Texas:

In this case, you have an extraordinary opportunity to show compassion for a woman and a family that has already suffered greatly, first from the tragic death of Mariah and then by the incarceration of Melissa. Through the clemency process, you alone can compensate for the rigidities of the judicial system, which has been unable to correct this injustice despite support from numerous federal judges. . . . In accordance with the shared values of our diverse religious and faith traditions and in the name of mercy, we respectfully urge you to commute her death sentence.

Ex. 15 at 1-2 (Letter From Faith Leaders). We respectfully urge the Board to recommend a commutation of Melissa’s death sentence to life in prison. In the alternative, we request the Board to recommend a reprieve of her execution, now scheduled for April 27, 2022, of not less than 120 days to allow for full consideration of evidence of her innocence.

BACKGROUND

Melissa Lucio was born in Lubbock, Texas on June 18, 1969. Melissa’s life was marked by violence and abuse from the beginning. Her mother’s intimate partners abused her in front of Melissa and her sisters. When Melissa was only six, her mother’s partner began sexually assaulting her. When Melissa worked up the courage to tell her mother about the abuse, her mother slapped her and called her a liar. Melissa suffered abuse and rape, at the hands of this man and others, throughout her childhood. Hoping to escape her brutal circumstances, Melissa married at age sixteen, yet the cycle continued: her own intimate partners physically, verbally, and sexually abused her throughout her adult life. Like many trauma victims, Melissa developed a substance

¹¹ See Ex. 14 (Letter From Texas and National Anti-Violence Experts).

abuse disorder. But she worked hard to get clean, even amidst setbacks and while enduring her partners' assaults and death threats.

Through it all, Melissa found solace in motherhood. From the time she was a child, Melissa wanted a family of her own. She adored children and hoped one day to work in a school or daycare where she could care for them. After a miscarriage at age seventeen, Melissa bore five children by the time she was twenty-three. When the father of those children abandoned her, Melissa began a new relationship with Robert Alvarez and gave birth to seven more children, the youngest being Mariah.

Although Melissa was loving, caring, and devoted, she was not a perfect parent; she and Robert struggled to provide for the family. From 1994 to 2007, the family moved twenty-six times, primarily because they were unable to pay rent. When their utilities were cut off for non-payment, they lived without electricity or running water. They sometimes ran a hose from a neighbor's apartment and filled a tall trashcan with water that they used for baths, flushing toilets, and washing dishes. At various points, Melissa and her children were homeless, lived in a park, and relied on food banks for meals.

It is in the midst of this precarious living situation, during one of the family's moves, that the unimaginable occurred. Mariah fell down a steep set of outdoor stairs, and though she did not immediately appear to be seriously injured, she had in fact suffered internal injuries and complications that would lead to her death.

Melissa has now spent fifteen years on death row, and during that time she has reflected deeply on the choices and mistakes she made in the past. She has become a person of deep faith, and has brought others, including her son John, to walk with God as well. She is a loving mother and grandmother who has formed close friendships in prison: She lights up when talking about

her family, and brings light to those who know her.

Melissa Lucio is not the person she was fifteen years ago, but even then she was not a murderer. She is an innocent woman who is set to be executed for the tragic death of her daughter.

REQUIREMENTS UNDER BPP RULE § 143.57

A. Supporting Documentation.

As required by the Board for consideration of a petition for commutation, the following documents are included as exhibits: “[C]ertified copies of the indictment, judgment, verdict of the jury, and sentence in the case, including official documentation verifying the scheduled execution date, if said information is not contained in the sentence.” 37 Tex. Admin. Code § 143.42(3).

B. Statement Of Offense.

Though Mariah’s death occurred on February 17, 2007, the series of events leading to that tragic day began years earlier. In September 2004, after years of interaction with the family, Child Protective Services (“CPS”) removed the seven youngest children from Melissa and Robert’s custody. There are well over 1,000 pages of CPS reports documenting the conditions in which the family was living. The reports tell a story of Melissa’s love for the children, as well as her inability to care for them properly: an unclean home environment, inadequate food, lack of electricity or water, insufficient supervision, and homelessness. Def. Tr. Ex. 14 at 6; Trial Tr. Vol. 37 at 178, 181.¹² The story told by the CPS reports is one of poverty, not violence—at least not by Melissa. Not once did any of the children report that Melissa had abused them.

To Melissa, the loss of her children to CPS was catastrophic. She did everything in her power to get them back, despite her own difficult circumstances and substance abuse disorder.

¹² Throughout this petition, we have cited to the trial transcript as “Tr.” and to exhibits from trial as “Def. Tr. Ex. __.” CPS records are cited by reference to their Bates Stamp identifier. At the Board’s request, we would be happy to provide any and all of these documents.

She attended parenting classes,¹³ substance abuse classes,¹⁴ and individual counseling sessions.¹⁵ She thought constantly about how things would be different when they were together again. Every week, she went to CPS to see the children during supervised visits. While social workers scrutinized their interactions, she tried to give each child individualized attention. She always managed to cuddle the younger ones—Sara, the three-year-old, was always jealous of the attention Melissa gave to Mariah, the youngest. The older ones competed for Melissa’s attention as well, telling her stories of their foster homes and school days.

The children were still in foster care in January 2006 when Robert was jailed for nine months—his fourth stint in jail since the couple had had their first child together. Melissa felt safe: while he was in the state’s custody, he couldn’t beat her. She was admitted to a rehab program, and for the first time since she was sixteen years old, she had the support she needed to stay clean.¹⁶ The classes, counseling, and supervised visits with her children made it difficult to find work,¹⁷ but eventually, she got a job as a home health provider with San Benito Home Health.¹⁸ She loved caring for others, working, cleaning, and talking to the people she cared for.

After Robert was released from jail in October 2006, Melissa tried unsuccessfully to leave him. When Melissa told him that she wanted out of their relationship, he told her that he would kill her if she left.¹⁹ Melissa felt she had no choice but to stay, and focused instead on doing what

¹³ CPS Records, Bates Stamp Nos. MLFD2 00017706, MLFD2 00017793.

¹⁴ CPS Records, Bates Stamp No. MLFD2 00017789.

¹⁵ CPS Records, Bates Stamp Nos. MLFD2 00017757, MLFD2 00017787, MLFD2 00017789; MLFD2 00017793.

¹⁶ CPS Records, Bates Stamp No. MLFD2 00016683. After she left the rehab center, Melissa tested negative for drugs. CPS Records, Bates Stamp No. MLFD1 0019094.

¹⁷ CPS Records, Bates Stamp No. MLFD2 00017789.

¹⁸ CPS Records, Bates Stamp No. MLFD2 00016695.

¹⁹ CPS Records, Bates Stamp No. MLFD1 0018792.

she could to get her children back. Robert got a part-time job to help pay bills. Melissa still had her job as a home health provider, and with the two of them working, they thought they could afford the rent for a furnished three-bedroom apartment. It had three bathrooms, a living room, kitchen and dining room. It was the nicest home they had ever had.

They moved into the new home in early November, and on November 21, 2006, all of their children moved back in with them, including three from Melissa's first marriage (Daniella, 19; "Little" Melissa, 18; and John, 17). This was the day Melissa had been working so hard for since the younger children were placed in foster care in 2004. Melissa was ecstatic, and she was determined to keep the family together. She kept working, relying heavily on her older daughters—particularly Selina and Alexandra—to help care for the younger kids. She managed to stay away from drugs, even after Robert began using again. Regular drug tests—administered up until one week before Mariah's death—confirmed that Melissa was drug-free.²⁰ But despite Melissa's efforts to hold things together, they began, again, to come apart. Robert's abuse escalated. The children bickered.²¹ And, because Robert was only working part time, they were unable to pay the electric bill. On December 11, 2006, their landlord served Melissa with an eviction notice. They managed to find another place to live but it was not habitable; while the landlord made repairs to the new apartment, he gave the family a run-down second-floor apartment. After a few weeks in this way-station, they prepared to move again.

On February 15, 2007, Melissa woke up in the dark. Their electricity had been cut off the

²⁰ CPS Records, Bates Stamp No. MLFD2 00016695.

²¹ In their time in foster care, Melissa's children developed significant behavioral problems. They had not all lived together as a family for two years, and the siblings pushed, wrestled, and bit each other, struggling over toys and food. CPS reports document multiple instances of rough play and aggression while the children were in foster care. *See, e.g.*, CPS Records, Bates Stamp Nos. MLFD2 00016848; MLFD1 0018733; MLFD1 0018789.

day before, and she felt for the ground with her feet, groping for her clothes while she started running through her list of things to do to prepare for the move. She listened for her children to see who was awake. The nine children—Mariah, age 2; Sara, age 3, Adriana, age 4; Gabriel, age 6; Bobby, age 7; Richard, age 9; Rene, age 9; Selina, age 14; and Alexandra, age 15—were sprawled on mattresses laid on the floor of the dark apartment. Melissa had slept little; she had spent the previous day going to the laundromat, washing and folding clothes, packing dishes in boxes, and preparing the children for their next move. They had to get out of the apartment and they weren't nearly ready. The food in the refrigerator had spoiled after the power was cut, and there wasn't much to eat. Soon after waking, the boys began to roughhouse. Melissa helped some of the children get ready for school, and others ran outside to play while she focused on packing. Mariah and Alexandra stayed inside with her. Melissa tried to keep an eye on Mariah while she packed—but at some point, Mariah managed to open the unlocked screen door to the set of dilapidated stairs outside.

When Melissa noticed that Mariah was not in the apartment, she ran outside in a panic and saw Mariah at the bottom of the stairs:



Ex. 12 (Photographs of Madison Apartment Stairway).

She had fallen and was crying but conscious. Melissa had not seen her fall, and was not sure whether she fell all or part of the way down the stairs. Mariah had struggled with illness and developmental delays since birth. CPS records reflect that Mariah had trouble walking, and even after she was prescribed orthopedic shoes for a turned-in foot, she fell repeatedly. *See* Ex. 53 (summary of CPS records regarding Mariah's health issues). After one of her falls at a daycare program, she lost consciousness and incurred a traumatic brain injury. *See id.* On the day of the fall down the stairs, Melissa gave thanks that Mariah did not appear to be seriously injured: she was bleeding from where her bottom tooth cut into her lip, but Melissa did not see any other injuries. Tragically, Mariah had in fact suffered internal injuries, and would deteriorate over the next two days, leading to her death.

By February 17, Mariah was congested, had been sleeping excessively, and refused to eat. For two days, Robert and Melissa had moved their belongings, the children's toys, their remaining food, the family's clothes, linens, dishes, and furniture to the new apartment. On the 17th, the family continued to get settled; Mariah remained listless and sleepy. At the new apartment, there was no hot water and the sink was leaking. Melissa was exhausted. She considered taking Mariah to the doctor, but decided it could wait until the following day. Melissa put Mariah down for a nap, then turned her attention to an endless pile of children's clothes that needed folding.

A short while later, Melissa's world fell apart. Mariah wasn't breathing. The family frantically called 911. Paramedics arrived and tried, unsuccessfully, to resuscitate Mariah. When they arrived at the hospital, doctors pronounced her dead.

C. Procedural History.

Melissa's capital murder conviction was affirmed by the Texas Court of Criminal Appeals on September 14, 2011. *See Lucio v. State*, 351 S.W.3d 878, 898 (Tex. Crim. App. 2011). Melissa

filed a state habeas petition on January 13, 2011. *See* ROA.7932. On July 23, 2012, the trial court issued findings recommending that the Texas Court of Criminal Appeals deny relief, and the appellate court did so on January 9, 2013. *Ex parte Lucio*, No. WR-72,702-02, 2013 WL 105179, at *1 (Tex. Crim. App. Jan. 9, 2013). Melissa then filed a federal habeas petition in the United States District Court for the Southern District of Texas on January 9, 2014. The district court denied her petition, and a panel of the Fifth Circuit initially reversed on July 19, 2019, finding that Melissa had been denied her constitutional right to present a complete defense at trial, but the *en banc* Fifth Circuit subsequently reversed that panel decision and affirmed the district court's denial. *See Lucio v. Lumpkin*, 987 F.3d 451 (5th Cir. 2021). The Supreme Court denied Melissa's petition for certiorari. *Lucio v. Lumpkin*, 142 S. Ct. 404 (2021).

D. Summary Of Legal Issues.

On direct appeal and in her state and federal habeas petitions, Melissa raised a number of legal issues. In state and federal habeas petitions, she argued, for example, that the trial court's exclusion of critical expert testimony violated her constitutional right to present a complete defense under clearly established Supreme Court law. The Texas Court of Criminal Appeals incorrectly considered this claim to be a state evidentiary claim and denied it on that basis. The Fifth Circuit later held it amounted to constitutional error, but a sharply divided *en banc* Fifth Circuit subsequently held that its hands were tied and that it could not correct the mistakes at Melissa's trial, even though it resulted in an injustice. *See Lucio v. Lumpkin*, 987 F.3d 451, 488 (5th Cir. 2021) (Southwick, J., concurring) (explaining that the procedural "limitations ... place[d] on federal courts" prevented reversing the trial court, but noting that Melissa's case "is a clear example that justice to a defendant may necessitate a more comprehensive review of state-court evidentiary rulings than is presently permissible under law"). No court to date has had an opportunity to consider the new evidence described in this petition.

E. Current Procedural Status.

On January 18, 2022, the 138th District Court of Cameron County, Texas set an execution date for April 27, 2022.

On February 8, 2022, Melissa filed a motion to appoint counsel and a motion to reconsider the order setting the execution date were filed in the trial court, the 138th District Court for Cameron County. The motion to reconsider the order setting the execution date was supplemented on February 28, 2022. On February 18, 2022, Melissa filed a motion to disqualify or recuse Judge Gabriel Garcia, and a motion to disqualify the Cameron County District Attorney's Office, in the trial court. The motion to disqualify or recuse Judge Garcia was supplemented on March 10, 2022.

On March 14, 2022, Melissa filed a motion to recall the mandate in the Fifth Circuit, which is currently pending. On March 16, 2022, the Fifth Circuit directed the State to file a response to Melissa's motion to recall the mandate by 5:00 p.m. on March 22, 2022.

On March 18, 2022, Melissa filed a motion to stay the execution, motion for leave to file a petition for writ of mandamus, and petition for writ of mandamus in the Texas Court of Criminal Appeals on March 18, 2022.

To date, neither the State nor any court has taken any further action on these filings.

F. Victim Impact Statement.

Victim impact statements are included in Section III.

REQUEST FOR COMMUTATION OR REPRIEVE

I. GROUND 1: MELISSA DID NOT ABUSE MARIAH AND IS NOT GUILTY OF CAPITAL MURDER

When Mariah stopped breathing on the evening of February 17, 2007, the family immediately called 911. Melissa told the emergency responders that her two-year-old daughter had fallen down the stairs a couple of days before. Emergency responder Randall Nestor was

dubious, however, because the residence he responded to “was a single-story,” with “only about three steps in the front”; he “thought it was kind of odd” and “report[ed] that to the police department when they arrived.” Trial Tr. Vol. 33 at 87. Of course, Nestor didn’t appreciate that Mariah had fallen down the stairs at the apartment the family had *just moved from*—a second-floor apartment accessed by a steep 14-step outdoor staircase. Ex. 12 (Photographs of Madison Apartment Stairway). This critical misunderstanding set in motion an investigation plagued by tunnel vision, where the investigators continually assumed the worst about Melissa without investigating or considering alternatives.

Error propounded error. With suspicion cast on Melissa based on the paramedics’ misunderstanding of where Mariah’s fall occurred, first responders also misjudged Melissa’s “demeanor”—which was shaped by her own history of victimization and trauma—to immediately conclude that the extensive bruising on Mariah’s body meant she had been abused and murdered. *See, e.g.*, Trial Tr. Vol. 33 at 91-92, 93 (Nestor) (asserting that Melissa “wasn’t really crying or showing a whole lot of emotion,” and “didn’t act at all like what I would expect of a mother”). Less than three hours after Mariah died, and having “made unscientific determinations about the meaning of [Melissa’s] behavior, demeanor, and body language at the scene,” police began a coercive, “guilt presumptive interrogation” of Melissa. Ex. 11 at 3-4 (David Thompson Report).

During the more than five-hour interrogation, law enforcement officers used “a variety of implicit and explicit threats,” *id.* at 4. They shouted at Melissa; berated her as a neglectful mother; repeatedly showed her photos of her dead child; and implied that if she wasn’t at fault, one of her other children would have to be. Melissa asserted her innocence *more than 100 times*,²² but police

²² During the interrogation, Melissa verbally asserted her innocence 86 times, and non-verbally asserted her innocence (by, e.g., shaking her head) 35 times.

refused to accept any response that was not an admission of guilt—suggesting to Melissa that the interrogation would not stop unless she told them what they wanted to hear. After hours of relentless, coercive tactics, Melissa began to acquiesce to the officers’ repeated insistence in her guilt, vaguely indicating she was “responsible” for Mariah’s injuries and “regurgitating” the words and facts that interrogators fed to her throughout the interrogation process. Ex. 11 at 4, 25 (David Thompson Report). Experts confirm that Melissa “was relentlessly pressured and extensively manipulated” throughout the many hours of interrogation. Ex. 10 at 15 (Dr. Gisli Gudjonsson Report); *see also* Ex. 11 at 4 (David Thompson Report). The “interrogators’ guilt presumptive endeavors, techniques, and manipulative ploys, involved two main objectives: (a) To break down [Melissa’s] persistent denials and resistance; and (b) increase[] her willingness to make incriminating admissions” Ex. 10 at 6 (Dr. Gisli Gudjonsson Report).

Recent clinical testing of Melissa has revealed that she was profoundly susceptible to interrogators’ efforts because she has “highly abnormal” levels of vulnerability to police coercion. *Id.* at 12. Further, given Melissa’s background as a survivor of childhood sexual abuse and domestic violence, who functioned with a low IQ, Melissa had a number of additional risk factors for succumbing to the pressures of interrogation and making false admissions. *Id.* at 1 (“In my extensive forensic evaluation of cases of disputed confessions internationally, the number, severity, and combination of the risk factors involved during the lengthy interrogation are exceptional.”). Melissa’s interrogation has been reviewed by two leading experts of interrogation, both of whom concluded that the coercive techniques used by police exploited Melissa’s numerous vulnerabilities to pressure her into making incriminating statements that lack reliability. *See* Ex. 10 (Dr. Gisli Gudjonsson Report); Ex. 11 (David Thompson Report).

The State took Melissa’s coerced admission and ran with it—no matter that even as Melissa

was being interrogated, her older daughters were in the same police station giving officers sworn statements that corroborated Melissa's account of Mariah's fall down the stairs, and said nothing about abuse. *See* Ex. 55 (Feb. 18, 2007 Statement of Daniella Lucio) (explaining that the day before Mariah died, her sister Alexandra said Mariah had fallen down some stairs, had a black eye, and had been sick); Ex. 54 (Feb. 18, 2007 Statement of Alexandra Lucio) (explaining that the night before Mariah died, her parents "had been awake with the baby all night," and Mariah "had been breathing heavily" since the previous day).

With Melissa having "confessed," the State's Medical Examiner, Norma Jean Farley, was influenced by the state's hypothesis of homicide, rather than investigating causes and contributions to Mariah's death that have nothing to do with intentional force. It is well documented that false confessions have the power to "taint[] the perceptions of [] forensic experts, and others[.]"²³ That is precisely what happened here. Dr. Farley failed to consider Mariah's prior medical history, which included trouble walking and documented falls, as well as a prior traumatic brain injury; information about Mariah's behavior in the days before she died, including excessive sleep and loss of appetite, which were consistent with head trauma after an accidental fall; or potential non-abuse causes for Mariah's injuries, including evidence that Mariah had a blood coagulation disorder that causes profuse bruising throughout the body, *see* Ex. 6 at 2-3 (Declaration of Dr. Michael Laposata); Ex. 5 at 6 (Declaration of Janice Ophoven).

At trial, the State used Dr. Farley's false and scientifically invalid testimony—that Mariah's injuries must have occurred within twenty-four hours of her death and that marks on Mariah's body were human bite marks—to convict Melissa. The timing conclusion made

²³ Saul M. Kassir, Why Confessions Trump Innocence, 67 *American Psychological Association* 431, 436-38 (2012).

Melissa’s defense, that Mariah had died due to injuries from her days-prior fall down the stairs, impossible, and the highly inflammatory “bite mark” testimony confirmed the State’s abuse narrative. But both conclusions are indisputably false, as experts now confirm. Dr. Farley also told the jury that Mariah’s extensive bruising could only be the result of a beating, which was false—Mariah’s autopsy findings reflected a disorder known to cause extensive bruising, which experts confirm can erroneously be attributed to abuse. Dr. Farley further inflamed the jury by claiming that an older healing fracture in Mariah’s arm was a sign of prior abuse. That, too, was false. “Fractures are very common among toddlers,” often result from falls or roughhousing, and “[t]here is nothing about the nature of [Mariah’s] fracture that indicates that it was the result of an intentional act or abuse.” Ex. 9 at 1-3 (Declaration of Dr. Christopher Sullivan).

The State also relied on the testimony of law enforcement officers who opined that Melissa was guilty because of how she responded to Mariah’s death. Ranger Escalon, for example, expressed complete certainty that he was able to determine Melissa’s guilt by interpreting her facial expressions and demeanor: because she had her “head down,” her “shoulders [were] slouched,” and “she was not making eye contact with the investigator,” he testified, “right there and then, I knew she did something.” Trial Tr. Vol. 33 at 115 (Escalon). Science tells us that these physical reactions are *not* indicative of guilt, contrary to Ranger Escalon’s inexpert opinion.²⁴ Experts confirm that “Ranger Escalon’s statements that he was able to determine [Melissa’s] internal thoughts and emotions from her facial movements, posture, body movements and diction is scientifically baseless and false.” Ex. 13 at 2 (Declaration of Dr. Lisa Feldman Barrett); *see also*

²⁴ Studies show that attempts to detect guilt or deception based on nonverbal cues or behaviors are about as accurate a method as flipping a coin. *See e.g.*, Aldert Vrij, Christian A. Meissner, & Saul M. Kassin, Problems in expert deception detection and the risk of false confessions: no proof to the contrary (2014). Trained police investigators “perform only slightly better, if at all,” in making such judgments. Saul M. Kassin et al, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 Law and Hum. Behav. 3, 6 (2009).

Ex. 11 at 3 (David Thompson Report). In fact, the behaviors that Escalon took as sure signs of guilt are particularly common for someone who has been the target of chronic physical and sexual abuse, like Melissa. Ex. 13 at 5 (Declaration of Dr. Lisa Feldman Barrett).

The push to convict Melissa at all costs was driven by a district attorney, Armando Villalobos, who was facing an election and under immense pressure from members of the community about his perceived leniency in crimes against children.²⁵ But Villalobos was not an honest prosecutor in search of real justice; indeed, he's now completing a federal sentence for corruption. His blindered pursuit of Melissa was self-serving, and his unfair tactics—using a coerced confession and false testimony—were aided by evidentiary rulings that concealed from the jury important information contextualizing Melissa's reactions to her daughter's death, as well as defense counsel who lacked capital experience and failed to consult with the proper experts to evaluate the State's false and misleading medical assertions. In the end, Melissa didn't have a chance. An innocent woman was convicted of capital murder and sentenced to death because person after person made the unfounded assumption that Melissa was an abuser, and refused to consider any and all evidence to the contrary.

A. The Prosecution's Witnesses Falsely Testified That Mariah Could Not Have Died From An Accidental Fall.

At Melissa's trial, the jury was told that Mariah's injuries could *only* be explained by child abuse and *could not* be explained by an accidental fall. Significantly, Dr. Farley told the jury that Mariah's head injuries had to have happened within twenty-four hours of her autopsy. That testimony made Melissa's defense—that she did not abuse Mariah, and that Mariah had an accidental fall down a long, steep flight of stairs about two days before she died—impossible. The

²⁵ See Jeff Gorman, Defamation Claim Against Paper Survives, Courthouse News Service, Aug. 20, 2009, <https://www.courthousenews.com/defamation-claim-against-paper-survives/>.

State relied heavily on Dr. Farley’s testimony, at the guilt phase of the trial as well as the penalty phase, to argue for the imposition of a sentence of death.

That testimony, however, was false. Mariah’s accidental fall down a steep flight of stairs absolutely could have caused her injuries, as her autopsy report reflects and as experts now confirm. Dr. Farley reached the opposite conclusion only by failing to review any of Mariah’s medical history, which includes a history of falling and head trauma. At bottom, Dr. Farley, who was told going into autopsy that Melissa had “confessed” to abusing Mariah, and who was accompanied in the autopsy suite by two of the interrogating officers, assumed everything she observed was evidence of abuse and ignored all evidence to the contrary.²⁶

1. *Dr. Farley’s Testimony To The Jury Was False*

There was no question at trial that Mariah suffered blunt force trauma to her head before her death on February 17, 2007. Melissa’s defense was that she did not harm her daughter: Mariah had fallen down the stairs about two days before her death, and her health declined in the following days. The jury was told by the State’s witness, however, that Mariah’s injuries could only have come from an intentional beating, and that Mariah’s head trauma had to have happened very shortly before her death. That testimony was false.

a. Dr. Farley Mislead The Jury When She Testified That The Bruises On Mariah’s Body Could “Only” Be The Result Of Child Abuse

Dr. Farley told the jury that Melissa’s defense—that Mariah had fallen down a steep set of stairs at their old apartment about two days before her death—was not possible, because such widespread bruising could not have resulted from an accidental fall and instead could mean only

²⁶ Dr. Farley has misstated medical evidence to favor the State’s theory of prosecution in another child death case. *See Court’s Findings of Fact and Conclusions of Law, Ex parte Velez*, No. 07-CR-721-WR (404th Dist. Ct., Cameron Cnty., Apr. 2, 2013), <https://bit.ly/3M2Dhzw> (detailing how Dr. Farley’s inaccurate, misleading, and false statements led to an innocent man’s death sentence); *Ex parte Velez*, 2013 WL 5765084 (Tex. Crim. App. Oct. 23, 2013) (vacating the conviction).

that Mariah had been abused. She testified unequivocally that: “[T]his is a child that has been beaten. This is a battered child... Maybe if they fell off a house, fell off a significant height more than once. But these are—all over the body. This isn’t a simple fall.” Trial Tr. Vol. 34 at 34. But experts now confirm that Dr. Farley inexplicably overlooked the likely non-abuse explanation for Mariah’s injuries and bruising. Dr. Farley ignored that Mariah exhibited clear signs of disseminated intravascular coagulation (DIC), which is a blood coagulation disorder that can result in both hemorrhages (bleeding) and abnormal thrombosis (clotting) throughout the body.

Both head trauma and infection are common causes of DIC. Mariah’s fall down a steep flight of stairs two days before she died—a fall confirmed by multiple members of her family—is precisely the type of trauma that can lead to DIC. Dr. Michael Laposata, Chairman of the Pathology Department for the University of Texas, Galveston, explains in his declaration that DIC commonly occurs after accidental trauma, and head trauma, in particular, is a “notorious catalyst for DIC/clotting reactions.” Ex. 6 at 2 (Declaration of Dr. Michael Laposata). Dr. Laposata confirms that Mariah’s autopsy documented certain factors indicating that she was, in fact, experiencing DIC as a result of such trauma. *See id.* And evidence shows that Mariah appears to have been battling an infection at the time of her death, another common cause of DIC. Mariah had a “significant fever” when she was treated in emergency room, after she had been dead for nearly an hour.²⁷ Ex. 5 at 6 (Declaration of Dr. Janice Ophoven).

²⁷ Aside from indicating that Mariah may have been experiencing DIC at the time of her death, this elevated temperature provides another reason to doubt Mariah’s death was caused by abuse. Dr. Harry Davis, the doctor responsible for Mariah’s emergency room care, explains in his affidavit that it is highly unusual to see a child with an elevated temperature when the child died of trauma. As a result, he does not believe that Mariah died of abuse. Dr. Harry Davis was the attending physician in the Valley Baptist Emergency Room on February 17, 2007, and he was the primary physician responsible for Mariah’s care. His declaration, included here, is new evidence. *See* Ex. 8 (Declaration of Dr. Harry Davis). Despite treating Mariah and declaring her time of death, no one interviewed him about his observations of Mariah’s condition. Dr. Davis moved out of Texas in October 2007.

Importantly, DIC would explain the bruising on Mariah's body. When a person has DIC, routine handling of the person's body can result in bruising or injury. For example, EMS workers performing CPR, putting a person on a stretcher, or performing life-saving care all could easily result in bruising and apparent hemorrhaging in a person experiencing DIC. *Id.* (Declaration of Dr. Janice Ophoven). It is not uncommon even for a patient in DIC who has been sitting untouched in a hospital bed to suddenly appear covered with bruises, like those on Mariah's body. DIC, in combination with injuries from the fall itself, can explain the appearance of bruising Mariah's body. Precisely because DIC can cause rapid and profound bruising throughout the body (including on the face), Dr. Laposata explains, "DIC-associated bleeding and bruising can be—and has been—incorrectly attributed to child abuse when it is caused by accidental trauma and infection." *See* Ex. 6 at 2 (Declaration of Dr. Michael Laposata).

Dr. Farley's repeated testimony that the bruising *had to* come from a beating,²⁸ then, was patently incorrect. Mariah's autopsy findings were indicative of DIC, which provided a non-abuse explanation for her injuries and bruising—an explanation the jury never heard. Not only did this impact the jury's determination of innocence or guilt, but Dr. Farley's (false) testimony was used by the State to argue for the imposition of a sentence of death: "She killed this little girl, Dr. Farley told you. She killed this little girl. She beat her to death. This Defendant is a cold-blooded murderer. She knew exactly what she was doing each and every time she struck the little girl." Trial Tr. Vol. 36 at 17 (De Ford).

²⁸ Tr. Vol. 34 at 56 ("You can get bruising falling down the stairs, but as I said earlier, some of these are under the eye. That's not a commonplace to bump your head as you're tumbling down the steps. The lower cheeks – under the chin – the abdomen, and in the recessed areas. No. In my opinion, this came from a beating."); *id.* ("I think I made it clear. I think it's due to being beat. That child had more bruises than I've ever seen on any case that I had before. This is a beating.").

b. Dr. Farley Testified Falsely That Mariah’s Brain Injuries Had To Have Occurred Within 24-Hours, And That Mariah’s Bruises Could Be Dated And Indicated Abuse

Dr. Farley also testified to two purportedly medical estimates related to the timing of Mariah’s injuries, concluding in both cases that this timing meant that abuse was the only possible cause of those injuries. Both claims—that Mariah’s brain injuries had to have occurred within twenty-four hours of her death, and that Mariah’s bruises could be dated and indicated a period of abuse—were false.

First, Dr. Farley testified that the absence of certain indicia of internal trauma (hemosiderin deposits) and particular cells (macrophages) in Mariah’s brain meant that the injuries to her brain were incurred very recently, within twenty-four hours of death. Dr. Farley’s twenty-four-hour claim, which she expressed with certainty, *see* Trial Tr. Vol. 34 at 55, 57, made Melissa’s defense impossible: if it were true, it would have to mean that this injury could not have resulted from an accidental fall two days before. But it wasn’t true.

As Dr. Laposata explains, and as is well-documented in scientific literature, hemosiderin does not appear for *several days* post-injury, and the timing of its appearance is variable. Ex. 6 at 3 (Declaration of Dr. Michael Laposata); Ex. 5 at 6 (Declaration of Dr. Janice Ophoven). The absence of hemosiderin and macrophages is common two days post-injury; it is even common three or four days after an injury. Thus, the absence of these particular indicators in Mariah’s brain tissues is *not* evidence that her injuries occurred within twenty-four hours, and instead is entirely consistent with an accidental trauma *two days* before.

There is thus no scientific basis whatsoever for Dr. Farley’s twenty-four-hour testimony. And, in fact, the medical evidence supported Melissa’s defense: Mariah’s injuries were entirely consistent with an accidental fall two days before her death.

Second, Dr. Farley claimed that she could “date” the age of bruises on Mariah’s body based

on their color, and that the varying ages of those bruises confirmed that Mariah had been “beaten” over an extended period of time. Trial Tr. Vol. 34 at 20. This, too, was false, as Dr. Farley herself has since conceded. The medical literature available at the time of trial established that it is not possible to accurately date bruises based on their color. For example, scientific studies from 1991 and 1996 each confirm that the various colors of different bruises can appear at any point in the evolution of a bruise, and that bruises of identical age and cause can appear differently even on the same person.²⁹ Dr. Farley has recently acknowledged that bruise dating by color is unreliable: in an evidentiary hearing in July 2021, in the 21st District Court, Bastrop County, Dr. Farley testified that bruises cannot, in fact, be dated with any accuracy at all. *See Habeas Tr. Vol. 8 at 292, State v. Rodney Reed* (WR-50,961). But Dr. Farley told the jury the opposite at Melissa’s trial: she claimed to be able to date the bruises on Mariah’s body, and testified that the presence of a few “older” bruises meant her abuse had been extensive.

This was a fiction; there is nothing about the amount or appearance of bruising on Mariah’s body that indicates she was abused.

c. Dr. Farley’s Testimony There Was A “Bite Mark” On Mariah Is Scientifically Unsupported

Several witnesses testified with absolute certainty that an injury on Mariah’s back was a bite mark, including most extensively and significantly Dr. Farley. Testimony claiming to identify an injury as a human bite mark, whether from a medical examiner or from a forensic dentist, is not considered scientifically valid today. In the years since Melissa’s trial, bite mark analysis has been so widely rejected as lacking in reliability and any scientific basis that there is now a moratorium

²⁹ Langlois NEI, Gresham GA. The ageing of bruises: a review and study of the colour changes with time. *Forensic Science International* 1991; 50: 227–238; Stephenson T, Bialas Y. Estimation of the age of bruising. *Arch Dis Child* 1996; 74(1): 53-5.

on its use in criminal cases in Texas.

The State presented testimony of a purported bite mark on Mariah's back to the jury as indicative of the "cruel and brutal life" she experienced, Trial Tr. Vol. 32 at 15 (Padilla), and repeatedly referred to that bite mark throughout trial. *See, e.g., id.* at 16 ("You're going to hear evidence that the child had bite marks all over her back, and bite marks all over her arms."); Trial Tr. Vol. 32 at 73 (Vargas) (purportedly identifying "a couple of bite marks"); Trial Tr. Vol. 33 at 124 (Escalon) (Texas Ranger testifying that DNA was collected to try to link Melissa to "bite marks").

Dr. Farley offered extensive testimony of these purportedly "obvious" bite marks on Mariah's right back, characterizing them as "like dragging of the teeth across the back." Trial Tr. Vol. 34 at 17; *see also id.* (characterizing it as a "big bite!" and "painful injury," "with raking, where it just pulls flesh off of the back"). Dr. Farley buttressed her testimony with the opinion of a forensic odontologist (who did not testify or provide a report), but who, according to Dr. Farley, told her "they're bite marks." Trial Tr. Vol. 34 at 33. Dr. Farley also opined that the "bite marks" were "adult size[d]," thereby excluding the possibility that the purported bites were made by a child or teenager. Trial Tr. Vol. 34 at 33. And in the penalty phase of the trial, Dr. Farley testified that the bite marks were evidence of battered child syndrome, that there were "at least two bite marks" on Mariah's back, that these would be painful because "the teeth were dragged along the skin and caused abrasions," and that the injuries resulted from "[v]ery, very forceful biting." Trial Tr. Vol. 37 at 156-57.

Dr. Farley's testimony—that these abrasions could be identified as bites, and specifically as adult bites—was extremely powerful evidence that Mariah was intentionally injured by an adult. But that testimony is without any scientific basis. As explained in affidavit of former American

Board of Forensic Odontology President Adam Freeman, there are “numerous examples of circular or half-mooned injuries—not dissimilar to the wounds at issue here—that both laypeople and forensic odontologists have mischaracterized as human bite marks, when the wounds were actually caused by a range of inanimate objects, even a child’s toy, or a piece of fencing.” Ex. 7 at 8-9 (Declaration of Dr. Adam Freeman). According to scientific consensus, bite mark analysis is totally unreliable.

Since the time of trial, the National Academy of Science (NAS), the Texas Forensic Science Commission, and the President’s Council of Advisors on Science and Technology, supported by numerous scientific studies from board certified odontologists, have established that there *is no scientific validity* to identifying a patterned injury as human bite mark. For example, a 2009 NAS report found that bite mark evidence is scientifically invalid, grossly subjective, and especially prone to the influence of cognitive bias.³⁰ In 2015, leading forensic odontologists—including then-American Board of Forensic Odontology president, Dr. Adam Freeman—conducted a study that demonstrated the fundamental unreliability of bite mark analysis, revealing that expert testimony which conclusively identifies an injury as a human bite mark is in fact without a scientific basis. *See* Ex. 7 at 9-11 (Declaration of Dr. Adam Freeman). In that the study, *none* of the 100 case studies resulted in unanimous agreement among board-certified examiners regarding which injuries could be characterized as human bite marks. *Id.* These leading forensic odontologist thus concluded that the “discipline” of bite mark analysis was “unreliable from the outset.” *Id.* And in 2016, the President’s Council of Advisors on Science and Technology concluded that “available scientific evidence strongly suggests that examiners cannot consistently

³⁰ Strengthening Forensic Science in the United States: A Path Forward at 176 (“NAS Report”), available at <https://www.ojp.gov/pdffiles1/nij/grants/228091.pdf>

agree on whether an injury *is* a human bite mark and cannot identify the source of bite mark with reasonable accuracy.”³¹ As a result, the Council found “the prospects of developing bite mark analysis into a scientifically valid method to be” so low that it “advise[d] against devoting significant resources to such efforts.”³²

In 2015, after the exoneration of a Texas man who had been wrongfully convicted based on bite mark analysis,³³ the Texas Forensic Science Commission undertook a year-long investigation and issued a report in 2016 recommending a moratorium on the use of bite mark evidence in all criminal cases in the state of Texas.³⁴ Unless and until research and “rigorous and appropriately validated proficiency testing” can establish reliable criteria for “identifying when a patterned injury constitutes a human bite mark” and for “identifying when a human bite mark was made by an adult versus a child,” the Commission concluded such analysis was too unreliable to be used in court.³⁵

³¹ Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods at 87, available at https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf.

³² *Id.*

³³ After having spent twenty-eight years wrongfully incarcerated, in 2018, the Texas Court of Criminal Appeals found that Steven Mark Chaney was “actually innocent” of a 1987 murder conviction that had been procured based primarily upon faulty bite mark testimony. *Ex parte Chaney*, 563 S.W.3d 239, 258 (Tex. Crim. App. 2018) (observing that bite mark evidence, “which once appeared proof positive of . . . guilt, no longer proves anything”).

³⁴ See *Forensic Bitemark Comparison Complaint Filed by National Innocence Project on Behalf of Steven Mark Chaney—Final Report* (Apr. 12, 2016), available at [https://www.txcourts.gov/media/1440871/finalbite markreport.pdf](https://www.txcourts.gov/media/1440871/finalbite%20markreport.pdf).

³⁵ *Id.* at 15-16. It is also worth noting that any bite mark analysis purporting to distinguish adult from child bite marks is particularly unreliable. Dr. Freeman explains that because “a human’s dental arch may be fully developed when a child is as young as eight years old, with some, minimal, increase until age thirteen,” “there is no reliable way to measure a circular or half-mooned abrasion and determine whether it is attributable to an adult’s dentition, as compared to [a] child’s.” Ex. 7 at 11-12 (Declaration of Dr. Adam Freeman). Dr. Farley’s testimony that the “bite marks” were attributable to an adult is therefore “scientifically indefensible.” *Id.* at 11.

In sum, Dr. Farley’s testimony identifying the injuries on Mariah’s body as human bite marks lacks any scientific support. Her testimony is no longer valid, if it ever was: “there is no published scientific literature that supports the use of bite marks in criminal matters. There are no studies, empirical experiments, or systematic reviews that provide any objective metrics or assurances that the process of identifying injuries on a human body as caused by human bite marks is reliable.” Ex. 7 at 3 (Declaration of Dr. Adam Freeman).

2. *Abuse Is A Diagnosis Of Exclusion, But Dr. Farley Did Nothing To Exclude Other Causes*

Child abuse is a diagnosis of exclusion. Dr. Laposata explains that the American Academy of Pediatrics advises that pediatricians must rule out coagulation, or blood clotting, disorders such as DIC—basically, alternative causes of bruising—before even considering whether abuse is at issue. *See* Ex. 6 at 3 (Declaration of Dr. Michael Laposata). Yet Dr. Farley did the opposite here: steeped in extrinsic, biasing information, she failed to review any of Mariah’s medical history to look for any explanation or contributing cause to her injuries, conduct any basic laboratory tests to diagnose a coagulation disorder, or even perform simple testing to confirm the presence of infection or sepsis. Ex. 5 at 5 (Declaration of Dr. Janice Ophoven). Without conducting any biomechanical analysis, *id.* at 3-4, she ignored indications that Mariah’s fatal condition had another cause, *id.* at 4, simply assumed the conclusion of abuse, then, without the necessary data or analysis, told the jury Mariah’s head injury had to have come from a blow, not a fall.

Dr. Farley’s inverted approach critically left key evidence uncollected and obscured the true story of Mariah’s death. A mere interview with Melissa or with other members of the family could have revealed historic data about Mariah’s significant changes in behavior and worsening condition over the two days after the fall that would have offered clear evidence that this child died of complications of an accidental head trauma. Instead, informed by police investigators, Dr.

Farley ignored all signs to the contrary to proclaim abuse. Indeed, as Dr. Ophoven concluded: “The investigation into Mariah’s death appears to have been significantly prejudiced, not evidence based, and without adequate consideration of alternative issues. The medical evidence is consistent with a cause of death related to a fall down the stairs two days before Mariah’s collapse and other complications that went unexplored.” *Id.* at 6.

At every turn, Dr. Farley’s trial testimony reflected a failure to consider alternative causes, as is necessary for a diagnosis of exclusion. For example, Dr. Farley testified that she could tell that Mariah had been abused because she had “lung contusions to both lungs” and a “contusion to the right kidney.” Trial Tr. Vol. 34 at 28. When asked what would have caused such injuries, Dr. Farley yet again told the jury there could only be one explanation: it must have come from violent, intentional force—from “punches or stomps—or slams.” Trial Tr. Vol. 34 at 29. But as both Dr. Laposata and Dr. Ophoven explain, that simply is not true. A patient in DIC will bleed and suffer bruising (contusions) with no or minimal force or pressure. By the time Mariah reached the autopsy suite—even by the time she reached the emergency room—she had experienced many rounds of CPR, both in her home and in the hospital; she’d been intubated; she’d been handled by numerous EMS workers and doctors in an effort to revive her. Any one of these actions would easily bruise someone in DIC. Indeed, CPR can cause bruising and contusions to a patient’s lungs *even for someone not in DIC*. Ex. 5 at 5 (Declaration of Dr. Janice Ophoven). A proper diagnosis of exclusion could never have found abuse in these circumstances.

Dr. Farley’s testimony regarding a healing fracture to Mariah’s left humerus (top arm) bone is yet another example of her complete mischaracterization of the autopsy evidence and her inexplicable failure to consider Mariah’s medical history. Dr. Farley erroneously testified that this old, healing fracture—which she characterized as a “spiral” fracture—had to have come from

someone “tugging on” or “twisting” Mariah’s arm. Had Dr. Farley testified truthfully, the jury would have heard that fractures like the one in Mariah’s arm bone are very common in walking toddlers, who fall often, and can result simply from “[j]ust a basic fall on the arm from a standing position or kids playing rough” with each other. Ex. 9 at 2 (Declaration of Dr. Christopher Sullivan). Mariah, of course, fell frequently because of her developmental delays and misshapen feet. Dr. Christopher Sullivan, pediatric orthopedic surgeon at the University of Chicago, explains that non-displaced fractures, like the one in Mariah’s arm, are among the most common childhood injuries. *See* Ex. 9 at 3 (Declaration of Dr. Christopher Sullivan). Dr. Sullivan also explained that identifying a fracture as “spiral” does not indicate abuse; spiral fractures, too, can result from simple falls. *Id.* at 1-2. Further undermining Dr. Farley’s testimony, Dr. Sullivan explained that, actually, Mariah’s “fracture in the left humerus is not a spiral fracture” at all. *Id.* at 2.

Given that Mariah’s fracture was non-displaced, meaning the bone was merely cracked but still properly aligned, and given that it was in her arm, any signs of injury would likely have been subtle and easily missed by caregivers. *Id.* at 2. As Dr. Sullivan explains, “there is nothing about the nature of [Mariah’s] fracture that indicates it was the result of an intentional act or abuse.” *Id.* at 3.

B. Modern Social Science Proves That Melissa Was At Very High Risk Of Falsely Confessing. Her Jury Did Not Hear That Evidence.

Mere hours after her daughter died, Melissa was taken to a police station, isolated from her grieving family, and interrogated for over five hours by armed officers. They impliedly threatened to “*beat her half to death*,” Ex. 10 at 27 (Dr. Gudjonsson Report), repeatedly screamed at her that she “*ha[d] to know*” what happened, *id.* at 29, insisted that she looked like a “*cold-blooded killer*,” *id.* at 30, and refused to accept her repeated assertions—over *one hundred* separate times—that she did not harm her daughter, *id.* at 25, 29; Ex. 11 at 24 (Thompson Report). This went on for

hours. *See* Ex. 10 at 6 (Dr. Gudjonsson Report) (describing interrogating officers’ “manipulative ploys” in service of their “guilt presumptive endeavor” with the objective to “increase[e] [Melissa’s] willingness” to confess).

Before an inculpatory word was uttered, an armed Texas Ranger came into the room, got within inches of Melissa’s face, and insisted, as Melissa sobbed, that there was a “lot of evidence . . . that’s not going to look good” in the capital murder case against her. *Id.* at 38. He then offered Melissa a way out; he would “help” her “put this to rest” if she confessed to what he claimed to “know”—that Melissa was responsible for her daughter’s death. *Id.* at 37. Continuing to insist she did not know how Mariah died, Melissa nonetheless began to make incriminating statements, as the Ranger encouraged her to go further—telling her she was doing “so good” when she inculpated herself. *Id.* at 38, 42. Revealing her high level of suggestibility, when asked to explain why she purportedly harmed her daughter, Melissa parroted back the language that had been suggested to her, saying she “guess[ed]” it was “[f]rustration”—precisely what officers *told her* was her motivation *thirteen* times before. *Id.* at 41. At 3:00 am, after having been apparently coached off-camera,³⁶ Melissa took responsibility for specific visible injuries on her daughter’s body, and complied with the interrogating officer’s instructions to demonstrate the alleged abuse on a doll—a tactic that has been repeatedly utilized in cases involving false confessions from innocent caregivers.³⁷

³⁶ Melissa’s 3:00 am statement occurred after officers inexplicably turned off the video camera for nearly 90 minutes. During that time, they apparently continued to “groom” Melissa in advance of her final on-camera admissions; the Ranger tells Melissa when the camera first turns on that they had “talked about” this reenactment before—that “talk” about the reenactment was not recorded. Ex. 10 at 48 (Dr. Gudjonsson Report); *id.* at 9 (indicating that there is “evidence of a prior enactment discussion [grooming] process”).

³⁷ *See, e.g., State v. Eskew*, 390 P3d 129, 136 (Mont. 2017) (mother wrongfully convicted after interrogators gave her a doll to demonstrate what she had purportedly done to the child and insisted that she make the doll’s head rock); *People v. Thomas*, 22 NY3d 629, 640 (N.Y. 2014) (father wrongfully convicted after interrogators pressured him to demonstrate how, according to the officers, he threw his son down to cause

False confessions elicited by guilt-presumptive police interrogations—like the interrogation at issue here—are a primary cause of wrongful conviction in the United States, contributing to nearly *one-third* of all known wrongful convictions underlying the nation’s DNA exonerations.³⁸ Such false confessions are of particular concern in cases like Melissa’s, in which a parent is interrogated “immediately after a child’s death . . . [when they] may be particularly vulnerable to suggestion, manipulation or memory lapses.”³⁹ And two experts on false confession have confirmed that Melissa was uniquely vulnerable to the coercive interrogation techniques because of her cognitive deficit, history of significant trauma and corresponding mental health issues, and high levels of suggestibility and compliance—all exacerbating the risk posed to her by the officers’ relentless psychological manipulation.

Yet the jury that convicted Melissa and sentenced her to death was presented with essentially no science about the psychological manipulation involved in her interrogation, the risk that such interrogation tactics could produce a false confession, or Melissa’s unique and profound vulnerabilities to the manipulative police coercion. Rather, the jurors watched the prejudicial video statements, heard false and unchallenged testimony that Melissa’s demeanor was indicative of her guilt, and heard the prosecution argue that the confession evidence conclusively proved that “[Melissa] is the one that did it and no one else.” Trial Tr. Vol. 36 at 21 (De Ford). Without any explanation regarding the false-confession science, Melissa’s jurors were undoubtedly swayed by

the injuries).

³⁸ See Innocence Project, DNA Exonerations in the United States <<https://www.innocenceproject.org/dna-exonerations-in-the-united-states/>> (accessed Mar. 15, 2022). As experts caution, these proven false confessions “most surely represent the tip of an iceberg.” Kassir et al, *Police Induced Confessions*, at 3 (the American Psychological Association’s “white paper” on false confessions).

³⁹ Keith A Findley et al, *Shaken Baby Syndrome, Abusive Head Trauma, and Actual Innocence: Getting it Right*, 12 Hous. J. Health L. & Pol’y 209, 257-60 (2012).

her custodial statements,⁴⁰ allowing for her wrongful conviction to take shape.

1. *The Interrogating Officers Engaged In A Guilt-Presumptive, Highly Manipulative Interrogation Using Tactics That Are Known To Coerce False Confessions From Innocent People*

Today, there is a robust body of scientific research identifying the risk factors that lead innocent people to implicate themselves in crimes. Many such factors are present here, as confirmed by two experts in police interrogation. Dr. Gisli Gudjonsson, one of the world’s leading experts on false confessions,⁴¹ has concluded that Melissa’s case presents a “very high” risk of false confession because the “number, severity, and combination of the risk factors involved during [her] lengthy interrogation are *exceptional*.” Ex. 10 at 16 (Dr. Gudjonsson Report). Likewise, police interrogation expert David Thompson found that the officers’ “explicit and implicit threats, promises, [and other interrogation] techniques ... cast doubt on the veracity of Ms. Lucio’s confession.” Ex. 11 at 3 (David Thompson Report).

Specifically, Melissa’s interrogation involved high-risk interrogation techniques known as “maximization” and “minimization”—two tactics which “have been repeatedly present in known cases of false confessions[.]”⁴² Maximization is intended to “convey the interrogator’s rock-solid belief that the suspect is guilty and that all denials will fail.”⁴³ Such tactics—designed to coerce

⁴⁰ Confession evidence has been demonstrated to have an overwhelming impact on factfinders—often elevated above even scientific evidence of innocence. Saul M. Kassin, *Why Confessions Trump Innocence*, 67 *American Psychological Association* 431, 433-34 (2012) (internal citations omitted). Indeed, as of July 2020, *twenty-two percent* of all individuals who falsely confessed and were later exonerated by DNA testing had exculpatory DNA evidence available at the time of trial but were nonetheless wrongfully convicted. Innocence Project, *DNA Exonerations in the United States*, <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> (accessed Mar. 22, 2022).

⁴¹ Dr. Gudjonsson is a former police officer and clinical psychologist. He has authored numerous books and articles on the subject of false confessions and is a coauthor of the American Psychology-Law Society’s 2010 White Paper on false confessions. See Kassin et al., *Police Induced Confessions*.

⁴² Jeffrey Kaplan et al., Perceptions of coercion in interrogation: comparing expert and lay opinions, 26 *Psych. Crime & Law* 384, 388(2019); see also Kassin et al., *Police Induced Confessions*, at 12.

⁴³ Kassin, et al., *Police Induced Confessions*, at 12.

individuals into confessing—include expressing certainty in the subject’s guilt, implicitly or explicitly threatening harsher consequences if the suspect persists in a claim of innocence, as well as “making an accusation, overriding [the suspect’s] objections, and citing evidence, real or manufactured, to shift the suspect’s mental state from confident to hopeless.”⁴⁴ Minimization, on the other hand, is “designed to provide the suspect with moral justification and face-saving excuses for having committed the crime in question.”⁴⁵ Officers might “offer[] sympathy and understanding[,]” and often provide “a choice of alternative explanations—for example, suggesting to the suspect that the murder was spontaneous, provoked, peer-pressured, or accidental[.]”⁴⁶ Both tactics have been shown to elicit unreliable admissions, and both were used throughout Melissa’s interrogation to coerce her into making unreliable, incriminating statements. Ex. 11 at 25 (David Thompson Report) (“[t]hese techniques were seen in multiple forms throughout [Melissa’s] interrogation[,]” and the interrogation thus had a “high likelihood of [producing] a[n] . . . unreliable confession”).

First, the interrogating officers used maximization, categorically rejecting Melissa’s repeated insistence that she was innocent, confronting her repeatedly with accusations of guilt, and insisting she “ha[d] to know” what happened to her daughter. *See e.g.*, Ex. 10 at 30 (Dr. Gudjonsson Report). From the outset of Melissa’s interrogation, officers told Melissa that they “knew,” with “no doubt,” that Mariah was “definitely” abused, and thus any innocent explanation for her daughter’s injuries—including that Mariah fell down the stairs—was not possible. Interr. Tr. at SX3-47, SX3-49. Despite Melissa’s repeated assertions that she “never” and “would not”

⁴⁴ *Id.*

⁴⁵ *See id.* at 10.

⁴⁶ *Id.* at 27.

harm her children, Ex. 10 at 25, 29 (Dr. Gudjonsson Report), the interrogators insisted they knew, with certainty, what caused Mariah's death, and that Melissa was lying when she insisted she was innocent:

- Detective Cruz insists that “[th]ere’s no way she fell off the stairs ... There’s no way. A child can fall and will not have those bruises ... I have medical personnel that are saying that this was abuse.” Interr. Tr. at SX3-19.
- Detective Banda declaring that “[t]hose bruises are not from horseplay. That’s not from kids playing around.” *Id.* at SX3-38.
- Detective Salinas says: “Mariah is dead and Mariah did not die because she fell down stairs.” *Id.* at SX3-45.
- Detective Salinas tells her that “She was abused. There’s no doubt in my mind. You keep saying you didn’t abuse . . . you didn’t abuse her. Somebody did. Right now it’s pointing towards you. It’s all pointing towards you . . . We know Mariah was abused. You can’t say that she wasn’t.” *Id.* at SX3-47-48.
- Detective Cruz again insisting that “there’s no way that it happened on a fall. There is definitely abuse.” *Id.* at SX3-49.
- Detective Salinas saying that he is “sure” that Mariah was repeatedly abused and that Melissa “ha[s] to answer for that.” *Id.* at SX4-4-5.

The interrogators likewise employed the maximization technique when they “stood over [Melissa] and repeatedly shouted at her, . . . us[ing] . . . threats and inducements[,]” throughout the interrogation. Ex. 10 at 16 (Dr. Gudjonsson Report). One detective yelled: “[i]f I beat you half to death like that little child was beat, I bet you you’d die too.” *Id.* at 26. Another implied that Melissa would not be permitted to go to Mariah’s funeral unless she started confessing. *Id.* at 29. The interrogators told her that by asserting her innocence, she was “digging [her]self deep[er]” into the “hole” she was in. Interr. Tr. at SX3-47. Without a confession, they told her, she would “look[] like . . . a coldblooded killer[.]” Ex. 10 at 30 (Dr. Gudjonsson Report). As Dr. Gudjonsson explains, the officers worked to “maximize[] Ms. Lucio’s emotional distress,” *id.* at 35—perhaps most clearly displayed when Melissa tells officers that she “wish[es] [she] was dead,” *id.*, and later, through tears, again expresses a desire for her own death, *id.* at 48.

Second, the officers used minimization techniques against Melissa throughout the interrogation. They repeatedly pushed Melissa to confess to causing Mariah’s death by presenting her with a false, but exclusive and inevitable, set of options—either admit she caused Mariah’s death by “accident” or “mistake,” or be revealed as a “coldblooded” killer who “planned” her own daughter’s murder. Ex. 10 at 30 (Dr. Gudjonsson Report); Interr. Tr. at SX3-44-45; *see also id.* at SX3-46, 58, 60 (continuing to insist Melissa is either a “coldblooded killer or it was an accident”). Dr. Gudjonsson explains that the officers repeatedly induced her to implicate herself, trying to “persuade her that this was merely a mistake due to the frustration [or] due to the stress she was under at the time, emphasizing that everybody makes mistakes.” Ex. 10 at 8 (Dr. Gudjonsson Report); *see e.g., id.* at 38 (Texas Ranger Escalon saying “it happens,” and “we all make mistakes”); *see also, e.g.,* Interr. Tr. at SX3-30, SX3-42-43, SX4-3, SX4-13-14, SX4-35 (officers repeatedly offering Melissa moral justification for the purported murder, suggesting that she abused her daughter out of “frustration” or the “pressure” she was under). In one particularly manipulative use of the technique, Ranger Escalon got within inches of Melissa’s face, repeatedly insisting he “already kn[ows] what happened,” that her confession would “help,” that she “owe[d] it” to her deceased daughter and her mother, that God would forgive her, and that confession was the best way to “put this to rest.” Interr. Tr. at SX4-8-13.

When maximization and minimization are used together in this way, they can be particularly coercive and create a substantial risk of false confession. As police interrogation expert Thompson explains, the “combination of threats followed by suggestions of leniency create an incentive for innocent subjects to confess[,] . . . and cast doubt on the reliability of any information gained.” Ex. 11 at 4 (David Thompson Report). In addition to these coercive interrogation tactics, the length of Melissa’s nighttime interrogation further increased the risk that

she would falsely incriminate herself. *Id.* at 8. Experts have found that the “vast majority of interrogations last approximately from 30 minutes up to 2 hours,” while interrogations that have elicited proven false confessions lasted much longer.⁴⁷

2. *Melissa Was Uniquely Vulnerable To Giving A False Confession*

Melissa also has various personal characteristics that rendered her extremely vulnerable and susceptible to this interrogative pressure. Ex. 10 at 17 (Dr. Gudjonsson Report). As detailed in Section II, below, Melissa’s life has been marked by physical, emotional, and sexual abuse.

Her history of significant trauma at the hands of men has led to Post-Traumatic Stress Disorder (PTSD), and other mental health conditions, and she also has cognitive deficits and high levels of suggestibility—all of which compounded the impact of the situational risk factors discussed above, and placed her at “very high” risk of false confession. Ex. 10 at 15 (Dr. Gudjonsson Report).

As Dr. Gudjonsson explains, “a history of negative/traumatic life events is associated with increased level of suggestibility, compliance, and false confession[,] . . . because trauma significantly reduces the *resilience* of the trauma victims to cope with *interrogative pressure*.” *Id.* at 11, 12. As described above, interrogators that employ maximization and minimization techniques may “coerce suspects to confess with a one-two punch: the intentional production of fear and stress, followed by the promotion of confession as the most expedient solution to end that fear and stress. *Trauma responses may magnify suspects’ vulnerability to each of these tactics*, rendering them more likely to confess either falsely or involuntarily.”⁴⁸ More specifically, women

⁴⁷ Kassin et al., *Police Induced Confessions* at 16; see also Brandon L. Garrett, *Contaminated Confessions Revisited*, 101 Va. L. Rev. 395, 402 (2015) (analyzing twenty-six then-recent cases of false confessions and noting that all but one “involved lengthy interrogations that took place for *more than three hours*” (emphasis added)).

⁴⁸ Hayley M. D. Cleary, et al., *How Trauma May Magnify Risk of Involuntary and False Confessions Among*

with domestic abuse histories (like Melissa) may be more “easily subjected to influence from authority figures” (like her armed interrogators).⁴⁹ Coercive interrogation, like Melissa endured for hours, thus can lead abused women to acquiesce to the interrogative pressure and assume a submissive role to comply with authority figures.⁵⁰

Recent testing of Melissa is consistent with this scientific research, revealing that Melissa has “highly abnormal” levels of vulnerability to police coercion. Ex. 10 at 12 (Dr. Gudjonsson Report) (explaining Melissa’s score on a scientific test used to measure suggestibility).⁵¹ One instance highlighting this high level of suggestibility and compliance in Melissa’s interrogation, Dr. Gudjonsson explains, is when Melissa is seen on camera hitting a doll “reluctantly,” but as instructed to do so by the officers, and appears to be “merely *passively complying* with enactment without any clear evidence of genuine responses.” *Id.* at 10 (emphasis added).

Melissa also lives with persistent depression and a below-average IQ⁵²—two factors, in addition to her trauma history, that increase her already-heightened vulnerability to false confession. Studies confirm that “mental disabilities,” including “depressive[] ... disorders,” can “increase vulnerability to police interrogation.”⁵³ The same goes for intellectual limitations:

Adolescents, 2:3 Wrongful Conviction Law Review 173, 184 (2021) (emphasis added).

⁴⁹ Lenore E. A. Walker, *The Battered Women Syndrome* 457–60, 458 (2017).

⁵⁰ *Id.*

⁵¹ The Gudjonsson Suggestibility Scale, developed by Dr. Gudjonsson, is “an instrument that intends to measure individual differences in interrogative suggestibility[,] . . . [testing] two different aspects of interrogative suggestibility, namely the tendency to give in to leading questions (Yield) and the tendency to shift responses under conditions of interpersonal pressure (Shift).” Harald Merckelbach et al., *The Gudjonsson suggestibility scale (GSS): Further data on its reliability, validity, and metacognition correlates*, 26 Soc. Behav. Pers. 203 (1998), <https://www.proquest.com/docview/209897410> (last visited Mar 17, 2022).

⁵² Melissa has a below-average IQ, and “her greatest intellectual vulnerability [is] her impaired verbal comprehension[.]” Ex. 10 at 12 (Dr. Gudjonsson Report).

⁵³ Lauren Rogal, *Protecting Persons with Mental Disabilities from Making False Confessions: The Americans with Disabilities Act as a Safeguard*, 47 NM L Rev 64, 70 (2017); see also Kassin et al., *Police*

individuals with such limitations are “over-represented in false confession cases.”⁵⁴ Indeed, experts on false confessions overwhelmingly agree that “[i]ndividuals who have intellectual disabilities are particularly vulnerable to the pressures of social influence” which are used by officers during police interrogation.⁵⁵

Melissa’s unique vulnerability to false confession was exacerbated by the circumstances of the interrogation: At the time of her five-hour interrogation—which culminated after 3:00 in the morning—Melissa was sleep deprived, which necessarily increased her susceptibility, decreased her decision-making abilities, and thereby further increased her corresponding risk of falsely confessing.⁵⁶ Sleep deprivation “strongly impairs human functioning,” and both real-world data and “[c]ontrolled laboratory experiments” have shown that sleep deprivation can “heighten susceptibility to influence and impair decision-making abilities.”⁵⁷ The timing of Melissa’s interrogation thus further “exacerbate[d] [her] other vulnerabilities[.]” Ex. 10 at 13 (Dr. Gudjonsson Report).

3. *Melissa’s Statements Bear Indicia Of Unreliability*

In light of the foregoing, it is not surprising that the incriminating statements Melissa made contain numerous concerning indicia of unreliability. Now known as the “phenomenon of confession contamination[.]” comprehensive studies of known false confessions have revealed that

Induced Confessions, at 22.

⁵⁴ Kassin, et al., *Police Induced Confessions*, at 20; see also Brandon L. Garrett, *Contaminated Confessions Revisited*, 101 Va. L. Rev. 395, 400 (2015) (noting that of all the proven false confessions studied, “one-third involved individuals who were mentally ill or had an intellectual disability”).

⁵⁵ Kassin et al., On the General Acceptance of Confessions Research: Opinions of the Scientific Community, 71:1 American Psychologist 63, 72 (2018).

⁵⁶ *Id.* at 71-72 (noting that there is a “high level of consensus” among the leading experts that sleep deprivation impacts interrogation decision making).

⁵⁷ Kassin, *Police Induced Confessions* at 16.

police officers, intentionally or unintentionally, often “prompt the suspect” on how they believed the crime happened, thereby allowing an innocent suspect without any knowledge of the crime to “parrot back an accurate-sounding narrative.”⁵⁸ “Contamination”—a suspect’s adoption of facts or narratives suggested to them by police—is found in the vast majority of false confessions. *See id.* at 1080-1082 (detailing instances in which suggestion by police was apparent in recordings of several analyzed false confessions). Indeed, studies show that proven false confessions often contain detailed narratives and alleged motivations that were suggested to the innocent confessor by the interrogating officers.⁵⁹ In such cases, the alleged wrongdoer isn’t “confessing” to anything at all, but rather repeating the story the interrogator has suggested is the “right” one. And that is precisely what happened here.

Specifically, officers “contaminated” the interrogation by repeatedly showing Melissa photographs of the specific injuries they insisted were evidence of abuse, expressing absolute certainty as to Mariah’s cause of death by abuse, and feeding facts to Melissa about the purported crime and her alleged motivation. When Melissa ultimately acquiesced to the officers’ insistence in her guilt, she merely adopted the very words fed to her by the interrogating officers. To avoid such contamination, today, “law enforcement trainers and leaders across the board agree” that suggesting facts about the crime to a suspect, “has no legitimate place in American interrogation.”⁶⁰

⁵⁸ Brandon Garrett, *The Substance of False Confessions*, 2010 at 1053.

⁵⁹ Sara C. Appleby, et al., *Police-induced confessions: an empirical analysis of their content and impact*, 19:2 Psychology, Crime, & Law 111, 125 (2013), available at <https://tinyurl.com/yebt36vc>; see also Richard A. Leo et al., *Promoting Accuracy in the Use of Confession Evidence: An Argument for Pretrial Reliability Assessments to Prevent Wrongful Convictions*, 85 Temple L. Rev. 759, 776 (2013).

⁶⁰ Leo et al., *Promoting Accuracy*, at 825; see also Fred E. Inbau et al., *Criminal Interrogation and Confessions* (2013) at 306 (cautioning interrogating officers against revealing details about the crime to the suspect during “the questioning process, [or through] news media, or the viewing of crime scene photographs”).

Here, due to the officers' contamination, Melissa's resulting incriminating statements are not a reliable "confession" of her guilt, but rather are "a *regurgitation* of information relayed to her from investigators throughout the interrogation." Ex. 11 at 4, 22 (Thompson Report) (emphasis added). Melissa's only explanation or motive for the alleged abuse was exactly what officers had suggested to her over and over again—that she was a "frustrated" mom under pressure. Ex. 10 at 30-37 (Dr. Gudjonsson Report). When asked to elaborate, she again used the interrogating officers' own words, saying that her "other children, they were very hyper and it was hard for me take care of all of 'em." *Id.* at 41. That is precisely the explanation that police suggested to her throughout the interrogation; when using minimization tactics, officers insisted that the alleged abuse was understandable because she had "a lot of children to put up with[,] . . . [was a] stressed mom, . . . [who had three boys who were] very hyper." Interr. Tr. at SX3-55.⁶¹ Officers further contaminated her statements by "lead[ing] [Melissa] to change her words" until "her responses [were] to their satisfaction[.]" Ex. 11 at 4 (David Thompson Report). Specifically, over the five-hour interrogation, officers induced [Melissa] to alter her words from "'discipline' to 'spank' to, ultimately, a role play of her 'beating' a doll in the interrogation room." *Id.*

Finally, and further casting doubt on the veracity of Melissa's statements, the interrogating officers gave "no consideration for [Melissa's] susceptibility to coercive tactics relating to her traumatic experience, including the death of her daughter[.]" *Id.* at 4. Today, "[e]xtensive research

⁶¹ Similar coercion occurred when officers suggested to Melissa that she had bitten Mariah. As discussed in Section I.A, any purportedly scientific conclusion that Mariah had bite marks on her body is wholly unreliable. But even setting that aside, Melissa's "confession" to having bitten Mariah bears indicia of unreliability already discussed. The officers forced Melissa to act it out on a doll, having previously coached her on how to do so. *See supra* 32 & n.36. After saying "[l]et's start with the bite mark," the officer told Melissa to "just re-enact what . . . how you did it," and when Melissa said "[d]o I have to?," the officer told her "[y]es." Interr. Tr. At SX5-2-3. And again, when officers asked Melissa why she bit Mariah, she parroted their own language back to them, saying it must have been "[f]rustration, I guess." *Id.* at SX5-4.

in the field of trauma-informed interviewing and deception detection [that has] been conducted over the last several years[,]” suggests that “[Melissa’s] entire interview process should have been conducted differently and with these factors in mind” so as to prevent the elicitation of an unreliable confession. *Id.* Instead of the guilt-presumptive, coercive interrogation that officers here conducted, “[a] trauma-informed, cognitive approach with an understanding of the multiple causes of non-verbal cues would have provided more reliability to any statements made by Ms. Lucio.” *Id.*

In light of the myriad risk factors for false confessions and indications that Melissa’s inculpatory statements were a result of her suggestibility, not her guilt, experts have opined that her “inadvertent” admissions were “not [] credible,” Ex. 10 at 15 (Dr. Gudjonsson Report), and are properly understood as “contaminated ... through a coercive process with a high likelihood of being a coerced-compliant and unreliable confession[,]” Ex. 11 at 25 (David Thompson Report).

In sum, Melissa’s trauma response to her daughter’s death, wrongfully perceived by responding officers and her interrogators as evidence of guilt, set in motion a profoundly biased investigation. That biased investigation supported a prosecution—led by a criminally corrupt prosecutor—centered on an unreliable, contaminated “confession” and false scientific evidence. These errors misled the jury into convicting Melissa for a capital murder that never happened.

II. GROUND 2: MELISSA’S EXPERIENCES AS A VICTIM OF CHILD SEXUAL ABUSE AND DOMESTIC VIOLENCE MADE HER A TARGET FOR BIASED POLICE AND PROSECUTORS AND ULTIMATELY LED TO HER CONVICTION

From birth, Melissa’s life has been shaped by domestic violence, severe childhood sexual abuse, and poverty. The repeated sexual and physical assaults that Melissa experienced throughout her life caused Post Traumatic Stress Disorder (PTSD), clinical depression, dissociation, panic

disorder, and substance abuse. Melissa's trauma symptoms were misinterpreted by first responders, exploited by police interrogators, and dismissed by prosecutors.

The legal system's failure to recognize and respond appropriately to the consequences of Melissa's victimization led directly to her conviction and death sentence. At trial, the prosecution successfully excluded expert testimony that would have explained to the jury why a battered woman would capitulate to aggressive, armed male interrogators. And in arguing that Melissa should be sentenced to die, the prosecution mischaracterized her trauma symptoms as evidence that she was "coldhearted." Tr. Vol. 38 at 145. These tactics reflect profound ignorance of the consequences of gender-based violence, and have been condemned by a coalition of Texas anti-violence advocates who have spent decades protecting victims like Melissa:

Those of us who work in the anti-violence field or have experienced abuse know that victims of violence bear not only the burden of pain and trauma but also the heavy burden of people and systems that misunderstand, or even actively overlook, their experiences of abuse.

Exhibit 14 (Letter of Texas Anti-Violence Advocates). Commutation of Melissa's sentence will begin to remedy the harm caused by those who either ignored, or failed to comprehend, the consequences of Melissa's abuse. Governor Abbott recognized in February 2020 that women like Melissa are victims long before they are defendants; that is why he directed the Board to give special consideration to clemency requests by victims of domestic violence.⁶² Melissa is one such victim.

A. Melissa Suffered Horrific Physical, Sexual, Psychological And Emotional Abuse Throughout Her Childhood And In Her Adult Relationships.

Melissa's mother, Esperanza Correa, was a battered woman. Esperanza's partners kicked

⁶² Office of the Texas Governor, *Governor Abbott Establishes Customized Clemency Application For Survivors Of Human Trafficking And Domestic Abuse* (Feb. 20, 2020), <https://gov.texas.gov/news/post/governor-abbott-establishes-customized-clemency-application-for-survivors-of-human-trafficking-and-domestic-abuse>.

her, punched her, and dragged her through the house while Melissa and her sisters watched. Esperanza stayed in abusive relationships for the same reason that many women stay: She loved her partners, she feared them, and she depended on them.

One of those partners, Esquiel “Kelo” Carr, was a predator who began sexually assaulting Melissa when she was six years old. Financially struggling and “working 24/7,” Esperanza was incapable of caring for Melissa and her siblings alone and would often leave them with Esquiel. Trial Tr. Vol. 37 at 196–97. Melissa recalls how Esquiel would give her sisters money to go to the store so he could be alone with her. Summoning immense courage, seven-year-old Melissa told her mother about the abuse. But instead of protecting her young daughter, Esperanza slapped Melissa and called her a liar, telling her never to speak of it again. So the abuse continued. Esquiel continued raping Melissa until she was eight or nine years old, when Esquiel and Esperanza finally broke up.

Melissa’s childhood sexual abuse made her vulnerable to repeated victimization.⁶³ Esperanza’s brother (Melissa’s maternal uncle), Andres “Andrew” Gutierrez, also began assaulting Melissa when she was a young girl. While Esperanza, and Melissa’s aunt, Maria, attended garage sales, Andres would force Melissa into his bedroom, close the door, and make her touch his penis. Conditioned by her mother’s response when she reported Esquiel’s abuse, Melissa had learned not to say anything to adults. When she was nine years old, Melissa snuck into a utility closet in the family’s apartment complex to smoke a cigarette pilfered from her mother’s friend’s purse. A passing maintenance man scared her into thinking she was in trouble. Telling her “if you do this, I won’t tell your mom,” the maintenance man raped her, forcing his penis into her mouth.

⁶³ Bonnie L. Kessler & Kathleen J. Bieschke, *A Retrospective Analysis of Shame, Dissociation, and Adult Victimization in Survivors of Childhood Sexual Abuse*, 46 J. Counseling Psych. 335, 340 (1999).

Once again, Melissa endured this sexual violence in silence, with no hope of help from an adult.

Melissa's early childhood trauma opened the door to re-victimization as an adolescent, and as an adult. At just fifteen, unable to legally consent, Melissa was raped by Israel Saucedo, a twenty-one-year-old married man. At sixteen, Melissa became a child bride.⁶⁴ She thought that marriage would allow her to escape the violence of her childhood, but the violence only continued. Melissa moved with Guadalupe to Houston, where she was separated from her family and friends, and Guadalupe, an alcoholic and drug dealer, abused her physically and emotionally. Trial Tr. Vol. 37 at 199. After Guadalupe's sister Sylvia introduced sixteen-year-old Melissa to cocaine, *id.* at 194, years of addiction followed. Like many trauma victims, Melissa's drug use served as both an escape and a means to cope with the trauma and abuse she suffered daily.⁶⁵

After a miscarriage at age seventeen, Melissa bore five children by the time she was twenty-three. Guadalupe took off, forcing Melissa and the children to fend for themselves. Melissa was so stunned by Guadalupe's sudden abandonment that she reported him missing to the police.

Vulnerable, abandoned, and struggling to support her five children, Melissa began a new relationship with Robert Alvarez. She found solace in being a mother,⁶⁶ and gave birth to seven more children during her relationship with Robert, including a daughter named Mariah. She also

⁶⁴ Her marriage to twenty-year-old Guadalupe Lucio was legally permitted in Texas only because Melissa's mother consented. TEX. FAM. CODE ANN. §2.102 (West 2009) (repealed 2017). Roughly 90% of married children are girls, and in 2017, Texas banned the practice. *See* Anjali Tsui, Dan Nolan and Chris Amico, *Child Marriage in America by the Numbers*, Frontline, July 6, 2017; Alex Samuels, *New State Law Seeks to Reduce the Number of Child Brides in Texas*, Texas Tribune, Sept. 26, 2017, <https://www.texastribune.org/2017/09/26/new-law-seeks-reduce-number-child-brides-texas/>.

⁶⁵ *See* Scheidell, et al., Childhood Traumatic Experiences and the Association with Marijuana and Cocaine Use in Adolescence through Adulthood, 113 (1) ADDICTION 44–56 (Jan. 2018) (noting that “[n]umerous studies have documented associations between childhood traumatic experience and drug use in both adolescent and adulthood periods”).

⁶⁶ Ex. 57 at 2 (Dr. John Pinkerman Aff.); Trial Tr. Vol. 37 at 197. In his assessment, Dr. Pinkerman found that “it is evident that her self-esteem and identity are closely tied to her role as a mother and wife.” Ex. 58 at 6 (Dr. John Pinkerman Assessment).

suffered two more miscarriages. Like Guadalupe and Esquiél before him, Robert was physically, sexually, and verbally abusive to Melissa and her children. He punched her. He threw beer bottles at her head. He kicked her with his steel-toed boots. He spit on her. He dragged her by her hair. He pushed her, knocking her head against the wall. He raped her repeatedly.

Robert was also controlling and possessive. He would take Melissa's keys away and lock her in the house to keep her from her family and friends. He accused her of infidelity. He called her a bitch and a whore. Ex. 28 (March 18, 2022 Declaration of John Vincent Lucio). His jealousy fueled his rage, and he would pin Melissa to the bed and rape her. Once, he threw her down on the bed, wrapped his hands around her neck, and began to strangle her. She couldn't breathe. As he pressed down on her windpipe and cut off her air supply, she saw stars. He stopped short of killing her—but his strangulation left bruises on her neck that remained for days.⁶⁷

Melissa's children witnessed this abuse. As a young teenager, Melissa's son John would try to protect his mother:

The first time I got in the middle of a fight I was 14 years old. My sisters, Daniella and [L]ittle Melissa were also there. I saw Robert grab my mom by her arms and pushed her and shoved her. Robert hit her and slapped her. My mother looked scared. Robert was shouting at her and called her a bitch. I stepped in and hit him for the first time. Robert came after me, but he was too slow and unable to get to me.

Ex. 28, (March 18, 2022 Declaration of John Vincent Lucio). Melissa's children called 911. They reported to the Texas Department of Family and Protective Services (DFPS), also known as CPS,

⁶⁷ Domestic violence experts warn that strangulation dramatically increases the risk that a woman will be killed by her partner:

Our research has now made clear that when a man puts his hands around a woman's neck, he has just raised his hand and said, "I'M A KILLER." They are more likely to kill police officers, to kill children, and to later kill their partners.

Casey Gwynn, Co-Founder of the Training Institute on Strangulation Prevention, <https://www.strangulationtraininginstitute.com/all-abusers-are-not-equal-new-ipv-research-reveals-an-indicator-of-deadly-abuse/>.

that they had witnessed domestic violence in their household. Def. Tr. Ex. 14 at 6. Even strangers reported Robert's violence: a school principal informed CPS that she saw Robert punch Melissa in a park near the school. Trial Tr. Vol. 37 at 205; Def. Tr. Ex. 14 at 2-3. Despite these reports, no one took action to ensure Melissa's safety—or even to refer Melissa to available support services for battered women.

B. Melissa Developed Post-Traumatic Stress Disorder As A Result of Her Repeated Trauma.

Melissa's early and pervasive experiences of abuse caused lasting psychological harm. Mental health experts have concluded that she suffers from PTSD, depression, and "battered woman syndrome" directly resulting from her early childhood trauma and ongoing physical, sexual, and emotional abuse. Ex. 58 at 10, (Dr. John Pinkerman Assessment); Ex. 57 at 2 (Dr. John Pinkerman Aff.). Like many individuals who have experienced prior trauma, including sexual abuse, Melissa responds to intensely painful or stressful situations by turning inwards and becoming passive. Instead of acting out, she represses her feelings. Ex. 58 at 7-8 (Dr. John Pinkerman Assessment), Ex. 57 at 2 (Dr. John Pinkerman Aff.). To endure the horrific abuses of her childhood, Melissa learned to numb her feelings and "appear empty or passive." Ex. 57 at 2 (Dr. John Pinkerman Aff.).

This sort of trauma response is a survival tactic. When Melissa has a flat affect, seems unemotional, and bows to male authority figures, she is employing psychological defenses against painful experiences and memories: By withdrawing and numbing her emotions, she can protect herself from the pain of her constant trauma. Her dissociation "serves to keep many important elements of daily life from her conscious awareness." Ex. 58 at 7 (Dr. John Pinkerman Assessment). This dissociation is a core biological symptom of PTSD and is compounded by her depression. *Id.* at 7-9.

Melissa’s severe, decades-long abuse had lasting consequences that trained experts can readily detect and explain. Yet Melissa’s jury never heard this explanation before they convicted her of capital murder, because the trial court prevented her experts from testifying at the guilt phase of her trial. Melissa’s experiences as a victim of gender-based violence were simply erased, as if they bore no relevance. The nexus between her victimization and her conviction is clear: the misconceptions that animated the police interrogation of a grieving mother and led to her false “confession” were reinforced by the prosecution, ratified by the judge, and received by jurors who were deprived of critical context for Melissa’s responses under interrogation.

III. GROUND 3: THE VICTIM’S RELATIVES—MELISSA’S CHILDREN— OPPOSE HER EXECUTION

Under Texas law, relatives of a victim have the right to provide victim impact statements to this Board, so that their views about punishment of the defendant are heard. *See* Tex. Code Crim. Proc. art. 56A.051(a)(12)(B). One way in which this case is unique is that the family of the victim, Mariah Alvarez, is also the family of Melissa Lucio. While the State failed to solicit the family’s views before setting an execution date for Melissa, family members have made it known that they *do not want Melissa executed*. The very same family members who have already been devastated by Mariah’s death should not be forced to endure the additional horror of losing Melissa. Punishment is meant to alleviate trauma felt by the victim’s family, not exacerbate it.

A. Texas Law Requires The Board To Hear The Pleas Of Mariah’s Family Who Do Not Want Melissa Executed.

The Texas Code of Criminal Procedure lists fourteen rights granted to Melissa’s adult children, as close relatives of the victim, Mariah.⁶⁸ One such right is this Board’s consideration

⁶⁸ Melissa’s children are “close relatives” of a victim. Tex. Code Crim. Pro. art. 56A.001(3)(B).

of their victim impact statements.⁶⁹ Tex. Code Crim. Proc. art. 56A.051(a)(12)(B). While the statutory language frames this right in the parole context, it should apply with equal or greater force at this stage of a capital case. Melissa’s children are close relatives of the victim, Mariah, and each of them has the right to be heard by each and every member of the Board.

The District Attorney chose not to seek input from Mariah’s family before scheduling Melissa’s execution, and refused to listen to the family when they asked to be heard. The Board can and should afford them the fairness and dignity they are entitled to under the Texas Constitution⁷⁰ by heeding their call to spare their mother’s life. Their voices must be heard.

B. The Family’s Message Is Clear: Please Do Not Kill Melissa.

In a letter directly addressing this Board, Mariah’s brothers and sisters stand together—Mariah’s eleven siblings speak with a unified voice, pleading with the Board to “[p]lease spare the life of [their] mother.” Ex. 31 (Siblings Letter). Mariah’s siblings explain: “The death of our sister Mariah and the prosecution of our parents tore our family apart. The wounds never fully healed. They probably never will.” *Id.* But they “ask [this Board] not to tear those wounds open again” by taking their mother away. *Id.* With this Board’s mercy, the family will be permitted “to reconcile with Mariah’s death and remember her without fresh pain, anguish, and grief.” *Id.*

Mariah’s oldest brother, John Lucio, offers additional thoughts for the Board’s consideration. Ex. 28 (John V. Lucio Letter). John describes his “sweet little sister” Mariah, and how the “15 years since Mariah’s death have been very difficult on [him] and [his] siblings.” *Id.* But, he writes: “As Mariah’s brother, I want to say that having my mother taken from me and my

⁶⁹ Additionally, the District Attorney must ensure that Melissa’s children are informed of this right, together with their other statutory rights. Tex. Code Crim. Proc. art. 56A.051(c).

⁷⁰ Tex. Const. art. I §30(a)(1) (according victims the “right to be treated with fairness” and with “respect for [their] dignity . . . throughout the criminal justice process”).

siblings by the State of Texas will not give me any sense of ‘closure,’ or sense of ‘justice’ for my sister.” *Id.* To the contrary, John explains, “executing [Melissa] will make [the family’s] wounds unhealable.” *Id.* And his mother’s execution weighs heavily on John, in particular: he has had his own share of personal struggles, and has “been working hard to get [his] life on track,” but since learning of Melissa’s execution date, “much of [his] progress has fallen away.” *Id.* John writes:

Most of the progress I have made in life and as a person is because of my mom. If the State of Texas takes her from me and my siblings, we will not have her guidance, love and support. And for what purpose? ... I respectfully beg you to please spare my mother’s life and do not let the State take her from us.

Id.

One of Mariah’s sisters, Melissa Lucio—who is affectionately known to her family as “Little Melissa”—has made it clear that she would be devastated if their mother were executed. Ex. 33 (Declaration of Melissa Lucio Jr.). In addition to believing her mother is innocent, the Little Melissa pleads for her mom’s life because “her kids and grandkids need her.” *Id.* She has even expressed an alarming concern about her own will to live if Melissa were to be executed. *Id.* (“[I] think I wouldn’t want to be in this world anymore. I would want to die.”). Speaking directly to this Board, Little Melissa pleads: “Please do not kill an innocent mother, do not take her away from our family, by killing her you will be killing me too.” *Id.* Little Melissa’s courage in exposing her own vulnerabilities while pleading for her mother’s life vividly demonstrates that this execution would only unleash more pain, loss, and suffering upon an already-traumatized family, rather than provide them with any degree of “closure” or “justice.”

One of Mariah’s brothers, Bobby Alvarez, has described the compounded trauma and suffering that is sure to come if the State of Texas proceeds with the execution. Bobby was seven years old when his sister died, and eight when his mother was sent to Death Row. Today, he tells

the Board: “I have already been through enough trauma in my life with the death of my sister Mariah and being separated from my family.” Ex. 20 (Feb. 27, 2022 Bobby Alvarez Declaration). Bobby explains that “loosing [sic] [my mom] would be another [trauma] that I think i [sic] could not overcome.” *Id.* Bobby “beg[s]” and pleads with the Board to prevent this execution. As he explains, the execution will “put more suffering” on him and other members of the family. *Id.* If the State of Texas executes Bobby’s mother, it will “take away [his] last hopes of getting to know [his mother] more.” *Id.* Bobby’s heartbreaking statement makes clear that, in the circumstances of this case, effectuating the death penalty would fulfill none of the goals traditionally associated with that punishment, such as providing justice to the victims of the crime. On the contrary, the State would be injecting a lifetime of pain and trauma into the lives of the victims, who have already endured—and continue to endure—an inordinate amount of suffering due to Mariah’s death.

Is killing Melissa Lucio more important than sparing Mariah’s family further anguish and loss? The answer is, unequivocally, “No.”

IV. GROUND 4: MELISSA’S SENTENCE IS DISPROPORTIONATE

The Board should also consider whether Melissa’s death sentence is reasonable when compared to sentences in other Texas cases involving the deaths of infants or children attributed to a caregiver. Such a comparison reveals that Melissa’s death sentence is aberrant—and grossly disproportionate to her culpability.

Perhaps the most relevant sentence with which to compare Melissa’s is the one that her partner, Robert Alvarez, received. Although Robert (like Melissa) was home at the time of Mariah’s death, and Robert (like Melissa) was a caregiver for Mariah and the rest of the children, he was prosecuted only for “causing injury to a child by omission.” *See* Ex. 56 (Robert Alvarez Sentencing Transcript). He received a four-year sentence. The treatment he received at the hands

of police and prosecutors comports with the evidence in this case, which shows—at most—that Melissa and Robert should have sought medical treatment for Mariah soon after she fell down the stairs. No valid forensic or eyewitness evidence indicated that either Melissa or Robert caused Mariah’s injuries, and the evidence presented to this Board, discussed above in Section I, demonstrates that her injuries were entirely consistent with the accidental fall down the stairs that both Melissa and Robert reported to police. When the police questioned Robert, they expressed sympathy for his loss, allowed him to explain what happened, and believed him when he said that he never abused Mariah. Melissa, by contrast, was immediately treated as a suspect. The police yelled at her, berated her, and refused to accept that she had not abused her daughter.

Robert’s prosecution and sentence is particularly discordant given that *unlike* Melissa, it was well-documented that Robert was violent—towards both Melissa and the children. *See infra* Section II. That Robert was prosecuted for a lesser offense and only received a four-year sentence illustrates not just the narrow issue of sentencing disparities, but also the broader role that bias played in Melissa’s conviction and death sentence.

Even setting aside the disparity between Melissa’s sentence and Robert’s, Melissa’s death sentence is disproportionate when compared to sentences received by other Texas defendants who committed murder made capital because the victim was a child.⁷¹ Texas prosecutors rarely seek the death penalty in such cases, even where they have evidence that a parent has caused a child’s death. *See* Ex. 52 (Sentencing Disparity Data – Life Sentences For Capital Murder). Considering the sentences received by other female defendants is particularly instructive. Nearly twenty

⁷¹ The current version of the Texas Code makes murder a capital offense if the victim is “under 10 years of age,” Tex. Penal Code Ann. § 19.03(a)(8), whereas a previous version of the statute made it a capital offense if the victim was “under six years of age,” Tex. Penal Code Ann. § 19.03(a)(8) (2011). For purposes of this briefing, Melissa discusses sentences under both the prior and current version of the statute.

women have been convicted of capital murder of a child in Texas, and only one besides Melissa received a death sentence—all of the others were sentenced to life imprisonment. *See id.*; Ex. 51 (Sentencing Disparity Data – Death Sentences For Capital Murder). That is so even though *all* of the women sentenced to life imprisonment for the murder of a child involve facts no less egregious; and *all* involve facts more aggravated than what prosecutors accused Melissa of (which, of course, wasn't even true).⁷² *See* Ex. 52 (Sentencing Disparity Data – Life Sentences For Capital Murder).

The only occasion in which prosecutors have sought death for a parent accused of causing their child's death is where they have overwhelming evidence that a parent has deliberately and sadistically killed a child—and even those cases are rare. *See* Ex. 51 (Sentencing Disparity Data – Death Sentences For Capital Murder). The relatively few Texas defendants who have been sentenced to death in such cases have committed substantially more aggravated crimes, and their culpability for the child's death was not in doubt.⁷³

Meanwhile, the only other woman besides Melissa to receive a death sentence for capital murder of a child in Texas is Lisa Coleman, whose crime was particularly horrifying and whose

⁷² For example, Laura Day drowned her six-year-old stepson. A witness saw her beckon child into the ocean, and later, “when [she] drove away, she waved at him with an ‘ear-to-ear’ grin.” *Day v. State*, No. 13-13-00338-CR, 2016 WL 4272383, at *2 (Tex. App. Aug. 11, 2016). Melinda Lynn Muniz murdered her fiancé's two-year-old daughter, who “was found unconscious and unresponsive, with duct tape over her mouth, in a locked apartment where [Muniz] was the only one present.” *Muniz v. State*, No. 05-18-00428-CR, 2018 WL 3599196, at *1 (Tex. App. July 27, 2018). And Rosie Mae Webb murdered her three-year-old granddaughter, admitting to “punish[ing]” the child for wetting the bed by “spank[ing] her ... on her shoulders and head with the shoe,” and holding the child down while the child's father “struck the victim fifteen or twenty times with his belt.” *Webb v. State*, No. 03-00-228-CR, 2001 WL 725663, at *1 (Tex. App. June 29, 2001).

⁷³ Those are cases like *Mullis v. Lumpkin*, No. 3:13-CV-121, 2021 WL 3054800, at *1 (S.D. Tex. July 20, 2021), where the defendant was convicted of sexually assaulting his three-month-old son and then strangling him and stomping on his head, crushing his skull. Or *Thomas v. Lumpkin*, 995 F.3d 432, 438 (5th Cir. 2021), where the defendant broke into the apartment of his estranged wife and stabbed her, their four-year-old son, and his wife's one-year-old daughter, killing all three, and then attempted to cut the hearts out of each victim. *See also* Ex. 51 (Sentencing Disparity Data – Death Sentences For Capital Murder).

culpability was also unquestioned. Coleman starved and abused her girlfriend's nine-year-old son Davontae, which eventually resulted in his death. *Coleman v. Thaler*, 716 F.3d 895, 898-900 (5th Cir. 2013). There was no question who was responsible. In that case, unlike here, CPS had documented Coleman's abuse of the child—CPS had “removed Davontae from [his mother's] custody because [Coleman] was abusing him physically,” and only “returned Davontae to [his mother] on the condition that he ‘not be around Lisa Coleman.’” *Id.* at 898-99. But Coleman, tragically, was not kept away. *Id.* at 899. This case of abuse is far afield from Melissa's, which involves a death that was the product of a tragic accident.

Sentences should be proportionate to a defendant's culpability, which is why sentences of death must be limited to those offenders whose extreme culpability makes them the most deserving of execution. As these comparisons show, Melissa is not such an offender. These cases highlight the disproportionate and arbitrary nature of Melissa's death sentence, and highlight the need for commutation to bring Melissa's sentence in line with similarly-situated caregivers. The Board can, and should, act to prevent the disproportionate and arbitrary imposition of death in this case.

V. GROUND 5: MELISSA IS A PERSON OF DEEP FAITH WHO POSES NO THREAT TO SOCIETY

We respectfully ask the Board to consider two defining features of Melissa's character: first, her turn to spirituality and strong faith as a Roman Catholic; and, second, the fact that she poses no threat to society, either in prison or more broadly. If the main goal of incarceration is reformation and rehabilitation, Melissa is a prime example of the success of that goal.

A. Melissa Is A Devout Roman Catholic Whose Devotion, Spirituality, And Turn Towards God Is Known To Many.

Since her incarceration, Melissa has become a deeply spiritual person, and religion has become an integral part of her relationships with family and friends. Though Melissa did not always have a personal relationship with God, finding religion has transformed her. Melissa's

spiritual advisor, Deacon Ronnie Lastovica, has met weekly with Melissa “on matters of Spiritual life for the past seven and a half years.” Ex. 59 at 1 (Declaration of Deacon Ronald Wayne Lastovica) (hereinafter “Declaration of Deacon Ronnie”). Deacon Ronnie describes Melissa’s faith as follows:

Melissa is not perfect, but because of her deep relationship with Jesus Christ, she continually redirects her thoughts and actions to be aligned with His. The Christ in her reaches out and touches the Christ living in all of us. Because of this intentional way of living, Melissa’s life now magnifies the Lord.

Id. at 2. This one sentence encapsulates Melissa’s deep spiritual devotion, present in every relationship and every aspect of her life: “*Melissa’s life now magnifies the Lord.*” *Id.* (emphasis added). Melissa’s turn toward religion attests to the depth of her rehabilitation. It would be profoundly unjust to execute a person who has undergone such a fundamental reformation, and who has brought the light of religion to others in her family and community even while incarcerated on death row.

Melissa did not always have such a close relationship with God. Before her arrest, conviction, and incarceration at the Mountain View Unit, Melissa did not have a strong identification with religion at all. Although she has always believed in God and identified as a Catholic, she “did not have any personal relationship with God.” Ex. 32 at 1 (Declaration of Melissa E. Lucio). Before her incarceration, Melissa sought comfort elsewhere—through her role as a mother and, for a period, in substance abuse.

Melissa’s relationship with religion has profoundly changed. She explains: “since I have been on death row, I have turned to God for support, direction, and guidance, and I have found great comfort in finding faith and the spiritual strength the Catholic faith has given me to deal with my situation.” *Id.* Melissa’s turn to spirituality began in 2014, when she was facing difficult times on death row and “[b]egan to think about how [she] wanted to live [her] life.” *Id.* As Melissa

explains, “God reached out to me, and I realized I was being called. I got on my knees and asked God to accept me.” *Id.* Melissa thus “began [her] walk with God and [her] practice of the Catholic faith.” *Id.* As Melissa’s younger sister Sonya explains, “[Melissa] believes that she was saved and that Jesus our savior has a plan for her. She is a completely changed person due to her faith in Him.” Ex. 48 (Declaration of Sonya Valencia).

That faith is now present in every facet of Melissa’s daily life. Melissa attends Catholic Mass weekly, “serv[ing] as a Lector” and “reading aloud God’s most Holy Word.” Ex. 59 at 2 (Declaration of Deacon Ronnie). Melissa has met with Deacon Ronnie weekly on an individual basis for over seven years; since receiving an execution date, she has met with him for an additional two hours every week. Ex 32 at 1 (Declaration of Melissa E. Lucio). Melissa also reads the Bible every day on her own, and other death row inmates note that they “can sometimes hear her pray in her cell.” Ex. 40 at 2 (Declaration of Erica Yvonne Sheppard). Melissa’s fellow inmates confirm that she “hold[s] strongly to her faith,” Ex. 42 (Declaration of Linda Anita Carty), noting that she “speaks openly and often about her love of God and her desire to serve God in everything she does,” Ex. 39 at 1 (Declaration of Darlie Lynn Routier).

Melissa has found—and built—community and connection through her faith. In describing her current religious practice, Melissa recounts: “In 2015, myself and other women on Death Row began Bible study groups amongst ourselves. We would read aloud passages and then discuss them as a group.” Ex. 32 at 1 (Declaration of Melissa E. Lucio). Through Bible study, Melissa is able to communicate her love for God beyond the strict confines of any particular religion or social group. One of Melissa’s friends and fellow inmates, Erica Sheppard, is a Muslim, but she still attends Bible study with Melissa where the inmates “pray together, and everyone holds hands.” Ex. 40 at 1 (Declaration of Erica Yvonne Sheppard). And now, Deacon Ronnie and sometimes

even the prison warden participate in Bible study. Ex. 32 at 2 (Declaration of Melissa E. Lucio).

Given that religion has become such an important part of Melissa's life, it is unsurprising that her faith has also become an important part of her relationship with her children. Melissa has relied on her deep faith both to come to terms with her past mistakes, and also to minister to her own children and encourage them to lead lives of faith. In a letter written to Pope Francis, Melissa acknowledged her past mistakes and explained how faith has helped her face them:

Your Holiness, for many years, I've sat here feeling nothing but emptiness, and loss. So very hopeless and alone. I've made many mistakes in my life, and have carried a great deal of guilt for the choices I've made. A part of me felt like I didn't deserve to live.

My children are everything to me, but I also know that my past mistakes and wrong choices had caused all of my children a great deal of pain & hurt. I felt the weight of all that guilt bearing down on me, to the point where I felt no hope at all.

Ex. 23 at 1 (Letter of Melissa Lucio to Pope Francis). Out of this guilt and despair, though Melissa did not feel she was worthy of God's love, she "begged for forgiveness, and for his mercy. For direction and for strength, I knew that there was no way I could do this on my own." *Id.* Then, Melissa explained, "the Lord sent someone into my life that would begin to show me the power of forgiveness and mercy The power of God's grace for all of his children." *Id.* That person was Deacon Ronnie, who "has not only shown [Melissa] the true love of Christ, but he has nurtured [her] sorrows, and shown [her] the way to [her] salvation." *Id.*

Melissa's spiritual turn is not only about her own salvation—indeed, she relies on her faith to strengthen her relationship with her children, and to encourage them to develop their own personal relationships with God. Melissa considers "[e]ach" of her children "a gift from God"—she "pray[s] for them constantly," and while she knows "[m]any of them are still hurting because of the choices that [she] made," Melissa "will never lose hope[] that one day [their] relationship will be restored through the power of the Lord." *Id.* at 2. As Melissa wrote to Pope Francis,

“[a]lthough the road has not always been easy, I have found strength in the Lord[] to reach out and begin ministering to my own children.” *Id.* at 1.

The fruits of Melissa’s efforts are clear: for example, Melissa’s turn to faith led her eldest son, John Vincent Lucio, away from a path of crime. John recalls receiving a letter from Melissa early on in her incarceration, telling John that God was “calling her name,” “speaking to her,” telling her to “come out and eat.” Ex. 30 at 1 (Feb. 22, 2022 Declaration of John Vincent Lucio). John explains that Melissa later realized that “God was not telling her to eat food, but to eat the bread of life, receive the word of God. That made a huge impression on [him.]” *Id.* John visits Melissa frequently—those visits always begin with prayer, and involve the selection and discussion of a sermon. *Id.* “In the visiting room,” John says, “there are Bibles on both sides of the wall, and we both get one to help us.” *Id.* As a result, John “has been completely transformed by the love of Christ. He went from living a gang life to preaching the word of God to anyone he encounters.” Ex. 23 at 1 (Letter of Melissa Lucio to Pope Francis).

Melissa continues to minister to all of her children, and her faith is apparent in her communications with them. Deacon Ronnie writes that “Melissa has never failed to direct others to Christ in dealing with everyday life matters, especially her family.” Ex. 59 at 1 (Declaration of Deacon Ronnie). When Melissa exchanges letters with her son Bobby Alvarez, he says that “she is always talking about her faith and what she has done over the years to become a better person with the grace of God.” Ex. 20 (Feb. 27, 2022 Declaration of Bobby Alvarez). Bobby emphasizes that Melissa “has become a very religious person,” and “when [he] had problems she would always refer to God and tell [Bobby] to pray.” *Id.* Melissa’s daughter, Little Melissa, explains that Melissa’s “great faith in God” made her “super happy because she is a changed person, she is a different soul.” Ex. 33 (Declaration of Melissa Lucio Jr.).

Melissa's spirituality is well-known among other family and friends. In her letters to family, Melissa consistently writes about her faith. *See* Ex. 50 (Feb. 23, 2022 Declaration of Diane Cerda) (Melissa's sister noting that "Melissa is very religious ... in her letters she tells me about her faith and how God talks to her"); Ex. 48 (Declaration of Sonya Valencia) (Melissa's sister noting that Melissa "found God while being incarcerated and always writes to [Sonya] about her faith"); Ex. 49 (Declaration of Vanessa Escamilla) (Melissa's niece explaining that she "was amazed to find out how religious she has become," and Melissa's "faith in God is incredible").

And those outside Melissa's family are also aware of her strong and abiding faith and spirituality. Rae Gaither, a registered nurse in Indiana, has written frequently to Melissa—several times per month for the past eight years. Ex. 43 at 1 (Declaration of Rae Gaither). Ms. Gaither writes of Melissa's dedication to her faith: "I have witnessed her grow by leaps and bounds. I never hear her complain about the prison or the way her life has gone ... She shows compassion and love for others. She has even given me spiritual encouragement when I needed it the most." *Id.* Shannon FitzPatrick is a former prosecutor living San Marcos, Texas, who has been visiting and corresponding with Melissa for over two years. Ex. 47 (Declaration of Shannon FitzPatrick). Ms. FitzPatrick writes that "[h]aving spent many hours with Melissa," her deep faith is apparent:

I know that she has found a faith in God that she never had the chance to express in her pain-filled life prior to her arrest. I have seen her talk to other death row inmates and try to persuade them that there is a better path, and it was clear to me that her faith as a Roman Catholic is real. Her savior Jesus Christ was also wrongfully executed and she has told me that she feels he is by her side through this terrible journey.

Id. This abiding faith is equally apparent to others who have grown to know Melissa over the years. *See, e.g.,* Ex. 41 (Declaration of Lewis McCall Bowden) (Mr. Bowden, who has been visiting and writing Melissa for over two years, notes that Melissa "seems to have found a spiritual home [in the Catholic faith]," and he is "glad that Melissa has found a faith journey that continues

to give her comfort in such dark times”); Ex. 46 (Declaration of Sandra L. Jonas) (Ms. Jonas, who began corresponding with Melissa last year and has visited Melissa twice, states that “Ms. Lucio has expressed to me that her relationship with God is extremely important to her; that she prays and trusts in God to protect her and trusts in God”). At bottom, Melissa’s deep faith is immediately obvious to all she meets. Sabrina Van Tassel, the director of a documentary on Melissa’s life, “*The State of Texas v. Melissa*,” explains: “Since the very first day I met her, I have known of Melissa’s deep faith in God.” Ex. 45 (Declaration of Sabrina Van Tassel).

As a result of her faith, Melissa has garnered strong support in her religious community, who call on this Board to embrace grace and forgiveness. Two Catholic Bishops, the Most Reverend Daniel E. Flores of the Diocese of Brownsville and Most Reverend Joe S. Vasquez of the Diocese of Austin, have written statements opposing Melissa’s execution. Bishop Flores writes: “[E]xecuting Melissa will not bring peace to her surviving children, it will only bring more pain and suffering. I urge the State of Texas to commute Melissa’s death sentence. *Let us not give up on her life.*” Ex. 22 (Statement of Bishop Flores in Support of Melissa Lucio) (emphasis added). And Bishop Vasquez focuses on how Melissa’s “heart is centered on Christ and how she has been helping bring others to the Lord.” Ex. 21 (Statement of Bishop Vasquez in Support of Melissa Lucio). Deacon Ronnie, Melissa’s closest spiritual advisor, explains that despite her difficult circumstances, “Melissa ministers to me more than I minister to her. Even on her darkest days, she always points to the light of Christ for her comfort and direction.” Ex. 59 at 2 (Declaration of Deacon Ronnie).

In her letter to Pope Francis, Melissa confided in him about the hurt that her family has faced, and the additional trauma that her execution would bring:

They are faced with losing a daughter, a sister, and a mother as well. I believe in God's justice Your Holiness, but I do not see how taking my life will fulfill any justice. It will only cause more pain and suffering to those who are left.

Ex. 23 at 1 (Letter of Melissa Lucio to Pope Francis). This Board has the power to show mercy to Melissa and her family.

B. Melissa Poses No Threat To Others.

Given the overwhelming evidence of Melissa's turn toward religion and her deep and abiding spirituality, there should be no doubt that she poses no threat to others, either within prison or in society more broadly.

Melissa's family has consistently confirmed her peaceful, nonviolent nature. Her daughter Little Melissa writes: "I never witnessed my mother to be violent with any of us and I never witnessed her being violent towards Mariah." Ex. 33 (Declaration of Melissa Lucio Jr.). Melissa's son Bobby, who was seven when his mother was arrested, said the same: "I was constantly with my mother and never witnessed her being abusive or violent with my sister Mariah or anyone of us." Ex. 19 (June 10, 2018 Declaration of Bobby Alvarez). Melissa's first born daughter, Daniella, was 20 years old when her mother was arrested. Ex. 25 at 1 (Declaration of Daniella Hope Lucio). On the night Mariah died, Daniella "told [a police investigator] that [Melissa] had never been abusive to any of [the children,] and that [Daniella] never saw her abuse Mariah." *Id.* at 2.

Melissa's own siblings echo her children's statements about her peaceful nature. Her younger sister Sonya explains that "Melissa is a loving person, she is a loving mother with a beautiful soul and was never violent towards us, her siblings, her children, or anybody in general." Ex. 48 (Declaration of Sonya Valencia). Another of Melissa's younger sisters, Diane, writes that "Melissa is not a murderer, she is a loving person who was never violent." Ex. 26 at 1 (May 10, 2018 Declaration of Diane Cerda). Melissa's youngest brother, Rene, considered Melissa to be a second mother to him, and spent a lot of time at her house around Melissa and the children. He

explains that “[Melissa’s] children were everything to her. She was never abusive to them.” Ex. 44 (Declaration of Rene Trevino).

Yet none of these other children or relatives, with the exception of Sonya, was ever called as a witness by the defense. Most of them were never even contacted by state and federal habeas counsel. Melissa’s jury never heard this compelling story of her innocence, which would have carried heavy weight as to their determination of her future dangerousness.

Still, at trial, there was no evidence that Melissa was violent towards her children, or towards anyone else. *See supra* 8. At the sentencing phase, Melissa’s jurors were asked to answer the question of whether she would be a future danger to others—and despite the lack of evidence of any dangerousness, the jury answered in the affirmative, resulting in Melissa’s death sentence. Several jurors who sat on Melissa’s jury have since admitted that they never actually considered this question at all, and that the jury *did not in fact think Melissa was dangerous*. Juror Erminio Cruz attests: “I did not and do not think Melissa is a danger to others. This is not something we discussed in deliberations, and it did not impact our decision.” Ex. 38 at 2 (Declaration of Erminio Cruz). Similarly, juror Alejandro Saldivar attests: “The jury did not think Melissa was a future danger and we did not consider that when sentencing her to death.” Ex. 24 at 2 (Declaration of Alejandro Saldivar). In sentencing Melissa to death, the jury was asked to determine whether she would pose a threat to others. Now, it turns out, the jury never thought Melissa posed any such threat; she was sentenced to death without that critical finding.

The passage of time has shown Melissa is not, in fact, dangerous. For over fourteen years at the Mountain View Unit, Melissa has been an exemplary inmate. She has helped and counseled others, and has impressed others with her humility, compassion, and spiritual guidance. Melissa’s deep faith, described above, only serves to underscore her nonviolent nature. Additionally, the

passage of time has undermined one of the primary grounds on which the prosecution had originally urged the jury to make a finding of future dangerousness: The prosecution had advanced the preposterous notion that Melissa might have access to children within prison because she was still within childbearing years and could theoretically become pregnant while incarcerated. Today, Melissa's childbearing years are behind her. She lives to serve God, and to love the children and grandchildren she already has.

Melissa's "main worry heading toward execution is for the kids and grandkids." Ex. 43 (Declaration of Rae Gaither). Melissa is a quiet, loving grandmother; a woman of deep faith and compassion. She has made mistakes, as she will be the first to admit. Like all of us sinners, she is flawed. But her deep and abiding faith and her complete lack of dangerousness call out for the Board's mercy in this case.

CONCLUSION

Melissa's case cries out for clemency. The Board has an opportunity to avert a tragic miscarriage of justice in this case—both by sparing an innocent woman from execution, and by preventing the unfathomable anguish her death would cause to Mariah's already-traumatized family. Melissa's innocence; the consistent exploitation of her vulnerabilities as a survivor of domestic violence and assault; the profound injustice that permeated her trial; the misgivings of her jurors, many of whom now support clemency and recognize that they were not presented with the whole story; the ardent support of Mariah's whole family and their deep opposition to the prospect of execution; Melissa's distorted sentence, grossly out of step with those imposed in similar cases, including in the case against Mariah's father; and the depth of Melissa's dedication to God, through which she continually brings light and joy to the lives of all who surround her, despite her dire circumstances—each of these considerations independently would warrant this

Board's mercy. Taken together, there can be no other outcome.

This Board's power is at its apex in cases just like this one—where the judicial system has allowed a case to slip through the cracks and barrel toward incalculably tragic, and permanent, consequences. And it is only through the merciful intervention of this Board that the word of God can come to pass: “For the Lord your God is gracious and compassionate. He will not turn his face from you if you return to him.”⁷⁴

For these reasons, Melissa Elizabeth Lucio, through her undersigned counsel, urges this Board to recommend to the Honorable Greg Abbott, Governor of the State of Texas, that he commute her sentence of death to a lesser penalty or, in the alternative, that he grant a reprieve of her execution for a period of **120 days** so that the Board may fully investigate and consider the facts of her case and wrongful sentence of death and the merits of this Application.



⁷⁴ 2 Chron. 30:9.

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Respectfully submitted,

s/s A. Richard Ellis

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