

Table 2. Cases Decided for the Government

Case Name	Court and Year	Brief Summary
<i>Brawner v. Epps</i> ²⁰	5th Circuit, 2011	Mr. Brawner claimed that he was denied effective assistance of counsel per <i>Strickland</i> , and that a thorough investigation of mitigating evidence, including his prior diagnoses of PTSD and depression, could have altered the sentencing trial outcome. The U.S. Court of Appeals for the 5th Circuit did not find prejudice under <i>Strickland</i> .
<i>United States v. Fields</i> ²¹	5th Circuit, 2014	Mr. Fields sought a Certificate of Appealability (COA) on multiple claims, including that he received ineffective assistance from counsel based on failure to conduct a competent penalty phase investigation. The 5th Circuit denied a COA for this claim and found his counsel detailed Mr. Fields' violent and tumultuous upbringing, including physical abuse at the hands of his mother's boyfriend, attempted suicide at age fourteen, his mother getting shot by her boyfriend, and witnessing the suicide of a friend and his grandfather being run over by a drunk driver.
<i>Jordan v. Epps</i> ²²	5th Circuit, 2014	Mr. Jordan claimed ineffective assistance of counsel, partially on the grounds that counsel failed to pursue a PTSD evaluation from a doctor other than one expert. Though no doctor ever diagnosed PTSD in Mr. Jordan, the attorney for the fourth sentencing trial obtained affidavits from a psychologist and psychiatrist who both believed that Mr. Jordan likely would have met the criteria for PTSD if evaluated, given his repeated combat experience in Vietnam. The 5th Circuit agreed with the district court's opinion that there was not a reasonable probability that a different doctor would have provided a more favorable evaluation.
<i>Nelson v. Davis</i> ²³	5th Circuit, 2020	Mr. Nelson argued that a thorough investigation of his past would have led to a postconviction expert's attributing his destructive behavior to PTSD stemming from an abusive childhood, rather than antisocial personality disorder and psychopathy as had been diagnosed previously by another expert. The 5th Circuit stated counsel's dependence on the prior expert testimony did not constitute ineffective assistance.
<i>Canales v. Davis</i> ²⁴	5th Circuit, 2020	The 5th Circuit found that the mitigating evidence for Mr. Canales was not sufficiently compelling that it would have established a substantial likelihood of a different result.
<i>Sheppard v. Davis</i> ²⁵	5th Circuit, 2020	Ms. Sheppard claimed her counsel's performance was deficient because he neglected to call her, her mother, or her brother to testify about her character and the struggles she had endured. The 5th Circuit opined Ms. Sheppard did not show that the result of the proceeding would have been different if not for her counsel's failure to present cumulative mitigating evidence.
<i>Pike v. Gross</i> ²⁶	6th Circuit, 2019	Ms. Pike filed a <i>habeas</i> petition on the grounds of her counsel's alleged ineffective assistance and failure to discover mitigating evidence, including diagnoses of organic brain damage, bipolar disorder, and PTSD offered by a psychiatrist during a postsentencing examination. The 6th Circuit denied the petition.
<i>Anderson v. Kelley</i> ²⁷	8th Circuit, 2020	Mr. Anderson claimed his counsel ineffectively failed to present evidence on the biological limitations of the teenage brain, identify PTSD despite ample evidence of childhood abuse, and identify a history of fetal alcohol spectrum disorder. The 8th Circuit found Mr. Anderson's counsel's performance was not constitutionally deficient.
<i>Kemp v. Kelley</i> ²⁸	8th Circuit, 2019	Mr. Kemp petitioned for a writ of <i>habeas corpus</i> due to counsel's alleged failure to investigate and present mitigating evidence about his childhood abuse, fetal alcohol exposure, and PTSD. The 8th Circuit concluded that counsel's mitigation investigation fulfilled its obligations under <i>Strickland</i> .
<i>Rhoades v. Henry</i> ²⁹	9th Circuit, 2010	The 9th Circuit determined that the mitigating value of one mental health expert's assessment that Mr. Rhoades experienced PTSD was lessened because his diagnosis did not satisfy the requirements of DSM-IV for this condition and there was no suggestion that Mr. Rhoades committed the acts while in any kind of PTSD-induced dissociative state.
<i>Payton v. Cullen</i> ³⁰	9th Circuit, 2011	Mr. Payton had no mitigation evidence presented during the penalty phase of his trial. Three mental health experts evaluated him before his trial and found that he had no evidence of organic brain pathology, had a serious personality disorder, and had abused drugs in the past, and they concluded he had no viable mental state defense.
<i>Zapfen v. Davis</i> ³¹	9th Circuit, 2015	Mr. Zapfen was granted an evidentiary hearing on some of his ineffective assistance claims, in which he argued that trial counsel should have presented evidence of his psychiatric problems. It was unclear, however, whether Mr. Zapfen actually had any form of psychiatric illness. The 9th Circuit did not consider it. Additionally, the court opined that there was no reason counsel should have known that Mr. Zapfen had PTSD. As a result, counsel's failure to introduce evidence of psychiatric illness did not render the performance inadequate.

PTSD and Trauma as Mitigating Factors in Sentencing

Table 2. Continued

Case Name	Court and Year	Brief Summary
<i>Mendoza v. Secretary</i> ³²	11th Circuit Court, 2014	Mr. Mendoza filed a federal <i>habeas</i> petition asserting he was denied effective assistance of counsel, alleging his attorneys failed to investigate his mental health and back-ground. The 11th Circuit opined that Mr. Mendoza’s trial counsel thoroughly investi-gated his mental health.
<i>Brannan v. GDCP Warden</i> ³³	11th Circuit, 2013	The 11th Circuit ruled it did not find a reasonable probability that the result of sentenc-ing would have been different if Mr. Brannan’s counsel had presented evidence his offense was related to his not being medicated, evidence regarding his PTSD diagno-sis relating to his combat experience in Vietnam, and testimony from his treating psychiatrist.
<i>Gissendaner v. Seaboldt</i> ³⁴	11th Circuit, 2013	The 11th Circuit agreed with the district court’s assessment that the social history com-posed by one expert during the state <i>habeas</i> trial was “biased towards uncritical ac-ceptance of Ms. Gissendaner’s self-reports of traumatic childhood experiences” despite conflicting accounts from her family members which undermined her diagno-sis of PTSD (Ref. 34, p 1333).
<i>Pooler v. Sec’y</i> ³⁵	11th Circuit, 2013	The 11th Circuit affirmed the district court’s denial of Mr. Pooler’s petition. They deemed that the factual differences between this case and <i>Porter</i> were substantial and numerous. The 11th Circuit noted Mr. Porter’s counsel called only one witness and presented no mitigating evidence, while Mr. Pooler’s counsel called four mental health experts, a jail officer, one of his friends, and three of his family members. Much of the evidence presented to the jury would humanize Mr. Pooler, yet the jury still recommended he receive the death penalty.
<i>Jones v. GDCP Warden</i> ³⁶	11th Circuit, 2014	Mr. Jones’s use of new mitigating evidence about his childhood and his mental health would have opened the door to a vast array of aggravating evidence that likely would have outweighed the mitigating evidence in this case.
<i>Pope v. Sec’y</i> ³⁷	11th Circuit, 2014	The 11th Circuit found that counsel presented all mitigating evidence on behalf of Mr. Pope and that there was no <i>Strickland</i> prejudice.
<i>Tanzi v. Sec’y</i> ³⁸	11th Circuit, 2014	Mr. Tanzi’s counsel retained two experts who had opposing conclusions regarding his mental health diagnoses. Mr. Tanzi argued his counsel failed to present consistent mental health testimony. The 11th Circuit believed that although the two experts offered disparate diagnoses, they agreed that Mr. Tanzi met the requirements of both statutory mental health mitigators, and that there was substantial nonstatutory mitigation.
<i>Anderson v. Sec’y</i> ³⁹	11th Circuit, 2014	Mr. Anderson alleged counsel’s penalty phase performance was deficient because of their failure to uncover evidence that he was sexually abused as a child and had brain damage, borderline personality disorder, and PTSD caused by the sexual abuse. After reviewing the case, the 11th Circuit held that counsel’s failure to uncover and present evidence of sexual abuse was not deficient in the context of an otherwise thorough mitigation defense.

PTSD = posttraumatic stress disorder

DSM-IV = Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)

This information, however, did not make its way to the jury. During his trial, Mr. Andrus’s attorney declined to offer an opening statement and rested immediately after the prosecution had rested its case against him. In its review, the Court found that trial counsel barely knew the witnesses he called in Mr. Andrus’s defense.

Trial counsel represented that Mr. Andrus had no mental health problems. Yet a mitigation expert subsequently prepared a report stating that Mr. Andrus “had been diagnosed with affective psychosis, a men-tal health condition marked by symptoms such as depression, mood lability, and emotional dysregula-tion” (*Andrus*, p 1882, internal quotes omitted). A clinical psychologist also testified at the *habeas* hearing

that Mr. Andrus experienced “very pronounced trauma and posttraumatic stress disorder symptoms from, among other things, severe neglect and exposure to domestic violence, substance abuse, and death in his childhood” (*Andrus*, p 1882, internal quotes omitted).

Doe v. Ayers.

Petitioner Mr. Doe (a pseudonym) experienced multiple rapes during a prior incarceration and had a history of childhood trauma, including being neglected by his mother and beaten by his uncle. These experiences were not presented during the sen-tencing phase of his murder trial. The court noted that the transcript for the mitigation phase of the trial