No. 18-1585

In the Supreme Court of the United States

KASSIM M. NAGI,
Petitioner,

v.

DARREL VANNOY, WARDEN,
LOUISIANA STATE PENITENTIARY,
Respondent.

On Petition for Writ of Certiorari to the Louisiana Supreme Court

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

(1) Does Nagi's 90-year sentence for racketeering, money laundering, drug possession, and drug distribution violate the Eighth Amendment's prohibition on excessive and disproportionate sentences even though the trial court found that his crimes were "pretty shock[ing]" and he will be eligible for parole after he has served 1/3 of his sentence?

(2) Did the state court correctly apply Louisiana's racketeering and money laundering statutes?

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INTRODUCTION

State officials charged Kassim Nagi with racketeering, money laundering, drug possession, and drug distribution after discovering that he and his employees were selling vast amounts of synthetic marijuana from a convenience store in Houma, Louisiana. Raiding the store, the police found $95,000 in cash and hundreds of packages of the drugs ready for sale. In Nagi's apartment and personal safety deposit box, authorities found another 33 pounds of synthetic marijuana and $590,005 in cash. Officials also recovered over $400,000 from various bank accounts tied to Nagi's scheme.

A jury found Nagi guilty on all four counts by a 10–2 verdict. After finding that Nagi's crimes were "pretty shock[ing]," the state district court sentenced Nagi to 30 years for the racketeering count, 30 years for the money laundering count, and 15 years for each of the drug counts—all to run consecutively. Pet. App. at 48–50. But, because Nagi's offense was non-violent and he was a first-time offender, under state law at the time of his sentencing, he is eligible for parole after he has served 1/3 of his sentence. *See* La. R.S. 15:574.4 (prior to amendment in 2017). The state appellate courts upheld his conviction and sentence.

Nagi now appeals to this Court, arguing that his sentence is cruel and unusual under the Eighth Amendment because it is excessive and disproportional. And he argues that the state courts misinterpreted Louisiana's racketeering and money laundering statutes. Both of Nagi's arguments fail. His sentence, especially in light of the possibility of parole

within 30 years, comfortably falls within the realm of acceptability established by this Court's precedent. *See, e.g.*, *Ewing v. California*, 538 U.S. 11, 23–24 (2003); *Harmelin v. Michigan*, 501 U.S. 957, 961, 996 (1991); *Hutto v. Davis*, 454 U.S. 370, 374 (1982); *Rummel v. Estelle*, 445 U.S. 263, 272 (1980). And it is well-established that this Court will not review issues of state law, such as the proper interpretation of Louisiana's racketeering and money laundering statutes. *Fid. Union Tr. Co. v. Field*, 311 U.S. 169, 178 (1940).

Finally, this Court should not hold Nagi's appeal for its decision in *Ramos v. Louisiana*, 18-5924. Nagi never challenged the constitutionality of his non-unanimous jury conviction in state court, and so he is procedurally barred from raising the issue. *State v. Quinn*, 2012-0689 (La. App. 4 Cir. 8/21/13), 123 So. 3d 320, 334; *see Hathorn v. Lovorn*, 457 U.S. 255, 262 (1982) ("[F]ailure to comply with a state procedural rule may constitute an independent and adequate state ground barring our review of a federal question."). And he does not challenge the law's constitutionality here. The Court should deny Nagi's petition.

STATEMENT OF THE CASE

I. Nagi's racketeering, money laundering, and drug distribution scheme.

Kassim M. Nagi devised a scheme to sell synthetic marijuana from Kee Food, Inc.—a convenience store/Exxon gas station—in Houma, Louisiana. Pet. App. at 3. In packages that ranged from 2.5–4 grams, Nagi sold the drugs in a variety of flavors, such as

"Strawberry Kush," "Super Nova," and "Passion Raspberry." Pet. App. at 3, 5. Unlike every other product in Kee Food/Exxon, the drugs "were kept underneath and on the side of the register and were not in view of the customers." Pet. App. at 22–23. And, unlike every other product in Key Food/Exxon, Nagi's employees "never had to sign for the synthetic cannabinoids upon delivery, and never saw the distributors of those products." Pet. App. at 23.

Nagi's employees "did not feel comfortable selling the synthetic cannabinoids." Pet. App. at 23. They feared for their safety because the customers were "sometimes outraged." Pet. App. at 23. But Nagi told them they would lose their jobs if they failed to sell the drugs. Pet. App. at 23. Nagi would call the employees "chicken" and threaten to hire somebody "stronger" if they would not do what he demanded. Pet. App. at 23.

State authorities conducted seven controlled purchases of the drugs between January 15, 2013 and March 13, 2013. Pet. App. at 4. After obtaining a warrant, on June 26, 2013, the authorities "conducted an unannounced show-up at Kee Foods/Exxon." Pet. App. at 5. Officers arrested the clerk on duty and confiscated large amounts of drugs and cash. They found $95,000 in cash in the register, under the register, and in the office. Pet. App. at 5. They also discovered hundreds of packets of the drugs throughout the store. Pet. App. at 5.

Police executed a search warrant for Nagi's apartment in Houma. Officials found approximately 33 more pounds of the drugs in a storage closet. Pet. App. at 6. Narcotics agents discovered a safety deposit box

registered in Nagi's name containing $590,005 in cash. Pet. App. at 8. And officials seized over $400,000 from various accounts at Coastal Commerce Bank. Pet. App. at 25. But Kee Food's tax return reported only $15,334 of income and only $8,449 in cash assets in 2012. And Nagi's personal 2012 tax return reported $64,400 of income. Pet. App. at 27.

II. Procedural history

Nagi was arrested and charged with violating state laws proscribing racketeering,[1] money laundering,[2] distribution of synthetic marijuana,[3] and possession with intent to distribute synthetic marijuana.[4] He pleaded not guilty to the charges. Pet. App. at 2. He was tried before a jury, which found him guilty of each of the four charges by a 10–2 vote. *See* Pet. at 3 & n.1. The state district court denied Nagi's motion for post-verdict judgment of acquittal and his motion for a new trial. Pet. App. at 2. The district court sentenced Nagi to 30 years of hard labor on the state racketeering count and another 30 years on the state money laundering count. Pet. App. at 2. The district court also sentenced Nagi to 15 years of hard labor on each of the

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[1] La. R.S. 15:1353; La. R.S. 1534(A).

[2] La. R.S. 14:230(E)(4) (prior to amendment by 2017 La. Acts, No. 281, § 1).

[3] La. R.S. 40:966; La. R.S.40:966(B)(3) (prior to amendment by 2017 La. Acts, No. 281, § 2).

[4] La. R.S. 40:966; La. R.S. 40:966(B)(3) (prior to amendment by 2017 La. Acts, No. 281, § 2).

drug counts. Pet. App. at 2. The judge ordered Nagi, who was 33 years old, to serve all of the sentences consecutively. Pet. App. at 2. So, in total, Nagi received a 90-year sentence. The district court judge carefully considered the gravity of Nagi's crimes when determining the sentence. *See* Pet. App. at 48–50. Ultimately, the judge found that the amount of cash Nagi amassed, along with Nagi's willingness to sell "this horrible poison" to "unsuspecting citizens," was "pretty shock[ing]" and justified the sentence—which was within the statutory range. Pet. App. at 48–49. The district court denied Nagi's motion to reconsider his sentence. Pet. App. at 2–3.

The state intermediate appellate court affirmed Nagi's conviction and his sentence. *See* Pet. App. at 46. The Louisiana Supreme Court denied Nagi's petition for a writ of certiorari. Pet. App. at 51. In state court, Nagi never argued that the non-unanimous jury verdict violated his constitutional rights, and no court addressed that issue below.

Nagi now seeks relief from this Court, raising three issues: (1) whether his sentence is unconstitutionally excessive; (2) whether the state court failed to correctly apply the Louisiana Racketeering Act; and (3) whether the state court failed to correctly apply Louisiana law proscribing money laundering.

REASONS FOR DENYING THE PETITION

I. Under the Court's long-established precedent, Nagi's punishment does not violate the Eighth Amendment's prohibition on excessive or disproportionate sentences.

The state trial court ordered Nagi to serve the following sentences consecutively: 30 years for the racketeering conviction (which has a 50-year statutory maximum); 30 years for the money laundering conviction (which has a 99-year maximum); and 15 years each for his two drug convictions (which each have a 30-year maximum). Pet. App. at 48–49. Nagi contends that because he has no prior criminal history, all together, his punishment violates the Eighth Amendment's prohibition on excessive or disproportionate sentences.[5] But, under state law at the time of his conviction, Nagi will be eligible for parole after he has served 1/3 of his sentence. La. R.S. 15:574.4 (prior to amendment in 2017) ("[A] person, otherwise eligible for parole, convicted of a first felony

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[5] Nagi mixes several state law issues into his argument that his sentence violates the Eighth Amendment. He contends that his sentence violates Article 1, § 20 of the Louisiana Constitution. *See* Pet. at 10. He argues that the state district court failed to adequately explain why his sentences should run consecutively under Louisiana Code of Criminal Procedure article 883. *See* Pet. at 11–12. And he contends that the state district court failed to consider that he has no past criminal behavior under Louisiana Code of Criminal Procedure article 894.1. *See* Pet. at 15. Because these issues raise questions of state law, they are beyond the pale of this Court's review. *Fid. Union Tr. Co. v. Field*, 311 U.S. 169, 178 (1940).

offense shall be eligible for parole consideration upon serving thirty-three and one-third percent of the sentence imposed."). So, Nagi could be released 60 years before his sentence expires.

This Court has explained that, "[o]utside the context of capital punishment, successful challenges to the proportionality of particular sentences have been exceedingly rare." *Rummel*, 445 U.S. at 272. And federal courts should be "reluctant to review legislatively mandated terms of imprisonment." *Id.* at 274; *accord Hutto*, 454 U.S. at 374.

The Court has upheld many harsher sentences for crimes less severe than Nagi's. In *Rummel v. Estelle*, for example, this Court upheld a mandatory sentence of life in prison with the possibility of parole for the non-violent felony of obtaining money by false pretenses.[6] *See generally* 445 U.S. 263. In *Hutto v. Davis*, this Court upheld a sentence of 40 years for the possession and distribution of less than nine ounces of marijuana. 454 U.S. at 371, 374. In *Harmelin v. Michigan*, this Court upheld the life sentence of a first-time offender convicted of possessing 672 grams of cocaine. 501 U.S. at 961, 996; *accord Ewing*, 538 U.S. at 23–24. And, in *Ewing v. California*, this Court upheld the defendant's conviction of "25 years to life" under California's three strikes law even though

[6] The petitioner in *Rummel* previously had been convicted of passing a forged check in the amount of $28.36 and fraudulently using a credit card to obtain $80 worth of goods and services. 445 U.S. at 265–66; *accord Hutto*, 454 U.S. at 372.

defendant's offense was "shoplifting three golf clubs." 538 U.S. at 28, 30.

To be sure, this Court has held "as a matter of principle that a criminal sentence must be proportionate to the crime for which the defendant has been convicted." *Solem v. Helm*, 463 U.S. 277, 290 (1983). And "a court's proportionality analysis under the Eighth Amendment should be guided by objective criteria." *Id.* at 292. Specifically, a court will examine "(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." *Id.* But Nagi has failed provide any data or argument about whether his sentence is greater than those imposed on other criminals in the same or other jurisdictions. Accordingly, he has waived that argument. *See City of Canton v. Harris*, 489 U.S. 378, 384 (1989). And the state district court carefully considered the evidence of Nagi's crimes—including the large amounts of cash and drugs officials recovered—and determined that Nagi's willingness to sell "this horrible poison" to "unsuspecting citizens," was "pretty shock[ing]." Pet. App. at 48–49. Each of the sentences the district court imposed was well within the state statutory guidelines. And this Court has been "reluctant to review legislatively mandated terms of imprisonment." *Rummel*, 445 U.S. at 274.

In light of this Court's precedent and the fact that Nagi will be eligible for parole within 30 years, Nagi's sentence falls well within the range of acceptability. Even if the Court disagrees, granting certiorari would

amount to error correction, and the Supreme Court is "not a court of error correction." *Martin v. Blessing*, 134 S. Ct. 402, 405 (2013) (Statement of Alito, J., respecting the denial of certiorari). Nagi fails to explain how his sentence "has so far departed from the accepted and usual course of judicial proceedings . . . . as to call for an exercise of this Court's supervisory power." *See* Supreme Court Rule 10(a), (b). Nagi has identified no broad split dividing the federal circuits or the state courts of last resort, and so granting certiorari is unwarranted in any event. *See id.*

II. Whether the state court correctly applied Louisiana's racketeering and money laundering statutes is a question of state law, and so the Court should not consider it.

Nagi's petition spills pages of ink explaining how the state courts below misinterpreted and misapplied Louisiana's statutes proscribing racketeering and money laundering. Pet. at 20–29; *see* La. R.S. 15:1351–56 (The Louisiana Racketeering Act); La. R.S. 14:230 (Louisiana statute proscribing money laundering). He contends that the state intermediate appellate court looked to federal jurisprudence as a guide to interpreting state law, but the court failed to correctly apply the law to his case. *See* Pet. at 25, 29.

Whether or not Nagi's argument is correct, it is an inappropriate question for this Court to answer. It is well-settled that state high courts are the final authority on questions of state law. *See Fid. Union Tr. Co.*, 311 U.S. at 177 (citing *Beals v. Hale*, 4 How. 37, 54 (1846)). Even intermediate state appellate courts, "in

the absence of more convincing evidence of what the state law is, should be followed by a federal court in deciding a state question." *Id.* at 178. To the extent that any conflict exists between the state court's interpretation of state law and similar federal law, resolution must come from the Louisiana court system.

III. The Court should not hold this case for its decision in *Ramos* because Nagi failed to preserve the issue of whether a non-unanimous verdict violates the Constitution.

Nagi notes in his brief that he was found guilty 10–2 and that this Court has granted certiorari and heard argument in *Ramos v. Louisiana*, 18-5924. Pet. at 3 & n.1. But Nagi never raised the non-unanimity issue in state court, and no court below addressed that issue. Accordingly, Nagi is procedurally barred from raising the issue under state law.[7] *State v. Quinn*, 2012-0689 (La. App. 4 Cir. 8/21/13), 123 So. 3d 320, 334.

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[7] Properly preserving his constitutional challenge to the non-unanimous jury rule in the district court was essential because, among other reasons, when the constitutionality of a Louisiana law is challenged in state court, the state Attorney General has a statutorily prescribed interest in defending the state statute. *See* La. R.S. 49:257(C) (providing that "[n]otwithstanding any other law to the contrary, the attorney general, at his discretion, shall represent or supervise the representation of the interests of the state in any action or proceeding in which the constitutionality of a state statute or of a resolution of the legislature is challenged or assailed.").

This Court has held that failure to comply with a state procedural rule may constitute an independent and adequate state ground barring its review of a federal question. *Hathorn*, 457 U.S. at 262–63 (citing *Michigan v. Tyler*, 436 U.S. 499, 512, n.7 (1978); *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 264 n.4 (1964)). When a state court refuses to rule on the merits of a claim in light of a neutral state rule, the Court acts with "utmost caution" before deciding that the state court is obligated to entertain the claim. *Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 372 (1990). "[F]ederal law takes the state courts as it finds them." *Id.* (quotation omitted). This rule is "bottomed deeply in belief in the importance of state control of State judicial procedure." *Id.* This Court has acknowledged that states have great latitude to establish the structure and jurisdiction of their own courts. *Id.*; *see also Walker v. Martin*, 562 U.S. 307, 316 (2011); *Jimmy Swaggart Ministries v. Bd. of Equalization of Cal.*, 493 U.S. 378, 398 (1990).

For these reasons, the Court's decision in *Ramos* cannot aid Nagi—whatever the result. Thus, the Court should not hold this case.

CONCLUSION

The State of Louisiana prays that the Court will deny the petition.

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