No. 18-6818

In the Supreme Court of the United States

RUBEN RANGEL,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTIONS PRESENTED

1. Whether California's capital punishment system satisfies the constitutional requirement that the death penalty may only be applied to a narrowed subclass of murders.

2. Whether the Constitution requires that a California jury that has already found unanimously and beyond a reasonable doubt that the defendant committed an offense whose special characteristics render the crime eligible for the death penalty must also, in order to render a verdict of death, unanimously find beyond a reasonable doubt that specific aggravating factors exist and that they outweigh mitigating factors.

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STATEMENT

1. In August 1997, Ruben Rangel and codefendant Joseph Mora, both armed with firearms, approached an occupied vehicle parked on the street. Pet. App. A 2-9. They demanded wallets from the driver, Andy Encinas, and the front passenger, Anthony Urrutia, then shot them to death. *Id.*[1]

The State charged Rangel and Mora with the murders and attempted robberies of Encinas and Urrutia. Pet. App. A 1. The State also alleged the murders were committed under two special circumstances that would make Rangel and Mora eligible for the death penalty: that they had committed multiple murders and that the murders were committed in the commission of robbery. *Id.* at 2; *see* Cal. Penal Code §§ 190.2, 190.4. At the guilt phase of the trial, the jury convicted Rangel and Mora of the first-degree murders and attempted second-degree robberies of both victims, and found both special-circumstance allegations true beyond a reasonable doubt. Pet. App. A 2.

At the trial's penalty phase, the jurors were instructed that, in deciding whether each defendant should receive a sentence of death or a sentence of life in prison without the possibility of parole, they were to "consider, take into account, and be guided by the applicable factors of aggravating and mitigating circumstances"; that the "weighing of aggravating and mitigating circumstances does not mean a mere mechanical counting of factors"; that they

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[1] Mora has filed a separate petition for certiorari, which raises the same issue as Rangel's second question presented. *See Mora v. California*, No. 18-7516. In this brief, RT refers to the trial court's Reporter's Transcript.

were "free to assign whatever moral or sympathetic value you deem appropriate to each and all of the various factors"; and that to "return a judgment of death, each of you must be persuaded that the aggravating circumstances are so substantial in comparison with the mitigating circumstances that it warrants death instead of life without parole." 21 RT 3294-3296. The jury returned verdicts of death. Pet. App. A 2.

2. The California Supreme Court affirmed the convictions and death sentences. Pet. App. A 1, 94. Rangel raised over thirty claims and subclaims of error, two of which are relevant here. First, Rangel argued that California Penal Code Section 190.2 is unconstitutionally broad because it fails to adequately narrow the class of murderers who are eligible for the death penalty. *Id.* at 91. Second, Rangel argued that California's capital sentencing system is unconstitutional because the penalty-phase jury is not instructed to employ the beyond-a-reasonable-doubt standard in determining that an aggravating circumstance exists, that aggravating circumstances outweigh mitigating circumstances, and that death is the appropriate penalty. *Id.* at 92. The court rejected each argument, based on its prior decisions. *Id.* at 91, 92.

ARGUMENT

1. Rangel first contends that California's death penalty law violates the Fifth, Sixth, Eighth, and Fourteenth Amendments by failing to adequately narrow the class of death-eligible murders. Pet. 7-11. The California Supreme Court's rejection of that argument does not conflict with this Court's precedent or with decisions of other courts, and no further review is warranted.

"Since *Furman v. Georgia*, 408 U.S. 238 (1972) (per curiam), [this Court has] required States to limit the class of murderers to which the death penalty may be applied." *Brown v. Sanders*, 546 U.S. 212, 216 (2006). "This narrowing requirement is usually met when the trier of fact finds at least one statutorily defined eligibility factor at either the guilt or penalty phase." *Id.* To satisfy constitutional requirements, the eligibility factor "must genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder." *Zant v. Stephens*, 462 U.S. 862, 877 (1982).

California's statutes fulfill this narrowing function in two stages. First, out of all of those convicted of murder in California, the death penalty is a possibility only for those convicted of first-degree murder. Cal. Penal Code §§ 189, 190. This requirement "genuinely narrow[s] the class of persons eligible for the death penalty" and is part of how the State "reasonably justif[ies] the imposition of a more severe sanction on the defendant compared to others found guilty of murder." *Zant*, 462 U.S. at 877; *see also Tuilaepa v. California*, 512 U.S. 967, 972 (1994) (eligibility factor must "not apply to every defendant convicted of a murder; it must apply only to a subclass of defendants convicted of murder").

Ignoring that step of California's narrowing process entirely, Rangel instead focuses on the second step by which California narrows the pool of those eligible for the death penalty. California law specifies that a person

convicted of first-degree murder is eligible for the death penalty only if the jury has also found one or more statutory special circumstance proven beyond a reasonable doubt. *See* Cal. Penal. Code §§ 190.2, 190.4; pp. 6-7, *infra*. Rangel argues that, in practice, most first-degree murders turn out to involve at least one special circumstance. Pet. 10. But even if first-degree murders were the relevant denominator for evaluating a narrowing question, such an allegation would not show any constitutional infirmity in California's system. In *Arave v. Creech*, 507 U.S. 463 (1993), this Court considered whether Idaho's "utter-disregard-for-human-life" aggravating circumstance provided sufficient narrowing to satisfy *Furman*. Idaho courts had interpreted that aggravating circumstance as applying only if a defendant was a "cold-blooded, pitiless slayer." *Id.* at 468-470. To evaluate the requirement's sufficiency as a narrowing device, this Court asked whether "a sentencing judge reasonably could find that not all Idaho capital defendants are 'cold-blooded.'" *Id.* at 475-476. Because some murderers are not cold-blooded—but rather exhibit feelings such as "anger, jealousy, revenge or a variety of other emotions"—this Court concluded that the "cold-blooded, pitiless" construction had "narrowed in a meaningful way the category of defendants upon whom capital punishment may be imposed," as the Eighth Amendment requires. *Id.* at 476. California's law is similarly constitutional, because its special circumstances leave room for a range of first-degree murders that a "sentencing judge reasonably could find" do not qualify for the death penalty. *Compare, e.g.*,

People v. Disa, 1 Cal. App. 5th 654, 660-661 (2016) (jealous boyfriend choked victim to death during an argument), *with* Cal. Penal Code § 190.2(a) (list of special circumstances). Rangel identifies no decision, from this Court or any other, holding that the special circumstances responsible for his sentence are constitutionally insufficient.[2]

2. Rangel next argues that California's death penalty system violated his right to due process guaranteed by the Fifth and Fourteenth Amendments, and his right to a jury trial guaranteed by the Sixth Amendment, because state law does not require the penalty-phase jury to unanimously find beyond a reasonable doubt that an aggravating factor exists and that the factors in aggravation outweigh the factors in mitigation. Pet. 11-18. This Court has

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[2] In alleging that "almost all first degree murders [are] eligible for the death penalty" in California, Rangel appears to assert that the problem results from California's "'particularly overbroad'" special circumstances for lying in wait and for murder in the course of a felony. Pet. 9. But Rangel was never charged with a laying-in-wait special circumstance. *See* Pet. App. 2. And although the jury did find that Rangel committed his murders in the course of committing robbery, that finding was not necessary to his death-eligibility. The jury also found that the prosecution had satisfied its burden as to an independent special circumstance—multiple murder—whose appropriateness Rangel appears not to contest. *See* Pet. App. A 2; *id.* at 95-97 (Liu, J., concurring and dissenting) (disagreeing with the sufficiency of the evidence underlying the robbery-murder special circumstance but agreeing that Rangel's sentence should be upheld based on the independent multiple-murder special circumstance); Pet. 10 (citing with apparent approval a proposal to reduce the number of California's special circumstances but retain the multiple-murder special circumstance).

repeatedly denied review in cases presenting the same or similar questions, and there is no reason for a different result here.[3]

a. A California death sentence depends on a two-step process prescribed by California Penal Code Sections 190.1 through 190.9. The first stage, the guilt phase, involves determining whether the defendant committed first-degree murder. That crime carries three potential penalties under California law: a prison term of 25 years to life with the possibility of parole, a prison term of life without the possibility of parole, or death. Cal. Penal Code § 190(a). The penalties of death or life without parole may be imposed only if one or more

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[3] *See*, *e.g.*, *Penunuri v. California*, No. 18-6262, *cert. denied*, 2018 WL 4922041 (Dec. 10, 2018); *Henriquez v. California*, No. 18-5375, *cert. denied*, 139 S. Ct. 261 (2018); *Wall v. California*, No. 17-9525, *cert. denied*, 139 S. Ct. 187 (2018); *Brooks v. California*, No. 17-6237, *cert. denied*, 138 S. Ct. 516 (2017); *Becerrada v. California*, No. 17-5287, *cert denied*, 138 S. Ct. 242 (2017); *Thompson v. California*, No. 17-5069, *cert. denied*, 138 S. Ct. 201 (2017); *Landry v. California*, No. 16-9001, *cert. denied*, 138 S. Ct. 79 (2017); *Mickel v. California*, No. 16-7840, *cert. denied*, 137 S. Ct. 2214 (2017); *Jackson v. California*, No. 16-7744, *cert. denied*, 137 S. Ct. 1440 (2017); *Rangel v. California*, No. 16-5912, *cert. denied*, 137 S. Ct. 623 (2017); *Johnson v. California*, No. 15-7509, *cert. denied*, 136 S. Ct. 1206 (2016); *Cunningham v. California*, No. 15-7177, *cert denied*, 136 S. Ct. 989 (2016); *Lucas v. California*, No. 14-9137, *cert. denied*, 135 S. Ct. 2384 (2015); *Boyce v. California*, No. 14-7581, *cert. denied*, 135 S. Ct. 1428 (2015); *DeBose v. California*, No. 14-6617, *cert. denied*, 135 S. Ct. 760 (2014); *Blacksher v. California*, No. 11-7741, *cert. denied*, 565 U.S. 1209 (2012); *Taylor v. California*, No. 10-6299, *cert. denied*, 562 U.S. 1013 (2010); *Bramit v. California*, No. 09-6735, *cert. denied*, 558 U.S. 1031 (2009); *Morgan v. California*, No. 07-9024, *cert. denied*, 552 U.S. 1286 (2008); *Cook v. California*, No. 07-5690, *cert. denied*, 552 U.S. 976 (2007); *Huggins v. California*, No. 06-6060, *cert. denied*, 549 U.S. 998 (2006); *Harrison v. California*, No. 05-5232, *cert. denied*, 546 U.S. 890 (2005); *Smith v. California*, No. 03-6862, *cert. denied*, 540 U.S. 1163 (2004); *Prieto v. California*, No. 03-6422, *cert. denied*, 540 U.S. 1008 (2003).

statutorily enumerated special circumstances "has been found under Section 190.4 to be true." *Id.* § 190.2(a). The defendant is entitled to a jury determination of such a special circumstance, and the jury's finding of a special circumstance must be made unanimously and beyond a reasonable doubt. *Id.* § 190.4(a), (b). During the guilt phase of Rangel's trial, the jury found him guilty of two counts of first-degree murder and also found true the special circumstance allegations that he committed multiple murders and that the murder was committed during the course of robbery. Pet. App. A 2. The guilt-phase findings were unanimous under the beyond-a-reasonable-doubt standard. 30 RT 2463-2466.

The second stage of a California's death penalty trial process, the penalty phase, proceeds under California Penal Code Section 190.3. During the penalty phase, the jury takes in evidence which it is allowed to consider "as to any matter relevant to aggravation, mitigation, and sentence, including but not limited to" certain specified topics. Cal. Penal Code § 190.3. "In determining the penalty," the jury must "take into account any" of a list of specified factors "if relevant"—including "[a]ny … circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." *Id.* With the exception of prior unadjudicated violent criminal activity and prior felony convictions, the jury need not agree unanimously on the existence of a particular aggravating circumstance, or find the existence of such a circumstance beyond a reasonable doubt. *See People v. Romero*, 62 Cal.

4th 1, 56 (2015); *People v. Gonzales*, 52 Cal. 4th 254, 328 (2011). If the jury "concludes that the aggravating circumstances outweigh the mitigating circumstances," then it "shall impose a sentence of death." Cal. Penal Code § 190.3. If it "determines that the mitigating circumstances outweigh the aggravating circumstances," then it "shall impose a sentence of confinement in state prison for a term of life without the possibility of parole." *Id.*

b. Rangel contends that he could not be constitutionally sentenced to death unless the jury during the penalty phase found, unanimously and beyond a reasonable doubt, that at least one mutually agreed-upon aggravating factor existed and that the aggravating circumstances outweighed those in mitigation. Pet. 13-16. That is incorrect.

Rangel primarily relies (Pet. 15) on the Sixth and Fourteenth Amendment rule that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *see also Ring v. Arizona*, 536 U.S. 584 (2002) (applying rule to Arizona death penalty). But under California law, once a jury finds unanimously and beyond a reasonable doubt that a defendant has committed first-degree murder with a special circumstance, the maximum potential penalty prescribed by statute is death. *See People v. Prince*, 40 Cal. 4th 1179, 1297-1298 (2007); *see generally Tuilaepa*, 512 U.S. at 975 (a California defendant becomes "eligible for the death penalty when the jury

finds him guilty of first-degree murder and finds one of the § 190.2 special circumstances true"). Imposing that maximum penalty on a defendant once these jury determinations have been made does not violate the Constitution.

In arguing to the contrary, Rangel relies on *Hurst v. Florida*, 136 S. Ct. 616, 619-622 (2016). Pet. 12-13. Under the Florida system considered in *Hurst*, after a jury verdict of first-degree murder, a convicted defendant was not "eligible for death," 136 S. Ct. at 622, unless the judge further determined that an enumerated "aggravating circumstance[] exist[ed]," Fla. Stat. § 921.141(3). The judge was thus tasked with making the "'findings upon which the sentence of death [was] based,'" 136 S. Ct. at 622 (quoting Fla. Stat. § 921.141(3))—determinations that were essentially questions of fact, *see* Fla. Stat. § 921.141(5) (listing aggravating circumstances, such as whether the crime was committed with a purpose of pecuniary gain). This Court held that Florida's system thus suffered from the same constitutional flaw that Arizona's had in *Ring*: "The maximum punishment" a defendant could receive without judge-made findings "was life in prison without parole," and the judge "increased" that punishment "based on [the judge's] own factfinding." 136 S. Ct. at 621.

In California, however, what makes a first-degree murderer eligible for a death sentence is the jury's determination that at least one of the special circumstances in California Penal Code Section 190.2(a) is present. That determination, which the jury must agree on unanimously and beyond a

reasonable doubt, is part of how California fulfills the "constitutionally necessary function" of "circumscrib[ing] the class of persons eligible for the death penalty." *Zant*, 462 U.S. at 878; *see* pp. 3-5, *supra*.

The jury's subsequent consideration of aggravating and mitigating factors at the penalty phase fulfills a different function: that of providing an "individualized determination … at the selection stage" of who among the eligible defendants deserves the death penalty. *Zant*, 462 U.S. at 879; *see People v. Moon*, 37 Cal. 4th 1, 40 (2005) ("The penalty jury's principal task is the moral endeavor of deciding whether the death sentence should be imposed on a defendant who has already been determined to be 'death eligible' as a result of the findings and verdict reached at the guilt phase."). Such a determination involves a choice between a greater or lesser authorized penalty—not any increase in the maximum potential penalty. *See Jones v. United States*, 526 U.S. 227, 251 (1999) (finding of aggravating facts in context of capital sentencing is a choice between a greater and a lesser penalty, not a process of raising the sentencing range's ceiling).

Kansas v. Carr, 136 S. Ct. 633 (2016), effectively forecloses Rangel's argument that determinations concerning the existence of aggravating or mitigating factors at the penalty-selection phase must be made beyond a reasonable doubt. As *Carr* reasoned, it is possible to apply a standard of proof to the "'eligibility phase'" of a capital sentencing proceeding, "because that is a purely factual determination." *Id*. at 642. In contrast, it is doubtful whether

it would even be "possible to apply a standard of proof to the mitigating-factor determination (the so-called 'selection phase' of a capital-sentencing proceeding)," because "[w]hether mitigation exists … is largely a judgment call (or perhaps a value call): what one juror might consider mitigating another might not." *Id.*; *see*, *e.g.*, *People v. Brown*, 46 Cal. 3d 432, 456 (1988) (California's sentencing factor regarding "'[t]he age of the defendant at the time of the crime'" may be either a mitigating or an aggravating factor in the same case: the defendant may argue for age-based mitigation, and the prosecutor may argue for aggravation because the defendant was "'old enough to know better'").

Carr likewise forecloses Rangel's argument that the jury's final weighing of aggravating versus mitigating circumstances should proceed under the beyond-a-reasonable-doubt standard. In *Carr*, this Court observed that "the ultimate question of whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy," and "[i]t would mean nothing … to tell the jury that the defendants must deserve mercy beyond a reasonable doubt." 136 S. Ct. at 642. That reasoning leaves no room for Rangel's argument that such an instruction is required under the Constitution. Pet. 13-16.

c. Rangel points to the Delaware Supreme Court's fractured decision in *Rauf v. State*, 145 A.3d 430 (Del. 2016), as a reason for this Court to consider whether the beyond-a-reasonable-doubt standard should apply at California's

selection stage. Pet. 15. *Rauf*'s various opinions hold that a determination as to the relative weight of aggravating and mitigating factors in the application of Delaware's death penalty must be made beyond a reasonable doubt. *See* 145 A.3d at 434 (per curiam); *id.* at 481-482 (Strine, J., concurring); *id.* at 487 (Holland, J., concurring); *but see id.* at 487 (Valihura, J., dissenting). The rationale of those opinions is not clear, and they notably fail to cite or discuss this Court's reasoning on the issue in *Carr*. In any event, the most notable feature of the Delaware law invalidated in *Rauf* was that the jury's choice between a life sentence and death was completely advisory: the judge could impose a sentence of death even if all jurors recommended against it, as long as the jury had unanimously found the existence of a single aggravating factor. *See* Del. Code tit. 11, § 4209(c)(3), (d)(1); *Rauf*, 145 A.3d at 457 (Strine, J., concurring) (under Delaware law the judge "has the final say in deciding whether a capital defendant is sentenced to death and need not give any particular weight to the jury's view"). Under California law, the death penalty may be imposed only if the jury has unanimously voted for death. *See* Cal Penal Code § 190.3. It is by no means clear from the opinions in *Rauf* that the Delaware Supreme Court would have reached the same result if it had been analyzing California's quite different statute.[4]

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[4] Similar shortcomings undercut Rangel's reliance on the opinion dissenting from the denial of certiorari in *Woodward v. Alabama*, 134 S. Ct. 405, 410-411 (2013), and on *State v. Whitfield*, 107 S.W. 3d 253 (Mo. 2003). Pet. 12. The statutes at issue in *Woodward* and *Whitfield* allowed a judge to

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted

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impose the death penalty even where the jurors voted against it. *See Woodward*, 134 S. Ct. at 406, 410-412 (jury's decision as to whether the defendant should be executed was merely an "advisory verdict"); *Whitfield*, 107 S.W. 3d at 261-262 (judge imposed death sentence after jurors voted 11-1 for life imprisonment). The *Woodward* dissent suggests that a trial judge's view should not replace that of the jury—not that the death penalty may not be imposed without the jury finding beyond a reasonable doubt that aggravating factors outweigh mitigating factors. 134 S. Ct. at 10-11. To whatever extent *Whitfield* held that the beyond-a-reasonable doubt standard should apply to aggravating and mitigating factors, that ruling has been superseded by this Court's analysis in *Carr*.