No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KERRY LYN DALTON, *Petitioner*,

v.

STATE OF CALIFORNIA, *Respondent*.

_____

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

(DEATH PENALTY CASE)

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CAPITAL CASE

QUESTION PRESENTED

Does California's death penalty scheme violate the requirement under the Fifth, Sixth and Fourteenth Amendments that every fact other than a prior conviction that serves to increase the statutory maximum for the crime must be found by a jury beyond a reasonable doubt?

RELATED PROCEEDINGS

Kerry Lyn Dalton, *et al. v. Superior Court,* Case No. D019546
(California) Court of Appeal, Fourth District, Division 1
(Pretrial writ proceeding, decision issued November 2, 1993)

People v. Kerry Lyn Dalton, Case No.135002
Superior Court of San Diego County (California),
(Trial, judgment entered May 23, 1995)

People v. Kerry Lyn Dalton, Case No. S046848
Supreme Court of California
(Direct appeal, decision issued May 16, 2019)

In re Kerry Lyn Dalton, Case No. S178504
Supreme Court of California
(Habeas corpus proceeding, pending)

Kerry Lyn Dalton v. Superior Court, Case No. D057048
(California) Court of Appeal, Fourth District, Division 1
(Postconviction discovery writ, decision issued November 23, 2010)

Kerry Lyn Dalton v. Superior Court, Case No. D062577
(California) Court of Appeal, Fourth District, Division 1
(Postconviction discovery writ, decision issued October 31, 2012)

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2019

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KERRY LYN DALTON, *Petitioner*,

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STATE OF CALIFORNIA, *Respondent*.

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

(DEATH PENALTY CASE)

Petitioner Kerry Lyn Dalton respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of California affirming her conviction of murder, conspiracy, and sentence of death.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings below were petitioner, Kerry Lyn Dalton, and Respondent, the People of the State of California.

OPINION BELOW

The California Supreme Court issued an opinion in this case on May 16, 2019, reported as *People v. Dalton*, 7 Cal. 5th 166 (2019). A copy of that opinion is attached as

Appendix A. On June 19, 2019, the California Supreme Court issued an order denying rehearing, a copy of which is attached as Appendix B.

JURISDICTION

The California Supreme Court entered its judgment on May 16, 2019, and denied rehearing on June 19, 2019. This Court has jurisdiction pursuant to 28 U.S.C. section 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

I. Federal Constitutional Provisions

The Fifth Amendment to the United States Constitution provides in pertinent part: "No person . . . shall be deprived of life, liberty, or property, without due process of law . . . ."

The Sixth Amendment to the United States Constitution provides in pertinent part: "In all criminal prosecutions the accused shall enjoy the right to [trial] by an impartial jury . . . ."

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part: "No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

II. State Statutory Provisions

The relevant state statutes, attached as Appendix C, include California Penal Code sections 187, 190, 190.1, 190.2, 190.3, 190.4 and 190.5.

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STATEMENT OF THE CASE

I. Introduction

Petitioner was convicted and sentenced under California's death penalty law, adopted by an initiative measure in 1978. Cal. Penal Code §§ 190-190.4.[1] Under this scheme, once the defendant has been found guilty of first degree murder, the trier of fact determines whether any of the special circumstances enumerated in section 190.2 are true beyond a reasonable doubt. If so, a separate penalty phase is held to determine whether the defendant should be sentenced to life imprisonment without possibility of parole or death. §§ 190.2 & 190.3; *Tuilaepa v. California*, 512 U.S. 967, 975-76 (1994).

At the penalty phase, the parties may present evidence "relevant to aggravation, mitigation, and sentence. . . ." § 190.3. Section 190.3 lists the aggravating and mitigating factors the jury is to consider.[2]

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[1] All statutory references are to the California Penal Code unless otherwise specified. "CT" refers to the Clerk's Transcript. The cited portions of the Clerk's Transcript are attached as Appendix D.

[2] This list includes the circumstances of the crime, including any special circumstances found to be true (factor (a)); the presence or absence of criminal activity involving the use or threat of force or violence (factor (b)) or of prior felony convictions (factor (c)); whether the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance (factor (d)); whether the victim was a participant in or consented to the defendant's conduct (factor (e)); whether the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation (factor (f)); whether the defendant acted under extreme duress or the substantial domination of another

Consistent with this statutory scheme, the jurors in this case were instructed that they could sentence petitioner to death only if each of them was "persuaded that the aggravating circumstances are so substantial in comparison to the mitigating circumstances that it warrants death instead of life without parole." 46 RT 4596; Cal. Jury Instr.-Crim 8.88 or "CALJIC No. 8.88".[3] The instruction defines an aggravating circumstance as "any fact, condition or event attending the commission of a crime which increases its guilt or enormity or adds to its injurious consequences which is above and beyond the elements of the crime itself." 46 RT 4595; CALJIC No. 8.88; *see* CALCRIM No. 763; *People v. Steele*, 27 Cal. 4th 1230, 1258 (2002).[4]

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person (factor (g)); whether the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, or the effects of intoxication (factor (h)); the defendant's age at the time of the crime (factor (i)); whether the defendant was an accomplice whose participation in the offense was relatively minor (factor (j)); and any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime (factor (k)). § 190.3.

[3] In 2006 the California Judicial Council adopted revised jury instructions known as Judicial Council Of California Criminal Jury Instructions, or "CALCRIM." CALCRIM No. 766 provides in part that: "To return a judgment of death, each of you must be persuaded that the aggravating circumstances both outweigh the mitigating circumstances and are also so substantial in comparison to the mitigating circumstances that a sentence of death is appropriate and justified."

[4] The capital sentencing jury is not instructed in the exact language of the statute, which provides in part:

> After having heard and received all of the evidence, and after having heard and considered the arguments of counsel, the trier of fact shall consider, take into

For prior violent criminal activity and prior felony convictions—section 190.3 factors (b) and (c)—the standard of proof is beyond a reasonable doubt. *See People v. Montes*, 58 Cal. 4th 809, 899 (2014). But under California law, proof beyond a reasonable doubt is not required for any other sentencing factor; and the prosecutor does not have to establish beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating circumstances or that death is the appropriate penalty. *Id*. The state high court has also concluded that a capital sentencing jury as a whole need not agree on the existence of any one aggravating factor. *See, e.g.*, *People v. Contreras*, 58 Cal. 4th 123, 173 (2013). The court deems a juror's determination whether aggravation outweighs mitigation to be a normative conclusion, not a factual finding. *People v. Merriman*, 60 Cal. 4th 1, 106 (2014). This is true even though the jury must make certain factual findings in order to consider specific circumstances as aggravating factors. *See, e.g.*, *People v. Prieto*, 30 Cal. 4th 226, 263 (2003).

The court has since rejected the argument that *Hurst v. Florida*, ___ U.S. ___, 136

> account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall impose a sentence of death if the trier of fact concludes that the aggravating circumstances outweigh the mitigating circumstances. If the trier of fact determines that the mitigating circumstances outweigh the aggravating circumstances the trier of fact shall impose a sentence of confinement in state prison for a term of life without the possibility of parole. § 190.3.

S. Ct. 616, 621-24 (2016) dictates a different result, on the grounds that "[t]he California sentencing scheme is materially different from that in Florida." *People v. Rangel*, 62 Cal. 4th 1192, 1235, n. 16 (2016).

By failing to require that the jury unanimously find each aggravator relied upon and weighed to be true beyond a reasonable doubt, California's death penalty scheme violates the Fifth, Sixth and Fourteenth Amendments, and this Court should grant certiorari to bring the largest death row population in the nation into compliance with the guarantees of the United States Constitution.

II. Procedural History

Petitioner was charged with conspiracy to murder and the first-degree murder of Irene Melanie May. The jury found her guilty of all counts and found all special allegations true. *Dalton,* 7 Cal. 5th at 176.

At the penalty phase, the prosecutor focused on the circumstances of the crime and presented evidence of the circumstances of petitioner's prior felony conviction as well as misconduct she committed while she was in custody. *Dalton, 7* Cal. 5th at 198-200, 204-05. In mitigation, the defense presented evidence that petitioner's father was an alcoholic who had abandoned his family when petitioner was very young, that petitioner had a history of drug abuse, that her family, including her five children, loved her and did not want her to die, and that she had undergone a religious conversion while awaiting trial

and had been a positive influence on her fellow inmates. *Id*. at 200-04.

The court then instructed the jury in accordance with the statutory sentencing scheme at issue here. 9 CT 1939-40, 1941-42 (CALJIC Nos. 8.85 & 8.88). Consistent with California law, the jury that sentenced petitioner to death was not required to find beyond a reasonable doubt that (1) an aggravating factor existed, (2) the aggravating circumstances outweighed the mitigating circumstances, and (3) the aggravating circumstances were so substantial that they warranted death instead of life without parole. The jury returned a verdict of death, and judgment was entered on May 23, 1995. 11 CT 2215.

On direct appeal, petitioner argued that California's death penalty scheme violates the Fifth, Sixth and Fourteenth Amendments, citing *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002). The California Supreme Court rejected petitioner's claims, stating:

> "The death penalty statute does not lack safeguards to avoid arbitrary and capricious sentencing . . . or constitute cruel and unusual punishment on the ground that it does not require either unanimity as to the truth of aggravating circumstances or findings beyond a reasonable doubt that an aggravating circumstance (other than [Cal. Penal Code] § 190.3, factor (b) or (c) evidence) has been proved, that the aggravating factors outweighed the mitigating factors, or that death is the appropriate sentence."

Dalton, 7 Cal. 5th at 267 (quoting *People v. Rangel*, 62 Cal. 4th 1192, 1235 n. 16 (2016)). The court further stated that "[n]othing in *Hurst v. Florida* [577 U.S. ____ (2016)]. . . affects our conclusions in this regard," and that "[n]o burden of proof is constitutionally required, nor is the trial court required to instruct the jury that there is no burden of proof." *Id.* (internal citation omitted).

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REASONS FOR GRANTING THE PETITION

CERTIORARI SHOULD BE GRANTED TO DECIDE WHETHER CALIFORNIA'S DEATH PENALTY STATUTE VIOLATES THE CONSTITUTIONAL REQUIREMENT THAT ANY FACT THAT INCREASES THE PENALTY FOR A CRIME MUST BE FOUND BY A JURY BEYOND A REASONABLE DOUBT

I. This Court Has Held That Every Fact That Serves to Increase a Maximum Criminal Penalty Must Be Proven to a Jury Beyond a Reasonable Doubt

The Fifth, Sixth and Fourteenth Amendments "require criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *United States v. Gaudin*, 515 U.S. 506, 510 (1995). Where proof of a particular fact other than a prior conviction exposes the defendant to greater punishment than that applicable in the absence of such proof, that fact must be proven to a jury beyond a reasonable doubt. *Apprendi*, 530 U.S. at 490; *see also Cunningham v. California*, 549 U.S. 270, 281-82 (2007); *Blakely v. Washington*, 542 U.S. 296, 301 (2004). As the Court put it in *Apprendi*, "the relevant inquiry is one not of form, but of effect—does the required finding expose the defendant to a greater punishment than that authorized by the jury's guilty verdict?" *Apprendi*, 530 U.S. at 494. In *Ring*, a capital sentencing case, this Court established a bright-line rule: "If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact—no matter how the State labels it—must be found, by a jury beyond a

reasonable doubt." *Ring*, 536 U.S. at 602 (citing *Apprendi*, 530 U.S. at 494, 482-83).

Applying this mandate, the Court in *Hurst* invalidated Florida's death penalty statute, restating the core Sixth Amendment principle as it applies to capital sentencing statutes: "The Sixth Amendment requires a jury, not a judge, to find *each fact necessary to impose a sentence of death*." *Hurst*, 136 S. Ct. at 619 (emphasis added). And as explained below, *Hurst* makes clear that the weighing determination required under the Florida statute at issue was an essential part of the sentencer's factfinding exercise, within the meaning of *Ring*. *See Hurst*, 136 S. Ct. at 622.

Under the capital sentencing statute invalidated in *Hurst*, former Fla. Stat. § 782.04(1)(a), the jury rendered an advisory verdict at the sentencing proceeding, with the judge then making the ultimate sentencing determination. *Hurst*, 136 S. Ct. at 620 (citing § 775.082(1)). The judge was responsible for finding that "sufficient aggravating circumstances exist" and "that there are insufficient mitigating circumstances to outweigh aggravating circumstances," which were prerequisites to imposing a sentence of death. *Id.* at 622 (citing former Fla. Stat. § 921.141(3)). These determinations were part of the "necessary factual finding that *Ring* requires." *Id*.[5]

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[5] As this Court explained:

> [T]he Florida sentencing statute does not make a defendant eligible for death until "findings *by the court* that such person shall be punished by death." Fla. Stat. § 775.082(1) (emphasis added). The trial court alone must

The questions decided in *Ring* and *Hurst* were narrow. "Ring's claim is tightly delineated: He contends only that the Sixth Amendment required jury findings on the aggravating circumstances asserted against him." *Ring*, 536 U.S. at 597 n. 4. The petitioner in *Hurst* raised the same claim. *See* Petitioner's Brief on the Merits, *Hurst v. Florida*, 2015 WL 3523406, at *18 (U.S., 2015) (the trial court rather than the jury has the task of making factual findings necessary to impose death penalty). In each case, this Court decided only the constitutionality of a judge, rather than a jury, determining the existence of an aggravating circumstance. *See Ring*, 536 U.S. at 588; *Hurst*, 136 S. Ct. at 624.

Despite this, *Hurst* shows that the Sixth Amendment requires that any fact that must be established to impose a death sentence, but not the lesser punishment of life imprisonment, must be found by the jury. *Hurst*, 136 S. Ct. at 619, 622. *Hurst* refers not simply to the finding that an aggravating circumstance obtains, but, as noted, to the finding of "each fact *necessary to impose a sentence of death*." *Id*. at 619 (emphasis added).

> find "the facts . . . [t]hat sufficient aggravating circumstances exist" and "[t]hat there are insufficient mitigating circumstances to outweigh the aggravating circumstances." § 921.141(3); *see State v. Steele*, 921 So. 2d 538, 546 (Fla. 2005).

Hurst, 136 S. Ct. at 622.

II. California's Death Penalty Statute Violates *Hurst* by Not Requiring That the Jury's Factual Sentencing Findings Be Made Beyond a Reasonable Doubt

In California, a death sentence cannot be imposed on a defendant who has been convicted at the guilt phase of capital murder unless the jury additionally finds: (1) the existence of one or more aggravating factors; (2) that the aggravating factors outweigh the mitigating factors; and (3) the aggravating factors are so substantial that they warrant death instead of the lesser penalty of life without parole. Under the principles that animate this Court's decisions in *Apprendi*, *Ring* and *Hurst*, the jury in this case should have been required to make these factual findings beyond a reasonable doubt. *See* John G. Douglass, *Confronting Death: Sixth Amendment Rights at Capital Sentencing*, 105 Colum. L. Rev. 1967, 2004 (2005) (*Blakely* arguably reaches "any factfinding that matters at capital sentencing, including those findings that contribute to the final selection process.").

Although California's statute is different from those at issue in *Hurst* and *Ring* in that the jury, not the judge, makes the findings necessary to sentence a defendant to death, California's death penalty statute is similar to the invalidated Arizona and Florida statutes in ways that are key with respect to the *Apprendi/Ring/Hurst* principle. All three statutes provide that a death sentence may be imposed only if, after the defendant is convicted of first degree murder, the sentencer finds, first, the existence of at least one

statutory death eligibility circumstance—in California, a "special circumstance," Cal. Penal Code § 190.2, and in Arizona and Florida, an "aggravating circumstance," Ariz. Rev. Stat. § 13-703(G); Fla. Stat. § 921.141(3)—and, second, engages at the selection phase in an assessment of the relative weight or substantiality of aggravating and mitigating sentencing factors—in California, that "the aggravating circumstances outweigh the mitigating circumstances," Cal. Penal Code § 190.3; in Arizona that "'there are no mitigating circumstances sufficiently substantial to call for leniency,'" *Ring*, 536 U.S. at 593, quoting Ariz. Rev. Stat. § 13-703(F); and in Florida, that "'there are insufficient mitigating circumstances to outweigh aggravating circumstances'" *Hurst*, 136 S. Ct. at 622, quoting Fla. Stat. § 921.141(3).[6]

Although *Hurst* did not address the standard of proof as such, the Court has made clear that weighing sentencing factors is an essentially factual exercise, within the ambit of *Ring*. As the late Justice Scalia explained in *Ring*:

> [T]he fundamental meaning of the jury-trial guarantee of the Sixth Amendment is that all *facts* essential to imposition of the level of punishment that the defendant receives—whether the statute calls them elements of the offense, *sentencing factors*, or Mary Jane—must be found by the jury beyond a reasonable doubt.

[6] In *Hurst*, the Court uses the concept of death eligibility to mean that there are findings that actually authorize the imposition of the death penalty, and not in the sense that an accused potentially faces a death sentence at a separate hearing, which is what a "special circumstance" finding establishes under California law. Under California law it is the jury determination that the statutory aggravating factors outweigh the mitigating factors that ultimately authorizes imposition of the death penalty.

Ring, 536 U.S. at 610 (Scalia, J., concurring) (emphasis added); s*ee also Hurst*, 136 S. Ct. at 622 (in Florida "critical findings necessary to impose the death penalty" include weighing facts the sentencer must find before death is imposed).

Other courts have recognized the factfinding nature of the weighing exercise. In *Hurst v. State*, 202 So. 3d 40, 43 (Fla. 2016), the Florida Supreme Court reviewed whether a unanimous jury verdict was required in capital sentencing, in light of this Court's decisions discussed above. The determinations to be made, including whether aggravation outweighed mitigation, were described as "elements," like the elements of a crime itself determined at the guilt phase. *Hurst*, 202 So. 3d at 53, 57.

The Delaware Supreme Court has found that "the weighing determination in Delaware's statutory sentencing scheme is a factual finding necessary to impose a death sentence." *Rauf v. State*, 145 A.3d 430, 485 (Del. 2016). The Missouri Supreme Court has also described the determination that aggravation warrants death, or that mitigation outweighs aggravation, as a finding of fact that a jury must make. *State v. Whitfield*, 107 S.W.3d 253, 259-60 (Mo. 2003). Similarly, Justice Sotomayor has stated that "the statutorily required finding that the aggravating factors of a defendant's crime outweigh the mitigating factors is . . . [a] factual finding" under Alabama's capital sentencing scheme. *Woodward v. Alabama*, 571 U.S. 1045, 134 S. Ct. 405, 410-11 (2013) (Sotomayor, J., dissenting from denial of cert.).

Other courts have found to the contrary. *See United States v. Gabrion*, 719 F.3d 511, 533 (6th Cir. 2013) (federal jurisdiction; under *Apprendi*, determination that the aggravating factors outweigh the mitigating factors, "is not a finding of fact in support of a particular sentence"); *Nunnery v. State*, 127 Nev. 749, 773-75 (Nev. 2011) ("the weighing of aggravating and mitigating circumstances is not a fact-finding endeavor"); *Ritchie v. State*, 809 N.E.2d 258, 265-66 (Ind. 2004) (same). This conflict further supports granting certiorari on the issue presented here.

The constitutional question cannot be avoided by labeling the weighing exercise "normative," rather than "factual," as the California court has tried to do. *See*, *e.g.*, *Merriman*, 60 Cal. 4th at 106; *People v. Karis*, 46 Cal. 3d 612, 639-40 (1988). At bottom, the inquiry is one of function. *See Ring*, 536 U.S. at 610 (Scalia, J., concurring) (all "facts" essential to determination of penalty, however labeled, must be made by jury).

III. California Is an Outlier in Refusing to Apply *Ring's* Beyond-a-Reasonable-Doubt Standard to Factual Findings That Must Be Made Before a Death Sentence Can Be Imposed

The California Supreme Court has applied its flawed understanding of *Ring*, *Apprendi* and *Hurst* to its review of numerous death penalty cases. The issue presented here is well-defined and will not benefit from further development in the California Supreme Court or other state courts. These facts favor grant of certiorari for two reasons.

First, as of August 23, 2019, California, with 733 inmates on death row, had over one-fourth of the country's total death-row population of 2,673. *See* Death Penalty Information Center at https://files.deathpenaltyinfo.org/documents/pdf/FactSheet.f1566566669.pdf (last visited September 4, 2019). California's refusal to require a jury to make the factual findings necessary to impose the death penalty beyond a reasonable doubt has widespread effect on a substantial portion of this country's capital cases.

Second, of the 31 jurisdictions in the nation with the death penalty, including the federal government and the military, the statutes of nearly all provide that aggravating factors must be proven beyond a reasonable doubt.[7] The statutes of several states are silent on the standard of proof by which the state must prove aggravating factors to the

[7] *See* Ala. Code § 13A-5-45(e) (1975); Ariz. Rev. Stat. § 13-751(B); Ark. Code Ann. § 5-4-603(a); Colo. Rev. Stat. Ann. § 18-1.3-1201(1)(d); Del. Code Ann. tit. 11, § 4209(c)(3)a.1; Ga. Code Ann. § 17-10-30(C); Idaho Code Ann. § 19-2515(3)(b); Ind. Code Ann. § 35-50-2-9(a); Kan. Stat. Ann. § 21-6617(e); Ky. Rev. Stat. Ann. § 532.025(3); La. Code Crim. Proc. Ann. art. 905.3; Miss. Code. Ann. § 99-19-103; Mo. Ann. Stat. § 565.032(1); Mont. Code Ann. § 46-18-305; Neb. Rev. Stat. § 29-2520(4)(f); Nev. Rev. Stat. § 175.554(4); N.C. Gen. Stat. § 15A-2000(c)(1); Ohio Rev. Code Ann. § 2929.04(B); Okla. Stat. Ann. tit. 21, § 701.11; 42 Pa. Stat. and Cons. Stat. § 9711(c)(1)(iii); S.C. Code Ann. § 16-3-20(A); S.D. Codified Laws § 23A-27A-5; Tenn. Code Ann. § 39-13-204(f); Tex. Crim. Proc. Code Ann. § 37.071 § (2)(c); Va. Code Ann. § 19.2-264.4(C); Wyo. Stat. Ann. § 6-2-102(D)(i)(A), (E)(i); 18 U.S.C. § 3593(c).

trier of fact.[8] But with the exception of the Oregon Supreme Court,[9] the courts of these jurisdictions have explicitly determined that the trier of fact must find factors in aggravation beyond a reasonable doubt before it may use them to impose a sentence of death.[10] California may be one of only several states that refuse to do so.

Certiorari is necessary to bring California, with the largest death row population in the nation, into compliance with the Fifth, Sixth and Fourteenth Amendments by requiring the state to prove beyond a reasonable doubt the factual findings that are a prerequisite to the imposition of the death penalty.[11]

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[8] *See* Fla. Stat. § 921.141(1), (2)(a); Or. Rev. Stat. Ann. § 163.150(1)(a); Utah Code Ann. § 76-3-207(2)(a)(iv).

[9] *See State v. Longo*, 148 P.3d 892, 905-06 (Or. 2006).

[10] *See State v. Steele*, 921 So. 2d 538, 540 (Fla. 2005); *State v. Gardner*, 947 P.2d 630, 647 (Utah 1997).

[11] Further, if the factual findings set forth above are the functional equivalents of the elements of an offense to which the Fifth, Sixth, and Fourteenth Amendment rights to trial by jury on proof beyond a reasonable doubt apply, then it follows, contrary to the view of the California Supreme Court, that aggravating circumstances must be found by a jury unanimously. Cal. Const. art. I, § 16 (right to trial by jury guarantees right to unanimous jury verdict in criminal cases); *People v. Maury*, 30 Cal. 4th 342, 440 (2003) (because there is no Sixth Amendment right to jury trial as to aggravating circumstances, there is no right to unanimous jury agreement as to truth of aggravating circumstances); *People v. Wolfe*, 114 Cal. App. 4th 177, 187 (2003) and authorities cited therein (although right to unanimous jury stems from California Constitution, once state requires juror unanimity, federal constitutional right to due process requires that jurors unanimously be convinced beyond a reasonable doubt).

CONCLUSION

Wherefore, petitioner respectfully requests that this Court grant the petition for a writ of certiorari and reverse the judgment of the Supreme Court of California upholding her death sentence.

Dated: September 12, 2019

Respectfully Submitted,
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