

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES



SOCORRO SUSAN CARO,

PETITIONER

V.

STATE OF CALIFORNIA,

RESPONDENT



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

CAPITAL CASE



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QUESTION PRESENTED

Does California's death penalty scheme, which permits the trier of fact to impose a sentence of death without finding beyond a reasonable doubt (1) the existence of one or more aggravating circumstances; (2) that aggravating circumstances outweigh mitigating circumstances; and (3) that the aggravating circumstances are so substantial that they warrant death instead of life, 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 penalty for a crime must be found by a jury beyond a reasonable doubt.

LIST OF PARTIES

All parties appear on the caption of the case on the cover page.

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| Question Presented | i |
| List of Parties | ii |
| Opinion Below | 2 |
| Jurisdiction | 2 |
| Constitutional and Statutory Provisions Involved | 2 |
| Statement of the Case | 3 |
| Reasons for Granting the Petition | |
| I. THIS COURT SHOULD GRANT CERTIORARI TO DECIDE WHETHER CALIFORNIA'S DEATH PENALTY LAW VIOLATES THE CONSTITUTIONAL REQUIREMENT THAT ANY FACT THAT INCREASES THE PENALTY FOR A CRIME MUST BE FOUND BY A JURY BEYOND A REASONABLE DOUBT | 8 |
| A. 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 | 8 |
| B. California's Death Penalty Scheme Violates this Court's Precedents by Not Requiring that All of the Jury's Factual Sentencing Findings Be Unanimously Made Beyond a Reasonable Doubt | 11 |
| C. California Is An Outlier In Refusing To Apply <i>Ring's</i> Beyond-A-Reasonable-Doubt Standard To Factual Findings That Must Be Made Before A Death Sentence Can Be Imposed | 15 |
| Conclusion | 18 |

INDEX TO APPENDICES

APPENDIX A

Order of the Supreme Court of California filed on July 12, 2006, appointing Tracy J. Dressner as counsel for Socorro Caro

APPENDIX B

Opinion of the Supreme Court of California filed on June 13, 2019, and published at *People v. Caro*, 7 Cal.5th 463 (2019)

APPENDIX C

Order of the Supreme Court of California Modifying the Opinion and Denying Petition for Rehearing filed on September 11, 2019

APPENDIX D

Letter from the Supreme Court of the United States stating that Justice Kagan extended the filing time for the petition for writ of certiorari until February 7, 2020

APPENDIX E

California Penal Code sections 190, 190.1, 190.2, 190.3, and 190.4.

TABLE OF AUTHORITIES CITED

| | <u>Page(s)</u> |
|--|------------------|
| <u>CASES</u> | |
| <i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000) | 6-10, 12, 14, 15 |
| <i>Blakely v. Washington</i> , 542 U.S. 296 (2004) | 8, 9 |
| <i>Cunningham v. California</i> , 549 U.S. 270 (2007) | 8 |
| <i>Hurst v. Florida</i> , ___ U.S. ___, 136 S.Ct. 616 (2016) | 6, 7, 9-13, 15 |
| <i>In re Winship</i> , 397 U.S. 358, 363-364 (1970) | 8 |
| <i>Mullaney v. Wilbur</i> , 421 U.S. 684 (1975) | 8 |
| <i>Nunnery v. State</i> , 127 Nev. 749 (Nev. 2011) | 14 |
| <i>People v. Anderson</i> , 25 Cal.4th 543 (2001) | 16 |
| <i>People v. Brown</i> , 33 Cal.4th 382 (2004) | 16 |
| <i>People v. Collins</i> , 17 Cal.3d 687 (1976) | 15 |
| <i>People v. Dyer</i> , 45 Cal.3d 26 (1988) | 4 |
| <i>People v. Griffin</i> , 33 Cal.4th 536 (2004) | 15 |
| <i>People v. Jones</i> , 3 Cal.5th 583 (2017) | 15 |
| <i>People v. Karis</i> , 46 Cal.3d 612 (1988) | 14 |
| <i>People v. McKinzie</i> , 54 Cal.4th 1302 (2012) | 14 |
| <i>People v. Monterroso</i> , 34 Cal.4th 743 (2004) | 15 |
| <i>People v. Montes</i> , 58 Cal.4th 809 (2014) | 6 |
| <i>People v. Mora</i> , 5 Cal.5th 442 (2018) | 7 |
| <i>People v. Prieto</i> , 30 Cal.4th 226 (2003) | 16 |

TABLE OF AUTHORITIES CITED

| | <u>Page(s)</u> |
|--|----------------|
| <u>CASES</u> | |
| <i>People v. Simon</i> , 1 Cal.5th 98 (2016) | 15 |
| <i>Rauf v. State</i> , 145 A.3d 430 (Del. 2016) | 13, 15 |
| <i>Ring v. Arizona</i> , 536 U.S. 584 (2002) | 6, 7, 9-14 |
| <i>Ritchie v. State</i> , 809 N.E.2d 258 (Ind. 2004) | 14 |
| <i>State v. Brown</i> , 607 P.2d 261 (Utah 1980) | 17 |
| <i>State v. Gardner</i> , 947 P.2d 630 (Utah 1997) | 17 |
| <i>State v. Longo</i> , 148 P.3d 892 (Or. 2006) | 17 |
| <i>State v. Steele</i> , 921 So.2d 538 (Fla. 2005) | 17 |
| <i>State v. Wood</i> , 580 S.W.3d 566 (Mo. 2019) | 14 |
| <i>Tuilaepa v. California</i> , 512 U.S. 967 (1994) | 4 |
| <i>United States v. Gaudin</i> , 515 U.S. 506 (1995) | 8 |
| <i>Woodward v. Alabama</i> , 571 U.S. 1045, 134 S.Ct. 405 (2013) | 13 |
| <u>STATUTES</u> | |
| 18 U.S.C.A. § 3593(C) | 17 |
| 42 Pa. Cons. Stat. § 9711 (C)(1)(iii) | 17 |
| Ala. Code 1975 § 13A-5-45(E) | 16 |
| Ariz. Rev. Stat. § 13-703(F) | 13 |
| Ariz. Rev. Stat. § 13-703(G) | 12 |
| Ariz. Rev. Stat. Ann. § 13-751(B) | 16 |

TABLE OF AUTHORITIES CITED

| | <u>Page(s)</u> |
|---|-----------------|
| <u>STATUTES</u> | |
| Ark. Code Ann. § 5-4-603 | 16 |
| Cal. Penal Code § 190 | 3, 4 |
| Cal. Penal Code § 190.1 | 3 |
| Cal. Penal Code § 190.2 | 3, 4, 11, 12 |
| Cal. Penal Code § 190.3 | 3-6, 11, 13, 15 |
| Cal. Penal Code § 190.4 | 3, 4, 11 |
| Colo. Rev. Stat. Ann. § 18-L.3-1201(1)(D) | 16 |
| Del. Code Ann., Title 11, § 4209(C)(3)A.L | 16 |
| Fla. Stat. § 782.04(1)(a) | 9 |
| Fla. Stat. § 775.082(1) | 9, 10 |
| Fla. Stat. § 921.141(1) (2)(A) | 17 |
| Fla. Stat. § 921.141(3) | 10, 12, 13 |
| Ga. Code Ann. § 17-10-30(C) | 16 |
| Idaho Code § 19-2515(3)(B) | 16 |
| Ind. Code Ann. § 35-50-2-9(A) | 16 |
| K.S.A. § 21-6617(E) | 16 |
| Ky. Rev. Stat. Ann. § 532.025(3) | 16 |
| La. Code Crim. Proc. Ann. Article § 905.324 | 16 |
| Miss. Code Ann. § 99-19-103 | 17 |

TABLE OF AUTHORITIES CITED

| | <u>Page(s)</u> |
|---|----------------|
| <u>STATUTES</u> | |
| Mo. Rev. Stat. Ann. § 565.032.L(1) | 17 |
| Mont. Code Ann. § 46-18-305 | 17 |
| N.C. Gen. Stat. § 15a-2000(C)(1) | 17 |
| Nev. Rev. Stat. § 175.554(4) | 17 |
| N.H. Rev. Stat. Ann. § 630:5-III | 17 |
| Ohio Rev. Code Ann. § 2929.04(B) | 17 |
| Okla. Stat. Ann., Title 21, § 701.11 | 17 |
| Ore. Rev. Stat. § 163.150(1)(A) | 17 |
| S.C. Code Ann. § 16-3-20(A) | 17 |
| S.D. Codified Laws Ann. § 23a-27a-5 | 17 |
| Tenn. Code Ann. § 39-13-204(F) | 17 |
| Tex. Crim. Proc. Code Ann. § 37.071, § (2)(C) | 17 |
| Utah Code Ann. § 76-3-207(2)(A)(iv) | 17 |
| Va. Code Ann. § 19.2-264.4(C) | 17 |
| Wyo. Stat. § 6-2-102(D)(ii)(A), (E)(I) | 17 |
| <u>UNITED STATES CONSTITUTION</u> | |
| U.S. Const. Amendment V | 2, 8, 11 |
| U.S. Const. Amendment VI | 2, 8, 11 |
| U.S. Const. Amendment VIII | 8 |
| U.S. Const. Amendment XIV | 3, 11 |

TABLE OF AUTHORITIES CITED

| | <u>Page(s)</u> |
|--|----------------|
| <u>OTHER AUTHORITIES</u> | |
| California Jury Instruction Criminal (“CALJIC”) No. 8.88 | 4, 15 |
| CDCR Condemned Inmate List at https://www.cdcr.ca.gov/ capital-punishment/condemned-inmate-list-secure-request/ | 16 |
| Death Penalty Information Center at https://files.deathpenaltyinfo.org/ documents/pdf/FactSheet.f1580394413.pdf | 16 |

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of California.

OPINION BELOW

The published opinion of the Supreme Court of California appears at Appendix B with the order modifying the opinion at Appendix C. *See People v. Caro*, 7 Cal.5th 463 [442 P.3d 316; 248 Cal.Rptr.3d 96] (2019).

JURISDICTION

The California Supreme Court issued its opinion in this automatic appeal on June 13, 2019. (App. B.) On September 11, 2019, the California Supreme Court denied a timely filed petition for rehearing, but modified the opinion. (App. C.) On November 21, 2019, Justice Kagan granted a timely filed request for an extension of time until February 7, 2020 to file the petition for writ of certiorari. (App. D.)

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Constitutional Provisions:

The Fifth Amendment to the United States Constitution provides, in pertinent part, that no person shall be deprived of liberty 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 a speedy and public trial, by an impartial jury”

The Eighth Amendment to the United States Constitution provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, “[N]or shall any state deprive any person of life, liberty, or property, without due process of law....”

State Statutory Provisions:

The relevant state statutes include California Penal Code sections 190, 190.1, 190.2, 190.3, and 190.4. These statutes are attached as Appendix E.

STATEMENT OF THE CASE

In November 2001, a jury convicted Socorro Caro of three counts of first degree murder and found true the special circumstance allegation that Ms. Caro committed multiple murder.^{1/} In December 2001, following a penalty phase trial where the prosecution presented evidence in aggravation and Ms. Caro presented evidence in mitigation, the jury returned a verdict of death for each murder conviction. In June 2019, the California Supreme Court affirmed Ms. Caro's convictions and death sentences.

Ms. Caro was convicted and sentenced under California's death penalty law, adopted by an initiative measure approved in 1978. Cal. Pen. Code §§ 190-190.4 (attached as App. E).^{2/} Under this scheme, a person is eligible for the death penalty

^{1/} The victims were Ms. Caro's three children. Ms. Caro was also shot in the head and required emergency neurosurgery. The primary issue at trial was whether Ms. Caro or her husband, the father of the children, was responsible for the shootings. The facts are summarized in the opinion of the California Supreme Court. App. B, pages 2-14.

^{2/} All statutory references are to the California Penal Code unless otherwise
(continued...)

if one or more special circumstances have been alleged and found true by the trier of fact. Section 190.2 provides that “[t]he penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without possibility of parole if one or more of” the listed special circumstances has been found to be true under Section 190.4.

Once the trier of fact has found that one or more special circumstances exist, the court must hold a separate penalty phase hearing to determine whether the punishment will be death or life imprisonment without possibility of parole. Cal. Pen. Code §§ 190.2(a), 190.3, 190.4; *Tuilaepa v. California*, 512 U.S. 967, 975-976 (1994). At that penalty hearing, the parties may present evidence “as to any matter relevant to aggravation, mitigation, and sentence. . . .”^{3/} Cal. Pen. Code § 190.3. Section 190.3 lists the aggravating and mitigating factors the jury is to consider.^{4/}

^{2/}(...continued)
specified.

^{3/} In California, aggravating factors are defined 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.” *People v. Dyer*, 45 Cal.3d 26, 77 (1988); California Jury Instruction Criminal (“CALJIC”) No. 8.88. Ms. Caro’s jury was so instructed. (Clerk's Transcripts, Vol. 11, p. 2227.)

^{4/} Penal Code section 190.3 provides that in determining the appropriate penalty, the trier of fact must take the following factors into account, if relevant:

(a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to section 190.1;

(b) The presence or absence of criminal activity by the defendant which
(continued...)

The trier of fact “shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in” section 190.3, and impose a sentence of death only if it concludes “the aggravating circumstances outweigh the mitigating circumstances.” Cal. Pen. Code § 190.3. If the trier of fact determines that the mitigating circumstances outweigh the aggravating circumstances, it “shall impose

^{4/}(...continued)

involved the use or attempted use of force or violence or the express or implied threat to use force or violence;

(c) The presence or absence of any prior felony conviction;

(d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance;

(e) Whether or not the victim was a participant in the defendant’s homicidal conduct or consented to the homicidal act;

(f) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct;

(g) Whether or not defendant acted under extreme duress or under the substantial domination of another person;

(h) Whether or not at the time of the offense 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;

(i) The age of the defendant at the time of the crime;

(j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor;

(k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.

a sentence of life without the possibility of parole.” *Id.*

No provisions of California’s statutory scheme address the burden of proof applicable to establishing factors in aggravation or mitigation at a capital trial. Under California law, proof beyond a reasonable doubt is not required for any sentencing factors except prior violent criminal activity and prior felony convictions, which are factors (b) and (c) of section 190.3. *See People v. Montes*, 58 Cal.4th 809, 899 (2014).

In 2016, this Court found Florida's death penalty statute unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2006), and *Ring v. Arizona*, 536 U.S. 584 (2002), because the sentencing judge, not the jury, made a factual finding –the existence of an aggravating circumstance-- that was required before the death penalty could be imposed. *See Hurst v. Florida*, 577 U.S. ___ [136 S.Ct. 616, 624, 193 L.Ed.2d 504] (2016). In *Apprendi*, a noncapital sentencing case, and *Ring*, a capital sentencing case, this Court established a bright-line rule: if a factual finding is required to subject the defendant to a greater punishment than that authorized by the jury's verdict, it must be found by the jury beyond a reasonable doubt. *Ring*, 536 U.S. at 589; *Apprendi*, 530 U.S. at 483.

Despite the clarity of this Court’s decisions in this area of the law, the California Supreme Court has repeatedly held:

- The death penalty statutory scheme is not unconstitutional for failing to require the jury to find beyond a reasonable doubt that aggravating factors outweigh mitigating factors;

- California’s death penalty statutory scheme does not run afoul of *Apprendi* and its progeny for failing to so require;
- there is no burden of proof at the penalty phase; and the trial court is under no obligation to instruct the jury that neither party bears the burden of proof.

See e.g., People v. Mora, 5 Cal.5th 442, 519 (2018), *citing People v. Simon*, 1 Cal.5th 98, 149 (2016), *People v. Gamache*, 48 Cal.4th 347, 406 (2010), and *People v. Leonard*, 40 Cal.4th 1370, 1429 (2007).

Notwithstanding these prior rulings from the California Supreme Court, Ms. Caro challenged on appeal the constitutionality of California's death penalty scheme because it does not require as a predicate to imposition of a death judgment that a jury unanimously find beyond a reasonable doubt that an aggravating circumstance has been proved, that the aggravating factors outweigh the mitigating factors, or that death is the appropriate sentence. In raising these argument, Ms. Caro relied upon several cases from this Court, including *Apprendi*, *Ring*, and *Hurst*. The California Supreme Court rejected Ms. Caro's challenges, based on its own prior decisions denying similar claims made in past cases. App. B, pp. 89-91.

Ms. Caro seeks certiorari from this Court because the decision of the California Supreme Court conflicts with these decisions from this Court requiring that any fact that increases the penalty for a crime be found by a jury beyond a reasonable doubt.

REASONS FOR GRANTING THE PETITION

I.

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

A. 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); *see also Mullaney v. Wilbur*, 421 U.S. 684, 698 (1975); *In re Winship*, 397 U.S. 358, 363-64 (1970). These pronouncements closely align with the Eighth Amendment’s reliability requirements. Where proof of a particular fact, other than a prior conviction, exposes a defendant to greater punishment than she would be subject to in the absence of such proof, that fact is an element of the crime which the Fifth and Sixth Amendments require to be proved to a jury beyond a reasonable doubt. *Ring v. Arizona*, 536 U.S. at 609; *Apprendi v. New Jersey*, 530 U.S. at 490; *see also Cunningham v. California*, 549 U.S. 270, 281-82 (2007); *Blakely v. Washington*, 542 U.S. 292, 301 (2004).

As this Court stated 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, quoting *Apprendi*, 530 U.S. at 482-83; *see also Blakely*, 542 U.S. at 305 (invalidating Washington state’s sentencing scheme to the extent it permitted judges to impose “an exceptional sentence” —i.e., a sentence above the “standard range” or statutory maximum authorized by the jury’s verdict— based upon a finding of “substantial and compelling reasons.”).

Applying this mandate in *Hurst*, this Court 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). *Hurst* establishes 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*. *Id.* at 622.

In Florida, a defendant convicted of capital murder is punished by either life imprisonment or death. *Id.* at 620, citing Fla. Stat. §§ 782.04(1)(a), 775.082(1). Under the capital sentencing statute invalidated in *Hurst*, the jury rendered an advisory verdict at the sentencing proceeding with the judge then making the

ultimate sentencing determination. *Id.*, citing Fla. Stat. 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). This Court found that these determinations were part of the “necessary factual finding that *Ring* requires,” and held that Florida’s death penalty statute was unconstitutional under *Apprendi* and *Ring*, because the sentencing judge, not the jury, made a factual finding, the existence of an aggravating circumstance, that was required before the death penalty could be imposed. *Id.* at 622, 624.^{5/}

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 (the trial court rather than the jury has the task of making factual findings necessary to impose death penalty). In

^{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 find “the facts ... [t]hat sufficient aggravating circumstances exist” and “[t]hat there are insufficient mitigating circumstances to outweigh the aggravating circumstances.”

Hurst, 136 S. Ct. at 622 (citations omitted) (emphasis in original).

each case, this Court decided only the constitutionality of a judge, rather than a jury, determining the existence of an aggravating circumstance. *Ring*, 536 U.S. at 588; *Hurst*, 136 S.Ct. at 624.

Yet, *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. This requirement applies not just to the finding of an aggravating factor but to “each *fact necessary to impose a sentence of death.*” *Id.* at 619 (emphasis added).

B. California’s Death Penalty Scheme Violates this Court’s Precedents by Not Requiring that All of the Jury’s Factual Sentencing Findings Be Unanimously Made Beyond a Reasonable Doubt

The procedure for imposing a death sentence under California’s death penalty scheme violates a defendant’s right to proof beyond a reasonable doubt under the Fifth, Sixth and Fourteenth Amendments. Under sections 190.2(a), 190.3, and 190.4(a), once the trier of fact finds that a defendant committed first-degree murder with a true finding for at least one special circumstance, the court must hold a separate penalty phase hearing to determine whether the defendant will receive a sentence of death or a term of life without the possibility of parole. In considering whether to impose the death penalty, the trier of fact must consider a variety of enumerated circumstances of factors in aggravation and mitigation. *See* §190.3.

In California, a death sentence cannot be imposed on a defendant who has

been convicted at the guilt phase of a capital murder trial 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 Ms. Caro's case should have been required to make these factual findings beyond a reasonable doubt, but it was not.

Although California's death penalty statute is different from the statutes at issue in *Hurst* and *Ring* because the jury, not the judge, makes the findings necessary to sentence a defendant to death, California's death penalty statute is similar to the statutes invalidated in Arizona and Florida in ways that are crucial for applying 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 makes two additional findings. First, the sentencer must find the existence of at least one statutorily-delineated circumstance: in California, a "special circumstance" (Cal. Pen. Code § 190.2) and in Arizona and Florida, an "aggravating circumstance" (Ariz. Rev. Stat. § 13-703(G); Fla. Stat. § 921.141(3)). This finding alone, however, does not permit the sentencer to impose a death sentence. The sentencer must also make an additional factual finding: —in California, that "the aggravating circumstances outweigh the mitigating circumstances" (Cal. Pen. 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 issue, this Court has made clear that weighing sentencing factors is part of the sentencer's factfinding within the ambit of *Ring. Id.* 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.

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

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). 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

^{6/} 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. Cal. Pen. Code § 190.3.

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 e.g., State v. Wood*, 580 S.W.3d 566, 585 (Mo. 2019) (“the weighing step is not a factual finding that must be found by the jury beyond a reasonable doubt”); *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 done repeatedly. *See e.g., People v. Karis*, 46 Cal.3d 612, 639-40 (1988); *People v. McKinzie*, 54 Cal.4th 1302, 1362 (2012). Ultimately, 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 the jury). As this Court stated 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. If so, then the required finding must have been made by the jury beyond a reasonable doubt. Because, as discussed above, the California statute requires the jury to make three additional findings before a death sentence may be imposed, these findings must be

made beyond a reasonable doubt.⁷¹

Moreover, the requirement that these determinations be made by a jury beyond a reasonable doubt necessarily includes the requirement that the jury decision be unanimous. *See Apprendi*, 530 U.S. at 477 (“[T]rial by jury has been understood to require that “the truth of every accusation . . . be confirmed by the unanimous suffrage of twelve of the defendant’s equals and neighbors.”); *Rauf v. State*, 145 A.3d at 484-85 (if the finding that the aggravating circumstances outweigh the mitigating circumstances is to be made by a jury, the jury must find so unanimously and beyond a reasonable doubt). Further, the California Constitution, like the Delaware Constitution relied upon in *Rauf*, requires criminal jury verdicts to be unanimous. *People v. Collins*, 17 Cal.3d 687, 693 (1976); *Rauf*, 145 A.3d at 485 n.26 (Holland, J., concurring).

C. 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. *See e.g., People v. Jones*, 3 Cal.5th 583, 618-19 (2017); *People v. Simon*, 1 Cal.5th 98, 149 (2016); *People v. Monterroso*, 34 Cal.4th 743, 796 (2004); *People v. Griffin*, 33 Cal.4th 536,

⁷¹ These factors are: (1) the existence of one or more aggravating factors; (2) that the aggravating factors outweigh the mitigating factors; and (3) that the aggravating factors are so insubstantial that they warrant death instead of the lesser penalty of life without the possibility of parole. Cal. Pen. Code § 190.3; CALCIC 8.88.

595 (2004); *People v. Brown*, 33 Cal.4th 382, 401-02 (2004); *People v. Prieto*, 30 Cal.4th 226, 275 (2003); *People v. Anderson*, 25 Cal.4th 543, 589-90 n.14, (2001).

That court held similarly in Ms. Caro's case. App. B, p. 90. The issue presented here is well-defined and will not benefit from further development in the California Supreme Court or any other state courts. Two additional factors favor a grant of certiorari.

First, as of January 6, 2020, California, with 728 inmates on death row,^{8/} had over one-fourth of the country's total death-row population of 2,639.^{9/} California's refusal to require a unanimous jury to make the factual findings necessary to impose the death penalty beyond a reasonable doubt has a widespread effect on a substantial portion of this country's death row inmates.

Second, of the 32 jurisdictions in the nation with the death penalty, including the federal government and the military, the statutes of 26 states and the federal government provide that aggravating factors must be proved beyond a reasonable doubt.^{10/} The statutes of three additional states contemplate the introduction of

^{8/} See CDCR Condemned Inmate List at <https://www.cdcr.ca.gov/capital-punishment/condemned-inmate-list-secure-request/> (last visited February 3, 2020).

^{9/} See Death Penalty Information Center at <https://files.deathpenaltyinfo.org/documents/pdf/FactSheet.f1580394413.pdf> (last visited February 3, 2020).

^{10/} See Ala. Code 1975 § 13A-5-45(E); Ariz. Rev. Stat. Ann. § 13-751(B); Ark. Code Ann. § 5-4-603; Colo. Rev. Stat. Ann. § 18-L.3-1201(1)(D); Del. Code Ann., Tit. 11, § 4209(C)(3)A.L; Ga. Code Ann. § 17-10-30(C); Idaho Code § 19-2515(3)(B); Ind. Code Ann. § 35-50-2-9(A); K.S.A. § 21-6617(E); Ky. Rev. Stat. Ann. § 532.025(3); La. Code (continued...)

evidence in aggravation, but are silent on the standard of proof by which the state must prove this evidence to the trier of fact.^{11/} However, with the exception of Oregon's Supreme Court,^{12/} the supreme 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.^{13/} California and Oregon are the only two states that refuse to require the state to prove aggravating factors beyond a reasonable doubt before the jury may impose a sentence of death.

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 trier of fact, the jury, to unanimously find beyond a reasonable doubt the factual findings that are a prerequisite to the imposition of the death penalty.

^{10/}(...continued)

Crim. Proc. Ann. Art § 905.3; Miss. Code Ann. § 99-19-103; Mo. Rev. Stat. Ann. § 565.032.L(1); Mont. Code Ann. § 46-18-305; N.C. Gen. Stat. § 15a-2000(C)(1); Nev. Rev. Stat. § 175.554(4); N.H. Rev. Stat. Ann. § 630:5-III; Ohio Rev. Code Ann. § 2929.04(B); Okla. Stat. Ann., Tit. 21, § 701.11; 42 Pa. Cons. Stat. § 9711 (C)(1)(iii); S.C. Code Ann. § 16-3-20(A); S.D. Codified Laws Ann. § 23a-27a-5; Tenn. Code Ann. § 39-13-204(F); Tex. Crim. Proc. Code Ann. § 37.071, Sec. (2)(C); Va. Code Ann. § 19.2-264.4(C); Wyo. Stat. § 6-2-102(D)(ii)(A), (E)(I); 18 U.S.C.A. § 3593(C).

^{11/} See Fla. Stat. § 921.141(1) (2)(A); Ore. Rev. Stat. § 163.150(1)(A); Utah Code Ann. § 76-3-207(2)(A)(iv).

^{12/} See *State v. Longo*, 148 P.3d 892, 905-06 (Or. 2006).

^{13/} See *State v. Steele*, 921 So.2d 538, 540 (Fla. 2005) (abrogated on other grounds in *Hurst*, 136 S.Ct. at 622); *State v. Gardner*, 947 P.2d 630, 647 (Utah 1997); *State v. Brown*, 607 P.2d 261, 273 (Utah 1980).

CONCLUSION

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

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Respectfully submitted,

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