No. 19-8831

In the Supreme Court of the United States

ERIC REID,

Petitioner,

v.

STATE OF ARKANSAS,

Respondent.

On Petition for Writ of Certiorari to the Arkansas Supreme Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Eric Reid murdered his wife and daughter in front of his grandchildren. At Reid's trial for these two capital murders, the trial court permitted his counsel to question prospective jurors at length using hypotheticals to determine whether they would automatically impose the death penalty, consistent with this Court's precedent. *See Morgan v. Illinois*, 504 U.S. 719, 735-36 (1992) (discussing due-process right to "life qualify" the jury by excluding for cause any prospective juror who would automatically vote for the death penalty after rendering a guilty verdict). But the trial court excluded hypothetical questions based on a then-recent school shooting where seventeen children and staff were killed.

The question presented is:

Does *Morgan* require that defense counsel be allowed to question prospective jurors using emotionally charged hypothetical scenarios—such as mass school shootings—that raise specific factual issues unrelated to the case at hand?

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INTRODUCTION

Eric Reid murdered his wife Laura and daughter Mary Ann following an argument about how his daughter parented her two children. Pet. App. 2a. Reid does not now and has not ever denied that he committed these murders. He claims only that the trial court's exclusion of emotionally charged, factually specific hypothetical questions—involving a mass school shooting, in particular—prevented him from eliminating jurors who would automatically vote for the death penalty after rendering a guilty verdict. But Reid's counsel was permitted to probe jurors' opinions on capital punishment and to inquire at length concerning their ability to fairly consider a life sentence, hypothetically assuming a guilty verdict. Reid was convicted and sentenced to death, and the Arkansas Supreme Court affirmed.

Reid's petition presents no compelling reason for this Court's review. Reid alleges no split of authority, and the decision below does not conflict with the holding of *Morgan v. Illinois,* that a capital-murder defendant is entitled to ensure that each juror will fairly consider all facts and circumstances of the case before deciding whether to vote for the death penalty. 504 U.S. 719, 735-36 (1992). The use of emotionally charged hypotheticals that raise issues not involved in a particular case is neither constitutionally required nor helpful for life-qualifying a jury. So this Court should deny Reid's petition for a writ of certiorari.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

STATEMENT

1. Following the argument with Laura and Mary Ann, Reid retrieved his pistol from the nightstand and shot his wife twice in the back and once more as she lay on the ground. Pet. App. 2a. Before the final shot, Laura told Mary Ann and Reid's other daughter, Heather, to run. Reid fired two shots in their direction. The first one missed, but the second struck both Heather—who was eight months pregnant—and Mary Ann. *Id.* Mary Ann tried to run away, but Reid chased after her, shooting her several more times, including one final time as she lay on the ground. Pet. App. 3a. Laura and Mary Ann died from multiple gunshot wounds. *Id.*

Mary Ann's 14-year-old son and 11-year-old daughter witnessed the murders. After shooting their mother, Reid looked at them and quipped that this was what the children got for not eating their vegetables. Reid told his grandson that he was the cause of his mother and grandmother's murders. Law enforcement took Reid into custody, and he admitted shooting his wife and daughter.

2. Reid was charged with two counts of capital murder, and the State sought the death penalty. During the pretrial conference Reid's counsel asked permission to inquire into veniremembers' propensity to impose either the death penalty or life imprisonment by posing hypotheticals that assumed a guilty verdict. For example, "Imagine a hypothetical case in which you heard the evidence and concluded that the defendant was guilty of premeditated and deliberated murder. In that case, would you believe that death is the only appropriate penalty?" The court permitted such inquiries.

Voir dire took two days. Prospective jurors were questioned in groups of three. During questioning of the second group, Reid's counsel asked a hypothetical question concerning what sentence should be imposed for "the worst murder that there could ever be." Supp. App. 1a. In response, a veniremember mentioned the cold-blooded mass murder, only two weeks before, of seventeen children and staff at Marjory Stoneman Douglas High School in Parkland, Florida. *Id.* at 3a. The ensuing discussion proved counterproductive, as it prompted veniremembers to express views on the death penalty through the prism of that school shooting—an emotionally fraught and factually specific scenario completely unrelated to the charges against Reid. *Id.* at 3a-6a.

Before Reid's counsel questioned the next group, the State objected that "[w]hen [defense counsel] asked the question about think about the worst case scenario and it opened up a can of worms about the school shooting in Florida, I think it completely digressed." *Id.* at 6a. The trial court agreed, stating, "I don't even think it effectively gives you any information as far as jury selection goes, frankly, because it's so far afield from what we're dealing with here." *Id.*

Reid's counsel then asked for clarification on the use of hypotheticals and the court responded, "Yeah, you have to shorten that down. If you have a case that is clearly the Defendant is guilty of capital murder and then go from there. I don't want anything to lead us into this school shooting scenario . . . ." *Id.* The court did not restrict Reid's counsel from continuing to ask hypothetical questions to identify prospective jurors who would be unable to fairly consider a life sentence. In fact, several

dozen times throughout the course of voir dire, Reid's counsel, the State, and the trial court variously asked questions seeking to discern whether veniremembers could fairly consider a life sentence, hypothetically assuming a guilty verdict. *See, e.g.*, Supp. App. 7a, 9a-19a.

The State explained to each set of prospective jurors how the punishment phase of the trial would proceed and how a jury could properly arrive at a sentence of either life imprisonment or death. *See, e.g., id.* at 8a-9a. For the jury to impose the death penalty, the State must carry its burden of proving three things beyond a reasonable doubt. It must prove, first, that at least one aggravating circumstance exists. *Id.* Second, it must prove that the aggravating circumstances outweigh any mitigating circumstances. *Id.* And third, it must prove that the aggravating circumstances justify a sentence of death. *Id.* If the State failed to carry its burden at any one of these steps, then life imprisonment was the only proper penalty. *Id.* at 9a-12a.

The jury was selected, and it heard the evidence. After closing arguments, the jury retired to deliberate on Reid's culpability. It returned a unanimous guilty verdict on both capital-murder counts. Reid took the stand during the punishment phase and admitted his guilt in open court. The jury retired again to deliberate on Reid's punishment, and it returned a unanimous sentence of death.

The jury found that the State had proven beyond a reasonable doubt the aggravating circumstances that Reid caused the death of more than one person during the same criminal episode and that he knowingly created a great risk of death to a person other than the victim—in this case, his pregnant daughter Heather. Second, the jury

found beyond a reasonable doubt that these aggravating circumstances outweighed any mitigating circumstances. And, finally, it found beyond a reasonable doubt that the aggravating circumstances justified a sentence of death.

3. The Arkansas Supreme Court affirmed Reid's conviction and sentence. Pet. App. 1a. It denied his petition for rehearing. Reid timely filed his petition for a writ of certiorari.

REASONS FOR DENYING THE PETITION

Reid does not allege a split of authority or any other "compelling reason" for the Court to take up his petition. Sup. Ct. R. 10. Rather, he contends merely that the decision below misapplied the rule of *Morgan v. Illinois* that a defendant on trial for capital murder is entitled to life-qualify a jury by ensuring that each juror will duly consider all facts and circumstances of the case before deciding whether to vote for the death penalty. 504 U.S. 719, 735-36 (1992). But, in fact, over the course of the two-day voir dire, Reid's counsel was permitted to inquire at length concerning jurors' ability to consider a life sentence with an open mind after coming to a guilty verdict. The Arkansas Supreme Court's decision that a trial court may exclude emotionally charged, factually irrelevant hypothetical questions is entirely consistent with *Morgan*. There is no constitutional right to use such questions. And they are not even helpful for life-qualifying a jury.

I. The petition asserts no split of authority but only a purported misapplication of a properly stated rule of law.

Reid does not claim that the decision below conflicts with decisions of other state courts of last resort or federal courts of appeal. In fact, Reid does not claim that there

is any split of authority on the means by which a defendant must be permitted to life-qualify a jury. Rather, Reid asserts only that the decision below conflicts with *Morgan*, which held that a defendant is entitled to ensure that each juror will fairly consider all facts and circumstances of the case before deciding whether to vote for life imprisonment or the death penalty. 504 U.S. at 735-36; Pet. 9-16.

But, far from conflicting with *Morgan*, the decision below correctly applied it. Expressly relying on *Morgan*, the decision below recognized that "[v]oir dire is conducted to identify and eliminate unqualified jurors"; namely, "those who are not able to impartially follow the court's instructions and evaluate the evidence." Pet. App. 4a (citing *Morgan*, 504 U.S. at 729-30). That is a correct statement of law: A juror's inability to impartially consider all the evidence before deciding whether to vote for the death penalty renders him or her unqualified to serve. *Morgan*, 504 U.S. at 735-36.

At most, the petition claims that the decision below misapplied a properly stated rule of law. *See* this Court's R. 10. It thus does not present this Court with any "compelling reason" to take up the question presented. *Id.* This is reason enough to deny the petition.

II. The petition does not show that the decision below is erroneous.

Notwithstanding Reid's failure to account for the considerations governing this Court's review on certiorari, he has not shown any error in the decision below. The Arkansas Supreme Court properly applied this Court's holding in *Morgan* and reached the correct decision.

A. The decision below does not conflict with any decision by this Court.

As this Court required in *Morgan*, the trial court permitted Reid's counsel to inquire into prospective jurors' ability to consider with an open mind all the facts and circumstances of the case before deciding whether to impose life imprisonment or the death penalty. *See* 504 U.S. at 735-36. In fact, unlike in *Morgan*, the trial court below permitted Reid to inquire quite invasively into prospective jurors' views on capital punishment. *See, e.g.*, Supp. App. 7a, 12a-19a . The trial court excluded only voir dire questions based on emotionally charged, factually irrelevant hypotheticals. *Id.* at 6a-7a; Pet. App. 5a. In the decision below, the Arkansas Supreme Court found no error in the exclusion of those questions. Pet. App. 5a. That decision does not conflict with *Morgan*.

The trial court in *Morgan* denied the defendant's request to ask veniremembers the following question: "If you found Derrick Morgan guilty, would you automatically vote to impose the death penalty no matter what the facts are?" 504 U.S. at 723. Instead, the court itself asked the abstract questions: "Would you follow my instructions on the law even though you may not agree?"; and some variation of either, "Do you know of any reason why you cannot be fair and impartial?" or "Do you feel you can give both sides a fair trial?" *Id.* at 723-24.

This Court held that such "general fairness and 'follow the law' questions . . . are [not] enough to detect those in the venire who automatically would vote for the death penalty." *Id.* at 734-35. Instead, the Court ruled that Morgan "was entitled, upon his request, to inquiry discerning those jurors who, even prior to the State's case in

chief, had predetermined the terminating issue of his trial, that being whether to impose the death penalty." *Id.* at 736.

Unlike the defendant in *Morgan*, Reid was not limited to abstract fairness and "follow the law" questions. The trial court below never restricted Reid's counsel from inquiring, in a definite and concrete way, whether prospective jurors would automatically impose the death penalty upon rendering a guilty verdict. Over the course of the two-day voir dire, the trial court permitted Reid's counsel to probe prospective jurors' opinions using countless iterations of the inquiry the defendant in *Morgan* was denied. *See, e.g.*, Supp. App. 12a-19a.

Reid is wrong to suggest that the decision below held that Arkansas trial courts may flout *Morgan* by excluding such questions. Pet. 11. Arkansas law requires voir dire, in part, "for the purpose of discovering bases for challenge for cause." Ark. R. Crim. P. 32.2(a). Besides asking questions that are necessary for the trial court to determine a prospective juror's qualifications, the court is required to "permit such additional questions by the defendant or his attorney" that are "reasonable and proper." *Id.* 32.2(b). And the decision below, citing *Morgan*, plainly recognized that "[v]oir dire is conducted to identify and eliminate unqualified jurors" through challenges for cause. Pet. App. 4a (citing *Morgan*, 504 U.S. at 729-30).

Further, because a juror's inability to consider a life sentence after a guilty verdict renders him or her per se unqualified to serve in a capital-murder case, inquiry concerning veniremembers' views on this issue is plainly "reasonable and proper" under Arkansas law. Ark. R. Crim. P. 32.2(b). Arkansas' voir dire framework comports

with *Morgan*'s requirement that a juror who "intends to impose the death penalty without regard to the nature or extent of mitigating evidence if the defendant is found guilty of a capital offense . . . should be disqualified for cause." *Morgan*, 504 U.S. at 738-39.

Because the decision below does not conflict with *Morgan*, this Court should deny Reid's petition.

B. The decision below is correct.

This Court should also deny the petition because the decision below is correct. The Constitution does not require that juries be life-qualified through questions involving emotionally fraught, factually specific scenarios not involved in the case at hand. In fact, such questioning is not even helpful for the task of life-qualifying a jury.

The decision below affirmed the trial court's exclusion of factually specific hypotheticals after Reid's counsel asked several questions concerning what punishment prospective jurors would impose for "the worst murder that there could ever be." Pet. App. 5a; Supp. App. 1a. Because the shooting at Marjory Stoneman Douglas High School in Parkland, Florida—which resulted in the murder of seventeen children and staff—had occurred only days beforehand, it was fresh on jurors' minds. *Id*. at 3a-4a. A veniremember mentioned it, and the suggestion derailed the voir dire. The prospective jurors viewed Reid's counsel's subsequent inquiry through the prism of that factually unrelated event, saying things like "I wouldn't give the [school shooter] a trial," "I'm sorry if the kid had a bad background or whatever. It doesn't excuse what

he did," and "You've taken seventeen lives . . . . You have no right to your own." *Id.* at 3a-6a.

Before the next round of questioning, the State correctly objected that "[w]hen [Reid's counsel] asked the question about think about the worst case scenario and it opened up a can of worms about the school shooting in Florida, I think it completely digressed." *Id.* at 6a. The trial court sustained the objection, instructing Reid's counsel that "we need to focus" the hypotheticals because "I don't want anything to lead us into this school shooting scenario." *Id.* But it expressly permitted Reid's counsel to continue using hypothetical questions that assumed a guilty verdict for capital murder when inquiring into the prospective jurors' ability to consider a life sentence with an open mind. *Id.* at 6a-7a.

Consequently, during the next round of questioning, Reid's counsel asked the following hypothetical:

> Let's—I want to talk about a situation, not this case, not this case at all, but a situation where there is absolutely, positively no question at all whether or not the murder was premeditated and deliberated. None at all. And the only—nothing. No issue at all. I mean, no issues about the victims, anything else like that, it's just—it was a premeditated, deliberated murder. The definition that was read by Mr. Graham. In that situation where there was a premeditated, deliberated murder, I want to know what your feelings are about the imposition of the death penalty. Do you believe that death would be the appropriate sentence in that case?

Id. at 7a. The trial court permitted this hypothetical and others because they were reasonable and proper under the law. Ark. R. Crim. P. 32.2(b). Yet Reid inexplicably contends that the trial court prevented him from asking juror Robert Phillips the following hypothetical:

> I would like you to imagine a hypothetical case. Not this case. In this hypothetical case, you heard the evidence and were convinced the defendant was guilty of premeditated, intentional murder. Meant to do it and did it. It wasn't an accident, self-defense, defense of another, heat of passion, or insanity. He meant to do it, premeditated it, and then did it. For that defendant, do you believe that the death penalty is the only appropriate penalty?

Pet. 15 (quotation and citation omitted). Reid cites nothing in the record showing that his counsel desired to ask Phillips this particular hypothetical but was prevented from doing so. He also offers no explanation for how this hypothetical materially differs from any of the others that his counsel asked Phillips or other prospective jurors.

In reality, the trial court's restriction did not cause Reid's counsel's failure to ask this hypothetical of Phillips. Rather, any omission is better explained by the fact that Reid's counsel conducted Phillips's examination late on the second full day of voir dire. *See* Supp. App. 17a (Reid's counsel making the excuse that "it's late" after the trial court corrected his misstatement of law during Phillips's examination).

But even though Reid's counsel never asked this precise hypothetical, he did specifically inquire whether Phillips would automatically vote to impose the death penalty upon rendering a guilty verdict. *Id.* at 12a-13a. Reid's counsel was permitted to examine Phillips at length, and nothing that would disqualify him came to light. *See, e.g.*, *id.* at 12a-19a. This was in addition to the State's own thorough questioning of Phillips on the same issues. *See, e.g.*, *id.* at 8a-11a. The trial court's voir dire procedure did not preclude Reid from exposing any purported bias on Phillips's part.

In any case, Reid's argument concerning Phillips is a distraction from the decision below, which affirmed the trial court's restriction on emotionally charged hypothetical scenarios—such as the mass school shooting—that raised specific factual issues not involved in Reid's case. Pet. App. 5a.

The decision below was correct to affirm the trial court. The trial court permitted questions by Reid's counsel precisely to the extent that they effectively sought to discern "those jurors who, even prior to the State's case in chief, had predetermined . . . whether to impose the death penalty." *Morgan*, 504 U.S. at 736. Nothing in the Constitution or this Court's precedents requires the use of emotionally fraught, factually irrelevant hypotheticals to ascertain whether prospective jurors can fairly and impartially impose a sentence. *See id.* at 729 ("The Constitution . . . does not dictate a catechism for voir dire, but only that the defendant be afforded an impartial jury.").

In fact, the use of such hypotheticals is not even helpful for ascertaining prospective jurors' fairness or impartiality. Veniremembers entertaining a specific factual scenario unrelated to the case at hand will naturally tend to respond to questions in terms specific to that scenario. *See* Supp. App. 3a-6a. Thus fixated, their answers will not effectively indicate an ability to fairly adjudicate the different factual scenario involved in the case at hand. The trial court in this case noted this fact, telling Reid's counsel, "I don't even think it effectively gives you any information as far as jury selection goes, frankly, because it's so far afield from what we're dealing with here." *Id*. at 6a. Indeed, prospective jurors' outrage at the calculated, cold-blooded mass shooting at Marjory Stoneman Douglas High School does not reliably shed light

on their ability to fairly and impartially consider an appropriate punishment in a domestic murder scenario like Reid's.

Reid contends that his counsel was denied the ability to use the "Colorado method" of voir dire, which, as Reid's secondary source explains, "puts the prospective juror in the place of having been personally convinced that a hypothetical defendant is guilty of capital murder." Matthew Rubenstein, *Overview of the Colorado Method of Capital Voir Dire*, Champion, November 2010, 18, at 20; *see* Pet. 2. But Reid was not denied the ability to use this method. Throughout the course of the two-day voir dire, Reid's counsel was permitted to probe jurors' opinions on capital punishment and to inquire at length concerning their ability to fairly consider a life sentence, hypothetically assuming a guilty verdict. *See, e.g.*, Supp. App. 7a, 12a-19a.

Further, even Reid's "Colorado method" does not require the sort of irrelevant, emotionally fraught hypotheticals that the trial court excluded here. Rather, Reid's secondary source explains that one using that technique "incorporates *relevant case-specific* facts" into hypothetical questions. Rubenstein, *Overview of the Colorado Method of Capital Voir Dire*, at 20 (emphasis added). "If, for example, the case involved one prisoner serving a life sentence who killed a correctional officer, the question would include this fact: 'In this hypothetical case, you heard the evidence and were convinced that the defendant, who was a prisoner serving a life sentence, intentionally killed a correctional officer.'" *Id.* at 21. The decision below did not restrict Reid's ability to use such relevant, case-specific hypotheticals. Pet. App. 4a-5a. So even if the Court were inclined to consider whether a capital-murder defendant is

entitled to employ Reid's "Colorado method" in voir dire, this case would not be the proper vehicle for reviewing that question.

Using emotionally fraught, factually irrelevant hypotheticals is neither constitutionally required nor does it accurately gauge prospective jurors' ability to fairly consider a life sentence. Reid's voir dire was constitutionally sufficient to ensure a fair and impartial jury. Therefore, this Court should deny the petition.

CONCLUSION

This Court should deny the petition for certiorari.

Respectfully submitted,

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