No. 21-8046

In the Supreme Court of the United States

JOSEPH MARTIN DANKS,

Petitioner,

v.

MICHAEL MARTEL, WARDEN OF CALIFORNIA STATE PRISON AT SAN QUENTIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIFTH DISTRICT

BRIEF IN OPPOSITION

ROB BONTA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
LANCE E. WINTERS
Chief Assistant Attorney General
JAMES WILLIAM BILDERBACK II
Senior Assistant Attorney General
SAMUEL P. SIEGEL
Deputy Solicitor General
JUSTAIN P. RILEY*
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 210-7744
Justain.Riley@doj.ca.gov
*Counsel of Record**

CAPITAL CASE

QUESTIONS PRESENTED

In 1990, petitioner Joseph Danks killed his cellmate while serving an indeterminate sentence for six prior murders. The jury convicted him of first degree murder and voted to impose the death penalty. After Danks exhausted his direct review, he filed a petition for writ of habeas corpus in the California Supreme Court. In that petition, he argued that the Eighth Amendment prohibited imposing the death penalty because the State was aware of, and failed to treat, his mental illness, and that the State's failure to treat him was a but-for cause of his murder of his cellmate. The California Supreme Court denied that petition in 2010. Danks then filed a new petition in state court, in which he made the same argument but asserted that there was new evidence and new law relevant to his Eighth Amendment claim. The superior court concluded that the petition was successive under California law; the court of appeal denied Danks's request for a certificate of appealability; and the California Supreme Court summarily denied review. The questions presented are:

1. Whether this Court lacks jurisdiction to consider the merits of Danks's constitutional claim because the state courts denied the petition on independent and adequate state law grounds.

2. Whether the Eighth Amendment bars capital punishment under the circumstances of this case.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

In re Joseph Martin Danks, No. S271569 (January 5, 2022) (petition for review denied) (state collateral review) (this case below).

In re Joseph Martin Danks, No. S196398 (May 22, 2019) (transferred to Kern County Superior Court) (state collateral review).

In re Joseph Martin Danks, No. S121004 (September 15, 2010) (petition for writ of habeas corpus denied) (state collateral review).

People v. Joseph Martin Danks, No. S032146 (February 2, 2004) (convictions and death sentence affirmed) (automatic appeal).

California Court of Appeal, Fifth District:

In re Joseph Martin Danks, No. F083411 (October 22, 2021) (certificate of appealability denied) (state collateral review) (this case below).

Kern County Superior Court:

In re Joseph Martin Danks, No. HC016213A (September 10, 2021) (transferred from Calif. Supreme Court No. S196398) (state collateral review) (this case below).

People v. Joseph Martin Danks, No. SC 44842 (April 2, 1993) (judgment of death).

United States District Court for the Eastern District of California:

Joseph Martin Danks v. Broomfield, No. 1:11-cv-00223-JLT (matter stayed; petition for writ of habeas corpus pending).

Supreme Court of the United States:

Joseph Martin Danks v. California, No. 04-5852 (Nov. 1, 2004) (certiorari denied).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

CONSTITUTIONAL PROVISIONS

STATEMENT

1. While serving an indeterminate sentence for six prior murders, petitioner Joseph Danks murdered his cellmate while the two were housed together at the California Correctional Institution in Kern County. *People v. Danks*, 32 Cal. 4th 269, 273-275 (2004). Danks's mental health was a central issue in both cases. *Id.* at 275-290.

Danks was convicted of the six prior murders for stabbing homeless people to death in January 1987. *Danks*, 32 Cal. 4th at 275. Danks admitted the stabbings on the day of his arrest. *Id.* He did not know his victims, and downplayed the seriousness of his actions because the victims were "'bums' or 'transients.'" *Id.* Nine days after Danks's arrest, he was referred to an outpatient unit for mentally ill prisoners, where he was diagnosed with a psychotic disorder and received psychotropic medication. Pet. App. a15-a16. During subsequent trial proceedings, the court found Danks not competent to stand trial, and Danks was sent to a state hospital. *Id.* at a13-a14, a16. While there he was diagnosed with a psychotic disorder. *Id.* at a15-a16. With treatment, Danks regained his competency and trial resumed. *Id.* Ultimately, Danks pleaded guilty to the six murders in exchange for a 156-years-to-life sentence. *Id.* at a14.

During Danks's incarceration, he was transferred back to the state hospital due to his worsening mental health. Pet. App. a16. He stayed there from June 1989 to March 1990. *Id.* Danks was diagnosed with paranoid

schizophrenia and anti-social personality disorder. *Id.* With treatment, including medication, Danks's mental state and behaviors improved. *Id.* Danks was transferred back to a county jail, where a forensic psychologist evaluated him and concluded that he did not "manifest any delusional or psychotic thinking." *Danks*, 32 Cal. 4th at 285-286. It appears, however, that Danks's medication regimen was in flux in March 1990 due to a serious reaction to some of the medication and Danks's unwillingness to take other medication. *Id.* Danks was transferred to the California Correctional Institution on August 23, 1990. *Id.* at 273.

Less than one month later, Danks strangled and killed his cellmate, Walter Holt. *Danks*, 32 Cal. 4th at 273-274. Danks immediately confessed to correctional officers. *Id*. He was charged with first degree murder (and one other crime not relevant here), and the prosecution sought the death penalty, alleging the special circumstance that Danks had previously been convicted of six first degree murders. *Id.* During the trial proceedings, Danks assaulted a correctional officer, and stabbed both a fellow inmate and one of his defense attorneys. Pet. App. a15. At the close of the guilt phase, in separate proceedings, the jury returned guilty verdicts, and found the special circumstances true. *Id.* at 273.

During the penalty phase, Danks presented multiple opinions from mental health experts regarding his mental state at the time of the offense, as well as before and after the offense. *Danks*, 32 Cal. 4th at 277-287. The experts

opined that Danks suffered from paranoid schizophrenia and anti-social personality disorder from an early age; that those conditions resulted in a propensity to fixate on and commit violent acts; and that medication had an ameliorative effect on his mental state and violent behavior. *Id*. at 283-287. Danks supplemented these opinions with anecdotal evidence including lay observations of some of his bizarre behaviors since he was a child. *Id*. at 277-281. He also presented evidence that the state prison system, which was his sole provider of mental healthcare around the time of the offense, was aware that Danks's mental condition made him violent before he killed Holt, and that medication made him less so. *Id*. at 282-284. The jury returned a verdict of death.

2. a. The California Supreme Court affirmed Danks's conviction and the judgment of death. *See Danks*, 32 Cal. 4th at 316. This Court denied a petition for writ of certiorari. *Danks v. California*, 543 U.S. 961 (2004). Meanwhile, Danks filed a state habeas petition in the California Supreme Court, which that court denied on September 15, 2010. Pet. App. a3; *see also In re Joseph Martin Danks*, 2010 Cal. LEXIS 8926 (2010). Among other things, that petition included a claim that Danks's capital offense was the foreseeable product of the state penal system's deliberate indifference to his need for adequate treatment of his mental condition, and that the Eighth Amendment barred execution under such circumstances. Pet. App. a4-a5, a21-a24. Danks did not seek review of that decision in this Court.

Two developments relevant here occurred after the California Supreme Court denied Danks's habeas petition in 2010. First, this Court issued its decision in *Brown v. Plata*, 563 U.S. 493 (2011). In that case, a three-judge district court ordered California to reduce the population in its prisons to remedy the constitutionally-deficient medical and mental healthcare that California provided to inmates. *Id.* at 499-502. On appeal, this Court upheld the three-judge court's order, reasoning that reduction of the prison population was an appropriate remedy to reduce overcrowding in order to improve the delivery of medical and mental health care to California inmates. *Id.* at 545.

Second, in 2011, the California Office of Administrative Hearings granted the California Department of Corrections and Rehabilitation's petition to involuntarily administer anti-psychotic medication to Danks. Pet. App. a4, a21. At a hearing on that petition, a state psychiatrist opined that Danks had suffered from mental illness since adolescence, and that he suffered from schizophrenia at least since his incarceration at San Quentin (where he was imprisoned after he killed Holt). *Id.* at a23-a24. That psychiatrist did not opine on Danks's mental state at the time he killed Holt. *Id.* at a24. The psychiatrist concluded that Danks should be involuntarily medicated given his history of mental illness, the psychiatrist's experience treating Danks between 2009 and 2011, and observations made during Danks's incarceration after 1990. *Id.*

b. Danks filed a second habeas petition in the California Supreme Court on September 13, 2011. Pet. App. a4. He again argued that his murder of Holt was "the direct and avoidable result of the State's wanton violation of the Eighth and Fourteenth Amendments," *id.* at a4, and that the proceedings that led to the involuntary medication order and this Court's decision in *Plata* constituted new circumstances to support his claim. *Id.* at a4, a12-a13. The California Supreme Court transferred the petition to the superior court, which denied relief in a reasoned decision on September 10, 2021. *Id.* at a1-a25. The superior court explained that Danks had raised this claim in his prior petition, and that the claim had previously been "denied on the merits." *Id.* at a5. The court noted that "[i]t has long been the rule" under California law that a claim raised and rejected in a prior habeas petition is "procedurally barred." *Id.* As a result, the court held, Danks's claim "could be denied as successive," unless Danks could "demonstrate a basis for bringing these claims yet again." *Id.* The court recognized that it could consider renewed claims under certain circumstances, including (as relevant here) that there has been a "change in the law[]" or that there has been "newly discovered evidence." *Id.* at a11. Danks invoked both exceptions in the superior court, arguing that this Court's decision in *Plata* was a "change in the law" and that the involuntary medication order was a "change in the facts." *Id.* a8.

The superior court rejected both arguments. Pet. App. a12-a24. It reasoned that the *Plata* decision did not "conclude[] that the medical and

mental health care provided to California inmates fell below standards of decency that inheres in the Eighth Amendment." *Id.* at a19. Instead, the Court "merely affirmed [d]istrict [c]ourt decisions that found that the reduction of prisoners is an appropriate remedy to reduce prison overcrowding and improve the delivery of medical and mental health care to California inmates." *Id.* The superior court recognized that a district court had "found 'overwhelming evidence of the systemic failure to deliver necessary care to mentally ill inmates' in California prisons" in 1995. *Plata*, 563 U.S. at 506 (quoting *Coleman v. Wilson*, 912 F. Supp. 1282, 1316 (E.D. Cal. 1995)). But because that finding had been made eight years before Danks filed his first habeas petition in 2003, the superior court held that nothing in *Plata* (or the litigation that led to that decision) constituted "'new law'" that justified a departure from the bar on raising claims that had been previously rejected. Pet. App. a20.

Moreover, the superior court reasoned that, under California law, only changes in the law that "affect the petitioner" can avoid a "finding that the [second petition] is successive." Pet. App. a19. But Danks "failed to explain how the *Brown v. Plata* [decision] personally affected him." *Id.* at a20. *Plata* "did not involve individual claims . . . but merely a claim that the prison medical system was so defective that some number of prisoners will inevitably be injured by incompetent medical care." *Id.* (citing *Plata*, 563 U.S. at 552 (Scalia, J., dissenting)). *Plata* did not "itself provide a personal connection" to

Danks's care; and his petition "did not contain an allegation that there was a lack of medication and treatment for Petitioner that was caused by overcrowding of the prison facility." *Id.*

The superior court also rejected Danks's assertion that "testimony provided in connection" with the State's request for an involuntary medication order constituted "'new' evidence" that supported Danks's Eighth Amendment claim. Pet. App. a21. The court held that the State's evidence to involuntarily medicate Danks in 2009 did not bear on his mental state at the time he killed Holt. *Id.* at a23-a24. The psychiatrist who testified at that proceeding had only treated Danks since 2009; had reviewed only those medical records post-dating Holt's murder; and "did not opine as to Petitioner's mental state at the time of the killing of Walter Holt." *Id.* at a24. In any event, the court reasoned, this evidence would have been cumulative: "overwhelming evidence that Petitioner was a violent person who was intent on continuing his acts of violence" was introduced at trial, and the evidence introduced in support of the request for an involuntary medication order was "not of such decisive force and value that it would have more likely than not changed the outcome of the trial." *Id.* at a22.

c. As required under California law, Danks then asked the California Court of Appeal to grant a certificate of appealability to allow for further review of his Eighth Amendment claim. *See* Pet. App. a26 (citing Cal. Penal Code § 1509.1(c)). The court of appeal denied that request. *Id.* at a26-a29. It agreed

with the superior court that Danks's Eighth Amendment claim was successive, and that no "new factual and legal predicates" supported an exception from the rule barring such claims. *Id.* at a28. Although Danks's "involuntary psychotropic medications and the Supreme Court's *Plata* decision" were "unavailable prior to the [California] Supreme Court's review of [his] original habeas petition decided in 2010," the court of appeal held that Danks had failed to "establish how those considerations affect [his] substantial rights[.]" *Id.* The court noted that Danks's mental health was "investigated and litigated in both of [his] underlying trials," and that it was "well-known during prior litigation that appellant had a long history of mental illness dating to his childhood years." *Id.* at a29. Neither the evidence introduced by the State in the 2011 proceedings nor the *Plata* decision rendered his claims "non-successive for purposes of appealability" under California law. *Id.*

Danks sought review of the denial of the certificate of appealability in the California Supreme Court, which denied his request. Pet. App. a30.

ARGUMENT

Danks asks this Court to grant review to decide whether the Eighth Amendment prohibits imposing the death penalty on the ground that the State was deliberately indifferent to his mental illness and that failure to treat was purportedly a "but for" cause of his cellmate's murder. Pet. 12. But the lower courts denied habeas review of his claim on procedural state law grounds: The superior court concluded that Danks's petition was successive, and the court of

appeal concluded that he had not made the showing required to grant a certificate of appealability on that issue. Because the state courts relied on independent and adequate state grounds to deny relief, this Court lacks jurisdiction to consider Danks's Eighth Amendment claim. *See Coleman v. Thompson*, 501 U.S. 722, 729 (1991). In any event, even if this Court had jurisdiction to consider the substance of Danks's Eighth Amendment claim, Danks's arguments lack merit.

1. This Court lacks jurisdiction to consider the merits of Danks's Eighth Amendment claim because the lower courts resolved Danks's habeas claim on state-law procedural grounds. It is black-letter law that this Court "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." *Coleman*, 501 U.S. at 729. This rule "applies whether the state law ground is substantive or procedural." *Id.* And where, as here, the "last reasoned opinion on the claim explicitly imposes a procedural default," this Court "presume[s] that a later decision rejecting the claim did not silently disregard that bar and consider the merits." *Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991); *see also Kernan v. Hinojosa*, 578 U.S. 412, 414-415 (2016) (per curiam) (similar). In the context of "direct review of a state court judgment," this doctrine is "jurisdictional": because this Court has "no power to review a state law determination that is sufficient to support the judgment, resolution of any independent federal ground for the decision

could not affect the judgment and would therefore be advisory." *Coleman*, 501 U.S. at 729.

Under California law, it has been firmly established since at least 1993 that a state habeas petitioner generally may not seek relief "based on the same grounds as those of a previously denied petition." *In re Reno*, 55 Cal. 4th 428, 496 (2012); *see also In re Clark*, 5 Cal. 4th 750, 760 (1993). That bar on "successive" petitions does not apply if there has been a "change in the facts or law substantially affecting the rights of the petitioner." *Id.*[1] And when a superior court dismisses a state habeas petition as successive in a capital case, a petitioner may appeal that dismissal only after securing a certificate of appealability from the superior court or the court of appeal. Cal. Penal Code § 1509.1(c). To secure a certificate of appealability after the dismissal of a successive petition, the petitioner must "make a substantial showing that the claim, although presented in a subsequent petition[,] was not successive" under California law. *In re Friend*, 11 Cal. 5th 720, 747 (2021).[2]

---

[1] *See also In re Friend*, 11 Cal. 5th 720, 731 (2021) (California courts generally may not "consider[] successive petitions" unless the petitioner justifies the failure to present the claims in an earlier petition because, for example, "the claim depends on newly available evidence or on a change in the law"); Cal. Penal Code § 1509(d).

[2] A court may review a successive claim if the petitioner alleges that he is "actually innocent of the crime of which he or she was convicted or is ineligible for the sentence." Cal. Penal Code § 1509(d); *see also id.* (listing examples of ineligibility for a death sentence, including being under the age of 18 at the time of the crime); *In re Friend*, 11 Cal. 5th at 728-729. If a successive petition

Here, the superior court concluded that Danks's Eighth Amendment claim was successive. Pet. App. a1-a25. Indeed, in the lower courts Danks admitted that his Eighth Amendment claim was "initially presented to the California Supreme Court as part of the 440-page petition for writ of habeas corpus" filed in December 2003 and denied in September 2010. *Id.* at a28. And the superior court rejected the argument that the claim was not successive on the basis of "new law" and "new evidence." *See id.* at a21-a25. The court reasoned that this Court's decision in *Brown v. Plata*, 563 U.S. 493 (2011), was not "new law" because the issue of adequacy of the mental healthcare treatment in California's prisons had been addressed in a separate decision issued eight years before Danks filed his first habeas petition. Pet. App. a20. The court also reasoned that the opinion did not "provide a personal connection" to Danks, and that as a result *Plata* did not "allow the application of the exception to" the bar on successive petitions. *Id.* at a20. With respect to Danks's "new evidence" argument, the court acknowledged that the facts regarding Danks's involuntary medication in 2011 were not available at the time of trial or his first habeas petition. *Id.* at a21. But the court concluded

---

is denied on the merits, a petitioner may seek a certificate of appealability by showing "both a substantial claim for relief" and a "substantial claim that the requirements of" Penal Code Section 1509(d) have been met. Cal. Penal Code § 1509.1(c). Danks did not invoke those grounds for avoiding the successiveness bar. On the contrary, he urged the California Supreme Court to grant review to determine whether a habeas petitioner is entitled to have the merits of his claim reviewed "without the need to demonstrate factual innocence or ineligibility for the death penalty." Pet. for Review at 14, *In re Joseph Martin Danks*, No. S271569 (Cal. Nov. 1, 2021).

that the evidence was "cumulative" to the expert testimony and other evidence presented during Danks's penalty phase trial. *Id.*

On these bases, the superior court concluded that Danks's Eighth Amendment claims were "procedurally barred as successive claims." Pet. App. a25. Danks sought review of that decision, but the court of appeal denied his request for a certificate of appealability, concluding that his asserted "factual and legal changes" did not render his Eighth Amendment claim "non-successive for purposes of appealability." *Id.* at a29. And when Danks sought review of that conclusion, the California Supreme Court summarily denied his request. *Id.* at a30.

Because issues of state law are "sufficient to support the judgment below," *Coleman*, 501 U.S. at 729, this Court would lack jurisdiction to reach the merits of Danks's claim. *Cf. Walker v. Martin*, 562 U.S. 307, 316-317 (2011). Danks does not acknowledge that the only issues actually decided by the lower courts involved applications of state procedural bars on successive petitions, much less explain why the independent and adequate state grounds doctrine does not apply here. The petition should be denied on this basis alone.

2. Even if this Court had jurisdiction to consider the substance of Danks's Eighth Amendment claim, his arguments would not warrant this Court's review. Danks argues that the decision to impose the death penalty is "grossly disproportionate to his moral and individual culpability," Pet. 13, because the State knew of his mental illness and failed to treat it, and the failure to

adequately treat him was purportedly a "but for" cause of his murder of his cellmate, *id.* at 17. This argument lacks merit for several reasons.

a. As an initial matter, Danks has not established the premise of his claim: that the State's treatment of him was a "but for" cause of his decision to murder his cellmate. Pet. 17. The record here demonstrates that prison officials treated Danks's mental illness for years before he murdered his cellmate in 1990. Nine days after Danks was first arrested for killing six people in January 1987, he was referred to an outpatient unit for mentally ill prisoners, where he was diagnosed with a psychotic disorder and received psychotropic medication. Pet. App. a15-a16; *see also People v. Danks*, 32 Cal. 4th 269, 273-275 (2004). Danks was also treated at a state hospital from June 1989 through March 1990. *Danks*, 32 Cal. 4th at 283. Danks was later transferred back to jail, where a forensic psychologist evaluated him and concluded that he did not "manifest any delusional or psychotic thinking" (although that same doctor noted that Danks had recently been taken off of medication because he experienced an "adverse reaction"). *Id.* at 285-286; *see also id.* at 285 (noting that Danks had been "unwilling[] in 1990 to take medication in the Los Angeles County jail"). Shortly thereafter, Danks was transferred to the prison, where he murdered his cellmate. *Id.* at 273-274.

Danks does not point to anything about this course of treatment demonstrating that he would not have murdered his cellmate had he been treated differently. Instead, he cites the testimony introduced in support of

the State's request for an involuntary medication order and this Court's decision in *Plata*. *See* Pet. 15-17. But neither establishes that the State's treatment of Danks was the but-for cause of his cellmate's murder in 1990. The evidence introduced in support of the State's effort to involuntarily medicate Danks in 2011 showed only that there was a "direct connection" between his "mental illness and his threating and aggressive statements and behaviors" *at that time*. Pet. App. a23. It did not speak to his mental health when he murdered his cellmate in 1990; indeed, the psychiatrist who testified at the 2011 hearing "did not opine as to [Danks's] mental state at the time of killing[.]" *Id.* at 24. In *Plata*, this Court "merely affirmed [d]istrict [c]ourt decisions that found that the reduction of prisoners is an appropriate *remedy* to reduce prison overcrowding and improve the delivery of medical and mental health care to California inmates." *Id.* at a19 (emphasis added). And although a district court previously "found 'overwhelming evidence of the systemic failure to deliver necessary care to mentally ill inmates' in California prisons," *Plata*, 563 U.S. at 506 (quoting *Coleman v. Wilson*, 912 F. Supp. 1282, 1316 (E.D. Cal. 1995)), that court did not find that the State had been deliberately indifferent to the serious medical needs of any particular inmate (except the class representatives). On the contrary, the court acknowledged that some

inmates had received "timely medication and/or appropriate monitoring." *Id.* at 1310.[3]

b. In any event, Danks has not established that imposing the death penalty violates the Eighth Amendment under the circumstances of this case. Under this Court's precedents, the Eighth Amendment

> require[s] sentencers to consider relevant mitigating circumstances when deciding whether to impose the death penalty. And those cases afford sentencers wide discretion in determining 'the weight to be given relevant mitigating evidence.' But those cases do not require the sentencer to make any particular factual finding regarding those mitigating circumstances.

Jones v. Mississippi, 141 S. Ct. 1307, 1316 (2021) (internal citation omitted).

Here, the jury heard evidence and argument about Danks's mental health, including his assertion that the state failed to adequately treat him and that this failure was a but-for cause of the murder. *See Danks*, 32 Cal. 4th at 277-287; Trial Transcript 2849-2859; *see also supra* pp. 2-3. Danks's counsel also argued that if the jury "felt the prison was responsible, at least in part, for letting a mentally ill person have a cell mate, and that this wouldn't have happened but for that, and you felt that that outweighed the aggravation," it "could stop right there and vote for life without parole" instead of the death

---

[3] Danks suggests that the California Supreme "took 'as true'" his allegations of deliberately indifferent care when it denied his earlier petition in 2010. Pet. 2. That is incorrect: when that court summarily denies a habeas petition, it does "not accept wholly conclusory allegations," and "'review[s] the record of the trial to assess the merits of the petitioner's claims.'" *Cullen v. Pinholster*, 563 U.S. 170, 188 n.12 (2011).

penalty. Trial Transcript 2880. And in determining whether the death penalty was warranted, the jury was instructed to consider the circumstances of the crime, whether Danks was under the influence of extreme mental or emotional disturbance, whether he could conform his conduct to the requirements of law, whether he was impaired as a result of mental disease or defect, or any other circumstance which extenuated the gravity of the crime. *Id.* at 2903-2905. These procedures comport with this Court's Eighth Amendment precedents. *See Jones*, 121 S. Ct. at 1316 (the Eighth Amendment does not require the "sentencer to make any particular factual findings" regarding mitigating circumstances).

In arguing otherwise, Danks cites several decisions of this Court establishing that States may not limit presentation or consideration of certain individualized mitigation evidence, and other decisions establishing that the death penalty is categorically barred in some circumstances. Pet. 13-17. But the first set of decisions requires only that the sentencer be allowed to hear and consider all relevant mitigating evidence—which the jury did in this case. *See, e.g.*, *Woodson v. North Carolina,* 428 U.S. 280, 304 (1976) (imposition of death penalty "requires consideration of the character and record of the individual offender and the circumstances of the particular offense"). And with respect to the second set of decisions, Danks does not point to anything in his case that would put him in the class of inmates for whom the death penalty is categorically prohibited. He does not, for example, identify an "objective

indicia of consensus, as expressed in particular by the enactments of legislatures" that the death penalty is inappropriate in the circumstances like the ones presented here. *Roper v. Simmons*, 543 U.S. 551, 564 (2005). Nor has he pointed to any consideration that would lead this Court to conclude "in the exercise of [its] own independent judgment" that the "death penalty is a disproportionate punishment" for offenders like Danks. *Id.*

c. Finally, Danks argues that certiorari is warranted to ensure that "federal courts' factual findings are respected by state courts." Pet. 21. More specifically, Danks argues that, in denying his petition and his request for a certificate of appealability, the lower courts "fail[ed] to acknowledge the full weight of this Court's *Plata* decision," *id.* at 23, which he argues "establish[es] the accuracy" of his allegation that the State violated his "right to minimal psychiatric care at the time of the capital offense," *id.* at 21. Neither *Plata* nor *Coleman* establish that the State failed to adequately treat Danks in 1990. *See supra* pp. 14-15. On the contrary, the State treated his mental illness for years before he committed his capital crime, including by sending him to a state hospital for nine months shortly before he murdered his cellmate. *See supra* p. 13.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: August 19, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
LANCE E. WINTERS
Chief Assistant Attorney General
JAMES WILLIAM BILDERBACK II
Senior Assistant Attorney General
SAMUEL P. SIEGEL
Deputy Solicitor General

s/ Justain P. Riley
JUSTAIN P. RILEY
Deputy Attorney General