No. 22-7233

In the Supreme Court of the United States

JUSTIN HEATH THOMAS,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

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

BRIEF IN OPPOSITION

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April 21, 2023

CAPITAL CASE
QUESTION PRESENTED

Whether a California jury that has already found unanimously and beyond a reasonable doubt that the defendant committed first degree murder under special circumstances that render him eligible for the death penalty must also, in order to return a penalty verdict of death, find beyond a reasonable doubt that specific aggravating factors exist, and that those aggravating factors outweigh the mitigating circumstances.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

People v. Thomas, No. S161781, (January 26, 2023) (this case below) (entering judgment).

In re Thomas on Habeas Corpus, No. S277456 (state collateral review) (pending).

Riverside County Superior Court

People v. Thomas, No. RIF086792 (March 7, 2008) (this case below) (entering judgment).

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STATEMENT

1. In September 1992, petitioner Justin Heath Thomas, a methamphetamine dealer, lured his supplier Rafael Noriega to a remote location under the pretext of a drug deal. Pet. App. 2-3.[1] Once there, Thomas stole a duffel bag of drugs from Noriega and then fatally shot the victim multiple times for being a "Narc." *Id.* at 3-5. Thomas then concealed the victim's body, which was discovered over a month later. *Id.* at 4-5. Shortly after the killing, Thomas relocated to Texas, where he bragged about the details of his crimes to several acquaintances. *Id.* at 5-6.

Less than one year later, Thomas fatally stabbed Regina Hartwell, after Hartwell threatened to tell the authorities that Thomas had been selling drugs. Pet. App. at 1, 8. He placed Hartwell's body in the back of her car, drove it to a rural area, doused it in gasoline, and set it on fire. *Id.* at 8. Thomas was convicted in a Texas court of Hartwell's murder, and sentenced to life in prison. *Id.* at 1.

In 2001, Thomas was charged with first degree murder of Noriega, with the special circumstances of murder committed during the commission of a robbery, and murder committed by a defendant previously convicted of murder (regarding Hartwell's killing). Pet. App. 1; *see* Cal. Penal Code §§ 187(a), 190.2(a)(2), (17)(A). The jury convicted Thomas of first degree murder and

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[1] The page numbers correspond to the pagination appearing on the slip opinion issued by the California Supreme Court, which is reproduced as Appendix A in the petition appendix.

unanimously found both special circumstances true beyond a reasonable doubt, thereby qualifying him for the death penalty. Pet. App. 1; *see* Cal. Penal Code § 190.2.

At the penalty phase of the trial, the trial court instructed the jurors that in deciding whether Thomas should be punished by death or life in prison without parole, they were to "consider, take into account and be guided by the applicable factors of aggravating and mitigating circumstances"; that they were not to "simply count the number of aggravating and mitigating factors and decide based on the higher number alone"; that they were "free to assign whatever moral or sympathetic value you find appropriate to each individual factor and to all of them together"; and 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." 17 Clerk's Transcript (CT) 4503. Consistent with state law, the trial court also instructed the jury that no juror could consider evidence of Thomas's prior conviction or violent conduct in aggravation unless the juror was satisfied beyond a reasonable doubt that Thomas was convicted of that crime or committed the unadjudicated criminal acts. 17 CT 4473, 4488-4498. The jury returned a verdict of death, and the trial court sentenced Thomas to death. Pet. App. 1-2

2. The California Supreme Court affirmed Thomas's conviction and death sentence on direct appeal. Pet. App. 2. As relevant here, the court explained: "[a]s defendant acknowledges, we have consistently rejected the argument that *Apprendi* and its progeny require the jury to find that aggravating factors outweighed mitigating factors beyond a reasonable doubt." *Id*. at 109. The court further reiterated its previous holding that "[t]here is no federal constitutional requirement, either under the Fifth, Sixth, Eighth, or Fourteenth Amendments, that the jury make unanimous findings regarding the aggravating factors." *Id*. at 110.

ARGUMENT

Thomas argues that California's death penalty system violated his rights guaranteed by the Fifth, Sixth, and Fourteenth Amendments because state law does not require the penalty-phase jury to find the existence of aggravating factors beyond a reasonable doubt, or to find beyond a reasonable doubt that those aggravating factors outweigh the mitigating factors. Pet. 10-31. This Court has repeatedly denied review in cases presenting the same or similar questions, and there is no reason for a different result here.[2]

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[2] *See, e.g.*, *Pineda v. California*, 2023 WL 2357360 (2023) (No. 22-6514); *Ramirez v. California*, 2023 WL 2563354 (2023) (No. 22-6445); *Mataele v. California*, 143 S. Ct. 751 (2023) (No. 22-6088); *Bracamontes v. California*, 143 S. Ct. 739 (2023) (No. 22-6071); *Poore v. California*, 143 S. Ct. 494 (2022) (No. 22-5695); *Gonzalez v. California*, 142 S. Ct. 2719 (2022) (No. 21-7296); *Scully v. California*, 142 S.Ct. 1153 (2022) (No. 21-6669);

1. A California death sentence depends on a two-stage process prescribed by California Penal Code Sections 190.1 through 190.9. At the first stage, the guilt phase, the jury initially determines whether the defendant committed first degree murder. Under California law, that crime carries three potential penalties: a prison term of 25 years to life with the possibility of parole, a prison term of life without the possibility of parole, or death. Cal. Penal Code § 190(a). The default sentence is a prison term of 25 years to life. The penalties of death or life without parole may be imposed only if, in addition to finding

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Johnsen v. California, 142 S. Ct. 353 (2021) (No. 21-5012); *Vargas v. California*, 141 S. Ct. 1411 (2021) (No. 20-6633); *Caro v. California*, 140 S. Ct. 2682 (2020) (No. 19-7649); *Mitchell v. California*, 140 S. Ct. 2535 (2020) (No. 19- 7429); *Capers v. California*, 140 S. Ct. 2532 (2020) (No. 19-7379); *Erskine v. California*, 140 S. Ct. 602 (2019) (No. 19-6235); *Mendez v. California*, 140 S. Ct. 471 (2019) (No. 19-5933); *Bell v. California*, 140 S. Ct. 294 (2019) (No. 19-5394); *Gomez v. California*, 140 S. Ct. 120 (2019) (No. 18-9698); *Case v. California*, 139 S. Ct. 1342 (2019) (No. 18-7457); *Penunuri v. California*, 139 S. Ct. 644 (2018) (No. 18-6262); *Henriquez v. California*, 139 S. Ct. 261 (2018) (No. 18-5375); *Wall v. California*, 139 S. Ct. 187 (2018) (No. 17-9525); *Brooks v. California*, 138 S. Ct. 516 (2017) (No. 17-6237); *Becerrada v. California*, 138 S. Ct. 242 (2017) (No. 17-5287); *Thompson v. California*, 138 S. Ct. 201 (2017) (No. 17-5069); *Landry v. California*, 138 S. Ct. 79 (2017) (No. 16- 9001); *Mickel v. California*, 137 S. Ct. 2214 (2017) (No. 16-7840); *Jackson v. California*, 137 S. Ct. 1440 (2017) (No. 16-7744); *Rangel v. California*, 137 S. Ct. 623 (2017) (No. 16-5912; *Johnson v. California*, 577 U.S. 1158 (2016) (No. 15-7509); *Cunningham v. California*, 577 U.S. 1123 (2016) (No. 15-7177); *Lucas v. California*, 575 U.S. 1041 (2015) (No. 14-9137); *Boyce v. California*, 574 U.S. 1169 (2015) (No. 14-7581); *DeBose v. California*, 574 U.S. 1051 (2014) (No. 14-6617); *Blacksher v. California*, 565 U.S. 1209 (2012) (No. 11-7741); *Taylor v. California*, 562 U.S. 1013 (2010) (No. 10-6299); *Bramit v. California*, 558 U.S. 1031 (2009) (No. 09- 6735); *Morgan v. California*, 552 U.S. 1286 (2008) (No. 07-9024); *Cook v. California*, 552 U.S. 976 (2007) (No. 07-5690); *Huggins v. California*, 549 U.S. 998 (2006) (No. 06-6060); *Harrison v. California*, 546 U.S. 890 (2005) (No. 05-5232); *Smith v. California*, 540 U.S. 1163 (2004) (No. 03-6862); *Prieto v. California*, 540 U.S. 1008 (2003) (No. 03-6422).

the defendant guilty of first degree murder, the jury also finds true one or more statutorily enumerated special circumstances. *Id.* §§ 190.2(a), 190.4. The jury's findings on these special circumstances are also made during the guilt phase of a capital defendant's trial, and a "true" finding must be unanimous and beyond a reasonable doubt. *Id.* §§ 190.4(a), (b).

During the guilt phase of Thomas's trial, the jury found him guilty of first degree murder and found the robbery-murder and prior-murder special circumstances to be true. Pet. App. 1-2. The jury's findings were unanimous and made under the beyond-a-reasonable doubt standard. 17 CT 4390, 4395, 4398.

The second stage of California's death penalty trial process, the penalty phase, proceeds under California Penal Code Section 190.3. During the penalty phase, the jury hears evidence which it is allowed to consider "as to any matter relevant to aggravation, mitigation, and sentence, including but not limited to" certain specified topics. Cal. Penal Code § 190.3. "In determining the penalty," the jury must "take into account any" of a list of specified factors "if relevant"—including "[t]he circumstances of the crime of which the defendant was convicted" and "[a]ny . . . circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." *Id.* The jury need not agree unanimously on the existence of a particular aggravating circumstance, nor must it find the existence of such a circumstance (with the exception of prior unadjudicated violent criminal

activity and prior felony convictions) beyond a reasonable doubt. *See People v. Romero*, 62 Cal. 4th 1, 56 (2015); *People v. Gonzales*, 52 Cal. 4th 254, 328 (2011). If the jury "concludes that the aggravating circumstances outweigh the mitigating circumstances," then it "shall impose a sentence of death." Cal. Penal Code § 190.3. If it "determines that the mitigating circumstances outweigh the aggravating circumstances," then it "shall impose a sentence of confinement in state prison for a term of life without the possibility of parole." *Id.*

2. Thomas contends California's capital sentencing statute is unconstitutional because it does not require the jury during the penalty phase to find the existence of an aggravating factor beyond a reasonable doubt, or to find that the aggravating factors outweigh the mitigating factors beyond a reasonable doubt. Pet. 10-31. But the Constitution does not impose such requirements. In support of his contentions, Thomas primarily relies (Pet. 10-24) on the Sixth and Fourteenth Amendment rule that "[i]f 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 v. Arizona*, 536 U.S. 584, 602 (2002) (applying rule to Arizona death penalty); see also *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). Pet. 10-20. California law is consistent with this rule because once a jury finds unanimously and beyond a reasonable doubt that a defendant has committed first degree murder with a special circumstance, the

maximum potential penalty prescribed by statute is death. *See People v. Prince*, 40 Cal. 4th 1179, 1297-1298 (2007); *see generally Tuilaepa v. California*, 512 U.S. 967, 971-972 (1994) ("To render a defendant eligible for the death penalty in a homicide case, we have indicated that the trier of fact must convict the defendant of murder and find one 'aggravating circumstance' (or its equivalent) at either the guilt or penalty phase"). Imposing that maximum penalty on a defendant once these jury determinations have been made unanimously and beyond a reasonable doubt thus does not violate the Constitution.

In arguing to the contrary, Thomas cites *Hurst v. Florida*, 577 U.S. 92, 94-95, 98, 100 (2016). Pet. 10-16, 20, 25. Under the Florida system considered in *Hurst*, after a jury verdict of first degree murder, a convicted defendant was not "eligible for death," 577 U.S. at 99-100, unless the judge further determined that an enumerated "aggravating circumstance[] exist[ed]," Fla. Stat. § 921.141(3). The judge was thus tasked with making the "'findings upon which the sentence of death [was] based,'" 577 U.S. at 96 (quoting Fla. Stat. § 921.141(3))—determinations that were essentially questions of fact, *see* Fla. Stat. § 921.141(5) (listing aggravating circumstances, such as whether the crime was committed with a purpose of pecuniary gain). This Court held that Florida's system suffered from the same constitutional flaw that Arizona's had in *Ring*: "The maximum punishment" a defendant could receive without judge-made findings "was life in prison without parole," and the judge "increased"

that punishment "based on [the judge's] own factfinding." *Hurst*, 577 U.S. at 99.

In contrast, under California law, a defendant is eligible for a death sentence only after the jury finds true at least one of the special circumstances in California Penal Code Section 190.2(a). *See McKinney v. Arizona*, 140 S. Ct. 702, 707-708 (2020) ("Under *Ring* and *Hurst*, a jury must find the aggravating circumstance that makes the defendant death eligible."). That determination, which the jury must agree on unanimously and beyond a reasonable doubt, is part of how California fulfills the "constitutionally necessary function" of "circumscrib[ing] the class of persons eligible for the death penalty." *Zant v. Stephens*, 462 U.S. 862, 878 (1983).

The jury's subsequent consideration of aggravating and mitigating factors at the penalty phase fulfills a different function: that of providing an "individualized determination . . . at the selection stage" of who among the eligible defendants deserves the death penalty. *Zant*, 462 U.S. at 879; *see People v. Moon*, 37 Cal. 4th 1, 40 (2005) ("The penalty jury's principal task is the moral endeavor of deciding whether the death sentence should be imposed on a defendant who has already been determined to be 'death eligible' as a result of the findings and verdict reached at the guilt phase."). Such a determination involves a choice between a greater or lesser authorized penalty—not any increase in the maximum potential penalty. *See Jones v. United States*, 526 U.S. 227, 249 (1999).

Kansas v. Carr, 577 U.S. 108 (2016), effectively forecloses any argument that determinations concerning the existence of aggravating or mitigating factors at the penalty selection phase must be made beyond a reasonable doubt. As *Carr* reasoned, it is possible to apply a standard of proof to the "eligibility phase" of a capital sentencing proceeding, "because that is a purely factual determination." *Id*. at 119. In contrast, it is doubtful whether it would even be "possible to apply a standard of proof to the mitigating-factor determination (the so-called 'selection phase' of a capital-sentencing proceeding)," because "[w]hether mitigation exists . . . is largely a judgment call (or perhaps a value call): what one juror might consider mitigating another might not." *Id.*; *see, e.g.*, *People v. Brown*, 46 Cal. 3d 432, 456 (1988) (California's sentencing factor regarding "[t]he age of the defendant at the time of the crime" may be either a mitigating or an aggravating factor in the same case: the defendant may argue for age-based mitigation, and the prosecutor may argue for aggravation because the defendant was "old enough to know better").

This Court further observed that "the ultimate question of whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy," and "[i]t would mean nothing . . . to tell the jury that the defendants must deserve mercy beyond a reasonable doubt." 577 U.S. at 119. That reasoning leaves no room for Thomas's argument that the Constitution

requires a capital sentencing jury to determine the relative weight of the aggravating and mitigating factors beyond a reasonable doubt.[3]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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[3] Thomas's claim that "[o]ther states have held that *Ring* and *Apprendi* require the jury to find beyond a reasonable doubt that the aggravating factors outweigh the mitigating factors and death is the appropriate penalty" is incorrect. Pet. 29. All but two of the identified States have held that *Ring* and *Apprendi* do not apply to the weighing of aggravating and mitigating factors. *See State v. Wood*, 580 S.W.3d 566, 584-585 (Mo. 2019); *Ex parte Alabama*, 223 So. 3d 954, 965-966 (Ala. 2016); *State v. Belton*, 74 N.E.3d 319, 337 (Ohio 2016); *Nunnery v. State*, 263 P.3d 235, 250 (Nev. 2011). The Colorado Supreme Court previously interpreted *Ring* to require proof beyond a reasonable doubt for the weighing of aggravating and mitigating factors, but that holding arose from Colorado's unique use of weighing to determine *eligibility* for the death penalty. *See Woldt v. People*, 64 P.3d 256, 265-66 (Colo. 2003). The Connecticut Supreme Court has also held that the beyond a reasonable doubt standard applies to the weighing determination, but as a matter of state constitutional law. *State v. Rizzo*, 266 Conn. 171, 224-243 (Conn. 2003).