No. 20-6684

In the Supreme Court of the United States

DANIEL T. SILVERIA,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

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

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether the California Supreme Court correctly held that petitioner's decision not to introduce possible mitigating evidence did not violate the Constitution.

2. Whether the admission of aggravating evidence against petitioner's co-defendant at a joint penalty trial rendered petitioner's death sentence proceedings fundamentally unfair.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

People v. Silveria & Travis, No. S062417 (Aug. 13, 2020) (this case below).

California Superior Court, Santa Clara County:

People v. Silveria & Travis, No. 155731 (June 13, 1997) (judgment of death).

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STATEMENT

1. On January 28, 1991, petitioner Daniel Silveria and four others robbed and killed James Madden, who was working as the manager of a craft store in Santa Clara County. Pet. App. A at 2. Petitioner's group waited until the store closed and Madden was alone before surprising Madden as he tried to leave. *Id.* at 3. They forced Madden to open the store's safes and then bound him to a chair with duct tape. *Id.* at 4. Petitioner and one other member of the group, John Travis, repeatedly stabbed Madden with a knife; petitioner also used a stun gun on Madden. *Id.* Another man, Christopher Spencer, slit Madden's throat with a knife. *Id.*

Petitioner and Travis were arrested together the next day. Pet. App. A at 4. The police found a stun gun, duct tape, and $694 in cash in petitioner's car. *Id.* Petitioner and Travis each confessed to their involvement in Madden's murder. *Id.* at 2. Petitioner also admitted his involvement in several other crimes, including the burglary of a gun store in which a member of his group obtained the stun gun used in Madden's murder. *Id.*

2. Petitioner and Travis were tried jointly to separate juries. Pet. App. A at 1.[1] At the guilt phase, each defendant's confession to the police was played for his jury. *Id.* at 115. The juries convicted petitioner and Travis of the robbery and murder of Madden and the burglary of the craft store. *Id.* at 1.

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[1] Spencer was tried separately and also sentenced to death. *People v. Spencer*, 5 Cal. 5th 642 (2018).

The juries also found true allegations that petitioner and Travis had committed the murder during the course of a robbery and burglary and with the personal use of a knife. *Id.* Petitioner's jury also found him guilty of two other robberies. *Id.*

At the penalty phase, petitioner's and Travis's juries deadlocked, and the trial court declared mistrials. Pet. App. A at 2. Petitioner and Travis were retried before a single jury. *Id.* They moved for severance and presented expert testimony from a former Texas judge and a California defense attorney, each of whom testified that it was more difficult for juries to make an individualized determination about the appropriate penalty when two capital defendants are tried together. *Id.* at 52-54. The trial court denied the severance motions, noting that it found the expert testimony unpersuasive. *Id.* at 54.

In denying petitioner's severance motion, the trial court also ruled that the prosecutor could not introduce petitioner's confession to the police in his case-in-chief because of concerns that it would implicate Travis's Confrontation Clause rights. Pet. App. A at 115 (citing *Bruton v. United States*, 391 U.S. 123, 127-128 (1968)). For the same reason, while the trial court allowed the prosecution to introduce portions of petitioner's testimony from the first penalty trial, it barred any reference in that testimony to petitioner's confession. *Id.* at 116. Petitioner had made his own motion to introduce his confession, but withdrew it after the trial court's rulings. *Id.* Petitioner also

requested permission to elicit testimony from the police officer who interviewed petitioner on the night of his arrest about whether petitioner had admitted to participating in the murder. *Id.* The trial court granted petitioner's request, but petitioner did not ask the officer that question at trial. *Id.* at 117.

The jury returned death verdicts for petitioner and Travis. Pet. App. A at 2.

3. The California Supreme Court unanimously affirmed petitioner's and Travis's convictions and death sentences in the same opinion. Pet. App. A at 2, 189.[2] The court rejected petitioner's claim that the trial court abused its discretion when it denied petitioner's (and Travis's) motion seeking separate penalty retrials, and that the joint penalty retrial violated due process. *Id.* at 52-59. The court observed that, under California law, there is a "'strong preference for joint trials,' including joint penalty phase trials." *Id.* at 54. It explained that joint trials may enable a jury "to assign fairly the respective responsibilities of each defendant in the sentencing" and conserve judicial resources. *Id.* (quoting *Kansas v. Carr*, 577 U.S. 108, 125 (2016)). It also recognized that a conviction or sentence could be reversed if the joint trial resulted in a "gross unfairness" that "deprive[d] the defendant of a fair trial or due process of law." *Id.* at 55, 57 (citations and quotation marks omitted). But

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[2] Travis has filed a separate petition for a writ of certiorari. *See* Pet., *Travis v. California*, No. 20-7252. That petition raises issues distinct from those raised by the instant petition, *see id.* at i; the State's response is presently due on April 28, 2021.

it held that no such unfairness had occurred in this case. *Id.* It reasoned that although the penalty-phase jury heard evidence about Travis's culpability, this Court's decision in *Carr* foreclosed petitioner's claim that the "mere admission of evidence that might not otherwise have been admitted in a severed proceeding" rendered his trial fundamentally unfair. *Id.* at 58 (citations and quotation marks omitted).

The California Supreme Court also rejected petitioner's claim that the trial court had erred by excluding statements made on the night of the arrest in which petitioner "acknowledged his involvement in and expressed remorse for Madden's murder." Pet. App. A at 114; *see also id.* at 114-119. The court recognized that "[t]he Eighth and Fourteenth Amendments require that the sentencer in a capital case not be precluded from considering any relevant mitigating evidence, that is, evidence regarding any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Id.* at 102 (citation and quotation marks omitted). But it concluded that petitioner had not been denied that opportunity in this case. *Id.* at 117-118. Instead, it held that petitioner had withdrawn his motion to introduce his confession "apparently to avoid opening the door to other portions of [petitioner's] statement to police being admitted." *Id.* at 115. It also noted that petitioner could have, but did not, ask the officer who arrested him to testify about a portion of his confession. *Id.* at 116. In the alternative, the court held that

even if there had been error with respect to the omission of petitioner's confession, petitioner suffered no prejudice as a result. *Id.* at 118.

The court also rejected petitioner's claim that the trial court erred by limiting the testimony of his psychiatric expert about his abuse as a child. Pet. App. A at 126-139. The court concluded that the parties had agreed to limit the expert's testimony; and that there was no indication in the record that trial counsel had "curtail[ed his] desired examination" of the expert in any way. *Id.* at 134. It further held that petitioner was not prejudiced by any limitation with respect to his expert's testimony in light of the other evidence showing that petitioner had been abused as a child, and how that abuse affected his conduct on the day of the murder. *Id.* at 135-137.

ARGUMENT

Petitioner asks this Court to grant certiorari to review his claims that the penalty retrial court's joinder of the sentencing cases and denial of his severance motion violated his constitutional rights by barring him from presenting certain evidence in mitigation. The California Supreme Court properly rejected those claims. Petitioner's fact-bound contentions do not merit further review.

1. As this Court has recognized, "[j]oint proceedings are not only permissible but are often preferable when the joined defendants' criminal conduct arises out of a single chain of events." *Kansas v. Carr*, 577 U.S. 108, 125 (2016). That is because "[j]oint trials may enable a jury 'to arrive more

reliably at its conclusions regarding the guilt or innocence of a particular defendant and to assign fairly the respective responsibilities of each defendant in the sentencing.'" *Id.* Indeed, forbidding joinder would have the "perverse[]" effect of "*increas*[*ing*] the odds of wanton and freakish imposition of death sentences." *Id.* (citation, quotation marks, and brackets omitted); *see also id.* ("Better that two defendants who have committed the same crimes be placed side-by-side to have their fates determined by a single jury."). While co-defendants might have "'antagonistic' theories of mitigation," that concern does not overcome the State's "'interest in promoting the reliability and consistency of its judicial process.'" *Id.* And any concern about prejudice can be cured with a limiting instruction. *Id.*

2. Petitioner recognizes that joint trials are not per se unconstitutional. Pet. 10. But he urges this Court to grant review, arguing that the California Supreme Court "misunderstood the scope" of this Court's decision in *Carr* and "failed to recognize" differences between this case and that one. *Id.* at 9. Contrary to petitioner's assertion, however, no "mitigating evidence was kept from the jury solely because of the joint trial before a single jury." *Id.* at 10.

a. Petitioner first argues that the decision to try him alongside Travis "stripped" petitioner of his right to testify. Pet. 12. As a threshold matter, petitioner forfeited this claim by failing to raise it in the courts below.[3] And it

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[3] *See Campbell v. Louisiana*, 523 U.S. 392, 403 (1998) (with only "very rare

would fail in any event. As petitioner acknowledges, he chose not to testify at the penalty retrial—against his counsel's advice—because he "had a 'strong conscientious position' that he 'did not want to be seen or heard to be testifying against Mr. Travis.'" *Id.* at 9 (quoting RT 23962, 23965).[4] Petitioner cites no case suggesting that a defendant has a constitutional right to be neither "seen [n]or heard" testifying against a co-defendant.

b. Petitioner next contends that his confession to the police on the night of his arrest—which he asserts was a "quick, sincere acknowledgment of guilt and his statements of regret and shame"—was improperly excluded because of the decision to try him and Travis jointly. Pet. 12. But it was petitioner, and not the trial court, who made the decision to keep the jury from hearing his confession. As the California Supreme Court concluded, petitioner withdrew his motion to introduce that statement "apparently to avoid opening the door to other portions" of his statement. Pet. App. A at 116. While petitioner now claims that he withdrew his motion because the trial court ruled that the *prosecution* could not introduce his confession over concerns that it might violate his co-defendant's Confrontation Clause rights, *see* Pet. 12 & n.9, petitioner made no such claim in the trial court. Nor did he challenge the trial court's ruling on the prosecutor's motion to introduce his confession when it

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exceptions," this Court does not consider claims that were neither "addressed by or properly presented to the state court that rendered the decision [it] ha[s] been asked to review") (citation and quotation marks omitted).

[4] "RT" refers to the reporter's transcript.

was issued. Petitioner also could have, but did not, introduce at least part of his confession through other means: the trial court would have allowed petitioner to ask the officer who arrested him whether petitioner admitted to participating in the robbery and murder. *Id.* at 117. But petitioner did not ask that question at trial. *Id.*

In any event, petitioner suffered no prejudice. Pet. App. A at 118.[5] Had petitioner introduced the favorable portions of his confession, it would have opened the door to other, unfavorable statements, including his "initial repeated denials of involvement in Madden's murder." *Id.* And petitioner introduced other evidence showing both that he acknowledged his involvement in the crimes, and of his remorse. *Id.* at 118-119. Among other things, he introduced his own testimony from the first penalty-phase trial stating that he felt "'horrible'" and "'sick'" about his participation in the murder, and that he "'should be held accountable for what he did.'" *Id.* at 118-119 (brackets omitted). Petitioner also elicited testimony from several other witnesses, including his foster mother, former girlfriend, a correctional officer, and a reverend, each of whom told the jury about his repeated expressions of remorse. *Id.* at 119. On this record, there is no reasonable probability that the outcome of petitioner's penalty-phase retrial would have been different had petitioner introduced his confession. *Id.* at 118.

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[5] Petitioner acknowledges the California Supreme Court's prejudice ruling, *see* Pet. 12 n.9, but does not appear to argue that it was incorrect.

c. Petitioner's claim that the joint trial impermissibly limited the testimony of his psychiatric expert Dr. Harry Kormos, Pet. 13, also fails. After the trial court raised concerns that any reference by Dr. Kormos to petitioner's testimony during the first penalty-phase trial might implicate Travis's Confrontation Clause rights, the parties met to find a mutually agreeable solution. Pet. App. A at 126-128. Based on that discussion, the parties agreed that Dr. Kormos would not testify about Madden's murder on either direct or cross-examination. *Id.* at 128. Petitioner's counsel assured the trial court that he was amenable to this resolution, and that he did not need to "ask the doctor questions about his diagnosis subsequent to the time of the crime." *Id.* at 128-129. Contrary to petitioner's assertion, Dr. Kormos was not prevented from testifying about something "significant." Pet. 13. Indeed, nothing in the record suggests that petitioner's trial counsel "curtail[ed his] desired examination" of Dr. Kormos in any way. Pet. App. A at 134.

And any limitation on that testimony was "harmless beyond a reasonable doubt." Pet. App. A at 135.[6] Petitioner introduced evidence about the topics that he argues Dr. Kormos was improperly prevented from testifying about. Dr. Kormos himself testified extensively about petitioner's childhood abuse, opining that a person with petitioner's history of abuse would be "impaired in

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[6] Petitioner does not appear to dispute the California Supreme Court's conclusion that there was no prejudice with respect to the exclusion of any of Dr. Kormos's testimony.

his ability to make rational choices later in life," and "'would indeed suffer from severe psychiatric and psychological problems.'" *Id.* at 135-136. And petitioner elicited testimony about his rehabilitation after the murder through other witnesses, including from correctional officers, a spiritual leader, and his foster mother. *Id.* at 136-137.

3. Finally, there is no merit to petitioner's claim that he "suffered prejudice from the spillover effect of aggravating evidence introduced against" his co-defendant. Pet. 14. As this Court recognized in *Carr*, the Eighth Amendment is "inapposite when each defendant's claim is, at bottom, that the jury considered evidence that would have been admitted in a severed proceeding, and that the joint trial clouded the jury's consideration of mitigating evidence like 'mercy.'" 577 U.S. at 123. Instead, the Due Process Clause governs assertions that the introduction of certain evidence—including evidence that goes to a co-defendant's culpability—was "'unduly prejudicial.'" *Id.* To prevail on such a claim, a defendant must show that the evidence at issue rendered the trial "fundamentally unfair"; that it so "infected the sentencing proceeding with unfairness as to render the jury's imposition of the death penalty a denial of due process." *Id.* at 123-124 (citation and quotation marks omitted).

Petitioner cannot make that showing here. While the jury heard evidence about Travis's plan to escape from jail, and about a letter Travis wrote to a member of the Manson family in which he stated that he "enjoyed every

moment" of stabbing Madden, the trial court instructed the jury to limit its consideration of this evidence to its determination about Travis's sentence. Pet. App. A at 59. That limiting instruction "cure[d] any risk of prejudice." *Carr*, 577 U.S. at 125 (citation and quotation mark omitted). And the "mere admission of evidence that might not otherwise have been admitted in a severed proceeding" did not render petitioner's trial fundamentally unfair. *Id.* at 124; *see also id.* at 122-126 (no due process violation where jury heard testimony that one co-defendant "corrupted" the other, or that the jury saw one defendant but not the other in handcuffs, where trial court gave limiting instruction).

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: March 22, 2021

Respectfully submitted

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