CASE NO. 21-5672

IN THE SUPREME COURT OF THE UNITED STATES

WAYNE C. DOTY,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED FOR REVIEW

Whether Petitioner's death sentence violates the Due Process Clause of the Fourteenth Amendment, because finding the sufficiency of aggravating factors, as weighed against mitigating circumstances, are not fundamental equivalents of elements of a higher offense and do not require these determinations be made beyond a reasonable doubt.

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OPINION BELOW

The Florida Supreme Court's decision challenged by Petitioner is reported at *Doty v. State*, 313 So. 3d 573 (Fla. 2020).

JURISDICTION

The Florida Supreme Court affirmed Petitioner's death sentence on February 13, 2020, following resentencing. On April 15, 2021, Florida's High Court denied Petitioner's motion for rehearing. *See Doty v. State*, 315 So. 3d 633 (Fla. 2021). Chapter 28 U.S.C. § 1257 authorizes this

Court's jurisdiction to review the Florida Supreme Court's final decision and limits it to federal constitutional issues that were properly presented. In accordance with this Court's Orders of March 19, 2020, and July 19, 2021, the Petition is timely. *See* Sup. Ct. R. 13.3; 28 U.S.C. § 2101(d).

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Wayne C. Doty, an inmate at Florida State Prison, confessed and pled guilty to killing fellow inmate, Xavier Rodriguez in 2012.[1] *Doty v. State*, 170 So. 3d 731, 733-34 (Fla. 2015). Following a hearing pursuant to *Faretta v. California*, 422 U.S. 806 (1975), the trial court permitted Petitioner to proceed *pro se* with standby counsel. In addition, Petitioner conducted his own investigation prior to entering his guilty plea. *Doty*, 170 So. 3d at 734.

The facts of the case are summarized as follows: While serving a life sentence for the shooting death of his former employer, Doty planned and executed the brutal murder of a fellow inmate, Xavier Rodriguez.

1/ Petitioner was indicted along with co-defendant William Wells. Their cases were severed. *Doty v. State*, 170 So. 3d 731, 734 (Fla. 2015).

Doty and co-defendant Wells worked as runners together and were given privileges, including access to an interview room where Rodriguez was murdered. The evidence showed, Doty began planning the murder after Rodriguez called him names and stole tobacco, obtained and concealed a homemade knife. Doty and Wells "carefully watched" the officers to determine the best time to kill Rodriguez and then lured him to an interview room available to the runners. *Doty*, 170 So. 3d at 734. Doty and Wells "tricked" Rodriguez into letting them bind his hands, after which, Doty place the victim in a chokehold from behind, until Rodriguez's body went "slack." *Id.* Doty dropped Rodriguez to the floor, pulled his body around a desk, then began to stab him with the homemade knife. Doty commented, he was hoping to pull out Rodriguez's heart "to make sure he was really dead," but the knife was too dull. *Id.* Doty and Wells then tied a ligature around Rodriguez's neck, smoked a cigarette and took showers. After they were sure that Rodriguez was dead, Doty and Wells notified a corrections officer and confessed to the crime. *Id.*

In 2013, the jury recommended Petitioner be sentenced to death by

a vote of ten to two. *Doty*, 170 So. 3d at 734; *see also* Appendix A. The trial court sentenced Petitioner to death. *Id.* at 737. The Florida Supreme Court affirmed Petitioner's conviction and sentence on direct appeal. *Id.* In state postconviction under Florida Rule of Criminal Procedure 3.851, however, the trial court vacated Petitioner's death sentence because it became final after *Ring v. Arizona*, 536 U.S. 584 (2002), and the jury did not unanimously recommend death, required by *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). *Doty v. State*, 313 So. 3d 573, 574 (Fla. 2020).

During the second re-sentencing proceeding in 2018, the Petitioner again represented himself. The State sought to prove three aggravating factors, that the Petitioner: 1) was previously convicted of a capital felony for the murder of his prior employer; 2) was serving a sentence of imprisonment for a prior felony when he murdered Rodriquez; and 3) committed the murder in a cold, calculating and premeditated manner. *Doty*, 313 So. 3d at 575; *see also* § 921.124(6)(a), (b) and (i), Fla. Stat. (2017). The State and Petitioner stipulated to the first two aggravating factors. As to the third, the State presented testimony of two prison

employees that Petitioner confessed to them, he planned the murder for weeks. *Doty*, 313 So. 3d at 575-76.

The jury also heard from several witnesses in support of Petitioner's seven non-statutory mitigating circumstances. The witnesses, including his mother, stepmothers and psychologist, spoke of Petitioner's prison experiences and cooperation with the prison investigation, mental health issues of "obsessive compulsive personality disorder," adverse childhood experiences of being abused, abandoned, neglected and that he lacked a male role model. *Doty*, 313 So. 3d at 575-76.

Prior to the jury's deliberation, the trial court reviewed the proposed instructions with Petitioner at the final charging conference. The instructions included,

> that a death sentence could be imposed only if the jury unanimously found that the State had proved at least one aggravating factor beyond a reasonable doubt, that the aggravating factors found to exist were sufficient to justify the death penalty, that the aggravating factors outweighed any mitigating circumstances found to exist, and that, based on all these considerations, the defendant should be sentenced to death.

Doty, 313 So. 3d at 576. Petitioner did not object to the proposed instructions or ask the trial court to apply a reasonable doubt standard

of proof as to sufficiency and weighing. Instead, Petitioner informed the trial court that he was satisfied. *Id.*

The re-sentencing jury unanimously found that the State proved all three aggravating factors beyond a reasonable doubt. As to mitigation, however, the jury determined that the Petitioner only established four of the seven mitigating circumstances by the greater weight of the evidence. The jury unanimously agreed that the aggravators outweighed the mitigators and unanimously recommended a death sentence. *Doty*, 313 So. 3d at 576; Appendix A.

In its twenty-page sentencing order, the trial court found the State proved all three presented aggravators, but weighed them against all seven mitigating circumstances, instead of the four found by the jury. Petitioner was sentenced to death a second time. *Doty*, 313 So. 3d at 576; Appendix B.

On direct appeal of his second death sentence, Petitioner argued that the trial court fundamentally erred by failing to instruct the jury that it must find that the aggravating factors were sufficient to warrant a death sentence and that they outweighed the mitigating factors, *beyond*

a reasonable doubt.[2] *Doty*, 313 So. 3d at 576-77. The Florida Supreme Court rejected the argument without a fundamental error analysis, concluding that the trial court made no error regarding the jury instructions. It succinctly held that sufficiency and weighing "are not subject to the beyond a reasonable doubt standard of proof," citing *Newberry v. State*, 288 So. 3d 1040 (Fla. 2019), *cert. denied, Newberry v. Florida*, 141 S. Ct. 625 (Oct. 19, 2020), and *Rogers v. State*, 285 So. 3d 872 (Fla. 2019) (*receded on other grounds by Lawrence v. State*, 308 So. 3d 544 (Fla. 2020)), *cert. denied, Rogers v. Florida*, 141 S. Ct. 284 (Oct. 5, 2020). *Doty*, 313 So. 3d at 577. Petitioner now seeks certiorari review of the Florida Supreme Court's decision.

REASONS FOR DENYING THE PETITION

Florida's Death Penalty Statute

In *Hurst v. Florida*, 577 U.S. 92 (2016), this Court held that

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2/ Under Florida law, the fundamental error doctrine is a basis for reversal due to unpreserved, but egregious trial court errors which "reaches down into the validity of the trial itself" and "that a sentence of death 'could not have been obtained without the assistance of the alleged error.'" *Doty*, 170 So. 3d at 743, quoting *Snelgrove v. State*, 107 So. 3d 242, 257 (Fla. 2012).

Florida's capital sentencing scheme violated the Sixth Amendment in light of *Ring*. Under Florida law, the maximum sentence a capital felon could receive based on a conviction alone was life imprisonment. *Hurst*, 577 U.S. at 95. Capital punishment was authorized "only if an additional sentencing proceeding 'result[ed] in findings by the court that such person shall be punished by death.'" *Id.* (quoting Fla. Stat. § 775.082(1) (2010)). At that additional sentencing proceeding, a jury renders an advisory verdict, recommending for or against the death penalty. In making that recommendation, the jury was instructed to consider whether sufficient aggravating factors exist, whether mitigating circumstances exist that outweigh the aggravators, and, based on those considerations, whether death is an appropriate sentence. § 921.141(2)(a)-(c), Fla. Stat. (2010).

This Court struck down that scheme in *Hurst*. Observing that it had previously declared invalid Arizona's capital sentencing scheme because the jury there did not make the "required finding of an aggravated circumstance"—which exposed a defendant to "a greater punishment than that authorized by the jury's guilty verdict"—the Court

held that that criticism "applie[d] equally to Florida's." *Hurst*, 577 U.S. at 98 (quoting *Ring*, 536 U.S. at 604). "Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, [was] therefore unconstitutional." *Id.* at 103.

In response to *Hurst* and the Florida Supreme Court's subsequent interpretation of that decision, the Florida Legislature repeatedly amended section 921.141 to comply with those rulings. As relevant here, the amended law requires the jury, not the judge, to "determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor." § 921.141(2)(a), Fla. Stat. (2017). If the jury concludes that no aggravating factor has been proven, the defendant is "ineligible" for the death penalty. § 921.141(2)(b)1., Fla. Stat.

If on the other hand, the jury unanimously finds at least one aggravator, the defendant is "eligible for a sentence of death." § 921.141(2)(b)2., Fla. Stat. In that event, the jury must make a sentencing recommendation based on a weighing of three considerations: *first*, "[w]hether sufficient aggravating factors exist";[3] *second*, "[w]hether

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3/ As construed by the Florida Supreme Court, "it has always been understood that

aggravating factors exist which outweigh the mitigating circumstances found to exist"; and *third*, based on the other two considerations, "whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death." § 921.141(2)(b)2.a.-c., Fla. Stat.

By assigning the latter three findings to the jury, the Florida Legislature granted capital defendants procedural protections beyond *Hurst*'s requirements. *See Hurst*, 577 U.S. at 103 (requiring a jury to find "the existence of an aggravating circumstance"); *see also id.* at 105-06 (Alito, J., dissenting) ("[T]he Court's decision is based on a single perceived defect, *i.e.*, that the jury's determination that at least one aggravating factor was proved is not binding on the trial judge."). Neither section 921.141 nor the standard jury instructions require that the jury undertake those determinations by any particular standard of

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. . . 'sufficient aggravating circumstances' means 'one or more.'" *State v. Poole*, 297 So. 3d 487, 502 (Fla. 2020) (citing cases). Any "suggestion that 'sufficient' implies a qualitative assessment of the aggravator–as opposed simply to finding that an aggravator exists–is unpersuasive and contrary to this decades-old precedent." *Id.* at 502-03 (disapproving prior case holding that "the existence of an aggravator and the sufficiency of an aggravator are two separate findings, each of which the jury must find unanimously," and explaining that, "[u]nder longstanding Florida law, there is only one eligibility finding required: the existence of one or more statutory aggravating circumstances").

proof.

I. THE DECISION BELOW IS CORRECT AND DOES NOT VIOLATE PETITIONER'S DUE PROCESS RIGHTS.

The Florida Supreme Court rejected Petitioner's claim and narrowly held that sufficiency and weighing determinations are not subject to the beyond a reasonable doubt standard of proof. *Doty*, 313 So. 3d at 576-77. In so doing, the court correctly applied this Court's precedents to Florida's capital sentencing scheme.

In *Rogers*, which served as the basis for the *Doty* decision, the Florida Supreme Court has explained, the penalty phase findings at issue here, whether the aggravators are sufficient and whether those aggravators outweigh the mitigators, are not elements of the capital felony of first-degree murder. *Rogers*, 285 So. 3d at 885. *See also State v. Poole*, 297 So. 3d 487, 503-13 (Fla. 2020), *cert. denied*, *Poole v. Florida*, No. 20-250 (Jan. 11, 2021). "Rather, they are findings required of a jury: (1) *before* the court can impose the death penalty for first-degree murder, and (2) *only after* a conviction or adjudication of guilt for first-degree murder has occurred." *Rogers*, 285 So. 3d at 885 (emphases in original).

That is, they are sentencing factors intended to make the imposition of capital punishment less arbitrary by guiding the exercise of the judge and jury's discretion within the applicable sentencing range.

The plain text of Florida's death-penalty statute supports that reading:

> If the jury . . . [u]nanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death.

§ 921.141(2)(b)2, Fla. Stat.

In light of this Court's decision in *McKinney v. Arizona*, 140 S. Ct. 702 (2020), Petitioner's argument fails on its own terms. He frames the constitutional question as whether the sufficiency and weighing of aggravators can be characterized as the "functional equivalents" of elements. *See* Petition at 1, 6-16. Petitioner does not cite, let alone address, *McKinney*, which rejected the theory that a jury must weigh aggravators and mitigators, and thus made clear that a determination that aggravators outweigh mitigators is not an "element" of capital

murder for purposes of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny.

In *McKinney*, a capital defendant challenged his death sentence because the sentencing judge had failed to consider his posttraumatic stress disorder (PTSD) as a mitigating factor, thereby violating *Eddings v. Oklahoma*, 455 U.S. 104 (1982) (holding that a capital sentencer may not refuse as a matter of law to consider relevant mitigating evidence). On remand from the Ninth Circuit, the Arizona Supreme Court performed its own *de novo* weighing of the aggravators and mitigators, including the defendant's PTSD, and upheld the sentence. *McKinney*, 140 S. Ct. at 706. In the state supreme court's independent judgment, the balance of the aggravators and mitigators warranted the death penalty. *Id.*

On certiorari review, the defendant argued that "a jury must resentence him" because a court "could not itself reweigh the aggravating and mitigating circumstances." *McKinney*, 140 S. Ct. at 706. This Court rejected that claim. "Under *Ring* and *Hurst*," the Court explained, "a jury must find the aggravating circumstance that makes the defendant death

eligible." *Id.* at 707. "[I]mportantly," however, "in a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range." *Id.*; *see also id.* at 708 (explaining that "*Ring* and *Hurst* did not require jury weighing of aggravating and mitigating circumstances").

Because the Sixth Amendment permits the "weigh[ing] [of] aggravating and mitigating" evidence by judges, *McKinney*, 140 S. Ct. at 707, the determination that aggravators outweigh mitigators cannot be considered an "element" of the offense. And because that determination is not an element, it is not subject to the beyond a reasonable doubt standard. *See Alleyne v. United States*, 570 U.S. 99, 107 (2013) ("The touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an 'element' or 'ingredient' of the charged offense."). In other words, *McKinney* rejects an essential premise of Petitioner's argument: that the weighing of aggravators and mitigators is either an "element" or the "functional

equivalent" of an element. *See* Petition at 1, 6-16.

Post-*Doty*, the Florida Supreme Court has not wavered from its analysis and has consistently rejected like claims. *See, e.g.*, *Davidson v. State*, 2021 WL 2834613, *5 (Fla. July 8, 2021) (holding, no fundamental error occurred where findings that "aggravating factors were *sufficient* to justify the death penalty and whether those factors *outweighed* the mitigating circumstances" were not subject to the reasonable doubt standard) (emphases in original) (citation omitted); *Allen v. State*, 2021 WL 2232499 (Fla. June 3, 2021) (holding, no fundamental error for failing to instruct the penalty phase jury that it must determine whether the aggravating factors were sufficient to justify the death penalty and whether those factors outweighed the mitigating circumstances beyond a reasonable doubt); *Deviney v. State*, 2021 WL 1800101 (Fla. May 6, 2021) (rejecting fundamental error argument that determinations of the sufficiency and weighing of aggravators against mitigators must be made beyond a reasonable doubt); and *Craft v. State*, 312 So. 3d 45 (Fla. 2020) (certiorari petition pending, SC21-5280).

Finally, the statutory requirement that the jury weigh, among other considerations, "[w]hether sufficient aggravating factors exist," § 921.141(2)(b)2.a., Fla. Stat., adds nothing to Petitioner's argument. As construed by the Florida Supreme Court, "it has always been understood that . . . 'sufficient aggravating circumstances' means 'one or more.'" *Poole*, 297 So. 3d at 502 (citing cases). Put differently, "[u]nder longstanding Florida law, there is only one eligibility finding required: the existence of one or more statutory aggravating circumstances." *Id.* at 502-03. And, it is undisputed that in this case, that requirement was satisfied when the judge found multiple aggravating circumstances beyond a reasonable doubt. *See Doty*, 313 So. 3d at 576; Appendix B at 3-9.

For reasons this Court has already explicated, it would make little sense to apply the beyond a reasonable doubt standard to normative determinations of the kind at issue here. In *Kansas v. Carr*, 577 U.S. 108, 119 (2016), this Court "doubt[ed]" that it is "even possible to apply a standard of proof to the mitigating-factor determination." The Court reasoned that "[i]t is possible to do so for the aggravating-factor

determination," on the one hand, because the existence of an aggravator "is a purely factual determination." *Id.* Whether mitigation exists, on the other hand, "is largely a judgment call"—or "perhaps a value call"—just as the "ultimate question whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy." *Id.* Thus, "[i]t would mean nothing . . . to tell the jury that the defendants must deserve mercy beyond a reasonable doubt; or must more-likely-than-not deserve it." *Id.*

The beyond a reasonable doubt standard ensures that the prosecution must "persuad[e] the factfinder at the conclusion of the trial of [the defendant's] guilt beyond a reasonable doubt." *In re Winship*, 397 U.S. 358, 364 (1970). This safeguard preserves the "moral force of the criminal law" because it does not "leave[ ] people in doubt whether innocent men are being condemned." *Id.* But sufficiency and weighing do not go to whether the defendant is guilty of a capital offense—that question is answered when the jury finds the existence of an aggravated first-degree murder. *See McKinney*, 140 S. Ct. at 707; *Kansas v. Marsh*, 548 U.S. 163, 175-76 (2006). Sufficiency and weighing instead, go to the

appropriateness of the penalty. That is, they are normative judgments, not facts.

A fact is "something that has actual existence" or, perhaps more appropriately in this context, is "a piece of information presented as having objective reality." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/fact. Facts have their basis in observable truths about the world. A fact either is or is not; although a person's perception of facts may be open to debate, facts are objectively discernable. By contrast, normative judgments are opinions. As such, they turn on the subjective views of individual decisionmakers. In short, they are questions involving discretion.

Petitioner's substantial expansion of the *Apprendi* doctrine would have significant and troubling practical implications, including for non-capital sentencing. The federal statute governing criminal sentences, for example, provides that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with" certain statutorily enumerated sentencing factors. 18 U.S.C. § 3553(a). Given that a federal sentence must, by statute, be supported by a normative judgment that

the chosen sentence is "not greater than necessary" to effectuate "the purposes set forth in" the statutory sentencing factors, *see id.*, must that "finding" be made by a jury beyond a reasonable doubt? And if not, why is that normative judgment any different than the moral determination at issue here—i.e., that aggravating factors outweigh mitigating circumstances? *See United States v. Gabrion*, 719 F.3d 511, 533 (6th Cir. 2013) (en banc).

Notably, Petitioner appears unwilling to accept the practical consequences of his own theory. He asks this Court to rule that two determinations—sufficiency and weighing—must be made beyond a reasonable doubt. But the statute also provides that the trial court may not impose death unless the jury further determines, based on those two factors, that death is the appropriate sentence. *See* § 921.141(2)(b)2.c., (3)(a)2., Fla. Stat. (requiring the jury to determine, based on sufficiency and weighing, "whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death," and providing that the court may sentence the defendant to death if, and only if, "the jury has recommended a sentence of . . . [d]eath").

Petitioner nevertheless does not go so far as to say that the jury's ultimate recommendation that "the defendant should be sentenced to . . . death," § 921.141(2)(b)2.c., Fla. Stat., must be made beyond a reasonable doubt. And for good reason: "Any argument that the Constitution requires that a jury impose the sentence of death," this Court has explained, "has been soundly rejected by prior decisions of this Court." *Clemons v. Mississippi*, 494 U.S. 738, 745 (1990); *see also McKinney*, 140 S. Ct. at 707; *Proffitt v. Florida*, 428 U.S. 242, 252 (1976) (plurality opinion).

Nor would Petitioner's proposed extension of the *Apprendi* doctrine necessarily redound to the benefit of criminal defendants. If state laws like the one Petitioner asks this Court to strike down—those that seek to *protect* criminal defendants by reducing the risk of arbitrariness and guiding a sentencing authority's discretion to impose particularly harsh punishments—give rise to otherwise non-existent due process problems, lawmakers may well respond by repealing, rolling back, or declining to create such protections in the first place. That is one reason why this Court has "warned against wooden, unyielding insistence on expanding

the *Apprendi* doctrine far beyond its necessary boundaries." *Oregon v. Ice*, 555 U.S. 160, 172 (2009) (citation omitted) (internal quotation marks omitted); *see also Ring*, 536 U.S. at 613 (Kennedy, J., concurring).

All of this explains why this Court has denied certiorari in three Florida cases presenting the identical issue. *See Santiago-Gonzalez v. Florida*, 2021 WL 2519344 (June 21, 2021) (No. 20-7495); *Rogers v. Florida*, 141 S. Ct. 284 (Oct. 5, 2020) (No. 19-8473); and *Bright v. Florida*, 141 S. Ct 1697 (Mar. 22, 2021) (No. 20-6824). And, this Court denied certiorari review in a case presenting the underlying question, whether the Sixth and Eighth Amendments require that a jury find that the aggravators outweighed the mitigators, *see Poole v. Florida*, No. 20-250.

II. THE FLORIDA SUPREME COURT'S DECISION DOES NOT CONFLICT WITH THIS COURT'S PRECEDENTS.

Petitioner asserts that the Florida Supreme Court's decision "conflicts with this Court's opinions in *Apprendi*, *Ring*, *Alleyne* and *Hurst*." Petition at 6. Petitioner is simply, incorrect. The cases to which he cites do not conclude that the beyond a reasonable doubt standard applies to non-factual determinations intended to guide the jury's

sentencing recommendation. On the contrary, those cases evince this Court's understanding that that standard of proof is limited to *factual* findings.

By its terms, *In re Winship* applies the beyond a reasonable doubt standard only to "the factfinder." 397 U.S. at 363-64; *see also id.* (referencing "the trier of fact"). The Court there held that the Due Process Clause "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *Id.* at 364; *see also Alleyne*, 570 U.S. at 103 ("Any fact that, by law, increases the penalty for a crime is an 'element' that must be submitted to the jury and found beyond a reasonable doubt.").

Consistent with *Winship*, this Court in *Apprendi* expressly and repeatedly explained that the beyond a reasonable doubt standard of proof applies to "facts." For example, the Court:

- required the states to "adhere to the basic principles undergirding the requirements of trying to a jury all facts necessary to

constitute a statutory offense, and proving those facts beyond reasonable doubt," *Apprendi*, 530 U.S. at 483-84;

- referenced the jury's "assessment of facts," *id.* at 490;
- described the "novelty of a legislative scheme that removes the jury from the determination of a fact that, if found, exposes the criminal defendant to a penalty exceeding the maximum he would receive if punished according to the facts reflected in the jury verdict alone," *id.* at 482-83 (emphasis omitted); and
- explained that "constitutional limits exist to States' authority to define away facts necessary to constitute a criminal offense" and "a state scheme that keeps from the jury facts that 'expos[e] [defendants] to greater or additional punishment' may raise serious constitutional concern." *Id.* at 486 (internal citation omitted).

Thus, *Apprendi* did not hold that the beyond a reasonable doubt standard should be extended to non-factual normative judgments of the kind at issue here. Moreover, this Court's statements concerning that standard of proof undermine, rather than support, Petitioner's claim.

This Court's cases applying *Apprendi* to the capital sentencing context likewise did not hold that the Due Process Clause requires the jury to determine, beyond a reasonable doubt, that normative considerations support the imposition of the death penalty. In *Ring*, for example, this Court explained that "[c]apital defendants, no less than noncapital defendants, . . . are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment." *Ring*, 536 U.S. at 589. So too in *Hurst*, where this Court reiterated that the sentencing scheme in *Ring* violated the defendant's right to have "a jury find the facts behind his punishment." *Hurst*, 577 U.S. at 98; *see also id.* at 94 ("The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death.").

In sum, the decision below does not conflict with this Court's precedents. None of the cases Petitioner cites held that a jury must find beyond a reasonable doubt that aggravating factors outweigh mitigating circumstances or are sufficient to warrant the imposition of capital punishment. What is more, the reasoning of those cases expressly ties the beyond a reasonable doubt standard to factfinding of a kind not at

issue here—and thus undermines rather than supports Petitioner's claim.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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