No. 25-5219

In the Supreme Court of the United States

MAO HIN,

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
QUESTION PRESENTED

Whether a California jury that has already found unanimously and beyond a reasonable doubt that the defendant committed first-degree murder and that special circumstances exist rendering 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. Hin, No. S141519 (judgment partially affirmed and partially vacated February 3, 2025; opinion modified and rehearing denied April 23, 2025) (this case below).

In re Hin on Habeas Corpus, No. S288290 (pending).

San Joaquin County Superior Court:

People v. Hin, No. SF090168B (judgment entered February 24, 2006) (this case below).

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STATUTES

CONSTITUTIONAL PROVISIONS

STATEMENT

1. On October 10, 2003, petitioner Mao Hin and an associate named Rattanak Kak approached Alfonso Martinez and Debra Pizano in a park in Stockton, California. Pet. App. A 30-31. Kak pointed a gun at the couple as petitioner demanded their money. *Id.* Martinez and Pizano complied, but petitioner directed the couple to a darker area of the park. *Id.* at 31. There, petitioner and Kak took additional items from the couple, including Pizano's watch and pieces of Martinez's clothing. *Id.* As petitioner and Kak began to walk away, petitioner commented on the danger of walking in the park at night. *Id.* Petitioner and Kak then began laughing as Kak opened fire. *Id.* Pizano was struck in her head and leg, but survived. *Id.* Martinez was struck in his back and thigh and died at the scene. *Id.*

2. At the guilt phase of petitioner's trial, the jury convicted him of murder, attempted murder, and robbery for the attack on Martinez and Pizano. Pet. App. A 28. The jury also convicted him of crimes related to his involvement in a separate drive-by shooting. *Id.* And the jury found true, beyond a reasonable doubt, two special circumstances: that the murder had been committed during the commission of a robbery and that it had been committed during the commission of a kidnapping. *Id.* Those special-circumstance findings qualified petitioner for the death penalty under California law. *Id.*; *see* Cal. Penal Code § 190.2(a)(17), (a)(22).

At the penalty phase, the prosecution relied on guilt-phase evidence relating to the attack on Martinez and Pizano, the drive-by shooting, an

additional shooting, and petitioner's gang involvement. Pet. App. A 38-40. The prosecution also introduced victim-impact evidence and evidence about petitioner's involvement in several additional assaults and shootings. *Id.*

The defense challenged the credibility of the witnesses who identified petitioner in the uncharged acts. Pet. App. A 40. The defense also presented evidence of petitioner's good character and lack of behavioral issues, and evidence regarding petitioner's troubled childhood and alleged cognitive limitations. *Id.* at 40-42.

The court instructed that in choosing whether petitioner should be punished by death or by life imprisonment without parole, jurors were to "consider, take into account, and be guided by the applicable factors of aggravating and mitigating circumstances"; that they were "free to assign whatever moral or sympathetic value you deem appropriate to each and all of the various factors"; and that to "return a judgment of death, each of you must be persuaded that the aggravating circumstances are so substantial in comparison with the mitigating circumstances that it warrants death instead of life without parole." 20 RT 5757-5758.[1] The jury returned a verdict of death. Pet. App. A 28.

3. The California Supreme Court affirmed the murder and robbery convictions and the death judgment, while vacating certain other convictions and enhancements not at issue here. Pet. App. A 28-171. As relevant to

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[1] RT refers to the Reporter's Transcript; CT refers to the Clerk's Transcript.

petitioner's current claims, petitioner argued that his death sentence was invalid because his jury was not required at the penalty phase to find any aggravating circumstances unanimously and beyond a reasonable doubt, or to agree beyond a reasonable doubt that the aggravating factors outweighed the mitigating factors and that death was the appropriate sentence. *Id.* at 168-169. The court rejected that claim, based on its prior decision in *People v. Rangel*, 62 Cal. 4th 1192, 1235 (2016), *cert. denied*, 580 U.S. 1057 (2017). Pet. App. A 168-169.

ARGUMENT

Petitioner argues that California's death penalty system violates the Fifth, Sixth, Eighth, and Fourteenth Amendments because state law does not require the penalty-phase jury to unanimously 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. 9, 15-17. 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.*, *Wilson v. California*, 145 S. Ct. 1086 (2025) (No. 24-5916); *Miranda-Guerrero v. California*, 144 S. Ct. 115 (2023) (No. 22-7373); *Ramirez v. California*, 143 S. Ct. 1027 (2023) (No. 22-6445); *Pineda v. California*, 143 S. Ct. 1005 (2023) (No. 22-6514); *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); *Johnsen v. California*, 142 S. Ct. 353 (2021) (No. 21-5012); (continued…)

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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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*, 586 U.S. 1232 (2019) (No. 18-7457); *Penunuri v. California*, 586 U.S. 1053 (2018) (No. 18-6262); *Henriquez v. California*, 586 U.S. 897 (2018) (No. 18-5375); *Wall v. California*, 586 U.S. 865 (2018) (No. 17-9525); *Brooks v. California*, 583 U.S. 1019 (2017) (No. 17-6237); *Becerrada v. California*, 583 U.S. 889 (2017) (No. 17-5287); *Thompson v. California*, 583 U.S. 878 (2017) (No. 17-5069); *Landry v. California*, 583 U.S. 834 (2017) (No. 16-9001); *Mickel v. California*, 581 U.S. 1019 (2017) (No. 16-7840); *Jackson v. California*, 581 U.S. 907 (2017) (No. 16-7744); *Rangel v. California*, 580 U.S. 1057 (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 petitioner's trial, the jury found him guilty of the murder of Alfonso Martinez. Pet. App. A 28. The jury also found true the special circumstances that the murder had been committed during the commission of a robbery and kidnapping. *Id.* The jury's findings were unanimous and made under the beyond-a-reasonable-doubt standard. 4 CT 965, 973, 1022, 1085-1086.

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 that 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 beyond a

reasonable doubt (with the exception of prior unadjudicated violent criminal activity and prior felony convictions). *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. Petitioner contends California's capital sentencing statute is unconstitutional because it does not require the jury during the penalty phase to unanimously 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. 15-17. But the Constitution does not impose such requirements. In support of his contentions, petitioner relies (*see* Pet. 13-14, 17) 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). 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

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, petitioner cites *Hurst v. Florida*, 577 U.S. 92, 94-95, 98, 100 (2016). Pet. 14-20. 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,'" *Hurst*, 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 once the jury finds true at least one of the special circumstances in California Penal Code Section 190.2(a). *See McKinney v. Arizona*, 589 U.S. 139, 144 (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." *Carr*, 577 U.S. at 119. That reasoning leaves no room for petitioner'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. Petitioner is likewise wrong to assert that this case implicates any conflict in the lower courts. Pet. 17-20. As petitioner admits, numerous other courts have joined the California Supreme Court in concluding that the principles of *Apprendi* and *Ring* do not require that a sentencing jury apply the beyond-a-reasonable-doubt standard to the weighing of aggravating versus mitigating circumstances. *See* Pet. 19-20.

Petitioner cites *Rauf v. State*, 145 A.3d 430 (Del. 2016), as reaching the opposite conclusion. Pet. 17-18. The fractured opinions in that case collectively hold that a determination as to the existence and relative weight of aggravating and mitigating factors in the application of Delaware's death penalty must be made unanimously and beyond a reasonable doubt. *See* 145 A.3d at 434 (per curiam); *id.* at 481-482 (Strine, J., concurring); *id.* at 487; (Holland, J., concurring); *but see id.* at 487 (Valihura, J., dissenting). The rationale of those opinions is not clear, and they notably failed to cite or discuss this Court's reasoning on the issue in *Carr*. In any event, the most notable feature of the Delaware law invalidated in *Rauf* was that the jury's choice between a life sentence and death was completely advisory: the judge could impose a sentence of death even if all jurors recommended against it, as long as the jury had unanimously found the existence of a single aggravating factor. *See* Del. Code tit. 11, § 4209(c)(3), (d)(1); *Rauf*, 145 A.3d at 457 (Strine, J., concurring) (under Delaware law the judge "has the final say in deciding whether a capital defendant is sentenced to death and need not give any

particular weight to the jury's view"). In contrast, under California law, the death penalty may be imposed only if the jury has unanimously voted for death. *See* Cal Penal Code § 190.3. It is by no means clear from the opinions in *Rauf* that that court would have reached the same result if it had considered California's quite different statute.[3]

The Colorado decisions petitioner cites are even further afield. *See* Pet. 18 (citing *Woldt v. People*, 64 P.3d 256 (Colo. 2003), and *People v. Montour*, 157 P.3d 489 (Colo. 2007)). *Woldt* considered a statute under which, once the jury found the defendant guilty of first-degree murder, determinations regarding eligibility for the death penalty and the selection of that penalty were made by a three-judge panel. *Woldt*, 64 P.3d at 265-266. And *Montour* held that a capital defendant did not lose his right to have a jury decide his penalty simply because he had pled guilty to the underlying charge of murder. *Montour*, 157 P.3d at 498. Neither decision has relevance here: California's statute specifies special circumstances that must be found by the jury unanimously and beyond a reasonable doubt for the defendant to be eligible for a death sentence, then requires a jury determination of whether that sentence should in fact be imposed. *See supra* pp. 4-6.

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[3] A similar shortcoming undercuts petitioner's reliance on the opinion dissenting from the denial of certiorari in *Woodward v. Alabama*, 134 S. Ct. 405 (2013). Pet. 18. The statute in *Woodward* allowed the judge to impose the death penalty even where the jurors voted against it. *See Woodward*, 134 S. Ct. at 406, 410-412 (jury's decision as to whether the defendant should be executed was merely an "advisory verdict").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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