

## 05-493 AYERS V. BELMONTES

DECISION BELOW:414 F3d 1094

LOWER COURT CASE NUMBER: 01-99018

### QUESTIONS PRESENTED:

In *Boyde v. California*, 494 U.S. 370 (1990), this Court upheld the constitutionality of California's "catch-all" mitigation instruction in capital cases, the so-called "unadorned factor (k)," which directs juries to consider "any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." This Court found jurors would reasonably understand this instruction to encompass mitigating factors unrelated to the crime itself, such as the defendant's background and character. In this case, the Ninth Circuit Court of Appeals held that the use of this same instruction violated the Eighth Amendment of the United States Constitution because it likely misled the jurors to believe they were forbidden from considering background and character evidence relating to "forward-looking" considerations about the defendant's future prospects if sentenced to life in prison. The questions presented are:

1. Does *Boyde* confirm the constitutional sufficiency of California's "unadorned factor (k)" instruction where a defendant presents mitigating evidence of his background and character which relates to, or has a bearing on, his future prospects as a life prisoner?
2. Does the Ninth Circuit's holding, that California's "unadorned factor (k)" instruction is constitutionally inadequate to inform jurors they may consider "forward-looking" mitigation evidence, constitute a "new rule" under *Teague v. Lane*, 489 U.S. 288 (1989)?

Cert. Granted 5/1/2006