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**In the Supreme Court of the United States**

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**CHRISTOPHER ERIC POORE ,**

Petitioner,

v.

**RON DAVIS, WARDEN,**

Respondent.

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ON PETITION FOR WRIT OF CERTIORARI TO THE  
CALIFORNIA SUPREME COURT

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**BRIEF IN OPPOSITION**

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**CAPITAL CASE  
QUESTION PRESENTED**

Whether the Constitution requires that a California jury that has already found unanimously and beyond a reasonable doubt that the defendant committed first degree murder and that the murder involved a special circumstance that renders the crime 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.

**DIRECTLY RELATED PROCEEDINGS**

California Supreme Court:

*People v. Poore*, No. S104665, judgment entered June 27, 2022 (this case below).

*In re Poore on Habeas Corpus*, No. S274562 (state collateral review) (pending).

Riverside County Superior Court:

*People v. Poore*, No. INF-033308, judgment entered February 20, 2002 (this case below).

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**STATEMENT**

1. In 1999, petitioner Christopher Eric Poore was paroled from a California prison where he was an associate of the Aryan Brotherhood, a white supremacist gang. Pet. App. 1–4. Less than a year after his release, Poore shot and killed Mark Kulikov, and stole two carloads of Kulikov’s property. *Id.* Poore admitted killing Kulikov and told multiple witnesses he committed the murder on behalf of the Aryan Brotherhood. *Id.*

The prosecution charged Poore with murder, robbery, burglary, and possession of a firearm by a felon. 1 CT 196–199; *see* Cal. Penal Code §§ 187(a), 211, 459, 12021(a)(1).<sup>1</sup> The prosecution further alleged as special circumstances that Poore committed the murder for financial gain and by means of lying in wait. 1 CT 196–199; *see* Cal. Penal Code § 190.2(a)(1), (a)(15). At the guilt phase of the trial, the jury convicted Poore as charged and found the special circumstance allegations true beyond a reasonable doubt, thereby qualifying him for the death penalty. Pet. App. 1; 31 CT 9122–9125 (jury instructions requiring proof beyond a reasonable doubt and unanimity in order to return true findings on special circumstances); *see* Cal. Penal Code § 190.2.

At the penalty phase of the trial, the trial court instructed the jurors that, in deciding whether Poore should be punished by death or life in prison without

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<sup>1</sup> CT refers to the superior court clerk’s transcript. RT refers to the superior court reporter’s transcript.

parole, they were to “consider, take into account and be guided by the applicable factors of aggravating and mitigating circumstances”; that the “weighing of aggravating and mitigating circumstances does not mean a mere mechanical counting of factors on each side of an imaginary scale”; 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.” 29 RT 6298–6300, 6345–6346; 31 CT 9148–9163.<sup>2</sup> The jury returned a verdict of death, and the trial court sentenced Poore to death. Pet. App. 1; 29 RT 6350–6351.

2. On direct appeal, the California Supreme Court affirmed Poore’s conviction and death sentence. Pet. App. 1. As relevant here, the court observed it had repeatedly considered and rejected challenges to California’s capital sentencing scheme identical to those raised by Poore. *Id.* at 57. The court reiterated its previous holding that because “the jury’s penalty choice is a normative decision, not a factual one[,]” California’s death penalty scheme does not violate the federal Constitution by failing to require the jury to find “beyond a

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<sup>2</sup> Consistent with state law, the trial court instructed the jury that, before relying on evidence of the defendant’s prior violent conduct or prior conviction as circumstances in aggravation, any individual juror had to determine that those allegations were proven beyond a reasonable doubt. *See* 31 CT 9153–9155; *see also* Pet. App. 10–13 (describing evidence of violent conduct presented during penalty phase).



reasonable doubt . . . the existence of aggravating factors (other than section 190.3 factor (b) or (c) evidence,” or “that aggravating factors outweigh mitigating factors, or that death is the appropriate penalty.” *Id.* at 58.

### ARGUMENT

Poore 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 an aggravating factor beyond a reasonable doubt. Pet. 7–25. This Court has repeatedly denied review in cases presenting the same or similar questions, and there is no reason for a different result here.<sup>3</sup>

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<sup>3</sup> See, e.g., *Gonzalez v. California*, No. 21-7296, cert. denied, 142 S. Ct. 2719 (2022); *Scully v. California*, No. 21-6669, cert. denied, 142 S.Ct. 1153 (2022); *Johnsen v. California*, No. 21-5012, cert. denied, 142 S. Ct. 353 (2021); *Vargas v. California*, No. 20-6633, cert. denied, 141 S. Ct. 1411 (2021); *Flores v. California*, No. 19-8081, cert. denied, 140 S. Ct. 2783 (2020); *Caro v. California*, No. 19-7649, cert. denied, 140 S. Ct. 2682 (2020); *Mitchell v. California*, No. 19-7429, cert. denied, 140 S. Ct. 2535 (2020); *Capers v. California*, No. 19-7379, cert. denied, 140 S. Ct. 2532 (2020); *Erskine v. California*, No. 19-6235, cert. denied, 140 S. Ct. 602 (2019); *Mendez v. California*, No. 19-5933, cert. denied, 140 S. Ct. 471 (2019); *Bell v. California*, No. 19-5394, cert. denied, 140 S. Ct. 294 (2019); *Gomez v. California*, No. 18-9698, cert. denied, 140 S. Ct. 120 (2019); *Case v. California*, No. 18-7457, cert. denied, 139 S. Ct. 1342 (2019); *Penunuri v. California*, No. 18-6262, cert. denied, 139 S. Ct. 644 (2018); *Henriquez v. California*, No. 18-5375, cert. denied, 139 S. Ct. 261 (2018); *Wall v. California*, No. 17-9525, cert. denied, 139 S. Ct. 187 (2018); *Brooks v. California*, No. 17-6237, cert. denied, 138 S. Ct. 516 (2017); *Becerrada v. California*, No. 17-5287, cert. denied, 138 S. Ct. 242 (2017); *Thompson v. California*, No. 17-5069, cert. denied, 138 S. Ct. 201 (2017); *Landry v. California*, No. 16-9001, cert. denied, 138 S. Ct. 79 (2017); *Mickel v. California*, No. 16-7840, cert. denied, 137 S. Ct. 2214 (2017); *Jackson v. California*, No. 16-7744, cert. denied, 137 S. Ct. 1440 (2017); *Rangel v. California*, No. 16-5912, cert. denied, 137 S.

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 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 Poore’s trial, the jury found him guilty of first degree murder and found the

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Ct. 623 (2017); *Johnson v. California*, No. 15-7509, *cert. denied*, 577 U.S. 1158 (2016); *Cunningham v. California*, No. 15-7177, *cert. denied*, 577 U.S. 1123 (2016); *Lucas v. California*, No. 14-9137, *cert. denied*, 575 U.S. 1041 (2015); *Boyce v. California*, No. 14-7581, *cert. denied*, 574 U.S. 1169 (2015); *DeBose v. California*, No. 14-6617, *cert. denied*, 574 U.S. 1051 (2014); *Blacksher v. California*, No. 11-7741, *cert. denied*, 565 U.S. 1209 (2012); *Taylor v. California*, No. 10-6299, *cert. denied*, 562 U.S. 1013 (2010); *Bramit v. California*, No. 09-6735, *cert. denied*, 558 U.S. 1031 (2009); *Morgan v. California*, No. 07-9024, *cert. denied*, 552 U.S. 1286 (2008); *Cook v. California*, No. 07-5690, *cert. denied*, 552 U.S. 976 (2007); *Huggins v. California*, No. 06-6060, *cert. denied*, 549 U.S. 998 (2006); *Harrison v. California*, No. 05-5232, *cert. denied*, 546 U.S. 890 (2005); *Smith v. California*, No. 03-6862, *cert. denied*, 540 U.S. 1163 (2004); *Prieto v. California*, No. 03-6422, *cert. denied*, 540 U.S. 1008 (2003).

two special circumstances to be true. Pet. App. 1. The jury’s findings were unanimous and made under the beyond-a-reasonable-doubt standard. 26 RT 5556–5562.

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. Poore 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. Pet. 7–24. That is incorrect. Poore primarily relies (Pet. 10–16) 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 potential penalty prescribed by statute is death. See *People v. Prince*, 40 Cal. 4th 1179, 1297–98 (2007); see generally *Tuilaepa v. California*, 512 U.S. 967, 971–72 (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, Poore cites *Hurst v. Florida*, 577 U.S. 92, 94–95, 98, 100 (2016). Pet. 13–15. 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*, 206 L.Ed.2d 69 [140 S.Ct. 702, 707–08] (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”).

And to the extent that Poore argues that the jury’s final weighing of aggravating versus mitigating factors should proceed under the beyond-a-reasonable-doubt standard, *Carr* likewise forecloses that argument. In *Carr*, this Court 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 Poore’s argument that such an instruction is required under the Constitution.

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Dated:       October 27, 2022

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