No. 22-6071

In the Supreme Court of the United States

MANUEL BRACAMONTES,

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE
CALIFORNIA SUPREME COURT

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED

Whether a California jury that has already found unanimously and beyond a reasonable doubt that the defendant committed first degree murder under special circumstances that render him eligible for the death penalty must also, in order to return a constitutional penalty verdict of death, find beyond a reasonable doubt that aggravating circumstances outweigh the mitigating circumstances.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

People v. Bracamontes, No. S139702, judgment entered April 11, 2022 (this case below).

In re Bracamontes on Habeas Corpus, No. S273644 (state collateral review) (pending).

San Diego County Superior Court:

People v. Bracamontes, No. SCD-178329, judgment entered December 14, 2005 (this case below).

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STATEMENT

1. On the night of June 19, 1991, nine-year-old Laura Arroyo ran downstairs to answer a knock at the front door of her family's home. *See generally* Pet. App. A; *People v. Bracamontes*, 12 Cal. 5th 977, 982-984 (2022).[1] Laura's mother heard her daughter say, "Who's there?" and came downstairs ten minutes later to discover Laura was gone. *Bracamontes*, 12 Cal. 5th at 982–983. Laura's body was discovered less than four miles away early the next morning. *Id.* at 983. She had been strangled and stabbed at least ten times with a pick-axe. *Id.* She suffered a broken nose, chipped teeth, bruising, and lacerations. *Id.* Petitioner Manuel Bracamontes was a neighbor's father who no longer lived in the apartment complex. *Id.* He was considered a suspect during the initial police investigation, but there was insufficient evidence to charge him with Laura's murder. *Id.* Twelve years later in 2003, physical evidence was reexamined and tested for DNA. *Id.* at 984. Autopsy slides revealed the presence of sperm from Laura's mouth, neck, and fingernails. *Id.* The DNA profiles on those samples matched Bracamontes's DNA sample with a probability of a random match of one in 2.7 trillion. *Id.* The DNA profile of sperm recovered from Laura's pajamas also matched Bracamontes's DNA profile, with the likelihood of a random match of one in 30 quadrillion. *Id.*

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[1] The Petition Appendix is not sequentially numbered. For ease of reference, citations to the decision below are to the California Reporter.

Bracamontes was charged with first degree murder. *Bracamontes*, 12 Cal. 5th at 982. The prosecution further alleged, as special circumstances, that he committed the murder while engaged in kidnapping, unlawful oral copulation, and the commission of a lewd or lascivious act upon a child under the age of 14. 1 CT 74-76; *see* Cal. Penal Code §§ 187(a), 190.2(a)(17)(B), (F), (E).[2] At the guilt phase of his trial, the jury convicted Bracamontes of first degree murder and found the special circumstance allegations true beyond a reasonable doubt, thereby qualifying him for the death penalty. *Bracamontes*, 12 Cal. 5th at 982; 8 CT 1764, 1774, 1778 (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 Bracamontes should be punished by death or life in prison without 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

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[2] CT refers to the clerk's transcript in the superior court.

circumstances are so substantial in comparison with the mitigating circumstances that it warrants death instead of life without parole." 9 CT 1930.[3] The jury returned a verdict of death, and the trial court sentenced Bracamontes to death. *Bracamontes*, 12 Cal. 5th at 982–985; 10 CT 2132-2144.

2. On direct appeal, the California Supreme Court unanimously affirmed Bracamontes's conviction and death sentence. *Bracamontes*, 12 Cal. 5th at 982. As relevant here, the court concluded that Bracamontes "present[ed] no compelling argument to reconsider [the court's] precedents" upholding California's death penalty scheme. *Id*. at 1005. The court explained that the "death penalty is not unconstitutional 'for failing to require proof beyond a reasonable doubt that aggravating factors exist, outweigh the mitigating factors, and render death the appropriate punishment.'" *Id.* at 1004. "The jury's determination of the appropriate sentence within the statutorily specified options 'is an inherently moral and normative function, and not a factual one amenable to burden of proof calculations [citation], [and] the prosecution has no obligation to bear a burden of proof or persuasion.'" *Id*. (alterations in original)

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[3] Consistent with state law, the trial court also instructed the jury that before relying on evidence of the defendant's other violent conduct or criminal convictions as circumstances in aggravation, any individual juror had to determine that those allegations were proven beyond a reasonable doubt. *See* 9 CT 1916; *see also* Pet. App. A 985 (describing evidence of violent conduct presented during penalty phase).

ARGUMENT

Bracamontes 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 beyond a reasonable doubt that the aggravating factors outweigh the mitigating factors. Pet. 4-22. This Court has repeatedly denied review in cases presenting the same or similar questions, and there is no reason for a different result here.[4]

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[4] *See*, *e.g.*, *Poore v. California*, No. 22-5695, *cert denied*, 2022 WL 17408219 (2022); *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); *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, *cer*t. *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. 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);

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 Bracamontes's trial, the jury found him guilty of first degree murder and found the special circumstances to be true; *that is*, that the murder was committed while he was engaged in kidnapping and during his commission of unlawful oral copulation and committing a lewd or lascivious act on a child under age

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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).

14. *Bracamontes*, 12 Cal. 5th at 982. The jury's findings were unanimous and made under the beyond-a-reasonable-doubt standard. 8 CT 1764, 1774, 1778.

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. Bracamontes contends California's capital sentencing statute is unconstitutional because it does not require a jury in the penalty phase to find that the aggravating factors outweigh the mitigating factors beyond a reasonable doubt. Pet. 7-22. But the Constitution imposes no such requirement. In support of his contention, Bracamontes relies primarily (*see* Pet. 12-17) 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 potential 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"). Thus, imposing that maximum penalty on a defendant once these jury determinations have been made unanimously and beyond a reasonable doubt does not violate the Constitution.

In arguing to the contrary, Bracamontes cites *Hurst v. Florida*, 577 U.S. 92, 94-95, 98, 100 (2016). Pet. 13–18. 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*, 140 S.Ct. 702, 707-708 (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 weight of aggravating and 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 Bracamontes's argument that the Constitution requires a capital sentencing jury to determine the relative weight of aggravating and mitigating factors beyond a reasonable doubt.[5]

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[5] Bracamontes asserts that California is an "outlier" in that it does not require that aggravating factors be proved beyond a reasonable doubt. Pet. 21-22. But the question presented raises a constitutional claim about how a California jury weighs aggravation versus mitigation, not a challenge to how aggravating factors are proved. *See* Pet. ii, 14-19. In any event, this Court has repeatedly denied many previous petitions that have asserted that California's system is unconstitutional because it does not impose a beyond-a-reasonable-doubt standard for penalty-phase aggravating factors. *See, supra,* at n.2. As explained above, a California jury's separate finding of a special circumstance, unanimously and beyond a reasonable doubt, satisfies *Apprendi*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: December 15, 2022

Respectfully submitted

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