No. 22-6088

In the Supreme Court of the United States

TUPOUTOE MATAELE,

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 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. Mataele, No. S138052, judgment entered July 21, 2022 (this case below).

In re Mataele on Habeas Corpus, No. S275256 (state collateral review) (pending).

Orange County Superior Court:

People v. Mataele, No. 00NF1347, judgment entered October 7, 2005 (this case below).

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STATEMENT

1. A jury convicted petitioner Tupoutoe Mataele of the murder of Danell Johnson, the attempted murder of John Masubayashi, and conspiracy to commit the murders of Johnson and Masubayashi. *See generally* Pet. App. A; *People v. Mataele*, 13 Cal. 5th 372, 385 (2022).[1] The evidence presented at trial showed that Mataele lured Johnson and Masubayashi into a car because of a personal dispute, and shot Johnson in the head and Masubayashi in the chest. *Mataele*, 13 Cal. 5th at 388. Johnson died from the gunshot wound to his head. *Id.* Masabayashi managed to flee before collapsing on the street. *Id.* Masabayashi was taken to the hospital, where he was able to tell police officers that Mataele shot him and Johnson. *Id.*

The prosecution charged Mataele with murder, attempted murder, and conspiracy to commit murders. *Mataele*, 13 Cal. 5th at 385; *see* Cal. Penal Code §§ 187(a), 664(a), 182(a). The prosecution further alleged the special circumstance that Mataele committed the murder by means of lying in wait. *Mataele*, 13 Cal. 5th at 385; *see* Cal. Penal Code § 190.2(a)(15). At the guilt phase of the trial, the jury convicted Mataele as charged and found the special circumstance allegation true beyond a reasonable doubt, thereby qualifying him for the death penalty. *Mataele*, 13 Cal. 5th at 385; 5 CT 1346-1348 (jury instructions

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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.

requiring proof beyond a reasonable doubt and unanimity in order to return true finding on special circumstance); *see* Cal. Penal Code § 190.2.[2]

At the penalty phase of the trial, the trial court instructed the jurors that, in deciding whether Mataele 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 circumstances are so substantial in comparison with the mitigating circumstances that it warrants death instead of life without parole." 6 CT 152-153.[3] The jury returned a verdict of death, and the trial court sentenced Mataele to death. *Mataele*, 13 Cal. 5th at 385; 6 CT 1590.

2. On direct appeal, the California Supreme Court affirmed Mataele's conviction and death sentence. *Mataele*, 13 Cal. 5th at 385. As relevant here,

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

[3] Consistent with state law, the trial court instructed the jury that, before relying on evidence of the defendant's prior violent conduct as circumstances in aggravation, any individual juror had to determine that those allegations were proven beyond a reasonable doubt. *See* 6 CT 1513; *see also Mataele*, 13 Cal. 5th at 392 (describing evidence of violent conduct presented during penalty phase).

the court observed that it had repeatedly considered and rejected challenges to California's capital sentencing scheme identical to those raised by Mataele. *Id.* at 434-435. The court reiterated its previous holding that because "the decision whether to sentence a defendant to death is essentially a normative one, we have held the prosecution bears no burden of persuasion in the penalty phase," and "[t]he death penalty law is not unconstitutional because it does not require unanimous jury findings, beyond a reasonable doubt, that particular aggravating factors (other than prior criminality) exist." *Id.* at 435.

ARGUMENT

Mataele 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. 13-25. This Court has repeatedly denied review in cases presenting the same or similar questions, and there is no reason for a different result here.[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, *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

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

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(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); *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).

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 Mataele's trial, the jury found him guilty of first degree murder and found the lying in wait special circumstance to be true. *Mataele*, 13 Cal. 5th at 385. The jury's findings were unanimous and made under the beyond-a-reasonable-doubt standard. 5 CT 1346-1348.

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. Mataele 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. 13-25. That is incorrect. Mataele primarily relies (Pet. 13-18) 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"). 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, Mataele cites *Hurst v. Florida*, 577 U.S. 92, 94-95, 98, 100 (2016). Pet. 16-17. 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 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 Mataele 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 any argument that such an instruction is required by the Constitution.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: December 19, 2022

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