

No. \_\_\_\_\_

IN THE  
Supreme Court of the United States

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MICHAEL J. BROOKS,  
PETITIONER,  
V.  
STATE OF LOUISIANA,  
RESPONDENT.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
LOUISIANA COURT OF APPEAL, FIRST CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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## **QUESTION PRESENTED**

This Court has granted certiorari in *Ramos v. Louisiana*, 139 S.Ct. 1318 (2019) (No. 18-5924). This case also involves a non-unanimous verdict, giving rise to the following question:

**Whether Petitioner was constitutionally entitled to a unanimous jury under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution?**

## **PARTIES TO THE PROCEEDING**

The petitioner is Michael J. Brooks, the defendant and defendant-appellant in the courts below. The respondent is the State of Louisiana, the plaintiff and plaintiff-appellee in the courts below.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner, Michael J. Brooks, respectfully petitions for a writ of certiorari to the Louisiana First Circuit Court of Appeal in *State v. Michael L. Brooks*, 258 So.3d 944 (La. App. 1 Cir. 9/24/18). *Appendix “A”*.

## **OPINIONS BELOW**

The judgment of the Louisiana First Circuit Court of Appeal is an unpublished opinion reported at *State v. Michael L. Brooks*, 258 So.3d 944 (La. App. 1 Cir. 9/24/18). *Appendix “A”*. The Louisiana Supreme Court’s order denying review of that decision is reported at *State v. Michael L. Brooks*, 2019 WL 1150363. *Appendix “B”*.

## **JURISDICTIONAL STATEMENT**

The judgment and opinion of the Louisiana First Circuit Court of Appeal were entered on September 24, 2018. The Louisiana Supreme Court denied review of that decision on February 25, 2019. *See Appendix “A” and “B”*, respectively. This Court’s jurisdiction is pursuant to 28 U.S.C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Sixth Amendment to the United States Constitution provides, in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . .” U.S. Const. Amend. VI.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

Article 782(A) of the Louisiana Code of Criminal Procedure provides, in pertinent part: “Cases in which punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict.” La. C.Cr.P. art. 782(A).

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## STATEMENT OF THE CASE

Petitioner was charged by grand jury indictment with one count of molestation of a juvenile (under the age of thirteen years), a violation of LSA-R.S. 14:81.2 (count 1), and two counts of aggravated rape (of a victim under the age of thirteen years), violations of LSA-R.S. 14:42 (prior to amendment, which redesignated aggravated rape as first-degree rape) (counts 2 and 3). He was found guilty as charged on counts 1 and 3 by a vote of 11-1;<sup>1</sup> he was found not guilty on count 2. Petitioner was sentenced to life in prison without parole, plus 25 years.

The Court of Appeals rejected petitioner's pro se challenge to the non-unanimous convictions observing:

Louisiana Constitution article I, § 17(A) and Louisiana Code of Criminal Procedure article 782A provide that in cases where punishment is necessarily at hard labor, the case shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict. Under both state and federal jurisprudence, a criminal conviction by a less than unanimous jury does not violate a defendant's right to trial by jury specified by the Sixth Amendment and made applicable to the states by the Fourteenth Amendment.

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<sup>1</sup> See *State v. Brooks*, 248 So. 3d 944, n. 3 (2018) ("It was an 11-1 verdict for both counts 1 and 3.")



*State v. Brooks*, 248 So. 3d 944, 953 (2018) at Pet. App. A9. The court noted that the issue had been resolved by the Louisiana Supreme Court in *State v. Bertrand*, 2008-2215 (La. 03/17/09), 6 So. 3d 738, and that the issue “had already been decided as meritless by a majority of the United States Supreme Court in *Apodaca*.” *Id.* at 954, Pet. App. A10.

### **Reasons for Granting the Petition**

On March 18, 2019, the Court granted a petition for a writ of certiorari in *Evangelisto Ramos v. Louisiana*, 139 S. Ct. 1318 (2019) (No. 18-5924). For the reasons stated in that petition, as well as reasons stated in similar petitions filed over the last 45 years, the plurality opinion in *Apodaca v. Oregon*, 406 U.S. 404 (1972), deserves re-examination and disavowal. Given the racial origins of the non-unanimous jury provision, full incorporation by the Fourteenth Amendment of the Sixth Amendment’s guarantee of a unanimous jury is required.

This Court should hold this petition pending its decision in *Ramos*, and then dispose of the petition as appropriate in light of that decision.

## CONCLUSION

The petition for writ of certiorari should be held pending this Court's decision in *Evangelisto Ramos v. Louisiana*, 139 S. Ct. 1318 (2019), and then be disposed of as appropriate in light of that decision.

Respectfully Submitted,



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Dated: May 14, 2019

## CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the \_\_\_\_\_ day of May, 2019, pursuant to Supreme Court Rules 29.3 and 29.4, the accompanying motion for leave to proceed *in forma pauperis* and petition for a writ of *certiorari* was served on each party to the above proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing these documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

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|--|--|
| Joseph L. Waitz, Jr.<br>District Attorney<br>Office of the District Attorney<br>P.O. Box 3600<br>Houma, LA 70361-3699<br>Phone: (985) 873-6868 | Colin Clark<br>Assistant Attorney General<br>Louisiana Department of Justice<br>P.O. Box 94005<br>Baton Rouge, Louisiana 70804<br>Phone: (225) 326-6200<br>Fax: (225) 326-6297<br>Email: ClarkC@ag.louisiana.gov |
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