

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

IN THE  
**Supreme Court of the United States**

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**HARLOW HUTCHINSON**

**PETITIONER,**

**V.**

**STATE OF LOUISIANA,**

**RESPONDENT.**

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
LOUISIANA COURT OF APPEAL, THIRD 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 jury 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 Harlow Hutchinson, 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, Harlow Hutchinson, respectfully petitions for a writ of certiorari to the Louisiana Third Circuit Court of Appeal in *State v. Harlow Hutchinson*, 2018-445 (La. App. 3 Cir. 12/12/18), 261 So.3d 927. *Appendix “A”, Pet. App. 1a-18a.*

## OPINIONS BELOW

The judgment of the Louisiana Third Circuit Court of Appeal is reported at *State v. Harlow Hutchinson*, 2018-445 (La. App. 3 Cir. 12/12/18), 261 So.3d 927. *Appendix “A”, Pet. App. 1a-18a.* The Louisiana Supreme Court’s order denying review of that decision is reported at *State v. Harlow Hutchinson*, 2019 WL 3229226 (La. 5/28/19). *Appendix “B”, Pet. App. 19a.*

## JURISDICTIONAL STATEMENT

The judgment and opinion of the Louisiana Third Circuit Court of Appeal were entered on December 12, 2018. *Appendix “A”, Pet. App. 1a-18a.* The Louisiana Supreme Court denied review of that decision on May 28, 2019. *Appendix “B”, Pet. App. 19a.* 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).

## STATEMENT OF THE CASE

Petitioner was charged by grand jury indictment with solicitation for murder, a violation of LSA-R.S. 14:28.1. He was found guilty as charged by a non-unanimous jury verdict<sup>1</sup>. Petitioner was sentenced to 17 years in prison at hard labor.

On direct appeal to the Third Circuit Court of Appeal, petitioner *pro se* argued, among other things, that the trial court “should have rendered the verdict as acquittal or at least as a mistrial because he was convicted by a non-unanimous jury verdict. Mr. Hutchinson’s trial counsel requested the polling of the jury. According to the Third Circuit, the appellate records did not contain the transcript or the minutes of the results of the polling. Consequently, the Third Circuit noted that Mr. Hutchinson could not “prove that he was convicted by a less than unanimous jury verdict.” *Pet. App. at 18(a)*. However, relying on *State v. Bertrand*, 2008-2215 (La. 03/17/09), 6 So.3d 738, the Court of Appeal rejected petitioner’s argument stating:

“The Supreme Court’s ruling in *Apodaca v. Oregon*, . . ., held that a state court conviction obtained by a less than unanimous jury was constitutional, and the Louisiana Supreme Court recently upheld the constitutionality of La. Code Crim. P. art. 782 in *State v. Bertrand*, 08-2311 (La. 3/17/09) 6 So.3d 738. Therefore, even if Defendant counsel prove his conviction was by a less than unanimous jury the verdict is valid.”

*Pet. App. at 18(a)*.

## REASONS FOR GRANTING THE WRIT

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<sup>1</sup> See *State v. Harlow Hutchinson* at Pet. App. 18a (defendant challenged the constitutionality of his non-unanimous jury verdict).



Mr. Hutchinson was convicted for solicitation for murder and sentenced to 17 years imprisonment at hard labor by a non-unanimous jury. 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 reason 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 reexamination and disavowal. Given the racial origins of the non-unanimous jury provision, full incorporation by the Fourteenth Amendment of the Sixth Amendments' guarantee of a unanimous jury is required.

The Sixth Amendment requires a unanimous verdict to convict a defendant of a nonpetty offense, and the Fourteenth Amendment applies that requirement to the states. Full incorporation is an established principle on which the Court itself has relied for several decades. This Court should overrule *Apodaca*'s idiosyncratic and incorrect holding and apply the Sixth Amendment's unanimity guarantee to the states.

In *Lewis v. Louisiana*, 18-7488, a case involving the same issue, the State of Louisiana through the office of the Attorney General agreed:

This Court granted the petitioner's petition for a writ of certiorari in *Ramos* on March 18, 2019. Accordingly the petition in this case should be held pending the Court's decision in *Ramos* and then disposed of as appropriate in light of that decision.

See *Lewis v. Louisiana*, 18-7488 (Brief in Opposition) at 5; see also *id.* at 6 ("Conclusion: The petition for a writ of certiorari should be held pending this Court's

decision in *Evangelisto Ramos v. Louisiana*, No. 18-5924 (April 3, 2019) and then disposed of accordingly”).

### 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,

A handwritten signature in blue ink, appearing to read "G. Ben Cohen", with a long horizontal flourish extending to the right.

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## CERTIFICATE OF SERVICE

Undersigned counsel certifies that on this date, the 13<sup>th</sup> day of August, 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:

Keith Stutes <i>District Attorney</i> 15 <sup>th</sup> Judicial District Attorney's Office 100 South State Street, #215 Abbeville, LA 70510 Office Phone: (337) 898-4320	Elizabeth B. Murrill Louisiana Department of Justice P.O. Box 94005 Baton Rouge, Louisiana 70804 Phone: (225) 326-6766 Email: <a href="mailto:MurrillE@ag.louisiana.gov">MurrillE@ag.louisiana.gov</a>
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