No. 19-5807

IN THE
Supreme Court of the United States

THEDRICK EDWARDS,
Petitioner,

v.

DARREL VANNOY, WARDEN,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF AMICI CURIAE EDWARD L. TARPLEY, JR., PAUL J. CARMOUCHE, MICHAEL W. MAGNER, STEPHEN HÉBERT, RHETT P. SPANO, WILLIAM L. GOODE, HARRY ROSENBERG, JAMES E. BOREN, RALPH S. WHALEN, PAUL C. FLEMING, JR., A. MARTIN STROUD, III, GRAHAM BOSWORTH, LEONARD KNAPP, JR., MICHAEL D. SKINNER

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INTERESTS OF *AMICI CURIAE*[1]

Amici are fourteen former prosecutors both state and federal who believe that convictions on the basis of an unconstitutional jury verdict cannot stand.

Edward L. Tarpley, Jr., lead *Amicus* and former district attorney for Grant Parish (1991-1997), authored the resolution adopted by the Louisiana State Bar Association calling for the legislature to restore unanimous jury verdicts in Louisiana, and helped lead the successful campaign to enshrine the right to a unanimous jury in Louisiana's constitution.

Joining Mr. Tarpley as *Amici* are Paul J. Carmouche, former President of the Louisiana District Attorneys' Association, member of the Governor's Commission on Law Enforcement, and five-term District Attorney for Caddo Parish; Michael W. Magner, who served 20 years in the Assistant U.S. Attorney's office in the Eastern District of Louisiana (New Orleans) and received the Department of Justice's highest award for litigation, the John Marshall Award, as well as the Director's Award for Superior Performance; Stephen Hébert, former assistant district attorney, New Orleans, 2003-2005 and 2008-2010; Rhett P. Spano, former prosecutor Orleans

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[1] Pursuant to this Court's Rule 37, *Amici* states that no counsel for any party authored this brief in whole or in part, and no person or entity other than *Amici* made a monetary contribution to the preparation or submission of the brief. *Amici* provided timely notice of this brief to the parties. Petitioner and Respondent consented to the filing of this amicus brief.

Parish, 1999-2001; William L. Goode, former assistant district attorney in Caddo Parish and a former Assistant U.S. Attorney in the Western District of Louisiana; Harry Rosenberg, former United States Attorney for the Eastern District of Louisiana; James E. Boren, former Assistant District Attorney in New Orleans; Ralph S. Whalen, former Assistant District Attorney and Special Prosecutor, New Orleans District Attorney's Office, 1971-1975; Paul C. Fleming, Jr., former assistant district attorney in New Orleans 1995-1996; A. Martin Stroud, III, who served as an Assistant U.S. Attorney, Western District of Louisiana, for six years with the last two as Chief of the Criminal Section, and also served as First Assistant District Attorney for Caddo Parish for six years; Graham Bosworth, former Judge, Pro Tempore, of Section "D" in Orleans Parish Criminal District Court, and a former Orleans Parish Assistant District Attorney for five years beginning in 2005; Leonard Knapp, Jr., former District Attorney, 14th Judicial District Court, Calcasieu and Cameron Parishes; and Michael D. Skinner, former United States Attorney for the Western District of Louisiana, 1993-2000.

INTRODUCTION

For centuries, the bedrock principle that only the verdict of a unanimous jury could sustain a conviction has safeguarded the accuracy, fairness, and integrity of our criminal justice system—except in Louisiana and Oregon. Seeking to deny members of racial, ethnic, and religious minorities their right to a fair trial, those two states abolished the fundamental requirement of a unanimous jury. Not only has this policy caused the discriminatory effects its authors intended, it has deprived every defendant in those states of the right to a fair trial guaranteed by the Sixth Amendment to the United States Constitution.

In *Ramos v. Louisiana*, 140 S. Ct. 1390, 1397, 206 L.Ed.2d 583 (2020), the Court finally put an end to the further use of non-unanimous juries. That welcome decision, however, does nothing to redress the harm inflicted upon Petitioner and the thousands of other defendants unconstitutionally convicted by non-unanimous juries in the past. Each of those cases was tried by a prosecutor who, like *Amici*, owed a duty to do justice, not to secure a conviction at any cost. In light of *Ramos*, the costs of those unconstitutional convictions—both to the defendants and to the integrity of the justice system itself—are now painfully clear. *Amici* believe that convictions obtained by denying defendants the most essential protections of our Constitution are not just. *Amici* urge the Court not to let these unconstitutional convictions stand, but instead to ensure that justice is done.

SUMMARY OF ARGUMENT

In our criminal justice system, prosecutors bear the unique obligation to seek a fair and just result in all criminal prosecutions. Almost one hundred years ago, this Court observed that:

> [t]he [prosecutor] is the representative not of any ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that *justice shall be done*.

Berger v. United States, 295 U.S. 78, 88 (1935) (emphasis added). A prosecutor is a "servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer." *Id.*

Throughout their careers as prosecutors, *Amici*'s highest obligation was not obtaining convictions, but doing justice. This solemn commitment is necessary to protect defendants' due process rights, to conduct criminal prosecutions fairly, to preserve the credibility of the criminal justice system, and, above all else, to ensure the innocent are not imprisoned while the guilty go free.

For far too long, Louisiana and Oregon failed to guarantee all defendants a right to a fair trial in which "justice shall be done." Alone among the states of the Union, these two jurisdictions permitted criminal convictions on the basis of non-unani-

mous jury verdicts. Thousands of criminal defendants in Louisiana and Oregon have been convicted on the basis of non-unanimous verdicts that would have resulted in mistrials in the courts of every other state and every federal district.

The states' anomalous standard was intentionally designed to achieve racist results. For many decades and in many thousands of cases, it succeeded. In addition to these discriminatory effects, the policy deprived *all* defendants of the essential protections of the unanimity requirement. As *Amicus* Edward L. Tarpley, Jr. explained during the successful campaign to change Louisiana's law, "The impact of the non-unanimous jury verdict law . . . hangs over the criminal justice system of Louisiana like a cloud and influences how criminal cases are both prosecuted and defended."[2]

Finally recognizing the pernicious history and consequences of these non-unanimous jury verdicts earlier this year, the Court ruled that the Sixth Amendment protects defendants from this unfair practice in state courts, just as it does in federal courts. *Ramos v. Louisiana*, 140 S. Ct. 1390, 1397, 206 L.Ed.2d 583 (2020) ("There can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally.").

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[2] Ed Tarpley, *Guest column: Change state law on jury trials*, *The Advocate*, (Apr. 1, 2018), available at: https://www.theadvocate.com/baton_rouge/opinion/article_51ca1c88-32af-11e8-ac74-33079e43fbf4.html

Now, the Court must decide whether it will deny justice to all those victims of these racist laws who, like the Petitioner, suffered the misfortune of having their cases decided before the *Ramos* decision.

As prosecutors, *Amici* fully understand the importance of finality in criminal prosecutions and the challenges engendered by retrying cases. But "finality" is not the highest goal of our criminal justice system: justice is.

Justice is not upheld by the stubborn refusal to remedy hundreds of unconstitutional convictions based on racially discriminatory laws that have disproportionately harmed African American defendants and jurors. *Amici* have no doubt that the capable prosecutors of Louisiana and Oregon can manage the administrative burdens resulting from the retroactive application of *Ramos*. They have much less confidence that public trust in our court systems can withstand the continued incarceration of so many people convicted under an unconstitutional standard.

Because *Amici* have devoted their lives to ensuring "that justice shall be done," they urge the Court to grant the relief Petitioner seeks.

I. The Unanimous Verdict Requirement Is an "Ancient Guarantee" that Must Be Applied Retroactively

In *Ramos*, the Court held that the Sixth Amendment forbids the felony conviction of criminal defendants by non-unanimous jury verdicts in state courts. Here, on collateral review of Mr. Edwards' fi-

nal conviction, the Court must decide whether to apply that rule retroactively to felony convictions determined by non-unanimous jury verdicts that occurred before the Court's decision in *Ramos*. *Amici* urge the Court to do so.

In *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060, 103 L.Ed.2d 334 (1989), the Court adopted a framework for determining whether a rule "should be applied retroactively to judgments in criminal cases that are already final on direct review." *Whorton v. Bockting*, 549 U.S. 406, 416, 127 S. Ct. 1173, 1180–81, 167 L.Ed.2d 1 (2007). Under that framework, an "*old* rule applies both on direct and collateral review," but a "*new* rule" typically applies only on direct review. *Id.* (emphasis added). The Court did "not attempt to define the spectrum of what may or may not constitute a new rule for retroactivity purposes," but noted that, "i[n] general . . . a case announces a new rule when it breaks new ground," "imposes a new obligation on the States or the Federal Government," or "was not *dictated* by precedent existing at the time the defendant's conviction became final." *Teague*, 489 U.S. at 301 (plurality opinion) (emphasis in original).

Far from creating a "new rule," *Ramos* restored "the ancient guarantee of a unanimous jury verdict" in state court criminal proceedings. *Ramos*, 140 S. Ct. at 1401. "The Sixth Amendment right to a jury trial is 'fundamental to the American scheme of justice' and incorporated against the States under the Fourteenth Amendment." *Ramos*, 140 S. Ct. at 1397 (citing *Duncan v. Louisiana*, 391 U.S. 145, 148-50

(1968)).[3] Necessarily included within that right is the requirement that "[a] jury must reach a unanimous verdict in order to convict. *Id.* at 1395. As John Adams put it, "it is the unanimity of the jury that preserves the rights of mankind." 1 John Adams, A Defence of the Constitutions of Government of the United States 376 (Philadelphia, William Cobbett 1797).

While Adams may have been a visionary in other respects, here he broke no new ground. "The requirement of juror unanimity emerged in 14th century England and was soon accepted as a vital right protected by the common law." *Ramos*, 140 S. Ct. at 1395 (citing J. Thayer, Evidence at the Common Law 86–90 (1898) (Thayer); W. Forsyth, History of Trial by Jury 200 (J. Morgan ed., 2d ed. 1875); 1 W. Holdsworth, A History of English Law 318 (rev. 7th ed. 1956); D. G. Smith, The Historical and Constitutional Contexts of Jury Reform, 25 Hofstra L. Rev. 377, 397 (1996)). Accordingly, Blackstone emphasized the necessity of "the unanimous suffrage" of twelve jurors: a "'verdict, taken from eleven, was no verdict'" at all. *Id.* (quoting 4 W. Blackstone, Commentaries on the Laws of England 343 (1769)).

Following the common law, the first states also adopted the unanimity requirement expressly or implicitly. *Id.* at 1396. And, as this Court has long recognized, the Framers enshrined the right to a trial

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[3] Indeed, the Declaration of Independence lists the deprivation "of the benefits of Trial by Jury" among the "repeated injuries and usurpations" that threatened "the establishment of an absolute Tyranny over these States." The Declaration of Independence (U.S. 1776).

by a unanimous jury in the Sixth Amendment to the United States Constitution. *Id.*

Reestablishing the centuries-old requirement of unanimous jury verdicts in state court proceedings did not "break new ground" or "impose a new obligation" never before imagined by the states. To the contrary, the "Court has, repeatedly and over many years, recognized that the Sixth Amendment requires unanimity." *Id.* at 1396; *see also id.* at 1421, 1423-24 (Thomas, J., concurring in the judgment) (concluding because the Court's decisions "have long recognized that unanimity is required" by the Sixth Amendment, that "constitutionally enumerated right" necessarily applies to the States through the Privileges or Immunities Clause of the Fourteenth Amendment).

Because the rule applied in *Ramos* is one of the oldest and most venerable rules known to our criminal justice system it cannot reasonably be characterized as a "new rule" for the purposes of the *Teague* framework, and the Court should apply it retroactively.

II. The Unanimous Verdict Requirement Is a "Watershed Rule" that Must Be Applied Retroactively

Even if deemed a "new rule," however, the ancient requirement of unanimity would still apply retroactively under *Teague*. Based upon considerations of comity and administrative convenience, even a new rule applies on collateral review "if (1) the rule is substantive or (2) the rule is a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding."

Whorton, 549 U.S. at 416 (internal quotation marks and alterations omitted).

A "watershed rule" must meet two requirements. *Id.* at 418. "First, the rule must be necessary to prevent an impermissibly large risk of an inaccurate conviction. Second, the rule must alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Id.* (internal citations and quotation marks omitted).

If any rule can be considered a "watershed," it is this rule now before the Court.

A. The prohibition of non-unanimous jury verdicts is "necessary to prevent an impermissibly large risk of an inaccurate conviction."

Ramos' rejection of non-unanimous juries in state courts is essential to protecting against an "impermissibly large risk of an inaccurate conviction," satisfying the first requirement of a "watershed rule." *Whorton*, 549 U.S. at 418. "The history recounted above demonstrates that from the inception of our scheme of justice, the unanimous jury has been one of its essential attributes; serving with the requirement of guilt beyond a reasonable doubt as the guarantor of the accuracy and fairness of criminal convictions.

The Court in *Ramos* traced an unbroken line of authorities recognizing the indispensability of unanimous jury verdicts from the founding of this nation to the post-Reconstruction Louisiana Constitutional Convention of 1898. 140 S. Ct. at 1396-97. Seeking to "establish the supremacy of the white race," *id.* at

1394, the convention "approved non-unanimous juries as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans, especially in voting and jury service," *id.* at 1417 (Kavanaugh, J., concurring in part). "[A]ware that this Court would strike down any policy of overt discrimination against African-American jurors . . . the convention delegates sculpted a 'facially race-neutral' rule . . . in order 'to ensure that African-American juror service would be meaningless.'" *Id.* at 1417 (Kavanaugh, J., concurring in part) (quoting *State v. Maxie*, No. 13–CR–72522 (La. 11th Jud. Dist., Oct. 11, 2018), App. 56–57). In the 1930s, Oregon followed suit; implementing a non-unanimous jury rule that "can be similarly traced to the rise of the Ku Klux Klan and efforts to dilute the influence of racial, ethnic, and religious minorities on Oregon juries." *Id.* at 1394 (internal quotation marks omitted).

The stated purpose of these laws was to reduce the fairness and accuracy of jury verdicts by permitting the unreasonable certainty of a white majority to quash the reasonable doubts of a diverse minority.[4] "Then and now, non-unanimous juries can

[4] Writing as *amicus curiae* in *Ramos*, the State of Oregon disputed that unanimity is a fundamental requirement of a fair and accurate trial, dismissing it as a "historical accident" and "an artifact of bizarre medieval assumptions and practices." Brief for State of Oregon as *Amici Curiae*, *Ramos v. Louisiana*, 2019 WL 4013302 at 28, n. 9 (U.S.). The current governor and her four most recent predecessors—joined by numerous prominent Oregon judges and law professors—strongly disagree: "The non-unanimous jury rule makes wrongful convictions more likely." Brief for Prominent Current and Former State Executive and Judicial Officers, Law Professors and the

silence the voices and negate the votes of black jurors, especially in cases with black defendants or black victims, and only one or two black jurors. The 10 jurors 'can simply ignore the views of their fellow panel members of a different race or class.'" *Id.* at 1414-18 (Kavanaugh, J., concurring in part) (quoting *Johnson v. Louisiana*, 406 U.S. 356, 397 (1972) (Stewart, J., dissenting)).

"In light of the racist origins of the non-unanimous jury, it is no surprise that non-unanimous juries can make a difference in practice, especially in cases involving black defendants, victims, or jurors." *Id.* at 1417 (Kavanaugh, J., concurring in part). Through the use of these juries, Louisiana and Oregon have "allow[ed] convictions of some who would not be convicted under the proper constitutional rule, and tolerate[d] and reinforce[d] a practice that is thoroughly racist in its origins and has continuing racially discriminatory effects." *Id.* at 1419 (Kavanaugh, J., concurring in part). In short, the purpose of these laws was to make it easier to silence "racial, ethnic, and religious minorities" serving on juries and to make it easier to convict members of those groups of serious crimes.

Even in the absence of such invidious discrimination, in what sense can the State claim it has proven a defendant's guilt beyond a reasonable doubt when it simply decrees that the doubts of two jurors are, in effect, per se unreasonable? *See Amicus Curiae*

OCDLA as *Amicus Curiae*, *Ramos v. Louisiana*, 2019 WL 2563177 at 28 (U.S.) (listing examples of wrongful convictions by non-unanimous juries in Oregon).

Brief from Prominent Current and Former State Executive and Judicial Officers, Law Professors and the OCDLA as *Amicus Curiae*, *Ramos v. Louisiana*, 2019 WL 2563177 at *18 (U.S.) ("Non-unanimity 'demonstrates the existence of reasonable doubt that could not be explained during the deliberation of twelve vetted jurors and shows that the government has failed to meet its burden of proof.'") (quoting Kaplan & Saack, *Overturning Apodaca v. Oregon Should Be Easy: Nonunanimous Jury Verdicts in Criminal Cases Undermines the Credibility of Our Justice System*, 95 Or L. Rev. 1, 29 (2016)).

Whatever expediency is gained by non-unanimous verdicts comes at the expense of accuracy and fairness. *Ramos*, 140 S. Ct. at 1401 ("Who can say whether any particular hung jury is a waste, rather than an example of a jury doing exactly what . . . it should—deliberating carefully and safeguarding against overzealous prosecutions?"). By allowing ten jurors to ignore the views and objections of the remaining two, the use of non-unanimous juries denies *every* defendant, regardless of race or creed, an essential protection against inaccurate and unfair verdicts.

Because these laws were *designed* to create an impermissible risk of inaccurate convictions—and in practice do create such a risk—abolishing these laws necessarily satisfies the first criterion of a "watershed rule."

B. The prohibition of non-unanimous jury verdicts restores the Court's historical "understanding of the bedrock procedural elements essential to the fairness of a proceeding."

The second requirement of a "watershed rule" is that it "must alter [the Court's] understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Whorton*, 549 U.S. at 418 (internal citations and quotation marks omitted). Truly new rules will almost always fail this standard. *Cf. Teague*, 489 U.S. at 311–12 (citing "the right to counsel at trial" as the only example). After all, how likely is it that a "bedrock procedural element" has gone undiscovered over the hundreds of years of criminal jury trials in our legal tradition?

As shown above, however, the Court did not invent a novel new rule of criminal procedure in *Ramos*, it merely corrected its own "egregiously wrong" decision in *Apodaca v. Oregon*, 406 U.S. 404, 92 S. Ct. 1628, 32 L.Ed.2d 184 (1972). That rule was "an outlier in the Court's jurisprudence" at the time it was decided and "over time it has become even more of an outlier." *Ramos*, 140 S. Ct. at 1416 (Kavanaugh, J., concurring in part). *Ramos* "alter[ed]" the Court's understanding by restoring the unanimous jury requirement to its rightful place as a "bedrock procedural element[ ] essential to the fairness of" *all* felony criminal proceedings. *Whorton*, 549 U.S. at 418.

The history detailed above demonstrates that unanimous juries were considered "bedrock proce-

dural elements" of criminal trials for the five hundred years preceding *Apodaca*. In that case, four members of the Court voted to demote "the ancient guarantee of a unanimous jury verdict" based upon a "cost-benefit analysis" of the requirement's "'function' in 'contemporary society.'" *Ramos*, 140 S. Ct. at 1398, 1401 (quoting *Apodaca*, 406 U.S. at 410, 92 S. Ct. 1628). Justice Powell, meanwhile, provided the fifth vote for upholding non-unanimous juries under the idiosyncratic "dual-track" theory of incorporation, which he admitted was foreclosed by precedents he was simply "unwillin[g]" to follow. *Id.* at 1398 (quoting *Apodaca*, 406 U.S. at 375-76 and n. 15, 92 S. Ct. 1635 (concurring opinion)).

Suffice it to say, the Court's understanding of whether non-unanimous jury verdicts are "fundamentally fair" has changed since *Apodaca*. *Teague*, 489 U.S. at 311, 109 S. Ct. 1060. "Apodaca was gravely mistaken [and] no Member of the Court today defends [it] as rightly decided . . . ." *Ramos*, 140 S. Ct. at 1405. Having restored the requirement of unanimous juries to its once and future "bedrock" status, the Court must now apply that "watershed rule" retroactively.[5]

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[5] Indeed, that is precisely what the Court did the last time it struck down a Louisiana law permitting non-unanimous jury trials. *Brown v. Louisiana*, 447 U.S. 323, 331, 100 S. Ct. 2214, 2221, 65 L.Ed.2d 159 (1980) (holding non-unanimous six-member juries for petty offenses violates the Sixth Amendment, and applying rule retroactively). There, the Court noted that the failure to require a unanimous verdict "raise[d] serious doubts about the fairness" of the trial "and the reliability of the fact-finding process" to an even greater extent than the denial of a jury altogether. *Id.* at 334 and n. 13.

III. The Unanimous Verdict Requirement Must Be Applied Retroactively to Preserve the Integrity of the Justice System

Implicit in the *Teague* framework is the calculus that the administrative burden of upsetting final convictions is justified only when states have deprived defendants of fundamental guarantees of fairness. That has happened here. Indeed, it is difficult to imagine a more egregious deprivation of the fundamental guarantees of fairness than a racist law depriving defendants, mostly of color, of their basic freedom over the reasonable doubts of some of their peers. Even the individualized prosecutorial misconduct forbidden by *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L.Ed. 2d 69 (1986), is less unconscionable than a law imposing discriminatory procedures in *every* case. *Amici* believe it is also significant that the costs of retroactive compliance with the Sixth Amendment are likely to be relatively modest—and the consequences of failing to remedy those past injustices would be incalculable.

Based on their professional experience as prosecutors, *Amici* do not share the dissent's fear that *Ramos* would "impose[ ] a potentially crushing burden on the courts and criminal justice systems" of Oregon and Louisiana. *Ramos*, 140 S. Ct. at 1425 (Alito, J., dissenting). Retroactive application would "not affect the validity of all convictions obtained under Louisiana's unconstitutional jury practice . . . but only those in which it can be shown that the vote was in fact less than unanimous." *Brown*, 447 U.S. at 336, 100 S. Ct. 2214. Even then, in many cases the non-unanimous verdict will be immaterial for other reasons, such as where criminals are serving a

longer concurrent sentence based on a unanimous conviction. But in those relatively few cases when the evidentiary record demonstrates an individual was convicted unconstitutionally based on intentionally discriminatory laws, justice demands correcting that past error. *See id.* at 337 ("What little disruption to the administration of justice results from retroactive application . . . 'must be considered part of the price we pay for former failures to provide fair procedures.'") (quoting *Adams v. Illinois,* 405 U.S. 278, 297, 92 S. Ct. 916, 927, 31 L.Ed.2d 202 (Douglas, J., dissenting)).

How that error is corrected will vary from case to case. Prosecutors possess substantial discretion to assess the demands of justice in each case and proceed accordingly. By definition, defendants impacted by the Court's decision in this case have already served lengthy sentences. Where appropriate, prosecutors may decline to recharge the defendant in light of the nature of the crime, the interests of the victim, the time served, the time remaining on the sentence, and other relevant factors. *Amici* anticipate that the vast majority of the remaining cases would be resolved through plea agreements, rather than retrial. Managing the cases that do need to be retried is unlikely to prove unduly burdensome. Prosecutors are no strangers to trial, and they have significant control over the timing and administration of their cases.

More fundamentally, however, *Amici* agree with Chief Justice Johnson of the Supreme Court of Louisiana that "[t]he cost of giving new trials to all defendants convicted by non-unanimous juries pales

in comparison to the long-term societal cost of perpetuating—by our own inaction—a deeply-ingrained distrust of law enforcement, criminal justice, and Louisiana's government institutions." *State v. Gipson*, 2019-01815, p. 9 (La. 6/03/20), — So. 3d — (Johnson, C.J., dissenting); *see also Johnson v. Louisiana*, 406 U.S. at 398 (Stewart, J., dissenting) ("[C]ommunity confidence in the administration of criminal justice cannot but be corroded under a system in which a defendant who is conspicuously identified with a particular group can be acquitted or convicted by a jury split along group lines."). "[T]his Court has emphasized time and again the imperative to purge racial prejudice from the administration of justice generally and from the jury system in particular." *Ramos*, 140 S. Ct. at 1418 (Kavanaugh, J., concurring) (internal quotation marks omitted). But this Court cannot say it has purged "the last of Louisiana's Jim Crow laws" if it denies justice to the vast majority of individuals convicted under those laws. *Id.* (Kavanaugh, J., concurring).

In the powerful conclusion to his opinion in *Ramos*, Justice Gorsuch writes:

> On what ground would anyone have us leave Mr. Ramos in prison for the rest of his life? Not a single Member of this Court is prepared to say Louisiana secured his conviction constitutionally under the Sixth Amendment. No one before us suggests that the error was harmless. Louisiana does not claim precedent commands an affirmance. In the end, the best anyone can seem to muster against Mr. Ramos is that, if we

> dared to admit in his case what we all know to be true about the Sixth Amendment, we might have to say the same in some others. But where is the justice in that? Every judge must learn to live with the fact he or she will make some mistakes; it comes with the territory. But it is something else entirely to perpetuate something we all know to be wrong only because we fear the consequences of being right.

Ramos, 140 S. Ct. at 1408.

Amici believe Justice Gorsuch's words are just as true for Mr. Edwards and all others convicted under these discriminatory laws, as they were for Mr. Ramos. The Court should not allow Mr. Edwards' unconstitutional conviction to stand merely because it fears the costs of correcting past injustices. Those costs are the price we must pay to protect the integrity of the justice system to which *Amici* have devoted their lives, and upon which the "rights of mankind" depend. 1 John Adams, A Defence of the Constitutions of Government of the United States 376 (Philadelphia, William Cobbett 1797).

CONCLUSION

For the reasons set forth herein, *Amici* respectfully request that the Court grant the relief sought by Petitioner.

Respectfully submitted,

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